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URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

HEARING

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

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URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, NOVEMBER 10, 1993

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

The hearing was convened, pursuant to notice, at 10:05 a.m., Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Also present: Senators Baucus, Rockefeller, Packwood, Danforth, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No H-42, October 22, 1993]

FINANCE COMMITTEE ANNOUNCES PLANS FOR URUGUAY ROUND HEARING; REQUESTS TESTIMONY FROM INTERESTED PERSONS

WASHINGTON, DC—Senator Daniel Patrick Moynihan (D-NY), Chairman of the Senate Committee on Finance, announced today that the Committee has scheduled a hearing on the Uruguay Round of multilateral trade negotiations.

The hearing will begin at *10:00 a.m. on Wednesday, November 10, 1993,* in room SD-215 of the Dirksen Senate Office Building.

"On June 23, the Finance Committee voted 18-to-2 to give the President an extension of 'fast track' negotiating authority for the Uruguay Round. One week later, that extension passed the full Senate 76-to-16. Those votes sent a clear message of our support for the President in his effort to complete these critical trade negotiations by December 15," Senator Moynihan said.

"Now, with less than two months remaining before that deadline, it is essential that the Finance Committee review where matters stand in Geneva. The Committee will be particularly interested in the eight key areas of the negotiations described in our June 23 letter to the President," Senator Moynihan added.

The Uruguay Round participants have agreed to conclude the negotiations by December 15. Under U.S. law, the President must also notify Congress by that date of his intent to enter into the agreement in order for implementing legislation to be considered under fast track legislative procedures.

In its June 23 letter, the Finance Committee set forth the objectives it believes the United States should pursue in the following areas of the negotiations: market access (tariffs and non-tariff barriers), services trade, agricultural trade (including sanitary and phytosanitary measures), government procurement, dispute settlement, disciplines on dumping and subsidies, intellectual property rights, and textiles and apparel.

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

The CHAIRMAN. A very good morning to our distinguished witnesses and our guests. This is a regular hearing of the Committee on Finance on the Uruguay Round of negotiations under the GATT.

Senator Baucus, who is chairman of our Subcommittee on Trade, will speak for himself, but I think we can say that our committee is concerned that the progress in Geneva is not what we had hoped it would be.

We have a deadline of December 15th, and I am here to say, as chairman of the committee, that is a serious deadline. We have been at this for 7 years and the time comes when an agreement should be reached. We think there is opportunity to enlarge the current GATT in an exceptionally important way.

The scope of the GATT is there, the basic agreements, and they ought to be consummated. We have found ourselves the object of Gallic comment which, if not unfamiliar, is not any the more welcome, and the sort of sniping that is inappropriate to a matter of this consequence.

Some of us have been asked if we would be able to visit Geneva before the final hours of negotiations, and I think we will undertake to do that. We will talk in the committee about it. Mr. Barnette particularly made that suggestion. But we are here to listen and to learn.

Senator Packwood will be just a little bit late, but we are going to go ahead in any event since we have members on both side.

Senator Baucus.

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

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

Several months ago, Mr. Chairman, I spoke about the Round to a business forum. And, on that occasion, I said that a modern day Nietzsche might conclude that GATT is dead. If we do not pay more attention to this, Mr. Chairman, I am afraid that that might be a self-fulfilling prophecy. I commend you very much for holding this hearing.

Frankly, I am a bit disturbed because, with all of the attention on the NAFTA, I do not think the Congress, Washington, DC—including this committee—really has paid all the attention we should have been paying on the Round, because consequences of the Round, I think, are going to be even greater than the consequences of NAFTA.

When the Round opened, as we all know, we hoped to expand the GATT essentially to meet the challenges of a new century. GATT covers very little modern commerce; the GATT has to be expanded. We plan not only to continue the tariff and quota cuts of previous Rounds, but to extend GATT coverage to trade and agriculture, services, and agree on ways to protect intellectual property, a subject the Round had previously neglected.

We wanted to make GATT as strong as the other Bretton Woods institutions. I believe these goals are still valid. I believe that, even

now, they are still attainable and reaching them would mean a lot for the States and for the world.

This week, for example, the OECD said, "A successful Round would raise world economic production by $270 billion a year." Earlier estimates found it would raise American GDP by $65 billion a year after 10 years.

So what remains to be done? First, the Round must take, in my judgment, environmental issues into account and prepare us for a future green Round. Its dispute settlement process should be adaptable to environmental concerns.

Its agriculture sections must be as strong as NAFTA on environmental issues like sanitary and phytosanitary standards, making sure we can block unsafe fruit, vegetables and meats, and, like NAFTA, it should not threaten our existing environmental standards.

Second, on agriculture we must remove the most abusive export subsidies. Out, too, must go the quotas and outright import bans that block our grains, rice, apples and wood products from countries like Japan and South Korea.

If we succeed, American farmers would see exports rise by $4–$5 billion over the first 6 years of the agreement. This would include up to $2.8 billion in new grain exports.

Third, the market access sections of the Round must have stronger benefits for manufacturing than the present Dunkel drafts, it must eliminate European tariffs on semiconductor chips and nonferrous metals, and Japanese tariffs on wood products, and it must move us toward similar agreements with developing nations.

Fourth, on intellectual property, the provisions should be as strong as in NAFTA. I remind everyone that if we get NAFTA it will be much easier to demand that GATT be just as good.

By the way, Mr. Chairman, I want to compliment the Vice President on his performance last night. I thought he did a great job. I think those who watched Mr. Perot and the Vice President, after they listened to the music as well as the words, will understand that this is a good deal for America.

Back to intellectual property. I think the Dunkel draft has good points, but it falls short in two areas. First, it allows too much time to change weak or non-existent pharmaceutical patent laws, leaving some products open to piracy for over a decade. It does not require protection for pharmaceuticals in the pipeline stage, that is, medicines not yet approved for public use.

Second, it fails to ensure national treatment for films and television programs. This would give a permanent okay to the discriminatory provisions in the EC's broadcast directory.

And, finally, a good GATT agreement would not weaken our trade remedy laws, as the Dunkel text threatens to do. Section 301, Special 301 on intellectual property, and our antidumping and countervailing duty laws must all stay intact and at full strength.

Assuming the administration does not intend to break its campaign promise on Super 301, it must provide for that law as well. It would be very hard for me to vote for a GATT agreement that weakens our trade laws.

If all sides are committed to an agreement in the best interests of world trade, we can reach a deal in the next month. But I see few signs, Mr. Chairman, of that commitment.

Japan, the world's major beneficiary of the GATT, resists cutting tariffs and opening its financial services market; developing countries still fight strong intellectual property standards; Germany refuses to open its telecommunications market; and France makes these obstacles seem minor by trying to back out of the Blair House agreement.

Some of this might be posturing. But, even if it is, there is a lot of work to do and very little time to do it. There are just over 30 days to address all of the issues on which the Dunkel draft needs changes. That is not much time. Today's hearing, I hope, will serve as an alarm bell.

GATT is very sick; it does not meet the challenge of today's modern global commerce and needs emergency treatment. This Round can help resuscitate, help revive it. We have 35 days left. I hope we succeed. We have to use every single day as well as we possibly can to achieve that goal.

The CHAIRMAN. Very well said, sir. Can I just make the point for the record so everyone here will know it? You made the point of having the GATT develop into an institution comparable to the other Bretton Woods institutions, and it just has never done that.

I mean, I can remember the GATT when it consisted of Eric Windham White and three Swiss secretaries in a little villa above Geneva. This particular Round would begin to produce more institution than it has in the past.

But, just as importantly, an organization began in 1948 in an era when international trade was trade in things, and very elemental things. The computer had not appeared; the development of pharmacology and the like had not happened.

The Tokyo Round, which was concluded in 1979, is already in a distant point of development of our economies. Things have happened since intervening it which the international trade regime has not provided or responded to. That is a wake-up proposition. We have 35 days. I suggest we had better get on with this hearing.

Senator Grassley.

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

Senator GRASSLEY. Well, one of the points, Mr. Chairman, that I am going to make in a statement that I am not going to read because I want to save time, is that NAFTA, it seems to me, is going to be decided in the next week or so.

And that is very important in this process, as far as I am concerned, since GATT provides an opportunity to demonstrate leadership in the global economy and to prove that Americans can and do want to compete.

And I think if we reject NAFTA, we are going to send a signal to the entire world that we favor the status quo and that we are going to be a more inward-looking Nation, withdrawing to some extent. And, if that attitude is present towards the United States as we see ourselves, it seems to me that that is going to be negative towards GATT.

One other thing for any of our witnesses that are going to testify today, if any of them feel that, because of the agricultural issues, that agriculture maybe should be set aside and made not a part of GATT—which I would not agree with—I would like to know if that is the view of anybody who is testifying today.

And, lastly, Mr. Chairman, a question to you. I do not know what the definition of a deadline is. It seems to me like every year for the last 5 or 6 years we have been talking about having to do something before the end of the year.

And, except for fast track running out, what is any different about this December 15th deadline than any other deadlines we have had? Unless I have misinterpreted what the definition of deadline is.

The CHAIRMAN. The difference, sir, is that this deadline will not be extended. The world community has had ample opportunity to make its will known. And, if it does not want to do this, well, then, nothing——

Senator GRASSLEY. Does that make this deadline any more credible than past deadlines?

The CHAIRMAN. I think it would be prudent not to answer. But you did hear me say this deadline will not be extended.

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

Senator Danforth.

OPENING STATEMENT OF HON. JOHN C. DANFORTH, A U.S. SENATOR FROM MISSOURI

Senator DANFORTH. Mr. Chairman, I do not have any prepared comment. I would just like to make one remark that is, I guess, in the nature of a mild dissent from some previous statements this morning.

I have never believed that negotiating trade agreements for the sake of saying that we have negotiated a trade agreement is the Holy Grail of trade policy.

I think that the worst way to negotiate is to have a sort of desperate view of the absolute necessity of completing negotiations successfully and doing it by sometime certain. I have never felt that the world would fall apart without a successful Uruguay Round.

It would be fine, if we had it. On the other hand, if the Uruguay Round accomplishes the opening up of approved subsidies by other countries, if it weakens the antidumping rules, if it opens up the Blair House agreement, and so on, that is not a good deal and I do not think we should create the impression that we are so panting after a successful Uruguay Round that absolutely anything goes.

The CHAIRMAN. Thank you, Senator Danforth.

Senator Rockefeller.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Mr. Chairman, I apologize, because I got your hint that you wanted to start the hearing, and I know the

four gentlemen at the table do. But, because of this only being a month away, I wanted to make a comment, with your permission.

Also, to respond to what Senator Danforth said, I agree and I do not agree that having a Round is important. I think it is important to conclude it. On the other hand, I would also say that it has always been my position if we did not conclude it successfully—with dumping subsidies, dispute settlement, things of that sort properly worked out—that we could have two choices.

One, is we could back up and just have an agreement based upon things that we do agree on, which would be a minimal approach, or we could simply proceed as the rest of the world fears and divide into trading blocs.

We have the North American-South American trading bloc; Europe, and Asia would do theirs. I do not think that the United States would be well-served by that, and I think others would be ill-served by that. But all of those are possibilities.

Nevertheless, I think, as Senator Baucus said, we have got only a month left. This hearing is particularly welcome because the trade debate for the past several months has been so totally occupied by NAFTA, despite the fact that the Round, in my judgment, as Senator Baucus said, is more important and potentially more dangerous to our economy than NAFTA would be.

If we ignore what is going on in Geneva until after the NAFTA vote we will have forfeited our opportunity to influence the negotiations. It will simply be too late, and that would be bad.

That is an important point, because it appears that things are not going well in Geneva for us. The French continue to insist on reopening the Blair House agreement; reports are growing that our government is trying to find a way to accommodate their concerns.

And, Mr. Chairman, I am making these points partly because the administration is not here and I want them to hear it, and this is the only way I can do it.

The CHAIRMAN. Dare I assume that there is someone from the administration in this room?

Senator ROCKEFELLER. Somebody is out there, I know.

The market access talks are stalled far short of what we need to create any enthusiasm for the Round. We have not yet solved the cultural exemption issue with the European Community. A number of difficult issues remain in the service talks.

Beyond those, I personally am very concerned about some of the so called textual issues, modifying the draft text in the areas of dumping, subsidies, and dispute resolution.

In all of these areas the draft text not only fails to achieve our goals, it would actually leave us worse off than we are now in dumping, unsatisfactory language on methodology, sunset standing, circumvention, cumulation and dispute settlement.

All of these things will make it harder for American companies to file complaints against unfair trade practices, harder for them to win, harder for them to obtain duties that accurately offset the amount of harm being done them.

The subsidies text is likely to result in less discipline over subsidies than we have under current GATT rules, and the EC is trying to weaken it even further. In the dispute resolution language,

all of our trade laws and practices will be put at risk by panels with excessively broad mandates.

What is even more disturbing is the lack of progress we seem to be making in correcting these flaws. It is no surprise that most of our trading partners oppose us. The draft text, in its current form, will benefit them enormously at our expense.

That only makes it more important that our negotiators make clear how critical this issue is to American agreement in the Round. So far, our trading partners seem unconvinced.

I thank the Chairman.

The CHAIRMAN. Well, you always were noted for ambiguity. [Laughter.]

I am quite serious. If Senator Packwood will forgive me. We do not see anyone we recognize from the administration. Is there someone here from the administration?

[No response.]

No, there is not. That is not acceptable. Marcia, call your colleague in the back room and tell them they had better get up here.

Senator Packwood.

Senator PACKWOOD. I will pass, Mr. Chairman.

The CHAIRMAN. All right. Our executive branch should be listening to this. In any event, the record will be made.

We welcome our first panel and our first witness, Curtis Barnette, who is chairman and chief executive officer of the Bethlehem Steel Corp., and appears on behalf of the American Iron and Steel Institute. Good morning, sir.

STATEMENT OF CURTIS H. BARNETTE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BETHLEHEM STEEL CORP., BETHLEHEM, PA, ON BEHALF OF THE AMERICAN IRON AND STEEL INSTITUTE

Mr. BARNETTE. Good morning, Mr. Chairman and members of the committee. It is a great privilege to appear before you this morning. I do appear on behalf of AISI—we represent about two-thirds of the steel production in the United States—and, of course, on behalf of my own company, Bethlehem.

AISI supports the prompt and successful conclusion of the GATT Round and the objectives, Mr. Chairman, set forth in the June 23 Finance Committee letter to the President. We think a successful GATT Round would be good for the United States, it would be good for steel's customers, and good for the steel industry.

As a member of the President's Trade Advisory Committee, ACTPN, I do want to recognize and commend the efforts of Ambassador Hills and the efforts of Ambassador Kantor today. I think they are making good efforts to try to bring the Round to a conclusion.

But I am reminded often, and I agree completely, that no agreement is better than a bad agreement. A successful Round must meet the negotiating objectives set out by Congress in 1988 and by both of our previous USTR's.

One of the principal objectives is to seek stronger disciplines against dumping, subsidies and other unfair trade practices. This objective simply has not been achieved.

Instead of establishing more effective international rules in U.S. laws against unfair trade, the United States is being asked to accept, more or less, as is, the final draft text, which I will refer to as the Dunkel text.

This, we believe, would severely weaken our laws against dumping and subsidies, the exact opposite—the exact opposite—of what the Congress intended. There are many ways—and Senator Rockefeller and others have referred to them—in which Dunkel undermines U.S. trade laws.

But, simply, it would make it harder to file and initiate cases, harder to win meritorious cases, and certainly harder to keep good jobs and keep our orders on the books.

The Committee to Support U.S. Trade Laws, CSUSTL, of which AISI is a member, has produced a very detailed analysis of this and it is a part of my testimony.

This Finance Committee's June 23 letter lists the absolute minimum in terms of areas where significant changes to Dunkel are needed.

If substantial improvements cannot be made, we respectfully ask that the President instruct our GATT negotiators to do two things.

First, remove the draft dumping and subsidies codes from the overall Uruguay Round; and, second, change the Dunkel draft's dispute settlement procedures so they do not weaken U.S. dumping and subsidies laws in Section 301.

Effective dumping and subsidy laws remain absolutely critical to the future viability of America's most competitive manufacturing industries, and today that includes steel.

We are the low-cost, high-quality producers in the U.S. market, and I have attached to my testimony some exhibits and statements which I hope you find of interest that I think objectively demonstrate just that point.

But there simply is no fair trade in steel. There is enormous excess steel-making capacity worldwide, and we still do not have a multilateral steel agreement in place. Foreign governments are trying to use the GATT Round and the MSA talks to weaken our laws against unfair trade.

So far, the U.S. Government has held the line. We support a comprehensive, effective and enforceable MSA that would be trade law plus, an agreement that would keep our laws intact, plus opening steel markets, ending steel subsidies and international steel cartels.

Congress is certainly focused on NAFTA. NAFTA preserves strong U.S. trade laws. AISI and Bethlehem strongly support NAFTA. The GATT Round, however, could have far greater effects on the U.S. economy, on jobs and on companies. If Dunkel is adopted, we will lose jobs and we will lose companies to a flood of dumped and subsidized imports from all over the world.

We believe that the Senate, and especially the Finance Committee, Mr. Chairman, should let our GATT Round negotiators know that Congress will not accept a Uruguay Round that results in trade weakening provisions.

This would be a bad deal for the United States, severely harm our manufacturing sector and our steel industry. We urge you to go to Geneva and be an advisory part of these negotiations.

Thank you, Mr. Chairman.

The CHAIRMAN. We thank you, Mr. Barnette. Thank you for that table on foreign governments' involvement in the steel industry. It is very powerful.

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

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Chairman, I wanted to introduce Mr. Bob Donnelly of Portland, OR, to the committee. The man and his company Contact Lumber, I am quite familiar with. It is not a small company; it has 750 employees. It is not a mom and pop operation, nor is it a saw mill in the normal sense that you think of a log being sawed on four sides and being sawed into rough boards.

This is a company that does very finely finished door jams and window sills; very high quality products where they are taking rough lumber and turning them into very value added products, and are having success in exporting those products overseas, including Japan. He knows the difficulties, but they have had success in penetrating foreign markets, and I think he brings a great expertise to this committee.

The CHAIRMAN. Mr. Donnelly, we welcome you.

STATEMENT OF ROBERT L. DONNELLY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONTACT LUMBER, PORTLAND, OR, ON BEHALF OF THE ZERO TARIFF COALITION

Mr. DONNELLY. Thank you, Senator, for that introduction. Thank you, Mr. Chairman, for the opportunity to testify.

My company, Contact Lumber, is headquartered in Portland, OR. We are a major supplier of products to the domestic window and door industry, as well as moulding and millwork products for distribution and export. Our potential to increase our exports to Asia is substantial if tariff barriers are eliminated.

I am here today on behalf of the Zero Tariff Coalition, which represents thousands of companies comprising of a broad cross-section of U.S. industries, accounting for approximately 30 percent of U.S. merchandise trade.

In July 1993, the Market Access Protocol at the Economic Summit in Tokyo committed the quad countries to eliminate tariffs in eight zero tariff sectors.

As important as this development might appear, it is essential to note that the remaining industries not included in the Tokyo agreement represent the majority of U.S. jobs, exports, manufacturing capacity and economic growth potential in the zero tariff sectors.

Tokyo protocol provides an opportunity to expand the market access agreement to include more zero tariff sectors. Specifically named are wood, paper and pulp, and scientific equipment. Zero tariffs should also be expanded to other sectors; including electronics, non-ferrous metals, soda ash, and toys.

It may be helpful to the committee to examine the implications of the Zero Tariff Initiative for a specific sector.

On the paper side, European tariffs range from 6 to 9 percent. If U.S. paper companies try to sell in Europe, they have to compete with Nordic suppliers who get zero tariffs as a result of EFTA pref-

erences, as well as developed countries which benefit from preferential tariffs, and also with internal EC producers.

Japan maintains high tariffs as barriers to imports of value added wood products. Most of the $2.8 billion Japanese imports of U.S. wood products have only occurred on a few tariff-free items, while access to an enormous market for value added wood building products is denied. Tariff-free value added imports make up only 2 percent of U.S. wood exports to Japan.

For example, because most U.S. lumber enters Japan duty-free, lumber comprises 23 percent of U.S. wood exports to Japan. Softwood/plywood exports, however, which face 10–15 percent tariffs, remain stagnant at about $2 million, less than 700ths of 1 percent of our exports to Japan.

Preferential tariff programs of the United States, Japan and European Community already eliminate wood products tariffs for most wood exporting nations. The United States, Canada, and New Zealand are virtually the only significant producer nations facing wood tariffs in developed markets.

This puts our industry at a serious competitive disadvantage on value-added exports. Worldwide export growth has been basically non-existent for wood products subject to tariffs.

As the December 15th deadline approaches, we are increasingly concerned that the package as negotiated to date still does not include elimination of tariffs on wood and paper products.

This is the final outcome that will be wholly unacceptable for the forest industries. Data prepared for us by DRI indicates this would mean the loss of $12 billion potential exports and 27,000 new jobs by the year 2000.

We have a globally competitive industry, and that is what we want to do, is compete. The forest industry's case is representative of the zero tariff sectors not yet included in the zero tariff package.

The Zero Tariff Coalition urges this committee to send the clearest possible message to the administration that any final Uruguay Round agreement which does not include the elimination of tariff barriers for these competitive American industries will be very difficult to approve.

Thank you very much.

The CHAIRMAN. Well, thank you, Mr. Donnelly. We will get back to each of you after we have heard the whole panel.

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

The CHAIRMAN. Next, is Mr. William Farley, who is chairman and chief executive officer of Fruit of the Loom, a firm in Chicago. Mr. Farley, we welcome you.

STATEMENT OF WILLIAM FARLEY, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, FRUIT OF THE LOOM, INC., CHICAGO, IL

Mr. FARLEY. Thank you, Mr. Chairman. I am delighted to be here this morning, and delighted you are holding these hearings.

I would like to just give you a very brief capsule of what Fruit of the Loom is. We are approximately a $2 billion textile and apparel company. We employ over 30,000 Americans, and we have added 17,000 jobs in America in the last 5 years. So, we have a very strong domestic record.

We are what we call a vertical company, meaning we start with cotton that is grown here in the United States, and we buy approximately 10 percent of the U.S. cotton crop in America.

So, it is a big business, and it is a big business for Americans. For example, we are the largest employer in Louisiana; we are the largest employer in Kentucky; and we are one of the largest in most of the Southeastern States.

We were in favor of fast track, we are in favor of NAFTA and believe it is a good program and trade policy for the United States. However, with regard to the GATT Round, we are extremely concerned because we think, given the present negotiations, it puts at risk over 2 million American jobs associated with the textile and apparel industry.

And I think the same questions that were asked about NAFTA should be asked about the Uruguay Round, which is, will there be more or less jobs in America created by this Round? And, if we lose revenue as a result of the reduction in tariffs—and that could amount to $30–$40 billion—how are we going to replace that revenue lost?

I would like to make a couple of points with regard to the present Round. With regard to the MFA, we feel that the phase-out should be 15 years and not 10. We think that there is inadequate concern right now, or certainly in terms of language, relative to market access. For example, three developing countries that are most likely to gain from a phase-out of the MFA would be China, India, and Pakistan.

And those countries, in essence, have 100 percent duties on textile and apparel products that are being imported. For example, in India, a country I know you are quite familiar with, they exported approximately $3 billion of textile and apparel products and imported zero. We do not think that is what you call market access.

The CHAIRMAN. So, they do not have a 100 percent duty, they have prohibition.

Mr. FARLEY. That is right. That is right.

And, further, as expressed earlier by members of the committee, there is a real concern we have about the protection of intellectual properties.

For example, we feel Fruit of the Loom, as a trademark and a property, is one of the most valuable in the world today. And, given the problems we had in Mexico in resolving the issues associated with that trademark, we feel, under NAFTA, we really do have some protection and some provisions to do so.

Let me give you a sense. In many industries in which imports have become a big factor, such as the footwear industry, not terribly different from textiles and apparel, you have moved from 30–40 percent import penetration to 80 percent. Today in textile and apparel, approximately 40 percent of the products being consumed in America today are imported.

Our feeling is that, as MFA is phased out, that number would move to approximately 80 percent. The faster you phase out the MFA, the more likely it is that it will be jolting to our States, particularly in the southeast, and also, by the way, Central America and the Caribbean, which supply a significant number of textile

and apparel products under the Section 807(a) in the Caribbean Basin Initiative.

So, in summary, as I say, we have a lot of concerns about the present negotiations. We think they represent a significant threat to this industry. We think you need 15 years in order to phase out certain facilities, as well as modernize facilities.

And I also would urge the committee to consider that, as these are phased out, you are going to lose maybe $4–$7 billion of revenue per year. The question is, are you getting enough benefits in these Rounds of negotiation to offset that?

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Farley.

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

The CHAIRMAN. And, now, to conclude this panel, we have a distinguished New Yorker, chairman emeritus of Pfizer. You do not look emeritus, Edmund Pratt. But he is here on behalf of the Intellectual Property Committee. We welcome you, sir.

STATEMENT OF EDMUND T. PRATT, JR., CHAIRMAN EMERITUS, PFIZER INC., NEW YORK, NY, ON BEHALF OF THE INTELLECTUAL PROPERTY COMMITTEE

Mr. PRATT. Thank you, Mr. Chairman. I am pleased to be here once again in front of this committee, even though I am in the gray land of retirement and emeritus, whatever that means. I am here today representing——

The CHAIRMAN. That means you are meritorious.

Mr. PRATT. Thank you, sir.

I am appearing here today to provide the views of the Intellectual Property Committee on the GATT negotiations on intellectual property.

The IPC was formed by myself and a few others at the beginning of the GATT negotiations—back at the time of the Punte del Este Ministerial—at the request of the then leadership at USTR. We were asked to get a number of different industries all of which were interested in intellectual property to work together in support of the introduction of this new and critically important issue into the next GATT Round, where it had not been before.

The group included an interesting group of bedfellows: pharmaceutical companies, media and entertainment companies, book publishers, and electronics and computer companies. They are admittedly a wide and unusually broad group of companies, who, however were working together on a subject that was critical to all of us.

The IPC's views are presented in detail in my written testimony and in the letter that the IPC sent to Ambassador Kantor on March the 11th of this year, which I ask be included in the record of this hearing.

The CHAIRMAN. Without objection.

[The letter appears in the appendix.]

Mr. PRATT. Thank you.

While the focus of today's hearing is on the Uruguay Round, the Round is not today's top priority on the national trade agenda. Rather our first order of business is passing the NAFTA implementing legislation. Passing NAFTA is not only important in its

own right, but it will also pave the way for successful conclusion of the current GATT Round of multilateral trade negotiations.

We have quite a different situation with respect to the GATT. Evaluating the GATT, as my predecessors have made very clear, is difficult in that we do not yet have an agreement before us. We have varying provisions which are still in the discussion stage, whereas, with respect to NAFTA we have a completed document. I think it is fair to say that almost all of U.S. industry supports the NAFTA and believes that it will be useful to all three nations that are involved.

I think it is also interesting to note that the NAFTA included for the first time intellectual property issues and, indeed, in the NAFTA we do have a good intellectual property agreement. We already have, in Mexico, strong intellectual property protection in the form of a new set of laws that came out of the NAFTA negotiations.

Intellectual property protection is really about American competitiveness and American jobs. America's competitive edge rests ultimately on our creativity and our resourcefulness, the unique ability of Americans to generate new ideas and develop new ways of looking at the world.

Our growth industries are idea industries like entertainment, pharmaceuticals, and computer software, among others. All of these, and many more, will need strong intellectual property protection if they are to continue to grow, to create skilled and high-paying jobs, and to expand into new markets worldwide.

If local pirates and counterfeiters are allowed to steal the products of our intellectual labor, America will forfeit one of the most crucial elements of its global competitive advantage.

In this regard, the Dunkel text on TRIPS—Trade Related Intellectual Property—goes a long way in providing the type of international intellectual property protection that all of us, the IPC, three successive administrations, and the U.S. Congress have been seeking together in the GATT for over these last——

The CHAIRMAN. Now, you are saying, sir, that the Dunkel text——

Mr. PRATT. I have further things to say about it.

The CHAIRMAN. All right. It goes a long way.

Mr. PRATT. It does a lot of things that are necessary, and we worked with Arthur Dunkel a great deal on it. The text, however, contains certain provisions that undermine adequate and effective international intellectual property protection.

The major outstanding deficiencies in the current text deal with the transitional arrangements for pharmaceutical and other products and national treatment and contractual rights in the copyright area, both of which are among the TRIPS issues cited in the June 23rd letter from this committee to the President.

Unless overly long and discriminatory transition periods are shortened, the LDC's—less developed countries—will be legally permitted under the GATT to deny intellectual property protection and to engage in international piracy far into the future. The United States will be barred for the next 5–10 years, at least, from taking any effective action, either under GATT dispute settlement, or outside the GATT, for example, under Special 301. To protect those very industries that have contributed so much to the growth of

U.S. jobs and exports, the transition periods must be shortened to 2 years for all intellectual property elements in all developing countries.

I can only repeat what has been said by most of the members of the committee already, and we have been saying this since the beginning of this negotiation, it is better to have no deal on TRIPS than a bad deal, and that is true, I am sure, on all elements of the negotiation.

I have got the red light. I will——

The CHAIRMAN. Go ahead.

Mr. PRATT. You want me to go ahead?

The CHAIRMAN. Sure.

Mr. PRATT. In addition to being overly long, the transition periods in the Dunkel text discriminate among industrial sectors by providing a longer transition period for pharmaceutical, agrichemical and chemical products—10 years instead of 5—there industries are among our most internationally competitive businesses. Shortening transition period to 2 years will go a long way to erasing this discrimination. However, the only effective way to ensure that these industries receive equal treatment under TRIPS is to provide full protection for products in what has been called the pipeline, which is that period of time after a product has been patented but has not been marketed because of delays in gaining governmental approval. And, if we now pass patent protection in TRIP, which however, leaves out those products that are not yet in the market because they are awaiting government approval, it is certainly not acceptable or fair.

Two other important issues could undermine the agreement. They are among the issues that are being developed as the organization considers the new elements that should be involved in a new multilateral trade organization. These are covered in some detail in my prepared statement; I will not try to get into those in any depth here.

I however do want to say in passing that, having been at the Punte del Este meeting and at most of the meetings on this trade negotiation, it has become pretty clear to me, as I think some of the members of the committee have already suggested, that things have greatly changed since the beginning of the GATT when there were some 30–40 members.

Now the GATT has over 100 members and, instead of merely discussing tariffs, all these other critical elements are involved. We have now got a much more complicated situation, and the regulations for dealing with them under the old GATT are inadequate.

It has seemed to me, as I have attended these meetings, that getting over 104 countries to agree on everything in order to have an agreement is a non-starter and is, I think, something that will have to be changed in the future.

So, in summary then, we believe that (1) the NAFTA is good on intellectual property; (2) there are some critical changes that must be made in the Dunkel text or it cannot be supported by, I am sure, almost all of the members of The Intellectual Property Committee and those companies which need protection for their innovations.

It may well become necessary then to decide whether the whole intellectual property issue will have to be left out of the GATT

agreement rather than accepting a bad TRIPS outcome and whether the GATT agreement itself would be negative enough that it does more harm than good.

And, Senator Danforth, I also have said for a number of years, now that, although there is huge potential for good in this agreement, it is not the end of the world if we do not pass it. It would certainly not justify passing an agreement that does no good for us in the long run.

Thank you, Mr. Chairman.

The CHAIRMAN. We thank you, sir.

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

The CHAIRMAN. I would simply note that we are getting somewhat contradictory signals. Mr. Farley asks that the Multifiber Agreement transition be extended to be phased out over 15 years, but Mr. Pratt, on behalf of the Intellectual Property Committee, wants to close it in that area. There you are.

Could I just go down this way very quickly, starting with Mr. Barnette, first. The agreement, as far as it has moved in Geneva, would you want the United States to settle for that?

Mr. BARNETTE. No.

The CHAIRMAN. No. Mr. Donnelly?

Mr. DONNELLY. No.

The CHAIRMAN. Mr. Farley?

Mr. FARLEY. Absolutely not.

The CHAIRMAN. Mr. Pratt?

Mr. PRATT. I am afraid not.

The CHAIRMAN. Well, then perhaps the next panel will be more——[Laughter.]

Well, all right. I asked.

Senator Packwood, you did not have a chance to make an opening statement.

Senator PACKWOOD. I will have some questions for you.

The CHAIRMAN. All right. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

I think that is a useful question you just asked. That will just go the next step. The question you asked, I think, is would you support or would you want the United States to adopt the present Dunkel text, essentially?

A bit different question is, if the Dunkel text were adopted, would you advise this committee to advise the Congress to reject the Round? I was struck with your comparison, most of you, comparing NAFTA with the Uruguay Round.

One of the major arguments we hear against the NAFTA is, well, gee, it is not good enough, therefore, it should be rejected. My answer to that is, well, it is much better than the status quo, therefore, it should be approved. We cannot let perfection be the enemy of the good. NAFTA is not perfect, but is much better than the status quo.

And, as you point out, Mr. Barnette, it is just not damage or trade remedy laws. Intellectual property provisions are better; Mexican tariffs, which are higher than the United States, come down. It is good for the United States. It is good for jobs in the United States, it is good for the environments of both the United States and Mexico.

But you also seem to be saying that, whereas, NAFTA is good for jobs in the United States, that the Dunkel text will take away jobs for the United States. So, my question really is, why the difference?

I guess, more specifically, if the Dunkel text were the agreement that the United States brought back and submitted to the Congress, would you advise the Congress to reject that agreement or to approve it, remembering that we have a fast-track procedure here, we really cannot amend it very well? Mr. Barnette.

Mr. BARNETTE. I would advise this committee, as the committee of jurisdiction responsible for our trade laws, Senator, to reject the GATT Round if the Dunkel text is the text that is brought back for consideration.

My understanding is—and the Ambassador, of course, can best speak for himself—that it is the current position of our government that the Dunkel text is unacceptable and that efforts are being made to correct it. But, certainly, that is a position that Ambassador Kantor's associates can best present to the committee.

Senator BAUCUS. All right. Mr. Pratt.

Mr. PRATT. Well, I think I really covered that in my earlier comments, Senator Baucus. The text, as it stands, was certainly unacceptable to intellectual property critical industries.

Senator BAUCUS. But the NAFTA intellectual property provisions have some improvement.

Mr. PRATT. We support the NAFTA. We would like to see it passed.

Senator BAUCUS. All right. Mr. Farley.

Mr. FARLEY. Senator, I think that the difference between NAFTA as it presently constructed and this Uruguay Round is like night and day relative to the textile and apparel industry, for sure.

We view Mexico as a very good growth market. We think we can be extremely competitive in that country. There are a lot of new consumers and a lot of new business for Fruit of the Loom and other textile and apparel companies.

With regard to this Uruguay Round, I think what could well happen is——

Senator BAUCUS. Of course, NAFTA does not deal with MFA.

Mr. FARLEY. NAFTA does not deal with the MFA.

Senator BAUCUS. Yes. That is the major difference.

Mr. FARLEY. Major, major difference. But, also, in the implications of it, I mean, when you phase out MFA—and I am assuming we will phase out MFA, I think the issue is more when and under what conditions we phase out MFA—I want to make the committee aware that approximately 10 percent of all the manufacturing jobs in America—approximately 10 percent—are textile and apparel related.

In States like North Carolina, 50 percent of the manufacturing base is textile and apparel related. Now, that is not a reason, in my judgment, to keep in MFA, but it is a reason to be cautious about what our policy is going to be relative to this phase out.

And, as I was mentioning, countries like India, Pakistan, and eventually China, assuming they become part of this member group, have a number of policies which adversely impact our industry. For example, the Chinese just absolutely willfully and illegally

ship product to avoid a quota, and they transship through various countries in Central America and the Caribbean.

Senator BAUCUS. Mr. Donnelly, your view.

Mr. DONNELLY. Super 301 provisions have been very useful to our industry in attempting to open markets, but I do think, from my perspective, I would like to see the entire agreement before I made that decision.

Senator BAUCUS. Another question. There is a very interesting article, I think a very accurate article, in the New York Times not too long ago, maybe about a week or so ago, pointing out that USTR is understaffed. It does not have the resources to meet 1990's accent for this Round of NAFTA or the Asian market.

The CHAIRMAN. Well, they certainly have not found the resources to have anybody in this hearing. [Laughter.]

Senator BAUCUS. That is the next question. I was getting to that.

Do we have sufficient resources, now, to include a good Uruguay Round; is there enough time, do we have enough resources? The USTR's office is so focused on NAFTA and will be, at least, for the next couple of weeks.

Mr. FARLEY. Given all the issues that we have been discussing this morning from this group and the concerns that this committee has expressed, it really stretches my imagination and vision to see that we could logically conclude within the timeframe that you have allotted to meet this deadline.

Senator BAUCUS. Thank you.

The CHAIRMAN. Sir, I would just want to point out in the context of Senator Baucus' remark that we do not now have an ambassador in Geneva. It is difficult to understand. Booth Gardner, who is the former Governor of Washington, we understand, has been chosen for that position, but his nomination has not come to us, as Senator Packwood knows.

The moment it arrives we will report it out and he can be on his way, but he is not now. It is difficult to understand what is holding it up. We do not have an Ambassador in Geneva with, as Senator Baucus says, 35 days to go. I am baffled.

Senator Danforth, you understand these matters in deep perspective.

Mr. BARNETTE. Mr. Chairman, may I comment on Senator Baucus' question?

The CHAIRMAN. Please, Mr. Barnette. Please.

Mr. BARNETTE. It is just this, Senator. I would distinguish the time issue from the quality issue and the capability issue of the USTR staff, and I relate that to Ambassador Hills during her period of tenure, and I certainly believe that in the case of Ambassador Kantor.

They have an extraordinarily capable team of representatives for the USTR and for our government. To me, that is a different issue than, given the amount of time remaining, can we bring home a good agreement, not only for the world, but for the United States?

Senator BAUCUS. But, if I might, Mr. Chairman, it is a combination of the two, quality and time. So, the question really is, given the remaining time, are there sufficient resources, in your judgment, to get the job done? That is the basic question.

Mr. BARNETTE. Yes, sir.

Mr. PRATT. If I could just comment on the same question.

The CHAIRMAN. Mr. Pratt.

Mr. PRATT. Thank you. I go back to the point that I made earlier. To me, the most serious problem here is the very complexity of what we are trying to do. There are so many issues and so many differing points of view. And, under the ground rules that you have, there is no vote and everybody has to agree in the negotiations. There were reasons for that. I understand that.

I just do not think we can handle the complexity and the number of issues that we have with over 100 countries, no matter how many people you have involved, without some differing ground rules in order to be able to bring it to a conclusion.

Senator BAUCUS. You are really getting at the one country, one vote problem that we face.

Mr. PRATT. Yes.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. I would like to explore the thought that it is possible for a trade agreement to make things worse rather than better.

Now, Mr. Barnette, we have assumed in our country and throughout the world, at least in agreements in the past, that subsidies are not a good thing as a general principle. This Dunkel text allows for some subsidies that are not now permissible, or not now sanctioned. Is that not correct?

Mr. BARNETTE. Yes.

Senator DANFORTH. So, the present rule is that, while subsidies are bad, this Dunkel text says, however, if we agree to this text, this trade agreement, there are some forms of subsidies—research subsidies, regional subsidies—which will no longer be bad things, they will be acceptable things.

Mr. BARNETTE. That is correct, and it is wrong. As an historian of GATT, going back to 1948, it was certainly intended that GATT would be framed on market economies; that the market would decide, operating in a free and competitive manner. In the dumping and subsidies, sure, they would be a part of national laws and of the system, but not the heart of the system.

Well, if I may use steel as an example, there is not a market economy in steel today. Foreign governments of the world, as matters of national policy, simply own, operate, subsidize foreign steel industries.

When we restructure in this country, as we have done over the last 8–10 years, and bring our employment from 500,000 down to less than 200,000, reducing our capacity by one-third, we bear the expense of that.

There is no subsidy that helps us bear health, pension and other costs. In fact, it is referred to in my exhibit. That simply is not true in the rest of the world. So, to permit these subsidies and make them non-countervailable, enormous damage will be done, not just to steel, but to other industries as well.

Senator DANFORTH. My point is that this would be a change in the present state of affairs in——

Mr. BARNETTE. Yes, it would.

Senator DANFORTH [continuing]. The present Subsidies Code. So that right now while subsidies are generally countervailable, this

Dunkel text, if this became the agreement, would say, however, that general prohibition would no longer be there and——

Mr. BARNETTE. We will green light.

Senator DANFORTH [continuing]. We will green light some subsidies and say, these subsidies are all right. Similarly, some dumping cases that could now be brought against the practice that is generally viewed as being not in keeping with a fair and open trading system, some dumping cases that can now be brought could no longer be brought under the Dunkel text. Is that correct?

Mr. BARNETTE. That is correct. There are technical issues that are vital to the integrity of the U.S. trade laws, issues like cumulation and de minimis standards; issues as to who can bring trade cases, who can initiate cases; certainly the importance of unions and organized labor having an important part in the administration of our fair trade system in this country is substantially impaired by the Dunkel text.

I think what we have is, in fairness, is a text that is simply not a balanced, well-reasoned text. It reflects a consensus view of the Secretariat trying to treat all trading partners around the world as equals.

Senator DANFORTH. Well, the fact is that we have had something of a rash of subsidies throughout the world and that is the way that some countries do business.

And, if we step back from the present law, from the present agreement and say, well, here are some things that are suddenly permissible, or you can do without concern about any action being taken, that is not a step toward a more open trading system or a more fair trading system, it is a step back.

Mr. BARNETTE. It is a significant step away from market economics. Our view would continue to be, what a country does within its national borders with respect to subsidies, what it does with respect to products within its borders that are subsidized, so long as those products do not move in international commerce and cause damage and injury into countries where those products are taken, that is a matter of judgment for that country.

Senator DANFORTH. Now, I would like to ask Mr. Pratt a similar question. Mr. Pratt, right now we say that in our high-tech companies, or pharmaceutical companies, our companies that have a lot invested in patents and in copyrights, we need to maintain the protection of those intellectual property rights when we do business abroad.

It is my understanding—and I think that it is your testimony—that the present state of affairs would be made worse and not better, at least for a period of 10 years; that, whereas today there are certain steps that we can take under Section 301 which would have the effect of enforcing intellectual property rights, under the Dunkel text, that would not longer be the case.

So that, instead of moving forward, we seem to think that we enter trade agreements for the sake of forever progressing forward to a more fair, more open, more competitive international trading system.

I think what you are saying is that, in the case of pharmaceuticals, in the case of companies that have stakes in intellectual

property, the result of this Dunkel text is that, instead of moving forward, we would be moving backward. Is that right?

Mr. PRATT. When we began these negotiations, that issue was a critical one. What we wanted, very simply, was fair patent and copyright laws around the world.

We have good ones here and in other developed countries, but in some countries do not have good protection. We would like to have similar high standards of protection in all countries. In return for that, we were being asked to give up 301. We said, yes, if we would get adequate intellectual property protection in other countries, so that we will not need to use 301 anymore. And, to be frank, some of our bilateral instrument are not always a panacea. You do not always win. It is a difficult thing. But it is all we have, and we have made some good progress with our bilateral weapon.

So, our view was if we get high standards of protection abroad, yes, we would give 301 up. But we could not even consider giving 301 up without gaining those improvements we do not have that level of protection under the Dunkel text.

The difficult thing is, Dunkel does do some good things. The agreement says that the nations of the world would agree to a 20-year patent life. That is a good start. That is what we wanted.

But, then they hung on these other things which say, in the first place, nobody is going to get it for 5 years, and for some industries like pharmaceutical and agrichemical 10 years. By that time, God knows where we would be. In the meantime, we would have had no benefit at all and lost our protection. So, yes. We could not possibly accept the balance the way it is.

Senator DANFORTH. There is a period of time in which we would be worse off, not better off if the good that we are talking about is that our patents should be protected around the world.

Mr. PRATT. Right.

Senator DANFORTH. All right. Now, this is not an agricultural panel, but I would just simply assert that exactly the same is true in agriculture. I mean, a lot of people did not like the Blair House agreement.

I did not like the Blair House agreement. However, it is possible to make the Blair House agreement even worse. It is possible to move backwards; it is possible to moving toward agreeing to subsidies. I think that that is what is happening.

What really alarms me is this notion that, well, we are involved in the Uruguay Round and we absolutely must complete it. We absolutely have to. I mean, it would be a disaster. The world would fall apart if we did not do it. And, with that kind of thinking we agree to almost anything that is out there. I absolutely agree with this panel, that we cannot do that.

It is possible to step backward. If the world is devolving into subsidies or devolving into protectionism, it is possible to come out of a Uruguay Round with an international trading system that, instead of being more fair, more open, more given to allowing people to develop patents, and so on, and have those patents protected, we will be going in exactly the opposite direction in the name of progress.

Mr. PRATT. May I respond? As I thought about coming down here, I came to the conclusion, as I went over all the materials that

I had, that, even though I spent more than 10 years of my life on this GATT Round and that I was committed to its potential, to the desirability of a good Round, that the most important thing I would say while I was here was—that a bad agreement is worse than no agreement.

The CHAIRMAN. Could I suggest, at the risk of seeming older than I am, that there is a mixture in these agreements, Senator Danforth?

We have looked back to the halcyon moment of the Kennedy Round, the Trade Expansion Act of 1962. Well, the condition of obtaining the Kennedy Round in the Trade Expansion Act was the Long-Term Cotton Textile Agreement.

I was one of the three persons who negotiated that agreement in 1962 in Geneva on Mondays and Tuesdays before the advent of jet planes. It took a toll on all of us.

But that agreement, which was to be a 5-year agreement, we have heard from Mr. Farley the proposal that it now be phased out over 15 years. It was to be over by the end of the 1960's, and we now want to get it over by the 21st century. But there has always been in this imperfect world which you are doctrinally trained to accept, a mix. [Laughter.]

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I just have two quick questions. I need to say, too, for the purpose of sunshine, that Senator Danforth and Mr. Barnette were law school classmates.

Senator DANFORTH. We were not classmates.

Senator ROCKEFELLER. Oh.

Mr. BARNETTE. Yes. We were in the school at the same time. I think you were in the Class of 1963, and I was in the Class of 1962.

The CHAIRMAN. And I was negotiating the Long-Term Cotton Textile Agreement. [Laughter.]

Senator DANFORTH. He was one of the old guys. [Laughter.]

Mr. BARNETTE. But, with respect to sunshine, I am a West Virginian, too, Senator.

Senator ROCKEFELLER. Actually, my first question is for you, Mr. Barnette. Although the administration talks a lot about the Dunkel draft in the sense that they share our objections about it, and they have specifically talked about dumping, one is not quite so sure what actually is happening and how strong the pressure is.

Let me just pick one technical part of it which is incredibly important to you, and you probably know more about it than anybody in the private sector, and that is methodology. Methodology. In other words, how do you calculate dumping; how do you count it up?

What is your understanding as to what is going on in the discussions on methodology, and what would be the consequences to you if the calculation of dumping, were left as it is in the Dunkel text?

Mr. BARNETTE. Yes, sir. It is a technical question, and we have submitted detailed papers in response in covering this. But, in general, if I may answer it generally, in a dumping case it is simply essential that all countries that are dumping into the marketplace be recognized, calculated and cumulated as a part of that process.

It is also equally important that injury caused by dumping and subsidies be added, be cumulated. That is the heart of the injury. The Dunkel text would, along with the standard of review, the manner in which these cases would be reviewed, would literally, in our view, tear apart the fabric of existing U.S. laws dealing with dumping and subsidies.

It might take a little time of combining the two, changing the methodology, the manner in which dumping calculations are made, standards of de minimis, how small or how large must the import entries be and by what measure of dumping or subsidy must they be calculated, changing U.S. practice would have a devastating effect on the steel industry.

Senator ROCKEFELLER. Which is to say that a highly intricate—let us not discuss this at this kind of a meeting—issue like methodology——

Mr. BARNETTE. Yes.

Senator ROCKEFELLER [continuing]. Can have a devastating effect——

Mr. BARNETTE. Yes, it would. Yes, it would, Senator.

Senator ROCKEFELLER [continuing]. In fact, unless it is corrected.

Mr. BARNETTE. Yes, it would. We have a good U.S. practice in these areas now. Our national laws should be continued. That is what we understand the heart of this committee's letter to the President was. We must preserve U.S. laws, not weaken them.

Senator ROCKEFELLER. I know. But this is just on this one particular methodology thing.

Mr. BARNETTE. Yes. Yes.

Senator ROCKEFELLER. Do you have a sense that pressure is being brought to bear that is sufficient to your understanding of what has to happen in terms of changing the Dunkel text on methodology?

Mr. BARNETTE. We have, in every respect, submitted our views. I think they are well-known and understood by our negotiators. The concern that we always have in a complex negotiation such as this is adding the pluses and the minuses at the end of the process and determining which parts might be sacrificed in order to achieve other advantages.

That is a broad public policy decision that will have to be made. That is why I urge that each of you go to Geneva and be a part of the advisory process, because, if it comes together, that is where it will all come together. Methodology is critical there.

Senator ROCKEFELLER. Then to expand that question to all four just very briefly, I say this in the context of feeling that this administration is serious about trade.

I am not satisfied with what is going on in the GATT Round with our negotiators, but I think in terms of the framework review of Japan, generally speaking, they are showing an intensity, potentially a constancy about trade policy, which is hopeful.

Are you gentlemen aware of anyone in the private sector, either individually or people in your respective industries, being consulted, talked with by this administration about trade policies? You are here testifying because you are all heavyweights in your own industry. Have you been talking with anybody in the administration? Yes.

Mr. DONNELLY. I am an ISAC chairman. Yes, ISAC members have.

Mr. FARLEY. Yes, I am, Senator.

Senator ROCKEFELLER. All right.

Mr. BARNETTE. I think that is true.

Mr. PRATT. Yes.

Senator ROCKEFELLER. Good. All right. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Packwood.

Senator PACKWOOD. One of the things that has been interesting to discover in the NAFTA negotiations, as I talk to different industries, is how relatively slight in some of the industries is what they call their direct floor labor costs; not their management, not their R&D, not their financing, but their actual on-the-floor costs which, if you did move, would be the kind of thing you would move, but probably not your R&D, management, finance, and everything else.

Could I just go down the line and find out, in your particular industries, how much of your costs are floor labor? And, Mr. Farley, when we get to you can you separate it if it is different, apparel from textile?

We will start with Mr. Pratt.

Mr. PRATT. Well, I cannot give you the precise number. Our industry is clearly not heavily labor intensive. So, I cannot think of any major locational decision that we have made for that reason.

Senator PACKWOOD. The reason, Mr. Pratt, I ask this, I have found the same thing in the electronics industry. They say, oh, 7 percent, 6 percent, 8 percent of their costs is floor labor and it is not worth moving for that kind of cost.

Mr. PRATT. Yes. We have moved to where the market is and for other factors of that nature, not for an issue relative to labor costs.

Senator PACKWOOD. Mr. Barnette.

Mr. BARNETTE. Yes, Senator. There are four components in looking at steel. The components are labor, materials, energy, and other. Now, we are a labor-intensive industry, but our labor is highly skilled and the facilities in this country are modernized.

So, in terms of percentages, one could almost put them in quartiles in the four areas. We want to produce, and are producing, high-quality, low-cost product in this country to use in this country, and to go, also, into the export market.

Senator PACKWOOD. I mean floor labor now. I am not talking about your management or your R&D.

Mr. BARNETTE. Yes.

Senator PACKWOOD. That is a higher percentage in most industries. Given a level playing field, even with one-quarter of your costs being floor labor, can you compete?

Mr. BARNETTE. Yes, we can.

Senator PACKWOOD. All right.

Mr. BARNETTE. If we can get our U.S. trade laws enforced, Senator, as they should be enforced, we will compete in this market because, as one of my exhibits demonstrates, we are the low cost producer in this market.

Senator PACKWOOD. Yes. I do not mean in this market. Can you compete overseas?

Mr. BARNETTE. We need to compete, first, in this market, Senator. We want our customers in this market. That is the remarkable thing We want the chance to supply our customers in this market. We are being precluded of that because of unfair trade even today. Will we export into the export market? Yes, indeed. We will do that.

Senator PACKWOOD. Mr. Farley.

Mr. FARLEY. Yes. Senator, you were, I think, on the right track in trying to distinguish between textiles and apparel. They are different. There is a different intensity. These are approximations.

On the textile side I would say it would be in the range of 15–17 percent, because there has been tremendous automation. We have invested this year, for example, over $200 million in that automation process. That largely has occurred on the textile side.

On the apparel side it would be more like 35 percent; much more labor intensive. But we do feel that there is a tremendous amount of automation coming on that side.

One of the reasons for requesting and suggesting a longer phaseout is, as automation occurs, I think you will be able to preserve more jobs here in America and be competitive.

Keep in mind that, if you take a country which we discussed earlier, India, which basically forecloses any imports—I mean, they had zero imports. It is not just the U.S. importing into India, it is everyone being precluded from being there. You are dealing with a 20-cent an hour, approximately, wage base, with a whole number of issues that go along with that.

So I, nonetheless, having said that, feel that the United States and companies like Fruit of the Loom—and there are many: Sarah Lee, Haines, the VF Corp., Russell Corp., a number of well-known American companies—have today become globally competitive because of their automation and the investment they have made.

Senator PACKWOOD. I understand the difficulty of penetrating India. Let us limit it to textiles for a moment. I understand the difficulties trying to automate. The making of a man's suit is difficult. But you are confident that, again, given a level playing field, you could compete, for example, in the Australian market in textiles, or with India, with their 20-cent labor.

Mr. FARLEY. Yes. I give you Mexico as an example. We think that the American textile industry and apparel industry will be very competitive in Mexico. Yet, there are very significant cost differences in labor there.

Senator PACKWOOD. Mr. Donnelly.

Mr. DONNELLY. I suspect in our industry you would get some differing numbers that went out 10–12 percent as far as the labor side. The question of whether we can compete around the world, certainly with a level playing field we can. We deal with tariff escalation: zero tariffs for raw materials rapidly escalate upward on manufactured products. And, no, we do not have the opportunity, and, yes, we want the opportunity.

Senator PACKWOOD. What each of these panelists are saying is, by and large, you are not complaining about foreign competition, all things being equal; that you are willing to go head-to-head with them and you are convinced you are more productive than they are and you can pay higher wages because they are a relatively small

portion of your costs, so long as you are productive and have an equal shot.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Before we thank our panel, may I just say that Nancy Leamond, who is the Deputy U.S. Trade Representative for Congressional Relations is with us, as is Vanessa Sclana, who is the Assistant General Counsel. So, our concerns have been heard.

We want to thank you very much for emphatic testimony. Sir?

Mr. PRATT. Could I make just one final point?

The CHAIRMAN. Sure.

Mr. PRATT. As I thought about what we were saying, to give you a feeling of how we approach this, we wanted intellectual property protection in the GATT Round and we struggled to get it. We have a proposal now that says we will have a 20-year patent life. That sounds like it is a good start, and some of our trade negotiators have asked why are we not willing to take it? We have made a lot of progress, why not take that deal?

I think what needs to be said is, that there is more than just GATT involved here. In spite of the fact that GATT was created to stop bilateral negotiations, the bilateral negotiations are going on all the time, and regional negotiations like the NAFTA are also going on. If our government agrees to a set of worldwide rules that are inadequate and unfair, it gets very much harder for us to gain higher standards in bilateral negotiations.

We have been able to make much progress, with a number of countries in getting them to pass good patent laws, while all of these GATT negotiations were going on.

If our government agrees to an inferior patent rule in GATT than we have already in NAFTA, we are heading for trouble. This is another issue that I think must be kept in mind.

The CHAIRMAN. On a personal note, may I express the appreciation of West New Yorkers to the Bethlehem Steel Co. for the highly responsible manner in which you responded to the closing of what was one of the great steel mills in the world, the Bethlehem plants on Lake Erie.

Mr. BARNETTE. Thank you, Senator.

The CHAIRMAN. They have not just been left there to molder, you have been taking them apart. There are about 10 miles along Lake Erie, and you are trying to restore the land. If we could get the Environmental Protection Agency to help you, why, it might be done in more time. But we do thank you.

Mr. BARNETTE. Thank you, Senator.

The CHAIRMAN. Thank you all. We will go on to our next panel.

Very well, now. We are going to hear our second panel, which is an equally illustrious group. Richard Leone, who is chairman of the Port Authority of New York and New Jersey. Good morning, Mr. Chairman. Good to see you, sir.

Howard Samuel, who is an old friend of this committee and of this Senator. He is representing the Labor/Industry Coalition for International Trade. And you are to be accompanied by Mr. Kenneth Freeman. Oh, Mr. Freeman, there you are. He is the executive vice president of Corning.

An old friend, if I may say, both personally and of this committee, Robert McNeill, who is the executive vice chairman of the Emergency Committee for American Trade.

And, finally, Mr. F. William Hawley, who is the director of international government relations for Citicorp/Citibank, on behalf of the Coalition of Service Industries.

And, as is our practice, we will begin at the top of our list with Mr. Leone.

STATEMENT OF RICHARD C. LEONE, CHAIRMAN, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, AND PRESIDENT, THE TWENTIETH CENTURY FUND, NEW YORK, NY

Mr. LEONE. Thank you, Senator. Thanks for the opportunity to appear. I am going to spend a couple of minutes in summary with some facts about the Port Authority, the region, and the importance of this agreement and trade to the New York/New Jersey region. I have more in my prepared testimony.

Then slipping on my other hat as president of the 20th Century Fund, I cannot resist making a few general comments about the Uruguay Round and its importance.

The CHAIRMAN. Fine. May I say that all texts will be printed in the record, along with any extemporaneous comments you make?

Mr. LEONE. Thank you. We believe that the liberalization of services trades, strength and protection of intellectual property rights, and improved dispute settlement—which are, I think, sufficiently a part of this agreement—would have a very beneficial effect on the port region. Nowhere in the country are services produced on the scale they are in the New York/New Jersey region. We are home to 82 of the Fortune 500 services firms, and we applaud the administration's continuing efforts to ensure coverage of financial services.

We urge the Congress and the administration not to accept the EEC proposal allowing for restrictions on cultural industries such as films, television and recordings. Collectively, the arts industry has an economic impact of about $10 billion in the New York/New Jersey region.

Intellectual property is also disproportionately important in the region. We are the home to a significant concentration of biomedical industries, avionics, software. In addition, we have media arts, culture, and fashion design. Each of these have a big stake in the property rights agreement.

And, finally, on dispute settlement, we have a disproportionate impact as well in the current very difficult process of working things out, particularly with regard to wine, spirits and other imports that are significant in our region. We favor the kind of changes in dispute settlement that look to be part of the agreement.

So, on the whole I have been advocating both the approval of this agreement and the NAFTA. I want to make a comment about something that was said earlier. It is true that this agreement is not perfect, and will not be perfect if it is concluded. It is also true that in 1990, 1991 and 1992 the heads of state of the major industrialized countries promised that it would be done at the end of the year.

It is also true that in any negotiation it is only pressure and however it is manufactured that achieves any kind of compromise. And, indeed, while this agreement is far from perfect, it is better than the Dillon Round, the Kennedy Round, the Tokyo Round; it represents some progress. It is odd, but I think understandable, that trade has been dragged out of the, sort of, closet. Watching GATT negotiations is a great cure for insomnia.

But, in the search for scapegoats for the poor American economic performance, two or three things have been a part of the focus. Well, Ross Perot, I guess, is the noisiest and the wealthiest, if not the most thoughtful person looking to explain why we are not doing well.

So, GATT and NAFTA have been beaten up, and beaten up for two or three reasons. One, is a great emphasis on the difference between us and other countries. The Mexicans have low wages; the Japanese have powerhouse industries; the Europeans have banded together. Obviously, if there were no differences there would be no need for trade. New Jersey would not trade with Mississippi, New York would not trade with California, and the United States would not trade with countries around the world.

We seem to be taking the position in the political dialogue—and I am sympathetic to the reasons why—that anyone who is not just like us is somehow someone we should be very wary of trading with. Frankly, that does not make any sense to me and I think it is dangerous ground on which to fight this debate.

In fact, the United States has not done a very good job at some things that are important to trade, but they are mostly here in this country. When I was in graduate school we hardly paid attention to trade it was so unimportant to our overall economy. Because of our wealth, we never went through the struggles that Europe did. We never had what is called in Europe the social democratic compromise.

We never put in place for workers a safety net, a set of training programs, a variety of things that make it possible politically and acceptable economically to open up the world and open up trading regionally and elsewhere. We have to face up to those problems.

Our greatest weakness in the trade debate is at home. If you look at the European agreement, there are a number of regional development training programs in countries that already have a very strong social safety net, and they are still having political problems. It is no surprise that there is a strain in our country—one that does not even provide universal health insurance—when we say we are going to try to continue trade.

On the other hand, let me conclude by saying that the major area of growth for our economy, even during these hard times, has been international trade. It is very important to our region, it is important to the country, and we think that this agreement ought to be approved. Thank you, sir.

The CHAIRMAN. Thank you, Mr. Chairman. We will get back to you, of course.

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

The CHAIRMAN. Mr. Samuel. And you are going to share your time with Mr. Freeman.

STATEMENT OF HOWARD D. SAMUEL, EXECUTIVE DIRECTOR, LABOR/INDUSTRY COALITION FOR INTERNATIONAL TRADE, WASHINGTON, DC, ACCOMPANIED BY KENNETH W. FREEMAN, EXECUTIVE VICE PRESIDENT, CORNING INC., NEW YORK

Mr. SAMUEL. Thank you, Mr. Chairman.

I am here as the executive director of the Labor/Industry Coalition for International Trade, which is known as LICIT. It is a coalition, and, until I retired recently as president of the Industrial Union Department of the AFL–CIO, I was pleased to have served it as co-chairman.

I appreciate the consideration and forbearance of this committee in allowing us to divide our presentation among two of us. Since we are a coalition, that has always been important for us. I am accompanied today by the executive vice president of Corning, Ken Freeman, who will follow me immediately.

We initiated our study of the Uruguay Round shortly after its inception and, during the past several years, we have developed a set of criteria and prepared some three reports, the most recent in July of this year. There are some copies here available for the committee if the committee does not have them already. The report is entitled, "The Uruguay Round: Good for Manufacturing?"

The CHAIRMAN. We do have that.

Mr. SAMUEL. Good. I am glad our legislative department is working well.

It has been signed by the following companies; I mention their names for a reason: Bethlehem Steel, B.F. Goodrich, Chrysler, Corning, INTEL, Motorola, and the Association for Manufacturing Technology.

It has also been endorsed by the following national and international unions: the Amalgamated Clothing and Textile Workers; American Flint Glass Workers; Communication Workers; Machinists; ILGWU; the Electronic Workers; the Electrical Workers; Rubber Workers, and Steel Workers.

I read these because we are trying to demonstrate, Mr. Chairman, the fact that these are companies and unions which are concerned with unfair trade practices as they affect market disruption in the United States, as well as to establishing barriers to exports. Most of these companies are highly qualified exporters, among the most successful in the world.

To sum up our position, while LICIT fully supports a successful Uruguay Round and applauds the progress that may have been achieved on agricultural issues, it believes the so called Dunkel text, which appears to represent the basis for current negotiations, would undermine the U.S. ability to preserve its industrial base against foreign predatory practices, and unfair market disruptions.

I am referring both to those elements which you have heard about this morning, such as dumping, subsidies, countervailing duties, protection of intellectual property and dispute resolution, and also to issues which are not covered which have not been discussed very much this morning, such as foreign targeting and anti-competitive practices.

We are particularly disturbed, of course, by the fact that Section 301, to assure U.S. exporters open markets, would be substantially weakened, if not rendered useless.

The manufacturing sector is a critical component of the U.S. economy, accounting for nearly 19 percent of U.S. national income in 1991. We believe a strong manufacturing sector is essential to providing high-wage jobs to American workers.

Unfortunately, the Dunkel text would seriously weaken the ability of U.S. industries' firms and workers to defend themselves against unfair foreign trade practices without offering significant benefits to the United States. Without substantial renegotiation of the Dunkel text, Uruguay Round would be a bad deal for U.S. manufacturers and, thus, for the United States.

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

Mr. FREEMAN. May I continue?

The CHAIRMAN. Mr. Freeman, yes.

STATEMENT OF KENNETH W. FREEMAN, EXECUTIVE VICE PRESIDENT, CORNING INC., CORNING, NY

Mr. FREEMAN. Thank you, Mr. Chairman.

As former manager of Corning's television glass business, I am here to tell you firsthand about dumping. Consistent, unfair, injurious dumping has plagued the television industry for the past 20 years. The Dunkel draft, as written, will destroy the only real weapon we have to fight back.

The CHAIRMAN. Which is?

Mr. FREEMAN. All aspects of the dumping law are critical to our ability to fight back. I will continue further, here.

The CHAIRMAN. Please.

Mr. FREEMAN. Corning has been involved in the television industry from the beginning. We invented the glass for color television picture tubes. We have watched as U.S. television manufacturers, unable to export directly to a closed Japanese market, licensed their technology to Japanese companies as the only means to access their market.

We watched as Japanese companies charged a higher price for televisions in Japan and a lower price in the United States, causing significant injury to U.S. firms in the process.

As a result, the number of U.S.-owned producers of color picture tubes dwindled from 26, to just one. Repeatedly, we made the case against this dumping at the ITC. Five times the ITC ruled that the industry had been injured by unfair trade.

Each time when U.S. industry thought we would finally get relief, the Asian dumpers found a way around the agreements. It has taken a lot of time, a lot of effort and millions of dollars, but we have learned some lessons.

First, Asian suppliers of television tubes and sets persistently dump into export markets to gain market share; second, the dumping statute is the only line of defense against such predatory practices.

These are lessons we hope to use as U.S. industry enters the age of high-definition television. Two hundred million TV sets in the United States could well be replaced in the next 10 years.

We know that most of the foreign companies active in the development of HDTV are the exact same ones that have been dumping in our market over the last 20 years.

The CHAIRMAN. Could you help us, sir? HDTV.

Mr. FREEMAN. High definition television, Mr. Chairman.

The CHAIRMAN. High definition. Yes.

Mr. FREEMAN. But we are ready this time. We have dumping orders outstanding against a large number of the frequent offenders, and NAFTA, if enacted, should stop the diversion through Mexico.

I would like to pause here to thank the committee, specifically Chairman Rockefeller.

Mr. Chairman, may I please continue?

The CHAIRMAN. Please continue.

Mr. FREEMAN. I want to thank Senator Rockefeller for his sponsoring the amendment in the NAFTA implementing bill for television; to thank you, Mr. Chairman, for your support of the provision, and the rest of the committee as well. We estimate it will generate about half a billion dollars of exports over the next several years.

If you adopt the Dunkel text on dumping, you will pull the rug out from under the industry at a time when we have every reason to be optimistic because of the high-definition television opportunity, and the ongoing multi-media revolution.

Under the Dunkel text, the outstanding dumping orders will likely expire under the de minimis and sunset provisions. New cases will be difficult, if not impossible to bring, because labor unions will not have standing.

Under the dispute settlement process, international panels may well overturn existing or new dumping decisions. Compromise in the GATT negotiations cannot include gutting our trade laws.

That is exactly what our Asian competitors want, and we will not survive such an outcome. It is not too late for Congress to make this GATT Round a winner for U.S. industry. The Dunkel draft can and must be changed.

Thank you very much.

The CHAIRMAN. Well, thank you, sir. I found that chilling.

May I make the point that Corning has been one of those places ideas come out of? I think you produced the catalytic converter from a standing start in about 19 months. Detroit said it could not be done, and you did it.

I remember visiting there at Corning and seeing the mock-up of the original one and being told about the Detroit executive who came through Corning, saw that you were doing it, and made his way down to Washington to testify that it could not be done. That was the mind and mentality of Detroit in the 1960's. But fiber optics, which is changing the world, came out of Corning.

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

The CHAIRMAN. Robert McNeill, on behalf of ECAT. Good morning, sir.

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

Mr. MCNEILL. Mr. Chairman, you mentioned earlier that you remember the GATT when it was Eric Windham White and two secretaries. I remember when he hired his second secretary. [Laughter.]

The CHAIRMAN. That is right.

Mr. MCNEILL. We in ECAT continue our support for a successful conclusion to the Uruguay Round. We hope in the days and weeks ahead that that, in fact, will happen, for there is much to be gained for the members of ECAT.

Our companies are 63 in number. They have worldwide sales of over $1 trillion, and they employ over 5 million persons on a worldwide basis. I would guess in the United States that they employ between 3.5 and 4 million American workers.

ECAT member companies derive substantial parts of their revenue from abroad, both through exports and foreign investments. Sound Uruguay Round agreements in the areas of market access, intellectual property protection, services and investment would dramatically improve foreign market access.

We do, however, have concerns in some of these areas, many of which were expressed by members of the preceding panel, and, indeed, by Senator Baucus, who essentially summarized my testimony in his opening remarks.

We in ECAT are concerned about the lack of adequate progress in the market access negotiations. We have companies with a vital interest in market access improvements, particularly in the zero for zero effort in respect of paper and wood products, electronic products, non-ferrous metals, and scientific equipment.

As was mentioned by Mr. Donnelly on the earlier panel, the paper and wood products industries in the United States have low tariffs in the United States, but very high tariffs abroad. Paper and wood products producers would like to see tariffs mutually eliminated to enable them better to compete in world markets.

Similarly, for non-ferrous metals, scientific equipment and electronic products, we have a lot of companies in our membership that would like to see the mutual elimination of tariffs on their products.

Mr. Pratt summarized our ECAT concerns in the area of intellectual property. The concern here is that the Dunkel text would allow up to 10 years for countries to continue the economic piracy of the property rights of American companies, something that we find very objectionable. We would hope that our negotiators in Geneva could shorten the transition period during which countries would put into effect measures to protect our intellectual property.

The CHAIRMAN. And that position was stated by Mr. Pratt.

Mr. MCNEILL. By Mr. Pratt. Yes. ECAT also represents companies that are affected by the so called cultural exemptions both in intellectual property and services. We are concerned that copyright protection, particularly for U.S. record and film companies, might not be adequately accommodated in the text of the prospective GATT agreement. So we share Mr. Pratt's expressions of concern in the intellectual property arena.

In the area of services, my colleague, Mr. Bill Hawley, will talk about concerns that the United States Financial Services Industry has along with other service industries.

We share those concerns because we feel that the insurance industry as well as a lot of financial security companies stand to gain precious little, and perhaps to lose quite a bit if the services negotiations do not result in national treatment and market access for our service industries.

There has been considerable comment made by the preceding panel about antidumping. ECAT member companies are petitioners in the United States for antidumping relief from unfair pricing practices. We also, however, see our exports subject to antidumping procedures abroad. That, indeed, is a great, great concern to us.

On balance, we think that the Dunkel text, in the antidumping area, is such that we would not recommend that it be opened. We like some provisions of the Dunkel text and dislike others.

But, on balance——

The CHAIRMAN. Sir, I guess I would have to ask you, what did you mean by opened? Could you say it again?

Mr. MCNEILL. Oh. We would not like to see the antidumping provisions in the Dunkel text open for renegotiation.

The CHAIRMAN. I see.

Mr. MCNEILL. That is the reference to open.

I notice that I have the yellow light.

The CHAIRMAN. Take your time. Take your time.

Mr. MCNEILL. All right.

In the antidumping area our concern is that large numbers of countries are putting in place for the first time domestic antidumping statutes and regulations. Until very recently, it was the United States, Canada, Australia and the European Communities that were practically the sole practitioners in the world in the antidumping area.

In recent years as tariffs have gone down very substantially pursuant to the Kennedy Round and subsequent GATT negotiations, a lot of countries are putting into effect antidumping regimes and using them not only as a protective device against unfair pricing, that is, against products dumped in their market, but are tending to use the antidumping mechanism as a general device for general protection from imports. In some cases antidumping duties are imposed without sufficient regard to whether or not the protection is a result of unfair pricing.

Mexico, incidentally, just recently put into effect an antidumping law. I remember in the earlier days that Mexico would initiate an antidumping investigation on a Tuesday of a given week, and have the antidumping duty in effect on Friday of the same week.

The CHAIRMAN. That is efficiency in government.

Mr. MCNEILL. That is an efficient antidumping regime, but not one that provides due process. So, we are hopeful that the antidumping provisions finally agreed to in the Uruguay Round will take into account the balanced interests of both domestic petitioners and exporters.

I simply want to make the point to the committee that, as exporters as well as domestic manufacturers and producers, we do hope that there is balance achieved in the antidumping code, in

substantial part for the reason that we do not want to see our exports capriciously treated by foreign governments abroad.

And, finally, I know I am way past the red light, Mr. Chairman, but in the area of textiles, we hope that agreement can be reached. As you indicated earlier, trade negotiations involve at the end of the day the balancing of competing interests.

Our European trading partners are unwilling at the moment to provide adequate market access for our services industries and for a lot of our manufacturing industries because they say that we will not lower our tariffs, particularly our very high tariffs in the area of textiles.

There are a number of developing countries in the GATT whose willingness to sign an accord at the end of the day will, in large part, depend on whether they will have multilateral access for their exports of textile and agricultural products.

These countries are very skeptical about agreeing to protections for intellectual property rights, or to providing benefits for U.S. investments and service industries unless they can get some improvement in respect to their exports of textile and agriculture products.

So, there are a variety of interests that are affected by the textile issue, and we hope that our negotiators will come out with something that is satisfactory.

I thank you for your courtesy, sir.

The CHAIRMAN. We thank you for that. It was brilliantly done.

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

The CHAIRMAN. Now, to conclude our panel, Mr. Hawley, on behalf of the Coalition of Service Industries.

STATEMENT OF F. WILLIAM HAWLEY, DIRECTOR, INTERNATIONAL GOVERNMENT RELATIONS, CITICORP/CITIBANK, WASHINGTON, DC, ON BEHALF OF THE COALITION OF SERVICE INDUSTRIES

Mr. HAWLEY. Mr. Chairman and members of the committee, thank you very much for this opportunity to appear before you today to discuss the interests of the service sector in the Uruguay Round trade negotiations.

I am testifying today on behalf of the Coalition of Service Industries and its Financial Services Group. The coalition represents a group of large, multinational companies engaged in a broad spectrum of service businesses.

The range of sectors covered by CSI's membership includes accounting, consulting, professional and business services, telecommunications, shipping, data processing, travel and tourism, and, of course, financial services such as banking, securities, and insurance.

The service sector then is very broad, and for that reason it is difficult for me to make a general statement about the progress or problems associated with the market access negotiations for services.

There are service industries where the market access talks have been more productive. Some of the professional or business services

are examples. In other areas, such as audio-visual and financial services, the market access talks have been quite problematic.

The negotiations are now less than 6 weeks from their scheduled conclusion, and, unfortunately, no real progress on improved market access in financial services has been achieved. After recent consultations with U.S. negotiators and review of current market access offers by other countries, it is evident that most of the commercially important developing countries do not intend to liberalize access to their financial markets.

At best, most developing countries' market access offers now constitute only a standstill; many others fall short of even this inadequate commitment.

The intransigence of these countries has continued, despite the best efforts of U.S. negotiators who have been working diligently for many years in consultation with U.S. financial services companies to achieve a successful——

The CHAIRMAN. Mr. Hawley, you will have to forgive me. Did you say developed or developing?

Mr. HAWLEY. Developing.

The CHAIRMAN. Developing.

Mr. HAWLEY. Developing countries. Most of the problem areas, Mr. Chairman, in this area, lie outside of the OECD in what we generally refer to as the emerging economies of Asia and Latin America.

Under these circumstances, it is imperative for the administration to take action to resolve these problems now. Several things must be done. First, to the extent feasible, the administration should continue to press our trading partners for market access offers that would provide meaningful market access.

In this regard, we hope that the current trip to Southeast Asia by Assistant Secretary of the Treasury Shafer will produce significant results. This high level involvement by the U.S. officials does demonstrate the continuing commitment of the United States to achieving substantial liberalization.

Second, U.S. negotiators should reemphasize that standstills and commitments to remove only one or two of a multitude of protectionist measures do not constitute market access. Foreign countries should not be rewarded if they fail to commit to open their financial markets.

Third, the administration should clarify how a country can exercise its explicit right under the General Agreement on Trade in Services to prevent protectionist countries from taking unfair advantage of open financial markets in other countries like the United States.

In this regard, the recent policy statements by Secretary of the Treasury Bentsen and Under Secretary of the Treasury Summers are steps in the right direction. We believe that the United States should seek an agreement that achieves sufficient liberalization to justify accepting an Uruguay Round most-favored-nation obligation. Standstill commitments that lock in existing protectionist measures are not sufficient.

Fourth, in consultation with U.S. financial services companies, determine immediately those countries whose offers currently fall short of comparable and substantial market access and inform

them that, without substantially improved commitments, they should expect the United States to exercise its legitimate general agreement on trade and services' right to deny them most-favored-nation treatment.

Our standard for judging the final services agreement has always been the degree to which it assures that markets will be open for all service providers to compete on a fair and equitable basis. We agree wholeheartedly with the criteria set out in this committee's letter to the President in June of this year.

Where foreign markets are already open, we want assurances they will stay that way. And, where markets are closed or discrimination exists, we want those obstacles removed. We believe that these objectives are fully consistent with the 1988 Trade Act.

Mr. Chairman, we have supported this negotiation from its inception because it was to be about the lowering of trade barriers. However, if there is to be virtually no improvement in market access in the final agreement of this Round, then the United States must exempt itself from the unconditional most-favored-nation obligation if it is to retain any leverage for future progress in opening the world's most highly restricted financial services markets. This must not be an agreement which simply freezes the open markets open and the closed markets closed.

Thank you.

The CHAIRMAN. Thank you, Mr. Hawley.

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

Senator PACKWOOD. May I say something, Mr. Chairman?

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. This has been a most revealing hearing this morning, and the Chairman and I have been talking about it. Here we have had two panels of people who have been strong supporters, by and large, of expanded trade. And you are here today to say, there is a limit beyond which we will not go.

I hope that other nations are paying attention to this testimony today because if they assume the United States is going to sign on to any GATT agreement just because it has the name GATT—I can speak for myself, that I am not. I do not think the Chairman is. But there cannot be a better group to give that warning than the people we have heard today.

Senator ROCKEFELLER. That is precisely the point.

The CHAIRMAN. Yes, sir, Senator Rockefeller. We started out this way, but perhaps you came in——[Laughter.]

Senator DANFORTH. Never, Mr. Chairman. I really am encouraged by this hearing, because I think what has been said is realistic. I also would just add to what Senator Packwood said.

We cannot now, at noon on the 10th of November, be in the position of crying wolf. I mean, we cannot be saying, well, we are really rattling the sabers. I mean, we have real problems with this.

Then, when it comes down to it and everybody is rushing to finish something, to come up with something by December 15th, then they come up with something and they say, well, this is impossible. We have to go along with it; it would be an international disaster if we did not.

I hope that all of us really do mean what we are saying. And what we are saying is, that the purpose of trade negotiation is not just to have trade negotiations.

There is a wonderful story in the Wall Street Journal of November 8th—and, Mr. Chairman, we will get pictures made for the Senators who are here for anybody who has not read it—but the title is, "For GATT Officials, Talking Only Stops if Mouths Are Full." It really is a priceless story about the GATT negotiations.

But, again, the point of negotiation is to lead somewhere, and the somewhere should be to open markets, not just more negotiations.

And, Mr. Hawley, I think, used the word problematic results, or somebody did, these really are going to be problematic results of the Dunkel text, is where we are headed.

The CHAIRMAN. We thank you.

The dinner conversations reported by Lawrence Ingrassia in the Wall Street Journal from Geneva are very real. I observed Mr. McNeill cited Mr. Reed, of Citibank, when he said, just a few weeks ago, "There is little, if any, market liberalization to be seen in the likely results."

I was not quite prepared for this, I have to say to you. I think, Mr. Chairman, you are sort of lonely in this situation. But we have heard you very carefully.

Mr. Freeman, I want to personally charge you with telling me more about why you think several hundred million dollars in dumping duties owed to the U.S. Treasury by Japanese companies were ultimately forgiven. Do not let that pass by, all right?

Mr. FREEMAN. Yes.

The CHAIRMAN. Because we had a television industry, and it went. Elmira was a major center and it just all went. We did not invent it; the British invented it. But we developed it. Suddenly, I think there predatory pricing. We had to work out on the NAFTA this National——

Mr. FREEMAN. Yes.

The CHAIRMAN. Mr. Chairman, do you want to say something?

Mr. LEONE. Well, I want to say a couple of things. First of all, I think, obviously, the criticisms of the agreement by people whom one would expect to support it are powerful and important. And I suppose it is up to the negotiators, if you will forgive me, to moot Mr. Hawley's point on trade.

But the fact is that, for our region, first of all, we have over a quarter of a million jobs involved in manufacturing exports. We have nearly 300,000 jobs involved in international trade. We do 30 percent of the Nation's air cargo export. So, we have a strong stake in continuing down the path towards freer trade.

Part of the motivation for my comments was not simply trade theory, which we could all quote, which would argue that we should go ahead with any liberalization and in the long run it will work out, it was, in fact, to weigh in against the political situation in this country, to speak frankly, which I think makes it extremely difficult for people to support NAFTA or the Uruguay Round.

It may be that everything will be 10 cents cheaper if we get a good trade agreement, but that is hard to put on a television show. If one person loses a job, that is an interview and that is potentially a political commercial.

I think that the context in which we are approaching trade issues has changed dramatically in my lifetime, especially in the last few years since the economy has slowed down.

So, I also think that with regard to some of the concerns, particularly the manufacturing concerns, we lack an historical perspective.

If this committee had been meeting 100 years ago, it would have talked about the fact that something very terrible was happening to the family farm, and this country went from a period when 70, 80, even 90 percent of the people were on farms, down to 1 percent. William Jennings Brian would have made Ross Perot look like a piker.

The CHAIRMAN. Sir, not this committee. We were into big steel already in the Finance Committee. [Laughter.]

Mr. LEONE. Actually, the top 15 companies in the United States, the largest at the turn of the century—of which only G.E. survives, by the way—were overwhelmingly in natural resources, and particularly heavy in the export of natural resources. But I am carrying on too far. I think these are powerful arguments about the details.

The CHAIRMAN. No. Do not think you are carrying on too far.

Mr. LEONE. About the details, I think there are equally powerful arguments that it would be a great tragedy if this country basically said when we had 40 percent of the world's GNP and when we could dictate the terms to people around the country we said, we know they are a pain, and there is adjustment involved in the kind of system we have devised at Brenton Woods and in free trade, but we want you to make those adjustments; you will be better off in the long run.

Now that we are kind of running scared and people in politics are running before the wind—present company excepted—that we decide, well, you know, the devil is in the details and we cannot live with these free trade agreements, they are too expensive.

So, I weigh in heavily because I want to weigh in on the side of thinking about the long run, and I also make the arguments I make thinking about our own people because I think we have done a poor job at that. I think there is a way to——

The CHAIRMAN. The social democratic compromise that you referred to has never happened in this country, as Mr. Samuel, who was head of the Industrial Union Department, knows too well. We have an unemployment compensation system in tatters. We could not even pass the 4-month extension that we had.

I can recall from the 1960's, with Germany and France with the iron and steel agreement, they began closing down coal mines. And when the coal miners were over 50 and they were going to close down the mine, they just retired them. They did not retrain you. You are a coal miner, you are 50, enjoy life, as it were. We did not do that.

Yet, these are the people who are very much into it. Mr. McNeill and Mr. Hawley are persons who would very much share your view, and you are speaking to someone who was taught this subject by Harry Hawkins, who negotiated for Cordell Hull.

Mr. MCNEILL. The Reciprocal Trade Agreement——

The CHAIRMAN. The Reciprocal Trade Agreement. So, I was baptized early in this church. Yet, the things that Mr. Freeman describes, you know——

Mr. FREEMAN. Mr. Chairman, may I make a comment?

The CHAIRMAN. Would you please, sir?

Mr. FREEMAN. I have heard your comments, sir.

The CHAIRMAN. I do not want to keep you beyond your schedule.

Mr. FREEMAN. From the Port of New York's point of view—and I can appreciate your perspective with respect to the potential benefit of additional imports to the country if the Dunkel text, as proposed, is included as part of the GATT negotiations—what we are really looking for in manufacturing, though, in Corning, as well as the TV industry, is fairness.

We are not looking for an unfair advantage for the United States, or for Corning, Incorporated, or any other institution here, we are looking specifically for a level playing field, an opportunity to compete fairly around the world. And the way the Dunkel text is written currently, jobs are at stake and they are the high-paying, high-skilled jobs.

We believe that U.S. manufacturing competitiveness is not like farming. We must have a strong infrastructure in our country of high-paying, high-skilled jobs for our country's success in the years in the future.

The CHAIRMAN. Well, gentlemen——

Mr. SAMUEL. Could I add one sentence?

The CHAIRMAN. Mr. Samuel, Mr. McNeill, Mr. Hawley, you have yet to have your final word.

Mr. SAMUEL. Just one sentence in response to Mr. Leone's comment about the historical vision 100 years ago, that suggests that what we are dealing with is declining industries.

I would like to suggest that the industries which have been sitting at this table and represented by our coalition make microprocessors, which I do not think is a declining industry; make HDTV components and fiber optics from Corning, which I do not think is a declining industry; would make numerically controlled machine tools, which I do not think is a declining industry.

If these are, in truth, declining industries for the United States; then we are in for perilous times. These are the industries which are concerned with the Dunkel text.

Mr. LEONE. Let me just say that I do not think farming is or was a declining industry, it is the most marvelously productive transformation in the history of the world.

The CHAIRMAN. Of course.

Mr. MCNEILL. Mr. Chairman, could I make a final comment? And that is that the testimony you have heard from both panels has correctly led the committee to the impression that much remains to be done if the various communities that we represent are to be supportive of an agreement in the Uruguay Round.

I would just caution that in the next 6 weeks a lot of compromises will be made, and the views that we all are expressing here today, in part or in whole, might be accommodated so that the ultimate position that each of us might express on the Uruguay Round really has yet to be determined.

The CHAIRMAN. All right. All right; 35 days. But it could change. Mr. Hawley.

Mr. HAWLEY. Well, Mr. Chairman, I just want to emphasize that we, as my Chairman would say, if John Reed were here, that we are free traders and we are fully in sync with what Chairman Leone has been saying about the necessity of pushing ahead to try to get barriers lowered so we can keep increasing the flows of goods and capital across borders.

My concern, as laid out in more detail in my testimony, is with the outcome that appears likely in December. It does not worry us that it would create some sort of unfair access to our market for foreign banks or financial companies. We have welcomed companies in the financial field from all over the world into this market for all kinds of good reasons over the years.

But our fear is what, in this unusual situation, the potential outcome will be of the unconditional MFN principle being, in my judgment, used improperly. We could end up with a situation in which MFN which has, over the years been generally a trade liberalizing principle, has the potential to have a perverse impact and actually slow down the process by which we get closed markets open.

The CHAIRMAN. Well, this has been an important morning for the committee and all represented here. We are fighting crime over on the floor, so some Senators could not make it. But this has been very helpful. It is a fire bell in the night. Thank you, gentlemen, most specifically.

[Whereupon, at 12:10 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF CURTIS H. BARNETTE

Thank you, Mr. Chairman. This statement is on behalf of the American Iron and Steel Institute's (AISI's) 32 domestic member companies whose facilities account for over two-thirds of the raw steel produced annually in the United States.

The steel industry welcomes this hearing and applauds the Finance Committee for holding it at this critical time. With scarcely a month left before the GATT Uruguay Round is scheduled to conclude, it is indeed essential that Congress assess whether the negotiations are achieving—or *failing* to achieve—U.S. objectives for the Round *as described in the Committee's June 23 letter to the President.*

AISI supported an extension of fast-track authority in the spring of 1991, and we continue to support the Uruguay Round's principal objectives and the prompt and successful conclusion of this GATT Round. Among other reasons, the Uruguay Round holds the potential to help steel's customers. We want to see world markets opened up to greater U.S. exports of cars, auto parts, machines and other steel-containing products. We also agree fundamentally with the President that "America can compete and win again." But, as this Committee has recognized, free trade has got to be fair.

This is why both the previous Administration (when it set out its GATT Round proposals) and the Congress (when it passed the Omnibus Trade and Competitiveness Act of 1988) stressed the need to use this Round to achieve *stronger* international disciplines—and U.S. laws—against dumping, subsidies and other unfair trade practices.

Unfortunately, this principal negotiating objective of the United States has not been achieved. Instead of establishing stronger rules against unfair trade, our country is now under enormous pressure to accept the Uruguay Round's Draft Final Act or "Dunkel Draft"—a document that, if adopted in anything close to its current form, would *severely weaken* U.S. laws against dumping and subsidies. To their credit, both Ambassador Hills and Ambassador Kantor have declared that the Dunkel Draft's treatment of unfair trade practices is unacceptable to the United States. And well it should be. It directly contradicts one of Congress' key negotiating objectives—to maintain strong and effective U.S. trade laws. On the other hand, it does achieve one of the main negotiating objectives of *foreign* governments—including the very ones that dump and subsidize and tolerate cartel practices that have so injured steel and other U.S. industries—by weakening existing U.S. trade laws.

My written statement includes a full analysis of the Dunkel Draft by the Committee to Support U.S. Trade Laws, of which AISI is a member. In the interest of time, I'll cite only a few examples. The draft includes: (1) new dispute settlement language that would give GATT panels, with no standard or limit for their review, the power to overturn the laws passed by Congress; (2) no explicit GATT authorization for "cumulation" in dumping cases, which would seriously harm our industry in light of the pervasive dumping of steel that still goes on; (3) higher *de minimis* requirements that would allow much injurious dumping of steel to go unpunished; (4) a subsidy "green light" for "regional development," which would make non-actionable under U.S. law many foreign government steel subsidies; (5) a weakening of our current laws against circumvention of dumping and subsidy orders; and (6) a so-called "sunset" provision that would end dumping and subsidy orders, which are established after lengthy and expensive trade litigation, after only five years—even where unfair trade is continuing.

Well, this is where we stand today. The Dunkel Draft, if adopted more or less as is, will completely undermine U.S. trade laws. It will remove much of the existing

discipline against unfair trade practices. And it will make it impossible for Congress to redress the imbalance in the future.

Because this is the exact opposite of the negotiating objectives outlined by Congress in the 1988 Act, U.S. GATT Round negotiators are trying to devise a strategy to limit the damage caused by Dunkel. But what ever happened to Congress' goal of seeking *stronger* rules against unfair trade? The excellent compilation of concerns in the last paragraph on page two of the Committee's June 23 letter lists the *absolute minimum* in terms of areas where significant changes are needed to make the Dunkel Draft acceptable. If substantial improvements in these areas can't be made, we *ask that the President instruct our GATT negotiators to do two things: (1) remove the draft Dumping and Subsidies Codes from the overall Uruguay Round agreement: and (2) change the Dunkel Draft's dispute settlement procedures so that they do not weaken U.S. dumping and subsidy laws and Section 301.*

The central point that needs to be driven home is that the Dunkel Draft provisions on unfair trade practices will, if adopted, make our economy—and jobs base—weaker. That's because effective dumping and subsidy laws remain absolutely critical to the future viability of America's *most competitive* manufacturing industries. The steel industry in the United States has made enormous, dramatic strides in recent years to regain its international competitiveness. The attachment to my written testimony demonstrates the progress that has been made. At the same time, our industry continues to face many challenges, including significant tonnages of dumped and subsidized foreign steel.

1. There is no fair trade in steel.

2. The United States is the one major developed economy that has reduced its steel production and has capability near domestic requirements.

3. U.S. producers are currently the low-cost, high-quality producers for the United States home market. Many "high-cost" world producers remain heavily dependent on exports to maintain volume.

4. Fair and comprehensive Department of Commerce investigations confirmed the wide margins (an average of 37 percent or $150 per ton) by which foreign producers are trading unfairly in the four largest flat rolled steel categories.

5. The domestic steel industry has lost more than 200,000 jobs over the last dozen years. Employment is now less than half its size in 1980.

6. The more Bethlehem downsizes and streamlines, the more disproportionate its retiree to employee ratio becomes. As of year end 1992, retirees outnumbered active employees by a 2.8 to one margin.

7. Health care costs for Bethlehem are now $240 million annually and rising, despite wide ranging efforts to manage them.

While these last two examples reflect Bethlehem-specific data, they are representative of the problems facing most major domestic steel producers.

This is especially true in regard to unfair trade. Despite the current strong international competitiveness of America's steel industry, conditions for massive unfair trade in steel persist. There are still 100 million tons of excess steelmaking capacity worldwide—and still no comprehensive, effective and enforceable Multilateral Steel Agreement (MSA). With respect to the MSA, which ever since the June Economic Summit has been formally linked to the Round, the following point is worth making: in this arena, too, foreign governments have been trying to weaken U.S. trade laws. And here, as well, we continue to support the original United States objective of a comprehensive, effective and enforceable MSA that is truly *"trade laws plus."* This means that we won't accept any weakening of our dumping or subsidy laws—or any settlement of the steel unfair trade cases—in exchange for concluding an MSA. And so far, U.S. government negotiators have held the line. Together, they and we are both saying no to subsidy green lights, no to subsidy wavers and no to any pre-initiation antidumping law provision. In closing, I'd like to thank the Committee for holding this hearing at such a critical time. We know that, with only a week to go before the House votes on NAFTA, it may be difficult to focus on other trade issues right about now. But the GATT Uruguay Round will arguably affect the U.S. economy—for better or worse—far more than NAFTA will. And they're closely inter-elated. A primary concern for both is their long term effect on quality jobs in America. NAFTA, unlike the Dunkel Draft, will maintain strong U.S. trade laws. AISI strongly supports the NAFTA and thinks it will be a winner for the United States. But whatever one's feeling about NAFTA and trade relations with Mexico, our country stands to lose a huge number of good jobs and companies if the Dunkel Draft is adopted and the U.S. economy is subjected to a flood of dumped and subsidized imports from Japan, the EC and everywhere else.

We therefore urge you to act now. Talk and write to the President. Go yourselves to Geneva. Let our GATT Round negotiators know that the United States Senate—and this Committee in particular—will not accept a Uruguay Round result that in-

cludes the Dunkel Draft's trade law-weakening provisions. Send a clear message that *any* GATT agreement that makes U.S. trade laws less effective is unacceptable, unbalanced—and a bad deal for the United States. We appreciate the leadership on this issue shown by the Finance Committee, and appreciate this opportunity to present our views.

COMMITTEE TO SUPPORT U.S. TRADE LAWS

Analysis of the Dunkel Dispute Settlement, Antidumping and Subsidies Texts

On December 20, 1991, Arthur Dunkel, the Director General of the GATT, promulgated a draft text of the New GATT Agreement. United States negotiators, as well as the private sector, are currently analyzing this draft to determine whether it should be accepted, or whether it even can serve as a suitable basis for further negotiations.

The Lawyer's Technical Working Group of the Committee to Support U.S. Trade Laws has carefully reviewed the provisions related to Dispute Settlement, Antidumping, and Subsidies. Our conclusion is that these sections are unacceptable, and constitute a severe retrenchment from current United States law and from the current GATT Codes. In judging any new GATT Codes, the fundamental question we must pose is this: if the Codes are enforced and implemented in U.S. law, will the antidumping and subsidies laws be stronger and more helpful to United States industries seeking to prevent unfair competition, or will they be weaker?

Without doubt, the Dunkel text will weaken, and weaken significantly, current United States antidumping and countervailing duty law. It will make it much harder and more expensive to bring cases, by interposing new, burdensome initiation requirements. Unions will probably not even be able to bring cases unless a major proportion of domestic producers affirmatively support the case, effectively denying independent standing rights to unions. Furthermore, more stringent evidentiary requirements will cost petitioners thousands, if not hundreds of thousands, of dollars to meet. If a case can be started, new procedural requirements will make it much more difficult to prosecute a case. Moreover, a plethora of new substantive rules will be applied against petitioners. In the Subsidies area, these include broad "green light" subsidies not currently permitted under United States law. In the Antidumping area, the new rules would permit greater dumping of goods below their cost of production and will also make it harder to find dumping in price-to-price cases.

Even if a petitioner is successful in passing through this mine field in order to put a dumping or subsidies order on the books, it will be much more difficult to maintain the order. First, there is mandatory sunset of the order after five years, regardless of whether dumping or subsidization is continuing. Further, all dumping and subsidies orders will be subject to review by GATT Dispute Settlement Panels, whose conclusions the United States will be required to accept, despite the fact that such panels have shown themselves to be totally disinclined to rigorously apply the dumping and subsidies laws. GATT Dispute Settlement Panels have generally taken a very narrow view on the Antidumping and Subsidies Codes, saying that if something is not specifically permitted in the Codes, it is prohibited. The United States sought a limitation on this standard of review. We had asked that the Dispute Settlement Panels should only determine whether the application of the Antidumping and Subsidies Codes through national law is a "reasonable" or "permissible" interpretation of the Codes. No such limitation is in the Dunkel text.

Many of the provisions in the Dunkel text will be particularly detrimental to United States high-tech industry, for which the dumping law is the main remedy against Japanese and other countries' predatory practices. For example, it is critical for high-tech industry that minor changes in products do not remove the product from the coverage of an antidumping order; this is recognized under U.S. law. The Dunkel Text does not authorize coverage of such altered products, and moreover would prevent the bringing of a case on a product and subassemblies of that product, making the coverage of the dumping law very, very narrow. The Dunkel draft would also make it much more difficult to show "sales below cost" dumping, which is the main form of dumping case used by United States high-tech industry. Finally, the text, by interposing new standing requirements, will make it much more difficult for high-tech companies, many of which are small businesses, to bring cases.

In addition to the limitations on the effectiveness of our antidumping and countervailing duty laws resulting from the Dunkel draft, the dispute settlement text would also severely restrict the ability of the United States to use Section 301.

It has been argued that any "weakening" changes in the dumping and countervailing duty laws could be offset by new changes which provide greater protection against circumvention of orders. First, this argument is seriously flawed because anticircumvention provisions are totally useless if one cannot obtain a dumping order in the first place. Moreover, the provisions in the Dunkel text on circumvention are, to put it succinctly, useless in some instances and a severe retrenchment from United States law in other instances.

The Dunkel text on Dispute Settlement, Antidumping, and Subsidies must be totally rejected. Director General Dunkel had a number of alternatives in writing this text. He could have accepted the draft proposal made jointly by the United States and the EC, or he could have accepted those proposals made by Japan and other traditional respondents in dumping cases. On the whole, he accepted the Japanese view. It is simply untenable for the United States to accept this draft, or to use it as a basis for negotiations. We ask that the United States negotiators continue the firm resolve that they have maintained throughout this negotiating process and reject the Dunkel text.

This paper, after this brief introduction, reviews on a paragraph-by-paragraph basis those provisions in the Dispute Settlement, Antidumping, and Subsidies sections of the draft that are the most unacceptable.

Problems in the Dispute Settlement Area

Part S: Dispute Settlement Scope/Standard of Review.

In assessing the effects that the draft texts would have on the U.S. trade laws, it is imperative to consider the manner in which GATT Dispute Settlement Panels would interpret those texts in dispute resolution cases.

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1 GATT Panel Report, Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada (September 5, 1990).

Currently, GATT Panels take the view that GATT articles authorizing the use of AD and CVD laws, as an "exception to basic principles of the General Agreement," must be "interpreted narrowly," and that the country applying a trade remedy has the burden to "demonstrate that it [has] met the requirements of the GATT."[1] Although the United States sought a provision in the Dunkel text making clear that this standard of review is erroneous, and that GATT Panels ought to show the same deference to agency decisions as is shown by U.S. appellate courts, the draft texts contain no such provision. The result is that any ambiguity in the draft texts would likely be construed against the country imposing an AD or CVD duty.

Although the draft dispute resolution text contains no rules regarding the standard or scope of review of trade case determinations, it does greatly reduce the ability of the United States to affect Panel decisions. Under the new text, the United States cannot block the formation of Panels (Article 4) nor the adoption of Panel reports (Article 14), and if it declines to abide by a Panel report it believes is erroneous the GATT must authorize retaliation against it (Article 20). With these increased powers and applying the standard of review discussed above, it is likely that, if the draft texts are implemented, GATT Panels will pick apart U.S. trade laws piece by piece. Soon there will be no trade laws left.

Article 21: Effect on Section 301.

The draft dispute resolution text would restrict the ability of the United States to use Section 301. The text provides that, where a country seeks the redress of an action that violates the GATT, nullifies or impairs GATT rights or impedes attainment of any objective of the GATT, it must use the dispute resolution process. It cannot unilaterally determine the existence of a violation, or impose a retaliatory sanction unless and until authorized by the GATT to do so. As a practical matter, therefore, GATT procedures will likely supplant Section 301 with respect to disputes regarding GATT signatories.

While the Code likely will require all Section 301-type issues to proceed through the GATT process, the draft text would not require mandatory action against serious barriers that do not "directly" violate the GATT. Those nations that protect their markets through cartel-like private behavior, through complex barriers that will not be removed in the Round, or that violate bilateral agreements with the United States, may take comfort from these provisions.

Problems in the Dumping Area

Paragraph 2.2: New Cost of Production Hurdles.

This paragraph concerns "sales below cost" dumping (which is of particular importance to high-tech industry.) The paragraph interposes an entirely new set of requirements into the Code, and severely limits the instances where sales-below-cost dumping can be found. Among other problems, the paragraph requires that sales below cost must generally be determined in accordance with the accounting principles "of the exporting country," though such accounting principles are often distortive. For example, in Japan plants that are not currently in use are not considered to be part of

the cost base. Under U.S. practice, the exporting country's accounting principles are accepted *provided they are reasonable*. A GATT Panel may decide that the U.S. practice of evaluating the reasonableness of the foreign accounting principles does not comport with the Code.

Moreover, this paragraph, and the accompanying footnote 3, overrule current United States law concerning when sales below cost will be disregarded in determining fair market value. Current United States law uses the so-called "90-10" rule, which provides that any sales below cost, above a minimum threshold of 10 percent of all sales, will be disregarded in determining fair market value. The Dunkel text changes the test so that significantly more sales below cost will be included in determining fair market value (thus lowering fair market value and permitting more dumping).

Paragraph 2.2.1.1: Start-Up Costs.

This paragraph further alters cost of production methodology. It provides that there will be an adjustment to cost of production for "start-up" costs. This adjustment will presumably provide that the lowest cost during the start-up period will be considered the cost of production for the entire period. The length of the start-up period is not limited, and therefore it may extend well beyond what most United States companies would consider "start-up." Moreover, the period of time for which the adjustment could be taken is not limited to the period of investigation (nor, in any case, is the length of the period of investigation specified in the text). Though the adjustment is limited to costs "which can reasonably be taken into account by the authorities," such costs could be said by Dispute Settlement Panels to include those well after the initiation and even the preliminary determination in a case. The costs, moreover, "which can reasonably be taken into account" in an annual review (as opposed to an investigation) could occur much later. Given the lack of limitation on the start-up period, this provision becomes dangerously close to "life cycle" pricing. It is a very serious problem for the semiconductor and other high-tech industries.

Paragraph 2.2.2: Minimum Profit and GS&A.

This paragraph overrules the United States minimum 8 and 10% provisions, for profit, and general, selling, and administrative expenses, respectively, used in cost cases. Without such minimums, these profits and expenses will be much more susceptible to manipulation and may be unverifiable. Moreover, the use in dumping cases of much lower profit numbers than are acceptable in United States business practices will be permissible.

Paragraph 2.4: Circumstance of Sale Adjustments.

This paragraph, which adds that allowances should be made for a wide variety of differences in the circumstances of sale, such as "level of trade, quantities, physical characteristics..." and the like will require United States administrators to make inappropriate adjustments to prices, which have traditionally not been permissible under United States law and practice. For example, the provision would likely be interpreted by a Dispute Settlement Panel so as to require deductions from Japanese home market prices of the cost of the inefficient Japanese distribution system. Current U.S. practice is to compare the first sale to an unrelated purchaser in each market.

Paragraph 2.4.2: Averaging.

This paragraph will normally require averaging on both sides of the dumping calculation. Rather than determine a fair market value in the foreign country, and hold that each sale below fair market value in the United States constitutes dumping, sales in the United States will also have to be averaged. This will allow foreign producers to offset dumped sales with undumped sales.

While it is useful to have some language allowing an exception to this averaging provision, this exception does not solve the averaging problem. The draft text makes clear that averaging of U.S. price will be the norm in investigations and that only where exceptional circumstances are found will the authorities be permitted to look at individual transactions. Under Panel review, this exception cannot be seen as leading to use of individual prices instead of average prices other than in unusual circumstances.

Article 3: Cumulation.

This Article, by failing to authorize cumulation of imports from different countries in determinations of injury, constitutes a major failing of the Dunkel draft, and a major problem for United States industry. If unfairly traded imports from more than one source cannot be considered cumulatively, the collective impact of imports from a number of countries will be a forbidden consideration in dumping cases, despite the fact that the International Trade Commission and U.S. law has recognized cumulation for years. Moreover, given the presence of this language in the subsidy text but not the dumping text, it would be impossible to argue to a GATT Panel that cumulation was not prohibited in dumping cases.

A failure to require the cumulation of imports in dumping cases will not only prevent industries from filing future cases against collectively injurious unfair imports from a variety of countries, but will also undermine the ability of industries that obtained affirmative injury determinations in the past, based on a cumulation analysis, to survive the "sunset" injury test without the benefit of cumulation.

In addition, the current wording of the cumulation section in the Subsidy text would preclude "cross-cumulation," the current U.S. standard requiring the cumulation of dumped with subsidized imports in an injury analysis. Changes should be made in both the Antidumping and Subsidy draft texts to ensure that cumulation of dumped with subsidized imports is permitted.

Paragraph 3.3: Margins Analysis in Injury Determinations.

This paragraph, on injury, provides that the "magnitude of the margin of dumping" must be taken into account in determining injury. This inclusion of so-called "margins analysis" adds a new hurdle, beneficial to respondents, to the proof of injury requirements. This is not currently a requirement in the Code.

Paragraph 3.6: Threat of Material Injury.

This new paragraph on "threat" of material injury is far too restrictive, and adds a harder test than exists in the current Code.

Paragraph 4.1: Standing.

This paragraph provides that a "major proportion" of United States industry must affirmatively support a petition, and coupled with paragraph 5.4, would appear to require polling of the industry; this will make it much more difficult to begin cases. The failure of the Dunkel text to define "major proportion" creates a degree of uncertainty that will probably be solved by GATT Panels adversely to petitioners.

In addition, by referring only to a survey of "domestic producers" in Article 5.4 to determine industry support, there is an implicit exclusion of the positions of workers or unions in supporting trade actions. If a major proportion of domestic producers did not support a case, but the unions did, a GATT Panel might determine that there was not standing to initiate the action.

Footnote 1, Page F7: Definition of Related Parties.

The definitions of related parties seems to be too restrictive here, and could lead to the conclusion that companies which are in joint ventures or otherwise affiliated with foreign companies must be counted as part of the United States industry for purposes of determining standing. However, such affiliated companies will often be pressured not to support dumping cases.

Paragraphs 5.2 and 5.3: Petition Requirements.

These paragraphs will significantly raise standing requirements, and subject the initiation of cases to very close scrutiny by Dispute Settlement Panels disinclined to permit cases to go forward. As opposed to determining whether the necessary elements are alleged and whether information reasonably available to petitioners has been included, the Dunkel text requires the authorities to examine the "accuracy and adequacy of the evidence provided." This is a much higher standard, and could lead a GATT Panel to decide that the evidence in the petition was not adequate to justify the initiation of an investigation.

Paragraph 5.4: Standing Based on Domestic Producers Only

This paragraph is the critical section of the text requiring changes to address the issue of standing for unions. The draft text states that no investigation will be initiated unless the authorities determine, based on a survey of "domestic producers" of the like product, that a major proportion of the domestic industry supports the petition as required by Paragraph 4.1. There is no reference to a survey of workers or unions to determine support. Under review by a GATT Panel, therefore, it is quite possible that any case filed by unions that did not have the support of a major proportion of the domestic producers would be seen as not satisfying the GATT standing requirements.

The general caveat in Paragraph 6.11 that "interested parties" could include other, non-enumerated domestic entities does not alter these standing requirements. Thus, while the United States could presumably grant unions the right to enter an appearance in a case as an interested party, the unions still could not file petitions independently from domestic producers and without domestic producer support. This fundamental alteration to our dumping laws should be strongly opposed.

Paragraph 5.8: *De Minimis* Standards.

This paragraph adds new *de minimis* standards, raising them to 2% as opposed to the .5% under current United States law. As such, many cases which would go affirmative will be knocked out, even though dumping is occurring. For example, in one actual case, a U.S. industry producing a fungible commodity product was faced with imports that took approximately 20 percent of the U.S. market. In 1984, the Department of Commerce found average dumping margins of approximately 1.8 percent and an antidumping order was issued. Given the significant market share held by this one foreign country and the fungible commodity nature of the product, the difference between this 1.8 percent dumping order and a negative determination was critical to the domestic industry's survival.

In addition, this paragraph will mandate the dismissal of dumping cases if imports from a particular country constitute less than 1% of the domestic market (unless such imports collectively account for more than 2.5% of the market). This "safe harbor" for dumping can be devastating to United States companies, particularly to small businesses. Many small businesses could be driven out of existence by dumped imports totaling less than 1% of the United States market.

Paragraph 6.10.1: Choice of Respondents.

This remarkable paragraph specifies that the respondents in a case should be chosen by the foreign producers in a case, not by the United States administrators. This is a significant change in United States procedure, which currently provides that our administrators will determine which respondents must answer questionnaires and be held accountable for their dumping. Administrators currently select those producers to be respondents that account for a majority of the imports at issue and that are identified in the petition as engaging in dumping practices. Were respondents permitted to dictate those respondents that should be subject to investigation, they could choose small companies that were not the target of the dumping petition and were not the cause of the injurious dumping identified by the petition. It is not even clear that any particular percentage of production would have to be accounted for by the respondents surveyed, as is current U.S. law.

Paragraph 9.5: New Shippers.

This paragraph requires that if new shippers enter the market after a dumping order has been put on the books, duties cannot be applied to them until a new dumping determination is done for them. Duties can only be applied beginning on the date of initiation of the review, which means that any dumping by a new shipper prior to the date of initiation will never be offset by duties. Under current United States practice, new shippers fall into the "all other" rate, which is basically an average of the degree of dumping from the country in question, until they are subject to their own review . The new shippers are therefore liable for duties from the moment they ship. Not requiring new shippers to pay duties immediately provides an enormous potential for abuse, as it will be easy for foreign suppliers to "trade off" customers in different countries in order to evade a dumping case.

Paragraph 10.4: Circumvention As Shipments from Third Countries.

This paragraph, on circumvention of a dumping order by new imports from a third country, requires an entirely new injury test in order to show circumvention. It will be useless to United States industry, and is no better than simply bringing a new case which is already permissible.

Paragraph 11.3: Sunset.

This paragraph creates a five year sunset of all dumping orders, even if dumping is continuing. If a domestic petitioner wishes to challenge the sunset of an order, the burden of proof will be on that domestic petitioner to show continuation of injury as a result of dumping. This will be as difficult and as expensive as simply bringing a new case before the International Trade Commission, and will make the dumping law significantly less useful for United States petitioners.

The United States had originally opposed a sunset clause altogether, and then urged at a minimum that the burden of proof rest on respondents and not petitioners at the end of five years to establish injury. Neither of these suggestions was taken into account in the Dunkel text. Instead, in his text, a U.S. industry that originally bore the expense of proving injury due to an unfair trade practice must again prove injury even though dumping continues.

The burden on the domestic industry will be impossible to meet in many cases due to the exit of imports from the market as the result of the dumping finding. In cases where imports are dumped at massive margins, often the reaction of the foreign producer is to exit the market altogether. In such cases, it would be impossible to show injury in the absence of the imports. However, after removal of the order these respondents who dumped on a massive scale would have carte blanche to re-enter the market. This result is illogical but is the natural consequence of the sunset provision as drafted.

Article 12: Circumvention.

This "anticircumvention" provision is much more restrictive than United States law, and includes an injury test. The restrictive nature of this provision, together with the absence of any provisions in the text on third-country assembly, minor alterations and later-developed merchandise, could require major changes in the anticircumvention provision adopted by Congress in the 1988 Trade Act. Moreover, by specifying under what conditions a dumping order may be applied to parts of products, it could be construed by a Dispute Settlement Panel to prevent the filing of one case on products and parts thereof together. This will be devastating to United States high-tech industry.

Article 15: Antidumping Action on Behalf of a Third Country.

This provision, on cases brought on behalf of a third country, is comparable to current Code, but is an area where the United States had sought significant improvement. It constitutes no improvement whatsoever; in its current form the provision has never been used and is impossible, or at a minimum very difficult, to use.

Problems in the Subsidies Area

Paragraph 1.1: Definition of a Subsidy.

The draft text defines a subsidy as a "financial contribution" by a government or other entity. Under the text, many actions by a government that confer a benefit (and currently are countervailable under U.S. law) may not be deemed a subsidy.[2] These subsidies may cease to be countervailable if the current definition of subsidy is retained.

Article 2: Specificity.

The draft text adopts the concept that a subsidy must be "specific" to an enterprise or industry, or group of enterprises or industries to be actionable. The text imposes a heavy burden on petitioners in a countervail case to prove specificity, which must be "clearly substantiated on the basis of positive evidence." Given the subjective nature of specificity determinations, this heavy burden of proof, and the strict scrutiny applied by panels reviewing trade cases, this area is likely to provide fertile ground for panels seeking to overturn U.S. countervailing duty orders.

Article 3: Prohibited Subsidies.

Although an increase in international subsidies discipline was a key U.S. goal in the Uruguay Round, the new draft scarcely expands the prohibited subsidy category beyond that found in the current Code. (The current Code bans export subsidies; the new draft also prohibits subsidies conditioned on import substitution.) Even this highly limited ban does not apply to developing countries or NMEs until the turn of the century or later, and does not apply to the least developed countries at all (Articles 27.2, 29.2).

Article 6: Presumption of Serious Prejudice.

The draft text provides that certain categories of subsidies would be presumed to cause "serious prejudice" to other signatories, and thus to be prohibited (unless the presumption can be rebutted). However, the presumption in practice is too narrow to be very useful. First, the presumption does not apply to developing countries (Article 27.2). Second, the categories of subsidy for which a presumption exists are very circumscribed. For example, although a presumption exists where a product is subsidized at a level above 5 percent, the level of subsidization is to be calculated based on the "cost to government" standard (Annex 4). Subsidies to cover operating losses also are assumed to cause serious prejudice, but only the second time they are given. Similar loopholes exist for the other categories.

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2 For example, the United States recently found that an export ban on Argentine hides that drove down the price that leather tanners paid for hides conferred a countervailable subsidy on Argentine leather producers. Similarly, the United States found that a Spanish law requiring private banks to lend money at subsidized rates to certain industries conferred a subsidy.

Article 8: Non-actionable Subsidies.

The draft text provides that basic industrial and applied research subsidies, as well as "non-specific" regional subsidies, not only are authorized but cannot be countervailed (contrary to current U.S. practice). This is a serious problem, as it offers countries a "road-map" to subsidize. The breadth of the categories, and the absence of any monetary caps, would make this a major loophole in the U.S. CVD laws. For example, 50 of the EC's 171 regions would qualify for the regional aids exemption, while the definition of applied research is vague and could be read very broadly.

Paragraph 11.2 and Article 16: Standing.

The draft subsidies text presents basically the same problems regarding standing (requiring proof of industry support before initiation, failing to consider worker support for a petition, etc.) as the draft antidumping text. These provisions make it harder for petitioners to file petitions and for the U.S. Government to initiate cases.

Paragraph 11.7: *De Minimis* Rules.

The draft text would deem a subsidy of less than one percent to be *de minimis* and hence not subject to a CVD order. Imports subject to de minimis subsidization levels could not be cumulated (Article 15.3).

Article 14: Calculation of CVD rates.

The draft text provides that, when determining whether a government confers a subsidy through the sale of a good, the price of the good should be compared to "prevailing market conditions . . . in the country . . . ." The draft fails to recognize that, in some cases, there will be no undistorted market for the product in the subsidizing country, and that it will be necessary to look at world market conditions in order to value the subsidy. This could force the United States to undervalue dramatically the benefit of government subsidies, especially with respect to natural resources (where the government often is the primary or sole supplier of the resource).

Article 20: Sunset.

The subsidies draft requires that countervailing duty orders terminate after five years unless the domestic industry can show that there is "good cause" for their continuation. Like a similar provision in the antidumping draft, this provision may in effect require petitioners to reprove their case every five years, whether or not there is any evidence that the foreign industry has stopped its unfair practices.

Article 21: Circumvention.

The anticircumvention provisions in the draft subsidies text are worse than current law. There is nothing in the text about assembly in third countries. The provisions related to circumvention through assembly in the country imposing the order, like those in the antidumping text, impose onerous requirements that will be difficult to meet.

Developing Countries.

As noted in various points in this document, the draft text virtually exempts developing countries from subsidies disciplines. Thus, developing countries will be able to sign the Code, obtaining the benefits of the injury test in countervailing duty cases, without making any significant commitments to reduce or eliminate subsidization.

Further, developing countries would be entitled to the benefits of special, higher *de minimis* rules in CVD cases. A developing country subsidy rate of less than 2% would be deemed *de minimis* (a country that phased in disciplines over export subsidies faster than required would be subject to a 3% *de minimis* rate). And subsidized imports from a developing country would be deemed negligible and hence not subject to CVD orders if they accounted for less than 4% of total imports of the product, unless subsidized imports from small suppliers collectively accounted for more than 9% of the U.S. market.

Finally, subsidies provided pursuant to privatization programs would not be actionable under the draft text even if the United States could prove it was harmed by the subsidies.

Article 28: Transitional Arrangements.

Signatories would be given three years to conform their existing subsidies disciplines to the limited disciplines of the draft text. The limitations on U.S. CVD laws, on the other hand, apparently would come into effect immediately.

Article 29: Non-Market Economies.

Countries in the process of "transformation into a market economy" would have a full seven years to eliminate prohibited subsidies. The presumption of serious prejudice would not apply where a government forgave the debt of a company. And NME subsidies that displaced U.S. exports from third-country markets would not be prohibited by the text.

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National Farmers Union
National Industries, Inc.
National Knitwear and Sportswear Association
National Lime Association
National Semiconductor Corporation
Neckwear Association of America
New Process Steel Corp.
Non-Ferrous Metal Producers Committee
Northern Indiana Public Service Company
Northern Textile Association
Phoenix Cement Company
Riverside Cement Company
Roses, Inc.
Shieldalloy Metallurgical Corporation
Shipping Container Institute
Silicon Metaltech, Inc.
SiMETCO, Inc.
SKW Alloys, Inc.
Smith Corona
Southdown, Inc.
Specialty Steel Industry of the United States
Steel Manufacturers Association
Steel Tube Institute
Stupp Bros. Bridge & Iron Company
Textile Distributors Association
Thompson Steel Company Inc.
The Timken Company
The Torrington Company
UMETCO
United Engineers and Constructors International
United Steelworkers of America
Uranium Producers of America
U.S. Business and Industrial Council
Valmont Industries
Valve Manufacturers Association
Vemco
Zenith Electronics Corporation

Foreign Governments' Involvement With Their Steel Industries

Country*	Government Ownership	Government Control	Steel Import Limitations	Steel Industry Subsidization	Unfair Steel Trade Findings in U.S. since 1/1/82
Japan			X		X
China	X	X	X	X	X
Germany	P	P	X	X	X
S. Korea	P	P	X	X	X
Italy	P	P	X	X	X
Brazil	P	P	X	X	X
India	P	P	X	X	X
France	X	X	X	X	X
United Kingdom	P **	P **	X	X	X
Canada	P	P		X	X
Spain	P	P	X	X	X
Czechoslovakia	X	X	X	X	X
Taiwan	P	P		X	
Belgium	P	P	X	X	X
Turkey	P	P	X	X	

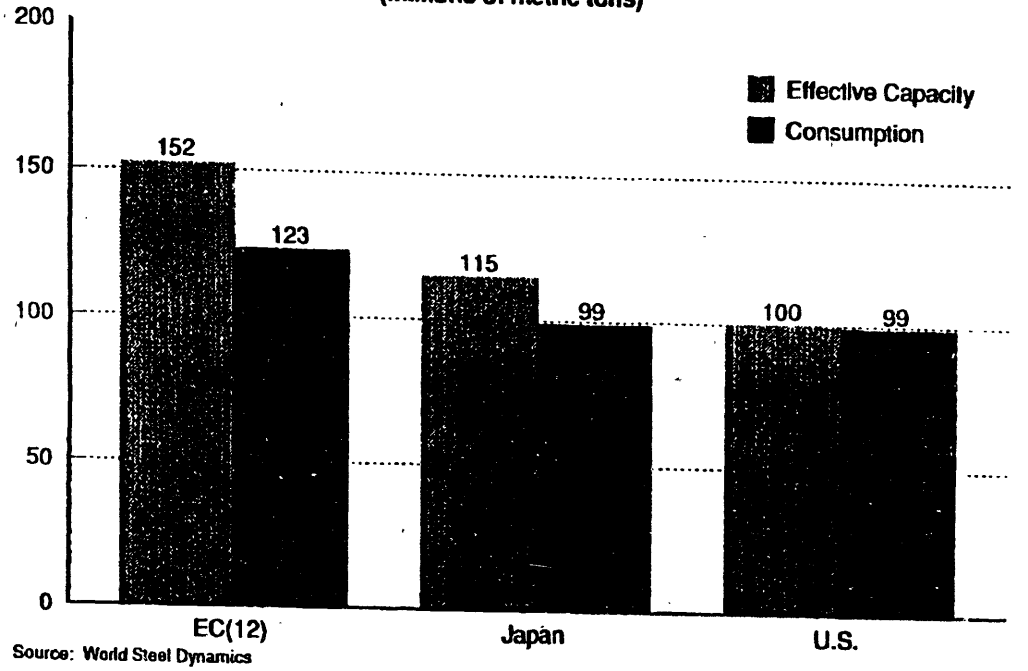
Source: IISI, Steel at a Glance, 1991

* Ranked in order of 1992 steel production (ex. USSR)
** British Steel privatized in late 1988 after 20 years of government ownership
P = Partial

There is no fair trade in steel mill products.

1992 Steel Capacity vs. Consumption

(millions of metric tons)

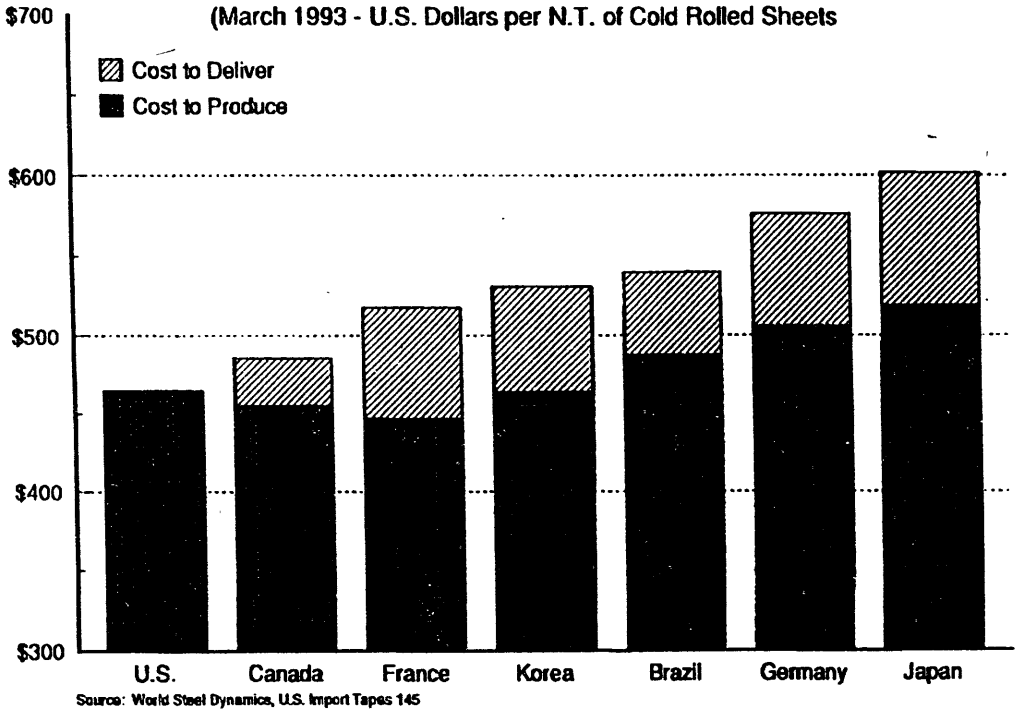


Source: World Steel Dynamics

The United States is the one major developed economy which has reduced its steel production and has capability near domestic requirements.

Comparative Cost of Leading Steel Producing Nations to Deliver Steel in United States

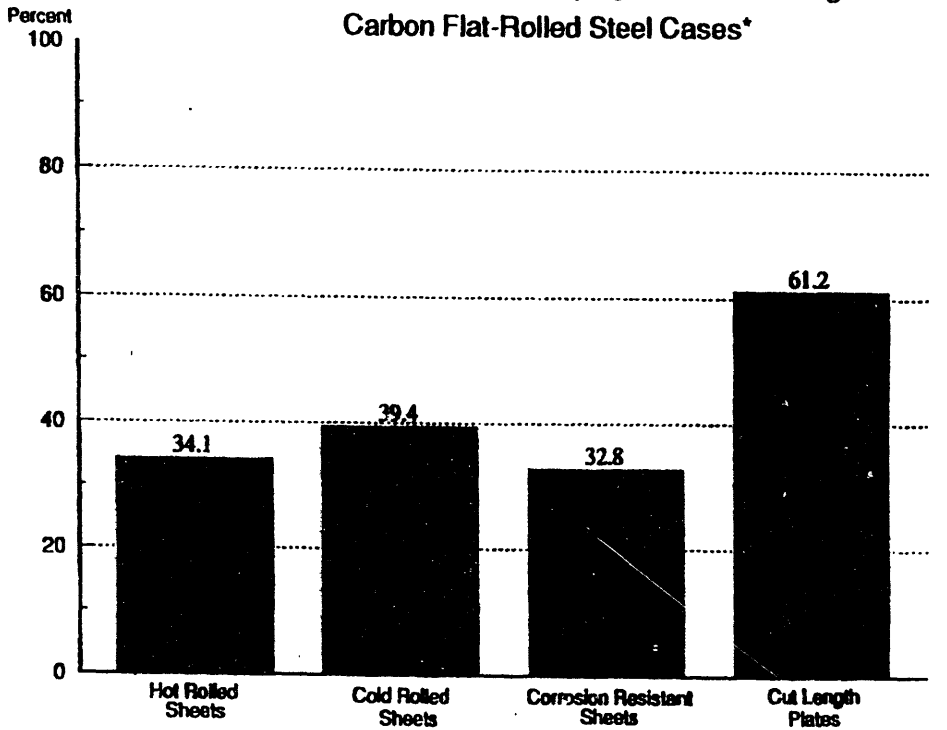
(March 1993 - U.S. Dollars per N.T. of Cold Rolled Sheets



Source: World Steel Dynamics, U.S. Import Tapes 145

U.S. producers are currently the low cost, high quality producers for their home market. Many "high cost" world producers remain heavily dependent on exports to maintain volume.

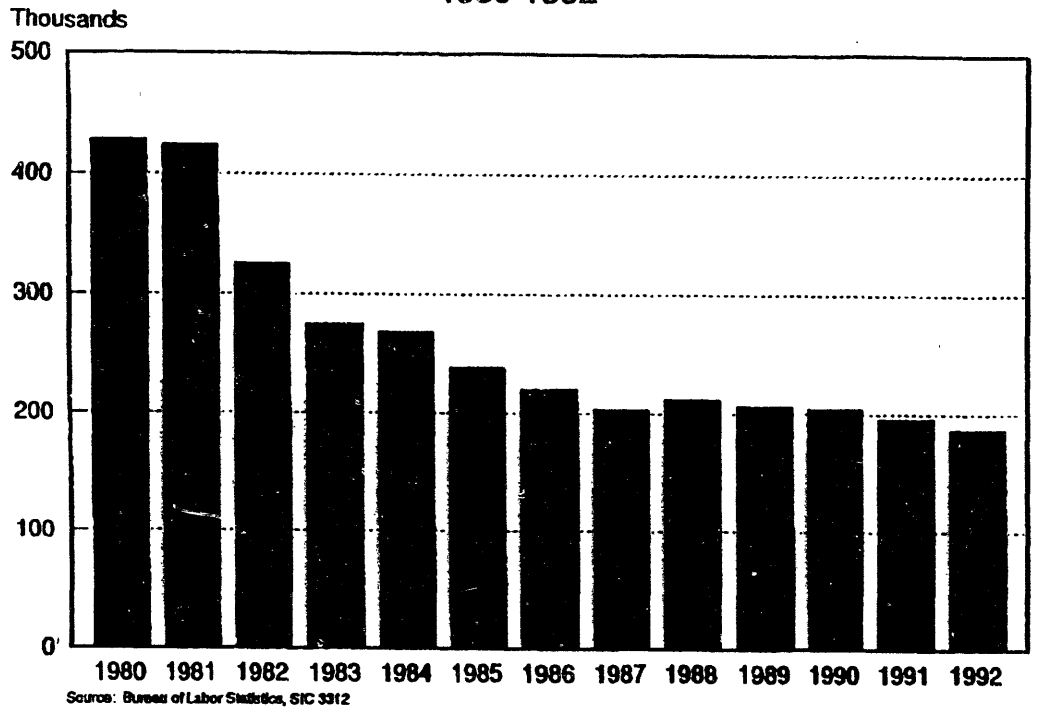
Combined Final DOC Antidumping & Countervailing Duties
Carbon Flat-Rolled Steel Cases*



*Weight-averaged by estimated 1992 imports.

Fair and comprehensive Department of Commerce investigations confirmed the wide margins (an average of 37% or $150 per ton) by which foreign producers are trading unfairly in all four product categories.

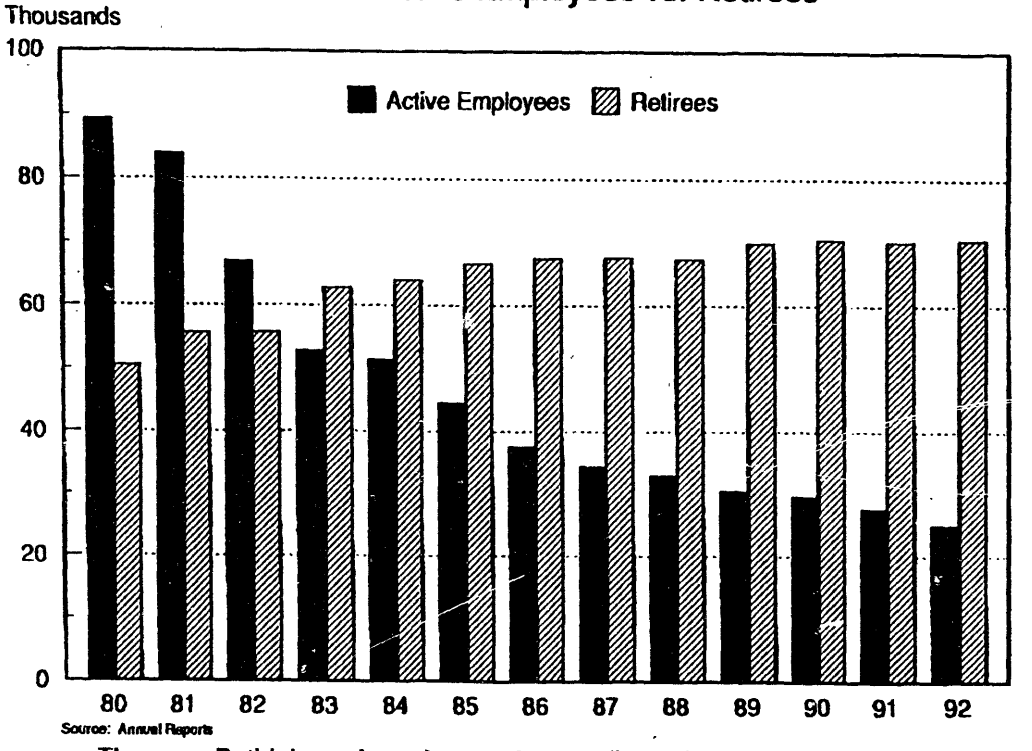
Domestic Steel Industry Employment
1980-1992



Source: Bureau of Labor Statistics, SIC 3312

The domestic steel industry has lost more than 200,000 jobs over the last dozen years. Employment is now less than half of its size in 1980.

Bethlehem's Active Employees vs. Retirees



Source: Annual Reports

The more Bethlehem downsizes and streamlines, the more disproportionate its retiree to employee ratio becomes. As of year-end 1992, retirees outnumbered active employees by a 2.8 to one margin.

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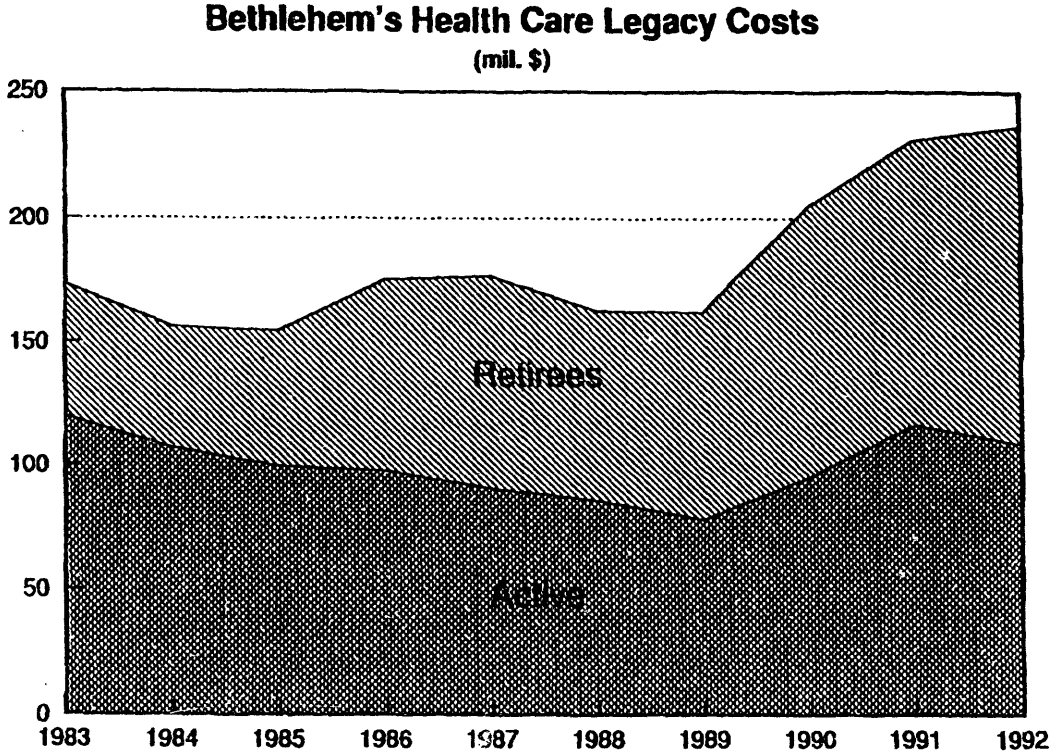


Health care costs for Bethlehem are now $240 million annually and rising, despite wide ranging efforts to manage them.

PREPARED STATEMENT OF ROBERT L. DONNELLY

My name is Bob Donnelly and I am President of Contact Lumber, a family business founded in 1946. I am also chair of the Industry Sector Advisory Committee for Lumber and Wood Products (ISAC–10), a director of the American Forest & Paper Association, and past chair of the Association's International Trade Council.

Contact Lumber: Contact Lumber, a privately held company with 760 employees headquartered in Portland, Oregon, and its two interactive manufacturing divisions, commands the resources to deliver sophisticated technology, high-volume manufacturing capacity, and innovative sales and merchandising support to customers throughout the world.

Clear Pine Mouldings in Prineville, Oregon, a 600,000 square foot complex, is one of the most versatile millwork production centers in the United States. Our products include a wide range of moulding and millwork products. This includes such items as: cutstock, door jambs and mouldings, edge and face glued products, prefinished moulding and millwork, and veneer laminated products.

We are a major supplier of products to the domestic window and door industry as well as mouldings and millwork that move through normal distribution channels for the home building and remodeling markets. Through one of our divisions, Contact International, we have imported wood products from Southeast Asia and South America for the U.S. market for the past 20 years. During this period, Contact has also been active in exporting with increasing attention paid to the Japanese market. Emphasis on precision and quality has enabled us to satisfy the stringent demands of domestic and export customers.

The Subject of Today's Testimony: I am testifying today on behalf of the American Forest & Paper Association (AFPA) and the Zero Tariff Coalition on the status of the Uruguay Round market access negotiations, specifically regarding the zero tariff objective.

The American Forest & Paper Association represents approximately 550 member companies and related trade associations (whose membership is in the thousands) which grow, harvest, and process wood and wood fiber, manufacture pulp, paper and paperboard products from both virgin and recovered fiber, and produce solid wood products. As a single national association, AFPA represents a vital national industry which accounts for over 7 percent of the total U.S. manufacturing output.

The industry employs some 1.4 million people, and ranks among the top 10 employers in 46 states, with an annual labor cost of about $46 billion. The forest and paper products industry generates sales of $200 billion annually. As a significant exporter to global markets, with exports of $17 billion in 1992, the industry makes an important contribution to the U.S. balance of payments.

The Zero Tariff Coalition represents a broad cross section of American industry from agricultural equipment to zinc. Anyone who questions the competitiveness of American industry has only to look at the membership of the Zero Tariff Coalition, which ranges from basic natural-resource based industries such as forest products, aluminum and non-ferrous metals to high tech industries producing semiconductors, computer parts, and scientific and medical devices; from heavy construction and agricultural equipment to consumer products, such as furniture, toys, and beer and spirits. These industries account for approximately 30 percent of U.S. merchandise trade.

What these diverse sectors have in common is an interest in eliminating tariff barriers to the sale of their products in world markets. In each case, the U.S. industry is highly competitive, but faces strong foreign competition and uneven terms of trade—i.e., U.S. tariffs on foreign competitors' products are low or non-existent, while foreign tariffs of U.S. products are relatively high.

For each industry in the Coalition, the primary markets in which tariff elimination is sought are the European Community and Japan. The maintenance of tariff barriers in these globally competitive industries by highly developed countries distorts trade flows with adverse consequences for American workers, economic growth in developing countries, and the competitiveness of the very industries in Europe and Japan which they seek to protect with high tariffs. It is time for these tariff walls to come down.

The Uruguay Round presents the opportunity for the elimination of barriers to trade and the subsequent expansion of commerce and economic growth. Elimination of tariff barriers in industries which are globally competitive is the most immediate tangible evidence of the realization of GATT objectives to promote free and fair trade.

Let me give a few examples of the importance of this issue to sectors included in the Coalition:

The Distilled Spirits Council of the United States (DISCUS), on behalf of U.S. producers and exporters of distilled spirits, strongly supports the negotiation of a Uruguay Round agreement providing for the reciprocal elimination of tariffs on distilled spirits. The elimination of tariffs by key U.S. trading partners will create new market opportunities for U.S. exporters of distilled spirits, resulting in expanded domestic production and increased employment within the U.S. distilled spirits industry and associated industries. Assuming the agreement announced by the Quad countries in July 1993 is expanded to cover all distilled spirits, and other industrialized countries adhere to it, DISCUS anticipates a resulting increase in U.S. exports of between 5 and 10 percent, and the creation of approximately 250 new jobs. While relatively modest in size, these increases are particularly significant at a time when the U.S. distilled spirits market is shrinking and U.S. distilled spirits producers are experiencing declines in sales and employment.

The Copper & Brass Fabricators Council supports zero tariff levels for all entries under the following brass mill product HTS numbers: 7407, 7408 (alloy wire only), 7409, 7410, and 7411. The members of the Council making this request account for more than 80 percent of the brass mill products manufactured in the United States. U.S. international trade in these products amounted to more than 566 million pounds in 1992: imports—336,000,000; exports—230,000,000; valued at more than one billion dollars.

Over the past five years, the U.S. medical device industry has been America's fastest growing industry, in large part due to the strong export growth it has experienced. By the end of 1993, the $43 billion industry is expected to have exports of $9.7 billion and its overall trade surplus is expected to reach $4.7 billion. Moreover, U.S. employment in the industry is expected to expand to 280,000—up an average of nearly 4 percent over the past five years. A GATT tariff elimination agreement for medical devices and diagnostic products would provide the industry with up to $1.0 billion in annual savings on a global basis, and better enable companies to provide life-saving, life-enhancing products at lower costs to the patients that need them.

The U.S. furniture industry's positive experience with the U.S./Canada Free Trade Agreement (F.T.A) taught us that increased trade occurs when U.S. furniture is given free market access. The U.S./Canada F.T.A took effect January 1, 1989. U.S. furniture exports to Canada have grown from $158.1 million in 1988 to $527.7 million in 1992. With the above in mind, and in conjunction with other favorable experiences the industry has had where free market access was granted, the American Furniture Manufacturers Association strongly supports the zero tariff initiative in the GATT context.

The U.S. aluminum industry strongly supports expanded market access as an extremely important objective for the Uruguay Round. The Industry's goal in the Uruguay Round is the elimination of tariff and non-tariff barriers in aluminum. Australia, Canada and Japan, in addition to the United States, all fully support the zero-for-zero goal for trade in aluminum. The EC, and specifically the French government-owned aluminum industry, has opposed aluminum trade liberalization, with tariff among the highest in consuming countries. EC duties apply directly to North American, Australian, and Japanese exports, but not to the 85 percent of their metal imports from EFTA and former colonies. Failure to significantly reduce barriers to future trade in aluminum and aluminum products will severely damage the long-term competitive outlook of the U.S. aluminum industry.

As one of America's largest exporters, virtually every GATT issue affects Caterpillar business in some way. However, there is no GATT issue which is more important to the company than the Zero-for-Zero tariff proposal. Tariff in developed countries cost Cat customers about $100 million annually. For example, EC duties on construction equipment range from 4 to 11 percent. By eliminating tariff on the products we produce, (i.e., construction and mining equipment) the competitiveness of Caterpillar exports will improve significantly.

The United States, Canada and Japan eliminated their tariffs on semiconductors and computer parts in 1986. Although asked, the European Community refused to participate in these negotiations and continues to adamantly oppose substantial reductions in electronic tariff. The European Community currently imposes a 4 percent tariff on computer parts, and similarly high tariffs on computers, photocopiers parts, toners and accessories. The EC tariff on computer parts and semiconductors cost U.S. producers an estimated $340 million a year in lost revenues, as well as undermining the competitiveness of their own European companies in downstream products.

U.S. non-ferrous metals exports already account for a sizable portion of primary copper and lead production. From virtually no exports in 1987, the domestic refined copper industry in 1991 exported over 270,000 metric tons worth $624.3 million.

From under 3,000 metric tons in 1987, refined lead exports grew to over 60,000 thousand metric tons in 1991, valued at $36.8 million. Much of the increase during this period was in expanded exports to Japan. During the Japanese recession in 1992, however, the Japanese tariffs were used effectively to shut out U.S. exports such that, compared to 1991 amounts, U.S. sales of refined copper to Japan dropped by 59 percent.

The Beer Institute supports a continued expansion for other sectors in the zero for zero tariff initiative as it is vital for many American industries to be included in a positive market access agreement in the Uruguay Round. In the United States, total brewer employment is close to 50,000 persons with another 825,000 employed in the distribution of beer. In 1992, the value of American beer exported was $193.6 million while imports of foreign beer were $862.3 million.

The highest priority in the Uruguay Round for the U.S. soda ash industry is to secure zero-for-zero tariff elimination. Zero tariffs on soda ash would eliminate the most significant barrier to U.S. market access worldwide. In the absence of trade barriers, U.S. exporters predict that the U.S. could sell an additional $1 billion of soda ash in world markets. Soda ash is a basic chemical used in the manufacture of glass and detergents. U.S. produced natural soda ash is recognized as the world's standard for price and quality. In the Uruguay Round, a proposal to harmonize chemical tariffs would bring soda ash tariff down to only 5.5 percent. This would NOT assure sufficient market access for U.S. industry to justify the capital investment required to support a competitive presence in many countries. The U.S. soda ash industry has requested U.S. negotiators to seek zero tariffs and accelerated phasing in of tariff cuts on soda ash worldwide in the Uruguay Round.

Why Zero Tariffs: On March 15, 1990, when the zero tariff initiative was formally introduced by the U.S. Government as a negotiating priority, it was received with skepticism by our trading partners. We have come a long way since then. Today it is the cornerstone of the Uruguay Round market access negotiations.

But we still have a long way to go. I am here today to urge that we not stop just short of the zero tariff goal line. The Uruguay Round presents an important opportunity—and frankly the only multilateral opportunity for probably the next twenty years—for the elimination of barriers to trade and the subsequent expansion of commerce and economic growth.

The zero-for-zero tariff proposal is reasonable, fair and, we believe, critical to a successful GATT agreement. It is a broad proposal that crosses many industrial sectors and helps to offset some of the more strident voices of protectionism. For these U.S. industries who are not seeking protection, but merely a level international playing field, the zero-for-zero tariff initiative is a rallying cry for trade expansion and economic opportunity. In this regard it is important to note that the U.S. has essentially balanced trade in the zero tariff sectors.

The Tokyo Summit—A Success for Zero Tariffs?: In July 1993, an important landmark was reached in the zero tariff initiative. The market access protocol at the Economic Summit in Tokyo committed the Quad countries to eliminate tariff in eight of the thirteen zero tariff sectors proposed by the United States.

Although the Tokyo agreement was important, it covered only pharmaceuticals, construction equipment, medical equipment, steel (subject to the MSA), beer, and, with exceptions, furniture, farm equipment, and spirits.

Important as this development might appear, it is essential to note that the remaining industries not included in the Tokyo agreement represent the majority of U.S. jobs, exports, manufacturing capacity, and economic growth potential in the zero tariff sectors. Until all zero tariff sectors have been achieved, we will not see the full results of increased jobs, exports, and Uruguay Round support that was originally anticipated from the Zero Tariff Initiative.

The Administration has taken the position that the Tokyo Protocol provides an opportunity to expand the market access agreement to include other zero tariff sectors beyond those agreed upon in Tokyo. Specifically named are: wood, paper and pulp, and scientific equipment.

The principle of tariff free sectors, having been accepted as an important market opening initiative of this Round, should now be expanded to all other sectors contained in the U.S. proposal, including forest products (wood and paper), electronics, scientific equipment, non-ferrous metals, soda ash, and toys.

Reduction of tariff barriers has been the mainstay of previous GATT negotiations as a principal means of expanding trade and economic growth. A successful GATT agreement will require an enthusiastic sales force to generate public and political approval in the United States. Industries included in the original U.S. zero-for-zero tariff proposal account for approximately 30 percent of U.S. manufactured trade, and we need to insure that this entire segment of the economy is working to support the eventual GATT agreement.

Why Zero Tariffs are Essential—One Industry's Assessment: It may be helpful to the Committee to examine the full implications of the success or failure of the zero tariff initiative as applied to a specific sector.

The U.S. forest products industry has been ranked among the most competitive in the world. We are deeply committed to expanded free—and fair—global trade and have consistently supported efforts to reduce U.S. tariff barriers to zero for virtually all our products. With an annual payroll of $46 billion, this sector provides high-paying manufacturing employment to almost 1.5 million Americans and indirect employment to an estimated 4.9 million more—more than 6 million jobs in all.

Unfortunately, our trading partners have not been equally fair. Despite the efforts of the administration in the course of the Uruguay Round negotiations, the European Community and Japan have thus far refused to agree to match the U.S. and eliminate their tariffs in the paper and wood products sectors.

Exports have been, and will remain, the key path to future industry growth, but under existing international tariff structures we are severely disadvantaged in global trade. Compared to U.S. tariffs which have been for the most part reduced to zero, European tariffs on paper products range from 6–9 percent. When U.S. paper companies try to sell in Europe, they have to compete with Nordic suppliers who get zero tariffs as a result of EFTA preferences, and less developed countries which benefit from preferential tariffs, as well as with internal EC producers. This is exactly the kind of uneven playing field the Uruguay Round was supposed to eliminate.

Japan maintains high tariffs as barriers to imports of value added wood products. Most of the $2.8 billion in Japanese imports of U.S. wood products have only occurred on a few tariff-free items, while access to an enormous market for value added wood building products is denied. Japan's value added imports make up only 2 percent of U.S. wood exports to Japan.

For example, because most U.S. lumber enters Japan duty free, lumber comprises about 23 percent of U.S. wood exports to Japan. Softwood plywood exports, however, which face 10–15 percent tariffs, have remained stagnant at about $2 million, less than seven hundredths of 1 percent of our exports to Japan.

Export growth has been non-existent for products subject to tariffs. The U.S. wood products industry has been excluded from lucrative Japanese markets that could be worth well over a billion dollars annually in increased exports by the end of the decade.

Preferential tariff programs of the United States, Japan, and the European Community already make wood products tariffs free for most wood exporting nations in the world's major consuming markets. United States, Canadian, and New Zealand wood products industries are virtually the only significant producer nations facing wood tariff in developed markets, while Brazil, Indonesia, Malaysia, and others can in most cases export their products without facing any trade inhibiting tariffs. Preferential tariffs make zero tariffs an accomplished fact for most wood products producers. This puts our industry at a serious competitive disadvantage on value added exports.

Failure to achieve zero tariff coverage for U.S. paper and wood products threatens the competitiveness of an industry with annual shipments of close to $200 billion, accounting for 7 percent of U.S. manufacturing output.

It would also mean that an industry that is globally competitive today would be rendered permanently, structurally disadvantaged as a result of a trade policy decision by the U.S. government. At risk are not only the jobs related to exports but, with few tariffs on imports, jobs dependent on domestic sales are in jeopardy as well.

The administration has often made it clear that it will insure that U.S. economic interests are not sacrificed to other concerns in international negotiations. A Uruguay Round package which fails to redress this fundamental unfairness and contains within it the seeds of decline for an industry of this magnitude would deal a serious blow to the economies of hundreds of rural communities across the country dependent on the forest products industry for employment. This cannot be viewed as an acceptable outcome.

We believe there is no substantive economic rationale which would preclude agreement in this area. We urge you to send an unmistakable signal that the future of an industry which provides jobs to nearly 1.5 million Americans is not tradable, and that the only final package Congress will accept is one which provides fair market access—at zero tariffs—for America's forest products industry.

As the December 15 deadline for conclusion of the Uruguay Round approaches, we are increasingly concerned that the package as negotiated to date still does not include the elimination of tariffs on wood and paper products—or electronics, scientific equipment, non-ferrous metals, soda ash, and toys, nor the products in sec-

tors on which exceptions were taken in the July '93 Tokyo agreement. We are aware that the Administration has made wood and paper a priority objective in the Round, and while we strongly support this, we can also cite experience with past negotiations (including the Tokyo Summit) where it was deemed necessary to relinquish some of our priorities in order to reach overall agreement.

Such an outcome would be wholly unacceptable for the wood and paper industries. Data prepared for us by DRI indicates this would mean a loss of $12 billion in potential U.S. exports and 27,000 new U.S. jobs.

We believe that it would be equally problematic for members of Congress who support competitive American industries in their efforts to open international markets. Given the web of preferential tariffs which benefit the industry's competitors, and the virtual absence of any meaningful U.S. tariffs on these products, it would perpetuate an egregious trade inequity well into the next century. More to the point, it would permanently disadvantage an industry which today employs nearly 1.5 million Americans. This must be regarded as a significant defect in any trade agreement facing Congressional passage.

The American forest products industry joins with the other sectors represented in the Zero Tariff Coalition in urging this Committee to send the clearest possible message to the Administration that any final Uruguay Round Agreement which does not eliminate tariff barriers for these competitive American industries would be very difficult to approve.

We also ask that the Committee indicate its desire to see a strategy in place to ensure that forest products are not sacrificed at the end of the day in Geneva. We hope USTR's response will allay our concerns and provide assurance that the Congress will be asked to endorse an Agreement which secures for competitive American industries a standard of equitable access to world markets which we can wholeheartedly support.

Thank you for the opportunity to testify.

PREPARED STATEMENT OF WILLIAM FARLEY

Mr. Chairman, I am grateful for the opportunity to present my views on the Uruguay Round of Multilateral Trade Negotiations to the committee. My name is William Farley, I have been chairman and CEO of Fruit of the Loom, Inc. since May of 1985. Today Fruit of the Loom is a $2 billion industry leader. Since 1985 we have increased employment in the United States from 13,000 to 30,000, creating more than 2,000 jobs on average per year.

Fruit of the Loom is a vertically integrated manufacturer of activewear, casualwear, infantswear, underwear and family socks. We are the single largest user of U.S. grown cotton, consuming about one million bales each year. We continue to invest heavily in new plants and equipment to remain a world-class U.S. textile and apparel manufacturer. Since I became chairman and CEO, Fruit of the Loom has invested nearly one billion dollars in the United States; this year alone our capital expenditures in the United States will be about $200 million.

Mr. Chairman, I thank you for calling this hearing. While the North American Free Trade Agreement (NAFTA) captures the headlines, trade negotiations are proceeding in Geneva, Switzerland that would have a more profound effect on our nation's economy. These negotiations can determine the fate of many U.S. textile and apparel companies and the two million workers in these industries.

NAFTA in my judgment offers substantial opportunities for Fruit of the Loom and other textile and apparel companies. To put NAFTA in perspective, Fruit of the Loom consumes more cotton each year than the entire Mexican textile industry did in 1990. We see Mexico as a good export market not as an import threat. The Uruguay round as currently drafted, on the other hand, is a great threat to domestic textile and apparel manufacturers. The central question surrounding NAFTA is: Will the agreement result in a net increase or decrease in American jobs? Another important questions is: How will we pay for the lost tariff revenues? we must ask the same questions about a potential Uruguay Round Agreement.

A well crafted Uruguay Round Agreement is in the interest of the domestic textile and apparel industries. Companies like Fruit of the Loom can continue to prosper and expand production in the United States if:

—The multifiber arrangement is phased-out over a sufficient time-frame such as fifteen years to allow companies to adjust to more intense competition;
—The rules require *all* countries to open their markets on roughly equivalent terms; and
—Adequate laws exist to deal with dumping and subsidies by our trading partners, and to protect and enforce intellectual property rights.

A paramount objective of the Uruguay Round is to reduce textile and apparel trade barriers around the world. This does not mean only phasing-out the multifiber arrangement (MFA), but reducing all barriers, including those maintained by developing countries. another important objective is to reduce subsidies that distort international textile and apparel trade.

Mr. Chairman, as one of the principal architects of the MFA, I know you realize that for workers in the more labor-intensive segments of the apparel industry this agreement means survival. In the absence of the MFA, apparel import penetration probably would approach 80 percent as it has in the footwear industry.

To fully appreciate the impact of phasing-out the MFA one must consider the nature of our foreign competition. China, the world's largest textile and apparel exporter, is a large non-market economy that often prices products to gain market share, not to make a profit. India and Pakistan, major textile and apparel exporters, subsidize their exports and close their markets. In addition, investment is pouring into Vietnam in anticipation of the lifting of the U.S. trade embargo.

U.S. apparel import penetration is about 40 percent. Today the apparel industry employs 982,000 workers; the textile industry employs an additional 667,000 people. Many more jobs in the United States are dependent on our textile and apparel industries. If import penetration were to rise to 80 percent, employment in the apparel industry would decline by nearly 70 percent—a loss of over 650,000 jobs. Considering the impact on textiles and other related industries, the total job loss would be near one million.

The current draft Uruguay Round Agreement would eliminate MFA quotas in 10 years. However, industries in the United States, Europe and many developing countries believe a 15 year transition is required. The additional five years are necessary to allow non-competitive companies around the world to either modernize facilities or to phase-out operations, and insure that countries with closed markets such as India and Pakistan reform their trade policies.

Most developing countries also would welcome a longer MFA transition. Countries such as Indonesia, Sri Lanka, the Philippines, Jamaica and Mexico now realize that they cannot compete in the lucrative U.S. and European markets if the lowest wage countries are not subject to quotas. Just recently the textile and apparel industries of the Association of Southeast Asian Nations (ASEAN) stated they would "support any proposal to extend the transition period beyond ten (10) years." This is a clear signal that most of the world will follow a U.S. initiative to negotiate a 15 year MFA phase-out period.

Other developing countries know that they will lose sales in the U.S. and EC markets to China, India and Pakistan once MFA quotas are eliminated. Mexico and other countries in this hemisphere will be hard hit. Mexican apparel companies are aware that China, India and Pakistan can export products at substantially lower prices under "normal" tariff rates than they can under free trade. The potential social, economic and political disruption that could occur, for example, in the Caribbean and Central America if these countries lose their apparel export markets is not a reason to maintain MFA quotas forever. However, it is another reason for us to reflect on the benefits of a longer MFA phase-out period.

India and Pakistan, as well as China when that nation becomes a member of the General Agreements on Tariff and Trade, will be the only major beneficiaries of eliminating the MFA. As a result, they should be the only countries to object to an effort to extend the phase-out period. Therefore, it seems to me that the Clinton administration and Congress must decide if the concessions India and Pakistan are offering the United States in other areas are sufficient to place nearly one million textile and apparel jobs at risk.

Since the out-set of the Uruguay Round negotiations there has been a linkage between phasing-out the MFA and other countries eliminating non-tariff barriers and substantially reducing tariffs for textiles and apparel. This linkage is expressed in cover note (c) to the draft agreement dated December 20, 1991, which states:

> "Final agreement on the attached draft final act will depend on substantial and meaningful results for all parties being achieved in the ongoing market access negotiations: This applies to areas such as natural resource-based products, tropical products, agriculture and textiles and clothing."

The U.S. proposal is that all countries must reduce their tariffs to *at least* 15% for yarns and 32% for other textile and apparel products. It is critical to maintain this linkage.

Fruit of the Loom is working hard to expand international sales. We are dedicating more resources to capturing the opportunities of opening foreign markets. India and Pakistan claim to have a comparative advantage producing textiles and apparel, yet they ban imports. For example, in 1991 India exported $2.9 billion in ap-

parel, but imported *nothing!* I would like the same opportunity to sell Fruit of the Loom products in India that Indian companies have in the U.S. market.

Mr. Chairman, I would like to make a final point about the potential Uruguay Round Agreement. This relates to the impact on the Federal budget. The administration and Congress have struggled with how to raise $2.35 billion over the next five years to offset lost tariff revenues if NAFTA is enacted. A Uruguay Round Agreement could result in lost revenues of $5.7–6.8 billion each year if tariff reductions are in the range of 33–40 percent The exact impact on the budget would depend on the level of reductions taking place in each of the first five years of the agreement. I urge you not to shoulder American business and consumers with additional tax increases to compensate for the lost tariff revenue.

Thank you Mr. Chairman for holding these hearings and listening to my views.

PREPARED STATEMENT OF KENNETH W. FREEMAN

INTRODUCTION

Mr. Chairman, Members of the Subcommittee, my name is Ken Freeman and I'm the Executive Vice President of Corning Incorporated. On behalf of the Labor Industry Coalition for International Trade, I would like to thank you for the opportunity to comment on the Uruguay Round.

From the outset, let me be perfectly clear. LICIT cannot accept the so-called Dunkel Draft Text in its current form. That means that in addition to Corning, the Electrical Workers Union ("IBEW") cannot accept it; Motorola cannot accept it; the Chemical Workers Union ("OCAW") cannot accept it; the Association of Manufacturing Technologies cannot accept it; and the list goes on.

To merit this nation's support, the Draft requires substantial improvement. The text is fundamentally flawed, and inconsistent with the very negotiating objectives you and other members of this Subcommittee set out in the 1988 Trade Act.

Mr. Chairman, we recognize how difficult the negotiations have been. We know that compromise is the name of the game. We simply ask, however, that you not allow the existing unfair trade laws to be gutted, just to get an agreement.

The Dunkel draft does exactly that. And in so doing, U.S. business and labor will lose THE MOST effective tool they have in the fight against unfair imports. This will hurt firms and workers from Corning, New York, to Palo Alto, California.

I know that Administration trade officials have said that they won't sacrifice our trade laws. They are well meaning. But given the pressures they are under from our trading partners, concessions are *certain* to be made that will sacrifice the effectiveness of our laws, especially our antidumping law.

Fortunately, you can change this dynamic. By speaking up now loudly and forcefully, Congress can have a positive influence on the outcome of the negotiations. It's not too late. But, you must act now. Time is running out.

THE TELEVISION EXPERIENCE

You've heard from academicians, lawyers and lobbyists. I'm not any of those. I'm here to give you a slightly different perspective—that of a manager of a business that has suffered because of unfair trade. I've been there. I know first hand what dumping can do to a business. And let me tell you, it's predatory, and it causes real harm to both firms and workers.

I ran Corning's television glass business for the last four years. Our involvement in this business dates back to the industry's early origins in the 1940s. Corning, in collaboration with RCA, invented the process for manufacturing glass for television picture tubes.

Over the last 20 years, we've witnessed the constant erosion of our customer base—U.S. producers of color picture tubes—because of unfair dumping. In fact, we've seen our customer base drop from 26 U.S.-owned firms to just one. And, over the course of these two decades of decline, the U.S. International Trade Commission ("USITC") has found that the industry has been injured by unfair trade *five* times.

Here is the story. The tube is the most technically complex part of a television, accounting for 40 to 60 percent of the value of the set. With a world-class product in the 1950s and 60s, our customers believed that they could do very well in the rapidly growing consumer market in Japan. But because the Japanese market was closed to foreign goods and investment, they were not able to export directly to Japan. The only way they could participate in the Japanese market was to license their technology to Japanese companies.

When the Japanese acquired U.S. technology, they immediately established a two-tiered pricing system. This meant high prices in their protected home market and

low prices in export markets. The potential for unfair dumping was established. Thus began a problem for the American television industry that is now entering its third decade.

In 1968, the Japanese first began dumping television receivers into the United States, we took action under U.S. antidumping law. The International Trade Commission agreed that the industry had been injured and the Treasury Department, then the Administrator of the dumping law, found that antidumping was the problem.

Naively, we thought our problems were over. We had identified the dumping problem and proven injury as required by law. Unfortunately, our problems had just begun.

The Treasury Department was, shall we say, less than enthusiastic about enforcement. Despite our affirmative findings, only nominal dumping duties were collected. In fact, we have reason to believe that several hundred million dollars in dumping duties, owed to the U.S. Treasury by Japanese companies, were ultimately forgiven.

We needed to do something else. So, we formed the first labor-industry trade coalition, known as COMPACT—the Committee to Preserve American Color Television—and filed for import relief under Section 201.

Again, the International Trade Commission found that the industry had been injured by imports and relief was granted. Orderly Market Agreements ("OMAs") were negotiated first with Japan, and later with Korea and Taiwan.

The OMA's worked for awhile. But as soon as they expired, unfair imports from Korea and Taiwan surged. Again, the industry filed dumping cases, this time as a united labor-industry coalition under COMPACT, and won.

Winning was not a surprise. After all, many of the facilities operating in Taiwan and Korea were owned by Japanese firms. They simply exported to Korea and Taiwan the long established practice of buying market share through injurious dumping.

But Asian creative genius of evading U.S. dumping orders didn't end there. In the early 1980s, color picture tube imports began growing at an alarming pace. Tubes were not subject to dumping orders and entered freely for final assembly and sale in the U.S. as color TV sets.

Again, COMPACT filed a dumping case in 1986—this time on color picture tube imports from Japan, Korea, Taiwan and Canada. And, once again, we won on the basis of an injury decision by the USITC.

Not to be outdone, Asian suppliers soon began evading all outstanding dumping orders by trade diversion through Mexico. They set up television set assembly operations in Maquiladoras and exported tubes to Mexico duty-free for final assembly into sets and shipment in the United States. Today, almost 90 percent of the set imports that compete with U.S. production come from Mexico.

It's almost unbelievable that Mexico, a country with virtually no indigenous television technology, has become the principal foreign supplier of TV sets to the United States.

To deal with this diversion problem, the industry has worked hard, with the assistance of the Committee, to get provisions in the NAFTA and the implementing bill to stop diversion through Mexico. Hopefully, these provisions will be enacted.

LESSONS LEARNED

From this long and difficult experience, we've learned two valuable lessons. First, Asian suppliers of television tubes and sets persistently dump into export markets to gain and keep market share. Second, the dumping statute is the *only* line of defense against such predatory practices.

The Dunkel draft, as written, would strip the television industry of that very means to fight back. The sunset and de minimis clauses will likely terminate any existing cases. Even more troublesome, organizations like LICIT and COMPACT may no longer be able to file cases because the standing of unions is not specifically recognized. Finally, the dispute settlement procedures would likely render the law ineffective as decisions are overturned by international panels.

In short, the adoption of the Dunkel Text on dumping would threaten the very existence of the U.S. television industry.

Such an outcome would truly be a loss because the industry is now poised to respond to the opportunity created by the introduction of High Definition Television ("HDTV"). The demands that this technological evolution will impose on domestic producers in terms of research and development and capital investment are substantial—but the reward is high. Almost 200 million TV sets in America will have to be replaced. This is a huge opportunity.

Given the enormous commercial stakes associated with HDTV, there is no reason to expect that the Japanese, Koreans or any other Asian government-business team now involved in the development of HDTV will alter their traditional competitive strategies—that is, injurious dumping—in supplying HDTV to the U.S. market. Indeed, most of the Japanese firms now active in the development of HDTV are the same companies that have been the target of U.S. antidumping actions over the last 20 years.

But this time we're ready. We have dumping orders outstanding against a large portion of tube and set imports from Asia. NAFTA, if enacted, should stop the diversion through Mexico. The FCC has decided to go digital for HDTV, putting us ahead of the rest of the world. And, most importantly, we know what to expect from our Asian competitors.

Adopting the Dunkel text on dumping now, would pull the rug out from under the industry at a time when we have reason to be optimistic. Please don't let that happen.

OTHER IMPORTANT ISSUES

U.S. manufacturers believe that there are a number of other changes that need to be made to the Dunkel draft. You've heard about most of them already, so I'll only touch on them briefly. For the record, I'd like to submit a comprehensive discussion paper prepared by LICIT, entitled, "The Uruguay Round: Good for Manufacturing?"

First, INTELLECTUAL PROPERTY: The Dunkel draft contains excessively lengthy time frames for transition to new protections for intellectual property, allowing countries with weak or non-existent patent, trademark, and copyright regimes to continue those deficiencies, in some cases, for up to ten years after the agreement enters into force. What good is increased protection today if it doesn't take effect for a decade? Further, the current draft fails to reverse a GATT panel decision invalidating section 337, and does not adequately address compulsory licensing or special border measures that could be used to unfairly restrict U.S. exports.

Second, SUBSIDIES: The Dunkel language contains vague definitions and lacks discipline on subsidies allowed for regional economic development programs and research subsidies that benefit specific industries. In short, it weakens existing discipline on subsidies.

Third, DISPUTE-SETTLEMENT: The Dunkel draft is too vague regarding constraints that the proposed GATT dispute settlement process would place on our use of U.S. unfair trade laws, especially section 301. The proposed supra-national Multilateral Trade Organization that is potentially vested with the broad authority to interpret the new international obligations, would create the possibility that panels, consisting largely of nations engaging in unfair trade, would decide whether the United States is permitted to act against trade-distorting practices.

And last, INVESTMENT: The Dunkel text fails to address trade-related investment measures such as: requirements that investments be accompanied by the transfer of technology, equity participation by local entities, and restriction on remittances. Simply put, these deficiencies diminish progress made elsewhere on investment.

CONCLUSION

In conclusion, Mr. Chairman, I stress that No Deal on December 15th is better than a Bad Deal. I'm not asking that you renegotiate to give special treatment to Corning. I'm not asking for special treatment for LICIT. I'm not asking for subsidies, tax breaks or special waivers. No, today I'm asking for just one thing—that Corning employees and our products be given a fair chance and level playing field.

In my view, Corning has some of the most productive and innovative workers anywhere. Bring on fair competition and we'll prove it. But the Dunkel draft will effectively tie one arm behind our back, at the very time when we have some reason for optimism.

Thank you.

THE URUGUAY ROUND:

Good for Manufacturing?

•Will the Uruguay Round dispute-resolution procedures permit continued effective enforcement of U.S. trade laws--including the use of Section 301--and thereby preserve U.S. sovereignty?

•Will American trade law remedies against unfair dumping and subsidized, injurious imports be dismantled or undermined?

•How will U.S. trade policy deal with such issues as foreign industrial targeting and exclusionary foreign industrial practices --which are not addressed by the Uruguay Round?

Robert Galvin
Chairman of the Executive Committee, Motorola Inc.

Jack Sheinkman
President, Amalgamated Clothing & Textile Workers Union

James Houghton
CEO, Corning Inc.

Lynn Williams
President, United Steelworkers of America

A report from the Labor/Industry Coalition for International Trade (LICIT). With its subsidiary, the Coalition for Open Trade (COT), LICIT brings companies and unions together to assure increased, balanced, and equitable international trade.

Amalgamated Clothing and Textile Workers	American Flint Glass Workers
Association for Manufacturing Technology	B F Goodrich
Bethlehem Steel	Chrysler Corporation
Communications Workers of America	Corning Inc
Industrial Union Department (AFL-CIO)	Intel
International Association of Machinist	International Brotherhood of Electrical Workers
International Ladies Garment Workers Union	International Union of Electronic Workers
Motorola Inc	United Rubber Workers

United Steelworkers of America

PREFACE

In June 1990, the Labor-Industry Coalition for International Trade (LICIT) asked what we believe is a critical question: Will the Uruguay Round be a good deal for U.S. manufacturing? LICIT believes that U.S. policy-makers should ask themselves the following questions when considering whether a Uruguay Round agreement will be a net benefit for U.S. manufacturing and the nation.

- *Will new dispute resolution procedures significantly enhance enforcement of multilateral rights and permit effective enforcement of the trade laws?*

- *Have the new dispute resolution procedures been obtained at the expense of proven national measures, such as Section 301?*

- *Will the agreement,-particularly the dispute settlement provisions and the MTO text, adequately preserve U.S. sovereignty?*

- *Will American trade law remedies against unfair dumping be significantly improved, or have they been diminished or otherwise undermined?*

- *Have significantly increased disciplines been placed on foreign subsidies, and can these new disciplines be effectively enforced?*

- *Have American trade remedies against subsidized, injurious imports been diminished or undermined?*

- *Does the new draft Trade-Related Intellectual Property Code provide significantly improved intellectual property protection? Does it recognize the Section 337 approach to intellectual property rights violations?*

- *Has substantially improved access for U.S. manufactured goods in foreign markets been achieved?*

EXECUTIVE SUMMARY

It is in the interest of U.S. manufacturing to attain an agreement in the Uruguay Round negotiations, being conducted under the auspices of the General Agreement on Tariffs and Trade (GATT), that opens foreign markets and provides new disciplines on unfair trade practices. What is on the table in the GATT talks so far does neither: the negotiations have not yet produced a complete meeting. In addition, the so-called "Dunkel texts" weaken international disciplines on unfair trade practices while, at the same time, undermining the U.S. laws designed to remedy the injurious effects of those practices. In terms of trade rules, then -- the focus of this paper -- the texts fail to meet the negotiating objectives laid down by Congress in 1988 and addressed by LICIT in 1991. Absent significant amendments, the Dunkel texts are a bad deal for U.S. manufacturing.

The United States maintains the most open market in the world. At the same time, our foreign competitors often benefit from government subsidies or engage in other unfair trade practices. The emphasis of the Dunkel texts is on limiting the ability of the United States to act against unfair trade practices rather than on regulating the practices themselves. The current set of texts establishes no significant new disciplines on subsidies -- a major deficiency. It completely ignores industrial targeting. It establishes no disciplines on anticompetitive practices, a principal form of trade protection used by some of our main competitors. It contains no provisions that would help to eliminate Japan's numerous and complex barriers to the import of manufactured products.

At the same time, the Dunkel texts' provisions concerning antidumping, subsidies, dispute resolution, the Multilateral Trade Organization, and intellectual property are likely to seriously weaken the ability of U.S. manufacturers to address unfair foreign trade practices. Taken as a whole, the Dunkel texts would make it much more difficult for U.S. industries which petition for relief against unfair trading practices to achieve standing, to show that dumping has caused injury, to fully offset subsidies or dumping, to maintain relief once won, or to achieve consistent and objective review of the application of national trade laws.

The texts also would sharply limit U.S. sovereignty, our ability to safeguard U.S. manufacturing interests, and our ability to pry open closed markets abroad. Applications of U.S. trade law would be subject to review by GATT panels, with no clear standards of review and no principle of deference to national investigating authorities. Use of Section 301 to open foreign markets and address unfair trade practices would likely be drastically undercut if not eliminated. A supra-national Multilateral Trade Organization would also be created, with each nation having one vote regardless of size, and potentially invested with broad authority to interpret the new international obligations created. Panels consisting largely of nations engaging in unfair trade would, under such an MTO, decide whether the United States is permitted to act against market distorting practices.

The Dunkel texts, then, as they stand today, do not increase but rather interfere with effective disciplines and remedies on unfair foreign trade practices. While there are potential benefits from the Uruguay Round for U.S. manufacturing, none would be sufficient to offset the effects of a reduction in the efficacy of our antidumping, countervailing duty, and market-access trade remedies. The Dunkel texts which are currently on the table in Geneva are fundamentally biased against the United States (which, with the world's largest, most open market, is uniquely dependent upon the use of *ad hoc*, specific remedies rather than on subsidization or toleration of anticompetitive practices to regulate trade). The texts must either be improved considerably or rejected. No deal is better than a bad deal.

The task ahead is far from impossible, however. Continued access to the U.S. market provides great leverage. The United States must be prepared to reciprocate the receipt of equivalent opportunities for increased market access abroad. This must not, need not, and should not, require the compromise of our trade laws. In most cases, the textual changes required to obtain a balanced result are not so extensive as to require a major re-drafting effort. Nor should the United States be alone in seeking changes in the current draft texts. Some participants, including in some cases the European Community, which should have interests which closely parallel those of the United States. In the end, the changes suggested in these pages should be seen as a fair "re-balancing" of the results reached two years ago in a rash attempt to conclude the negotiations on grounds which the United States could not accept.

INTRODUCTION

The General Agreement on Tariffs and Trade (GATT) has played an important role in expanding world trade by providing rules for the international trading system and by facilitating the reduction or elimination of tariffs and non-tariff barriers to trade. The United States entered into the current phase of multilateral liberalization negotiations, the "Uruguay Round," with the dual purposes of expanding GATT rules into new areas and strengthening the disciplines related to trade in goods.

The Uruguay Round was scheduled to conclude in December 1990 at the Brussels ministerial meeting. The ministerial meeting failed primarily because of the lack of agreement over limiting government distortions to trade in agriculture.

After the collapse of the talks in Brussels, the Uruguay Round entered a stage of inactivity for nearly a year. Negotiations resumed briefly in late 1991, and in December 1991, GATT Director-General Arthur Dunkel, at the behest of the key countries involved in the trade talks, proposed a draft "final agreement." The "Dunkel texts" remain the basis for the current negotiations. In some instances the Dunkel texts reflect a negotiated outcome, but in several key areas such as antidumping and subsidies, the texts represent Mr. Dunkel's attempt to propose a compromise where no negotiated agreement was achieved. The talks were suspended for most of 1992, until the Bush Administration made one final effort to conclude the basic elements of a deal prior to leaving office.

Although a Uruguay Round agreement was not finalized, the Bush Administration did complete an agreement with the European Community that could have important implications for the Uruguay Round -- the so-called "Blair House Accord" which was aimed at resolving a longstanding dispute with the European Community over its subsidies to oilseeds producers and processors, and more generally, over the effects of the Common Agricultural Policy on world trade. The Blair House Accord was intended to be the basis for a GATT agreement on agriculture and was hailed as a breakthrough by both the United States and the EC.

At the July 1993 meeting of the Group of Seven nations, negotiators from the United States, Canada, the EC and Japan made progress toward reaching a market-access accord, potentially giving new impetus to the broader Uruguay Round negotiating effort. The Clinton Administration has stated that it would like to be able to notify Congress by December 15, 1993 -- the deadline under recently extended fast-track negotiating authority -- of its intention to enter into a Uruguay Round agreement and to sign such an agreement by April 15, 1994.

While LICIT fully supports a successful Uruguay Round and applauds the progress that may have been achieved on agricultural issues, it believes that no Uruguay Round issue is as critical to U.S. manufacturing, and to the nation as a whole, as preservation of effective trade laws to counter unfair foreign market distortions. These distortions persist and will not be effectively disciplined by the Dunkel texts. Candidate Clinton said that

> *The United States can no longer afford to turn the other cheek when our competitors close their markets to our goods, dump and subsidize their products, violate trade agreements, and target our industries.*

Later, as President, Clinton stated that

> *We must enforce our trade laws and our agreements with all the tools and energy at our disposal*

In spite of the strong position the Administration and Congress have taken on this issue, many in American labor and industry fear that the United States might be put in a position where its negotiators would be forced to make concessions on trade laws to "pay for" conclusion of the Uruguay Round. For U.S. manufacturing, and, we believe, for agriculture and services, such concessions would be too high a price to pay. Market-access *and* effective disciplines on unfair trade must continue as the twin pillars of the GATT.

A Uruguay Round agreement can play a significant role in determining the future of the world trading system and, with it, the nature and composition of the U.S. economy. The manufacturing sector is a critical component of the U.S. economy, accounting for nearly 19 percent of U.S. national income in 1991. A strong manufacturing sector is essential to providing high-wage jobs to American workers. President Clinton, in his campaign publication "Manufacturing for the 21st Century: Turning Ideas Into Jobs," stated

> *America can't prosper without a strong manufacturing base. Manufacturing is the foundation for creating wealth.*

LICIT is convinced that the Uruguay Round can be judged a success *if* it advances American commercial interests as a whole, including those of the manufacturing sector. To do so would also improve the structure of world trade. Unfortunately, the Dunkel draft would seriously weaken the ability of U.S. industries, firms and workers, to defend themselves against unfair foreign trade practices, without offering significant benefits to the United States in other areas sufficient to outweigh the major defects of the texts. Without substantial renegotiation of the Dunkel texts, the Uruguay Round would be a bad deal for U.S. manufacturers.

In June 1990, LICIT asked what we believe is a critical question: Will the Uruguay Round be a good deal for U.S. manufacturing? In a subsequent report issued in December 1991, LICIT suggested a number of criteria that would have to be met for a Uruguay Round agreement to be deemed a success for U.S. manufacturing. In this report, LICIT again sets forth suggested criteria for determining whether a Uruguay Round agreement is a win for U.S. manufacturing and examines how the Dunkel texts stack up.

U.S. negotiators should never lose sight of one guiding principle: No deal is better than a bad deal. This document offers suggestions on how key provisions of the Dunkel texts could be revised to create an agreement that is a good deal for U.S. manufacturing. LICIT's members stand ready to work closely with U.S. negotiators to achieve this critical goal.

ASSESSMENT OF THE DUNKEL TEXTS

DISPUTE RESOLUTION AND NATIONAL TRADE LAWS

Will new dispute resolution procedures significantly enhance enforcement of multilateral rights and permit effective enforcement of the trade laws?

The dispute resolution provisions in the Dunkel text would vest unprecedented authority in GATT panels that review the application of antidumping, countervailing duty, and other trade remedies available under the national laws of GATT signatories. GATT signatories are asked to surrender their sovereignty to multinational panels which are subject neither to adequate constraints nor to adequate standards. The implementation and interpretation of national laws would be subject to review by GATT panelists who often do not understand the U.S. legal system and who may be citizens of countries whose policies are hostile to the application of U.S. trade laws against injurious, unfairly traded imports. This creates two problems:

- First, there will be virtually no constraints on the ability of panels to review determinations *de novo*, and no principle of deference to national law or the determinations of administrative bodies.

- Second, many foreign nations (and several previous GATT panels) have incorrectly taken the position that the enforcement of antidumping and anti-subsidy laws, though sanctioned by the GATT, involves a "derogation" from basic GATT principles. To the extent this perspective is allowed to take hold, it will cause GATT panels to adopt an increasingly restrictive, narrow, view of an investigating country's authority to act against unfairly traded imports. Under a standard of this kind, any ambiguities in the GATT subsidies and antidumping codes are likely to be resolved in favor of unfair traders and against the investigating authorities, and any procedures not explicitly authorized would be deemed to be prohibited.

The new procedures would also make it impossible to block adoption of a potentially erroneous panel report unless *every* GATT member (including, the party found by the United States to have subsidized) votes against it, and would require that the GATT Council authorize withdrawal of trade concessions where a party refuses to comply with a panel decision. Inasmuch as, under the Dunkel text, final interpretations of U.S. law will effectively be made in Geneva by panels rather than by the U.S. courts, all GATT provisions relating to trade law remedies must be read with the dispute settlement provisions in mind.

LICIT believes that these problems must be explicitly corrected by:

- establishing a standard of review that requires GATT panels to defer to reasonable interpretations of national agencies charged with administering the trade laws; and

preventing GATT panels from taking an unnecessarily restrictive view of a signatory's administration of its trade laws. Any action against unfairly traded imports not precluded by the GATT should be recognized as acceptable. The enforcement of unfair trade remedy laws has, and must retain, a status under the GATT equal to that given to the maintenance of trade liberalization measures.

MORE EFFECTIVE ANTIDUMPING RULES

Will American trade law remedies against unfair dumping be significantly improved, or have they been diminished or otherwise undermined?

Among the most important of the Uruguay Round negotiations are those pertaining to the GATT Antidumping Code. Under GATT rules, dumping occurs when firms sell below cost for an extended period of time, or when their prices in export markets are lower than their prices in their home market, and producers in the importing country are materially injured as a result. Dumping is frequently associated with the existence of market imperfections (e.g., a closed or cartelized home market limits competition or where government subsidies are granted).

The GATT has recognized since its inception that trade measures to counter injurious dumping are legitimate actions to protect fair competition. The Code therefore permits signatories to take remedial action (in the form of antidumping duties) against dumped imports and prescribes international rules for the conduct of antidumping actions.

With the world's largest and most open market, the United States is especially vulnerable to the injurious effects of dumping. Thus, much more than in other nations where government intervention to protect or promote industry interests is commonplace, U.S. domestic political support for a liberal trading order is inextricably tied to the existence of remedies to counter foreign trade practices when those practices are inconsistent with the functioning of a market economy. Antidumping actions are among the most important of these remedies.

There are many reasons why a strong and effective antidumping law is vital to U.S. interests. Perhaps the most compelling is that the alternative is to allow the actions of foreign governments and industrial groups to determine the composition of the U.S. economy. Unchecked dumping, particularly the type of chronic dumping that occurs in some sectors, greatly increases investment risk in the affected industry and causes investment to flow instead to industries that offer greater prospects of a reasonable return. Often the embattled industries are those that have been targeted by foreign governments and industrial groups for their long-term strategic importance. Disinvestment produced by undeterred dumping would have serious long-range consequences for the U.S. economy.

LICIT supports an Antidumping Code which requires transparency in the application of national antidumping laws, which strengthens disciplines against dumping, and which would prevent circumvention of antidumping orders. In spite of exceptional efforts by U.S. negotiators, no significant improvements in the Antidumping Code are contained in the Dunkel text. In fact, the Dunkel text dramatically undermines the effectiveness of U.S. antidumping rules. Among the specific problems with the Dunkel text are that:

- it increases the burden on petitioners to prove their "**standing**" to bring a case and does not explicitly authorize consideration of **worker interests** in determining standing;

- it **provides for automatic termination ("sunset")** of an antidumping remedy after five years (which would eliminate an incentive for foreign producers to restrain excess capacity or tailor investment decisions to reflect reasonable market projections), unless it can be proven that continuation of the remedy is necessary to prevent injurious dumping -- displacing the current U.S. system of permitting importers to demonstrate that the unfair trade practices have ceased;

- it **increases the burden of proving injury** by not providing that administering authorities may **cumulate** the injurious effects of dumped imports from a variety of sources and by raising the already high **causation** threshold necessary to find injury from dumping;

- it could **reduce or eliminate dumping margins** in many cases by prescribing rules allowing exporters greater freedom to manipulate the costs and prices used to evaluate dumping and to sell their products below cost for indefinite periods (for much of a product life cycle or a business cycle); and

- it **fails to adequately prevent exporters from circumventing antidumping orders** by assembling dumped subassemblies or pre-manufactured parts in the country imposing duties or in a third country

LICIT strongly opposes the Dunkel antidumping text and urges that it be strengthened significantly or eliminated altogether

TIGHTER DISCIPLINES AGAINST SUBSIDIES

Have significantly increased disciplines been placed on foreign subsidies, and can these new disciplines be effectively enforced, or have American trade remedies against unfairly subsidized imports been diminished or undermined?

The United States has a strong interest in establishing tighter disciplines on subsidies. Foreign governments devote a significantly larger share of their GDP to subsidies than does the United States. Foreign subsidization continues to have a devastating effect on U.S. industry. In the steel industry, for example, large foreign subsidies led to chronic overcapacity abroad and a structural recession in the early and mid-1980s. The member states of the European Community alone gave their industry more than $37.4 billion in subsidies from 1980 to 1985, more than the United States spent on its manned space flight program.

Although improving disciplines on trade-distorting subsidies was one of the key U.S. objectives in the Round, the Dunkel text fails to impose significant new restraints on foreign subsidies and actually, in effect, endorses certain kinds of subsidies. At the same time, the text would require the U.S. Government to dramatically revise its countervailing duty laws, presenting new hurdles that would seriously limit the ability of U.S. industry to secure relief in the face of injurious foreign subsidies.

Subsidy Discipline: The Dunkel text, which divides subsidies into three types ("non-actionable," "actionable," and "prohibited"), achieves little in the way of additional subsidy discipline.

- **"Non-Actionable"**: The concept of non-actionable, or "green-light" subsidies is new to the Subsidies Code and effectively confers international approval on certain kinds of distortive and injurious government aid. This represents a step backward for subsidies discipline. Money is fungible, and money ostensibly given for "good" purposes frees up money for investment or other uses the market would not otherwise permit. The U.S Government has long held that a subsidy, regardless of its purpose, is countervailable if the subsidized imports injure a U.S. industry. This position must be maintained. The list of approved subsidies, moreover, is disturbingly broad, including regional development subsidies and basic and applied research subsidies. If adopted, these exceptions would act as roadmaps for legitimizing the subsidization of foreign companies, resulting in an unfair competitive advantage over U S. firms.

- **"Actionable"**: "Yellow-light" subsidies are defined so narrowly as to add very little, if any, direct discipline. Provisions supposedly designed to make these subsidies more easily actionable, by introducing a concept of "serious prejudice," incorporate a lax and inappropriate cost-to-government standard. At the same time, national remedies for "actionable" subsidies -- such as the U.S. countervailing duty law -- are severely undercut by the Dunkel text (see below)

- **"Prohibited"** The list of prohibited ("red-light") subsidies was only fractionally widened beyond export subsidies (already prohibited by the Subsidies Code) to include subsidies conditioned on import substitution Even these limited prohibitions would be phased in slowly, while "green-light" subsidies would become non-actionable immediately.

Undermining the CVD Remedy: The Dunkel text would require a series of potentially destructive modifications to the U.S countervailing duty law and its application by relevant agencies of the U.S. Government For example, it would:

- mandate a higher standard for a positive finding of "specificity" (the showing that subsidies are given to a discrete sector of the economy) than for other findings;

- establish a requirement that the government make an actual financial contribution to firms, thus making non-countervailable export restrictions and other programs that provide large subsidies through government regulation;

- require governments to establish procedures to "take due account" of the interests of domestic parties potentially injured by countervailing duties (this would, in effect, convert every countervailing duty investigation into a political battle between injured industries and consumers of an imported product); and

- grant developing countries differential treatment under the Code, with special rules that would limit their susceptibility to the application of countervailing duties

The goal of U S negotiators in the Round must be to ensure that international trade flows are determined by the competitive abilities of producers U S companies cannot and must not be expected to compete against the national treasuries of foreign nations **To achieve this end, the Uruguay Round negotiations must result in a far tighter subsidies discipline than contained in the Dunkel text. Even more importantly, unless and until subsidies are banned, and cease to exist, U.S. industries' ability to secure relief under the countervailing duty laws must be preserved.**

RETAINING THE ABILITY TO ENFORCE U.S. RIGHTS AND TO USE SECTION 301

Have the new dispute resolution procedures been obtained at the expense of proven national measures, such as Section 301?

Foreign governments have sharply criticized U.S. trade laws, such as Section 301, which are used to enforce U.S. rights under international trade agreements, to open foreign markets, and to respond to foreign unfair trade practices, lax enforcement of intellectual property rights, closed markets for telecommunications equipment and discriminatory government procurement practices.

Section 301 and similar laws have proven to be effective in advancing U.S. interests and liberalizing world trade by opening previously restricted foreign markets. Successes include increased access to the Japanese markets for semiconductors, telecommunications equipment, satellites, wood products and supercomputers.

Under the Dunkel texts, however, use of Section 301 would likely be so severely circumscribed as to render it useless, leaving U.S. exporters without adequate redress to the effects of trade barriers that the Dunkel texts do not adequately address.

The Dunkel texts undermine Section 301 by requiring that virtually all trade disputes be taken to the GATT. This will result in problems in several circumstances.

The Dunkel texts mandate that any dispute seeking redress of "an impediment to the attainment of any objectives of the GATT" be taken to dispute settlement, even if the GATT provides no effective remedy for such impediments and cannot act to remove those impediments (e.g. government procurement barriers not covered by the Code or purely private anticompetitive activities). Thus, while very real foreign restrictions might exist, and the GATT is incapable of acting, the United States will be committing not to act. If interpreted broadly by a GATT panel, this category of cases without a remedy could be read to encompass virtually all trade disputes. Thus, the United States would be precluded from taking timely action, while an illusory GATT dispute settlement process is invoked.

This problem is particularly acute for the United States because of the transparent nature of our trade policies and the requirements and procedures for due process in the U.S. system. The United States cannot, for example, retaliate against foreign unfair trade practices by simply engaging in a slowdown of Customs entry for a particular foreign product or by giving tacit support to an industrial boycott. Thus, many foreign practices will be largely insulated from GATT review (if for no other reason, because of the opaque nature of market barriers abroad), while transparent U.S. responses to such unfair practices will be, as a practical matter, impossible.

The Dunkel texts will also remove the flexibility that permits reasonable resolution of many trade disputes. Current GATT practice permits the GATT Council to bring to any dispute political pressure for resolution. It can delay retaliatory action against the United States in light of the reasons for the U.S. retaliatory action, namely, the existence of reasonable cause -- the underlying unfair foreign practices. By removing the ability of the Council to defer action on adoption of panel reports, even when the vast majority of countries (all but one) favor this course, the Dunkel texts would remove important flexibility and a safety valve from the international dispute settlement system.

The inevitable result would be virtually an automatic foreign response to even reasonable, transparent U.S. actions taken to redress unfair trade practices that are not disciplined by the GATT. As a practical matter, the ability of aggrieved U.S. industries to obtain redress as intended by Congress from unfair market barriers would be unacceptably compromised. Implementation of the proposed Dunkel text would deprive the United States of the sovereign right of self-defense against many unfair trade practices without providing adequate remedies at the GATT.

The United States should not abdicate its right to use proven national trade policy tools such as Section 301 in favor of the proposed new dispute-resolution system potentially inimical to U.S. interests. If the United States, or any other nation, errs in the use of its national measures, GATT processes and national measures would still be available to offset unwarranted actions.

MULTILATERAL TRADE ORGANIZATION

Will the agreement adequately preserve U.S. sovereignty?

The Dunkel texts would create a Multilateral Trade Organization (MTO) with sweeping powers to interpret the various GATT texts -- an authority tantamount to legislative authority -- based upon a majority vote. These powers would be given to a body whose structure resembles the U.N. General Assembly without a Security Council: each GATT signatory would be entitled to one vote, with decisions made by majority vote. It is likely that many decisions made by this body would be inimical to the interests of the United States, as very few foreign countries share the U.S. preference for allowing market forces to dictate competitive results.

The MTO is intended to become the institutional framework through which the Dunkel texts will be implemented and interpreted. Further GATT negotiations will be conducted under the auspices of the MTO as well. Thus, the Dunkel texts could create what the GATT has (purposefully) never had: a strong, supranational organization possessing power to enforce its interpretations of the meaning of treaty provisions over the objections of a numerical minority of signatories (which may represent the bulk of world trade or population).

At present, the GATT is a contract among nations, subject to a continuing process of negotiation to increase its scope and providing sovereign nations a framework within which to preserve their national interests. The proposed MTO would expand the GATT far beyond its current mission.

The MTO proposal suffers from at least two major flaws. First, vesting interpretation of the agreement in a one-nation, one-vote assembly is dangerous. The United States, with the world's largest economy, would have no more voting power in the MTO than the smallest GATT signatory, placing the United States in an extremely vulnerable position. A group of countries, including countries that have been found to be unfair traders in U.S. legal proceedings, could interpret and elaborate GATT rules in a manner unfavorable to U.S. interests -- forcing the United States, for example, to reverse trade remedy decisions of its administering agencies. This might be more tolerable if it were a committee of the like-minded, all of whose founders favored open and fair trade. However, this is not the case. Moreover, it must be remembered that the GATT rules themselves impose far fewer disciplines on unfair trading practices than does current U.S. law.

Second, moving from a contractual view of the GATT to a more compulsory system would reduce existing incentives to resolve disputes politically. Given the volatility of trade issues in many countries, such a shift could eliminate a needed safety-valve and impair the functioning of what remains a consensual system operated by sovereign nations. Ultimately, the backlash against an over-reaching MTO could threaten the entire GATT system.

A final agreement must not grant power to the MTO to interpret (and thereby alter) the agreement. LICIT urges that the United States oppose the current MTO proposal.

PROTECTING INTELLECTUAL PROPERTY

Does the new Code provide significantly improved intellectual property protection? Does it recognize the Section 337 approach to intellectual property rights violations?

Intellectual property rights protection is vital for American manufacturing interests. According to a 1988 report by the International Trade Commission, U.S. industry loses as much as $43 to $61 billion *each year* due to inadequate protection of intellectual property rights abroad. Not only does the counterfeiting or pirating of U.S. intellectual property reduce potential sales and royalties, it also deters investment in new products and processes.

Discussions on these issues are taking place in the Trade-Related Aspects of Intellectual Property Rights (TRIPs) negotiating group. Any TRIPs Code must result in significantly increased protection abroad for U.S. intellectual property rights. The current draft Code in the Dunkel text does in many respects provide this increased protection. Nevertheless, the text's TRIPs provisions are still seriously flawed in a number of respects.

First, the draft fosters compulsory licensing. Currently, many countries require that rights holders license their patents to domestic concerns. The draft TRIPs Code does not effectively limit -- in fact, it legitimizes -- these practices. For instance, under the Code, each country would be able to determine when to impose a compulsory license requirement, as long as the patent holder receives "adequate" compensation. Thus, compulsory licensing could be imposed when local authorities determine that a right holder is failing to satisfy the local or export market. This deficiency is all the more threatening since the TRIPs text would also permit a foreign company that obtains a compulsory license to export the affected products throughout the world. The TRIPs Code ought to limit very strictly compulsory licensing because it discourages innovation by depriving innovators of the fruits of their labor. LICIT believes that this practice should be limited to situations involving national security concerns, economic emergencies, or adjudication of violations of national competition laws.

Another issue that the draft TRIPs Code fails to address is preservation of a Section 337 remedy. Section 337 is the U.S. law used to enforce American intellectual property rights against infringing imports. In 1988, a GATT panel ruled that some elements of Section 337 violate the GATT principle of national treatment. Despite serious questions about the decision, the United States eventually allowed the GATT panel report to be adopted but said that it would continue to enforce the law "pending enactment of legislation amending Section 337, which could most effectively occur through Uruguay Round implementing legislation."

If significant adverse changes are made in the way Section 337 is administered, U.S. manufacturing will undoubtedly suffer. Section 337 is effective because the International Trade Commission, the agency which administers the law, has the necessary expertise, can offer relief within a limited period of time, and can exclude all infringing imports from the U.S. market. District court actions, by comparison, pose jurisdictional and enforcement difficulties vis-a-vis foreign defendants create, lengthy delays in obtaining relief, and are encumbered by limits on the remedial powers of district courts.

LICIT continues to strongly urge that the TRIPs code ratify the Section 337 approach to enforcement of intellectual property rights at the border.

The draft TRIPs Code has several other shortcomings:

- it tolerates summary "special border measures" that could be used, without clear deadlines, to unfairly exclude exports;

- it allows pirates in developing countries to ignore all TRIPs rules for a transition period of up to ten years;

- it does not cover, in developing countries benefiting from the TRIPs transition period, pharmaceuticals in the development pipeline; and

- it does nothing to restrain countries from adopting abusive international "exhaustion" standards in their domestic patent laws.

These shortcomings do not render the TRIPs Code valueless, but they do require a serious assessment of the extent to which limited gains in this area ought to be traded off for concessions on other issues of importance to the United States.

THE RELATIONSHIP OF THE NEW RULES OF TRADE TO MARKET-ACCESS NEGOTIATIONS

U.S. manufacturing would benefit greatly from the reduction and elimination of tariffs on a wide range of products, as long as the resulting access is reciprocal. Tariffs remain high and unbound in many developing countries. For example, the World Bank estimated India's average unweighted tariffs to be 118 percent during the period 1988-90, while even in newly industrialized countries such as Korea and Taiwan (with unweighted average tariffs of 11.4 and 9.7 percent, respectively, in 1990), tariffs remain high by U.S. standards. Significant tariff barriers also remain for some products seeking to enter industrialized country markets. For instance, high EC tariffs on semiconductors (14 percent) and soda ash (10 percent) reduce sales of highly competitive U.S. products in that market. In sensitive U.S. sectors such as textiles and apparel, particular attention must be paid in the process of liberalizing tariffs or quotas that this change in policy be balanced by reciprocal market-access commitments by exporting countries.

A successful Uruguay Round must also address nontariff barriers and permit national governments to remedy the distortions caused by those non-tariff barriers which remain unaddressed. Non-tariff barriers, such as quantitative restrictions, import licensing schemes, import surcharges and internal taxes, and discriminatory government procurement practices, are often a more significant impediment to trade than tariffs.

The United States, Canada, the EC, and Japan made progress on market-access during the meeting of the Group of Seven nations in early July 1993. Significant work must still be done, however, to achieve an overall Uruguay Round package that has broader and larger benefits for U.S. manufacturing.

First, the quadrilateral market-access agreement, although it creates a framework for future progress, is incomplete in important respects. In substantial part, the announced agreement referred to goals rather than actual negotiated results. Once this package has been further elaborated, the three key measures of success will be the resulting openness of the Japanese market, the lessening in the discrimination inherent in Europe's preferential trading arrangements, and the integration of developing countries into the world trading system. Japan still has not provided access to manufactured imports equal to that provided by either the United States or the EC. It is important that the European Community not become a vast preferential trading bloc that discriminates severely against non-European nations. And the more advanced developing countries must be pressed to assume all obligations of the GATT system in a timely fashion. The United States should continue to insist on reciprocity in market access from *all* GATT participants.

Second, the recent progress in the market-access negotiations does not lessen the importance of resolving the serious shortcomings in the Dunkel texts on trade rules. While dramatic tariff reductions and other market opening measures are important goals, even if achieved they would not justify accepting the infirmities in the current draft texts on trade rules. In particular, the United States must preserve its right to address trade-distorting measures by using the unfair trade laws. A balanced and acceptable Uruguay Round package must open foreign markets *and* ensure that remaining market distortions can be remedied.

AREAS NOT COVERED BY THE URUGUAY ROUND

As U.S. manufacturing weighs the costs and benefits of the Uruguay Round, its calculus will also be affected by what is *not* on the agenda. Industrial targeting, differences in environmental regulation, and anticompetitive practices are each important concerns for U.S. manufacturing but are addressed either tangentially or not at all in the current Round.

Targeting. One of the major shortcomings of the current GATT rules is the failure to systematically address the problem of industrial targeting -- comprehensive programs which include the suspension of antitrust laws, closed home markets, forced technology transfer, and production and R&D subsidies. This failure is especially unfortunate in light of the increasing frequency with which targeting practices are leading-to major trade disputes. The U.S.-EC conflict over Airbus, U.S. and EC disputes with Japan over semiconductors, and the prolonged international crisis in steel can all be traced to the conscious decisions of our trading partners to create artificial comparative advantages for their industries. Concentrated as they are in support of specific industries, these practices distort private investment decisions and often lead to excess capacity and dumping.

The long-run objective of the United States should be to subject industrial targeting to multilateral rules and remedies. Until the international community can agree on effective multilateral rules governing industrial targeting, the United States and other countries will have to rely on bilateral negotiations, domestic policy measures, and national trade remedies to offset the injurious effects of targeting.

The environment and international trade. International differences in the stringency of environmental regulations can have a significant effect on the competitiveness of U.S. industry. One recent study concluded that environmental regulation played a "negative role" in the evolution of U.S. trade performance -- a finding "consistent with the earlier observations that U.S. environmental policy has tended to be more stringent and, by inference, more costly than the policies of its major trading partners."[1] Unless minimum standards on environmental protection can be agreed upon, more lenient environmental regulations will continue to be a source of competitive advantage for some foreign industries.

Anticompetitive practices. Dumping is caused and U.S. manufactured exports are impeded by foreign government tolerance or encouragement of anticompetitive behavior and exclusionary business practices. These practices have been well-documented. In the case of soda ash, for example, Japanese producers have been investigated for blocking foreign access to the Japanese market through control of the distribution channels and terminal facilities, pressure on Japanese distributors and terminal facilities, and other anticompetitive activities. Similar problems have been reported in the construction, auto parts, amorphous metals, semiconductor, steel, and polysilicon industries, among others.

Accounts of this "privatization of protection" are certainly not limited to Japan. In other major markets, such as the EC, serious market-distorting private practices have been reported, for example, in the steel, soda ash, and heavy electrical equipment industries.

Efforts to negotiate meaningful provisions in the Uruguay Round (as well as in the Multilateral Steel Agreement negotiations) have so far been unsuccessful. LICIT believes that this issue will assume an increasingly important place in trade policy discussions over the next few years.

THE FINAL RESULTS

As this paper is being written, the final results of the Uruguay Round are yet to be achieved. The U.S. negotiators have pledged themselves to seek substantial revisions in the GATT negotiation draft texts. LICIT members fully support this effort to bring home a result that U.S. manufacturing interests can fully support.

[1] J.A. Kalt., "The Impact of Domestic Environmental Regulatory Policies on U.S. International Competitiveness", in *International Competitiveness*, A.M. Spence and H.A. Hazard, eds., 241 (1988).

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Thank you Mr. Chairman: Many of us on this committee and many individuals are hoping for progress relative to the Uruguay Round of GATT talks before the December 15th target date. As might be expected, there are mixed reviews on whether success in these talks will be realized

Nevertheless, we must create a global atmosphere that demonstrates intolerance to violation of trade laws, while at the same time improving access to foreign markets. We must develop new policies that create a level playing field for farmers and businessman regardless of which side of the ocean they reside. It is time to address the root causes of our trade problems, rather than merely treating symptoms.

The time has come for each of us to realize that we can no longer tolerate one way streets, for the stakes are to enormous. A drift from the principles of GATT could close off an era of prosperity and possibly throw us into a worldwide recession.

The task of global political leadership is to understand the gravity of our position and begin to shape a trade policy that makes sense for our farmers and our industries into the twenty-first century.

What concerns me most, Mr. Chairman, is that this may be an opportunity missed if we fail to pass the North American Free Trade Agreement. The house we be faced with this task within the week and this body shortly thereafter should they exhibit the wisdom to pass the agreement. I am concerned that our major trading partners are viewing our actions on this agreement as a prelude of how earnest they will be willing to enter into a honest and forthright negotiations.

We have a choice to make. By passing the North American Free Trade Agreement, we can demonstrate leadership in the global economy and prove Americans can compete. By rejecting NAFTA, we will send a signal that we favor the status quo and that we are an inward looking nation. Opportunities to build a better life for all of our citizens do not come often.

Shakespeare once wrote, "There is a tide in the affairs of men which, taken at the flood, leads on to fortune." In 1993 we are riding such a tide in which both the General Agreement on Trade and Tariff and the North American Free Trade Agreement can ride us into the twenty-first century or drown us in a sea of despair.

Mr. Chairman, I will conclude my remarks by saying that I wish our negotiators well. Yet, as much as I would like to see a successful conclusion to the GATT, I do not want to leave them with the impression that it should be accomplished at the expense of one industry, whether it be agriculture, business, or the service sector purely for the expediency of initially an agreement. A rising tide should lift all boats.

Thank you Mr. Chairman.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, I welcome the participation of this distinguished panel of witnesses, and appreciate their valuable wisdom regarding some badly needed changes in the Uruguay Round.

Let me join my good friend, Ed Pratt, former Pfizer President, in commenting further on the inadequacy of the Trade-Related Intellectual Property (TRIPs) rules.

First, allowing developing countries a five- to ten-year transition period is simply unacceptable. I join the U.S. trade associations whose constituents members are at risk in insisting on a two-year phase-in, as a *maximum*.

Second, curbs on the use of compulsory licensing of patents and mask words must also be in place.

Until GATT provides these minimal protections, we have no choice but to continue our reliance on the Special 301, as well as other reliefs available to American firms under our trade statutes.

Our trade partners must realize that they cannot have it both ways. That is, there will be *no* support in Congress for concessions on transition periods and compulsory licensing along with weakened trade statutory protections.

I want to keep this statement brief, Mr. Chairman, so as to allow for a comment from the panel.

PREPARED STATEMENT OF F. WILLIAM HAWLEY

Mr. Chairman and members of the Committee: Thank you very much for the opportunity to appear before you today to discuss the interests of the service sector in the Uruguay Round trade negotiations.

I am testifying today on behalf of the Coalition of Service Industries, and its Financial Services Group. The Coalition represents a group of large multinational companies engaged in a broad spectrum of service businesses. The range of sectors covered by CSI's membership includes accounting, consulting, professional and business services, telecommunications, shipping, data processing, travel and tourism, and financial services.

The CSI Financial Services Group (FSG) was established in 1989 when the Uruguay Round negotiations on financial services became more focused and the need arose for private sector input on a more specific basis. The FSG includes a broad range of finance companies and sector associations covering banking, insurance, securities, and consumer finance businesses.

The companies in the Coalition's membership and its Financial Services Group have been strong and vocal supporters of the Uruguay Round during the seven years it has been underway, and we have worked very closely with our negotiators to help advance U.S. service sector interests.

Our standard for judging the final services agreement has always been the degree to which it assures that markets will be open for all service providers to compete on a fair and equitable basis. We agree wholeheartedly with the criteria set out in the Committee's letter to the President in June of this year. Where foreign markets are already open, we want assurances that they will stay that way. And where markets are closed or discrimination exists, we want those obstacles removed. We believe that these objectives are consistent with the 1988 Trade Act.

The Uruguay Round services negotiations have produced the text of a General Agreement on Trade in Services, or GATS, which sets forth trade and investment rules. Most of these rules will only apply to those sectors and commitments listed in each participating country's schedule. In our view, the rules and the commitments are inseparable; each is meaningless without the other. The negotiations to complete the schedules of commitments have not yet been concluded, and therefore it is difficult for us to render a judgment as to the agreement's commercial value or our support for the outcome.

It is the negotiations to secure schedules of commitments that have experienced difficulty, as our trading partners have sought to give as little as possible in some areas and we in the United States have persisted in more ambitious goals.

I will pause here to just restate that the service sector is very broad, and for that reason it is difficult for me to make a general statement about the progress or problems associated with the market access negotiations for services. The Group of Negotiations on Goods in the Uruguay Round is divided into fourteen subgroups, while the Group of Negotiations on Services meets as a whole. There are service sectors where the market access talks have been more productive. Some of the professional or businesses services are examples.

The telecommunications negotiations have produced an annex to the agreement, and CSI has continued to monitor negotiations on basic telecommunications services which have as their objective liberalization and market access on a reciprocal basis for facilities-based carriers. To date, no significant offers have been made by our trading partners and we are skeptical that any meaningful offers will be forthcoming prior to December 15th.

By agreement, the negotiations will continue another 18 months until 1994. In discussions with the U.S. negotiators, we have received assurances that during this period there is no prohibition on consummating private commercial relations, that the United States will continue to pursue objectives bilaterally where feasible, and that at the conclusion of the negotiations in 1994, the U.S. will not assume any MFN obligations in the absence of reciprocal market access and will take a derogation.

The EC will liberalize resale in most markets by 1998. Given the telecommunications offers to date and the EC timetable, the industry remains doubtful that the additional negotiating period will produce beneficial results, and would recommend instead that the U.S. negotiate bilaterally with those countries such as the U.K. and Spain whose firms have a significant market presence here.

The GATS negotiations are but one forum in which the industry is addressing the serious issue of asymmetrical market access highlighted by the recent BT–MCI merger. Also, we are hopeful that accounting rate reform can be addressed in the GATS forum. AT&T and Sprint seek the same degree of market access in the U.K. which BT enjoys in our market.

In other areas apart from telecom, such as audio-visual and financial services, the market access talks have been quite problematic.

I would like to comment in some detail about the financial services negotiations, as it is my area of expertise and a key component of a successful trade round.

FINANCIAL SERVICES

As we have stated many times, the Coalition's long-standing commitment to the Uruguay Round is based on its belief that substantial, global liberalization of trade in services will contribute to domestic and international economic growth. Nowhere is this more evident than in the financial services sector.

Opening financial service markets across a wide range of commercially important industrialized and developing countries will also help achieve President Clinton's goal of economic security for Americans by strengthening one of the most competitive U.S. industries and facilitating the retention and creation of high paying jobs.

Mr. Chairman, the FSG recently sent a letter to the Administration outlining our views and concerns. A copy of that letter is attached to this testimony and should be a part of the record. The letter was signed by American Bankers Association, American Council of Life Insurance, American Express Company, American Insurance Association, American International Group, Bank of Boston, Bankers Association for Foreign Trade, Chemical Bank, CIGNA Corporation, Citicorp/Citibank, Dean Witter Reynolds, Fidelity Investment, Financial Services Council, Ford Financial Services Group, Investment Company Institute, Morgan Stanley, National Association of Insurance Brokers, NationsBank Corporation, Salomon Brothers Inc., and the Securities Industry Association.

The negotiations are now less than six weeks from their scheduled conclusion and, unfortunately, no real progress on unproved market access has been achieved. After recent consultations with U.S. negotiators and review of the current market access offers by other countries, it is evident that most of the commercially important developing countries do not intend to liberalize access to their financial markets.

At best, most developing countries' market access offers now constitute only a standstill; many others fall short of even this inadequate commitment. The intransigence of these countries has continued despite the best efforts of U.S. negotiators, who have been working diligently for many years, in consultation with U.S. financial services companies, to achieve a successful conclusion to the negotiations.

OVERVIEW OF THE NEGOTIATIONS TO DATE

Since 1986, U.S. financial services companies have stated clearly that standstill commitments do not constitute liberalization and will not result in concrete commercial benefits for the United States. Standstill commitments only reward foreign countries that maintain protectionist financial services policies to the detriment of the world economy and one of the most internationally competitive U.S. industries.

As the Uruguay Round negotiations approached the Brussels Ministerial in 1990, U.S. financial services companies warned U.S. negotiators that the market access negotiations were failing and, as a result, a serious free rider problem was developing. Fortunately, the failure of the Ministerial gave the members of the GATT a second chance to negotiate open financial service markets.

During 1991, we worked closely with U.S. negotiators in an attempt to salvage the market access negotiations and, as a safety valve, to develop reasonable GATT rules that would prevent protectionist countries from getting a free ride into an open U.S. market at the expense of U.S. companies and their workers. At the end of the year, the market access negotiations still had not succeeded, but U.S. negotiators informed us that the Dunkel text's General Agreement on Trade in Services (GATS) included a provision to prevent free riders.

Throughout 1992 and 1993, U.S. financial services companies continued to support the market access negotiations. This support was expressly based on the representations of U.S. negotiators that the United States would exercise its right under the GATS to prevent protectionist countries from taking advantage of open U.S. financial markets in the event that market access negotiations failed.

THE CURRENT SITUATION

Now, less than six weeks before the scheduled conclusion of the Round, we are confronted with four very disturbing facts.

First, it is clear that most of the commercially important developing countries do not intend to open their financial markets.

Second, as a practical matter, it is still unresolved how a country may exercise its explicit GATS right to prevent protectionist countries from taking advantage of its open financial markets. This uncertainty is compounded by an effort by the GATT Secretariat and a number of foreign countries to discourage the United States from exercising its explicit right under the GATS to exempt itself from the unconditional MFN obligation, even though 30 other countries have already tabled 135 MFN exemptions.

In short, there is an ongoing collective attempt to pressure the United States into rewarding protectionist countries by legalizing their barriers to foreign competition under the GATS. (Further, it is unclear under what circumstances U.S. companies would be able to take unilateral action under Section 301 if the GATS and MTO mechanisms are adopted and the U.S. becomes a signatory. The potential limitations on use of Section 301 under these circumstances are especially critical for service industries not covered by the new Treasury MFN proposal.)

Third, as part of the campaign to prevent the United States from exercising its GATS right to prevent free riders, there is an effort to redefine what constitutes liberalization of financial markets. In the NAFTA, Mexico agreed, subject to certain transition periods and limited exceptions, to provide substantial and meaningful access to its financial services markets. In the GATT, as of now, the most we are likely to achieve is a standstill at current levels of protection. The FSG's position on this has been consistent and clear: standstill commitments or the removal of only one or two protectionist measures will not facilitate market access to highly regulated and protected foreign markets for industries whose continued growth and worldwide success is predicated on the introduction of innovative new products into the global financial service marketplace.

Fourth, the offers of most countries, in addition to their limited nature, are frequently ambiguous and use terms for which the GATT has created no standard definition. If these offers are accepted as is, their lack of clarity will cause future misunderstandings and disputes concerning just what commitments were made. The result will likely be a flood of complaints under the GATT's dispute resolution procedures that may not be amenable to satisfactory resolution. This litigiousness would undermine the credibility of the GATS negotiating process and place undue strain on the GATT dispute resolution machinery.

Claims that these problems can be fixed in later GATT negotiations are misguided and must be rejected. The vast majority of foreign protectionist measures will be grandfathered, while open markets, like those in the United States, will be locked open. The United States will have forfeited important leverage—access to U.S. markets—for any future negotiations. The U.S. financial services industry will be much worse off; effectively barred from foreign markets with no realistic prospect of improved access and facing foreign competition that has GATS guaranteed access to U.S. markets. This is hardly an advantageous or equitable situation in which to place many of our most internationally competitive companies and their workers.

Speeches by our trading partners and the GATT Secretariat about seizing opportunities must also be carefully scrutinized. Before we seize anything, it is important to understand clearly what we would be left holding.

The GATS does not constitute a package of rules and principles comparable to the GATT. Under the GATT all parties are bound, regardless of their Schedules of Concessions, by fundamental rules and principles which promote market access through the elimination of trade barriers and discrimination, *e.g.,* Article III, which requires national treatment, and Article XI, which eliminates quantitative restrictions. In consideration for these rights and obligations, the GATT Parties agreed to accept an MFN principle.

Under the GATS, however, the comparable fundamental market access and nondiscrimination rules and principles are not included in the framework. They constitute obligations in the GATS only to the extent that they are contained in a party's Schedule of Commitments. Those Commitments, in turn, are essentially the product of bilateral reciprocal negotiations. In short, the GATS framework is really only a set of *potential* principles and rules. If we focus too closely on short-term gains in the GATS, and accept only *potential* rules and principles, we will live to regret not having taken a longer-term, broader view on the critical need to realize *actual* rules and principles to achieve real—not illusory—progressive liberalization in the financial services sector.

AGENDA FOR ACTION

Under these circumstances, it is imperative for the Administration to take action to resolve these problems now. We recommend a four-part plan of action for U.S. negotiators.

First, to the extent feasible, the Administration should continue to press our trading partners for market access offers that would provide meaningful market access. In this regard, we hope that the trip to Southeast Asia by Assistant Secretary of the Treasury Shafer will produce significant results. This high level involvement by the U.S. officials demonstrates the continuing commitment of the United States to achieving substantial liberalization.

Second, U.S. negotiators should emphasize that standstills and commitments to remove one or two of a multitude of protectionist measures do not constitute market access. Foreign countries should not be rewarded if they fail to commit to open their financial markets.

Third, the Administration should clarify immediately how a country can exercise its explicit right under the GATS to prevent protectionist countries from taking unfair advantage of open financial markets in other countries, like the United States. In this regard, the recent policy statements by Secretary of the Treasury Bentsen and Under Secretary of the Treasury Summers are steps in the right direction. We believe that the United States should seek an agreement that achieves sufficient liberalization to justify accepting an Uruguay Round MFN obligation. Standstill commitments that lock-in existing protectionist measures are not sufficient. In addition, we strongly believe that the United States cannot justify locking our market open without comparable commitments from others and, therefore, the United States should maintain an MFN exemption unless or until we are able to negotiate adequate commitments from other countries.

Fourth, in consultation with U.S. financial services companies, determine immediately those countries whose offers currently fall short of comparable and substantial market access, and inform them that without substantially improved commitments, they should expect the United States to exercise its legitimate GATS right to deny them MFN treatment.

With less than six weeks left in the negotiations, this agenda requires immediate action. It will be ironic and unfortunate indeed if the U.S. financial services industry, which has consistently supported the Uruguay Round negotiations up to this point, is severely disadvantaged by the final agreement that comes before the Congress. If this happens, the ability of the FSG to continue to support the Uruguay Round final agreement will be called into serious question.

Thank you very much. I am happy to answer your questions.

Attachments.

COALITION OF SERVICE INDUSTRIES, INC.,
FINANCIAL SERVICES GROUP,
Washington, DC, October 22, 1993.

Hon. LLOYD BENTSEN,
Secretary of the Treasury,
Washington, DC.

Dear Mr. Secretary: The Financial Services Group ("FSG") of the Coalition of Service Industries is writing to express its deep concern over the status of the financial services negotiations in the Uruguay Round. As you know, the FSG was established in 1989 with the purpose of working with the Administration to achieve a strong agreement that would assure open financial service markets on a global basis. The negotiations are now less than 60 days from conclusion, and no real progress on improved market access has been achieved.

The FSG's commitment to the Uruguay Round is based on its belief that substantial and global liberalization of financial services will contribute to domestic and international economic growth. Opening financial service markets across a wide range of commercially important industrialized and developing countries will also help achieve President Clinton's goal of economic security for Americans by strengthening one of the most competitive U.S. industries and facilitating the retention and creation of high paying jobs.

Unfortunately, after recent consultations with U.S. negotiators and review of the current market access offers by other countries, it is evident that most of the commercially important developing countries and several of the important industrialized countries do not intend to liberalize their financial markets. At best, most developing countries' market access offers now constitute only a standstill; many others fall short of even this inadequate commitment. Several industrialized countries similarly appear willing to make very few significant market access commitments, while the United States continues to afford open access to its financial markets. The intransigence of these countries has continued despite the best efforts of U.S. negotiators, who have been working diligently for many years, in consultation with U.S. financial services companies, to achieve a successful conclusion to the negotiations.

1. OVERVIEW OF THE NEGOTIATIONS TO DATE

Since 1986, U.S. financial services companies have stated clearly that standstill commitments do not constitute liberalization and will not result in concrete commercial benefits for the United States. Standstill commitments only reward foreign

countries that maintain protectionist financial services policies to the detriment of the world economy and one of the most internationally competitive U.S. industries.

As the Uruguay Round negotiations approached the Brussels Ministerial in 1990, U.S. financial services companies warned U.S. negotiators that the market access negotiations were failing and, as a result, a serious free rider problem was developing. Fortunately, the failure of the Ministerial gave the members of the GATT a second chance to negotiate open global financial service markets.

During 1991, we worked closely with U.S. negotiators in an attempt to salvage the market access negotiations and, as a safety valve, to develop reasonable GATT rules that would prevent protectionist countries from getting a free ride into an open U.S. market at the expense of U.S. companies and their workers. At the end of the year, the market access negotiations still had not succeeded, but U.S. negotiators informed us that they had secured the inclusion of a provision to prevent free riders in the Dunkel Text's General Agreement on Trade in Services (GATS).

Throughout 1992 and 1993, U.S. financial services companies continued to support the market access negotiations. This support was expressly based on the representations of U.S. negotiators that the United States would exercise its right under the GATS to prevent protectionist countries from taking advantage of open U.S. financial markets in the event that market access negotiations failed.

2. THE CURRENT SITUATION

Now, less than 60 days before the conclusion of the Uruguay Round, we are confronted with four very disturbing facts. *First,* it is clear that most of the commercially important developing countries and several of the important industrialized countries currently do not intend to open their financial markets. Their inadequate offers represent a refusal to depart in a meaningful manner from the current closed state of international financial service markets.

Second, as a practical matter, it is still unresolved how a country may exercise its explicit GATS right to prevent protectionist countries from taking advantage of its open financial markets. This uncertainty is compounded by an effort by the GATT Secretariat and a number of foreign countries to discourage the United States from exercising its explicit right under the GATS to prevent free riders, even though 30 other countries have already tabled 135 MFN exemptions. In short, there is an ongoing collective attempt to pressure the United States into rewarding protectionist countries by legalizing their barriers to foreign competition under the GATS.

Third, as part of the campaign to prevent the United States from exercising its GATS right to prevent free riders, there is an effort to redefine what constitutes liberalization of financial markets. In the NAFTA, Mexico agreed, subject to certain transition periods and limited exceptions, to provide substantial and meaningful access to its financial service markets. In the GATT, countries are arguing that standstills and, in a few instances, commitments to eliminate one or two of a multitude of protectionist measures constitute real liberalization. The FSG's position on this has been consistent and clear: standstill commitments or the removal of only one or two protectionist measures will not facilitate market access to highly regulated and protected foreign markets for industries whose continued growth and worldwide success is predicated on the introduction of innovative new products into the global financial service marketplace.

Fourth, the offers of most countries, in addition to their limited nature, are frequently ambiguous and use terms that are not clearly defined. If these offers are accepted as is, their lack of clarity will cause future misunderstandings and disputes concerning just what commitments were made. The result will likely be a flood of complaints under the GATT's dispute resolution procedures that may not be amenable to satisfactory resolution. This litigiousness would undermine the credibility of the GATS negotiating process and place undue strain on the GATT dispute resolution machinery.

Claims that these problems can be fixed in later GATT negotiations are misguided and must be rejected. The vast majority of foreign protectionist measures will be grandfathered, while open markets, like those in the United States, will be locked open. The United States will have forfeited its most important leverage, access to U.S. markets, for any future negotiations. The U.S. financial services industry will be much worse off: effectively barred from foreign markets with no realistic prospect of improved access and facing foreign competition that has GATS guaranteed access to U.S. markets. This is hardly an advantageous or equitable situation in which to place many of our most internationally competitive companies and their workers.

3. AGENDA FOR ACTION

Under these circumstances, it is imperative for the Administration to take action to resolve these problems now. We recommend a four-part plan of action for U.S. negotiators. *First,* to the extent feasible, continue to press our trading partners for market access offers that would provide meaningful market access. (In this regard, we hope that the upcoming trip to Southeast Asia by Assistant Secretary of the Treasury Shafer will produce significant results. This high level involvement by the U.S. officials demonstrates the continuing commitment of the United States to achieving substantial liberalization.) *Second,* reemphasize that standstills and commitments to remove one or two of a multitude of protectionist measures do not constitute market access. Foreign countries should not be rewarded if they fail to commit to open their financial markets. *Third,* clarify immediately how a country can exercise its explicit right under the GATS to prevent protectionist countries from taking unfair advantage of open financial markets in other countries, like the United States. *Fourth,* in consultation with U.S. financial services companies, determine immediately those countries whose offers currently fall short of comparable and substantial market access, and inform them that without substantially improved commitments, they should expect the United States to exercise its legitimate GATS right to deny them MFN treatment.

With less than 60 days left in the negotiations, this agenda requires immediate action. It will be ironic and unfortunate indeed if the U.S. financial services industry, which has consistently supported the Uruguay Round negotiations up to this point, is severely disadvantaged by the final agreement that comes before the Congress. If this happens, the ability of the FSG to continue to support the Uruguay Round will be called into serious question.

Sincerely,

American Bankers Association; American Council of Life Insurance; American Express Company; American Insurance Association; American International Group; Bank of Boston; Bankers Association for Foreign Trade; Chemical Bank; Cigna Corporation; Citicorp/Citibank; Dean Witter Reynolds; Fidelity Investments; Financial Services Council; Ford Financial Services Group; Investment Company Institute; Morgan Stanley; National Association of Insurance Brokers; NationsBank corporation; Salomon Brothers Inc.; Securities Industry Association.

RESPONSE OF F. WILLIAM HAWLEY TO A QUESTION SUBMITTED BY SENATOR CHARLES E. GRASSLEY

Question. What if any impact would failure to pass NAFTA have on the successful conclusion of the Uruguay Round?

Answer. Failure to pass the NAFTA will likely have the effect of discouraging countries from coming forward with significant market access offers in the final days of the Uruguay Round negotiations. The uncertainty caused by a seeming retrenchment by Congress from trade liberalizing agreements may cause our GATT negotiating partners to shy away from making the difficult decisions to open their markets to services.

NAFTA's failure could only encourage those who favor protectionism over trade liberalization. The Uruguay Round represents an opportunity to open markets and promote expanded trade; a defeat for NAFTA would severely compromise those goals.

PREPARED STATEMENT OF RICHARD C. LEONE

My name is Richard Leone. I serve as Chairman of The Port Authority of New York and New Jersey and as President of The Twentieth Century Fund. My prepared testimony for the record includes a section containing specific information about the potential impact of the Uruguay Round upon the port region. I also should note, Mr. Chairman, that I strongly support the substance of your June 23rd letter to the President. I'll try not to cover too much of the same ground today.

The importance of international trade in services makes the successful completion of the Uruguay negotiations of vital interest to New York and New Jersey. The failure of both GATT and NAFTA would hurt major components of our economy, especially those driven by creativity, knowledge and technology. Reversion to isolationism and protectionism, in fact, could deal an economic body blow to the bi-state metropolitan area. Let me offer a few comments that are relevant, I hope, whether or not one lives within 25 miles of the Twin Towers.

Trade issues bring out the worst in public policy debates: our statistics versus their statistics, academic theories versus economic realities, the interests of companies versus those of workers. Rational discussion, let alone political discourse, is made more difficult because while the benefits of liberalization are abstract and widely scattered, the costs are keenly apparent to those who face the cutting edge of new competition.

A generation ago, the teaching of economics in many American classrooms involved limited analysis of international flows of goods and services. Trade was relatively unimportant to the prosperity of the United States. Today, in what is still by far the world's largest economy, concern and even anger about international competition has become a powerful political force. One would be hard put to find the confident and optimistic consensus that animated the largely American-designed postwar economic order. Even the apparent demise of communism has failed to restore American confidence in its economic future.

In a sense, it is bizarre that international trade has become such a hot issue. Following GATT negotiations is a sure cure for insomnia. But recently, international trade has become the favorite scapegoat of those—Ross Perot is the wealthiest and noisiest, if not the most thoughtful, example—who need something to blame for the nation's disappointing economic performance. NAFTA and the GATT have been dragged from obscurity to be beat up by the populists of the 1990s.

The minimal threat these pacts pose is underlined by their place in history. Since World War II, we have had a series of international agreements under the GATT: the Dillon Round, Kennedy Round, and the Tokyo Round. While a parallel series of side agreements have preserved protection in some areas, the trend has been to lower barriers to international trade in goods. The endless Uruguay Round involves some dicey areas—agriculture and services—but it is simply another in a long line of multilateral agreements in which reciprocal concessions end up generating opportunities for producers in all countries. Such agreements, together with bilateral pacts, have led to international trade that has grown faster than the GNP almost every year since World War II. Growing interdependence has meant growing prosperity worldwide.

One irony in the frenzy over NAFTA, for example, is that our economy and Mexico's already have been moving rapidly toward integration, without NAFTA. Another is that the NAFTA agreement will impose a much greater shock, by far, on the Mexican economy, which is more protectionist than ours and tiny by comparison (several states, including New York, have a larger GNP). The trade agreements currently in the spotlight will simply be incremental steps in a steady historical trend toward economic integration.

It is curious that opposition to trade agreements is based in large measure on the differences between our trading partners and us. Mexico has lower wages and different environmental laws; Japan has better technology and more powerful industrial organization. The same arguments that our automobile and computer industries advance for protection against Japan can be employed by Mexican firms against competition from our powerhouse industries. The same low wage arguments our producers use against Mexico are becoming more and more applicable for Europe to use against us.

If all regions were the same, of course, there would be no reason for trade. International and interregional trade are built exactly on international division of labor and on specialization (even if the specialization is fine-tuned). Implicitly, many opponents of NAFTA have been setting up the United States as the ideal for the world in wages, labor law, environmental legislation, etc. Anyone who has standards below ours cannot trade with us. Anyone with standards above ours may be ignored.

In fact, compared to Western Europe, we ignore the consequences to our workers of job displacement whether they are losers because of technology or competition, domestic or foreign. We might learn from the European Economic Community which has established an elaborate network of worker readjustment programs. Bear in mind, of course, these are societies that also offer a substantially stronger social safety net for all citizens. To some extent, the economic integration of Europe is made politically possible and individually tolerable by the existence of strong social support and worker training on the one hand, and specific economic development commitments on the other.

International trade does threaten some people. They are those who own capital, land, and skills that are not very productive in international comparisons. Unskilled workers are likely to suffer from increased trade. Most skilled workers should benefit from it. Efforts to block trade can mitigate these redistributions. But the price is high; some individuals will gain but the country will lose.

Trade agreements often are characterized as simple choices between free markets and government intervention. But, in fact, they require more—a new set of govern-

ment activities. Like NAFTA, the GATT should stimulate debate on, basic questions about domestic policy, including investments in the workforce and the social safety net.

America led the post-war movement toward free trade but never really dealt with its consequences for workers. Europe, on the other hand, established what has been called the social democratic compromise. Now that the playing field has leveled between us and our once impoverished trading partners, we must resolve not to stop progress toward free trade, but rather to catch up in the area of training and sustaining those citizens who are hurt by economic forces beyond their control.

AREAS OF PARTICULAR IMPORTANCE TO THE NEW YORK-NEW JERSEY REGION

Of particular importance to the Port Authority and our region are the liberalization of services trade, strengthened protection of intellectual property rights, and improved dispute settlement mechanisms.

A. Services

Services are among the nation's fastest growing source of exports. In 1992, US service exports totaled $192 billion, nearly a third of our total exports. Nowhere in the country are services produced on the scale of the New York-New Jersey region. More than one-tenth of all the accounting, finance, and legal jobs and one-fifth of all advertising jobs are located here. The region also has significant concentrations of the nation's employment in computer services, management consulting and engineering services. Altogether, the region is home to 82 of the Fortune 500 services firms, which are active in markets around the world. These firms would flourish with the liberalization of services trade which would occur with a successful Round. No service industry should be denied the benefits of liberalization. We applaud the Administration's continuing efforts to insure coverage of financial services and we urge the Congress and the Administration not to accept the EC proposal allowing for restrictions on "cultural industries" such as films, television and recordings. Collectively, the arts as an industry has an economic impact of nearly $10 billion in the New York-New Jersey region.

In addition, the Port Authority would directly benefit from expanded services trade. Our World Trade Center houses many foreign and domestic financial service providers and we have the nation's first telecommunications center, the Teleport, on Staten Island.

B. Intellectual Property

The New York-New Jersey Region also has a significant concentration of biomedical industries, avionics and software, each with a strong research and development component. The region also leads in the media, arts/culture and the fashion and design industries. Each of these areas will benefit from the strengthened protection of intellectual property rights worldwide. The absence of such protection in many areas of the world has been a deterrent to the expansion of these industries through export and foreign investment.

C. Dispute Settlement

Effective dispute settlement mechanisms are absolutely critical to the effective operation of the expanded system of multilateral rules negotiated during the Round. Without such a system, compliance cannot be assured and trade wars would abound.

The improved GATT dispute settlement procedures negotiated during the Round will particularly benefit regional trading interests and the Port Authority. Effective and rapid GATT procedures will enhance the ability of the US to secure the removal of foreign practices that hamper regional exports, a majority of which pass through our facilities. The improved procedures will also increase the chances that disputes will be resolved without resorting to import-limiting retaliation which adversely affects our facilities. For example, because of inadequacies in the dispute settlement mechanisms, the US in recent years has resorted to the imposition of trade restrictions on EC exports as the only effective means of obtaining EC compliance with GATT rules. The New York-New Jersey port facilities tend to be disproportionately burdened by such restrictions because a significant share of the products enter through our gateway. Thank you.

PREPARED STATEMENT OF ROBERT L. MCNEILL

Mr. Chairman, thank you for this opportunity to express the continuing support of the members of the Emergency Committee for American Trade (ECAT) for a successful conclusion of the Uruguay Round.

For the community of U.S. multinational corporations represented by ECAT, there is much to be gained from a successful Uruguay Round. Our members look forward to sound agreements in the areas of market access, intellectual property, services and investment, as well as to continuity of the international economic system represented by the GATT. The damage to that system that would be caused by a failure of the Uruguay Round would work against the economic interests of the United States and of the members of ECAT whose prosperity in large part depends on open access to foreign markets.

The sixty members of ECAT have annual worldwide sales of over $1 trillion. They have about five million employees, and they account for a substantial portion of total U.S. exports. Success of the Uruguay Round is thus of vital interest.

Based on what we know about the negotiations in Geneva, we have a number of concerns. Depending on how they are resolved will determine our ECAT position on a Uruguay Round settlement. Since most of these concerns are shared with other witnesses who are commenting on them in some detail, I shall simply summarize our concerns for the information of the Subcommittee.

MARKET ACCESS

A critically important part of the market access negotiations is the so-called zero for zero effort. We applaud this effort and urge our negotiators to attain as broad a product and country coverage as is possible.

We were pleased with the G7 agreement to include pharmaceuticals, construction equipment, medical equipment, furniture, farm equipment, and spirits under the zero for zero effort, and also to consider the same treatment for steel under the Multilateral Steel Agreement negotiations. Hopefully, other Uruguay Round participants will sign on to the zero for zero effort.

We are disappointed, however, that the G7 countries are unable to agree to include paper and wood products, electronics, non-ferrous metals, and scientific equipment under the tariff elimination initiative.

We have ECAT members who are producers in all of these areas. Our paper and wood members, for example, are part of an industry that exported about $16 billion of products in 1992, but who are disadvantaged in export markets by tariffs in the EC and Japan that are substantially higher than those in the United States. The mutual elimination of tariffs on paper and wood products would substantially increase U.S. exports and jobs. Leaving current tariff disparities in place, however, will continue to seriously disadvantage the U.S. wood and paper industry. To illustrate, EFTA and other EC wood and paper competitors of U.S. companies can sell duty-free throughout Europe whereas U.S. paper and wood products bear EC tariffs from 6 to 9 percent.

Similar situations pertain with electronics, non-ferrous metals, and scientific equipment products. U.S. manufacturers of these products would see their export competitiveness substantially advanced through their inclusion in any zero for zero agreement. We urge U.S. negotiators to bear these industries in mind as they fashion their final package.

Other than the zero for zero initiative, ECAT members have vital interests in all other market access negotiations. Our members from the telecommunications industry, for example, have strong interests in the liberalization of barriers to market access for both their products and their services.

INTELLECTUAL PROPERTY

The intellectual property negotiations are key to many members of ECAT. They are strongly supportive of a number of significant advances that have been achieved in developing rules and procedures for the protection of intellectual property rights. Included are desirable standards of protection and of enforcement of intellectual property rights together with a multilateral dispute settlement procedure.

Along with these and other benefits, however, there are several glaring deficiencies that are of concern to a number of ECAT companies whose intellectual property rights are at issue. It is worth noting here that U.S. intellectual property industries returned a $35 billion export surplus to the United States in 1992. It is troubling that fundamental questions in both the intellectual property and services texts remain for these industries.

Principal among the significant problems for U.S. firms in the intellectual property area are those transition provisions granting developing and centrally planned countries a period of five years before they are required to provide protection for intellectual property rights That is simply too long a period to tolerate the continuing economic piracy of U.S. intellectual property. Either the one-year transition period applicable to other countries, or perhaps a period of two years, would appear to provide adequate time for the developing countries to put in place protective mechanisms for the protection of intellectual property rights.

A particularly objectionable transition provision is the one whereby developing countries shall have a transition period of ten years during which they do not have to provide patent protection for pharmaceutical and certain agricultural chemical products. That provision together with inadequate protection of pharmaceutical products that are in the pipeline call for the attention of U.S. negotiators.

In ECAT's opinion there are further shortcomings in the intellectual property text in the areas of national treatment and contractual rights. The exception to national treatment in the Dunkel text concerning copyrights will be most costly to U.S. copyright owners, particularly to U.S. record and film companies, as also will be deficiencies in the protection of contractual rights for these same firms.

SERVICES

As in the case of intellectual property, the Uruguay Round promises significant and desirable rules for international trade in services that are welcomed by the U.S. business community. Trade in services is burgeoning and is of fundamental importance to the U.S. balance of payments.

However, as in the case of intellectual property, there are several troublesome issues in the services negotiations for members of ECAT. Among them are the lack of adequate progress in both the areas of national treatment and market access for a number of service sectors including the financial services, insurance, and audiovisual industries.

One of our members, for example, John S. Reed, Chairman and Chief Executive Officer of Citicorp/Citibank, in recent testimony before the Senate Banking Committee on behalf of the Coalition for Service Industries, noted that with just a few weeks left before the December 15 deadline "there is little if any market liberalization to be seen in the likely results" in the financial services negotiations. This is primarily because of the lack of success in achieving national treatment and liberalized market access in this vital area of the services negotiations as well as in the insurance and other areas.

We certainly hope that the Administration is right in believing that it is possible to obtain significant commitments in all services areas, including insurance and banking and securities, by the December 15 deadline. If not, there is no other multilateral vehicle in sight for accomplishing these objectives.

A current audiovisual exemption in the services area must also be confronted by our negotiators. The exemption will permit film and broadcast quotas, video levies and subsidies for the foreign competitors of U.S. audiovisual companies. The exemption will constitute a ready-made excuse for not dealing with U.S. audiovisual industries in a fair manner. President Clinton has expressed his support for including audiovisual services in any GATT accord. We commend him for this and hope that his negotiators will be able to eliminate the audiovisual exemption.

ANTIDUMPING

ECAT has long been concerned with the issue of antidumping. Our members are both petitioners for antidumping relief in the United States and abroad as well as exporters of products that are subject to foreign antidumping actions. We thus see the issue from both perspectives.

The antidumping provisions of the Dunkel text contain both provisions that we support and oppose. On balance, however, we feel that the objectionable provisions are not sufficient for ECAT to recommend an opening-up of the antidumping provisions of the Dunkel text.

As exporters, what concerns us is the increasing use of antidumping laws and regulations abroad. Until quite recently, for example, antidumping practice was limited to but a very few countries, including the United States, Canada, Australia, and the EC. Now, more and more countries have and are putting in place antidumping rules and regulations, and are using them as general safeguards against competitive imports in the guise of a device to penalize unfairly priced imports.

It is important, therefore, that GATT antidumping rules be clearly directed at unfair pricing practices and not at permitting the use of antidumping provisions as a general protective device. The Senate Finance Committee recognizes the need for

the United States in the Uruguay Round to seek "clarification of substantive rules and stronger procedural standards to prevent the misuse of these rules against U.S. exporters."

TEXTILES

How to treat international trade in textiles is nearly as vexing a question as how to treat international trade in agricultural products.

The textile provisions in the prospective GATT agreement are very important to several ECAT member companies, particularly to those in the apparel and retailing industries.

The textile exporting countries, who in the main are developing or newly industrializing countries, are conditioning their willingness to make concessions in such areas as market access, intellectual property and services on the liberalization of the current textile import quota system as well as on improved market access for their agricultural exports.

The market access negotiations between the United States and the European Communities are also closely intertwined with the textile negotiations. The EC is calling for significant cuts in high U.S. tariffs on textile products as a consideration for EC tariff reductions on imports of wood and paper products, electronic products, non-ferrous metals and certain scientific equipment.

The textile negotiations are thus one of the key areas to be resolved in the time remaining for concluding the Uruguay Round. In making their decisions, we hope that U.S. negotiators will bear in mind the interrelationships of all of the areas of negotiation, including those on textiles.

We in ECAT certainly hope that we will be in a position to support a Uruguay Round settlement. If it is perceived as in the best interests of our member companies, we will be in the forefront of public support.

EMERGENCY COMMITTEE FOR AMERICAN TRADE
Washington DC, December 13, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC

Dear Senator Grassley: In response to your question at the November 10, 1993, Senate Finance Committee hearing as to the likely impact of failure to pass the NAFTA implementing legislation on the successful conclusion of the Uruguay Round, I believe that such a failure would have doomed any prospects for the Uruguay Round for it would have been a clear signal to our Uruguay Round negotiating partners that the chances for congressional passage of a Uruguay Round implementing bill in the United States were doubtful at best. With such doubts in their minds, foreign government leaders would have had little reason to undertake GATT commitments that would be unpopular with their domestic constituencies and thereby place their governments at risk.

Sincerely,

ROBERT L. MCNEILL, *Executive Vice Chairman.*

PREPARED STATEMENT OF EDMUND T. PRATT, JR.

I am Edmund T. Pratt, Jr. President Emeritus of Pfizer Inc. I appreciate your invitation to provide the views of the Intellectual Property Committee (IPC)[1] on the Uruguay Round negotiations as they may affect specific U.S. commercial interests. While the focus of today's hearing is on the Uruguay Round, the round is not today's top priority on the national trade agenda. Rather, our first order of business is passing the NAFTA implementing legislation. Passing NAFTA is not only important in its own right but it will also pave the way for a successful conclusion of the current GATT round of multilateral trade negotiations.

My testimony today will focus on three issues: (i) the TRIPS (intellectual property) provisions of the Draft Final Act, the so-called "Dunkel text;" (ii) certain provi-

[1]The member companies of the IPC are Bristol-Myers Squibb, Digital Equipment Corporation, DuPont, FMC, General Electric, Hewlett-Packard, IBM, Johnson & Johnson, Merck, Monsanto, Pfizer, Procter & Gamble, Rockwell International and Time Warner.

sions related to the Multilateral Trade Organization (MTO); and (iii) dispute settlement procedures.

I do not plan to go over all of our concerns about the current TRIPS provisions. They are well known to the Congress and to your Committee, in particular. Our views on the Dunkel text are summarized in a letter that the IPC sent to Ambassador Kantor on March 11, 1993, which I ask be included in the record of this hearing. At this point in the negotiations—with less than six weeks to go before the December 15th deadline—it would be most appropriate for me to provide the Committee with the views of the IPC on what we consider to be the "bottom line" TRIPS issues.

In considering the TRIPS agreement, one must recall that protection of intellectual property is not a momentary enthusiasm of U.S. industry. Indeed, intellectual property rights have been a part of our national culture since our founding fathers provided protection for intellectual property in the Constitution. Intellectual property protection is about American competitiveness and American jobs. America's competitive edge rests ultimately on our creativity and resourcefulness—the unique ability of Americans to generate new ideas and develop new ways of looking at the world. Our growth industries are idea industries like entertainment, pharmaceuticals and computer software. All of these and many more will need strong intellectual property protection if they are to continue to grow, to create skilled and high-paying jobs, and to expand into new markets worldwide. If local pirates and counterfeiters are allowed to steal the products of our intellectual labor, America will forfeit the most crucial element of its global competitive advantages.

The Dunkel text on TRIPS goes a long way in providing the type of international intellectual property protection that the IPC, three successive Administrations and the U.S. Congress have been seeking together in the GATT for over the last seven years. As a general rule, the text contains high standards of protection and enforcement, has a multilateral dispute resolution mechanism and limits many of the exceptions and derogations from the standards of protection that had been a concern for the IPC. The text, however, contains certain provisions that undermine adequate and effective international intellectual property protection, and we look to Ambassador Kantor and his negotiating team to rectify these key provisions in the upcoming "end game" of the multilateral trade negotiations.

1. TRIPS PROVISIONS

The major outstanding deficiencies in the current TRIPS text that the IPC believes need improvement include most of those cited by Senators Moynihan and Packwood in their June 23rd letter to the President:

a. *Transitional arrangements*—The overly long and discriminatory transition periods[2] found in the current Dunkel text on TRIPS negate the value of the text's generally adequate and effective standards of intellectual property protection. These standards of intellectual property protection will be of little immediate help to U.S. industries if they have to wait five to ten years before they can begin to reap any international commercial benefits in the developing countries (LDCs) from TRIPS. Unless the transition periods are shortened, LDCs will be legally permitted under the GATT to deny intellectual property protection and to engage in international piracy. In turn, the United States will be barred, for the next five to ten years, from taking any effective action, either under GATT dispute settlement or bilaterally outside the GATT, under, for example, Special 301, to protect those very industries that have contributed so much to the growth of U.S. jobs and exports.

The IPC is especially concerned that, under the current TRIPS transition provisions, the United States will have to stand idly by and watch as the LDCs steal our technology and creative works and, thus, U.S. jobs. This will represent a dramatic change from the current situation in which the United States can use the full range of its bilateral weapons to stop the piracy and counterfeiting of U.S. intellectual property. We urge this Subcommittee to make it clear to our negotiators that the current transition periods are unacceptable and that they

[2] Under the current Dunkel text, all developing and Eastern European countries will have 5 years after the agreement enters into force to conform their national laws to the TRIPS obligations with respect to all intellectual property elements (patents, copyright, trademarks, trade secrets/proprietary information, semiconductor layout designs, industrial designs and geographical indications). LDCs that have not done so will have an additional 5 years (for a total of 10 years) to provide patent protection for pharmaceutical and agrichemical products. The transition period for the least developed countries—a specific UN designation for approximately 45 of the poorest developing countries—is a minimum of eleven years from the date of the agreement's entry into force.

must be shortened to two years for all intellectual property elements in all LDCs.

We recognize that GATT agreements traditionally provide LDCs with transition periods that enable them to conform their national laws to the new international standards. We, however, believe that the transition periods for TRIPS should reflect the fact that, for many advanced LDCs such as Brazil, Argentina, and even, India, much of the infrastructure for adequate and effective intellectual property protection is already in place. Thus, the only issue is whether these countries have the political will to adopt strong national protection. Developing the necessary political will does not take five to ten years.

In addition to being overly long, the transition periods currently found in the Dunkel text discriminate among industrial sectors by providing a longer transition for pharmaceutical, agrichemical and chemical products, which are among our most internationally competitive industries. Shortening the transition period to two years for all intellectual property elements, as we have already urged, will go a long way to erasing this discrimination. However, the only effective way to ensure that the pharmaceutical, agrichemical and chemical industries, whose products face long delays in gaining marketing and regulatory approval before they can reach the market, have commercial benefits from the TRIPS agreement that are similar to those of the other patent-based industries is to provide pipeline protection. Such pipeline protection would require countries that provide pharmaceutical, agrichemical and chemical patent protection for the first time to grant a drug, agrichemical or chemical already patented elsewhere protection for the remaining life of its patent, provided that the product had not yet been placed on the market in that country. Korea, Hungary, Mexico, and China, among others, have already agreed to provide pipeline protection.

Our concerns about the lengthy and discriminatory transition periods are further heightened by the fact that the end of the five to ten year transition periods will mark only the beginning, not the end, of our struggle to gain improved intellectual property protection in the LDCs. The draft TRIPS text does not require the LDCs to take any *interim,* progressive measures during the transition periods to have in place an effective system of intellectual property protection at the end of the periods. Based on the U.S. experience in such countries as China, we predict that it will conservatively take the LDCs a number of years after the end of the officially-sanctioned transition periods to put in place the proper intellectual property laws and regulations.

The IPC hopes that the Congress is not prepared to accept a standstill in the steady and effective progress that the United States has been making in gaining improved intellectual property protection in the LDCs. Such a standstill, however, will occur if the current transition periods remain unchanged.

b. *National Treatment/Contractual Rights*—The Dunkel text makes certain exceptions to the cardinal trade principle of "national treatment." These exceptions would permit GATT member countries to discriminate against U.S. copyright owners by denying them national treatment. This could result in the loss of hundreds of millions of dollars to the U.S. record and film companies and the people they employ. The agreement would also permit countries to undercut existing and future contractual relationships between U.S. copyright owners and those who contribute creative services to a work. It, therefore, is essential that the final TRIPS accord eliminate the current exceptions to national treatment and include provisions that will not permit other countries to ignore U.S. laws and substitute their own domestic laws regarding "authorship" for agreements establishing relationships between U.S. nationals for works created in the United States.

c. *Technical Improvements*—In its letter to Ambassador Kantor, the IPC identified two deficiencies in the current Dunkel text that it considers to be "technical" in nature. These were not cited in the Moynihan-Packwood letter. They should be corrected in the legal/technical working group that is reviewing the current text:

i. *"Me too Registration" (Article 39(3))*—Protection of registration data provided to governments for the marketing approval of pharmaceutical or agricultural chemical products against "me too registration" should not be limited to "new chemical entities." The word "new" should be dropped from the text, since the testing of old chemical entities by modern procedures—quite often after the expiration of patent protection and involving considerable effort—is increasingly being required by governments in order to extend product registration to new uses.

ii. *Protection under Article 70(9) of Existing Subject Matter*—Article 70(9) has been billed as an effective means of preventing abuse during the long transition periods facing pharmaceutical and agrichemical products. The IPC does not share this view. The IPC, however, does believe that Article 70(9) could have a positive but marginal benefit if it were restructured to ensure the provision's original intent: to provide a period of market exclusivity for innovators of pharmaceutical and agrichemical products during the transition period when the LDCs are not obligated to provide patent protection to such products. As currently drafted, the article does not make it clear that exclusivity vests in the legitimate product from the time of the patent grant in the other country. Unless this is clarified, LDCs will be free to continue their current practice of delaying marketing approval for the legitimate product until after a copied product has first been approved for local marketing.

2. INSTITUTIONAL ISSUES (MTO AND DISPUTE SETTLEMENT)

a. *MTO Provisions*—To understand the concerns of the IPC about the MTO provisions on amendments, horizontal waivers and nonapplication, it is important to recall that the IPC originally supported the negotiation of a GATT intellectual property code that would be limited to signatories who were willing to subscribe to the code's high standards of protection and enforcement. At the time, we indicated our preference for a code with high standards of protection and fewer adherents than for a code that compromised the standards of protection to gain a greater number of adherents. It quickly became clear that the ground rules for the Uruguay Round did not include the negotiation of codes and that the final package would be a "single undertaking," which signatories would have to accept or reject in toto. The IPC reluctantly accepted the concept of a "single undertaking," which recognized the trade-off between higher levels of protection and globality of participation. We accordingly adjusted our sights and strategy during the hard negotiations that led to the Dunkel text. It is in this regard, that we view with great concern the current provisions for the MTO that could negate the effectiveness of the TRIPS agreement in a way not envisaged during the negotiation of the TRIPS accord itself. We fear that the Congress and U.S. industry have not sufficiently focused on the implications of these institutional issues for the substantive agreements being concurrently negotiated in the round. Our concerns focus on the MTO provisions on:

i. *Amendments*—The generally high standards of intellectual property protection and enforcement found in the Dunkel text reflect, for the most part, the intellectual property norms found in the developed countries and will require the LDCs to make significant changes in their national systems of intellectual property protection. The language of Article 71 of the TRIPS draft accord, which specifically covers the review and amendment of the TRIPS agreement, implies that amendments to TRIPS will be made on the basis of a "consensus." As currently drafted, the MTO amendment procedures, which we understand will cover TRIPS, do not operate on a consensus basis. As a result, if these provisions were not changed, they would undermine the standards set out in the TRIPS agreement. The IPC believes that U.S. negotiators should not agree to the inclusion of any amendment procedures that would permit changes in the TRIPS other than by consensus.

ii. *Horizontal waivers*—The current MTO text would permit a country to opt out of any provision of any Uruguay Round text, even if that text does not permit waivers. This is the case in TRIPS. Our negotiators are well aware that inclusion of such a waiver would totally undermine the TRIPS accord. Industry support for TRIPS is predicated on the "single undertaking" concept, that is, that countries could not opt out of any TRIPS provision or any other part of the Uruguay Round package. We fully support the current U.S. opposition to the inclusion of any "waiver" provision in the MTO.

iii. *Nonapplication*—The current Dunkel text would permit a country to not apply, for example, the entire TRIPS agreement in its trading relations with another country. In retaliation, the other country could not withhold concessions in the critical area of goods (e.g., tariff reductions). This is especially relevant to TRIPS, since our major leverage to deter most LDCs from opting out of TRIPS is not found in denying their inventors or creators intellectual property protection in the United States, but rather in denying their manufacturing and agricultural concerns access to the U.S. market for

their goods and products. Thus, nonapplication could, once again, limit the country coverage of TRIPS, a serious "nonstarter" for the IPC and U.S. industry.

b. *Dispute Settlement*—The IPC is especially concerned about the implications for TRIPS of the U.S. attempt to limit the scope of review for multilateral dispute settlement panels. We understand that the current U.S. proposal seeks to limit the ability of dispute settlement panels to challenge a national interpretation of GATT/MTO rules so long as the interpretation was reasonable, even if the panels favored a different interpretation. Our negotiators are well aware that the extension of such a "standard of review" to TRIPS would undermine the multilateral enforcement of the TRIPS provisions and would place in jeopardy U.S. industry support for the Uruguay Round package. It is important to recall that the multilateral enforcement of international intellectual property standards, which is absent in all WIPO intellectual property agreements, has been and continues to be one of the principal U.S. industry objectives for a GATT intellectual property agreement. The meaning of some of the key TRIPS provisions and their intent are very specific and known to our negotiators and the GATT Secretariat. If other "reasonable," but mistaken, interpretations by government entities of the TRIPS provisions will be outside the purview of dispute settlement panels, the value of the multilateral enforcement mechanism will plummet. It would be ironic if the support of the U.S. intellectual property-dependent industries for the final Uruguay Round package would be called into question by a U.S. proposal that would effectively turn the GATT into a WIPO clone and deny us one of our primary objectives for the round. We are raising this issue solely in the context of adequate and effective protection of intellectual property. The IPC does not have a position on whether or not a standard of review is needed in the context of the countervailing duty and antidumping issues. However, it is the IPC's belief that, if this standard of review is applied to the protection of intellectual property, it will be misused by government officials looking for a way out from under the standards of the TRIPS agreement.

The need for a strong agreement is especially vital in light of what the United States may have to give up in a TRIPS agreement. In particular, modification of Section 104 of the U.S. Patent Act, which will be required by the "nondiscrimination" provisions of Article 27(1), is an extremely contentious domestic issue and will be problematic without, at a minimum, an effective TRIPS accord that the U.S. private sector can support. Similarly, the limitations that the Uruguay Round package will place on our ability to use the full range of our bilateral weapons—principally Special 301—to stop the foreign piracy and counterfeiting of U.S. intellectual property is also a domestically contentious issue, especially when coupled with U.S.-inspired limitations on the ability of GATT dispute settlement panels to enforce the TRIPS accord. Another domestically contentious issue that is linked to the successful negotiation of a TRIPS agreement are the changes mandated by a GATT panel that the United States will have to make to Section 337. Finally, we must recall that many of the TRIPS concerns that were raised today are effectively dealt with in the NAFTA intellectual property chapter. Should the NAFTA pass—and we expect that it will—we will look to the intellectual property provisions of the NAFTA as the model for future intellectual property agreements in Latin America, Asia and Eastern Europe.

During the forthcoming "end game" of the round, the focus of the IPC will be on the negotiations on both the TRIPS and the intellectual property-related MTO and dispute settlement provisions. The IPC remains committed to working with the U.S. Government during the "end game." The final position of the IPC, however, will depend on the success of our negotiators in gaining the improvements in the Dunkel text that we seek.

RESPONSE OF EDMUND T. PRATT, JR. TO A QUESTION SUBMITTED BY SENATOR CHARLES E. GRASSLEY

Question. I would like to have each of you advise me of what, if any impact, failure to pass the NAFTA will have on the successful conclusion of the Uruguay Round.

Answer. This question reached me after the Congress had passed the NAFTA implementing legislation and, therefore, I am pleased that my answer is hypothetical and only provided to complete the record of this hearing. I believe that failure to pass NAFTA would have made more difficult the successful conclusion of the Uruguay Round. Our negotiating partners in the GATT would have viewed failure to pass NAFTA as calling into question President Clinton's leadership and signalling

a breakdown in the executive-legislative partnership in U.S. trade. I believe that they would have adjusted their negotiating strategies to take advantage of a weakened President. They would not have made the politically tough concessions to the United States necessary to complete the round out of fear that the final package would be rejected by the Congress. Again, I am pleased that the Congress approved NAFTA, which now permits our President and the U.S. negotiators to focus their efforts on successfully concluding the round.

IPC

INTELLECTUAL PROPERTY COMMITTEE
2300 M Street, N.W. Suite 800 Washington, D.C. 20037
Phone: (202) 973-2870 Telecopier: (202) 296-8407

March 11, 1993

The Honorable Michael Kantor
United States Trade Representative
Office of the United States Trade Representative
Washington, DC 20506

Dear Ambassador Kantor:

The Intellectual Property Committee (IPC), which was formed in March, 1986, is the only business group that has as its specific mission the mobilization of international support for improving the protection of intellectual property, and, as such, has focused much of its efforts on the GATT intellectual property (TRIPS) negotiations.

In this regard, the IPC wishes to take this opportunity to familiarize you with its views on the Dunkel text on TRIPS. While the Dunkel text on TRIPS goes a long way in providing the type of international intellectual property protection that the IPC and the U.S. Government have been seeking together in the GATT for over the last seven years, it also contains certain provisions that undermine adequate and effective international intellectual property protection.

We believe that the following are the major outstanding deficiencies in the current text that need to be improved in order to secure an adequate and effective international intellectual property instrument in the GATT:

1. Transitional arrangements - The transition period for developing countries currently found in the TRIPS text is too long. Developing countries should only be permitted an additional one year of transition for all intellectual property elements. Furthermore, the current draft discriminates among industrial sectors. The only way to ensure that the pharmaceutical, agrichemical and chemical industries gain commercial benefits from the TRIPS agreement that are similar to those of other patent-based industries is to provide pipeline protection along the lines found in the Mexican industrial property law or in the amendments to Article 70(8)(*ii*) suggested by the United States during the course of negotiations.

2. Works-Made-For-Hire - Failure to accord U.S. copyright owners national treatment with regard to video and audio levies and other collective compensation mechanisms and to require other countries to give effect to U.S. contractual arrangements will deprive U.S. copyright owners of millions of dollars otherwise due to them. It, therefore, is essential that a TRIPS agreement contain a provision on works-made-for-hire, including both national treatment and respect for contractual relationships.

3. Exhaustion - The language currently found in the Dunkel text is not neutral and continues to provide a basis for GATT support for international exhaustion. The language on exhaustion should either be deleted or redrafted to render it clearly neutral.

We have provided in the enclosure a more detailed description of our concerns about these and a number of other very serious deficiencies currently found in the Dunkel text. The final position of the IPC on an overall TRIPS text will depend on the success that our negotiators will have in gaining the improvements in the Dunkel text that we seek.

Should you have any questions or comments, please contact our counsel, Charles S. Levy (202/663-6400) or our economic consultant, Jacques J. Gorlin, (202/973-2870).

Under separate cover, the IPC will be providing you with its views on the intellectual property provisions of the NAFTA Agreement.

Sincerely,

Bristol-Myers Squibb	Johnson & Johnson
Digital Equipment Corporation	Merck & Co., Inc.
E.I. DuPont de Nemours & Company	Monsanto Company
FMC Corporation	Pfizer Inc.
General Electric Company	The Procter & Gamble Company
Hewlett-Packard Company	Rockwell International Corporation
IBM Corporation	Timer Warner Inc.

Enclosure

Major Deficiencies in the Dunkel Text on TRIPS
(An Analysis Prepared by the Intellectual Property Committee of
Annex III to MTN.TNC/W/FA of 20 December 1991)

March 11, 1993

The following are the major outstanding deficiencies in the order that they appear in the current text on TRIPS that need to be improved in order to secure adequate and effective international intellectual property protection:

1. Article 3 and Article 4 — The TRIPS text should mandate the strict application of National Treatment and Most Favored Nation Treatment for sound recordings.

2. Article 6: Exhaustion — The language contained in the Dunkel text continues to provide a basis for GATT support for international exhaustion. Both Article 6 and reference to Article 6 in the footnote to Article 28(i) should be deleted or redrafted to render them clearly neutral.

3. Part II, Section 1

   a. Article 14(4): Rental Right for Sound Recordings — The general standard for record rentals should be an exclusive rental right. The only exception to that standard should be a one-year exclusive rental right followed by equitable remuneration for countries having a system of equitable remuneration for record rentals on the date of signature of the TRIPS accord.

   b. Works-Made-for-Hire/Contractual Rights — Failure to accord U.S. copyright owners national treatment with regard to video and audio levies and other collective compensation mechanisms and to require other countries to give effect to U.S.

contractual arrangements will deprive U.S. copyright owners of millions of dollars otherwise due to them. It, therefore, is essential that a TRIPS agreement contain provisions on works-made-for-hire, including both national treatment and respect for contractual relationships among the persons involved.

4 Article 30: Exceptions to Patent Rights — Because the provisos in Articles 8 and 40 that certain measures that could be used to weaken intellectual property rights must be consistent with the provisions of the TRIPS agreement, the "exceptions" language in Article 30 takes on special significance. In its current form, the language is too open-ended. To ensure that the exceptions are limited, the first "unreasonably" and the phrase "taking account of the legitimate interests of third parties" must be deleted from Article 30.

5. Article 31(l): Dependent Patent Compulsory Licensing — The requirement that the second patent shall involve an important technical advance of considerable economic significance is not a sufficient enough safeguard to permit U.S. recognition of dependent patent compulsory licensing. It is the IPC preference that such practices be prohibited. If this cannot be accomplished, Article 31(l), at a minimum, should be redrafted to ensure that the dependent patent constitutes an important technical advance with considerably greater economic significance in relation to the invention claimed in the first patent. This redrafting should include, for example, explanation that a compulsory license shall not be available for a mere alternative process for the production of a product that is already available by existing processes.

6. Article 39: Protection of Undisclosed Information

a. Article 39(2) — As currently drafted, the footnote to Article 39(2) that defines "a manner contrary to honest commercial practices" would not expressly provide protection against continued use or further dissemination by a third party of a trade secret after it can be established that practices contrary to honest commercial practices were involved in the acquisition. The addition of the term "or use" to the fourth line of footnote(1) after the word "acquisition" clarifies that protection is available against continued "use" and not merely "acquisition."

b. Article 39(3): "Me Too Registration" — Protection against "me too registration" should not be limited to pharmaceutical or agricultural chemical products "which utilize new chemical entities." The latter limitation should be deleted, since the testing of old chemical entities by more modern procedures — quite often after the expiration of patent protection and involving considerable effort — is increasingly being required by governments in order to maintain product registration.

7. Part VI: Transitional Arrangements

a. Article 65:4 should be deleted. There cannot be any differentiation among industrial sectors with respect to transition arrangements.

b. The five-year transition period for developing countries is too long, regardless of the type of intellectual property. Developing countries, most of which already have the necessary institutional infrastructure to provide adequate intellectual property protection, should only be permitted an additional one year of transition for all intellectual property elements.

c. Article 66: Least Developed Countries — The eleven year transition period for least developed countries is too long, particularly in the field of copyright, and will result in copyright pirates simply switching their bases of operation to such least developed countries.

8. Article 70: Protection of Existing Subject Matter

a. Article 70(2) — Because some countries (China, Mexico) argue that the Berne Convention does not currently extend rights to works such as computer programs, they may well argue that Berne Article 18 does not apply to computer programs. Accordingly, the language in Article 70(2) that "obligations with respect to existing copyrighted works

shall be solely determined under Article 18" provides a significant loophole. This phrase should be changed to "copyright obligations with respect to existing [copyrighted] works shall be solely determined under Article 18 of the Berne Convention (1971), or under Article 18 of the Berne Convention, mutatis, mutandis...." The change would make it clear that the rules of Berne Article 18 as to retroactivity would apply whether or not the work was considered (under Berne) a copyrighted work.

b. Article 70(4) — The convoluted language is very dangerous and could be used to negate any transition protection found in the rest of the TRIPS text. At a minimum, the wording must be simplified to address directly the understandings U.S. negotiators have about the intent of Article 70(4) that were conveyed to the IPC.

c. Articles 70(8) and (9) — Patent counsel in the IPC companies, based on their real world experience, do not believe that these articles — especially Article 70(9) — provide any supplementary protection or tangible commercial benefits. The only way, therefore, to ensure that the pharmaceutical, agrichemical and chemical industries gain commercial benefits from the TRIPS accord that are similar to those of other patent-based industries is to provide pipeline protection along the lines found in the Mexican industrial property law or in the amendments to Article 70(8)(*ii*) suggested by the United States during the course of the negotiations. In addition, the language of Article 70(8) should be made consistent with that of Article 65(4) to ensure that the transition provisions under Article 70(8) are extended to all products covered by Article 65(4) (e.g., chemical as well as pharmaceutical and agrichemical products).

To the extent that the following issues can be addressed, international intellectual property protection will be substantially improved:

1. Article 8: Principles — So long as the language on exceptions in Article 30 is not strengthened, Article 8 as currently drafted permits the full exploitation of "public interest" and "public health" measures.

2. Definition of "Public Performance" — The absence of a definition of "public performance" could result in the denial of protection for many uses. U.S. and EC negotiators, therefore, should try again to craft a satisfactory definition of "public performance."

3. Article 27(2): Exclusions from Patentability — The term "commercial" should be deleted. The banning of only "commercial exploitation" presumably would permit non-commercial uses, such as production and distribution by the government, of the inventions that had been denied patent protection for the enumerated public policy-type reasons.

4. Article 27(3) — Exclusion of plant and animal inventions other than microorganisms from patentability goes beyond the current practice under the European Patent Convention, which the IPC had supported as the ultimate resolution of this issue. A critical class of inventions, with great commercial significance, will be excluded from protection.

5. Article 34: Process Patents: Burden of Proof — Parties should be required to provide for the reversal of the burden of proof without its being dependent on a judicial order. Otherwise, the remedy becomes subject to local political pressure. In addition, Article 34(1)(a) should be clarified to ensure that there is a mutually agreed upon understanding of the term "new product."

6. Article 65(5): Standstill — The TRIPS accord should require a freeze — not a standstill in relation to the terms of the TRIPS agreement — of domestic laws, regulations and practice during the transition periods. Under the current wording, a Party, whose laws, etc., are at a level higher than those contained in the TRIPS agreement, would be permitted to lower those laws to the level contained in the TRIPS accord.

Modification of Section 104 of the U.S. Patent Act that may be required by the "nondiscrimination" provisions of Article 27(1) is an extremely contentious domestic issue and will be problematic, without, at a minimum, a comprehensive TRIPS accord that the U.S. private sector can support. In this regard, European memoranda available to the IPC state that Article 27(1) requires the United States to drop Section 104.

PREPARED STATEMENT OF HOWARD D. SAMUEL

My name is Howard D. Samuel, and I am executive director of the Labor/Industry Coalition for International Trade, known as LICIT. LICIT is a coalition, representing labor and management, and until I retired as president of the Industrial Union Department of the AFL–CIO I was pleased to have served it as labor co-chairman. Since our appearances have traditionally featured presentations by both labor and management, today I am accompanied by Kenneth Freeman, Executive Vice President of Corning, Inc.

LICIT's objective is to represent the common interests of American firms and American workers in increased, balanced and equitable international trade. Over the years we have directed our efforts toward the negotiation of international agreements to regulate practices not effectively covered by the GATT; the effective enforcement of U.S. trade laws and existing international agreements; and the improvement of U.S. trade laws and policies where they have proven inadequate to deal with unfair trade practices.

We initiated our study of the Uruguay Round shortly after its inception, and during the past several years have developed a set of criteria and prepared three reports—the most recent in July of this year.

This report—copies of which are available to members of the Committee—is entitled "The Uruguay Round: Good for Manufacturing?" and has been signed by the following companies: Bethlehem Steel, BF Goodrich, Chrysler, Corning Inc., Intel, Motorola, and the Association for Manufacturing Technology, representing the machine tool industry. It has also been endorsed by the following national and international unions, affiliated with the Industrial Union Department: Amalgamated Clothing and Textile Workers, American Flint Glass Workers, Communication Workers, Machinists, International Brotherhood of Electrical Workers, International Ladies Garment Workers, the Electronic Workers, the Rubber Workers, and the Steelworkers.

To Sum up our position—which will be defined in greater detail by Mr. Freeman—while LICIT fully supports a successful Uruguay Round and applauds the progress that may have been achieved on agricultural issues, it believes that the so-called Dunkel texts, which appear to represent the basis for current negotiations, would undermine the U.S. ability to preserve its industrial base against foreign predatory practices and unfair market distortions.

During the 1992 campaign, candidate Clinton said that, "The United States can no longer afford to turn the other cheek when our competitors close their markets to our goods, dump and subsidize their products, violate trade agreements, and target our industries."

Later, as President. Mr. Clinton stated that "We must enforce our trade laws and our agreements with all the tools and energy at our disposal."

In spite of the strong position the Administration and Congress have taken on this issue, many in American labor and industry fear that U.S. negotiators would be forced to make concessions on trade laws to "pay for" the conclusion of the Uruguay Round. For U.S. manufacturing—as well as for the economy as a whole—such concessions would be too high a price to pay. Market access and effective disciplines on unfair trade must continue as the twin pillars of the GATT.

I am referring both to those elements which are included in the Dunkel texts, such as dumping, subsidies and countervailing duty remedies, the protection of intellectual property, and dispute resolution, and to issues which are not covered, such as foreign targeting and anti-competitive practices. We are particularly disturbed by the fact that Section 301 to assure U.S. exporters of open markets would be substantially weakened, if not rendered useless.

The manufacturing sector is a critical component of the U.S. economy, accounting for nearly 19 percent of U.S. national income in 1991. A strong manufacturing sector is essential to providing high wage jobs to American workers. President Clinton, in his campaign publication "Manufacturing for the 21st Century: Turning Ideas Into Jobs," stated "America can't prosper without a strong manufacturing base Manufacturing is the foundation for creating wealth "

Unfortunately, the Dunkel draft would seriously weaken the ability of U.S. industries, firms and workers to defend themselves against unfair foreign trade practices, without offering significant benefits to the United States sufficient to outweigh the major defects of the texts. Without substantial renegotiation of the Dunkel texts, the Uruguay Round would be a bad deal for U.S. manufacturers—and thus for the United States.

COMMUNICATIONS

STATEMENT OF THE AMERICAN CORN GROWERS ASSOCIATION, NATIONAL FARMERS UNION, AND THE NATIONAL FAMILY FARM COALITION

The American Corn Growers Association, National Farmers Union and the National Family Farm Coalition continue to be deeply concerned about the Uruguay Round talks of the General Agreement on Tariffs and Trade, especially the provisions for agriculture included in the Dunkel Draft Text and in the Blair House accords.

Over the course of these negotiations, our organizations have monitored these talks very closely, traveling to Geneva, Tokyo and other cities around the globe to find out exactly what is being proposed, what impact this would have on world trade, and how this would affect America's family farmers, especially those producing corn and other feedgrains. Frankly, we have been shocked by the blatantly anti-farmer proposals that have been made by both our own government and by other governments around the world.

Our members and our organizations have written thousand of letters to the Reagan and Bush Administrations, and to members of Congress, describing the specific concerns that we have with the proposals that have been made, and about the problems these would create for America's family farmers and rural communities. We have also made a number of specific suggestions of ways to reach a good GATT agreement. Thus far, however, our concerns and ideas have been largely ignored.

First of all, the American Corn Growers Association, National Farmers Union and the National Family Farm Coalition believe that there must be significant changes made to both the Dunkel text and to the Blair House accords, along the following lines:

1. Both the Dunkel Draft and Blair House accords include the Bush Administration's proposals for tariffication. They would abolish current U.S. laws controlling the imports of agricultural products, such as our Section 22 provisions in the Farm Bill and the Meat Import Act, replacing these effective laws with ineffective tariffs that would then be phased down or out over time. Given the ease in which countries can move the value of their currencies, tariffs are simply an ineffective means of maintaining an effective and balanced control over imports in sensitive industries. This ineffectiveness of tariffication was recognized by the 60 U.S. Senators who wrote to the previous Administration informing them that they would not accept any attempt by GATT to use tariffication to weaken Section 22.

The attempt to replace current U.S. import control laws with tariffication must be deleted from both Dunkel and Blair.

2. Both the Dunkel and Blair agreements include measures to reduce slightly export subsidies, but they fail to address the real problem, export dumping. Both Blair and Dunkel stipulate reductions in the quantity of goods that can receive subsidies, but this approach would require a huge bureaucracy to enforce and fails to address the fundamental problem of nations selling farm products at below the cost of production overseas through a wide range of policy manipulations, including currency manipulations, internal subsidies, etc.

The Uruguay Round should concentrate on reducing and ultimately banning export dumping.

3. The current Dunkel and Blair texts assume the shift of farm programs away from farm support prices to direct payments by governments to farmers. This is absurd in this time of huge budget deficits around the world and the recognition that the market should be paying the full cost of production, not taxpayers. These proposals, often called de-coupling, were pushed very hard by the Reagan and Bush administrations but were soundly defeated by Congress in the past. The Uruguay

Round should not be used as a backdoor way to impose policy changes that would ruin farmers and the budget.

We oppose the attempt in Blair and Dunkel to change the fundamental nature of U.S. farm policy from being marketplace driven to government handouts.

4. The sanitary and phyto-sanitary provisions in the Dunkel Draft are completely unacceptable. The attempt to allow imported goods to enter the U.S., with weaker requirements for safety than required of U.S. producers and food processors is absurd.

The sanitary and phyto-sanitary measures developed in the Uruguay Round should not be used to permit discrimination against domestic production, but instead should insure that countries do not use food safety standards to discriminate against either imports or local production.

5. Large fluctuations in world production and stocks, especially in grains, has been a difficult crisis to manage over the past decade. U.S. farmers often bear the brunt of major swings in supply and demand. The Uruguay Round has failed to address this serious problem, although there have been a number of excellent solutions proposed, including the World Food Reserve concept put forward by Senator Conrad.

The final agricultural agreement should address the problems of how to fairly share the cost of maintaining the world's food reserve and the problem of how to equitably share the burden of reducing world stocks when they grow to levels that are market disrupting.

While the American Corn Growers Association, National Farmers Union and the National Family Farm Coalition have very serious problems with the current proposals being made at GATT, we are strong supporters of the GATT system and the multilateral approach to regulating trade. We fear that if the GATT talks continue to be based on the present set of proposals, the only possible outcome is failure of the whole round. In order to save GATT, we believe that a moratorium in the talks must be called, and the most contentious issues addressed directly and without linkage to other issues.

We need a good GATT agriculture deal to stop the export dumping and to get world prices up. This cannot happen with the current main elements being considered. President Bush used to say that no GATT deal would be better than a bad deal. We can't tolerate this particular form of defeatism. We need a good GATT deal, not a bad deal or no deal. Here's what we would consider a good agreement.

WHAT WOULD BE A POLITICALLY FEASIBLE GOOD GATT AGRICULTURAL AGREEMENT?

Although an agricultural agreement will not necessarily guarantee the successful conclusion of the Uruguay Round, there most certainly will not be conclusion until there is an agriculture agreement. The following four specific elements of a good GATT agricultural deal can be found in almost every major position paper on GATT released by farm, consumer, and environmental organizations, and therefore represent a politically feasible basis for compromise on a good GATT agreement on agriculture.

REDUCE OR ELIMINATE EXPORT DUMPING BY ENFORCING GATT ARTICLE VI

Across the board, the major criticism of the current agricultural trade situation is the export of products, especially grains and dairy products, at prices below the cost of production. This dumping of agricultural products has negative impacts on developing countries in two ways. First, for those countries attempting to export, they must compete against these artificially low prices if they hope to gain any marketshare. At the same time, it affects farmers attempting to sell into their local markets, who must compete against extremely low-priced imported foods.

While devastating for poor countries, export dumping has not helped farmers in more wealthy countries. The primary benefit has gone to the buyers of these commodities, the grain traders and food processors. The first component of an acceptable GATT deal would be to begin enforcing Article VI, which prohibits dumping. To implement this provisions would require the commitment by all governments to gradually reduce and eventually eliminate the gap between the average cost of production in a country and the average export sales price, expressed in local currencies.

For example, the goal could be a 50% reduction in export dumping over the next 5 years, with a commitment to continue these reductions if the process is proceeding smoothly and the desired effect is being obtained. The most complicated aspect of this proposal, has already been largely solved as a result of this round of negotiations. Countries have already drawn up lists of the "hidden" costs of production that are currently being paid by some levels of government. These are expressed in dollar

amounts on national lists submitted as part of the overall attempt to establish the "Aggregate Measurement of Support" for most farm commodities.

One way to determine the average cost of production would be simply to add up all of the visible and invisible costs of production for the entire national crop divided by the total national production. Other approaches could be chosen, but as long as the approach is consistent for each country the net effect should be to decrease export dumping.

Some environmentalists may argue that adding up the visible and invisible costs doesn't reflect the true cost of production because it does not include certain externalized costs, like environmental degradation. The cost of ecological damage could be factored in as well, as long as each government worked from the same assumptions about the monetary value (cost) of various elements of ecological depletion. Frankly, however, the actual process for doing this type of ecological accounting is still very underdeveloped.

MAKE IMPORT CONTROLS MOST EQUITABLE AND TRANSPARENT BY CLARIFYING AND ENFORCING ARTICLE XI

Import controls are absolutely necessary for the functioning of domestic farm programs. They may, in fact, be the reason why agribusinesses and the food companies made the banning of import controls such a high priority, knowing that this would eventually lead to the elimination of all farm programs. However, no other single proposal from anyone has proven to be a greater threat to the survival of the Uruguay Round.

Over half of the U.S. Senators have signed letters saying they won't support a final GATT treaty that weakens U.S. farm import control rules under Section 22 of the Farm Bill. The president of the Young Farmer's Union of South Korea committed hari-kari in the GATT lobby in Geneva to protest attempts to force Korea to import rice, and the massive demonstrations in Japan, France, Germany, and other countries testify as well to the intense political opposition to this proposal.

Alongside of the intense protest to protect import controls there is clearly a recognition among a wide range of stakeholders, including farmers, that there needs to be an improved system of applying import controls, one that is fair and clear for everyone that is involved or affected. The fact that the United States and the European Community have been effectively exempted from the rules applied to other GATT member nations when it comes to import control laws is just one example of the inequities that need to be addressed in the Uruguay Round.

The reform approach that has garnered the greatest support, thus far, is the proposal from the Canadian farmers, carried by their government, to strengthen and then enforce the rules for import controls contained in the current GATT's Article XI. Under present rules, countries are free to use import controls as long as they are tied to domestic supply management programs. In the case of the U.S., we currently do not have to follow this rule because we were granted an exemption back in the early 1950's. For the EC, the form of import control used, the variable levy, is not mentioned by the GATT so they have been able to avoid compliance.

Even for the Canadians, who attempt to faithfully comply with the rules of Article XI, there is a great deal of ambiguity with regard to processed foods. Canada has the right to restrict milk imports as long as they have supply management for their dairy farmers, but they are being denied the right to restrict ice cream imports, which of course makes the limits on milk imports nearly meaningless. Canada wants the actual provisions strengthened to permit import controls on processed goods which directly undercut supply management programs, and they want the U.S. and the EC to eventually bring their import control programs under the Article XI provisions instead of being "outside the law." Adoption of this approach would go a long way towards addressing some of the inequities in the current GATT system.

STABILIZE WORLD PRICES BY ESTABLISHING AN EFFECTIVE WORLD GRAIN RESERVE

The massive drought here in North America in 1987–89 and the floods and droughts of 1993 are reminders of how fragile the world's food reserves really are. The gigantic oversupplies that kept world marketprices at disastrously low levels in 1990–92 are also reminders of how quickly shortage can turn into a price destroying surplus.

It is vital, for both consumers and producers, to establish a grain reserve mechanism that ensures that an adequate world reserve is established with the costs fairly shared among all nations, and that ensures that surplus stocks do not build up to the point where they destroy world prices. This would require that all nations share the cost of storing the world's grain reserve and that all producing nations

share the responsibility of reducing production when surpluses, beyond food security levels, are building up. Senator Kent Conrad (D-ND) has a plan calling on our GATT negotiators to pursue this overall approach to a GATT-led world food reserve.

CLARIFY ENVIRONMENTAL AND CONSUMER PROTECTION PROVISIONS

While it is clear that it is not in the interest of smooth trade for health and safety rules to be used as hidden trade barriers, it is also clear that concerns over environmental and consumer protection will remain high on the public's agenda for quite some time. Attempts to use the Uruguay Round talks and current GATT rules to undermine existing domestic environmental laws have already provoked a wide range of very powerful organizations to come out against the GATT. Any final deal must repair the damage that has been done by specifically confirming the right of national and sub-national units of governments to enforce environmental and consumer protection laws as strictly as they choose, as long as they do not discriminate against imported goods and are not used as a hidden, unwarranted trade barrier.

This could be simply done by clarifying that the current GATT language in Article 20, which allows for trade barriers to protect "human, animal, or plant life or health" does indeed cover the full range of concerns being addressed in modern environment and consumer legislation. Language that would be acceptable for this provision has been developed by Steven Shrybman while he was serving as staff attorney at the Canadian Environmental Law Association. He suggested the following:

> "1. Nothing in this (GATT) agreement shall be construed to prevent any party from taking any action which it may deem necessary to protect the environment including the establishment of import or export restrictions and the use of subsidies to:
>
> (i) prevent or remedy adverse environmental effects, and/or;
>
> (ii) conserve natural resources;"

The political opposition from family farmers, joined in many countries by consumers and environmentalists, has to be overcome before an agricultural agreement can be adopted. The outline I have just described would address some of the major problems in the world food trading system while being supportive of family farmers. Family farmers around the world would accept it. I know this because our organizations have been talking with the other groups around the world since December of 1987.

What is not clear is how these proposals will be greeted by the agribusiness interests who stood to gain so much from the current GATT proposals. These agribusiness interest have brought the GATT to the brink of collapse. Unless a compromise can be reached, opening the way for a more politically feasible proposal, it appears that the rest of the GATT talks cannot go forward, leading to further deadlock and eventual collapse.

In closing, we must understand the complex relation between all agriculture products which result in lower market prices for corn producers if other commodities are adversely affected. If the barley market is hurt, so goes other feed grains such as corn. If hogs and cattle prices fall, eventually fewer animals will consume corn. If raw sugar prices fall, so does the price of corn sweetener. Besides, there are few corn farmers that do not grow other commodities. Many of us raise livestock, soybeans, sugarbeets or other commodities too.

Attachment: Letter to Ambassador Kantor

November 4, 1993.

Ambassador MICKEY KANTOR,
U.S. Trade Representative,
Washington, DC

Dear Ambassador Kantor: The undersigned family farm, commodity, and rural organizations are writing to inform you of our continued concern about the current status of the Uruguay Round talks of the General Agreement on Tariffs and Trade (GATT), especially the provisions for agriculture included in the Dunkel Draft Text and in the Blair House accords.

Over the course of the last seven years of negotiations our organizations have individually and collectively written over 100 letters to the Reagan and Bush Administrations outlining a number of the problems that would be created for our family farmers and our rural communities from several of the proposals incorporated in the

Dunkel and Blair texts. To a large part, our concerns have fallen on seemingly deaf ears.

We believe that significant changes must be made to both the Dunkel text and the Blair House accords before we can support the final outcome when it comes to Congress. The following specific concerns are among the most important of the changes needed to make the Uruguay Round a positive instead of a negative change for rural America.

1. Both the Dunkel Draft and the Blair House accords include the Bush Administration's proposals for tariffication. This would abolish current U.S. laws controlling imports of agricultural products, such as our Section 22 provisions in the Farm Bill and the Meat Import Act, replacing these effective laws with ineffective tariffs that would then be phased down or out over time. Given the ease in which countries can move the value of their currencies, tariffs are simply an ineffective means of maintaining a balanced control over imports in sensitive industries. This effectiveness of tariffication was recognized by the 60 U.S. Senators who wrote to the previous Administration informing them that they would not accept any attempt by GATT to use tariffication to weaken Section 22.

The attempt to replace current U.S. import control laws with tariffication must be deleted from both Dunkel and Blair.

2. Both the Dunkel and Blair agreements include measures to reduce slightly export subsidies, but they fail to address the real problem, export dumping. Both Blair and Dunkel stipulated reductions in the quantity of goods that can receive subsidies, but this approach would require a huge bureaucracy to enforce and fails to address the fundamental problem of nations selling farm products at below the cost of production overseas through a wide range of policy manipulations, including currency manipulations, internal subsidies, etc.

The Uruguay Round should concentrate on reducing and ultimately banning export dumping.

3. The current Dunkel and Blair texts assume the shift of farm programs away from support farm prices to direct payments by governments to farmers. This is absurd in this time of huge budget deficits around the world and the recognition that the market should be paying the full cost of production, not taxpayers. These proposals, often called decoupling, were pushed very hard by the Reagan and Bush administrations, but were soundly defeated by Congress in the past. The Uruguay Round should not be used as a backdoor way to impose policy changes that would ruin farmers and the budget.

We oppose the attempt in Blair and Dunkel to change the fundamental nature of U.S. farm policy from being marketplace driven to government handouts.

4. The sanitary and phyto-sanitary provisions in the Dunkel Draft are completely unacceptable. The attempt to allow imported goods to enter the U.S., with weaker requirements for safety than required of U.S. producers and food processors, is absurd.

The sanitary and phyto-sanitary measures developed in the Uruguay Round should not be used to permit discrimination against domestic production, but instead should ensure that countries do not use food safety standards to discriminate against either imports or local production.

5. Large fluctuations in world production and stocks, especially in grains, has been a difficult crisis to manage over the past decade. U.S. farmers often bear the brunt of major swings in supply and demand. The Uruguay Round has failed to address this serious problem, although there have been a number of excellent proposals put forward to address these concerns.

The final agricultural agreement should address the problems of how to fairly share the cost of maintaining the world's food reserve and the problem of how to equitably share the burden of reducing food stocks when they grow to levels that are market disrupting.

While we have a number of other specifics that we would like to address in future letters, these are our main concerns. We would like to meet with you as soon as possible to discern what approach you believe would be the most effective for getting these changes incorporated into the final Uruguay Round agricultural deal.

As we have stated before, these are very serious concerns that need to be addressed before we can support any final outcome of this round. We are supporters of the GATT system and multilateral approaches to trade rules, and fear that if these concerns are not dealt with it will lead to the rejection of the entire Uruguay Round package by Congress.

Sincerely,

American Corn Growers Association; Farmers Union Milk Marketing Cooperative; Georgia Peanut Commission; Institute for Agriculture and

Trade Policy; League of Rural Voters; National Farmers organization; National Farmers Union; National Family Farm Coalition; Rural Coalition.

STATEMENT OF THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE

This statement is submitted by the American Textile Manufacturers Institute (ATMI), the national association of the textile mill products industry (SIC Industry 22).

With annual sales of over $60 billion, two-thirds of a million employees in nearly all of the fifty states and a crushing import burden that contributed to the loss of 165,000 jobs during the prior decade and an additional 65,000 since, the domestic textile industry has more than a passing interest in the Uruguay Round.

ATMI has taken a position in opposition to the Uruguay Round of GATT negotiations as it currently exists Our position derives from the fact that the Multifiber Arrangement (MFA) is being eliminated as part of the GATT negotiations in such a way as to cause an enormous loss of U.S. production and jobs. The phaseout of the MFA as called for in the so-called Dunkel Draft will lead to job losses in the domestic textile and apparel industries on the order of one million during the 10-year phaseout period. Three separate studies have reached this conclusion and summaries of them are attached as Appendix A. The remaining jobs and production left in this country after the phaseout will also likely be displaced by imports in a relatively short time. The Dunkel Draft phase out plan is a blueprint for the elimination of this major U.S. manufacturing sector, its 1.6 million workers and the hundreds of thousands of workers in the industries supplying fibers, chemicals and other inputs to textile and apparel production.

One of the worst features of the quota phaseout proposal is that it generously rewards the large textile and apparel exporters of Asia such as China, India and Pakistan while punishing not only U.S. workers but those in smaller developing countries including Mexico and the Caribbean. This is illustrated in Exhibit I which shows that under the Dunkel plan the quota growth provided China, India and Pakistan will overwhelm the quota access provided for all of Latin America, the Caribbean and Eastern Europe.

ATMI has tried without success to convince our government to seek improvements in the Dunkel proposal in order to lessen the damage to U.S. jobs and production. Unfortunately, neither the previous Administration nor the present one have expressed a willingness to change the MFA phaseout proposal. We have been told that if the Dunkel Draft on textiles is reopened it would create a chain reaction and other parts of the draft would "unravel." This is debatable, but the important question is: Is it in the United States' interest to support a GATT proposal that will put over a million U.S. manufacturing workers out of work and seriously damage a major U.S. industry? Moreover, we have been unable to find other segments of the Dunkel Draft that are so advantageous and beneficial to the U.S. that it would be wrong to "unravel" them.

In addition to the quota phaseout provisions there is another especially insidious provision of the Dunkel textile proposal called "product integration." This provision gives such unlimited power to the Executive Branch of our government that by government decree quotas would be removed literally overnight from selected textile and apparel products and our market declared open season for all foreign producers of that product. The Dunkel Draft calls for this to be done on over half of our textile trade during the phaseout period. The impact of this action on investment and planning by U.S. producers, especially smaller companies, would be devastating. On one day companies would be making investment plans and hiring decisions based on the expectation of continued (though increasing) quotas. The next day a government pronouncement would eliminate all quota protection and declare those products no longer subject to textile safeguard procedures. This exercise truly takes on the image of an Orwellian nightmare.

Mr. Chairman, I serve as Chairman of the Industry Sector Advisory Committee for Textiles and Apparel (ISAC–15) and our committee made a detailed study of the entire Dunkel draft when it appeared nearly two years ago. Our examination revealed that not only the U.S. textile and apparel industry but American interests generally would be seriously damaged by many parts of the Dunkel Draft. Let me cite just a few deficiencies:

- The antidumping provisions would seriously weaken existing U.S. antidumping laws and would make it more difficult for U.S. producers to attack illegal dumping by foreign suppliers. Those areas of concern include, but are not limited to, cumulation, sunset, circumvention and standing. ATMI participates in a broad

based coalition, the Committee to Support U.S. Trade Laws, and through that committee, ATMI has submitted extensive and detailed comments on the deficiencies in the Dunkel Draft in this area which need not be reiterated now.

- The countervailing duty provisions of the Dunkel Draft also will limit the ability of U.S. producers to seek remedies against illegal foreign subsidies. In fact, some developing countries who are among the most notorious subsidizers of textiles and apparel exports will be exempted from any disciplines under the Dunkel proposal as will certain subsidy practices.
- The Dunkel Draft on intellectual property does not deal effectively with the protection of textile and apparel designs and models in spite of our efforts to include such provisions.
- U.S. sovereignty is being challenged through the creation of a new trade body known as the Multilateral Trade Organization (MTO). The MTO would have powers not intended by the Congress with the result that, for example, any administrative or court decision involving U.S. trade could become subject to the approval of the MTO and/or an international tribunal process. U.S. court decisions could be overturned and the U.S. would either have to accept the tribunal decision or face retaliation by our trading partners.
- In the market access talks ATMI has urged the U.S. negotiators to require all participants to open their markets as a prerequisite to MFA quota liberalization, but thus far we have seen no progress. This means that as the negotiations currently stand, the U.S. will agree to eliminate textile and apparel quotas, reduce textile and apparel tariffs and yet will make no specific linkages that would require all participants to open their markets as well.

Perhaps you can understand why we are unpersuaded by arguments from our negotiators that the Dunkel Draft on textiles cannot be changed because it would "unravel" other parts of the negotiations. Mr. Chairman, nearly every part of the Dunkel Draft needs to be "unraveled" and improved in order to serve the full range of U.S. interests. We are not aware of any portion of the 400-page Dunkel Draft that is so clearly in the U.S. interest that it could or should not be reopened and improved.

The inviolability of the Dunkel Draft is a specious argument and must be rejected or else the U.S. will be a party to a disastrous trade agreement that will cripple our competitiveness and cause untold economic damage to our entire manufacturing base.

Let me describe briefly what our industry has been trying to do to mitigate the potential damage that will result from the Dunkel Draft. First, we have argued that the quota phaseout transition period should be extended from the current 10 years to 15 years. We have no illusions that this will correct the deficiencies in the Dunkel Draft; it will not. However, there is widespread, though quiet, support from other countries for an extension of the phaseout because most countries realize that the current 10-year phaseout plan benefits China, India and Pakistan and practically no one else. Even with a 15-year phaseout the damage will still occur to our industry and to other industries around the world, but it will be less abrupt. Other changes are clearly needed if massive job losses and production cutbacks are to be avoided. These changes include a new formula for quota growth rates and major modifications of the product integration mechanism described above.

We believe there is a major element of inequity inherent in this phaseout approach that ought to be corrected along with the improvements we have suggested. The current Dunkel Draft as well as the market access negotiations would result in the U.S. phasing out its textile and apparel quotas and cutting textile and apparel tariffs significantly. This would mean that the U.S. textile and apparel industry and its workers would be making an enormously disproportionate contribution to the Uruguay Round talks, more, in fact, than any other industry anywhere. The U.S. would, at the same time, be making no specific, comparable demands of the other participants in the GATT Round.

We believe that the U.S. should, at a minimum, demand that all countries at the negotiating table be required to open their textile and apparel markets to imports as a prerequisite to receiving MFA quota liberalization. If this is done, real reform of the world trading system in textiles and apparel could be accomplished. Many textile and apparel industries in other countries share our views on this issue. U.S. negotiators have expressed some interest in this approach as well. We urge this Committee and the Congress generally to support such an approach and to urge our negotiators to make it a requirement for the completion of the Uruguay Round.

Most of the major Asian textile and apparel exporting countries maintain highly protective tariff and non-tariff barriers to imports of textile products. For example, India not only maintains tariffs of 50–100 percent, but the Indian government has a prohibition on imported textile products. The effectiveness of those measures are illustrated by the trade statistics. In 1991, India exported $5.5 billion of textiles and apparel while it imported no apparel and $250 million worth of textiles solely for use in products to be subsequently exported. The same is true in other countries. Pakistan exported over $4.4 billion worth of textile and apparel products and imported less than $200 million in 1991, none of it apparel. The list could go on and on.

Those obstacles can be attacked effectively only by linking their removal to MFA quota liberalization. This is an opportunity to truly reform trade in these products and we hope that this Committee will endorse this approach and urge our negotiators to demand it.

Mr. Chairman, I would like to make a comment regarding a country that is not a member of the GATT but is desperately trying to become one—the People's Republic of China. As I mentioned earlier the Dunkel Draft rewards the large exporting countries of the Far East, and China certainly is one of the countries which will benefit from the MFA phaseout, probably more than any other country. We have urged U.S. negotiators to deny China any of the benefits of the Uruguay Round because it is not a GATT member. The responses we have received have been encouraging, but, of course, since China already receives most-favored-nation treatment, it will get the benefits of tariff reductions agreed to in the Uruguay Round. In our view this is unfortunate and we have worked with our negotiators to try to avoid tariff cuts on those products of interest to China.

We believe there should be a clear cut policy, however, that the People's Republic of China, as well as other non-GATT members, will receive none of the benefits of the Uruguay Round. Even more importantly, we believe that China should not be permitted to join the GATT until it meets very stringent requirements. Specifically, China must demonstrate in real terms that it has become a market economy; that it has opened its market so that real trade, reciprocal trade, is taking place; that it has adopted labor standards that recognize not only human rights but workers' rights including a safe and healthy workplace; that it has eliminated unfair trade practices such as dumping and subsidization and refrains from exchange rate manipulation and environmental pollution. China's accession to the GATT must be conditioned in this manner; otherwise China will unfairly dominate our textile and apparel market causing massive damage and job losses.

In conclusion, the Dunkel Draft as currently written is a road map for disaster in practically every respect. There is little doubt that it will lead to the decimation of our industry and its workers. We realize that a little over a month remains before the latest deadline for the conclusion of negotiations but we can find no justification for rushing headlong to a disastrous outcome. We urge the Committee to demand major changes in the Dunkel Draft or the withdrawal of entire sections of the draft.

We believe it is unfortunate that the Uruguay Round appears headed to such a result. There is a better way than the Dunkel Draft to bring about true reform of world trade in textiles and apparel. ATMI was joined some months ago by over 50 fiber, textile and apparel trade associations and unions from 25 countries in endorsing an alternative approach. We are attaching as Exhibit II the "Charter of Fundamental Principles of Global Trade for Textiles and Apparel" which, if implemented by governments, would truly reform textile and apparel trade. We commend those principles to your review and hope that the Committee will urge that they become the basis of all future trade negotiations.

APPENDIX A

The Impact of Eliminating the Multi-Fiber Arrangement on the U.S. Economy

Isolating the Textile and Apparel Components of GATT

Submitted to:

American Fiber Textiles and Apparel Coalition

Industry Analysis

The WEFA Group employed the Industrial Analysis Service Model to trace and measure the impact of the proposed new trade policy for textile and apparel on industrial output and manhours for the period 1993-2002. This model uses a combination of input/output and statistical techniques to estimate the impact of new trade assumptions on textile and apparel manufacturers and all related industries.

In input/output analysis, the production of a commodity like apparel starts a chain reaction of transactions through the economy. Demand for apparel prompts its manufacture, and this production in turn generates a need for inputs, such as fabrics, buttons, paper, advertising and trade services. These are referred to as direct industries. These suppliers to the apparel core sectors will in turn need inputs for their own production. For example, in order to meet demand coming from the apparel industry, textile manufacturers will require inputs of cotton, synthetic fibers, electricity, and so on. Likewise, the second-round suppliers to the apparel industry will require inputs for their production processes, with the cycle continuing. The sum of all these transactions are referred to as indirect supplier contributions. In addition, the income earned by employees in these industries, as production and sales transactions occur, will in turn be spent on goods and services, creating additional demand and production requirements throughout the economy. This is the familiar income multiplier concept, referred to as "expenditure-induced" impacts.

Impact on Production

Direct requirements by the textile and apparel manufacturers are those inputs purchased by these two industries for the final production of textile and apparel products. These industries demand materials (referred to as intermediate demand) and add value to produce their own products.

An examination of the direct and indirect impact of the proposed trade policy (Table 4A) shows that the linkages of the textile and apparel industries are diverse, with almost every U.S. industry affected to some degree. Due to the concentration of textile and apparel inputs in nondurable goods, the nondurable industries are impacted the most. On average over the next ten years the total impact on these industries amount to $10.64 billion 1982 dollars or 0.34% of baseline output. Sectors which are significantly affected are chemicals ($1.64 billion 1982 dollars or 0.6% of the baseline), paper ($0.52 billion 1982 dollars or 0.45%), and miscellaneous manufacturing ($0.08 billion 1982 dollars 0.25%). Agriculture and regulated industries show large impacts in percentage terms from baseline levels despite small dollar figures. The direct and indirect impact to the agriculture sector is $0.3 billion in real terms, or 0.18% of the actual on average between 1993-2002. Regulated industries, which consist of electric utilities, transportation services, and telecommunications services, are also affected by the assumed change in trade policy. Around $0.97 billion 1982 dollars or 0.11% of the baseline output result from the indirect feedbacks from the assumed changes in trade in the textile and apparel industries.

When the induced spending effects generated by the change in textile and apparel trade are considered, further impacts associated with the proposed new trade policy are implied for U.S. industries. Our methodology allows prices to respond to demand changes, and at the same time income is reduced due to employment losses. These two phenomena have offsetting influences on demand and supply.

Induced impacts reflect lower income for employees in the textile and apparel industries, which in turn cause reduced spending on a wide array of goods and services. New cars, furniture, clothing, food, vacations, housing, and other goods and services are all affected. As can be seen from Table 4A, the expenditure-induced impacts are quite apparent in virtually every industry.

In manufacturing, the expenditure-induced impacts on durable goods amount to $2.55 billion 1982 dollars or 0.14% of the average 1993-2002 baseline output forecast. The change is durable goods output reflects both reduced spending for automobiles, appliances, furniture, and so on, as well as lower investment demand for machinery and equipment to produce these goods as business respond to lower demand for their products. The expenditure-induced impacts on nondurables production is $2.72 billion 1982 dollars, or 0.2% of the baseline output forecast.

The impacts accrued in manufacturing have counterparts in other sectors of the economy. A reduction of $0.14 billion 1982 dollars is observed in construction, reflecting reduced demand in both the residential and nonresidential sectors, while the impact on the regulated industries will be $0.75 billion.

Likewise, the continual declines in income generated by this process leads to lower wholesale and retail activity. Sales margins are reduced $1.44 billion 1982 dollars in the wholesale and retail trade sector. This represents 0.14% of the ten-year average baseline output from 1993-2002.

Impact on Manhours

Because the level of employment and manhours in most industries is generally a function of their output, the impact on manhours closely mirrors output effects, unless other inputs have substantially higher costs per unit. These effects are summarized in Table 4B.

In the direct and indirect industries, on average 179 million manhours are lost in the manufacturing sectors due to the proposed new trade policy. The vast majority of these manhours, 172 million hours, are in the nondurables sector. The durable industries are impacted by 6.2 million hours on average.

In the nonmanufacturing sectors, 17 million manhours are lost on average in the regulated industries, or 0.12% of the average baseline manhours over the next ten years. In wholesale and retail trade 24 million manhours or 0.05% of the baseline average are lost. Finally, in the service sectors 17 million hours, or 0.04%, are lost an average due to increases in textile and apparel imports.

The expenditure-induced employment impacts likewise reflect the induced gross output impact. For example, within manufacturing, 68 million hours of work are lost on average due to the assumed trade policy change. Of these, 32 million hours are lost in durable goods industries, and 68 million hours are lost in nondurable goods industries. Also 14 million manhours are lost on average in the regulated industries, 53 million hours in wholesale and retail trade, and 23 million hours in the narrowly-defined service sector between 1993 and 2002.

Impact on Employment

As might be expected, the employment impact of the new proposed trade policy on the textile and apparel sectors is severe. Table 4.5 shows the direct and indirect impact on employment for all of the two digit SIC industries, and Table 4.6 summarizes the induced impact. The WEFA Group baseline (with MFA) forecasts a job loss of 392,000 in the textile and apparel industries during the 1993-2002 period, based on expected productivity increases as well as the domestic industries' competitive disadvantages.

Under the new proposed policy (GATT) the employment declines will be much more severe. The direct and indirect impact on the textile and apparel industries is estimated to be job loss of 647,000, and the induced effect is an additional 98,000, during 1993-2002.

Under the new proposed policy (GATT) the direct and indirect impact on total establishment employment is estimated at 970,000, including 210,000 jobs lost in the non-manufacturing sectors. The induced impact is estimated to be an additional 420,000 job loss in total, of which 150,000 is in the non-manufacturing sectors.

CHARTER OF FUNDAMENTAL PRINCIPLES OF GLOBAL TRADE

FOR TEXTILES AND APPAREL

(A TEXTILE/APPAREL MAGNA CARTA)

The fiber-textile-apparel industries constitute one of the major sectors in our national economies. Creativity, innovation, productivity and investment in products and processes have allowed the industries to continue to support millions of jobs and to respond to the ever-increasing demands of the consumer for quality fashion products. Our industries are committed to expanding international trade by competing on terms that are equitable and reciprocal. This means there must be agreement on fair conditions of trade.

Fair conditions of trade require:

(1) Opening of textile and apparel markets on a reciprocal basis among free market economy countries in the developed world by means of reductions of tariffs and progressive dismantling of non-tariff barriers applicable to those countries' exports, while working to resolve issues and problems affecting trade with other countries that are committed to the free market system but are at different stages of development,

(2) Internationally agreed rules that provide for more vigorous enforcement of measures aimed at eliminating all forms of dumping, subsidies having a distorting effect on trade and piracy of intellectual property,

(3) Measures to prevent circumvention of trade rules by transhipment and false declaration of value, product description and country of origin,

(4) A system of safeguard mechanisms that provides for swift action to deal effectively with market disruption or threat thereof,

(5) Specific provisions for dealing effectively with the problems caused by trade distorting practices inherent in non-market economies and nations that practice industrial targeting - because no private sector business can effectively compete against the resources of a state -while favouring the development of emerging democracies,

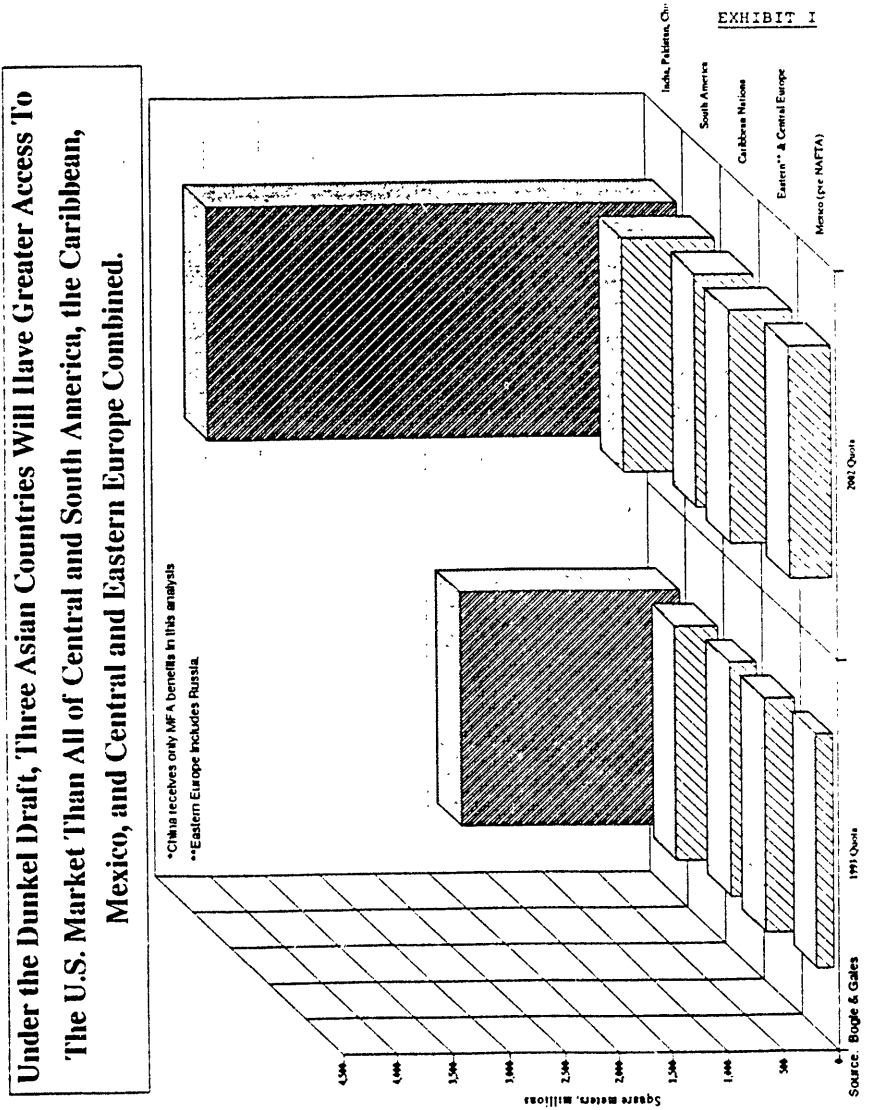
(6) Commitment by all countries to accept and implement the following principles for all textile and clothing workers, including those employed in export-oriented free-zones : the freedom of association, freedom to organize and bargain collectively, prohibition of forced labor, a minimum age for the employment of children, minimum standards governing hours of work, wages, and health and safety conditions, the elimination of employment discrimination on the basis of race, color, sex, religion, political opinion, national or social origin, prevention of occupational accidents and diseases, compensation in case of work accidents or occupational diseases.

(7) Promotion of a world-wide positive approach to environmental issues aimed at overcoming unfair competitive advantages created by some countries' failure to enact and enforce acceptable environmental standards. This means conditioning continued market access for goods on adherence to acceptable environmental practices in production of goods benefiting from such access.

(8) A system of verification and enforcement of those rules and principles, allowing countries and/or companies that are adversely affected to take rapid compensatory and punitive measures sufficient to deter unfair and illegal practices,

The signatories of this Charter must commit to all the above-mentioned principles. These principles are interrelated and non-severable from the Charter which, as a cohesive whole, will be promoted by the signatories in their relations with their respective public authorities and during international bilateral and multilateral negotiations.

EXHIBIT I



May 28, 1993

CHARTER OF FUNDAMENTAL PRINCIPLES OF GLOBAL TRADE FOR TEXTILES AND APPAREL

(A TEXTILE/APPAREL MAGNA CARTA)

WE, the undersigned, commit our organizations to support and work for the adoption of the Charter of principles contained in the attached document.

WE believe that the world trading system in textiles and apparel can be significantly improved by the adoption of these principles by the countries involved in fiber, textile and apparel trade.

WE believe that these principles should be employed in the Uruguay Round of GATT trade negotiations and should form the basis of all provisions in those negotiations related to trade in fiber, textile and apparel products.

WE urge the Industries and the Trade Unions around the world in these sectors to join with us in supporting the reform of the world trading system in these products.

WE further urge our respective governments and all governments to support the charter of principles as the basis for the GATT negotiations on fiber, textile and apparel products and we commit to work with our own governments to this end.

FINAL REPORT

ANALYSIS OF THE DOMESTIC EMPLOYMENT EFFECTS OF THE REMOVAL OF U.S. TEXTILE AND APPAREL IMPORT QUOTAS BY 2002

Prepared for:
The Fiber, Fabric and Apparel Coalition for Trade
Washington, D.C.

EXECUTIVE SUMMARY

The Chairman of the Textiles Group in the Uruguay Round trade negotiations has proposed that MFA quotas on imports of textile and apparel products be completely eliminated by 2002. TRA's analysis shows that such action will cause severe domestic textile and apparel production and employment losses.

Table 1
Domestic Production of Textile and Apparel Products
(Billion SYE)

	MFA			No MFA		
					% Change Versus	
	1989	2002	Change	2002	1989	2002 MFA
Fabric	22.9	25.4	11.1%	7.5	(67.2)	(70.5)
Apparel	12.6	13.6	7.9%	7.3	(42.1)	(46.3)
Floor Cover.	1.3	1.5	15.4%	1.4	7.7	(6.7)
Misc.	9.4	10.1	7.4%	5.6	(40.4)	(44.5)

Source: TRA Analysis

If the MFA remains in place, projected domestic output of textile and apparel products would increase slightly over the 1989-2002 period. Elimination of the MFA would cause domestic output in all categories except floor coverings to fall by 40 to 60 percent compared with 1989 and baseline (MFA) 2002 levels. These drastic production losses are the direct results of import gains in the absence of any quota restraints. As shown in Table 2, the production losses to imports would produce very severe employment losses.

Table 2
Domestic Textile, Apparel, and Supplier-Industry Employment
(Thousand Workers)

	MFA			No MFA	
			%		% Change
	1989	2002	Change	2002	vs. 2002 MFA
Fabric	527	397	(24.7%)	187	(52.9%)
Apparel	803	617	(23.2%)	239	(61.3%)
Floor Cover.	63	49	(22.2%)	45	(8.2%)
Misc.	226	174	(23.0%)	65	(62.6%)
Supplier Ind.	617	505	(18.2%)	245	(51.5%)
Total	2236	1742	(22.1%)	780	(55.2%)

Source: TRA Analysis

Despite the modest 1989-2002 production gain under the MFA, total employment in the textile, apparel, and supplying industries would decline by about 22 percent as a result of long-term productivity increases. Following removal of all MFA import quotas, however, total employment in 2002 would fall from 1.7 million workers to 780 thousand workers for a total additional loss in employment of almost one million jobs or 55 percent.

STATEMENT OF THE CHEMICAL MANUFACTURERS ASSOCIATION

Good morning, Mr. Chairman and members of the Subcommittee. My name is Larry Gess, and I am the Director of World Trade for Nalco Chemical Company, located in Naperville, Illinois. I am here today to convey what the Chemical Manufacturers Association (CMA) has done to advance a successful conclusion to the Uruguay Round negotiations.

Those of us in the chemical industry know that international trade is in an economic quagmire. The industry is still coming out of the recession. Overall export demand is soft. Some companies have been forced to lay off workers. Companies are downsizing and deferring capital investments. And as the chemical industry goes, so goes the economy: Our downstream customers, including construction and manufacturing, are also experiencing a mixed outlook.

Is there a *cure* for the situation? There is.

Is it a *cure-all* for our economic concerns? It is not.

The engine we need to pull us out of the economic quagmire is the Uruguay Round of Multilateral Trade Negotiations. That's why the U.S. chemical industry is doing all it can to help complete the Round.

Six weeks ago I shared with the Subcommittee the U.S. chemical industry's commitment to the North American Free Trade Agreement (NAFTA). From our vantage point as America's largest exporting industry, NAFTA is an excellent example of the refinements possible in trade agreements. In NAFTA's case, those refinements mean direct job opportunities for the United States, for the chemical industry, for Nalco's customers and for my company.

The potential trade benefits of the Uruguay Round are staggering. It is true that we may not see the direct short-term benefits that we will with NAFTA. It is true that the draft Round agreements are not as comprehensive as some of those in the NAFTA. But in its scope and impact, the Round is likely to have many times the benefit of any regional trading agreement. To realize these gains, and to establish a basis for future progress in international trade disciplines, we must successfully complete the Round.

The U.S. chemical industry generally supports the draft final Agreement for the Uruguay Round, the so-called Dunkel text. Our support for the draft Agreement is premised, however, on a reasonable market access component, which is still being negotiated. Rather than focus on how well the Dunkel text meets the industry's objectives, I'd like to spend a few moments describing what I believe is the chemical industry's most important contribution to the negotiations.

When the Uruguay Round began, the chemical industry had a number of priorities. Our industry sought improved international standards for the protection of intellectual property and trade-related investment. We emphasized time and again that tariff negotiations should not be a primary objective for the Uruguay Round—our experience in the Kennedy and Tokyo Rounds showed the limitations inherent in a "tariff-cut" approach to the negotiations. Rather, CMA and its members advocated an approach that linked the removal or reduction of tariff *and* non-tariff barriers to trade with improved access to foreign markets. CMA worked closely with the industry groups in Canada, Japan, Australia and Europe to forge a common position on this approach.

More to the point, the members of the Office of the Chemical Industry Trade Advisor (OCITA), a coalition made up of CMA, the National Agricultural Chemicals Association (NACA), the Society of the Plastics Industry (SPI), the Synthetic Organic Chemical Manufacturers Association (SOCMA), The Fertilizer Institute (TFI), the National Paint and Coatings Association (NPCA), and the Chemical Specialties Manufacturers Association (CSMA) also supported our approach to tariff harmonization. I want to emphasize that point. Our harmonization proposal promotes a fair, balanced approach, and has gained widespread support.

Two years ago, CMA and its foreign counterparts developed a framework agreement for tariff harmonization in the Uruguay Round. This harmonization agreement is not a tariff-cutting exercise but a true market access proposal. It seeks to equalize chemical tariffs for *all* GATT Contracting Parties, and eliminates non-tariff measures which could replace those tariffs. If fully adopted, our proposal would reduce peak tariffs, encourage countries to reduce and bind their tariff rates, and even remove tariff protection where practicable.

I am very proud that the Geneva negotiators, including the U.S. delegation, have essentially adopted the chemical industry's framework for the tariff harmonization talks covering products contained in Chapters 28–39 of the Harmonized Tariff System. The significance of our proposal lies not only in how it advances the negotiation, but in the example it sets for other tariff harmonization talks in the future.

CMA's Tariff Harmonization Agreement (THA) links broad country coverage, the reduction of non-tariff measures, accelerated reductions (i.e., zero-for-zero proposals) and safeguards against import surges. To allow for manufacturers to adjust to tariff reductions, the Agreement allows for a longer staging period for products which have higher current duties. Country coverage must be as complete as possible, and should include all the major U.S. trading partners and developing economies.

An important aspect of our proposal is that there are no exceptions to the harmonization levels. Under our proposal, the negotiators could easily pursue reductions below the specified harmonization level in those cases where the specific sector or product made such progress viable.

For those products which might be sensitive to increased imports caused by tariff reductions, our proposal contains provisions allowing individual manufacturers to justify their claims for sensitivity directly with their respective governments. In other words, our proposal did not, and does not, condition industry support upon protection for any "sensitive" products.

Take a moment to consider the implications of this relatively simple harmonization proposal. Using this approach, no country negotiating in the Round will be forced to accept drastic tariff cuts. Tariff cuts do not become the bargaining tool of last resort. The vast majority of tariffs will be reduced to levels that enhance trade, particularly with those countries with whom our developing trade is significant. Realistic opportunities for tariff elimination can be readily identified and negotiated. And more importantly, the tariff negotiations return to their appropriate place—as one component of a comprehensive negotiation covering all trade-related issues.

I said earlier that I am proud of the chemical industry's contribution to the Round. We are confident that progress in Geneva—aided by proposals such as our harmonization agreement—will permit the President to notify Congress by the December 15, 1993 deadline. Just as my industry looks to the NAFTA to drive significant economic gains in North America, we look to the GATT to open up the world market.

Mr. Chairman, that concludes my statement. I ask that it, and the attached summary of CMA's objectives for the Uruguay Round, be made a part of the record. I will be happy to answer any questions that members might have.

CRITICAL CHEMICAL INDUSTRY ISSUES IN THE URUGUAY ROUND

INTRODUCTION

The Chemical Manufacturers Association has identified issues of critical importance to its members in the Uruguay Round. As the negotiations head for a conclusion in December 1990, we want to reemphasize the importance of achieving the following results. A balanced, but comprehensive agreement that meets these needs will be vital to chemical industry support for the outcome of the Round.

MARKET ACCESS/TARIFF & NON-TARIFF MEASURES (NG 1, NG 2)

- Make no chemical tariff concessions without fair, open and equivalent access to foreign markets including acceptable elimination of and disciplines over identified non-tariff measures
- Seek global harmonization of chemical tariff rates and bindings
- Eliminate fiscal duties, additional customs charges
- Prohibit restrictive licensing
- Preclude use of import quotas
- Confine import prohibition to reasons of national security, health, safety and environment
- Provide GATT discipline over preshipment inspection
- Discipline restrictive aspects of technical standards
- Establish a tariff-shift basis for Rule of Origin

TRADE RELATED INTELLECTUAL PROPERTY (TRIPS) (NG 11)

- Protect trade secrets and seek longer and uniform terms for product and process patents
- Bar compulsory licensing except for adjudicated competition law violations and declared national emergencies
- Dispute settlement, enforcement, penalties and non-discrimination
- Guarantee rights to royalties for intellectual property owners
- Eliminate discrimination against related party royalties
- Apply intellectual property rights protections to new areas of technology
- Ensure full participation by all Contracting Parties

TRADE RELATED INVESTMENT MEASURES (TRIMS) (NG 12)

- Prohibit:
  - —Local content requirements
  - —Trade balancing requirements
  - —Technology transfer requirements
  - —Export and performance requirements
  - —Foreign exchange restrictions
- Subject all other TRIMs to GATT discipline
- Ensure full participation by all Contracting Parties
- Seek national treatment and transparency
- Minimize governmental screening of foreign investment proposals

SUBSIDIES/ANTI-DUMPING (NG 10, NG 8)

- Tighten definitions of subsidies and enforcement
- No weakening of existing disincentives to dumping

SAFEGUARDS (NG 9)

- Provide rules and procedures which promote reliance on GATT principles rather than gray area measures
- Accept limited selectivity

DISPUTE SETTLEMENT (NG 13)

- Preclude blockage of panel report adoption by a single Contracting Party and its implementation
- Finalize preliminary Mid-term Review Agreements [1]

AUSTRALIAN CHEMICAL INDUSTRY COUNCIL; CANADIAN CHEMICAL PRODUCERS' ASSOCIATION; CHEMICAL MANUFACTURERS ASSOCIATION (USA); EUROPEAN CHEMICAL INDUSTRY COUNCIL; JAPAN CHEMICAL INDUSTRY ASSOCIATION

October 28, 1991.

JOINT FRAMEWORK AGREEMENT FOR TARIFF HARMONIZATION IN THE URUGUAY ROUND

1. The tariff levels of all products contained in Chapters 28–39 of the Harmonized Tariff System should be harmonized and bound. Harmonization shall start from currently applied MFN rates.

2. The harmonization will be phased as follows:

Tariff level	Harmonization level (See attachment)	Time frame
10% or less	5.5–6 5 percent	5 years
10.1–25%	6.5 percent	10 years
>25%	6.5 percent	15 years

Applied tariffs currently below the harmonization levels remain the same subject to the provisions of paragraph 3.

3. Reduction of tariff levels below the specified harmonization level, including total elimination of tariffs, is a viable goal in certain sectors or for specific products and should be supported by negotiators.

4. There will be no exceptions to the harmonization agreement per se. The above phasing schedule is intended to accommodate products which may be sensitive to tariffs reductions.

However, manufacturers of products which may be most sensitive to tariff reductions must justify their claims to their respective negotiators. Only those products so justified need not be subject to the provisions of ¶2, but may be granted the following treatment:

A. Phasing shall not exceed 15 years

B. The harmonization level may be different than those specified above.

[1] Detailed papers on each of these critical issues are attached. For more information contact Jim O'Connor (202:887–1130) at the Chemical Manufacturers Association.

C. Tariff reductions will be no less than 30% and be in the spirit of the harmonization agreement.

5. If, within the phasing periods, import surges occur such that imports of specific products are significantly in excess of the trend for a reasonable base period, affected parties will be allowed to delay tariff cuts for justified time periods. Such delays shall not affect the achievement of the final deadline for tariff harmonization.

6. Country coverage must be as complete as possible and should strive to include: Argentina, Australia, Austria, Brazil, Canada, the European Community, Finland, India, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Singapore, Sweden, Switzerland, Thailand, Venezuela and the United States of America.

7. Tariff harmonization in accordance with the above criteria is subject to reduction and elimination of non-tariff measures which have been identified to the negotiators by their respective country chemical industries.

8. This agreement should be considered an integral part of the total Uruguay Round package. It is recommended that this agreement supersede previous tariff offers in the chemical sector.

ATTACHMENT I

Harmonized tariff schedule	Chemical tariffs harmonization levels
Chapter 28 [1]	5.5 percent
Chapter 29: [1]	
2901–2902	0 percent
2903–2915	5.5 percent
2916–2942	6.5 percent
Chapter 30 [1]	0 percent
Chapter 31 [2]	6.5 percent
Chapter 32	6.5 percent
Chapter 33 [2]	6.5 percent
Chapter 34 [2]	6.5 percent
Chapter 35 [1]	6.5 percent
Chapter 36	6.5 percent
Chapter 37	6.5 percent
Chapter 38 [1 2]	6.5 percent
Chapter 39 [2]	6.5 percent

[1] Where appropriate the pharmaceutical 0-for-0 offer applies.
[2] The industry will seek lower harmonization levels within these HTS chapters

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STATEMENT OF THE COALITION FOR MARKET ACCESS PARITY (CMAP)

THE COALITION FOR MARKET ACCESS PARITY (CMAP)

CMAP is a coalition of U.S. chemical companies, large and small, that are very concerned about the outcome of the Uruguay Round negotiations, especially the final agreement on market access. The industry has worked diligently and sincerely, for the last seven plus years, to assist the U.S. negotiators to achieve a market access agreement that would expand access to global chemical markets. The goal of CMAP members is to help U.S. negotiators insure expanded opportunities for U.S. chemical exports.

BACKGROUND ON U.S. CHEMICAL INDUSTRY EXPORTS

The U.S. chemical industry is the *LARGEST U.S. EXPORTER OF MANUFACTURED PRODUCTS*—$43.9 billion in 1992! Its exports have grown constantly since the recession of 1983 regardless of global economic conditions. The industry has maintained the largest or second largest positive trade balance of all U.S. manufacturing sectors since the low point in 1983 growing to $16.3 billion ten years later.

U.S. chemical producers, by their own efforts, have held the number one exporter position and stayed globally competitive, in spite of:

1. A regulatory burden that is bigger than any of its global competitors;
2. Extensive non-tariff barriers, e.g. import quotas, import surcharges, currency exchange controls, arbitrary standards (with no scientific justification), pre-shipment inspection, threats of anti-dumping actions, etc., etc.
3. A less than supportive or cooperative attitude of U.S. negotiators toward the U.S. chemical industry. For example, the Department of Commerce down-

graded the *Office* of Chemicals to the *Division* of Chemicals and reduced the staff by 40%.

THE URUGUAY ROUND NEGOTIATIONS AND THE DUNKEL DRAFT FINAL AGREEMENT

The U.S. chemical industry has focused on six primary subjects of the Uruguay Round negotiations, i.e. market access (tariffs and NTMs), trade related intellectual property (TRIPs), trade related investment matters (TRIMs), subsidies, anti-dumping and the multilateral trading organization (MTO). Of the five primary subjects covered in the Dunkel Draft Final Agreement (market access was not included), the CMAP evaluation is:

1. 2 are not acceptable (subsidies and anti-dumping);
2. 1 is acceptable, as is (TRIPS);
3. 1 is marginally acceptable (TRIMS), and
4. 1 if modified, would be acceptable (MTO).

CMAP support of or opposition to the final Uruguay Round agreement (if there is one) will hinge on the outcome of the market access negotiations.

CMAP POSITION ON MARKET ACCESS

Since the inception of the Uruguay Round, CMAP has held the hope of expanded market opportunities for U.S. chemical exports. When the U.S. tariff format of "Request/Offer" proved to be unworkable and the Uruguay Round was not concluded in December, 1990, the U.S. chemical industry assumed (as did U.S. negotiators) that negotiations would resume and, it was asked by U.S.T.R. to develop and submit its own market access proposal. A proposal, the Chemical Tariffs Harmonization Proposal (CTHP), was conceived, refined and adopted by the U.S. chemical industry. The CTHP was discussed with and adopted by the chemical producers of Canada, Japan and the European Community and, shortly thereafter, by Australia, Sweden and Switzerland. The CTHP was submitted to the U.S. negotiators in November, 1991 and accepted as the U.S. chemicals market access offer; it was tabled in Geneva as the U.S. offer on chemicals market access in December, 1991.

The Chemical Tariffs Harmonization Proposal consists of four basic elements:

1. The global harmonization of chemical tariffs in accordance with a prescribed time-table for reductions to the harmonized levels;
2. Most Import Sensitive Products (MISPs), approved by the respective governments, need not be reduced to the harmonized levels but must be reduced by at least 30%;
3. Key chemical producing countries must agree to adopt the CTHP, i.e. NO "free-riders" and
4. Specified non-tariff barriers (NTMs) must be eliminated.

At the G–7 meeting in Tokyo, July, 1993, the four Quad members agreed to the global harmonization of chemical tariffs with NO CONDITIONS, i.e. this was merely a tariffs *cutting* agreement! The U.S. can, and must, restore the missing elements of the Chemical Tariffs Harmonization Proposal to the U.S. Draft Final Offer on market access for chemicals and the final agreement. This can be done by the U.S., within the context of the G–7 Agreement, WITHOUT abrogating its acceptance of the Agreement. The precedents for such a modification of the G–7 Agreement are contained therein:

1. Broad country coverage is included in a general statement covering the total market access agreement—the Quad "efforts must be matched by binding market-opening measures by other participants," i.e. other GATT members.
2. The elimination of NTMs can be a requirement—the "market-opening measures" referred to above include the elimination of NTMS.
3. Most Import Sensitive Products can be excepted from reductions to the harmonized levels—2 sub-chapters of HTS Chapter 33, 1 sub-chapter of Chapter 34 plus one specific product in Chapter 34 were excepted from reduction to the harmonized tariff level.

THE CONCLUSION (HOPEFULLY) OF THE URUGUAY ROUND

The U.S. and all other GATT members are required to submit Draft Final Market Access Offers by November 15, 1993. The U.S. plans to submit, as its Draft Final Offer, the G–7 chemicals market access agreement as concluded in Tokyo with NO CONDITIONS! In other words, the U.S. Draft Final Offer on Market Access for chemicals:

1. WILL offer to reduce U.S. chemical tariffs to the harmonized levels of 0%, 5.5% or 6.5%;
2. WILL NOT require that the specified countries must reduce chemical tariffs to the CTHP harmonized levels, i.e. it will not address and solve the "free-rider" problem;
3. WILL NOT give special consideration to U.S. Most Import Sensitive Products (MISPs), i.e. ALL U.S. chemical tariffs would be reduced to the harmonized levels in 10 years or less (although MISPs of other Quad members were given special consideration), and
4. WILL NOT require that specified NTMs must be eliminated.

CONCLUSIONS REACHED BY CMAP

1. Improved market access is the key to increased U.S. chemical exports;
2. The planned U.S. Draft Final Market Access Offer on chemicals, by eliminating 3 of the 4 basic elements of the Chemical Tariffs Harmonization Proposal, WILL NOT provide the improved global market access to expand U.S. chemical industry export opportunities;
3. The U.S. must restore the missing elements of the Chemical Tariffs Harmonization Proposal to its Draft Final Offer on market access and this can be done within the context of the G–7 Agreement;
4. The Dunkel Draft Final Agreement subjects that are of primary interest to CMAP members are hanging in the balance, i.e. the outcome of the market access negotiations will dictate whether CMAP supports or opposes the Uruguay Round Final Agreement.
5. The final agreement on chemicals market access MUST include all four key elements of the Chemical Tariffs Harmonization Proposal to earn the support of the Coalition for Market Access Parity for the total final Uruguay Round agreement!
6. If the final Agreement does NOT include the four key elements of the Chemicals Tariff Harmonization Proposal, it will not insure the expanded opportunities for chemical exports. It would open the doors to a flood of subsidized imports and, put many U.S. chemical producers at a competitive disadvantage in domestic and foreign markets. For some U.S. chemical processors, it would cause them to drop specific products or close production facilities due to unfair foreign competition. The loss of employment, salaries, tax receipts, etc. would have a significant and direct effect on the U.S. economy and international trade balance.

STATEMENT OF CONE MILLS CORP. AND JOHN WOLF DECORATIVE FABRICS

I. INTRODUCTION.

This statement is submitted on behalf of Cone Mills Corporation ("Cone") and John Wolf Decorative Fabrics ("John Wolf"), a division of Cone located in New York, New York. Cone, founded in 1891, is a major textile manufacturer and producer whose headquarters are located in Greensboro, North Carolina. Cone Mills has over 7,000 employees with plants located in North Carolina, South Carolina, and Mississippi.

This statement addresses provisions in the Uruguay Round of the GATT negotiations relating to the protection of intellectual property rights, the TRIPs provisions. Before delineating specific comments on and concerns about the TRIPs text, Cone Mills wishes to commend the Senate Finance Committee and the U.S. Trade Negotiators for their efforts and results to date in negotiating an international framework for the protection of intellectual property rights. Such a framework is clearly and urgently needed as the system in existence today can best be described as an international jungle in which legitimate businesses are preyed upon by unscrupulous parasites. The outcome of the negotiations has vast implications for American industry: businesses like Cone and John Wolf have the most to benefit and, conversely, the most to lose from the TRIPs provisions.

II. GATT TRIPS PROVISIONS: SPECIFIC CONCERNS AND RECOMMENDATIONS.

A. Recommendations.

Cone Mills and John Wolf have the following recommendations regarding the current TRIPs agreement:

1. The TRIPs agreement should be revised to require protection for textile fabric designs as items of copyright; in doing so, the governments participating in the

GATT agreement should uniformly establish copyright protection as the legal regime for the protection of textile designs.

2. The transition rules for developing countries should be the same as for developed countries: one year.

B. Discussion.

1. **Textile Design Protection Under Copyright Law.** Protection of textile fabric designs should be recognized under copyright laws, not as industrial designs. It is encouraging that the proposed TRIPs text of the GATT recognizes that textile fabric designs should be afforded protection as the property of the owners of the designs. However, the TRIPs proposal establishes a dual system for protection as either items of copyright or items of industrial design (Section 4, Article 25). The potential for each country to determine whether ownership rights arise under its copyright or design laws has serious shortcomings which could diminish the level of protection now afforded fabric designs.

There is a need to establish a single standard for the protection of textile designs as items of copyright for the following reasons:

First, the standards for evaluating and registering industrial designs as opposed to items of copyright are different. Textile fabric designs are the types of items normally considered to be copyright protected. They are artistic creations with commercial applications. As such, they are most readily understood as items of copyright, not as functional designs. John Wolf routinely copyrights its fabric designs in the United States. Such action is simple and inexpensive, yet it creates a record of ownership rights which should be recognized throughout the world.

Industrial designs are, on the other hand, articles of utilitarian application which have distinct features. Automobile parts are an example of this type of article. The United States has no industrial design law, and the closest our law comes to recognizing industrial designs are design patent provisions. These rules are more closely associated with inventions than artistic creations and have higher standards of originality than those items protected under copyright law. Textile designs should be afforded protection under copyright laws; to do otherwise creates confusion and the opportunity to avoid adequate protection of the design.

Second, recognition of a dual system establishes costly and cumbersome procedures for registration on a country-by-country basis. The effect is to reduce the protection available as every design would have to be registered in countries which would protect designs only as industrial designs and not as copyrights. John Wolf averages 100 to 120 new designs per year and can produce as many as 200 per year. To protect its ownership rights as contemplated under the TRIPs provisions, John Wolf would be required to register in each country which offers protection under its industrial design law as well as copyright the design in the United States. Registration of each design in each country creates an administrative requirement which effectively reduces the level of protection. This assumes that the registration in each of the countries could be accomplished quickly and easily. This may not be the case, and delays in registration and the standards for such registration could effectively negate any protection which is afforded.

2. **Lengthy Transition Period For Developing Countries.** The transition period for developing countries is too long. The current draft provides developing countries with five years to bring their rulings for protection into compliance with TRIPs. This is unnecessarily long. Most countries have, in the area of copyright, signed the Berne Convention. Their laws should be compatible with the principle of TRIPs. A lengthy delay for bringing laws into compliance could undo the progress which has already been made. A five year transition period only provides a means of delaying the implementation of protections which are contemplated under the agreement.

In recommending that the agreement incorporate a universal copyright standard for fabric designs, we realize that we are in the final phases of the GATT negotiations. However, revisions are needed in the TRIPs agreement relating to textile fabric designs. The current TRIPs agreement recognizes that fabric designs are to be afforded protection. It however, fails to establish a universal standard of copyright protection, which is needed is protection is to be effective.

III. EXPLANATION OF RECOMMENDATIONS.

To appreciate the foregoing concerns and recommendations, it is important to understand the nature of Cone Mills' international operations and John Wolf's position as a major developer and marketer of printed textile fabric designs throughout the world.

A. International Operations.

Cone is a U.S. textile manufacturer and anticipates that much of its future growth will be in the competitive international marketplace. It 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 and $705 million in 1992. 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.

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 decorative home 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.

John Wolf sells its decorative fabrics throughout the world. Approximately 20% of net 1992 sales of $53 million, or $10.6 million, were exports. International sales are focused on Europe, the Middle East, the Pacific, and the Far East. John Wolf recently acquired a second operation in Miami, Florida which will act as a window to Central and South America, where regional sales are expected to increase.

B. Fabric Designs: Artistic Creation and Commercial Development.

The unauthorized and illegal copying of copyrighted textile fabric designs is a major concern for John Wolf. Commonly known as a "knock-off," this activity has experienced a sharp increase and represents a possible detriment to the company's future growth in international markets. As exports constitute a growing component of current sales and are anticipated to be an increasing element of future sales, knock-offs pose a threat to the long-term expansion and stability of John Wolf and other fabric manufacturers in the international marketplace.

A print fabric design is an artistic design which John Wolf either acquires or develops. Such designs are printed on various types of fabrics which are then sold for purposes that include home furnishing such as upholstered furniture, draperies and bedding. A textile fabric design originates as an artistic creation. John Wolf's rights to the design arise through its creation by employees of John Wolf or through the purchase of the design by John Wolf. The designs which are purchased come from artwork reviewed in trade shows throughout the world. Frankfurt, Germany, for example, hosts a major trade show where designs are exhibited. To protect the print design, it is routinely copyrighted in the United States. Any duplication is prohibited without express license or royalty.

The purchase of a design is the first step in bringing a design to market. A significant investment of money, time, and effort are involved in transferring the design from a printed design to a finished fabric. After the design is purchased, there is an artistic breakdown on engraved metal plate of twelve to sixteen plates, one plate per color. Once the engraving is completed, it is then transferred to a greige fabric where a prototype is developed after several different runs to test the engraving and to develop a satisfactory product.

The prototype then is painted on paper to refine the colors. The plates are then prepared which are transferred to the finishing plant. Several additional test runs are undertaken at the plant and samples are ultimately produced. Once samples are prepared, a worldwide marketing effort begin through trade shows and distribution of agents throughout the world.

In addition, initial runs of fabric must be made to accommodate orders. These runs are made prior to sales. Many of the initial fabrics which result from the designs may be poor sellers. However, it is necessary to have the goods available for shipment to meet demand. Therefore, popular designs are used to compensate for slow sellers. The popular designs are, however, the very ones which ultimately are knocked-off.

In summary, the printed fabric patterns are the result of extensive artistic and creative effort, manufacturing technology, and product marketing and development. The designs, once copyrighted in the United States, are then produced and exported throughout the world. The copyrighted design represents property of substantial value to Cone Mills, and any duplication is prohibited without an express license or loyalty.

C. Inadequate International Protection and Losses to U.S. Industry.

The extensive investment made in a fabric design makes its protection throughout the world essential. The standard procedure to obtain this protection is to copyright the design in the U.S. This should be recognized internationally in countries which are signatories to the Berne Convention. Unfortunately, there are many parts of the world where a U.S. copyright offers no protection even if the country in which the infringement occurs has signed the Berne Convention. Many of these countries have been identified under Special 301 of our trade laws.

Companies located in these countries are allowed to engage in unauthorized copying of fabric designs without fear of legal action. These companies are careful not to sell their products in the U.S. and, therefore, operate outside the reach of our laws. Their products are sold in countries outside of the United States where enforcement is weak. The companies engaged in the practice are located in countries with poor and inadequate protection against the practice.

Under these circumstances, it is virtually impossible to halt the practice except in very expensive and highly publicized actions in which the local authorities cooperate with the companies whose designs have been stolen. While it is difficult to put a precise estimate on the sales which are lost due to knock-offs, John Wolf has been successful in several cases in countries where there is protection for fabric designs. This experience indicates that the magnitude of the problem is great. Based upon the experience gained from these prior cases, it is estimated that 35% of sales are lost due to knock-offs. In other words, net sales for John Wolf would be 35% greater absent the theft of its textile fabric designs.

The damages caused by the copyrighted infringement reach far beyond lost profits. Each successful fabric pattern is a culmination of substantial investments in acquiring the design and printing the pattern, such as the cost of initial drawing, engraving, color work, ink and dye, and screens. There are other fixed costs involved which include the cost of initial inventory, the cost of international marketing, and the expenses incurred in acquiring the exclusive copyright and license of each design. The direct cost for producing a design amounts to an investment of approximately $50,000.

Additional costs also are associated with marketing and distribution of the product. These revolve around attendance at trade shows, preparation of sales, distribution of samples, and maintaining an international marketing and sales force. The cost per design of this phase of the development of the design is conservatively $10,000 per design. Additional investment is involved in the plant and the equipment which is in the Carlisle finishing division for the actual production of the material. This cost has not been calculated for purposes of this discussion as part of the cost of a single design. However, it also should be factored into any computation of the total investment in each design. Excluding cost of plant and equipment for the manufacturer of the design, the total cost invested in each of the designs is exceeding $60,000 per design.

Furthermore, fabric patterns produced by the infringer are generally inferior in quality. Thus, Cone Mills' reputation and prestige in the international marketplace is damaged. Initially, however, Cone is mistakenly perceived to be responsible for the cheap imitations. Thus, established business relationships are jeopardized. As a result, Cone suffers loss of future sales and market share as well as the loss in growth opportunities. Consequently, Cone Mills must expend additional time and money to maintain its business relationships and to enforce its legitimate property rights.

The need to purchase, create, and prepare for market more fabrics each year than are sold should not be underestimated. An average of 100 to 124 patterns are created each year. This means that with an investment of $60,000 (which is conservative) per pattern, a total investment of $6 million to $7.4 million per year is made in patterns for sale throughout the world. In some years, as many as 200 fabric designs are created and brought to market. In these years, the capital investment approaches $12 million.

Recovery of these substantial capital costs cannot be viewed on a cost per fabric design basis. Of the total designs which are marketed annually, only 50% eventually recoup the initial capital cost. Approximately another 20% fail to recover their initial capital investment. The remaining 30%, therefore, must carry the entire product line and account for most of the return on the capital investment. These economic facts mean that although an individual pattern may be copied, the damage resulting from the knock-off is magnified immensely. Knock-offs are only of the popular patterns, not the ones which do not sell. A knock-off substantially curtails the sale of a popular pattern and is thus more damaging in terms of overall investment return than one would otherwise assume based upon a mere analysis of the cost per pat-

tern. Knock-offs substantially increase investment risk and reduce investment return.

Finally, it is virtually impossible for a manufacturer to print a fabric which is a copy without realizing that it is so doing. One of the defenses which has been raised is that the patterns are brought to the copying mill by a third party and, therefore, the mill is not responsible for the knock-off. This is not the normal business practice. No mill will print a copy unless it has the selvage (the outer edge of the fabric) upon which the pattern owner's name is printed together with a letter from the owner requesting that it print it. The selvage clearly indicates the ownership of the goods. Anyone printing from a sample without selvage is clearly on notice that it is printing pirated goods. Even if selvage is furnished, verification of ownership of the design is a prerequisite to printing. Therefore, it is highly unlikely that anyone following normal industry practice would knock-off a design without realizing that it is doing so.

IV. PROTECTION OF TEXTILE FABRIC DESIGNS AND GATT: THE EXAMPLE OF PAKISTAN.

The TRIPs proposal moves in the right direction because it specifically requires that signatories are to protect textile designs. The need to strengthen international protection of textile fabric designs is best illustrated by a case example involving the country of Pakistan. Pakistan is currently on the Watch List under Special 301. It is also the subject of a special "out-of-cycle " interagency study to review its practices relating to the protection of intellectual property rights. A major positive aspect of the TRIPs text is that it establishes the principle that textile fabric designs are to be protected. In the current situation, the interplay between a country's copyright law and its industrial design law results in no protection. Pakistan is an example.

An analysis of the Pakistani law relating to protection of ownership rights applicable to fabric designs demonstrates that the law as written virtually eliminates possible legal course of action against companies located in Pakistan for unauthorized copying of fabric designs. American copyright owners are accorded copyright protection in Pakistan pursuant to both the Convention for the Protection of Literary and Artistic Works (Berne Convention) and the Universal Copyright Convention (U.C.C.). The U.C.C. explicitly subordinates itself to the Berne Convention, which is considered to be the primary multilateral treaty throughout the world. *See:* The Law of Copyright §17.01[B] (1989).

Thus, as the U.S. and Pakistan are both members of the Berne Convention, Berne is the applicable treaty. In addition, because of its less formalistic tenor, the Berne Convention provides superior protection. Specifically, unlike the U.C.C., which mandates notice of copyright as a prerequisite to protection, the Berne Convention affords protection without any such formality. *See:* D. Nimmer, *Nation, Duration, Violation, Harmonization: An International Copyright Proposal for the United States,* in Global Intellectual Property Series 303 (Practising Law Institute Vol. 55, No. 2, 1992).

However, while the Berne Convention sets forth the basic framework for copyright protection abroad, it does not guarantee adequate enforcement and the availability of effective remedies for infringement. For instance, while the Berne Convention mandates "copyright subsistence" without formalities, it does not prohibit the imposition of prerequisites for certain remedies such as statutory damages and attorneys fees. *See:* The Law of Copyright §17.01[B] (1989). Secondly, the Berne Convention prescribes only a minimum level of protection. As the laws of the country where protection is sought apply, enforcement is wholly dependant upon their effectiveness. Thus, while "national treatment" as mandated by the Berne Convention, requires member countries to grant the same level of protection to foreign works as that given to domestic works, if the national copyright laws are ineffective, such as those in Pakistan, foreign copyright owners have little protection in that country. *Id.*

Copyright Ordinance, 1962, as amended by Copyright (Amendment) Act 1973 (the "Ordinance"), governs the protection of copyrights in Pakistan. In September 1992, legislation became law which made the changes in the Ordinance, but nothing was done to address problems surrounding protection of textile fabric designs. Also, it strengthened penalties against infringement. However, to date, there has been no change with regard to the enforcement of protection of the rights of owners of copyrights in Pakistan.

Pakistan's Copyright Ordinance fails to protect adequately textile fabric designs. Fabric designs fall within the scope of the Ordinance. The Ordinance covers artistic works and defines such works as ". . . an engraving . . . and any other work of artistic craftsmanship . . . ." Copyright Ordinance, §2(c) (1962), *as amended by* Copyright (Amendment) Act (1973).

Presumably textile fabric designs would come within the parameters of an artistic work, either as an engraving or as another work of artistic craftsmanship. However, this provision has limited applicability as it does not cover commercially reproduced works. In addition, the ordinance excludes from its provisions ". . . any design which is registered under the Patents and Design Act, 1911." *Id.* §12.

The standards under the Patents and Designs Act raise questions as to whether fabric designs are covered. This leaves the owner of a textile design in a "no-win" situation. If the textile is not covered under national copyright law, it then must register under the Pakistani design law and meet the standards for protection under the design law. If it does not meet the design law standards, the fabric design is not covered under either design or copyright law. The textile design is, therefore, left without any protection.

The current draft provisions for TRIPs alleviate this situation and specifically require protection as either a copyright or an industrial design. This is, therefore, a positive step. However, as previously discussed, the dual system of protection under either design or copyright law creates problems which should be resolved in favor of a uniform system of copyright protection.

V. CONCLUSION.

In the U.S. and other countries, fabric designs are recognized as works of art subject to copyright. To permit countries to impose an industrial design standard for fabric designs with separate registration of each design in each country undermines the protection which is sought. This would be extremely burdensome and provide a large opportunity for countries to ignore copyright protection and potentially impose burdensome requirements for registration under a design law.

STATEMENT OF THE FLORAL TRADE COUNCIL

I INTRODUCTION

These comments are submitted on behalf of the Floral Trade Council, pursuant to Senator Daniel Patrick Moynihan's October 22, 1993, announcement of a public hearing on the Uruguay Round of Multilateral Trade Negotiations. The Floral Trade Council is a U.S. trade association, the majority of whose members are domestic producers or wholesalers of fresh cut flowers in the United States, and is located at 1152 Haslett Road, Haslett, Michigan 48840 (telephone (517) 339-9765). These comments address the status of the market access negotiations for the floricultural industry as well as the phytosanitary and antidumping provisions of the Draft Final Act ("Dunkel Draft") of December 20, 1991.

The U.S. fresh cut flower industry is extremely import-sensitive. The United States is the only major flower-consuming country that has remained open to imports of fresh cut flowers. Over the past twenty years the U.S. fresh cut flower industry has been decimated by low-priced imports. In order for the U.S. fresh cut flower industry to benefit from the free international trade envisioned by the Uruguay Round, the removal of tariff and non-tariff barriers to trade in potential export markets is imperative.

Flowers are being addressed as part of the agriculture negotiations. Tariffs are expected to be reduced, from the year 1993 to the year 1999, "on a simple average basis by 36 per cent with a minimum rate of reduction of 15 per cent for each tariff line." Dunkel Draft at L.19 at Part B (12/20/91). The Quad Group statement of July 7, 1993, called for the addition of "as many sections as possible" to the list of sectors for complete tariff elimination. On September 28, 1993, the Floral Trade Council formally requested that the United States offer duty-free treatment with respect to imports of all fresh cut flowers, classified under Harmonized Tariff Schedule number 0603.10, in return for duty-free treatment of U.S. exports of such flowers. FTC Letters to Sec. Espy, U.S. Department of Agriculture and Ambassador Kantor, U.S. Trade Representative (9/28/93), see California Cut Flower Commission Letters (10/7/93). The Floral Trade Council requests that the U.S. offer be conditioned on a requirement that the EC and Japan eliminate non-tariff barriers to trade.

The Floral Trade Council desires that the U.S. negotiators raise the issue of zero-for-zero on fresh cut flowers in the context of the Uruguay Round. Because acceptance of the U.S. offer would benefit both U.S. and third country growers, the Floral Trade Council hopes that zero-for-zero will be pursued aggressively.

II MARKET ACCESS

A The U.S. Market

The negotiation of zero-for-zero treatment of fresh cut flowers would benefit the U.S. fresh cut flower industry. The U.S. industry has been forced to contract its size severely over the past twenty years. While flowers are grown in all parts of the United States, those states with the largest number of growers are California, Colorado, Florida, Pennsylvania, Indiana, Ohio, New York, Hawaii, and Michigan. Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. Nos. 701-TA-275-278 (Final), USITC Pub. 1956, at A-27, n.1, A-28 (March 1987). Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses, Inv. No. 332-263, USITC Pub. 2178, at 3-1 - 3-2 (April 1989). Due to the huge increase in foreign imports from 1971 to 1990, the loss of U.S. market share has forced **nearly 5,000 U.S. cut flower growers out of business with a resulting loss of over 30,000 jobs.**

The number of U.S. growers of cut flowers and cut florist greens declined from 4,698 in 1978 to 4,325 in 1982 and again in 1985. USITC Pub. 1956, at A-27-28. In 1987, there was an estimated 500 to 600 commercial growers of standard carnations, miniature carnations, standard chrysanthemums, pompom chrysanthemums, alstroemeria, gerberas, and gypsophila. Id. In 1989, there were an estimated 250 commercial rose growers in the United States. USITC Pub. 2178 at 3-1. The following figures calculated by the U.S. Department of Agriculture demonstrate the substantial reduction in number of growers and amount of area devoted to cut flower production that has occurred over the past twenty years. Particularly striking is the fact that U.S. growers are abandoning production of chrysanthemums, pompom chrysanthemums, and standard carnations, as imports of these flower types from Colombia have surged over the past twenty years.

TABLE 1

Year	Flower Type	Number of Growers	Production Area 1,000 square feet
1968	**Standard Chrysanthemum**	**2,599**	**N/A**
1975		1,142	23,421
1988		435	12,368
1968	**Pompom Chrysanthemum**	**2,660**	**N/A**
1975		1,278	40,655
1988		552	25,487
1968	**Miniature Carnation**	**345**	**N/A**
1975		210	2,522
1988		200	8,244
1968	**Standard Carnation**	**1,930**	**N/A**
1975		594	28,789
1988		244	16,342
1968	**Hybrid Tea Roses**	**347**	**N/A**
1975		256	23,470
1988		273	33,029
1968	**Sweetheart Roses**	**241**	**N/A**
1975		205	5,048
1988		201	6,845

Source Floriculture and Environmental Horticulture Products: A Production and Marketing Statistical Review, 1960-88, U.S. Department of Agriculture at 92-99 (1990)

Significant import penetration has been accomplished by underselling U.S. growers with dumped or subsidized imports. As shown above, U.S. growers of the major categories of unfairly traded imports -- standard carnations, pompom chrysanthemums, standard chrysanthemums -- have been forced out of business over time. By 1989, the U.S. rose industry was in a similar state as foreign rose imports had eroded the dominant position of the domestic industry during the 1980's. USITC Pub. 2178, at 5-1. Although many of the imports were found to have been unfairly traded, the U.S. government continued to extend duty-free tariff treatment to fresh cut flowers from Colombia, Mexico, Costa Rica, Chile, Peru, and Ecuador. A significant number of the Central and South American flower-producing countries benefit from duty-free treatment under the Andean Trade Preference Act, the Caribbean Basin Economic Recovery Act, and the Generalized System of Preferences Program. As a result, the effectiveness of the antidumping and countervailing duty orders and suspension agreements was reduced,* and any market expansion has accrued to imports, as demonstrated by Table 2.

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* Antidumping duty orders are in effect for certain types of fresh cut flowers imported from Colombia, Mexico, Chile, Ecuador, and Kenya. Countervailing duty orders on certain fresh cut flowers are in effect for Ecuador, Chile, the Netherlands, Israel, and Peru. Countervailing duty suspension agreements are in place between the United States and Colombia and the United States and Costa Rica. Certain Fresh Cut Flowers from Colombia, 52 Fed. Reg. 6842 (Dep't Comm. 1987) (Final LTFV Deter.); Miniature Carnations from Colombia, 52 Fed. Reg. 1353 (Dep't Comm. 1987) (Suspension of Invest.); Roses and Other Fresh Cut Flowers, 51 Fed. Reg. 44,930 (Dep't Comm. 1986) (Suspension of Invest.); Certain Fresh Cut Flowers from Costa Rica, 52 Fed. Reg. 1356 (Dep't Comm. 1987) (Suspension of Invest.); Certain Fresh Cut Flowers from Mexico, 52 Fed. Reg. 6361 (Dep't Comm. 1987) (Final LTFV Deter.); Certain Fresh Cut Flowers from Ecuador, 52 Fed. Reg. 2128 (Dep't Comm. 1987) (Final LTFV Deter.); Certain Fresh Cut Flowers from Ecuador, 52 Fed. Reg. 1361 (Dep't Comm. 1987) (Final CVD Deter.); Certain Fresh Cut Flowers from Chile, 52 Fed. Reg. 3313 (Dep't Comm. 1987) (Final CVD Deter.); Standard Carnations from Chile, 52 Fed. Reg. 8939 (Dep't Comm. 1987) (Order); Certain Fresh Cut Flowers from Peru, 52 Fed. Reg. 13,491 (Dep't Comm. 1987) (Final CVD Deter.); Fresh Cut Roses from Israel, 45 Fed. Reg. 58,516 (Dep't Comm. 1980) (Final CVD Deter.); Certain Fresh Cut Flowers from Kenya, 52 Fed. Reg. 13,490 (Dep't Comm. 1987) (Order); Standard Chrysanthemums from the Netherlands, 52 Fed. Reg. 7646 (Dep't Comm. 1987) (Order).

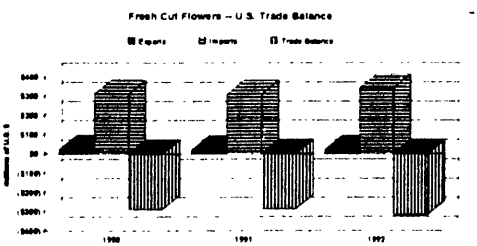
TABLE 2

Year	Flower Type	Import Share %
1971	**Carnations**	**5.2%**
1992		84.4%
1971	**Standard Chrysanthemums**	**7.3%**
1992		63.4%
1971	**Pompom Chrysanthemums**	**5.6%**
1992		85.9%
1971	**Roses**	**.2%**
1992		55.6%

Sources USDA, Ornamental Crops National Market Trends & USDA, Floriculture Crops

Foreign flower growers can compete in the U.S. market unencumbered by tariff or non-tariff barriers. Access to the U.S. market on a duty-free basis has allowed exporting countries to establish a significant market presence in the United States. Foreign producers have established distribution and ready access to the U.S. market where they offer fresh cut flowers of uniform merchantable quality. USITC Pub. 2178, at xii. Over the past 25 years, Colombian cut flower exports by value have increased by monumental proportions. $20,000 in 1965 compared to $267 million in 1991. Present and Future of Colombia's Floriculture Industry, **Ohio Florists' Association Bulletin** 1 (Sept. 1992). Out of the $267 million in 1991, imports of roses grew by 9.5% ($68.5 million) and imports of miniature carnations grew by 46.4% ($20.2 million). T.E. Wilde, Agribusiness Trade In Colombia Offers More Than Just Coffee And Bananas, 113 **Business America** at 14 (Sept. 21, 1992). Colombia's cut flower exports are especially strong in light of total agricultural exports to the United States valued at $842.7 million in 1991. Id. By 1990, Colombia represented 96.2% of all imported standard carnations, 79.9% of all miniature carnations, 86.9% of all pompoms, 78.5% of all standard mums, and 68.7% of all roses. See Penn State Marketing Information (May 1992). As the following chart demonstrates, the United States had an overall negative trade balance in fresh cut flowers of $319 million in 1992.

TABLE 3



TRADE BALANCE

in millions of U.S. dollars

Year	Exports	Imports	Trade Balance
1990	$24	$312	($288)
1991	$22	$310	($288)
1992	$22	$341	($319)

Data from the U.S. Department of Commerce, Bureau of the Census, export and imports for consumption statistics, HTS 0603.10. F.A.S. values at port of exit

B Export Markets

The future of the U.S. fresh cut flower grower in the 1990's is uncertain. U.S. and third country growers must have access to the relatively closed markets of major flower-consuming countries. Thus, at the close of the Uruguay Round, export markets, such as the European Community ("EC"), Japan, Korea, and Singapore, must be opened. The Floral Trade Council has requested that the U.S. negotiators offer to eliminate all U.S. duties on imports of fresh cut flowers, in return for tariff elimination with respect to like exports from the United States, and subject to certain market access conditions. The Floral Trade Council urges Congress to support this offer for the following reasons.

Currently, the largest market in the world for fresh cut flowers is the EC. The EC, however, imposes a dual-rate tariff on imports from the United States 15% during the months of November through May, and 20% during the months of June through October O J Eur. Comm (C143) 178 (May 24, 1993) The U.S. International Trade Commission has found that these tariff rates significantly affect world trade in flowers USITC Pub 2178 at xii-xiii The EC market is effectively closed to U S exports during the summer months when U S market prices are lowest and excess supply cannot find a market that allows a profitable return on investment. Other potential markets for fresh cut flowers have higher tariffs, such as Korea with a 30% tariff on fresh cut flowers

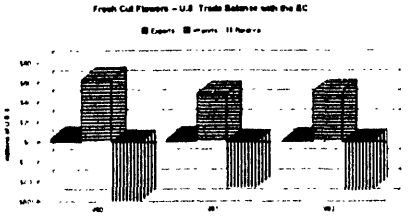
Our strongest and principal international competitors in the EC market are growers in the Netherlands Indeed, the Netherlands is the world's "largest producer of fresh cut flowers and is the world's leading producer of fresh cut roses" USITC Pub. 2178, at 4-10 When Dutch flowers are imported into the United States, however, they face tariffs ranging from 4% to 8%

Moreover, U S growers face export competition in the EC market from Colombian growers In the U S market, Colombian imports account for over one-half of all U S consumption of roses and for an even larger share of the U S market for other fresh cut flowers Yet, these same Colombian exports enjoy duty-free status under EC regulations similar to the U S Andean Trade Preference Act when imported into the EC E C Reg No 3059/92. Thus, U S. growers must not only compete with the dominant Colombian growers in the U.S. market, but they must compete against those Colombian growers at a disadvantage in the EC

In addition to tariffs, the EC market is also characterized by non-tariff restraints on trade Most importantly, access to the EC market is limited by virtue of the fact that access to the major European flower auctions is limited Both the U S International Trade Commission and the U S Department of Commerce have acknowledged the importance of access to flower auctions in the EC See USITC Pub 2178 at 4-10, 6-11, Certain Fresh Cut Flowers from Colombia, 55 Fed. Reg 20,491, 20,492 (Dep't Comm 1990) EC price levels are generally much higher than prices in the U S market (excepting certain holiday periods in the United States) Hence, the inability to gain access to this market via the auctions is a severe handicap to U.S growers This impediment also affects exports from Colombia, Guatemala, Ecuador, Costa Rica, and other less developed and developing country exporters of fresh cut flowers

In terms of trade balance, the United States continues to maintain a negative trade balance with the EC in fresh cut flowers Thus, U S competition in the EC market is far outweighed by EC competition in the U S market

TABLE 4



TRADE BALANCE WITH THE EC

in millions of U S dollars

Year	Exports	Imports	Balance
1990	$3	$63	($60)
1991	$2	$49	($46)
1992	$1	$51	($49)

Data from the U S Department of Commerce, Bureau of the Census, export and imports for consumption statistics HTS 0603 10 F A S values at port of exit.

Air freight rates also encourage U S flower imports. Miami is an intermediate shipping point for South American growers. The U.S International Trade Commission has found that the "costs of shipping roses from Bogota to Miami is much less than shipping from Bogota to any city in Europe" USITC Pub No 2178, at 6-10. In fact, the "costs of shipping fresh cut roses to Europe via Miami is less expensive than shipping them directly to Europe from Bogota" Id. (emphasis added) As a consequence, exports from these countries are disproportionately directed to the U S market

Similarly, there are non-tariff barriers in Japan that impede the penetration of that market by U S and other exports of fresh cut flowers Japan's inspection process unduly delays flower shipments and makes it virtually impossible for U S flower growers (or any other exports of flowers) to penetrate the Japanese market, notwithstanding its zero tariffs Inspection in Japan is so time-consuming and destructive that it damages the quality of U S flowers, undercutting the ability to market U.S exports effectively or to command reasonable prices USITC Pub 2178, at 7-6, USDA, Horticultural Products at 10 (June 1993) Flowers from the Netherlands are not similarly hampered by burdensome phytosanitary inspections Japan permits the Netherlands to pre-clear exported flowers at the auction house in the Netherlands before shipment to Japan The result is that flowers from the U S and third countries are at a competitive disadvantage in the Japanese market

In the current phytosanitary provisions of the Draft Final Act ("Dunkel Draft"), contracting parties agree that inspection procedures will be undertaken without "undue delay" Dunkel Draft, MTN TNC/W/FA at L 51 (12/20/91) The Dunkel Draft envisions that the "standard processing period of each procedure [will be] published or that the anticipated processing period [will be] communicated to the applicant upon request" Id. Because fresh cut flowers are extremely perishable, "standard" or "anticipated" processing times are likely to be impractical if these standards are not product-specific. Just as important, the Dunkel Draft states that "Contracting parties shall accept the sanitary or phytosanitary measures of other contracting parties as equivalent, even if these measures differ from their own if the exporting contracting party objectively demonstrates to the importing contracting party that its measures achieve the appropriate level of sanitary or phytosanitary protection" Id. at 37 U S. negotiators in the Uruguay Round should condition any zero-for-zero proposal on a specific commitment that our trading partners will permit pre-clearance inspections at the principal ports of export in the United States (or in third countries), in lieu of recognizing the integrity of domestic inspections

The flower industry embraces free and fair trade in flowers as the optimal outcome of the Uruguay Round The U S industry is willing to see its own tariff protection from EC competition be eliminated -- but only if there is reciprocity The United States should also link tariff reduction or elimination to a requirement that non-tariff barriers in the EC and Japan be eliminated The EC should take appropriate action to open its auction houses to imports from all countries without regard to the selling season Japan and Singapore should permit pre-clearance by appropriate authorities in the country of exportation With such measures in place, the fresh cut flower sector could prosper under conditions of truly open trade

III PHYTOSANITARY PROVISIONS

References to "scientific principles" in the Dunkel Draft provisions concerning sanitary and phytosanitary measures should be clarified For example, the Dunkel Draft includes the following provisions

> 6 Contracting parties shall ensure that sanitary and phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health, are based on scientific principles and are not maintained against available scientific evidence.
>
> 11 Contracting parties may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification

Dunkel Draft, MTN TNC/W/FA at L 36-37 (12/20/91) (emphasis added) The final text should provide additional guidance regarding reliance on scientific principles or justifications Because scientists frequently disagree, the text should explain the degree of support necessary to retain certain phytosanitary measures for all parties It is not clear that the opinion of the U.S Department of Agriculture or the U S Environmental Protection Agency would be sufficient support for U S phytosanitary measures Therefore, the final text should provide guidance as to level of proof required by these provisions

IV ANTIDUMPING DUTY PROVISIONS

As explained above, U S flower growers have been forced to compete with continuing price depression in the U.S market in various product categories Because the conditions of competition in the U S market have not improved, the effectiveness of the U.S unfair trade laws remains critical The Floral Trade Council, therefore, is deeply discouraged by the current status of Dunkel Draft provisions relating to antidumping duty proceedings

Standing: The standing requirements for initiation of antidumping proceedings contained in the Dunkel Draft are unnecessarily burdensome. Article 5 of the Dunkel Draft will require the International Trade Administration to conduct a pre-initiation procedure. The agency will be forced to determine, "on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry" which must be responsible for a "major proportion of the total domestic production of those products" Dunkel Draft, MTN TNC/W/FA, at F.7, F.9 In the case of fragmented industries involving an exceptionally large number of producers, "authorities may determine support and opposition by using statistically valid sampling techniques" Id

The U S fresh cut flower industry is a fragmented industry comprised of numerous small growers, many of which are family-owned and operated. There is no known comprehensive list of U.S. flower growers It is, therefore, not clear from the current Dunkel text that flower growers would be able to show that a petition was supported by growers responsible for a "major proportion" of total domestic production Without a comprehensive list, the use of a statistical sampling methodology could be easily challenged as unrepresentative. As explained above, the U S fresh cut flower industry continues to experience the loss of growers

The United States should not change existing U.S law based on the erroneous presumption that frivolous cases are common In the past, growers, as members of trade associations or otherwise, have contributed the necessary funds to bring the costly antidumping duty petitions. The Floral Trade Council can attest to the fact that growers, already experiencing extreme financial difficulty, view their contributions as a last resort measure Any modifications to U S antidumping duty law should recognize that industrial as well as agricultural producers use the law but have diverse needs.

Sunset: The Floral Trade Council is particularly concerned that the five year "sunset" provision in Article 11 of the Dunkel Draft will undermine the usefulness of the antidumping duty law Under the proposed system, orders would automatically terminate after five years unless the agency or the domestic industry reestablish that "continued imposition of the duty is necessary to prevent the continuation or recurrence of injury by dumped imports" Dunkel Draft, MTN TNC/W/FA, at F 21 Article 11 essentially requires the domestic industry to undergo another investigation with the burden of proof

Although the sunset provision may seem reasonable for other industries, the U S fresh cut flower industry could not financially support a campaign every four years to fight for continuation of the orders Flowers are grown all year round, and flower production is labor intensive. Flower growers do not have in-house counsel or trade divisions to submit factual information regarding injury on their behalf. Many growers jeopardize the productivity of family-operated greenhouses when they devote their time and energy to the collection of financial data for submissions For these reasons, adoption of a sunset requirement severely limits the utility of the antidumping duty laws

Cumulation: In the most recent antidumping and countervailing duty proceedings involving certain fresh cut flowers, the U S International Trade Commission cumulated and cross-cumulated imports from various countries Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. No. 701-TA-275-78 (Final), USITC Pub. No. 1956, at 18 (March 1987). The Dunkel Draft, however, does not expressly provide for cumulation of imports in Article 3. Dunkel Draft, MTN TNC/W/FA, at F 5

Every country that has used the Antidumping Code has cumulated imports from various countries in appropriate circumstances Without a cumulation provision, the Commission would be forced to ignore the volume and effect of imports from other countries It is conceivable that injury could be proven only in cases in which a single exporting country dominated import market share Therefore, the final agreement should clarify that current practice regarding cumulation will continue.

In addition, the Dunkel Draft's negligibility requirements should be rejected as unrealistic. Article 5 requires the agencies to reject a petition and terminate the investigation if "the volume of dumped imports, actual or potential, or the injury is negligible" Dunkel Draft, MTN TNC/W/FA, at F 10

> The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 1 per cent of the domestic market for the like product in the importing country unless countries which individually account for less than 1 per cent of the domestic market for the like product in the importing country collectively account for more than 2 5 per cent of that market

Id (emphasis added) Article 5 does not recognize that, even when imports account for small shares of apparent consumption, the domestic industry suffers lost sales This is especially true when imports account for a substantial part of apparent consumption

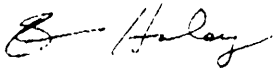
Standard of Review: Finally, the Dunkel Draft does not address how GATT panels will construe the antidumping code provisions In antidumping duty proceedings, U S. agencies collect and analyze a large amount of data The information reviewed by the agencies constitutes the administrative "record." Any final decision is reviewed only in light of the information in that record and arguments presented to the agency Thus, current U S law does not allow parties to challenge final agency determinations on the basis of information not in the record or arguments not made before the agency Some governments, however, have attempted to have GATT panels review administrative findings on the basis of new arguments or information

The U.S. antidumping duty statute has also been considered to be a remedial statute. Thus, U S courts have interpreted the statutory provisions expansively to provide the domestic industry the relief intended Yet, some recent GATT panels have used language suggesting that the antidumping code is viewed as a derogation from other GATT obligations Because it is unclear how GATT panels will construe the antidumping provisions, the final act should reflect the role of the administrative record as well as the remedial nature of antidumping duty relief

V CONCLUSION

As members of an import-sensitive industry, U S. fresh cut flower growers ask Congress to support the Floral Trade Council's request for zero-for-zero treatment on fresh cut flowers in the Uruguay Round, conditioned on the removal on non-tariff barriers in the EC and Japan Without removal of trade barriers to international trade in fresh cut flowers, the future of the U S fresh cut flower grower is uncertain In addition, the Floral Trade Council respectfully requests that Congress consider its comments on the phytosanitary and antidumping provisions of the Dunkel Draft

Respectfully submitted,



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STATEMENT OF THE FMC WYOMING CO., GENERAL CHEMICAL PARTNERS, AND NORTH AMERICAN CHEMICAL CO.

FMC Wyoming Company, General Chemical Partners and North American Chemical Company appreciates the opportunity to submit this statement to the Subcommittee on Trade of the Committee on Ways and Means for consideration as part of the Subcommittee's hearing on the Uruguay Round of Multilateral Trade Negotiations. This statement is made in support of the U.S. soda ash industry by strongly urging the zero-for-zero elimination of the European Community (EC) and U.S. tariffs on soda ash as part of the Uruguay Round trade agreement.

The U.S. soda ash industry is a dramatic American export success story. Soda ash is a basic chemical used in the manufacture of glass, detergents and in other industrial processes such as desalinization of seawater. The basis for the U.S. success is a natural resource advantage. The most accessible and commercially viable natural reserves of soda ash in the world are located in California and Wyoming. Although soda ash is produced synthetically by our foreign competitors, the process generates environmentally harmful by-products. The U.S. industry continues to enhance its natural resource advantages through improved mining techniques and capital investments in energy-efficient production facilities. These investments are paying off. As an example, by 1990, the U.S. soda ash industry had decreased energy consumption by many of its producers to less than one-third of the energy used in the synthetic method. These advantages have made the United States the leading exporter of soda ash in the world, generating in 1991 a total of $40.7 million in export sales.

The U.S. soda ash industry directly employs over 3,000 people. In addition, the shipment of soda ash for export generates economic activity throughout the United States. Soda ash moves principally through three ports: Portland, Oregon; Long Beach, California; and Port Arthur, Texas. Railroads transport soda ash and U.S. stevedoring firms have established bulkloading terminals at the ports for the efficient transfer of soda ash from rail to ocean cargo vessels. Clearly, U.S. exports of soda ash have a tangible positive impact on many geographic and business sectors of our nation's economy.

The EC presents a substantial opportunity for the U.S. soda ash industry, however, U.S. producers have been unable to firmly establish a consistent European presence. This disappointing development of the EC market does not reflect commercial factors. The European Commission has concluded that U.S. firms are cost competitive with the domestic EC producers, even allowing for the cost of delivery from the U.S. to Europe. The EC market has been largely shielded from competition, both internally and from foreign sources. The market is highly concentrated, with two producers, Solvay and Brunner Mond dominating sales on the continent and in the United Kingdom, respectively; in 1990 the EC cited Solvay for anti-competitive activities and imposed record fines on it. Externally, the EC market is protected by a 10 percent tariff. Elimination of the tariff will enable U.S. soda ash firms to compete for a presence in the Community and to become reliable sources for EC soda ash consumers.

The tariff is a major obstacle to development of an expanded U.S. presence in Europe. Soda ash is a commodity and as such, price competitiveness has a significant impact on market share. While U.S. firms enjoy large, but varying cost advantages over European firms, those advantages are partially offset by the costs associated with moving this bulk commodity by rail and ship from the western United States to European consumers. The ten percent tariff—while it does not fully negate the U.S. cost advantage—is nevertheless a substantial penalty that makes competing on price a difficult and sometimes risky proposition. Notably, the EC's tariff is not imposed on the price of soda ash at the U.S. factory gate, but on the price which incorporates all of these shipment costs as well; because these costs are substantial, the impact of the tariff is correspondingly greater.

The U.S. soda ash industry is grateful for the support it has received from Congress and the Administration in its attempts to have this unjust tariff removed. Many members of Congress from both sides of the aisle have repeatedly urged our trade negotiators to gain elimination of this tariff as part of the Uruguay Round agreement. Ambassador Kantor also has expressed his support for complete elimination of the EC tariff on soda ash.

Elimination of the EC tariff will benefit both the U.S. and the EC. The U.S. tariff on soda ash is 1.2 percent; the U.S. industry supports elimination of both the U.S. and EC tariffs on a zero-for-zero basis, a measure which will be mutually beneficial.

—**The U.S. will benefit.** U.S. penetration of the EC soda ash market can only add substantial additional revenues for U.S. firms and translate into additional jobs in the U.S. industry.

—**European soda ash consumers will benefit.** EC soda ash consumers—who have already welcomed the elimination of the antidumping duty on U.S. soda ash—will gain a reliable competitive alternative to their domestic suppliers.

—**The environment will benefit.** One synthetic method of soda ash production, the one utilized in the EC, produces calcium chloride as a by-product. Calcium chloride is a pollutant if it is pumped into rivers or leached into groundwater.

In addition to the direct benefits derived from full elimination of the U.S. and EC tariffs on soda ash, it is anticipated that the elimination of these tariffs would create increased pressure on many of our other trading partners to reduce or eliminate their soda ash tariffs. As a result, the U.S. industry would have greater unfettered access to worldwide markets and could maximize its natural resource advantages.

The elimination of unfair tariffs is correctly a priority in U.S. trade policy. International trade will continue to grow only with free and fair access to markets. Exports benefit the United States through increased employment and revenues. The U.S. soda ash industry is proud to be a significant contributor to this effort. If the tariff barrier is removed from the EC market, the U.S. soda ash industry is confident of its continuing contribution to the economic prosperity of this country.

STATEMENT OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL–CIO

This statement is made on behalf of the International Ladies' Garment Workers' Union and our 175,000 members, who produce women's and children's apparel and related products. Our members live and work in more than two-thirds of the nation's fifty states.

Thank you for permitting me to appear before you today.

My testimony will focus on the progress of the GATT negotiators with regard to the apparel industry and the likely impact of the agreement on apparel workers in the United States. I must stress that my comments relate primarily to apparel and not to the combined apparel and textile industries. While the two industries have a common bond in that both have been deeply affected by imports, there are significant differences. One such difference pertinent to today's hearing is the export potential of the two industries.

Before evaluating the extent to which the negotiations are achieving U.S. objectives on foreign market access for women's and children's apparel, it is necessary to list the objectives of the United States government in entering into the Uruguay Round negotiations seven years ago.

It was apparent from the start that the Reagan and Bush Administrations had several primary goals at the GATT talks and that a gain for the domestic apparel industry was not one of them. They wanted to open up trade in services, to protect intellectual property, and to open other countries, primarily in the third world, to investment on behalf of U.S. banks and insurance companies.

To secure these objectives, the U.S. had to place something on the trading block. Apparel and agriculture were the chosen sacrificial lambs. Even though some sixty percent of the U.S. apparel market is represented by imports, our government was prepared to open the doors even wider by reducing apparel tariffs and, most important, agreeing to a speedy phaseout of the controls now in place pursuant to the Multifiber Arrangement (MFA).

The proposed giveaway of domestic apparel production and the jobs of U.S. workers in the GATT negotiations was, of course, nothing new. Successive governments have used increased apparel imports repeatedly over the years as a bargaining chip to attain perceived national security and political goals. But, where previously the apparel giveaway was conducted on a country by country basis, now the negotiations were across the board and the potential for damage that much greater.

The U.S. government stance was so one sided against the domestic apparel industry that a *quid pro quo* for the industry was not even seriously thought of during the first six years of negotiations. Only since President Clinton took office, has the matter been raised at all. Unfortunately, the so-called gain for the industry—the new catch phrase, reciprocal market opening—is an empty gesture and of little practical significance. Let me develop this point.

The concept of reciprocal market opening arose largely as the result of attempts by the respective textile companies of the European Community and the U.S. to reach an agreement on the GATT provisions which they hoped they could persuade their respective governments to adopt. In return for accepting deep tariff reductions on wool fabrics and apparel sought by the EC, the U.S. textile and apparel industries sought EC support for the opening of third-world markets to U.S. textiles and apparel and the linking of market opening to the phaseout of the MFA.

The U.S. and EC industries agreed on what they called "real" and "measurable" access to key markets now effectively closed to the U.S. and the EC. Countries that did not clearly comply—mainly the developing countries—would be limited to zero growth in MFA quotas, presumably during the ten-year phaseout of MFA. To comply, a country would have to cut its apparel and textile tariffs to specified levels, eliminate non-tariff barriers affecting apparel and textiles, commit themselves not to impose any new restrictions and import reasonable amounts of textiles and apparel.

However, the EC industry, and apparently the Community itself, seeks even deeper tariff cuts than the U.S. industry is willing to accept. With respect to apparel and textiles, the fate of the Uruguay Round is still up in the air with no immediate settlement in sight. It is a myth that market opening could lead to an appreciable increase in U.S. apparel exports. It was in effect a by-product of these discussions and is now being used by the U.S. government in an attempt to sell GATT, if an agreement is reached.

As noted earlier, the export potential for textiles and for apparel are very different. Should restrictions be removed, there is a clear short-term and a possible long term potential for increases in U.S. textile exports. There are several reasons for this.

First, apparel exporting countries may need additional fabric to meet expanded production requirements and in the short run will be unable to produce it themselves. Second, the textile industry anticipates increased assembly abroad of U.S. made and cut garment parts, which expands demand for U.S. fabric. Textile industry gains would, of course, be at the expense of U.S. garment workers, in much the same way as the present arrangements with Mexico and the Caribbean Basin Initiative countries.

In apparel, however, the potential for increased exports to newly opened third-world markets exists almost entirely in the mind of its supporters and not in the real world. Unlike textiles, which are used for further manufacture, apparel is a consumer product and its sale is heavily dependent on the existence of a mass market with ample purchasing power. If the average income level of the country is low, there must be at a minimum a substantial middle and upper class population with the wherewithal to purchase imported U.S. clothing.

Very few of the principal apparel exporting countries, India perhaps being the most important exception, have a sufficiently developed middle class with enough money to buy U.S. apparel products. And India, of all countries, can be expected to be a major holdout on market opening.

On the other hand, even the most economically backward exporting countries might readily agree to "open" their markets to secure for themselves the benefit of cuts in U.S. tariffs. They could do so in the knowledge that only if a dramatic increase in wage levels and labor standards in their country took place, would U.S. apparel exporters have any chance of selling significant amounts of U.S.-made apparel into their market. Only under such circumstances could U.S. apparel workers benefit in terms of increased job opportunities. The reciprocity myth is shattered if U.S. trade data compiled by the Census Bureau are examined. In 1992 the U.S. reported apparel exports valued at $4.9 billion.[1] Of this total, $0.7 billion consisted of re-exports of foreign made goods. Of the balance of $4.2 billion, $2.6 billion consisted of cut garment parts leaving the U.S. for assembly abroad and eventual return to the U.S. as finished garments.[2]

Total exports of finished U.S.-made garments amounted to only $1.6 billion in 1992, with $1.3 billion of the total going to Canada, the EC and Japan. Only $0.3 billion was exported to the rest of the world, including all of the developing nations. Foreign tariff and non-tariff barriers play only a minor role in holding down apparel exports, the key limiting factor being a lack of consumer income.

U.S. apparel import sourcing is equally one-sided. Of total apparel imports of $31.2 in 1992, only $2.1 billion came from Canada, the EC and Japan. $23.0 billion came from the rest of Asia and $4.5 billion from Mexico and the CBI.

Any assessment of the impact of GATT on our domestic apparel industry and in particular on its work force must consider the precarious condition in which the in-

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[1] Data are for all apparel (SITC 84), including garments made of textile fibers, fur, plastic, rubber and leather.

[2] U.S. apparel export data do not differentiate between finished garments and cut parts. The $2.6 billion cited figure represents the value of U.S. components of foreign-assembled apparel that re-entered the U.S. under the duty free provisions of Item 9802 of the Harmonized Code. This methodology was recommended by the General Accounting Office in a July 1993 study: *U.S. Mexico Trade, The Maquiladora Industry and U.S. Employment.*

dustry finds itself after years of erosion, the direct result of constantly growing imports.

Until the late 1950's just about all of the clothing worn in the United States was made in our country. Mass production of clothing had been developed here and only a few high-priced European imports entered our market.

Gradually, U.S. entrepreneurs began to move overseas in the search for low-wage countries in which to settle garment production. What started as a trickle of imports became a steady flow in the 1960's and 1970's and a virtual flood in the 1980's and the early 1990's.

Where four percent of the clothing worn in the U.S. was imported 35 years ago, the share today is over 60 percent. In the twelve years 1980 to 1992, apparel imports, measured in square meters of fabric used in their production, increased nearly three-fold, from 2,411,500,000 square meters to 7,079,340,000 square meters. In the year ending August 1993, apparel imports rose to 7,410,156,552 square meters.

Apparel employment reached its high-water mark in 1973 when the industry employed 1,257,400 production workers, according to the Bureau of Labor Statistics. These exclude non-apparel items made from textile fibers (SIC 239), but they do include knit outerwear and knit underwear (SIC 2253 and 2254).

By 1980, the number of workers in the industry had fallen to 1,079,000 and by 1992 the industry work force was down to 816,000 workers. Since 1973, the industry lost 441,400 jobs; more than 263,000 have been lost since 1980 alone. There was a slight improvement in early 1992 but apparel employment has been declining ever since. In the first eight months of 1993, production worker employment is 3.2% behind the same period of 1992. In broader terms, current apparel imports represent considerably more than one million jobs.

Unemployment in the U.S. apparel industry remains high in the wake of import-related plant closings and layoffs. The industry average last year was 11.0 percent, about 50 percent higher than in the nation as a whole, according to BLS data. In the first nine months of 1993, apparel unemployment averaged 11.6 percent.

The U.S. apparel industry is highly import sensitive and has been so designated by successive administrations and by the Congress in the legislation establishing the General System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). That these decisions were the right way to go is supported by the data cited above. The GATT negotiations should not permit the elimination of the fraction of the industry still providing jobs in the U.S. The MFA should not be eliminated; it should be renewed and improved.

STATEMENT OF THE JAPAN AUTOMOBILE MANUFACTURERS ASSOCIATION

On April 16, 1993, President Clinton and then Prime Minister Miyazawa met in Washington and agreed to forge a new, multifaceted framework for negotiations on bilateral trade, commerce, and economic issues. Following preliminary discussions the two leaders agreed, at the time of the Tokyo G7 Summit last July, to establish the Japan-United States Framework talks. Trade in automobiles and auto parts was included in the individual sector talks as part of this Framework understanding.

Currently, there is an approximate 21 billion dollar bi-lateral trade deficit in motor vehicles between Japan and the United States, and an additional 10 billion dollar auto parts trade deficit. This is a fact, and appears to be the primary reason why the United States insisted on making this sector one of the "baskets" in the Framework talks. It is vital to emphasize that the Framework documents set out what the two nations agreed was the objective of the talks: "achieving *significantly expanded sales opportunities* to result in a significant expansion of purchases of foreign parts by Japanese firms in Japan and through their transplants, as well as removing problems which affect market access, and encouraging imports of foreign autos and auto parts in Japan."

Thus, the clearly stated objective of the Framework talks is to achieve "expanded sales opportunities" which will result in additional sales, *not* to force or enforce sales of parts or vehicles. The Framework agreement does not guarantee any result through targets, monitoring or any other mechanism. Nor should it do so, for the fact is that there are no barriers to access either to auto parts procurement or to the sale of motor vehicles in Japan. Japan's trade and investment practices in automotive products have been microscopically examined for well over a decade. Those examinations have yet to identify any unfair trade practice under any definition of the law. So far as JAMA is aware, at no time in the Framework negotiations has the United States ever identified to Japan any unfair trade practice which could form the basis for extensive new demands on the Japanese auto industry.

In fact, for the last seven years JAMA has been actively working to develop business between U.S. suppliers and Japanese assemblers on a competitive basis within the free enterprise system. JAMA has developed many programs with considerable success. These efforts have been recognized and lauded on numerous occasions by the U.S. Government and the U.S. auto parts industry. Specifically, these efforts were endorsed by the U.S. Government and incorporated in the Market Oriented Cooperation Plan developed by governments of the United States and Japan. These efforts have resulted in a nearly 14 billion dollar increase in purchases of U.S. sourced parts.

Consistent with the facts, the expressed preferences of the United States Government, and the free enterprise principles that have produced positive results, the primary focus of the Framework was to address structural and other macro-economic issues related to the imbalance of trade between Japan and the United States. Automobiles were included in the Framework due to the fact that there is a imbalance in vehicle trade, not as a result of identified barriers to access. With the presentation of the U.S. proposal, it appears that the current negotiations have gone off course in this "basket."

JAMA notes and expresses its serious objections to the direction of the negotiations at this juncture. The proposal handed to the Government of Japan during negotiations held the week of October 17 in Tokyo goes well beyond the scope of the efforts outlined by both governments in the initial Framework agreement. The proposal intervenes into the private sector in ways that are neither considered or advisable in a free enterprise system.

JAMA's position is clear on this point. JAMA members are prepared to continue to cooperate with legitimate forms of trade promotion *within a context that recognizes the realities of a highly competitive international marketplace, the needs and standards of individual companies and consumers and the current economic situation in Japan.* JAMA members are *not* prepared to accept government interference in the legitimate corporate activities of private, multi-national businesses.

JAMA's primary concerns include, but are not limited to, the following:

(a) Although the July Joint Statement on the Framework commits both sides to make utmost efforts under the basic principle of a two-way dialogue to find solutions, the U.S. proposal places the burden solely on the Government of Japan to impose administrative guidance on Japanese corporations. It does not recognize or specify any efforts to be made either by the Government of the United States or the U.S. industries involved.

(b) The U.S. proposal includes the phrase "regarding quantitative indicators, *specific expectations* shall be included in the Arrangements pending further discussions between the two governments." This clearly calls for the establishment of numerical targets for trade.

(c) The U.S. proposal requests that "special consideration" be paid to "non-Japanese U.S. auto parts." This clearly reveals the intention of the U.S. Government to use this agreement to press the Government of Japan to encourage discrimination against Japanese-affiliated auto parts companies.

(d) The U.S. proposal calls for the Government of Japan to issue guidance to Japanese-affiliated auto companies in the United States to "encourage" them to submit projections of auto parts purchases for 1995 and subsequent years. This would require companies incorporated under U.S. law and holding U.S. nationality to submit to the direction of a foreign government. This raises clear legal questions regarding national sovereignty and extraterritorial authority.

These one-sided U.S. demands to establish numerical targets, discriminate against American affiliates of foreign corporations, and create inappropriate monitoring requirements will serve only to harm the development and continuation of good business relations between the private sectors of the U.S. and Japan. They are counterproductive to the issues at hand, since business decisions not made on the bases of sound business judgments will not foster increased sales.

Just as importantly, there are serious international and domestic U.S. law questions that are raised by pressure for overt discrimination against Japanese-affiliated companies. These American companies have invested in the United States, created jobs, paid taxes, and contributed significantly to local economies. Seeking to have these companies deprived of sales solely because of their affiliations in order to benefit their direct competitors would violate both the spirit and the letter of the principle of national treatment agreed to under international treaties signed by the United States and other countries, including Japan.

Business development is an issue which can only be effectively addressed by private company interests in the U.S. and in Japan. U.S. Government intervention into these private company decisions is managed trade, a concept which will distort the

structure of open multilateral trade and the principles which support it. Ultimately, this approach will reduce competition, raise prices and restrict consumer choices in Japan and the United States.

JAMA and its member companies have proven over the past decade that business can be developed and problems addressed through specific programs to increase mutual understanding of business practices and objectives.

POSITIONS ON VEHICLES AND AUTO PARTS

The Japanese auto industry is both open and very competitive. There are no unfair trade or business practices protecting the industry either identified or otherwise that should or can be subject to U.S. criticism. For example:

(1) Vehicles

In Japan there are no regulations or practices which restrict imported cars.

(a) In 1978, the tariff on imported cars in Japan was reduced to zero, lower than that of any other industrialized nation. By contrast, the U.S. maintains a 2.5 percent tariff on passenger cars and a 25 percent tariff on imported trucks and two-door sports utility vehicles. The U.S. Big Three manufacturers are trying to extend this extraordinarily high tariff to other vehicle products, such as passenger vans.

(b) There are no regulations, taxes or product approval processes which in any way restrict imported cars in Japan. In fact, Japan is the only country in the world that actually gives preferences in their regulatory process to imported vehicles.

(c) Japanese auto manufacturers do not either in their sales contracts with dealers or otherwise prohibit dealers from selling competing makes.

The key to increasing sales of foreign cars in Japan lies in marketing strategies, *i.e.*, selling cars which fit the market. For example:

(a) Cars with engines smaller than 2,000 cc and which cost less than 3 million yen compose 80 percent of the Japanese market. The Big Three U.S. producers have not introduced a single model in this market range. Instead, they concentrate sales in larger cars with 3,000 cc engine capacity or larger. This segment consists of only 3 percent of the Japanese market.

(b) It is essential to market cars with right-hand steering in order to significantly increase sales in Japan.

(c) It is necessary to market cars which are designed for road conditions, parking restraints, and consumer preferences for performance, fit and finish, and maintenance servicing.

(d) It is important to recognize the obvious. Consumers decide which vehicle to purchase. Dealers decide which vehicles they choose to sell, Japanese, Big Three, or other import. The manufacturers' responsibility is to meet consumer needs. Sales promotion is the key to selling, be it in Japan or the United States.

(2) Auto Parts

JAMA member company affiliates in the U.S. have established a clear policy to purchase parts from local suppliers to the fullest extent possible. It is commonly recognized that there are differences in production, management and purchasing practices between Japanese and U.S. vehicle manufacturers. There are different approaches to product development schedules, cost and quality and other factors which are critical to making purchasing decisions on auto parts. The key to increasing the purchase of U.S. made parts by Japanese owned vehicle manufacturers is to address these differences through education and cooperative ventures.

On the other hand, JAMA member companies can not and should not be expected to purchase parts from non-competitive suppliers as dictated by a rigid government formula designed to interfere with the buying decisions of private corporations. It is most essential that the governments in their negotiations avoid such top down, managed trade approaches such as numerical targets and discrimination against corporations on the basis of ownership. Such approaches will serve only to distort business decisions and in both the short and long term negatively impact the economic interests of both nations.

As stated earlier, JAMA and its member companies have, over the past decade, worked with the United States Government and the U.S. industry to further business opportunities for U.S. auto parts producers. These initiatives and cooperation include, but are not limited to, (1) U.S. Department of Commerce seminars; (2) semiannual Liaison Committee meetings with the Motor Equipment Manufacturers Association (MEMA); (3) One-on-One business meetings; (4) overseas supplier meet-

ings by individual member companies; and (5) organizing delegations to major auto parts shows. Further details are provided below.

U.S. DEPARTMENT OF COMMERCE SEMINARS

JAMA has worked closely with the Department of Commerce and others organizing and presenting large scale seminars. The purpose of these seminars has been to address and discuss practical aspects of selling auto parts to Japanese companies. Some of these seminars include:

- "Trading With Japan Seminar," 1986 in Detroit
- "Selling to Japan Seminar," 1986 in Los Angeles
- "The Indianapolis Seminar," 1987 in Indianapolis
- "Selling Auto Parts to the Japanese Seminar," 1988 in Chicago
- "Design-In Seminar," 1991 in Chicago
- "Business Together,"1993 in Detroit

JAMA/MEMA LIAISON COMMITTEE

JAMA/MEMA Liaison Committee meetings have been held biannually since 1987. Senior purchasing executives from JAMA member companies participate in these meetings where information, opinions, and ideas are exchanged, and programs to assist U.S. parts firms to develop business with JAMA member companies are developed.

ONE-ON-ONE MEETINGS

Since 1990, three "One-on-One" business meetings have been held, the latest of which was held in 1992 in Las Vegas. These meetings feature prearranged appointments between representatives of approximately 100 individual parts makers from MEMA members and approximately 30 teams of purchasing executives from the eleven Japanese car manufacturers. The fourth meeting is scheduled to take place in San Francisco in February 1994.

OVERSEAS SUPPLIER MEETINGS

All of the Japanese automakers have formulated a comprehensive series of measures to expand their procurement of U.S. parts. The Japanese automakers are holding regular conferences with overseas suppliers to share information and exchange views on procurement policy. For example, in March 1993, Honda held supplier meetings with 240 Japanese suppliers and 30 foreign suppliers. In February 1992, Nissan held a meeting with 160 people representing 50 U.S. parts manufacturers, and, in November 1991, Toyota held meetings with approximately 280 people representing 75 North American parts manufacturers.

In addition to the activities discussed above, JAMA and its member companies have participated in organizing delegations to major auto parts shows such as the MEMA/ASIA Big "I" Show, Automotive Aftermarket Industry Week, and Equipment and Tool Institute Seminars.

Through efforts made by industry groups and by individual companies, such as those discussed above, substantial progress has and is being made on the basis of sound business decisions. For example:

- Japanese automaker's purchases of U.S. auto parts increased more than fivefold between 1986 and 1992—from $2.49 billion to $13.62 billion.
- In the past five years, Japanese automakers have nearly quadrupled the number of U.S. companies they purchase parts and supplies from 298 in 1986; 1,179 as of March 1993.

In fact, at their 12th Liaison Committee meeting held this last October 21, JAMA and MEMA issued a joint statement stating that:

> (The two Chairmen) highlighted the significant efforts which both industries have made in expanding long-term business ties. At the same time, they emphasized the mutual dedication of MEMA and JAMA members to achieving substantially greater business growth.
>
> The two Chairmen reaffirmed the founding principle of the MEMA/JAMA relationship that increased sales from U.S. parts suppliers to Japanese vehicle producers can best be achieved within a free enterprise system by close cooperation and communication on an industry-to-industry and company-to-company basis.

Herein lies the real solution to the issues being raised in the Framework.

CONCLUSION

U.S.-Japan auto and auto parts trade has been the focus of industry-to-industry and government-to-government discussions for more than a decade. That focus has been highly productive. Japan has no substantial barriers to the import and sale of U.S. vehicles, and vehicles which appeal to Japanese consumers have sold well in the Japanese market. Despite the current economic recession in Japan and its effects on auto sales, to the extent that U.S. manufacturers are committed to the Japanese market, such sales can increase. Similarly, purchases of U.S.-made auto parts to Japan and to U.S. transplant plants have risen dramatically.

All of these successful discussions have been based on a guiding principle—market-oriented, private sector initiatives hold the key to successful trade. Governments can smooth the road, but only commercial relationships can produce business opportunities and sales. When governments go beyond that role to seek to impose solutions on private businesses, the result is no longer free or fair trade. When governments seek to compromise bilateral and multilateral commitments to national treatment, competitive equality, and protection of proprietary business information, the inevitable result is disruption of trade. JAMA strongly supports and urges that the continuing Framework negotiations turn from managed trade and return to focusing on increasing sales opportunities through expanding business relationships—a tested and proven means to achieving real results.

STATEMENT OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

GATT—URUGUAY ROUND

Issue

Access to global markets is vital to the U.S. semiconductor industry. The SIA has always supported policies designed to strengthen and expand the international trading system. **The industry supports the efforts of the Clinton Administration to negotiate a *successful* Uruguay Round agreement.**

What is needed

A good agreement is more important than concluding any agreement. A "successful" Round must include the elimination of European Community and Korean tariffs on semiconductors and computer parts, the strengthening of international disciplines against dumping, in harmony with current U.S. law; effective protection of intellectual property rights, special border measures, compulsory licensing, patent filing and U.S. Section 337; and, any agreement must continue to allow the use of U.S. Section 301 of the 1974 Trade Act to combat foreign unfair trade practices.

Background

The U.S. must obtain **elimination of the European Community (EC) and Korean tariffs on semiconductors** (14 and 9 percent, respectively). The EC tariffs alone impose a tax of as much as $340 million on the export of U.S. semiconductors and computer parts. These tariffs unfairly place U.S. exporters at a competitive disadvantage while EC and Korean manufacturers benefit from duty-free access to the North American market. SIA supports the "zero-for-zero" tariff proposal for semiconductors, computer parts, and semiconductor manufacturing equipment and materials.

SIA supports strengthening—and certainly no weakening—of international disciplines against dumping. SIA supports deterring injurious dumping by repeat offenders, preventing evasion of dumping remedies, expediting responses to stop dumping, and including all costs in dumping calculations. Unfortunately, these objectives have not been met in the current draft of the GATT Antidumping Code.

Effective protection of intellectual property rights is imperative for U.S. high-technology companies. The Dunkel draft is deficient in several respects. It allows foreign governments to force the transfer of U.S. technology essentially without limit as long as there is "adequate" compensation. SIA opposes compulsory licensing of maskworks. Compulsory licensing provisions also could be abused since the Code does not prevent the exportation of goods from the country which compelled the technology licensing. Further, the United States should not give away its major bargaining chip by agreeing to adopt a "first-to-file" patent standard in the TRIPs negotiations without, at a minimum, obtaining concessions from other countries with substandard patent regimes. Such concessions might include a grace period during which an inventor may work toward commercialization of a product (e.g. U.S. law

already permits one year) without requiring the inventor to file a patent application. Providing disciplines which will eliminate discriminatory practices such as slow patent issuance, lax patent enforcement and patent flooding is useful. The special border measures provisions should clarify the *prima facie* standard necessary to invoke these measures so that all countries understand what this level of proof entails. Finally, SIA believes that the U.S. should retain the enforcement powers provided in U.S. Section 337.

Dispute settlement provisions in the current draft Uruguay Round agreement would undermine the effectiveness of U.S. Section 301 of the 1974 Trade Act. Section 301 has been a driving force behind liberalization of many foreign markets. The U.S. must insure that the GATT Dispute Settlement Code allows the U.S. to **continue to utilize Section 301** to combat discriminatory foreign trade practices that limit U.S. exports.

The Dunkel draft includes a provision permitting the majority of either the Ministerial Conference or the General Council of the Multilateral Trade Organization to interpret the provisions of the various GATT codes. In the past, agreement by consensus was necessary. Permitting the United States to be bound by the interpretations of a majority, would clearly disadvantage U.S. companies in areas such as intellectual property protection and enforcement of remedies against unfair trade practices.

STATEMENT OF SOUTHDOWN, INC.

Considerable public and press attention is currently being focused on the Administration's efforts to seek Congressional approval of the controversial North American Free Trade Agreement (NAFTA). Due in part to the clamor over NAFTA, too little attention is being devoted to the Uruguay Round international trade negotiations that are scheduled to be concluded by December 15, 1993. The draft Uruguay Round agreement proposed by former GATT Director General Arthur Dunkel would significantly weaken U.S. laws against unfairly traded imports, result in a loss of U.S. manufacturing jobs, and accelerate the ongoing process of de-industrialization of our economy, which has significant long-term social and economic consequences.

The importance to the U.S. manufacturing sector of strong, effective remedies against unfairly priced imports is exemplified by the experience of the U.S. cement industry. A description of this product and the market is helpful to understanding the cement industry's story.

Cement is the binding agent in concrete. As an essential component of virtually all construction, concrete is literally the foundation of modern society. Depending upon economic conditions, the United States consumes from 70 million to 90 million tons of cement annually. The manufacture of the gray portland cement used to produce concrete involves the mining and crushing of large quantities of limestone. The crushed limestone is combined with smaller amounts of iron, silica and alumina for grinding into a raw meal which is heated in rotary furnaces or kilns to temperatures of 2700 degrees. The resulting intermediate material, called cement clinker, is combined with gypsum and ground into the finished product, a fine gray powder.

Cement is produced to standards set by the American Society for Testing Materials. As a result, it is a homogeneous, fungible commodity. Because cement producers' ability to differentiate their products is very limited, cement sells on the basis of price.

Demand for cement is closely tied to the construction cycle. At the peak of the construction cycle, the domestic cement industry has historically experienced strong demand, high capacity utilization, and increased prices. As the construction cycle reaches its trough, cement demand, capacity utilization, and prices have typically fallen.

The peaks and valleys resulting from the cyclical nature of the industry historically averaged out to provide the industry acceptable profits and returns on investment. Accordingly, the industry's performance through the late 1970's enabled it to generate or attract the capital required to modernize aging plants and equipment and to expand production capacity to meet growing demand.

Beginning in the 1980's, however, the dynamics of the cement industry were radically altered by the massive intrusion of dumped imported cement from Mexico, Japan, and other countries. The prices at which these countries sold cement in the United States were significantly lower than prevailing prices for cement in the exporters' protected home markets. Cement manufacturers from these countries were nevertheless able to profit from dumping by exporting otherwise unutilized production capacity to the United States at prices above their variable manufacturing costs.

The increasingly large volume of low-priced imported cement altered the balance between supply and demand in the U.S. cement market by effectively creating a perpetual "excess supply" situation. During the robust economic expansion that prevailed from 1983 to 1989, cement consumption increased by 25 million tons, or 40 percent, over the previous cyclical trough in 1982. Because of the limitless supply of dumped imports, however, cement prices departed from previous historical patterns and actually declined during this boom in the construction cycle. In fact, prices for cement fell by approximately $20 per ton in real dollar terms from 1980 to 1990.

In this severely depressed pricing environment, the economic condition of the domestic cement industry became so debilitated that, rather than following the historical pattern of expanding capacity during the upturn in consumption, the industry abandoned 9 million tons, or 10 percent, of its existing capacity. The number of plants declined 23 percent, from 142 in 1980 to 109 in 1990. The industry's return on investment was simply too low to economically justify the commitment of additional capital to new plants and equipment.

At Southdown, we realized that the economic viability of the industry depended on reversing the price depressing effects of dumped cement imports. Enlisting the support of other producers with plants located in the eight southern tier states, we filed our first petition against dumped imports of cement and cement clinker from Mexico in 1989. We did so with full knowledge that, despite the declining condition of the cement industry, domestic manufacturers had lost a series of previous antidumping cases, including major cases in 1978, 1983 and 1986. We believed that we had a compelling case to make. We also believed that, if the industry was willing to put capital at risk to manufacture a product as efficiently and cost effectively as it can be produced anywhere in the world, we should not be denied the right to survive and prosper simply because the trade laws had not been enforced in the past.

At tremendous cost, we prevailed. Cement producers secured antidumping orders against dumped imports from Mexico in 1990 and against dumped imports from Japan in 1991. An antidumping investigation of imports from Venezuela was suspended early in 1992 with an agreement by Venezuelan exporters not to sell cement and cement clinker in the United States at prices lower than their prices in Venezuela.

The results of these victories have been dramatic. The annual volume of imports from Mexico, Japan, and Venezuela has declined over 80 percent since 1989. Import prices have improved markedly. As a result, domestic cement prices have begun to rise across the country for the first time in over a decade.

The resurgence of the domestic cement industry is by no means complete, nor will it be easy. Because of the U.S. antidumping law, however, the domestic cement industry is again able to compete on a fair basis with imports from other countries. Although petitioning for dumping relief is a costly and uncertain course for domestic industries to undertake, the antidumping law can be a powerful corrective to unfairly priced imports when properly enforced. The United States needs to retain its full ability to remedy unfair trading practices.

The Dunkel draft, however, would upset the cement industry's hard-won relief and would discourage other industries from even seeking relief. It would compel sweeping changes to the U.S. antidumping law. Many of these changes would clearly be harmful to the interests of U.S. manufacturers like the cement industry. They would, for example, make it more difficult for U.S. industries to file an unfair trade case by imposing unreasonably stringent standards for determining whether the petitioner has "standing" to file a case. Moreover, U.S. labor unions would likely lose the right to seek relief under the trade laws.

Methodological changes to the dumping calculation required by the Dunkel draft would also make it more difficult to find that dumping has occurred and would diminish the relief provided against dumped imports even where dumping is found to exist. The Dunkel draft would also make it more difficult to make the required showing that the domestic industry is economically injured by the dumped imports, because it does not authorize the U.S. International Trade Commission to take into account the combined impact of unfairly traded imports from multiple countries.

In addition, the Dunkel draft would rob U.S. industry and labor of the ability to obtain meaningful, long-term relief against dumping and subsidies. After five years, the domestic petitioner would be forced to prove its injury case all over again in order to keep relief in effect.

The Dunkel text's provisions for the settlement of antidumping disputes between countries would also be harmful to the interests of U.S. manufacturers. Here, too, the cement industry has first-hand experience. The Mexican Government challenged the U.S. antidumping order on Mexican cement under procedures provided in the GATT Anti-dumping Code. The industry incurred considerable expense defending its interests against Mexico's politically motivated GATT case. Predictably, the GATT

panel's July 1992 report was adverse to the United States and the U.S. cement industry. The panel based its decision on the conclusion that the U.S. Commerce Department should have determined, prior to initiating the investigation, that the antidumping petition was supported by the domestic industry. This result is not compelled by the language of the Anti-dumping Code, is contrary to U.S. law and practice, and was never argued to the Commerce Department by the Mexican exporters. In effect, the panel ruled that Commerce has *never* properly initiated an antidumping or countervailing duty case in compliance with the Anti-dumping Code.

As permitted by current GATT rules, the U.S. Government has not agreed to the adoption of the panel report by the GATT Anti-dumping Code Committee. Under the Dunkel draft, however, the United States would be compelled to adhere to adverse GATT panel decisions, no matter how erroneous, politicaliy motivated, or detrimental to U.S. interests. Thus, antidumping relief fairly won before U.S. agencies and sustained in the U.S. courts would be wiped out by panels of international bureaucrats, who would be free under the Dunkel draft to substitute their judgment freely for that of U.S. authorities. The Dunkel draft provides no standards for a panel's review and requires no deference to the findings and conclusions of the International Trade Commission and the Commerce Department.

The Dunkel draft is not intended to represent a compromise among the various national interests involved in the Uruguay Round. Rather, it reflects the interests of Japan and other export-dependent countries whose manufacturers benefit from formal and informal import barriers that protect their home markets from foreign competition and permit them to engage in international price discrimination, that is, to export to the United States at lower prices than they charge in their home market. These countries have tried to influence the outcome of the Uruguay Round negotiations through a well-financed lobbying and public relations campaign that portrays antidumping remedies as protectionism for inefficiently operated, failing domestic industries.

The U.S. antidumping law, however, is anything but protectionist and does not serve merely to prop up aging and inefficient production. It provides a remedy only against unfairly traded imports, not fairly traded imports. If relief is effective, as in the cases involving cement imports, it will result in trade at fair prices. The free flow of fairly priced foreign goods is unimpeded. Because the antidumping law serves to deflect protectionist pressures away from U.S. lawmakers by providing an administrative remedy against unfairly priced imports, the Dunkel draft's weakening of this law would actually increase the likelihood that Congress would opt for protectionist measures in the future.

The antidumping law also does not sacrifice consumer benefits for protection of industries and jobs. The savings to consumers from purchasing dumped merchandise are merely transitory. In the long run, unfairly priced imports displace U.S. production, force reductions in domestic production capacity and industrial employment, and make U.S. consumers more dependent upon foreign sources of supply. As a result, U.S. consumers become vulnerable to supply disruptions and higher prices in the future.

It also should be pointed out that the antidumping law is procedurally fair to foreign exporting interests. Foreign companies and governments are permitted full participation in trade cases. Representatives of foreign interests are given access to all evidence that will be considered by U.S. agencies in making their decisions. These decisions are also subject to review by the Federal courts to ensure against errors of fact or law. For example, after several years of appeals, our August 1990 antidumping order against cement from Mexico has finally been affirmed by the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit. Our May 1991 order against cement from Japan is still on appeal.

The "disruption" to international trade asserted by foreign exporting interests is illusory in any event. Despite the immense volume of U.S. imports and the great variety of different goods being imported into the United States, few antidumping cases are filed each year. Moreover, statistics compiled by the U.S. Department of Commerce demonstrate that the majority of antidumping cases are decided against the domestic petitioners. Consequently, only a minuscule percentage of all imports into this country are subject to antidumping duty orders.

The U.S. cement industry has never sought to hide behind protectionist barriers. We welcome fair competition, both foreign and domestic. For this reason, Southdown supports NAFTA. Unlike the Dunkel draft, NAFTA expressly preserves current U.S. law against injurious dumping.

As the experience of the cement industry demonstrates, the continued competitiveness of the U.S. manufacturing sector can only be ensured if effective relief against dumped imports remains available. If the ability of the United States to counteract unfairly priced imports is lost as a result of the Uruguay Round, it will

contribute in a major way to the further loss of domestic industrial capacity and manufacturing employment and the irretrievable de-industrialization of the U.S. economy.

As the December 15 deadline for a Uruguay Round agreement approaches, the Clinton Administration will be under increasing pressure from our trading partners to make a deal—any deal—to bring the Uruguay Round to a "successful" conclusion. Dumping, of course, is only one of the matters under negotiation in the multi-faceted Uruguay Round talks. Many U.S. industries have worked hard to lower tariff and non-tariff barriers to free trade, and other industries hope to obtain liberalization of trade in services and enhanced protection of U.S. intellectual property abroad. These are all important goals.

A successful result for U.S. business and industry in the Uruguay Round, however, should balance the expansion of free trade with the preservation of fair trade, and must not bargain away the interests of U.S. producers and workers. U.S. Trade Representative Mickey Kantor has promised that the Clinton Administration "is committed to seeking a Uruguay Round agreement which preserves our antidumping and countervailing duty laws as effective remedies against unfair trade practices." To be true to its commitment, the Administration must insist that the Dunkel draft not be the basic instrument for negotiating a Uruguay Round agreement on dumping and demand that the final agreement fully protect U.S. remedies against unfair import competition. Should the Administration fail to do so, Congress should be prepared to reject the resulting agreement.

STATEMENT OF THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. Chairman and Members of the Committee: My name is Robert E. Heaton and I am Vice Chairman of the Stainless Steel Group of Lukens, Inc., a producer of specialty steel. I also serve as Chairman of the Board of Directors of the Specialty Steel Industry of the United States, a trade association representing 21 domestic producers of specialty steel. Specialty steels include stainless, tool, heat-resisting and electrical steels as well as super alloys and other high technology materials. Our high-technology products possess unique characteristics that permit their use in extreme environments demanding exceptional hardness, toughness, strength and resistance to heat, corrosion or abrasion.

I appreciate the opportunity to testify before you today on the Uruguay Round of the General Agreement on Tariffs and Trade. Because of my industry's long-standing struggle against the unfair trade practices of foreign specialty steel producers, I am vitally concerned about the terms of the agreement currently being negotiated in Geneva and their effect on U.S. trade laws.

Sadly, I fear that the GATT agreement as it currently stands will weaken the ability of American industries to protect themselves against dumped and subsidized products. My concerns arise from the so-called Dunkel draft text, which amends the codes that govern U.S. laws on these practices. Rather than strengthening domestic trade laws, these amendments make it more difficult for U.S. industries to file unfair trade cases, more difficult to obtain affirmative decisions and more difficult to maintain outstanding orders. If the Administration cannot make substantial changes in the Dunkel text, I urge you to reject any agreement incorporating its changes to the Dumping and Subsidies Codes.

However, before I detail how the Dunkel text adversely affects U.S. law, I want to emphasize that trade laws are not just technical niceties that take up space in the U.S. Code. They can actually mean the difference between the survival or demise of an American industry—even a technologically innovative one. My industry is a case in point. During the past 20 years, we have filed more than 20 cases under U.S. trade laws to remedy the injury caused by the unfair trade practices of our foreign competitors. The successful prosecution of these cases has proven critical to our industry's financial health. Without tough laws to rectify the distorted prices of dumped and subsidized foreign steel, there is no question that the ranks of domestic specialty steel industry would be much thinner today and that we would not have been able to maintain our technological prowess.

The fact that we have had to resort to legal remedies to ensure our survival does not mean that this industry is noncompetitive. The producers in this sector have maintained their commitment to modern technology, innovation and productivity, even in the face of the continuous assault of unfairly traded imports. Such a commitment is reflected in the sustained capital investment in our production facilities and the ongoing effort to bring new materials to the marketplace.

But clearly all of the technological innovation in the world cannot ensure an industry's survival if it is competing against foreign competitors that are able to take

advantage of government subsidies or that can sustain dumped prices until they have driven their American counterparts out of business. That is where U.S. trade laws provide the crucial element in the balance of international trade. These laws are needed to make sure that foreign producers abide by internationally accepted rules of lawful commercial conduct. They are essential to preserving competition in the U.S. market so that American consumers always pay a fair price for their purchases.

Unfortunately, the Dunkel text undermines these important objectives. While there are numerous parts of the Dunkel draft that weaken current U.S. trade laws, I would like to highlight a few of the more egregious problems for your review:

- **Dispute Settlement.** To be acceptable, any GATT agreement must provide standards of review for dispute settlement panels evaluating American antidumping and countervailing duty determinations. Without such standards, it is likely that GATT panels will pick apart U.S. trade laws by applying their own standards. To prevent this, findings of fact should not be reviewable by GATT panels and U.S. legal procedures should not be subject to reversal unless they are unreasonable interpretations of the GATT and its codes.
- **Use of Averaging.** The Dunkel draft would require averaging on both sides of the dumping calculation, thus permitting foreign producers to offset dumped sales with undumped sales and unfairly diminishing dumping margins.
- **Exclusion of Sales Below Cost.** The current draft agreement permits administering authorities to disregard sales below the cost of production by adopting the basic criteria contained in the U.S. dumping statute. However, the effectiveness of these criteria is then vitiated by the overly-broad definitions contained in the footnotes. These definitions represent a complete departure from current U.S. practice and will permit a far greater number of below cost sales to be considered in dumping calculations.
- **Cumulation.** The GATT agreement must allow imports from different countries to be cumulated in order to establish injury in antidumping cases. This provision, which is part of United States law, has been omitted from the Dunkel draft.
- **Definition of Subsidy.** The definition of subsidy in the Dunkel draft is much too narrow and appears to be limited to financial contributions to foreign industries. However, nonfinancial benefits, such as governmentally-imposed export restraints, exemptions from regulations and dual pricing programs, provide substantial subsidies and must be actionable.
- **Sunset.** The Dunkel draft provides that antidumping and countervailing duty orders will be revoked in five years, even if dumping or subsidization continues. This provision must be eliminated, or the burden of proof with respect to revocation must be placed on respondents.
- **Standing.** The Dunkel draft unfairly restricts eligibility for filing a case by failing to provide that unions can be petitioners and by requiring polling of domestic companies to determine who supports a case, even when many companies are reluctant to make a public commitment because of fear of retaliation. Further, the Dunkel draft does not make clear that involvement in a joint venture, or other relationships with a foreign exporter short of full control, would exclude a U.S. producer from being counted as part of the domestic industry.

These and other changes in the Dunkel draft are essential before the United States approves a GATT agreement that contains its amendments to the Dumping and Subsidies Codes. If these modifications are not made, the Uruguay Round will undermine the ability of U.S. industries to protect themselves against unfair trade practices. I therefore encourage you to give serious thought to the future of vital industries, such as specialty steel, when you consider whether the agreement resulting from the Uruguay Round will prove beneficial to the U.S. economy.

Thank you for your kind attention.

STATEMENT OF TERENCE P. STEWART, ESQ.

I. Introduction.

This statement presents my personal views on the current status of negotiations in the Uruguay Round and how those negotiations may effect U.S. industries. As the Committee may be aware, our firm has monitored developments in the Uruguay Round closely during the last four years and has prepared a treatise on the negotiating history of the Round* which has recently been published and which will hopefully be updated when the Round concludes.

A. Market Access

While the market access agreement announced in Tokyo in July has helped frame the approach of the major industrialized countries to the industrial products sector, the Tokyo package has received differing interpretations by the participants. Nonetheless, the size of the package of tariff reductions on industrial products presented by the Quad countries to date in Geneva (some on an "illustrative" basis) would meet the general Round objectives of a minimum overall reduction of about one third. Each country has adopted a different approach to meeting the one third target. For example, the U.S. has pursued sectoral zero-for-zero arrangements and participation in the chemical sector harmonization process for much of the duty reductions contained in its offer. The European Community has been willing to participate in many of the zero-for-zero groups but has emphasized tariff peak reductions -- the EC has the fewest tariff categories with existing tariffs at 15% or above of the Quad countries -- while minimizing duty reductions offered on a range of major industrial products with tariffs in the 12-14% range (just below the EC-promoted definition of peak, 15%). Japan has made offers that have included binding existing duty levels on many products where duties were "temporarily" reduced. This means that there will likely be minimal further increased access to the Japanese market from duty reductions as a result of the Round.

As the Committee is aware, the U.S. is interested in increasing the number of zero-for-zero sectors (electronics, nonferrous metals, scientific instruments). Europe has been seeking substantial reductions in tariff peaks by the United States and other Quad participants. Because tariff peaks in industrial products are generally in products of proven import sensitivity and often appear where other market access issues are involved (e.g., reintegration of textiles and apparel) and because the U.S. has attempted to pursue a largely request-offer approach, to date there has been no breakthrough in an industrial products market access package that would permit reductions bigger than the "minimum" overall package that is included in existing offers. The European Community has not supported the efforts of the U.S. and EC textile and apparel industries to arrive at a mutually agreeable market access package on textiles and apparel. Absent such a breakthrough between the industries and acceptance of any resulting package by the respective governments, it is not clear that the final market access package will be as "big" as many exporting industries would prefer. Indeed, it is possible that agreement on certain zero-for-zero categories may not survive the resolution of remaining issues by Quad participants. Because there remains uncertainty as to what the Quad in fact intends to agree upon, there has been hesitation by other countries to put large offers on the table.

Despite the uncertainty, it is my understanding that to date there has been some positive response to the Tokyo package, including the zero-for-zero options. For example, I am informed that Korea has informally offered to accept six of the eight zero-for-zero categories (excluding beer and distilled spirits). However, for many countries, the commercial benefit from the zero-for-zero offerings lies in categories rejected to date by the EC and/or other members of the Quad (e.g., nonferrous metals) or that were not part of the Quad package -- e.g., fish (New Zealand and a number of other countries), oil seeds (Argentina). Other zero-for-zero requests presented to governments have not yet been acted upon even where there are indications of support from other countries (e.g., cut flower industry request to the U.S. for inclusion in the zero-for-zero offers; indications of support from major cut flower exporting countries like Colombia).

On market access in agriculture, the issues are complicated by factors ranging from the political importance of farming interests in many countries, national security/food self-sufficiency, balance of trade considerations, foreign debt, food aid needs, and cultural/historical issues. While much of the focus has understandably been on the European Community and its ability to accept the Draft Final Act as revised in the bilateral Blair House

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* Stewart and Stewart, The GATT Uruguay Round: A Negotiating History (1986-1992) (Terence P. Stewart, General Editor)(1993) (Kluwer Law and Taxation Publishers).

agreement, the EC and more particularly France are not the only parties with major problems with the existing Draft Final Act: Japan and Korea on rice, Canada, Switzerland, certain Nordic countries on dairy, Mexico on other products. Moreover, the liberalization envisioned by the Draft Final Act is likely to cause substantial financial difficulties for some of the poorest countries in the world. Many countries describe the schedules presented to date as containing significant "dirty tariffication" by most, if not all, players. To the extent that the market liberalization process of tariffication is not calculated on formulae that minimize the inflationary claims of the submitters, agricultural exporters in the United States and in other countries will find market liberalization even more watered down than the numbers and criteria in the Draft Final Act and Blair House agreement suggest.

There is substantial discussion in Geneva of a "deal" between the United States and Japan that would permit Japan to postpone the tariffication process on rice in exchange for expanded minimum market access figures. To the extent such an arrangement is reached, many other countries presumably have an interest in whether the mechanism adopted will solve their problem. At the same time, agricultural exporters have important concerns about whether such an arrangement will undermine the existing perceived balance in the Draft Final Act and lead to the unraveling of the overall negotiations. Even the rumored arrangement on rice for Japan does not appear to be sufficient for some countries. For example, Korea has started the process of distancing its particular circumstances from those of Japan, pushing for total exclusion of Korean rice from the market liberalizing efforts.

Side deals are also rumored as being considered between a number of other countries as major participants pursue bilateral negotiations. Some developing countries are attempting to sort out concerns on the agriculture package in bilateral negotiations as well. For example, India has a number of concerns, including exceptions for certain subsidy programs or the ability, despite the "peace clause" in agriculture, to resort to traditional GATT remedies if agricultural imports cause difficulties in India.

Finally, while some progress on some underlying DFA issues in agriculture were reported as being made, little progress has been reported on the textile negotiations. While the U.S. and EC industries have attempted to reach a common position, some major exporters, such as India and Pakistan, continue to push for an expansion of the speed and size of reintegration efforts.

There also remains substantial unhappiness among developing countries on market access opportunities in tropical products (exacerbated by the ongoing dispute over access by Central and South American producers of bananas to the European Community) and natural resources.

Despite the continuing difficulties in agriculture and the smaller than desired existing proposals on industrial tariffs, the Director General of the GATT indicated on Monday of last week in Geneva, "we have 66 comprehensive and 6 non-comprehensive draft schedules of concessions from participants representing in aggregate the great bulk of world trade." This is the most participation in terms of tariff reductions and bindings by countries in the history of the GATT. Further offers and at least some improvements in existing offers remain a probability.

Six weeks before the scheduled conclusion of the Round, it appears likely that the market access package will meet minimum expectations on industrial goods and will be a small package in agriculture.

B. Services

In services a revised framework agreement was circulated on October 1st and was updated by a draft circulated on October 29th, reportedly leaving only a few issues unresolved. Many countries revised their offers of initial commitments or supplied initial offers in the last thirty days. As of November 1st, "sixty-seven offers of initial commitments covering 81 countries" had been submitted. While many offers from developing countries cover only a few issues and while a number of areas remain controversial, there appears to have been more progress on services than any other area of the Round in the last year.

Several areas of controversy remain:

(a) whether the United States will take an exception to MFN obligations for financial services;

(b) whether the U.S. will continue to take a "horizontal limitation" on national treatment for direct taxation in its schedules;

(c) what, if any, maritime sectors will be offered by the United States; and

(d) whether the European Community will make an offer in the audio/ visual sector.

On financial services, it is my understanding that a number of countries are perceived by the United States to have made inadequate initial commitments. The U.S., accompanied by the EC, will be visiting many of these countries during the next several weeks to review existing concerns and, hopefully, improve the size of initial commitment offers. Absent movement by these countries, the U.S. will likely adopt its two-tiered approach on financial services, essentially taking an exemption from MFN requirements for selected countries.

On direct taxation, the United States is reported to have taken a "horizontal limitation" in its schedule on the application of national treatment. In recent months a range of concerns have been raised about the implications of a national treatment commitment in the context of direct taxation, including the ability to assure equitable tax payments by subsidiaries of foreign corporations. Draft language considered by the Services group which attempted to address concerns raised by the United States was apparently unsatisfactory. Failure to resolve this issue in the context of the ongoing negotiations could result in similar "horizontal limitations" being taken by our trading partners, which might be of concern to U.S. multinationals.

On maritime and audio/visual, the U.S. is likely to offer commitments in two sectors of maritime -- auxiliary services and port facilities (assuming sufficient other country initial commitments on these sectors) -- while some form of standstill on local programming may be offered by the Community, possibly with an offer of national treatment on the payment of funds collected from the sale of blank video tape.

C. Institutional Issues/Dispute Settlement

When the Draft Final Act was released in late December 1991, one of the areas where there was anticipated need for further review was on the so-called Multilateral Trade Organization ("MTO"). A variety of concerns on the MTO were raised in the United States by various groups, including environmental groups concerned about possible limitations on U.S environmental standards. Other issues included the possible loss of national sovereignty (e.g., whether the amendment process could force the U.S. to accept changes to substantive rights where the U.S. did not agree), technical issues on whether certain laws could be grandfathered (importantly, the Jones Act), rights/procedures for waiver, and concerns over the creation of another international organization. A number of issues also remained to be addressed in the review of dispute settlement procedures, including the U.S. concern over panel decisions in antidumping and countervailing duty challenges

Efforts in the last month in Geneva to address these issues have been complicated by the mandate of the group (Informal Group on Institutional Issues) formed. While at this point, the identity of the issues of concern to the United States and other countries is clear, the ultimate resolution of the issues remains uncertain. For example, several proposals have been made on the amendment process, each making distinctions between changes which involve "substantive" rights and those that deal only with procedural matters, each providing a basis for a country that has not voted for a change to not accept the change, but with different approaches to whether failure to accept a change requires removal from the MTO.

The United States submitted a paper on October 29th presenting its preferred approach to the issues, including an alternative to a new organization.

The European Community, one of the originators of the MTO concept along with Mexico and Canada, has been positioning itself to claim that a failure to include an MTO within the final package would be a deal breaker. Many countries are similarly placing great emphasis on inclusion of an MTO in the final package, although alternatives exist to accomplish the same result. At the November 1st meeting of the Trade Negotiations Committee in Geneva, Mr. Sutherland has called on the continued work of the Informal Group on Institutional Issues with revised drafts of both the MTO and dispute settlement texts asked for November 15th.

On dispute settlement, there has been considerable "harmonization" activity between the various dispute settlement texts in the various individual areas and the so-called "integrated dispute settlement" provisions. Concerns have been expressed by some that the balance of the Subsidies agreement could be shifted by the ongoing harmonization process by language changes proposed by the European Community and others on handling matters under the prohibited subsidies and so-called "dark amber" subsidy articles. Should changes be made in the subsidy text to lessen the disciplines or the actions that aggrieved parties can take against countries in these areas, some of the major accomplishments of the subsidy code negotiations will have been eroded in the harmonization exercise.

One of the other important issues in dispute settlement involves the U.S.'s efforts to obtain clarification on panel functions in reviewing administrative determinations, such as antidumping or countervailing duty actions. Panel decisions in the past in these areas have appeared to many in the U.S. to (a) create new obligations that are not contained in the Code, (b) reject interpretations by governments that are reasonable where Code language may be ambiguous, (c) permit evidence that was not part of the administrative record to be considered in determining whether an administrative determination is correct, (d) provide no deference for the weighing of evidence by the administrator, and (e) deviate from normal GATT practice in mandating remedies as opposed to simply requiring the country concerned to bring its practice into conformity. Some of these issues were addressed in the Draft Final Act. Others are of sufficient concern to warrant clarification and agreement before the Round is concluded. The U.S. efforts to date have been to explore the problems perceived and the nature of the solution sought. Hopefully, resolution of the issues will occur in the next forty days.

The Committee should be aware that a significant underlying problem in dispute settlement and in the Rules area appears to flow from the position of some countries (Hong Kong, Japan, ASEANs, Nordics) that Article VI of the GATT (which authorizes antidumping and countervailing duty actions) should be narrowly construed. Such a position conflicts both with the language of Article VI (which indicates that injurious dumping is to be "condemned") and with the practice of major users, such as the United States, which have viewed Article VI as an integral part of the GATT and within domestic law as remedial.

D Rules

I had the opportunity to appear before this Subcommittee in early 1992 to review the problems that existed at that point in the antidumping and subsidy texts. For brevity, a copy of that statement is attached. As I stated then and repeat today, the Draft Final Act released in December 1991, if adopted without significant change would:

(a) make it more difficult and more expensive for companies and workers facing unfair foreign trade practices to file a petition for relief;

(b) make it more difficult and more expensive for companies and workers to obtain determinations of dumping or subsidization that accurately reflect the amount of price discrimination, magnitude of sales below cost or magnitude of subsidization;

(c) make it more difficult and more expensive for companies and workers to obtain affirmative injury determinations from the International Trade Commission; and

(d) make it more difficult and more expensive to maintain antidumping or countervailing duty orders despite the continuation of dumping or subsidization.

Stated differently, under the Draft Final Act cases will be more difficult to bring, cost more, provide less relief and for shorter periods of time. Such a result is plainly at odds with the Congressional mandate for the negotiations to bring back greater disciplines. It should be remembered that antidumping and subsidies were two of the areas where many issues were solved not by negotiation but by having the GATT Secretariat put out a text that reflected its view of a compromise position amongst the parties

In December 1992, the United States presented a paper identifying a number of important issues in antidumping that it wished to have revised. Issues of importance to the United States include:

(a) dispute settlement
(b) sunset
(c) cumulation (including negligibility standards)
(d) circumvention.

Each of these issues is very important to U.S. users. This short list, however, does not address many U.S. industry and worker concerns. The lack of standing for workers (U.S. law presently provides such standing) is one obvious problem. Many others exist. It is critical that the U.S. obtain correction to the short list issues and as many other issues as possible in the next thirty-five days.

It is also critical that the U.S. not lose ground in the harmonization process that is ongoing either in the antidumping and subsidies texts or in the institutional issues/dispute settlement areas.

E. Other issues

Many of the so-called "Track IV" issues (besides antidumping) that were raised by the United States in December 1992 or that appear to have been raised by interest groups in the U.S. remain unresolved today -- environmental concerns on sanitary and phytosanitary provisions and on standards, industrial concerns on intellectual property issues (transition periods, coverage of pipeline, lack of national treatment on blank tape fund disbursements in France, compulsory licensing). Some are presumably being raised in bilateral negotiations. Others presumably are part of the United States' end game program for the next forty days.

F Scorecard

Measured against the negotiating objectives identified in the Omnibus Trade and Competitiveness Act of 1988 [19 U.S.C. 2901], the Draft Final Act and subsequent negotiations suggest the following grades thirty-five days before December 15th:

Objective	Grade
A. Overall U.S. Trade Negotiating Objectives	
(1) more open, equitable and reciprocal market access:	
-- industrial goods	C - C+
-- agricultural	D - C
-- services	C- - B+
(2) the reduction or elumination of barriers and other trade distorting policies and practices	D in Agr C in ind.
(3) a more effective system of international trading disciplines and procedures:	
-- antidumping	F
-- subsidies	D
-- safeguards	C - B
-- TRIPs (grades are impacted by transition periods and concerns about compulsory licensing)	C- - B
-- Preserving ability to use 301:	
-- areas covered by Uruguay Round	A
-- areas not covered by Uruguay Round (objective of U.S. trading partners to eliminate ability to take unilateral action)	?
-- TPRM	B - A
-- FOGS/GATT Articles	C- - B
-- Rules of Origin (only concern has to do with spillover effect on circumvention questions in antidumping/subsidies)	B - A
-- Services	B
B. Principal Trade Negotiating Objectives	
(1) Dispute settlement:	
(a) more effective and expeditious dispute settlement mechanisms and procedures	B - A

F. Scorecard (cont.)

Objective	Grade
B. Principal Trade Negotiating Objectives (cont.)	
(b) more effective and expeditious resolution of disputes and enable better enforcement of U.S. rights	B - A
[NOTE: U.S. rights in important areas such as agriculture will remain unclear and presumably unenforceable because of language in text]	
(2) Improvement of the GATT and Multilateral Trade Negotiation Agreements:	
(a) enhance status of GATT	B - A
(b) improve operation and extend coverage to products, sectors, and conditions of trade not adequately covered:	
-- agriculture	D - C
-- textiles and apparel	C
-- services	B
-- TRIPs	B
(ignoring transition periods and compulsory lic.)	
-- TRIMs	D - C
-- Japan-related issues (competition policy, etc.)	F
(not on agenda for Uruguay Round)	
-- Environment	F - C-
(not on agenda; some efforts by U.S to include language in preamble, MTO, phytosanitary, and standards and establishment of working group which may be upgraded to a permanent committee)	
(c) to expand country participation in particular agreements or arrangements	B - A
(3) Transparency	B
(4) Developing countries:	
(a) providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices:	
-- market access	F - B
(depending on country)	
-- special and differential treatment	C
(b) establishing procedures for reducing non-reciprocal trade benefits for the more advanced developing countries	F
(5) Current account surpluses (rules to address large and persistent global current account imbalances)	F
(being addressed vis-a-vis Japan in bilaterals; not part of Uruguay Round agenda)	
(6) Trade and monetary coordination	C+

F. Scorecard (cont.)

Objective	Grade
B. Principal Trade Negotiating Objectives (cont.)	
(7) Agriculture:	
(a) developing, strengthening and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices	C
(b) increasing U.S. agricultural exports by eliminating barriers to trade and reducing or eliminating the subsidization of agricultural production	D - C-
(c) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions	D - C-
(d) reduce excessive production of agricultural commodities during periods of oversupply	D - C-
(8) Unfair trade practices:	
(a) improve GATT 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	F
(b) to obtain application of similar rules to the treatment of primary and nonprimary products in the Subsidies Code: in Subsidies Code	A
in light of Agriculture	F
(c) obtain enforcement of GATT rules against state trading enterprises	D - C
(d) obtain enforcement of GATT rules against acts, practices, or polices of a government which unreasonably require: (i) substantial direct investment in the foreign country be made, (ii) intellectual property be licensed to the foreign country or to any firm of the foreign country, or (iii) other collateral concessions be made as a condition for the importation of any product or service of the U.S. into the foreign country or as a condition for carrying on business in the foreign country	C
(9) Trade in services:	
(a) reduce or eliminate barriers to int'l trade in services (depending on sector)	D+ - B
(b) develop internationally agreed rules, including dispute settlement	B - A

F Scorecard (cont.)

Objective	Grade
B. Principal Trade Negotiating Objectives (cont.)	
(10) Intellectual property:	
(a) enactment and effective enforcement of laws which recognize and adequately protect intellectual property including copyright, patents, trademarks, semiconductor chip layout designs, and trade secrets (issues of concern in Uruguay Round: transition periods, compulsory licensing); to date, Special 301 also effective	B - A
(b) and provide protection against unfair competition	B - A
(c) establish GATT obligations on standards, enforcement procedures both internally and at the border and effective dispute settlement procedures	B - A
(11) Foreign direct investment:	
(a) reduce or eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment	D
(b) develop internationally agreed rules, including dispute settlement procedures, which help ensure a free flow of foreign direct investment, and reduce or eliminate trade distortive effects of certain trade-related investment measures	D - C-
(12) Safeguards:	
(a) improve and expand rules and procedures	B - A
(b) ensure that safeguard measures are transparent, temporary, degressive and subject to review and termination when no longer needed	B - A
(c) require notification and monitoring by GATT	B - A
(13) Specific barriers:	
(a) obtain competitive opportunities for U.S. exports in foreign market substantially equivalent to the competitive opportunities afforded foreign exports, including the reduction or elimination of specific tariff and nontariff trade barriers:	
-- zero-for-zero categories	A
-- chemical harmonization categories	A
-- other products	C
(14) Worker rights (while not Uruguay Round issue, U.S. objective specifically references GATT in connection with worker rights issues)	F
(15) Access to high technology in foreign countries (not an area of discussion in Uruguay Round; however, footnote 2 to the TRIPs text in the Draft Final Act indicates that national treatment applies both to obtaining intellectual property rights "as well as those matters affecting the use of intellectual property rights"; see also Article 7 (Objectives))	N/A

F. Scorecard (cont.)

Objective	Grade
B. Principal Trade Negotiating Objectives (cont.)	
(16) Border taxes -- obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantages to countries relying primarily for revenue on direct taxes rather than indirect taxes	F

G. Conclusion

The negotiations have been and continue to be extremely complex. The original targets were very ambitious and at the same time did not include several areas of pressing importance for U.S. exporters. The passage of time has added other issues needing multilateral attention. The U.S. negotiators have worked very hard over seven years to achieve a good package. The scorecard shows that despite their efforts, a last stage push is still needed on a range of matters of great importance to U.S. industry, agriculture, and workers. I add my best wishes to the U.S. negotiators in the difficult task that lies ahead.

Finally, the Committee should be aware of one wild card that looms over the end game of the Uruguay Round and, if successful, the implementing legislation process in the United States. At present a GATT panel proceeding is underway, initiated at the request of the European Community, against various laws of the United States dealing with automobiles, including the gas guzzler tax, the luxury car tax and CAFE. The timing of the EC's panel request puts the panel report on schedule to come out in the first half of 1994. Considering the concerns raised within the public sector of the United States when a GATT panel found problems with U.S. law protecting marine mammals, one can imagine the consequences of a GATT panel decision finding fault with the U.S.'s efforts to reduce pollution and become less foreign energy dependent.

STATEMENT OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

This statement is submitted for the hearing record by the Synthetic Organic Chemical Manufacturers Association (SOCMA) in conjunction with the Subcommittee's hearings on the Uruguay Round of Multilateral Trade Negotiations.

SOCMA is a trade association serving more than 220 companies that have a common interest in the manufacture, distribution and marketing of organic chemical products. The majority of SOCMA's members are small businesses with annual sales under $40 million. SOCMA member companies are representative of a much larger number of organic chemical manufacturers throughout the United States. Most of SOCMA's manufacturing member companies utilize batch processes and many are custom chemical manufacturers who produce speciality chemicals by contracting with larger companies.

INTRODUCTION

While chemical products are the largest exports of U.S. manufactured goods, opportunities exist for greater exports if the global markets are further opened to U.S. chemical exports. This can occur as a result of successful completion of the Uruguay Round.

The successful completion of the Uruguay Round will help improve the economic situation of the U.S. industry. In fact, the benefits of the Uruguay Round would likely dwarf the benefits of the North American Free Trade Agreement which SOCMA supports.

CHEMICAL TARIFFS HARMONIZATION PROPOSAL

In light of the benefits of a successful trade agreement, the U.S. Chemical industry at the request of the United States Trade Representative (USTR) worked with the chemical producers of Canada, the European Community, Japan, and Australia to develop an industry-supported proposal for tariff harmonization. The Chemical

Tariffs Harmonization Proposal (CTHP) was finalized in October 1991. The joint agreement was submitted to the U.S. Trade Representative on October 29, 1991 and became the U.S. offer in the chemicals sector.

The CTHP is not a tariff-cutting exercise but a true market access proposal which consists of four main elements:

1. The global harmonization of chemical tariffs in accordance with a prescribed time-table for reductions to the harmonized levels;
2. Elimination of non-tariff barriers (NTMs);
3. The recognition that country participation is vital and must include all major chemical producing countries named in the proposal, i.e. no "free-riders;" and
4. Consideration of most import sensitive products (MISPs). The CTHP allows individual manufacturers to justify their claims for sensitivity directly with the respective government and permits any justified products be granted special treatment.

CURRENT STATUS OF CTHP IN THE URUGUAY ROUND NEGOTIATIONS

Prior to July 1993, the chemical industry understood that our negotiators were working to get the entire CTHP approved. However, at the G–7 meeting in Tokyo in July, the four Quad country members, including the U.S. agreed to harmonize global chemical tariffs with no conditions. In other words, the G–7 proposal was a tariffs cutting agreement without the cross-linkage to country coverage, elimination of non-tariffs barriers, and consideration of MISPs.

It is SOCMA's understanding that the agreement reached during the G–7 summit will be submitted as the U.S. Draft Final offer. This action will seriously weaken our support for the Uruguay Round.

IMPLICATIONS FOR THE SUCCESS OF THE URUGUAY ROUND

Our experience in the Kennedy and Tokyo Rounds showed the limitations inherent in a tariff-cutting approach to negotiations. It was for that reason that the industry advocated an approach that goes beyond former agreements and developed the CTHP. Moreover, the industry analysis of the Draft Final Act (Dunkel Text) indicated that there were a number of problems within the text, but despite our reservations a successful market access agreement would enable the industry to support the overall Uruguay Round Agreement.

In conclusion, SOCMA members believe it is of critical importance for the U.S. to restore the missing elements of the CTHP to its Draft Final Offer on market access. By eliminating three of the four basic elements of the CTHP, the Uruguay Round does not provide the improved global market access necessary to expand U.S. chemical industry exports.

Thank you for allowing SOCMA to share these thoughts with the Committee.

STATEMENT OF THE TANNERS' COUNTERVAILING DUTY COALITION

Mr. Chairman and Members of the Committee: The Tanners' Countervailing Duty Coalition ("TCC") appreciates this opportunity to present its comments on the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations issued by Director General Arthur Dunkel of the General Agreement on Tariffs and Trade ("GATT") on December 20, 1991. The Tanners' Countervailing Duty Coalition is a group of U.S. leather tanners that successfully petitioned the Department of Commerce for a countervailing duty order against Argentine leather in 1990. See Attachment 1.

The Tanners' Countervailing Duty Coalition vigorously opposes the sections of the Dunkel draft text concerning subsidies and dumping. While the draft has numerous serious problems, including the establishment of a sunset provision, restrictive standing requirements and a rigid "specificity" standard, TCC will focus on its primary concern: the definition of the term "subsidy." Under the Dunkel text, subsidies are limited to *financial* contributions by a government or other entity to a domestic industry.

However, not all subsidies actionable under U.S. law have involved financial contributions. The U.S. Department of Commerce issued a countervailing duty order on October 2, 1990 against Argentine leather because this South American country has maintained a 20-year ban on the exports of cattle hides. In a precedent-setting decision, Commerce determined that this export restraint constituted a significant subsidy to Argentina's leather tanning industry because it kept the prices of Argentine hides well below world levels. As a result, Argentina was able to ship subsidized leather in substantial quantities to the United States. Should the Dunkel text be

adopted, this countervailing duty order, which has been extremely effective in curtailing this unfair trade, would be revoked because an export ban would not qualify as a financial contribution.

Such a result would be unconscionable, especially in light of the history of this case. The Government of Argentina first imposed a prohibition on exports of wet salted bovine hides on May 15, 1972. Executive Power Decree No. 2861/72 was promulgated with the stated purpose of "assuring adequate supplies (of untanned cattle hides] for the domestic tanning industry." With "adequate supplies," Argentine leather tanners were also assured of another important benefit: prices that were substantially below hide prices on the international market.

In response to this unfair trade practice, the Tanners' Council of America, Inc. filed a petition in 1979 under section 301 of the Trade Act of 1974, as amended, alleging that Argentina's hide embargo constituted an unjustifiable and unreasonable trade practice within the meaning of that statute. At the request of the U.S. Trade Representative, Argentina signed a formal agreement pledging to eliminate this GATT-illegal export restraint by first converting it from a quantitative restraint into an export tax and then reducing that tax to zero. Unfortunately, Argentina failed to honor its commitments under the agreement. First, Argentina set a minimum export price for hides, thus effectively increasing the amount of export tax above the agreed-upon level. Second, the scheduled reductions in the amount of the export tax were ignored.

The U.S. leather industry was therefore compelled to seek termination of this agreement in 1981. On October 30, 1982, this request was granted. Three years later, Argentina reconverted the export tax into an absolute embargo. Secretary of Industry Resolution 321 (Sept. 12, 1985). The resolution announcing the reinstitution of the export ban stated that its purpose was to "maintain the volume of supply of raw materials adequate to the needs of the domestic market of the leather tanning and manufacturing sector facilitating a smooth flow of supplies while avoiding any undue increase in prices." *Id.*

The export restriction provides direct and substantial benefits to Argentine tanners. Through this government-imposed restriction on hide exports, an excess supply is created and prices decline below free-market levels. The price-depressing nature of this export restraint is confirmed by the language of the Argentine resolution reimposing the export ban and has been acknowledged by the Department of Commerce. In the *1991 U.S. Industrial Outlook,* the Department stated:

> Developing countries, particularly those with abundant raw material supplies such as Argentina, Brazil, and India, impose export controls or taxes to restrict raw material exports in order to encourage the growth of their own tanning and leather products industries. Export restrictions depress the price of hides and skins within these countries, thereby indirectly subsidizing their production and exports of leather and leather products.

U.S. Dept. of Commerce, *1993 U.S. Industrial Outlook,* 33–4 (Jan. 1993).

Because of the harmful effect of this subsidy on the U.S. leather tanning industry, the Tanners' Countervailing Duty Coalition filed a petition under the countervailing duty law in February 1990. In that petition, these leather tanners charged that Argentina's unfair trade practice not only violated U.S. law but also the General Agreement on Tariffs and Trade ("GATT"). As one expert in this field noted:

> Export tariffs can be a form of protection. If an important exporting country restricts the export of a raw material, the domestic price of the raw material will tend to fall and world market prices will tend to rise. The domestic manufacturing industry able to purchase the raw material at the local price will therefore have an advantage over foreign manufacturers that have to pay world market prices (citing Corden, W.M., "The Theory of Protection" (Oxford, 1971), p. 43).

Roessler, GATT and Access to Supplies, 9 J. World Trade L. 25, 31 (1975).

The illegality of this practice was confirmed on October 2, 1990 when the U.S. Department of Commerce announced that Argentina's hide embargo constituted a subsidy within the meaning of U.S. countervailing duty law and issued an order affecting leather imports subject to the investigation. 55 *Fed. Reg.* 40212 (1990). In that determination, the agency emphasized that it "held petitioners to an extremely high standard of proof, requiring them to substantiate their claim that the embargo had a direct and discernible effect on hide prices in Argentina." *Id.* at 40213.

Examining prices for U.S., British and Argentine hides for more than 30 years, the Commerce Department determined that "hide prices in the six largest exporting nations, including the United States, were higher than Argentine hide

prices . . . ." *Id.* The agency found a "clear link" between the imposition of the export ban and the divergence between U.S. and Argentine hide prices. *Id.* at 40214. They made a further finding that other factors, such as hide quality differences, inflation and cattle slaughter did not account for the large disparity between Argentine and world pricing levels for hides. *Id.* As a result of its investigation of the hide embargo and other subsidy practices, an estimated countervailing duty of 15 percent was imposed on the leather subject to the order, with one company assessed a 24 percent estimated countervailing duty. These duty rates were finalized in October 1991.

The U.S. leather tanning industry was therefore distressed to learn that, despite the findings of two U.S. government agencies that this export restraint is an unfair trade practice, Argentina will be able to use the GATT negotiating process to escape the sanctions designed to neutralize the economic advantages of this subsidy. By requiring that a subsidy be a "financial" contribution to a domestic industry, Argentina will try to compel the revocation of this order properly issued under U.S. law.

To prevent this egregious result, we urge the Subcommittee on Trade to advise the Administration that it will reject the Dunkel text in its entirety unless our negotiators fulfill their pledge not to weaken U.S. trade laws. To do that, amendments must be made to the definition of the term "subsidy" and other provisions in the subsidies and dumping text before the draft can be considered acceptable. We have provided suggested language in Attachment 2 to address our particular concerns about the Argentine CVD order. However, we urge you to scrutinize the entire Dunkel text for its adverse effect on our countervailing duty and antidumping statutes and to remind the Administration of its promise to strengthen U.S. trade laws. Thank you for your attention to this issue of critical concern to the U.S. leather tanning industry.

ATTACHMENT 1.—Members of the Tanners' Countervailing Duty Coalition

Hermann-Oak Leather Company; Salz Leather Company; Prime Tanning Company, Inc.; Irving Tanning Company; S.B. Foot Tanning Company; Westfield Tanning Company; Suncook Tanning Corporation; United Tanners, Inc.; Paul Flagg, Inc.

ATTACHMENT 2.—Proposed Changes to Definition of Subsidy in the Dunkel Text

The Dunkel text should be amended to expressly provide that export restraints, such as embargoes and export taxes, are actionable under the definition of the term "subsidy." Additions to the Dunkel language are indicated by italic and deletions by dashes.

OPTION 1

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution *or other action* by a government or any public body within the territory of a signatory (hereinafter referred to as "government"), i.e., *including, but not limited to,* where:

(i) government practice involves a direct transfer of funds * * *

* * * * * * *

and

(b) a benefit is thereby conferred.

OPTION 2

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a signatory (hereinafter referred to as "government"), i.e., where:

(i) government practice involves a direct transfer of funds (e.g., grants, loans, and equity infusion), potential direct transfers or liabilities (e.g., loan guarantees);

* * * * * * *

or

(a)(2) there is any form of income or price support in the sense of Article XVI of the General Agreement;

or

(a)(3) a government imposes an export restraint (e.g., an embargo or export tax);

and

(b) a benefit is thereby conferred.

OPTION 3

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:
(a)(1) there is a financial contribution by a government or any public body within the territory of a signatory (hereinafter referred to as "government"), i.e., where:

* * * * * * *

(iii) a government provides goods or services other than general infrastructure, or purchases goods, *or imposes an export restraint (e.g., an embargo or export tax):*

* * * * * * *

and
(b) a benefit is thereby conferred.

OPTION 4

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:
(a)(1) there is a financial contribution by a government or any public body within the territory of a signatory (hereinafter referred to as "government") . . . ;
or
(a)(2) there is any form of income or price support in the sense of Article XVI of the General Agreement (*including export restraints*);
and
(b) a benefit is thereby conferred.

STATEMENT OF THE TORRINGTON CO.

The Torrington Company is the only remaining domestic producer of the full range of antifriction bearings. Torrington pioneered the application of needle roller bearings. and today produces and markets bearings of every configuration. Torrington has also remained at the forefront of new product developments, including the application of new materials. such as ceramics. Yet. to remain in a leadership position, Torrington has had to seek protection from massive dumping by its foreign competitors. Today, Torrington addresses the effectiveness of the antidumping remedy as it would be modified by the Uruguay round.

The world market in bearings has long since been dominated by much larger European and Japanese bearing makers. In the face of these more powerful and more deep-pocketed competitors, U.S. bearing makers such as Torrington (but also The Timken Company, a domestic producer of tapered roller bearings) were forced repeatedly to turn to the U.S. unfair trade laws, particularly the antidumping law. to combat the pricing practices of their much larger foreign competitors. Although the industry's efforts were sometimes frustrated and the initial cost was high, without the benefit of the unfair trade laws, the U.S. bearing industry might not have survived.

Torrington will address four issues that arise from the current status of negotiations regarding the antidumping code. Those four issues, if not resolved, will have an immediate and tangible impact on the domestic industry's ability to use the trade laws effectively. If these provisions had been in place at the time Torrington brought its petition, they would have severely curtailed its ability to obtain relief. Torrington will also briefly address the so-called short-supply argument, which, although not directly in issue during the negotiations, has nevertheless been relied upon by some to justify limitations on the antidumping law.

STANDING

Under current law, petitioners are presumed to act on behalf on the industry. The presumption continues unless opponents show that a majority of the industry opposes the petition. There is no affirmative burden on the domestic industry to prove the extent of support for the petition.

Under the pretense that the current rules allow frivolous cases, the draft code threatens to alter this practice. The code would require that Commerce, prior to the initiation of a case, conduct an inquiry to determine the extent of industry support for a petition. Moreover, the code might also remove the ability of a union to bring a petition on behalf of an industry. These changes, as explained below, would unnec-

essarily make the bringing of a petition more difficult, thus discouraging otherwise meritorious petitions.

There is no evidence that the current practice, which does not require such an investigation, and which allows unions to bring petitions, results in frivolous cases. To the contrary, as Torrington can attest from its own experience, to bring a successful case under current law a petitioner must collect a huge amount of factual information to support unfair price and injury allegations. Because of this, bringing an antidumping or countervailing duty petition is costly and requires substantial commitment by management, at a time when both financial and managerial resources are already taxed because of the impact of the imports. Because of this, it is intuitively absurd to propose that the current system would somehow promote the bringing of "frivolous" cases. The cost and complexity of these cases is an effective screen to remove frivolous cases. Hence, a pre-initiation investigation of standing is unnecessary.

The arguments made in favor of "strengthened" standing rules should be recognized for what they really are: a means to reduce access to the antidumping law, and thus reduce the number of cases brought, *regardless of their merit.*

As Torrington's own experience taught, it is often very difficult to line up express and affirmative support for a petition. There may be antitrust concerns on the part of the companies that make up the domestic industry, the industry may be very fragmented, the industry may have a number of captive producers, or there may be several producers that are related to the foreign producers, as was the case in the bearing industry. Moreover, polling the industry delays the investigation and adds to the administrative burdens and costs. Because of this, the U.S. should seek to eliminate the pre-initiation standing inquiry. At the very least, the burden should remain on the opponents to demonstrate lack of support. Moreover, it should clarified that unions continue to be viable petitioners.

SUNSET

Under current U.S. law, a dumping order remains in place until the party that was shown to have been dumping in Commerce's investigation can demonstrate that it has been selling at fair value or ceased exporting for a sustained period of time. Dumping orders may also be terminated upon a showing of changed circumstances, such as lack of interest on the part of the domestic industry.

The Dunkel draft changes this essentially fact-based system (termination is based on demonstrated past behavior) to a prospective system based on predictions. Under the proposed system, orders would automatically terminate after five years, unless a determination is made that continuation of the duty is necessary to prevent the continuation or recurrence of injury by dumped imports.

This regime, if not adequately clarified, has the potential of imposing an impossible burden on the domestic industry. As already explained, to bring a petition, a domestic industry must garner a very large amount of factual evidence regarding its competitor's pricing and regarding the injury that befell the domestic industry. This requires significant financial and managerial commitment, at a time when both are at a premium because of the impact of the unfairly priced imports. In addition, relief is sometimes slow and always uncertain. Finally, any relief is limited to added duties only: there is no provision for private compensation for the industries aggrieved by the dumping practice.

In those circumstances, a requirement that in effect forces the petitioner to present his case all over again and garner new evidence of injury and dumping only five years after he obtained initial relief will exclude all but the most deep-pocketed and persistent of petitioners. This is potentially troubling when the incentive to invest is considered. Under the present system, a domestic industry that obtains relief from dumping has an incentive to invest, to re-employ laid-off workers, and to rebuild based on resumed fair pricing in its market. But if antidumping orders are to be terminated automatically after only five years after they are issued, then domestic producers will face a five-year period in which to earn an adequate return on investment. Such a short period is daunting and will undoubtedly eliminate one of the primary reasons for obtaining antidumping orders.

At a minimum, if an automatic expiration period is accepted, the burden of producing the relevant evidence should be on the offending party, and not on the victim. Thus, at the end of the five year period, the importers previously found to have been dumping should demonstrate that injury because of dumped imports will not recur. Failing such a demonstration by the importers, antidumping relief should continue.

CUMULATION

When Torrington brought its case against unfairly traded imports of bearings from Europe and several Asian countries, the International Trade Commission assessed the impact of these unfairly traded imports cumulatively. This means that the Commission did not attempt to determine separately the impact of imports from Germany, France, Sweden, or Japan, but instead analyzed the collective impact of all imports under investigation.

Cumulative assessment of the impact of imports is absolutely essential to the injury determination. Without cumulation, a petitioner would have to prove that imports of each country subject to the investigation are separately causing injury to the industry. Such a requirement places an unsurmountable and unfair burden on domestic industry. Like a man in an alley surrounded by assailants, a domestic industry is not always able to determine which attacker broke his knees and which bruised his ribs. Moreover, it's often not a single country's imports that alone injure U.S. industry, but the "hammering" effect of imports from several sources that deliver the crippling blow. In an industry, such as bearings, with world-wide over-capacity, imports from numerous sources combine to impact domestic producers. Hence, cumulation is a logical, as well as legal, imperative.

Language addressing cumulation in the context of antidumping investigations was included in every draft preceding the Dunkel draft, but was omitted in the Dunkel draft. We have learned that in light of the negotiating history this omission should not be interpreted as a prohibition of cumulation. The cumulation provision, however, is too important. To remove unnecessary doubt, there should be a clarification that current practice regarding cumulation will continue. In addition, any standard regarding negligible imports should reflect the commercial reality that very small market shares for commodity products can nevertheless result in cognizable commercial harm.

STANDARD OF REVIEW

In any antidumping procedure (and more so in complex procedures such as our bearing case, which involved multiple countries, producers and products) the administering authority is required to collect and analyze a great deal of information in a relatively short time, and make a determination on the basis of this information prior to the expiration of statutorily established deadlines.

Hence, the administering authority justifiably relies on the interested parties to present all arguments and factual data to support the determination. Current U.S. law does not allow any party later to challenge agency determinations in court on the basis of issues or evidence not before the agency at the time of the challenged determination. It should be made clear that the same salutary rule also applies in panel reviews of national determinations. GATT panels should not be permitted to entertain new evidence that was not first presented to the agency responsible for making the original decision.

In addition, U.S. law has always viewed the antidumping law as remedial. Thus, provisions were interpreted expansively, to allow domestic industries the relief intended. Yet, some recent GATT panels have used language suggesting that the antidumping provisions should be viewed as limited derogations of other GATT obligations. Such confusion about the fundamental nature of the antidumping process should not be allowed to continue. Clarification should issue to affirm the remedial nature of the antidumping code.

SHORT SUPPLY

Finally, Torrington would like to address an issue that is not part of the current draft antidumping code, but has nevertheless been raised by some to justify limitations on the antidumping law or to cast doubts on the economic desirability of the antidumping remedy.

Sometimes, a user industry may complain that the antidumping order forces that industry to pay higher prices for the subject product even where the particular product is not available in sufficient quantity from domestic suppliers, or can only be obtained from import sources. Thus, the argument goes, the particular product, although otherwise within the scope of the antidumping or countervailing duty order, should be excluded from the actual scope of the order to recognize the fact that the domestic industry is unable to satisfy demand.

This is a false argument. The only place for a "short supply exception" is where the trade remedy results in *quantitative* restrictions, such as the voluntary restraint agreements imposed to limit steel imports. Where the quantity of imported product

is constrained, domestic users must be allowed to exceed the limits imposed when the product is no longer available from the domestic suppliers.

By contrast, however, there is no place for a short supply exception where the trade remedy results in additional duties. Additional duties are the usual and intended result of a domestic industry's resort to the antidumping duty law. The effect of the duty is only to enforce fair prices for the imported product. In no way does the duty impair access to the imported product.

Under those circumstances, creating a short supply exception would not only be illogical, it would also reward the most pernicious dumpers.

Under the current interpretation of the International Trade Commission's injury test, the domestic industry, before it can hope to obtain an affirmative injury determination from the Commissioners, must typically be able to point to plant closings, to layoffs, and to reduced capital expenditures and R&D spending. Such injury indicia reflect the *targeted* impact of unfairly traded imports.

In our industry, for instance, targeting of specific bearing types is the preferred tactic of foreign bearing makers to gain market share. The tactic may be described as follows. The foreign maker identifies a suitable product line, typically a high-volume, bread-and-butter item in a market where the cost of entry is low. For instance, a suitable item would be a high volume OEM item in an application where product safety is not a critical concern. The foreign producer then proceeds to penetrate this market aggressively, pricing his product well below home market or third country prices, and below cost of production. when needed. Without the benefit of the foreign producers' deeper pockets, and assuming effective trade relief is not obtained, the domestic producer is soon forced to abandon this market, and terminates production of the particular bearing it sold in this market.

Relief under the antidumping law affords a potentially effective remedy to the domestic producer in such a situation. Torrington, after obtaining antidumping relief, was able to reinvest in the production of high-volume bearing models, previously thought to have been lost to unfairly priced foreign competition. Under the proposed short supply exception, such relief would no longer be available. The very product most affected by the unfair trading practices would be excluded from the scope of the antidumping relief obtained by the domestic producer. This cannot be the result intended by the antidumping remedy. The proffered justification for the exclusion is the reduced or terminated availability of the particular product from the domestic industry. This rationale, however, is tantamount to claiming that the thief cannot be prosecuted if the stolen goods cannot be retrieved. It also rewards the most persistent and successful dumpers by exempting the product they targeted.

The imposition of the antidumping or countervailing duty in no way disadvantages the user industry, even where domestic capacity has been reduced because of the impact of unfair trading. Users can still obtain imports (albeit with a duty) and the price will be the same as the price charged in foreign markets—hence, users are no worse off than their competitors in foreign markets. The only result of the antidumping or countervailing duty order is that the user will be required to pay fair prices for the imported product, thus restoring the domestic industry's capacity again to compete. This is precisely the result intended by the statute.

It is true, of course, that prior to the imposition of the antidumping duty, the user industry which purchased the unfairly priced imported bearings enjoyed an economic advantage. That perceived advantage flowing to the user industry from its purchase of these low-priced bearings, however, is the result of false economic signals. The dumping prices do not reflect any actual competitive advantage on the part of the foreign producer. They reflect only the foreign producers' willingness and ability to price below fair value for a sufficiently long period.

Thus, recognizing a short supply exception to the antidumping or the countervailing duty law is not only illogical, but also would perpetuate economic distortions and prevent the normal application of the economic laws of international competition. Without the market signal of higher prices, the U.S. industry is not encouraged to invest and produce the particular product. Hence, to allow a short-supply exception will assure that any gains achieved through dumping are set in concrete—a product line lost cannot be regained. For those reasons, such an exception to the law must be opposed.

STATEMENT OF THE TOY MANUFACTURERS OF AMERICA, INC.

The Toy Manufacturers of America Inc. (TMA) an association representing more than 250 U.S. importers and manufacturers of toys, dolls, and games, who account for 85 percent of the toys sold in the United States, strongly supports a successful conclusion of the Uruguay Round of negotiations under the General Agreement on

Tariffs and Trade (GATT). TMA views the Uruguay Round as an important opportunity to lower and eliminate trade barriers worldwide, including tariffs that effectively limit access to markets and unnecessarily impose additional costs upon consumers. The reduction of tariffs can only enhance U.S. competitiveness and ensure the continued preeminence of the U.S. toy industry.

THE U.S. TOY INDUSTRY

U.S. companies lead in the manufacturing and marketing of toys in almost every developed country in the world. Because of the highly competitive nature of the industry and the need to sell toys at affordable prices, most American toy companies have turned to offshore sources of supply in developing countries. In the 1950s, the industry was one of the first to source product from Japan, and when Japan's growing economy made production there too expensive, toy companies moved to Hong Kong, Korea and Taiwan. As their economies developed, and China became an available source of production, the industry again gradually shifted production. Many toys are also produced in developing countries, such as Malaysia, Indonesia, Thailand and Mexico, that qualify for the Generalized System of Preferences (GSP) program. Toys produced in each of these countries by U.S. companies are sold around the world.

Close to two-thirds of TMA's members now import and export toys throughout the world; and about 60 to 70 percent of all toy inventions, designs, engineering, and marketing programs emanate from the United States and TMA member employees. While low skilled U.S. toy production employment has declined since the 1950s, employment in product development, design, duality control, production engineering, marketing and advertising has increased in the United States. Today, the toy industry's U.S. employees are medium and high-wage earners. More than 25,000 jobs in and related to the toy industry in the U.S. are dependent upon free and open trade. International production and marketing is therefore a matter of maintaining and expanding highly valued and desired jobs in the U.S.

THE OPPORTUNITY PRESENTED BY THE URUGUAY ROUND

The Uruguay Round market access agreement presents an important opportunity for both (1) compelling our trading partners to open their markets to our goods and (2) the permanent resolution of the problems inherent in passing temporary duty suspension legislation.[1] Recognizing this, and in light of the importance of a global market for toys, TMA has been an active member of the Zero Tariff Coalition since its inception in 1991. The Zero Tariff Coalition, which includes a broad cross-section of U.S. industries, advocates the *reciprocal* elimination of tariffs across broad product sectors.

TMA is extremely pleased that the U.S. Administration, as part of its Uruguay Round market access offer, has tabled a "zero for zero" proposal that includes the toy sector (Chapter 95 of the Harmonized Tariff Schedule), and that the major industrialized countries, including Canada, Europe and Japan, are indicating their support as well. The elimination of all tariffs on Chapter 95 products also should be a significant benefit for Asian and Latin American nations, which produce substantial quantities of toys, and offer the potential to become important consumer markets as the wealth and disposable incomes of their populations improve.

CONCLUSION

U.S. toy companies and U.S. consumers have the most to gain from free and open trade. Including Chapter 95 (toys, dolls, games, and Christmas decorations) in the zero-for-zero tariff proposal in the Uruguay Round will ensure the continued competitiveness of the U.S. toy industry, and will keep down costs for consumers. TMA is working closely with our counterparts in Europe and Japan to assure their support for "zero for zero" for toys, and will continue to strenuously support the Administration's efforts to reach a successful resolution to the Uruguay Round, including zero tariffs across the world. Once the agreement is finalized, we hope the Congress will act quickly to approve the necessary implementing legislation, so that the proc-

[1] Between 1983 and 1993, stuffed dolls and stuffed toy figures were able to enter the U.S. duty-free under legislative temporary duty suspensions. The duty suspensions expired at the end of 1992 when the Congress failed to enact legislation extending the provisions, due to the 1990 Budget Agreement rules requiring offsetting revenues for tariff reductions. Most toys now enter the U.S. at duty rates of 6.8 percent or 12 percent, unless they qualify for duty-free treatment under the Generalized System of Preferences (GSP) program. The future of the GOP program is now in doubt, however, because of the 1990 Budget Agreement. The current authority for the GSP program expires September 30, 1994.

ess of world-wide elimination of duties on Chapter 95 goods can begin on January 1, 1995.

STATEMENT OF TREK BICYCLE CORP.

We are Trek Bicycle Corporation of Waterloo, Wisconsin, and are writing to submit for the hearing record our comments in support of the potential benefits offered by the market access negotiations in the General Agreement on Tariffs and Trade ("GATT"). The GATT is presently being negotiated in Geneva and is expected to conclude in mid-December 1993.

I. TREK BICYCLE CORPORATION

Trek Bicycle Corporation ("Trek") designs and manufactures a variety of bicycle types. Among them are the increasingly popular all terrain or "mountain" bike designs, the more traditional road or "touring" bike designs, and "hybrid" bicycle styles. Trek employs 750 people in Waterloo, Wisconsin, and manufactures premium, high-quality bicycles of varying designs.

This brief is submitted in lieu of our appearance at the public hearings to be held by the United States Senate on November 10, 1993. Those hearings are an effort to determine the probable economic effects of enacting the GATT and its market access proposals, which may drastically modify or eliminate multilaterally portions of the present system of tariffs and non-tariff barriers on merchandise shipped in international trade.

II. THE AMERICAN BICYCLE INDUSTRY: A WORLD LEADER IN BICYCLE DESIGN AND INNOVATION

The American bicycle industry is a classic model of success, from the marketing innovations of Schwinn in the 1930s to the technological innovations of Trek in the 1990s. Historically, new bicycle variants were created by experimenting with modifications on existing bicycle model frames. Biking enthusiasts, small-town bike shop owners, teenagers, and professional bicycle racers all had significant input into the evolution of bicycles from the vintage designs of the 1930s to those racing down mountain trails today.

Although mountain biking was still in its infancy in the 1970s, its perceived popularity led to production development of bicycles with rugged tires and frames and well-geared transmissions. Likewise, the onset of fitness consciousness in the 1980s inspired the development of the "hybrid" styles of bicycles; a combination of the mountain bikes' rugged appearance with the comfort and control offered by more traditional road bicycles. Each phase of the bicycle's development was a dramatic departure from the norm, while nonetheless providing sales and profit for the industry.

The most recent boom in the American bicycle industry began in the 1970s, and led to its present status as an innovating industry. Responding to youthful desires to race traditional bicycles down California mountainsides, several small bike shops began custom converting the traditional designs into those more suitable for rougher riding. These shops began turning out bikes that combined comfort with speed, control, and durability; up-right handlebars, wide cushioned saddles, lowered top tube height, and wider tires with increased tread were added. The innovations were picked up by a number of bicycle companies, and led to production models of "hybrid" style bicycles.

Trek began innovating the bicycle industry over fifteen years ago with their designs of "hybrid" and other bicycle styles. Trek has continued to develop rapidly since then. Trek is now a leader in an increasingly global bicycle industry and has maintained its position as an innovator. In fact, Trek is now one of a handful of American companies that is a global trend-setter; Trek leads the world bicycle industry in innovation, production, and marketing. According to research completed by Bicycling magazine, when presented with a choice of bicycle models, more than 40% of bicycle consumers chose to purchase a Trek.

III. DUTY ELIMINATION ON BICYCLE COMPONENTS

The bicycle industry is a high-profile, colorful, fashion industry, satisfying the varied demands of racing, recreational, and fitness enthusiasts everywhere. As in other industries, Trek exists and thrives in a system regulated by free market price competition and commercial success. Despite the aesthetic popularity of many of Trek's models, they still face the reality of competing for the attention and purchasing

power of bicycle consumers all over the world. In fact, an increasing proportion of Trek's market lies in exports of their bicycle models.

Trek is very interested in obtaining suspension of the duties on imports of bicycle parts, whether through the GATT market access negotiations or through the unilateral operation of the U.S. Congress. The American bicycle industry has enjoyed the benefits of duty suspension on imports of bicycle components in the past. Until quite recently, like the entire U.S. bicycle industry, Trek was a beneficiary of duty suspension bills passed by the United States Congress. H.R. 4318 (1992); H.R. 1098, S. 1043 (1993). These bills provided duty-free treatment for a whole range of bicycle components which Trek imported into the United States in order to facilitate their production of bicycles.

A GATT market access agreement is very important to Trek, as it multilaterally reduces tariffs on imports of bicycle parts, among other commodities. Trek utilizes these parts in the manufacture of its bicycles and many of these parts are not available domestically. Since there are virtually no domestic sources of bicycle components, the elimination of these tariffs threatens no U.S. industries. The imposition of customs duties on the imports of these products into the United States simply results in increased costs of production for the U.S. bicycle industry and, therefore, increased purchase prices for consumers.

The company's primary concern is with regard to tariffs imposed on imports of bicycle parts. Trek advocates the positive effects on international trade that the GATT's market access negotiations will have on tariff rates. Trek maintains this position because such an elimination of tariff rates benefits the U.S. bicycle industry and bicycle consumers worldwide, by keeping both production costs and retail costs low.

The increased trade available from lower costs to consumers in both countries results in gains from production efficiencies and more affordable prices for the bicycles. The restraints on trade that are presently imposed through the duty arrangement across the U.S. border imposes burdens on consumers and economies everywhere.

Thus, an elimination of duties on bicycle parts results in increased exports and sales of bicycles. Such increases insure the continued employment of the American bicycle industry. Likewise, the elimination of these duties provides bicycle consumers in the United States and elsewhere with increased supplies of high-quality bicycles at affordable prices, thereby insuring continued sales and employment opportunities for U.S. workers.

IV. GLOBAL TRADE IN BICYCLES

The GATT's potential to eliminate the present system of tariff rates enhances the ability of U.S. producers of bicycles, such as Trek, to increase their exports to the burgeoning world market. Increased exports means increased production as well as increased employment in manufacturing, shipping, warehousing, and sales.

By way of illustration, Canada is one of the U.S.'s primary trading partners in the bicycle industry. The U.S.—Canada Free Trade Agreement ("CFTA"), which reduces tariffs on bicycle parts and other commodities over a 10-year period, epitomizes the impact of reduced tariff barriers on bicycles.

Since the implementation of the CFTA in 1989, overall U.S. exports of bicycles have increased. In 1990, the bicycle industry reported exports of $114 million dollars. The following year, the industry exported $210 million dollars worth of bicycles, an increase of over 84%. With the elimination of many duty rates, as proposed by the GATT market access negotiations, the export market has the potential to swell to even greater proportions. *INT'L. TRADE ADMIN. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK '92 (1992).*

Bicycle consumers may gain a great deal by the elimination of tariffs on bicycle parts. A reduction in duty rates enables U.S. bicycle manufacturers to produce and ship more bicycles at more affordable costs. The result is that bicycle consumers will gain increased access to greater varieties of high-quality bicycles from the United States at reasonable prices, because of decreased production costs resulting from lower duty rates at the border.

V. CONCLUSIONS

The elimination of duties through the GATT's market access negotiations positively affects the U.S. bicycle industry. The elimination of those tariffs results in larger markets for U.S. producers. The increase in the overall size of the bicycle market in North America alone is resulting in a restructuring within the industry in which more modern, better-run manufacturing operations emerge. With the larger market and the corresponding ability to keep production, warehousing, and man-

agement facilities in the United States to service other markets, employment in the United States increases and returns on investment and corporate profit will improve.

We submit that the reciprocal and immediate elimination of tariffs on bicycle parts, offered by the implementation of the GATT's market access proposals, would benefit the U.S. bicycle industry, U.S. labor concerns, and consumers everywhere. We therefore encourage the U.S. government to take any and all appropriate steps to conclude the GATT as planned in December 1993.

STATEMENT OF THE U.S. COALITION FOR FAIR LUMBER IMPORTS

My name is Kip Howlett. I am Chairman of the Coalition for Fair Lumber Imports. My industry has spent the better part of ten years using the U.S. unfair trade laws in an effort to offset unfair subsidies to the Canadian lumber industry. I am here today because the current drafts of the Uruguay Round texts could undermine the ability of U.S. industries to bring countervailing duty cases effectively against subsidized imports in the future.

The GATT system rests on two pillars: First, measures to open world markets and promote free trade, and second, strong rules to permit unilateral correction of the effects of subsidies, dumping, and other trade-distorting activities that continue to close those same markets.

The U.S. lumber industry believes both pillars are equally important. We support the elimination of all tariff and nontariff barriers. But trade by definition is not free when it is blocked by trade-distorting practices such as subsidies and closed foreign markets.

Let me illustrate my industry's problem with the GATT texts by reference to the subsidies case against Canadian lumber imports. Virtually every objective observer in Canada itself recognizes that the Canadian provinces bestow enormous subsidies on their lumber industry. In British Columbia, which produces 85% of the lumber in Canada, three former Ministers of Forests, the official B.C. Forest Resources Commission, and numerous other groups have admitted these subsidies exist.

Even under the current U.S. laws, it has been an arduous and uncertain process to obtain relief from these acknowledged subsidies. In fact, our 1991 case against subsidized lumber, which has been supported by the unions and environmentalists, is still pending before Free Trade Agreement dispute settlement panels, which if they properly apply U.S. law, they will affirm the Department of Commerce's subsidy finding and the International Trade Commission's injury finding, but final disposition is still months away. The Dunkel texts would make it even more difficult, if not impossible, to remedy these subsidies. They would do so in the following key respects.

First, the draft Subsidies Code would "greenlight" regional development subsidies. What that means is that even if these subsidies were provided to our foreign competitors, and subsidized imports injure the U.S. industry, we would not be able to take any offsetting action to protect U.S. jobs from unfair trade. This creates a roadmap for subsidization in many industries. Lumber is a perfect example: Governments could grant assistance to rural areas where the lumber industry is concentrated without fear of a subsidy offset. The Dunkel texts should not permit any loopholes for foreign subsidies that injure U.S. industry. Our industry is prepared to compete against any foreign industry, but we cannot be expected to compete against foreign treasuries. After all, our mills must operate in a market and buy all of our timber at market prices. How foreign mills get subsidies is of little interest to our members.

Second, the Dunkel text apparently would establish a higher standard for specificity findings than for other determinations in unfair trade cases. A key issue in the lumber case has been the specificity of lumber subsidies—i.e. whether the subsidies are provided to a specific industry or group of industries rather than the economy as a whole. While under U.S. law the specificity of Canadian lumber subsidies is well-established, the FTA binational panel in our case used an improperly narrow reading of specificity as one device to require the Department of Commerce to again review the Canadian subsidy finding. Mandating a higher specificity standard in the Dunkel text would make it much easier to overturn U.S. administrative agency determinations and to let off unfair and injurious subsidies.

Third, the requirement that a government provide a "financial contribution" for a subsidy to exist, if interpreted narrowly, could prevent the U.S. Government from countervailing many unfair foreign subsidies. For example, if a foreign government tells a bank to give one of our competitors a low-cost loan, it is a subsidy. Our competitor gets an artificial benefit from its government. Similarly, Canadian log export

restrictions protect Canadian timber subsidies and provide a benefit to their industry, but Canada would argue that they do not involve a financial contribution. This is unacceptable: The Canadian log export restrictions properly were found by the Department of Commerce to be subsidies in the softwood lumber case. By limiting demand for logs and artificially reducing prices, the export restrictions are an integral part of the Canadian scheme to provide their mills with below market fiber inputs. Indeed, there is no reason why the form of a subsidy should matter. If Canada gave a cash grant of $1 billion to its lumber industry, no one would argue that the subsidy should not be countervailed; if Canada gives $1 billion through log export restrictions, the benefit to the recipient, distortion of the market and injury to the U.S. industry is the same but under the Dunkel draft Canada could argue that it should be treated differently.

This does not mean that the Coalition is supporting or opposing the use of export restrictions. Canada may have reasons why it wants to restrict such trade. But, when the export restrictions are used to lower the price of a key input and U.S. mills are injured by subsidized imports, then under our law and international law they must be considered in analyzing a subsidy program. As former Ambassador Carla Hills noted, however, U.S. restrictions do not meet such a test.

These are our most important concerns in the Subsidies Code. We also have deep-founded concerns about the Dispute Settlement provisions. Beyond the problems in the text of the Code, the actual arbiters of the meaning of Subsidies Code provisions and thus of U.S. law will be in Geneva. For the first time, GATT dispute settlement will be compulsory and the rulings of GATT panels binding regardless of whether the United States accepts them or whether they protect against unfair trade.

While we would support fair dispute settlement, these panels typically are composed of persons who may have no understanding of or sympathy with the U.S. unfair trade laws. Many, if not most, will come from countries that liberally provide subsidies to their industries. These panels may be predisposed to second-guess the reasonable determinations of U.S. administrative agencies to avoid action against their own practices. Unlike in U.S. law, the GATT system provides no serious constraints on the ability of reviewing authorities to decide cases based on their own reasons (rather than the law and facts as found by the agency).

This is unacceptable. The Dispute Settlement text must provide for deference to the reasonable interpretations of national administering agencies, and state clearly that use of national trade laws is not an exception from the principles of the GATT to be interpreted narrowly—as I stated earlier, action against unfair trade must be seen as the twin pillar of the GATT.

Finally, the Multilateral Trade Organization (MTO) provision must be changed. The Dunkel texts would create this new supra-national organization and apparently invest it with broad authority to interpret the international obligations of GATT signatories on the basis of one nation, one vote. As a result, the U.S. Government may have little control over how these GATT provisions, many of which are subject to different interpretations, would be implemented.

Taken together, these provisions could render the trade laws ineffective for many U.S. industries. This will harm U.S. industry and cost U.S. jobs. In my industry, our companies and workers will be competing with the treasuries of Canadian provinces who give their timber to their lumber companies for a fraction of its market value. This neither is fair nor does it advance free trade.

The United States did not enter into the Uruguay Round to deprive industries such as my own of the ability to offset market-distorting trade barriers. The exact opposite is true. Congress in the 1988 Omnibus Trade and Competitiveness Act listed increased disciplines over unfair trade as one of the chief objectives for the GATT Round. You in Congress should let the Administration know, in no uncertain terms, that Congress does not approve of the draft subsidies and dispute settlement texts and cannot approve them in their current form.

The U.S. Government has an obligation to negotiate an acceptable agreement along the lines outlined by Congress, that will open markets and advance the interests of U.S. industry in responding to unfair subsidies. Thank you.

STATEMENT OF U.S. SOUTHERN TIER CEMENT PRODUCERS AND LABOR UNIONS

INTRODUCTION

This statement is in response to the press release (No. H–42) issued by the Committee on Finance on October 22, 1993, with respect to the Committee's November 10, 1993, hearing on the Uruguay Round multilateral trade negotiations. This statement is submitted on behalf of cement producers and labor unions located in the

southern tier of the United States. These entities support the outstanding antidumping orders issued by the U.S. Commerce Department against dumped imports of cement and cement clinker from Mexico and Japan and the suspension agreement on imports of cement and cement clinker from Venezuela. A complete listing of these companies and unions is provided as an attachment to this statement.

These cement producers and labor unions are opposed to the revisions to the Anti-Dumping Code of the General Agreement on Tariffs and Trade ("GATT") proposed by the draft Uruguay Round agreement formulated by former GATT Director General Arthur Dunkel. They believe that, without extensive revisions, the Dunkel text cannot be a suitable framework for a Uruguay Round agreement on dumping. The Dunkel draft would compel significant changes in the U.S. antidumping law that would make it more difficult and more costly to file an antidumping petition, to prosecute an antidumping action before U.S. administrative agencies, and to obtain meaningful, permanent relief against international price discrimination. The Dunkel text would ensure a significant weakening of U.S. law, would cost U.S. jobs and competitiveness, and would be correctly perceived as a victory for those U.S. trading partners that have sought throughout the Uruguay Round negotiations to gain increased exports to the United States by eliminating international protections against unfair trade practices.

UNACCEPTABLE PROVISIONS IN THE DRAFT TEXT

Unacceptable new provisions in the Dunkel draft include the following:

- new "standing" requirements that would make it more difficult for domestic petitioners to file an antidumping petition and a failure to clarify that labor unions have standing to petition for relief;
- a "sunset" requirement that would terminate antidumping orders after five years unless domestic producers prove the necessity of continued relief;
- a more stringent *de minimis* standard for dumping margins and the imposition of a *de minimis* standard for import volumes;
- the lack of a provision specifically authorizing the U.S. International Trade Commission to cumulate dumped imports from different countries subject to investigation when determining whether imports are a cause of material injury to the domestic industry;
- a requirement barring the U.S. Department of Commerce from using minimum percentages for general expenses and profit when calculating foreign market value on the basis of constructed value, which is required by current U.S. law; and
- the practical elimination of the Commerce Department's practice, when calculating a dumping margin, of comparing weighted-average prices in the exporter's home market with U.S. prices for individual sales.

In addition, the Dunkel text is silent as to whether any or all of its provisions will be applied retroactively to antidumping orders and suspension agreements dated prior to the effective date of a Uruguay Round agreement. This question is of great consequence to U.S. southern tier cement producers and labor unions, who sought antidumping relief against cement imports from Mexico, Japan, and Venezuela in reliance on current law. It would be unfair to change the rules after the industry endured the difficult and expensive process of successfully obtaining tariff remedies against these unfairly traded imports.

For example, the agreement between the Commerce Department and Venezuelan cement producers suspending the Venezuelan cement investigation bases foreign market value on constructed value as calculated under current U.S. law. The Dunkel draft would forbid Commerce from using an 8 percent minimum for profit and a 10 percent minimum for general expenses in calculating constructed value, as is now required by U.S. law. This change, if applied retroactively, would clearly be contrary to the expectations of the petitioner, the respondents, and Commerce under that agreement. The final Uruguay Round antidumping text should specify that none of its provisions apply retroactively to pending investigations, existing suspension agreements, and administrative reviews of outstanding orders.

DISPUTE SETTLEMENT

Equally damaging to the interests of U.S. producers are the Dunkel text's provisions for dispute settlement under the Anti-Dumping Code. The importance of these provisions has been highlighted for cement producers by the GATT case that was initiated by Mexico against the U.S. antidumping order on Mexican cement. Besides the considerable expense incurred by the industry in securing relief against dumped imports from Mexico and in defending the U.S. International Trade Commission's

material injury determination in an appeal to the U.S. courts, Mexico's GATT challenge created significant additional costs and uncertainty for the domestic industry with respect to its hard-won antidumping order.

The aim of the Mexican Government in filing the GATT case was clearly not to obtain an objective decision on the merits of the dispute, but to exert international political pressure against the U.S. antidumping order in the GATT arena, where there is a clear bias against dumping remedies. The GATT panel's July 1992 decision, which was predictably adverse to the United States and the U.S. cement industry, was based on a ground that CEMEX had never raised before the U.S. agencies and courts—the lack of a determination by the U.S. Commerce Department before it initiated the investigation that the antidumping petition was supported by the domestic industry. The Anti-dumping Code does not expressly provide such a rule, which is contrary to the practice of the Commerce Department, approved by the U.S. courts, of assuming that the domestic petitioner has standing in the absence of a showing by a majority of the industry that it does not support the petition.

The industry's experience with this process reinforces the need for significant changes to the dispute resolution provisions of the Code to prevent panels from second-guessing every issue decided by U.S. administrative agencies and from deciding cases on issues not even presented to U.S. administrative agencies. The Dunkel text is deficient in failing to provide, as U.S. negotiators have sought, a standard of review for dispute resolution that accords substantial deference to the findings and conclusions of national investigating authorities. The staff of the GATT Secretariat, which provides technical and legal advice to dispute resolution panels, believes that Article VI of the GATT and the Anti-Dumping Code are derogations from the most-favored-nation and national treatment provisions of the GATT and therefore must be construed narrowly. For this reason, the omission of an explicit, deferential standard of review will permit GATT panels to continue to second-guess the decisions of the Department of Commerce and the International Trade Commission in antidumping investigations.

The U.S. Government has not agreed to the adoption of the panel report on Mexican cement by the GATT Anti-dumping Code Committee. The Dunkel draft, however, would make GATT panel decisions in disputes involving U.S. antidumping orders binding upon the United States, no matter how erroneous or detrimental to U.S. interests a decision may be. If the Anti-dumping Code had so provided at the time the panel report on Mexican cement was issued, the United States would have had no recourse but to comply with the decision, despite the fact that it was based on a ground that had never been raised before the U.S. antidumping authorities and that was not based on explicit language of the Code. Although this change might not be applied retroactively to the panel report in the Mexican cement dispute, U.S. cement producers have no assurance that the adoption of this rule will not encourage GATT challenges against future antidumping orders and administrative review determinations regarding existing antidumping orders.

THE DRAFT TEXT IS UNACCEPTABLE AS A FRAMEWORK FOR NEGOTIATION

As harmful as the specific provisions of the Dunkel text on dumping and dispute resolution are, however, it would be a mistake to evaluate any of its provisions in isolation. The Dunkel text makes major changes to nearly every Article of the Anti-Dumping Code. These changes are clearly detrimental to the interests of U.S. producers who rely on the dumping laws to deter international price discrimination. For these producers, the changes to the Code are not compensated for, or offset by, any potential improvements in the rules of international trade that may be included elsewhere in the Dunkel text. In many instances, the Dunkel language is imprecise, and its effects are unclear. This would leave the meaning of the revised Code open to interpretation by GATT panels in ways that are adverse to U.S. law and practice.

Taken as a whole, the Dunkel text would effect sweeping changes in the U.S. antidumping law, diminishing both its effectiveness as a remedy against dumping and the chances that a meritorious petition will be successful. Unlike a truly negotiated agreement, the Dunkel text on dumping in no way represents a "compromise." In fact, the Dunkel text resolves nearly every significant issue under consideration in the negotiating group on dumping against the position taken by the United States.

The Dunkel text aligns closely with the negotiating position of Japan and a number of other export-dependent countries whose producers benefit unfairly in the U.S. market through international price discrimination. These countries have engaged in a well-financed lobbying and public relations campaign, both in the United States and abroad, designed to foster the view that antidumping remedies disrupt free trade and that a country ought to be permitted to discriminate in price between its

home market and foreign markets because lower prices benefit consumers. Unlike the United States, which is largely open to import competition, these countries have repeatedly demonstrated that they lack a commitment to either free or fair trade by closing their home markets to import competition while encouraging their producers to export at dumped prices. The changes to the Anti-Dumping Code desired by these countries and adopted by Mr. Dunkel have only one goal—to render ineffective the safeguards against injurious dumping embodied in the Anti-Dumping Code and U.S. law.

Consequently, the Dunkel text is not a suitable framework for a Uruguay Round agreement on dumping, even if revisions to that text remain possible (U.S. negotiators have explained that any revisions to the Dunkel text will be difficult and would entail additional concessions by the United States). Because the Dunkel text resolves almost all dumping issues against the interests of U.S. producers, the acquiescence of U.S. negotiators in working from the Dunkel text is itself a major concession by the United States.

Contrary to the argument pushed by the apologists for dumping, the U.S. antidumping law is the very antithesis of protectionism. The antidumping law, in fact, serves to reduce the pressure on Congress to pass protectionist tariffs and quotas by providing domestic producers a procedure for seeking a remedy against unfairly traded imports. A drastic weakening of this law, as would be required by the Dunkel draft, would make protectionist solutions to our trade problems far more likely.

As pointed out by Professor F. Gerard Adams of the Department of Economics of the University of Pennsylvania, the U.S. antidumping law does not disrupt trade:

> Considering the volume of U.S. imports (over $500 billion in 1991) and the vast variety of different goods being imported into the U.S., only a small number of dumping actions are filed (on average less than 100 a year from 1980 to 1990). Many are not successful. This is not protectionism by any stretch of the imagination. U.S. procedures are consistent with GATT. (In Article VI of the GATT, the United States and 100 other GATT signatory countries have acknowledged that "dumping . . . is to be condemned if it causes or threatens material injury" to an industry of a GATT signatory.) In the United States, we approach trade policy with a bent toward free trade, very differently from other countries where numerous regulations protect home industries and where a firm need only complain that they cannot meet foreign competition to obtain protection. *In practice, U.S. antidumping law is substantially more consistent with free trade than with protectionism.*

F.G. Adams, "The Case Against Dumping," at 3–4 (emphasis added).

Professor Adams also debunks the myth that antidumping relief harms consumers:

> It goes almost without saying that antidumping rulings are intended to offset the unfairly low prices of certain imports, not to disrupt trade. If the rulings are effective, they will result in trade at fair product prices—that, after all, is their intent. The resulting prices will be consistent with pricing based on domestic and "fairly priced" foreign competition.
>
> So where's the gain to consumers? This is a classic case of long run against short run. In the short run consumers miss out on the transitory saving of exceptionally low priced "dumped" imports. These savings are merely transitory because they are not supported by a real comparative advantage. After all, . . . prices in the foreign markets are substantially higher. If demand abroad increases, will foreign suppliers continue to dump their excess capacity in the U.S. when it can be sold for a higher price in their home market? And, will U.S. producers be able to meet growing U.S. demand if they have failed to keep up their production capacity because dumping has depressed prices? The answer to both of these questions is "no!" So, in the longer term, dumping displaces U.S. production and makes U.S. consumers more dependent upon foreign sources of supply. As a result, U.S. consumers become more vulnerable to supply disruptions and higher prices in the future.

Id. at 5–6.

Simply put, there is no justification for the major changes in U.S. dumping law that would be required by the Dunkel draft. U.S. procedures for investigating dumping cases are by far the most fairly and transparently administered of those of any signatory to the Anti-Dumping Code. Foreign companies and governments are permitted full participation in trade cases. Representatives of foreign interests are

given access to all evidence that will be considered by U.S. agencies in making their decisions. Statistics compiled by the Department of Commerce demonstrate that the majority of antidumping cases are decided against the domestic petitioners. In addition, agency determinations are subject to review by the Federal courts, which can—and often do—remand or reverse determinations to correct errors of fact or law. No other signatory to the Code has as effective a system of review, by a fair and independent judiciary, of antidumping determinations.

This strong, yet evenhanded, system of deciding antidumping cases is now jeopardized by the Dunkel text. Administrative remedies against unfairly traded imports are needed now more than ever. The continued competitiveness of U.S. industry can only be ensured if effective relief against dumped imports remains available. If the ability of the United States to counteract international price discrimination through the effective use of antidumping remedies is lost, it will lead to the further hemorrhaging of industrial capacity in the United States and declining employment in our industrial base.

Like most U.S. producers, the U.S. southern tier cement industry welcomes vigorous, fair competition from both U.S. and foreign producers. For this reason, most cement producers support the North American Free Trade Agreement. Adoption of NAFTA would not affect U.S. laws against unfairly traded imports, because NAFTA explicitly preserves the right of the United States to use those laws.

CONCLUSION

The Clinton Administration has pledged to seek a Uruguay Round agreement that preserves the U.S. antidumping law as an effective remedy. This aim is consistent with the Uruguay Round negotiating objective, established in the Omnibus Trade and Competitiveness Act of 1988, of improving the provisions of the GATT in order to deter, discourage, and discipline unfair trade practices, including dumping, that have adverse trade effects. The Dunkel text, however, would significantly weaken the antidumping law and reduce U.S. jobs and competitiveness. Because the revisions to the GATT Anti-dumping Code in the Dunkel text represent a derogation from the negotiating objectives established by Congress and also represent a bad deal for U.S. producers and workers, southern tier cement producers will be compelled to oppose the results of the Uruguay Round in their entirety if the final agreement contains those revisions.

At bottom, the Dunkel draft is an effort by an international bureaucrat to impose upon the United States and the other sovereign nations participating in the Uruguay Round a result that none would have reached as the result of negotiation. We urge the members of the Committee on Finance to go on record in opposition to the Dunkel draft and to indicate that they will work to defeat the fast-track legislation implementing the results of the Uruguay Round if it adopts the dumping provisions of the Dunkel draft.

Respectfully submitted,

JOSEPH W. DORN,
MICHAEL P. MABILE,
Kilpatrick & Cody.

SOUTHERN TIER CEMENT PRODUCERS AND LABOR UNIONS ON WHOSE BEHALF THIS STATEMENT IS FILED

Company/Headquarters location	Southern Tier plants	Other U.S. plants
Alamo Cement Co., San Antonio, TX	San Antonio, TX	
Blue Circle Cement Inc., Marietta, GA	Calera, AL	Harleyville, SC Atlanta, GA Ravena, NY Sparrows Point, MD Tulsa, OK
California Portland Cement Co., Glendora, CA	Colton, CA Mojave, CA Rillito, AZ	
Capitol Aggregates Inc., San Antonio, TX	San Antonio, TX	
Florida Crushed Stone Co., Leesburg, FL	Brooksville, FL	

SOUTHERN TIER CEMENT PRODUCERS AND LABOR UNIONS ON WHOSE BEHALF THIS STATEMENT IS FILED—Continued

Company/Headquarters location	Southern Tier plants	Other U.S. plants
Lafarge Corp., Reston, VA	New Braunfels, TX	Alpena, MI Davenport, IA Paulding, OH Fredonia, KA Grand Chain, IL Independence, MO
Lehigh Portland Cement Co., Allentown, PA	Leeds, AL	Gary, IN Cementon, NY Mason City, IA Mitchell, IN Waco, TX York, PA
Lone Star Industries Inc, Stamford, CT	Sweetwater, TX	Cape Girardeau, MO Greencastle, IN Nazareth, PA Oglesby, IL Pryor, OK
Medusa Cement Co, Cleveland Heights, OH	Demopolis, AL	Charlevoix, MI Clinchfield, GA Wampum, PA
National Cement Co Inc, Encino, CA	Lebec, CA Ragland, AL	
North Texas Cement Co., Dallas, TX	Midlothian, TX	
Phoenix Cement, Phoenix, AZ	Clarkdale, AZ	
Riverside Cement Co, Diamond Bar, CA	Crestmore, CA Oro Grande, CA	
Southdown, Inc, Houston, TX	Victorville, CA Brooksville, FL Odessa, TX	Kosmosdale, KY Pittsburgh, PA Fairborn, OH Knoxville, TN Lyons, CO
Tarmac America, Herndon, VA	Medley, FL	Roanoke, VA
Texas Industries Inc, Dallas, TX	Midlothian, TX New Braunfels, TX	
Texas-Lehigh Cement Co, Buda, TX	Buda, TX	
Labor Unions		
International Union of Operating Engineers, Local 12 International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers		

STATEMENT OF WHEATLAND TUBE CO. AND THE COMMITTEE ON PIPE AND TUBE IMPORTS

These written comments are filed on behalf of the testimony provided to the Senate Committee on Finance on issues related to the GATT Uruguay Round by Mr. James Feeney, Senior Vice President of Wheatland Tube Company, Wheatland, Pennsylvania and chairman of the Committee on Pipe and Tube Imports (CPTI). Wheatland Tube is a manufacturer of a variety of steel pipe and tube products and is a member of the CPTI. The CPTI is a trade organization comprised of 26 domestic producers of steel tubular products, who account for the majority of pipe and tube production in the United States. Its members are located in eighteen states.

Over the years the domestic pipe and tube industry has utilized the U.S. trade laws in order to remain in business. Since 1984, the industry has filed over 50 cases, the most recent cases being filed in 1991 and decided upon in late 1992. These cases covered antidumping petitions against five countries on standard pipe products. In late 1992, the International Trade Commission determined that the U.S. pipe and tube industry was injured by these imports and duties were put in place on standard pipe products from Brazil, South Korea, Mexico, Taiwan and Venezuela.

The foundation of the U.S. trade laws has been of paramount importance to the industry and to its future. In fact, prior to the filing of cases in 1984, numerous domestic companies were forced out of business due to the unfair trading practices of our foreign competitors. The industry supports the negotiating objectives for the GATT included in Section 1101(b)(8)(A) of the 1988 Omnibus Trade and Competitiveness Act that clearly identified the U.S. negotiating priorities for a GATT agreement which would define, deter and discourage the persistent use of unfair trade practices under international trade law. If the objective of a multilateral trade agreement is to ease the burdens from restrictive trading practices and liberalize markets and countries economies, then those responsible for the negotiation of the Uruguay Round must reconsider what has been presented for final negotiations.

These comments provide the view of the pipe and tube industry's on the Dunkel Draft of the Dumping and Subsidy Codes. *This draft unequivocally and unacceptably restricts U.S. industry access to the trade laws and weakens those laws.* We acknowledge the previous efforts by U.S. negotiators to make changes in the draft and believe the U.S. government's December 14, 1992 negotiating position provided a substantial improvement on the Dunkel draft. However, our industry would like to outline areas of the Draft which we believe need significant improvements. These areas include dispute settlement, dumping, subsidies and market access issues in the Round.

I. DISPUTE SETTLEMENT

The Dunkel Draft provides for binding Dispute Settlement Panels to review antidumping and countervailing duty determinations, but does not set forth a standard for reviewing those determinations. This deficiency would potentially allow GATT Dispute Settlement Panels to rewrite U.S. trade laws.

The December 14, 1992 U.S. proposal to the GATT formulation of a standard of review adequately addresses this problem in that it limits the panel to determining whether the legal action reviewed is a reasonable interpretation of the codes, limits review of factual determinations to whether the factual findings are supported by evidence on the record, and limits review to legal arguments and facts presented on the record reviewed. Any final agreement must contain the standard of review language contained in the December 14, 1992 proposal, or substantially similar language embodying these points.

II. DUMPING CODE

A. Cumulation

Any agreement must recognize current U.S. practice regarding cumulation. The Dunkel Draft Dumping Code (Art. 3) does not contain any specific provision regarding cumulation, although Article 5.8 (negligibility) appears to implicitly recognize it. The Dunkel Draft Subsidies Code provision on cumulation is found at Article 15.3. Both codes should be amended to specifically allow cumulation of the effects of dumped or subsidized imports, and cross-cumulation of dumped and subsidized imports.

The *de minimis* levels for cumulation should be dropped from the codes. Current U.S. law and practice does not set a specific bright line *de minimis* market share level for application of cumulation. This allows the ITC to make decisions on cumulation on a case by case basis. Articles 11.7 of the GATT Subsidy Code and 5.8 of the GATT Dumping Code define *de minimis* for cumulation purposes as less than a 1% market share. The draft Dumping Code recognizes cumulation where countries each have less than a 1% market share but collectively account for more than a 2.5% market share. While it would be preferable to have no bright line rule, the U.S. position should be that any mandatory *de minimis* level should not be higher than 0.5%.

This position would be in line with current ITC practice, which tends to find *de minimis* imports when market share is closer to 0.5% than to 1%. This approach has generally worked equitably for both petitioners and respondents. Making bright line rules will lead to a mechanical approach that will be unfair to all parties. For example, in recent antidumping cases against standard pipe from six countries, the ITC cumulated imports from Venezuela with other countries on the basis of a 0.9% market share but chose to exclude as negligible imports from Romania which were at 0.6%. Under the Dunkel Draft the domestic industry would have lost against Venezuela, a country with significant capacity in standard pipe products.

In the recent flat-rolled steel cases, the Commission found market shares as high as 0.7% to be negligible. However, under the Dunkel Draft, the ITC could have cumulated imports of cold-rolled coil from Argentina, Belgium, Brazil, France, Italy,

Spain and South Africa, all of which it found to be negligible, because their collective market share totalled more than 2.5%.

Thus, current U.S. practice provides a flexible approach that has been fair to petitioners and respondents. That flexibility should be maintained.

B. Standing

Articles 5.4 and 4.1 of the Dunkel Draft Dumping Code and 11.1 and 16.1 of the Dunkel Draft Subsidy Code would prohibit initiation of investigations in any case unless the authorities have made an affirmative determination that the petition is supported by domestic producers "whose collective output of the products constitutes a major portion" of domestic production. Thus, Commerce would be forced to poll the domestic industry in every case prior to initiation to determine whether more than 50% of the industry supports the petition.

This provision conflicts with current U.S. practice which requires polling only when an affirmative showing is made that a portion of the industry does not support the petition. This polling currently does not have to be done prior to initiation. Requiring polling in every case prior to initiation will substantially increase the burden on Commerce during the 20 days during which it must evaluate the petition. It also unfairly shifts the burden to petitioners and Commerce to prove standing even in the absence of any public opposition to the petition from the domestic industry. Aside from significantly increasing petition costs, mandatory polling will act as a barrier to filing petitions by forcing domestic producers to express an opinion as to the petition when it may be in their economic interest to have the case go forward without expressing such an opinion. For example, many companies have technical or licensing agreements, joint ventures or investment relationships with foreign competitors against whom they may also wish to see cases filed. It is common in such cases for companies to support petitions by providing information or with financial assistance, but to express no opinion on the record regarding the petition where doing so may jeopardize its relationship with a foreign entity.

The U.S. should seek to retain its current practice, which has not been unfair to respondents. The key consideration regarding standing is that petitioners should not have to meet a high standard. An affirmative showing of no more than 25% of the industry should be required for initiation where there is more support for than opposition to the petition among producers who express an opinion. Where a producer does not express an opinion, it should not be deemed to be opposed to the petition. Polling should not be required until after initiation, and only—when a significant portion of the industry expresses opposition such that it is possible that a majority of the industry expressing an opinion would oppose the petition.

These points appear to be generally addressed by proposed Option A of the December 14, 1992 Draft Issues text revising Article 5.4. These revisions should also be made to the Subsidies Code. In addition, the provision should be made consistent with U.S. law to allow labor unions standing. Either phrasing of Option B would accomplish this.

C. Averaging U.S. Prices to Calculate Margins

Article 2.4.2 of the Dunkel Draft Dumping Code requires margins to be calculated based on a comparison of weighted average prices in the home and export (U.S.) markets, unless targeted dumping is found. This is a change from current U.S. practice which compares individual prices in the U.S. market to weighted average prices in the home market. The absolute amount of dumping duties in each comparison is then summed and the total is divided by the total value of U.S. sales for the period to calculate the average dumping margin.

The U.S. position should be to require recognition and acceptance of this practice. This practice most fairly and accurately reflects the affect of dumped imports on the U.S. market during the period of investigation. The effect of Article 2.4.2, as it is drafted, is to reduce the average margins found by Commerce by offsetting less than fair value sales with fair value sales. This methodology will mask dumping where foreign producers dump for part of the period of investigation or dump certain sizes or specifications of products but not others within the class or kind of merchandise under investigation. Not only will this provision make it more difficult to get an affirmative dumping determination (particularly in light of demands that the *de minimis* dumping level be raised), it will also make it harder to get an affirmative injury determination since the Codes are drafted to require margins analysis.

D. Calculation of Profit and SGA in Constructed Value

Article 2.2.2 of the Dunkel Draft Dumping Code provides that selling, general and administrative expenses (SGA) and profit for use in constructed value calculations shall be based on the SGA and profit levels of the exporter of the same general category of merchandise sold in the home market, the weighted average amount of

SGA and profit for other producers in that country of the like product, or any other reasonable method as long as the SGA and profits used are not greater than the weighted average amount of SGA and profit for other producers in that country of the like product. Thus, this provision generally sets as a cap on profit and SGA for constructed value, the general profit level for that industry in the country under investigation. Current U.S. practice also looks to the profit on the general class or kind of merchandise sold in the home market by the producer under investigation, but sets the minimum SGA at 10% and the minimum profit at 8%.

The Dunkel proposal should be rejected, in favor of current U.S. practice. Particularly in the area of profits, use of the foreign industry profit margins can set profits at an unfairly low level where the whole or predominant portion of the foreign industry maintains exceptionally low profits. For example, public records show that the Korean pipe industry consistently reports extremely low profits of 0–2%. These companies are willing to maintain low profits to increase sales volume. They are not motivated by profit, as the Dunkel Draft provision seems to assume they would be. In other countries, producers may be willing to forego profits for political, social or other non-economic reasons. To rely on industry profit levels where the industry is not profit maximizing unfairly understates constructed value when that constructed value is to be compared to U.S. sales that are presumed to be profit maximizing if made at fair value.

If it is not possible to get an agreement based on current U.S. practice, the cap predicated on foreign industry experience should be rejected. It should be replaced with general language allowing the administering authority to base SGA and profit on any reasonable method.

E. Sunset

The Dunkel text requires that an antidumping order be revoked after five years unless a new injury determination finds that maintenance of the order is necessary to prevent the continuation or recurrence of injury. This places on the domestic industry a recurring burden of proving injury. Current U.S. law has no sunset provision and allows revocation only after a company proves to Commerce that it has not engaged in dumping for three years or demonstrates to the ITC that circumstances have changed such that the order is no longer necessary.

The most important aspect of this issue is that the foreign producers continue to bear the burden of proving that the order is not necessary. The domestic industry should not have the automatic burden of proving continued injury. This will add significant expense to maintaining orders, since it will require a full blown injury determination regardless of the condition of the industry at the time.

The pipe and tube industry has obtained several orders that would now be subject to the five year provision proposed in the Dunkel Draft. The pattern in these cases has been that the exports dwindled to very small levels following the issuance of the orders, and as a result the foreign producers did not request administrative reviews. Given a small level of imports for a long period, it is unlikely that the domestic industry could win a new injury determination. These orders would therefore likely be revoked, dumped and subsidized imports would resume and the industry would be forced to incur the expense of a new case.

While current U.S. practice is preferable, the language in the December 14, 1992 proposal is adequate to address these concerns in that it at least shifts the burden to the foreign producer or government to prove that the order is no longer needed.

F. De Minimis Margins

The Dunkel Draft Dumping and Subsidy Codes set at 2% the *de minimis* level for margins. Current U.S. practice sets the *de minimis* level at 0.5%.

A 2% *de minimis* level does not recognize the fact that in many product markets, a 2% margin may be enough to cause domestic producers to lose sales. This is particularly true in highly competitive markets. It is also true for commodity products, such as standard pipe, where price may be the only differentiating factor between domestic and imported merchandise.

III. SUBSIDIES CODE

A. Regional Subsidies

Even recognizing that some liberalization in creating non-actionable subsidies in the subsidy regime will be necessary to achieve an agreement, the Dunkel Draft's allowance of regional subsidies should be rejected.

Particularly in the steel products area, where world overcapacity is still a problem, allowing regional subsidies to develop the economy of a particular region at the expense of an industry in other countries is not defensible. The domestic industry

must maintain the ability to seek to impose countervailing duties if regional subsidies cause or threaten to cause material injury to a U.S. industry.

B. Other Issues

In addition to the regional subsidy issue, the dispute settlement, standing, cumulation, and *de minimis* margins issues must be addressed in the context of the subsidies code.

IV. MARKET ACCESS

The industry supports the objective in the Round to eliminate tariffs through the zero for zero initiative. The domestic pipe and tube industry must deal with a tariff inversion on pipe and tube products. This tariff inversion has created an incentive for foreign producers to target this value added product market in the U.S. The zero tariff initiative would eliminate these tariffs and resolve our tariff inversion problem. We support objectives in the market access negotiations to eliminate tariffs.

V. CONCLUSION

In conclusion, the industry supports the efforts of the U.S. negotiators to work towards a fair GATT agreement which will give U.S. industries every ability to compete in the future. We support the elimination of tariffs in the market access negotiations and believe a tariff free climate would enhance our ability to expand exports. Finally, we would like to reiterate that should U.S. negotiators be prevented from making these changes to the Dunkel Draft then no dumping and subsidies code should be adopted. Instead, the U.S. should reject these proposals and maintain the current code which is used today. The Congress must insure that the intent of the U.S. trade laws are not traded away for an international trade agreement that could lead to irrevocable damage to our nation's economy and to the workforce.

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