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RESULTS OF THE URUGUAY ROUND TRADE NEGOTIATIONS

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

FEBRUARY 8, MARCH 9, 16, AND 23, 1994

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RESULTS OF THE URUGUAY ROUND TRADE NEGOTIATIONS

TUESDAY, FEBRUARY 8, 1994

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

The hearing was convened, pursuant to notice, at 12:13 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Present: Senators Baucus, Boren, Pryor, Riegle, Conrad, Packwood, Roth, and Danforth.

[The press release announcing the hearing follows:]

[Press Release No. H–3, January 26, 1994]

FINANCE COMMITTEE ANNOUNCES URUGUAY ROUND HEARING; TRADE REPRESENTATIVE KANTOR TO TESTIFY

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 results of the Uruguay Round trade negotiations.

The hearing will begin at *10:00 a.m. on Tuesday, February 8, 1994,* in room SD–215 of the Dirksen Senate Office Building.

United States Trade Representative Mickey Kantor will be the sole witness at the hearing.

"The Uruguay Round negotiations that concluded December 15 in Geneva produced a set of agreements more than 400 pages in length, covering a broad spectrum of complicated international trade issues. In addition, negotiations are continuing to finalize the specific, country-by-country commitments on tariffs and other market access issues," Senator Moynihan said.

"The Finance Committee looks forward to hearing from Ambassador Kantor concerning both the agreements reached in Geneva and what more needs to be accomplished between now and April 15, as well as the administration's views on the timing and process for implementation of those agreements," Senator Moynihan added.

President Clinton notified the Congress on December 15, 1993 of his intention to enter into the Uruguay Round agreements. The agreements are scheduled to be signed in Marrakech, Morocco on April 15, 1994.

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 witness and our welcome guests. We are a little late, as you can tell. The Senate has been voting—is still voting—on a series of amendments. There, in fact, I have to tell you, may be yet another on another matter. It is not yet clear.

We even so wanted to just get started. Senator Packwood is voting now and has asked if we would just go ahead without him. He will be here very shortly.

I think our opening statements might be as brief as is possible as Ambassador Kantor has a press briefing on your recent visit to Japan. Is that right, sir?

Ambassador KANTOR. Yes, sir, Mr. Chairman. I appreciate that. I apologize for the scheduling difficulties.

The CHAIRMAN. Well, we apologize for our schedule. Well, no, there are no apologies required from anybody. Could you tell us when you have to leave?

Ambassador KANTOR. Yes, sir, 1:00.

The CHAIRMAN. You have to leave at 1:00. Well, much of the morning remains. [Laughter.]

Ambassador KANTOR. More time than I have information, Mr. Chairman.

The CHAIRMAN. I have a statement, which I will place in the record at this point. It simply says our purpose this morning is to begin our review of the results of the Uruguay Round of multilateral trade negotiations under the GATT. I believe that this is a review of work conducted under three Presidents and which you very successfully concluded in my view in December. You are not quite finished, however. We have market access negotiations still to come.

Ambassador KANTOR. Yes, sir.

The CHAIRMAN. We have a meeting in Marrakech on April 15 to sign the agreements. There are many things yet to be done. I place my statement in the record.

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

The CHAIRMAN. Senator Baucus, you are Chairman of the Subcommittee on Trade. Would you like to make a statement?

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

Senator BAUCUS. Well, thank you, Mr. Chairman, just briefly so we can hear from the Ambassador.

I think it is important to note not only the number of years that we have been working on this round, but second, the bipartisan nature of our efforts. Two prior administrations, both Republican, two prior USTR's, Carla Hills, Clayton Yeutter, as well as Mickey Kantor. This committee has extended fast-track negotiating authority in the Round I think three times.

This committee has held over 20 hearings on the Round. But the first important point for us all to remember it has been very bipartisan. It is not just a throw away phrase that we often use around here, but, in fact, it has been very bipartisan, as have trade issues generally. NAFTA, for example, certainly in the Senate—this committee and the Senate—was very much bipartisan.

Second, it is important to note that there are major advances in this proposed agreement. That is, the Round will generate at least $270 billion a year in additional GDP. Those are OECD estimates. Everybody has an estimate, but I think those are pretty good.

The United States economy will increase by at least $65 billion a year as a consequence of the Round. I think it is on balance a good agreement.

I might say, too, that we have to do more yet on market access as you have referred to, Mr. Chairman. I am particularly concerned about the Japanese, who still have tariffs that are much too high for processed forest products and for nonferrous metals. If we can get those down to where they should be, it is a tremendous job opportunity for America.

In addition, I would like to remind the administration of its campaign promise to extend Super 301. I ask the administration to followup, make good on that promise. I have some concerns about the green lighting of some industrial research and development provisions, that is subsidies. I know Senator Danforth has some of those same concerns and questions about those. But in summation I think it is important for us to remember the bipartisan, cooperative effort that this committee has undertaken in order to achieve good results. I commend the Ambassador for his very hard work in what by in large is a good agreement.

Ambassador KANTOR. Thank you.

The CHAIRMAN. Thank you.

May I also, and I am sure the committee will want to join me in welcoming Ambassador Schmidt, who is the actual negotiator and has all the wounds I am sure to show for it. I note as well that one of the questions we have to ask in the context of Senator Baucus' proposition is that we expect this agreement will bring about a large increase in trade between our various countries. That will mean an increase in wealth but also a decrease in tariffs.

Ambassador KANTOR. Yes, sir.

The CHAIRMAN. We are going to have find $11 billion or thereabouts to deal with this. It is not, in fact, an expenditure; whatever loss in terms of revenue directly from one particular tariff, this set of tariffs, the general revenues will increase. It is a complexity for which I know you will have some resolution for us.

Senator Danforth has been very much involved in trade matters for 18 years in the Senate now and has some strong views on this agreement. Senator Danforth, would you like to make a statement?

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

Senator DANFORTH. Yes, Mr. Chairman. Thank you very much.

I am concerned that the green lighting of certain subsidies under this agreement puts our government squarely on the horns of a dilemma and that there is no good answer to that dilemma.

When subsidies are green lighted, when they are permissible without countervailing duties, then it seems to me that our choices are really only two. One choice is not to match the rest of the world in subsidies. In that case Airbus becomes the model for sector after sector, whether it is pharmaceuticals, high-definition television, or whatever the sector is.

Subsidies will be done by the rest of the world. They will not be by our country and we will simply lose out as we have with Airbus.

The other side of the dilemma, the other alternative, is that we decide that we are going to get into this business of providing subsidies. And if the answer is that we are going to get into subsidies then I think we better face that before we agree to this GATT agreement.

Where is the money going to be? What industries are we going to subsidize? Who is going to make the decision as to what industries are going to be subsidized?

I am not trying to cause trouble by raising this question. I have raised it privately with Ambassador Kantor ever since I guess December and have continued to do it on the telephone and in person and continue to do it right now.

But I hope, Mr. Chairman—and we have raised it in the back room a few weeks or so ago—I do hope we can have at least a public meeting on the subject because it really is a matter of great public concern. If we do not match the rest of the world in subsidies, we are going to lose major sectors of this economy. And if we do try to match them, we have a real problem in deciding where the money is going to come from and what we are going to do.

The CHAIRMAN. And which.

Senator DANFORTH. And which, yes.

The CHAIRMAN. Senator, you are absolutely right; and you have—I know Senator Packwood would instantly join me in saying we will have as many hearings as is required until we are satisfied that we have learned what there is to know and we have heard the answers to your questions and other person's questions, your questions, Senator Packwood, from the administration.

Sir?

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

Senator PACKWOOD. Mr. Ambassador, I apologize. I did not know a vote was going on. I got caught some place. It is my fault for getting back late. You know the problems. I do not need to repeat them—new foreign markets for financial service institutions, and the agricultural subsidies, and the restrictions on U.S. film. So I will address myself to two others—the Japanese and forest products, because they have only gone to apparently 50 percent on wood.

They are willing to go to zero on paper. Europe is willing to go to zero on paper and wood, but unless I am incorrect, Europe may condition that upon Japan going to zero on wood and condition all the rest of their agreement on it. I do not know. Perhaps you can enlighten me on that. I hope that is not the case.

Needless to say, coming from a principal wood producing State, we are delighted with paper and delighted with what we have, but would hate to see Europe retrench on it.

Then lastly on the revenue loss, and I have a letter for you that I will send down from Senators Dole and I, and Domenici and Danforth, we want to pay for this, all the revenue loss. We are already going to go off budget for the California disaster and it is an argument as to whether we are going to go off budget or not on the insurance premiums on health through an employer. Those seem like a tax no matter how you may name it.

We would just hate to say, well, here is one more coming along that we will not bother to submit our budget rules to. So I will send this letter down to you and I would appreciate your looking at it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I wonder if we might not put the letter in the record at this point so we know what we are talking about.

Senator PACKWOOD. Good. Thank you.

[The letter appears in the appendix.]

The CHAIRMAN. Senator Roth?

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE

Senator ROTH. Well, thank you, Mr. Chairman. I have a statement, a brilliant statement, of course, that I would ask to be entered as if read.

The CHAIRMAN. Without objection.

Senator ROTH. But I do want to emphasize a few points of particular concern and interest to my State as well as a number of others. I had the opportunity to discuss these privately with Ambassador Kantor while waiting for this meeting to start.

I handed the Ambassador a letter on poultry which was signed by a total of 20 different Senators. My concern is, Mr. Chairman, that Canada has a very strict quota on the importation of poultry. Under our Free Trade Agreement it was agreed that no new tariffs would be imposed by the countries that are party to it.

However, under GATT they are supposed to "tariffy" non-tariff barriers on agriculture, such as quotes.

The CHAIRMAN. Tariffication.

Senator ROTH. Tariffication of quota. So what we are worried about is that when Canada does that on poultry it will end up with a 280 or 300 percent tariff that will effectively stop increased access to that market. I point out that we only sell now roughly $90 million in poultry exports to Canada. That could go as high as $700 million of there were no trade barriers. So we are not talking about peanuts. My concern is, what are we going to do about to stop this.

The other area of interest is the harmonization of tariffs impacting on chemicals. That is an area where we have a favorable trade balance. What worries me is that to increase that balance in the future it is important that we have access to developing country markets.

What has happened, however, is that America is cutting its chemical tariffs very substantially but we do not see that happening in many of the developing countries like India, Brazil, Argentina, Thailand, Indonesia, and Venezuela. These are matters of real concern to my people back home.

The CHAIRMAN. Thank you.

I am going to ask Senator Conrad and Senator Riegle if they would indulge our arrangements and give rather brief statements because Ambassador Kantor has said he has to leave by 1:00.

Senator Conrad, sir.

Senator CONRAD. Well, I will forego my opportunity completely in the interest of having a change to hear from Ambassador Kantor.

The CHAIRMAN. You are very generous, sir.

Senator Riegle?

OPENING STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR FROM MICHIGAN

Senator RIEGLE. I will take only 30 seconds, Mr. Chairman. I want to emphasize the urgency of pressing hard in the discussions with the Japanese. Our bilateral deficit this year with them will be about $60 billion in their favor. That is about $5 billion a month leaving our economy and going to theirs.

I know they have been very stubborn and unforthcoming in these talks. I just urge you to press very hard. It is not just an American problem. I am told that their current account surplus this year for the whole world will be about $130 billion, with half of that roughly coming from us, out of our hides, I would hope you would press very hard.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Riegle.

Ambassador Kantor?

STATEMENT OF HON. MICKEY KANTOR, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC, ACCOMPANIED BY AMBASSADOR SCHMIDT

Ambassador KANTOR. Thank you very much, Mr. Chairman. I will be similarly brief if I could submit my entire statement for the record.

The CHAIRMAN. Your entire statement would require until 4:00 this afternoon. So I think it will be just as well.

[The prepared statement of Ambassador Kantor appears in the appendix.]

The CHAIRMAN. But do not be brief, tell us what you think we need to know.

Ambassador KANTOR. I hope I will have the opportunity, and I assume that I will, to come back and be even more detailed.

The CHAIRMAN. You most certainly will.

Ambassador KANTOR. Let me address just one question quickly that Senator Packwood raised. The paper agreement in the Round Agreement is not tied to the wood agreement or lack thereof. So, therefore, the zero tariff phase-out on paper stands, regardless of what happens in the wood sector.

Senator PACKWOOD. And there is no likelihood that the EC might retrench on that if we do not go to zero?

Ambassador KANTOR. There is no indication that is going to happen.

Senator PACKWOOD. Thank you.

Ambassador KANTOR. Mr. Chairman and members of the ommittee, I appreciate the chance to be here today to discuss the successful conclusion after 7 long years of the Uruguay Round involving 117 countries.

The administration believes that the Round, when implemented, will justify the years of hard work and frequent disappointment that has marked the 7-year negotiating history. It is the largest, broadest trade agreement in history and is shaped to the strengths of our economy.

The United States is uniquely positioned to benefit from the Round and the new world trade system it will create. U.S. workers will gain from significant new employment opportunities and addi-

tional high-paying jobs associated with increased productions from exports.

U.S. companies will gain from significant opportunities to export more agricultural products, manufactured goods and services.

U.S. consumers will gain from greater access to a wider range of lower priced, higher quality goods and services. As a nation we will compete. We will not retreat and we will prosper.

This historic agreement will (1) cut foreign tariffs of manufactured products by over one-third, the largest reduction in history. It is about 37 percent worldwide. It protects the intellectual property of U.S. industries such as pharmaceuticals, entertainment products, and software from piracy in world markets.

It ensures open foreign markets for U.S. exporters of service, such as accounting, advertising, computer services, tourism, engineering and construction. It greatly expands export opportunities for U.S. agricultural products by limiting the ability of foreign governments to block exports through tariffs, quotas, subsidies and a variety of other domestic policies and regulations.

It assures that developing countries live by the same trade rules as developed countries. It creates an effective set of rules for prompt settlement disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like.

We look forward to working with you and this committee this spring as we prepare the legislation to implement the Round. We hope the Congress will agree to ratify the Round as soon as possible, meaning in 1994.

Let me say, and let me reiterate, or at least ratify the statements made by Senator Baucus, first, regarding the bipartisan nature of how we have operated in trade. This has been true for many years in the past, not only since I have been the U.S. Trade Representative, which the administration appreciates and it is certainly welcomed. We will continue to operate in that fashion.

Number two, no trade agreement of this size is the product of one administration or one Trade Representative or one President. This has spanned three Presidents and three Trade Representatives.

And last, but certainly not least, this committee and this Congress have been instrumental, including your involvement, Mr. Chairman, in Geneva with members from both sides of the aisle as well as from the House and the Senate in making it clear to the European Community and to others that we wanted a good agreement, not just any agreement. Your advocacy in Geneva, especially 24 hours before I arrived there to work with Ambassador Schmidt to finish the Round, was critical; and we appreciate that very much.

I look forward to your questions and look forward to working with this committee as we develop the implementing legislation and the statement of administrative action, and look forward to ratification this year.

Thank you, sir.

The CHAIRMAN. Thank you, Ambassador.

I am going to put three questions in sequence. I think this is what the committee will want to hear. First, we had left Geneva,

you might say, with the understanding that this was a measure, this trade agreement would go into effect on July 1, 1995, following a meeting of Ambassadors and Trade Ministers in Marrakesh, Morocco this April is to sign it.

Now we hear you telling us you would like us to do it this year so it can go into effect sooner. Perhaps you will comment on that.

Second, there is this matter of how do we "pay" for the lost tariff revenue over 5 years. It is an anomaly. If we lose tariffs, it is because trade has increased. If trade has increased, it means revenues of American firms have increased.

And, therefore, revenues to the Federal Government will have increased more than the loss in tariffs. And yet we have a statement from Senator Packwood, as you know Senator Dole is a member of the committee, Senator Domenici is ranking member of the Budget Committee, and Senator Danforth saying no, we have to find the money.

And finally, the issue of subsidies, which has been raised by Senator Danforth. I do not mean to hold off any other questioning, but I think these are the questions that we would like to hear you respond to, and the first one in particular because it has to do with our schedule.

Ambassador KANTOR. Thank you very much, Mr. Chairman. First of all, the reason that July 1, 1995 was considered to be the date that would be the implementation date for the new World Trade Organization was because the Japanese had indicated they could not ratify the World Trade Organization in 1994 due to the procedures in their Diet.

The Japanese have now indicated it is not only possible, it is probable they will ratify this agreement in 1994.

The CHAIRMAN. They will call a special session in their Congress.

Ambassador KANTOR. They will call a special session and they will calendar this agreement and it is indicated will ratify it.

That being the case, it was our judgment in the administration, subject of course to the consent of this committee and the Senate, and of the House, that the United States should not be the one lone country in the world holding up the implementation of the Uruguay Round.

We believe the Round to be in the best interest of the United States economically. The sooner the implementation the sooner we will get the benefits of the Round, including for a number of industrial sectors in which most countries agreed to zero tariffs, and also including increases in agricultural exports, protection of intellectual property and the services agreement.

So we believe that it is important that we not hold up the Round or be seen to be doing so, and that we ask the Congress to ratify it in 1994.

The CHAIRMAN. So you want this committee to work out what could be very complex legislation—health care, welfare, unemployment insurance, GATT, what else?

Senator PACKWOOD. Is that not enough?

The CHAIRMAN. No. We have the problems of Social Security payments for domestic workers and we had those extended. That is all right. We are here. That is what we get paid for. Fine. So that is a decision that has now been made. [Laughter.]

When we last met you, the administration had not made it. It has now done.

And the matter that Senator Packwood raises: Is it about $11 billion you are talking about?

Ambassador KANTOR. Well, we are trying to come up with an exact figure.

The CHAIRMAN. You have not got a number yet?

Ambassador KANTOR. We have not. But it is in that range. And, of course, Director Penetta is trying to work that out right now.

I have seen your letter, Senator Packwood. I really have no argument with the letter at all. It is clear under the pay/go rules we are going to have to pay for the reduction in tariffs. It is interesting to note that our economists estimate we will collect at least $3 in Federal revenue for every dollar in tariff cuts under the Uruguay Round. But that is not all——

The CHAIRMAN. Have you got——

Ambassador KANTOR. I am sorry, sir.

The CHAIRMAN. There is such a study?

Ambassador KANTOR. There is a study being done by the Institute of International Economics. When it is completed, we are confident that it will indicate a similar favorable ratio between revenue gains and revenue losses.

The CHAIRMAN. Oh, good. I will look forward to seeing that.

Ambassador KANTOR. That will obviously be very helpful for your budgetary concerns in not only this, but in other areas as well.

The CHAIRMAN. Do you want to say that once more? I interrupted you. Do you want to say once again what you think that study will estimate?

Ambassador KANTOR. They estimate—now, this is not an administration estimate—that Federal revenues will increase $3 for every $1 in cut in tariffs under this agreement, as well as other trade agreements.

However, we understand the rules and the rules are that you cannot in a static budget concept count that. Therefore, after we estimate as accurately as we can the cuts, we are going to have to find a way to pay for that. We are already looking for offsets.

We look forward to working with the committee, as well as the House side, in trying to work this out. It is always difficult. It was under NAFTA, and of course it was much smaller under NAFTA. It will be very difficult and a very tight budget to do that.

Obviously, the administration believes that it is in the best interests of the country that we find the offsets in order to implement the Round because of its importance to our economic future.

The CHAIRMAN. All right, sir.

Ambassador KANTOR. And last is the subsidies question. Let me just start off by saying, without getting into great detail—because I know Senator Danforth will want to get into detail, and I am happy to do so without taking too much time here—for the first time under this agreement we define certain key terms such as subsidy and serious prejudice which will help put into operation multilateral rules and disciplines over subsidies. We do not have that right now.

Under the Tokyo Round 1979 subsidy agreement, as you know, most of the language is hortatory at best. We papered over dif-

ferences. It really has not been an effective discipline on subsidies; I think there is general agreement as to that.

Second, this new subsidies agreement prohibits export subsidies and subsidies contingent on the use of domestic over imported goods. Moreover, the coverage of export subsidies includes de facto export subsidies that are tied to exports or export earnings in practice, even if not in law.

It creates a special presumption of serious prejudice where the ad valorem subsidization of a product exceeds 5 percent; subsidies are provided to cover operating losses of a specific industry; subsidies are provided on more than one occasion that covers operating losses of a single firm; and subsidies are provided for debt forgiveness.

It defines and strengthens the general procedures for showing when serious prejudices exist in foreign markets, even when there is no presumption. These improvements include effective procedures for obtaining information on adverse trade effects in foreign markets.

It subjects all but the least developed countries to export subsidy phase-out obligation and accelerates such phase-outs in cases where a developing country has achieved global export competitiveness in a particular product sector.

As you know, it sets up four different categories. There is the red which covers subsidies that are not allowed. There is what they call the dark amber. There is the yellow, which is countervailable. And, of course, there is the green. There are three areas in the green category that are noncountervailable under certain limited circumstances. I think that is what we will be talking about in great detail.

The CHAIRMAN. What Senator Danforth calls the green lighting.

Ambassador KANTOR. The green lighting, yes, sir.

The so-called green, yellow, dark amber and red were categories developed under two previous administrations. That is not a defensive statement. We agree with those categories. But three administrations now have supported this.

Let me indicate though—for the first time we are going to have real discipline on subsidies under a dispute settlement mechanism in the GATT that works, and we also have our trade laws.

It is the administration's strong position that this subsidy code is in the best interests of the United States and the exception—the green category—which is narrowly drawn, subject to a 5-year sunset, make great sense for not only our country but great sense in the GATT.

The CHAIRMAN. There is a 5-year sunset on these color codings?

Ambassador KANTOR. On the green category and on some other aspects of the subsidy code as well. Since this is a consensual organization, if any one country—in our case the United States—does not agree with continuing the green category for, let us say, research subsidies, if that were the case in a theoretical situation, then if we did not agree, the green category for research would not be in effect 5 years from now.

The CHAIRMAN. I see. And by organization, my last comment just to be clear, you are talking about the new World Trade Organization?

Ambassador KANTOR. Yes, I am, sir.

The CHAIRMAN. For which we are deeply grateful. It is a term you can understand—multilateral hexagonal. [Laughter.]

Ambassador KANTOR. We made sure that we were strictly sensitive to the Chairman's great advice in changing the name from MTO to WTO.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. Mr. Ambassador, first I have a question from Senator Dole. Mr. Ambassador, you are well aware of the recent GATT dispute settlement panel ruling that found the European Banana Policy to be discriminatory. To my knowledge, the EC has not indicated a willingness to allow adoption of the ruling. The European policy harms U.S. companies. It is that simple.

Now the new Uruguay Round rules will require countries to change some of their practices. My question is this: Could you develop a strategy that will prevent the EC from continuing to discriminate against U.S. banana companies in the guise of "reform" under the Uruguay Round rules?

Ambassador KANTOR. We have worked very hard with our Latin American neighbors, including working with them in this GATT case, in an attempt to persuade the Europeans in every way possible to make sure that the banana policy which discriminates against Latin American nations and against our own companies was discontinued. They have refused to do so.

One of the great strengths of the Dispute Settlement Mechanism under the World Trade Organization is that you cannot block a dispute settlement ruling as you can now. The problem with the Dispute Settlement Mechanism now as you know, Senator, is you can block a ruling as the Europeans look like they are going to do in this case. Therefore, it cannot go into effect and you cannot take trade action against them for this pernicious policy they have implemented.

We are trying to work closely with our neighbors to the south in order to deal with this concern. There has been, as you know, some split of opinion among our Latin American neighbors about how to deal with the European countries on this issue. Some of the countries have indicated they would make a separate deal with the Europeans. It has undercut our strong advocacy for the Europeans to end this practice.

As of now we have had very little success in opening up this European market or dealing with this policy. We will continue to work hard to try to do so.

Senator PACKWOOD. Let me ask you an unrelated question. I am not going to pursue subsidies. You are going to hear that enough. I am assuming you are going to pursue the Japanese on wood when you meet with them.

Ambassador KANTOR. We already have. Ambassador Schmidt had meetings in Geneva just last week, and pursued that.

Senator PACKWOOD. Good.

Ambassador KANTOR. I have pursued it in Tokyo along with the framework agreement and along with the other Uruguay Round areas in which the Japanese Government has not been forthcoming.

I would like to report to you that I had great success. I have to report to you that there was no movement whatsoever. The Japanese position is that they will cut tariffs on wood by 50 percent over the first 5 years and then will take a look at the situation at that time and make a decision whether to cut 50 percent more—or to zero—in the second 5 years.

Senator PACKWOOD. Of course that is what they said they would do in the 301 challenge 3 or 4 years ago. They promised to do the 50 percent when GATT went into effect. They have not even quite done the 50 percent. But I know we were expecting more.

The CHAIRMAN. Well, you have to agree they are consistent.

Senator PACKWOOD. They have not budged.

The CHAIRMAN. But they always say 50 percent.

Senator PACKWOOD. Except this is an itsy-weeny bit less than 50 percent now.

You are familiar with the long running Canadian softwood lumber dispute.

Ambassador KANTOR. Yes, sir.

Senator PACKWOOD. And the bi-national panel has applied the wrong law. And, of course, we are entitled to appeal under the extraordinary challenge appeal. Do you plan to do so?

Ambassador KANTOR. Number one, it is my present intention—and I am going to tell you that the situation has changed to a small extent—that we would ask for an extraordinary challenge committee. We do not believe the ruling is correct.

It is unfortunate for many reasons. It broke strictly on country lines. As you know, the three Canadian participants voted——

Senator PACKWOOD. And there is no question they did not apply the correct law.

Ambassador KANTOR. There is no question in our mind here in this country and we agree with you.

Let me just make one other observation. There are allegations that two of the Canadian members had conflicts of interest. Without characterizing those conflicts, let me indicate that we are attempting to wind back these proceedings on that basis. So we may go back to the panel proceeding. We believe it to be the case and we are now in those discussions.

Senator PACKWOOD. Thank you.

Mr. Chairman, I have no more questions.

The CHAIRMAN. Thank you, Senator Packwood.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador, I want to compliment you on making some progress on agricultural export subsidies. As I understand it, reduction is about 21 percent reduction in agricultural export subsidies.

I am concerned, however, because I hear what is more than a rumor within the administration of its intention to cut Export Enhancement Program beyond what would otherwise be required under the Round agreement. As you well know, because the United States in the 1990 Farm Bill and subsequent actions made cuts equal to, if not greater than, the 21 percent that other countries must make under the agreement of export subsidies.

As a practical matter, the United States need not cut any of its Export Enhancement Program. But nevertheless, I hear that the

administration is considering going ahead anyway and cutting the export enhancement or recommending a cut.

I strongly urge you to resist that. You know as well as I that we Americans spend about $1 of export subsidies for every $10 that the European union spends on export subsidies. It would be an outrage, frankly, if the administration were to further recommend or move to cut export enhancement. Your reaction? Or more, your assurance that you are going to resist.

Ambassador KANTOR. Of course, the administration is operating with a very difficult budget situation. The Export Enhancement Program has been very effective in many areas for our agricultural community, including most recently, I believe, in opening up again the Mexican market for U.S. wheat in which the Canadians had taken unfair advantage of their subsidies for wheat and took over a large share of that market within about 24 months, as you know.

As far as export subsidies are concerned, the fact is Europeans have to cut 21 percent by volume, but 36 percent by budget outlay, over 6 years and cut internal supports by 20 percent. We already cut our internal supports, as you know, in the 1986 to 1990 period substantially.

Therefore, we will not have to cut at all since the 1986 to 1990 period of the budget is the base period. So, therefore, they will have a much greater cut than we will have in the agricultural area. It is quite substantial in fact. And because of tariffication and minimum and current access the European markets will be much more open to U.S. products—for grain specialty products, fruits and vegetables, as well as meat. So we have done quite well in the agricultural area in terms of the Uruguay Round.

The cuts in the EEP program, we believe, are not such that they would harm the program or harm U.S. agriculture. We believe that because of these cuts in the Uruguay Round subsidies are going to go down, especially in the European Community, and we will remain competitive, if not more competitive than we are today.

Senator BAUCUS. Are you saying that the administration will recommend further EEP cuts even though under the agreement the United States not is obligated to do so?

Ambassador KANTOR. One thing I have learned is that that is someone else's portfolio. I will let Secretary Espy answer that question.

All I would say here is, one, we are winners—U.S. agriculture—in terms of subsidy export, as well as internal support subsidy cuts. Number two, the Uruguay Round tariffication process is very helpful to U.S. agriculture. Number three, the EEP program has been very effective and I expect it to continue to be so.

Senator BAUCUS. I urge you to counter any efforts along those lines. I also want to associate myself with the questions of Senator Packwood with respect to processed wood products.

It is really ridiculous that the Japanese have not given in on that. It is a problem we have been pursuing for years now.

Second, I want to associate myself with the pending question of Senator Danforth with respect to subsidies.

I might say though I urge you to also take another look with Secretary Espy on a potential Section 22 with respect to Canadian grain. As you know, the USDA has concluded that the unfair, ex-

cessive subsidies of Canada, rail shipment subsidies and their Wheat Board, amount to about $600 million that the American taxpayers have paid over the last 4 years.

As you well know, we are attempting to negotiate an agreement with Canada, a volume cap that makes sense. I urge you to communicate to the Secretary that unless that agreement is concluded it addresses what amounts to roughly $600 million in 4 years. That is the fair amount that we are going to have to take appropriate action to stop those unfair subsidized shipments.

Ambassador KANTOR. We agree with you wholeheartedly. As you know, we have had very difficult negotiations with the Canadians on this situation. They are continuing. But they will not continue forever.

Senator BAUCUS. One quick question. I see my time is expiring. What effect, if any, will the Round have on our ability to use Section 301, Special 301 or about to be Super 301?

Ambassador KANTOR. It will make them more effective.

Senator BAUCUS. Any limitations?

Ambassador KANTOR. Let me explain that. Only the limitation that currently exists in the law. The limitation we currently have is that when we take a 301 action involving a GATT covered item and a GATT covered country, then, of course, we must go to the GATT after we have a 301 investigation and determine if we should take action.

That continues. Of course, we will have to go to the New World Trade Organization. But, one, there is a better dispute settlement mechanism. The fact is that it has strict time limits on not only the impaneling of a panel to hear the dispute, but on their time for making a decision and on appeal. Two, it cannot be blocked. And, three, you can engage in cross-retaliation, which we cannot today.

So in the intellectual property——

The CHAIRMAN. Would you explain "cross-retaliation?"

Ambassador KANTOR. Yes, Mr. Chairman. It is important. Take intellectual property. We are the world leader, whether it is pharmaceuticals or computer software or movies or compact discs. Because we are the world leader, if you could not cross retaliate into another sector, we would have to retaliate only in that sector where we had a successful ruling.

There would be so little imports into the United States that retaliation would have little if any effect. With cross-retaliation, we could go against the country who has been found wanting in this area and go against something where they do, in fact, export to the United States a very large amount of product and we could be more effective. So, therefore, that is helpful.

Last, but not least, 301, Special 301, any other 301 actions we might take or implement in terms of law, either by executive action or by this Congress—when it is a non-GATT covered item or a non-GATT covered country, such as China or Taiwan, for instance, or a non-GATT covered situation, such as keiretsu practices in Japan, we could still go with 301 unilaterally and would not have to go to the GATT or World Trade Organization.

Senator BAUCUS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Baucus.

Senator Danforth?

Senator DANFORTH. Thank you, Mr. Chairman.

Mr. Ambassador, you understand the point, my point, that if a trade agreement absolutely were to close down, let us say, three different types of subsidies but open the door to a different kind of subsidy because of the fungibility of money, the fungibility of the way in which government can help an industry it would create real problems. The subsidy would simply seek the open door. You understand that?

Ambassador KANTOR. I understand what you said. Yes, sir.

The CHAIRMAN. Senator, you know, if you said it one more time. I think it is an important statement and I think we ought to all get your point.

Senator DANFORTH. Well, I mean to list various ways in which we might improve our situation with respect to combating or outlying subsidies is really not an answer if at the same time we open up new possibilities for subsidy. In other words——

Ambassador KANTOR. If that were the case, if that were factually the case, I would agree. I think we probably disagree on the factual situation to some degree, not totally.

Senator DANFORTH. All right. But you understand the concern.

Ambassador KANTOR. I understand your concern.

Senator DANFORTH. If I am correct, if you open up Door D and close Doors A, B, and C, you can have a real problem.

Ambassador KANTOR. You may or may not.

Senator DANFORTH. Right, you may or may not. All right. Well, no, I do not think I agree with that. I think you have a real problem. [Laughter.]

Ambassador KANTOR. I was hoping, Senator.

Senator DANFORTH. Yes. I think you do have a problem.

Now, let me just ask you this. There is no doubt, is there, that we have opened up new doors for potential government subsidy of industries?

Ambassador KANTOR. No, we have not.

Senator DANFORTH. All right.

Ambassador KANTOR. No new doors.

Senator DANFORTH. Now let me ask you this——

Ambassador KANTOR. We have just not closed every door to every potential subsidy. We have kept the door open in three very limited prescribed areas.

Senator DANFORTH. All right. But we have opened doors that heretofore not been opened, have we not?

Ambassador KANTOR. De facto they had been opened because of the weakness of the 1979 subsidies code. No one has taken countervail actions in the areas we are talking about. So, therefore, they remained open.

Senator DANFORTH. So it is your argument that basically these changes in the subsidies code really do not do anything?

Ambassador KANTOR. It is my argument that they protect current U.S. programs which are the largest—we have the largest research subsidies of any nation in the world by far and it protects these very important programs which have made us more competitive and more productive as a country.

Senator DANFORTH. Well, then you think that our subsidies programs for research are important?

Ambassador KANTOR. Oh, I think they are critical.

Senator DANFORTH. Right. Now in addition to financial subsidies this trade agreement opens up the possibility for nonfinancial subsidies, correct? That would now be violations of GATT.

Ambassador KANTOR. Well, in these areas, for the limited purposes that I——

Senator DANFORTH. No, no, no. I am just talking about right now nonfinancial subsidies or violations. Whereas, under this agreement, if it is a nonfinancial contribution to an industry, it is not countervailable. It is permissible. It is not concluded any more in the definition of subsidy.

Ambassador KANTOR. De facto subsidization—de jure or de facto are both covered and are disciplined under this code.

Senator DANFORTH. Let me give you an example. Right now the Canadian prohibition on the exportation of raw timber, logs, is a countervailable subsidy, correct? It would not be under the new agreement. In other words, this agreement changes something. It creates the possibility that does not now exist lawfully for nonfinancial subsidies.

Ambassador KANTOR. In fact, if it is considered to be a de facto subsidy, in fact, it could be countervailable. In the particular case, I would have to get back to you, and for the record, and answer the question. It is very specific. Obviously, I would have to look at that.

Senator DANFORTH. Right.

Mr. Chairman, I really hope that we can get into the subsidy issue.

The CHAIRMAN. Yes.

Senator DANFORTH. Because even now the light is off and I have barely begun. I would just like to suggest that this agreement opens the door to industrial policy where that door is not now open. And that the effect is that our government, as a matter of policy, is going to have to make a choice. And the choice is, we are going to enter into this area of subsidies where they are not now permissible or we are going to lose out. And if we enter into it, that is a big policy decision.

Now the Ambassador in answer to the letter that I wrote him, I and others wrote him, one of the questions was, "Does the administration intend to embark on its own subsidy program to match or exceed foreign subsidies? If so, how much money does the administration intend to devote to its industrial policy?"

The answer is, "The administration does not intend to embark on any such subsidy program." That is a very important answer. But if the administration does not intend to embark on its own subsidy program, I would contend that Airbus is going to be the model of what is going to be happening in industry after industry. We are just going to be losing out.

I really think it is important for us to have a chance to really understand what is involved with this agreement.

The CHAIRMAN. Senator, can we not agree that we will have a full morning session on this subject, with a fair amount of ex-

change, what you attorneys call discovery, telling each other what you are going to ask.

Senator DANFORTH. Right.

The CHAIRMAN. Good.

Ambassador KANTOR. If I might, Mr. Chairman, with all due respect to the committee, just a couple of words. I would like to supply for the record a number of things here. One is the Industry Sector Advisory Committee Report for the Electronics Industry. It clearly supports what we have done for research subsidies.

Second, statements of support from the National Association of Manufacturers, Boeing and the American Business Conference. These are just a few of the statements in support of what was done in this limited area.

A chart showing 665 of research and development agreements in every State of the Union, which would be protected by what we did in the so-called green lighting category. I will supply that for the record.

Ambassador KANTOR. Let me make one comment, not to take the committee's time.

The CHAIRMAN. It is your time you are taking.

Ambassador KANTOR. Yes, and I apologize.

So we do not mix apples and oranges—what happened in Airbus was equity infusions, production and marketing subsidies for the most part; up to $26 billion. These would all be disciplined under this agreement.

What is done under the new World Trade Organization is to green light only research subsidies, basic and applied, in a manner that will protect very important continuing U.S. programs. We are the largest subsidizers of research, both basic and applied, working with industry, in the world—by far. We far exceed, we double, Japan on civilian alone and more than that when you add defense.

The fact is that the United States has become more competitive, more productive. Our workers have become the most productive in the world because we have engaged in this kind of help for private industry in research on a partnership basis.

By raising the percentage of permissible government support and changing the wording only to a small degree, we have basically protected these programs against attack as countervailable duties, which is critical, I think, to the future competitiveness of the country.

Senator DANFORTH. Mr. Chairman?

The CHAIRMAN. Yes, Senator Danforth.

Senator DANFORTH. I could also put into the record numerous statements of, for example, the Labor Advisory Committee, the Industrial Policy Advisory Committee, the Lumber and Wood Products Advisory Committee and so on who have raised real concerns about what you have done with respect to subsidies.

I do think that the last comment by Ambassador Kantor was very important because that really does get to the basic policy question. Maybe he is right. In other words, it was really an endorsement of the concept that we in government supporting by subsidies various high-tech industries. Maybe he is right and maybe that is what we want to accomplish.

But I think that is precisely the issue that should be debated on the merits.

The CHAIRMAN. Right, and will be. Let us restrain entries into the record just now because we will have panels of those organizations at our later hearing on this issue.

Senator Roth? We have three Senators to be heard and then you will be on your way. They will wait for you, I am sure. Do you see how many people are behind you right now?

Ambassador KANTOR. Unfortunately, I think they will, Mr. Chairman.

Senator ROTH. Mr. Chairman, in my opening remarks I mentioned two matters of particular concern to my State. I also referred to the fact that I had handed Ambassador Kantor a letter signed by 20 Senators. I see Dave Pryor is now here and he is coauthor of this letter on something that we will feel very strongly about, and that is access, additional access, to the Canadian market insofar as poultry is concerned.

What I would like to ask you is do you agree that Canada would violate its free trade obligations to us if it imposes new tariffs on poultry? Our concern is that they are going to use the GATT agreement to say that Canada is going to implement tariffication of their poultry quota system and then we will suddenly be faced with that and they will say they have no obligation to phaseout the new high tariffs that are imposed.

So what I would like to know, Ambassador Kantor, what is the status of our bilateral discussions with Canada and what are you doing to insist that Canada offers greater new export opportunities for poultry from the United States?

Ambassador KANTOR. The status is tense. The Canadian Free Trade Agreement regulates our agricultural relationships with Canada—as you know, that continues in force even with the NAFTA. Canada has agreed to tariffication of the Uruguay Round. When that goes into effect and they tariffy us, since all tariffs go to zero under our Canadian Free Trade Agreement, they would have no tariffs and no nontariff barriers to poultry, dairy and other things under what they call their Section 11 programs.

The fact is that that would be somewhat difficult for those Canadian industries. We are in discussions right now. They, of course, are very concerned about it. They are trying to seek relief from that situation. That is the discussions and the negotiations we talked about earlier today.

Also at the same time, we are discussing Canadian wheat access into the United States. So there is some connection between those two discussions as we talked about earlier.

Senator ROTH. I cannot stress too much, Mr. Ambassador, the importance of this matter. We are talking about a potential market of $700 million. We are talking about the creation of thousands of new jobs, so that to me as I review the GATT proposal, this will be a key factor.

Let me turn now, because I know the time is drawing late, to another matter of great concern. That is, chemical market access. As you well know, of every $10 of exports, $1 is chemicals. It is a favorable balance that we have in this industry and, of course, if we are going to do something about our overall imbalance, it is critical

that we be able to do something about those areas that we are competitively global.

My concern is that we are not opening up the market in respect to certain key developing countries, and that these countries are going to end up with very high tariffs that will effectively block greater U.S. export opportunity, and that in turn will dampen any opportunity for increasing exports in this area. Where are we on this and what can we do about that?

Ambassador KANTOR. First of all, we secured full or nearly full participation from 24 countries, including the European Union, in that; of course, we also hope opened markets with all the countries we have a free trade agreement with.

Second of all, we secured cuts up to 50 percent below the ceiling binding level in Brazil and Argentina, although we are continuing to work with them to get even further cuts.

The U.S. depth of cut was only 27 percent, which is lower than our average cut of 34 percent. So for the most part we received great cooperation and almost full participation.

The countries where we got full chemical harmonization represent 70 percent of our trade in chemicals. So obviously we are now working on those other countries to get full chemical harmonization.

Senator ROTH. But it is those other countries that are in many ways the growth area. You are talking about Brazil. You are talking about Argentina, India, Thailand, Indonesia, Malaysia, and Venezuela. These are fast growing countries. What bothers me is what are we doing to open up those markets.

Ambassador KANTOR. As you know, all of these are bilateral negotiations. In fact, I am seeing the Indian Ambassador next week. We are trying on a bilateral basis to open these markets even further than they have been. In some of these cases, as you know, there are historic problems in opening their markets, not only in this area, but in others.

That does not mean we have given up. We have until March 31 when the final offers are in. As you know, even though this is a multilateral organization, all of the negotiations are bilateral. That is why it becomes so complicated.

But let me indicate again—we have agreements with 24 countries, representing 70 percent of our trade. We have made great progress. We hope to make more.

The CHAIRMAN. And the final agreement is still open in this regard?

Ambassador KANTOR. Yes, until March 31.

The CHAIRMAN. That is important. Thank you, Senator Roth.

Senator ROTH. The only comment I would make is that to me it is important that major fast developing countries should take the burdens of the new agreement as well as the rights. That is very fine with 70 percent of the countries we have covered in the chemical tariff harmonization agreement, but what about these new developing areas.

Ambassador KANTOR. I could not agree more. Trade is a two-way street and that is the way it should be conducted. Thank you.

The CHAIRMAN. Thank you, sir.

Senator Boren?

Senator BOREN. Thank you, Mr. Chairman.

I think Senator Pryor is not going to ask a question, but wants to make a brief statement. So let me yield to him first.

OPENING STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS

Senator PRYOR. I would just take 30 seconds, Mr. Ambassador. Thank you, Senator Boren.

I want to share in the remarks expressed by our colleague, Senator Roth, with regard to the Canadian poultry situation. A letter will be coming to you, Mr. Ambassador, and we appreciate your personal attention to it.

By the way, Senator Boren wants to be added, Senator Roth, as an original co-author of the bill.

Senator ROTH. Give me the letter back. [Laughter.]

Senator PRYOR. Put Senator Boren on there, please, Mr. Ambassador. We appreciate his support for this concern.

Ambassador KANTOR. With his permission, I will sign his name to it.

Senator PRYOR. And second, Mr. Chairman, I ask permission that my full statement be placed in the record.

The CHAIRMAN. Without objection.

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

Senator PRYOR. And third, I want to differ with Senator Danforth's statement regarding industrial research. Investment in industrial research and development is the cornerstone of our entire defense conversion effort in this country at this point. It is very necessary that we keep the industrial R&D subsidy language and keep forging forward and we thank you.

Thank you, Senator Boren, for your courtesy.

The CHAIRMAN. Thank you, Senator Pryor.

Senator Boren?

Senator BOREN. Thank you, Mr. Chairman.

I want to compliment you, Ambassador Kantor, on the overall job you have done. I think that in nearly all cases you have been a tough but fair negotiator for us and you have done a good job. that does not surprise me.

I am concerned about the subsidy question. I have to be honest with you. I am going to withhold judgment on GATT until we resolve the question. I have read the Advisory Committee on Trade Practices and Negotiations Report to the President warning about the possible abuse of this new category of pre-competitive development activity. I worry whether it is narrowly enough defined given our budgetary constraints.

I note that the budget calls for a freeze on reimbursement on academic research, academic-based research, for example. While we talk a lot about encouraging research, we are not in all areas increasing our support for research, we are decreasing it.

So I share some of the concerns that Senator Danforth has raised, that we may have really damaged ourselves here in terms of opening the door to possibilities for which we do not have sufficient budgetary resources or the will. That is the other question.

Do we have the will to support some of these activities at a level that some of our competitors will have?

I am concerned about that. Two quick questions. One, when we say the green lighting sunsets after 5 years, does it become a red light or does it just become a neutral situation we have to renegotiate?

Ambassador KANTOR. Well, it would become either, red or amber, depending on whether it was as export subsidy or a domestic subsidy. It would be countervailable I think is the best way to answer.

Senator BOREN. It would be countervailable.

Ambassador KANTOR. Unless all countries agreed to either continue the green category or to modify it in some way.

Senator BOREN. Would we have the ability if we found we have made a mistake to rethink our position at that time?

Ambassador KANTOR. Well, to veto it, in fact.

Senator BOREN. To switch, although that is still a worry.

Let me ask, this really does to me represent quite a turnaround of the policy our government has followed and the policy that the Congress has followed in the past on moving toward tightening up and preventing subsidies and tightening up the definition of the old code.

Why was Congress not consulted about this or why was there not more of a public debate, because it does seem to be a major departure in policy before this decision was made? It could not just all of a sudden—I mean, this is an important policy that really goes to whether or not the country is going to embark on something of an industrial policy at a time when we are under budgetary constraint and also an environment, in which the American public and Congress have not shown much appetite for what might be called an industrial policy in the past.

I am not arguing the merits or demerits of it. I just do not want us to allow others to have an industrial policy if we do not have the stomach for it ourselves. That is one of my worries.

I just wonder, why was this not publicly aired, and why was it not aired more openly with Members of Congress and this committee? This is the first I knew about it.

Ambassador KANTOR. Well, as early as 1988 under the Reagan administration the categories—green, yellow, amber, and red lights—were agreed to.

Senator BOREN. Right.

Ambassador KANTOR. And subsequent to that the language we are dealing with in the green light category for research subsidies was agreed to under the Bush administration.

Number three, on November 22 I received a letter from a large number of Senators and Members of the House from both parties supporting, in fact, a limited—which we have done—a very limited green light for research subsidies since we are the greatest research subsidizer in the world.

Let me say that again. We—the United States of America—are the greatest subsidizer of research, and it has been to our advantage, which is interesting. This is not industrial policy. It is good, common sense.

The fact is whether it is SEMATECH or flat panel displays or it is a small company in New York with only eight people, Mr.

Chairman, who developed a new X-ray lens and the money came 50 percent from the Government, 50 percent from their own resources. They have now become a world leader in the technology for X-ray lenses—eight people.

That is repeated all over this country. Now that does not mean every program is successful or every grant is well funded. What it does mean is that we have been big winners in this area. That is why we are so competitive today in world markets.

So I think we ought to be somewhat careful. What we have really done is discipline in a very strong way, for the first time multilaterally, Senator Boren, development and marketing subsidies, as well as equity infusions, which characterize the development of Airbus. This is something we all have concerns with, and which is something we do not do as a country.

What we did is to say let us protect what we are doing as a country because it is so helpful and let us not allow others—or the United States—get into development or marketing or other subsidies.

When you say pre-competitive development subsidies, that means applied research. And if the Congress wants to put that into the implementating legislation, that is what we meant; we would welcome it. The only reason we called it that was that in order to get this provision to protect our programs, the Europeans insisted that we call it pre-competitive development.

Senator BOREN. Just one quick, final comment. I do not dispute what you said. But I would point out that when you look at the dollar volume of our research subsidies, most are defense—a very large proportion defense oriented as opposed to commercially oriented compared to other countries.

This is not the time for a full debate. The Chairman says we are going to have an entire hearing devoted to this subject. I think it is extremely important that we do that and that we follow through on that, because I am just not sure that the precompetitive term when it comes to commercial operations is sufficient to protect us.

And as has been said, other governments have been much more willing to use other kinds of subsidies and money is fungible. I am not at all sure that a lot of this money will—that if we had been ahead in the past, we will be ahead in the future. Given our budgetary constraints and their ability now to shift some direct subsidies they have been paying other ways over into this particular category.

We could have a pop-up effect that could put us at a disadvantage unless we really thought it through.

Ambassador KANTOR. Yes. I do not want you to think we did this without thought. The fact is that there are categories within this category which require you to put the dollars only into direct salaries and in direct equipment use and that is it.

So the pop-up effect, so to speak, which I think is a good characterization, does not become a problem. Let me give you one example. Japan spent in 1989 $8.3 billion on research subsidies which would be green lighted under this. We spent $16.9 billion in the same area—just civilian, not military. Obviously, military we are way above that.

So we are very much you might say in the ball game in this area. What we did want to do is take very valuable programs, which I

have put those in the record—I will not bore you with reciting those—and protect them from countervails by other countries under this new dispute settlement mechanism which is so effective.

That is what we were trying to do. I think it was well advised. This administration strongly supports this kind of research subsidy with a public/private partnership. But I think it is a subject well worth discussing.

The CHAIRMAN. Fine, and we will.

A closing comment from the Chairman of our Trade Subcommittee. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

I, Mr. Kantor, urge you to place in the record complete documentation of the assertion you just made, namely that the U.S. civilian research subsidies are far greater on an absolute basis, but I take it on a comparative basis than other countries.

I do not think many people would believe that to be true. That is not the common understanding of the common perception in this country.

Ambassador KANTOR. It is interest, this comes from the National Science Board, the numbers here.

Senator BAUCUS. The more you can document that, and I urge you to document it very fully, so that we have a good basis for the next time we have this subject.

Ambassador KANTOR. We would be pleased to do that. Thank you, Senator.

The CHAIRMAN. And the names of those eight New Yorkers. [Laughter.]

Thank you very much, Ambassador Kantor, Ambassador Schmidt. We appreciate this.

Ambassador KANTOR. Thank you.

The CHAIRMAN. We have a conversation going on here which is very important. Thank you for the President's message.

[Whereupon, at 1:18 p.m., the hearing adjourned.]

RESULTS OF THE URUGUAY ROUND TRADE NEGOTIATIONS (SUBSIDIES ISSUES)

WEDNESDAY, MARCH 9, 1994

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

The hearing was convened, pursuant to notice, at 10:08 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Also present: Senators Baucus, Rockefeller, Breaux, Packwood, Roth, Danforth, Chafee, and Wallop.

[The press release announcing the hearing follows:]

[Press Release No. 13, March 1, 1994]

FINANCE COMMITTEE SETS HEARING ON URUGUAY ROUND SUBSIDIES ISSUES

WASHINGTON, DC—Senator Daniel Patrick Moynihan (D–NY), Chairman of the Senate Committee on Finance, announced today that the Committee has scheduled the second in a series of hearings on the results of the Uruguay Round trade negotiations.

The hearing will focus on the Agreement on Subsidies and Countervailing Measures. The Committee will hear testimony from both administration and private sector witnesses concerning the Agreement, which is part of the Final Act of the Uruguay Round negotiations.

The hearing will begin at *10:00 a.m. on Wednesday, March 9, 1994,* in room SD–215 of the Dirksen Senate Office Building.

"The Uruguay Round Subsidies Agreement has been the subject of considerable attention and, it is fair to say, some controversy in the weeks since the negotiations concluded in Geneva," Senator Moynihan said. "In particular, several Members of the Finance Committee have expressed concerns relating to the categories of 'permissible' subsidies under the Agreement."

"The Committee had the opportunity to begin exploring this issue with Ambassador Kantor when he testified before us at our first Uruguay Round hearing on February 8. At that hearing, I indicated that we would devote a full session to this important subject—both the implications of the 'permissible' categories and other elements of the Subsidies Agreement," Senator Moynihan added. "This hearing will enable the Committee to review the full range of industrial subsidies issues in detail with senior Administration officials and other experts on U.S. trade and technology policy."

OPENING STATEMENT 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 honored guests. This is the first formal hearing to inquire into the White House strategy for bringing about subsidizations of some industries at the cost of others. We do not know who

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is behind this. There have been no subpoenas issued as of yet. But you never know and Senator Danforth is on the case. [Laughter.]

The subject being very straight forward. We will just have brief opening statements.

To make the point that we have agreed to the Uruguay Round, so-called the GATT negotiations, after a long period of some 8 years. But implementing legislation has now to be put in place. And in this strange world of our budgeting practices this requires us to find a very large sum of money to make up for the lost revenues that will come from the reduced tariffs and the increased foreign trade.

We will be working on the specifics in due time. For the moment, we are concerned about the provisions of the new agreement on subsidies. We will hear shortly from our respected and admired colleague, Senator Bingaman.

But, first, Senator Packwood.

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

Senator PACKWOOD. Mr. Chairman, I am delighted that we are having a hearing on the issue of subsidies today. We have spent the better part of 30 years, since the Kennedy Round, attempting to negotiate down subsidies. Whenever a foreign government would have a subsidy against which we could bring an action through a countervailing duty or dumping action, we would.

The better part of the Uruguay Round was spent trying to get agriculture subsidies down and we had some degree of success. But I think the government has gone backwards when we have not only allowed, but we have promoted some forms of industrial subsidies that would not have been allowed under the previous GATT as we used to call it then, now the World Trading Organization.

Moreover, but for us, these subsidies would not have been in this Round. It was the United States that was pushing these industrial subsidies. So I have real misgivings. I have not committed myself on this Round. I do not intend to. But I have real misgivings about reversing 30 years of policy when the United States has proven to the world, and we certainly have now, that if we are given a level playing field, we can beat anybody.

We can beat them in technology. We can beat them in agriculture. We can beat them in manufacturing. We can beat them in almost anything. I hate to think, however, that a level playing field is now going to mean you subsidize, I subsidize, you subsidize, I subsidize. You raise me, I raise you. You raise me, I raise you. Until finally we call each other after we have thrown all of our marks or franks or dollars into the water so that we can all compete with each other on a level playing field, and the level playing field is plus 10 for all sides to no benefit.

So, Mr. Chairman, I really am disappointed in this portion of the agreement and I am doubly disappointed that it was the United States that pushed this provision into the negotiations when the other countries, I think, would have been satisfied had we said nothing.

Thank you.

The CHAIRMAN. Well, let us get that record before we finish this series.

Senator Danforth?

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

Senator DANFORTH. Mr. Chairman, let me first thank you for the hearing. I think it is an important subject and I would like to set the table, so to speak, for the discussion and I hope to do it in 5 minutes. If I go a little bit over, I hope you will forgive me.

The CHAIRMAN. Senator Danforth, you have the floor.

Senator DANFORTH. Mr. Chairman, first of all, under the legislation under which this agreement was negotiated and comes to us, the administration was required to give notices to its intention to sign the agreement by December 15, which it did. But the agreement has not yet been signed.

The reason for that 4-month period of time between notification and the signing of the agreement was to permit Congress to weigh in. After all, international commerce, foreign commerce, under the Constitution is a responsibility of Congress, not of the White House. The negotiating authority must be delegated to the Executive Branch.

So to give us the opportunity to weigh in before the signing of the agreement, we insisted on this 4-month hiatus, which will come to an end on April 15.

Now, part of what was negotiated in the GATT agreement had to do with changes in the subsidies Code and the administration will point out and has pointed out that there are some greater disciplines that are created in the subsidies code.

However, to create some additional disciplines in general, but to create specific loopholes, falls afoul of the old adage that a chain is only as strong as its weakest link. So, therefore, if certain subsidies are permitted or green lighted, as the phrase is, that were are not permissible before or were permissible, but under the threat of countervailing duties, then, instead of providing increased disciplines, the effect of this is to create loopholes and to expand the possibility of government subsidies for industry. That is what I am concerned about in connection with this GATT agreement.

As Senator Packwood pointed out, the position of the U.S. Government in these negotiations was a change in prior policy for the U.S. Government. The U.S. Government took the position last winter that the recommendations in the Dunkel text should be changed to expand on research and development subsidies.

Under the Dunkel text, basic research subsidies up to 50 percent and applied research subsidies up to 25 percent were to be permissible but no development subsidies were to be green lighted.

Our government took the lead and insisted on changing this. So now the agreement that has been at least adopted by the administration provides for research subsidies not distinguishing between basic and applied of 75 percent and development subsidies of 50 percent.

We pushed this, as Senator Packwood said. It was not thrust on us. It was not something we had to do in order to give in the give

and take of trying to reach an overall GATT agreement. This was a matter of U.S. policy.

The CHAIRMAN. And this was a policy change for the United States.

Senator DANFORTH. It was a policy change. And there was a memo, and the authorship was not clear—it has not been clear on this memo—but Mickey Kantor tells me that he believes that the Commerce Department was the author of the memo. It was FAXed, I am told, from USTR in Geneva on November 27, 1993.

I would just like to read two paragraphs from the memo because I think this memo really puts the issue. This is according to Ambassador Kantor, the Commerce Department speaking. If the green category of the Dunkel draft subsidies code is expanded to include development subsidies, the U.S. Government will ostensibly choose between matching or exceeding foreign subsidies or accepting the reduced competitiveness of U.S. manufacturers.

"If the first choice is made, budget resources will have to be made available or the choice is illusory and the reduction of subsidies discipline would create a net loss to the U.S. economy as others could subsidize and we would not.

"The overall affect on the economy can be positive only as long as we remain willing and able to exceed foreign subsidies and to be selective in the particular areas subsidized. . . . Thus, a decision to reduce subsidies disciplines requires a commitment to be subsidy leaders, both in choosing beneficiary sectors and amounts given if we are to ensure positive economic effects for the United States. Because the Code will be in effect for many years, the commitment must also be long term."

Now that was the stated policy in this memo, that if we are to do away with disciplines, particularly with respect to development subsidies, the United States either has to commit itself as a matter of policy, to be subsidies leaders, or we lose out and we become less competitive.

So my point is that before we agree to this deal, before we sign it, we in the Congress, responsible for trade policy, better face up to the question of what we intend to do about subsidies. We are going to be on the horns of a dilemma. Either we are going to get into the subsidies business or in the alternative we are going to lose out.

That is the point that is made in the Commerce Department memorandum and it is the point that follows basic logic.

Now we now have on the floor of the Senate S. 4, which is a bill that provides $2.8 billion over 2 years for various forms of governmental subsidies for high-tech industries. I think that the issue raised in S. 4 is very similar to the issue raised here.

What really is the intention of the Government of the United States? Do we intend to get into the business of selecting those industries to be supported in research and development and to begin subsidizing them?

Do we intend to be leaders as this memorandum suggests? Do we intend if we are not to be leaders to at least match the rest of the world in whatever it does? If Japan picked, let us say, high-definition television; if Europe picked pharmaceuticals; if various countries in the world picked very specific promising industries, do we

intend one-by-one to match those subsidies or are we content to lose out?

So my concern is that what happened with Airbus is going to be the model for what happens in a variety of other industries. If the rest of the world chooses to subsidize as Airbus was subsidized to the tune of $26 billion over a period of a few decades, Airbus got 30 percent of the market and it has never made a profit.

So I think we are in the soup unless we decide to subsidize as well. Now, let me hasten to say, I have never intended to make this something that is just a Republican issue. Obviously, I mean, Republicans as a matter of philosophy tend to be a little more reticent about getting government into things than maybe some Democrats are. But there was a letter and it was signed by all 44 Republican Senators to Mickey Kantor. And one of the questions that was asked in this letter was, "Does the administration intend to embark on its own subsidy program to match or exceed foreign subsidies. If so, how much money does the administration intend to devote to its industrial policy?"

And Mickey Kantor's answer was, "The administration does not intend to embark on any such subsidy program." Well, is that because the issue has not been decided yet or is it that we are not going to embark on a subsidy program? If we are not going to embark on a subsidy program, what are the consequences?

It seems to me that the worst of all worlds is for the United States to push for a new subsidy system through the green lighting of research and development, allow the rest of the world into it and not embark on it ourselves. So I believe that before April 15 comes either we should somehow fix this problem, or in the alternative, and I think this is the worse of the two alternatives, we should figure out precisely what it is we intend to do and not just float along without any policy decision.

So I think it is an important issue, Mr. Chairman, and I really do appreciate your willingness to have this hearing and to allow us to direct our attention to it.

The CHAIRMAN. Well, I thank you for those kind remarks and for the clarity of your statement. May I first of all ask, whose memorandum is this? Somebody in this room knows. Ambassador Yerxa, what is this business of unnamed? Just tell us. Who did that?

Ambassador YERXA. Yes, it was an internal staff memorandum from a staff member in the Commerce Department to one of his supervisors discussing the issue.

The CHAIRMAN. So why do you not just find out the names and let us know later in the hearing. All right? Staff people have names.

Ambassador YERXA. Yes, I know, Mr. Chairman. I would respectfully suggest that you might want to ask the Secretary of Commerce. I do not feel really in a position to respond.

The CHAIRMAN. Of course. That is a perfectly fair point and we will do. Fine.

Senator Wallop?

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM WYOMING

Senator WALLOP. Thank you, Mr. Chairman, and my thanks to others for holding these hearings. I will give part of my prepared remarks and ask that the remainder of them be part of the committee's record.

The CHAIRMAN. Of course.

Senator WALLOP. Let me begin by saying that if this portion remains unchanged there is no way I could support a GATT agreement and that would be the first agreement since I have been in Congress that I would not have supported. It greatly troubles me and I think the consequences of that are terribly serious.

But agreeing with Senator Danforth, government simply does not know how to pick winners and losers and we have only to look at The Washington Post Business Section a couple of years ago, which the headline was, "Japanese Government Ends Development of Computer: Fifth Generation Falls Short of Goals."

That day The Post reads, "Japan's government has formally closed the books on its Fifth Generation's computer project, decade long research effort that was supposed to create a new world of computing power, but turned out to have little impact on the global computer market."

When Japan's MITI launched the project in 1982 it sparked new panic in the United States, that the Japanese Government and industry were about to do to the Silicon Valley what the Japanese auto industry had done to Detroit. $400 million later the Fifth Generation project did not give Japan global hegemony in big computers. In fact, they lost out.

Just the last couple of weeks we have seen the result of some $20 billion worth of Japanese Government investment in HDTV—cast aside and gone. The point I am trying to make is—each subsidized project sooner or later will run against its own efficiency, if those inefficiencies are kept in place.

But if they are met and accepted and embraced by the United States and matched in some way, with what money, I do not know, I mean where this government running the deficits it has is going to find money to choose winners and losers amongst America's industry——

The CHAIRMAN. We can raise tariffs.

Senator WALLOP. Yes.

The CHAIRMAN. That always brings in money, right?

Senator WALLOP. Raising tariffs gets us in trouble with the other portions of GATT.

But I guess the point that I would agree with Senator Packwood and Senator Danforth on is that this is a treaty agreement to have an industrial policy, a policy of subsidy and support, which many in Congress will not recognize that they are setting in place.

But for Senator Danforth's early attention to this and others, we might not have had the visibility of this issue that it currently has.

Industrial policy has not been a success in this country. I point to the space shuttle still searching for a mission and a role. Billions of dollars are spent on it, some of them successfully and some of them less so. But it still is in the problem stage and private sector

cannot get in; and were they able to, I think both the government would save money and science would be advanced.

But those are not the issue here. This is a reflection of a desire to create industrial policy and therein I think will lie a big argument within this Congress. I doubt seriously that the argument will be exclusively partisan. I think there are as many in your party that trouble on it as there are probably in ours.

But I dislike the idea of somehow or another having it forced on us through a trade agreement which either says, as Senator Danforth says, and I agree, that the companies of America will be either naked in the face of subsidized competition or the Government of America will have to embrace and grant a subsidy for them to remain competitive.

And in both instances, I think the world's consumers lose and surely the world's taxpayers lose. I would ask that my written statement be included in the record.

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

The CHAIRMAN. Of course. Very lucidly stated. We have to find out what happened.

The Chairman of our Subcommittee on Trade would like to address this matter.

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

Senator BAUCUS. Thank you very much, Mr. Chairman. Mr. Chairman, I think that the Senator from Missouri is correct. We have a problem here and it is a serious problem. Essentially, I agree with the Senator that the administration made a major mistake, number one, in not consulting with the Congress first before adopting this policy change. The Constitution is clear.

The decision was made when Congress was not in session. That does not excuse the administration. There are telephones and there are ways for the administration to communicate with the Congress and the administration did not.

Second, after having not consulted with the Congress on this matter, on the policy level the administration made a mistake. I think they overreacted. They overreacted to a concern about preserving, say, SEMATECH in this country or other similar research provisions in this country. And I say overreacted for a host of reasons.

Number one, no country has ever countervailed against SEMATECH or other related program. And the reason is very simple, it is because there is no demonstrated injury. That is, the administration tried to fix something that was not broke. Whenever we go down that road, trying to fix something not broke, we tend to get ourselves into deeper trouble and that is what happened.

The additional loopholes, and I think they are loopholes, in the areas of research, R&D subsidies that are now permitted, that were previously not permitted, are regional development subsidies green lighted. We Americans have had a very difficult time with other countries in regional development subsidies with the Canadians, for example, and timber and metals industry, the Europeans generally, who generically have not really regional subsidies but

they give subsidies to new businesses. They get certain tax preferences, et cetera.

And also environmental subsidies which is new. The real question is what we do about it. I do not think that it would be wise for the United States to not sign or ratify the proposed Uruguay Round. I say that because if the United States were to go back to all other hundred and some members of the GATT and say, wait a minute, we want to reopen the GATT, they too would have provisions they would like to change. I frankly suspect that we may be in a greater problem were we to go down that road than we are today.

I do think that we can generally fix, if not the entire problem, then shore up a lot of it. We certainly can strengthen our Super 301 provision and make it permanent. We can strengthen Special 301. We can also shore up our countervailing and anti-dumping laws. And there are other actions we can possibly take.

We have to think about this long and hard. One could be perhaps a counter subsidy against a subsidy they may take. Another might be an ITC study in the uses and abuses of subsidies that various countries might take to help guide us down the road. A third might be a Congressional action. That is, the United States has to approve by affirmative vote——

The CHAIRMAN. The Congress.

Senator BAUCUS. Excuse me. The Congress has to approve by affirmative vote whether we continue going down this road or not and somebody could think up a lot of other potential remedies. But the bottom line is, we have a problem. I do think the administration made a mistake. They overreacted. They did not consult and now I think we have to figure out a way to solve it in the context of the round. But I do not think it is wise for the United States to say we are going to, you know, not ratify this and go back and reinvent the whole round all over again.

We have been at this for 6, 7, 8 years. I doubt that we are going to be able to go back and reopen the round. So there are ways to solve this problem. We have to get on with ways to solve it.

The CHAIRMAN. That is a very thoughtful statement. I wonder if my colleagues would mind if I suggested that the next two statements be fairly brief because Senator Bingaman has been very patiently waiting.

Senator BREAUX. My turn?

The CHAIRMAN. Yes, sir.

OPENING STATEMENT OF HON. JOHN B. BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. I will be very brief and I thank the Chairman for having the hearings and the witnesses.

I think that all of us in Congress really have to face the facts of the real world. The facts are that all industrialized nations provide research and development assistance for industries and for the worker base in those respective industries. They do it and we do it. In fact, some say we do it to a greater extent than all of the industrial leaders combined.

I think what this subsidies agreement is attempting to do is to present for the first time a set of rules and regulations that will

bring some discipline to what they are doing and to what we are doing. Hopefully, this agreement will strike a proper balance and spell out what is an allowable subsidy and what is not allowable.

Because right now everybody is playing by a different set of rules; no wonder we have problems. This agreement creates the opportunity for the first time to establish rules that all countries will have to abide by. I am looking forward to see if the witnesses can address this issue, which I think is the key issue.

The CHAIRMAN. Thank you, Senator Breaux.

Senator Roth?

Senator ROTH. Just with your request, Mr. Chairman, I will make no remarks.

The CHAIRMAN. There will be plenty of time for questioning.

Now to our first witness, our friend and colleague, Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman. It is a pleasure to be here. Let me just say by way of preface I think the point that Senator Danforth and Senator Wallop made that this should not be partisan is certainly a point I totally agree with. I genuinely believe it is being approached in a way that is nonpartisan.

I first was drawn into this issue by Allan Bromley, who was President Bush's Science Advisor, when he raised concerns with me in my office about the Dunkel text. That is how I got involved.

Let me just go through a very short prepared statement to sort of put the issue in context as I see it. In late 1989 the Europeans began pushing for the very types of provisions which Senator Danforth is speaking eloquently about being concerned about. They began pushing for green lighting of research and development subsidies, as I understand it.

There is a quotation in the Council on Competitiveness's report which Eric Bloch is going to testify on later this morning which talks about how when our negotiators were approached by the Europeans, one of our negotiators said it was like "Bambi meeting Godzilla." Unfortunately, we were Bambi in that circumstance.

The Europeans wanted to permit all R&D subsidies and our response was to argue for no green lighting of anything. That was our initial reaction. This led the GATT negotiators to try to split the difference and that was what caused us to have the Dunkel text, which was the language which was on the table for a great long period.

That language had major problems, the Dunkel text did. And the reasons are fairly clear, it countervened the Bush administration's technology policy and the policy that we had pursued as a country for a very substantial period of time and that had received bipartisan support in this Congress.

The Dunkel text would have provided a challenge to others for our high performance computing initiative, for the advanced battery consortium, for SEMATECH, as Senator Baucus referred to, for thousands of cooperative research and development agreements that our laboratories have with industrys, for thousands of SBIR

grants, small business innovative research grants, and would have given the Europeans an opportunity to challenge the provisions we put in the Johnston-Wallop Energy Policy Act of 1992, where we provide for 50/50 cost share between government and industry in development of energy technologies.

All of that would have been challengeable under the Dunkel text. There were three specific problems in the text. The first was the definitions—the definitions of "basic industrial research" and "applied research." Those definitions were unworkable. The definition of basic industrial research would have captured virtually all of the basic research enterprise that we engage in in this country.

I think as the Chairman knows better than any of us, we engage in more basic research than any nation in the world, including NIH and all of the other. The applied research definition was loosely written enough so that it would have allowed government support for commercial development by a single firm, as in the case of Synfuels or Airbus. So it was objectionable, too.

So in the case of the basic industrial research the definition was too broad; in the case of applied research it was such that Airbus would have been approved there. I think there is bipartisan consensus in this country that that type of subsidy should not have been permitted, the kind that was involved in Airbus or Synfuels.

The second problem with the Dunkel text was the cost share allowed for government support. The cost shares were too low in some areas of research; they were too high in those areas where they were creating a developmental loophole such as the Airbus. There was a maximum 50 percent allowable for the so-called basic industrial research which was defined as I just referred to—a maximum 25 percent for applied research.

The final major problem with the Dunkel text was it had a pre-notification requirement, which would have had the effect of essentially requiring advance notice for this entire array of grants and government support programs that we have in our country. We have a $70 billion research and development enterprise that the Federal Government funds each year, and much of that would have been subject to pre-notification.

So in December of 1992, Congressman Brown and three members of this committee—Senator Danforth, Senator Rockefeller, Senator Riegle—and myself wrote to Carla Hills, pointing out some of these problems and urging her to try to drop the provisions related to subsidies. That letter I am sure you have in your file and we will provide copies.

The CHAIRMAN. I would like to place it in this record.

Senator BINGAMAN. We certainly will, yes. We will make a copy of that available to each member, too.

[The letter appears in the appendix.]

Senator BINGAMAN. That letter unfortunately came at the end of the Bush administration. It was effectively lost in the transition between the two administrations. The Clinton administration during the first three quarters of 1993, of course, was focused on NAFTA. So through mid-November of last year there really had not been much attention to the issue in spite of the fact that the letter was there.

In mid-November, a bipartisan, bicameral group of us sent a second letter urging that trade and technology policy be reconciled, that our trade policy and our technology policy——

The CHAIRMAN. Are we now November 1993?

Senator BINGAMAN. 1993, that is correct.

The CHAIRMAN. And we are in the last hours of the negotiations?

Senator BINGAMAN. Right, the last few weeks.

Our suggestion again was that we just put off the whole issue and not deal with subsidies. That was our suggestion. To be honest, the suggestion did not meet with the reality of the negotiating situation at that time with the Europeans and others who were committed to the green lighting of research.

So the administration instead decided to try to fix each of the problems that had been raised and that is the definitions, the allowable government cost share and the pre-notification problems. We have some written testimony I will submit for the record that goes into more detail.

But my own view is, Mr. Chairman, that they were remarkably successful. Our own negotiators were remarkably successful in those last weeks in resolving the problems in a way that makes sense and is consistent with the policy we have pursued for several administrations.

Fundamental research activities independently conducted by higher education or research establishments were made non-actionable, which I think is certainly something that makes sense, given our history of support, governmental support, for higher education research.

Under the language that wound up in the agreement, government can contribute up to 75 percent of the costs of industrial research, which is essentially applied fundamental research relevant to industry. That is a much improved definition over what was in the Dunkel text and what was objectionable.

Government can provide up to 50 percent of the cost of pre-competitive development activity, which is a research activity up to the creation of a first prototype, providing that the prototype is not capable of being used commercially.

I would note for all members that President Bush was the first President to coin this term "pre-competitive development" in a February 1990 speech that he gave to the American Electronics Association. He was trying to define the appropriate extent of Federal support for R&D and to distinguish his high technology policy from the so-called industrial policies of his predecessors in the 1970's.

Let me be very clear that there is nothing in these provisions as I see it, in the GATT provisions on subsidies, that encourages industrial policy in the pejorative sense of that term where it is often used to describe some of the policies we did pursue in the 1970's.

For example, the supersonic transport plane President Nixon pursued. Clinch River breeder reactor, Synfuels.

The CHAIRMAN. Sir, if I can say, I believe it might be useful at this point that the super sonic transport was involved with this. The Pentagon reached the point of—had previously developed almost all the prototypes for passenger planes, got to this one and found that it could move with the speed of light, but you only had

one company at most of Marines inside and it was on balance not worth it.

So the issue was, did anybody want to develop it commercially?

Senator BINGAMAN. Right.

The CHAIRMAN. So it begins with President Kennedy gave it to Vice President Johnson as President of the Space Council and it worked its way through to it and finally met its doom with the charge that it would crack the eggs of arctic geese. But that is another matter. [Laughter.]

Senator BINGAMAN. Well, that may be a better reason for cancelling it than the industrial policy argument. But for whatever set of reasons, the language that is in this Uruguay Round agreement before the committee today, in my view, does not permit that type of industrial policy. What we have now——

The CHAIRMAN. If I may interject, it was only to make the point that a very great deal of our industrial product began as military product in the last 4 years or so.

Senator BINGAMAN. That is certainly the case.

What we have now captured in the subsidies code in the agreement before the committee is our bipartisan consensus forged during the 1980's as to the appropriate role of government in research and development.

We believe that that role stops at pre-competitive development activity, which should be conducted on a cost shared basis with industry, putting up at least half of the money. This notion of what the appropriate role of government is and what the appropriate role is not is captured in numerous pieces of legislation that were passed since 1980 with bipartisan sponsorship and the blessings of the Reagan and Bush administrations.

The vast majority of that legislation passed by unanimous consent, so none of us have long voting records on it. But those of us that were involved feel that we got the mix between government and the private sector about right in the legislation. That role does not include helping individual firms get specific products to the commercial marketplace. It ends at pre-competitive development as used by President Bush in the speech I referred to, and that is the prototype stage.

The Clinton/Gore technology policy is consistent with that frame work of the Bush technology policy and the GATT subsidies code will now provide additional discipline on our policy process to ensure that we do not deviate into the industrial policy mistakes of the 1970's.

If the Dunkel text had not been corrected in my view, specifically the definition of applied research that was in that Dunkel text, there might have been a case that research green lighting would get us into industrial policy again. The final agreement captures the nation's bipartisan consensus on an appropriate role for government in research and should in my view be recognized as a major accomplishment of our negotiators and they should be congratulated for it.

Mr. Chairman, that concludes my remarks. I am glad to try to respond to questions if anyone has a question.

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

The CHAIRMAN. Well, we want to thank you very much for a very careful record and the appendices which I see are here.

Can I just ask, do I understand you to be saying that the changes made in the final weeks of the negotiations in the Dunkel text moved us away from an industrial policy mode rather than toward it?

Senator BINGAMAN. That is certainly my view because they got the definitions right.

The CHAIRMAN. And that term of pre-competitive development is implicit in what we have agreed? This is President Bush saying, we will not get into product development.

Senator BINGAMAN. That is correct. I think by correcting the definitions in the final version of the agreement, I think we headed off problems in both respects. We headed off problems of continued support for the basic research activities that we have historically pursued, which I think are very valuable.

But we also headed off problems of potential foreign government or U.S. Government support for actual development of product that goes into the marketplace, as in the case of Airbus.

The CHAIRMAN. Well, Senators, we have quite a distinctive difference of interpretation here.

Senator Packwood, would you like to ask some questions?

Senator PACKWOOD. Well, I would pose to the Senator only one question. I do not think it is so much a difference of interpretation but I sense from your statement you think the Dunkel text was a done deal and that we had to accept that or nothing.

Whereas, as I recall, we walked away from the Dunkel text and said, if it is that, there is going to be nothing. We are not going to sign.

Senator BINGAMAN. Well, my understanding was that there was a good faith effort on our part and on everyone's part to come to a final agreement and we were urging that the Dunkel text, that all reference to subsidies be dropped. That was not an acceptable final result from the point of view of the Europeans.

And accordingly, we said, okay, if we cannot drop them, let us try to correct the problems as they relate to research subsidies. That was accomplished in my view in a way that makes sense.

Senator PACKWOOD. That is fine. I just wanted to make sure we were not leaving the impression that if we had not agreed to this we had to agree to the Dunkel text. There was a time when a majority of this committee said to Ambassador Hills and then to Ambassador Kantor, walk away from this. Do not sign unless you get a good agreement. I do not think we were boxed into having to do this.

We just as well could have walked away and we would have kept our present countervailing duty and dumping statutes and we would have continued on under the old rules.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Senator Danforth?

Senator DANFORTH. Well, the subsidies code provides for generic research spending by government. What it does not allow for is specific targeted research called applied research directed to the

development of specific products or the support of specific industries.

Under the Dunkel text, basic research was going to be green lighted up to 50 percent and applied research up to 25 percent. However, in this agreement, the two types of research are aggregated and there can be 75 percent subsidy for research which means presumably all 75 percent can be in applied research.

In addition to that in the Dunkel text there was zero green lighted subsidy for development. But in this agreement there is 50 percent green lighted subsidy for development. And because particularly of the development subsidy this memorandum was prepared presumably by the Commerce Department which says now that we are getting into development, now that we are subsidizing development, if this is true and going to be our policy, then we had better commit ourselves to be subsidy leaders.

So it is my interpretation which is just very different from your interpretation that what we have done through our insistence is to move very much in the direction of getting the government into the business of both applied research and development. I think that it was not accidental. I think that this was something that was viewed as being positive, an investment, so-called, in the future.

If the government is freed up so that we can get into investing in various promising sectors of the economy, we are going to be better off as a nation.

Senator ROCKEFELLER. Mr. Chairman, may I ask the witness to yield?

Senator BINGAMAN. I am glad to and I will respond after my colleague.

The CHAIRMAN. I do not think the witness has the floor.

Senator ROCKEFELLER. It is unusual, and I apologize.

The CHAIRMAN. You are very welcome.

Senator ROCKEFELLER. I know that Senator Danforth is going to make this a tremendous effort over the next weeks, and I hope the Senator, when he talks about the so-called 75 percent mix and tries to score a point that way by saying this is applied research, understands what is written.

That is, regardless of how you interpret it or how you wish to look at any situation, once it gets beyond the pre-competitive point, the subsidy no longer applies, cannot apply. If any piece of equipment, any tool, any instrument, any single factor of anything is used for anything beyond pre-commercial competitive research, the subsidy stops.

The CHAIRMAN. Well, we are going to hear Senator Bingaman, and I believe that is your view.

Senator ROCKEFELLER. And I apologize to you, Senator.

Senator BINGAMAN. No, no. That is my view. I was just going to say, I think some of the confusion here, and I think there is genuine confusion, I think some of it is in the changing of the definitions that occurred between basic industrial research and applied research and then pre-competitive development activity. I think that it would be useful for the committee to have a clear fix on exactly what each of those terms are defined to include.

Because I do think the definition has changed from the Dunkel text to the final language.

The CHAIRMAN. Well, I think clearly we have to get a fix on that.
Senator Wallop?

Senator WALLOP. Mr. Chairman, let me just say that in my view and I think, in the view of a number of others that existing GATT rules would not have affected the research subsidies that were in the Johnston-Wallop energy bill, for the simple reason that those subsidies are not likely to result in products that would be any more challengeable than certain SEMATECH products.

We have gotten along quite well with the countervailing concept up to now. People understood it. It was argued and argued strenuously, sometimes successfully and sometimes not so. But this change I think does two things. One is it commits government to a policy which I am not certain it fully has defined even to itself. And, two, it clearly makes a marvelous new occupation for trade lawyers.

As you say, you are fiddling around changing definitions, I am not as persuaded as you are that the definitions are so distinct from those which preceded them as to give comfort. But let me just say, that is one of the reasons I am grateful for this hearing.

I also agree with Senator Baucus that we ought not let it fall on this point unless there is no change. Senator Baucus says there are solutions and resolutions of it and that I believe; and that I would hope for. But were it not to change, I would not be able to support it.

The CHAIRMAN. Senator Baucus, your turn.

Senator BAUCUS. Thank you, Mr. Chairman.

Senator, I am just curious as I understand it that at least you are concerned here, and the reason you tend to defend the present text is because you think that certain American activities like NIH research, SEMATECH and ATP and so forth need to be protected. I am just curious what the basis of that conclusion is, in view that none of those activities have ever been countervailed against by any country.

If you take SEMATECH, for example, ATP, another example, NIH, another example, at least I am unaware of any action by Europeans or any other country that has attempted to countervail. I think the reason is because the standards are very high. The injury standard is tough to meet. It is tough to show injury, like I say, to an NIH grant.

And second, then you have to show the margin, whether it is pricing or market share or what not. I just am curious of what concrete actions you are aware of by other countries that have taken actions, say countervailing actions, against these groups that we are all concerned about, that might lead one to the conclusion that perhaps they have to—this country has to fence them off in some way.

Senator BINGAMAN. Senator Baucus, I am not as expert as some of the witnesses you are likely to have later this morning. But my impression was that there has been confusion as to what can be countervailed, what could not be countervailed, prior to this new agreement being concluded.

That may be part of the reason why nothing was countervailed. I know that there have been genuine concerns and criticisms of

SEMATECH by European firms that wanted to participate and felt that they were being denied the right to participate.

I do think that the motivation for my involvement and I think the involvement of several of us here in the Congress in this issue was that people, the key officials in the Bush administration on these technology policy issues—Allan Bromley, Debra Wince-Smith, others—felt that much of the research and development activity that government was legitimately supporting in this country might be threatened if the Dunkel text were adopted as proposed.

Senator BAUCUS. I understand that to be perfectly candid about it. I think those concerns were reached without adequate knowledge of our trade laws, without adequate understanding of how our trade laws, particularly our countervailing trade laws in other countries actually work.

I think that was a concern. It was a surface concern. To put it very candidly, I do not think it was thought through, and I think the United States overreacted in reaching the conclusion unfortunately it finally reached. I think that is what happened.

So we now are in a situation of trying to fix it. I say fix it because based upon my reading of the language, I do believe that other countries though more aggressively take advantage of the language than this country will. We just have to deal with that.

Senator BINGAMAN. I would just say that based on the Council on Competitiveness report, which was prepared by some very thoughtful people in my view, and on which you will undoubtedly hear testimony from Erich Bloch this morning, there were a lot of folks who were confused. If you are right that the basis for the concern was confusion, there were a lot of people in both the Bush and Clinton administrations who were confused.

I tend to think that the basis for the concern was valid and, therefore, we did need to fix the Dunkel text. I think the way it was fixed made a lot of sense and I think it closed off the commercial development or industrial policy loophole that foreign competitors, foreign governments would have exploited.

The CHAIRMAN. Well, I think, if I may say, we are making progress there.

Senator Breaux?

Senator BREAUX. No questions. Thank you.

The CHAIRMAN. Senator Roth?

Senator ROTH. No questions, Mr. Chairman.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. No questions, Mr. Chairman.

The CHAIRMAN. Senator, thank you very much.

Senator BINGAMAN. Thank you.

The CHAIRMAN. You have helped define the issue we are trying to resolve and I think we are going to be able to do it. Of course we are going to be able to do it.

Senator ROCKEFELLER. Mr. Chairman?

The CHAIRMAN. Sir?

Senator ROCKEFELLER. Did my intervention count as my question?

The CHAIRMAN. No, it did not.

Senator ROCKEFELLER. I just want to read one little thing out of the agreement on subsidies and countervailing measures from the

text. The term pre-competitive development activity—and I am reading, so I assume the witness will agree with this—this is in the footnotes—"means the translation of industrial research findings into a plan, blueprint or design for a new modified or improved processes of services, whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use."

The CHAIRMAN. Perfectly clear to me. [Laughter.]

Thank you, Senator Bingaman.

Senator BINGAMAN. Thank you very much.

The CHAIRMAN. We are now going to hear from someone present at the scene, Hon. Rufus Yerxa, who is our Deputy U.S. Trade Representative; and Hon. Mary Lowe Good, who is Under Secretary for Technology of the Department of Commerce.

I do not want to introduce any sense of coerciveness into this hearing, but I have to simply say that as Chairman of the Committee on Finance under Rule X of our Rules of Procedure, I have to say that if the names of the persons who wrote the memorandum that Senator Danforth read from earlier, if those names are not produced for this committee by the end of business today, I will issue a subpoena for them.

Ms. GOOD. Mr. Chairman, I am prepared to tell you now if you would like to ask me.

The CHAIRMAN. Oh, good. I thought we might have had a certain influence. [Laughter.]

Why do you not just tell us now, Madam Secretary?

Ambassador YERXA. I am so persuaded I am prepared to tell you. [Laughter.]

The CHAIRMAN. All right. You tell us one and you tell us the other.

Ms. GOOD. First of all, as Under Secretary for Technology I have to tell you that I did not know who wrote the memo until this morning because it was an internal memo and not in my Department. Under Secretary Garten, who is the Under Secretary for the International Trade Administration asked for that memo as one of a variety of inputs and views.

There were many other memos asked from many staff members at that time. He wanted full consideration of the issue. This memo has no particular status and was not a departmental view, number one. Second, it was written by Ronald Lorentzen, who is very well respected and has done a lot of work in the trade issues——

The CHAIRMAN. Could you help with the spelling?

Ms. GOOD. Spelling, right. His name is Ronald and the last name is Lorentzen, L-O-R-E-N-T-Z-E-N.

The CHAIRMAN. All right.

Ms. GOOD. Who is the Senior Import Policy Analyst in the Office of Policy and the Import Administration. So this was a request for memorandums from a very large variety of people.

The CHAIRMAN. From Secretary Garten?

Ms. GOOD. Under Secretary Garten, who is the Under Secretary for the International Trade Administration. Asked for this memo with——

The CHAIRMAN. And was this memorandum sent to Geneva?

Ms. GOOD. I assume so. Under Secretary Garten was in Geneva as part of the coordinating group.

The CHAIRMAN. Fine. We will call him to the hearing.

Ms. GOOD. I am sorry. They told me at the time this memo was written he was in Washington. So I do not know whether it was sent to Geneva or not.

The CHAIRMAN. Thank you very much for your forthcoming information.

Ms. GOOD. Right.

The CHAIRMAN. Senator Danforth, Senator Wallop, I think we will ask that the Secretary come before the committee and explain.

Senator DANFORTH. Mr. Chairman, I think it is, I guess, interesting who wrote it. But I am more interested in whether or not the administration agrees with it.

The CHAIRMAN. That is why I think Under Secretary Garten should handle it. We can hear that from Ambassador Yerxa.

And so in accordance with the hearing, we will proceed. Ambassador Yerxa, you are next, sir.

STATEMENT OF HON. RUFUS YERXA, DEPUTY U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Ambassador YERXA. Thank you, Mr. Chairman. It is a pleasure to appear today to testify on this very important issue. I know that this is one of a series of ongoing analyses that the committee will want to do of the Uruguay Round Agreement as we bring it to the Congress for consideration.

Recognizing that you have already had a fairly long morning and you want to get to your questions, I will not read my prepared statement. I do have five or six points that I would like to briefly cover for the committee, which I think will be responsive to a number of the questions that have been raised and, of course, leave the rest for what I am sure will be a very productive dialogue with the members.

My first point probably goes without stating, and so I will not belabor it. That is, as we consider this entire issue the administration, of course, wants to emphasize the overall importance of the Uruguay Round in a very rapidly changing world.

This is an agreement which in our view is both a smart agreement and one that plays to all the strengths of the American economy, one which taken as a whole, despite certain areas where we feel we could have made more progress or where even certain flaws might be seen to exist by the Congress, will substantially strengthen the American economy, improve our posture in international trade.

I think one good example of how this agreement will be viewed by American industry will come later in your hearing when the Boeing Company testifies. I noticed in their statement a reference to the fact that an open trading system based upon the Uruguay Round Agreement is essential to Boeing's continued access to international markets. I think that speaks for the position of a number of U.S. companies that strongly support this agreement.

As I said, I will not dwell on that point because I know we want to get to the subsidy issues. Let me make the following points about the subsidies agreement. First of all, there is no doubt in my

mind that the Uruguay Round imposes meaningful and significant new disciplines on unfair trade and that this agreement is a quantum leap forward in improving international subsidy discipline.

The effect of this agreement will be to create greater, not lesser, discipline over government subsidization of the major internationally traded sectors from agriculture to airplanes.

Now the 1979 Subsidies Code under which we are operating now, Mr. Chairman, was largely a failure in imposing greater subsidy discipline. It was a weak and ambiguous agreement with a dispute settlement process that did not work. That has been borne out by our experience in the GATT under the Subsidies Code.

This agreement that we are looking at today, taken as a whole, this subsidies agreement, creates a greatly improved set of disciplines. First of all, an expanded list of prohibited subsidies, not just de jure but de facto export subsidies are prohibited. The agreement creates meaningful definitions of serious prejudice and a dispute settlement process that really will work. It creates a truly effective presumption of serious prejudice when domestic subsidies rise above 5 percent.

This means that we now have an effective tool to challenge and attack the most insidious forms of subsidy practices in international trade, production subsidies, equity infusions, direct grants and loans to companies; and the agreement creates—and this is very important—for the first time multilateral discipline over developing countries.

We must recall that there are only 27 countries in the current Subsidies Code. The vast majority of the developing world is not signatory to that code and is not subject to its disciplines. Under the Uruguay Round Agreement all 117 signatories of the new WTO automatically become subject to the same set of disciplines over subsidy practices.

My next point is that there, of course, is in this new arrangement a counterpart to the enhanced discipline that I just described and that is a very narrow and carefully constrained green lighting of certain forms of government support. These are very clearly limited under the agreement with precise definitions; and these government supports are green lighted only to the extent they stay within these definitions, and only if they are notified to the WTO Subsidies Committee and then approved.

The green light can be stripped whenever it is established that a particular program has resulted in product which causes serious adverse affects to the industry of another WTO member.

I will be glad to go into more detail with the Senators on how these definitions work. Some of this was raised by Senator Rockefeller in his dialogue with Senator Bingaman and I will be glad to discuss that in greater detail.

My next point is that these green lights will not become a loophole through which major production support can flow. We certainly intend to ensure strict compliance with the standards that are set forth for all three green light categories, through international monitoring in the Subsidies Code in Geneva, as well as through implementing legislation which explicitly defines in our law what remains subject to countervail action.

I think Senator Baucus was correct in referring to the number of steps that can be taken as we work with the committee on crafting appropriate implementing legislation.

And if abuse is demonstrated, we have a procedure under which the United States could decide not to renew the green light provisions when they come up for sunsetting in 5 years.

I would also like to make the point that failure to include the R&D green category would have placed at risk a number of very important technology initiatives. I know that Senator Baucus has made the point that governments have not countervailed these measures in the past. But I think we have to recognize what is happening here. We are adopting stringent new disciplines over subsidy practices and there are avenues through which governments could attack the programs we have on the books, not simply by countervailing them under their domestic law, but by challenging them in the WTO subsidies agreement.

I believe that in 2 years' time, were we not to have the protection of this green category, the administration would be back before this committee trying to explain why WTO panel rulings had found our cooperative research and development agreements, our advanced technology program, our NIH biomedical research and commercialization program, the SEMATECH program, the clean car program and many others to be inconsistent with our WTO obligations.

As we take more aggressive action under the subsidies agreement to enforce the disciplines on other countries, you can be certain, Mr. Chairman, that other countries will scour our statute books to find cases to bring against us. This has been our experience under every single one of the existing GATT agreements.

The result would be a certain tit for tat where they would be looking for ways of finding violation rulings against us. I think that is a very real risk that would have plagued our programs.

This would have placed us, I think, at a tremendous disadvantage internationally. First of all, other countries have other ways of assisting research and development. Europe and Japan for example, rely heavily, on government procurement and quasi public leasing arrangements.

And the ironic result would have been to jeopardize our programs but not to achieve the disciplines that Senator Danforth and others are seeking. Now the approach we are taking narrows and defines what is permissible and subjects it to international discipline. It is a response to an economic reality, the importance of strong research and development to our future competitiveness.

Senator Breaux referred to the fact that the United States far and away is the leader internationally in providing government support for research and development, both defense and non-defense. We have some figures we can go over with the committee today that I think amply demonstrates that.

But the important thing here is that I think he is correct in saying that we are channeling these into a predictable and understandable and transparent international system where they can be monitored and where they can be enforced strictly. And if the United States takes the appropriate leadership role in ensuring that

that is the case, I believe that this system can work very effectively.

Now I know that there individual Senators as we have discovered today and knew before. You have strong views about how some of these normative disciplines should be structured, and I certainly respect their position and their genuine concerns that they bring to the table about having sound trade rules.

But I must ask the committee to step back a few paces and look at the entirety of this agreement. The administration had certainly some difficult decisions to make, which we did after close consultations with affected parties and with the Congress.

I believe that we came up with an overall agreement, including stronger subsidies discipline which will work very well for the United States in the world economy of the 1990's and beyond. I would hope that the committee would at least share the conclusion drawn by our Advisory Committee for Trade Negotiations, our private sector advisory committee, which said on balance the ACTN believes that benefits we anticipate from broad excision to the subsidies agreement and the improvements in the dispute resolution process outweigh our concerns about the agreement's shortcomings.

I believe that the committee should draw the same conclusion and that to do otherwise and to reject or seek to reject a part of this agreement or seek to renegotiate a part of this agreement would both undermine U.S. credibility and place at risk the Uruguay Round. I do not believe that renegotiation is a practical possibility.

However, I do want to pledge to you, Mr. Chairman, and to the committee, that we will certainly work very closely with you in crafting the implementing measures and the ongoing monitoring and enforcement measures which would assure that the subsidies agreement is a good agreement for the United States and will help to enhance international subsidy discipline.

Thank you.

[The prepared statement of Ambassador Yerxa appears in the appendix.]

The CHAIRMAN. Thank you very much, Ambassador.

Madam Secretary?

STATEMENT OF HON. MARY LOWE GOOD, UNDER SECRETARY FOR TECHNOLOGY, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Ms. GOOD. Thank you, Mr. Chairman. I appreciate very much the opportunity to be here today. And with your indulgence I will read most of my statement, because the technology issues are so very important I want to be sure we understand the arguments properly. I have tried to put them together in a way that I think will be responsive to the questions that have been asked this morning and which will continue to be asked as we go forward.

First of all, the provisions of the Uruguay Round, relating to our technology investments, which are built on public, private partnerships are an important achievement, we think, under the GATT Round. These provisions will enable the United States to fight on fair subsidies that distort free trade while at the same time protect the technology programs with longstanding bipartisan support here

at home that link technology to economic growth, create jobs, and help ensure a rising standard of living.

These provisions reflect what we believe is both strong trade policy and competitive technology policy unlike previous trade agreements, our earlier proposals in the Uruguay Round.

Simply said, the Dunkel text tied our hands when it came to investing in research and development and the 1979 Code tied no one's hands and our technology programs were unprotected, particularly in the environment that Ambassador Yerxa has just discussed.

In the Uruguay Round we crafted provisions that were defined by us for us and not for our competitors abroad. We believe the resulted is a more clearly defined and effective GATT code on subsidies.

So let me focus on the technology issues which we believe in the future, particularly in the civilian sector, are going to be the engine of economic growth, both here and abroad.

Now since the end of World War II there has been a bipartisan consensus that technological progress fuels economic growth. That bipartisan consensus has allowed this Nation to build a research and development infrastructure that created new industries and reinvigorated old ones.

It enabled small businesses to do high quality design and manufacturing work that previously required the resources of big business. It helps big business achieve the speed, flexibility and closeness to customers that once were a defining characteristic of small business. Technology is a major contributor to a more productive work force and is key to improving the nation's standard of living.

As the 1994 economic report of the President states, every recent generation has seen its dreams turned into technology marvels. New products from new industries that have transformed the way we live and work, from the telephone, radio, airplanes and X-rays to televisions, urography, computers and magnetic resonant imaging equipment advances in technical know how have accounted for at least one quarter of our Nation's economic growth over the past half century.

Our nation's advances in technology have contributed to a stronger economy primarily through the private sector's ingenuity and the private sector's utilization of the fruits of our discoveries. It is the private sector and not the government that adapts technology to produce new products, expand the market, and improve production efficiencies.

The CHAIRMAN. Could I just ask, Madam Secretary?

Ms. GOOD. Certainly.

The CHAIRMAN. Advances in technical know how have accounted for at least one-quarter of our Nation's economic growth over the past half century.

Ms. GOOD. Right.

The CHAIRMAN. And what would be the other three quarters?

Ms. GOOD. Well, the other is in the service industries. It has to do with productivity improvements.

The CHAIRMAN. Does not "technical know how" imply technology?

Ms. GOOD. Yes. I would argue with this statement. If I were writing that statement, I would make it a great deal bigger than 25 percent.

The CHAIRMAN. That is what I thought and I would not have quoted it. Thank you.

Ms. GOOD. The fallout creates much more than the 25 percent you can prove absolutely. Thank you, sir. I appreciate your improvement in my testimony.

But our administration though does continue to recognize this essential fact of technology investment, that it is the private sector that makes it go so to ensure that the technology remains the engine of economic growth.

Now the research and development infrastructure that has given our Nation the opportunity to benefit from technology investments remains second to none and it is still a world class R&D infrastructure, primarily because more often than not it has been built through public, private partnerships, partnerships that link industry, academia and government together.

This principle of public/private partnerships is one that spans the political spectrum and extends back for decades and it is at the heart of the Clinton administration's technology initiatives.

The longstanding bipartisan support for technology investments recognizes that government investment in research and development is essential. New technologies and improvements to promote domestic development often fail to attract sufficient private sector investment. The risk is often high and the globalization of the economy is putting tremendous pressure on industry to reduce costs.

After several years of cutbacks major U.S. companies spend less than 22 percent of R&D today on long-term projects. In comparison, their counterparts spend nearly 50 percent of R&D on long-term investments. These are according to the estimates by the Council on Competitiveness. Mr. Bloch will be here later from that group.

The pressure we believe to stay competitive is mounting. The Industrial Research Institute's survey of 253 industry R&D managers found that 41 percent said they would reduce total R&D in 1994 versus 20 percent that plan increase. Three times as many plan to cut their long-term research funding as those who expect to increase it.

So with that background, let me say what our concerns with the Dunkel text were. The draft Dunkel text presented a number of concerns, particularly to the private sector and to some of our longstanding technology programs.

Let me say at the outset of this discussion that concern over the R&D language in the subsidies code of the Dunkel text came from a variety of sources. Yes, there was concern from government officials involved in technology and you will hear more about that from others. But this was more than just another inner agency group working or talking to itself.

Before becoming the Under Secretary of Technology at the Department of Commerce, I was the Senior Vice President for Technology at Allied Signal, which is a very large diversified group with primary technologies in aerospace, automotive and the chemical businesses.

The CHAIRMAN. You dumped all those chemicals into Onondaga Lake, did you not?

Ms. GOOD. That was very long ago, sir. We have also put a lot of money in cleaning it up.

The CHAIRMAN. They are still there.

Ms. GOOD. That one I am going to pass on. But in this in previous capacities I have served as a private sector member of a number of Presidential Commissions on Science and Technology under the last three Presidents and as Chair of the National Science Board, which oversees the programs of the National Science Foundation.

And even with that background it was only by accident that I, like so many of my colleagues in the private sector, learned about what had been proposed in the Dunkel text with regard to research and development. This lack of input by the private sector, which would be most affected by the draft code under the Dunkel text, I believe, is a major reason why this administration sought a comprehensive review, which included a wide variety of companies from different industries.

Like me try to make my point as bluntly as I can. Had the Dunkel text been implemented, it would have been very difficult for my former company to participate in Federal Government civilian industrial technology programs like the advanced technology program at the Department of Commerce.

The company would have been exposed to potential challenges and it would have been enforced and much more importantly perhaps. It could have been forced to release proprietary information to gain perhaps some protection from challenge by our competitors.

It simply would not have been worth the risk to participate, despite the opportunity to tackle a key problem facing technology problems.

Mr. Chairman, I would like to explain in concrete terms how the Dunkel text would have impeded building effective public/private partnerships in technology with the industry.

First and foremost, the Dunkel text undercut one of the primary advantages the United States has over our competitors. That is our R&D infrastructure. As measured by every category of R&D investment, the United States out performs other major industrialized nations. This advantage is true for total public and private research and development investment. It is also true for government support of R&D.

Of course, the U.S. figures for all governmental R&D investment include our substantial defense related R&D investment. No other country comes close to our historic commitment in this arena and none at this point I think ever will. Paring all of this down to just government support for non-defense civilian R&D the United States still out paces its competitors.

According to the latest figures that we have for comparison, the U.S. Government invested $28.4 billion in civilian R&D in 1991. Germany, the next largest country in terms of civilian R&D, spent 55 percent less. The Japanese government investment in civilian R&D is even less. But they do support their development programs in other ways as you have heard.

Now the figures I have just shared with you underline a long-term bipartisan commitment to technology investment to promote economic growth. If you look at that rise, it has rose—the contribution to civilian R&D has risen continuously over the last 10 years and we have some figures to show you those if you have questions about them.

The tangible examples are investments like the advanced technology program at the Department of Commerce, which was a program initiated during the previous administration, as well as the dual purpose initiatives embodied in the technology reinvestment project at the Department of Defense.

They also include the world class biomedical research of the National Institutes of Health, the Defense Department's investments in flat panel displays and multi-chip modules and an increased focus on civilian technology by the national laboratories.

This commitment to technology investment through public/private partnerships is also reflected in the more than 2,000 cooperative research and development agreements that have revolutionized industry/government collaboration.

The Clinton administration has reinvigorated the public/private partnership as a key means of achieving technology investments. In most cases the projects are cost shared, often 50 percent from industry and 50 percent from the government; and very importantly, the selection is merit based.

These initiatives reflect the proper role of government in working with the industry to sustain the high risk enabling technologies that are key to economic growth. The President's fiscal 1995 budget does include a 1 percent increase in research and development investments.

But more fundamentally, this budget is implementing the President's call for a redirection of government R&D spending to achieve a roughly equal balance between military purposes and civilian and dual use purposes within a few years.

The R&D spending proposed in the fiscal year '95 budget would be 44 percent civilian, would be 47 percent civilian if you include the dual use programs. That compares with 41 percent civilian R&D in fiscal year '93. So the goal here is to move some of the funding we have in defense-related industries into the civilian infrastructure case.

Now under the draft Dunkel text, the more transparent U.S. technology programs would have been open to foreign challenge. It would have impeded what every administration has recognized and that is that the investment in research and development is a desirable, effective and long-term investment in our future.

Now the second problem posed by the draft Dunkel text relied on the definitions of basic and applied research that did not fit the model of U.S. technology programs, and Senator Bingaman has spoken to that, I think, rather well.

That ambiguity was compounded by the fact that thresholds of non-actionable government investment envisioned in the Dunkel text were out of line with a bipartisan view that programs should be equally cost shared. It simply made no sense to have our technology programs require both government and industry put up 50

percent each while exposing a company to challenge if the government investment exceeded 25 percent.

If the private sector was frustrated with that kind of inconsistent governmental policy, they were must more, perhaps even much more distressed with the Dunkel text provision related to notification. In order to gain limited protection under the Dunkel text, highly detailed notifications of programs would have had to be made to the GATT Subsidies Committee, possibly requiring the government to share extensive and competitively valuable information about activities of U.S. firms.

So instead of seeing hope and protection in these notification requirements, the private sector saw greater regulation, more paperwork, threats to sensitive information and less incentive to work with the government in this important arena.

I have summarized, I think, very briefly, Mr. Chairman, the problems that arose during the administration's review of the Dunkel text. The United States found it necessary to address these provisions if the prospective Uruguay Round agreement on subsidies was to ensure rather than impair the long-term competitiveness of U.S. industry in the global economy.

Significantly, many of the subsidy tools typically used by our competitors will remain very much actionable under the provisions of the Uruguay Round subsidies agreement. Indeed, the disciplines applicable to these practices will be stronger than they have ever been in the past.

All forms of expert subsidies and subsidies conditioned on the use of domestic content are flatly prohibited. A presumption of injurious trade effects will exist whenever governments provide subsidies to forgive debt or to cover operating losses or when they subsidize products at levels exceeding 5 percent of a product sales value.

The only agreement also makes it easier for us to show how subsidies have formed our exports to other markets and which such arm is identified. It creates a legal obligation for the subsidizing government to withdraw the subsidies are alleviate the trade laws. If such remedial action is not taken within 6 months, the agreement automatically authorizes us to impose retaliatory measures.

So the portion of the Uruguay Round that addresses R&D investment we believe is a major improvement over the Dunkel text. Our investment in fundamental research is fully protected. The extraordinary contributions of our universities, research institutes and national laboratories in the areas of basic research are clearly preserved.

We have also ensured that government involvement, industrial research, a mainstay of our public/private partnerships, continues without threat. The government may be involved, either directly with funds or with personnel or in-kind resources.

In critical investigations aimed at the discovery of new knowledge with the objective that such new knowledge down the road may be useful in development new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

These kinds of partnerships are industry-focused, very pre-competitive, and have the potential to provide benefits across a number

of companies and industries and they are not in the category of picking industries or picking winners and losers.

Consistent with our bipartisan, merit-based cost-shared technology programs, the government may partner up to 50 percent of a project that focuses——

The CHAIRMAN. Madam Secretary, may I just ask something?

Ms. GOOD. Sure.

The CHAIRMAN. What is a bi-partisan technology program? Do you have Democratic firms and Republican firms?

Ms. GOOD. No, we do not, but we have Democratic and Republican industry people who clearly all believe in this programs.

The CHAIRMAN. I see.

Ms. GOOD. Okay? The partisanship is not just within the Washington Beltway. Partisanship does revolve all around the country.

The CHAIRMAN. All right.

Ms. GOOD. But the government may partner up to 50 percent of a project that focuses on pre-competitive development activity. That means that the government working with the industry shares the risk of translating industrial research finances into a plan, blueprint or design for new, modified or improved products, processes of services.

But the issue is that involvement is limited and the definition is limited very well, because it cannot include the creation of a commercially viable prototype. Also, if you read the definitions and language it precludes manufacturing issues. In other words, putting up production facilities. It precludes any of the steps that are required to make a commercial product. It clearly stops at that point.

Now these definitions are drawn from actual industrial practice, specifically the Industrial Research Institute, which represents the senior research executives from over 260 companies. This is where part of the definitions came from.

That approach reflects the orientation of the U.S. technology programs. Now it also addresses the sensitive issue of notification. The agreement maintains the ability to receive protection through special notification but does not mandate that notification occur in order to protect an investment from trade measures under the R&D criteria.

Instead, if there is ever a challenge, we can at that time show how any support provided is consistent with the R&D provisions. The final Uruguay Round text also clarifies that the notification requirements will not force U.S. companies to release any proprietary or confidential information to the GATT Subsidies Committee.

So just let me say in conclusion, Mr. Chairman, that the changes that were sought and obtained at Geneva, we believe, were aimed at protecting a variety of valuable, ongoing technology investments which have received great support in the Congress of the United States for many years.

We, therefore, establish new definitions of research drawn from U.S. terminology and experience and we incorporated new rules that better reflect the ways in which research is conducted and cost shared in the United States, not in Europe.

Had we not sought changes to the green light rules governing R&D, the result would not have been to prevent or discourage foreign governments in their support of industrial research and devel-

opment. Instead, our European trading partners would have enjoyed the protection of the Dunkel text green light rules, which were patterned after the European community's own internal rules, while the U.S. technology programs would not have enjoyed such protection.

We think the end of the Uruguay Round represents the latest step in a long-term effort to improve world trading rules and enhance U.S. competitiveness. From the vantage of promoting economic growth, the agreement recognizes that our technology policy is significant and directly linked to the demands and needs of industry to promote a rising standard of living.

My final conclusions are really two. One of them is that it represents an integration of trade and technology policy which for us in today's world is absolutely mandatory, it seems to us, that we must have both of these communities working together to end up with the best position for the United States.

The other is that these subsidies which we are talking about, and the green lights that we have, are not as Senator Danforth has suggested, to catch up or to add more money. It is to protect what we are already doing. There is no move to increase that, other than to continue to shift some of the resources we are currently spending in Defense-related activities into the civilian sector.

Mr. Chairman, you, yourself, earlier in the hearings today made the comment that we have had a lot of technology developed under the defense R&D structure. That is true. But as the Cold War winds down and we have to do that and do it in the civilian sector, we need to understand how to do that well and how to protect that as we shift it into the civilian sector. We believe these rules do it very well. We would be more than happy to try and answer questions.

[The prepared statement of Under Secretary Good appears in the appendix.]

The CHAIRMAN. Thank you. I assume that part of our defense R&D is used by the intelligence community.

Ms. GOOD. I am sorry, sir?

The CHAIRMAN. The intelligence community would be part of the defense R&D?

Ms. GOOD. The intelligence R&D?

The CHAIRMAN. The intelligence community.

Ms. GOOD. The intelligence community is not what I am talking about as R&D development. There is clearly some research and development which goes on which impacts and assists the intelligence community. But I am talking about real research and development that is used by the Defense Department for——

The CHAIRMAN. We are not taking advantage of those brilliant analysts who 2 years before the Berlin Wall came down——

Senator ROCKEFELLER. Careful, Dr. Good. Be very careful now.

The CHAIRMAN [continuing]. Discovered that the per capita GDP in East Germany was higher than West Germany, something nobody knew before. Nobody in Berlin was aware of this and only we knew it.

Ms. GOOD. I think I will pass on that one, Mr. Chairman.

The CHAIRMAN. I will made the point for my colleagues that for 40 years the Central Intelligence Agency told the President of the

United States everything there was to know about the Soviet Union except the fact that it was about to break up. Details like that escaped us. Government technology sometimes terrifies me, but there you are.

Senator Packwood?

Senator PACKWOOD. Let me ask Ambassador Yerxa, if Germany were to say our telecommunications policy is going to be such that we are going to have a domestic content law, would that violate this agreement?

Ambassador YERXA. Well, domestic content laws, generally, if they deny national treatment, they violate Article III of the GATT, yes. The national treatment principle——

Senator PACKWOOD. Define what that is, national treatment principle.

Ambassador YERXA. It says that a government should not treat domestic products more favorably in trade than imported products; an internal tax regulation or other domestic measure which treats domestic——

The CHAIRMAN. Buy Americans?

Ambassador YERXA. Well, government procurement is treated somewhat differently, Mr. Chairman. Government procurement has been recognized under the GATT as an area where governments do discriminate in favor of domestic products. But if you are talking about a general domestic content regulation that applies to all commercial sales, that could definitely run into serious GATT challenge.

Senator PACKWOOD. What about the provision in the telecommunications bill that will require the Bell operating companies when they manufacture to have 40 percent of their product domestically produced, which the administration supports?

Ambassador YERXA. Well, I did not come to the hearing prepared to address our specific position on that provision.

Senator PACKWOOD. In your judgment.

Ambassador YERXA. As I understand it, we have sent a letter to the committees describing our concerns about certain aspects of the legislation.

Senator PACKWOOD. I think you have said it violates GATT.

Ambassador YERXA. Yes. Well, I was being artful. [Laughter.]

Senator PACKWOOD. All right. I will not ask you further to defend the administration's inane position on that because——

The CHAIRMAN. The inane position of defending the American worker.

Senator PACKWOOD. My hunch is, deep in Rufus' heart he does not support that provision.

I want to understand how this research subsidy works. Let us say a country with a good academic atmosphere—Indian or Brazil—wants to target the pharmaceutical industry. Can they ask Merck or Up-John to locate here in exchange for paying 75 percent of research costs for new products? Why not?

Ambassador YERXA. Well, if the government conditions receipt of the money on locating there, they may run into problems under the TRIMS provision for the agreement. That is, if it is an investment restriction which is governmentally imposed, that could be a violation.

Senator PACKWOOD. Let us rephrase it then. They do not invite Merck or Up-John to come. They simply say, we were going to start up our own pharmaceutical industry. We have the intellectual capacity to do so. We are going to target this sector and we will pay 75 percent of the research cost. Is that okay?

Ambassador YERXA. If they notify this to the subsidies committee; if the assistance is not greater than the percentages that are set forth in the agreement; if all the other limits that are set forth are met—assistance must be limited exclusively to personnel costs of staff exclusively in the research activity, costs of instruments that are exclusively and permanently for research, et cetera; if they go through all of those steps and they qualify the program as one which is truly limited to that type of research, yes, that could be notified as a green lighted subsidy.

Senator PACKWOOD. The reason I picked pharmaceuticals is, because as you know, so much of their up front cost is research.

Ms. GOOD. Correct.

Senator PACKWOOD. The pharmaceutical industry spends an awful lot of time researching projects that never turn out. So here you have an industry——

Ambassador YERXA. Government programs go to assisting research. In fact, a great many of our programs go to assisting research that may not turn out.

Senator PACKWOOD. I just want to find out under this code what a foreign government can do if it wants to target the pharmaceutical industry. I am assuming that these research costs are genuine research costs when you are trying to develop new pharmaceutical products that would probably fall within this definition. I see Secretary Good nodding.

So if they want to target pharmaceuticals, they could say, this is an industry that is disproportionately research oriented and we think we will target this industry. That would be okay under this code.

Ms. GOOD. Senator, the ability to do fundamental research in pharmaceuticals has been a right of government for ever.

Senator PACKWOOD. All right.

Ms. GOOD. It would be no different under this code than it has always been.

Senator PACKWOOD. Well, maybe, maybe not. I am not sure. But in any event, they will be able to target 75 percent. If this company is going to have $1 billion worth of research costs in a given year, the government can put up $750 million of it, assuming they meet the standards of what Ambassador Yerxa said is required for receipt of research subsidies.

Ms. GOOD. They could do that today, sir, under the current text. What I would like to point out——

Senator PACKWOOD. Well, today I think we could probably countervail on that.

Ms. GOOD. Not if it is fundamental research.

Senator PACKWOOD. You are targeting a specific industry. This is not generic research.

Ambassador YERXA. I would make two points. First of all, it is true that under current law there is no constraint as to what you can countervail. But I would suggest this is becoming less our prob-

lem in international trade. Our problem is more, what kind of multilateral discipline do we have in export markets, particularly in the sector you have identified, pharmaceutical products.

There is no question that we are an enormously competitive world player, with governments around the world trying to figure out ways to restrict us from exporting there in the future.

Now the fact is that NIH spends about $9 billion in governmental support for research, a great deal of that going to biomedical research which has direct benefits in the pharmaceutical sector.

The reverse side of the argument you are making, Senator Packwood, is that if we had a subsidies agreement in which those programs could be challenged as prohibited programs or presumed injurious programs, I think our pharmaceutical sector would be at risk to those kinds of challenges, no doubt about it.

The reason the Uruguay Round agreement is such a good agreement for our pharmaceutical sector is—we are eliminating tariffs worldwide to zero, we are getting countries to agree to intellectual property discipline and we have created a structure which prohibits countries from providing subsidization for production or marketing, but which recognizes that research is a fundamental part of this industry, one in which the United States is a world leader.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Senator Danforth?

Senator DANFORTH. I am going to give you two paragraphs from this famous memo. Mrs. Good, you indicated that it was just one of many memos and it did not speak for the administration.

Ms. GOOD. Correct.

Senator DANFORTH. I am going to ask you whether or not you agree with these two paragraphs in the memorandum. I will read you the two paragraphs out loud as you are reading them to yourselves.

"If the green category of the Dunkel draft Subsidies Code is expanded to include development subsidies, the U.S. Government will ostensibly choose between matching or exceeding foreign subsidies or accepting the reduced competitiveness of U.S. manufacturers. If the first choice is made, budget resources will have to be made available or the choice is illusory and the reduction of subsidies discipline would create a net loss to the U.S. economy as others could subsidize and we would not.

"The overall effect on the economy can be positive only as long as we remain willing and able to exceed foreign subsidies and to be selective in the particular areas subsidized. . . . Thus, a decision to reduce subsidies disciplines requires a commitment to be subsidy leaders, both in choosing beneficiary sectors and amounts given if we are to ensure positive economic effects for the United States. Because the Code will be in effect for many years, the commitment must also be long term."

Now my question is: Do you agree with that statement?

Ms. GOOD. First of all, Senator, you need to understand that this text says that "if all development was green lighted." You must reread the definitions of the GATT subsidies. All development is by

no means green lighted in the text and, in fact, development as you are defining it is for the most part prohibited.

The only thing that is allowed under the GATT subsidies that we have before you is that part of the generic development that comes before you are ready to do the commercial development.

Having been in this business for——

Senator DANFORTH. Do you agree with this or do you not agree with it?

Ms. GOOD. What I am trying to explain is, to me it is not relevant as a simple paragraph pulled out of context, because it says all development.

Senator DANFORTH. It is not out of context. Please, Mrs. Good, let us talk about the basic policy questions that are before us.

Ms. GOOD. Okay.

Senator DANFORTH. And not try to deflect or quibble.

Ms. GOOD. Senator, I understand.

Senator DANFORTH. This is a fundamental question and I must say in your main testimony you were very forthright in stating your understanding of the policy choices. You talked repeatedly about the partnership that you thought was important between government and the private sector in investing in research.

Now I am asking you whether or not you agree with this statement. The statement goes to the green lighting of development subsidies. Those subsidies today are not green lighted. After this agreement is finalized, they would be green lighted.

Do you agree or do you not agree with this statement?

Ms. GOOD. Senator Danforth, I understand your question very well. What I am trying to explain to you, however, is that the question is—you amplified the question and you did not ask me what has to do with this paragraph. Because I disagree with your understanding of what the paragraph means. This paragraph says that if all development—and the point is, all development is not allowed under these agreements.

I believe in what the GATT says.

Senator DANFORTH. Mrs. Good, it does not say that.

Ms. GOOD. It says——

Senator DANFORTH. No, it does not say that. It does not say that.

Ms. GOOD. Okay. We read the English language differently. I am sorry, Senator.

Senator DANFORTH. All right. Let me ask you this then. Thus, a decision to reduce subsidies disciplines requires a commitment to be subsidy leaders, both in choosing beneficiary sectors and amounts given if we are to ensure positive economic effects for the United States. Do you agree with that or do you not agree with it?

Ms. GOOD. Senator, I do not agree with that in the sense that there is anything in my testimony which would suggest that I am in favor of all green lighted development.

I think I made that very clear, that I am not in favor of green lighting development.

Senator DANFORTH. What is your answer, Ambassador Yerxa?

Ambassador YERXA. Well, Senator, I happen to know and have worked with the individual who wrote the memo, and have very high regard for his views. I am prepared to accept the basic premise that if as a consequence of this agreement we are contin-

ually out-spent by other governments in what is defined under this agreement as green lighted research, we will be placed at a competitive disadvantage.

Ms. GOOD. Right.

Ambassador YERXA. And that that could become a serious problem. I should point out, however, that it is quite clear from the record and from all of the programs that exist today that the United States far out spends its competitors in these categories, already maintains a much, much higher level of governmental commitment to these types of programs. I think the argument I would make on the reverse side is—the suggestion that government assistance to research should be treated with prohibitions under the agreement or with restrictions under the agreement could lead to the exact opposite perverse effect. That would place us at a disadvantage.

If you take a snapshot of the situation today, Senator Danforth, there is no question that we are the leader. Now I accept the premise that you are putting forward and is put forward in this memorandum.

Senator DANFORTH. You think this is just basically waste paper.

Ambassador YERXA. No, not at all.

Senator DANFORTH. That there is no change that is required in what we are doing with respect to the relationship between government and industry. I heard Mrs. Good talk about the new approach that has been taken by this administration. I do not know if you are proposing something new or not.

I mean, I do not think I am being unfair in asking the fundamental question of what do you mean. That is all I want to know. What do you intend? When I write a letter to Ambassador Kantor and say does the administration tend to embark on its own subsidy program to match or exceed foreign subsidies and the answer is the administration does not intend to embark any such subsidy program, that is at least an answer.

But the answer to me means that in response to this we are going to fall behind.

Ambassador YERXA. No, I do not think that is what we are saying. I think what we are suggesting very strongly, which we are prepared to back up with supporting information, is that those programs already exist and are on the books and are having an impact.

There is a massive shift which has to be undertaken in this country from an emphasis on defense research and development in a Cold War environment to an emphasis on commercialization and competition in a much more competitive world economy. It is one which has been recognized on a bipartisan basis.

Senator DANFORTH. So that our government is going to be doing something new and different with respect to government subsidies for private sector research.

Ambassador YERXA. No, to maintain a commitment to these programs.

The CHAIRMAN. I think we are going to hear from people in industry.

Ms. GOOD. Let me just make one last comment. The only change is to shift what we are presently spending on defense into the civilian sector, if that is new policy.

The CHAIRMAN. Thank you.

Senator Wallop?

Senator WALLOP. Mr. Chairman, thank you.

Ms. Good, I do not accept one premise early in your statement in which you say that the research and development infrastructure is world class, primarily because more often than not it has been built through public/private partnerships.

I think you would agree with me that most of the great technology in the United States has been developed outside of government involvement, most of the great commercial technology. Military, I agree.

Ms. GOOD. Senator, I would agree with you that the commercial technology has been developed outside the government support. That is what remain committed to have happen. However, I would challenge the following.

One of the reasons that our chemical industry today which does not get much in the way of government subsidy as you very well know—they do not participate in government subsidies very much. But I would argue that if you look at what they needed in terms of fundamental basic research to create new products and new chemicals and that sort of thing, the government has funded that very heavily in this country in the basic research arena, which was what they needed to be successful.

If you look at other disciplines in other industries it is different. I would suggest that in the pharmaceutical area, if you look at what we have committed to the National Institutes of Health over the last 50 years, the support that we have provided to the NIH, that and what we have provided in fundamental research in the chemically based disciplines is a big reason why our industry is so very successful. They have worked with that very closely.

Senator WALLOP. You have selected out a couple. But I think the statement is not in isolation——

Ms. GOOD. Would you like for me to tackle the aerospace industry, which had a great deal of its funding and research came out of the defense organization? We could go on and on and on, Senator. You may find a few.

If I look at the electronics industry today I think you would clearly agree that Federal support has been extraordinarily valuable.

Senator WALLOP. No, I would not. Let me just go on. Let me ask Ambassador Yerxa——

Ms. GOOD. We will have to have a private discussion on that one then.

Senator WALLOP. Was the text adopted the only option or an option to the Dunkel text?

Ambassador YERXA. I am sorry?

Senator WALLOP. Was the text adopted or about to be submitted one of several options or the only option to the Dunkel text?

Ambassador YERXA. The United States advocated its change in the text, as Senator Danforth has stated. I do not think that we really had the viable option of eliminating the green categories or of adopting a different structure.

We knew that if we wanted the enhanced discipline that this agreement brings us, the enhanced prohibitions, the enhanced defi-

nitions of serious prejudice, the tighter controls over direct subsidy practices, over loans, equity infusions—the kinds of support of development and of basic manufacturing that exists around the world—we had to deal with this aspect.

Now after looking at the situation, the United States came to the conclusion that we benefit substantially from having both a green light and clearer rules. We are prepared to live within those rules. If you are asking was there an option of not having a green box, I do not believe so.

Was there an option of keeping it at lower limits? The administration came to the conclusion that our programs would be better protected with higher limits.

Senator WALLOP. Well, going back, Mrs. Good. I again disagree with you that the selection is merit based. Are you prepared to tell me that no member of Congress or any Secretary, any Cabinet Secretary, is ever influenced a choice in what gets subsidized?

Ms. GOOD. Clearly, Senator, I cannot say that, because both of us——

The CHAIRMAN. She did say it was bipartisan. [Laughter.]

Ms. GOOD. And that I believe, Senator, you will agree is true. What I did say is that the programs that we are putting together like the advanced technology program at this moment—even today, it is one of the ones that we are trying to get increased—that program is merit based and it has, indeed, been competitively organized. It has been competitively put on the street and there has been nothing given in that program that was not merit based. That is what I am saying.

Senator WALLOP. And Allied-Signal would never have been a great corporation without government support?

Ms. GOOD. Senator, if you were to look at Allied-Signal's aerospace industry, I think you would believe that it has had significant help from the government over several decades.

Senator WALLOP. That was not my question.

Ms. GOOD. That is the biggest piece of Allied-Signal.

Senator WALLOP. The worry that I have, Mr. Chairman, in concluding, is the paragraph that Senator Danforth has circulated from the memo. And to be selective in the particular areas subsidized, that is not a commitment to merit-based selection.

That is a commitment to power. When you see the big three automakers taking on their government partnership to make fuel efficient cars and $150 million to match export subsidies from Japan, and $3 billion to prop up the ship building industry and the new data super highway, those are politically based decisions. Those are not merit based decisions.

What worries us as you commit us in effect to an industrial policy, that they will not be finally in the best interests of the consumers, either of this country or the world.

Ambassador YERXA. Could I just make one point in response, Mr. Chairman.

The CHAIRMAN. Briefly, if you would, Ambassador.

Ambassador YERXA. Yes,sir.

The CHAIRMAN. Because we have other witnesses.

Ambassador YERXA. I understand the concern you are raising, Senator Wallop, about industrial policy and about the temptation

to embark on sort of a selection of winners and losers. That certainly is a risk under anything that creates a permissible category.

But I think it is important to emphasize the broader picture here of what this subsidy agreement does. Basically, this subsidy agreement limits and constrains government more so than they have ever been constrained before. Taken as a whole, it is going to create disincentives for extensive subsidization.

It does, as a trade off, create a category in which abuses could occur if they are not carefully within the limits. I think what we have to do is, structure legislation which ensures that we keep our trading partners within those limits as well as keeping ourselves within those limits.

The CHAIRMAN. Now we have a clearly—we are getting to where we are defining this issue.

Ambassador YERXA. I would just urge you to look carefully at the broader picture of why this is overall enhanced and very strong discipline on international subsidy practices. I do not think we should lose sight of that fact.

Senator WALLOP. Mr. Chairman, may I express my skepticism but my willingness to listen to Ambassador Yerxa. I respect him. I just remain a skeptic.

Ambassador YERXA. I understand.

The CHAIRMAN. Fair enough.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador, I do not want to get into who shot John. The point is, we have an initial agreement and the question is what we do about it.

Ambassador YERXA. Yes.

Senator BAUCUS. My thought is that it does not make sense to go back and reopen negotiations. That would be, I think, counterproductive. The next question is what do we do. I believe that one option we have is implementing legislation.

Let me just suggest to you various proposals that we might consider. I am preparing a package that deals hopefully with this problem. I will be introducing it fairly soon. But let me just tick off a couple thoughts that I think might be helpful.

Before doing so, I think there are some improvements versus the Dunkel text. I mean the dark amber, for example; Airbus provision, for example. There are some improvements. But I also think there are some loopholes here that you have to deal with.

One thought would be to—before we get into the subsidies question—is to make Super 301 permanent and another would be to strengthen Special 301, say, dealing with the pipeline issue. Beyond that, we can, I think, strengthen our countervailing duty provisions around the margin anyway.

With respect to the subsidy question, one thought was to provide for a kind of counter subsidy, if you will. That is, if for example the ATP, it is clear that an industry is concerned about developing or spending research dollars for a new area. If that is an area where there is very intense foreign competition, maybe that proposal would get a preference, for example.

There are various ways to structure some of our programs that deal with some of these potential excessive research and development subsidies. It depends on how they are defined.

Another would be to sunset this provision. So Congress would have to vote every 5 years, say, so we have a handle on it.

Another might be an ITC study on uses—the uses first and then the abuses of all this. And some others could think of some other suggestions. I am just curious what your reaction would be to some of those and what other ideas you might have.

Ambassador YERXA. Well, Senator Baucus, I said in my statement that we think it is very important to sit down with the committee and work with you on the implementing measures and on how we are going to ensure that the discipline stays tight.

You have mentioned a number of areas. While I am not prepared to commit the administration on any specifics today, certainly I find the proposals you mentioned interesting. I think we could explore them with you.

I think that we share a similar concern and we ought to be able to find a means of resolving that in the legislation. If this becomes an abuse, there is a provision for sunsetting the green category. We could talk with you about that.

We may well find through experience that this system of creating clear delineation between that which is prohibited and that which is permissible establishes some very, very good ground rules in international trade and ones which actually, Senator Danforth, over time create some real binding norms about subsidy practices. That certainly would be an improvement over the present state.

But if that is not the case, I think sunsetting is a very real possibility. The other proposals you have suggested, we have to look at very carefully, but certainly we would work with you to explore them.

I did mention, Senator Baucus, that defining exactly how we will apply and monitor this provision both in our countervail law and in Geneva in the subsidies agreement has got to be in the implementing bill. So we will work with you.

Senator BAUCUS. I just note, for example, the executive summary of Mr. Clarkson who is here for Boeing, who I believe is going to testify, in his prepared statement he said, you know, further review mechanisms and sunset provisions should help ensure that these provisions do not become a new loophole for trade distorting government subsidization.

To me, that reflects a concern, a possibility that there would be loopholes taken advantage of and also express that there are ways to try to deal with that and guard against it.

Ambassador YERXA. I agree with that.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

And finally, Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Ambassador, I have been, as you know, a long time supporter of our trade efforts. But I must say I have a real problem here and I want some help from you. That deals with a matter that is very, very important to my State. It is not directly involved with

the issue before us, but since I have 4½ minutes or so of time, I am going to take it up with you now.

The issue is what France is doing to U.S. fish imports right now. It is an outrageous situation. I do not know how familiar you are with the situation, but you are going to be much more familiar by the time I have finished this statement. [Laughter.]

On February 5, France suddenly with no warning whatsoever refused to recognize the inspection certificates of U.S. fish shipments and banned all U.S. fish imports. Now this French action came on the heels of an event on the prior day, where some northern French fishermen went on a rampage against imports and burned down the local town hall.

As a result of the action that the French government took, it caused the spoilage of some 35 tons—35 tons of fish is a lot of fish—of U.S. fresh fish waiting inspection at the Charles DeGaulle Airport. That fish—mostly monk fish, dog fish and skate—was worth approximately between $75,000 and $100,000.

Now shortly after this, because of the outcry of the United States and others, the French replaced their outright ban with an inspection system. But their inspection system was so finicky and so time consuming that in effect it was the same thing as a ban.

As we all know, if you want fish it has to be fresh fish. And any fish that goes through Customs has to be cleared within 24 hours if it is to retain its price. Fish held longer than 24 hours is discounted; and fish held for more than 3 days must be totally destroyed.

Now this impacts my State. We have very serious problems in our fisheries industry as you know, because of over fishing and the resulting loss of stock. The traditional fish that we have been dependent upon—haddock, and cod, and flounder—have been severely hit. So we have moved on to other type of fish that aren't quite as valuable, but have some value obviously, and they are particularly valuable in the exports. I am talking about, for example, monk fish.

Just to tell you what this has done financially to the industry let me give you some figures. One Narragansett seafood company lost $50,000 in potential sales; another lost $200,000, again in potential sales. A seafood firm in my hometown of Warwick lost $325,000 worth of potential business. Now as far as U.S. Steel and Boeing goes, that may be peanuts. But for a small company, a $325,000 loss in potential sales is a substantial sum.

As you know I have served on this committee for many years. I have seen the whole series of trade-related disputes, everything from aluminum baseball bats, to Airbus, and beer, and all of those things. But this is the most blatantly protectionist thing I have ever seen. Now the press reports tell us that an agreement has been reached, and perhaps you can report on that. But the fisherman in my State tell me nothing has changed. So they simply cannot risk shipping fish to France without some absolute guarantee that they are not going to be subject to this harassment.

I want to hear from you what you are doing at USTR to protect our industry and to retaliate if necessary.

Ambassador YERXA. Senator Chafee, I could not agree with you more regarding the entirety of your statement. I should tell you

that this is something in which I have been very much involved from the very moment it first came up. I think it is fair to say that there is a temptation on the part of the French Government to resolve a situation of domestic unrest by creating international unrest. This is completely inconsistent with both the letter and the spirit of international commitments.

There is no question in my mind but that this action was taken—first, to ban imports and then to impose a burdensome inspection system—on the flimsiest of foundations, and did not relate to genuine health or sanitary concerns. In fact, before the measures were undertaken, U.S. fish was regularly entered into the French market, and was a reliable product which was not the subject of any health concerns.

At the time this action was taken, Ambassador Kantor and I secured interagency approval to act both immediately and directly under our trade laws if this matter were not alleviated. Over the past weekend, the French Government has agreed with us to a series of steps and understandings which we hope will have demonstrated this week that the problem is resolved.

They agreed first of all to go back to a former inspection system that was not commercially intrusive and did not lead to the undue delays that caused spoilage of the product. I am informed of one incident under this inspection system they put in place, in which they actually held the fish in Charles DeGaulle Airport until it was fully rotted and then charged the importer a fee for disposing of it.

This is the kind of protectionism gone wild that the United States has to respond quickly to. The French Government has now restored the former inspection system, has reopened Charles DeGaulle Airport for handling of fish shipments, and we have a technical team that has been in Paris since Monday to ascertain exactly how future inspections will be handled.

If we are not satisfied and if the trade does not demonstrate to us that we have returned to the status quo ante, the U.S. Government will act.

Senator CHAFEE. Well, I hope so. You know, this is so outrageous. This is not a quibble over——

The CHAIRMAN. Arch damages do.

Senator CHAFEE. Yes. What about the compensation for any financial losses? If some company in Warwick, RI, loses $325,000 worth of possible sales, that is an incredible sum. What can we do?

Ambassador YERXA. We have certainly talked about that within the administration. I should say at the outset, there is no procedure under existing trade agreements to obtain compensation for past damage, both when we are found in violation and when other countries are found in violation.

Generally we obtain a remedy through the GATT. But here we also have to look into what France's commitments might be to us under other agreements, under customary international law, and under private law. And we certainly are going to examine that closely and see what we can do.

I agree with you entirely, Senator. The commercial harm that has occurred here is unsustainable for small firms.

Senator CHAFEE. You know, when you are dealing with something like fish, it is such a unique product, as opposed to a durable

product. With a durable product, the manufacturer incurs the storage charges and the shipping charges, and if it is rejected the product comes back, good as new. But they do not lose the total product.

Well, Mr. Ambassador, I do not know whether the French have a history of this kind of action, but it seems to me that if this is the way they are going to behave, I think there has to be kind of an instantaneous retaliation that comes down on them like a ton of bricks. Otherwise, they are going to play us for a bunch of patsies.

Just ban their wine for a certain number of weeks, whatever length of time is appropriate. Because there has been tremendous suffering here of these very small companies, as you know. They are not great big cooperative—they are fairly small businesses.

Ambassador YERXA. I think that is a fine idea. I prefer California wine anyway. [Laughter.]

But I want you to know that I do have interagency understanding that if the situation is not resolved this week and if it has not been demonstrated that it is resolved to the satisfaction of our exporters we will act.

The CHAIRMAN. You can tell them that it ought to be resolved to the satisfaction of the Committee on Finance as well. Will you?

Ambassador YERXA. I will.

The CHAIRMAN. It is just that intolerable and ought not to be tolerated.

Senator Chafee?

Senator CHAFEE. Thank you very much, Mr. Chairman. I appreciate your support in all of this.

Just one final question on the other subject. R&D subsidies. Mr. Ambassador, what can we do on this whole agreement that is submitted to us? I listened to Senator Danforth and the others, and they pose some important questions. But are we really in a take it or leave it situation? Is there any possible way that you could go back and review the subsidies and green light issues that have been discussed here?

As a practical matter, you have already finished negotiating it. We will treat this measure on a fast track procedure. You are not going to go back and renegotiate with the 120-plus countries, are you? I mean, I know you think it is a good deal, and that is fair. I am not saying it is not a good deal. I am just asking because it seems that we can talk as much as we want up here about green lights and so forth, but as a practical matter it is take it or leave it.

Ambassador YERXA. Obviously, the President has not signed the agreement yet. So technically the United States can seek renegotiation. However, I think the risks inherent in that course of action make it very ill advised.

First of all, there is no question but that we have struck an overall deal in the Uruguay Round which is broadly of great benefit to us. Certainly we are much better off with it than without it.

Second, we have tighter subsidy discipline than we have ever had and we risk unraveling that subsidies agreement by entering into a renegotiation. We have more discipline than we had before. That is a key point.

Third, I think that the way we have constrained the green light category is one which through our own implementation and our own enforcement and monitoring will not create the risks that Senator Danforth has raised.

I recognize that there is a risk and that we have to carry this out in a way that will not create it. But I think as a practical matter at this point the administration would have to decide—are we going to go forward or are we going to reopen the entire Uruguay Round agreement to renegotiation which I think could take a matter of years.

The CHAIRMAN. All right.

Senator CHAFEE. Thank you, Mr. Chairman. If I have another question or two, could I submit them in writing?

The CHAIRMAN. Of course, because we do have other witnesses.

Senator CHAFEE. Oh, I know that.

[The questions appear in the appendix.]

The CHAIRMAN. Could I just make a suggestion. I had a thought. The Treaty of Paris in 1763 left the French in control of two small islands—SanPiere and Micelone—in the Gulf of the St. Lawrence River. They were used for drying cod.

You could also say that we have been thinking about it and clearly this has implications for the Monroe Doctrine.

Tell them about it. Let them think about it. You know, what are they doing there?

Senator Danforth?

Senator DANFORTH. Mr. Chairman, thank you very much.

I would just like to make one final point and it follows on what Senator Chafee was saying. I hope that we have not reached the position where we have so delegated the responsibility for international trade to the administration that we have reduced ourselves and the Congress to being just 535 worthless twerps who are receiving the position of the administration and doing nothing about it.

That is not what the Constitution says and it is not what we said in the enabling legislation when we provided for 4 months before the signing of the agreement.

Now Senator Baucus raised a possibility of working with implementing legislation. I have to say that I am not certain how implementing legislation of one country can fix an international agreement. But I have privately called to the attention of the Ambassador Kantor what I will now say publicly by way of a kind of a hint of how we might work ourselves out of this situation and not to my total satisfaction, but short of totally reopening the Uruguay Round.

Article 9 in the Uruguay Round subsidies agreement provides that if a green lighted subsidy by one country causes "serious adverse effects" to the domestic industry of another country, the injured country may request consultations to reach a "mutually acceptable solution."

That is kind of mushy and it seems a little on the weak side and very uncertain and not very much of a reed to lean on. However, in the U.S.-EC Airbus agreement there is a precedent for an agreement among parties—not all parties to the Subsides Code, but

among some parties to the subsidy code—with respect to the interpretation and the application of that agreement.

So I would suggest that perhaps Article 9 and the precedent of the U.S.-EC Airbus agreement be considered by the administration to see if there could be some sort of understanding worked out.

I know in discussions with Ambassador Yerxa I have presented the parade of horribles that I am concerned about, that we have opened up. Ambassador Yerxa has said to me, well, all of that is not going to come to pass. It is not really as bad as you think.

So I said to him, I envision this 1,000 pound gorilla and you are telling me it is just a little chimp. It seems to me that if it is not intended that the little chimp—I do not even like the little chimp. But if it is not intended that the little chimp will become a 1,000 pound gorilla, there should be some way of working that out.

I would suggest looking at Article 9 and look at the precedent of the aircraft deal to see if there is not something that is not just a little better than just fussing around with enabling legislation.

The CHAIRMAN. Well, why do we not say that is an offer on the table and we will consider it. Thank you. We are going to have two more hearings on this subject. We might want to have a meeting in our back room as well.

Ambassador, thank you very much; and Madam Secretary, thank you very much.

Ambassador YERXA. Thank you, Mr. Chairman.

Ms. GOOD. Thank you, sir.

The CHAIRMAN. You have been very forthcoming and we appreciate that.

We are now going to hear from a very patient panel of persons with very direct involvement in this matter. Mr. Thomas J. Usher, who is president of USX-U.S. Steel Group, from Pittsburgh. Mr. Lawrence Clarkson is vice president for Planning and International Development with the Boeing Co. in Seattle, WA. And finally, Mr. Erich Bloch, distinguished fellow, with the Council on Competitiveness.

Mr. Usher I see that Mr. Frank Fenton accompanied you here. It is always good to see him in our hearing room. Did Senator Packwood have to leave? We obviously are in a fix if Senator Packwood has to go, but we await your testimony and we want to hear it. Mr. Usher, you are first.

STATEMENT OF THOMAS J. USHER, PRESIDENT, USX-U.S. STEEL GROUP, PITTSBURGH, PA

Mr. USHER. Thank you, Mr. Chairman. It is certainly a pleasure to be here. I thank you for the opportunity to appear at this hearing to consider the GATT-Uruguay Round implementing legislation.

My name is Thomas Usher, president of U.S. Steel and I am pleased to be here to testify on behalf of the 31 U.S. member companies of the American Iron and Steel Institute, which account for about two-thirds of the annual steel production in the United States.

Mr. Chairman, your committee has an extremely important task. The GATT-Uruguay Round involves the most serious changes in international trade policies that we have seen in more than 2 dec-

ades. If the job of implementing these changes is not done right, the competitive position of many industries, including ours, could suffer irreparable damage and our Nation's overall trade posture could be greatly harmed.

Before discussing the proposed legislation, I would like to say a few words about the competitive situation facing the American steel industry today and how this industry has faced up to these challenges over the past 12 years. Our industry has undergone a radical transformation since the early 1980's through an extensive modernization program, resulting in tremendous productivity gains, cost and quality improvements and reductions in capacity.

Since 1980 as an industry, we have invested more than $35 billion of our own money, not government money, in modernizing our equipment and facilities. During that same time period, our labor productivity has improved dramatically.

For example, at U.S. Steel worker hours per ton of steel produced and shipped have declined from 11 in the early 1980's to 3 today, more than tripling our productivity in just a little over a decade. Today we are the most productive steel industry in the world. Our quality is world class and our product costs are lower than our international competitors.

Ten years ago I could not have sat here and told you that. These improvements, however, come at a significant cost as more than 300,000 steel jobs were permanently lost during the 1980's, and entire towns have suffered financial blows from which they may never recover.

I am sorry to report, however, that while the approach of American steel firms to its business has changed dramatically, the rest of the world has not changed. Steel remains today one of the most heavily subsidized industries in the world, and American companies are continually forced to compete on an uneven playing field.

During the past decade more than $100 billion in subsidies have been provided by foreign countries to our competitors—three times the total what American industry has spent on modernization.

Some 100 million tons of steelmaking overcapacity, much of it the result of foreign government subsidies, continues to exist around the globe. This number of 100 million tons is roughly the size of the entire U.S. steel industry. At the present time the U.S. stands alone among our major trading partners in having a negative balance of trade in steel of over $11 billion.

By contrast, Japan, Brazil, South Korea, the United Kingdom, Canada and others all enjoy positive balances. This provides some idea of what we are up against. U.S. steelmakers are under no illusions about the nature of the foreign competition facing us and we are concerned that the new Uruguay Round green lights will make certain subsidies permissible and non-countervailable under U.S. law.

The point is, no U.S. industry, no matter how competitive it is, can compete against the treasuries of foreign governments. This is precisely why we have consistently and strongly supported our own government's two-pronged approach to the problem of foreign government subsidies to steel.

What we had hoped would be achieved by now was first a comprehensive, effective and enforceable multilateral steel agreement

or MSA that would eliminate steel subsidies, open steel markets, and end other trade distorting practices in steel; and second, a GATT-Uruguay Round result that would produce stronger international disciplines against subsidies and other unfair foreign practices.

Unfortunately, we have reached an impasse so far in efforts to obtain an MSA and the GATT Round has produced a net weakening of U.S. countervailing duty law.

This brings me to our concerns about subsidies in the Round. The U.S. goal was that international discipline in this area needed to be significantly strengthened by the round. I want to publicly thank you, Mr. Chairman, and other members of the committee for your efforts in working to strengthen the Round.

Partly as a result of your stellar work, the new code does include some gains. These gains are far outweighed, however, by the damage done to U.S. law, especially the new green lights for basic and applied research, regional development and certain purchases of environmental equipment; and second, the narrow definition of subsidy as a financial contribution by government, which has the potential to become another loophole in the law.

This committee can help minimize this damage if, and only if, you use the discretion available under the new GATT to preserve all of our laws against unfair trade to the maximum extent possible, consistent with U.S. obligations under the GATT.

I say all of our laws because there is a clear connection between foreign government subsidies and other unfair foreign trade practices, especially dumping, which subsidies often facilitate. Accordingly, it is imperative that Congress take a broad approach to the Uruguay Round implementing legislation and not just do the minimum necessary to implement the GATT Round.

We ask that you make sure that U.S. antidumping law, Section 301, as well as our countervailing duty law are as effective as possible. Two key issues for steel in the CVD area are what to do about green lighting and the definition of financial contribution.

On green lights we urge that the bill define these categories as narrowly as possible and not allow green lights for subsidies that predate the effective date of the Round. We also urge that green lighting subsidies be included in the calculation of dumping and in the analysis of injury, and that these provisions sunset after 5 years and not be reenacted if there is evidence of abuse.

With respect to the definition of financial contribution, the implement legislation should clarify that countervailable subsidy programs include those where private action is compelled by government. Steel's concerns in these areas are real.

In terms of the new green lights, for example, many unneeded foreign steel plants are located in depressed economic regions. So the regional development green light is a particular concern to our industry.

The CHAIRMAN. Please, go ahead, Mr. Usher.

Mr. USHER. Thank you.

Also the cost of adapting production facilities to comply with stricter environmental standards accounts for an increasing portion of steelmaking costs in most industrialized countries.

If our competitors are relieved of this part of their costs through subsidies, they will gain a significant cost advantage. Likewise, we have real world experience with foreign governments that compel private banks to allocate large amounts of capital at preferential rates to the steel sector.

Before I close, I would like to add a point or two about the proposed MSA. The AISI's U.S. member companies continue to support the position, to oppose green lights and extensive waivers in the MSA. In point of fact, because of what the GATT Round has done in authorizing these three green lights, achievement of an MSA with a higher level of subsidy discipline for the steel sector is now more important than ever.

But not just any MSA will do. Within 2 weeks of the GATT agreement, the European Commission approved a $7.7 billion aid package for six State-owned steel companies. And just last month the Commission imposed a record fine on 16 leading European Union steelmakers for operating a price fixing and market sharing cartel.

These are the very same companies that would like us to say yes to subsidy green lights and to subsidy waivers in the MSA and yes also to the destruction of U.S. trade laws and our trade law rights.

Mr. Chairman, the GATT-Uruguay Round implementing bill has enormous significance both for the steel industry and for the national economy. While we have lost many jobs in our competitive downsizing, we are still today a major industry providing hundreds of thousands of jobs.

These jobs are good jobs, jobs that create wealth for the nation and provide our employees the opportunity to buy cars and houses, to send their kids to college and to share a piece of the American dream.

To allow these American jobs to be sacrificed so that a French steel worker or a Japanese steel worker can keep working when we are the most productive steel industry in the world would be a travesty. We look forward to working closely with you. I thank you.

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

The CHAIRMAN. We thank you, sir. That is, in fact, a very impressive turnaround. We sort of miss Bethlehem Steel and Lackawana, but the record of the American steel industry is very impressive indeed. Because no industry has——

I guess Boeing is an industry, is it not? Mr. Clarkson, we welcome you, sir.

STATEMENT OF LAWRENCE W. CLARKSON, VICE PRESIDENT, PLANNING AND INTERNATIONAL DEVELOPMENT, THE BOEING CO., SEATTLE, WA

Mr. CLARKSON. Thank you, Mr. Chairman, Senator Danforth. I am Larry Clarkson, corporate vice president for planning and international development of the Boeing Co. I appreciate the opportunity to provide you with the Boeing Co.'s perspective of the Uruguay Round Agreement on Subsidies and Countervailing Measures.

Mr. Chairman, I bring you personal greetings from an old chum, Brewster Denny.

The CHAIRMAN. Oh, sure. Oh, good.

Mr. CLARKSON. I would like to submit my prepared testimony for the record and I will highlight the key points in these remarks.

The CHAIRMAN. Good. Quite agreed.

Mr. CLARKSON. One of the principal challenges we face as an industry is the threat posed by foreign government subsidies. Inadequate rules governing foreign government subsidization contributed to the emergence of highly competitive aerospace firms in Europe and are fostering the development of an additional aerospace capacity in Asia and the former Soviet Union.

We need rules that will encourage foreign firms to make investment decisions based upon the same type of market considerations we face. We believe that with the new Uruguay Round Subsidies Code Agreement new more exacting disciplines over the full range of government support programs will finally be put into place.

Mr. Chairman, a powerful Subsidies Code Agreement is a necessary addition to other international rules on aerospace trade. The Boeing Company has encouraged the U.S. Government to pursue two parallel efforts to maximize disciplines over trade-distorting subsidies in the aircraft sector.

One effort has been to improve rules on the supports provided to our principal foreign rival Airbus industry. In July of 1992 after 5 years of negotiation, the United States and the European Community reached an agreement that prohibits production funding and sets strict terms and conditions on the use of development support.

The second effort has involved strengthening what we view as the baseline for subsidies disciplines, the GATT Subsidies Code. This second track became critical to our effort to limit subsidies because of the inherent limitations of the U.S.-EC bilateral.

That agreement's application is limited only to the United States and the EC. It includes no dispute settlement mechanism and a number of well recognized forms of government support are either excluded or not adequately covered. We never envisioned the bilateral as the exclusive set of disciplines on aircraft supports.

Securing improvements in the GATT Subsides Code was not easy. International support for tightening disciplines on how and to what extent governments can foster industrial development ranged from lukewarm to nonexistent.

In fact, the European Community pressed vigorously to exclude civil aircraft from the new disciplines of the Subsidies Code. A great deal of credit goes——

The CHAIRMAN. But unsuccessfully.

Mr. CLARKSON. Thank God.

A great deal of credit goes to both Ambassador Kantor and to key Members of Congress and their staff, some of which are present here, who were vigilant in ensuring that the interests of the U.S. aerospace industry were not compromised in the final days of the negotiation.

It is our firm belief that the new Subsidies Code Agreement represents a substantial improvement over existing rules on government subsidies. From our perspective, the two most notable achievements are first the broader country coverage. All GATT signatories will have to take on the obligations of the Code——

The CHAIRMAN. Against the 27 who signed up.

Mr. CLARKSON. Exactly, yes.

And, for example, under the old agreement countries that were not a signatory to that Code or to the Aircraft Code could both subsidize or impose on a company such as Boeing and demand civil offsets. Take sales in Australia, for example, which was not a signatory to the Aircraft Code, we had to agree to a 30 percent offset, buying goods from Australia equal to 30 percent of the value of the planes they were buying. Government-marked offset requirements are not allowed under this new code.

Second, the Europeans, and this went on for some time, took the position because there was an Aircraft Code in the 1979 GATT that the Subsidies Code did not apply at all to aircraft. We clearly now have an agreement where the Subsidies Code clearly applies. That, we think, was a major improvement.

These improvements to the Code go to the heart of the type of subsidy problems that we have faced and continue to face despite the negotiation of the U.S.-EC bilateral.

I would now like to turn my remarks to the issue that was a genesis for this particular hearing today, that is the green lighting of R&D and other forms the government supports in the new Subsidies Code Agreement.

The Boeing Company was actively involved in the deliberations over the treatment of R&D early on in the negotiating process. We have consistently argued that government-sponsored research activities, which have a negligent affect on trade flows should not be subject to trade remedies.

At the same time, we believe that as governmental activities move along the R&D continuum into development where the effect on trade is more direct, it is critical that these programs remain subject to trade measures. Our bottom line has always been to balance a legitimate government role in supporting aerospace research with ensuring that government activities directly related to commercial aircraft development and production remain a subject of international trade disciplines.

Mr. Chairman, during the final days of the Uruguay Round negotiation, the U.S. Government acknowledged that it was willing to accept making what was termed "pre-competitive development" permissible under the new Subsidies Code Agreement.

The CHAIRMAN. President Bush's term.

Mr. CLARKSON. Yes. After internal review, we determined that the green lighting of pre-competitive development would have undermined existing rules on direct development funding of the U.S.-EC bilateral, as well as our broader effort to secure disciplines over the direct development support of other aircraft producers.

We could not support any degradation of these rules that the U.S. Government had so painstakingly negotiated, particularly given that development funding has been a preferred route for foreign governments to support its aerospace industry.

The U.S. negotiators shared our concern to work closely with Ambassador Yerxa and Ambassador Kantor, to ensure that civil aircraft was excluded from this particular green light provision. As a result, government sponsored research and development activities in the civil aircraft sector remain potentially actionable under both the Subsidies Code and the U.S. countervailing duty law.

We recognize and share the concerns that have been raised about green lighting any type of government support activity. However, we also believe that there are sufficient safeguards in the agreement to prevent these provisions from being misused if the government establishes a vigorous monitoring and enforcement program.

In conclusion, let me state that the Boeing company believes that the new Subsidies Code will provide U.S. industry and the U.S. Government with improved tools for addressing the market distortions associated with government subsidies.

For our sector, the new Subsidies Code is an essential component of a set of international rules and disciplines that should help move foreign aircraft manufacturers toward more commercially competitive behavior. We look forward to working with you to develop the appropriate implementing legislation for this agreement and other important Uruguay Round agreements that will help Boeing remain the world's number one aerospace company and this Nation's number one exporter.

Thank you very much.

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

The CHAIRMAN. Thank you, Mr. Clarkson. Obviously, we have been successful in your area, whereas the multilateral steel agreement is simply still stymied. I wish I could tell you more about where our prospects are. I certainly will find out.

That staggering figure of your testimony, Mr. Usher, that in Italy for the last decade every 18 months the Italian steel industry has lost more money than it is worth.

But on the other hand, I would like to know what Dr. Bloch thinks about such behavior, how in the end that does not get you anywhere. Does it not? Good morning.

STATEMENT OF ERICH BLOCH, DISTINGUISHED FELLOW, COUNCIL ON COMPETITIVENESS, WASHINGTON, DC

Mr. BLOCH. I agree with you. Good morning, Mr. Chairman, Senator Danforth. I appreciate the opportunity to appear before this committee and I am representing the Council on Competitiveness. This is a nonprofit, nonpartisan—I hope nonpartisan is an acceptable word—organization of chief executives from business, higher education and organized labor, who have come together for many years now to improve the ability of American companies and workers to compete in world markets while building a rising standard of living at home.

Before joining the council I was the director of the National Science Foundation. In both of these positions, my concern has been to construct linkages between science and technology on the one hand and the country's economic competitiveness on the other.

That both of these issues are closely linked has been recognized by our trading partners and by ourselves. We and they appreciate that in the modern world it is knowledge, technology and education that are the raw materials of a vital economy, of jobs and of a high standard of living.

That the last three administrations, as well as the present one agree with the importance of civilian R&D has been born out by their budgets. Between 1981 and 1991 federally funded civilian

R&D, excluding support to universities increased by 30 percent, from 1991 to 1995 by 38 percent to $20 billion.

In other words, all of these administrations, Republican and Democratic alike, have recognized the vital role civilian R&D plays in contributing to the economic well-being of our society.

The Council, as was mentioned this morning by Senator Bingaman, first addressed the issue of the GATT subsidies code last summer in its study, "Roadmap for Results." I would request, Mr. Chairman, that the appropriate pages, 71 to 90, be introduced into the record.

The CHAIRMAN. Without objection.

Mr. BLOCH. I think it will add to the history of the GATT negotiations.

We drew the clear lessons that U.S. trade and technology policy needed to be better coordinated and the different views taken into consideration. In this case, there were differences between the trade views that all subsidies, including the R&D subsidies, all trade distorting and the technology view, that governments have a legitimate role and have exercised that legitimate role to support basic and applied pre-competitive research.

This issue was never resolved before the negotiations or during the negotiations. In the final months and weeks of the Uruguay Round, the concern of the Council on Competitiveness was to make sure that the United States retained its freedom of action in the civilian R&D area, particularly in light of the new administration's attempt to expand and not diminish existing government industry technology collaboration.

The council's letter to the President outlined the issues with the so-called Dunkel text. Let me enumerate. The Dunkel text contained distinct and separate definitions of basic and applied research that were inappropriate in today's world.

Second, it contained caps on subsidies for basic and experimental research. Governments have a legitimate role in supporting basic and applied research in the sciences, technology and other areas. This role in our opinion should not have been limited.

The third consideration was the text's notification provisions for non-actionable GATT status that may have required our National laboratories, for instance, and companies to reveal their strategic research roadmaps or programs to their competitors.

In fact, as a fourth point, the then existing Subsidies Chapter could have undermined the potential for cooperative government-industry partnerships, which the Clinton administration properly and thoughtfully identified to be of crucial importance to our Nation's transition to a post-Cold War economy.

Our recommendations, how to correct these objections were as follows. First, establish a single category of research that includes both basic and experimental research, excluding product development. All subsidies for which should be regarded as non-actionable.

Second, to remove limits and caps on government funding for basic and experimental research.

Third, do not make non-actionability for research subsidies contingent upon prior notification to GATT.

Fourth, to modify the Subsidy Chapter's definition of applied research and make clearer the distinction between this and product development.

Last, make subsidies for product development clearly actionable under the GATT.

We believe that the changes that have been made in the last round of negotiations, while not fully addressing our concerns, are workable ones.

The CHAIRMAN. Both in a workable framework.

Mr. BLOCH. In a workable framework in our opinion. I want to explain why we think so. The improvements we see are three-fold.

First of all, clear and appropriate distinctions have been made between fundamental research, industrial research, pre-competitive research and commercial or product development. While these definitions might not satisfy a lawyer, as a practicing engineer, let me tell you I think they are workable definitions, and they follow much more the practical road that one takes from research to development for a marketable product.

More important, fundamental research correctly defined as an enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives, has been made completely non-actionable. I think that is very important.

Furthermore, non-actionability for research subsidies was not made contingent upon prior notification to the GATT. Therefore, we are not obliged to reveal to the GATT Subsidies Committee our research plans and technology roadmaps.

The Council fully supports a negotiated GATT agreement. While we have no position on some of the issues in the agreement, like subsidies for regional development or for environmental protection, we agree with some of the concerns expressed by others, however, that some of the provisions for pre-competitive development activity may be interpreted differently or even abused by other countries and could conceivably cause adverse affects on our industries.

We want to point out, however—and this is in line with Senator Baucus' comments this morning—that the final agreement has two provisions to correct for mis-use. The first one is that no later than 18 months after the date of entry into force of this agreement, the review of the provisions for and definitions of industrial research and pre-competitive development activity be undertaken. I think there is a chance of making changes if abuses do materialize.

Second, the provisions pertaining to non-actionable subsidies, remedies, and serious prejudice will expire automatically after 5 years, after the entry into force of the agreement, unless it is decided to continue.

These reviews should provide the U.S. Government, American industry, and our Nation's research community with an opportunity to advance necessary modifications to these provisions.

I would like to make it clear what motivated the Council's involvement in the GATT on the subsidies issue. We recognize that the global economic balance has changed enormously over the last decades. Technology innovation has become an increasingly important determinant for economic growth and competitiveness. U.S. Government-industry-academia partnerships are essential to tech-

nology innovation in this new world and through this path they add to U.S. competitiveness.

The policy, therefore, must be to foster these partnerships, not to discourage them. The Council has expressed itself forcefully on the issue of government-academia-industry technology, investment programs and we support strongly initiatives such as the ATP, the Advanced Technology Program, and projects related to the National Information Infrastructure.

These programs can have a significant impact on U.S. industrial competitiveness. Manufacturing technology centers or manufacturing technology outreach centers must be expanded and integrated into a network that provides comprehensive service to all geographic regions.

And the U.S. Government in cooperation with American industry and academia must refocus the technical capabilities and expertise of its Federal laboratories on issues of economic competitiveness.

In this vein, the Council on Competitiveness strongly supports a provision of S. 4, the National Competitiveness Act of 1993.

Let me conclude in the final weeks of the Uruguay Round the council acted on the concern that the draft that was laying on the table at that time on R&D subsidies could undermine programs and initiatives like those that I mentioned and that are mentioned in S. 4.

This concern was addressed by the administration's effort—not fully, I will add that—to improve the final agreement. But I think it made it more workable. It is now up to Congress to move forward. Thank you very much.

The CHAIRMAN. Thank you, Mr. Bloch.

[The prepare statement of Mr. Bloch appears in the appendix.]

The CHAIRMAN. Well, I think I will pass this matter to you, Senator Danforth. You have heard a fairly positive statement.

Senator DANFORTH. Mr. Chairman, thank you very much.

I thank all members of the panel. I have a question or two for Mr. Clarkson. Mr. Clarkson, were you in the room when Mrs. Good testified?

Mr. CLARKSON. Yes, I was.

Senator DANFORTH. Well, she said that in her opinion the government has been busily subsidizing the aerospace industry. The Defense Department has spent a lot of money on aerospace. NASA has been involved. And yesterday on the floor of the Senate in connection with S. 4, one of the arguments that was made is, well, we are already heavily in the subsidies business ourselves.

This, of course, is the same argument that the Europeans have made in defense of Airbus, that yes they are subsidizing Airbus, but the Government of the United States has heavily subsidized the U.S. aerospace industry. Boeing and McDonnell-Douglas have been beneficiaries of the largess so it is all the same.

Is that a correct analysis in your view?

Mr. CLARKSON. Of course not. Let me suggest that, if I might I want to read very quickly something that you have can find in the March 14 edition of Business Week and it is under the "Reality Check."

It says, "Airbus says that its U.S. rivals get unfair help from Washington. After losing a recent $6 billion Saudi Arabian airline

deal to Boeing and McDonnell-Douglas Europe's Airbus Industrie renewed its old charge that NASA and the Pentagon indirectly subsidized the commercial U.S. aerospace industry.

"The consortium of France, Germany, Britain and Spain, a 20-year-old Airbus says its government subsidies are just loans to counter the U.S. public money. In reality, Airbus accounting of public aid to U.S. competitors of reportedly up to $22 billion over the past 15 years is suspect."

Airbus assumes that up to 90 percent of Uncle Sam's money spent for space and defense R&D contracts has value for commercial aviation. But the space shuttle's biggest program has almost no commercial application, nor does costly stealth technology. In fact, we do our best to keep our commercial airliners visible. [Laughter.]

By law, Washington must recoup the benefits of technology transfer to U.S. commercial aviation which has repaid $170 million as of March 1992. By U.S. count Airbus has netted up to $26 billion in government loans that may never be fully repaid.

Senator Moynihan made a comment early on that we had benefited or that the industry had benefited in early models from military models. There has never really been in the commercial aviation business from the Boeing standpoint any commercial derivative of military product.

We did learn——

The CHAIRMAN. There were some.

Mr. CLARKSON. No, not from Boeing.

The CHAIRMAN. Not Boeing.

Mr. CLARKSON. Not a Boeing.

The CHAIRMAN. There were some.

Mr. CLARKSON. There have been—well, I cannot even think of any directly from McDonnell-Douglas. The KC–10 was, in fact, a derivative of an airplane, the DC–10, that was developed by Douglas. We learned about swept-wing technology with the B–47 and then with the B–52. But it was Boeing's own internal money that developed the Dash–80 as we called it, which was the prototype for the 707. That was privately funded.

From that was developed the C–135 right along side the 707. The 747 I agree we had a very small initial development contract in the C–5 competition which we lost. We then undertook the total development at much, much bigger expense to the Boeing Company to develop the 747. As you know, it came close to undermining Boeing's financial position. .

Everything we have developed since then—the 727, the 737, the 757, the 767, and today the 777—were all developed by internally generated funds. There have been government programs, I would not deny it, where there has been some technology flow from the defense side to the commercial side.

Some of the work in composites, for example. But there has been equal flow back the other way. And certainly——

Senator DANFORTH. Well, my point is simply this, that the argument that is made repeatedly, well, we are just like them. I mean, we lead the world. I think that that was one of the comments that was made this morning. The United States leads the world in subsidies.

Mr. CLARKSON. I think that is a very dangerous thing to say.

Senator DANFORTH. Yes, I do too. I mean I think it is a ridiculous thing to say. We have first-rate research in this country. We have first-rate universities in this country. We have a heavy government involvement in national defense. We have heavy government involvement in basic research.

But the idea that anything that we do in this country is related to the magnitude of an Airbus operation is just wrong. Is it not?

Mr. CLARKSON. Correct. I do want to put on the record one concern that I have as a result of the tremendous downturn in defense, we are losing some of our good commercial suppliers. I think it is an issue that this group, your committee, Mr. Chairman, may have to deal with. Two good Boeing commercial suppliers located in the State of New York appear to be history. One clearly already is history—Republic, which was one of the initial key suppliers on the 747 program.

Yesterday we heard about the potential merger between Martin Marieta and Grumman. It is my understanding that if that goes through that Grumman will essentially disappear, but they also will be going out of the air frame business. We will lose a supplier.

So there are legitimate questions about what is going to happen in the future to some of our industry.

Senator DANFORTH. Could I ask another question of Mr. Clarkson?

The CHAIRMAN. Of course.

Senator DANFORTH. Mr. Clarkson, the aircraft manufacturing industry is not included in the provision in this agreement with respect to green lighted R&D subsidies. My understanding of your testimony is that the aircraft industry asked that it not be included.

Mr. CLARKSON. That is correct.

Senator DANFORTH. Now, the aircraft industry is now covered by a separate agreement between the United States and the EC with respect to aircraft. That agreement provides that one-third of development is green lighted.

Mr. CLARKSON. That agreement allows for governments to loan money for the development, up to 30 percent of the development costs can be loaned. But the loan must be paid back, and the real subsidy is in the interest rate charged.

Senator DANFORTH. Right. But this proposal, had the aircraft been covered, would have allowed 50 percent of what is called precompetitive development to be subsidized.

Mr. CLARKSON. That is my understanding. Plus, we have a great deal of trouble in our industry anyway understanding what precompetitive development is. If you go up through a noncommercial prototype that may mean, in fact, an airplane that has all of the characteristics of one you want to sell in the market. But that prototype itself would never be sold because it does not have the features in it that are required for certification.

So we were very concerned about how that definition would apply in our business, plus the issue that you have made. We convinced our negotiators of that with some help from people, including some of your good staff people.

Senator DANFORTH. Well, this is exactly the point I want to make. Senator Rockefeller was making the point, well, this is just pre-competitive. It is nothing to do with manufacturing. That is correct.

But in an industry such as the aerospace industry, is it fair to say that if another country were to subsidize 50 percent of pre-competitive development that would be a major aid in bringing a product to the marketplace?

Mr. CLARKSON. It would be hard for me to be able to see how it could possibly not be trade distortive.

Senator DANFORTH. Thank you very much.

The CHAIRMAN. Thank you.

I think we are getting a fix on this. I just have to say in the end subsidies of actual production have to be an uneconomic venture for an economy. I mean, it will not get you anywhere. We have political cultures around the world where this is normal. I do not know that they in the end are going to be the better off for it.

If you look at the experience of the British with enormous amounts in subsidies over the last half century it has not been successful and you look at Boeing and it is. And you look at steel and having let go a pretty brutal experience you cut your capacity by a third and your work force by two-thirds, I believe.

But still, we are the low-cost producer in the world. Are we not?

Mr. USHER. Definitely. Yes.

The CHAIRMAN. Well, I mean, that is not bad. Had we tried to help you too much, I think it might not have happened.

Mr. USHER. It is not bad if market economics come into play.

The CHAIRMAN. Yes. It is a social, as well as an economic choice and the two are not always compatible. But I see we have work to do on our implementing legislation. I want to thank you three most especially. Mr. Bloch, let us thank you for the Competitiveness Council. Would you pass that word, because we get a lot of good advice from them.

Mr. BLOCH. Very good.

The CHAIRMAN. And, Senator Danforth, thank you for raising this, and thank you for indicating a possible way out.

Senator DANFORTH. Well, Mr. Chairman, I appreciate your holding the hearing because I have to say that in my view this is a really important question that does relate to the direction that the country is going to move in. I am really concerned about, you know, all hell breaking loose if we do this wrong.

I appreciate your holding the hearing. It is an issue that sometimes I think maybe makes people's eyes glaze over.

The CHAIRMAN. Not if they are cutting your subsidy.

Senator DANFORTH. But by holding the hearing I think you have helped elevate the issue, which is very helpful.

The CHAIRMAN. Thank you very much. With that, we thank all our guests. The hearing is adjourned.

[Whereupon, at 1:04 p.m., the hearing was adjourned.]

RESULTS OF THE URUGUAY ROUND TRADE NEGOTIATIONS

WEDNESDAY, MARCH 16, 1994

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

The hearing was convened, pursuant to notice, at 11:00 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Present: Senators Baucus, Conrad, Packwood, Danforth, Chafee, Grassley, and Wallop.

[The press release announcing the hearing follows:]

[Press Release Nos. 19 and 20, March 11, 1994]

FINANCE COMMITTEE ANNOUNCES HEARINGS ON URUGUAY ROUND LEGISLATION

WASHINGTON, DC—Senator Daniel Patrick Moynihan (D–NY), Chairman of the Senate Committee on Finance, announced today that the Committee has scheduled the third and fourth hearings in its series of hearings on the results of the Uruguay Round trade negotiations.

The third hearing will begin at *10:00 a.m. on Wednesday, March 16, 1994,* in room SD-215 of the Dirksen Senate Office Building. The fourth hearing is scheduled for *10:00 a.m. on Wednesday, March 23, 1994,* in room SD–215.

The Committee will hear testimony from private sector witnesses representing industry, labor, agriculture, and other interested parties.

"The Uruguay Round will formally come to an end in 5 weeks, with the signing of the agreements on April 15, 1994, in Marrakech, Morocco. Thereafter, the Committee will consider legislation implementing the agreements and authorizing our participation in the new World Trade Organization," Senator Moynihan said.

"The agreements, and therefore the implementing legislation, will affect a wide range of our trade laws, including our antidumping and countervailing duty laws, our current regimes for regulating imports of agricultural products, textiles and apparel, and our laws that safeguard against import surges," Senator Moynihan added. "The Committee will want to hear from a broad range of private sector interests as to how the United States should meet its new obligations under the WTO."

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 witnesses and our guests. This is the second of three hearings that the Committee on Finance is holding on the subject of the recently concluded trade negotiations, generically known as the Uruguay Round.

We are dealing with the substance of the agreement, which was reached after some 7 years of negotiation and clearly one of the major documents of its kind in the post-war period.

We are also quietly discussing the curious arrangements of our budgeting rules which require us to find some $14 billion to pay

for this measure because the increased trade will result in decreased tariffs. If you think the 8 years of negotiation was difficult, I think this is turning out to be more complex. But that is more, I suppose, a matter for the administration than it is, immediately at least, for this committee.

So we will proceed with our panel, apologizing to our witnesses that we had three votes starting at 10:00, such that you have been kept waiting for this hour.

Senator Packwood?

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

Senator PACKWOOD. Two things, Mr. Chairman. One, I would take this occasion to wish you a Happy Birthday and thank you for making this committee an enjoyable and educational experience.

The CHAIRMAN. Well, since we have no money we might as well——

Senator PACKWOOD. Be educated. [Laughter.]

Second, I do not often speak about parochial matters but I am very disappointed with the treatment of wood products by the Japanese. Not so much in this Round. They promised 4 years ago to drop their tariffs on lumber by 50 percent, but only when the Uruguay Round was finished. We thought it was going to be finished in 1990. It was not finished, of course, until this year.

The European countries have agreed to go to zero for zero on wood tariffs and hopefully they will stick with that. Even Japan has agreed to go to zero for zero on paper. But what I fear is that some of the other countries may not drop their tariffs to a zero if Japan maintains a relatively high tariff on finished wood products.

Mr. Chairman, it is nothing but protectionism. Japan does not have enough timber to supply their own domestic needs. So they have disparate treatment between the import of logs, which they use for their mills, and finished wood products. There is no country better than the United States, no part of it better than the Northwest, at providing good quality finished wood products at a very modest price, cheaper than the Japanese wood products. But as with so many other things, it is the Japanese, and in this case solely the Japanese, that are the hold out in the world, which is moving to no tariffs on paper and wood products.

The CHAIRMAN. I think that is a matter of record.

Senator Baucus, who is chairman of our Subcommittee on Trade.

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

Senator BAUCUS. Thank you, Mr. Chairman. I do not want to hold up the committee. We have witnesses we want to hear from. I would like to follow-up just very briefly though on the point Senator Packwood made. It is outrageous, frankly, the Japanese have spread this myth to some degree that Japanese processing is superior quality to American.

I can tell you that I have gone through and visited many American mills—plywood, machined mills. I have also been through and visited a Japanese plywood plant and I can tell you it is astound-

ing. Your eyes pop out how inefficient the Japanese mill is. It is just incredible how inefficient that mill is.

Senator PACKWOOD. Some of those, Max, are mills that you and I have not seen in our States in 30 years.

Senator BAUCUS. That is exactly right.

Senator PACKWOOD. Almost mom and pop roadside mills.

Senator BAUCUS. That is right. It is incredible. It is really outrageous, frankly, what is happening.

Second, Mr. Chairman, in talking with Ms. Olson about unfair actions that Canada has taken with respect to other exports of wheat. We will get into that a little later. But I just want to basically make the point that I would hope that we could find a way this year to deal with this budget matter with respect to the GATT.

It is a bit silly, to put it mildly, that we are somehow hamstringing ourselves by not taking up the Round because we cannot find "enough revenue" to pay for the loss of the tariffs, when all economists agree that the income to the Federal Treasury will be about three times what it would otherwise be with the tariffs. But we are hide bound because we have this static budget analysis as opposed to the common sense of dynamic budget analysis.

I just very much hope that the administration and the Congress exercises a little common sense to find a way to deal with this issue.

The CHAIRMAN. Well, I am trying to interest Senator Danforth in my proposal that we get the money by raising tariffs. [Laughter.]

Senator Danforth?

Senator DANFORTH. Those are the good old days. [Laughter.]

I have no statement, Mr. Chairman.

The CHAIRMAN. Senator Chafee?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Mr. Chairman, I want to apologize to the witnesses. We are starting late and unfortunately at 11:30 I have to give a speech to a group, and this speech represents a long, long time commitment. I am going to try and get back.

But I would like to say to Mr. Sheinkman and the others—I do not know the others as well—but Mr. Sheinkman and I have been involved in different conferences over time and I am sorry to miss his testimony and will try to get back. So thank you all very much.

The CHAIRMAN. Thank you, Senator Chafee.

Senator Grassley?

Senator GRASSLEY. Yes. I have a statement I am going to put in the record, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

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

The CHAIRMAN. Could we ask that our witnesses, if they could, keep themselves as close as they can to 5 minutes so we will hear you all. We have an executive session that has to follow.

First, Mr. Baker who is chairman and chief executive officer of Arvin Industries on behalf of the U.S. Chamber of Commerce. Mr. Baker, good morning, sir.

STATEMENT OF JAMES K. BAKER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ARVIN INDUSTRIES, COLUMBUS, IN, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. BAKER. Good morning. Mr. Chairman and members of this committee, I thank you for the opportunity to present the U.S. Chamber's views on the GATT Uruguay Round Agreement and implementing legislation.

The success of the Uruguay Round negotiations has been a Chamber priority ever since the Round was commenced in 1986. And now after over 7 years and three U.S. administrations, we have an agreement. Not a perfect agreement, but still an agreement that should be approved by this Congress and as soon as possible.

The Chamber is grateful to U.S. negotiators who labored under very difficult circumstances to advance U.S. commercial interests in negotiations involving over 100 countries. Their efforts exemplify a relationship between the private and public sectors that should be emulated government wide as the U.S. economy faces increasingly intense competition world wide.

The Uruguay Round may have taken several years and it may have achieved unprecedented progress in many areas. However, it was not the negotiation to end all negotiations, nor should it ever be interpreted as an abdication of U.S. prerogatives to assert its own legitimate interest in the global market.

The Chamber strongly supports approval of the Uruguay Round Agreement. At the same time it also believes that a number of steps can be taken to enhance the value of that agreement to the U.S. interests.

First, market access negotiations are still underway in a number of areas and should be concluded to bring additional commercial benefits. This would provide additional progress towards creating expanded market opportunities for U.S. companies.

Second, despite its overall advantages the Uruguay Round package contains a number of provisions that could negatively affect the ability of the United States to achieve greater fairness in international trade rules and practices.

U.S. implementing legislation should provide interpretations and clarifications to these provisions wherever necessary in order to ensure that U.S. economic interests are advanced. Our recommendations concerning some of these issues are summarized in the annex to my testimony. We would welcome the opportunity to work with you and your staff to develop more specific language in these areas.

Third, the value of the Uruguay Round Agreement will crucially depend upon effective monitoring and utilization of its provisions. Therefore, the U.S. implementing legislation should contain detailed language providing for the necessary monitoring and implementation activities by the U.S. Government.

Fourth, the United States must also continue efforts to negotiate mutually beneficial agreements with other countries in the Western Hemisphere and elsewhere that go beyond the GATT per se and establish even higher standards of conduct much as NAFTA did.

And fifth, and most importantly, the U.S. Government must continue to provide a favorable climate for U.S. business at home so

that we are more able to take advantage of those markets that the Uruguay Round and other trade agreements open for us. For in the end it will not matter how many doors you open via trade agreements if we, American business, cannot walk through them.

Again, I thank you for the opportunity, Mr. Chairman, and I would be happy to try to answer any questions you have.

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

The CHAIRMAN. Thank you, Mr. Baker. We very much appreciate the specific way in which your annex gives us very detailed advice on the implementing legislation. We will get back to that in questioning.

You are in the auto parts industry, are you not?

Mr. BAKER. Yes, sir, with a factory in Senator Danforth's good State of Missouri.

The CHAIRMAN. Very good.

Gordon Jones presents conceptual problems for me at least. You are President of the Stone Container International Corporation and you are here on behalf of the American Forest and Paper Association.

Mr. JONES. Yes, sir.

The CHAIRMAN. Is that not a conflict of interest?

Mr. JONES. I do not believe so.

The CHAIRMAN. You make stone containers?

Mr. JONES. Well, actually, just pulp and paper products, Senator. We are the world's largest producer of commodity pulp and paper grades. So our name may not necessarily adequately reflect what we do.

The CHAIRMAN. You are very welcome. Good morning, Mr. Jones.

STATEMENT OF GORDON L. JONES, PRESIDENT, STONE CONTAINER INTERNATIONAL CORP., CHICAGO, IL, ON BEHALF OF THE AMERICAN FOREST AND PAPER ASSOCIATION

Mr. JONES. Thank you. I might mention that I appreciate the remarks by Senators earlier. It is nice to know that we have allies on the committee for our position.

Thank you, Mr. Chairman. I am president of the Stone Container International with headquarters in Chicago, IL. We employ over 20,000 people and operate over 120 facilities worldwide, including pulp and paper mills, Kraft paper bag and sac plants, and corrugated container converting plants. We are a global company. However, over 90 percent of our productive capacity and people are located in the United States across over 45 States.

I am testifying today on behalf of the American Forest and Paper Association. The U.S. forest products industry appreciates the opportunity you have provided to express our views on the results of the Uruguay Round negotiations as they relate to wood and paper products. The U.S. forest products industry has been ranked among the most competitive in the world.

We have historically relied on competitive strength, not tariff protection to win markets. Our competitors have taken advantage of a full decade of zero tariffs access to our market and others where preferential tariffs apply while maintain tariff barriers as high as 9 percent on U.S. paper products and 20 percent on U.S. wood exports.

Thus, the priority objective for the U.S. forest products industry and Uruguay Round was the elimination of all tariffs on wood and paper products over 5 years. This point is very critical.

At any tariff level short of zero and for however long it takes to get to zero, the U.S. forest products industry will be structurally disadvantaged in world markets. If we compare the results to date with the original zero tariff objectives, it is clear that we have some distance to go.

On wood products we simply do not have a deal. Japan has so far been able to block an emerging international consensus for eliminating wood tariffs. As a result, there are a variety of offers on the table. The Japanese made no concessions on wood products in the Uruguay Round. Their offer to cut tariffs by 50 percent was simply a fulfillment of their 1990 Super 301 agreement.

The European Union at first agreed to zero tariffs in 10 years but in the face Japanese resistance, they reverted to an earlier offer of 44 percent. Canada has made a zero tariff offer, but it is conditional on being matched by both the European Union and Japan.

The current Japanese offer is unacceptable because it does not deliver economically. According to a study performed for the AF&PA by DRI/McGraw-Hill, the terms the Japanese are setting would deny the U.S. $8.8 billion in increased exports by the year 2001 when compared with our zero tariff request.

Japan's refusal to participate in global tariff elimination for wood clearly demonstrates how Japanese protectionism can and does have global market effects. We support the tough position Ambassador Kantor and the administration have taken since December in insisting that the market access negotiations on wood remain open.

In the 4 weeks remaining before April 15, we believe it would be appropriate to signal the Japanese that the signing ceremony will not relieve them of continuing U.S. pressure to grant fair access to their wood products market.

Further, the implementing legislation should make it clear that the United States will continue to use every opportunity to complete unfinished Uruguay Round business. In the paper products negotiation, our top priority trading partners, including the European Union, Japan and Korea, have now agreed to eliminate tariffs.

But at the insistence of the Europeans, the tariff cuts will be phased in over an abnormally long 10-year period. With the normal 5-year phasein the cumulative gain in net U.S. paper exports between now and the year 2005 would be close to $10.1 billion.

With a 10-year phasein, the U.S. export benefits are reduced by $3.3 billion. It is particularly ironic that the European Union is stalling the elimination of paper tariffs because while U.S. paper producers struggle to overcome high tariffs in Europe, European suppliers have exploited their virtual duty-free access to the U.S. paper market for over a decade.

In the past year alone, European sales of printing and writing papers in the U.S. market have increased by over 24 percent, cutting into the U.S. paper industry's share of our own domestic market. If we merely accede to the European Union demand for a 10-

year phasein period, we are in essence condoning European protectionists at home and their predatory practices in the U.S. market.

We believe there may be some room for improvement in the European position and we urge the U.S. Trade Representative to aggressively follow through with the European Union and make sure this issue is revolved before April 15.

While tariff elimination is clearly an immediate concern for the U.S. forest products industry, we also wish to draw the committee's attention to the substantial trade and environment component of the agreement. Without consulting its industry advisors, the United States agreed to "green-light" certain environmental subsidies, thereby conferring an advantage on U.S. competitors in an area where the administration has already testified it does not intend to offer support to U.S. industry.

At the same time, the United States pushed forward an agreement to initiate a work program on trade and the environment, whose objective is to provide a basis for the use of trade measures or conditions to market access to enforce environmental standards.

It is our belief that the work program is a surrogate Green Round trade negotiation and we urge that implementing legislation provide the necessary level, both Congressional oversight and business community participation, to ensure that such major policy errors are not repeated.

In summing up, Mr. Chairman, it is important that the administration continue to aggressively pursue the elimination of both wood and paper tariffs in 5 years. For the combined forest products industry this would mean $12 billion in new exports. But even more important, the failure to achieve zero in wood products will lock in a crippling disadvantage to the competitiveness of America's wood products industry. An industry that is globally competitive today, would be rendered permanently, structurally disadvantaged.

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. Thank you for giving the U.S. forest products industry this opportunity to testify on the Uruguay Roun' Agreement. I would be happy to answer any questions.

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

The CHAIRMAN. Thank you, Mr. Jones. Those are very cogent arguments. You referred to the signing ceremony. Just for the record, let us keep in mind that that is to be in Marrakech in Morocco on April 15. So we have some pressure of time. We will get to questions when the whole panel has spoken.

Now to an old friend, Mr. Ralph Nader, who is appearing on behalf of himself.

STATEMENT OF RALPH NADER, CONSUMER ADVOCATE, WASHINGTON, DC

Mr. NADER. Thank you, Mr. Chairman, and members of the Senate Finance Committee.

My remarks are exclusively focused on the democracy and sovereignty issues involved in the Uruguay Round. Most of the attention to the Uruguay Round has been directed toward economic issues. But a trade agreement must be measured by whether it damages our democracy and has serious insurgence into our ability at

the local, State and Federal level to establish our own health safety, worker, environmental and other standards.

This trade agreement by all accounts is by far the most expansive. It goes into more areas, such as agriculture, services, intellectual property. It is far more intrusive with the establishment of the world trade organization, the WTO, and far more equipped with sanctions to make its decision stick.

What we have, Mr. Chairman, is an international system of governance called the WTO or new GATT, which has the most autocratic procedures affecting its dispute resolution tribunals.

Consequently, given that in the agreement domestic standards of the signatory countries can be challenged as non-tariff trade barriers by other countries, these dispute resolution tribunals take on a very important cast.

They can decide that our auto safety or fuel efficiency standards or pesticide regulations or food labeling regulations or recycling programs are non-tariff trade barriers. And if these three-person tribunals composed entirely of trade specialists--not environmental, consumer or labor specialists—if these three specialists who comprise the tribunals decide that the United States or that California or that New York has imposed standards that are keeping out imports under a non-tariff trade barrier deliberation, then we will have two choices.

We either have to weaken or repeal the standards or we have to face perpetual trade fines and other sanctions. These tribunals do not operate the way we operate in our country. All proceedings are secret and closed to the media and citizens. All submissions by the parties can be secret.

The only parties to the tribunal proceedings are national governments, even if a State Government standard is being challenged. All decisions are rendered without indicating which member of the panel supported which part of the decision. And the decisions are not appealable, except vertically in the same organization. They do not have an independent judicial appeal whether it be a world trade court or our courts.

When you combine these dispute resolution procedures which are autocratic and antagonistic to our traditional systems of jurisprudence, which means openness, participation, material on the public record and independent appeal, you have autocracy with teeth laid over our democratic society and procedures in our country. This form of government is an intolerable infringement of sovereignty, one not necessary to further expansion of international trade and investment, but one necessary to concentrate power in the hands of the few over the many.

The harmonization procedures and the equivalency determinations are similarly autocratic, Mr. Chairman. That is, there is a mandate in the World Trade Organization Charter to pursue harmonization of standards between countries. And since our standards are higher than most other countries, it is quite clear that the pressures are going toward harmonization downward.

Mexican trucks are allowed to be on highways in Mexico up to 175,000 pounds in weight; our trucks cannot have more than 70,000 pounds. Where do you think the harmonization committees are going to head?

There is no public participation and no appeal. Again, autocracy over democracy. The same is true with equivalence proceedings which already have a legacy arising out of old GATT and the Canadian-United States Trade Agreement. Defining other country's standards as equivalent to ours, can be full of mischief if that is done without a public record and appeal as our Administrative Procedure Act warrants.

Just 2 years ago, Mr. Chairman, apart from any trade agreements, we saw the future. The Department of Transportation in conjunction with its counterpart in Mexico declared without a public docket or any public participation that Mexican truck driver licenses were equivalent to ours, even though their licenses are renewable every 10 years, unlike ours, even though they do not have to have health certificates, even though they do not have to demonstrate by training or experience that they know how to drive the rig they are driving or handle the cargo they are handling and they do not have to know any of the English words necessary in case of an emergency when they are traveling, for example, in Illinois or Massachusetts.

I think the State and local laws are extremely vulnerable as well. If I may just have a couple more minutes?

The CHAIRMAN. Sure.

Mr. NADER. We have in our documentation for the committee a list of probably vulnerable standards such as California's Prop-65 requiring labeling of carcinogens on products. Already the European Community and Japan have challenged our food labeling laws rhetorically. They will be doing it more formally as non-tariff trade barriers. We have recycling programs which have been challenged under old GATT; and, of course, with a more powerful new GATT and more powerful sanctions we are going to see this repeatedly.

I think it is important, Mr. Chairman, to have a national discussion about this. These 550 pages are replete with a greater incursion into our legitimate sovereignty and democratic procedures than anything I have ever seen since we rejected the 1947 proposal to join an international trade organization.

We need a national discussion. Otherwise, it is going to be a terrible political backlash when the unpleasant surprises begin being exercised by foreign company via foreign country challenges to our standards. What we will see are domestic special interests with their K Street law firms, wanting to oppose a Federal or State work place or health safety standard, aligning themselves with another foreign government and perhaps their overseas subsidiaries for challenges before the dispute resolution panels in Geneva or for work under harmonization downward or the equivalency determination proceedings.

It is not a healthy prospect for our democracy. We should sign trade agreements that pull up democracy abroad, not sign trade agreements that pull down democracy in this country.

Finally, I would like to note that we can provide exceptional detail and legal analysis to the committee about these and many other concerns that we have. I am sure some of the staff would avail themselves of these analyses.

I think that what we are going to see is an increasing awareness by human rights organizations that the challenge to China's viola-

tion of human rights once China joins WTO, and if we approve it, will no longer be possible. Unilateralism is prohibited and our fuel efficiency standards are already being challenged under old GATT by Mercedes saying that they have a discriminatory impact on the kind of model that Mercedes builds.

So these are not horrible hypotheticals. They are simply projections of what we are already in the preliminary way experiencing, Mr. Chairman. I hope that this committee will not rush to judgment, but will explore the impact on democracy of this international trade agreement and will recognize that democracy is the pre-condition for healthy, economic development as well as for other benefits of justice and open administrative procedures conducted in a democratic process.

Thank you.

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

The CHAIRMAN. Thank you. We appreciate your offer to be of help as we go through this drafting process. We will most certainly take advantage of that.

Ms. Judy Olson, she is president of the National Association of Wheat Growers and appears in that capacity. Good morning, Ms. Olson.

STATEMENT OF JUDITH C. OLSON, PRESIDENT, NATIONAL ASSOCIATION OF WHEAT GROWERS, GARFIELD, WA

Ms. OLSON. Thank you, Mr. Chairman. Thank you for the opportunity to discuss the Uruguay Round Agreement and its impact on U.S. agriculture. I am Judy Olson. I am a wheat and barley producer from Garfield, WA and am President of the National Association of Wheat Growers.

But I also have the added honor today of being able to convey to you the views of several other organizations with a strong interest in how the GATT implementing legislation evolves with respect to the agricultural export programs.

The CHAIRMAN. And these are?

Ms. OLSON. These are the American Soybean Association, the National Barley Growers Association, the National Broiler Council, the National Cotton Council, the National Council of Farmer Cooperatives, the National Pork Producers Council, the National Sunflower Association, the New England Brown Egg Council and the Rice Millers Association.

The CHAIRMAN. The New England Brown Egg Council.

Ms. OLSON. Yes.

The CHAIRMAN. I like that. [Laughter.]

Ms. OLSON. Agriculture is very diverse within our economy. The goal of the Uruguay Round was to achieve the greater liberalization of trade in agriculture and to bring all measures affecting the import access and export competition under strengthened and more operationally effective GATT rules and disciplines.

The U.S. farmers ability to export to new and established markets will be largely determined by how the administration and Congress intend to proceed with the implementation of the Uruguay Round Agreement. It is important to remember that the GATT accord will do nothing to discipline the unfair practices of monopolistic State trading agencies.

We believe that it is imperative that the legislative authority for the export enhancement program, that it be revamped to reflect broader market development and export expansion objectives as well as to be funded at levels prescribed by the Uruguay Round reduction schedule.

Such action will ensure that the United States will be able to maintain its current competitiveness and be in a position to take advantage of the growth in the nonsubsidized share of the world market. We strongly recommend that the Uruguay Round implementing legislation amend the statutory authority for the export enhancement program to include the following objectives.

Number one, the export enhancement program must be redefined to focus on foreign market development and export expansion.

Number two, the EEP program operations must be broadened to include all foreign markets and streamlined to increase its effectiveness.

Number three, EEP program funding must be made available and required to be used to the full extent permissible under the GATT.

And number four, outlay reductions in the export enhancement program required during the GATT implementation period must be redirected to fund green box agricultural export programs.

The CHAIRMAN. Ms. Olson, would you help a New Yorker here? Green box?

Ms. OLSON. Green box in the GATT are those programs, export programs, that the GATT agreement says are permissible, not subsidies necessarily, but market development to enhance trade and promote products.

The CHAIRMAN. In that green light?

Ms. OLSON. Right, in the green light. That is right.

The need for government assistance in maintaining the competitiveness of U.S. agricultural exports will not decline as EEP outlays are reduced. The NAWG strongly supports a requirement in the GATT implementing legislation that funds equivalent to required reductions in EEP and other subsidies programs be shifted to export development activities not subject to reduction under GATT.

We are discouraged by the administration's decision to cut support of the green box export promotion programs in its budget for fiscal year '95. In its budget request, the Department of Agriculture reduced its funding for the foreign market development program, the market promotion program and the PL–480 Food for Peace Program by $320 million.

It completely eliminated the sunflower oil assistance program and the cottonseed oil assistance program. It is disturbing to see that the United States unilaterally disarming its export programs, particularly those programs that are permitted by the GATT ahead of the implementation of the Uruguay Round Agreement.

Finally, the National Association of Wheat Growers strongly urges the administration to take a highly aggressive stance in the operation of the EEP prior to the Uruguay Round Agreement entering into force. Unless the unrestrained export practices of our competitors are effectively countered in this interim period, the United States will enter the implementation period with fewer resources,

potentially higher stocks overhanging the U.S. market and a sharply reduced share of the world market.

Again, on behalf of the group, I would like to thank you for the opportunity to be here today and I look forward to working with the administration and this committee as we move toward passing the implementing bill of the Uruguay Round.

Thank you.

[The prepared statement of Ms. Olson appears in the appendix.]

The CHAIRMAN. We thank you, Ms. Olson. We do not have a list of all the groups that you are representing. Perhaps you would provide it for the record.

Ms. OLSON. Yes, we will provide it.

The CHAIRMAN. It is not every day someone comes before this committee and speaks well of a government program. I am glad to see that you like—I do not know about that acronym EEP, but there you are, if it works it works.

And now a very dear friend and friend of this committee, Mr. Jack Sheinkman, representing, of course, the Amalgamated Clothing and Textile Workers Union. They have worked with this committee from the time of the Kennedy round in 1962. We are very welcome to see you back, sir.

STATEMENT OF JACK SHEINKMAN, PRESIDENT, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BRONX, NY

Mr. SHEINKMAN. Thank you, Mr. Chairman and members of the committee. First, I would request that my formal statement be included in the record.

The CHAIRMAN. Without objection, of course.

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

Mr. SHEINKMAN. And I assume my colleagues who testified likewise.

Trade in itself is not an end but rather a vehicle that will hopefully, but not necessarily, lead to greater shared prosperity, higher living standards and overall improvement in the human condition.

As you recall, Mr. Chairman, this was the underlying premise of the original GATT that was negotiated. Our union believes it is long overdue that agreements that govern international exchange of goods and services, address social and human concerns, which in addition to market efficiency, enhance productivity. The GATT fails to address these concerns in its present form.

Our members feel particularly betrayed because under the MFA which will be eliminated under the GATT and despite the so-called orderly process, today almost two-thirds of the U.S. market is import penetrated. Despite the MFA we have had massive import penetration, and a loss of a half a million jobs in the textile and apparel industry.

And phase out of that agreement under the MFA will mean that we will lose at least another million jobs in an industry that employs some 1.8 million people, a large number of women, a large number of minorities, as well as a large number of people who have very little education.

Senator Packwood, you would be interested, since this affects your home State. Pennelton Woolens, which is a well-known American product has informed our union that as a result of the enactment of the GATT and the passage of the NAFTA, they will now be importing from Asia and from Mexico and as a result, will be closing several of their plants. One of those plants may well be in Oregon as well as in Nebraska.

What is equally disturbing is that most of the third world will also lose export opportunities. Four or five countries—China, Pakistan, Bangladesh, India and maybe Indonesia and Thailand—are going to ogopolize the market, which will constitute about 75 to 85 percent of imports into our market.

We are told that exports is an answer to substitute for jobs. We ask what about Japan. You know, we know that Japan with a straight surplus is still undergoing a massive recession. We keep talking about how each billion dollars of exports constitutes $17,000 in jobs created in the United States.

I call that single entry bookkeeping. Nobody takes a look at the loss of jobs created by imports which constitute about 25,000 jobs. So you have a loss on the other side of the ledger that people do not look at.

We are told how this will likewise drive down consumer prices. Well, a worker in Indonesia, for example, earns about $1 a day making Nike shoes and they sell in the United States in many cases for $100 or more. So I do not see where that necessarily is going to help lower prices in the United States.

All it is going to do is lower the price of U.S. labor. We have already seen it happen. Real income has declined for most factory workers. The Wall Street Journal had an article this past week telling us that as a result of lost opportunities even for college students, they are now entering and working in auto factories.

We have seen a decline of auto factories. Just a month ago I visited a powerplant where I found an ex-steelworker who had earned $12 and $14 an hour working in our apparel plant at $8 an hour as opposed to a service job flipping hamburgers which would have paid him the minimum wage. When that plant closes, where is that worker going to go?

So what we find is that workers and working conditions, absent enforcible labor standards, are being eliminated.

Let us take a look at some other examples. We keep talking about high tech jobs which you voted upon this morning in the Senate. But what happens when it costs $12,000 per pound of payload to orbit a U.S. rocket and $8,000 per pound for a French rocket, and $4,000 for Chinese. You do not need a Kray computer to figure it out.

The majority of jobs being created today are part-time, temporary low-wage jobs. Given the down sizing at AT&T, GT&E, Bell, Baby Bells and Xerox, high tech jobs are being eliminated in the U.S. market.

What about the millions of new immigrants that have immigrated from Asia and Latin America? Where are these people going to end up working lacking the education and skills to enter into high tech jobs? If I may have another few minutes, Mr. Chairman.

The CHAIRMAN. Oh, please. Of course.

Mr. SHEINKMAN. You know, when the FLSA was passed, I would like to quote what President Roosevelt said, "Goods produced under conditions which do not meet a rudimentary standard of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate commerce."

And likewise, since we now live in a global economy with now a global labor market, we should not allow that to pollute world trade, which is exactly the case absent enforceable GATT regulations covering labor standards.

This is not a novel idea. Congress itself has set certain standards. For example, we ban products produced by slave labor, and forced labor. We also likewise ban companies from using corrupt practices. Child labor is just as onerous as prison labor.

Interestingly enough, the World Bank said to Bangladesh, which employs a great deal of child labor, you eliminate that and you are going to be transferring a lot of your work to other countries in Asia. We are engaged in a race to the bottom.

So we say if we move to a free market system internationally, we have to do more in humane terms. So we are asking the following; should we cry to the President to seek a code of institutional structures in the GATT to cover worker rights and minimum work standards with specific time limits for conclusion?

And as Mr. Nader pointed out very correctly, we can do all we want with 301 and MFN, but if the GATT goes into effect in its present form without labor standards, even given the limitations that he alluded to in terms of the processes, we are going to find our own laws, regardless of what you may do, members of the Congress, having no enforceability under the GATT rules.

We should expand our prohibition on forced labor products to include those in violation of ILO standards. I might point out, Mr. Chairman, my own union negotiated such an agreement in the men's tailored clothing industry. We now allow companies to import 10 percent of their products, but they can only have it made in a company worldwide that adheres to ILO standards.

And if they make it in a company anywhere in the world that does violate ILO standards, we can take them to arbitration and force them to cease doing business with that particular company.

We should have a code of conduct that Levi has adopted in conjunction with us.

The CHAIRMAN. And you placed that code as an appendix to your testimony.

Mr. SHEINKMAN. That is right, the Levi standards.

The CHAIRMAN. Levi Strauss.

Mr. SHEINKMAN. Not using ILO standards, but at least enforcement of the country's own rules. We have called violations to their attention. They pulled out from China, which uses forced labor; pulled out from other countries. They monitored contractors that do not adhere to those standards.

Then we have to strengthen 301 and develop effective remedies for labor rights violations. We need, I might say to you, that if we are going to give parity to the CBI countries under the NAFTA absent the enforcible labor rights of free association—we have seen some of that right now in Mexico under the NAFTA where what

is happening there—then I think Congress will be making and compounding a problem.

We want Congress to stimulate a good paying, full employment economy. Our members pay twice the price for dislocation by expanded trade—lose their jobs, then they lose their health care, a double penalty. And there is no meaningful transition program.

The transition program being proposed for retraining, assuming we do not know for what they are being retrained is really minimal, thus given the restructuring of the defense industry, the restructuring of American business, the jobs are being lost due to trade.

Voters in the last election sought a program of economic expansion, job creation and transition services and saw millions suffer through no fault of their own. Consequences of expanded international trade cannot be separated from what is done domestically. That has to be taken care of.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Sheinkman. You make a very powerful point here that there should be an integration of the accepted conventions of the International Labor Organization into the GATT process. I do not know how much, how widely this is known. I have only read it in the papers. But the President is going to go to Geneva for the 75th anniversary of the International Labor Organization in June. I think this is an opportunity to raise this.

As you know, once again, we have been adopting ILO conventions in recent years in a way we had not done from the 1930s; and as you also know, if it was not for the AFL we would never have joined the ILO as President Roosevelt did in 1934. So it is kind of a special moment in this regard.

I think we have everybody, most of us here have specific questions, points to be made. I would like to say that with respect to Mr. Nader's point about the procedures in dispute settlement in the WTO, the World Trade Organization, I think that is a fair point. I think we should address it.

I mean, the idea that these panels would behave in secret is something that would not be unusual in a Brussels bureaucracy. It is obviously offensive to our traditions and we have to address that.

Senator Packwood?

Senator PACKWOOD. Let me ask Mr. Baker—I quote your statement on page 5, "Measures such as local content requirements have long been a thorn in the side of many U.S. companies trying to do business in foreign markets."

We have been doing pretty well in foreign telecommunications markets recently. Yet we have in the telecommunication bill in the Commerce Committee a domestic content requirement which will require our telephone industry to purchase a fair amount of the equipment domestically if this bill passes.

Does the Chamber of Commerce have a view or a position on that? Whether you have a position or not, how are we going to argue to the world to open up their telecommunications markets at the very same time that we say in our case, we are going to have to buy American.

Mr. BAKER. Well, you raise a good point, Senator. Certainly domestic content is not the ultimate goal of any trade system. The

freer and the more open the system, the more we can endorse it and telecommunications is one of those where they have gone to the domestic content, just as automotive has gone to domestic content in some of their areas. We do not push that kind of legislation.

Senator PACKWOOD. Does the Chamber have a view on that bill or that particular provision of it?

Mr. BAKER. I could get that for you. I am not sure.

Senator PACKWOOD. Would you? I would appreciate it.

[The information requested follows:]

U.S. CHAMBER OF COMMERCE,
Washington, DC, August 10, 1994.

Hon. ROBERT PACKWOOD,
U.S. Senate,
Washington, DC

Dear Senator Packwood: At the Senate Finance Committee's March 16 hearing on the GATT Uruguay Round Agreement Implementing Legislation, you asked Mr. James Baker, Chairman of the U.S. Chamber's International Policy Committee, whether the Chamber had taken a position on certain local content provisions in pending telecommunications legislation. Mr. Baker provided a general response to the question of local content and also indicated that the Chamber would get back to you on the specific legislation.

A subsequent review of the Chamber's policy positions indicates that Mr. Baker's response was a sufficient portrayal of the Chamber's views on that subject. The Chamber generally views local content measures as trade-distorting and inconsistent with our world trade-liberalizing objectives, and seeks their amelioration through enforcement of multilateral and other trade agreements. However, it does not currently take a position on the specific local content provisions of the legislation you were referring to.

I hope that this information is useful. Please do not hesitate to contact me if you need additional information.

Sincerely,

JOHN HOWARD, *Director of Policy and Programs, International Division*

The CHAIRMAN. Would you let me interrupt just to say that I mentioned that the AFO was very instrumental in the United States joining the International Labor Organization, so was the U.S. Chamber of Commerce.

Mr. BAKER. Thank you.

The CHAIRMAN. Excuse me.

Senator PACKWOOD. That is quite all right.

You heard Mr. Sheinkman make reference to ILO standards. What would be the Chamber's position if we started getting into further trade negotiations focused heavily on environmental and labor issues?

Mr. BAKER. Well, I think GATT very much may challenge some of the U.S. standards. I think as a Chamber's position, we are opposed to that. We do not believe that countries whose standards are higher than the international standards should be challenged by GATT to bring others down, that they are a non-tariff——

Senator PACKWOOD. Well, it is not so much bringing them down. But if we get into a negotiation where we want to bring them up to our standards—although we have to be careful in some areas our standards are not as high as those in other countries of the world. We can get into a who struck John argument on environmental standards.

But generally I think the argument would be, and we saw this at NAFTA with the side agreements, that we should focus on increasing world environmental and heightening labor standards as part of trade negotiations.

Mr. BAKER. Well, my personal view is that those should be separate and distraint from trade negotiations. However, once they are in there, then they become a part of the negotiations and we have to do the best we can. But to encumber trade negotiations with a lot of side issues just make it that much more difficult.

Here is an example with GATT that we have been going on for 7 years. The more issues you bring into the chemistry the more complicated it is.

Senator PACKWOOD. Mr. Jones, you are representing both the Forest Products and the Paper Industries on this.

The CHAIRMAN. And Stone Containers.

Mr. JONES. Exactly, right.

Senator PACKWOOD. And Stone Containers has 20,000 employees?

Mr. JONES. Worldwide, more than 20,000.

Senator PACKWOOD. That is impressive.

We are going to go to zero/zero on paper apparently.

Mr. JONES. Although longer than we would like.

Senator PACKWOOD. I understand that. You would rather do it in 5 years rather than 10?

Mr. JONES. Absolutely.

Senator PACKWOOD. But we are going to go to it. What would be the position of your Association if the Japanese are obdurate on wood and therefore Europe and the other countries back off of the zero/zero agreement because Japan is obdurate. Yet we are going to go to zero for zero on paper, although over a longer period of time than you want.

Will your Association have a position on the Uruguay Round if that is the situation?

Mr. JONES. That is a good question. I would like to answer that by saying that we have time left between now and April 15 in order to aggressively manage a change. And we have every faith in the ability of the U.S. Trade Representative to do that, hopefully inspired by this committee to accomplish that. It is hard for me to predict what our Association's actual position will be relative to the agreement if some of these changes are made. We do have serious concerns over it.

Senator PACKWOOD. Would there be a split? Would your paper people say, well, we like 5 but we can live with 10 and we are not really in the timber products business so we will go with it?

Mr. JONES. I think it is fair that the paper side of our business is moderately supportive of the arrangement now because it does call for zero. But the 10 years is clearly costing us a lot of money and putting us in a noncompetitive situation for a longer period of time.

So there are some advantages on the paper side, although not nearly what we would have anticipated getting. The wood side simply is not there.

Senator PACKWOOD. I know it.

Mr. JONES. We have a terrible time saying that we are going to be competitive when the kinds of things that I mentioned in my statement have had no real change, I guess if you will, from the Super 301 agreement in 1990.

So wood is a primary concern for us. Paper is also a primary concern. We are closer on paper, but we are really not there on either one.

Senator PACKWOOD. I might just say, Mr. Chairman, it is not a question, but we have a large surplus in our balance of trade on wood and paper products. It is somewhat like pharmaceuticals and health equipment. We do very well worldwide and I hate to see us not taking advantage of our competitive position.

The CHAIRMAN. Well, it is my understanding that our Trade Representative is pressing this matter and we do have a month.

Mr. JONES. Well, very good. We appreciate very much your support on that, because——

The CHAIRMAN. Oh, you have our support.

Mr. JONES.—we need it.

Senator PACKWOOD. Tnank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Could I point out, tomorrow is St. Patrick's Day and that one of his colleagues, St. Columbus sailed to North America in a stone boat. Now that is a matter of fact, is it not?

Senator PACKWOOD. A stone container.

The CHAIRMAN. A stone boat. Senator Roth, you know about things like that.

Senator ROTH. Mr. Chairman——

The CHAIRMAN. I think Mr. Baucus is next. I was consulting you on ecclesiastical matters.

Senator ROTH. On the stone boat issue. [Laughter.]

I am going to have to consult with my superiors on this one, Mr. Chairman. I will get back to you on it. [Laughter.]

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Baker, I noted with some interest that the Motorola agreement in Japan seems to have occurred in part because the agreement was company-to-company rather than government-to-government. That is, numerical targets, objective criteria, quantification, they claim are managed trade. The fact is that we are trying to do is unmanage their managed trade.

Nevertheless, we were able to get around this to some degree because it was a company-to-company agreement. Could that also occur in auto parts and other related areas where we are now negotiating with Japan?

Mr. BAKER. Well, that may be a little more complicated in auto parts because parts do not always have a clear country of origin. Take a tire valve, a very simple 14 cent tire valve may have rubber from Indonesia and brass from Brazil and be manufactured in South Africa and shipped to Europe and all of these things become very complicated in trying to determine what is the true trade values of a part like that.

And about the time you get that all decided, that part has been replaced by some plastic part, and so you have lost 4 years of research. So it is not as clear in auto parts, but certainly there is a

great deal of pressure that has been brought by this administration and the last administration on the auto parts people in Japan on the significant differential.

The Japanese as you know argue that rather than using numerical targets we thought that fair trade meant let the best product win. And, therefore, they rest their laurels on the fact that they have high quality and good value.

Senator BAUCUS. Mr. Jones, I would like to ask you what you think the best leverage is so that we achieve our objective here. There are several candidates here. One is banning, you know, raw logs to Japan. Japan does not like that very much.

Another is Super 301. For example, under the President's Executive order, which I think should be enacted into law permanently because it is a major way to knock down other country's trade barriers, Japan could be named in the process. Forest products could be named under the President's Executive order.

Those are two possible levers that come to my mind. I would like you to comment on those or any others that you think might be effective.

Mr. JONES. Thank you, Senator. It is obviously a very difficult question—what leverage do we use? What do we have in the way of leverage in order to make it happen?

With respect to log exports, I would say that that is not my immediate field of expertise. But I can tell you that our association's position supports the existing ban on logs originating from Federal lands went of the hundredth meridian but opposes restriction on private log exports, basically because private log exports are a free enterprise type of issue.

Senator BAUCUS. What about Super 301?

Mr. JONES. I am not capable of commenting on that. I might mention if I come back to your original question of what leverage, it is my personal opinion that the leverage with the Japanese is for us to do a better job of making them aware of the advantages in their own community for opening their own markets.

Personally I am not sure we have done a good job of presenting that to the Japanese. They obviously have a lot of historical things that prevent their interests from doing that. But the leverage is not to go away in our opinion from free trade, free and open trade, or to put restrictions or tariffs or that type of thing on.

We want to remain open and free in our trade and we have to work harder to try to explain to them the benefits of that open trade.

Senator BAUCUS. That is a good point. I have forgotten the exact figure, but in housing it is a figure five or six times the Japanese pay per capita.

Mr. JONES. Exactly.

Senator BAUCUS. Compared to Americans and is due to a whole lot of reasons. One is this problem because of very high tariffs on processed forest products.

Mr. JONES. Exactly. And appealing directly to the Japanese—to the Japanese government, to the Japanese people, whoever it is—and explaining to them the benefits of opening their market to our particular products I think is really the way to go, rather than to slap some punitive measure on that restricts free trade.

It is directionally wrong. We want to hang on to the free trade concept.

Senator BAUCUS. Ms. Olson, I asked a question about how your organization thinks we should solve the problem we have with unfair subsidized Canadian wheat that is coming down across the border. Many of us are pursuing Section 22, either emergency 22 or a regular 22 that the ITC would pursue.

Another possible approach is under Article 28 of the GATT whereunder a country can impose a tariff on another country's products where there is a bilateral agreement between the two countries. I am suggesting here poultry and eggs, which is also in dispute with Canada.

What is your organization's views of using Article 28 as a backup or a backstop approach in addition to Section 22 to address the problem?

Ms. OLSON. We have not had the opportunity to thoroughly explore what the Article Section 28 would mean on behalf of our industry. We are somewhat skeptical because we understand that it requires more negotiations.

As you are very well aware, Senator, we have a large number of truckloads of Canadian grain coming across the border everyday in increasing amounts that is frustrating our own producers to a very great extent.

I guess my skepticism is really based in the fear that—if the focus was to change from the Section 22 and the emergency 22 which we are pursuing in order to put pressure on the Canadians to negotiate some form of price discovery mechanism that would work both sides of the border. If we change the focus of the argument, to our growers, I do not think would understand that, and I do not think that under my current understanding of how that would work that they would see anything visually to help them understand that some of their concerns are being addressed. We are currently looking into that much further.

Senator BAUCUS. I would hope you would do that because we have to find a solution to the problem. I told my colleagues, for example, Shelby, MT. Shelby is not a big city. It is not New York City by any stretch of the imagination. There are 400 trucks a week of grain coming down. These are big trucks coming down from Canada, basically because Canada is over subsidizing its shipments now.

The USDA did a study which shows that it amounts to about $600 million over the last 4 years in additional costs to U.S. taxpayers as a consequence of this action. It is a major problem.

Mr. NADER. Senator, may I comment on this?

Senator BAUCUS. Sure.

Mr. NADER. It is my understanding that Section 22 is eliminated in the Uruguay Round. Also, Super 301 is not possible under the World Trade Organization.

Senator BAUCUS. Oh, yes it is.

Mr. NADER. No. You see, WTO is on a collision course with Congress. You are going to see past legislation and future legislation severely vulnerable to these kinds of attacks. You are not going to be able to see any kind of unilateralism dealing with human rights or labor rights.

Senator BAUCUS. Well, I beg to differ, Mr. Nader, because actually the GATT agreement, which is not yet agreed to by this country, does preserve our trade remedies. That is in it. I can tell you also that were the preservation of American trade remedies in there, I guarantee you this Congress would not ratify the Uruguay Round.

Mr. NADER. Let me refer you to Article 9, paragraph 2. Please read that very carefully.

The CHAIRMAN. Noted.

Senator Danforth?

Senator DANFORTH. Mr. Baker, in your prepared statement you included a sentence. I would like to give you the opportunity to elaborate on it to whatever extent you would care to. You talk about the question of subsidies and the greenlighting of subsidies. You say that the Chamber is concerned about the possible proliferation of so-called greenlight subsidies that generate market inefficiencies and require countervailing public expenditures that exceed our ability to pay for them.

Would you care to elaborate on that in any fashion?

Mr. BAKER. Well, the language allows for greenlight subsidies to take place and certainly those create the market inefficiencies. I am not sure what part of the sentence you are questioning.

Senator DANFORTH. This has been a point that I have been trying to make. So anybody who supports me in making that point, I would like the floor to be open to them for whatever argument that you would care to make.

It has been my view that the greenlighting of subsidies is very bad business, that it is going to open a race. It is not a race necessarily with the rest of the world as a totality, but with whatever specific country decides to avail itself of the greenlighting for whatever specific product.

Either we are going to be losing major industries as, for example, is the case with Airbus which really harmed us or in the alternative we are going to have to come up with our own subsidy programs. This indicates to me that the position of the Chamber is that if we got into the subsidy business ourselves we would have a problem with how to pay for those subsidies.

I just wanted to ask you if you had any further comment other than this?

Mr. BAKER. No, I think your point is well taken. It tends to legitimize the violations that are in existence in other countries.

Senator DANFORTH. All right.

Mr. BAKER. That is not as a free trade agreement should do.

Senator DANFORTH. Mr. Jones, you say in your statement that according to the executive summary of the Uruguay Round Agreement, the objective of some negotiating parties in the GATT was to restrict the application of U.S. countervailing duty remedies and to protect certain forms of subsidies from any type of trade action.

"We in the U.S. forest products industry are concerned that those other 'negotiating parties' may have succeeded only too well. We are concerned that large loopholes have been created that will greatly weaken the effectiveness of our countervailing duty laws."

I think that your concern is more particularly in the environmental greenlight. But I would like to also give you the opportunity

to give us whatever embellishment you might care to make on this point.

Mr. JONES. Thank you very much, because it is a very important issue to us. The legislation as we understand it offers subsidies of up to 20 percent for the cost of meeting new and stricter environmental regulations.

Obviously, we are very supportive of the environment in our industry and we literally spend millions, in fact billions of dollars, to support the environmental needs. However, with this legislation, an example that comes to mind to me is that a country could support another one of our competitives, their own forest products industry,to the tune of up to 20 percent of extra capital which would really hurt is in the open market when we know we are not going to get subsidies back from the U.S. Government. The U.S. Government is probably not going to subsidize that.

Maybe there is a creative way that that could happen. I do not know. I would leave that in your hands to handle. But the real issue is what does that do if these other companies are subsidized. And at the same time, of course, then we are shipping into markets that carry tariffs or potentially carry tariffs.

So it is a bad problem. It puts us as an industry at risk to being noncompetitive for a long time and also puts the opportunity for our competitors, for instance, to hide underneath the subsidies to build new and bigger paper machines that run more efficiently with lower costs that impact us back that way.

So there are many things underneath the surface that cause great concerns. Those are the loopholes we are worried about.

Senator DANFORTH. Yes, you have used the word loopholes. You just did and it is also in your written testimony. But I think that the point is that money is fungible and to designate something as an environmental subsidy or research subsidy could end up being really a make weight.

In other words, you could say, well, this is an environmental subsidy and it would be a fact case as to what it really was. But the fungibility of money means that there is a possibility of enormous competitive advantage. You are concerned that the United States might not keep up in the same fashion with whatever subsidies are offered by your competitor.

Mr. BAKER. Exactly.

Senator DANFORTH. Could I ask one question to Ms. Olson just on the same basis?

The CHAIRMAN. Of course you can.

Senator DANFORTH. With respect to the EEP program, the origin in the EEP program is to keep with the export subsidies of other countries. But I think that your position, and correct me if I am wrong, is that if anywhere else in the world a government is subsidizing an activity or the production of a product or the export of a product, and the United States is not keeping up with that subsidy, it is a tremendous disadvantage for people in our country.

Therefore, whatever is being done in the rest of the world we have to be very careful not to let the other country subsidies go unmatched by what we are doing here.

Ms. OLSON. I think you understood very well, Senator.

Senator DANFORTH. Thank you.

The CHAIRMAN. That is the kind of answer that greets response in this committee.

Senator DANFORTH. Right.

The CHAIRMAN. Senator Wallop?

Senator WALLOP. I believe Senator Grassley was here before me, sir. At least he was here and I was talking to him when I walked in.

The CHAIRMAN. Senator Grassley?

Senator GRASSLEY. I thank you, Senator Wallop, very much.

My question would be to Ms. Olson. Considering the euphoria over the agriculture issues as we were debating those and negotiating those in GATT up until the last 2 or 3 weeks, why should farm groups—and I know you spoke for a lot of organizations that are for it—why are they so enthusiastic for it? Maybe not enthusiastic, but why are they for it and why should I be for it?

But before you answer that question, I kind of want to set a tone of where I am coming from. It seemed like through the years of the Bush administration as we would have those representatives here they would also say that agriculture agreement in GATT was a lynch pin for the entire agreement. And if we did not have a good agriculture agreement there would not be any agreement in any other areas.

And the only departure of this administration from that was that they spoke about getting a good GATT agreement. They also spoke about that it was not the lynch pin, that there were two or three other areas where they were going to make sure we had a good agreement or there would not be any agreement.

From the standpoint of agriculture, it seemed to me in the last month or so of the negotiations things seemed to fall apart. I want to quote from the U.S. trade, December 3, 1993, because it says,"On November 30 Kantor spelled out the provisions that he considered crucial for a good Uruguay Round Agreement." He said, "It must have four major elements—agriculture market access, real market access, goods and services including protection of audio visual exports, protection of U.S. trade laws such as anti-dumping rules and appropriate rules for MTO."

Then it went on to say, "On agriculture market access Kantor said an Uruguay Round deal must include provisions on minimum and current access applied to individual commodities not commodity groups" as one of the major provisions that he was trying to get. I do not think we got quite what he said he wanted in that area.

But what really disturbed me as we were negotiating those last few weeks in agriculture was this quote from the French Foreign Minister, Elaine Jope, where it was quoted in the Wall Street Journal December 8.

The articles says before his quote, "the assent of France which has regularly torpedoed a GATT deal is crucial." The French Foreign Minister said that, "Very important progress has been made on agriculture. A previous U.S.-EC farm accord negotiated under the Bush administration"—meaning Blair House, I am sure—"has been profoundly modified in the manner desired by France."

So, you know, all of a sudden agriculture is taken care of and then between December 8 and December 15 all I ever hear out of

our government is concern about what is going to happen to Hollywood.

I all of a sudden see for 3 or 4 years, under two administrations, all the concern about agriculture quietly gotten out of the way and then we are going to fight for Hollywood the next several weeks and then finally that is taken off the table in the final agreement.

So you are here to ask us to support the GATT because it is good for agriculture. Why should we support GATT for agriculture where I think that where we have been headed for so long all of a sudden the rug was pulled out from under us?

Ms. OLSON. Senator, I was asking you to support EEP in the continuation of the program. We feel in the wheat industry that GATT certainly was less than we hoped for. We did not achieve what we hoped to with the negotiations 7 plus years ago, where our objectives were free and fair trade; unsubsidized trade.

However, we do feel that the very, very modest levels of reduction in subsidized trade in agriculture worldwide are just that. We certainly do not view the GATT as being the end all, the cure all that we had hoped to achieve for agriculture of leveling the playing field for all of us.

But we do feel that the progress was modest, very modest, but modest and if nothing else, it probably in many instances will tend to cap the level of subsidies in agriculture exports. We do not look at it to eliminate them. We would hope that this body and the administration and the House will work to help keep U.S. agriculture competitive in whatever kind of trading relationships we establish.

Senator GRASSLEY. Well, what are going to be the consequences for the United States and our agriculture if we do abandon as suggested in the budgets now before us some agricultural market promotion and the EEP approach and all the other market promotion approaches we have?

Ms. OLSON. We will be extremely disadvantaged because we will not be able to compete. Obviously there is a green box or a green light area in the GATT that will enable other countries to support their agriculture in a wide variety of different ways. I think your quote from the French was very apropos.

I am sure that they fully intend to subsidize their agriculture in some manner to keep them competitive. What will happen is commodity supplies will rise on the international market, meaning there will be more stocks or inventory placed by those countries that have found other methods to support their agriculture and their international trade. Prices will probably drop.

U.S. producers are continually being regulated by a lot of different methods. We just believe that it is very important. If we are going to be competitive, we would prefer to be helped in market development to help us maintain market share.

Senator GRASSLEY. We are going to be unilaterally disarming?

Ms. OLSON. That is right.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. I am glad to hear my friend from Iowa talk up for big government and deficit spending. It just cheers me up.

Senator GRASSLEY. I thought I was cheering small government through all these other administrations when they were going to

make sure we did not have to have any of this stuff because they were going to have a good trade agreement for agriculture.

The CHAIRMAN. May I just say, if there is one group that really has to feel that the negotiations did not produce what they achieved, it was the textile manufacturers and the clothing manufacturers.

But on the other hand, Senator Danforth had to slip away, but, you know, this question of subsidies can get a little complicated. I mean we are out there in Detroit right now, or until yesterday, where all those EC countries subsidize everything and have not created a new job since 1973.

The economy that subsidizes is obviously paying for inefficiencies, which I think Mr. Baker and the Chamber understand very clearly. For all the brutalities that a market can inflict, there is another brutality, which is 12 percent unemployment over 30 years, as you know.

Senator Wallop, I do apologize, and thank you for your gallantry in recognizing that, indeed, Mr. Grassley was here first.

Senator WALLOP. Thank you, Mr. Chairman. I thought it was Senator Grassley when I came in. It looked very much like him. [Laughter.]

Senator GRASSLEY. But it did not sound like him.

The CHAIRMAN. You do not think it was a Japanese import? [Laughter.]

Senator WALLOP. I would also make the observation that unilateral disarmament in trade is following disarmament in Western defense activities.

I would say, Mr. Baker and Mr. Jones, the general tenor of what I get out of your two statements is that they are badly negotiated, these agreements, but important to embrace. It sounds like Republicans to me. [Laughter.]

Why should we embrace something that we generally find either disconcerting or inadequate?

Mr. BAKER. Well, I think after the amount of input, the number of countries involved, it would be very difficult to arrive at a perfect solution. The Chamber looks at it this way, sir, that the average American family pays $1,000 a year for tariffs and duties. The GATT agreement could very well reduce that in half.

I think underlying all of this is the principle that we continue to a spouse wherever we go and that is that trade is not a zero sum gain. If we lose jobs somebody else does not necessarily gain them. If they gain jobs, it does not necessarily mean we are going to lose them.

We have that study in both a macro and a micro way and it has been proven time and time again that increased world trade is going to help everyone.

Senator WALLOP. Well, I do not quarrel with that. But does it run the risk of adding the $500 back to the average family's obligations through green light subsidies?

Mr. BAKER. Well, certainly we hope not.

Senator WALLOP. But hope is a frail reed.

The CHAIRMAN. But it does run the risk.

Mr. BAKER. Your point is well taken. It is a weakness of the way the language is now written that that, in fact, could take place and

there is a lot of room and not much time. But there is a lot of room to improve that language.

Senator WALLOP. Mr. Jones?

Mr. JONES. Just to amplify a couple of remarks earlier. We embrace free trade and that is the general principle. Thus, we are delighted that the countries of the world sit and talk about free trade and try to find ways to improve.

Our position as an industry is that we are working to identify the fixes that we can do in the existing trade agreement and we want to proceed over the next 30 days to do that. But eliminations of tariffs create opportunities in our job and jobs for people. Our oversight issues, like the work program, the environmental subsidies, those are kinds of things that we have to talk about, work on in implementing legislation.

But we do embrace free trade. It is just that the way the forest products and paper industry has been addressed in this particular agreement is certainly not optimal and we are working to get much closer to what we really need in order to support our industry.

Senator WALLOP. Mr. Chairman, I would say that I am reminded about the anxieties that I often have with arms control agreements, that once negotiated it seemed to become more important to deal with the social reputation of the negotiators than the consequences of the agreement.

I see us kind of talking down things. Everybody is expressing anxieties about provisions of this. I think you know me as one who has always supported free trade.

The CHAIRMAN. Sure.

Senator WALLOP. But I am anxious that in many respects this has created circumstances that are a diminishment rather than an enhancement of it. I remain the skeptic. I want to be supportive of this agreement and I realize the consequences of walking away from it are not easy. But the consequences of embracing it may also not be easy.

The CHAIRMAN. Then the more ought we to attend to the implementing legislation.

Senator WALLOP. I agree with that.

The CHAIRMAN. Could I just say in summation with thanking our panel, let us keep in mind who we are. We produce the cheapest wheat on earth and make the best paper on earth.

Mr. Baker, you are from Columbus, Indiana. Everything in Columbus, Indiana is just about the best in the world.

Mr. BAKER. Thank you, sir.

The CHAIRMAN. And, Jack, you attached to your testimony an agreement that you have reached with Levi Strauss. Levi Strauss, you know, he got out there in the gold mines around San Francisco in 1854. He is the only one that made any money out of it. [Laughter.]

But a century later that product is the most valuable piece of apparel you can get in about one-half of the world. There are people who will kill for a pair of Levis. It is not a very complicated piece of equipment, but we do it very well. Let us not underestimate how good we are.

With that, we thank you very much. Mr. Nader?

Mr. NADER. Mr. Chairman, since apart from you there has been very little interest on the panel in the democracy issues of this trade agreement, and since you are clearly one of the most prophetic members of this body, I would beseech you to have some more hearings or discussion or meetings with some of us to go through what are clearly antagonistic provisions of this new GATT to our jurisprudence and our right to condition trade on human rights, labor rights, environmental measures and other purposes for which our statutory base has been quite clear in this country.

The CHAIRMAN. We will do that. But please remember also that people were very fearful of the International Labor Organization when it was before this committee in 1919, the Foreign Relations Committee. But the Chamber of Commerce and the AFL stood up for it. I think we can be proud of what we did.

Thank you all very much. We are sorry to have kept you waiting.

Mr. SHEINKMAN. Thank you.

Mr. JONES. Thank you.

Ms. OLSON. Thank you.

The CHAIRMAN. Thank you, Ms. Olson. Thank you, Mr. Nader, Mr. Jones, Mr. Baker.

Let us stand in recess for 20 seconds while we just say thank you personally to our panel.

[Whereupon, at 12:24 p.m., the hearing was adjourned.]

RESULTS OF THE URUGUAY ROUND TRADE NEGOTIATIONS

WEDNESDAY, MARCH 23, 1994

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

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

Present: Senators Rockefeller, Packwood, Danforth, Grassley, and Hatch.

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 panelists and our very welcome guests. This is the third and final hearing the committee is holding on the GATT Agreement as reached in Geneva last November and the prospective signing, which is in Marrakesh on the 15th of April and the question of implementing legislation.

We have heard some very important testimony. And we have within the committee, I think Senator Packwood would agree, different views on what happened and what will happen. So we have asked a most distinguished group of industrial leaders to speak to us and also Prof. John Jackson, who I believe for his sins has made the GATT the subject of his professional career, and who is all the more valued for that reason.

Senator Packwood?

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

Senator PACKWOOD. Mr. Chairman, as we approach this implementing legislation, the only amendments we are supposed to offer to it are those that are necessary or appropriate to implement the legislation. We are not supposed to gut the legislation with it. We are not supposed to add extraneous things.

I would hope we would hew very closely to that standard for two reasons. One, we do not want to gut the agreement. Two, Ways and Means and this committee, individually and in conference, are the only committees that can add these amendments.

The CHAIRMAN. That is right.

Senator PACKWOOD. Once they are added, you cannot amend the legislation on the floor.

The CHAIRMAN. That is right.

Senator PACKWOOD. And if we take advantage of that position and add lots of extraneous things to the implementing bill that we like which no one else has a chance to do, that will demean the significance of this committee and will cause us to have problems in the future with this kind of legislation.

So I hope we understand that and stick very closely to amendments that are necessary or appropriate to implement the agreement and hold ourselves to that, even though on other legislation we might be inclined to enact other items.

The CHAIRMAN. That is more than an important point to make because we have been given a very special position by the—each body has given the respective committee of reporting out and it is yours up or down. And that requires us to abide by the restraints. That could be abused.

Senator Grassley?

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

Senator GRASSLEY. I am going to put my statement in the record, but I do make reference to the fact that there is a budget problem when certain subsidies have to be involved in the maintenance of a program. I hope somewhere along the line we can have the staff put together some impact on that so we know exactly what that is, as I speak as much as a member of the Budget Committee as I do as a member of the Finance Committee.

The CHAIRMAN. Why do we not have a meeting after this panel to get exactly what you are looking for and we will put the staff to work on it?

Senator GRASSLEY. Thank you.

The CHAIRMAN. So as we go down our list, Mr. Appleton, you are first. Steven Appleton is the chairman and CEO of Micron Semiconductor of Boise, ID.

STATEMENT OF STEVEN R. APPLETON, CHAIRMAN, CHIEF EXECUTIVE OFFICER, AND PRESIDENT, MICRON SEMICONDUCTOR, INC., BOISE, ID, ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. APPLETON. Thank you, Mr. Chairman and members of the committee. The semiconductor industry appreciates the opportunity to submit testimony on the implementing legislation concerning the recently concluded GATT.

As the chairman just mentioned, my name is Steve Appleton. I am the chairman and CEO of Micron Semiconductor. I am here on behalf of the SIA as well. I would add that the SIA has over 200,000 members across the country and we represent substantially all of the American semiconductor industry.

The SIA would like to first thank the U.S. negotiators, certainly this committee and your hard—working staffs for bringing home a GATT that we can work with.

Our input on the specific details concerning the GATT can be found in my written submission. I am sure your staffs probably have more copies of it than they would like to have.

So I would like to take this opportunity to talk about what U.S. antidumping laws can mean to a high-tech company and perhaps more importantly an industry.

Unfortunately, the GATT creates the risk of weakening our dumping laws. Several countries pursued this for a simple reason. Our dumping laws have proven to be effective. And I do not have to look very far to find a good example of this.

Micron has been involved in three antidumping actions in the last 9 years. We truly are an American manufacturer; 100 percent of our production is in the United States. We manufacture semiconductors, computers, custom boards and related products. We have over 5,000 employees with $1.5 billion in annual sales. We export about 40 percent of our product.

Semiconductors, are better known as computer chips, and DRAMs which I reference later in my comments, are just a certain type of computer chip. They comprise the main memory of a computer.

In 1984 Micron had its first encounter with a foreign country dumping product in the United States. During this period we lost millions of dollars. We laid off 50 percent of our company. We cut salaries—all of us, everybody included—lost 100 percent of our benefits. At that time I personally was running production, and I had to personally talk to about 200 or 300 people and let them know that we were going to let them go. There are few things more painful than going out destroying people's lives, knowing they are good people.

It was frustrating because we had state-of-the-art technology. We had low-cost manufacturing. We had high quality. We had a very dedicated work force. We simply could not contend with Japanese pricing. And we were not the only ones—9 out of 11 producers in the United States either went out of business or went out of the DRAM business exiting the market.

In fact, at one time, Micron was the only merchant supplier manufacturing DRAMs in the United States. This was in an industry that was dominated by the United States as late as 1984. We filed an antidumping case in an effort to survive.

Fortunately, the 64K DRAM case and a subsequent one self-initiated by Commerce on the 256K DRAMS, helped to stem the tide of Japanese dumping. During the time these cases were going on, we were heavily criticized that poor quality and inefficiencies were our real problems, not a level playing field.

And I admit, sometimes you wonder if maybe you are missing something. So I studied the competition. I have been in most of our competitors' plants, including the Japanese. In fact, I learned how to speak Japanese. I have been involved in a lot of what happens overseas.

From all of this I walked away with the realization that we were among the best in quality and low-cost manufacturing. With 100 percent of our production in the United States, we were out competing our foreign competition. I would suggest that you do not need to rely on what I tell you. I think you should ask our competitors who the low—cost, high-quality manufacturer is and they will say it is Micron. That includes those that we compete with overseas.

It only became known later that the Japanese lost billions of dollars trying to gain this market share in the 1980's.

We encountered dumping again from Korean companies a couple of years ago and again faced difficult circumstances. Once again, we filed an antidumping case and the Koreans were found to be violating the U.S. dumping laws.

The point is that today we employ 10 times the number of people we did when we first encountered foreign dumping. Getting assistance from the antidumping laws did not turn Micron into an inefficient and lazy charity case. Today we are one of the top semiconductor companies in the world.

The antidumping laws and support our industry has received from Congress in the past are part of the reason that the U.S. semiconductor industry not only survived, but in 1993 regained the number one position in the world.

Congress has the ability to implement language under the GATT code that will continue to maintain the effectiveness of our U.S. dumping laws. The law should not be diminished or derailed by other interests. A good example, or one example, I should say, is currently there is a group who has an interest in adding what is called a short-supply provision.

This essentially says that if a company cannot get supply at their desired price, quantity or delivery that they would have the ability to circumvent the dumping penalties that may be in effect. In an economic recovery, this could probably apply to about every product in America.

This clearly guts the antidumping laws. Micron and the SIA support GATT and will continue to support it with language that maintains and improves our dumping laws, a standard that must be adopted by this committee. In drafting, implementing legislation in the U.S. law, it must be as strong as the Code permits.

We look forward to working with Congress to accomplish this. I thank you for your time.

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

The CHAIRMAN. My God, you are the low-cost producer. You did not even use 5 minutes. [Laughter.]

Could I ask you, sir, what was that last provision you talked about?

Mr. APPLETON. Well, it is not a provision under the law at the moment or it is not within GATT at the moment. There is a group that wants to get in place a provision that says if there is a short supply of a particular product, that then, in fact, they can circumvent the dumping laws. That makes no sense. That just guts the law right there.

The CHAIRMAN. Got you. Because that is not in our bill.

Mr. APPLETON. That is correct. It would have to be added.

The CHAIRMAN. Right.

Now, Curtis Barnette—Hank to his many friends—the chairman and chief executive officer of the Bethlehem Steel Corp., who appears on behalf of the U.S. Member Companies of the American Iron and Steel Institute. Mr. Barnette, we welcome you.

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

Mr. BARNETTE. Good morning, Mr. Chairman. It is a great privilege to be before you again, and members of the committee. I last appeared before you in November. I urged you to go to Geneva and we thank you for going to Geneva and becoming a part of the important negotiating process that brought about the GATT Round.

The CHAIRMAN. You sent Mr. Fenton who showed us around.

Mr. BARNETTE. Thank you, Mr. Chairman.

We recognize in particular the efforts of Ambassador Kantor and his staff, and those of Commerce Under Secretary Garten and his staff, in bringing about much needed revisions in the so-called Dunkel draft.

We fully support the approval of GATT. But we do so recognizing the need to limit the damage done to U.S. Trade laws. And if I may, Senator Packwood, use your words: we do not want the GATT agreement to gut U.S. trade laws. So it is a two-way street and there is a ground that must be reached in seeing to it that we continue to have strong and effective U.S. trade laws, and steel is a classic example of why that is essential.

Today, we are the low-cost, the high-quality producer in this market. We have modernized. We have restructured. We have literally reinvented ourselves.

Senator PACKWOOD. Are you profitable?

Mr. BARNETTE. We will be, Senator, and we have been.

Senator PACKWOOD. Good.

Mr. BARNETTE. It is difficult to be profitable when you compete against the governments of other countries in a world that is characterized by overcapacity, by closed markets, by cartel activity, and by unfair trade practices. We are the dumping ground for steel that comes off the world market. And if anything is well documented through the history of trade litigation and the administration processes in this town.

We can compete against foreign imports, provided they are fairly traded. And that is what we ask these laws to do: continue to preserve the right for us to complete on the basis of fairness.

There are provisions that we think warrant your very careful attention. They are technical. And for that I apologize. But it is in the technicalities of this legislation——

The CHAIRMAN. Do not apologize. This is what we are here for.

Mr. BARNETTE. Well, let me suggest five areas, Mr. Chairman. The first area is injury. Some comments about injury standards. The GATT negligibility standards of 3 and 7 percent should be bright lines. If subject imports are above these lines, they are not negligible.

The problem of captive production. Upstream products should only be counted if they compete directly against imports.

The issue of margins. There are many factor other than margins that can go into the injury decision. We would ask you to make sure that this is recognized.

A second area is antidumping, and here I would make three points. First, let's make sure that averaging applies to investiga-

tions, not to reviews. Second, on sales below costs. It is very confusing language in the GATT Agreement. We ought to stay as close to current U.S. practice as possible. Third, with respect to normal profit, a term that does not exist in U.S. law at present, we need to make sure that it does not apply to abnormally depressed operating results.

Let me turn now to a third area—common antidumping and countervailing duty law provisions. There is a new sunset provision. We must be sure that it does not bring about an unwarranted termination of relief. In addition, in regard to information, we want to be sure that, under appropriate circumstances, our Commerce Department can still use best information available.

A fourth area is countervailing duty law, and I appreciate that this morning's discussion is about antidumping. But, Mr. Chairman and members of the committee, I cannot resist talking about green lighting. For the first time in the history of our system we have permitted injurious subsidies to be authorized under GATT.

Now that being the case, I think we must be sure that those greenlighted subsidies are included in the analysis of injury and that we are going to review this whole situation in 5 years. It is a very, very serious matter. I know in particular Senator Danforth has expressed important concerns on this issue.

The fifth and final area is dispute settlement. Here, there is no question that we have impaired U.S. sovereignty. We respectfully suggest that, if GATT panels in the future make decisions that are contrary to long settled U.S. law, the U.S. Congress not let that happen without a careful review of proceedings.

And with respect to Section 301, we need to continue to act under this important statute even if it is inconsistent with GATT and even if it causes retaliation.

With satisfactory solutions in these areas, we support GATT. We appreciate the chance to compete fairly in this market. This steel industry can hold its own on a level playing field.

Thank you very much, Mr. Chairman.

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

The CHAIRMAN. Thank you, Mr. Barnette. This is something of a relay system here. No bells have gone off and we are going through the morning. We want to get back to particularly that question of whether you have impaired sovereignty if you have freely agreed to enter into arbitration arrangements. But we will get back to it.

Mr. Fisher, Donald Fisher, who is chairman and chief executive office of the Gap, Inc., of San Francisco, on behalf of the National Retail Federation.

Mr. Fisher, good morning.

STATEMENT OF DONALD G. FISHER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, THE GAP, INC., SAN FRANCISCO, CA, ON BEHALF OF THE NATIONAL RETAIL FEDERATION

Mr. FISHER. Thank you, Mr. Chairman and members of the committee. I am chairman and CEO of the Gap, and I am appearing today on behalf of the National Retail Federation, the nation's oldest and largest retail trade association.

I thank the committee for this opportunity to testify on behalf of the Federation, the Gap, and the Nation's retailers. We, as well, support the Uruguay Round Agreement and strongly urge Congress to pass the implementing legislation as soon as possible.

At the outset, I would like to say a few words about the retail industry. The Federation represents an industry that encompasses over 1.3 million retail establishments with sales last year in excess of $2 trillion. Our industry employs one in five working Americans or nearly 20 million people.

To remain competitive and to keep our people employed, retailers must provide quality merchandise to American consumers at a price that they can afford to pay. Our industry is consumer driven. The customer, not the retailer, ultimately determines what sells and what stays on the shelves.

Competition in the retail industry is fierce. No Federal subsidies, bailouts or guaranteed markets protect retailers. Those who cannot thrive in this environment do not survive. It is that simple. In fact, since 1990 more than 50,000 retailers have filed for bankruptcy and nearly half of the top 100 department stores in business in 1980 have shut their doors permanently.

As retailers, we know that the American consumer has suffered because of a long history of unparalleled import protection. This protectionist legislation, which has not been available to any other sector of the U.S. economy, was originally enacted over 20 years ago on the basis that it would be temporary. Nevertheless, through repeated renewals it has been transformed into permanent institutionalized protection.

The domestic textile and apparel industries have been shielded from the global marketplace long enough. Despite their never-ending tale of woe, textile industry is thriving. As The Financial Times reported at the end of last year, "the U.S. textile industry, long among the most protected of U.S. sectors, is emerging from 1993 with record sales, exports, production and capital spending." I only wish the picture were as rosy for the American retail industry. The retail industry itself had average net earnings of about 2 percent and less than that in 1992. And the textile and apparel industry had about 3.5 percent earnings, which was over 50 percent higher than the retail industry on an after-tax basis.

The price tag for this preferential protection is staggering. American consumers pay $46 billion a year in extra costs on textile and apparel. This amounts to more than $700 per year for a family of four. These costs fall most heavily on low-income consumers who spend more than 13 percent of their annual income on these products, more than twice what wealthier Americans spend.

The Uruguay Round Agreement makes some significant progress in eliminating these costly burdens on the American consumer. First, it phases out the complex quota system contained in the Multi-fiber Arrangement. This phase-out will occur over a 10-year period, which is still too long in my opinion, but it is a compromise that we can live with.

In addition, the agreement will modestly reduce costly tariffs on many retail items which currently cost consumers at least $10 billion a year. Finally, the agreement would open markets abroad,

which will allow U.S. companies to increase their sales of American-made goods and to be more competitive in the world market.

In sum, it is clear that the agreement is a winner for American consumers, American companies and the economy in general.

Let me emphasize a few major points with respect to the implementation of the agreement. First, Congress should act promptly on the implementing legislation so that the agreement can go into force as planned on January 1, 1995. It is important to bring the benefits of the agreement to the American people as soon as possible.

Second, Congress should unequivocally reaffirm the 10-year phase-out of the protectionist multi-fiber agreement.

Third, Congress must ensure that the legislation contains transparent and open procedures to allow for interested parties to participate in the administration's GATT-related actions.

Finally, the retail industry is concerned about recent reports that the administration is considering a proposal to auction textile quotas. For the reasons more fully contained in our written testimony, we strongly oppose quota auctioning and would resist implementing legislation that established such a system.

In conclusion, the retail industry strongly supports the Uruguay Round Agreement. Our customers—your constituents—depend on the health of the world trading system. The agreement will benefit each and every American consumer and we urge you to make those benefits available as soon as possible.

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

The CHAIRMAN. Thank you, Mr. Fisher, most emphatically. You are right, there has been a—well, I will correct that. Ambassador Kantor has floated the idea of auctioning textile quotas, which does not commend itself to this member of the committee, who was present at the creation. I was one of the three persons who negotiated the long-term cotton textile agreement, which was to have lasted for 5 years, in 1962. But we might hear more about that.

We would be interested in Professor Jackson's thoughts on that and any other subject. Good morning, sir, we are very pleased that you are able to join us.

STATEMENT OF JOHN H. JACKSON, HESSEL E. YNTEMA PROFESSOR OF LAW, THE UNIVERSITY OF MICHIGAN LAW SCHOOL, ANN ARBOR, MI

Dr. JACKSON. Good morning, Senator. I do not represent anyone. I come here on my own behalf. I have had the privilege or onus, as you mentioned, to follow this subject, among others, for some decades.

The CHAIRMAN. Courage, I believe is the term, sir.

Dr. JACKSON. Fair enough. [Laughter.]

Anyway, I do recall testifying before this committee and you more than a decade ago on very similar subjects of institutional reform and that sort of thing. I think the Uruguay Round is an extraordinary and splendid result. I think the negotiators really deserve credit. It exceeds my anticipations and mine were high.

It did not fulfill all of the elements of the agenda of Punta del Este, but it did go very, very far and remarkably so.

Now I am only going to focus on two things this morning in my talk, although I will be prepared to talk or to work with you in the panel discussion. I am going to look at the institutional side of the Uruguay Round, and that means the WTO and the WTO Charter and dispute settlement. And orally, I just want to make a few quick points about each of those and we can come back to them.

First, the WTO. We know that the GATT was never intended to be an organization. It has limped along in some ways for many decades, worked better than anyone could have anticipated, but it was there primarily because of the failure of the ITO. So the goal——

The CHAIRMAN. In this committee.

Dr. JACKSON. I am sorry?

The CHAIRMAN. The International Trade Organization met its fate in this committee.

Dr. JACKSON. I think this was one of the committees, yes, that had something to do with that. But in any event, the GATT has pragmatically worked better, I think, than anyone could have anticipated. The goal of the WTO is at least partly to correct some of the deficiencies and some of the problems of the GATT and there have been what I have called birth defects and my paper goes into some of those.

Second, what is the WTO? It is not a very grandiose conception, incidentally. It is not an ITO. It is a much more modest, what I sometimes call a mini charter. The WTO itself is basically focused on the institutional arrangements. The substantive rules are contained in the various substantive agreements of the Uruguay Round which are appended as annexes. But the WTO itself, the Charter itself that I am focusing on, is really just institutional and it has a number of provisions that I do not have time orally to go into, but some of which I have discussed in the paper.

Third, what are the advantages of a WTO? Well, there are at least four very significant advantages. First of all, the WTO provides an umbrella and emphasizes the single package concept of the Uruguay Round negotiation. The idea of this negotiation, unlike the preceding one, is that there is a one large package and it will contain virtually, but not entirely, the results of the Uruguay Round and every country who wants to come on board must accept that whole package.

And the WTO provides a very convenient legal framework for that with annexing the substantive agreements. Another aspect is that it provides, corrects as I mentioned, some of the institutional shortcomings of the GATT. Another one is that it extends the GATT institutional structure to the new subjects of the Uruguay Round. That is, services and intellectual property.

Without some kind of institutional legal framework to do that, it would have been quite awkward to just expand the GATT framework itself. And finally, it provides a supervisory mechanism for the dispute settlement process that I will come to next.

Now the last point on the WTO I would make is that the WTO has a very, very interesting and balanced, I think, decision making apparatus. It is not a heroic invasion of sovereignty, if you will. It is really quite careful. In fact, I would maintain that it is more careful than the GATT itself, but we can come back to that at another point.

Now as to dispute settlement. Again, I have a series of particular points. One is that the objective of dispute settlement, and there has been quite a history of this now, the objective of dispute settlement is to provide certainty and predictability for investors, for traders and so on in the world. It is to have the treaties implemented.

The second point is that the GATT has developed remarkably through practice quite a good dispute settlement system, but it had a number of defects.

Third, the dispute settlement system of the new rules will correct some of the problems. One is it will provide for a unified dispute settlement system, unlike the existing system which is fragmented. It clarifies some things. It also prevents the so-called blocking.

And finally, I would just say, and we can go into this further, that I do not think that either of these institutional mechanisms causes any dramatic change necessary in Section 301. In other words, I think Section 301 is good basically. It has to be carefully used and it can be so used under these new institutional measure.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Thank you, Dr. Jackson. We will get around to this and I know that Senator Danforth will want to get very specific in these matters.

So why do we not now get through our first round of discussions by welcoming Mr. Robert Shapiro, who is president and CEO of Monsanto on behalf of an organization new to me, but in spirit, certainly it sounds like—my God, why are you not taking television ads? It is called the Alliance for GATT Now. [Laughter.]

Do you have any television promotions you are planning?

Mr. SHAPIRO. No, sir.

Senator GRASSLEY. They have hired Louise.

The CHAIRMAN. They have hired Louise. [Laughter.]

Good morning, sir. We look forward to your testimony.

STATEMENT OF ROBERT B. SHAPIRO, PRESIDENT AND CHIEF OPERATING OFFICER, MONSANTO CO., ST. LOUIS, MO, ON BEHALF OF THE ALLIANCE FOR GATT NOW

Mr. SHAPIRO. Good morning, Mr. Chairman. Thank you for this chance to discuss the importance the Uruguay Round Agreement for the U.S. industry and the U.S. economy.

My company, Monsanto, does about a third of its business outside of the United States. Like its colleagues in the chemical, agricultural products, and pharmaceuticals industries, Monsanto is a positive contributor to America's trade balance.

As you noted, Mr. Chairman, I am speaking today also on behalf of the Alliance for GATT Now, a consortium of trade organizations, which together represent 200,000 American firms, large and mostly small.

The CHAIRMAN. Two hundred thousand?

Mr. SHAPIRO. The membership includes, for example, the NAM, the American Chamber of Commerce and the Business Roundtable and so on. And with more Associations and their members joining

everyday in recognition of the importance of rapid implementation of the benefits of the Uruguay Round.

These firms are all increasingly and inevitably tied into the global economy. For them and for their employees, we believe the GATT stands for opportunity. I would particularly emphasize the importance to businesses, large and small, of a coherent and predictable trade framework to substitute for the complex and ever changing laws and regulations developed on a nation-by-nation basis.

The existing pattern creates uncertainty for companies as they try to build their international businesses. As you know, uncertainty inevitably serves as a major deterrent to companies waiting to invest and expand in the United States to serve that export market.

For business to grow to invest and operate with some degree of certainty, we need to have a clear trading framework, a framework that replaces chaos with order and uncertainty with predictability. Although it is certainly not perfect, we are convinced on reflection that the GATT Uruguay Round Agreement provides a much improved framework for the world's trading system, a framework that will be advantageous to American business and American employees.

Taken as a whole, the agreement is a major step in the continuing effort to eliminate barriers to trade and investment and expand worldwide economic growth.

So we support speedy approval of GATT this year for several reasons. First and foremost, it will significantly reduce or eliminate tariffs on a wide range of products. We do not think sufficient tariff cuts have been made in all industry sectors, but it is a major step toward the U.S. goal of improving access for all our products.

Second, for the first time in history, the GATT will include agriculture, textiles and apparel, construction, tourism, education, health care and service industries. Again, there are imperfections, but the direction is clear and beneficial.

Third, the Uruguay Round represents a substantial step forward in the international protection of intellectual property. That is not only important to companies like Monsanto that spend in excess of $600 million a year in developing new products and new technology; it is also important to the U.S. economy as a whole.

One of the things we as a nation are very good at is innovation. And innovation, unless protected by intellectual property rights, does not repay the substantial investments that are made in it. If the United States is going to compete successfully in a world market, the products of its investment in technology must be protected.

And again, while the Uruguay Round did not achieve all the objectives one might have sought in the GATT agreement, it represents a significant step forward.

Subsequent to the implementation of the Uruguay Round, we would like to see the United States continue to pursue policies that keep pressure on our trading partners in order to remove remaining trade and investment barriers.

Specifically, we would urge extending negotiating authority to continue bilateral and multilateral trade initiatives, expanding the NAFTA agreement to appropriate countries in Latin America, pay-

ing special attention to Asian membership in the GATT because of the explosively growing economies there, and preserving American rights to take unilateral action to open closed foreign markets where necessary.

Taken as a whole,the Uruguay Round is not a cure all. It is not a solution to all our economic ills. But on balance, it is a important step towards a more prosperous economy in the United States and for our trading partners, and we urge its swift passing.

Thank you.

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

The CHAIRMAN. We thank you, sir.

If I could just take a moment before we go down our panels here to say that you could speculate, you know, had there been an Alliance for GATT Now in 1948 this committee probably would have approved the idea. Had we approved the idea, it was designated to be set up in Havana. There would have been this enormous presence of entrepreneurial free enterprise officialdom. Fidel Castro would never have come to power. The Cold War would never have entered the Western Hemisphere. The backward reels the mind. But there you are. [Laughter.]

I make that partly in jest, but Ambassador Gardner came before us for confirmation just a few days ago, former Governor Gardner of Washington, and he will be our permanent representative in Geneva for GATT matters. We asked him would he not pay very special attention to the formation of this new organization.

It is a nice bit of symmetry that it will take over the original building of the International Labor Organization there on the lake, which was built under Abertoma in 1927, a decade before the League got its building up, which the League is long gone. Not the civil servants, they are still there; but the League is long gone. And the ILO moved to more, rather embarrassingly, more luxurious quarters. But the old building is serving its purpose and there is even an Eric Whindom White conference room there. We looked in while we were over talking with Mr. Sutherland about the agreement.

The President of the United States is going to visit the International Labor Conference in June on the 75th Anniversary of the establishment of the ILO at the Pan American Building down on Constitution Avenue. Franklin D. Roosevelt was the Assistant Secretary of the Navy and cleared out all those temporary buildings on the Mall so they would have offices and they committed to the idea and the United States joined in 1934.

There is a lot of apprehension about this organization and yet we need not fear a system in which there are explicit rules, which we agreed to and from which we can withdraw.

Could I ask Dr. Jackson that point, because we do find anxiety here. We can withdraw from the World Trade Organization given notice and at our own judgment; is that not the case?

Dr. JACKSON. That is absolutely correct, given the appropriate notice. I believe it is 6 months in the agreement.

The CHAIRMAN. Yes.

Dr. JACKSON. That has been typical of many trade agreements.

The CHAIRMAN. And we do not have to explain why. We just have to say we are leaving.

Dr. JACKSON. On the other hand, it is not an easy thing to do.

The CHAIRMAN. You would find a lot of consequence. A lot of people would not want to do it. But we are free. We have not permanently conceded anything more than that we find this will be a useful international arrangement.

Dr. JACKSON. If something went seriously awry, we would have this option.

The CHAIRMAN. All right. Well, I just want to press you just a bit. Does something have to go seriously wrong?

Dr. JACKSON. No. But I would hope we would only use it——

The CHAIRMAN. We would not exercise it absent something such.

Dr. JACKSON. That is correct.

The CHAIRMAN. Yes. This Senator is not an automatic enthusiast for international organizations. But consider how much we rely on them, much more than we know. Have we gone to war with North Korea yet? [Laughter.]

Does anybody have a bulletin? When they do, let us know. But if we do, it will be on the basis of evidence provided by the International Atomic Energy Agency based in Vienna. You know, we have put a lot of trust in these international organizations and where it matters most, I think that trust has been returned.

That is basically what interests me, that we have an organization that begins to institutionalize the idea of an open trading system.

I think, Mr. Appleton, your case in point—I wish Steve Symms were here—that was pretty outrageous. But you say the Japanese lost several billion dollars. Good.

Mr. APPLETON. Yes, that is correct. It did not come out until later. But, you know, it became evident after we went through that time period.

The CHAIRMAN. But you can look to a trading system in which a country that sets out to spend a lot of money to destroy a competitor's market ends up just having lost the money.

Mr. APPLETON. Well, that would be okay if you were looking at it in the very short term, because in short terms of period that may be the case. But in the long run, when you have driven out all of the U.S. industry in that particular case, not because——

The CHAIRMAN. No, I mean that the effort will not succeed and there is a certain sort of if you try that all you will do is lose your money. In the end, the rules will be against it.

Dr. Jackson, you follow me. Do you think that it is not a possibility that, you know, you have reached a situation where a market strategy to sell below cost in another market at great initial expense in the expectation of acquiring a monopoly of some kind thereafter; it does not work, so you decide not to start down that path.

Dr. JACKSON. This is the classic predation motivation and it was certainly one of the original ideas of the antidumping laws. I think the worry is that the way antidumping is, in fact, administered it goes well beyond places where predation would exist.

Now what Mr. Appleton described sounds very, very much like pointing towards a predation idea.

The CHAIRMAN. I think it is not to be doubted that the steel industry has been, as Mr. Barnette said, a dumping ground, in a situation that is slightly different from semiconductors, an older industry, which got associated with national prestige and such life, so over capacity came into the situation as against innovation.

But in either way, it seems to me a system can be devised which makes such activities uneconomic and in the end governments restrain themselves at least.

Senator Packwood?

Senator PACKWOOD. One of the jobs of being on this committee, Mr. Chairman, is learning history from you. Many of these little anecdotes that he mentions are done with humor, but they are also relevant in most cases. I have quoted a statement you made earlier—not all cases. [Laughter.]

I have quoted a statement you made earlier and I thought it was both prophetic and historical. When Chairman Arafat and Prime Minister Rabin met and shook hands, Pat said, well, that is the end of World War I. He was correct. The British and French took that territory at the end of World War I, divided it up into artificial countries, and attempted to enforce these divisions unsuccessfully, of course, which probably led to a great many of the troubles that hopefully are now being unwound.

Mr. Fisher, let me ask you a couple of questions because I am always intrigued with the retail industry. Of all the industries that are entrepreneurial, it seems to me you are the ultimate. First, I assume there is not a lot of venture capital for new retailers, is there?

Mr. FISHER. There is a venture capital source of money for small retailers, yes.

Senator PACKWOOD. Is that right?

Mr. FISHER. Yes.

Senator PACKWOOD. If somebody wants to start out——

Mr. FISHER. For small private companies, it is there. But they certainly exact their pound of flesh.

Senator PACKWOOD. Tell me, when you and your wife started The Gap in 1969, how many employees did you have? Or was it you and her?

Mr. FISHER. It was just the two of us. Then I employed a few football players.

Senator PACKWOOD. What did you gross in 1969?

Mr. FISHER. $750,000 the first year.

Senator PACKWOOD. And now you gross how much?

Mr. FISHER. $3.3 billion.

Senator PACKWOOD. With 37,000 employees?

Mr. FISHER. Well, there are 44,000 in our annual report.

Senator PACKWOOD. That is amazing. If you and Toys 'R Us could open in Pying Yang we could not have to worry about war with North Korea.

Mr. FISHER. Well, we are opening outside of the United States. We have stores in Canada. We have a nice business in the U.K. We have a small business that we have started in France. We plan to enter Germany and Japan next year as well.

Senator PACKWOOD. Well, the next question I was going to come to is on opening overseas. But tell me, I read in your testimony,

you are opening something called the "Old Navy Clothing Co." Is this surplus Navy gear or what?

Mr. FISHER. Well, it sounds like it. Actually, they started out calling it The Old Navy Supply Co. I prevailed on them to change the name to The Old Navy Clothing Co. This division is going after a different market, a market below the Gap. A market that we think is about 50 percent of the apparel sales in the United States today. We will compete in this market with lower margins, with stores that are not located in the high rent districts or in the major shopping centers.

The CHAIRMAN. Could I just interject to say to my friend that anyone who has ever been in the Navy knows that the "Old Navy" was better. [Laughter.]

Mr. FISHER. But we are going after the lower income consumer and I think it is going to be a very successful operation. We just opened two stores last weekend and we hope to open 50 stores in 1994 and 100 stores in 1995.

Senator PACKWOOD. Amazing. Now, tell me when you go overseas, do you use essentially the same format The Gap would operate here or do you tailor it to different kinds of overseas markets? Tell me how you operate and what the reaction is.

Mr. FISHER. They love American goods. The only thing that we do is we edit the line a little bit. For example, we might not put as many yellows in or may decide to we put more blues into the U.K. The color spectrum is a little bit different.

Senator PACKWOOD. But you sell the same kind of jeans you would sell in Brazil.

Mr. FISHER. We sell the exact same clothes. We may have to change the sizing a little bit in Japan. But, otherwise, in the other countries it has not worked that way and we have been very successful. It is a big opportunity for our company to do international business.

Senator PACKWOOD. You can, and Toys 'R Us and the others, can be profitable at doing this in a relatively short period of time?

Mr. FISHER. We have been profitable almost at the beginning thus far. We have a big opportunity in Japan. I think that we are going to be the first company to enter Japan without any partners, expecting to do it ourselves. The USTR did a good job several years ago on something called the Big Store Law over there which restricted the size of the store that you could open. It was dependent upon the neighbors accepting you.

So, Toys 'R Us went over there. There are a lot of other companies going over there from the United States today that do have partners. And there are a lot of American goods going over. Talbots was recently opened. They were bought by a Japanese company. They have several stores. Sharper Image does. William Snoma has stores over there. The U.S. retailers are beginning to expand outside of the United States. Walmart, Price Club are all down in Mexico today.

So I think you are going to find that this agreement is going to help us dramatically.

Senator PACKWOOD. I would assume that American retailers are as good as they are because many other countries have restricted

big retailers and are, therefore, not experienced in the kind of business that you or Toys 'R Us or Walmart are involved in.

Mr. FISHER. This is the most competitive country in the world to do business. So when we go into the foreign countries, I think we have a competitive advantage on the way that we do do business.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Packwood.

Senator Grassley?

Senator GRASSLEY. Dr. Jackson, I want to ask you about whether or not WTO impacted upon our National sovereignty. I think your statement has been very clear on that and your discussion with the Chairman very clear. I would ask you though two reflections on that. And by the way, I do not dispute what you said.

But I kind of do run into quite regularly opposition in my State from some opponents of GATT and it also showed up in NAFTA about infringements upon national sovereignty. And yet, except for the emotional statements I assume that they sometimes come from sort of scholarly work. Have you run across any scholarly arguments of why it might be a reflection, a detraction from national sovereignty, even though you do not agree with it?

Dr. JACKSON. Honestly, I do not think I have recently. Clearly, every treaty in a sense is taking a particle of sovereignty away from national countries. That is the point of a treaty, to yield to a cooperative mechanism. So in a sort of absolutist sense or formalistic sense, there is a diminishment of sovereignty.

What is happening now, as I am sure you are very aware is, an enormous rethinking of sovereignty generally, the whole concept of sovereignty. And in some ways the concept, certainly the older concept of several centuries ago just does not make any sense in today's world.

Practical sovereignty for some small countries is nil. I mean, they just do not have the room to maneuver, particularly in economic affairs.

Senator GRASSLEY. Is there any doubt in your mind that any decisions made at the WTO level would be in conflict with existing U.S. law requiring that law to be changed in order for WTO to be carried out or are you satisfied that it is tightly enough drawn in every instance we would not have to change that congressional law?

Dr. JACKSON. That is extremely complex. When you look at the whole panoply of the agreements, clearly the point of the implementing legislation will be to change our law in order to conform and fulfill our obligations, just as was the case in the Trade Agreements Act of 1979, and in the other implementing bills on the Free Trade Agreements. Clearly, there are some changes.

One thing though that is often confused, and it is certainly understandable why it is confusing to people is, sometimes there is a statement that the WTO will trump, will override U.S. law automatically or that a panel report adopted will override U.S. law automatically. That is not so.

These instruments do not have self-executing affect. There must be an implementation by the U.S. legal authority. And in this respect incidentally, the GATT is somewhat more modest than for instance the so-called Chapter 19 of the Free Trade Agreement dis-

pute settlement arrangement, because the GATT process involves an international tribunal type or arbitral type arrangement.

And when the result comes out, then it still remains, at least in most countries and certainly in ours, for the country itself to decide how it will implement it.

Senator GRASSLEY. So then let us say today we adopt the implementing legislation and we changed all of our statutes to conform to it. Then 10 years in the future WTO makes some ruling that looks like it is in conflict of some then-existing Federal law. You are saying we do then at that point have to change that Federal law?

Dr. JACKSON. We might have to. We would have to look at it.

Senator GRASSLEY. All right. If that falls into a general area where there is some concern to help answer some of the emotional arguments out there that it does impact upon our National sovereignty, then I think maybe you could help us to identify some of those things, and then maybe make that more clear in the implementing legislation, that that would be something that we are anticipating doing.

Dr. JACKSON. Let me add one thing. I alluded to it in my oral statement and it is more fully presented in the written statement. Actually, I think the WTO offers somewhat less risk of this some kind of decision overriding national law than did the GATT, because the GATT was so loose and there was so much ambiguity there, whereas in the WTO charter, there are a series of much more well thought out provisions on decision making.

For example, in the amending clause it says that if the amendment would alter the rights and obligations of any member, then that member is not automatically bound to the amendment.

Senator GRASSLEY. Mr. Chairman, I am going to have some questions that I will submit to people in writing. They deal with the termination or sunsetting of antidumping orders and when the 5 years trigger in.

[The questions appear in the appendix.]

The CHAIRMAN. Fine. I am sure the panel will look forward to those questions.

Thank you, Senator Grassley.

Senator Danforth?

Senator DANFORTH. Mr. Barnette, I would like to ask you and maybe Mr. Appleton as well about the question of enforcement. It seems to me the point of negotiating trade agreements is not to just negotiate trade agreements, but to have something that is enforceable once we have negotiated it.

Clearly, the present state of affairs is not adequate, witness the Oilseeds cases, the possibility of bringing GATT cases that lead absolutely nowhere. And because of the weakness of enforcement of GATT we have insisted on workable national laws to enforce our rights against unfair trade practices—antidumping, countervailing duty, and Section 301.

Now the theory of this GATT agreement is to try to revitalize the dispute settlement procedures under GATT. My question to each of you is, in your opinion after this agreement are we going to be better off or worse off with respect to enforcement than we are today

or is the answer right now unclear, and depending on what we do on implementing legislation?

Mr. APPLETON. I will respond first. First of all, the ability of the enforcements that we have had historically when it was just a national law have actually been effective in our particular case, where they have an impact on what the pricing structure was.

This will clearly be more difficult to enforce when it has to be reviewed by a third party panel, again referencing Mr. Jackson's comments that, you know, we are giving up some sovereignty. In fact, that an antidumping case will still have to be reviewed by a GATT panel, which in fact may not be considered favorable by that group. I think it will be more difficult to enforce the antidumping laws under that system.

Mr. BARNETTE. I would agree with that, Senator Danforth. I think, as a result, it is unclear at this point. That question can be answered when we know what the final implementing legislation will be.

There is an opportunity I think for this committee, for the Congress, to take the fabric of the GATT agreement as it now stands and to cause there to be crafted into it the best trade law strengthening provisions, entirely consistent with GATT and U.S. trade laws, which would help us have more enforceable procedures. So I think the jury is out on that, Senator.

The CHAIRMAN. Or the jury is here.

Mr. BARNETTE. Yes.

Senator DANFORTH. If this could be advanced in implementing legislation, I really do think it is important that Mr. Barnette, and Mr. Appleton, and others communicate with this committee their ideas with respect to what should be in implementing legislation.

We went through this back in 1979 with the Tokyo Round and used the implementing legislation as a way to make more workable our procedures in subsidy and antidumping cases.

Mr. BARNETTE. We appreciate that, Senator Danforth. We have done so and we continue to be available to the committee and to your staff. We have very detailed recommendations with respect to implementing legislation which we think are entirely consistent with the agreement that has been negotiated and which will help make our laws stronger and more enforceable.

Senator DANFORTH. Dr. Jackson, you think that 301 is still alive and well even after this GATT Agreement, but it would trigger if used automatic retaliation? Would that not have a chilling effect on using 301?

Dr. JACKSON. First of all, I do think there will need some relatively technical amendments to 301, particularly in time tables and transition periods and so on. But second, the basic thrust of 301 is not inconsistent with what is done in the GATT negotiation. The basic thrust—in fact, the language of the statute requires submittal to the international processes when they exist.

And in a sense, therefore, 301 complements the international processes. I think that is healthy and constructive, and that should be emphasized.

Senator DANFORTH. Now a question for my constituent, Mr. Shapiro, particularly with respect to your comment about receiving further with respect to multilateral and bilateral negotiations.

There is an article in the newspaper today, in The Washington Post today, entitled "Trade Environment Faceoff." It has to do with—well, the first part of the articles says, "Trade officials from the United States and two dozen other nations agreed yesterday to launch negotiations to confront for the first time conflicts between promoting trade and protecting the environment and wildlife."

U.S. Trade Representative Mickey Kantor said, "There has been a concrete commitment to addressing the environmental issues in connection with trade," Kantor said in an interview.

Then we have articles in The Wall Street Journal and The New York Times today relating to a meeting in the White House yesterday about MFN for China and the whole question of the leakage of trade and human rights in China.

My question to you is, do you have any concern about negotiations and agreements relating to linkage of trade matters with environment, with labor standards, with foreign policy concerns? I mean, it seems to me that there's been sort of an ongoing saga in this committee ever since I have been here with respect to trying to keep the focus on trade and trying to prevent trade from being used as ancillary to some other laudable purpose.

But once you do it, trade falls into the background and the other purposes—foreign policy or whatever—turn out to be trade contracting rather than trade expanding conditions put on trade policy.

Mr. SHAPIRO. It certainly is understandably tempting to try to use trade policy as a means of influencing the behavior of other nations in directions that we all would find attractive and that would represent progress.

In many respects though it must be borne in mind that the achievement of a multilateral trade agreement and international trade framework, such as the Uruguay Round, is something of a miracle. To have that many nations sitting around the table prepared to make the difficult compromises and tradeoffs that are necessary in order to reach any agreement at all is a considerable achievement in itself.

There is always a risk that in trying to improve what is already good you may lose what you have. That is always the problem in trying to reach non-trade related issues through the mechanism of trade.

The CHAIRMAN. Thank you, Senator Danforth.

Senator Hatch?

Senator HATCH. Thank you. I think Mr. Fisher had a comment.

The CHAIRMAN. I am sorry. Mr. Fisher, do you have a comment?

Mr. FISHER. I thought maybe I could answer that question as it relates to our industry and specifically the most favored nations with China and using trade as a bargaining chip to achieve some of the political solutions that we are looking for. I think it is a terrible thing.

It seems to me—in fact, I read this a couple of places, that sanctions on a country like China should only be done if, one, you are not doing any business with them; two, if the sanctions are in your favor; and, three, if you are able to get other countries to go along and have the same sanctions. None of those things are happening today if, in fact, we disallow the most favored nations for China.

As far as the textile industry is concerned, it would create chaos. The American consumer would be absolutely devastated by the increase in costs. China is the largest supplier of apparel products to the United States. And if the duties went up to 100 percent duty for goods from that country, all of the businesses doing business there would have to go into the rest of the world to do it. Prices would go up because of supply and demand.

There is one company that I know of that does $2 billion worth of first cost out of China. It would absolutely wipe them out because they would not be able to find sourcing for the consumer in the rest of the world. I think that your point is very well taken and we should not be using trade under the circumstances with China. There has to be some other solution.

Mr. SHAPIRO. If I may add one additional comment on that?

The CHAIRMAN. Please, Mr. Shapiro.

Mr. SHAPIRO. Our motives in seeking to use trade as a lever to influence the behavior of other nations are understandable and from our perspective laudable.

It should be noted that similar kinds of objectives on the parts of other nations create an enormous opportunity for abuse in the sense of disguising what are actually protectionist measures in the more attractive guise of social policy or environmental policy.

We have already seen examples of that in the past. Opening the area up and legitimizing it as a means of controlling trade can create substantial opportunities for abuse.

The CHAIRMAN. Does any other member of the panel want to comment on this very simple question? Dr. Jackson, do you encounter it in your survey as it goes on?

Dr. JACKSON. My sense is that we cannot escape some linkage between trade policy and other issues. The closest of those issues that we have just mentioned is environment and I have written about the intersection between environment and trade, for instance, and I think there is no escape, that there is an intersection and that we have to deal with what I call policy dilemmas—that is, valid policy goals on both sides that clash. And we have to have some mechanism, hopefully in a GATT type context or maybe a GATT in an environment organization type context that is multilateral, multinational cooperation.

I also think there is some place, some rather minimal place for some human rights links to trade matters. However, I think we have not been careful about it. I agree with my colleagues on both sides of me that really it can be a disaster. It can be shooting ourselves in the foot.

What that place is I have not fully thought through. But I think it would be much more modest and hopefully much more in the background, not so confrontational.

The CHAIRMAN. Mr. Fisher?

Mr. FISHER. I think that there are more and more companies today that have environmental policies as it relates to who they do business with. I know that our company does and we are very careful.

As an example, when we wash jeans we are very concerned that the water that is used in the laundries will not contaminate the

rivers or the lakes or anything else. I think there are companies which are taking that kind of a position I think it will help a lot.

The CHAIRMAN. Would I dare to assume that Banana Republic, which I know you have a lot on Madison Avenue, that you do not sell tiger skin rugs?

Mr. FISHER. You can assume that.

The CHAIRMAN. Senator Hatch?

Senator HATCH. Thank you.

I agree with you, there may be some linkage. But in the case of China we have to be very careful. I remember back in the early 1980's when China was very upset with this country and pulled back, Skip Jackson went in 1 week to China and I went the second week and the Chinese treated us both like royalty, which was a signal that they were willing to open China up again.

And frankly, you have to understand the culture in China. For us to simply demand that the Chinese meet our cultural needs is ridiculous. I agree with what you said, Mr. Fisher.

Related to that, last week in this committee we heard a representative from the textile industry express serious concerns about what the Uruguay Round Agreement will do to the U.S. textiles industry. As an executive in the retail clothing business which obviously benefits from worldwide tariff reductions, what would be your response to the view that this agreement will devastate the U.S. textile industry?

Mr. FISHER. Well, as Senator Moynihan said, this whole agreement, the multi-fiber agreement, has been in force since 1974. It has been over 20 years. It started out at 4 years, then it went to 5 years, then it was 4½ years.

The CHAIRMAN. Actually, sir, it began in textile in 1962.

Mr. FISHER. In 1962. But I think as we know it today it was in 1974.

The CHAIRMAN. Right.

Mr. FISHER. You know, I cut something out of the paper. I have something that was in the New York Times yesterday relative to the economy. Maybe this will help to answer the question. It said, "American companies are prospering, but announcement of job cuts this year are more numerous than ever and have seemed likely to continue for months or even years. Technology advances let companies produce more with fewer employees. With price increases harder to get, corporate America increasingly maintains profits by slicing labor costs and job shredding has become fashionable—the mark of a good manager."

I do not think that the apparel industry or the textile industry in the United States is any different than any other industry today. They are downsizing because of their bringing in foreign machinery and being able to do things more efficiently.

The American retailers are spending about 72 percent of their dollars in buying American products so that only 28 percent is coming from foreign countries. I just do not think it is going to have a major affect on that particular industry. And I think protecting them any longer is not smart.

One of the reasons that we do business overseas is from a competitive point of view. It is not that we make more profits out of our merchandise that we bring in from overseas. There are lots of

things that are not made here or available to us in the United States. Things that have more labor in them are generally manufactured overseas in lower labor cost countries.

But, you know, the fact is that the textile industry today has every ability to go to Mexico with NAFTA. They can protect themselves just as well in this continent, because frankly the labor rates down in Mexico are lower than they are in a number of the countries in the Far East. The Hong Kong labor rates are higher than they are in Mexico.

I think that the textile industry, if they modernize themselves and do what is necessary, should not have any kind of major problem if this implementing legislation is taken care passed.

Senator HATCH. That is interesting. Dr. Jackson, in your statement you made reference to the idea that in your opinion: "The WTO has no more real power than that which existed for the GATT under previous agreements." And you further stated that, "The U.S. is so important to the success of the WTO and the trading rules that as a practical matter the U.S. cannot be ignored."

Now my question relates to whether you believe that the WTO will enhance the United States' ability to enforce international trade standards or that it will provide greater opportunity for other nations to avoid meeting international obligations.

Dr. JACKSON. Well, I think it will enhance the implementation of the trade rule system. And part of that is the dispute settlement system itself, which technically is separate from the WTO charter, but there is obviously a very close symbiotic relationship.

I mean, you could have one without the other. But I think the dispute settlement provisions will enhance the implementation of the rules, make the rules more predictable.

Senator HATCH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

Again, sir, if I could ask Dr. Jackson, we have heard testimony that concerns the secrecy of the WTO prospective procedures and that is mentioned in the article that Senator Danforth referred to.

Is there anything singularly secret about these proceedings? If there is, we need to know.

Dr. JACKSON. We are dealing with the culture of diplomacy heartily, because diplomats have for centuries been used to working in secret. And, of course, just as every negotiation has its sensitive parts, there is some valid purpose of some secrecy. I think it would be very hard for Kantor and Sir Leon Britton to make the final deals in front of newspaper and television headlights. Some of that has to be done with an air of confidence between them to try ideas and so on.

However, I think the GATT is too secret myself. My hope is that the WTO can be more open now that it would be a more established legal institution, and the fact that there are some provisions in the Charter that point towards a more open approach.

For example, there is a provision that explicitly allows the WTO to negotiate appropriate cooperative agreements with intergovernment organizations and nongovernment organizations. I think that is an interesting opening crack or wedge. For example,

the environmentalists, who are very interested in having more transparency and so on.

In addition, the rules of procedure have an explicit provision that says even though they are supposed to be confidential and secret—and I think they are too confidential and secret, frankly—but there is a provision that allows each country to decide for itself that it can open to its own public the arguments it makes in a dispute settlement process.

Now that follows what the United States is doing in fact in light of the Freedom of Information Act provisions, case of about a year ago. Again, those are little signs. They are not enough. But I think they are in the right direction.

The CHAIRMAN. Well ought not our implementing legislation address that?

Dr. JACKSON. It very well could help.

The CHAIRMAN. Arguments are made in open court in the United States and not necessarily in other countries—some, not all. What do we think about this subject?

Mr. BARNETTE. May I comment, Mr. Chairman?

The CHAIRMAN. Please, sir.

Mr. BARNETTE. We have in this country the fairest, the most open, the most due process arena procedures to deal with unfair trade complaints. We should certainly have no less in the organization that we are about to associate ourselves with and subject the future resolution of trade disputes in this country.

The CHAIRMAN. Well, I mean, if you want to lose an argument in this country say we have turned over our rights to a secret tribunal in a place where they eat frogs and speak languages we do not understand. [Laughter.]

That is a guaranteed loser and not very attractive. Dr. Jackson?

Dr. JACKSON. Mr. Chairman, just on that point, you know, we are dealing with 115 nations and there are probably just as many cultures involved. And many of the cultures are very, very secretive. This secrecy is not wise necessarily and it does not suit our temperament.

There are provisions in the dispute settlement rules, as negotiated and agreed to by all these countries, that require a certain modicum of secrecy. It certainly would be my hope that implementing legislation in any respect would not force the U.S. Government to be immediately in violation of its international obligations under these agreements.

The CHAIRMAN. Fair enough. But we ought to indicate that within the range of our options under the agreement we exercise the option of openness.

Dr. JACKSON. That is correct.

The CHAIRMAN. I see Mr. Shapiro agreeing and Mr. Appleton. Mr. Fisher?

Mr. FISHER. Yes, I would hope that you would be able to do this as well in the implementation of the phase out of the MFA. As you know, the MFA is going to phase out over a 10-year period with 50 percent of it dropping off at the end of 10 years. I think it is very important that the industry be aware of the phase out procedure. Part of it is supposed to happen at the implementation of the

Agreement. A part of it 3 years after, 6 years after and then 10 years after.

I would hope that all of those categories that are going to be dropped off from a quota point of view be set up ahead of time so that everybody is able to plan their businesses over the period of the 10 years. I think that that can be done, but I think it ought to also be done very openly.

The CHAIRMAN. All right. In the working procedures in Appendix 3 it provides that members shall treat as confidential information submitted by another member to the panel, which that member has designated as confidential. That I understand, if someone gives you something and says this is in confidence.

"Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also upon request of a member provide a nonconfidential summary of the information contained in its submissions that could be disclosed to the public." So there is some provision there. I think we ought to address that in our legislation. Thank you.

Senator Packwood?

Senator PACKWOOD. No other questions, Mr. Chairman.

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. No questions, Mr. Chairman.

The CHAIRMAN. Well, we have had just a hugely informative and helpful morning. We now have to go to the—there is one question I have to ask you. Does anybody here have $14 billion? [Laughter.]

No, I thought not. That is a problem. I am sure you all are aware that because we will lower tariffs we will lose revenue in this 5-year period. Now we surely expect to gain revenue from increased business, commercial activity. But that is not the way the budget rules are "scored."

I have had to say that the only way I can see to raise this revenue is to increase tariffs. But I am not sure that was in there. [Laughter.]

There is a problem with that. So on that note of ambiguity, but with great gratitude, we thank you all for a wonderfully concise and very important panel.

I think this concludes our hearing.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF STEVEN R. APPLETON

I appreciate the opportunity to appear before you today on behalf of Micron and the Semiconductor Industry Association (SIA) to discuss one of SIA's top policy issues: ensuring that legislation implementing the recently concluded GATT Uruguay Round enhances and strengthens U.S. trade laws. I am Steven Appleton, and I am the Chairman, CEO and President of Micron Semiconductor. Micron produces memory semiconductors and personal computers in Boise, Idaho. We employ more than 5000 people there and are one of the largest employers in the State.

SIA represents U.S.-based semiconductor manufacturers. SIA member companies account for 85 percent of U.S. semiconductor production and employ over 200,000 Americans. SIA was established in 1977 with the aim of addressing public policy issues confronting the industry. SIA concentrates its efforts on those issues which affect the ability of the U.S. semiconductor industry to remain competitive internationally and to develop a national semiconductor technology strategy.

SIA would like to thank the members of this Committee and your hard-working staffs, as well as our U.S. negotiators who worked diligently to bring home a GATT agreement that is good for U.S. companies and consumers. Last November, SIA had grave concerns about the Dunkel draft, which we believed significantly weakened the U.S. laws which discipline unfair trading practices of countries exporting to the U.S. While the final agreement reached last December is a vast improvement over the Dunkel text, overall the agreements worked to weaken significantly certain provisions in existing U.S. laws—in the areas of Antidumping and Section 301. In addition, Section 337 may be weakened in response to a GATT panel finding. On the other hand, the final GATT text also permits numerous opportunities to tighten and enhance U.S. trade laws in ways completely consistent with our GATT and World Trade Organization obligations, and we hope to see that accomplished.

SIA urges Congress to enact legislation that implements the Uruguay Round and supports strong antidumping laws. The GATT Agreement will mean greater market access abroad for semiconductors through foreign tariff changes and will help to protect U.S. semiconductor technology from foreign infringement. In the area of U.S. trade laws, it is essential that the legislation strengthen our trade laws to the full extent permitted by the Uruguay Round agreements.

THE URUGUAY ROUND'S IMPACT ON U.S. TRADE LAWS

The Antidumping Law

The semiconductor industry is an industry that may owe its continued existence in the United States to the antidumping law. In the mid-1980s the producers of U.S. dynamic random access memory (DRAMs) (the largest semiconductor product category) were on their knees because of Japanese dumping. The Japanese companies competing in this market had both the motive and the means to dump with impunity in the U.S. market. The U.S. market is the largest consumer of DRAMs and getting a foothold here by capturing market share, even at the expense of lower prices in the short run, made dumping a marketing strategy for many Japanese companies. While dumping, Japan maintained and continues to maintain, significant barriers to foreign semiconductor competition in its own market in semiconductors and downstream electronics products. These barriers permitted Japanese companies to recoup lower profits on overseas sales by charging higher prices at home. Second, the Japanese companies producing DRAMs were, and still are, huge vertically integrated corporate conglomerates such as Hitachi, Toshiba, and Matsushita.

These companies have the financial wherewithal to sell at a loss until competitors in the U.S. begin to leave the market. This strategy employed by Japanese DRAM producers worked. In 1986, Japanese DRAM producers lost $4 billion but went on to completely control the U.S. DRAM market. During this period 9 out 11 existing U.S. DRAM producers simply went out of the DRAM business—MOSTECH, AMD, National Semiconductor, AT&T, Intel and others left the market and have never returned.

In 1984, Micron filed a dumping case in a last ditch effort to stay alive. During this time we lost millions of dollars, we laid off 50 percent of our employees, we cut salaries and eliminated 100 percent of our benefits. We had state of the art technology, high quality, low-cost manufacturing, and a dedicated workforce, and yet we could not contend with Japanese prices. We did not have a protected domestic market from which to dump and we had to turn a profit in DRAMs.

Fortunately, the end to this story is a bright one. The 64K DRAM case and a subsequent one self-initiated by Commerce on 256K DRAMs, helped to stem the tide of Japanese dumping. In addition, Micron was successful in a dumping case filed in 1992 on dumped DRAMs from Korea. The correction in market pricing has created sufficient market stability for Micron to grow into a company today with $1.5 billion in sales and to now be among the top 10 DRAM producers worldwide. Micron employs over 5,000 people today and has restored wages and benefits to normal levels.

A major Uruguay Round goal of Japan and its satellites was weakening antidumping enforcement. We will not allow this to happen. SIA supports proposals made by domestic manufacturers to strengthen our trade laws. In drafting implementing legislation, this Committee must adopt the standard that U.S. law be as strong as the new Code permits. Specifically, this means the following:

SHORT SUPPLY PROVISION

First of all, Congress must insure that the antidumping law is not eviscerated by the adoption of a short supply provision. SIA opposes such a provision. A short supply provision is unnecessary because under an antidumping order, U.S. consumers may always buy from foreign suppliers, they must simply pay a fair, non-dumped price for what they buy. Access to foreign components is never restricted—thus components can never be said to be in "short supply." Moreover, adoption of such a provision would actually reward the most effective foreign dumpers—those that have successfully forced U.S. competitors to reduce capacity, or out of business all together. Finally, such a short supply provision would completely prevent the rational investment of capital by petitioners after a successful dumping case—if they knew that any time prices increased short supply would be granted, they would have no incentive to invest in new capacity thereby undercutting the purpose of the dumping order.

Treatment of start-up costs. The new Code requires that in investigations where cost of production is an issue, costs during start-up be disregarded, and the costs at the end of the start-up period be utilized instead. Congress should ensure that the start-up period is deemed to end at the time when commercial production begins, and that only depreciation and labor costs be adjusted.

Adoption of reasonable standing requirements. The new Code requires that at least 25 percent of an industry should support a petition. U.S. law should provide that if the petition states on its face that it is supported by the 25% minimum, no further inquiry should be made; polling of the industry should only occur if a bona fide member of the 'domestic industry states its opposition to the petition in writing, id the window for such opposition should be within ten days after the initiation of the case; exporters and importers of the subject merchandise, as well as persons related to them, should not be counted in determining opposition to the petition.

Proper exclusion of below cost sales. The new Code permits authorities to disregard below cost sales when, among other things, they are made over an "extended period." The statute should clarify that "an extended period of time" means the "period of investigation or review," and not a longer period. It should also note that below cost sales need only occur "within" the period rather that "over" the period. Moreover, Commerce must maintain the flexibility to calculate costs on a monthly or quarterly basis for industries like semiconductors where costs and prices change rapidly throughout a period of investigation or review.

Use of respondents' actual costs only when not distortive. Commerce must retain full leeway to determine that respondent's costs, as reported in their books and records, are distortive, and make adjustments as appropriate. Commerce should also request cost data in all cases at the outset of an investigation as the European Union does.

Proper calculation of profit and GS&A. Profit "in the ordinary course of trade" cannot be considered to be zero; it may not be less than the cost of capital in the country of exportation, and should exclude sales of the same class or kind of merchandise when determining the cap, which according to the GATT must be based on actual profits earned by other producers or exporters in the home market on sales of the same general category of merchandise. GS&A should be based on the greatest of GS&A experienced by the exporter under investigation, other exporters of the same class or kind of merchandise, or U.S. producers of the same class or kind of merchandise.

Limitations on the use of averaging in price comparisons. Where targeting, or "spot" dumping is occurring, Commerce must retain the ability to do comparisons on a transaction-by-transaction basis, to eliminate this "targeted" dumping.

Combating circumvention of AD orders. The new Code is silent regarding appropriate measures to combat circumvention of dumping orders. Often a company found guilty of dumping will simply source from one of its plants in a different country. U.S. law should take advantage of the Code's silence to strengthen its remedies against circumvention.

Treatment of targeting as a subsidy. When there is targeting by foreign governments, this practice should be treated as a subsidy, and the calculation of the subsidy should include the "multiplier" effect of such targeting.

Compensation to U.S. companies injured by dumping. If a U.S. company faces dumping, it may not be able to obtain relief for years. Once the relief is finally obtained, it is now subject to a five year sunset provision. One-half of the duties collected in a dumping case should be paid to the petitioners in order to offset the injury.

Adoption of reasonable timetables and standards for Sunset. Sunset reviews should not begin until the year 2000 (as the United States bargained for, and achieved, in Geneva). Reasonable presumptions should be used in the sunset reviews and should provide that the order will continue in effect if there has been dumping in the recent past, or if dumping margins have been eliminated only in the last review period where import volumes have also declined. There should also be a presumption, with respect to injury, that import volumes will increase where dumping margins continue to be found.

Deduction of profits and GS&A from exporter sales price transactions. Under current United States antidumping law, it is advantageous to sell through a related party importer, because profit and GS&A incurred by such an importer are not deducted from the United States price (as they would be if an unrelated parry importer were being used). Our trading partners deduct such related party profit and GS&A in determining home market prices, and, in order to harmonize our practice with the Europeans and other countries using the dumping law, we should do the same.

Adoption of more reasonable injury causation standards. The size of the margin should be only one determinant of whether dumping is a cause of injury, not a determinant more significant than the other factors that could be causing injury. Also, dumped imports need only be one cause of injury, not the major or sole cause.

Section 301

Japanese predation was made possible by the government of Japan, which encouraged cartelization and closure of the Japanese semiconductor market. Only through the use of Section 301 has the U.S. industry been able to obtain meaningful access to the Japanese market—access that has resulted in an increase in foreign market share to 20.7 percent in the fourth quarter of 1993. The existence of automatic GATT-authorized counterretaliation will make it less likely that the U.S. government will repeat the sanctions it levied in 1986 to achieve greater market access for the semiconductor industry in Japan. The implementing legislation must preserve U.S. rights to act unilaterally in areas not covered by the GATT, such as toleration of cartels. There should also be a new, explicit remedy against foreign anticompetitive behavior that burdens or restricts U.S. commerce.

Section 337

Section 337 of the Tariff Act of 1930, authorizing exclusion of products from the United States that infringe U.S. patents, has enabled semiconductor manufacturers to counteract foreign infringement of their U.S. patent rights. A GATT panel found that certain aspects of this law were found to be violative of U.S. national treatment obligations under the GATT. The law should be amended to take care of the GATT panel concerns, while preserving the fast and effective sanctions against foreign infringers that this law provides for.

THE URUGUAY ROUND'S IMPACT ON TARIFFS

The Agreement will bring about a reduction in some semiconductor tariffs. The European Union will replace its 14 percent tariff rate over a ten-year period on a range of semiconductor products that will effectively reduce duties overall by 35 percent. We also understand that Korea will eliminate its 9 percent tariff over a five year period. We urge both you and the Administration to encourage the EU to eliminate its tariffs completely and to encourage the EU and Korea to accelerate the duty reduction programs already agreed to.

THE URUGUAY ROUND'S IMPACT ON INTELLECTUAL PROPERTY

This is the first GATT round to cover the issue of intellectual property protection, an issue of crucial importance to the semiconductor industry which spends 11 percent of its revenue on research and development. SIA is pleased that the final agreement includes a specific limitation of compulsory licensing of semiconductor technology.

CONCLUSION

SIA looks forward to working closely with this Committee to achieve successful implementation of the GATT Round in a way that expands world trade and enhances our domestic trade laws, particularly the antidumping law.

Steve Appleton's Responses to Senator Grassley's Additional Questions

I. Both the Antidumping and Subsidies Code provide for the termination or "sunsetting" of orders after five years, unless the administering authority has conducted a special sunset review and determined that, absent continuation of the order, dumping and injury to the domestic industry will continue or recur. Since the code does not spell out how or when reviews of existing orders are to be carried out, my questions to you are:

1. Does this mean that no existing order shall be terminated under the sunset provision for at least five years after the codes go into effect?

Yes. During the Uruguay Round negotiations, domestic industries with outstanding orders were repeatedly told that all orders would be treated as entered on the date the agreement took effect. Implementing legislation should accurately reflect that commitment.

2. In situations where the dumping or subsidization has continued during the five year period, does the legislation place the burden on foreign producers to demonstrate that injury to the domestic industry has not continued and will not recur?

Current U.S. law allows antidumping orders to continue indefinitely, thus placing absolutely no burden of proof on the domestic industry for measures to be continued. Under the "Dunkel Draft," the burden of proof for sunset was placed entirely upon the domestic industry. The resulting compromise contained in the Uruguay Round agreement is neutral. The language does not include a burden of proof standard, so essentially, a new injury case would occur before an order could be terminated. Each side would submit its case on whether the antidumping or countervailing measures should continue or be terminated.

II. Do you believe the final GATT would substantially weaken our antidumping and countervailing duty trade laws? If so, what recommendations would you make for changes in the implementing language?

The Uruguay Round agreement, as I stated in my testimony, does create the risk of weakening our dumping laws. While Micron and the SIA generally support the agreement, we see the opportunity to, through implementing legislation, strengthen our dumping laws by including in U.S. trade laws GATT-legal procedures that are utilized by many of our trading partners, but not by the U.S.

SIA has recommended a number of GATT-legal changes to be made in current U.S. trade law through implementing legislation. These changes will make the U.S. antidumping law as effective as the new Code permits. In addition to our strong opposition to the inclusion of a short supply provision, our recommendations include:

Treatment of start-up costs

Adoption of reasonable petition support requirements

Combating circumvention of orders

Use of respondents' actual costs only when not distortive

Guidance on termination of orders

Sales by related importers

Compensation

Causation in the injury analysis

Proper exclusion of below cost sales

Proper calculation of GS&A

Limitations on the use of averaging in price comparisons

(Please see attached SIA position paper on these issues.)

III. I would like each of you to tell me what, if any, impact there would be on the U.S. economy if Congress failed to pass the GATT agreement before this Committee? I would also like to know your opinion as to the extension of fast-track to conclude several issues which will not be successfully negotiated before the final conclusion of this Agreement in July of 1995?

For the semiconductor industry, passage of the Uruguay Round will provide greater market access abroad through reduced tariffs and greater intellectual property protection for U.S. semiconductor manufacturers. The timely passage of the Agreement is obviously in our best interest, as the sooner it is passed, the sooner our industry and many other American industries will begin to reap the benefits of the Agreement. Micron and the SIA support the passage of Uruguay Round implementing legislation to expand world trade **as long as the final legislation maintains a strong and effective antidumping law.**

Micron and the SIA also support the renewal of tariff negotiating authority, especially to resolve the conflict over European Union tariffs semiconductor and computer parts. The U.S. Government must continue to encourage the EU to remove completely its tariffs on these products, and the use of tariff negotiating authority will make this goal much more achievable.

URUGUAY ROUND IMPLEMENTING LEGISLATION:
CONCERNS OF THE U.S. SEMICONDUCTOR INDUSTRY

SIA will support Congressional Uruguay Round Implementing Legislation Provided it:

1. Antidumping: strengthens U.S. Antidumping law.
2. Section 301: preserves U.S. right to act unilaterally, especially in areas not covered by GATT.
3. Section 337: maintains effectiveness of Section 337.

1. Antidumping

- Semiconductors: Capital intensive industry with short product life cycles.
- 1985-86 Japanese dumping nearly destroyed U.S. industry, cost 60,000 jobs.
- Effective antidumping actions key to return of U.S. global leadership.
- Strong antidumping laws essential to future health of U.S. semiconductor industry.

Several GATT-consistent amendments are needed:

Domestic industry

- New Code requires at least 25% of a "domestic industry" to support a dumping petition.
- Semiconductor industry includes companies which are solely producers of semiconductors as well as companies that are both large producers and consumers of semiconductors.

> **Provision needed:** Define "domestic industry" to exclude importers of the dumped product or parties related to the exporters of the dumped product.

Start-up costs

- Semiconductor manufacturing has steep cost/learning curve.
- Costs decline rapidly throughout the life of a product.

> **Provision needed:** Start-up costs must be defined to end upon commercialization and must be limited to a new product manufactured on a new production line.

Calculation of antidumping duties

- **Related-party importers**. Loopholes allowing related-party importers to absorb antidumping duties and reduce dumping margins by the amount of U.S. profit must be closed.
- New Code permits this change to U.S. law, bringing us in-line with practice in the EU.

> **Provision needed:** Close current loopholes in U.S. law.

- **Cost of production**. Commerce Department's discretion to reflect accurately foreign costs of production is essential to offset below cost sales.

> **Provision needed:** Explicit discretion must be granted to reconfigure reported data which do not capture all costs of production.

- **Averaging**. Averaging of prices on both sides of the dumping equation should not be allowed to conceal spot or targeted dumping against specific regions or customers, or during specific periods of time. Even a small price differential of underselling can be damaging when it robs the domestic industry of its key customers.

> **Provision needed:** Commerce Department must be authorized to employ its current calculation methodology where targeted dumping is present.

Termination of Antidumping Orders

- New Code requires that antidumping orders terminate within 5 years, unless a determination is made that injury and dumping is likely to continue or recur.

- Antidumping orders provide "breathing room" for the injured industry to reinvest to improve competitiveness and add capacity and new product lines

- Relief afforded injured industries must not be terminated without thorough examination of all factors which indicate a likelihood of continued injury and dumping.

  Provision needed: Congress must provide guidance to the ITC and Commerce Department regarding factors to be considered, including: unutilized or additional foreign capacity, evidence of dumping in other markets and investment by the domestic industry that increases vulnerability to renewed or continued dumping.

Anti-circumvention

- The new Code is silent as to remedies for circumvention of U.S. antidumping duty orders.

  Provision needed: U.S. should take advantage of the flexibility under the Code to strengthen remedies against circumvention.

Compensation

- Currently, neither foreign unfair traders nor the Government makes reparation to domestic industries found to be injured by dumping. It is a crime that pays.

  Provision needed: A portion of the antidumping duties collected should be paid to the injured domestic industry as compensation, to allow re-investment and job creation.

A harmful proposal which must not be enacted:

"Short Supply"

- The "short supply" coalition proposal is unacceptable. As currently written, it would deny relief to industries and their employees seriously injured by dumping.

2. SECTION 301

- Vital tool for opening foreign markets and enforcing U.S. trade agreements.

- U.S. semiconductor industry relied on Section 301 and antidumping remedies to survive in the mid-1980s.

- U.R. agreements may severely impair Section 301:

  - U.R. agreements could be read to require that all disputes be brought to WTO, even if WTO provides no explicit remedy.

  - Unless WTO authorizes retaliation, use of Section 301 to open foreign markets likely will be found GATT illegal.

Foreign negotiators believe U.S. ability to use Section 301 has been severely limited -- this perception greatly reduces U.S. negotiating leverage.

Provision needed: First, in areas not covered by the U.R. agreements -- such as foreign restrictive business practices (e.g., price fixing, division of markets) and export targeting -- give USTR broad authority to take unilateral action.

Second, explicitly state that USTR has a right to act -- even without WTO authorization -- so that particularly egregious foreign trade practices can be addressed immediately.

3. SECTION 337

- Semiconductor design requires enormous investments in research and development, i.e., 12% of revenue. Effective and expeditious intellectual property right protection from infringing imports is critical to allow U.S. firms to recoup these costs.

- Federal District court intellectual property right proceedings do not address the special problems of import infringement, particularly in the case of technology-intensive short life cycle products, where U.S. manufacturers are highly vulnerable to a quick surge of massive imports of infringing products.

- Section 337 of the Tariff Act of 1930 is the principal trade remedy available to U.S. intellectual property owners to combat infringing imports in both a fast and effective manner. The U.S. semiconductor industry has used Section 337 in recent years to enforce their patents against such pirated goods.

- A 1988 GATT Panel (Aramid Fiber case) found certain aspects of Section 337 violations of GATT national treatment obligations. The United States must now amend Section 337 to comply with the Panel's findings.

- Without swift and effective protection, U.S. firms would be exposed to substantial and irremediable injury from infringing imports.

Provision needed: Bring Section 337 into conformity with the GATT Panel concerns, while preserving the rapid relief and effective remedies of current law.

The U.S. Antidumping Law Should be Made as Strong as the Antidumping Code Permits

In the mid-1980's, predatory Japanese dumping nearly destroyed the U.S. semiconductor industry. Since that time four affirmative dumping determinations have been reached on semiconductor products, and dumping protections have been part of the two Arrangements on Trade in Semiconductors with Japan. Without the dumping laws, U.S. industry would not be nearly as strong as it is today. A major

Uruguay Round goal of Japan and its satellites was weakening antidumping enforcement. This must not be permitted to happen. The new Code requires changes to procedures for initiating investigations, the rules covering the determination of dumping margins, and the duration of the antidumping remedy. In implementing these changes, it is essential that U.S. law be made as effective as the new Code permits. In some cases, this will mean amending U.S. law to take advantage of GATT-legal procedures utilized by other countries, but not the U.S.

Treatment of start-up costs. The new Code requires that in investigations where cost of production is an issue, costs during "start-up" be disregarded, and the costs at the end of the start-up period be utilized instead. Congress must define when the start-up period ends. In semiconductor production, costs decline rapidly throughout the life of a product. To the untrained eye it may appear that start-up never ends. Congress should ensure that the start-up period is deemed to end at the time when commercial production begins, and that only depreciation and labor costs (items actually affected by start-up operations) be adjusted.

Adoption of reasonable petition support requirements. The new Code requires at least 25 percent of a "domestic industry" to support a petition. The Code also defines domestic industry to exclude companies that purchase the imported product under investigation or that are related to the exporters accused of dumping. Implementing legislation should ensure that that importers or parties related to exporters be excluded from the domestic industry for purposes of determining industry support. Moreover, Commerce should not be required to "poll" the domestic industry regarding support, unless a bona fide member of the domestic industry (i.e., neither an importer nor a party related to an exporter) expresses opposition with ten days of the initiation of the case.

Combating circumvention of orders. The new Code is silent regarding appropriate measures to combat circumvention of antidumping orders. Often a company found guilty of dumping will simply source from one of its plants in a different country or will shift minor assembly operations to the U.S. or third countries. The U.S. should take advantage of the Code's silence to strengthen its remedies against circumvention.

Use of respondents' actual costs only when not distortive. Commerce must retain full leeway to determine that respondent's costs, as reported in their books and records, are distortive, and make adjustments as appropriate. Commerce should also request cost data in all cases at the outset of an investigation as the European Union does.

Guidance on termination of orders. The new Code requires that orders terminate within five years unless it is determined that termination is likely to lead to continuation or recurrence of injury. Congress must provide guidance to the ITC regarding factors to be considered in this analysis. Investment by the domestic industry that makes it more vulnerable to renewed or continued dumping, unutilized or additional foreign capacity, and evidence of dumping in other markets all should be listed as factors in the analysis.

Sales by related importers. Under U.S. practice, antidumping duty margins assessed on transactions where the importer is a subsidiary of the exporter will be lower than on the identical transaction between the exporter an unrelated importer by the amount of the profit realized by the related importer when it resells the merchandise. The European Union practice is to deduct such related party profit. Because this methodology is an established practice in the EU and because it is not prohibited in the Code, the current loophole in U.S. law should be closed.

In addition, a related party importer is now permitted to simply absorb the antidumping duties itself and not raise its prices at all, with no affect on the antidumping margin. The result is that a deep-pocketed predator can continue to injure a domestic industry despite the existence of an antidumping order. Here again, our European trading partners' practice does not contain such a loophole, nor is it required by the Code. U.S. practice should be conformed accordingly.

Compensation. The circumstances described above illustrate situations where petitioners are deprived of the pricing relief contemplated by the law, highlighting the need for some portion of the duties collected to be returned to petitioners as compensation by companies that continue to dump. Implementing legislation should provide that one-half of duties paid be returned to petitioners to offset the injury from dumping.

Causation in the injury analysis. The current injury test is much more stringent than required in the GATT, and should be clarified to make the law more accessible. In one semiconductor case in the mid-1980's, for example, the industry's losses exceeded its total sales and there was overwhelming evidence of foreign targeting. In spite of this, two commissioners still voted negatively. U.S. law should clarify that industries need not be near extinction before receiving relief from dumping. Moreover, foreign industrial targeting should be recognized as an aggravating factor in the injury analysis.

Proper exclusion of below cost sales. The new Code permits authorities to disregard below cost sales when, among other things, they are made over an "extended period." The statute should clarify that "an extended period of time" means the "period of investigation or review," and not a longer period. It should also note that below cost sales need only occur "within" the period rather that "over" the period. Moreover, Commerce must maintain the flexibility to calculate costs on a monthly or quarterly basis for industries like semiconductors where costs and prices change rapidly throughout a period of investigation or review.

Proper calculation of profit and GS&A. In calculating cost of production, the Department of Commerce should not consider profit "in the ordinary course of trade" to be zero. It may not be less than the cost of capital in the country of exportation, and should exclude sales made at prices below cost. GS&A should be based on the greatest of GS&A experienced by the exporter under investigation, other exporters of the same class or kind of merchandise, or U.S. producers of the same class or kind of merchandise.

Limitations on the use of averaging in price comparisons. Where targeting, or "spot" dumping is occurring, Commerce must retain the ability to conduct comparisons using its current methodology to eliminate this "targeted" dumping.

The Short Supply Coalition proposal is unacceptable. As currently written, it would deny relief to the industries most seriously injured by dumping.

EUROPEAN SEMICONDUCTOR AND COMPUTER PARTS TARIFFS

STATUS: The European Union ("EU") agreed to replace its 14 percent duties on semiconductor products over a ten year period with a range of tariffs on different types of semiconductors that effectively reduces overall duties by a third. The tariff on electronic computer components was reduced by 50 percent.

As of January 1, 1995, the EU expects to expand to include Austria, Sweden, Norway, and Finland. The EU and the four countries have finalized their negotiations, and the European Parliament intends to study and approve the treaties before it recesses for elections in June. The accession treaties will then have to be approved in national referendums later in the year.

Generally, as a requirement of joining the EU, the four countries will have to adopt most EU standards, directives and regulations, including the EU's tariff schedule. Therefore, as a result of the accession treaties, semiconductor tariffs in these four countries will go from little or no tariff to 14 percent.

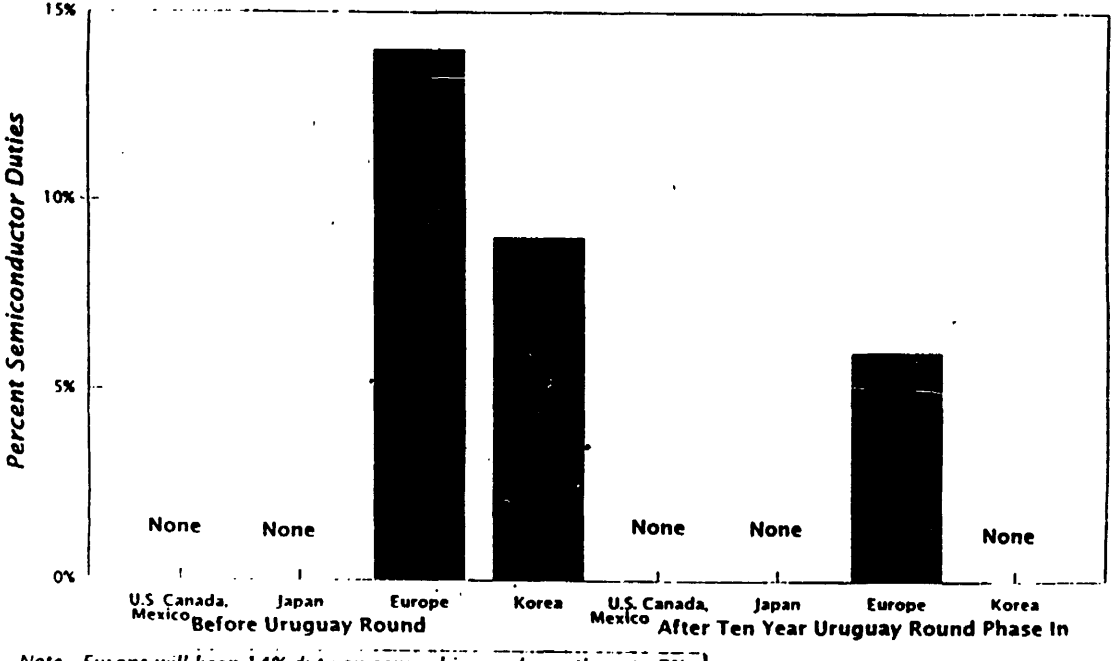
ISSUE: The Semiconductor Industry Association ("SIA") continues to support "zero-for-zero" tariffs for semiconductors, computer parts, and semiconductor manufacturing equipment and materials. SIA believes that the U.S. Government must continue to encourage the members of the EU to eliminate their duties on these products, or at a minimum accelerate their duty reduction programs. Otherwise the EU tariffs will continue placing U.S. exporters at an unfair competitive disadvantage ($340 million in U.S. export costs due to the EU's semiconductor and computer parts tariffs) and causing the loss of U.S. export jobs, sales and tax revenues, while EU manufacturers continue to benefit from duty-free access to the rest of the developed world including the North American market.

RECOMMENDATIONS: WTO Member countries should continue tariff negotiations:

Uruguay Round implementing legislation should contain legislation language similar to Section 201(b) of the CFTA and the NAFTA which will provide the President with the authority to proclaim, subject to consultation with Congress and the appropriate advisory committees, subsequent tariff reductions to maintain the general level of reciprocal and mutually advantageous concessions with respect to other parties to the agreements. This authority will also permit accelerated tariff reduction.

Finally, the U.S. Government should press on the EU to further decrease or accelerate reduction of semiconductor and computer part tariffs under GATT Article XXIV:6 EU enlargement negotiations for the accession of Austria, Sweden, Norway, and Finland.

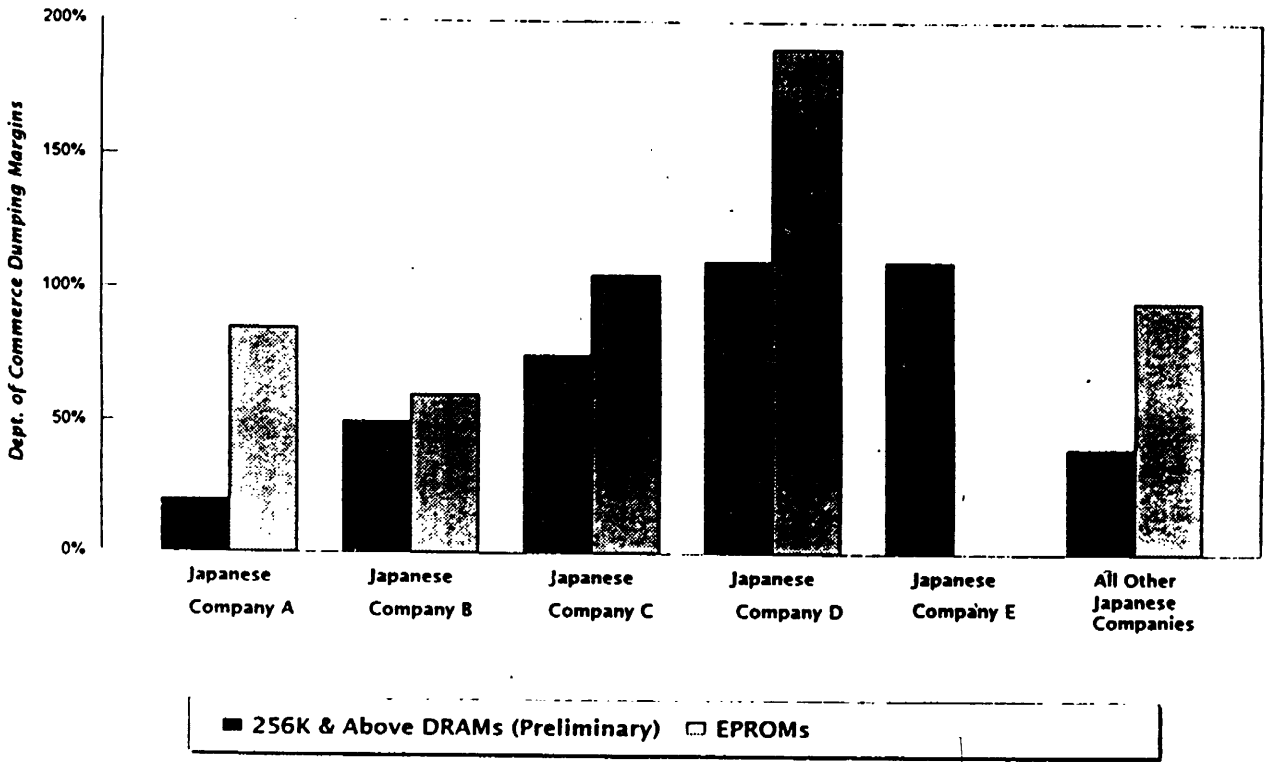
Uruguay Round Leaves Europe as Only Region with Protectionist Semiconductor Tariffs



Note Europe will keep 14% duty on some chips, reduce others to 7%, and eliminate duties for products which are not made in Europe.

GATT Implementing Legislation Must Deter Dumping

U.S. Chip Industry Suffered from Massive Japanese Dumping in mid-1980's



PREPARED STATEMENT OF JAMES K. BAKER

I am James K. Baker, Chairman and CEO of Arvin Industries in Columbus, Indiana, member and recent past Chairman of the U.S. Chamber's Board of Directors, and current Chairman of the Chamber's International Policy Committee. It is in the latter two capacities that I am appearing before you today. I appreciate very much your invitation to testify before this committee on legislation to implement the GATT Uruguay Round Agreement.

The success of the Uruguay Round negotiations has been a Chamber priority ever since the Round was commenced in 1986. After more than seven years and three U.S. administrations, we have an agreement. Not a perfect agreement by any means, but still an agreement that should be approved by this Congress as soon as possible.

The GATT process has been very successful in reducing tariff rates and increasing growth in world trade. Between 1948, the year of GATT's inception, and the beginning of the Uruguay Round, average tariff rates fell from 40 percent to five percent, and world trade grew eight-fold. The Chamber has long believed that the U.S. competitive position in world markets would be enhanced further by an agreement that (1) strengthened existing GATT rules and procedures (particularly its dispute-settlement process), (2) applied to areas of commerce that are not now covered, and (3) made further reductions in tariff and non-tariff obstacles to U.S. commerce.

The Chamber is grateful to the U.S. negotiators in the Reagan, Bush, and Clinton administrations who labored under very difficult circumstances to advance U.S. commercial interests in negotiations involving more than one hundred countries. Their efforts exemplify a relationship between the private and public sectors that should be emulated government-wide as the U.S. economy faces increasingly intense competition worldwide.

The Uruguay Round agreement embodies a resolution of many contentious issues—antidumping and countervailing duties, intellectual property, trade in services, trade-related investment, government procurement and dispute settlement, to name some. No country—including the United States—got everything it wanted. But all signatories to this agreement will have recognized our common interest in a stronger, more disciplined world trading system and the increased trade and commerce it will generate.

And, much more to the point of this hearing and the task facing this Congress, the United States must now decide to amend its laws, where necessary and appropriate, to bring them into conformity with the Uruguay Round agreement. At the same time, the United States faces the challenging task of crafting implementing legislation that simultaneously preserves U.S. prerogatives under its own trade laws and minimizes the likelihood of successful challenge in GATT dispute-settlement fora.

During the course of the Uruguay Round negotiations, the Chamber communicated its views to the U.S. government repeatedly and in considerable detail as to what it thought the U.S. negotiating positions should be. But one particularly important theme ran through all of our analyses and recommendations—namely, that the United States should be able to utilize its own domestic trade laws to fight foreign unfair trade practices.

Permit me to elaborate, yet also summarize, what the Chamber sought and what was achieved in some of the more critical areas.

ANTIDUMPING

The proposed antidumping rules would impact the operation of U.S. antidumping law in a number of ways. The Chamber has repeatedly expressed to the Bush and Clinton administrations its concerns about provisions dealing with who has standing to seek relief; whether antidumping orders should be "sunsetted;" the establishment of "de minimis" dumping margins and import volumes and other matters. The annex to my testimony identifies some areas where Congress can act to strengthen the U.S. position within the context of the agreement.

DISPUTE-SETTLEMENT UNDERSTANDING

The Chamber has long sought a strengthened dispute settlement process that is compatible with current U.S. trade law, including section 301. While the Chamber has taken no position on the specific features of the proposed World Trade Organization (WTO), it believes strongly that a fair and effective dispute-settlement mechanism is also an expeditious mechanism. The Chamber also believes that the agreement requires no material changes to the existing U.S. inventory of market-access statutes, such as section 301 and "special 301."

INTELLECTUAL PROPERTY

The Chamber has expressed a number of reservations about earlier draft Uruguay Round language on this subject. Those reservations refer to such matters as long transition periods for coverage under the new rules; lack of so-called "pipeline protection" for new products that might be pirated while they are waiting on lengthy patent-approval processes; excessively liberal allowances for compulsory licensing by foreign governments; exhaustion of intellectual property rights; inadequate copyright provisions; lack of clarity concerning whether certain biotechnology is patentable; and whether section 337 of the U.S. Trade and Tariff Act might need amendment. The annex to my testimony identifies some areas where Congress can act to strengthen the U.S. position within the context of the agreement.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The link between GATS and the market-access talks is critical. Significant progress on market access is a critical prerequisite for the success of this agreement. While there have been commitments to liberalize made by more than fifty countries, actual liberalization seems to be minimal, especially in Japan and the newly industrializing countries (NICs). So GATS appears to be largely a framework at this time.

SUBSIDIES

Much of the proposed language in earlier draft agreements has been criticized as needing clarification. In seeking clarification, the Chamber has also expressed concern that certain subsidies, such as regional development and R&D subsidies, might be too readily defined as "green-zone" or allowable.

The Chamber has also expressed opposition to the use of approaches to subsidies that might "parallel" those antidumping proposals which we have opposed. The final agreement does, in fact, categorize subsidies according to a "red-yellow-green" category and places regional development and R&D subsidies in the green category.

The Chamber understands and fully appreciates the concerns raise by Senator Danforth and others in their January 31 letter to Ambassador Kantor. The Chamber is concerned about the possible proliferation of so-called "green-light" subsidies that generate market inefficiencies and require countervailing public expenditures that exceed our ability to pay for them.

These and other unresolved issues must be subject to tough international discipline eventually. It is unfortunate that such discipline could not be achieved in the Uruguay Round. Therefore, the United States should seek to commence negotiations as soon as possible, while also reserving the right to take whatever actions are necessary and appropriate under countervailing duty and other U.S. laws to alleviate the negative impact of such subsidies on U.S. interests.

TRADE-RELATED INVESTMENT MEASURES (TRIMS)

Measures such as local content and export performance requirements have long been a thorn in the side of many U.S. companies trying to do business in foreign markets. And yet, until now there was no coverage in the existing GATT rules. The Uruguay Round agreement appears to fix this. Under the Uruguay Round agreement, TRMs would be phased out over a two to seven year period, depending on a country's level of economic development. After five years, the WTO would seek to determine whether additional investment and competition policy measures are needed.

The Chamber's position has been that TRIMs needed coverage under GATT but that the Dunkel language left certain key TRIMs—such as technology transfer requirements—out. This same concern extends to the final agreement. There has also been concern over whether developing countries might take excessive advantage of waivers applicable to them.

As with other potentially disputable topics, the United States must remain prepared to utilize both the WTO dispute-settlement process and its own trade laws to address these problems. Where ambiguity prevails, domestic U.S. interests should prevail until such time as the GATT dispute-settlement process finds against the United States. Textual ambiguity is *not* a justification for advance unilateral concessions by the U.S. government.

CONCLUSION

I will be frank with you. Many of the Chamber's members have expressed considerable angst over whether some of the Uruguay Round agreement's provisions could negatively affect the ability of the United States to achieve greater fairness in international trade rules and practices.

At the same time, most of these same members understand that failure to approve the agreement now before us would have even worse consequences. They understand that, for all the uncertainty surrounding this agreement, there are even more important benefits for the U.S. and world economy to enjoy when the agreement is implemented.

The Uruguay Round may have taken several years and it may have achieved unprecedented progress in many areas. However, it was not the "negotiation to end all negotiations." Nor should it ever be interpreted as an abdication of U.S. prerogatives to assert its own legitimate interests in the global market.

While the Chamber strongly supports approval of the Uruguay Round agreement, it also believes that a number of steps can be taken to enhance the value of that agreement to U.S. interests.

First, market-access negotiations are still underway in a number of areas and should be concluded to bring additional commercial benefits. This would provide additional progress toward creating expanded market opportunities for U.S. businesses.

Second, as noted earlier, the Uruguay Round package contains provisions relating to anti-dumping, dispute-settlement, intellectual property, subsidies, and trade-related investment that could negatively affect the ability of the United States to achieve greater fairness in international trade rules and practices. U.S. implementing legislation should provide interpretations and clarifications to those provisions wherever necessary in order to ensure that U.S. economic interests are advanced.

Third, the value of the Uruguay Round agreement will crucially depend upon effective monitoring and utilization of its provisions. Therefore, the U.S. implementing legislation should contain detailed language providing for the necessary monitoring and implementation activities by the U.S. government.

Fourth, the United States must continue efforts to negotiate mutually beneficial agreements with other countries—in the western hemisphere and elsewhere—that both fall outside the GATT per se *and* establish even higher standards of conduct, much as the North American Free Trade Agreement did.

And fifth and most importantly, the United States must continue to strengthen its own competitiveness at home so that we are more able to take advantage of those markets that the Uruguay Round and other trade agreements open up for us. This means continuous improvement in the quality of U.S. production processes, technologies and workforce. For in the end, it won't matter how many doors you open via trade agreements if you can't walk through them.

ATTACHMENT—ANNEX TO THE STATEMENT ON THE GATT URUGUAY ROUND AGREEMENT

The U.S. Chamber of Commerce reviewed the antidumping and trade-related intellectual property provisions of the 1994 GATT Uruguay Round Agreement. The antidumping provisions were measured against the Chamber's 1990 recommendations on the reform of U.S. antidumping laws. The Chamber recommends legislative changes with respect to the following issues that were addressed in the GATT Uruguay Round:

1. *"Standing."* Antidumping petitioning procedures should ensure appropriate access for domestic industry to relief from foreign dumping.
2. *"Weight averaging/domestic goods and export goods."* Improved methods of calculation are needed for determining whether prices of foreign goods in their home markets differ significantly from prices of those goods in the U.S. market.
3. *"Constructed vale/general sales and administrative expenses."* U.S. producers' general sales and administrative expenses should be considered in calculating dumping margins, when appropriate foreign exporters' data are not available.
4. *"Constructed value/profits."* Below-cost sales must be disregarded in calculating foreign exporters' profits and alternative methods should be considered.
5. *"Selection of currency exchange rates: use of 'lagged' exchange rates."* Limitations should be imposed on the use of exchange rates which distort price comparisons in dumping calculations.
6. *"Deduction of related importer profits from export (U.S.) prices."* Reasonable deductions of such profits from the total import price should be required, in order for U.S. practice to correspond more closely to that of our trading partners.
7. *"De minimis' dumping margins."* U.S. law should comply with the 1994 GATT agreement by defining "de minimis," i.e., not subject to investigation, as 2% or less of the foreigner's export price.
8. *"Cumulation (negligible imports)."* In antidumping cases involving a "regional" industry, the analysis of whether imports are negligible should be performed on a regional basis, to ensure consideration of a possible adverse impact on the domestic industry.

9. *"U.S. proposal regarding repeat offenders."* Congress should enact legislation to accelerate investigations and increase sanctions for repeat violators and evaders of antidumping orders.

10. *"Deterrence of injurious dumping through the application of penalties."* Congress should enact legislation to accelerate investigations and increase sanctions for repeat violators and evaders of U.S. antidumping orders.

11. *"Automatic termination of AD findings ('susnset')."* To ensure adequate time for preparation of review, U.S. law should define all orders entered prior to July 1, 1995 as entered on that date.

ATTACHMENT—TRADE-RELATED INTELLECTUAL PROPERTY (TRIPs)

General: Implementing legislation should:

1. Instruct U.S. government representatives to press the TRIPs Council to immediately begin fulfilling its obligation to monitor the operation of the TRIPs Agreement and members' compliance with their obligations under the agreement.

2. Retain to the maximum degree possible the flexibility for bilateral action currently available under Special 301. This is important because certain types of intellectual property rights violations that do not expressly violate the GATT will not have the benefit of the Uruguay Round's dispute-settlement mechanism for five years.

3. Contain measures to ensure careful monitoring of countries' application of the provisions in the TRIPs agreement on compulsory licensing and border measures, and to require U.S. action if there is evidence that these measures are being abused.

Transitional Arrangements: Uruguay Round provisions providing lengthy transitional arrangements for developing countries and countries undergoing change from centrally planned to market economies could slow or even halt progress toward improved intellectual property protection and enforcement if the transition period is abused by those countries. To prevent such an outcome, the following issues should be addressed in implementing legislation:

1. The transition period should be interpreted, not as a standstill period for, but rather a time period in which to undertake all measures necessary to fully meet TRIPs obligations at the latest by the end of the four year and nine year (for technologies not previously protected) transition periods. Extensions should be viewed as unacceptable.

2. The United States should take a leadership role in providing technical assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights (IPRs), prevention of the abuse of IPRs, and establishing the domestic personnel and offices relevant to those purposes, as provided for under Article 67 in TRIPs.

Section 337 [remedy against the importation of goods produced through violation(s) of U.S. intellectual property rights]

1. Section 337 should be modified only as necessary to meet the specific criticisms in the GATT Panel Report adopted by the GATT Council on November 7, 1989.

2. Provisions in the Uruguay Round legislative package dealing with modifications to Section 337 should substantially accord with S. 148, introduced by Senator Jay Rockefeller.

RESPONSE OF JAMES K. BAKER TO A QUESTION SUBMITTED BY SENATOR GRASSLEY

Question. Some individuals have raised concerns that the new "WTO" may impinge upon the question of national sovereignty. Do you agree with this statement or do you believe their are sufficient safeguards in place and the benefits of the "WTO" far outweigh the negative aspects?

Answer. The Chamber has concluded that the WTO does not infringe upon U.S. sovereignty. Furthermore, we have concluded that the WTO offers the United States additional leverage with which to achieve greater fairness and timeliness in world trade dispute resolution and thereby would make a major contribution to our economic interests.

I would like to single out what I believe are the four principal myths that have been raised:

Myth No. 1: U.S. domestic law, including environmental, labor and consumer standards, would be threatened by WTO dispute-settlement panel decisions.

Myth No. 2: The WTO would prevent the United States from using its laws to address foreign unfair trade practices.

Myth No. 3: The WTO would be an "economic United Nations" whose majorities can impose decisions contrary to U.S. interests.

Myth No. 4: The WTO would be a much more powerful organization than the current GATT institution and hence threatening to U.S. interests.

These criticisms are unfounded in fact and fail to recognize that the changes introduced by the Uruguay Round Agreement provide substantially greater opportunities for U.S. individuals and businesses to exercise their rights to operate in a more open global marketplace and to sell or buy from citizens of other countries with less government interference. Let's take these arguments one at a time:

Myth No. 1: U.S. domestic law, including environmental, labor and consumer standards, will be threatened by WTO dispute-settlement panel decisions. By joining WTO, the U.S. can be compelled to change its domestic laws by a decision of the WTO or dispute-settlement panels set up under WTO rules. Critics charge that American environmental, labor and consumer standards are at risk.

Response: No ruling by a dispute-settlement panel can become a part of U.S. law without Congressional action and Presidential signature. Joining the WTO would not require the United States to undertake a sweeping process of bringing its laws into conformity with WTO. The WTO rules are designed to speed up the dispute-settlement process and prevent the violator of agreed rules from blocking a decision. U.S. government officials and U.S. business have been highly critical of existing dispute-settlement rules. In the past, panels have taken from two to eight years to reach a decision which could then be indefinitely blocked by the violator. Therefore, a faster and more binding dispute-settlement process is a bipartisan goal which both the U.S. Congress and three Presidents have supported. The 1988 Trade Act establishes as Uruguay Round objectives "more effective and expeditious dispute-settlement mechanisms" and "mechanisms within the GATT to enable better enforcement of U.S. rights." These reflect a calculation that U.S. economic interests are served by stricter enforcement of international rules, even if on occasion decisions unfavorable to the United States must be adopted. If the United States is a defendant and loses a panel decision, it still retains the power to disregard the panel's decision and take unilateral action that is in the national interest.

Myth No. 2: The WTO would prevent the U.S. from using its laws to address foreign unfair trade practices. Membership in WTO would prevent the United States from using Section 301 and other trade laws for this purpose.

Response: The United States will be able to continue using Section 301 or Super 301, both to enforce our rights under the WTO and to address unfair trade actions not covered by our rights under the Uruguay Round Agreement. If the United States decided to undertake trade retaliation measures, these could be successfully challenged only if the WTO rights of the foreign government were infringed. Moreover, the United States can continue to assert its legitimate market-opening interests with the 145 countries that are not GATT members, led by China and Taiwan.

Myth No. 3: The WTO would be an "economic United Nations" whose majorities can impose decisions contrary to U.S. interests. By accepting the one-country, one-vote rule in WTO, it is alleged that U.S. law will be subject to challenges by the large majority of small, developing country members of the organization, who may be hostile to U.S. interests.

Response: Substantive WTO decisions, such as interpretations of WTO rules, require a ⅔ majority vote with no binding effect on countries who oppose the decision. Moreover, safeguards in WTO ensure that U.S. interests cannot be overridden by procedural ploys. In order to become binding, a proposed decision must first receive a ¾ majority vote that affirms that an issue is "procedural." That procedural issue would subsequently be subject to a vote requiring a ⅔ majority in order for it to become binding on all members. On important questions, the WTO is expected to continue the GATT tradition of decision by "consensus," under which agreement by major trading nations such as the United States is essential on major issues.

Myth No. 4: The WTO will be a much more powerful organization than the current GATT institution and hence threatening to legitimate U.S. interests. As such, the WTO will impose major new limitations on the ability of the United States to act.

Response: In fact, the WTO does extend the reach of international rules to major new areas of world trade, including services, intellectual property protection, and agricultural subsidies. More countries would be subject to rules of fairness under the so-called GATT Codes, such as subsidies, procurement, and standards. U.S. business has for some time argued that a more powerful multilateral mechanism is needed to ensure fair and timely resolution of trade dis-

putes. This would represent a major gain for the United States in getting other countries to play by the rules.

However, where WTO rules have been modified compared to the GATT, the impact for the U.S. is almost entirely positive. The WTO's rules are structured in such a way as to minimize the likelihood that WTO might disadvantage the United States. Safeguards against ⅔ majority decision-making are stronger. With regard to dispute-settlement, past experience suggests the United States will likely be the net beneficiary because it will help us to challenge successfully numerous "disguised" barriers to trade which exist among our trading partners.

Some argue WTO would subject the United States to control by a powerful, secretive, and independent international bureaucracy on which there are no democratic controls. In fact, the secretariat which administers GATT and which would provide administrative support for the new WTO is a small and politically neutral staff, which is closely watched and controlled by the member state representatives. Its ability to exert independent authority is minimal. The WTO, which would be a formal organization rather than an "agreement with a secretariat," will offer more opportunities for participation by non-governmental organizations and for greater openness in decision-making.

TIMELY DISPUTE SETTLEMENT AND THE WORLD TRADE ORGANIZATION

The Chamber has long been concerned with the inefficient workings of both U.S. and multilateral dispute settlement processes. Far too often, companies with legitimate grievances against foreign trade practices have had to wait years before their cases get resolved—by which time those companies could very well end up out of business.

In February 1987, the Chamber surveyed section 301 case files that USTR made available at the time. A principal purpose was to ascertain the amount of time section 301 cases took to resolve. Our survey did not focus on whether the resolution was favorable to petitioners or respondents. However, as the table below indicates, we found that section 301 cases that went to the GATT often took many years—4.6 years on average—to be resolved.

TYPE OF SECTION 301 CASE AVERAGE DURATION

Export subsidy cases (7 between 1975 and February 1987)	6.0 years
Other subsidy cases (4 between 1975 and February 1987)	4.2 years
General GATT cases (14 between 1975 and February 1987)	4.0 years
AVERAGE FOR ALL "GATT" SECTION 301 CASES	4.6 years

The conclusion that we drew was that, while the U.S. government appeared to be generally in conformance with deadlines established by our own laws, continuation of the case in GATT fora resulted in substantial delays. This is a principal reason why the Chamber supported the strengthening of section 301 and other market access laws as part of the 1988 Trade Act—in particular those provisions that required U.S. action against GATT or other trade agreement violations within eighteen months after an investigation was initiated or thirty days after conclusion of a dispute settlement procedure, whichever was earlier.

The 1988 law permits USTR to waive retaliation against trade agreement violations, but only if certain conditions are met, including a timely ruling by a GATT panel that is unfavorable to the United States.

And that is the point—timeliness. The Chamber believes that the WTO will provide for much improved timeliness in the dispute settlement process. Such timeliness should result in important net market-opening benefits for U.S. firms in the global market, given that our market is so much more open that those of our major trading partners.

In summary, the objections to WTO I have discussed are not supported by a dispassionate examination of the facts. However, I would like to conclude our assessment by observing that the WTO, with all its positive features, could, nevertheless, be employed for the pursuit of undesirable objectives. The future policies of our own government will be a key factor in determining whether or not this happens. Specifically, there is a danger—widely-perceived among the business community—that some within the U.S. Administration and Congress intend to use a future WTO to advance a broad social agenda unrelated to promoting fair and open global trade. These individuals see the WTO as a vehicle for linking action on labor standards and environmental protection to trade. It should be noted, however, that the risk

that WTO might be abused in this way stems from the possibility the United States will pursue misguided policies, not from any inherent deficiencies in the WTO itself.

Let me conclude by reiterating that the Chamber strongly supports rapid Congressional passage of an Uruguay Round implementing package. We recognize that the Uruguay Round Agreement is by no means perfect and I briefly addressed ways in which we believe implementing legislation could be enhanced. But we believe fears that the proposed WTO would be damaging to U.S. interests are unfounded.

It should also be emphasized that to reap the full benefits of world trade, U.S. participation in a new WTO must be part of sound overall trade and economic policies The United States should continue efforts wherever possible to negotiate mutually beneficial agreements with others—in the Western hemisphere and elsewhere—that deepen our trade cooperation beyond what was achieved in the Uruguay Round. In addition, the United States must continue to strengthen its competitiveness at home. This means continuous improvement in the quality of U.S. production processes, technologies, and the workforce. Support for a new global trade organization should simply be viewed as a useful part of this larger U.S. strategy to realize the economic potential of the global marketplace.

RESPONSE OF JAMES K. BAKER TO A QUESTION SUBMITTED BY SENATOR HATCH

Question. As a representative of the Chamber of Commerce, a wide range of business interests are embodied within the spectrum of the chamber. On balance, the Chamber obviously supports the overall goals of the Uruguay Round and the results of the agreement as a whole, but what are the critical areas that the Chamber is concerned with or would like to see improved?

Answer. While the U.S. Chamber strongly supports enactment of the GATT Uruguay Round implementing legislation in 1994, it believes that the agreement's value can be enhanced further by addressing the following issues:

ANTIDUMPING

The proposed antidumping rules would impact the operation of U.S. antidumping law in a number of ways. The Chamber has repeatedly expressed to the Bush and Clinton Administrations its concerns about provisions dealing with who has standing to seek relief; whether antidumping orders should be "sunsetted;" the establishment of "de minimis" dumping margins and import volumes; and other matters. The annex to my testimony identifies some areas where Congress can act to strengthen the U.S. position within the context of the agreement.

DISPUTE-SETTLEMENT UNDERSTANDING

The Chamber has long sought a strengthened dispute-settlement process that is compatible with current U.S. trade law, including section 301. The provisions of the Uruguay Round Agreement establish a more effective and expeditious dispute-settlement process that we believe does not require material changes to the existing U.S. inventory of market-access statutes, such as section 301 and "special 301."

INTELLECTUAL PROPERTY

The Chamber has expressed a number of reservations about earlier draft Uruguay Round language on this subject. Those reservations refer to such matters as long transition periods for coverage under the new rule; lack of so-called "pipeline protection" for new products that might be pirated while they are waiting on lengthy patent-approval processes; excessively liberal allowances for compulsory licensing by foreign governments; exhaustion of intellectual property rights; inadequate copyright provisions; lack of clarity concerning whether certain biotechnology is patentable; and whether section 337 of the U.S. Trade and Tariff Act might need amendment. The annex to my testimony identifies some areas where Congress can act to strengthen the U.S. position within the context of the agreement.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The link between GATS and the market-access talks is critical. Significant progress on market access is a critical prerequisite for the success of this agreement. While there have been commitments to liberalize made by more than 50, actual liberalization seems to be minimal, especially in Japan and the newly industrializing countries (NICs). So GATS appears to be largely a framework at this time.

SUBSIDIES

Much of the proposed language in earlier draft agreements has been criticized as needing clarification. In seeking clarification, the Chamber has also expressed concerns that certain subsidies, such as regional development and research and development (R&D) subsidies, might be too readily defined as "green-zone" or allowable.

The Chamber has also expressed opposition to the use of approaches to subsidies that might "parallel" those antidumping proposals which we have opposed. The final agreement does, in fact, categorize subsidies according to a "red-yellow-green" category and places regional development and R&D subsidies in the green category.

The Chamber understands and fully appreciates the concerns raised by Senator Danforth and others in their January 31 letter to Ambassador Kantor. The Chamber is concerned about the possible proliferation of so-called "green-light" subsidies that generate market inefficiencies and require countervailing public expenditures that exceed the United States' ability to pay for them.

These and other unresolved issues must be subject to tough international discipline eventually. It is unfortunate that such discipline could not be achieved in the Uruguay Round. Therefore, the United States should seek to commence negotiations as soon as possible, while also reserving the right to take whatever actions are necessary and appropriate under countervailing duty and other U.S. laws to alleviate the negative impact of such subsidies on U.S. interests.

TRADE-RELATED INVESTMENT MEASURES (TRIMS)

Measures such as local content and export performance requirements have long been a thorn in the side of many U.S. companies trying to do business in foreign markets. And yet, until now there was no coverage in the existing GATT rules. The Uruguay Round Agreement appears to fix this. Under the Uruguay Round Agreement, TRIMs would be phased out over a two to seven year period, depending on a country's level of economic development. After five years, the WTO would seek to determine whether additional investment and competition policy measures are needed.

The Chamber's position has been that TRIMs needed coverage under GATT but that the Dunkel language left certain key TRIMs—such as technology transfer requirements—out. This same concern extends to the final agreement. There has also been concern over whether developing countries might take excessive advantage of waivers applicable to them.

As with other potentially disputable topics, the United States must remain prepared to utilize both the WTO dispute-settlement process and its own trade laws to address these problems. Where ambiguity exists, domestic U.S. interests should prevail until such time as the GATT dispute-settlement process finds against the United States. Textual ambiguity is not a justification for advance unilateral concessions by the U.S. government.

PREPARED STATEMENT OF CURTIS H. BARNETTE

Thank you, Mr. Chairman. Like Mr. Appleton and other U.S. semiconductor producers, Bethlehem Steel and other U.S. steel producers are participants in the umbrella coalition known as the Committee to Support U.S. Trade Laws (or CSUSTL). While all CSUSTL members share a common commitment to maintaining the effectiveness of U.S. laws against unfair trade, we each have a somewhat different focus to our concerns about the trade laws. Accordingly, my testimony today is on behalf of the 30 U.S. member companies of the American Iron and Steel Institute (AISI) whose facilities account for about two-thirds of America's annual raw steel production. We are grateful to the Finance Committee for giving us this opportunity to testify on the impact of the GATT Uruguay Round and its implementation on AISI's U.S. member companies.

Two weeks ago, AISI testified before the Committee on the GATT Round, subsidies and countervailing measures -- an issue of vital importance to U.S. steelmakers. Today, I'd like to concentrate on the antidumping (AD) law and other critical trade law issues affected by the Uruguay Round.

Mr. Chairman, AISI greatly appreciates the efforts that you and others on the Committee made last year in trying to prevent the disaster that the Dunkel Draft would have been for our antidumping statute and other key U.S. laws against unfair trade. You will recall that I appeared before you on November 10, 1993 and urged you to go to Geneva.

More than four months earlier, on June 23rd, you had written to the President and stressed that the Committee was "concerned, in particular, with the provisions... on standing, cumulation, cost and profit methodologies, de minimis exceptions... and the termination of antidumping... duty orders." In addition, you said that we should "seek... effective measures to prevent circumvention of antidumping... duty orders and diversionary dumping."

I bring this up because, in spite of the outstanding efforts made in Geneva last fall by U.S. Trade Representative Kantor, Under Secretary Garten and the pro-trade law members of Congress, America's antidumping law was in fact substantially weakened by the Uruguay Round -- and we still need your help in ensuring that all of our laws against unfair trade remain as effective as possible.

The problem is: most of the trade law changes required by the Round are weakening changes. That's why it is absolutely imperative that Congress pass the strongest possible antidumping and other trade law provisions in legislation to implement the Round, consistent with U.S. obligations under the new GATT.

Though it's sometimes forgotten, Congress set in 1988, as a key U.S. negotiating objective for the Round, achievement of stronger disciplines against both dumping and subsidies. What the record shows is that this Committee and the Congress in general took the view that, as part of any pro-growth, pro-investment economic strategy, the United States must have good, effective laws against foreign dumping and other unfair trade practices.

Steel is a classic example of why strong trade laws and trade law enforcement are essential to future U.S. competitiveness. Since 1980, U.S. steel producers have probably used the antidumping law more than any other industry. And, contrary to reports in the mid-1980s of a "rust belt" industry in decline, America's steel producers have made remarkable progress.

Today we are the low-cost, high-quality producers in this market -- we can compete against fairly traded imports. U.S. producers have invested over $35 billion since 1980 and, as a result, we have: (i) more than doubled our labor productivity to world-leading levels; (ii) won back market share from Japan and other foreign competitors; (iii) gone head-to-head with plastics and aluminum; (iv) moved into important new market niches (such as steel frames in home construction); (v) increased substantially our exports; and (vi) projected a new competitive image with our strong support for NAFTA.

We have downsized, restructured and modernized in the face of soaring health care and pension legacy costs, increasingly costly environmental regulations and the world's worst capital cost recovery period for companies such as Bethlehem who remain Alternative Minimum Tax payers. And we have done all this -- at enormous financial, corporate and personal cost -- without the benefit of significant government subsidies, and in the face of global competition from highly subsidized foreign producers.

Unfortunately, much of the rest of the world's steel industry has not changed.

- We're still confronting a world with more than 100 million tons of unneeded, uneconomic excess steelmaking capacity -- that's as much steel as we consume annually in the U.S.

- We're still being forced to compete against the treasuries of foreign governments -- more than $100 billion in subsidies to steel since 1980.

- We're still being locked out of other countries' markets due to high tariffs, non-tariff barriers and anti-competitive cartel practices.

- And, chiefly as a result of foreign government subsidies and closed steel markets abroad, we're still being injured by the pervasive and chronic dumping of foreign steel -- that is, by foreign firms who sell steel here at prices either below than what they charge in their home markets or below their cost of production.

As the 1988 book Steel and the State makes eminently clear, the competitive environment that characterizes the world steel industry is not what Adam Smith and David Ricardo had in mind. It involves more than just competition between firms. It is marked by competition between fundamentally different economic systems.

It is this basic difference between the U.S. and other economies that makes having an effective antidumping law so important to our industry. Here in the United States, we have a functioning market economy -- and arguably the most open steel market in the world. In stark contrast, when we look abroad (and some of this information is summarized in the charts attached to my written statement), we see massive intervention in steel markets to enable otherwise uncreditworthy companies to stay afloat and modernize. We see extensive subsidies to support exports. We see the perpetuation of enormous overcapacity. We see closed markets. And we see cartels, customer and market allocations, special pricing arrangements and other entrenched private anti-competitive practices. These are precisely the conditions that promote and facilitate dumping in the U.S. market.

Congress has long recognized that the United States needs an effective dumping law. In a world of increasing commerce between countries whose economic systems differ markedly from one another,

the dumping law serves as a cornerstone of political and legal support for free trade and open markets. It acts as the international equivalent of national antitrust and predatory pricing laws. It helps to offset the effects of market distortions in other countries by preventing foreign firms from targeting market share in U.S. industries. It does not prohibit foreign firms from selling here at prices below what U.S. producers charge. It merely requires that foreign prices be based on market forces.

No U.S. company -- regardless of how competitive it is -- can compete effectively over time against foreign governments and firms whose prices are not based on market forces. Since 1948, the GATT has condemned injurious dumping as a pernicious practice that must not be allowed to destroy otherwise competitive domestic firms. And that is why most of the world's major trading nations have antidumping laws.

Over the past decade, advanced materials, semiconductors, steel and other strategic industries that are absolutely critical to America's long term prosperity have faced the most intense dumping by foreign competitors. Chronic and undeterred dumping of the kind that we've seen in steel destroys companies and jobs. It increases investment risk and deters investment. And, if it isn't offset, it can lead to disinvestment and the destruction of entire strategic industries.

The U.S. steel industry has been facing this problem for much longer than most others, and the cumulative damage to our industry reflects this. The harm done to U.S. steelworkers and steel producers by twenty-five years of dumped imports is incalculable.

The sustained, pervasive dumping of foreign steel in the U.S. market has helped drive up our cost of capital and made steelmaking in America a very difficult business. Today, there is only one U.S. integrated producer with investment grade debt. At the same time, dumping has led to the loss of tens of thousands of good manufacturing jobs in steel and related industries, to shattered communities -- and lives.

So, U.S. steel companies have fought back by filing cases as is our right under the GATT and U.S. law. But unfortunately, we have not always obtained full trade law enforcement from our government. The Commerce Department, for example, recently found that flat rolled steel was being dumped and subsidized in the U.S. market at margins averaging 37 percent (or $150 per ton). In fact, dumping margins ranged up to 109 percent! Yet, Bethlehem and the U.S. petitioners, at a cost of tens of millions of dollars, ultimately received only partial injury findings from the U.S. International Trade Commission (ITC).

In the end, many antidumping and countervailing duty (CVD) orders did not go into effect -- due to the failure of the ITC to follow the facts and the requirements of Congress and U.S. law. What happened was that dumped and subsidized products were let off the hook, due in large measure to the improper double and triple counting of sheet and strip products.

As a result, in the first 90 minutes following the ITC decision, the value of steel stocks on Wall Street decreased by $1.1 billion, and Bethlehem's stock fell by more than 20 percent. Thus, U.S. laws against unfair trade are certainly not biased against respondents. From a petitioner's standpoint, they were inadequate before the Round.

These facts and the related history have helped to shape our trade policy views. And they do not leave any room for further abuse of the U.S. market. We simply can't afford to allow the

competitive gains of U.S. producers to be undone by a weakening of our antidumping statute and other key laws against unfair trade. Effective trade laws are our only defense against predatory trade practices, and they must remain available to U.S. producers as a principal means of dealing with future unfair trade in steel.

And that brings me to our concerns about the Round. As I indicated at the start, I will not re-state here the problems that we have with the new "green lights" and a weakening of U.S. CVD law, because our testimony on March 9th already covered this ground. Instead, I will focus on our concerns in -- and proposed solutions for -- the areas of antidumping law (including injury determinations) and dispute settlement (including Section 301).

In reviewing the Round's results, let's remember again what our original goals were and why. Over the past decade, we've seen a continuing erosion in the effectiveness of U.S. antidumping law, as foreign companies have used increasingly sophisticated means to circumvent our law. Exporters who've used dumping as a successful commercial strategy have avoided our law by altering the product that's exported or by shifting the location of production to export platforms in third countries or to assembly outside of their home country. Meanwhile, foreign industrial targeting strategies have greatly increased both the likelihood and severity of dumping.

These were the reasons why the United States sought in the Uruguay Round to update and strengthen the GATT Antidumping Code and to ensure that the GATT would cover industrial targeting practices. Unfortunately, targeting remains uncovered by the new GATT and the result that was achieved in December -- even with the antidumping law improvements insisted upon and obtained by the United States -- represents a net weakening of U.S. AD law.

In the area of antidumping law, the Round contains stricter standing requirements, higher de minimis standards and a new five-year "sunset" provision that will make it even more difficult in the future to make the necessary investments in steel modernization. As a result of these and other weakening changes, U.S. antidumping cases will (i) be harder to bring, (ii) be harder to win, (iii) provide less relief for a shorter period of time and (iv) cost more money. In addition, the new Code does absolutely nothing to prevent circumvention of antidumping actions.

In the area of new GATT dispute settlement procedures, we also have some serious concerns about U.S. trade laws and U.S. sovereignty. We are concerned that, henceforth, international bureaucrats, historically hostile to U.S. trade laws, might be able to use binding panel decisions to overturn the dumping and subsidy laws passed by Congress and to thwart effective use of Section 301.

There are things that we can do, however, to help make U.S. trade laws -- including, in particular, our antidumping law -- as close to present law as possible. In the attachment to my statement, we list 6 major areas and 12 ways in which the damage to U.S. trade laws can be minimized if the Administration -- and Congress -- use available discretion under the new GATT to do everything possible to strengthen our laws against unfair trade.

- On injury, at least three issues are critical. First, the new GATT negligibility numbers of 3 and 7 percent should be treated as a "bright line" above which imports will not be deemed negligible. Second, internally consumed upstream products or "captive production" should only be included in the calculation of import market share where such products compete directly with imports. And third, with respect to the new GATT requirement that unfair trade margins below 2 percent not be actionable, we need to clarify that the size of margins is but one of several factors that ITC Commissioners need consider.

- In the AD area, there are also three major issues. First, the new GATT rules on averaging should only apply to investigations, not annual reviews, and an undue burden should not be placed on petitioners to demonstrate that a pattern of dumping targeted to customers or geographic regions exists. Second, the new Code's definitions of important tests of "sales below cost" should be clarified to accord as much as possible with current U.S. practice. And third, we need to ensure that the new procedure for arriving at "normal profit" does not rely upon abnormally depressed operating results.

- With respect to common AD/CVD concerns, there are at least two critical issues. First, we need to establish certain standards, presumptions and verification rules that ensure that the new "sunset" provision doesn't lead to the unwarranted elimination of relief. And second, we need to make sure that Commerce can still use "best information available" in appropriate circumstances.

- In the dispute settlement area, we have one overriding concern -- how to maintain as much as possible U.S. sovereignty. Here, at a minimum, we need to make it clear that, where a GATT panel rules against us, panel decisions that overturn settled interpretations of U.S. law will not be automatically implemented until they are reviewed and acted upon by Congress.

- And on Section 301, there are two main issues. First, we commend the Administration for its results-oriented approach to opening up Japan's markets, and strongly support the decision to renew Super 301. But we need to ensure that, just as USTR has promised, we can continue to use Section 301 where appropriate -- even if it's GATT-inconsistent and when it opens us up to retaliation. Second, we need to create a means by which the U.S. can act unilaterally if necessary to offset foreign cartel and other private anti-competitive practices.

Our message, then, is that, while damage has been done, there is still much that we can do. But Congress must have the <u>will</u> to do it. What we need is an implementing bill that:

(i) rebalances U.S. laws against unfair trade by accepting Uruguay Round changes where necessary and minimizing the harm from negative provisions;

(ii) takes advantage of GATT Round provisions not currently part of U.S. law and other affirmative measures not prohibited by the Agreement;

(iii) closes loopholes in existing U.S. law and practice;

(iv) eliminates, or at least reduces, the incentives to avoid our laws through circumvention or diversion; and

(v) simplifies the trade law process without prejudicing the results.

While we support, on balance, the GATT Uruguay Round, the Agreement contains some serious problems with respect to our trade remedy laws, and we want to work with you to help resolve them.

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Before I close, I'd like also to mention briefly two other issues of importance to U.S. steel producers: (i) the proposed Multilateral Steel Agreement (MSA) and (ii) steel tariff elimination, which is a part of the final Uruguay Round Agreement.

As you know, the MSA talks proceeded along a separate track from the Round, although the two negotiations dealt with many of the same issues (e.g., subsidies and market access) and, in the end, were linked in the public mind by the official communication that came out of the Tokyo Economic Summit last July.

But when the Uruguay Round Agreement was announced in mid-December, the U.S. and other governments agreed that it just wasn't possible to achieve an MSA at that time. This was a major disappointment to us. But again, the problem stemmed from the fundamental differences between the U.S. and other economies.

As a result of these differences, the U.S. and foreign governments disagreed as to whether the MSA should provide for (i) "green light" subsidies, (ii) extensive waivers from MSA subsidy disciplines and (iii) antidumping law pre-initiation consultations, which would politicize and further weaken U.S. antidumping law. Foreign governments wanted these MSA loopholes and trade law weakening changes. The U.S. government and industry did not.

The talks will resume again next month, and we certainly hope that they can be re-started on a sounder basis this time, because only an international steel agreement can address the root causes of world steel trade distortions: excess capacity, subsidies, dumping and toleration of private anti-competitive practices, which are increasingly important as a barrier to market access and as a cause of dumping in the U.S. market.

This is why we continue to offer strong support to the Administration in its efforts to achieve a comprehensive, effective and enforceable MSA that is "trade laws plus" -- an agreement that keeps our trade laws fully intact, plus ends subsidies, opens markets and eliminates cartel practices.

But AISI's U.S. member companies will not say yes to a bad international steel accord. We will not accept any agreement that diminishes in any way U.S. trade laws or our trade law rights.

Several weeks ago, I took part in an international steel trade policy conference here in Washington and recounted the history of the steel trade problem and the reasons we feel so strongly about this issue. I said that, in the 1970s, we had a Trigger Price Mechanism or "TPM" and it didn't stop dumping or subsidies; that, in the 1980s, we had the Voluntary Restraint Agreements or "VRAs" and they didn't stop subsidies or dumping; and that, in the 1990s, all we have are our trade law remedies -- and in this era of "TLRs," these laws must remain available to U.S. producers to address injurious unfair trade. We simply can't afford to see our laws weakened, even with an MSA.

While an acceptable, "trade laws plus" MSA will be the best way to deal with the pervasive problem of world steel subsidies, U.S. steel companies will still need effective trade laws to deal with the effects of past subsidies and present and future dumping.

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As to the Round's inclusion of zero-for-zero tariffs on steel mill products, our reaction has been one of concern. While we welcome new market access opportunities abroad, we're concerned that (i) not all major steel-producing countries have agreed to go to zero, (ii) many of those who've said "No" have the highest steel tariff barriers and (iii) the decision to go to zero has been taken without an acceptable MSA being in place. We'd simply urge that our government maintain the pressure by insisting that the parties keep the issue of continued steel tariff elimination under review, based on the progress made toward achieving an MSA.

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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

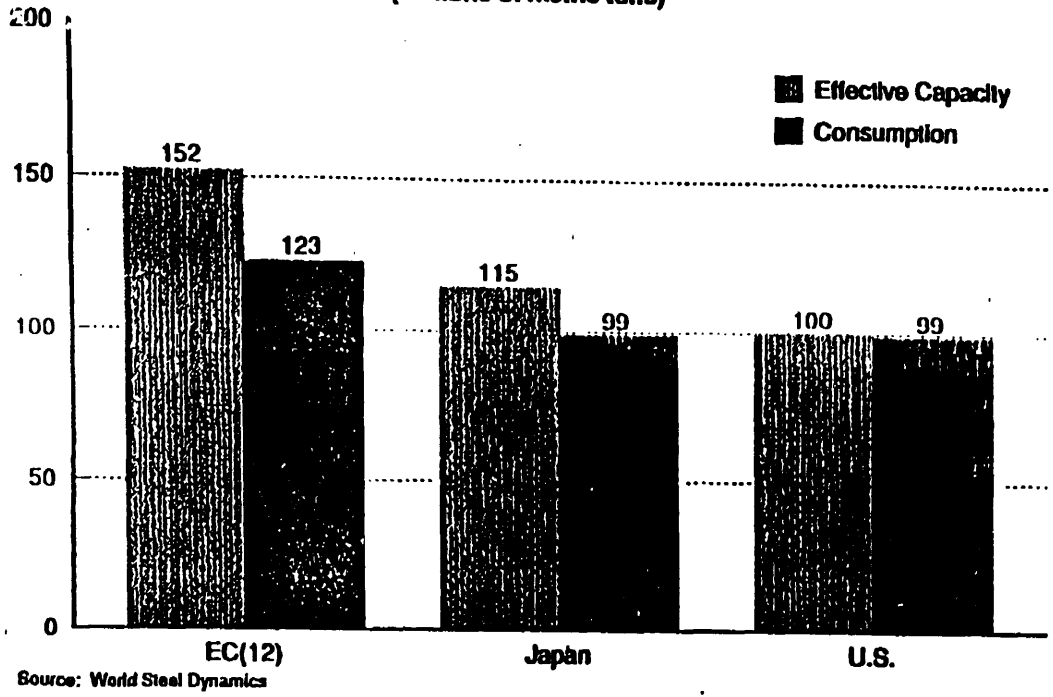
* Ranked in order of 1992 steel production (ex. USSR)
** British Steel privatized in late 1988 after 20 years of government ownership
P = Partial

There is no fair trade in steel mill products.

The GATT Uruguay Round implementing bill will have enormous significance for the future effectiveness of U.S. antidumping law, trade laws in genetal and our national economy. We thank you for allowing us to testify on the issue of the antidumping laws and other issues related to the GATT Round and U.S. implementing legislation. We look forward to working closely with you to ensure that the bill that does get enacted serves the national interest.

1992 Steel Capacity vs. Consumption

(millions of metric tons)

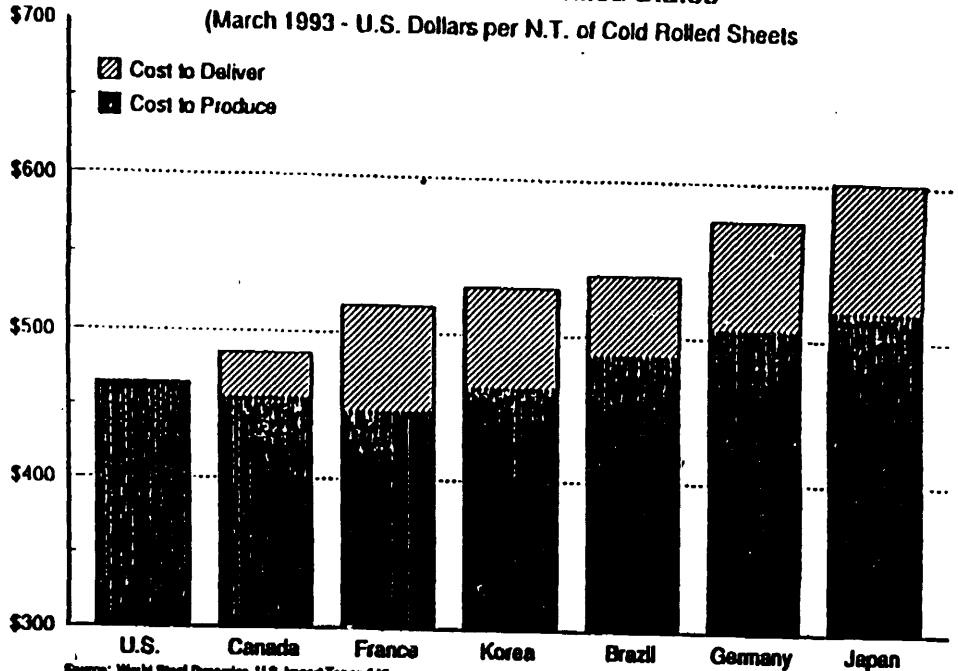


Source: World Steel Dynamics

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

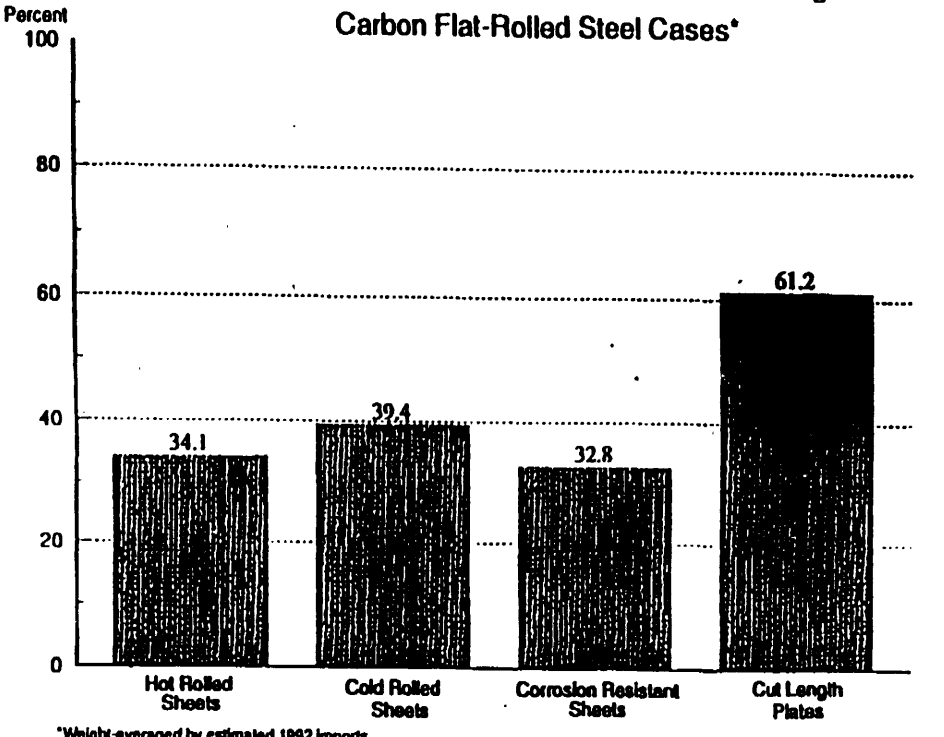
(March 1993 - U.S. Dollars per N.T. of Cold Rolled Sheets



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.

In spite of the impressive effort of our trade negotiating team, U.S. trade laws will be weakened as a result of the Uruguay Round Agreement. It will be more difficult for U.S. companies and workers to successfully use all three principal trade laws -- the antidumping law, the countervailing duty law and Section 301. The damage done to these statutes can, however, be minimized if the Administration uses available discretion under the new GATT to do everything possible to strengthen these laws.

INJURY

In order to obtain relief under the antidumping and countervailing duty statutes, U.S. companies must prove that the unfair trading practices of other countries are causing them injury. A number of provisions should be included in the implementing legislation to assure that American industry has a fair opportunity to prove its case.

Negligible Imports

Currently, the International Trade Commission can determine that unfairly traded imports are not causing injury because they are "negligible". The new GATT agreement specifies that countries that account for less than 3% of total imports are negligible and not causing injury (unless the combination of all the smaller unfairly traded imports constitute more than seven percent of total imports). This new standard should be included in the implementing legislation as a clear numerical test. Imports above these amounts should not be found to be negligible.

Captive Production

The import penetration ratio -- imports divided by the total U.S. market in a product - is a major factor in the injury analysis at the ITC. In some recent cases, some commissioners have included in the U.S. market for purposes of this calculation, all upstream interim product which was later transformed into a more advanced product by U.S. manufacturers. The effect of this artificial computation is to reduce import penetration by as much as two-thirds. The implementing legislation should require that internally consumed upstream interim products only be included in this calculation when they are shown to directly compete with the imported product.

Margins Analysis

The new GATT Agreement requires that the ITC Commissioners consider the size of unfair trade margins in their injury analysis and that margins below two percent not be actionable. The implementing bill should clarify that the Commission need only determine whether the unfairly traded imports are a cause of injury. Margins are but one of a number of factors to be considered.

ANTIDUMPING PROVISIONS

At the insistence of those trading partners that often dump in the United States market, several methodological changes were included in the Agreement. These changes have the effect of reducing the dumping margins in numerous cases. Here again, the new law should minimize the adverse effects of the Agreement.

Averaging

Under current U.S. practices, the average foreign market prices of a product are compared to specific sales prices in the U.S. This discourages targeted dumping by customers or geographic regions. The new agreement requires comparisons of averages both domestically and in the foreign market unless the Department of Commerce finds a pattern of targeting by the foreign dumper. The implementing legislation should specify that this change only applies to investigations and not to administrative reviews as provided in the Agreement and that an undue burden not be placed on petitioners to demonstrate the existence of a pattern of targeting.

Sales Below Cost

Under current U.S. practice, certain foreign market sales when made at prices less than the cost of production can be disregarded. The new Code adopts broad and confusing definitions of several of the important terms in the U.S. test. The implementing bill should clarify these definitions and stay as close as possible to current U.S. practice.

Normal Profit

Under current U.S. practice, when the Department of Commerce is calculating a constructed value, an eight percent profit must be included. The new Agreement eliminates the eight percent adjustment and substitute for it a "normal profit". The implementing legislation should ensure that the procedure for arriving at this "normal profit" does not rely upon abnormally depressed operating results.

COUNTERVAILING DUTY PROVISIONS

The new GATT agreement provides, for the first time, that U.S. companies cannot take action against certain subsidies, even though they cause injury to our industry in our market. The Implementing bill should be drafted to minimize the harm to the United States.

Greenlighting

Three specific kinds of injurious subsidies are no longer actionable under the new Agreement -- regional development subsidies, subsidies for research and applied research, and certain environmental subsidies. The implementing bill should narrowly define all of these greenlight categories. Further, it should provide that subsidies which predate the effective date of the Uruguay Round are not greenlighted; that greenlighted subsidies should be included in the calculation of dumping and in the analysis of injury; that the entire greenlighting

provision will expire after five years; and that it will not be re-enacted if there is evidence of abuse.

Financial Contribution

Some subsidies may escape action because they do not represent a "financial contribution" within the meaning of the new Agreement. The implementing legislation should make it clear that subsidy programs can be countervailed where they are provided through private action compelled by the government.

COMMON ISSUES FOR AD/CVD

Sunset

Under current U.S. practice, unfair trade duties continue as long as the unfair trade continues. The new Agreement provides that both antidumping and countervailing duties will sunset (terminate) after five years unless the administering authority has conducted a review and has determined that absent continuation of the order, dumping and injury to the domestic industry are likely to continue or recur.

The implementing legislation should contain a standard for the review which reflects the low threshold for continuation of an order intended by the agreement's language -- "likely to lead to a continuation or recurrence of dumping and injury." Reasonable and rebuttable prescriptions should be established by statute. Further, all respondent information should be verified.

It should further make it clear that no existing order should be terminated for at least five years after the new rule goes into effect.

Best Information Available

Under current U.S. law, when foreign respondents do not provide needed data, the Department of Commerce may use the best information available to fill information gaps. The new agreement provides that the administering authority should not disregard less than ideal information if the submitter "acted to the best of his ability". The implementing legislation should clarify that the rule of adverse inference should continue to apply and that any exception should be narrowly construed.

DISPUTE SETTLEMENT

Under current GATT practice, panels of international bureaucrats determine whether actions of member countries violate their international agreements. These decisions, however, are only adopted by the GATT by unanimous agreement. For the first time, under this new Agreement these panel decisions will be automatically adopted. The implementing legislation should clarify that these decisions are not automatically implemented but still require Congressional review and action where a settled interpretation of U.S. law is overturned. Fur-

ther, it should clarify that Congress will provide criteria for assessing the efficacy of this dispute settlement process as part of a four year review. The Administration should be required to report annually on the fairness of the dispute settlement decisions.

SECTION 301

Foreign governments are claiming that the new GATT Agreement eliminates the ability of the U.S. to use Section 301 other than with the concurrence of GATT panels. The implementing legislation should provide, consistent with the USTR representations to the Industry Policy Advisory Committee, that Section 301 will be used when appropriate even when such use is GATT inconsistent and will open up the U.S. to retaliation. In addition, the implementing bill should create a mechanism whereby the U.S. can act unilaterally to address burdens on U.S. commerce caused by anti-competitive activity in foreign markets.

CONCLUSION

The inclusion of these provisions in the Uruguay Round implementing legislation will assure that U.S. companies and workers still have access to effective remedies to redress unfair trade.

RESPONSES OF CURTIS H. BARNETTE TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Sunset

The Code requires that orders be terminated within five years of the effective date of the agreement unless the administering authorities determine that termination is likely to lead to continuation or recurrence of injury and dumping.

1. Consistent with the terms of the Code, existing orders should not be sunsetted until five years after the Code goes into effect. Both the Antidumping and Subsidies Codes deem all outstanding orders to be imposed on the date the WTO enters into force.

2. Consistent with the Code, U.S. law should clarify that orders will be maintained when the facts establish the likelihood of injury and dumping, and refrain from automatic termination of orders without rigorous analysis. Antidumping duty orders are intended to afford "breathing room" for injured domestic industries to increase revenues for reinvestment in research, efficiency improvements, and/or capacity expansion. The relief afforded injured domestic industries must not be terminated without a thorough examination of all factors which may indicate a likelihood of continuation or recurrence of injury and dumping.

Congress must provide guidance to the agencies regarding the factors to be considered in this analysis. For example, investment by the domestic industry to increase its competitiveness must not be interpreted as evidence of economic health which would prevent a finding of continuation or recurrence of injury. It should be made clear that an industry may be vulnerable to injury if dumping continues or recurs, even if it appears healthy at the time of the analysis. Unutilized

foreign production capacity and evidence of dumping in other markets should be among the important factors considered as to whether dumping is likely to continue or recur.

It is not clear whether the WTO presumes there will be a burden on either party. However, where dumping continues through five years, there should be a strong, rebuttable presumption that dumping and injury are likely to continue if the order is lifted. It makes little sense to think that dumping will not continue once an order is lifted if it continued to occur with the order in place.

Weakening of the Unfair Trade Laws

In the absence of implementing legislation that strengthens the U.S. trade laws to the maximum extent permissible, the final WTO agreement will substantially weaken the U.S. unfair trade laws. This is contrary to the express intent of Congress, which made strengthening the trade laws a key Uruguay Round negotiating objective in the 1988 Omnibus Trade and Competitiveness Act.

Already the unfair trade laws are inadequate to secure relief for U.S. industries beset by unfair trade practices. Domestic industries win less than half of the cases they bring. In flat-rolled steel cases, the International Trade Commission refused to find injury in nearly half the cases notwithstanding weighted margins of unfair trade that averaged 37%. Further weakening of the law would be devastating to U.S. manufacturing.

Generally speaking the new rules make it more difficult for domestic industries to bring cases, win relief, and maintain the relief once won. Whether the end-result of adopting the WTO will result in serious weakening of the U.S. trade laws depends on the shape of the implementing legislation.

For all cases, standing requirements have been made more stringent. Furthermore, all cases now will be subjected to a sunset review even where dumping and subsidization continue.

At the insistence of those trading partners that often dump in the United States market, several methodological changes were included in the Agreement. These changes (in calculating margins and determining constructed value, for example) will have the effect of reducing the dumping margins in numerous cases.

The new Subsidies Code provides, for the first time, that U.S. companies cannot take action against certain subsidies, even though they cause injury to our industry in our market. This is harmful to the steel industry, since our foreign competitors have received over $100 billion in subsidies since 1980 and continue today to pour vast sums into maintaining what is otherwise uneconomic capacity.

On balance, the WTO agreement would, absent strong implementing legislation, weaken the U.S. trade laws. To rebalance the U.S. trade laws, the implementing legislation should be carefully crafted to maximize the ability of the United States to offset unfair trade. Attached is a paper prepared by the industry that sets forth our main concerns and recommended implementing legislation provisions.

Consequences of No GATT Agreement

The steel industry is a strong supporter of free and fair trade. With implementing legislation that strengthens the U.S. trade laws to the maximum extent permissible, the industry would be a strong supporter of the Round. Until the shape of the implementing legislation is known, it is difficult to know whether passage of the agreement is, on balance, better than the status quo.

PREPARED STATEMENT OF SENATOR JEFF BINGAMAN

Mr. Chairman, I appreciate the opportunity to testify before your committee this morning. It is with a great degree of humility that I come before you to discuss the results of the Uruguay Round of the GATT negotiations in the area of subsidies and countervailing measures.

In preparing for the hearing I looked over the full 50 page Agreement on Subsidies and Countervailing Measures for the first time. I was struck by how complex a document you are dealing with, which perhaps is the inevitable result of over seven years of negotiations. Many of the most important points in the document are included in the sixty-five footnotes with which the agreement is peppered.

I do not come before you as an expert in the negotiating history of these fifty pages and sixty-five footnotes. Nor do I claim to begin to understand the full implications of the subsidies agreement for Federal and State government policy.

In only one area do I claim some expertise, the issue of the "green lighting" of certain research and development subsidies. In the typical way that Washington works, I was drawn into this issue in the summer of 1992 because of the outbreak of a high level conflict in the executive branch between the trade policy community and the technology policy community over the implications of the Dunkel text for the technology policy the Bush administration was pursuing with the support of the Congress.

I will not try to recapitulate the entire history of why this clash between the trade and technology policy communities broke out so belatedly. Dr. Bloch, from whom you will hear later this morning, and his colleagues at the Council on Competitiveness produced an eighteen-page case study on this matter in March 1993, which makes it clear that there was plenty of blame to be assigned to both communities.

Suffice it to say that from late 1989 when the European Community first advanced several proposals on how R&D subsidies should be treated in the subsidies code until the end of the Bush administration, the reconciliation of our trade and technology policies never occurred. One official involved in the executive branch's deliberations on the matter described those discussions to the Council on Competitiveness as "two ships passing in the night." Obviously, this is not a rare event in Washington. But the Council's report also came to the conclusion that this policy disarray had not served United States' interests in the GATT negotiations. One of my favorite lines in the report is the quotation of a former U.S. trade negotiator who likened our first reaction to the European Community's proposals on research subsidies in the 1990 time frame to "Bambi meets Godzilla." Unfortunately, we were Bambi.

Like most in the technology policy community, I had been unaware of the implications of the emerging Uruguay Round agreement for our R&D policy until President Bush's Science and Technology Advisor, Dr. Allan Bromley, brought the issue to public attention in August 1992 at an Industrial Research Institute roundtable discussion. After discussing the issue with Dr Bromley and examining the Dunkel text, which by that time had become the default option in the negotiations—that is, the likely result barring further intervention from the United States—I was concerned with three aspects of that text first the definitions of "basic industrial research" and "applied research," which were to be made partially non-actionable under the draft agreement, second and [illegible] to the first problem with the definitions, the percentages of government support allowed under these categories before the research became [illegible] third and most important, the prenotification of every research program [illegible] individual activities under each program, in great detail to the GATT Subsidies Committee in order for the program to qualify for non-actionable status.

Let me take each of these [illegible] you why they were inconsistent with the technology policy [illegible] pursuing at least since the passage of the Bayh Dole [illegible] Technology Innovation Act in 1980.

The Dunkel text [illegible] as "original theoretical and experimental [illegible] better understanding of the laws of science [illegible] apply to an industrial activity." It defined [illegible] experimental work based on the results [illegible] new knowledge to facilitate the attainment of specific [illegible] the creation of new products, production processes or services.

Neither of these definitions were [illegible] were they in our national interest. A fair reading of the definition of basic industrial research would have effectively captured the entire federally supported and State government supported basic research enterprise in this country by far the largest in the world. Since the vast pre-

ponderance of that research is not carried out with a requirement for fifty percent cost-share with industry, and appropriately so, it would have all been actionable under the Dunkel text.

The definition of applied research was so loose that it would have encompassed development of specific products by specific firms, large enough a loophole to drive an Airbus through as one person put it to me. This is an area in which there is a bipartisan consensus in this country that government action should be constrained, particularly in light of our own dismal experience with the Synfuels Corporation and other past development subsidies. Allowing up to 25 per cent subsidization of such development work was definitely not a loophole we should be opening for other nations to exploit.

Finally, even if we fixed the definitions and the allowed government cost-shares to bring the Dunkel text into conformity with our own practice, the prenotification provisions in Article 8 of the Dunkel Subsidies text would have had a chilling effect on all the government-industry partnership activities in applied research and precompetitive development which have grown up over the past decade in this country.

There are several thousand cooperative research and development agreements between federal laboratories—the National Institutes of Health, the National Institute of Standards and Technology, the NASA, DOD, DOE and EPA labs—and the private sector under the Stevenson-Wydler Technology Innovation Act, as amended in 1986 by Congressman Fuqua and Senator Dole and in 1989 by Senator Domenici and myself. There are numerous other cooperative arrangements, such as SEMATECH or small business innovation research projects undertaken under other legal authorities.

Notifying each of these arrangements to the GATT Subsidies Committee in the detail required would have slowed this process enormously. Many firms, I suspect, would not have put up with the further delays and the possible disclosure of proprietary information which would have been entailed. To the extent they would have, a vast bureaucracy of accountants and lawyers would have grown up here and in Geneva to deal with the details of this enormous number of cases.

With the largest federally funded research enterprise in the world, larger than those of Japan, Germany, France and the United Kingdom combined, the United States should have no interest in slowing the transfer of technologies developed at federal expense by our mission agencies to our industry or in impeding greater collaboration between the mission agencies and industry in technologies of mutual interest.

Mr. Chairman, at this point in the fall of 1992, with Ambassador Hills pressing to conclude the Uruguay Round during the Bush Administration and the trade and technology communities at an impasse in the executive branch, Congressman George Brown, three members of this committee, Senator Riegle, Senator Danforth, and Senator Rockefeller, and I joined in a letter to Ambassador Hills (attachment 1) expressing concerns about the Dunkel text, specifically the chilling effect on US industry-government cooperation in science and technology programs and the loophole on the actionability of development subsidies under GATT. In that letter we suggested that the research subsidy green lighting be simply abandoned for the Uruguay Round. Dr. Bromley had informed me that he had specific fixes for the research subsidy language to bring it into conformity with our practices, but the possibility of renegotiating the entire code under short deadlines when we had no consensus appeared remote.

As this committee well knows, Ambassador Hills' December 1992 goal to complete GATT was not achieved, luckily from the point of view of the research community. When the Clinton administration came to office, its first priority in the trade arena was the completion of the North American Free Trade Agreement (NAFTA) side agreements and then Congressional approval of NAFTA. Despite the call in the Council on Competitiveness's March 1993 case study, which I referred to earlier, both for this issue to be dealt with and for an improved coordination process between trade and technology policy to be put into place, my impression is that the problem of reconciling trade and technology policy in the Dunkel subsidies text continued unresolved. In the course of 1993, literally every technology agency from the National Institutes of Health to the Department of Defense weighed in in opposition to the text. But as of mid-November when NAFTA was approved by Congress and senior trade policy officials finally turned their attention to completing GATT by the expiration of fast-track authority December 15, the default position on the research subsidies language remained the Dunkel text.

So in a November 19 letter (attachment 2), a bipartisan, bicameral group of legislators wrote to the President pointing out the inconsistency between the Dunkel text and our bipartisan technology policy. Since we believed, as we had the year before in similar circumstances, that renegotiation of the research provisions in the sub-

sidy code with less than four weeks remaining would be a daunting task, we recommended that the provisions on R&D subsidies be dropped to be considered in a future round.

This letter together with similar letters from groups such as the Council on Competitiveness and the Institute of Electrical and Electronics Engineers apparently may have had some effect on raising this issue to a high policy level in the executive branch. In any case the administration decided to act. But their judgment ultimately was that fixing the problems I enumerated earlier in the Dunkel text was both possible and more likely to be negotiable, particularly in light of the European Community's original push to include R&D subsidies in the 1990 Cartland drafts, than an effort to simply postpone the issue to a future round as we had proposed.

Mr. Chairman, I think that our trade negotiators did an admirable job in addressing the concerns which the technology community had raised while closing the loophole on development subsidies which should have been of great concern to the trade community. The definitions were tightened and brought into conformity with the bipartisan consensus in this country on the appropriate role of government in research and development.

Fundamental research activities independently conducted by higher education or research establishments were made completely non-actionable. Government can contribute up to 75 percent of the costs of "industrial research," which is essentially applied fundamental research relevant to industry, a much improved definition, and up to 50 percent of the costs of "precompetitive development activity," which is research activity up to the creation of the first prototype, provided that prototype is not capable of commercial use.

I should note at this point that it was President Bush who first coined the term "precompetitive development" in a February 1990 speech to the American Electronics Association, as he tried to define the appropriate extent of federal support of R&D and to distinguish his technology policy from the "industrial policies" of his predecessors in the 1970s.

Further stages of development remain completely actionable under the Uruguay Round subsidies code. I repeat that the commercial development loophole in the Dunkel text's definition of applied research was closed.

Finally, a sentence was added to footnote 33, the effect of which was to remove the need for prenotification of every research activity in order for such an activity ultimately to qualify for non-actionable status. The sentence says that you can wait until challenged to prove the activity conforms to the non-actionable criteria. This will not prevent subsidy programs from being notified to the GATT or from being challenged. As I read Article 25, the United States and all other member countries and organizations must annually notify all subsidies, specific and non-specific, in some detail to the GATT. And the United States may well choose to notify R&D programs, as opposed to individual activities, under Article 8.

Mr. Chairman, as I said earlier, I personally found this an extraordinary accomplishment in the final stages of a long and difficult negotiation. For all of the reasons I outlined earlier, I believe that we are far better off with this agreement on research subsidies than the Dunkel text.

I also believe that we are better off with this text than the Tokyo Round agreement's ambiguity with regard to research subsidies. A fair reading of the Tokyo Round code would be that all research subsidies are potentially countervailable. However, the Tokyo Round code also mentions research subsidies for high technology industries in a positive light as an appropriate government policy. I understand that no one had challenged research, as opposed to development, subsidies in the intervening years.

The final Uruguay Round Subsidies Code now effectively puts into law what had been practice. Fundamental research is an appropriate role of government that should not be countervailed. Development subsidies are not an appropriate role of government and should be subject to challenge. The gray area in between these two categories has itself been divided in two—industrial research and pre-competitive development activity—with appropriate limits on the role of government consistent with practice in this country.

Indeed, I believe that the GATT agreement on these categories could help discipline our technology policy process. For example, I understand that Senator Baucus has already moved to bring his environmental technology bill, S. 978, into conformity with the GATT guidelines. My hope is that individual firms, who have in the past been active in seeking earmarks in the appropriations process for actionable research activities, will be restrained to the extent they hope to avoid countervailing duties on their products.

With by far the highest government research budget in the world, not only in absolute terms, but as a percentage of our gross national product, we had a great deal

at stake in these negotiations. In the end I believe that our interests were well served.

Mr. Chairman, let me conclude by noting that I have only begun to understand the full sweep of the GATT agreement on a wide range of federal policy areas. The document before the committee today, the subsidies code, clearly has implications for tax policy (indeed the first footnote says redemption of value-added taxes on exports is not a subsidy), for environmental policy, for the economic development policies of State governments, and probably for numerous other areas. The annual filing required by Article 25 of all federal and State government subsidies, both direct subsidies and tax expenditures, will be a massive undertaking, if my literal reading of it is correct. We will all learn a great deal from our submission and those of other countries about the full extent of government subsidies here and abroad.

So I now have a much better understanding of the enormity of the task before your committee in the months ahead to understand the full Uruguay Round GATT agreement and make a recommendation to the Senate on whether to approve it. It is clearly one of the most important decisions each of us in this Congress will be called upon to make and one I personally hope to be able to make in the affirmative. If I can be of any assistance to the committee in that process, please call on me. I would be happy to answer any questions you may have on my testimony today.

Congress of the United States

Washington, DC 20515

December 11, 1992

The Honorable Carla A. Hills
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

There is widespread concern in the Senate and the House of Representatives regarding the renegotiation of the subsidies rules in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Specifically, we are concerned with the language defining certain types of research assistance as non-actionable subsidies. There is some fear the Dunkel Text on research will have a "chilling" effect on U.S. industry-government cooperation in science and technology programs. It also may negatively affect the actionability of subsidies for industrial research under GATT and U.S. trade law.

Our concerns with the current Dunkel Text would be assuaged if efforts to include assistance for research activities as a non-actionable subsidy for the purposes of this round of GATT negotiations were abandoned. This would permit federal support for research to continue to serve U.S. industry, while preserving a course of action under GATT when U.S. companies are injured by foreign research subsidies.

Thank you for considering our views on this important issue.

Sincerely,

GEORGE E. BROWN, JR.
Member of Congress

DONALD W. RIEGLE, JR.
U.S. Senate

JOHN C. DANFORTH
U.S. Senate

JEFF BINGAMAN
U.S. Senate

JOHN D. ROCKEFELLER IV
U.S. Senate

Congress of the United States

Washington, DC 20515

November 19, 1993

The President
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our deep concern regarding the subsidies provision of the Uruguay Round's "Dunkel" draft text, specifically the language regarding the treatment of research as a domestic subsidy.

As we understand this provision, subsidies embodied in technologies commercialized as a result of government-industry partnerships would be vulnerable to trade action under the GATT in cases where the government share of the partnership exceeds 50 percent of the costs of "basic industrial research" or 25 percent of the costs of "applied industrial research." Moreover, even below the 50 percent or 25 percent level, respectively, research subsidies would be "non-actionable" only if the GATT Subsidies Committee were notified in advance of that assistance in sufficient detail to allow the Committee to evaluate the program's conformance to the new GATT code. Neither basic nor applied industrial research is satisfactorily defined in the text.

The pre-notification requirement is particularly troublesome because of its potential deterrent effect on companies contemplating entering into technology partnerships with the federal government, such as cooperative research and development agreements with federal laboratories, small business innovative research grants, the technology reinvestment project, and the advanced technology program.

We believe that inadequate consideration has been given to this provision. If adopted, it would be extremely detrimental to U.S. interests. Technology transfer from federal laboratories to U.S. industry, for example, is a legitimate effort to capture the economic benefits of federal research. Cost-shared government-industry partnerships, like SEMATECH, have over the past six years become increasingly the norm for the conduct of applied research relevant to industry. If the government contribution to these partnerships would make any results of a partnership potentially subject to trade action, then our efforts to enhance U.S. technological competitiveness will be seriously endangered.

A year ago several of us wrote United States Trade Representative Carla Hills to express our concern that this provision was clearly inconsistent with the Bush administration's technology policy. This inconsistency is even more glaring in your administration, with its endorsement of such cost-shared government-industry technology partnerships as the clean car initiative, pursuant to the technology policy you announced February 22. All of these efforts fostered by three administrations over the past decade would be threatened by the Dunkel text on research subsidies. While every other industrialized nation pursues similar technology partnerships, our industry would be at a particular disadvantage under the Dunkel text because of the relative openness of our budget process and the numerous public reporting requirements on our programs to facilitate oversight by the Congress. Ironically, many other nations provide the bulk of their aid to industry indirectly through tax holidays, favorable bank loans, subsidized land, etc.--subsidies which would not be captured by the Dunkel language.

Unfortunately, it was the United States Government which lobbied to have the research subsidies language included in the Dunkel text. The trade officials involved were apparently aiming at Airbus and Ariane with their proposed language, but missed the mark and managed mostly to put our own technology partnership programs in the GATT bureaucracy's sights. The resulting language was later opposed by President Bush's Science and Technology Advisor Allan Bromley and literally every other senior technology policy official of the Bush administration.

We believe that trade and technology policy must be reconciled. Given the short time remaining to conclude the Uruguay Round, we would urge you to direct our negotiators to seek to remove the language on research subsidies from the final Uruguay Round text pending further study. The existing GATT subsidies language, which results from the 1979 Tokyo Round, has not and would not pose a threat to your technology policy.

Sincerely,

GEORGE E. BROWN, JR.
MEMBER OF CONGRESS

JEFF BINGAMAN
U.S. SENATE

HELEN DELICH BENTLEY
MEMBER OF CONGRESS

JOSEPH I. LIEBERMAN
U.S. SENATE

HERB KLEIN
MEMBER OF CONGRESS

SHERWOOD BOEHLERT
MEMBER OF CONGRESS

DICK SWETT
MEMBER OF CONGRESS

TIM ROEMER
MEMBER OF CONGRESS

PAUL E. KANJORSKI
MEMBER OF CONGRESS

TIM VALENTINE
MEMBER OF CONGRESS

J. BENNETT JOHNSTON
U.S. SENATE

PETE V. DOMENICI
U.S. SENATE

DON RIEGLE
U.S. SENATE

PATRICIA SCHROEDER
MEMBER OF CONGRESS

CONSTANCE A. MORELLA
MEMBER OF CONGRESS

CARL LEVIN
U.S. SENATE

J. ROBERT KERREY
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JOHN J. LAFALCE
MEMBER OF CONGRESS

DAVID PRYOR
U.S. SENATE

TOM HARKIN
U.S. SENATE

EDWARD M. KENNEDY
U.S. SENATE

PREPARED STATEMENT OF ERICH BLOCH

I. INTRODUCTION

My name is Erich Bloch, and I am the Distinguished Fellow at the Council on Competitiveness. The Council is a nonprofit, nonpartisan organization of chief executives from business, higher education, and organized labor who have come together to improve the ability of American companies and workers to compete in world markets while building a rising standard of living at home.

Before joining the Council, I was the Director of the National Science Foundation (NSF). In both of these positions, my concern has been, and remains, the linkage between science and technology on the one hand and the country's economic competitiveness on the other. That both of these issues are closely linked has been acknowledged by our trading partners and by ourselves for a long time. We and they have recognized that in the modern world it is knowledge, technology, and education that are the raw materials for a vibrant economy, jobs, and a high standard of living. As Director of NSF throughout the second Reagan Administration and part of the Bush Administration, I worked at strengthening our nation's investment in R&D in general, but civilian R&D in particular.

That the last three Administrations and the present one agree with the importance of civilian R&D is born out by their budgets: between 1981 and 1991 federally funded civilian R&D, excluding support to universities, increased by 30% from $11 billion to $14.5 billion and from 1991 to 1995 by 38% to $20 billion. In other words, all of these Administrations have recognized the vital role civilian R&D plays in contributing to the economic well-being of our society.

II. GATT AND R&D SUBSIDIES: COUNCIL VIEWS ON THE DUNKEL DRAFT

The Council first addressed the issue of the GATT R&D Subsidies Code last summer in its report, Roadmap for Results: Trade Policy, Technology and American Competitiveness. The report drew the clear lessons that U.S. trade and technology policy need to be better coordinated and the different priorities and views of the trade and technology policy communities better taken into consideration. Throughout the U.S. negotiating process, there were differences between the trade policy view that all subsidies, including those for research and development, should be treated as potentially trade distorting and the technology policy view that governments have a legitimate role in supporting basic and applied research.

In the final months and weeks of the Uruguay Round, the GATT R&D Subsidies issue and the trade-technology differences over this issue arose again. A major concern at the Council on Competitiveness was to ensure that the United States retained its freedom of action in the civilian R&D area, particularly in light of the new Administration's attempt to expand existing government-industry technology cooperation. Accordingly, on December 2nd, then-Council Chairman George Fisher (Chairman, CEO and President of Eastman Kodak Company) and Council Vice Chairman Thomas Everhart (President of the California Institute of Technology) sent a letter to President Clinton expressing concern with the impending agreement's impact on U.S. technology policy programs.

The **problems** the letter outlined with the existing text (the Dunkel Draft) were four-fold:

- *It contained distinct and separate definitions of basic and applied research that were inappropriate.* The text's strict separation of basic and applied research did not reflect the reality of how technological progress is achieved.
- *It contained caps on subsidies for basic and experimental research.* Governments have a legitimate role in supporting basic and applied research in the sciences, technology, and other areas. This role should not have been limited.
- *The text's notification provisions for nonactionable GATT status may have required our national laboratories and companies to reveal their strategic research roadmaps to our international competitors.* Under these notification provisions, a number of important Federal research programs and technology transfer commercialization efforts (e.g. "Clean Car") could have become open to foreign review and potential challenge.
- *More broadly and most significantly, the then existing Subsidies Chapter could have undermined the potential for cooperative government-industry partnerships,* which the Clinton Administration properly and thoughtfully identified to be of crucial importance to our nation's transition to a post-Cold War economy.

The letter's recommendations, which were much in line with those of the U.S. industry Advisory Committee on Trade Policy Negotiations (ACTPN) Task Force on Industrial Subsidies, were as follows:

- Establish a single category of research that includes both basic and experimental research, all subsidies for which should be regarded as nonactionable.
- *Remove limits and caps on government funding for basic and experimental research.*
- *Do not make nonactionability for research subsidies contingent upon notification to the GATT.*
- *Modify the Subsidy Chapter's definition of applied research* to make clearer the distinction between this and product development.
- Make subsidies for product development clearly actionable under the GATT.

III. GATT AND R&D SUBSIDIES: COUNCIL VIEWS ON THE FINAL AGREEMENT

One of the Council's main concerns in the Subsidies Code negotiations was to protect cooperative government-academia-industry research partnerships and to preserve the country's freedom of action for needed support for basic and applied research. We believe that the changes made in the final Uruguay Round agreement address these concerns and result in a workable framework for our policies.

The **improvements** we see are three-fold:

- *Clear and appropriate distinctions have been made between fundamental research; industrial research; and pre-competitive, commercial development research.*
- *More importantly, fundamental research—correctly defined as "an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives"—has been made completely non-actionable.* The Dunkel Draft's treatment of fundamental research was vague and imprecise. The final text's definition and treatment of fundamental research are clear and specific.
- *Furthermore, nonactionability for research subsidies was not made contingent upon prior notification to the GATT.* U.S. research institutes, R&D facilities, and American companies will not be required by the Uruguay Round agreement to reveal to the GATT Subsidies Committee their research plans and technology roadmaps.

IV. GATT AND R&D SUBSIDIES: OTHER COUNCIL CONCERNS

The Council fully supports the negotiated R&D Subsidies agreement. We have no position on some of the issues in the agreement, such as subsidies for regional development and for environmental protection. Yet, we agree with some of the concerns expressed by others—that some of the provisions for pre-competitive development activity may be interpreted differently or even abused by other countries and could conceivably cause adverse effects on our industries. In particular, we should monitor the use of the "green light" provisions to ascertain whether our trading partners are providing large subsidies for big-ticket projects in a way that might distort market behavior.

We want to point out, however, that the final agreement requires that:

- no later than 18 months after the date of entry into force of the agreement, a review of the provisions for, and definitions of, industrial research and pre-competitive development activity be undertaken;
- the provisions pertaining to non-actionable subsidies, remedies, and serious prejudice will expire automatically five years after the entry into force of the agreement, unless it is decided to continue them.

These reviews should provide the U.S. government, American industry, and our nation's research community with an opportunity to advance necessary modifications to these provisions. We should be ready to take advantage of both of these opportunities, if that is required.

V. THE IMPORTANCE OF OUR CIVILIAN R&D PROGRAMS

In closing, I would like to reiterate the concern that principally motivated the Council's involvement in the GATT R&D Subsidies issue. The Council on Competitiveness recognizes that the global economic balance has changed enormously over the last few decades; technology innovation has become an increasingly important determinant of economic growth and competitiveness; U.S. government-industry-academia partnerships are essential to technology innovation and, through this path, American competitiveness. Our policy, therefore, must be to encourage these partnerships.

The Council has expressed itself forcefully on the issue of government-academia-industry technology, investment programs. In our January 1994 report, Technology

Policy Implementation Assessment, which is the Council's latest review of the U.S. government's technology policy implementation efforts, we stated:

- Initiatives such as the Advanced Technology Program and projects related to the National Information Infrastructure should be expanded considerably so that they can have a significant impact on U.S. industrial competitiveness.
- Manufacturing Technology Centers must be expanded and integrated into a network that provides comprehensive service to all geographic regions.
- And the U.S. government, in cooperation with American industry and academia, must refocus the technical capabilities and expertise of its Federal labs on issues of economic competitiveness.

In this vein, the Council on Competitiveness strongly supports the provisions of S. 4, the National Competitiveness Act.

In the final weeks of the Uruguay Round, the Council acted on the concern that the Dunkel Draft's language on R&D subsidies could undermine programs and initiatives like those mentioned above. This concern was addressed by the Administration's effort to improve the final agreement. It is now up to Congress to move forward.

Thank you.

PREPARED STATEMENT OF LAWRENCE W. CLARKSON

Good morning Mr. Chairman and Members of the Committee. I am Larry Clarkson, Corporate Vice President for Planning and International Development, The Boeing Company. I appreciate the opportunity to be here today to provide you with The Boeing Company perspective on the Uruguay Round Agreement on Subsidies and Countervailing Measures.

Mr. Chairman, it is no exaggeration to state that international trade is the Boeing Company's lifeblood. In 1993, more than 70 percent—or $14 billion out of $20.5 billion—of our commercial aircraft deliveries were from foreign customers. In 1993, the jobs of 60,000 Boeing employees were directly related to foreign aircraft orders. Over 60 percent of our backlog for commercial jet transports is for orders from foreign customers. Our ten-year long range forecast is that 65 percent of the market will continue to be with foreign carriers. Foreign sales are essential to generating the revenues required to develop and launch the new products that keep us a highly competitive industry leader.

Our ability to continue to sell our products overseas depends upon a strong, rules-based multilateral trading system that we believe will be the outgrowth of the Uruguay Round Agreement. It also depends upon effective international rules governing foreign government support for the development of national aerospace industries. We firmly believe that the new Subsidies Code Agreement will help discipline foreign aircraft subsidies and provide the U.S. Government with more effective measures to address foreign government subsidization.

One of the principal challenges we continue to face as an industry is the threat posed by foreign government subsidies. These subsidies take a variety of forms, including development and production funding and equity infusions. Inadequate rules governing foreign government subsidization contributed to the emergence of highly competitive aerospace firms in Europe and are fostering the development of additional aerospace capacity in Asia and the former Soviet Union. Unless and until foreign firms are bound by the same profit and loss constraints that dictate the investment and pricing decisions of U.S. firms, they will have the luxury of offering generous pricing, providing preferential financing, developing new products, and incorporating new technologies without the same regard for commercial constraints that we face.

The Boeing Company has encouraged the U.S. Government to pursue two parallel efforts to curtail trade-distorting subsidies in the aircraft sector. One effort has been to improve disciplines over government supports provided to our principal foreign rival, Airbus Industrie. In July of 1992, after five years of negotiations, the United States and the European Community reached an agreement which provides some important limits on government support in this sector. The U.S.-EC Bilateral Agreement on Large Civil Aircraft prohibits production funding and provides strict terms and conditions over development funding.

The second effort involved strengthening what we view as the baseline of subsidies disciplines, the GATT Subsidies Code. This second track became critical to the broader effort to limit trade-distorting subsidies in our sector because of the inherent limitations of the bilateral agreement.

- The U.S.-EC bilateral agreement does not include a concrete dispute settlement procedure, nor is there any GATT-sanctioned basis for taking countervailing duty action. As such, the only means of resolving disputes is unilateral, rather than multilateral.
- The bilateral agreement does not include any prohibition on export subsidies. The prohibited list of export subsidies has been one of the most important contributions of the current GATT Subsidies Code and served as the basis for the successful U.S. challenge to the German currency exchange risk insurance program in 1991.
- The bilateral agreement is prospective in nature, and does not include any disciplines on past subsidization.
- Finally, the agreement only applies to the U.S. and the European Union and only to aircraft with more than 100 seats. This left other countries (and other products) bound by either the previously weaker disciplines of the current GATT Subsidies Code, or in the case of certain other aircraft producers, which have not taken on the obligations of the GATT Civil Aircraft Agreement or the GATT Subsidies Code, no disciplines at all.

While a number of these limitations could have been addressed if the U.S. Government had been successful in improving the terms of the U.S.-EC bilateral agreement and extending its coverage to other countries, we never viewed that effort as a substitute for the ongoing Uruguay Round negotiations to improve the overarching GATT Subsidies Code.

The Boeing Company's objectives for the Subsidies Code negotiations were fourfold:

- To ensure continued coverage of civil aircraft under the disciplines of the Subsidies Code.
- To secure additional improvements in subsidies disciplines and to ensure that all GATT aircraft producers were bound by these disciplines.
- To maintain the right to use Section 301 or other U.S. trade laws to address issues that were not covered under the agreement.
- To ensure that any green-lighting of government subsidies was tightly circumscribed.

We are happy to report that to a large extent our objectives for the negotiations were achieved. A great deal of credit goes to both Ambassador Kantor, and to key Members of Congress and their staffs who were vigilant in ensuring that the interests of the U.S. aerospace industry were not compromised in the final days of the negotiations.

Despite intense efforts by the European Community to secure an exclusion of civil aircraft from the terms of the Subsidies Code and thus not be bound by the same disciplines as other industries, civil aircraft remains subject to the new strengthened disciplines of this agreement. However, it should be noted that to secure this coverage, several concessions were made. Civil aircraft is now excluded from the numerical test that will define when serious prejudice can be presumed to exist as a result of product-related subsidies. In addition, the text provides that falling behind on royalty repayments does not "in itself" constitute serious prejudice.

Notwithstanding these modifications, we firmly believe that the new Subsidies Code agreement is a substantial improvement over existing rules on government subsidies. Improvements over the existing Subsidies Code include:

- Broader country coverage, given that all GATT signatories will have to take on the obligations of the Code under the new terms of the World Trade Organization. This will be particularly helpful as additional aerospace capacity is contemplated in countries that might not have agreed to take on the obligations of the GATT Civil Aircraft Agreement or the previous Subsidies Code.
- A reaffirmation and expansion of the important list of prohibited export subsidies.
- A new standard for determining the extent of foreign government subsidization that is based upon the concept of benefit-to-recipient rather than cost-of-borrowing to a government (except for Article 6.1 actions).
- Clearer definitions of what constitutes an actionable subsidy.
- Agreement that certain government supports—such as those for debt forgiveness or operating losses—are presumed to distort trade flows.
- More automatic and streamlined dispute settlement, with strict—time limits.

Mr. Chairman, one of the most contentious and controversial issues in the final days of the negotiations was the effort to green light certain types of government support, including government R&D activities. Since The Boeing Company and

other representatives of the aircraft industry were involved in this issue from the early days of the Subsidies Code negotiations, a brief history of the application of the provision to aircraft may be helpful.

Under the 1979 GATT Subsidies Code, research and development activities were subject, under certain conditions, to offsetting trade measures under either the GATT Subsidies Code or domestic trade statutes. The Boeing Company's goal in the Subsidies Code negotiations was to carve out a defined category of government research support that would be non-actionable, while at the same time ensure that development support with direct commercial application remained potentially actionable.

The Boeing Company believes that government-sponsored research activities have a negligible effect on trade flows and subsequently should not be subject to trade remedies. This is in no way a commentary on the utility of these important government programs. We strongly support funding for NASA's aeronautical R&T programs which are essential to industry's ability to explore issues that improve aircraft technologies. At the same time, however, we would note that The Boeing Company has spent billions of dollars of its own resources over the past few years on R&D that was directly relevant to the development, production and improvement of our product line.

Our views on the applicability of trade rules to government-sponsored R&D programs are in sharp contrast to the views of the Europeans. They argue—buttressed by European-financed reports that exaggerate the benefits that have accrued to the U.S. civil aircraft industry from NASA and DoD R&D contracts—that government-supported research activities have an effect on trade comparable to that of development and production funding, and therefore these programs should be bound by disciplines comparable to those governing other forms of government support.

At the most fundamental level, our views on the treatment of R&D, as well as other forms of government support, are grounded in an assessment of whether there is any actual effect on trade. As governmental activities move along the R&D continuum into development, *where the effect on trade is more direct,* we believe it is critical that these programs remain subject to trade measures. Our bottom line remains to balance a legitimate government role in supporting research with ensuring that government activities directly related to commercial aircraft development and production remain subject to international trade disciplines.

The negotiations on the R&D provision were complicated. Prior to the release of the Dunkel Subsidies text in December 1991, we expressed serious reservations with the provisions on R&D. In particular, we opposed the establishment of thresholds above which subsidies for research would be actionable. Furthermore, we believed that the definitions in the text, particularly the definition of applied research, went beyond what should be permissible for our industry. To safeguard our industry from these potentially troublesome provisions, the U.S. negotiators in 1991 secured a footnote excluding civil aircraft R&D activities from this provision.

The Boeing Company, working with other civil aircraft manufacturers and representative of the technical community developed the following definitions which we recommended be incorporated into the Dunkel text.

- Basic fundamental research consists of original, experimental or theoretical investigations conducted to advance human knowledge in scientific and engineering fields. Basic exploratory research takes fundamental research to create useful concepts that can be *subsequently* developed into commercial materials, processes or products. *We believed that one hundred percent of this type of research should be green-lighted.*
- Development is defined as those activities directed toward obtaining specific knowledge into a plan or design for new, modified or improved product, processes or services, whether intended for sale or use. It includes the conceptual formulation, design and testing of products/processes/service alternatives, the construction of prototypes, and the operation of initial, scaled-down system or pilot plans. *We argued that development support, which directly affects the commercial viability and costs of new programs, and therefore would affect trade flows should remain actionable.*

Mr. Chairman, during the final days of the Uruguay Round negotiations, the U.S. Government acknowledged that it was willing to accept making what was termed "pre-competitive development" permissible under the new Subsidies Code agreement.

The green-lighting of "pre-competitive development" would have undermined existing development funding disciplines of the U.S.-EC bilateral aircraft agreement as well as all of our efforts to secure disciplines over the development activities of other aircraft producers. We could not support any degredation of the specific rules

governing development funding which the U.S. Government so painstakingly achieved, particularly given that development funding has been one of the preferred routes for foreign governments to support an aerospace industry.

We worked closely with the U.S. negotiators to ensure that the footnote excluding civil aircraft from the terms of this provision was maintained. As a result, the provisions green-lighting support for industrial research and pre-competitive development activity do not apply to government-supported civil aircraft R&D activities. These activities remain potentially actionable under the GATT Subsidies Code and U.S. countervailing duty law.

The Boeing Company cannot comment on whether green-lighting R&D would cause problems for other segments of the U.S. business community. However, we do note that there is a provision in the text that provides for an eighteen month review of the green-light provisions with a view toward modification if such modification is warranted.

We would also point out that other types of subsidies are green-lighted in the text. We share concerns about the new categories of subsidies—regional assistance and environmental aids—that would be permissible under the Subsidies Code. Hopefully, with a vigilant program of monitoring and enforcement, these concerns can be addressed. In particular, we would note that there are notification, consultation and remedy provisions in the text, which if enforced should help to ensure that these subsidies do not adversely affect the trading interests of signatories to the Code.

Mr. Chairman, in conclusion, let me state that the Boeing Company believes that on balance, the Subsidies Code provides U.S. industry and the U.S. Government with improved tools for addressing the problems associated with foreign government subsidization. For our sector, the new Subsidies Code is an essential component of a set of international rules and disciplines that should help move foreign aircraft manufacturers toward more commercially-competitive behavior. Thank you.

RESPONSES OF LAWRENCE W. CLARKSON TO QUESTIONS SUBMITTED BY SENATOR DAVID PRYOR

Question No. 1. RE: Taiwan—What is the difference between your proposed arrangement with Taiwan, as reported in the Financial Times (2/21/94), and the joint venture that McDonnell Douglas attempted with Taiwan a few years ago? Can you explain how your effort would be treated under the GATT?

Answer. This particular Financial Times article is not factual. Boeing has not made an agreement with Taiwan Aerospace to jointly develop a 100-seat regional jet.

Question No. 2. RE: China—A 2/29/94 article in The Economist refers to a deal between Boeing and Xian Aircraft which could lead to the Chinese producing most of the back half of a new generation of the 737 aircraft. That article states that the Chinese would be offered the same work on all new 737s that Boeing would sell worldwide. Is Xian Aircraft subsidized by the Chinese g vernment? Is this similar to subsidies European governments provide to Airbus?

Answer. Boeing is in discussion with Xian Aircraft Co. to place additional work in that company. Currently, XAC builds the vertical fin and horizontal stabilizer for the Boeing 737. An MOU has been signed for XAC to build Section 48 of the airplane which joins the other two sections already made by XAC. This does not constitute "most of the back half" of the airplane. It is anticipated that XAC will make these same assemblies for Boeing's new-generation 737–X aircraft. XAC is owned and controlled by the Chinese government but is in the process of privatizing.

Airbus governments have been providing massive subsidies to the Airbus companies to launch new commercial aircraft for 25 years. This has caused the introduction of new airplanes into the marketplace that would not have occurred except for the presence of government subsidies.

XAC is a parts manufacturer and has no impact on the market for commercial aircraft.

Question No. 3. RE: YSX—My understanding is that Boeing will decide in the next few months whether to take part in the development of a 70-seat passenger aircraft (YSX) being planned by Japan's private and public sectors. It seems that the development of this aircraft would include designing a new cockpit which could be used on the YSX and 737? Can you explain how financing would be handled for such a joint venture. Isn't this development subsidies?

Answer. Boeing has been approached by the Japanese Aircraft Industry to take part in the development of the 70 to 80-seat YSX. Boeing is currently reviewing the invitation and has not reached any conclusion at this time about participation.

There are no current plans for Boeing to participate in this program. No discussions have taken place regarding the 70 to 80-seat YSX design or any financing aspects.

Question No. 4. RE: Japanese Government Funding—Does the 20% Japanese workshare of the 777 fall under the development subsidies as negotiated under GATT? Can you explain the difference between this arrangement and the Airbus Industrie subsidies?

Answer. The Japanese industry's workshare on the 777 is approximately 20% of the airframe structure, which is equivalent to about 9% of the total airplane.

Japan is not a signatory of the 1992 GATT Civil Aircraft Bilateral Agreement. Moreover, Japan does not manufacture commercial transport aircraft.' Their share of the total 777 airplane is small, and whatever subsidies the Japanese industry has received have not resulted in prices which distort normal market prices. Therefore, there has been no significant impact on the marketplace for commercial transport airplanes resulting from Japanese industry participation.

Question No. 5. RE: Boeing Benefits from Japanese Relations—How much foreign support has The Boeing Company benefited from as a result of the relationship with the Japanese manufacturers? How long has Boeing been involved with Fuji, Kawasaki, and Mitsubishi Heavy Industries?

Answer. Boeing has not received any benefit from the Japanese Government by virtue of its contractual relationship with the Japanese Aircraft Industry. Boeing negotiates a contract price in the context of competitive market forces in our industry.

The Boeing Company has worked with Fuji, Kawasaki, and Mitsubishi Heavy Industries for over three decades.

Question No. 6. RE: Airbus and VLCT—The Washington Post reported that Boeing decided to include Airbus Industrie as an advisor in Boeing's VLCT (Very Large Commercial Transport). Will government financial assistance be required? How many jobs will be exported to these other foreign companies as a result of this VLCT being jointly manufactured?

Answer. The Airbus participation in the VLCT Feasibility Study Committee is confined to the role of an advisor to the European members of the Committee. Boeing finances its commercial airplane programs from private sector funding. Due to the high risk and immense cost of development for the VLCT, Boeing is exploring potential business relationships with certain European manufacturers. At present, it is our belief that the risks and costs of this program dictate a joint venture arrangement involving multiple partners including foreign manufacturers. If a joint program is agreed upon, this will enable this new aircraft to be developed, thus creating and sustaining more U.S. jobs.

[Submitted by Senator John C. Danforth]

MEMO FAXED FROM USTR GENEVA ON NOVEMBER 27, 1993

"If the green category of the Dunkel draft Subsidies Code is expanded to include development subsidies, the [U.S. Government] will ostensibly choose between matching or exceeding foreign subsidies or accepting the reduced competitiveness of U.S. manufacturers. If the first choice is made, budget resources will have to be made available or the choice is illusory, and the reduction of subsidies discipline would create a net loss to the U.S. economy, as others could subsidize and we would not.

"The overall effect on the economy can be positive only as long as we remain willing and able to exceed foreign subsidies, and to be selective in the particular areas subsidized. . . . Thus, a decision to reduce subsidies disciplines requires a commitment to be subsidy leaders, both in choosing beneficiary sectors and amounts given, if we are to ensure positive economic effects for the United States. Because the Code will be in effect for many years, the commitment must also be long-term."

PREPARED STATEMENT OF DONALD G. FISHER

Good morning Mr. Chairman and members of the Senate Finance Committee.

My name is Donald G. Fisher. I am the Chairman and CEO of The Gap, Inc., and I am appearing today to speak on behalf of the National Retail Federation, the nation's oldest and largest trade association that speaks for the retail industry. Mr. Chairman, I also have a Presidential appointment and am privileged to serve on Ambassador Kantor's Advisory Committee on Trade and Policy Negotiations (ACTPN) which has been active throughout the Uruguay Round process and has

provided information and advice to U.S. negotiators. I thank the Committee for this opportunity to testify on behalf of the Federation, The Gap and the nation's retailers.

The National Retail Federation represents the entire spectrum of retailing, from the nation's leading department and chain stores to specialty shops to small, independent stores. We also represent several dozen national retail associations and all 50 state retail associations. Our membership represents an industry that encompasses over 1.3 million retail establishments with sales in excess of $2 trillion last year. Our industry employs 1 in 5 working Americans, or nearly 20 million people.

Retailers have a nationwide presence. We are in every city and town, from the Deep South to the West Coast to the Great Midwest. The general store, the local car dealer, the corner grocery store, the downtown department store and the specialty store all are part of the retail industry—an industry which every one of you and every family in the country knows and does business with on a regular basis.

To remain competitive and to keep our people employed, retailers must locate merchandise that offers value to American consumers, *at a price they can afford to pay*. Our industry is consumer driven: the customer, not the retailer, ultimately determines what sells and what stays on the shelf. This means that the market is subject to constant change. For a retailer to stay in business, we must anticipate the market's direction and meet customer demand.

Competition in the retail industry is fierce. Retailers do not make excess profits as some would have you believe. In our industry, 4–5% after tax profits is an exceptional performance. In fact, our industry's average after tax profitability is only about 2%. We must constantly innovate to compete effectively. No federal subsidies, bail-outs, or guaranteed markets protect retailers. Those who cannot thrive in this environment do not survive. In fact, since 1990 more than 50,000 retailers have filed for bankruptcy, and nearly half the top 100 department stores in business in 1980 have shut their doors permanently. It's that simple.

The Gap, Inc. is a specialty retailer which operates stores under five brand names: Gap, GapKids, babyGap, Banana Republic, and our newest division, Old Navy Clothing Co. I founded the company with my wife almost 25 years ago, opening the first store in San Francisco in 1969. At the end of fiscal 1993, The Gap operated a total of 1,270 stores and employed 37,000 people in the United States.

As The Gap has grown, we have faced increasing pressures on our ability to source quality goods at a price customers can afford. We, like most retailers, source domestically whenever we can. For example, we have been very successful sourcing our basic products such as blue jeans and t-shirts here in the U.S. Many fashion items, on the other hand, simply cannot be sourced in the U.S. in the quantities and at the price points our customers demand. The current system of restrictive quotas and tariffs serves only to reduce supply and raise prices, thereby harming the very people we are trying to serve—the American consumer.

America's consumers and retailers support the Uruguay Round Agreement. We strongly urge Congress to approve the Agreement and pass implementing legislation as soon as possible. As retailers, we know that an open international trading environment remains critical to meeting customer needs. The availability of lower cost goods from overseas suppliers helps stretch the budget of the country's low and middle income families and in so doing helps control inflation. This important trade agreement will further open world trade and result in tremendous benefits to the American people.

Specifically, the Uruguay Round Agreement:

1. ends almost 60 years of special protection for the domestic textile and apparel industry through a phase-out of the wasteful and costly Multifiber Arrangement that has for years forced American consumers to pay extra for textiles and apparel;

2. reduces or eliminates tariffs on a broad range of goods including clothing, toys, furniture, beer, certain footwear, and ceramics—currently, the tariffs on these goods alone cost consumers approximately $10 billion a year; and,

3. gains concessions from developing countries on opening their domestic service markets, including their retail sectors, to U.S. investors. In opening stores abroad, U.S. retailers can play an important role in increasing the sale abroad of American-made goods. In fact, The Gap has already opened stores in the United Kingdom, France and Canada that have been very successful. The Gap is also contemplating further expansion in Europe and the Far East. Many of the basic items sold in our international stores are made here in the United States.

HOW THE URUGUAY ROUND AGREEMENT BENEFITS AMERICAN CONSUMERS AND RETAILERS

The American consumer has suffered because of the long and consistent history of unparalleled import protection provided to the domestic textile and apparel industries. This relief, which has not been available to any other sector of the U.S. economy, was originally granted on the basis that it would be temporary but has, through repeated renewals, been transformed into permanent, institutionalized protection. For example, the Multifiber Arrangement (MFA)—originally intended in 1974 to last just four years—has been extended five times and remains in effect today, 20 years later, in the form of a complex network of restrictive import quotas.

In addition to quotas, the textile and apparel industries benefit from tariffs dating back to the 1700s. These tariffs are among the highest in the U.S. tariff schedule. In 1992, textile tariffs averaged 9.3 percent, and apparel tariffs 16.6 percent, compared to 3.3 percent for U.S. merchandise imports as a whole. For some products, principally wool fabrics and apparel, they reach as high as 34.6 percent.

The price tag for these quotas and tariffs is staggering—American consumers pay $46 billion a year in extra costs on textiles and apparel. This amounts to more than $700 per year for a family of four.[1] Significantly, *these costs fall most heavily on low income consumers who spend more than 13 percent of their annual income on these products. more than twice what wealthier Americans spend.* Quotas and tariffs add significantly to the retail industry's costs. In this very competitive retail environment, we are forced to pass those costs directly on to the customers. Currently, we estimate that tariffs and quotas add $12 to what otherwise would be a $28 sweater, pushing the retail price to $40 a sweater. Significantly, some sweaters such as hand knit sweaters are not available from U.S. producers, certainly not at prices most consumers can afford. Quotas and tariffs are clearly costly and inflationary.

We anticipate that the phase-out of apparel quotas will also benefit our customers searching for affordable children's wear. While there are a few strong U.S. producers of children's wear, they cannot possibly meet the demand for products in the U.S. and are unable to supply certain styles of children's clothing at all. Retailers are forced to look abroad for this type of children's clothing. However, it can also be difficult to source children's wear from foreign suppliers because the current quota system does not distinguish between adult clothing and children's clothing. A child's shirt is counted the same against quota as a woman's shirt. Not surprisingly, foreign suppliers currently prefer to export adult clothing for which they earn greater revenue.

Phasing out children's wear imports from quota coverage will eliminate this restraint and enable us to offer our customers a broader selection of kid's clothing and at competitive prices. First, quotas covering babywear (category 239) should be integrated immediately. Second, new Harmonized System line items should be created for other children's wear, and those HS items as well as products in Category 237 (playsuits, etc.) should also be integrated immediately.

While the Agreement phases out quotas over ten years, it only makes modest tariff reductions of 11.6 percent over the same period. Retailers would prefer still more extensive tariff reductions; however, we are pleased with the progress made so far and we continue to support the Administration in its efforts to reach agreements on further tariff cuts and improved market access with a number of other countries.

The Agreement also provides U.S. retailers with tremendous growth opportunities as barriers are removed that for years have thwarted expansion. United States retailers, who are among the most efficient in the world, will greatly benefit from the ability to provide retail services abroad. The global expansion of U.S. retailers will bring with it increased exporting opportunities for U.S. manufacturers because these retailers will continue to market American-made products wherever they go. The Gap isn't the only retailer with limited expansion overseas. Toys R Us is doing business in Japan, Walmart and JC Penney's are moving into Mexico, and Kmart has opened stores in the former Eastern bloc. We anticipate this Agreement will increase expansion opportunities for U.S. retailers the American-made products they sell.

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[1] Gary Clyde Hufbauer and Kimberly Ann Elliott, *Measuring the Costs of Protection in the United States* (Washington, DC: Institute for International Economics, 1994), pp. 88–89. The IIE study estimates the total cost to consumers of textile and apparel tariffs and quotas at $24.4 billion. However, the IIE estimates reflect wholesale, rather than retail, prices. As such, they understate significantly the actual costs paid by consumers, who pay retail prices for apparel. If the IIE estimates are adjusted to reflect the costs of bringing apparel to the consumer, the correct consumer cost estimate is $46 billion a year, or $740 per family of four.

IMPLEMENTATION OF THE URUGUAY ROUND AGREEMENT

While we strongly support the Uruguay Round Agreement, I would like to emphasize several concerns that the retail industry has regarding implementation of the Round.

First, the retail industry advocates prompt congressional action on the implementing legislation for the Uruguay Round. We must not delay. As United States Trade Representative Mickey Kantor stated in his testimony to this Committee on February 8, "The United States should not be the one lone country in the world holding up the implementation of the Uruguay Round. We believe the Round to be in the best interest of the United States economically. The sooner the implementation, the sooner we'll get the benefits of the Round. . . ." We heartily concur.

The Agreement should go into force as originally planned, and as GATT Director General Peter Sutherland has advocated, on January 1, 1995. The American consumer has waited too long already for the benefits of the Uruguay Round Agreement, which will expand opportunities not only for consumers, but for American exporters and retailers as well. Congress should act now so that we all may reap these benefits as soon as possible.

Second, it is important for Congress to develop legislation that ensures that American consumers realize the full benefits of this Agreement. The retail industry urges Congress to unequivocally reaffirm the integration of textile and apparel trade into the GATT after the ten year quota phase-out period. Not only should the implementing legislation ensure that this goal is met, Congress should provide American companies with opportunities to expand trade during this transitional stage as the WTO Agreement only establishes minimum degrees of trade liberalization for textiles and apparel. Nothing precludes the U.S. from undertaking more liberalization than required, particularly if it stands to benefit American consumers and the U.S. economy.

Retailers also urge Congress to institute fair procedures that allow for interested parties to become involved in, and remain informed about, the Administration's GATT-related actions. One of America's goals in the Uruguay Round was achieving "transparency" from our trading partners in their administrative and rule-making procedures. All too often, other nations operated under such a cloud of obfuscation that the process of establishing regulations was itself a non-tariff trade barrier.

One of the greatest successes of the Uruguay Round was the progress reached by U.S. negotiators in this area. Under Secretary of Commerce for International Trade Jeffrey Garten, speaking before the House Ways and Means Trade Subcommittee, highlighted this achievement: "Virtually all of the U. S. proposals relating to the transparency of investigations, the rights of participants, the access to information, and the guarantee of judicial review were incorporated into the final agreements."

Thankfully, we have succeeded in obtaining more open procedures, but we have work to do in our own backyard: the antiquated and closed system which characterizes the administration of our textile import regime must be brought into line with basic principles of "transparency." Specifically, implementing legislation should ensure that:

- interested parties are given the ability to submit advice to the Administration on which products should be integrated into the GATT trading system and when it would be appropriate to begin such integration;
- interested parties have the opportunity to become involved when the Administration evaluates claims of "serious damage" in transitional safeguard investigations. It is important that the information used in reviewing claims of serious damage is honest and objective; and,
- any decisions are published, with an accompanying explanation, and affected industries should be afforded a procedure for official comment.

Finally, the retail industry is concerned about recent reports that the Administration is considering a proposal to auction textile quotas. Ambassador Kantor told the House Foreign Affairs Committee on March 2 that the Administration is giving this quota auctioning plan serious consideration. We oppose such a quota auctioning system and would resist implementing legislation that established such a system. A quota auctioning system would be bad for the nation's retailers and would be bad for America. More specifically, quota auctioning:

—will not raise new revenue to the extent predicted by supporters and will only act to promote market inefficiency and harm consumers;
—may violate U.S. international obligations under the GATT and the Multifiber Arrangement, and thus risks retaliation or claims for compensation from U.S. trading partners;

—will result in a system of "double quotas" on imports. Currently, many foreign countries auction their U.S. export quotas and the United States would probably be unable to convince them to cease this practice; and,
—will create an inefficient and cumbersome system, which will be gradually phased out over ten years anyway. It could also create the opportunity for monopolistic practices by some textile and apparel companies.

In conclusion, the retail industry strongly supports the Uruguay Round Agreement and hopes for quick passage of the necessary implementing legislation. As retailers, we vitally depend on the health of the world trading system. Our customers—your constituents—rely on the output of not only this nation but other nations. The Uruguay Round is critical for sustaining the historic American-led effort to liberalize world trade. As important, it will provide us with an opportunity to develop new rules to govern trade in services and investment, to protect and foster exchanges of intellectual property, and thus to promote our overall effort to expand world markets. Mr. Chairman, the retail industry wants to continue working with you and your staff to develop implementing legislation that will provide significant benefits to America's consumers. The Uruguay Round will benefit each and every American consumer and we urge you to make those benefits available as soon as possible.

Thank you.

RESPONSES OF MR. FISHER TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Question No. 1. Both the antidumping and subsidies code provide for the termination or "sunsetting" of orders after five years, unless the administering authority has conducted a special sunset review and determined that, absent continuation of the order, dumping and injury to the domestic industry will continue to recur. Since the code does not spell out how or when reviews of existing orders are to be carried out, my questions to you are: (1) Does this mean that no existing order shall be terminated under the sunset provision for at least five years after the codes go into effect? (2) In situations where the dumping or subsidization has continued during the five year period, does the legislation place the burden on foreign producers to demonstrate that injury to the domestic industry has not continued and will not recur?

Answer. The Gap and the National Retail Federation have not been intimately involved in the antidumping and subsidies debate and therefore we are not in a position to offer any formal legal opinion on these issues. However, we believe that an artificial deadline is inappropriate if dumping or subsidization has ceased. The GATT antidumping and subsidies code provides a mechanism to ensure free and fair trade. Once this goal is achieved and the relevant domestic industry is no longer threatened with injury, we feel that the maintenance of an order would be unjustified.

In situations where there is evidence that dumping or injury has continued during the sunset period, we believe that duties should be maintained as long as the unfair trading practices continue. Reasonable and rebuttable burdens should be established for the "likely to lead to a continuation or recurrence of dumping and injury" standard set forth in the GATT antidumping and subsidies code.

Question No. 2. Do you believe the final GATT Agreement would substantially weaken our antidumping and countervailing duty trade laws? If so, what recommendations would you make for changes in the implementing language?

Answer. The GATT Agreement does not weaken existing domestic antidumping and countervailing duty trade laws. Rather, the Agreement ensures that the United States will be able to maintain its tough and effective laws against unfair trade. As recently noted by U.S. Trade Representative Mickey Kantor, "notwithstanding tremendous international pressure to weaken antidumping and countervailing duty laws in the Uruguay Round, [the United States] was able to preserve the important elements of U.S. practice. These laws will continue to be our most important and most effective response to dumping and subsidies that injure U.S. industries." The Agreement, by opening foreign markets and instituting rules that promote fair trading practices, will reduce the instances where foreign competitors unfairly dump products onto the U.S. market and where foreign governments unfairly subsidize export industries. In fact, the Agreement actually strengthens antidumping proceedings by requiring investigating authorities to provide public notice and written explanation of their actions.

Question No. 3. I would like each of you to tell me what, if any, impact there would be on the U.S. economy if Congress failed to pass the GATT Agreement?

Answer. Simply put, failure to pass the GATT Agreement would have a serious detrimental impact on the U.S. economy. First, the credibility of the U.S. govern-

ment would be severely jeopardized; since the GATT was created, the U.S. Congress has never rejected a multilateral trade agreement. The ability of our negotiators to engage in any serious trade discussions—whether in a bilateral or multilateral context—would be weakened. Our ongoing discussions with Japan, China, Canada, Europe and Latin America on a wide variety of trade issues would be affected immediately.

Wall Street is well aware of these repercussions, and investors' confidence would be shaken. The financial markets would react in short order. Institutional investors would be the first group to respond negatively, and ultimately, consumer confidence would be undermined. As an industry vitally dependent on consumer confidence, retailers would feel the brunt of this downturn.

When fully implemented, this historic Agreement that commits over 100 of our trading partners to open their markets and compete fairly is expected to increase U.S. economic activity by at least $120 billion a year. The United States cannot afford pass up this opportunity for growth. The negative impact on the U.S. economy that will occur if Congress does not implement this Agreement is best illustrated by discussing the opportunities and benefits that will be lost.

(1) *Reduced foreign tariffs on manufactured products.* The U.S. negotiating team was successful in achieving one of the primary objectives of the United States—eliminating or reducing import tariffs on a variety of goods including electronics, steel, pharmaceuticals, machinery and furniture. As a result, U.S. exporters of manufactured goods will greatly benefit from increased market access opportunities.

(2) *Expanded export opportunities for U.S. agricultural products.* By limiting the ability of nations to prohibit exports through tariffs and reducing market distortion subsidies, the Agreement has attained more open and fair conditions for trade in agricultural commodities.

(3) *Protection for the intellectual property rights of U.S. industries.* The Agreement establishes improved standards and enforcement mechanisms for the protection of intellectual property rights. These protections will greatly benefit American industries that are at the forefront of technological innovation and those established businesses that, through years of hard work, have achieved trademarks that are synonymous with high quality.

(4) *Increased market access for services.* The Uruguay Round instituted the first multilateral arrangement covering trade and investment in the service industry and is an important beginning to the reduction or elimination of barriers to international trade in services.

The Uruguay Round Agreement's benefits that the retail industry, The Gap, and American consumers would lose in the event of failure to pass implementing legislation include:

(1) An end to years of special protection for the domestic textile and apparel industry through a phase-out of the wasteful and costly Multifiber Arrangement. The combination of import quotas and tariffs have forced consumers to pay an additional $46 billion a year for textile and apparel products. This hidden "tax" amounts to more than $700 per year for a family of four. Most significantly, this tax weighs heaviest on low income consumers who spend 14 percent of their incomes on textile and apparel products, more than twice what wealthier Americans spend annually. For most apparel retailers like The Gap, the phase-out of the Multifiber Arrangement and decreases in U.S. customs duties will allow The Gap to provide American consumers with a wider range of products at competitive prices.

(2) Reductions or elimination of tariffs on a broad range of goods including clothing, toys, furniture, beer, certain footwear, and ceramics—currently, the tariffs on these goods alone are in excess of $10 billion a year.

(3) Concessions from developing countries on opening their domestic service markets, including their retail sectors, to U.S. investors. The Agreement provides U.S. retailers with tremendous growth opportunities as barriers are removed that for years have thwarted expansion. United States retailers, who are among the most efficient in the world, will greatly benefit from the ability to provide retail services abroad. The global expansion of U.S. retailers will bring with it increased exporting opportunities for U.S. manufacturers, as these retailers will continue to market American-made products abroad.

Question No. 4. I would also like to know your opinion as to the extension of fast-track to conclude several issues which will not be successfully negotiated before the final conclusion of this Agreement in July of 1995.

Answer. The Gap and the National Retail Federation strongly support the extension of fast-track negotiating authority. As demonstrated in the achievements obtained in the NAFTA and the Uruguay Round, fast-track provides the President

with the ability to negotiate and conclude strong trade agreements that promote the long-term economic interests of the nation. The extension of this authority will enable the President to continue to pursue beneficial multilateral and bilateral trading arrangements.

As in any complicated round of multilateral trade negotiations, there are some areas that need to be addressed in the future. So long as tariff and non-tariff barriers exist around the world, there will be a need for providing a forum to address these matters. Extending fast-track continues the ability of the U.S. to engage our trading practices in mutually beneficial negotiations.

PREPARED STATEMENT OF MARY LOWE GOOD

Mr. Chairman, thank you very much. I very much appreciate this opportunity to be here today, and to discuss with the Committee the Administration's achievements under the Uruguay Round agreements, particularly as they relate to our country's investment in civilian technology.

The provisions of the Uruguay Round relating to our technology investments, built on public-private partnerships, are an important achievement under the GATT round. These provisions will enable the United States to fight unfair subsidies that distort free trade, while at the same time protect technology programs with long-standing bi-partisan support here at home that link technology to economic growth, create jobs, and help ensure a rising standard of living for all Americans.

These provisions reflect both strong trade policy and competitive technology policy, unlike previous trade agreements or earlier proposals in the Uruguay Round. Simply said, the Dunkel text tied our hands when it came to investing in research and development. The 1979 Code tied no one's hands, and our technology programs were unprotected. In the Uruguay Round, we crafted provisions that were defined by us for us—and not by our competitors abroad. And the result is a more clearly defined and effective GATT Code on Subsidies.

TECHNOLOGY: THE ENGINE OF ECONOMIC GROWTH

Since the end of World War II, there has been a bi-partisan consensus that technological progress fuels economic growth. That bi-partisan consensus has allowed this nation to build a research & development infrastructure that created new industries and reinvigorated old ones. It enables small businesses to do high-quality design and manufacturing work that previously required the resources of big business. It helps big business achieve the speed, flexibility, and closeness to customers that once were a defining characteristic of small business. Technology is a major contributor to a more productive workforce, and is key to improving the Nation's standard of living. As the *1994 Economic Report of the President* states:

> "Every recent generation has seen its dreams turn into technological marvels, new products from new industries that have transformed the way we live and work: from the telephone, radio, airplanes, and x-rays, to television, xerography, computers, and magnetic resonance imaging equipment. Advances in technical know-how have accounted for at least one-quarter of our Nation's economic growth over the past half-century."

Our Nation's advances in technology have contributed to a stronger economy primarily through the private sector's ingenuity and the private sector's utilization of the fruits of our discoveries. It is the private sector—not government—that adapts technology to produce new products, expand markets, and improve production efficiencies. Our Administration continues to recognize this essential fact of technology investment, so as to ensure that technology remains the engine of economic growth.

THE WORLD-CLASS U.S. R&D INFRASTRUCTURE

The research and development infrastructure that has given our Nation the opportunity to benefit from technology investments remains second to none. And it is still a world-class R&D infrastructure primarily because, more often than not, it has been built through public-private partnerships—partnerships that link industry, academia, and government together. This principle of public-private partnerships is one that spans the political spectrum and extends back for decades, and it is at the heart of the Clinton Administration's technology initiatives.

The long-standing bi-partisan support for technology investments recognizes that government investment in research and development is essential: new technologies and improvements to promote domestic development often fail to attract sufficient private sector investment. The risk is often high, and the globalization of the econ-

omy is putting tremendous pressure on industry to reduce costs. After several years of cutbacks, major U.S. companies spend less than 22% of R&D on long-term projects. In comparison, their counterparts in Japan expend nearly 50% of R&D on long-term investments, according to estimates by the Council on Competitiveness. And the pressure is mounting. The Industrial Research Institute's survey of 253 industry R&D managers found that 41% said they would reduce total R&D in 1994, vs. 20% that plan increases. Three times as many plan to cut long-term research funding as to raise it.

CONCERNS WITH THE DUNKEL TEXT

The draft Dunkel text presented a number of concerns for the private sector and to long-standing technology programs.

Let me say at the outset of this discussion that concern over the R&D language in the Subsidies Code of the Dunkel text came from a variety of sources. Yes, there was concern from government officials involved in technology, and you will hear about that from others here today. But, this was more than just another interagency working group talking to itself.

Before becoming the Under Secretary for Technology at the Department of Commerce, I was the Senior Vice President for Technology at Allied-Signal. In this and previous capacities, I served as a private sector member of a number of Presidential Commissions on Science and Technology under the last three Presidents, and as the Chair of the National Science Board which oversees the programs of the National Science Foundation. It was only by accident that I, like so many of my colleagues in the private sector, learned about what had been proposed in the Dunkel text with regard to research and development. This lack of input by the private sector, which would be most affected by the draft Code under the Dunkel text, I believe, is a major reason why this Administration sought a comprehensive review, which included a wide variety of companies from different industries.

Let me make my point even more bluntly. Had the Dunkel text been implemented, it would have been very difficult for my former company to participate in Federal government civilian industrial technology programs, like the Advanced Technology Program at the Department of Commerce. The company would have been exposed to potential challenges, and it could have been forced to release proprietary information to gain perhaps some protection from challenge by our competitors. It simply would not have been worth the risk to participate, despite the opportunity to tackle a key problem facing technology development.

THE DUNKEL TEXT IMPEDED PUBLIC-PRIVATE PARTNERSHIPS

Mr. Chairman, I would like to explain in concrete terms how the Dunkel text would have impeded building effective public-private partnerships in technology with industry.

First, and foremost, the Dunkel text undercut one of the primary advantages the United States has over our competitors: our R&D infrastructure. As measured by every category of R&D investment, the United States outperforms other major industrialized nations. This advantage is true for *total* (public and private) research and development investment.[1] It is also true for government support for R&D.[2]

Of course, the U.S. figures for all governmental R&D investment include our substantial defense-related R&D investment. No other country comes close to our historic commitment in this arena, and none ever will. Paring all of this down to just government support for non-defense, civilian R&D, the United States still outpaces its competitors. According to the latest figures available for comparison, the United States government invested $28.4 billion in civilian R&D in 1991.[3] Germany, the

[1] Source: NSF *Science and Engineering Indicators 1993*, using 1991 expenditures. In *total* support for R&D—i.e., public and private investment—the U.S. maintains better than a 2-to-1 advantage over Japan (much of Japan's R&D is private sector funded through other means), more than a 4-to-1 advantage over Germany, and even stronger margins over France and the United Kingdom.

[2] Source: NSF *Science and Engineering Indicators 1993*, using 1991 expenditures. For our discussion here today, we must focus on the level of *government* support for research and development. With more than $59 billion in R&D expenditures, the United States' investment dominates that of other nations. By comparison with Japan and Germany, our closest competitors, the U.S. governmental investment is 4.5 times higher. The U.S. advantage over France and Britain is even higher.

[3] Source: NSF *Science and Engineering Indicators 1993*, using 1991 expenditures. Germany expends $10.5 billion; Japan $8.5 billion.

next largest country in terms of civilian R&D investment, spends 55% less. Japanese governmental investment in civilian R&D is even lower.

The figures I have just shared with you underlie a long-term, bi-partisan commitment to technology investment to promote economic growth. The tangible examples of these investments include programs like the Advanced Technology Program at the Department of Commerce (a program initiated during the previous Administration), as well as the dual-purpose initiatives embodied in the Technology Reinvestment Project at the Department of Defense. They also include the world-class biomedical research of the National Institutes of Health; Defense Department investments in flat panel displays and multi-chip modules; and an increased focus on civilian technology by the national laboratories. And this commitment to technology investment through public-private partnerships is also reflected in the more than 2,000 Cooperative Research and Development Agreements that have revolutionized industry-government collaboration.

The Clinton Administration has reinvigorated the public-private partnership as a key means of achieving technology investments. In most cases, projects are cost-shared (often 50% from industry and 50% from government), and selection is merit-based. These initiatives reflect the proper role of government in working with industry to sustain the high-risk, enabling technologies that are key to economic growth. The President's fiscal 1995 budget does include a 1% increase in research and development investments. But, more fundamentally, this budget is implementing the President's call for a redirection of government R&D spending to achieve a roughly equal balance between military purposes and civilian and dual-use purposes within a few years. The R&D spending proposed in the FY 95 budget would be 44% civilian, and 47% civilian plus dual use. This compares with 41% civilian R&D in FY 93.

Under the draft Dunkel text, the more transparent U.S. technology programs would have been open to foreign challenge. It would have impeded what every administration has recognized: investment in research and development is a desirable, effective, and long-term investment in our future.

The second problem posed by the draft Dunkel text was that it relied on definitions of "basic" and "applied" research that did not fit the model of U.S. technology programs. This ambiguity was compounded by the fact that thresholds of non-actionable government investment envisioned in the Dunkel text were out of line with the bipartisan view that programs should be equally cost-shared. To put it more bluntly, it made absolutely no sense to have our technology programs require both government and industry put up 50% each, while exposing a company to challenge if the government investment exceeded 25%!

If the private sector was frustrated with that kind of inconsistent governmental policy, they were deeply distressed with the Dunkel text's provisions related to "notification." In order to gain limited protection under the Dunkel text, highly detailed notifications of programs would have had to be made to the GATT Subsidies Committee, possibly requiring the government to share extensive and competitively valuable information about activities of U.S. firms. Instead of seeing hope and protection in these notification requirements, the private sector saw greater regulation, more paperwork, threats to sensitive information, and less incentive to work with government in this important area.

THE URUGUAY ROUND: STRONG TRADE AND TECHNOLOGY POLICY

I have summarized very briefly, Mr. Chairman, the problems that arose during the Administration's review of the Dunkel text. The United States found it necessary to address these provisions if the prospective Uruguay Round agreement on subsidies was to ensure—rather than impair—the long-term competitiveness of U.S. industry in the global economy.

Significantly, many of the subsidy tools typically used by our competitors will remain very much actionable under the provisions of the Uruguay Round subsidies agreement. Indeed, the disciplines applicable to these practices will be stronger than they have ever been in the past. All forms of export subsidies and subsidies conditioned on the use of domestic content are flatly prohibited. A presumption of injurious trade effects will exist whenever governments provide subsidies to forgive debt or to cover operating losses, or when they subsidize products at levels exceeding 5 percent of a product's sales value. The agreement also makes it easier for us to show how subsidies have harmed our exports to other markets and, when such harm is identified, it creates a legal obligation for the subsidizing government to withdraw the subsidies or alleviate the trade loss. If such remedial action is not taken within six months, the agreement automatically authorizes us to impose retaliatory measures.

The portion of the Uruguay Round agreement that addresses R&D investment is a major improvement over the Dunkel text. Our investment in "fundamental research" is fully protected. The extraordinary contributions of our universities, research institutes, and national Laboratories in the areas of basic science are preserved.

We have ensured that government involvement in "industrial research," a mainstay of our public-private partnerships, continues without threat. The government may be involved—either directly with funds, or with personnel or in-kind resources—in critical investigations aimed at the discovery of new knowledge, with the objective that such knowledge may down the road be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services. These kinds of partnerships are industry-focused, very pre-competitive, and have the potential to provide benefits across a number of companies and industries.

And, consistent with our bi-partisan, merit-based, cost-shared technology programs, government may partner up to 50% of a project that focuses on "pre-competitive development activity." This means that government, working with industry, shares the risk of translating industrial research findings into a plan, blueprint, or design for new, modified or improved products, processes or services—but this involvement is limited. It must not include the creation of a commercially viable prototype.

These definitions are drawn from actual industrial practice, specifically the Industrial Research Institute which represents the senior research executives from over 260 companies. This approach reflects the orientation of U.S. technology programs.

The Uruguay Round achievement also addressed the sensitive issue of "notification." The agreement maintains the ability to receive protection through special notification, but does not mandate that notification occur in order to protect an investment from trade measures under the R&D criteria. Instead, if there is ever a challenge, we can at that time show how any support provided is consistent with the R&D provisions. The final Uruguay Round text also clarifies that the notification requirements will not force the U.S. to release any proprietary or confidential information to the GATT Subsidies Committee.

CONCLUSION

Mr. Chairman, as can be concluded from the above, the changes which the United States sought and obtained in Geneva were aimed at protecting a variety of valuable, on-going technology investments which have received broad bi-partisan support for many years. We, therefore, established new definitions of research drawn from U.S. terminology and experience, and we incorporated new rules which better reflect the ways in which research is conducted and cost-shared in the United States.

Had we not sought changes to the green light rules governing R&D, the result would not have been to prevent or discourage foreign governments in their support for industrial research and development. Instead, our European trading partners would have enjoyed the protection of the Dunkel text's green light rules, which were patterned after the European Community's own internal rules, while U.S. technology programs would not have enjoyed such protection.

The completion of the Uruguay Round represents the latest step in a long-term, bipartisan effort to improve world trading rules and enhance U.S. competitiveness. From the vantage of promoting economic growth, the agreement recognizes that our technology policy is significant and directly linked to the demands and needs of industry to promote a rising standard of living. It represents an integration of trade and technology policy, an important facet of which is a continued commitment to fight unfair subsidies used by other countries.

Mr. Chairman, and all the members of the Committee, I appreciate this opportunity to discuss this important issue with you today, and I will be glad to take any questions that you may have.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

[March 16, 1994]

Thank you Mr. Chairman.

I believe this may be the third hearing we have held on the Uruguay Round Agreements since the first of the year. I look forward to continued hearings on this very technical, yet historically important document that will have major consequences for our country for years to come.

The Uruguay Round as I understand it is the eighth round of GATT negotiation since they began in 1946. What the agreement was intended to do was to update the rules and institutional structure of the trading system; to further liberalize trade in goods while reintegrating textiles and apparel; integrate agriculture into GATT; expand GATT's scope to include services and trade related aspects of intellectual property rights; and to expand GATT's coverage of trade related investments.

As most of us recognized, the existing GATT system was incomplete, it was not completely reliable, and in some ways, it was not serving U.S. interest well.

Issues such as intellectual property, meaningful rules on agricultural trade, market access and dispute settlement are but a few. The old GATT rules as we knew them created unequal obligations among different countries, despite the fact that many of the countries were allowed to keep their markets relatively closed while at the same time being a major beneficiary of the system.

As a result, this GATT Agreement will have significant implications for the U.S. economy overall and a significant impact on the industrial, service, and agricultural sectors of this country.

And while their have been frequent frustrations anddisappointments that have marked the negotiations over the seven year period, I would nonetheless like to commend the Reagan and Bush administrations for their valiant efforts, and the Clinton administration for bringing this agreement to a conclusion.

Mr. Chairman, let me conclude with a little anecdote: It's been said that if you laid the world's economists end to end, they wouldn't reach a conclusion. Another common jab is that if you put two economists in the same room you'd end up with three opinions.

Iin all seriousness however, trade policy provides a notable exception to this rule. Economists generally agree that trade barriers do more harm than good. In fact, economists have estimated that as a result of this agreement the United States should anticipate an increase of trade of between 100–200 billion dollars into the U.S. economy every year after the round is fully implemented.

In that context I look forward to the testimony that our witnesses will present this morning.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

[March 23, 1994]

Thank you Mr. Chairman.

I am concerned over the potential that certain foreign subsidies may no longer be countervailable and may force the United States into a position of having to provide subsidies to our industries to stay competitive. And as a member of the Budget Committee I am concerned over whether we may be forced to choose among various programs due to significant budget resources to fund such a subsidy program.

And I am particularly concerned as to how we are going to pay for the agreement once it is finalized

Nevertheless, Mr. Chairman, I believe the United States is uniquely positioned to benefit from the recently agreed upon General Agreement on Trade and Tariffs. The opportunities are enormous for American workers to obtain high paying jobs as a result of the potential for future increased exports and thereby raise the living standards for all Americans. These opportunities exist not only in manufacturing, but in agriculture products and services as well. In the same token, hopefully the agreement will also provide the American public greater access to a wider array of goods and services.

It would be my hope, Mr. Chairman, that we will have sufficient hearings, (and I realize that this is our fourth hearing to date) to be in a position to act in a responsible manner to draft effective implementing language. Because of the enormity of this package and the effect it will have on the United States, speaking as one Senator, I hope we will have at least as many hearings as we did on the NAFTA, to truly understand the technical complexity of this agreement and its impact on both the American public and American industry.

The, Uruguay Round implementing bill will be one, if not the most important piece's of trade legislation in the last fifteen (15) years. But more importantly, it will govern the rules of competition well into the future.

As most of us recognized, the existing GATT system was incomplete, it was not completely reliable, and in some ways, it was not serving U.S. interest well. The old GATT rules as we knew them created unequal obligations among different countries, despite the fact that many of the countries were allowed to keep their markets relatively closed while at the same time being a major beneficiary of the system.

And while there has been frequent frustrations and disappointments over the seven year period, I would like to commend the previous Reagan and Bush adminis-

tration, the current Clinton administration, and you Mr. Chairman for bringing us to this point in our history.

In that context I look forward to the testimony that our witnesses will present this morning.

Thank you Mr. Chairman.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

[February 8, 1994]

Mr. President, I want to thank you for holding this hearing today and to extend my personal welcome to Ambassador Kantor. I appreciate the time you have taken, Mr. Kantor, to testimony before this committee. You have testified here on many occasions over the past year, and it is always a pleasure to have you here.

As you know, under the Fast Track procedures, Congress has an opportunity to review the initialed agreement before it is officially signed on April 15. I would like to think that the difficult part of the process is completed. However, as we all learned during the NAFTA negotiations, we have a lot of work ahead of us, and I look forward to working with you and my Senate colleagues to try to resolve the outstanding issues that will surely be raised today and throughout the next several months.

I congratulate you and your capable staff for completing a very complex series of negotiations. I have no doubt that the results of these discussions will provide greater opportunities for our economy. Market access for American industry is critically important to our economic security, and I believe many of the commitments you have obtained from other countries will provide the basis for further progress in markets that have been virtually closed to exports and foreign competition.

I am supportive of the agreement, but I strongly encourage you to take full advantage of the next couple of months and to secure further commitments from member countries on those sections that have yet to be resolved satisfactorily.

Although I am generally pleased with the progress and results of the Uruguay Round, I join many of my colleagues on this committee in expressing concern over sections of the agreement that have the potential of steering us down a path that diverges somewhat from previous U.S. policy.

It is no surprise to you, Mr. Ambassador, that on the issue of subsidies some serious concerns have been expressed. I must say that the practical application of the Uruguay text regarding subsidies provides, in my opinion, sufficient safeguards to protect against blatant abuses by governments for the time being. However, the long-term theoretical repercussions of agreeing to language that provides for "non-actionable" subsidies is a potentially dangerous precedent.

We must be extremely careful not to agree to provisions that, in theory, crack open the door to a policy that may lead to reckless, unrestrained government assistance. For example, it is no secret that the United States government has historically been involved in providing financial assistance for defense-related R&D projects. However, this type of assistance has been limited to defense-related endeavors for the purpose of bolstering national security. This is quite different from providing taxpayer funds directly to commercial entities for the purpose of establishing a competitively dominant position in a global marketplace.

The real danger lies not in the current Uruguay Round subsidies text but in the concept that agreeing to "green-light" any subsidy within an international context provides a basis from which to expand the scope of allowable subsidies down the road. Today, the Uruguay Round text provides an allowance for, on a limited basis, some types of R&D, regional, and environmental subsidies. But, how long will it be before our competitors pressure us to expand the scope of these three disciplines? And, how far are we willing to go in meeting these demands in order to gain further access to foreign markets?

It may seem simple, as we sit here today, to say that we will not go any further In expanding the "green-light" category of government subsidies. However, it is the nature of any negotiation to give and take, and we must determine what our definition of a "best alternative to a negotiated agreement" is going to be and whether it will include compromising on the issue of subsidies. otherwise, I believe we are starting down a path that has the potential to leave us in a fiscal mess, trying to keep up with the Jones', and without any mechanism with which to enforce a reasonable limit of foreign government subsidies.

Therefore, the question remains—how far in expanding the scope of allowable subsidies are we willing to go in future negotiations and for what price?

With that in mind, Mr. President, I look forward to hearing Ambassador Kantor's remarks, especially with regard to the specific concerns that have been raised by our side of tile aisle.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

[March 9, 1994]

Mr. Chairman, thank you for calling this hearing today. I appreciate the opportunity to address this important issue of subsidies. There is no doubt that as we embark on the task of drafting implementing legislation for the recently completed Uruguay Round negotiations, the issue of subsidies will be at the forefront. This hearing is an indication that this is already the case.

This hearing comes at a time when there seems to be a magnifying glass focused on the issue competitiveness. As the Competitiveness Act is debated on the floor this week, we are already seeing a fundamental difference in approaches to an issue that everyone agrees on—how to increase the United States' ability to compete in the global economy. The question is how to go about it.

As you know, Mr. Chairman, my home state of Utah has a reputation for being a leader in the field of high-tech. Utah County, home of such software giants as wordperfect and Novell, has been referred to as the "Software Valley," and the biomedical industry in Utah makes up a significant portion of the state's economy. Furthermore, Utah's universities have established solid national and global reputations in several disciplines, and much of the research and development efforts in the state have been supported, in part, by federal funds.

I, for one, have done my best to promote the critical research that is being done in Utah. In fact, there is probably not a Senator on this panel or throughout the Senate who has not done the same thing. We all recognize the importance of this research and development. R&D is essential for the local economies of our individual states and essential for the future of our nation's economy.

We all have a stake in the future of government-private sector partnerships that serve to increase our ability as a nation to compete, and none of us would like to see the obvious good that has come from these programs diminished. However, anything can be driven to extremes, and anything in the extreme is not usually wise.

I believe we must consider very carefully regarding the *fundamental* direction we are taking in this area. While certain subsidies and incentives can be productive, we must, in my view, guard against an *"industrial policy"* which would insert the federal government into private sector decisionmaking and management. I believe these concerns with regard to the subsidies text in the Uruguay Round are legitimate and need to be fully aired.

I understand the position that the Clinton Administration has taken on Uruguay Round subsidies text. I have heard the arguments that Ambassador Kantor has made to support these positions that he so skillfully negotiated. His arguments and reasoning are sound, and I respect him for his resolve and tenacity on these points. However, as we discuss the finer points of the subsidies text today, we must keep the following in mind.

Regardless of how far back you go in U.S. institutional history of subsidies policy in this country, regardless of your political persuasion, or of how much you support government funding for basic and applied R&D, "greenlighting" of certain subsidies represents a change in U.S. terminology and basic philosophy. And, although there is nothing wrong with altering policy or with going through an evolutionary process as national and world conditions change, we must ask ourselves how far we are willing to go down this new road. Specifically, we must consider at what point government support for these activities will be a catalyst or a crutch.

My concern is how far this administration is planning to go in furthering this new terminology, which will have potentially serious implications for future administrations, Congress, and American industry.

I look forward to discussing these points as the hearing proceeds. Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

[March 23, 1994]

Mr. Chairman, I commend you for your consistent scheduling of hearings on an issue that has the potential to change significantly the way in which we engage in trading activities throughout the world as well as to bring us further along the path of open trade. I want to welcome both panels of witnesses today, and I look forward to hearing their statements and comments.

Briefly, Mr. Chairman, I would like to comment on the question of budget offsets that will be necessary in order to move the Uruguay Round agreement through the implementing process.

If we are serious about breaking down barriers to trade so that we can improve the standard of living here in the United States, we must begin by getting serious about making substantial cuts in our spending habits. If the budget rules require us to find offsets in order to enact a Uruguay Round implementing bill, then we must find them.

I would hate to see us hold up an agreement that has the potential to do more for the citizens of this nation economically than many government programs that require direct spending of taxpayer dollars. I am sure that the collective effort of all the members of this committee can help identify these programs.

Although there is no doubt in my mind that the tariff reductions in the Uruguay Round Agreement will be more than offset by the increase in trade activity, let's not hold hostage the good that will inevitably come from this agreement because we can't seem to manage our own checkbook.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF JOHN H. JACKSON

Mr. Chairman and Members of the Committee: I want to thank you for inviting me to participate in this Hearing. My statement will be very brief, but I expect to participate in the panel discussions.

I am appearing here in my own capacity as a scholar and teacher of subjects concerning international law and international economic legal relations. In that capacity, I have devoted several decades to the subject of GATT and trade rules, and have been privileged to follow a number of its twists and turns. Indeed, I have previously appeared before this committee several times in connection with the Tokyo Round! (1970's and 1980's.)

I. OBSERVATIONS ON THE URUGUAY ROUND IN GENERAL

The Uruguay Round, the eighth broad trade negotiation round under the auspices of the General Agreement on Tariffs and Trade (GATT), is clearly the most extensive undertaken by the GATT system, and possibly by any similar endeavor in history. The goals of the September 1986 Ministerial Meeting at Punta del Este which set forth the agenda for the Uruguay Round were extremely ambitious. If half the objectives were achieved, the Uruguay Round would still be the most extensive and successful trade negotiation ever. In fact, despite the many years of delay and negotiating impasses, the Uruguay Round has achieved considerably more than half its objectives.

Of course the Uruguay Round will not be an unmixed blessing for every individual, or business enterprise. That is always the case for trade negotiations, including those like this one which on balance are a strong positive for our economy. In some cases individuals who have relatively little capacity, either financially or otherwise, to respond to some of the requirements of adjustment that will be imposed by the trade agreements, will need assistance from our government.

Today I will not try to discuss all the many extraordinarily complex and intricate parts of the Uruguay Round result, as only suggested in the more than 500 pages of treaty text developed in December. Instead, I will focus on the institutional components of the Uruguay Round result, namely the World Trade Organization (WTO), and the dispute settlement procedures embodied in those December texts.

II. THE URUGUAY ROUND NEW CHARTER FOR A WORLD TRADE ORGANIZATION

A. Genesis of the WTO

One of the interesting achievements of the Uruguay Round results is the development of a new institutional Charter for an organization which will help facilitate international cooperation concerning trade and economic relations. Some people have even said that this may be the most important element of the Uruguay Round result.

It is well known that the GATT (General Agreement on Tariffs and Trade) was never intended to be an organization. It was negotiated in the 1947–1948 period, at the same time as negotiators prepared a Charter for an ITO (International Trade Organization). The GATT was to be a multilateral trade and tariff agreement, which would depend for its organizational context and secretariat services, on the ITO. The ITO never came into being because the United States Congress would not approve it in the late 1940's. The GATT, however, was negotiated under advance au-

thority granted to the President in the 1945 extension of the Reciprocal Trade Agreements Act (the first such Act was 1934). Compounding the anomalies of that period, the GATT treaty instrument was and is applied to this day only "provisionally." At the time, it was contemplated that GATT would be applied provisionally for several years until the ITO came into force, and then would be put under the umbrella and conformed to the ITO Charter. However, because the ITO was stillborn, the GATT gradually became the focus for international government cooperation on trade matters.

Nevertheless, despite this inauspicious beginning, the GATT has been remarkably successful over its nearly five decades of history. Partly this is because of ingenious and pragmatic leadership in the GATT, particularly in its early years, as the GATT struggled to fill the gap left by the ITO failure.

The success was particularly important for reduction in tariffs so that in later years tariffs became less important than a plethora of non-tariff barriers, some addressed (for the first time) in the seventh round of trade negotiations called the "Tokyo Round" (1973–1979).

As decades passed, however, there was recognition that the GATT system was being increasingly challenged by the changing conditions of international economic activity, including the greater "interdependence" of national economies, and the growth in trade of services. Concern developed that the GATT was too handicapped to play the needed role of complementing the Bretton Woods system as the "third leg," along side the IMF and World Bank. Problems and "birth defects" included:

Provisional application and Grandfather rights exceptions.
Ambiguity about the powers of the Contracting Parties to make certain decisions.
Ambiguity regarding the waiver authority and risks of misuse.
Murky legal status leading to misunderstanding by the public, media, and even government officials.
Certain defects in the dispute settlement procedures.
Lack of institutional provisions generally, so constant improvisation was necessary.

In December 1991, the Uruguay Round Negotiators led by the GATT Director General, Arthur Dunkel, prepared and released a draft text of treaty clauses which covered the entire UR negotiation results up to that point, with indications of work yet to do. This was an important project with many implications. Included in this draft was, for the first time, a tentative draft of a new Charter for an organization—an MTO or Multilateral Trade Organization. This draft had a number of flaws, recognized by the U.S. government and others, but through hard work the negotiators were able to revise the draft and iron out the flaws. In the December 1993 draft the new organization was retitled the WTO—World Trade Organization—and it is this draft Charter I will discuss.

B. What is the WTO?

Unfortunately, there have been many misleading statements and a number of misconceptions about the WTO. Indeed, some of the statements about a WTO would equally apply to virtually every international organization in operation today. Thus, some of the criticism really is to the whole question of international cooperative mechanisms. Clearly my view is that such mechanisms are not only often needed in the kind of world we face, but are in some circumstance virtually inevitable. This does not mean, however, that we should relax our guard about potential abuses by such organizations or institutions, and that is part of the reason why I feel that the WTO is an improvement over the GATT.

Let me begin by suggesting three general characteristics and goals of the WTO Charter in the Uruguay Round draft texts:

First, the WTO can be described as a "mini-Charter." It is devoted to the institutional and procedural structure that will facilitate and in some cases be necessary for effective implementation of the substantive rules that have been negotiated in the Uruguay Round. The WTO is not an ITO (the 1948 ITO draft Charter which never came into force.) The WTO Charter itself is entirely institutional and procedural, but it incorporates the substantive agreements resulting from the Uruguay Round into annexes. In many cases the criticism aimed at the WTO is really criticism aimed at some of the substantive provisions of the Uruguay Round results, and should not be considered a criticism of the WTO institutional Charter.

The notion that the WTO will suddenly impose on the world a vast new bureaucracy or an all powerful organization, is more than an overstatement—it is ludicrous. The WTO essentially will continue the GATT institutional ideas and many of its practices, in a form better understood by the public, media, government officials and lawyers. To some small extent, a number of the GATT "birth defects" are overcome

in the WTO. The WTO Charter (XVI:I) expressly states the intention to be guided by GATT practices, decisions, and procedures to the extent feasible.

Second, the WTO structure offers some important advantages for assisting the effective implementation of the Uruguay Round. For example, a "new GATT 1994" is created and thus countries effectively withdraw from the old GATT and become members of the new GATT. This procedure avoids the constraints of the amending clause of the old GATT which might make it quite difficult to bring the Uruguay Round into legal force.

In addition, and very important, the WTO ties together the various texts developed in the Uruguay Round and reinforces the "single package" idea of the negotiators, namely, that countries accepting the Uruguay Round must accept the entire package (with a few exceptions). No longer will the Tokyo Round approach of side codes, resulting in "GATT a la Carte" be the norm.

Another important aspect of the WTO structure is that it facilitates the extension of the institutional structure (GATT like) to the new subjects negotiated in the Uruguay Round, particularly services and intellectual property. Without some kind of legal mechanism such as the WTO, this would have been quite difficult to do since the GATT itself only applies to goods. The new GATT structure separates the institutional concepts from the substantive rules. The GATT 1994 will remain a substantive agreement (with many of the amendments and improvements developed throughout its history, including in the Uruguay Round.) The WTO has a broader context.

Similarly the WTO will be able to apply a unified dispute settlement mechanism, and the Trade Policy Review Mechanism to all of the subjects of the Uruguay Round, for all nations who become members.

Third, the WTO Charter offers considerably better opportunities for the future evolution and development of the institutional structure for international trade cooperation. Even though the WTO Charter is minimalist, the fact that there is provision for explicit legal status, and the traditional organizational privileges and immunities to improve the efficiency of an organization helps in this regard. With the WTO focusing on the institutional side, it also offers more flexibility for future inclusion of new negotiated rules or measures which can assist nations to face the constantly emerging problems of world economics. For example, already mentioned for such attention are environmental policies and competition policies.

There is some confusion about the effect of a WTO and its actions on U.S. law. It is almost certain to be the case (as Congress has provided in recent trade agreements) that the WTO and the Uruguay Round treaties will not be self-executing in U.S. law. Thus they do not automatically become part of U.S. law. Nor do the results of panel dispute settlement procedures automatically become part of U.S. law. Instead the U.S. must implement the international obligations or the result of a panel report, often through legislation adopted by the Congress. In a case where the U.S. feels it is so important to deviate from the international norms that it is willing to do so knowing that it may be acting inconsistently with its international obligations, the U.S. government still has that power under its constitutional system. This can be an important constraint if matters go seriously wrong. It should not be lightly used of course. In addition, it should also be noted that governments as members of the WTO have the right to withdraw from the WTO with a mere six months notice (XV:I). Again, this is a drastic action which would not likely be taken, but it does provide some checks and balances to the overall system.

Finally, the United States is so important to the success of the WTO and the trading rules, that as a practical matter the U.S. cannot be ignored. Indeed, some of the more specific rules of the WTO will reinforce deference to this position.

Time and space does not permit a full analysis of all the Charter, but there are several details which we can look at, because they have been criticized and are indeed quite important.

First, a careful examination of the WTO Charter leads me to conclude that the WTO has no more real power than that which existed for the GATT under the previous agreements. This may seem surprising, but in fact the GATT treaty text contained language that was quite ambiguous, and could have been misused (but fortunately was not) to provide rather extensive powers. For example, in Article 25 of the GATT the Contracting Parties acting by majority vote were given the authority to take joint action "with a view to facilitating the operation and furthering the objectives of this agreement." This is very broad and ambiguous language. Under the WTO Charter, considerably more attention has been given to the question of decision making in a number of different contexts, and certain restraints have been added, such as increasing the voting requirements for certain actions (to three-fourths for many waivers and for formal interpretations), and a provision in the amending clauses that a country will not be bound by an amendment which it op-

poses if the amendment would "alter the rights and obligations of the members." Likewise, the waiver authority is more constrained and will be harder to abuse. Furthermore, formal "interpretations," "shall not be used in the manner that would undermine the amendment provisions." Thus there are more legal grounds to challenge overreaching of the power of the WTO institutions.

The amending authority (Article X) is itself quite intricate and ingenious. It obviously has been carefully tailored to the needs of the participating nations related to each of the different major multilateral agreements (GATT, GATS (Services), and intellectual property). Amendments for some parts of these require unanimity. Other parts require two-thirds (after procedures in the Ministerial Conference and Councils seeking consensus for amendment proposals.) In most all cases, as mentioned above, when an amendment would "alter the rights and obligations," a member which refuses to accept the amendment, is not bound by it. In such case, however, there is an ingenious procedure (partly following the model in GATT) whereby the Ministerial Conference can by three-fourths vote require all to accept the amendment, or withdraw from the agreement, or remain a member with explicit consent of the Ministerial Conference. Quite frankly, it is very hard to conceive t -efore of the amending provisions being used in any way to force a major trading country such as the United States to accept altered rights or obligations. The spirit and practice of GATT has always been to try to accommodate through consensus negotiation procedures, the views of as many countries as possible, but certainly to give weight to views of countries who have great weight in the trading system. This will not change.

Because the WTO will now be a more formally constituted organization, not only will it have better recognition and understanding by the public and officials, but also provisions in the draft Charter make explicit the authority for the WTO to work out cooperative relationships with both intergovernmental and non-governmental organizations. For the first time, therefore, one can foresee a much greater formal participation by non-government organizations who represent various public interests.

Also, I would like to stress in this part something already mentioned, namely the hope and design of the WTO Charter that it will have the flexibility to adapt to changing conditions of world economics, including the obvious and inevitable trend towards more participation in a variety of ways of public spirited interests. There is no doubt that the WTO still has further to go in this respect, but there is also no doubt that the Charter gives great scope to the potential to move in the more "transparent and participatory direction." Finally, the WTO Charter establishes (for the first time) the basic explicit legal authority for a Secretariat, a Director-General and staff. It does this in a way similar to many other international organizations, and it also adds the obligation for nations to avoid interfering with the officials of the organization.

With the extraordinary addition of new subject matter and work-load derived from the Uruguay Round, the GATT Secretariat will of course need to be enhanced somewhat in order for the Uruguay Round results to be effectively implemented. But the GATT has always prided itself on being "lean and mean," and it seems very unlikely that that will change significantly any time in the near future. By comparison to other major economic international organizations the GATT is very small.

III. THE URUGUAY ROUND AND GATT/WTO DISPUTE SETTLEMENT PROCEDURES

One of the many achievements of the GATT, despite its "birth defects," has been the development of a reasonably sophisticated dispute settlement process. The original GATT treaty contained very little on this, although it did specifically provide (in Article 22 and 23) for consultation, and then submittal of issues to the GATT Contracting Parties. As time went on, however, the practice began to evolve more towards a "rule oriented" system. For example in the late 1950's the practice introduced a "panel" of individuals to make determinations and findings and recommend them to the Contracting Parties. Before that, disputes had been considered in much broader working parties comprised of representatives of governments.

During the next several decades, the Contracting Parties utilized the panel process more and more. Increasingly, the reports began to focus on more precise and concrete questions of "violation" of treaty obligations. At the end of the Tokyo Round in 1979, the GATT Contracting Parties adopted an understanding on dispute settlement which embraced some of these concepts, and embodied the practice concerning dispute settlement procedures which had developed during the previous decades. In the 1980's, the dispute settlement panels were for the first time assisted by a legal section of the GATT. The panels began to write reports that were much more precise and better reasoned. Many countries, including the United States (which has been the largest single applicant for dispute settlement procedures in the GATT)

found it useful to take issues to panels as part of their broader approach to trade diplomacy.

However, as might be expected given the history of GATT, there were a number of defects and problems in the dispute settlement process.

Some of the problems were gradually overcome through practice in the GATT. But in the Uruguay Round December 1994 text, there is a major new text concerning dispute settlement procedures, the "Understanding on Rules and Procedures Governing the Settlement of Disputes."

The new text solves many of the issues that have plagued the GATT dispute settlement system, although not all of them. It accomplishes the following:

(1) It establishes a unified dispute settlement system for all parts of the GATT/WTO system, including the new subjects of services and intellectual property. Thus, controversies over which procedure to use will not occur.

(2) It reaffirms the right of a complaining government to have a panel process initiated, preventing blocking at that stage.

(3) It ingeniously establishes a new appellate procedure which will substitute for some of the Council approval process of a panel report, and overcome blocking. Thus, a panel report will automatically be deemed adopted by the Council, unless it is appealed by one of the parties to the dispute. If appealed, the dispute will go to an appellate panel. After the appellate body has ruled, its report will go to the Council, but in this case it will be deemed adopted unless there is a consensus against adoption, and presumably that negative consensus can be defeated by any major objector. Thus the presumption is reversed, compared to the previous procedures, with the ultimate result of the procedure that the appellate report will in virtually every case come into force as a matter of international law.

Arguably there is still more to do and it is hoped that the GATT dispute settlement process will evolve even further. For example, this process has been criticized for being too secret (in the diplomatic tradition). The Uruguay Round December Understanding does include a small measure of transparency, making it clear that national governments can make known to the public the argument it has made before a dispute panel. (Appendix 3, paragraph 3.) However, arguably this transparency should be extended, and much less secrecy rule in the entire panel processes.

Likewise there has been some concern about whether the panels have the appropriate expertise on some technical issues, particularly product standards and environmental policy issues. Again, the procedures make it clear that the panels may call upon various expert bodies to assist them. Nevertheless, it can be argued that something more is needed to ensure the appropriate expertise on the panels, perhaps following analogous provisions that are contained in the NAFTA dispute settlement procedures.

It should also be understood that the international legal system does not embrace the common law jurisprudence that prevails in the United States which calls for courts to operate under a stricter "precedent" or "stare decisis" rule. Most nations in the world do not have stare decisis as part of their legal systems, and the international law also does not. This means that technically a GATT panel report is not strict precedent, although there is certainly some tendency for subsequent GATT panels to follow what they deem to be the "wisdom" of prior panel reports. Nevertheless, a GATT panel has the option to not follow a previous panel report, as has occurred in several cases. In addition, although an adopted panel report will generally provide an international law obligation for the participants in the dispute to follow the report, the GATT Contracting Parties acting in a Council or the Ministerial Conference, can make interpretive rulings or other resolutions which would depart from that GATT panel ruling, or even establish a waiver to relieve a particular obligation.

It is clear both that no system will be perfect, and that not all cases will be decided in the most appropriate way. There will be mistakes. There will be situations where the United States or other countries will lose cases which they should lose; but also there will be cases where the U.S. and others will lose cases they did not deserve to lose. This is not different from domestic legal processes. Nevertheless in the broader context there is a great deal of utility in a creditable and efficient rule oriented dispute settlement system that has integrity, and the U.S. is an important beneficiary of such system.

It is quite interesting how significant dispute settlement systems have become in major international trade agreements in the last decades. For example, it is a very intricate part of the European Union with its Court of Justice sitting in Luxembourg. It is also an important and enhanced part of the U.S.-Canada Free Trade Agreement, the NAFTA (North American Free Trade Agreement), and in other similar regional arrangements that are currently evolving.

Many people are asking whether the new GATT/WTO dispute settlement procedures of the Uruguay Round results will require fundamental changes in the Section 301 statutes of the United States. Most people recall that Section 301 provides a procedure for individual enterprises in the U.S. initiating U.S. government attention to alleged foreign government practices that harm U.S. commerce, mostly targeted on U.S. exports, but also applicable to matters such as intellectual property, subsidized imports, service trade, etc.

Although I have not had the opportunity to do a completely thorough examination of the relationship of the new dispute settlement procedures to U.S. Section 301, I have examined it in a preliminary way and my basic judgment is that very few statutory changes will be needed to U.S. Section 301, at least the "regular 301" (compared to Special 301 and other similar statutory provisions, such as those on telecommunications.) There may need to be some alterations to some time limits, or transition measures, but the basic structure of 301 is not necessarily inconsistent with the Uruguay Round results. Indeed, I continue to have the opinion that Section 301 appropriately used in its current statutory form, is a constructive measure for U.S. trade policy, and for world trade policy. Section 301 calls for cases presented under the 301 procedural framework to be taken to the international dispute settlement process that pertains to the case. Likewise, Section 301 in its present formulation does not require the Executive Branch to ignore the results of the international dispute settlement process. Thus the Executive appears to have the discretion to apply actions under Section 301 in a manner consistent with the proposed new rules of the Uruguay Round dispute settlement understanding. This is the "formalistic" conclusion which I offer about Section 301.

Although there are plausible ways to interpret the statutory provisions of regular Section 301 so as to give the President discretion to act consistently with the Uruguay Round dispute settlement rules, in a few cases, particularly in Section 301(a) (the mandatory provision) the interpretations to do this are a bit strained. It would clearly therefore be better if the statute were amended to give the President and the Trade Representative in all cases under the statute the discretion to act in a way consistently with U.S. international obligations. Alternatively the Statement of Administrative Action by the President, along with other legislative history, could clarify this position.

However, to be candid one must realize that the procedures of the new dispute settlement understanding will provide moderately more pressure on all governments that will be members of the WTO, to conform to the results of a dispute settlement process. Partly this is because the new dispute settlement procedures include a segment dealing explicitly with the question of responses available to a complaining state, when a defending member of WTO does not conform to its obligations after a dispute settlement procedure. Of course a nation can still refuse to conform. For example, this could mean that despite a ruling against the United States on a complaint brought by the United States, the President might be tempted to take action that he is authorized to take under Section 301. Such action could be the violation of international obligations. The mere existence of the possible hypothetical authority to take such action would not necessarily be a violation.

A critical provision in the Uruguay Round text of December concerning dispute settlement in this regard is Article 23. Article 23.1 requires members of the WTO to use the dispute settlement procedures whenever they seek redress of a violation of obligations or other nullification or impairment. It also states that members shall "abide by, the rules and procedures of this understanding." Thus, several instances where the United States in the 1980's took unilateral and independent action without proceeding through the GATT, would be inconsistent with the new rules. However, they were also inconsistent with the old rules, to the extent that actual trade restraining measures were applied at the border which violated the GATT (such as a raise in tariffs.)

IV. SOME CONCLUSIONS

It has been observed that the combination of events and institutional developments of the last few years, with the NAFTA in North America, the European evolution towards deepening and broadening integration, the extraordinarily elaborate Uruguay Round results, as well as developments in China and East Europe, amount to the most profound change in international economic relations institutions and structures, since the origin of the Bretton Woods System itself in the immediate post war period.

The WTO will improve the international institutional structure for cooperation in trade and economic matters. The WTO is a fairly minimalist framework for this, and clearly over time there will be need to develop practice and interpretations that

fill in some of the gaps of the WTO, clarify some ambiguities, and possibly at some point to consider some amendments.

One of the major problems for nations of the world in connection with their relations, is the question of government regulation of international economic behavior. More and more governments find themselves frustrated in trying to regulate appropriately in situations where international economic behavior crosses borders, because the perpetrators of such behavior can sometimes play one nation off against another, develop rival or competitive "reductions in regulation rigor" (sometimes called "race to the bottom"). Thus an institutional structure that has the potential to meet these problems and to deal with them in an appropriate and balanced way through mutual cooperation is extremely important.

With respect to the dispute settlement provisions, many policies suggest the value and importance of a rule oriented system which is creditable and results in relatively effective implementation of treaty obligations. If the treaty obligations are not creditable, then one can ask why we should go to the trouble to negotiate them. The treaty rules provide a framework that is particularly important for market structures that rely heavily on decentralized decision making, i.e., on individual enterprises. It is these enterprises that need a modicum of stability and predictability provided by a rule structure. Such predictability often is essential for investment decisions.

Thus the Uruguay Round is a step forward, but it is not the end of the trail. There is much left to be done, and already many people are considering the "post-Uruguay Round agenda," whether it will be addressed by a new "Round," or by other more modest mechanisms of constant negotiation.

The reader may find it useful to consult some of the following works of this author:

Restructuring the GATT System The Royal Institute for International Affairs, (Chatham House), London, January 1990.

The World Trading System: Law & Policy of International Economic Relations (The MIT Press, 1989).

"The General Agreement on Tariffs and Trade in United States Domestic Law," 66 Michigan Law Review, 249 (December 1967).

World Trade and the Law of GATT (Bobbs-Merrill Company, December 1969). Treatise on a Legal Analysis of the General Agreement on Tariffs and Trade.

Legal Problems of International Economic Relations—Cases, *Second Edition* co-authored with Professor William J. Davey (West Publishing Company, August 1986).

Chapter on United States, in Volume "The Effect of Treaties in Domestic Law," edited by Professor Francis G. Jacobs (University of London) and Shelley Roberts (King's College, London), London Sweet & Maxwell 1987, proceedings of United Kingdom National Committee of Comparative Law Conference in London.

"Status of Treaties in Domestic Legal Systems: A Policy Analysis," by John H. Jackson, The American Journal of International Law, Volume 86, No. 2, (April 1992) pp. 310–340.

"World Trade Rules and Environmental Policies: Congruence or Conflict?," Washington & Lee Law Review, Vol. 49, No. 4 (Fall 1992) pp. 1227–1278.

"Regional Trade Blocs and GATT" The World Economy, Vol. 16, No. 2 (March 1993) pp. 121–131.

RESPONSES OF PROFESSOR JOHN H. JACKSON TO QUESTIONS SUBMITTED BY SENATOR MOYNIHAN

Question No. 1. Some have argued that the decisions of the World Trade Organization (WTO) or its dispute settlement panels may force the United States to change its laws or practices. Is that correct? As a matter of U.S. law, what is required to give legal effect to such panel decisions? Does this differ based on whether the challenged law or practice is at the State, rather than the Federal, level?

Answer. First, it has to be recognized that the decisions of the WTO or dispute settlement panels are not "self-executing" or "directly applicable" in U.S. law. Thus, they will become part of U.S. law, or U.S. law will be changed, only if the U.S. domestic jurisprudence provides for that, usually by implementing legislation (or in some cases implementing regulation when the Executive Branch has such authority.) This does give the United States the sovereign right to evaluate the WTO or dispute panel decisions, and provides some check on the international process.

As a matter of international law (treaty law), there will be an obligation on the U.S. to implement adopted dispute settlement panel report recommendations, and correctly adopted decisions of the World Trade Organization. However, the new

WTO Charter is quite cautious about decisions, making special provision not to bind countries in cases where a decision (such as an amendment) would "alter the rights or obligations" of a nation. In this sense, the WTO Charter is even more cautious than the previous looser and more ambiguous framework of the GATT.

With respect to State law, the same is true, except that under the U.S. Constitution the Federal authorities would have the power to implement a measure and require the States to conform. Again, this could be done by Congressional enactment or in some cases, Executive regulation. It would seem that this would normally only be done after consultation with the States concerned.

Question No. 2. If the United States refuses to comply with a panel decision, what are the consequences under the WTO?

Answer. Under the WTO procedures, a normal panel decision which is adopted would have a binding international law force of obligation on the U.S. If the U.S. refused to comply with the panel, it could be in violation of its international obligations. Under the new dispute settlement rules, there would follow the possibility of compensatory or retaliatory type action by the complaining nation.

In fact, for a country as large and powerful as the United States, the compensatory retaliatory action in many cases would not be the most significant aspect. More significant would be the moral and diplomatic pressure brought on the United States, and the tendency for other countries in the world to refuse to entertain U.S. complaints in the WTO dispute settlement system if the U.S. itself is not prepared to carry out the results of that procedure.

Question No. 3. How can we improve the transparency of WTO dispute settlement panel proceedings, consistent with the Uruguay Round agreement? Are there actions the United States can take unilaterally to provide its citizens with greater access to the dispute settlement process?

Answer. The new WTO dispute settlement procedures have only modest improvement in the "transparency," providing in the procedures Appendix 3, paragraph 3, as follows:

> 3. The deliberations of the panel and the documents submitted to it will be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential, information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

However, the WTO Charter explicitly provides for the development of cooperation arrangements with other intergovernmental organizations, and with non-governmental organizations. The dispute settlement procedures will need to evolve, and some of the specifics of the procedures will be spelled out in "regulations," under the authority of the WTO. These regulations will need to be consistent with the dispute settlement procedure set out in the Uruguay Round result, but there may be some possibilities of injecting greater transparency. For example, it seems possible that some arrangements can be made so that non-governmental organizations could have an opportunity to present advocacy to a dispute settlement panel in particular cases, consistent with the expertise of the non-government organization. The non-government organization could provide for inputs from various groups and individual citizens which could form part of the NGO advocacy.

At some point, it may be possible to amend the dispute settlement provisions to open up an opportunity for advocacy from the public, although care would need to be taken not to weigh down the dispute settlement procedures and cause undue resource implications for them. One possibility might be a one-day hearing of the panel when requested, and some arrangement made to confine the advocacy from the public to that one day so as to not unduly burden the panel procedures. It has to be recognized that the panels operate under very meager resources, and mostly with voluntary help.

The United States can also clearly take measures of its own, to provide its own citizens with greater access to the preparation of U.S. advocacy in dispute settlement panels. This is clearly recognized by the measure quoted above. The United States appears already to be following this somewhat, particularly after the Freedom of Information Act Case of Public Citizen v. Office of the United States Trade Representative, 804 F. Supp. 385 (1992).

RESPONSES OF PROFESSOR JOHN H. JACKSON TO QUESTIONS SUBMITTED BY SENATOR CHARLES E. GRASSLEY

Question No. 1. Does this mean that no existing order shall be terminated under the Sunset Provision for at least 5 years after the Codes go into effect? In situations where the dumping or subsidization has continued during the five year period, does the legislation place the burden on foreign producers to demonstrate that injury to the domestic industry has not continued and will not recur.

Answer. Unfortunately, my expertise does not extend to some of the details of anti-dumping and countervailing duty procedures. In general, I strongly favor the idea of "sunsetting" since this will prevent "overkill" of the use of these laws against imports, and allow for more free flow of trade. Likewise, any U.S. regulations concerning these subjects must bear in mind that we are faced with similar regulations in other countries, and we will want to persuade other countries to desist from actions that harm trade.

Exactly how the sunsetting provisions should be implemented, however, I do not know.

Question No. 2. Do you believe the final GATT Agreement would substantially weaken our antidumping and countervailing duty trade laws? If so, what recommendations would you make for changes in the implementing language?

Answer. I do not believe that the final GATT Agreement would "substantially weaken" our anti-dumping and countervailing duty trade laws. It does impose some modest additional constraints on how we might otherwise want to use those laws to protect domestic industry. The problem is, as many economists and others have commented, our laws may now already apply in a way that too drastically limits imports. Particularly when our exporters begin to face foreign government reciprocally comparable regulations (as they are now doing), it is troublesome to try and persuade foreign governments to moderate their overreaching AD and CV laws, when our own laws do the same thing.

Having said all that, however, I believe that the impact as I foresee it concerning these subjects of AD and CV in the GATT agreement, will be rather modest. One exception might be in the subsidy countervailing duty area, particularly with respect to research and development and environmental exceptions. Here, the U.S. might express in its implementing legislation a goal or desire for further elaboration and interpretation of the new GATT agreement rules, that could assist governments in drawing the appropriate lines against misuse of these exceptions.

Question No. 3. I would like each of you to tell me what, if any, impact there would be on the U.S. economy if Congress failed to pass the GATT Agreement before this committee? I would also like to know your opinion as to the extension of fast-track to conclude several issues which will not be successfully negotiated before the final conclusion of this agreement in July of 1995?

Answer (2 parts). Question 3A: The impact on the economy of the United States: All experts seem to agree that the Uruguay Round final agreement offers very important improvements for the world economy, and the U.S. economy in particular. The U.S. is very competitive, and has been strengthening its competitiveness in recent years, and thus it has considerable opportunities under the new GATT/WTO rules to strengthen its export sector, and compete successfully against imports. If the Congress failed to pass the GATT agreement, after seven agonizing years of extraordinarily broad and expensive negotiations, I believe that there would be a damaging impact on the U.S. economy, both in the short term and in the long run. In the long run, we would lose the advantages of the new agreement. In the short run, and possibly longer run, the congressional failure to implement would be a powerful and damaging signal to the world about the U.S. approach to trade. I feel quite confident that it would have an immediate negative effect on world financial markets, and would create considerable re-thinking in all the capitals of the world about the directions of trade policy. It would lead to more "regionalization" of trade, and to more inward looking and restrictive, or "managed trade" approaches. Likewise, it would diminish the opportunity of the U.S. to take leadership in further opening of foreign markets on behalf of our export capabilities.

Question 3B: With respect to extension of the fast track to several issues, it is my opinion that the fast track has been a reasonably successful procedural innovation to accommodate some of the separation of power tensions which occur under our Constitution. These tensions support certain constitutional principles, but when it comes to international affairs, they sometimes are counterproductive unless there is developed a mechanism by which U.S. government negotiators will have credibility in their negotiations with foreign representatives. This creditability depends on a reasonable opportunity to have the internationally negotiated results submitted without amendment to the U.S. Congress. This is what the fast track is all about.

Thus, it would appear wise to extend the fast track to some issues that will remain after the final conclusion and implementation of the Uruguay Round Agreements.

PREPARED STATEMENT OF GORDON L. JONES

Thank you, Mr. Chairman and Members of the Committee. My name is Gordon Jones. I am President of Stone Container International Corporation, with headquarters in Chicago, Illinois.

I am testifying today on behalf of the American Forest & Paper Association (AF&PA). I will be reporting the U.S. forest products industry1s view of the results of the Uruguay Round negotiations as they relate to wood and paper products.

The American Forest & Paper Association (AF&PA) represents approximately 550 member companies and related trade associations (whose membership is in the thousands). Our members 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, AF&PA represents a vital national industry which accounts for over seven percent of the total U.S. manufacturing output.

The industry employs some 1.4 million people, and ranks among the top 10 manufacturing employers in 46 states, with annual wages paid of about $46 billion. The forest and paper products industry generates sales of $200 billion annually. With exports of $17 billion in 1992, the industry makes an important contribution to the U.S. balance of payments. Exports have been, and will remain, the future growth segment for our industry.

The U.S. forest products industry has been ranked among the most competitive in the world. We have historically relied on competitive strength—not tariff protection—to win markets.

In fact, the U.S. forest products industry agreed to the virtual elimination of U.S. tariffs on wood and paper products in the Tokyo Round of the GATT. Our competitors have taken advantage of a full decade of zero tariff access to our market and others where preferential tariffs apply, while maintaining tariff barriers as high as nine percent on U.S. paper products and 20 percent on U.S. wood exports.

Thus, the priority objective for the U.S. forest products industry in the Uruguay Round market access negotiations, as submitted to U.S. negotiators in 1987, was the elimination, through the "zero for zero" tariff initiative, of all tariffs on wood and paper products over five years. In fact, the forest products industry—paper and wood—was the first manufacturing industry to propose "zero for zero" treatment for an entire industry sector. This objective—"zero in five"—remains our goal.

The importance of *fully* achieving this goal cannot be overemphasized. At any tariff level short of zero—and for however long it takes to get to zero—the U.S. forest products industry will be structurally disadvantaged in world markets. If we compare the Uruguay Round results to date with the official zero tariff objectives, it is clear that we still have some distance to go.

WOOD PRODUCTS

Preparing for the Uruguay Round

Enormous capital investments made by the lumber and wood products sector in the late 70s and early 80s have created a world class industry, and one of the world's low-cost producers. Ranked among the most competitive industries in the nation, high productivity has made the wood products industry a shining star of U.S. industrial competitiveness internationally.

Seven years ago, when the industry first developed its "zero tariffs in five years" negotiating objective for the Uruguay Round, it built upon this global position of strength. The zero tariff initiative, at that time, was an opportunity to take advantage of its international competitiveness.

Today, circumstances for the wood products industry have changed. Zero tariffs are now no longer a luxury but a matter of survival. As a consequence of unfair tariff structures maintained during the intervening years by foreign governments, the competitive position of this industry can quickly deteriorate. Tariff escalation and preferential tariffs are the primary examples of this problem.

The international marketplace for wood fiber is rapidly trending towards global parity. Countries with forest resources, and there are many, including less-developed and newly-industrialized countries, are investing in state-of-the-art manufacturing facilities—many subsidized by their governments. As the cost and quality differences narrow, tariffs and non-tariff barriers determine into which marker these products will flow.

In the absence of tariff elimination, the virtually zero tariff U.S. market becomes the market of preference. Tariff protection of five, ten, or fifteen percent or more by our trading partners will ensure that value-added wood products from overseas will flood the U.S. market which has little or no tariff protection and very liberal GSP programs for wood products. In effect, the failure to eliminate high tariffs in other countries will encourage the relocation of U.S. assets overseas and the importation of value-added wood products to the U.S. market.

Tariff escalation effectively bars the entry of value-added products in almost all of our overseas markets. Japan maintains high tariffs as barriers to imports of value-added wood products, while unfinished goods enter duty-free. 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 manufactured wood building products is denied. Products on which Japan charges a duty make up only six percent of U.S. wood exports to Japan.

The preferential tariff systems of developed countries are a serious problem for U.S. exports in most of the other major consuming markets. The U.S., Canadian, and New Zealand wood products industries are virtually the only significant producer nations facing wood tariffs 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 already accomplished fact for almost all producers except the United States.

December Results of the Uruguay Round—Wood Products

As of today, we still do not have a market access agreement on wood products. Japan has blocked emerging international consensus for the elimination of tariffs on wood products. As a result, eighteen countries which would have participated in a zero tariff agreement have pulled back their offers.

As of today, we still do not have a deal. Japan has so far been able to block an emerging international consensus for eliminating wood tariffs. As a result, there are a variety of offers on the table:

- The Japanese made no concessions on wood products in the Uruguay Round. Their offer to cut their tariffs by 50 percent was simply a fulfillment of their 1990 Super 301 Agreement;
- The European Union at first agreed to zero tariffs in ten years but, in the face of Japanese intransigence they reverted to an earlier offer of 44 percent;
- Canada has made a conditional zero tariff offer, which must be matched by the European Union and Japan.

The current Japanese offer of a 50 percent cut for wood products is unacceptable to the U.S. industry for one very important reason—it does not deliver economically. It denies our industry the majority of benefits we anticipated from the Uruguay Round. According to a study performed for AF&PA by DRI/McGraw-Hill, failure to achieve the elimination of tariffs on wood products in five years denies the U.S. $8.8 billion in increased exports and 17,500 jobs by the year 2001. (DRI/McGraw-Hill is the same firm used by USTR to estimate the nation-wide economic benefits of the Uruguay Round.)

We simply cannot let the Japanese off the hook on this one, no matter how many politically sensitive problems they have . . . this time.

The U.S. forest products industry has been deeply involved in the Japanese wood products markets for over a decade, spending millions of dollars and committing enormous personnel resources to promote U.S. building products. Our industry associations have offices in Japan representing lumber and plywood for structural and industrial applications, and hardwoods for furniture and interior uses. We have done the promotional things U.S. companies have been told we must do if we wish to sell in Japan. Nevertheless, the vast majority of U.S. building products are still almost totally excluded from the market because of trade barriers—first and foremost, tariff barriers.

Even the 1990 Super 301 agreement has not eliminated the barriers we face in Japan. Although the agreement made some progress toward reducing tariff escalation, the cuts were not deep enough and were staged over such a long period of time that they don't afford sufficient market access in Japan in the 1990s. They have not yet been eliminated, so Japan has already enjoyed an additional three years of tariff protection.

Further, the current Japanese strategy to take credit for their Super 301 concessions twice, once bilaterally and again in the Round, should not be tolerated. To claim concessions in the Round for what was agreed to three years ago bilaterally will make a sham of the tariff negotiations.

Complete tariff elimination on wood products is essential, particularly with respect to Japan, as zero tariff offers by Canada, the EU and other countries are contingent on Japan going to zero. The Uruguay Round results to date have taken seven long years to achieve, but the benefits for the U.S. wood products industry are still missing. This is a once-in-a-decade opportunity to achieve tariff elimination.

Our negotiators simply should not settle for less because the U.S. wood products industry cannot support an agreement that provides less. We intend to do everything we can to support our negotiators in this effort.

PAPER AND PAPER PRODUCTS

Preparing for the Uruguay Round

Compared to U.S. tariffs on paper products, which have for the most part been reduced to zero, European tariffs on paper products range from six to nine percent. As indicated in the attached chart, when U.S. paper companies try to sell in Europe, they have to compete with Nordic suppliers who enjoy tariff-free access as a result of European Free Trade Area (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 intended to eliminate, and the U.S. paper and paper products industry seized the opportunity to seek the total elimination in foreign tariffs, in as short a time period as possible, but not longer than five years.

December Results of the Uruguay Round-Paper Products

Our top priority trading partners (including the EU, Japan and Korea) have now agreed to eliminate tariffs on paper and paper products, but, at the insistence of the European Union, the tariff cuts will be phased in over an abnormally long ten-year period.

We recognize that a tremendous effort was required to reach agreement among the Quad members on zero tariffs for paper products, and we appreciate the efforts of all the U.S. negotiators involved. However, a zero tariff in ten years simply does not convey the same economic benefits as a zero tariff achieved in five years. Moreover, as a matter of principle, the proposition that U.S. suppliers should wait another ten years to achieve the sector reciprocity which they did not get in the Tokyo Round contains a clear warning to other American industries seeking only the chance to compete on equitable terms.

With the normal five-year phase-in, the cumulative gain in net exports between now and the year 2005 for U.S. paper, paperboard and converted products would be close to $10.1 billion. With a ten-year phase-in, the U.S. export benefits are reduced by $3.3 billion. A five-year phase-in is critical, given the global restructuring currently underway in this industry.

Five years is the normal GATT staging period for tariff reductions, and in keeping with past Rounds, the Uruguay Round staging for virtually all sectors is five years—except for paper, wood, toys, and beer. The fact that the EU went outside the agreed framework and insisted on a ten-year phase-in period means that we have effectively obtained the equivalent of a three to four percent tariff—not zero—in terms of trade benefit to the industry.

It is particularly ironic that the EU is stalling the elimination of paper tariffs because, while U.S. paper producers struggle to overcome a wall of protective tariffs in Europe, Europe suppliers have been exploiting the virtual duty-free access to the U.S. paper market for over a decade. If we merely accede to the EU demand for a ten-year phase-in period, we are, in essence, helping them further protect their home market by refusing to grant U.S. paper suppliers reciprocal access for another decade. In the past year alone, European sales of printing and writing papers in the U.S. market have increased by over 24 percent, cutting into the U.S. paper industry's share of our own domestic market. It we merely accede to the European Union demand for a ten-year phase-in period, we are, in essence, condoning European protectionists at home and their predatory practices in the U.S. market.

We believe there may be some room for improvement in the European Union position, and we urge the United States Trade Representative to aggressively follow through with the European Union and make sure this issue is resolved before April 15th.

NON-ACTIONABLE SUBSIDIES UNDER THE AGREEMENT

While the zero tariff initiatives for wood and paper products are clearly the most important goals of the U.S. forest products industry, we are also concerned about language in the Agreement with regard to non-actionable subsidies under the GATT Subsidies Code.

Among the objectives of the U.S. forest products industry in the Uruguay Round was the strengthening of the GATT Subsidies Code in order to establish greater discipline over foreign government subsidies to competing wood and paper producers. At the same time, our industry wanted to ensure that the U.S. countervailing duty laws were not diluted and would continue to be the valuable tool they have been in the past in fighting unfairly traded imports.

We are particularly concerned that these two goals have not been met under the Agreement's language with respect to non-actionable subsidies. According to the Executive Summary of the Uruguay Round Agreement, the objective of some negotiating parties in the GATT was to restrict the application of U.S. countervailing duty remedies and to protect certain forms of subsidies from any type of trade action. We in the U.S. forest products industry are concerned that those other "negotiating parties" may have succeeded only too well. We are concerned that large loopholes have been created that will greatly weaken the effectiveness of our countervailing duty laws.

Environmental Subsidies

The U.S. forest products industry is concerned with the provision, which the U.S. accepted without any consultation, allowing all countries to offer subsidies to cover up to 20 percent of the cost of meeting new or stricter environmental regulations. Although the Agreement limits such subsidies to "a one-time measure" to cover the cost of adapting existing facilities to new environmental regulations, it is difficult to consider how a measure could be sufficiently circumscribed as to eliminate ancillary benefits such as increased level of output or improved cost competitiveness. Moreover, since capital is fungible, when governments cover the cost of environmental compliance—a $1 billion dollar per year charge far the U.S. paper industry, for example—it frees up funds for other investments. Further, it is our understanding that this "one-time" benefit could be made available for compliance with subsequent enhancements to environmental regulations, as well.

This provision is of particular concern to the U.S. forest products industry, which is among the most capital intensive of all U.S. manufacturing industries, and one that is subject to environmental regulations which are often much more stringent than those of major competitors. It is unlikely U.S. industry can expect to benefit from any domestic government subsidies to assist in compliance. It is difficult to see how this particular pragmatism is consistent with U.S. trade interests.

Since this non-actionable environmental subsidy could have a significant effect on competitiveness in our industry, the U.S. forest products industry believes it is important that the Congress and the Administration limit its applicability by definition in the Statement of Administrative Action and the implementing legislation. Further, we strongly urge that this Committee, in particular, consider providing some subsidy-offsetting vehicle to provide for comparable investment equity for affected U.S. producers.

Regional Subsidies

The language in the Agreement which confirms "certain sub-federal level financial assistance as non-actionable under the Agreement" is also troublesome to our industry. On many occasions, the U.S. forest products industry has sought U.S. government intervention to counter Canadian federal and provincial subsidies to the Canadian pulp and paper industry. The prohibition of such subsidies was a main objective of the U.S.-Canada Free Trade Agreement and the NAFTA. On both occasions, the U.S. government indicated that resolution of this issue would have to await Uruguay Round GATT Subsidies Code negotiations.

We still firmly believe that subsidies, at any governmental level, provided to firms producing products that are primarily exported to the U.S. market, or compete with U.S. products in third country markets, should be prohibited. In addition, we are concerned by and dissatisfied with the lengthy implementation period granted developing countries for elimination of prohibited subsidies. We hope to work with the Committee and the Administration to address these concerns in the implementing legislation.

Work Program on Trade and the Environment

At the same time, U.S. negotiators took the lead in getting agreement that a Work Program on Trade and the Environment would be initiated shortly after the Agreement is signed on April 15. (The U.S. is also pushing for a permanent committee on Trade and the Environment in the WTO.)

The object of the Work Program, according to U.S. officials who have briefed us is, in trade parlance, to rewrite the GATT Article 20 to overturn the Tuna/Dolphin decision. In plain English, this means changing the existing structure of inter-

national trade rules to provide the basis for the imposition of trade restrictions—conditions on market access—to enforce environmental regulations.

While we would support an effort to introduce some agreed discipline into the use of such measures, we have the gravest concern that the terms of reference for the Committee and the Work Program are being kept so vague as to allow for very wide ranging negotiations. A faceless Geneva-based bureaucracy would be created with the ability to initiate a new generation of technical trade barriers which, unlike tariffs, are entirely immune to the normal equilibrating forces of trade and markets.

At the same time, the manner in which the environmental subsidy issue and the development of the Work Program itself were accomplished provides scant basis for any confidence that trade interests will receive adequate consideration as the Work Program is implemented.

CONCLUSION

In summing up, Mr. Chairman, despite the efforts of the Administration, the European Union and Japan have refused to agree to match the U.S. tariff offers in the wood and paper sectors. Japan has refused to eliminate tariffs on wood products, and the EU has delayed staging in paper over ten years. It is important that the Administration continue to aggressively pursue both these issues. For the combined forest products industry, this would mean $12 billion more exports over ten years.

But even more important, the failure to achieve zero in wood products in five years will lock in a crippling disadvantage to the competitiveness of an industry which, directly or indirectly, provides jobs for 2.8 million Americans. An industry that is globally competitive today would be rendered permanently, structurally disadvantaged. 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.

We also urge you to include in the implementing legislation a clear indicator of Congressional intent that a new round of negotiations on trade and the environment cannot be conducted

- *without* an agreed statement of U.S. objectives from the start
- *without* limits on the terms of reference of any Committee on Trade and the Environment which are coterminus with these objectives
- *without* a full measure of Congressional oversight and business community participation.

The Administration has often made it clear that it intends to make sure that U.S. economic interests are not sacrificed to other concerns in international negotiations. We urge the Administration to put current concerns regarding the process of Japanese reform in this context. We cannot accept 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 which depend on the forest products industry for employment.

U.S. trading partners must be convinced of the need to match U.S. offers—now. We urge you to send an unmistakable signal that the future of an industry which provides jobs to 1.6 million Americans is not tradable, and that the only final package you will accept is one which provides fair market access—at zero tariffs under the normal five year Uruguay Round staging—for America's wood and paper products industry.

IMPORT TARIFFS APPLIED BY THE EUROPEAN UNION ON SELECTED PAPER AND PAPERBOARD

Product	From		
	U.S.	EFTA[1]	LDC/Eastern Europe
Newsprint	duty free quota or 9.0%	0	0
Printing and Writing:			
Uncoated	9.0%	0	0
Coated	9.0%	0	0
Kraft linerboard	6.0/9.0%	0	0
Bleached Paperboard:			
Coated	8.0/9.0%	0	0

IMPORT TARIFFS APPLIED BY THE EUROPEAN UNION ON SELECTED PAPER AND PAPERBOARD—Continued

Product	From		
	U.S	EFTA[1]	LDC/Eastern Europe
Uncoated	9.0%	0	0

[1] EFTA: European Free Trade Association.

RESPONSE OF GORDON JONES TO A QUESTION SUBMITTED BY SENATOR GRASSLEY

Question. Some individuals have raised concerns that the new "WTO" may impinge upon the question of national sovereignty. Do you agree with this statement, or do you believe there are sufficient safeguards in place and the benefits of the "WTO" far outweigh the negative aspects?

Answer. The U.S. forest products industry is concerned about the possible impact of future World Trade Organization (WTO) action on questions of U.S. sovereignty. For instance, the creation of a Committee on Trade and the Environment within the WTO is touted as a step toward using trade policy to raise environmental standards around the world. And yet, without specific goals and continuing oversight, this committee could also open the door to trade actions taken abroad seeking to influence U.S. policy, and possibly impinging on U.S. sovereignty.

In the final hours of the Uruguay Round, the Trade Negotiating Committee agreed to the broad outlines of a "Trade and Environment Work Program." As further elaborated by a "core group" of countries in March 1994, activities to be undertaken under the Work Program will include the following:

—Establishment of a permanent Committee on Trade and the Environment; and
—Creation of recommendations regarding, *inter alia,* "the need for rules to enhance the positive interaction between trade and environmental measures, for the promotion of sustainable development . . . ."

Our concerns with this Work Program are centered on three major issues:

1. There are no specifically defined objectives.
2. There is little or no transparency in policy-setting procedures.
3. There is concern that a pattern may be emerging where business advisors are being shut out of trade policy decisions where environmental issues are involved.

According to U.S. officials, the principal U.S. objective in the Work Program will be to rewrite GATT Article 20 to overturn the Tuna/Dolphin decision. This would mean changing the existing structure of international trade rules to provide the basis for the imposition of trade resctions—conditions on market access—to enforce environmental regulations. The U.S. forest products industry appreciates the importance of exploring the relationship between trade and the environment, but we urge that the U.S. Government develop clearly defined objectives as we enter this new territory.

At this time, it is not clear what specific objectives the U.S. has in entering these negotiations. Rather, it seems the wording of the basic document creating the Work Program has been purposely kept so vague as to put almost no limits on the direction or extent of the Work Program.

In a recent article in the *Washinaton Post,* U.S. Trade Representative Mickey Kantor was quoted as follows: "Kantor said he believed the **new committee should be welcomed by the environmentalists. Its charter 'is broad enough to encompass nearly every issue they've raised.'"** We are concerned that this approach to the Work Program would be a very serious mistake if it means the growing use of environmental laws, policies and practices to erect a new generation of trade barriers. The goal of the Uruguay Round was to break down more global barriers to trade than ever before, not create fertile fields in which new barriers are spawned.

It is incredibly difficult to succeed in any negotiation without having well defined goals and objectives at the outset. Otherwise, it is too easy to be diverted by side issues and ultimately win the battle but lose the war. We strongly urge that congress work with USTR and the Administration in this new round of trade and environment negotiations to set specifically defined objectives that allow for balance between environmental concerns, and concerns regarding jobs and economic growth.

We are also concerned about the transparency in procedures surround the Work Program on Trade and the Environment. The inclusion of a specific environmental

component in international trade relations is a relatively new are of exploration and cooperation in governmental policy making.

With the creation of a Committee on Trade and the Environment, the "Work Program" seems to have developed in to a full-fledged trade negotiation. This development adds to our concern about the lack of transparency in the process. And this, coupled with indeterminate objectives for the outcome of these negotiations, would seem to require new negotiating authority and entail the level of Congressional oversight common to all trade negotiations. We believe the Administration should seek specific negotiating authority (although not "fast-track" authority), linked to the achievement of its objectives, in the Uruguay Round implementing legislation.

Finally, in addition to the need for specific negotiating objectives, negotiating authority and Congressional oversight, we are also concerned that a pattern is developing under the new trade and the environment regime that omits consultations with established business advisory groups. This lack of consultation would be a serious mistake and would put U.S. companies at a serious disadvantage when unintended consequences are allowed to slip by unnoticed by negotiators who are not experts in a particular industry sector.

For example, numerous private sector parties, as well as a number of Senators, have expressed concern about the "greenlighting" of environmental subsidies to allow all countries to offer subsidies to cover up to 20 percent of the cost of meeting new or stricter environmental regulations.

If U.S. industry sector advisory committees (ISACs) had been consulted before accepting this new provision, the wood and paper ISACs would have pointed out that the provision directly disadvantages the U.S. forest products industry. For example, the paper industry is among the most capital intensive in the world, and one that is subject to environmental regulations which are often more stringent than those of our major international competitors. Since 1980, the forest products industry has invested over $9 billion for environmental protection and improvement. And if EPA's "cluster rule" proposal is adopted, we will likely be spending an additional $11.5 billion.

And yet the U.S. Trade Representative Mickey Kantor, in a letter to Senator Danforth, indicated the Administration has not intention of initiating an environmental subsidy program for U.S. industry. Therefore, the likelihood of U.S. industry benefiting from the "greenlighting" of environmental subsidies is highly unlikely, at best.

We urge Congress to carefully oversee the development of the WTO and the Work Program on Trade and the Environment. The trade stakes in these negotiations are very substantial indeed, and they should not be undertaken without full and complete involvement of the U.S. industries which may be affected. The effects of well-meaning attempts by the U.S. to influence environmental policy around the globe may well backfire not only on the ability of U.S. companies to compete abroad, but also open the door for challenges to U.S. sovereignty at home.

PREPARED STATEMENT OF AMBASSADOR MICHAEL KANTOR

INTRODUCTION

Mr. Chairman, thank you very much. I appreciate the chance to be here today to discuss with you the Uruguay Round agreement, reached by 117 countries on December 15. As this committee well knows, the agreement marked the completion of more than seven years of negotiations.

The Uruguay Round agreement will reduce barriers blocking exports to world markets (in agriculture, manufactured goods, and services) and will create a more fair, more comprehensive, more effective, and more enforceable set of world trade rules. In order to assure the efficient and balanced implementation of the agreements reached, they also created a new World Trade Organization (WTO).

The Administration believes that the Uruguay Round agreement will justify the years of hard work and frequent disappointment that has marked the negotiating process. It will provide a major boost to the global economy in the coming years and into the next century, from which the United States will benefit a great deal. This agreement sets the stage for the U.S. to become a more competitive, productive and prosperous nation in the years to come.

I look forward to working with you this spring as we prepare the legislation that will implement the Round, and which the Administration will seek to have enacted this year.

I also want to acknowledge those who helped make reaching this historic agreement a reality. The Administration benefitted from the work of our predecessors, Presidents Reagan and Bush, and Trade Representatives Bill Brock, Clayton

Yeutter and Carla Hills. They saw the importance of the Uruguay Round, set high standards for an ambitious agreement and refused to accept less.

We benefitted from the steadfast, bipartisan support of Congress, led by this Committee and the House Ways and Means Committee. Congress supported the negotiations, but demanded constant proof that the results of the Round furthered the interests of U.S. companies and workers. You set strong negotiating objectives in the 1988 Trade Act, which I believe that we have met.

We benefitted from the advice and support of the private sector, who recognized the importance of completing the Round for the U.S. economy and global growth, and who gave us insight and understanding of the needs of hundreds of sectors of our strong and diverse economy.

The Uruguay Round trade agreement is the largest, most comprehensive trade agreement in history. The existing GATT system was incomplete; it was not completely reliable; and it was not serving U.S. interests well. The new agreements open up major areas of trade and provide a dispute settlement system which will allow the U.S. to ensure that other countries play by the new rules they have just agreed to.

The successful conclusion of the Uruguay Round negotiations was an important part of the President's strategy for strengthening the domestic economy. Barely a year ago, President Clinton entered office, faced with daunting challenges in his effort to restore the American Dream.

The economy was stagnant. Unemployment was high, and confidence was down. In just one year, we have turned a corner. Our economy is growing and millions of jobs have been created. People are getting back to work.

But these are just the first steps in preparing our nation for the 21st century. The President is addressing the long-term issues facing our economy.

How do we ensure the American Dream for all? How do we reverse the decline in real wages among workers in this country? How will we compete against the Europeans and the Japanese? How do we eliminate the gap between high-skill workers, for whom opportunities abound, and those lower skilled workers who lack opportunities, and even hope? At a time our workers are the most productive in the world, meaning it takes less workers to do the same work, how do we create new jobs and opportunities?

All of the elements of the President's economic strategy—reducing the deficit, reforming education, the President's reemployment program, and health care—are geared towards solving these problems, creating jobs and making our country more prosperous for our children. All of the parts work in tandem, each reinforcing the other.

An essential element in this strategy is to expand and open foreign markets. Expanding trade is critical to our ability to compete in the global economy and create high-wage jobs. That is why the President spent so much time in 1993—with not only the Uruguay Round but also the North American Free Trade Agreement, the establishment of the Japan Framework, the Asia Pacific Economic Cooperation conference to facilitate trade in that region. That is why we vigorously enforced our trade laws which resulted in opening the markets for heavy electrical equipment in Europe, telecommunications in Korea, construction in Japan, and enhanced protection for copyrighted and patented products in a number of nations, led by Taiwan and Thailand.

The U.S. economy is now woven into the global economy. Over a quarter of the U.S. economy is dependent on trade. Where we once bought, sold and produced mostly at home, we now participate in the global marketplace. American workers compete with their foreign counterparts every day, sometimes within the same company. By expanding our sales abroad, we create new jobs at home and we expand our own economy.

The global economy presents rewards not risks. Our greatest risk is in failing to understand the challenge. Jobs related to trade earn, on average, 17 percent more than jobs not related to trade. Prosperity is the partner to change and American workers are at their best when facing the challenges of a new era.

The benefits of trade ripple through our economy. Trade benefits not only the company that exports, but also the company which produces parts incorporated in exported products, the insurance agency which insures exporters, and the grocery store near the exporter's factory. At the same time, increased access to foreign markets and increased competition at home benefit consumers. Lower trade barriers reduce prices, improve the quality, and widen the choice of consumer good. This benefits both families and companies looking for good bargains and good quality.

U.S. workers and companies are poised to take advantage of the dynamics of the global economy, if they have access to foreign markets and can be ensured they are competing on fair terms with their foreign counterparts. Fast growing economies in

Latin America and Asia are hungry for American goods. Countries around the globe are embracing market economies and are in need of everything from hospital equipment to consumer goods.

"Made in the USA" still represents a standard of excellence, especially for products that will become more important in the coming century. America leads the world because of our imagination and creativity.

The United States, then, is positioned economically, culturally and geographically to reap the benefits of the global economy.

Economically, because our workers are the most productive in the world, and our economy is increasingly geared towards trade.

Culturally, because of our tradition of diversity, freedom and tolerance will continue to attract the best and the brightest from around the world ensuring that we will never stagnate as a people.

Geographically, because we are at the center of a nexus between our historic trading partners in Europe and Japan, and the new dynamic economies in Latin America and Asia.

Our trade policy is guided by a simple credo. We want to expand opportunities for the global economy, but insist on a similar responsibility from other countries.

Trade is a two way street. After World War II, when the American economy dominated the world, we opened ourselves up, to help other countries rebuild. It was one of the wisest steps this country ever took, but now we cannot have a one way trade policy. The American people won't support it and the Administration won't stand for it.

For other nations to enjoy the great opportunities here in the U.S. market, they must accept the responsibility of opening their own market to U.S. products and services. Ultimately, it is in their own self interest to do so, because trade fosters economic growth and create jobs in all countries involved. If a country closes itself to U.S. goods and services, they should expect the same from us.

The Uruguay Round ensures American workers are trading on a two-way street; that they benefit from this new globalized economy; that they can sell their products and services abroad; and that they can compete on a level playing field.

President Clinton led the effort to reinvigorate the Uruguay Round and to break the gridlock, which had stalled the negotiations despite seven years of preparation and another seven years of negotiations.

We did not accomplish everything we wanted to in the Uruguay Round. In the services area, we wanted to go further than the world was ready to go. The transition periods for patent and copyright protection are longer than we wanted. We were bitterly disappointed by the European Union's intransigence with respect to national treatment and market access for our entertainment industries.

But the final result is very good for U.S. workers and companies. It helps us to bolster the competitiveness of key U.S. industries, to create jobs, to foster economic growth, to raise our standard of living and to combat unfair foreign trade practices. The agreement will give the global economy a major boost, as the reductions in trade barriers create new export opportunities, and as the new rules give businesses greater confidence that export markets will remain open and that competition in foreign markets will be fair.

More importantly, the final Uruguay Round agreement plays to the strengths of the U.S. economy, opening world markets where we are most competitive. From agriculture to high-tech electronics, to pharmaceuticals and computer software, to business services, the United States is uniquely positioned to benefit from the strengthened rules of a Uruguay Round agreement that will apply to all of our trading partners.

THE URUGUAY ROUND

The Uruguay Round is the right agreement at the right time for the United States. It will create hundreds of thousands of high-wage, high-skill jobs here at home. Economists estimate that the increased trade will pump between $100 and $200 billion into the U.S. economy every year after the Round is fully implemented.

This historic agreement will:

- cut foreign tariffs on manufactured products by over one third, the largest reduction in history;
- protect the intellectual property of U.S. entrepreneurs in industries such as pharmaceuticals, entertainment and software from piracy in world markets;
- ensure open foreign markets for U.S. exporters of services such as accounting, advertising, computer services, tourism, engineering and construction;
- greatly expand export opportunities for U.S. agricultural products by reducing use of export subsidies and by limiting the ability of foreign governments to

block exports through tariffs, quotas, subsidies, and a variety of other domestic policies and regulations;
- assure that developing countries live by the same trade rules as developed countries and that there will be no free riders;
- create an effective set of rules for the prompt settlement of disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like; and
- open a dialogue on trade and environment.

This agreement will **not:**
- impair the effective enforcement of U.S. laws;
- limit he ability of the United States to set its own environmental or health standards; or
- erode the sovereignty of the United States to pass its own laws.

The Uruguay Round agreement will create a new organization—the World Trade Organization—that will support a fair global trading system into the next century and replace the General Agreement on Tariffs and Trade (GATT).

Some have expressed concern that the Uruguay Round results mean the loss of Section 301. That is simply not an accurate analysis. I have pledged that we will open markets multilaterally where possible and bilaterally where necessary. As a result of the Round we have made Section 301 a more effective tool in the multilateral context. We have improved existing trade rules, extended the rules to cover new areas of trade, and strengthened the procedures to enforce the rules. In other words, we will be able to use Section 301 to ensure that the multilateral rules are observed. For issues not covered by the new rules and for countries not members of the WTO, there will be no change in the way we resolve disputes; we will continue to use section 301 bilaterally. In addition, we will not shrink from using Title VII to combat unfair trade.

Notwithstanding tremendous international pressure to weaken antidumping and countervailing duty laws in the Uruguay Round, we were able to preserve the important elements of U.S. practice. These laws will continue to be our most important and most effective response to dumping and subsidies that injure U.S. industries.

As in the past, we will identify those trade barriers that have the most significant impact on our exporters of goods and services and develop a strategy for addressing them. We intend to work closely with Congress in implementing how we go after foreign trade barriers in both the bilateral and multilateral context. We are confident we have no shortage of tools.

While the world has benefitted enormously from the reduction of trade barriers and expansion of trade made possible by the GATT, the GATT rules were increasingly out of step with the real world. They did not cover many areas of trade such as intellectual property and services; they did not provide meaningful rules for important aspects of trade such as agriculture; and they did not bring about the prompt settlement of disputes. The old GATT rules also created unequal obligations among different countries, despite the fact that many of the countries that were allowed to keep their markets relatively closed were among the greatest beneficiaries of the system.

The WTO will require that all members take part in all major agreements of the Round, eliminating the free-rider problem. From agreements on import licensing to antidumping, all members of the WTO, will belong to all of the major international agreements.

The WTO will also require developing countries—an increasingly important area of U.S. trade—to follow the same rules as everyone else after a transition period. They will no longer enjoy the fruits of trade, without accepting responsibility and opening their own markets. The WTO will have a strengthened dispute settlement system, but will allow us to maintain our trade laws and sovereignty.

The WTO plays to the strengths of our economy. For example:

Market Access. The WTO will reduce industrial tariffs by over one third. On exports from the U.S. and the European Community, the reduction is over 50 percent. In an economy increasingly reliant on trade opening markets abroad is absolutely essential to our ability to create jobs and foster economic growth here at home. Our nation's workers are the most productive in the world and reduced tariffs will enable these workers to compete on a more level playing field.

Agriculture. U.S. farmers are the envy of the world, but too often they were not able to sell the products of their hard labor abroad, because the old GATT rules did not effectively limit agricultural trade barriers. Many countries have kept our farmers out of global markets by limiting imports and subsidizing exports. These same policies have raised prices for consumers around the world.

The Uruguay Round agreements will reform policies that distort the world agricultural market and international trade in farm products. By curbing policies that distort trade, in particular export subsidies, the World Trade Organization will open up new trade opportunities for efficient and competitive agricultural producers like the United States.

Services. The WTO will extend fair trade rules to a sector that encompasses 60% of our economy and 70% of our jobs: services. Uruguay Round participants agreed to new rules affecting around eighty areas of the economy such as advertising, law, accounting, information and computer services, environmental services, engineering and tourism. When a company makes a product, it needs financing, advertising, insurance, computer software, and so forth. Competition for these services is now global. We lead the world in this sector with nearly $180 billion in exports annually. The WTO will implement new rules on trade in services, which will ensure our companies and workers can compete fairly in the global market. While in certain key areas, such as telecommunications and financial services, the U.S. did not obtain the kind of market access commitments we were seeking, we kept our leverage by refusing to grant MFN treatment to our trading partners, and continued negotiations.

Intellectual Property. Creativity and innovation is one of America's greatest strengths. American films, music, software and medical advances are prized around the globe. The jobs of thousands of workers here in this country are dependent on the ability to sell these products abroad. Royalties from patents, copyrights, and trademarks are a growing source of foreign earnings to the U.S. economy.

The World Trade Organization will administer international rules to protect Americans from the global counterfeiting of their creations and innovations. These are the areas which represent some of the most important U.S. industries of the future. Stemming the tide of counterfeiting works to protect U.S. companies and workers, particularly as U.S. exports of intellectual property goods increase annually.

For example, our semiconductor industry is a driving force for U.S. technology advances and competitiveness. These products affect nearly every aspect of our lives and are incorporated in many of the goods traded internationally.

The TRIPS agreement is the first international agreement that places stringent limits on the grant of patent compulsory licenses for this critical technology. Under TRIPs, this industry's patents and layout designs can not be used for commercial purposes without the permission of the patent or design owner.

In short, the Uruguay Round agreements set the stage for free and fair trade in the world, and global prosperity and partnership at the end of this century and into the next.

INDUSTRIAL MARKET ACCESS

The United States achieved substantially all of its major objectives in the industrial goods market access negotiations. As a result, increased market access opportunities will be available to U.S. exporters of industrial goods.

Key provisions of the market access for goods agreement include:

- Expanded market access for U.S. exporters through tariff reductions secured from countries which represent approximately 85 percent of world trade;
- The elimination of tariffs in major industrial markets, and significantly reduced or eliminated tariffs in many developing markets, in the following areas:
  - —Construction Equipment
  - —Agricultural Equipment
  - —Medical Equipment
  - —Steel
  - —Beer
  - —Distilled spirits
  - —Pharmaceuticals
  - —Paper
  - —Toys
  - —Furniture
- Deep cuts ranging from 50–100 percent on important electronics items (semiconductors, computer parts, semiconductor manufacturing equipment) and on scientific equipment by major U.S. trading partners; and
- Harmonization of tariffs by developed and major developing countries in the chemical sector at very low rates (0, 5.5 and 6.5 percent).
- Vastly increased scope of bindings at reasonable levels from developing countries, which will ensure predictability and certainty for traders in determining the amount of duty that will be assessed.

In general, most tariff reductions will be implemented in equal annual increments over 5 years. Some tariffs, particularly in sectors where duties will fall to zero, such as pharmaceuticals, will be eliminated when the agreement enters into force. Other tariffs, particularly in sensitive sectors, including some sensitive sectors for the United States, will be phased-in over a period of up to ten years.

As part of the United States offer, many non-controversial duty suspensions introduced in the 102nd Congress, as well as many introduced in the 103rd Congress, were made permanent. Implementation of these reductions will occur on entry into force of the Agreement.

We still have some unfinished business to address including finalizing our negotiations with Japan. The Japanese offers do not respond to U.S. requests for Japan's participation in duty-elimination initiatives for wood, white spirits and copper, or substantial reductions in leather and footwear and certain chemicals. Similarly, work is still required to complete market access negotiations with certain developing countries where we will continue to press for reduction in areas such as textiles and adherence to the chemical harmonization proposal agreed by most of our major trading partners.

The schedule for finalizing the results of the market access negotiations requires governments to submit draft final schedules on or before February 15, 1994, and final schedules by March 31, 1994. A process of verification and rectification is required. Additionally, the United States is encouraging other partners that have not yet done so to improve existing offers to match the U.S. contribution.

AGRICULTURE

The Uruguay Round agreement on agriculture strengthens long-term rules for agricultural trade and assures the reduction of specific policies that distort agricultural trade. U.S. agricultural exports will benefit significantly from the reductions in export subsidies and the market openings provided by the agriculture agreement.

The United States was successful in its effort to develop meaningful rules and explicit reduction commitments in each area of the negotiations: export subsidies, domestic subsidies and market access. For the first time, agricultural export subsidies and trade-distorting domestic farm subsidies are subject to explicit multilateral disciplines, and must be bound and reduced. In the area of market access, the United States was successful in achieving the principle of comprehensive tariffication which will lead to the removal of import quotas and all other non-tariff import barriers. Under tariffication, protection provided by non-tariff import barriers is replaced by a tariff and minimum or current access commitments are required. For the first time, all agricultural tariffs (including the new tariffs resulting from tariffication) are bound and reduced.

Reduction commitments will be phased in during 6 years for developed countries and 10 years for developing countries. Budgetary outlays for export subsidies must be reduced by 36 percent and quantities exported with export subsidies cut by 21 percent from a 1986–90 base period. Non-tariff import barriers such as variable levies, import bans, voluntary export restraints and import quotas, are subject to the tariffication requirement. For products subject to tariffication, current access opportunities must be maintained and minimum access commitments may be required. Existing tariffs and new tariffs resulting from tariffication will be reduced by 36 percent on average (24 percent for developing countries) with a minimum reduction of 15 percent for each tariff line item (10 percent for developing countries). All tariffs will be bound.

Trade-distorting internal farm supports must be reduced by 20 percent from 1986–88 base period levels, allowing credit for farm support reductions undertaken since 1986. Direct payments that are linked to production-limiting programs will not be subject to the reduction commitment if certain conditions are met. Domestic support programs meeting criteria designed to insure that the programs have no or minimal trade distorting or production effects ("green box") also are exempted from reduction commitments. Due to the farm support reductions contained in the 1985 and 1990 Farm Bills, the United States has already met the 20 percent requirement and will not need to make additional changes to farm programs to comply with the Uruguay Round commitments.

Internal support measures and export subsidies that fully conform to reduction commitments and other criteria will not be subject to challenge for nine years. However, subsidized imports will continue to be subject to U.S. countervailing duty procedures, except for domestic support meeting the "green box" criteria, which will be exempt from countervailing duty actions for nine years.

TEXTILES AND CLOTHING

The textile and apparel sector has always been a critical one in this Round. From the very beginning of the negotiations at Punta Del Este, the developing countries have linked their willingness to accept disciplines in services and intellectual property, as well as further market opening, on the achievement of the phase-out of the Multifiber Arrangement (MFA). The MFA has governed trade in textiles and clothing for the past 20 years.

The Administration, however, was equally insistent on five key goals: (1) that the phase-out occur in a gradual manner that would permit our industry to adjust over time to the changes in the trading system; (2) that foreign markets be opened to U.S. textile and clothing exports for the benefit of U.S. workers; (3) that the U.S. retain control over which products would be integrated into the GATT at each stage of the phase-out period; (4) that strong safeguards be included in order to provide protection in the event of damaging surges in imports during the phase-out period; and (5) that in light of the phase-out of the MFA, that tariff cuts in this sector be held to a minimum.

We believe we have done very well in achieving those goals. While some in the sector had favored a 15-year phase-out of the MFA, we believe the 10-year period and the manner in which the phase-out in structured will give us ample tools to ensure a smooth transition. No limitations were placed on our right to make our own decisions about which products would be integrated at any given stage of the phase-out. This will ensure that the Administration can take into account the sensitivity of any given item in determining when quotas would be removed from that product in order to integrate it into the GATT.

In addition, the agreement includes strong safeguards that will allow us to take action against any import surges that might occur during the phase-out period.

In the area of tariffs, in recognition of the fact that the MFA will be phased out, the Administration resisted EC demands to cut all our peak tariffs by 50%. In fact, while the average U.S. tariff cut on all industrial items is 34 percent, the U.S. offer reduces textile and clothing tariffs by less than 12 percent overall. Particularly sensitive products received an even lower cut.

We also fought hard for commitments to open markets abroad for U.S. textile and apparel products. While we made very substantial progress in opening markets in most countries, we refused to close on inadequate offers—notably those of India and Pakistan—and are working vigorously to secure improved offers from these and other countries. We also ensured that non-WTO members, such as China, would not receive the benefit of the MFA phaseout until they become members of the WTO.

SAFEGUARDS

The Safeguards agreement incorporates many concepts long included in U.S. law—Section 201 of the Trade Act of 1974—ensuring that all countries will use comparable rules and procedures when taking safeguard actions. The agreement provides for suspending the automatic right to retaliate for the first three years of a safeguard measure; thus providing an incentive for countries to use WTO safeguard rules when import-related, serious injury problems occur.

ANTIDUMPING

The U.S. objectives in the Uruguay Round antidumping negotiations were to improve transparency and due process in antidumping proceedings, develop disciplines on diversionary dumping, and ensure that the antidumping rules continue to provide an effective tool to combat injurious dumping. The Agreement substantially achieves these objectives.

In preparation for the final Uruguay Round negotiations, Members of Congress and U.S. industries identified several issues that would to have to be addressed to make the so-called Dunkel Draft Antidumping Agreement acceptable to the United States, including: standard of review, anti-circumvention, sunset, union and employee standing, and cumulation. As of December 1, 1993, there was neither any support for U.S. proposals to improve the Dunkel Draft nor any set procedure for consideration of such proposals other than the assertion that changes would be made only by consensus—a virtually impossible condition.

Given these circumstances, it is remarkable that U.S. negotiators were able to achieve significant results in each of the areas identified as requiring change. The most important changes—and those that made the final agreement acceptable to the United States—include:

- Addition of an explicit standard of review that will make it more difficult for dispute settlement panels to second-guess U.S. antidumping determinations;

- Removal of the anti-circumvention provision which would have weakened existing U.S. anti-circumvention law;
- Modification of a rigid sunset provision that would have required near-automatic termination of antidumping orders after five years;
- Addition of express authorization for the ITC's practicing of "cumulating" imports from different countries in determining injury to a domestic industry;
- Improvements in the standing provisions that protect the rights of unions and workers to file and support antidumping petitions and that clarify the degree of support required for initiating an investigation.

In addition to these changes, there are other important aspects of the final Antidumping Agreement that make it a good agreement for the United States. One such aspect is the transparency and due process requirements proposed by the United States at the beginning of the Uruguay Round and accepted in their entirety. For example, the Agreement requires investigating authorities to provide public notice and written explanations of their actions. These new requirements should benefit U.S. exporters by improving the fairness of other countries' antidumping regimes.

The Agreement also incorporates important aspects of U.S. antidumping practice not previously recognized under the 1979 Antidumping Code. These fundamental aspects of U.S. antidumping practice are now immune from GATT challenge. For example, the agreement expressly authorizes the International Trade commission1s "cumulation" practice of collectively assessing injury due to imports from several different countries and the Department of Commerce's practice of disregarding below costs sales, if they are substantial, in determining fair value for export sales.

The Antidumping Agreement will require some changes in existing U.S. antidumping law. These changes, however, will not jeopardize our ability to combat unfair trade practices. Many of these changes are the result of the much greater detail in the new Agreement concerning the methodology investigating authorities may apply in conducting antidumping investigations. These methodological definitions will add valued predictability to all antidumping practices and protect conforming U.S. practices from GATT challenge.

SUBSIDIES AND COUNTERVAILING MEASURES

The Subsidies agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies non-actionable, provided they are subject to conditions designed to limit distorting effects. The Agreement creates three categories of subsidies and remedies: (1) prohibited subsidies; (2) permissible subsidies which are actionable if they cause adverse trade effects; and (3) permissible subsidies which are non-actionable if they are structured according to criteria intended to limit their potential for distortion.

The Agreement prohibits export subsidies, including *de facto* export subsidies, and subsidies contingent upon the use of local content. It also establishes a presumption of serious prejudice in situations where the total *ad valorem* subsidization of a product exceeds 5 percent, or when subsidies are provided for debt forgiveness or to cover operating losses.

Subject to specific, limiting criteria, the Agreement makes three types of subsidies non-actionable. Government assistance for regional development is non-actionable to the extent that the assistance is provided within regions that are determined to be disadvantaged on the basis of neutral and objective criteria and the assistance is not targeted to a specific industry or group of recipients within eligible regions. Finally, government assistance to meet environmental requirements is non-actionable to the extent that it is limited to a one-time measure equivalent to 20 percent of the costs of adapting existing facilities to new standards and does not cover any manufacturing cost savings which may be achieved.

Government assistance for industrial research and development is non-actionable if the assistance for "industrial research" is limited to 75 percent of eligible research costs and the assistance for "pre-competitive development activity" (through the creation of the first, non-commercial prototype) is limited to 50 percent of eligible costs. We successfully negotiated changes to the original R&D criteria so that they provided protection to our *existing* technology programs while ensuring that other countries cannot provide development or production support. The Administration intends to scrutinize strictly all claims of entitlement by other countries to protection under this provision. We also intend to use the review of the provision which will occur 18 months after implementation of the Uruguay Round agreement to ensure the provision has not been abused. We are convinced that under this provision the United States will be able to continue to cooperate with industry to develop the technologies of tomorrow without the threat of countervailing duty actions, while ensur-

ing that other countries cannot provide development or production subsidies free from such actions.

Both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice will expire automatically 5 years after the entry into force of the agreement, unless it is decided to continue them in current or modified form.

The Agreement also makes countervailing duty rules more precise, and in many cases reflects U.S. practice and methodologies. For example, for the first time, GATT rules will explicitly recognize U.S. "benefit-to-the-recipient" standard. In addition, the Agreement imposes multilateral subsidy disciplines on developing countries. Although subject to certain derogations, a framework has been established for the gradual elimination of export subsidies and local content subsidies maintained by developing countries.

TRADE-RELATED INVESTMENT MEASURES

The TRIMS Agreement prohibits local content and trade balancing requirements. This prohibition will apply whether the measures are mandatory or are required in return for an incentive. A transition period of 5 years will be given developing countries to eliminate existing prohibited measures, but only if they notify the GATT regarding each specific measure. Only a two-year transition is provided for developed countries.

Not later than 5 years after entry into force of the WTO Agreement there will be a review of the operation of the Agreement. As part of this review, the WTO Council for Trade in Goods will consider whether the Agreement should be complimented with provisions on investment policy and competition policy.

There are four agreements covering customs-related matters. The Import Licensing Agreement more precisely defines automatic and non-automatic licensing. The agreement will help ensure that where countries continue to maintain import licensing regimes, the procedures required to obtain a license are no more burdensome than necessary.

New provisions in the **Customs Valuation Agreement** will facilitate developing countries' adherence to the Code, and the dispute settlement provisions of the Code have been aligned with the tougher integrated dispute settlement provisions.

The Preshipment Inspection Agreement requires countries which use preshipment inspection companies to supplement or replace national customs services to ensure that the activities of PSI companies will be carried out on a non-discriminatory basis for all exporters; that quantity and quality inspections are in accordance with international standards; that inspection operations will be performed in a transparent manner and exporters will be immediately informed of all procedural requirements necessary to obtain a clean report of findings; and that unreasonable delays be will avoided in the inspection process. In addition, the Agreement establishes an independent, binding review procedure to expedite the resolution of grievances or disputes that cannot be resolved bilaterally. These changes should ensure that the activities of PSI companies do not impede or place undue burdens on U.S. exporters.

The **Rules of Origin Agreement** establishes a three-year work program to harmonize rules of origin among WTO Members. The Agreement also establishes a Committee which is to work with a Customs Cooperation Council Technical Committee to develop detailed definitions on which to base these harmonized rules of origin. During the transition period, criteria used to establish origin must precisely and specifically define the requirements to be met. These rules of origin are not to be used to influence trade or to create distortions or restrictions of trade. In addition, countries are required to publish changes to their rules of origin at least sixty days before such changes come into effect.

TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade improves the rules respecting standards and technical regulations. In particular, the agreement provides that standards, technical regulations and conformity assessment procedures (e.g., testing, inspection, certification, quality system registration, and other procedures used to determine conformance to a technical regulation or standard) are not discriminatory or otherwise used by governments to create unnecessary obstacles to trade. The Agreement improves disciplines concerning the acceptance of results of conformity assessment procedures by another country and enhances the ability of ad-foreign-based laboratory or firm to gain recognition under another country's laboratory accreditation, inspection or quality system registration scheme. The Agreement includes a process for the exchange of information, including the ability to comment

on proposed standards-related measures made by other WTO Members and a central point of contact for routine requests for information on existing requirements. Furthermore, unlike the existing TBT Code every country that is a Member of the new WTO will be required to implement the new TBT Agreement.

The new TBT Agreement ensures that each country has the right to establish and maintain standards and technical regulations at its chosen level of protection for human, animal and plant life and health and of the environment, and for prevention against deceptive practices. The Agreement generally encourages the use by governments of international standards, when possible and appropriate. At the same time it provides that each country may determine its appropriate level of protection and ensures that the encouragement to use international standards will not result in downward harmonization.

SANITARY AND PHYTOSANITARY MEASURES

The Agreement on the Application of Sanitary and Phytosanitary ("S&P") Measures will guard against the use of unjustified S&P measures to keep out U.S. agricultural exports. S&P measures are laws, regulations and other measures aimed at protecting human, animal and plant life and health from risks of plant and animal borne pests and diseases, and additives and contaminants in foods and feedstuffs. They include a wide range of measures such as quarantine requirements and procedures for approval of food additives or for the establishment of pesticide tolerances. The S&P agreement is designed to distinguish legitimate S&P measures from trade protectionist measures. For example, S&P measures must be based on scientific principles and not maintained without sufficient scientific evidence and must be based on an assessment of the risk to health, appropriate to the circumstances.

The S&P agreement safeguards U.S. animal and plant health measures and food safety requirements. The agreement clearly recognizes and acknowledges the sovereign right of each government to establish the level of protection of human, animal and plant life and health deemed appropriate by that government. Furthermore, the United States has a long history of basing its S&P measures on scientific principles and risk assessment.

In order to facilitate trade, the S&P agreement generally requires the use of international standards as a basis for S&P measures. However, each government remains free to adopt an S&P measure more stringent than the relevant international standard where the government determines that the international standard does not provide the level of protection that the government deems appropriate.

Because there may often be a range of S&P measures available to achieve the same level of protection, the agreement provides for an importing member to treat another member's S&P measure as equivalent to its own if the exporting member shows that its measures achieve the importing member's level of protection. The agreement also provides for adapting S&P measures to the sanitary or phytosanitary characteristics of a region, in particular calling for recognition of pest or disease free areas and areas of low pest or disease prevalence. For example, if an exporting member can assure an importing member that a particular area or region is free of pests or diseases of concern to the importing member, the exporting member should be able to trade from that area.

Finally, there are provisions for transparency of S&P measures, including public notice and comment and the maintenance of inquiry points where information about S&P measures can be obtained.

In the final days of the negotiations, the United States was able to obtain several improvements in the S&P agreement to respond to environmental concerns. The original S&P text provided that S&P measures must ". . . not be maintained against available scientific evidence." This language was unclear and did not take account of the fact that there is often conflicting scientific evidence. This section of the Agreement was changed to ". . . not maintained without sufficient scientific evidence, except as provided in paragraph 22." Paragraph 22 allows a member to provisionally adopt S&P measures on the basis of available pertinent information where there is insufficient relevant scientific evidence.

To clarify that there no "downward harmonization" of S&P measures is required under the agreement, the U.S. obtained an explanatory footnote to paragraph 11, which provides that a "scientific justification" is one basis for introducing or maintaining a measure more stringent than the relevant international standard. The footnote explains that "there is a scientific justification if, on the basis of an examination and evaluation of available scientific information . . . , a Member determines that the relevant international standards, . . . are not sufficient to achieve its appropriate level of protection."

The United States also succeeded in obtaining changes to the original S&P text requirement that members "ensure that . . . measures are the least restrictive to trade, taking into account technical and economic feasibility." This language was unclear and could be given an overly narrow, unreasonable interpretation. The revised language requires that members ensure that their S&P measures are "not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility." In addition, a footnote was inserted clarifying that a measure is not more trade restrictive than required unless there is another measure, reasonably 'available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade. These two changes make it clear that a member is not required to adopt unreasonable S&P measures or to change a measure based on insignificant trade effects.

SERVICES

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sectors. The GATS also provides a specific legal basis for future negotiations aimed at eliminating barriers that discriminate against foreign services providers and deny them market access. The principal elements of the GATS framework agreement include most-favored-nation (MFN) treatment, national treatment, market access, transparency and the free flow of payments and transfers. The rules embodied in the framework are augmented by sectoral annexes dealing with issues affecting financial services, movement of personnel, enhanced telecommunications services and aviation services.

Complementing the framework rules and annexes are binding commitments to market access and national treatment in services sectors that countries schedule as a result of bilateral negotiations. In order to fulfill the market access and national treatment provisions of the GATS, each government has submitted a schedule of market access commitments in services which will become effective upon entry into force of the GATS. Countries are also permitted to take one-time exemptions from the most-favored-nation provision in the GATS. Schedules of commitments include horizontal measures such as commitments regarding movement of personnel and service providers. The schedules also include commitments in specific sectors, such as: professional services (accounting, architecture, engineering), other business services (computer services, rental and leasing, advertising, market research, consulting, security services), communications (value-added telecommunications, couriers, audio-visual services), construction, distribution (wholesale and retail trade, franchising), educational services, environmental services, financial services (banking, securities, insurance), health services and tourism services. Maritime and civil aviation commitments were also scheduled by a small number of countries.

The GATS contains a strong national treatment provision that requires a country to accord to services and services suppliers of other countries treatment no less favorable than that accorded to its own services and services suppliers. It specifically requires GATS countries to ensure that their laws and regulations do not tilt competitive conditions in the domestic market against foreign firms in services sectors listed in its schedule of commitments.

The GATS also includes a market access provision which incorporates disciplines on six types of discriminatory measures that governments frequently impose to limit competition or new entry in their markets. These laws and regulations—such as restrictions on the number of firms allowed in the market, economic "needs tests" and mandatory local incorporation rules—are often used to bar or restrict market access by foreign firms. A country must either eliminate these barriers in any sector that it includes in its schedule of commitments or negotiate with its trading partners for their limited retention.

For services companies who benefit from sectoral commitments, the framework also guarantees the free flow of current payments and transfers. The provision on transparency requires prompt publication of all relevant measures covered by the agreement. Subject to negotiations, specific laws or regulatory practices may be exempted from MFN treatment, by listing them in an annex provided for that purpose. This mechanism allows countries to preserve their ability to use unilateral measures as a means of encouraging trade liberalization.

Given the breadth and complexity of the services sector, the GATS provides for the progressive liberalization of trade in services. Successive negotiations may be commenced at five-year intervals to allow improvements in market access and national treatment commitments and to allow liberalization of MFN exemptions. The GATS also sets out terms for the negotiation of several framework provisions which

currently contain no substantive disciplines such as subsidies, government procurement, and emergency safeguard actions. In addition, Ministerial Decisions related to the GATS establish work programs in several areas such as trade and the environment, basic telephone services, maritime transport services and reduction of barriers to trade in professional services. Moreover, while there were no commitments from the European Union on audio-visual, the sector is fully covered by GATS and the Administration will aggressively pursue the interests of this industry through a variety of channels.

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Trade in U.S. goods and services protected by intellectual property rights reflects a consistent trade surplus. For example, U.S. copyright industries—movies, computer software, and sound recordings—are consistently top U.S. export earners. U.S. semiconductors are found in the computers and appliances we all use each day. U.S. pharmaceutical companies are among the most innovative, and our exports of these important products have been growing. Strengthened protection of intellectual property rights and enforcement of those rights as provided in the TRIPs agreement will enhance U.S. competitiveness, encourage creative activity, and expand exports and the number of jobs.

The TRIPs agreement establishes, for the first time, detailed multilateral obligations to provide and enforce intellectual property rights. The Agreement obligates **all Members** to provide strong protection in the areas of copyrights and related rights, patents, trademarks, trade secrets, industrial designs, geographic indications and layout designs for integrated circuits.

In the area of **copyrights** the text resolves some key trade problems for U.S. software, motion picture and recording interests by:

- protecting computer programs as literary works and databases as compilations;
- granting owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products;
- establishing a term of 50 years for the protection of sound recordings as well as requiring Members to provide protection for existing sound recordings; and
- setting a minimum term of 50 years for the protection of motion pictures and other works where companies may be the author.

In the area of *patents* the Agreement resolves long-standing trade irritants for U.S. firms. Key benefits are:

- product and process patents for virtually all types of inventions, including pharmaceuticals and agricultural chemicals;
- meaningful limitations on the ability to impose compulsory licensing, particularly on semiconductor technology; and
- a patent term of 20 years from the date the application is filed.

As for **trademarks,** the Agreement:

- requires trademark protection for service marks;
- enhances protection for internationally well-known marks;
- prohibits the mandatory linking of trademarks; and
- prohibits the compulsory licensing of marks.

The Agreement also provides rules for the first multilaterally agreed standards for protecting trade secrets, and improved protection for layout designs for integrated circuits. Provisions on protection for geographic indications and industrial designs are consistent with U.S. law and regulations.

Most importantly, countries are then obligated to provide effective enforcement of these standards, including meeting due process requirements and providing the remedies required to stop and prevent piracy.

While the transition period for developing countries is too long and we must still work to ensure that U.S. sound recording and motion picture producers and performers receive national treatment and obtain the benefits that flow from their products, the TRIPs agreement is a major step forward in guaranteeing that all countries provide intellectual property protection and deny pirates safe havens.

DISPUTE SETTLEMENT

The Dispute Settlement Understanding (DSU) creates new procedures for settlement of disputes arising under any of the Uruguay Round agreements. The new system is a significant improvement on the existing practice. In short, it will work and it will work fast.

The process will be subject to strict time limits for each step. There is a guaranteed right to a panel. Panel reports will be adopted unless there is a consensus to reject the report and a country can request appellate review of the legal aspects of a report. The dispute settlement process can be completed within 16 months from the request for consultations even if there is an appeal. Public access to information about disputes is also increased.

After a panel report is adopted, there will be time limits on when a Member must bring its laws, regulations or practice into conformity with panel rulings and recommendations, and there will be authorization of retaliation in the event that a Member has not brought its laws into conformity with its obligations within that set period of time.

The automatic nature of the new procedures will vastly improve the enforcement of the substantive provisions in each of the agreements. Members will not be able to block the adoption of panel reports. Members will have to implement obligations promptly and the United States will be able to take trade action if Members fail to act or obtain compensation. Trade action can consist of increases in bound tariffs or other actions and increases in tariffs may be authorized even if there is a violation of the TRIPS or Services agreements.

The DSU includes improvements in providing access to information in the dispute settlement process. Parties to a dispute must provide non-confidential summaries of their panel submissions that can be given to the public. In addition, a Member can disclose its submissions and positions to the public at any time that it chooses. Panels are also expressly authorized to form expert review groups to provide advice on scientific or other technical issues of fact which should improve the quality of decisions.

WORLD TRADE ORGANIZATION

The Agreement Establishing the World Trade Organization (WTO) encompasses the current GATT structure and extends it to new disciplines that have not been adequately covered in the past. The new organization will be more credible and predictable and thus benefit U.S. trade interests.

The WTO will help to resolve the "free rider" problem in the world trading system. The WTO system is available only to countries that are contracting parties to the GATT, agree to adhere to all of the Uruguay Round agreements, and submit schedules of market access commitments for industrial goods, agricultural goods and services. This will eliminate the shortcomings of the current system in which, for example, only a handful of countries have voluntarily adhered to disciplines on subsidies under the 1979 Tokyo Round agreement.

The WTO Agreement establishes a number of institutional rules that will be applied to all of the Uruguay Round agreements. We do not expect that the organization will be different in character from that of the existing GATT and its Secretariat, however, nor is the WTO expected to be a larger, more costly, organization.

GATT ARTICLES

The mandate of the GATT Articles negotiating group was to discuss improvements to any GATT provision not being negotiated elsewhere. The balance-of-payments reform (BOP) text increases disciplines and transparency over the use of BOP measures. The state trading text affirms the obligation of GATT contracting parties to ensure that their state trading enterprises—government-operated import/export monopolies and marketing boards, or private companies that receive special or exclusive privileges from their governments—operate in accordance with GATT rules. The text on preferential trading arrangements clarifies the GATT rules that pertain to regional arrangements (customs unions and free trade arrangements) and defines the state/local relationship in regard to GATT obligations. The understanding on waivers of obligations will ensure that waivers are time-limited and that are subject to greater conditions and disciplines. There also are clarifications of GATT Articles II: 1(b) (regarding "other duties or charges") and Article XXXV (regarding tariff negotiations).

TRADE POLICY REVIEW MECHANISM

The Final Act confirms an April 1989 agreement establishing the Trade Policy Review Mechanism (TPRM), which examine, on a regular basis, national trade policies and other economic policies having a bearing on the international trading environment.

GOVERNMENT PROCUREMENT

The new GATT Government Procurement Code is a substantial improvement over the existing Code, significantly expanding the value of procurement opportunities covered by other countries and altering the character of the agreement to one much more rooted in reciprocity. For the first time, Code coverage is expanded to services and construction. It also opens the way for substantial coverage of subcentral governments and government-owned enterprises.

The new Code is like the old Code in limiting membership to those countries that specifically accede to it. Membership in the WTO does not necessarily lead to membership in the Procurement Code. The new Code departs from the old one, however, in creating a structure that makes reciprocity more workable between individual countries and actively encourages new countries to join. By authorizing departures from most-favored-nation (MFN) treatment, the new Code ensures that our relationships with all signatory countries are strictly reciprocal.

The new Code also provides improved disciplines. It restricts distorting practices such as offsets and ensures more effective enforcement through the establishment of national bid challenge Systems, while also increasing flexibility in certain procedural requirements to adapt the Code to new efficiencies in procurement, like those contemplated in the Vice President's Reinventing Government proposals.

In negotiations on coverage, the United States offered a substantial value of our states procurement to countries that were willing to address our priorities in their procurement markets. Since there was a consensus to allow exceptions to MFN coverage, we were able to agree to cover our states for countries (Korea, Israel and Hong Kong) that offered substantial coverage of their subcentral governments and government-owned enterprises and not be forced to extend our states coverage to countries whose offers fell short.

We leave open the possibility, however, of extending coverage with any one country through bilateral negotiations in the future. Most importantly, the United States and the European Union agreed to accomplish this by April 15 of this year. We expect this expanded coverage to include the European Unions's electrical sector under the Code and telecommunications sector under a separate, but parallel, bilateral agreement.

Finally, the new Code agreement sets the stage for new countries to accede and subject their procurement practices to international disciplines. The most recent addition is the Republic of Korea, which completed its accession with the conclusion of negotiations on the new Code. We expect that Taiwan, the Peoples Republic of China and Australia may soon follow as new signatories to the Code.

AIRCRAFT

Aircraft trade issues had been contentious throughout the negotiations because the European Community sought to have aircraft entirely excluded from the disciplines of the new UR Agreement on Subsidies and Countervailing Measures. Instead, the EC appeared intent on substituting a weaker discipline, having a revised Agreement on Trade in Civil aircraft entirely supersede any new subsidies agreement for aircraft products.

In the final week of negotiations, it became clear that the draft Aircraft Agreement had serious shortcomings. That text, if adopted, would have provided no new disciplines on production or development subsidies, nor would it have increased public transparency of government supports to aircraft manufacturers, such as those to the Airbus Consortium. Instead, the proposed revised Aircraft Agreement would have weakened those disciplines by allowing additional subsidies. Most significantly, past supports to Airbus would have been "grandfathered," completely exempting them from action under Subsidies Agreement. Moreover, certain provisions of the text might have provided a pretext for unjustified GATT action against our military and NASA research programs—programs that have also provided benefits to the Europeans and are in no way comparable to the immense state subsidies that have been systematically provided to Airbus for civil aircraft development and production.

While we worked hard to negotiate to remedy these insufficiencies, U.S. proposals were not adequately reflected in revisions to the Aircraft Agreement. Such an outcome was clearly unacceptable both to the U.S. industry and to the U.S. Government. Just days before the end of the negotiations, the U.S. stood firm and refused to accept the draft Aircraft text as the basis for an agreement.

As a result of our resolve, the EC, and subsequently all other countries negotiating the Uruguay Round, agreed to bring aircraft under the stronger disciplines of the new Agreement on Subsidies (with only minor changes) and the more expeditious and certain dispute settlement procedures contained in the UR dispute settlement agreement. The Subsidies Agreement will be applicable to all civil aircraft

products including aircraft of all sizes and types, engines and components, and to all WTO member countries. This was the principal objective of the U.S. aerospace industry, which produces the largest trade surplus of any U.S. manufacturing industry, an estimated $28 billion in 1993.

We continue to seek to tighten the existing disciplines on government support for aircraft development, production and marketing currently contained in the 1979 GATT Agreement on Trade in Civil Aircraft and to expand the coverage of that agreement to other countries that produce civil aircraft. Those negotiations will continue with the goal of reaching agreement by the end of 1994.

ENVIRONMENT

Comprehensive as it is, the Final Act does not cover every several aspect of trade policy of great importance to the United States and to this Administration. Our trading partners recognize that the work of shaping the World Trade Organization to the needs of the 21st century must continue without pause.

In December, the Uruguay Round participants decided to develop a program of work on trade and environment to present to the ministers in Marrakech in April. We begin with the agreed premise that international trade can and should promote sustainable development, and that the world trading system should be responsive to the need for environmental protection, if necessary through modification of trade rules.

The United States will seek a work program that ensures that the new WTO is responsive to environmental concerns. International trade can contribute to our urgent national and international efforts to protect and enhance environmental quality and conserve and restore natural resources. At the same time, we will continue to advocate trade rules that do not hamper our efforts to carry out vital and effective environmental policies, whether nationally or in cooperation with other countries. We will be working closely with environmental organizations and business groups, as well as the various agencies, and of course this Committee and others in Congress, as we define our trade and environment objectives.

CONCLUSION

Mr. Chairman, it appears that Congress will be considering the Uruguay Round implementing legislation at an auspicious time for America. The U.S. economy is expanding; investment is increasing; jobs are being created; and optimism about the prospects for our economy is soaring. This economic expansion reflects the fact that this country is moving in the right direction; and we are doing it together. The policies of the Clinton Administration, starting with our budget plan; the adjustments made over the last several years by our workers and companies—all of our efforts make us as a nation stronger and more competitive.

In setting the negotiating objectives for the Uruguay Round, Congress clearly signalled its belief that strengthening the multilateral rules of the GATT would make America more competitive in world markets. We succeeded. We met those objectives; and I am convinced that the new multilateral rules agreed to in the Uruguay Round will work together with our ongoing efforts to increase regional cooperation. America is uniquely positioned to benefit from expanding trade—in this hemisphere and in the world. The Uruguay Round builds on our strengths. It will benefit us, and the world economy as a whole.

RESPONSES OF AMBASSADOR KANTOR TO A QUESTION SUBMITTED BY SENATOR RIEGLE

Question. The market access agreement reached in December includes a tariff elimination ("zero for zero") agreement for distilled spirits. However, this agreement is limited to whisky and brandy. It does not cover other distilled spirits, such as vodka, rum, gin and liqueurs, which represents a significant portion of U.S. exports. I understand that only Japan has objected to eliminating tariffs on these products, while all other participants in the distilled spirits "zero for zero" are prepared to do so.

Do you intend to continue to press Japan to agree to eliminate its tariffs on these products, so that all U.S. exports of distilled spirits can benefit from tariff elimination in major markets around the world?

What are your plans for pursuing this issue with the Japanese?

Answer. I personally raised this issue with Minister Hata on several occasions in February. Unfortunately, Japan refused to go to zero on white spirits. As a result, other trading partners also refused to go to zero. Our current offer reflects this situation.

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable David L. Boren
United States Senate
Washington, D.C. 20510-3601

Dear Senator Boren:

Thank you for your letter of February 24 concerning the GATT subsidies agreement. I am pleased to provide you with further information on the research and development provisions of the Agreement on Subsidies, as well as a more thorough analysis of research spending of the U.S. and of our key trade competitors.

The Subsidies Agreement is in the best interest of the United States. Its strict new disciplines and effective new dispute settlement system will apply to all 117 members of the World Trade Organization.

The final Subsidies Agreement is shaped to fit existing U.S. programs. Indeed, the deficiencies in the Dunkel Draft Subsidies Agreement were brought to our attention not only by a bipartisan, bicameral group of Congressional leaders, but also by key industries. At their urging, incremental changes to the subsidy agreement were negotiated to protect long established U.S. R&D programs that support and create thousands of jobs across the country.

Furthermore, while the definition and allowable levels of support were slightly changed in the Subsidies Agreement, U.S. negotiators made certain that the R&D provision would not be a loophole. As a result, other countries will not be able to use the R&D provision to provide production subsidies under the guise of research assistance. Moreover, we ensured that green light status will only be granted after a thorough review of the program. The implementing legislation can clarify U.S. expectations for the review process.

The green light provision has been endorsed by many of the United States' most competitive companies, many of whom have been fighting foreign subsidies for years. For example, the Industry Sector Advisory Committee on Electronics and Instrumentation, which includes such leading U.S. companies as AT&T, Eastman Kodak, and Sun Microsystems, concluded that "the establishment of a non-actionable subsidy category for certain research and development assistance" facilitates "the legitimate role government plays in providing assistance for R&D activities."

Your letter inquired about the levels and type of support by the federal government for civilian R&D. As I mentioned at the hearing, the United States has been, and continues to be, the greatest supporter of industrial research in the world. In 1991, for example, the U.S. Government spent one-third more on R&D than Japan, the former West Germany, the United Kingdom and France combined. U.S. non-defense R&D spending exceeded that of Japan, West Germany, and the United Kingdom combined. Federal support for R&D has continually increased under Presidents Reagan, Bush, and Clinton. These figures reflect actual spending, not indirect assistance like tax credits.

On a per-capita basis, total government R&D spending in the United States exceeds that of our major trading partners. The U.S. government spends $234 per capita on R&D; Japan spends less than half that amount. Similarly, the U.S. government spends more per capita on non-defense R&D ($112 per capita) than Japan ($83.12) or the United Kingdom ($80.12). Thus, because of our extraordinary support for R&D, we had the most to lose under the Dunkel draft subsidies agreement, which did not have a green-light for R&D.

I trust this letter addresses your concerns. I look forward to discussing this and other issues with you as we move forward in the implementation process.

Sincerely,

Michael Kantor

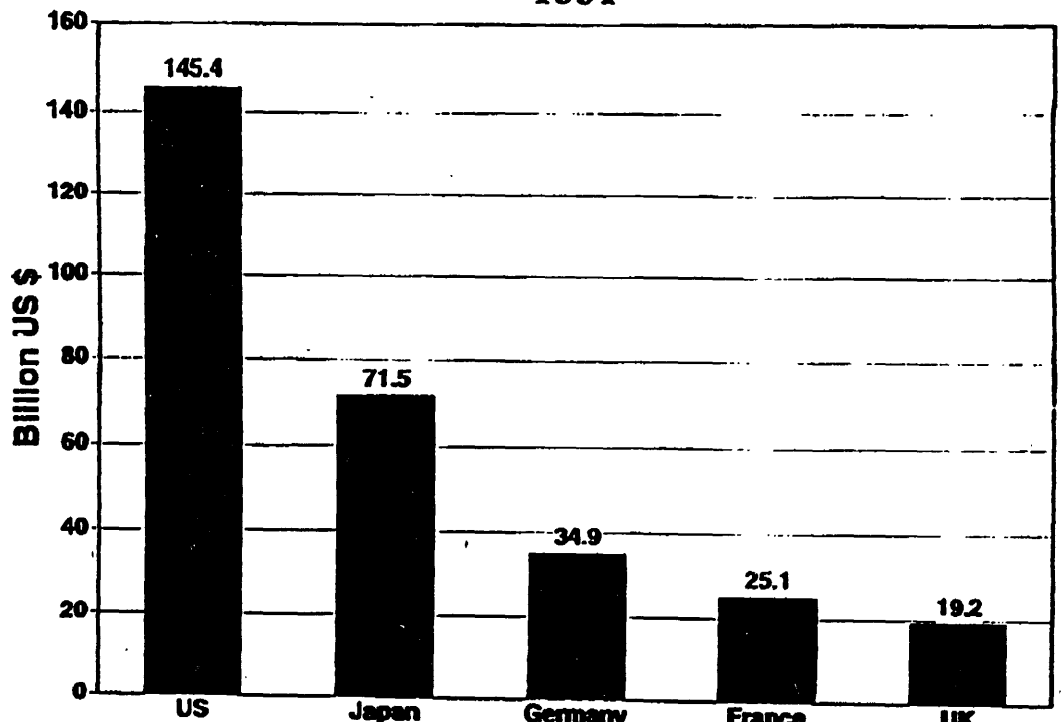
Estimates of National Expenditures on R&D
1991

(in billions of dollars)

	U.S.	Japan	W. Germany	France	U K.
Total R&D Spending (Government & Private Sector)	$145.4	$71.5	$34.9	$25.1	$19.2
Total Government R&D Spending	$59.2	$13.2	$13.0	$11.6	$6.6
Non-Defense Share of Government R&D Appropriations	41%	94%	90%	63%	54%
Estimated Gov't Spending for Non-Defense R&D	$28.4	$10.3	$12.7	$9.3	$4.6
Total Spending on Non-Defense R&D	$114.6	$68.6	$34.6	$22.8	$17.2

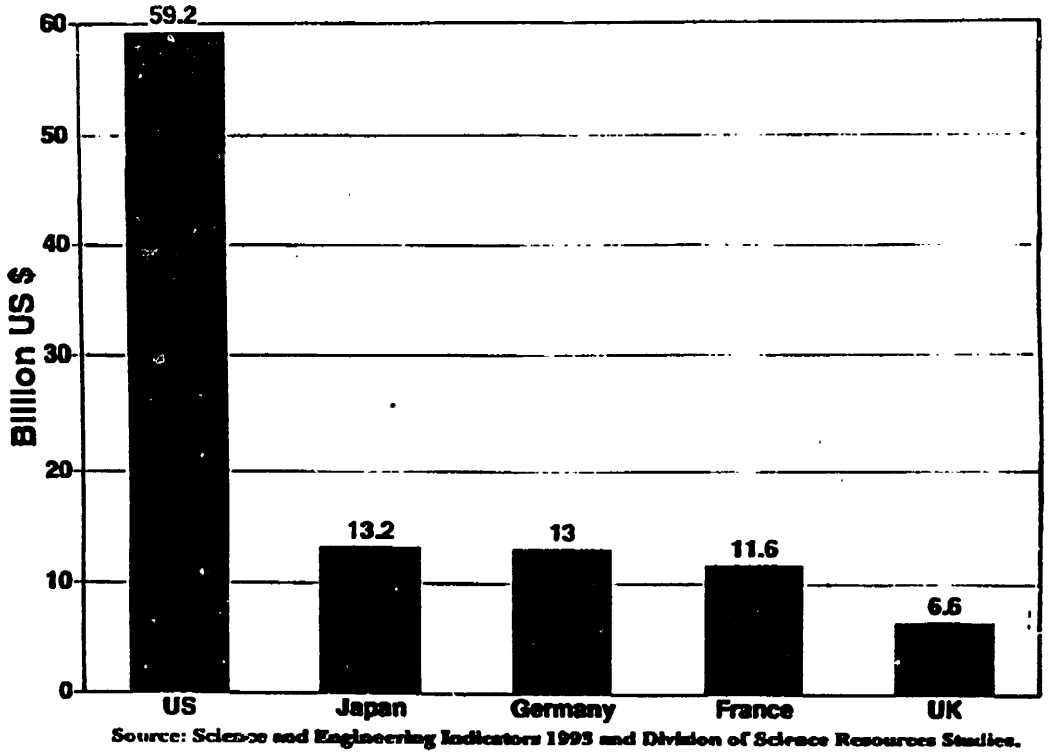
Note Data drawn from Science & Engineering Indicators, 1993, National Science Board. Calculations by USTR. Total R&D spending includes government, industry, higher education, and other sources.

Total Spending on R&D
1991



Source: Science and Engineering Indicators 1993 and Division of Science Resources Studies.

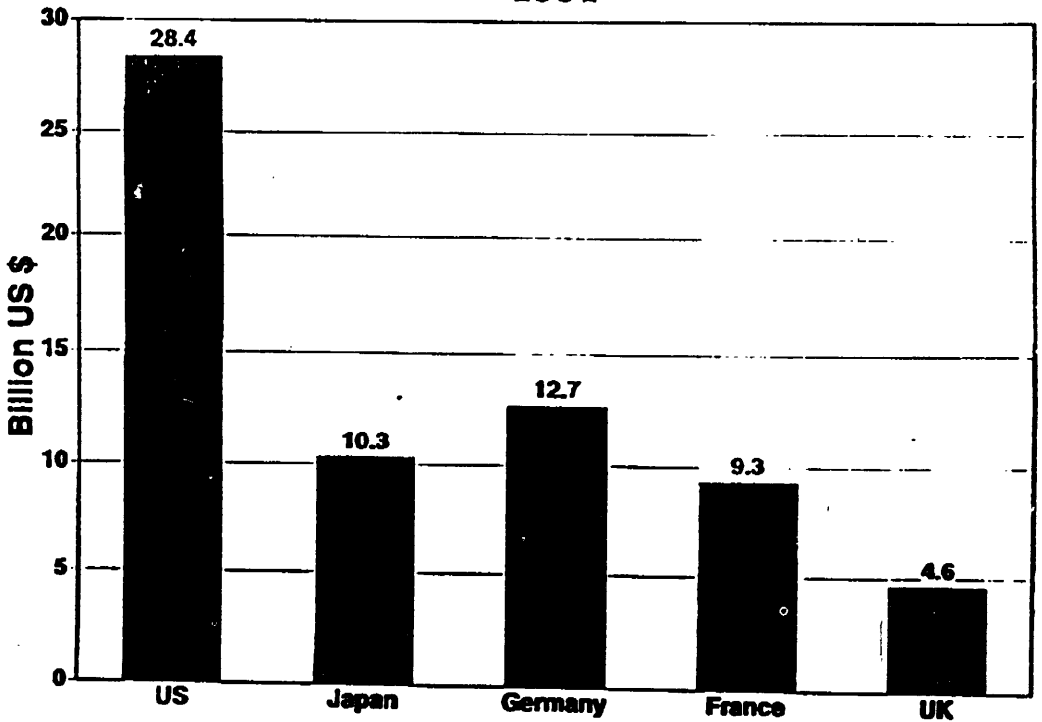
Government Support for R&D
1991



Source: Science and Engineering Indicators 1993 and Division of Science Resources Studies.

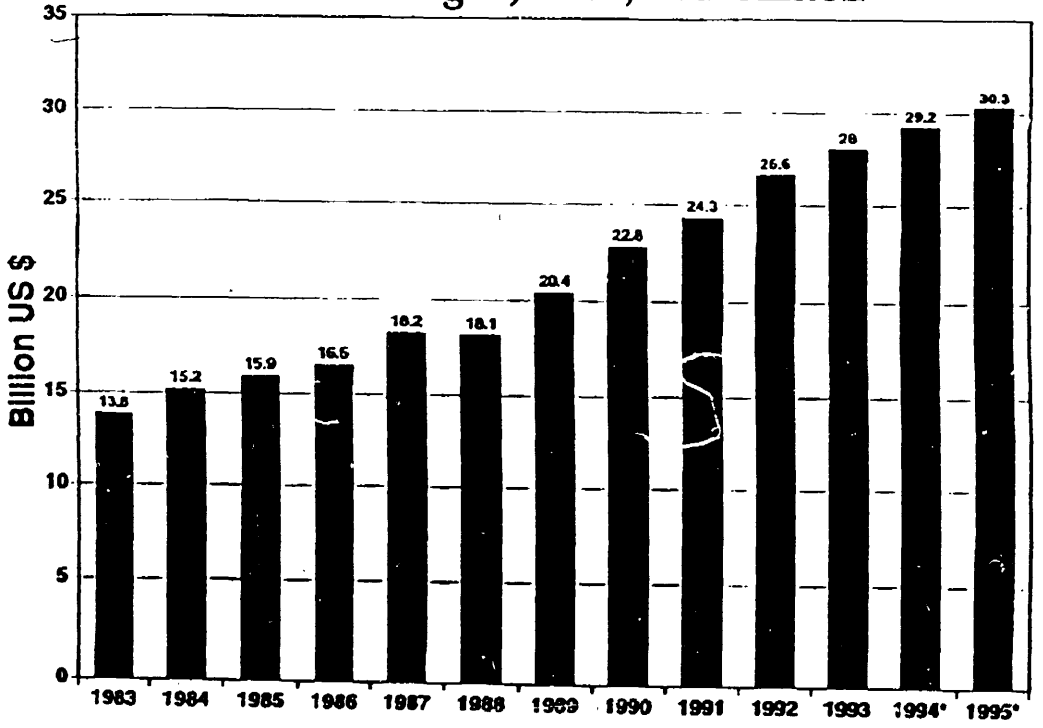
Government Non-Defense R&D Spending

1991



Source: Science and Engineering Indicators 1993 and Division of Science Resources Studies.

US Support for Non-Defense R&D Grew Under Reagan, Bush, and Clinton



Source: Science and Engineering Indicators 1993 and Division of Science Resources Studies.

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

FEB 7 1994

The Honorable John C. Danforth
United States Senate
Washington, D.C. 20510-3601

Dear Senator Danforth:

I am writing in response to the January 31 letter which you and your colleagues sent regarding the Uruguay Round Subsidies Agreement. I look forward to working with you on this and other aspects of the Uruguay Round. The answers to the specific questions you raised are attached to this letter.

The United States is uniquely positioned to benefit from the Uruguay Round trade agreements and the new world trade system it will create. U.S. workers will gain from significant new employment opportunities and additional high-paying jobs associated with the increased production for export. U.S. companies will gain from significant opportunities to export more agricultural products, manufactured goods and services. U.S. consumers will gain from greater access to a wider range of lower priced, higher quality goods and services. As a nation, we will compete; and we will prosper.

This historic agreement will:

-- cut foreign tariffs on manufactured products by over one-third, the largest reduction in history;

-- protect the intellectual property of U.S. industries such as pharmaceuticals and software from piracy in world markets;

-- ensure open foreign markets for U.S. exporters of services such accounting, advertising, computer services, tourism, engineering and construction;

-- greatly expand export opportunities for U.S. agricultural products by limiting the ability of foreign governments to block exports through tariffs, quotas, subsidies, and a variety of other domestic policies and regulations;

-- assure that developing countries live by the same trade rules as developed countries; and

-- create an effective set of rules for the prompt settlement of disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like.

Strong bipartisan support in the Senate for the Round strengthened our negotiating hand in Geneva and was of great assistance in our successful effort to achieve this historic result.

The Subsidies Agreement itself also is in the best interest of the United States. Its strict new disciplines and effective new dispute settlement system will apply to all 117 members of the World Trade Organization.

The Agreement establishes a three-class framework for the categorization of subsidies and subsidy remedies: (1) prohibited subsidies; (2) subsidies which are subject to dispute settlement in Geneva and countervailable unilaterally if they cause adverse trade effects; and (3) permissible subsidies which are non-actionable and non-countervailable if they are structured according to criteria intended to limit their potential for distortion.

The Agreement sets forth (for the first time in the GATT) the definition of a subsidy and the conditions which must exist in order for a subsidy to be actionable (i.e., U.S. rules on "specificity"). It retains U.S. countervailing duty practice with respect to the specificity of sub-national subsidies, so that generally available state subsidies provided by state governments will not be considered specific, but central government subsidies to a region will be specific except where the criteria for assistance to a disadvantaged region are met.

The Agreement extends and clarifies the 1979 Subsidies Code's list of prohibited practices to include de facto as well as de jure export subsidies and subsidies contingent upon the use of local content. It specifies how to prove serious prejudice (adverse effect) and creates an obligation for the subsidizing country to withdraw the subsidy or remove the adverse effects when such effects are identified. It also introduces a presumption of serious prejudice in situations where the total ad valorem subsidization of a product exceeds 5 percent (calculated on the basis of the cost to the subsidizing government of granting the subsidies), or when subsidies are provided for debt forgiveness or to cover the operating losses. (In circumstances where serious prejudice is presumed, the burden is upon the subsidizing government to demonstrate that serious prejudice did not result from the subsidization in question).

Countervailing duty rules have been made more precise, and the effectiveness of the U.S. countervailing duty law and practice have been preserved. For the first time there is international acceptance of U.S. "benefit-to-the-recipient" calculation methodologies for purposes of determining the "benefit conferred" by subsidies. The definition of subsidies requires that there be some form of "financial contribution" by the government (a direct transfer of funds, non-collection of revenue otherwise due, provision of goods or services, or entrusting a private body to carry out one of these functions).

Multilateral subsidy disciplines will be introduced for developing countries (another first). The value of this should not be discounted. Given that the Uruguay Round package will be accepted as a "single undertaking," all WTO Members will be subject to a framework for the elimination of their export subsidies.

The strengthening of multilateral disciplines and clarification of terms, combined with speedier and binding dispute settlement, will make subsidy remedies significantly more "user-friendly" than in the past. This should work to the advantage of U.S. industries which rely on export markets but which face subsidized competition in those markets.

The Agreement does set out three types of government assistance which are non-actionable where specific criteria are satisfied:

(1) certain government assistance for regional development will be non-actionable to the extent that the assistance is provided within regions that are determined to be disadvantaged on the basis of neutral and objective criteria and the assistance is not targeted to a specific industry or group of recipients within eligible regions;

(2) certain government assistance for basic industrial research and pre-competitive development activity will be non-actionable if the assistance for "industrial research" is limited to 75 percent of eligible research costs and the assistance for "pre-competitive development activity" (equivalent to applied research and development activities through the creation of the first, non-commercial prototype) is limited to 50 percent of eligible costs; and

(3) certain government assistance to adapt existing plant and equipment to new environmental requirements will be non-actionable if it is limited to a one-time measure equivalent to 20 percent of the costs of adapting existing facilities to new standards and does not cover any manufacturing cost savings which may be achieved.

Your letter focuses on the green light safe harbor for government R&D assistance. The United States Government provides more R&D assistance to industry than any other country. There is a long history of bipartisan support for R&D programs in several areas. Over the last several years these programs have contributed to the restoration of America's competitiveness.

The text of the 1991 Uruguay Round Draft Final Act on subsidies would not have provided green light safe harbor protection to important existing programs having broad bipartisan support, including:

Cooperative Research and Development Agreements (CRADA's) in several agencies, notably the Technology Transfer Initiative of the Department of Energy (FY94 funding in DOE for CRADA's is $225 million),

the Partnership for a New Generation of Vehicles,

the Advanced Technology Program at NIST (FY94 funding is $200 million),

Sematech (FY94 funding is $90 million),

biomedical research and commercialization at NIH,

NASA's aeronautics programs, and

the Technology Reinvestment Project (FY94 funding is $425 million) and other cost-shared dual use programs of the Defense Department's Advanced Research Project Agency (ARPA).

These programs support and create thousands of jobs across the country. They enhance our ability to stay on the leading edge of technology-- a step ahead of our competition. Without the assurance of freedom from countervailing duty actions or dispute settlement in Geneva, many of our industries would not be willing to engage in cooperative research programs with the Government. This would frustrate development of the technologies of tomorrow and stifle competitiveness. We as a country would be the loser.

In response to these urgent concerns of our science and technology community and a bipartisan group of Members of Congress, we sought incremental changes to the 1991 Uruguay Round Draft Final Act to increase our ability to promote government-sponsored research programs. The final text of the Subsidies Agreement reflects the structure of existing, longstanding, bipartisan U.S. technology programs.

The Administration succeeded in molding the R&D green light safe harbor to fit existing U.S. technology programs. Let me repeat, because it is very important-- the final R&D provisions, which we drafted, protect the type of technology programs the U.S. currently has, while excluding the type of development and production assistance which other countries typically grant.

Only two operative changes were made to the 1991 Uruguay Round Draft Final Act:

(1) The cut-off for activity which can be supported by the government was expanded slightly-- going from immediately before creation of any prototype to allowing involvement in the creation of the first non-commercial prototype; and

(2) the permissible level of government assistance was increased from 50% of basic industrial research to 75% and from 25% of applied research to 50% of what is now called "pre-competitive activity" (i.e., up to the first non-commercial prototype).

The permissible levels of government assistance were not selected at random. Rather, they reflect the level of assistance provided in U.S. programs. This also is true of the choice of the first non-commercial prototype as the cut-off for the green light safe harbor. This cut-off will ensure that we will be able to continue to provide the type of R&D support which we already provide while ensuring that other countries cannot provide development or production subsidies free from countervailing duty actions or dispute settlement in Geneva.

This provision will not be a loophole. Other countries will not be able to use this provision to provide production subsidies in the guise of research assistance. The Subsidies Agreement establishes clear rules and strong disciplines designed to avoid the potential that government assistance to R&D will significantly harm our commercial interests. The criteria for entitlement to claim green light coverage are clear and limiting. Assistance may cover only:

(1) those personnel and consultancy costs (and associated overhead) exclusively relating to permissible R&D; and

(2) the cost of instruments, equipment, buildings and land (a) which relate exclusively to permissible R&D and (b) which can never be used for commercial activity.

The only way to secure green light status is to get the approval of the Subsidies Committee after its review of whether the criteria for green light status are met. To do this, a country must notify the program for which it seeks such status, providing whatever information Members of the Committee believe necessary. I can assure you that this Administration intends to scrutinize very carefully all requests for green light status. (A country is not required to notify a program to the Committee, but if it does not, it does not get green light status, and it runs the risk of being subject to countervailing duty action or dispute settlement in Geneva. It can prove that it satisfies the criteria in such proceedings, but the cost will be high and period of uncertainty long).

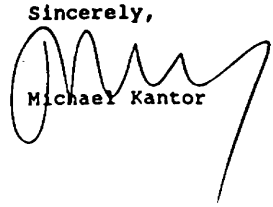
Even if the Committee grants green light status to a program, it can be stripped whenever it is established that a particular R&D program has resulted in production which causes serious adverse effects to the competing industry of another WTO Member. In

addition, the Agreement requires a review of the R&D provision after 18 months with a view to making all necessary modifications to improve the operations of the provision. This will give us an opportunity to correct any deficiencies that have come to light. Then, there is the ultimate safety valve in case other countries turn out to abuse the provision. Both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice will expire automatically 5 years after the entry into force of the agreement, unless it is decided to continue them in current or modified form. Thus, if the United States objects to the continuation of these provisions, they will not continue.

In closing, I believe we struck the appropriate balance between strict subsidies discipline and protecting the cooperative government-industry partnerships which have existed for years in the United States. The Subsidies Agreement does not promote competitive subsidization. Rather than stimulating higher levels of subsidization, it provides clearer and improved rules of the road to prohibit or discipline subsidies.

As I said at the start of this letter, the final Uruguay Round agreement is a good deal for America. American business, workers and consumers will benefit. The Round represents the latest step in a long-term bipartisan effort to expand global trading opportunities for our companies and to enhance U.S. competitiveness. I hope that when you look at the results of the Round as a whole you will share this view, and in the expectation that you will come to this conclusion I look forward to working with you, and your co-sponsors, to achieve implementation of this historic trade agreement.

Sincerely,



Michael Kantor

Attachment

Question 1

What was the basis for the change in U.S. policy on Subsidies? Has the Administration undertaken any analysis of the comparable levels of subsidies granted by the European Union, Japan, Canada, and the U.S.? If so, would you provide us with that analysis?

Answer

As explained at length in my letter, the successful effort to revise the R&D portion of the Subsidies Agreement was prompted by the failure of the text of the 1991 Uruguay Round Draft Final Act on subsidies to provide green light safe harbor protection to important existing U.S. technology programs having broad bipartisan support. The Administration has not undertaken an analysis of the comparable level of subsidies granted by the European Union, Japan, Canada and the U.S. One important reason is that, prior to the final Uruguay Round Subsidies Agreement, there was no internationally agreed definition of a subsidy.

Consequently, it would not have been possible to collect sufficient international data on comparable terms to make such a comparison. In any event, the results of the Uruguay Round negotiation made such a study superfluous, since the new Agreement will prohibit or significantly discipline most subsidies while permitting certain assistance for R&D. This works clearly in our interest since combined U.S. public and private spending on R&D activities exceeds that of any other country.

Question 2

What is the potential financial exposure for the U.S. government under the research and development "green light" category? For example, if the U.S. Government decided to fund 75 percent of the research costs and 50 percent of the development costs for High Definition TV (HDTV), approximately how much money would have to be appropriated?

Answer

Decisions as to the scope and amount of financing for U.S. (and for that matter, foreign) technology programs are primarily influenced by the relative success of ongoing activities, general economic and fiscal circumstances, and competing budgetary priorities. The impact of the Subsidies Agreement will be minimal in comparison to such larger influences. As noted in the body of this letter, the changes made to the Subsidies Agreement's provisions governing R&D were aimed at protecting the nature and level of ongoing U.S. Government assistance in R&D activities. These changes were made in order to provide greater certainty that existing U.S. technology programs and the firms which participate in them would not be subjected to unwarranted trade harassment by our trading partners. In and of themselves, they provide little incentive to increase government funding of commercial R&D. What they achieved was a reversal of a situation in which only European R&D programs would have been protected by new subsidy rules. With regard to the hypothetical question about HDTV, no calculation has been made.

Question 3

How many regions in the EU, Japan, Canada, and the U.S. would qualify as "disadvantaged regions" under the new subsidies rules? What would be the cost of designating each disadvantaged region in the U.S. as an "empowerment zone" under the tax law?

Answer

It is not possible to anticipate how many regions in the European Union, Japan, Canada and the U.S. might qualify as "disadvantaged regions" given the Subsidies Agreement's stipulation that "each disadvantaged region must be a clearly designated geographical area with a definable economic and administrative identity." This language is designed to forestall regional assistance "gerrymandering," but, for example, it could apply to Ireland as a whole or to each county in Ireland, or to the Appalachian region as a whole or to each separate county in that region. Further, whether any of these examples would qualify would depend on whether the government claiming "green" status could satisfy the criteria set forth in the provision, including that there be a general framework of regional development based on an internally consistent and generally applicable regional development policy, and that the designation be based on neutral and objective criteria indicating that the region's difficulties are structural in nature and are not reflective of temporary circumstances. It is also important to recall another

requirement-- that the assistance be provided within a designated region on a generally available and widely used basis (i.e., that it be "non-specific"). This will have the result of reducing the amount of assistance which any single recipient may receive in eligible regions, thereby diminishing even further the potential that such assistance will have any meaningful competitive effect. Since the Administration has no intention of designating each disadvantaged region in the U.S. as an "empowerment zone" under the tax law, the cost of such designation has not been calculated.

Question 4

What would be the cost of granting the green-lighted environmental subsidy to each industry affected by the regulations now being issued under the Clean Air Act Amendments of 1990?

Answer

Since the Administration has no intention of granting the green-lighted environmental assistance to each industry affected by the regulations now being issued under the Clean Air Act Amendments of 1990, the cost of such designation has not been calculated.

Question 5

Does the Administration intend to embark on it own subsidy program to match or exceed foreign subsidies? If so, how much money does the Administration intend to devote to its industrial policy?

Answer

The Administration does not intend to embark on any such subsidy program.

Question 6

How does the Administration intend to pay for these new subsidy programs? Through tax increases or through spending cuts? If spending cuts, which particular cuts does the Administration intend to propose?

Answer

Since the Administration does not intend to embark on any such new subsidy program, this question is moot, as are questions 7 and 8.

Question 7

Does the Administration have a list of proposed industries it intends to subsidize? If not, how does the Administration propose to select the particular industries to be subsidized? Which government agency or agencies will make the subsidy decisions? What criteria will be used in making these decisions?

Answer

This question is moot.

Question 8

If a particular industry is chosen to receive subsidies, will all companies within that industry be eligible to receive subsidies?

If not, how will the particular companies eligible for subsidies be chosen?

Answer

This question is moot.

Question 9

If a particular industry is faced with subsidized foreign competition, what remedies will be available to it? Will it have a right to matching subsidies? If it is not guaranteed matching subsidies, what other forms of relief from the unfair foreign competition will be available to the industry?

Answer

The remedies available to American industries faced with subsidized foreign competition are (1) action under the U.S. countervailing duty law or (2) dispute settlement in Geneva under the new Uruguay Round dispute settlement mechanism. As for programs for which foreign governments claim entitlement to the green light safe harbor, my letter explains at length the multiple safeguards against abuse, which I will summarize here. First, the Subsidies Agreement establishes clear rules and strong disciplines designed to avoid the potential that government assistance to R&D will significantly harm our commercial interests. Second, the only way to secure green light status is to get the approval of the Subsidies Committee after its review of whether the criteria for green light status are met. To do this, a country must notify the program for which it seeks such status, providing whatever information Members of the Committee believe necessary. Third, even if the Committee grants green light status to a program, it can be stripped whenever it can be established that a particular R&D program has resulted in production which is causing serious adverse effects to the competing industry of another WTO Member. Finally, there is the ultimate safety valve in case other countries turn out to abuse the provision. Both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice will expire automatically 5 years after the entry into force of the agreement, unless it is decided to continue them in current or modified form.

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Good morning to our guests and to our most distinguished witness. Our purpose this morning is to begin our review of the results of the Uruguay Round of Multilateral Trade Negotiations under the GATT. And we will do that with our Trade Representative, Ambassador Mickey Kantor, who has just returned from Japan, where he travelled at the direction of the President. Perhaps he will have some comments for us on that trip as well.

The agreement we review today is the result of much hard work by Republican and Democratic Administrations alike. President Reagan began the negotiations in 1986. President Bush pursued them through 1992, indeed quite vigorously under the direction of Ambassador Hills and nearly to completion. Last July, this Committee, and then the Congress, gave President Clinton one last chance to finish the Uruguay Round when it extended fast track procedures for the agreement—as long as it was in hand by December 15 of last year and could be signed by this coming April.

Ambassador Kantor met that December deadline and now it is our job to review the results. We begin that with the Administration today and will certainly want to continue with the private sector in the coming months. We must assure that the final agreement is one that is good for this country and its workers and companies.

Congress of the United States
Washington, DC 20515

March 16, 1994

The Honorable Don E. Newquist
Chairman
United States International
Trade Commission
500 "E" Street, S.W.
Washington, D.C. 20436

Dear Mr. Chairman:

As you know, on December 15, 1993, the President notified the Congress of his intention to enter into trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT). The Agreements are scheduled to be signed on April 15, 1994.

The GATT Uruguay Round Agreements will have important implications for the U.S. economy overall and a significant impact on individual industrial, agricultural, and service sectors. An understanding of the potential costs and benefits of the Agreements for U.S. producers and workers will be crucial to the consideration of implementing legislation by the Congress.

Consequently, on behalf of the House Committee on Ways and Means and the Senate Committee on Finance, we request under section 332(g) of the Tariff Act of 1930 that you conduct a study consisting of (1) a review and analysis of economy-wide studies of the likely effects of the Uruguay Round Agreements, focusing on the effects on overall U.S. employment, output, and trade flows; and (2) analyses of the impact of both tariff and non-tariff provisions of the GATT Uruguay Round Agreements on important agricultural, industrial, and service sectors of the economy.

The Commission's review and analysis of the economy-wide studies, as well as its sectoral analyses, should include explicit consideration of the likely impact of the Agreements on U.S. production and employment, U.S. consumers, and U.S. exports and imports. The sectoral analyses should be based on the final provisions of the Agreements, including tariff and other market access agreements scheduled to be completed by April 15. The study should focus on those provisions likely to have the most direct and greatest impact on individual sectors.

In light of the need for timely information on the Uruguay Round Agreements as Congressional Committees consider the Agreements and implementing legislation, we would appreciate receiving the study by June 17, 1994. In view of the time constraint and to provide the most useful information, the report should be concise and emphasize important implications rather than be excessively quantitative and detailed.

Thank you for your cooperation.

Sincerely,

Daniel Patrick Moynihan
Chairman
Committee on Finance
United States Senate

Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives

PREPARED STATEMENT OF RALPH NADER

Mr. Chairman and members of the Senate Finance Committee, thank you for the opportunity to testify on the Uruguay Round agreements of the General Agreements on Tariffs and Trade (GATT).

Congressional consideration of the agreement will have far-reaching implications. Unfortunately, the limited attention given to the Uruguay Round has focussed on specific problems, including those pertaining to environmental and consumer protection and the agreement's effect on the existing U.S. trade laws, such as section 301 and anti-dumping. As important as those issues are, even a cursory reading of the Uruguay Round text demonstrates that the agreement must be viewed as a system of penetrating international governance, not just as a trade agreement.

Few people have considered what adoption of the Uruguay Round agreement would mean to U.S. democracy, sovereignty and legislative prerogatives. As the world prepares to enter the twenty-first century, the proposed GATT system of international governance would lead nations in the wrong direction.[1] The terms of the Uruguay Round would expand the nature of the world trade rules in an autocratic and backwards-looking manner. This system of international governance is chronically secretive, non-participatory and not subject to any independent appeals process. Yet decisions arising from such governance can pull down our higher living standards in key areas or impose trade fines and sanctions until such degradation is accepted.

A major result of this transformation would be to undermine citizen control and chill the ability of domestic democratic bodies to make decisions on a vast array of domestic policies from food safety to communications and foreign investment policies. Most simply, the Uruguay Round's provisions would preset the parameters for

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[1] Moreover, the Uruguay Round deal is a sizable step backwards from the North American Free Trade Agreement (NAFTA) in failing even to recognize the unavoidable entanglement of environmental, health and labor rights policies with trade policy. While I have argued that NAFTA did not deal with the environmental and labor issues in a meaningful manner, they rose to the center of the public and congressional debate. For instance, as noted in the *Wall Street Journal* the day after the NAFTA vote,: "The NAFTA battle clearly leaves a powerful legacy: It gave respectability to the notion that something is fundamentally unfair about trading with poor nations whose labor costs undercut those in the United States. . . . Moreover, the brawl over NAFTA has spawned a permanent trade opposition . . ." (*Wall Street Journal*, November 18, 1993.)

domestic policy-making by putting into place comprehensive international rules about what policy objectives a country may pursue and what means a country may use to obtain even GATT-legal objectives, all the while subordinating non-commercial standards, such as health and safety, to the dictates of international trade imperatives.

Decision-making power now in the hands of citizens and their elected representatives, including the Congress, would be seriously constrained by a bureaucracy and dispute resolution body located in Geneva, Switzerland that would operate in secret and without the guarantees of due process and citizen participation found in domestic legislative bodies and courts. As well as undermining democratic decision-making, the new GATT means an increase in the primacy of the global trade rules over all other policy goals and domestic laws on the federal, state and local levels. This Congress must evaluate the new GATT as a political and legal document, not just as an economic document.

The Uruguay Round agreement would:

- Establish a new global commerce agency, the World Trade Organization (WTO) with increased power, closed procedures and outdated substantive *"trade uber alles"* rules;[2]
- Greatly expand the reach of global trade rules to impose new restraints on many nontariff policies that traditionally have been controlled domestically; and
- Significantly strengthen secretive dispute resolution mechanisms, thus guaranteeing stricter enforcement of the global trade disciplines over every countries' domestic laws and policies.

Taken as a whole, the texts coming out of the Uruguay Round negotiations would strengthen and formalize a world economic government dominated by giant corporations, without a correlative democratic rule of law to hold this economic government accountable. It is bad enough to have the Fortune 200, along with European and Japanese corporations, ruling the Seven Seas of the marketplace which affects workers, the environment and consumers. But, it is a level of magnitude worse for this rule not to have democratic accountabilities to the people.

No one denies the necessity of international trade and commerce. However, societies need to shape their trade policies to suit their economic and social needs—guaranteeing livelihoods for their inhabitants and their children, as well as safe and clean environments. For instance, policies encouraging community-oriented production would result in smaller-scale operations that are more flexible and adaptable to environmentally sustainable production methods and locally rooted firms are more susceptible to democratic controls—they are less likely to threaten to migrate and they may perceive their interests as more overlapping with general community interests. Although the Uruguay Round text has adopted the rhetoric of sustainability, in fact its terms would handicap the very domestic policy approaches that could promote more sustainable economic models.

Some Members of Congress have argued that the Uruguay Round's threats to existing domestic legislation can be limited in implementing legislation. However, the Uruguay Round text makes quite clear that the WTO has the exclusive authority to interpret the terms of the agreement.[3] Thus, any Congressional interpretation or definition in U.S. enabling legislation meant to preserve Congressional prerogatives is irrelevant to the WTO's dispute resolution and other functions.

I. ESTABLISHMENT OF THE WORLD TRADE ORGANIZATION WOULD SHIFT POWER FROM NATIONS TO AN UNDEMOCRATIC, BACKWARDS-LOOKING INSTITUTION

While USTR Mickey Kantor testified before this committee that the WTO would not be much different than the existing GATT Secretariat, in fact analysis of the WTO text argues otherwise. The Uruguay Round would fundamentally transform the nature of the world trade rules by replacing what has been a contract between countries (GATT) into a new international organization (WTO) with a "legal personality," similar to that of the United Nations.[4]

A. ESTABLISHING A NEW INTERNATIONAL ORGANIZATION Since its establishment in 1947, GATT has existed as a contract between nations, which have been called "contracting parties." Establishment of the WTO would raise the relative importance and strength of the global trade rules as against non-trade consumer, worker and environmental values by giving them a permanent international organizational structure with an ongoing infrastructure and powers that GATT didn't

[2] Agreement to Establish the WTO.
[3] Agreement Establishing the WTO, Art IX–2.
[4] Agreement establishing the WTO, Art VIII–1.

have, such as self-executing dispute resolution and trade sanctions.[5] All of the substantive trade rules that resulted from the Uruguay Round negotiations (agreements on trade in goods and services, intellectual property rules and more) fall under the WTO structure. Countries are obliged to ensure that their domestic laws conform with the substantive trade rules of the WTO under an extremely worrisome provision, Article 16–4 of the WTO text:

> "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."[6]

B. STRICT OBLIGATION OF CONFORMITY This obligation is much more stringent and inflexible than similar provisions in other trade agreements, including the 1991 "Dunkel" draft text of the Uruguay Round which required countries only to "endeavor to . . . . steps as are necessary."[7] Even under this weaker formula, Congressional Research Service concluded in an 1991. analysis of the draft text that: a **"party would no longer have control over whether or not it must change that particular policy or law [a successfully challenged law or policy] to conform with the GATT."**[8] Not only would establishment of the WTO add yet another layer of bureaucracy in a vast array of policy areas, but that bureaucracy would be a truly publicly unaccountable, yet highly powerful, one. Moreover, the final text extends the stronger obligation to ensure conformity with the WTO to encompass additional areas of domestic policy: regulations and administrative procedures. Bringing federal and state administrative procedures into conformity with the requirements of all of the WTO agreements could have significant impacts on the openness, citizen participation and due process guarantees available in current domestic administrative procedures.

C. CONTROL SHIFTS FROM NATIONS TO WTO The Uruguay Round would fundamentally shift control of the international trade rules from each participating country to the new international bureaucracy of the WTO. The WTO rules allow changes to some trade rules by a two-thirds vote of the Members that would then be binding on all Members. Under GATT, such changes could only be taken by consensus. WTO Members also must accept all aspects of the WTO's trade rules, while under GATT, countries who opposed certain provisions or additional agreements would not be bound by them unless that country consented. From a trade perspective, this all-or-nothing rule eliminates the problem of "free riders." From a democracy perspective, this rule forces countries to accept trade in areas that might be undesirable or to forgo some participation in the world trade system. This is all-or-nothing approval is unusual in international law because of its sovereignty implications. For instance, the United States and other countries often take "reservations" to certain aspects of treaties, while still approving the overall treaty.

Additionally, the WTO would establish numerous standing committees that could initiate on-going negotiations. Under GATT, additional negotiations could be initiated only by consensus of the parties. Alternatively countries that did not wish to be bound by new negotiations could opt out. After the Uruguay Round, there will be no more "Rounds" of negotiations over which Congress can assert some influence and which Congress must approve.

D. NEW ORGANIZATION HAS NO LABOR OR HUMAN RIGHTS, ENVIRONMENT MANDATE The WTO text would establish a powerful new international institution whose mandate looks backwards to an era when environmental and other citizen considerations were not taken into account.The binding provisions setting out the WTO's functions and scope do not incorporate any environmental, health, labor rights or human rights considerations. In fact, the only reference to the environment is in the rhetoric of the WTO's preamble, which does not have the binding legal effect of the agreement. Labor and human rights are not mentioned in the preamble at all. Moreover, there is nothing in the institutional principles of the WTO to inject any procedural safeguards of openness, citizen participation or accountability into the governance of this body or its functions. The WTO does not even have the structural capacity for citizens or nongovernmental organizations to have any role in its functions.

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[5] WTO Dispute Settlement Understanding. These provisions are described in detail below.
[6] Agreement Establishing the WTO, Article XVI–4.
[7] Agreement Establishing the Multilateral Trade Organization, XVI–4 (1991.)
[8] CRS Legal Memo on Domestic Law Effects of the Dunkel Text's MTO Provisions for Representative Jill Long, April, 1992.

II. ESTABLISHMENT OF THE WORLD TRADE ORGANIZATION GREATLY INCREASES THE IMPACT GLOBAL TRADE RULES WILL HAVE ON COUNTRIES' DOMESTIC LAWS

Congressional approval of U.S. membership in the WTO would greatly expand the reach of global trade rules to impose new restraints on many nontariff policies that traditionally have been controlled domestically. In the attached Annex, I have suggested the likely risks to our existing laws which the WTO rules, in combination with the strengthened dispute procedures, would pose by applying just two of the WTO's chapters on food and other standards to some existing and proposed U.S. laws. Please read that Annex, as it will make vivid how the WTO's terms could affect a broad array of important U.S. policies.

A. EXPANSION OF TRADE DISCIPLINES The Uruguay Round negotiations expanded trade disciplines into new areas such as agriculture, as telecommunications and transportation services, and intellectual property. The Uruguay Round would also put in place more pervasive restrictions in areas such as food standards and "technical standards" such as environmental or safety standards. The expansiveness of the Uruguay Round negotiations means that almost any domestic law that impacts international trade could he considered a "nontariff barrier." Only laws that are more protective of the environment or consumer or worker health and safety are exposed to challenge; extremely weak laws cannot be challenged as providing an unfair subsidy for procedures that fail to meet even minimal international standards in these areas. Thus, the GATT rules envision placing a ceiling on health, safety and environmental protection, but provide no minimal floor beyond which all nations must rise (except against slave labor).

B. LIMITATION OF ALLOWABLE POLICY GOALS The WTO's rules would spread such trade disciplines to many issues traditionally controlled by domestic policy-makers. Certain goals would be forbidden to all domestic legislatures. For instance, laws with "mixed" purposes, such as environmental and economic, could easily fall outside of the Uruguay Round's requirement. The provisions of the Clean Air Act which implement the international ozone agreement—the Montreal Protocol—phase out U.S. use of ozone-depleting substances. The law also provides a ban on importation, as well as sale, of foreign products made with ozone-depleting production methods. The import ban has two goals: One goal is to limit the global demand for goods made with ozone depleting substances. Another goal is to provide a level playing field for U.S. industry by ensuring that U.S. companies do not suffer competitive disadvantage in the U.S. market as a result of complying with the Montreal Protocol's rules. Under the Uruguay Round's rules, such Congressional attention to a non-trade policy's domestic economic implications is viewed as "managing trade" by interfering with the market forces.

The terms of the Uruguay Round would also limit policy goals for which legislatures around the world could strive. One critical issue is the extent to which trade restrictions may be imposed on products based on processing and production methods. This issue is not only vital to effective enforcement of many important policies; it also has important competitiveness implications for U.S. industry.

For example, may a country ban imports of shoes made with child labor or prison labor, ban imports of timber that does not come from sustainably managed forests, ban imports of ivory from countries with inadequate elephant conservation programs, ban imports of beef slaughtered in violation of humane standards, ban imports of products produced with ozone-depleting chemicals, ban tuna imports caught in a way that kills too many dolphins, ban fish imports caught with large-scale drift nets, or ban shrimp imports caught without turtle excluder devices?

The United States cannot effectively enforce its own domestic standards if it cannot control its own market to ensure that its domestic producers are not at a competitive disadvantage for merely following U.S. law. However, if a country cannot distinguish goods on the basis of their production methods, it will be unable to provide a level playing field for domestic companies which incur extra labor, safety and environmental compliance costs.

One of the cornerstones of GATT is that like products must be accorded treatment no less favorable than that accorded like domestic products and like products imported from other countries. It has generally been interpreted under GATT to preclude imposing restrictions on products based on the way they are produced. In the tuna-dolphin challenge, a GATT panel concluded that the U.S. ban on imports of tuna caught by methods that kill too many dolphins were impermissible because they were based on the way the tuna was caught, not any inherent characteristics of the tuna itself. Unfortunately, nothing in the Uruguay Round text rejects this ap-

proach, which even the Bush Administration admitted had upsetting implications for U.S. human rights and labor rights policies that use trade for enforcement.[9]

C. LIMITATIONS ON POLICY TOOLS Even, the means used to accomplish WTO-allowable goals must be the "least trade restrictive," regardless of whether such alternatives would be politically feasible. For instance, in its recent GATT challenge against the U.S. CAFE standards and gas guzzler tax, the European Union (E.U.) argued that while the U.S. goal of conservation was allowable, the means used to obtain that goal was not the least trade restrictive. The E.U. argued that the United States should use a carbon tax, instead of the current CAFE system. As was made evident last year in Congress, a carbon tax is not a politically feasible option. Under the existing GATT rules, in which there is no specific least trade restrictive test, the outcome of the E.U. challenge is uncertain. Under the WTO, where the least trade restrictive requirement is made explicit, the CAFE standards/gas guzzler program would quite likely be found to be an illegal trade barrier.

Moreover, despite suggestions to the contrary by the USTR, the agreement limits Congress' ability to put in place unilateral trade measures.[10] Yet, the United States has the world's largest consumer market, so we have been able to use access to our market as an incentive for other countries to meet certain environmental, labor rights and human rights goals we support. The Uruguay Round effectively forbids any country from taking any trade action on any issue covered under the broad expanse of the new trade rules without permission from Geneva. Thus, for instance, once China is admitted to the WTO, Congress will no longer be allowed to condition China's trade status on its human rights record. Under the WTO, China would automatically obtain Most Favored Nation Status and the U.S. would not be allowed to unilaterally deviate from that treatment. As well, many environmental laws, such as dolphin, elephant and other protections enforced through market access limitations, would run afoul of the unilateralism ban.Our laws are in jeopardy even if they are undertaken pursuant to international environmental agreements, since there is no exception to the Uruguay Round's rules for such standards. These international agreements do not have built-in enforcement mechanism. Each participating country is required to enforce them individually by limiting market access for domestic and foreign producers who do not comply. Thus, bans on ozone-depleting chemicals pursuant to the Montreal Protocol on Substances that Deplete the Ozone Layer or on trade in endangered species pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora would he vulnerable.

The WTO's ban on unilateralism not only curtails U.S. sovereignty to enforce important policies, it also would eliminate many of our most successful market opening tools such as Section 301. You may have noticed the regular references to the GATT and WTO of the Japanese officials lately. For instance, according to the Daily Japan Digest: "Japanese Prime Minister Hosokawa told the heads of Japan's four big business organizations: 'The United States is threatening to use Section 301 in the framework negotiations. Japan will have to act to contain that move through the World Trade Organization.'" The Japanese analysis of the fate of Section 301 and Super 301 under the Uruguay Round are correct; the measures would be effectively gutted under the terms of the WTO. Thus, although the U.S. could keep such laws on the books, membership in the WTO would mean facing perpetual trade sanctions as the price for applying such laws.

The WTO's rules and restrictions would apply to existing federal, state and local laws, as well as to future laws.[11] In this testimony, I have listed some existing and proposed U.S. laws that would fall outside of the Uruguay Round's requirements. Such existing laws would be exposed to challenge through the WTO's dispute resolution system, which provides for the adoption of trade challenge panel rulings made by closed tribunals of three trade officials.[12] Unlike the current GATT, automatic

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[9] Testimony of Joshua Bolton, General Counsel US, Hearing of the Subcommittee on Health and the Environment, House Committee on Energy and Commerce, September, 1991.

[10] WTO Dispute Settlement Understanding, Article 23. This section, entitled "Strengthening the Multilateral System," requires countries to go through the WTO's tribunal system when evaluating another country's trade practices, deciding if there are problems, suggesting how such problems should be resolved, deciding what is a reasonable time for any changes to occur, and assessing damages of any violation and whether trade sanctions can be used. In short, under the Uruguay Round the United States could not undue any step of Section 301 or Super 301 except collecting the evidence of a trade violation.

[11] The future under the WTO was foreshadowed by the recent Clinton Administration announcement that all future U.S. environmental proposals would be put through trade reviews to ensure they complied with U.S. trade obligations. (Inside EPA Weekly Report, Vol. 14, N. 38, September 24, 1993.)

[12] The new dispute resolution rules would eliminate the procedural "emergency brake" on adoption of dispute panel reports that allowed the United States to freeze adoption of the 1991

trade sanctions are also available for countries who fail to abide by the tribunals' decisions. As for proposed laws, Congress could expect the United States Trade Representative's office or the State Department or OMB to stall progress on proposals which fall outside of the Uruguay Round's requirements. These agencies would declare such proposed legislation to be in violation of U.S. obligations as a member of the WTO.

D. BROAD-REACHING IMPLICATIONS OF "NONTARIFF TRADE BARRIER" CONCEPT Under the WTO, "nontariff trade barrier" would become a code phrase to undermine all sorts of citizen-protection standards and regulations. Corporate interests focus on a safety or health regulation that they don't like, develop a story about why it favors domestic companies over foreign corporations and then demand that the regulation be revoked. As well, the WTO includes two mechanisms for pulling down health, safety and environmental standards—equivalence and harmonization provisions promote the establishment of unified global food, environmental and other standards. The WTO's specific harmonization mechanisms would pull standards down toward international lower common denominators because they require national standards to be based on generally weaker international standards established without citizen input but, with heavy corporate influences. The international standards provide a ceiling but not a floor for such protections.

Under equivalence, the Uruguay Round requires countries to permit imports that do not comply with their own food and other product safety standards where they satisfy different, but "equivalent," standards or processes.[13] This requirement invites wholesale circumvention of U.S. law. Even if Congress has established a standard or an agency has promulgated regulations prescribing the conformity assessment procedures to be used, imports may still be permitted. This would be done under the amorphous concept of equivalency, which calls for a subjective comparison of different standards without any clear guidelines for the process to undertake or the factors that must be considered. Several examples illustrate how insidious the concepts of nontariff trade barriers, harmonization and equivalence can be especially under undemocratic procedures.

In 1991, Puerto Rico, a U.S. territory (commonwealth,) upgraded the quality of its milk supply by instituting the Pasteurized Milk Ordinance, a tougher system of regulation than it previously had in place. Ultra-high temperature (UHT) milk from Canada, was unable to meet the island's new more rigorous standard. Puerto Rico subsequently banned the sale of Canadian UHT milk. Canada then challenged Puerto Rico's standard as a nontariff trade barrier under the existing U.S.-Canada Free Trade Agreement. A panel of five trade bureaucrats—three from Canada, two from the United States—heard the case. (The ratio was decided by a coin toss.) Canada won the challenge, the panel ruled that Puerto Rico must make a equivalence determination as required under the U.S.-Canada agreement to prove that the obviously different standard did not accomplish its policy goal. The Uruguay Round's food standards section also requires such equivalence determinations and requires the United States accept standards different from its own if such a determination shows the standards are "equivalent."

Such a decision about "equivalence" is how the U.S.-Canada Free Trade Agreement also was used to strip U.S. border meat inspection standards. U.S. and Canadian officials decided that the two countries' inspection systems were equivalent through an arbitrary and closed decision-making process. To avoid "unnecessary" trade effects, inspection of meat entering the United States from Canada was reduced to several carcasses from every fifteen trucks crossing the border. Canadian companies were notified in advance if their shipment would be the fifteenth and the truck drivers were designated to select the several carcasses to be inspected. Unscrupulous producers on both sides of the border could take advantage of the loophole in inspection to export the meat that would not pass domestic inspection. Luckily, a 25-year veteran USDA meat inspector in Montana, William Lehman blew the whistle on the vile and contaminated meat that was pouring over the border and onto the plates of American consumers. His repeated congressional testimony about the cancerous, feces- and blood-smeared meat coming through his inspection station ultimately led to a greater level of inspection being restored.

Finally, there is the successful 1991 GATT challenge by Mexico of the U.S. Marine Mammal Protection Act. Despite a letter from 63 Senators and another from over 100 Representatives calling for the "tuna-dolphin problem" to be solved as part of the Uruguay Round, the existing flaws in the GATT article were not fixed. In fact

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tuna-dolphin decision. Under the Uruguay Round rules, Congress would have been required to eliminate either the law or pay perpetual trade benefits to Mexico by early 1992. Failure to act would have resulted in automatic trade sanctions.

[13] SPS Agreement ¶ 14. and TST Agreement ¶ 2.7.

several principles from the panel decision were incorporated into the new Uruguay Round chapters on standards. Congress has been kept off the hot seat in the tuna-dolphin case because the United States exercised a procedural "emergency brake" available in the existing GATT to stop full implementation of such a panel decision. That emergency brake is eliminated in the Uruguay Round dispute resolution procedures. Thus, if the tuna-dolphin case arises under the new Uruguay Round rules or when the next successful challenge of a popular U.S. environmental and health law occurs, the Congress will be forced to repeal the law and face constituent wrath, or the United States would be required to pay perpetual trade sanctions to maintain it.

Most Americans probably find this possibility unbelievable; after all, they would suppose, the United States can surely impose whatever standards it wants on products made or consumed in this country without agreeing to an external system of decisions and sanctions that can vitiate them. But in approving the U.S.-Canada Free Trade Agreement and the NAFTA, the United States surrendered that degree of sovereignty over such laws. The U.S. Congress would do so on a much larger and more significant scale if it decides to approve U.S. membership in the WTO under the proposed autocratic language.

Consider what would have happened to auto safety if these trade agreements were in operation. To push for airbags in motor vehicles, auto safety advocates had to convince the federal government to mandate the equivalent of airbag protection in cars. If the trade agreements had been in place at the time, the auto companies and their political allies in Washington would have said, "Oh no. You can't have airbags because the applicable international standard just provides for three-point seatbelts. if we require all cars produced or imported in the United States to have airbags, that is really a disguised way to impede foreign cars from coming into the United States. That's a nontariff trade barrier and therefore a violation of the trade agreement."

Already, a Danish recycling program, the U.S. asbestos ban, a Canadian reforestation program, U.S., Indonesian and other countries' restrictions on exports of unprocessed logs, a Canadian anti-air pollution program and U.S. laws designed to protect dolphins have been attacked as non trade barriers under free trade agreements. The most recent version of the European Community's list of alleged U.S. nontariff trade barriers includes the Consumer Nutrition and Education Labeling Act, state recycling laws and fuel efficiency regulations for motor vehicles. This list can be taken as foreshadowing future trade challenges under the much more domestically intrusive WTO, The E.C. did indeed file a formal GATT challenge of the U.S. gas guzzler tax and fuel efficiency penalties several months after publication of its list. The case was briefed and argued in front of a closed GATT dispute tribunal in the fall of 1993 and a decision is pending.

U.S. citizen groups already have enough problems dealing in Washington with corporate lobbyists, legislators and agency officials, without being told that decisions affecting this country's standards will be made in other countries, by other officials, by other lobbies that have no accountability or administrative due process requirements that we have in this country. The problem is exactly the same for citizen organizations in other nations, already struggling against the entrenched monied interests (including foreign subsidiaries) in their own countries.

III. WORLD TRADE ORGANIZATION DISPUTE RESOLUTION: STRONGER ENFORCEMENT OF BAD RULES

The WTO's dispute resolution power is significantly strengthened compared to that of the GATT, thus guaranteeing stricter enforcement of the global trade disciplines over every countries' domestic laws and policies. This feature of the Uruguay Round must be considered from the perspective of a defendant, not only as a plaintiff which has been the perspective of USTR Kantor. Approval of this GATT text would put into place substantive trade rules that conflict with many U.S. domestic environmental, consumer and other policies and a strong mechanism to force the United States to comply with those rules. As you may have noticed in USTR Kantor's testimony, the Administration itself is not satisfied with the Uruguay Round's outcome on environmental issues and admits the WTO's failure to even mention labor rights is a major shortcoming. Whether or not Congress approves the United States joining the WTO, Congress and the Administration should insist on a moratorium on challenges to environmental and consumer laws under GATT disciplines until the agreement's terms are brought up to date with our current environmental and safety conditions and policies. Unfortunately, this ultimately reasonable moratorium idea has been all but rejected by the Clinton Administration. Instead, there is talk of "committees" on environment and labor rights for future dis-

cussions. Considering there will be no more GATT Rounds under the WTO, I find it hard to imagine what political leverage the Clinton Administration thinks it has to promote progress in these areas. After all, the GATT has had an environmental committee since the 1970's. It never met until 1992 and then it took up an agenda of getting environmental laws out of the way of trade.

A. SECRETIVE DISPUTE TRIBUNALS As with the GATT, WTO dispute resolution allows a Member nation to challenge another Member's domestic laws as illegal barriers to trade. Such challenges are decided in secret by panels of three trade experts who are chosen from a preset roster. As a general matter, shifting away "judicial" review to fora that do not have the procedural safeguards of the U.S. federal and state judicial systems is troubling. Trade dispute panels, whether in the WTO, NAFTA or U.S.-Canada FTA, share several highly problematic traits:

- Panels have no guarantee of impartiality nor economic disinterest of panelists;
- All documents and proceedings are secret. Countries may release their own submissions. However, the other nations' documents and all tribunal documents are strictly confidential; and
- There is no outside appeal or review available.

These problems are made more important in the WTO context by the new power given the WTO as an institution. As well, these problems are more serious than in the NAFTA because in the WTO, powerful potential "litigants" such as Japan and the European Union could use the WTO system, rather than our domestic courts, to review the continued validity of U.S. policy.

The WTO allows trade challenges of all domestic laws—federal, state and local—that conflict with any of the WTO's substantive trade rules.[14] However, the WTO also allows challenges of some domestic laws that another country considers are "nullifying or impairing" any direct or indirect benefit that it expects from the specific trade rules, even if there is no violation of a specific WTO rule.[15] Similarly, a law can be challenged if "the attainment of any objective [of that Agreement] is being impeded" by that law.[16] The vagueness of this provision is alarming in that it could be interpreted to include laws and policies that would seem to be free from trade disciplines.

B. DISPUTE PANELS HAVE NO SAFEGUARDS TO GUARANTEE IMPARTIALITY, BALANCE OR PUBLIC ACCESS The required qualifications for WTO panelists, such as experience in a country's trade delegation or experience as a trade lawyer bringing a trade dispute, will result in panelists with a uniformly pro-trade perspective.[17] In fact, with the exception of panelists qualified by merit of academic expertise in trade, the qualifications will result in panelists with a direct professional stake in the existing trade system. Moreover, astonishingly, there are no conflict of interest or other rules to even guarantee that a panelist does not have a direct economic interest in a decision. The Journal of Commerce recently exposed the pecuniary interests of two Canadian panelist in a U.S.-Canada Agreement dispute panel (which is similarly constituted.[18])

There is also no mechanism to guarantee that such panelists even will be exposed to alternative perspectives on environmental or heath or labor rights or human rights issues. This is the case because there is no allowance for amicus briefs from interested non-governmental groups or other guaranteed means of access for other viewpoints. In fact, the panel is not required to get technical or scientific help. The text merely allows panels to do so at their choosing. Finally, the text specifically forbids identification of which panelists supported which positions and conclusions.

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[14] As with the existing GATT, the WTO allows challenges against state ad local laws. (DS Understanding at 22.9.) When a WTO panel rules that a state or local law does not meet the trade rules, the federal government "shall take such reasonable measures as may be available to it to ensure . . . observance." (*Id.* at 22.9.) A GATT panel has already interpreted the "reasonable measures" standard, which is present in the existing GATT (1991 Panel report on Canadian challenge of certain U.S. Alcohol Taxes ad Regulations (*Beer II.*)). Under the terms of a adopted GATT case known as *Beer II*, the United States must use all powers constitutionally available to force subfederal compliance with trade panel rulings. This could include preemptive legislation, litigation ad withdrawal of federal financial support.

[15] WTO Dispute Settlement Understanding at 26.1.

[16] *Id.* at 26.1.

[17] *Id.* at 8.1.

[18] *Journal of Commerce*, February 18, 1994. The two panelists were attorneys whose law firms represented Canadian lumber interests directly affected by the outcome of the timber subsidy case under dispute.

This additional layer of secrecy adds to the lack of accountability of the WTO decision-makers with their greatly enhanced vast new powers.[19]

C. DECISIONS ARE AUTOMATICALLY APPROVED Under current GATT rules, decisions put forward by the three-person dispute panels must be approved by consensus by all of the GATT contracting party countries. Thus, each country maintains the right, although sometimes politically difficult to exercise, of blocking consensus, and thus adoption and implementation of a panel decision. The United States used this "emergency brake" to freeze adoption of a GATT ruling against provisions of the U.S. Marine Mammal Protection Act, which was successfully challenged at GATT as an illegal' trade barrier by Mexico in 1991.

The new WTO dispute resolution rules take away this emergency brake. Under the new rules, **the decisions of the three-person review panels are automatically adopted 60 days alter completion, unless there is a consensus among all WTO Members to reject the ruling,** or the losing country files an appeal.[20] Thus, within 60 days over 100 countries, including the country that has won the panel decision, must all be persuaded to stop the adoption of the panel report.

When a WTO panel decides that a domestic law does not meet the requirements of the trade rules, its report is required to include the "recommendation" that the offending country change its law to conform with the trade rules.[21] Thirty days after the report is adopted, the offending country must inform the other countries of its intentions with respect to implementing the panel report.[22] Countries are supposed to change their laws immediately. If that is impracticable, the countries in the dispute can negotiate or submit to arbitration to determine a "reasonable time period" for the losing country to comply with the panel ruling. The text suggests that arbitrators should be guided by a 15 month limit on what is a reasonable period to change the offending law.[23]

D. AUTOMATIC SANCTIONS IF DOMESTIC LAWS ARE NOT CHANGED If a country fails to change its law within the set time period, the winning country can request negotiations to discuss the matter. However, 20 days after the "reasonable time period" has expired, the winning country can request trade sanctions against a country that has refused to change its law.[24] Such a request to authorize sanctions is automatically granted 30 days after the expiration of the set time period, unless there is unanimous consensus of all WTO Members to reject the request.[25]

The dispute resolution text states that trade measures, or compensation by the losing country, are to be temporary measures when successfully challenged laws are not changed within the set tune period.[26] Where the ". . . recommendations to bring a measure into conformity with the covered agreements have not been implemented," the WTO "shall continue to keep under surveillance the implementation of adopted recommendations or ruling . . .," including cases where there are continuing sanctions or compensation.[27] Thus, a country whose law has been found to conflict with the WTO terms is under continuing pressure to actually change its law.[28]

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[19] WTO Dispute Resolution Understanding. at 17.11 ad 14.11.

[20] (*Id.* at 16.4.) Under the new rules, an appeal can be filed within 60 days after a panel has ruled. (*Id.* at 17.) Appeals are limited to issues of law covered in the panel report and legal interpretations developed by the panel (*Id.* at 17.6.) Appeals must be decided within 90 days, after which that decision would also be automatically adopted unless unanimously rejected within 30 days of its issuance. LId. at 17.14.) "An appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus ...t to adopt . . ." (DSB refers to the WTO Members meeting as the Dispute Settlement Body.)

[21] *Id.* at 19.1.

[22] *Id.* at 21.3.

[23] *Id.* at 21.3(c).

[24] *Id.* at 22.2.

[25] *Id.* at 22.6.

[26] *Id.* at 22.1 and at 22.8.

[27] *Id.* at 22.8.

[28] Under the World Trade organization, sanctions should initially be considered against parallel sectors. For instance, a country that refuses to change a food-related law should be given sanctions in food trade. However, under the WTO dispute resolution, countries may put up sanctions against any unrelated sector if parallel sanctions are "not practicable or effective." (*Id.* at 22.3(c).) The ability to use "cross sectoral" sanctions considerably increases a country's ability to cause economic pain and pressure on another country that refuses to change its laws by choosing sanctions in especially sensitive or important areas. The "level" of sanctions (the monetary value of them) is to be equal to the winning party's economic damage.a at 22.4.) Countries are allowed to challenge the amount of sanctions. Such challenges are submitted to binding arbitration, preferably by the panel that decided the case. (*Id.* at 22.6.) Countries are required to accept the arbitral decision as final; a second arbitration is not allowed. (*Id.* at 22.7.)

E. SECRETIVE AND INACCESSIBLE TRIBUNAL The secrecy of GATT dispute resolution is largely perpetuated in WTO dispute resolution. All panel proceedings are conducted in secret.[29] Only representatives of an involved WTO Member, namely the national government of each member country in a dispute, is guaranteed access. If a state law were to be challenged under the WTO, the governor or the state attorney general may only observe the Geneva proceedings or have access to the case documents at the pleasure of the federal government. Unlike complaints, briefs and affidavits in the U.S. court system, documents presented to the panel are kept confidential.[30] The extent of the secrecy is emphasized by what is being labeled an important improvement in openness: The WTO text allows countries to request a "non-confidential summary" of the information contained in official submissions that could be disclosed to the public.[31] This requirement is not an adequate substitute for disclosure of the submissions themselves, because the contents of the summaries need not fully disclose all of the evidence and arguments of the actual submissions. There is no right for public comment or participation, for instance in the form of amicus briefs. This secrecy flies in the face of the U.S. standards of openness and disclosure by which the Congress and courts operate.

IV. A CORPORATE BILL OF RIGHTS: GETTING NATIONAL GOVERNMENTS OUT OF "TRADE" POLICY

While inevitably domestic legislative prerogatives have been somewhat limited by the United state's international obligations, the Uruguay Round represents a revolutionary shift of authority over a vast array of policy areas to an unaccountable, foreign bureaucracy. The result would be expanded control by multinational corporations over the international economy and an increased capacity to undo the most vital health, safety and environmental protections won by citizen movements across the globe, or at the least, to keep future advances at bay. The WTO would give multinational corporations the lever to hold back or weaken central protections of people in the United States by a practical erosion of our domestic sovereignty through an external layer of regulatory bureaucracy that pulls standards, down, but not up. Look at the behavior of U.S. corporations in the United States as compared with their plants in other countries, such as the Mexican Maquildora region. The difference can be attributed to what they can get away with by getting away from the rule of law.

It is no secret that one of the underlying goals of the Uruguay Round was to limit each country's ability to control "terms of trade" through domestic legislation, and thus strengthen the relative power of international trade rules. "Governments should interfere in the conduct of trade as little as possible," said the Director General of GATT and the likely head of the WTO, Peter Sutherland in a March 3, 1994 New York City speech criticizing the U.S. push to include environmental and social issues in the future World Trade Organization negotiations.[32]

It is only recently that corporations developed the notion of using trade agreements to establish autocratic governance over many modestly democratic countries. The world community founded GATT after World War II as an institution to peacefully regulate world trade. At present, more than 100 nations that engage in over four-fifths of world trade belong to it. In its first 40 years of existence, GATT concerned itself primarily with tariffs and related matters; periodically, the GATT signatories would meet and negotiate lower taxes on imported goods. If the Uruguay Round were approved as written, Kraft, General Motors, Merck, Phillip Morris, American Express, Cargill, Dupont, and their foreign allies will have succeeded in turning trade negotiations into power plays against nations retaining a meaningful sovereign right to protect citizens from harm. Global commerce without commensurate global law may be the dream of corporate chief executive officers, but it would be a tragedy for the people of the world with its ratcheting downwards of worker, consumer and environmental standards.[33] The U.S. Congress is one of the only potential barriers to this future of concentrated corporate power backed by "pull down" trade rules.

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[29] *Id.* Appendix 3, Working Procedures at 2. "The panel will meet in closed session."

[30] *Id.* at 3 for regular panel reports. *Id.* at 18.2 for Appellate Reports.

[31] *Id.* at 3.

[32] Reported in the *Journal of Commerce*, March 4, 1994.

[33] For instance, in 1986, when the Uruguay Round began, multinational corporations thrust an expanded set of concerns on GATT that went far beyond traditional trade matters. They demanded that they be free to invest anywhere in the world with no domestic conditions; that environmental and safety standards be "harmonized" (made the same everywhere)—with the practical result that they be dragged down to a lower common denominator level.

V. THE MODERN, GLOBAL "RACE TO THE BOTTOM"

U.S. corporations long ago learned how to pit states against each other in "a race to the bottom"—to provide the most permissive corporate charters, lower wages, pollution standards, and taxes. Often it's is the federal government's role to require states to meet higher federal standards. Now, through their campaign for "free trade" particularly via the Uruguay Round, multinational corporations are directing their efforts to the international arena, where desperately poor countries are either pressured or willing to drive conditions downward and backward. There is no overarching "lift up" jurisdiction on the world stage.

It's an old game: when fifty years ago the textile workers of New England demanded higher wages and safer worker conditions, the industry moved its factories to the Carolinas and Georgia. If California considers enacting environmental standards in order to make it safer for people to breathe, business threatens to shut down and move to another state.

The Uruguay Round is crafted to enable corporations to play this game at the global level, to pit country against country in a race to see who can set the lowest wage levels, the lowest environmental standards, the lowest consumer safety standards. Notice this downward bias—nations do not violate the GATT rules by pursuing too weak consumer, labor (except for slave labor) and environmental standards. They are challenged only when these standards are considered too advanced.

Enactment of the Uruguay Round virtually ensures that any local, state or even national effort in the United States to demand that corporations pay their fair share of taxes, provide a decent standard of living to their employees or limit their pollution of the air, water and land will be met with the refrain, "You can't burden us like that. If you do, we won't be able to compete. We'll have to close down and move to a country that offers us a more hospitable business climate." The WTO will accelerate this corporate leverage. This sort of ultimatum is extremely powerful—communities already devastated by plant closures and a declining manufacturing base are desperate not to lose further jobs, and they know all too well from experience that multinational corporations find it easy to exit the United States if they do not get their unfair way.

Want a preview of the new world trade order? Check out the U.S.-Mexico border region, where hundreds of U.S. companies have opened up shop during the last two decades in the special maquila trade zone. When U.S. factories have closed down and moved to Mexico, this is usually where they have gone. The lure is simple: a workforce that earns as little as five or six dollars a day and does not have the means to defend itself against employer aggression because it is effectively denied the right to organize, and is exposed to terrible environmental and workplace conditions.

In many instances, large corporations are already forcing U.S. workers and communities to compete against this Dickensian industrialization—but the situation will become much worse under the WTO, which will make it much easier and less risky for U.S. and other foreign companies to open harsh factories in impoverished developing countries. Further, under the GATT rules. a country may not exclude imports on the basis of labor or environmental conditions in the country of production (GATT and WTO do allow an exception to this rule for slave labor.) Although such "production process" standards affect the cost of production, countries with higher standards cannot provide a level playing field for local producers who follow domestic laws and incur the related costs. Thus, countries are denied the tools to ensure that domestic producers can successfully operate without having to relocate to jurisdictions with lower cost standards.

Worst of all, the corporate-induced race to the bottom is a game that no country or community can win. There is always some place in the world that is a little worse off, where the living conditions are a little bit more wretched. Look at the electronics industry, where dozens of assembly and other factories—in search of ever lower production costs—have migrated from California to Korea to Malaysia. Many of those businesses are now contemplating moving to China, where wages and workplace and environmental standards are still lower. The game of countries bidding against each other causes a downward spiral.

The most important tool countries have to combat serious corporate blackmail is to say, "You are not going to be able to sell in this country if you behave in that manner." Using this logic in the past, the United States has conditioned trade status on labor and human rights for trading partners. Similarly, the United States currently has environmental and conservation laws that forbid sale in our market, for instance, of fish caught with driftnets or using techniques that kill dolphins, and of wild-caught birds. But the Uruguay Round would place at risk the exercise of such national authority to control the domestic market. Under the terms of the

WTO, that sort of effort to protect national standards would be considered a "nontariff trade barrier," and would be proscribed.

VI. THE URUGUAY ROUND: HEADED IN THE WRONG DIRECTION

All over the country there is a bubbling up of citizen activity dealing with the environment and public health. People want solar energy instead of fossil fuels; they want recycling; they want to clean up toxic waste dumps; they want safer, biodegradable, environmentally benign materials instead of others that happen to be sold in greater numbers worldwide. And if local or state governments can make decisions to help achieve these goals, then people can really make a difference. But if existing or proposed local and state standards can be chilled by a foreign country's formal accusation (*often in collaboration with domestic special interests*) that the standards are a nontariff trade barrier, then the evolution of health and safety standards here and around the world will be stalled. Regulatory breakthroughs do not only occur at the national level. Often, a smaller jurisdiction—a town, city or state—experiments with a standard, other cities and states copy it and, eventually, national governments and international governments, lagging behind, follow the local lead.

This percolating-up process for advancing crucial non-commercial values that shape living standards will be stifled by the WTO, with bottom-up democratic impulses replaced by pull-down mercantile dictates. It is inevitable that different policy goals will at times conflict, for instance goals of maximizing trade and goals of public health and environmental protection. However, the decision about which policy goal should take precedence in a particular instance should be decided by those who will live with the results. Under the Uruguay Round, those decisions are largely shifted away from citizen control and domestic democratic institutions to a dispute resolution body located in Geneva, Switzerland which operates in secret and without the guarantees of due process and citizen participation found in domestic legislatures and courts.

Moreover, the substantive trade rules interpreted by the dispute resolution body of the WTO would exercise a supremacy over other policy goals in almost every instance. This grave institutional bias, which subordinates health, safety and other factors to the imperatives of commercial trade is the not the way that Congress has legislated over the decades. I strongly urge Congress to reject the Uruguay Round agreement in order to revisit its trade proposals within a democratic structure that protects our domestic federal and state sovereignty, and, to apply President Clinton's words, that "promotes democracy abroad." For it is democracy, not autocracy, that is the strongest and fairest engine for sustainable economic development.

It is the duty of this committee and the Congress to assess the broadest implications of this agreement on the continued viability of democratic institutions here at home and their continued capacity to regulate commerce to suit the needs of their constituents. In two, three or four decades, when historians look back on this period during which so much of the world's system of self-organization is being reconfigured, they will point to the U.S. Congressional debate and consideration of the Uruguay Round as a turning point in the post cold war era. Either they will focus on it as a moment in which the Congress resisted the destructive GATT and NAFTA programs designed by society's most powerful forces for their narrow benefit, or they will view it as the moment in which Congress ceded authority to safeguard the interests of this country and its inhabitants to large multinational corporations that would gain excessive power from the Uruguay Round which they were so deeply involved in shaping.

Who among you on this Committee will be the prophets? Who among you will be the safeguarders? These two roles are different sides of the same coin. Thank you.

ANNEX I—EXAMPLES OF HOW THE URUGUAY ROUND COULD UNDERMINE DEMOCRACY, SOVEREIGNTY AND CONGRESSIONAL PREROGATIVES

The Uruguay Round could undermine U.S. and state policies by limiting the goals the U.S. may pursue-in its standards and by limiting the means the U.S. may use to promote those goals. The gravity of the Uruguay Round mandates is compounded because trade challenges to all policies will be resolved by trade experts in the secret system described above that is stacked against consumer, labor and environmental interests.

THE URUGUAY ROUND LIMITS THE MEANS EMPLOYED TO ACHIEVE WTO-ALLOWED POLICY GOALS

The Uruguay Round imposes significant limitations on the means used to accomplish even World Trade Organization-legitimate goals, if such means have trade effects. As a general matter, measures must be the "least trade restrictive." So far, this rule has only been established in a series of GATT dispute resolution cases. Approval of the Uruguay Round text, which specifically contains this requirement in numerous places, would give political approval to this policy for the first time. Then, a variety of policy goals that are only politically achievable through means that have greater trade impacts would be World Trade Organization illegal.

For instance, **fuel efficiency** has been a U.S. policy goal. In a current, pending GATT challenge, the European Union has challenged the U.S. CAFE standards and gas guzzler tax arguing that a carbon tax would be a less trade-restrictive way to promote fuel efficiency. However, when President Clinton proposed such a tax in 1993, it proved to be political infeasible. Under the existing GATT rules, which themselves need reform to accommodate social and environmental policies, the outcome of the EU challenge is uncertain. Under the Uruguay Round rules which implicitly adopts the least trade restrictive test, the United States would almost certainly lose. Thus, under the least trade restrictive test, an existing law can be struck down even though no alternative is available, much less in place.

Raw log export bans in two Pacific Northwest states and in the federal land management rules would face the same fate. Raw log export bans are one of the most trade restrictive means to attain the goal of conserving our nation's forests. Yet, after years of debate, raw log bans were the only politically feasible approach because they accommodated the interest of providing alternative lumber processing jobs to those who would not longer be cutting down forests. Laws with such mixed economic and social purposes, of which there are many, would likely fall before challenge under the World Trade Organization's rules.

For instance, in this annex, two chapters of the World Trade Organization's substantive trade rules concerning standards have been interpreted to demonstrate their undermining effect on existing and proposed U.S. legislation. "The Uruguay Round's principal standards provisions are found in the Agreement on the Application of Sanitary and Phytosanitary ("SPS") Measures, which addresses food and agricultural standard[1] and in the Agreement on Technical Barriers to Trade ("TBT"), which covers all product regulation other than that addressed in the SPS Agreement.[2] Both Agreements address a vast expanse of domestic regulations, ranging from end-product criteria to labeling and packaging requirements to risk assessment methods to testing, certification, inspection, and approval procedures.

1. TECHNICAL STANDARDS

Technical standards include all non-food standards, such as OSHA specifications, product safety and labelling rules, bans on asbestos and other dangerous substances and literally any other law that provides standards for products or services. The World Trade Organization's rules on technical standards require that the means used to achieve even allowable goals in technical standards be the least trade-restrictive alternative. Thus, technical regulations may not be "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.[3] In addition, technical regulations may "not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.[4]

- Under these provisions, Canada could argue, as it did in an amicus brief, that a **phaseout of all asbestos** should not apply to the asbestos produced in Can-

[1] Sanitary and Phytosanitary Measures include standards to protect human, animal, or plant life or health from risks arising from additives, contaminants, toxins, diseases, or pests, where such measures may, directly or indirectly, affect international trade (SPS Agreement, Annex, ¶1.)

[2] TBT Agreement ¶1.5; Annex 1, ¶¶1–3.

[3] (TBT Agreement ¶¶2.2,5.1.2.) Technical regulations may not be "more trade-restrictive than necessary to fulfill a legitimate objective, taking into account the risks non-fulfillment would create." (*Id.* at ¶2.2.) This sentence is immediately followed by factors that must be taken into account "[i]n assessing such risks," thereby envisioning a risk assessment or cost-benefit analysis. Conformity assessment procedures may not be more strict or applied more strictly than necessary to give confidence that products conform to technical regulations and standards. (*Id.* at ¶5.1.2.)

[4] *Id.* at ¶2.3.

ada because it presents less of a health risk, which can be controlled through use restrictions, than the other types at which the phaseout was principally directed. Such a Canadian challenge would be expected under the WTO terms.

- **Recycling schemes and packaging requirements** may be vulnerable. In past trade challenges, the European Court of Justice invalidated a component of a Danish recycling scheme requiring the use of reusable containers that could be handled by facilities in Denmark, and the U.S. complained that Ontario's imposition of higher taxes on recyclable beer containers than on reusable ones discriminates against U.S. beer, which is sold largely in cans, as compared with Canadian beer, which is sold largely in bottles. These schemes were not considered the least trade restrictive alternatives, or were considered to put a disproportionate burden on trade for the goal they achieved.
- The Department of Transportation's forthcoming requirement that trucks use **antilock brakes,** could be challenged with the argument that anti-jack knife devices would have the same primary effect, even though it takes longer to stop the truck with them.
- If Congress passes pending legislation, which now exists in several states, to **ban toy balls with a diameter less than 1.75 inches for small children,** a challenger could argue that the measure is unnecessary because of inadequate evidence of harm or that hard plastic or wood balls should not be subject to it. In fact, Connecticut's law to this effect would be exposed to challenge.
- If OSHA phased out cadmium batteries because the cadmium leaches into ground water in landfills, a challenge could be mounted because most substitutes also contain heavy metals that would present similar problems.

2. FOOD SAFETY STANDARDS

Under the Uruguay Round, food standards may be "applied only to the extent necessary to protect human, animal or plant life or health."[5] In addition, countries must ensure that their food safety measures "are not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility."[6] Note that political feasibility is not included as a relevant consideration.

Under the least trade-restrictive alternative test, any product ban may be called into question, since bans are the most trade-restrictive measures available. "Thus, a ban could be challenged on the ground that permitting small exposures, labeling foods, or washing or other handling precautions would meet the level of protection.

- **An EPA ban on pesticide residues** on a particular food could be challenged on the ground that permitting trace residues would achieve the same level of protection.
- **EPA's coordination policy precludes carcinogenic pesticides** on raw commodities, where the pesticide concentrates in processed foods. The Delaney Clause prohibits residues of the carcinogenic pesticides only in the processed foods, but EPA has extended the pesticide ban to raw commodities because it does not know which tomatoes will be used to make tomato sauce. A challenger could argue, as industry has, that this policy is not "necessary" because FDA could monitor the processed foods for the residues instead.
- **Bans on dyes, genetically altered produce, or fish** with lead levels safe for everyone, except pregnant women, children or other vulnerable populations, could be challenged on the ground that warnings would suffice.
- The Circle of Poisons Prevention bill, which, if enacted, would ban the export of certain hazardous pesticides in part to prevent them from being used on foods exported back to the U.S. A challenger could argue that the export ban is not necessary because permitting the export but monitoring for the residues would achieve the chosen level of protection.

The "taking into account technical and economic feasibility" language may prevent a country from using its chosen means because of economic considerations. It might also preclude the use of technology-forcing regulations that impose stringent requirements in order to force technological improvements, such as EPA's phaseou[t]

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[5] SPS Agreement at ¶6.

[6] (*Id.* at ¶21.) A footnote provides that "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade." (*Id.* at ¶21 n.3.) The alternative measures need only be technically and economically feasible, they do not need to be politically feasible. This distinction is critical, as noted above in the context of the pending GATT challenge to the U.S. fuel economy standards and in the case of the raw log export bans.

of uses of the pesticide carbofuran, even though substitutes were not available when the phaseout was established, or a ban the use of lead solder in food cans five years from now in order to force industry to come up with alternatives.

Aspects of the **1990 Nutritional Labeling and Education Act** also might be vulnerable to a trade-restrictive alternative challenge. Thus, mandatory labeling designed to provide consumers information about carcinogens or potentially harmful additives, such as salt, MSG, nitrites, or sulfites, could be challenged on the ground that voluntary labeling would suffice or that not all foods need to be covered by mandatory requirements. Indeed, both Japan and the European Union have already made claims that the mandatory nutritional labeling is an unfair trade barrier.[7]

1. TECHNICAL STANDARDS

The Technical Barriers to Trade Agreement allows the legitimacy of a country's objectives to be called into question, and also substantially limits the reasons that a country may employ to justify not using an international standard.

Under the Uruguay Round, U.S. technical standards must be based on international standards, even where the international standards are not yet completed, but their completion is imminent.[8] The only exception is when the international standard "would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."[9]

Note that the examples are both modified by the word "fundamental" and they are objective rather than subjective conditions. Noticeably omitted from the list of exceptions is that the international standard provides an insufficient level of protection, a factor specifically listed in an analogous provision elsewhere in the TBT Agreement.[10] The international standards serve as a ceiling, not a floor, curtailing innovative solutions to public health problems that are ahead of the international status quo, but not requiring that any solutions be put into place. In other words, the Uruguay Round contains no incentives, let alone any mandates, that countries, at a minimum, afford the level of protection provided by relevant international standards.

2. FOOD SAFETY STANDARDS

Under the Uruguay Round, food safety measures:

- Must be "based on scientific principles;"
- Must "not be maintained without sufficient scientific evidence;" and
- Must be based on a risk assessment, taking into account risk assessment techniques developed by relevant international organizations.[11]

These scientific and risk assessment requirements may jeopardize cutting-edge food safety regulation in areas, such as food irradiation, biotechnology, and the use of growth hormones in beef production, where the scientific evidence may not yet be in, but a country wishes to protect its citizens from possible, but uncertain, harm under the precautionary principle.

- Indeed, the United States claimed that a European Community ban on imports of **hormone-treated beef** lacked scientific support, and thus was a disguised restraint on trade.
- Laws such as the Delaney Clause, which prohibits the use of certain carcinogenic **food and color additives**, are at risk because it is a 30-year-old congressional policy judgment to protect the public from **uncertain** risks that is now attacked by industry as scientifically outmoded. As a measure setting a zero-risk standard, permitting no exposure to certain additives, it is not based on quantitative risk assessment

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[7] The Uruguay Round also prohibits arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail, and the application of measures in a manner that constitutes a "disguised restriction on international trade." (SPS Agreement at ¶7.) A narrow construction of the latter requirement would simply require that the measure be a matter of public record or that it be the result of an open rulemaking or administrative proceeding. Under such a construction, FDA action levels, which indicate when FDA will enforce pesticide residue and food additive standards, may be open to challenge. A broader construction might permit challenges to a food safety measure on the ground that its underlying effect is to restrict trade. For example, a ban on *listeria in cheese*, which is only imported, while listeria is not banned in other products, might be viewed as a hidden trade restriction.

[8] TBT Agreement at ¶¶2.4,5.4.

[9] *Id.* at ¶2.4.

[10] *Id.* at Annex 3, ¶F.

[11] SPS Agreement at ¶¶6, 16–17.

- **California's Proposition 65,** which requires warnings before exposing the public to cancer-causing substances or reproductive toxins, would be threatened because it was adopted as a popular referendum not a regulatory determination "based on scientific principles" and risk assessment.

In conclusion, while there are disagreements over the advisability of the above policy matters in one direction or another, the absence of democratic procedures assures that non-meritorious factors, relating to power imbalances, will often decisively shape the decisions made. That is why the sovereignty issue for the United States, with its more democratic systems of advocacy and dispute resolution, is paramount.

PREPARED STATEMENT OF JUDY OLSON

Thank you for the opportunity to discuss the Uruguay Round agreement and its impact on U.S. agriculture. My name is Judy Olson. I am a wheat and barley producer from Garfield, Washington. I appear before you as president of the National Association of Wheat Growers. I have the added honor today of being able to convey to you the views of several other organizations with a strong interest in how the GATT implementing legislation evolves with respect to agricultural export programs. These are: the American Soybean Association, the National Barley Growers Association, the National Broiler Council, the National Cotton Council, the National Council of Farmer Cooperatives, the National Pork Producers Council, the National Sunflower Association, the New England Brown Egg Council and the Rice Millers Association.

The goal of the Uruguay Round was to achieve greater liberalization of trade in agriculture and to bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines.

We believe that this goal was attained on both points, but that the results, even at the end of the six year implementing period, will be fairly modest, especially for export-dependent commodities like wheat. The U.S. farmer's ability to export to new and established markets will be largely determined by how the administration and Congress intend to proceed on the implementation of the Uruguay Round agreement.

In order to meet its obligations under the Uruguay Round and to remain competitive in an only slightly less hostile world trading environment, the U.S. has agreed to accept staged reductions in the annual volume and value of the export enhancement program or EEP. According to the Uruguay Round Final Act, the U.S. will be required to cap its EEP volumes and values at specific base levels and to reduce these amounts by 21 percent in terms of volume and 36 percent in terms of value from the levels maintained in 1992. In the case of wheat, when fully implemented, the new GATT agreement will have curtailed European wheat subsidies by an amount roughly equivalent to a poor wheat crop in Italy. In other words, not very much. Moreover, the GATT accord will do nothing to discipline the unfair practices of monopolistic state trading agencies or other countries who employ predatory pricing practices to enhance world market share.

The administration currently plans to recommend revisions to the EEP in the implementing legislation so that it meets U.S. obligations under the GATT agreement. We believe that it is imperative that the legislative authority for EEP be revamped to reflect broader market development and export expansion objectives as well as to be funded at levels proscribed by the Uruguay Round reduction schedule. Such action will ensure that the U.S. will be able to maintain its current competitiveness and be in a position to take advantage of the growth in the non-subsidized share of the world market.

We strongly recommend that the Uruguay Round implementing legislation amend the statutory authority for EEP to include the following objectives:

1. *EEP must be redefined to focus on foreign market development and export expansion.* The statutory definition of EEP as a "response to unfair trade practices" has restricted use of the program to countries where U.S. exports have been displaced by the European Community's subsidy programs. Now that EEP is no longer needed as a trade policy tool, there is an appropriate role for EEP in developing foreign markets and expanding exports. This purpose will allow the U.S. to compete more effectively and on near equal terms with all exporting countries, especially those left undisciplined by the Uruguay Round commitments on export subsidies.

2. *EEP operations must be broadened to include all foreign markets and streamlined to increase effectiveness.* Targeting of EEP solely against the unfair trade practices of Europe has prevented competition in key markets, reducing

export volume and increasing costs. Moreover, targeting has required approval by other agencies, a time-consuming and often public process that allows other exporting countries to undercut U.S. prices and complete export sales. Opening EEP up to all markets would eliminate the need for inter-agency approval, allowing more efficient use of funds available for the program.

3. *EEP funding must be made available and required to be used to the full extent permitted by GATT.* The amount of outlays permitted to be used for export subsidy programs during each year of the implementation period is specifically identified by commodity-sector in the GATT agreement. In order to maximize U.S. competitiveness, funding provided for these programs in each fiscal year must equal or exceed the total amount permitted to be used. In addition, all funds made available must be required to be obligated.

4. *Outlay reductions in EEP required during the GATT implementation period must be redirected to fund "green box" agricultural export programs.* The need for government assistance in maintaining the competitiveness of U.S. agricultural exports will not decline as EEP outlays are reduced. Many of the trade practices of other exporting countries are not subject to GATT discipline. The role of export promotion activities, in particular the foreign market development program, and food assistance programs in supporting private sector efforts to access foreign markets will only become more important as U.S. export subsidies are phased down. The NAWG strongly supports a requirement in the GATT implementing legislation that funds equivalent to required reductions in EEP and other subsidy programs be shifted to export development activities not subject to reduction under GATT.

On this point, we are discouraged by the administration's decision to cut support for "green box" export promotion programs in its budget for fiscal year 1995. In its budget request, the Department of Agriculture reduced its funding for the foreign market development program, the market promotion program, and the PL–480, Food for Peace program by $320 million. It completely eliminated the sunflower oil assistance program and the cottonseed oil assistance program. It is disturbing to see the United States unilaterally disarming its export programs, particularly those programs permitted by the GATT, ahead of the implementation of the Uruguay Round agreement.

Finally, the NAWG strongly urges the administration to take a highly aggressive stance in the operation of the EEP prior to the Uruguay Round agreement entering into force. Unless the unrestrained export practices of our competitors are effectively countered in this interim period, the U.S. will enter the implementation period with fewer resources, potentially higher stocks overhanging the U.S. market, and a sharply reduced share of the world market.

Again, on behalf of our group, I would like to thank you for the opportunity to appear here today. We look forward to working with the administration and this committee as we move toward passing the Uruguay Round implementing bill.

RESPONSE OF JUDITH C. OLSON TO A QUESTION SUBMITTED BY SENATOR GRASSLEY

Question. Some individuals have raised concerns that the new "WTO" may impinge upon the question of national sovereignty. Do you, agree with this statement or do you believe their are sufficient safeguards in place and the benefits of the "WTO" far outweigh the negative aspects?

Answer. We do not feel threatened by the "WTO" as some have felt. We hope that the new GATT machinery will do a better job of dealing with country disputes and settlements.

RESPONSE OF JUDITH C. OLSON TO A QUESTION SUBMITTED BY SENATOR HATCH

Question. During the NAFTA implementing legislation phase of the agreement there were some specific concerns that were addressed in the area of agriculture at the last minute, which, for better or for worse, seemed to satisfy some specific agricultural sectors such as sugar, for example. What, specifically must the wheat growers have in order to support a Uruguay Round agreement?

Answer. Although the gains to wheat growers from the Uruguay Round Agreement are modest at best, the National Association of Wheat Growers intends to support GATT implementing legislation. In this regard, we are especially keen that the U.S. live up to its full subsidy reduction mandates by not underspending its competitors in volume or value. We look forward to such an assurance in the implementing legislation.

[Submitted by Senator Packwood]

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

February 7, 1994

Hon. MICHAEL KANTOR,
U.S. Trade Representative,
Washington, DC.

Dear Ambassador Kantor: The Uruguay Round GATT agreement reduces or eliminates many tariffs and therefore would result in a substantial revenue loss to the federal treasury. Under Congressional budget rules, it is out of order for Congress to consider legislation implementing the agreement unless appropriate budget offsets are found or the budget rules are waived.

Before the process to implement the Uruguay Round agreement gets fully underway, we think it is important and fair to you and others in the Administration to inform you of our concerns relating to the consideration of this agreement.

While we may be frustrated by revenue estimating methodologies, we are not in a position to advocate different budgetary treatment for different types of legislation. Therefore, we cannot support a waiver of the Budget Act to exempt the agreement from the budget rules that apply to all legislation. To grant special treatment to this legislation would set a dangerous precedent for other legislation that may be just as worthy of passage, but similarly confined by budgetary considerations.

We are witnessing legislation now moving through Congress that will increase the budget deficit because it will be considered outside the boundaries of the Budget Act: the disaster supplemental (by virtue of the presidential emergency declaration) and health care reform (if it is considered an off-budget item). We cannot support a further increase in the deficit, even if it is only in the short term, by waiving the Budget Act to consider the GATT agreement.

We trust you understand our parameters. We are willing to work with you to address this funding issue. Thank you for your attention to this important matter.

Sincerely,

BOB PACKWOOD, *Ranking Member,*
Finance Committee
BOB DOLE, *Minority Leader*
PETE DOMENICI, *Ranking Member,*
Budget Committee
JOHN C. DANFORTH, *Ranking Member,*
Commerce Committee

PREPARED STATEMENT OF SENATOR DAVID PRYOR

[February 8, 1994]

Thank you, Mr. Chairman. I appreciate your calling this very important meeting to hear from our U.S. Trade Representative, Ambassador Mickey Kantor regarding the Uruguay Round of the GATT negotiations. I believe that following on the heels of the North American Free Trade Agreement, the GATT compliments the importance that the Clinton Administration places on the benefits of free trade and a more level playing field.

However, I do have considerable concern on at least one unresolved issue. One of my biggest concerns is that we must put more pressure on Canada for increased market access, particularly with respect to poultry and eggs.

Last year, the state of Arkansas produced 4.8 billion pounds of chicken with a farm-gate value of over $1.6 billion. Nationwide, more than 400,000 jobs are either directly or indirectly related to the production, processing and marketing of chicken, and since Arkansas is the largest chicken growing and processing state, it is vitally important that the Canadian market become more open.

The Uruguay Round agreement calls for increased export market potential for the U.S. poultry industry in most other countries. Certainly, our friends to the North should be forced to live up to the overall requirements of the GATT which, I might add, could mean between 7,000 and 14,000 new jobs in the United States.

As you continue to negotiate with Canada, Ambassador Kantor, I urge you to fully support the poultry and egg industries. Senator Roth, myself and 18 of our colleagues have written you a letter expressing our strong concern that you not link

a bilateral agreement or understanding with Canada on poultry to any other agricultural products.

On another matter, I would like to praise and defend one aspect of the GATT text which is the section pertaining to subsidies for industrial research and development. Overall, this language gives us the tools for the first time in GATT history to attack the unfair subsidies that our competitors use to give their industries a leg up on U.S. companies, while at the same time establishing a framework in which research and development subsidies to industry, which harness preeminent U.S. technical capabilities, will be allowable.

I am particularly supportive of the industrial R&D subsidies language because it will enable our country to continue some of our most important defense conversion programs which otherwise would have been actionable under the Dunkel text. The corner stone of our country's defense conversion program is the Technology Reinvestment Project or TRP which provides competitive, cost-shared grants to industry and other participants to develop and deploy advanced technology. If we hope to employ the hundreds of thousands of individuals who have or will lose their jobs because of reductions in defense budgets, we must help encourage the creation of new technologies, which will lead to new industries and new jobs. The TRP was wildly popular, receiving over 2,800 proposals requesting $8.5 billion for a $472 million pot of money. Under the Dunkel text, the TRP, other dual-use defense conversion programs, and many other government supported R&D programs would have been seriously threatened, while our foreign competitors would have been able to continue many of their unfair subsidy practices. The new industrial R&D subsidies language is smart, it is well suited to our existing defense conversion and technology policy, and it will be good for the American economy and the American worker.

Mr. Chairman, I look forward to hearing from Ambassador Kantor this morning as well as working with he and members of this committee to address this complex trade agreement.

PREPARED STATEMENT OF SENATOR DAVID PRYOR

[March 9, 1994]

Mr. Chairman, I am pleased we are holding this hearing to day so that we can all get a better understanding about the subsidies provisions in the GATT treaty. In my view, the Clinton Administration and the USTR took a very enlightened approach when it negotiated the provision we are discussing today, because this provision will allow us to continue our civilian, commercial technology programs which are crucial to economic growth, jobs, and high wages. Moreover, this provision is essential to our nation's defense conversion strategy. Under the previous Dunkel Text, our flag ship defense conversion program, the Technology Reinvestment Project, would very likely have been subject to challenge. That would have been disastrous in my view.

For once, I believe the U.S. acted in its own best interests to protect its own technology programs rather than let other countries determine the outcome of this provision. This provision was drafted in response to the concerns of industry and the science and technology community. The R&D priorities which would be supported by our technology programs would be set by industry, not bureaucrats, and they would be cost shared with industry. If industry doesn't think the R&D has market potential and isn't willing to share at least half the cost, the programs don't get funded.

I think it is high time we got rid of the old, worn out phrase "industrial policy," and we got our heads out of the clouds of economic theory. We know technology is the key driver of economic growth, we know there is a need for public support of technology development and deployment, and we know our competitors have operated programs like these for years.

I say we focus on what works, and what produces jobs. Our technology programs do work, they do produce jobs, and they need the protection afforded by the provision in the GATT Treaty negotiated by this administration.

PREPARED STATEMENT OF SENATOR DONALD W. RIEGLE

Mr. Chairman, thank you for calling this important hearing with Ambassador Kantor. I would like to make a few points. First, I intend to look very carefully at the results of the Uruguay Round of multilateral trade negotiations—especially at how this agreement affects U.S. trade law. We must not allow this agreement or the implementing legislation to weaken our ability to respond to unfair trading

practices and dumping. I hope to work with the Administration in crafting legislative language that preserves our trade laws.

Second, I am somewhat puzzled by the response of my Republican colleagues to the subsidies part of this agreement. I would have thought that they would have been overjoyed. For the first time, we are imposing effective discipline on the types of subsidies they have complained of in the past. In fact, I worry that we may have gone too far in limiting actions that the government might take to ensure a healthy vibrant industrial economy.

I do however, applaud the actions taken by the Administration to modify the Dunkel Draft in this area. The draft agreement would have severely constrained our ability to carry out a number of important technology programs—programs that have strong bipartisan support over the years, such as defense conversion and dual-use technology programs, cooperative research projects between industry and our National Laboratories, and the Commerce Department's Advanced Technology Program.

Finally, while this hearing is on the multilateral trade agreement, I would like to briefly mention the bilateral negotiations with Japan—which are at a critical stage. The Japanese government recently announced that their overall trade surplus—their current account surplus—for last year was $131 billion. At the same time, according to the budget documents released yesterday, the Administration expects our current account deficit to increase to between $105 and $145 billion in fiscal year 1995—with the merchandise trade deficit increasing to between $135 to $175 billion. These trends are unsustainable—and pose a danger for the entire world trading system. And thus, these negotiations are important for the entire global economy—not just the U.S.

This Friday, President Clinton is to meet with Prime Minister Hosokawa to review progress—especially in the areas of autos and auto parts. I am heartened by recent statements from the Administration that no agreement is better than a bad agreement. I urge the Administration to stand firm on all aspects of the negotiations—especially with respect to specific measurable targets and access by U.S. auto parts manufacturers to the Japanese auto transplants in this country. I also urge the Administration to be prepared to take tough action if the negotiations fail. We must bring the global trading system back into balance.

PREPARED STATEMENT OF SENATOR WILLIAM V. ROTH, JR.

Thank you Mr. Chairman. I would like to make a few openings remarks.

I have always been a strong supporter of achieving a successful conclusion to the Uruguay Round because a strong and comprehensive set of international trade rules and more open markets overseas are vital to bolstering our position as the world's largest exporter. It translates into economic growth and jobs here at home.

While on balance, the results achieved last December 15th take us in that direction, it is critically important to keep in mind that the agreement is not concluded yet, not until April 15th. In particular, we have not finished the market access negotiations and much more progress must be accomplished in this area before a satisfactory outcome can be reached. Another general point is that, although we may have been overly ambitious in our expectations of what could be achieved among over 115 nations, there are some specific areas of serious disappointment which make an enthusiastic embrace of this agreement somewhat difficult.

I am still carefully examining the agreement; not only is the agreement over 500 pages, but there are well over 500 pages of formal reports from the U.S. private sector on their views of what's been accomplished.

A few things of vital importance to my state of Delaware are clear right now. First, Mr. Ambassador, it's critically important that we substantially improve the current market access offers from developing countries on chemicals. It is my understanding that we have agreed to lower our tariffs on chemicals by 40 percent, more than the overall 33 percent average cut we've agreed to, but there is not reciprocal opening overseas in the growing markets of the future. Few, if any, developing countries have agreed to our Chemical Tariff Harmonization Agreement, which, among other things, calls for harmonization of chemical tariffs at low levels. This creates an unacceptable one-way street where developing countries with significant chemical production can easily enter our markets but we cannot enter their's because of very high tariffs, tariffs which are in some instances as high as 100%.

Even those one or two developing countries that have agreed to join the CTHA appear not to have done so across-the-board. It is my understanding that that is the case with Malaysia. Moreover, it is my understanding that the Malaysian government may impose a 15% tariff on titanium dioxide, which currently enters Ma-

laysia at a zero tariff rate and happens to be manufactured in my state of Delaware. That is not harmonizing tariffs at low rates, at least not in my book.

Unless we can achieve full and comprehensive coverage of these fast-growing economies in the chemical harmonization proposal, which is where our future chemical export growth lies, we should not go forward with our offer in its current form. Chemicals is our largest export. It accounts for $1 out of every $10 of U.S. exports, and it deserves a level playing field. The "free rider" problem has got to be resolved.

I am also alarmed by the prospect that Canada may not, in fact, open its poultry market to our poultry producers and workers as a result of the agricultural provisions of the Uruguay Round. Senator Pryor and I are deeply concerned that Canada will not uphold its free trade obligations to us. We would like to hand you a letter today that outlines these concerns. Some of our colleagues have also signed the letter.

This is a very important issue for Delaware—over two-thirds of Delaware's cash farm income was from broilers last year. The 1200 poultry growers in the state of Delaware, the seventh largest poultry producing state in the country, have waited patiently for increased access to Canada and it is critical that it be achieved as part of the Uruguay Round.

An open Canadian market would mean $350 to $700 million more in chicken exports and 7,000 to 14,000 new jobs. Right now we are only able to export $90 million worth of poultry because of Canada's restrictive trade barriers. The letter that Senator Pryor and I are delivering to you today calls for a successful market access agreement with Canada that creates significant new export opportunities and eventually eliminates any new poultry tariffs between our two countries, as required under our free trade agreement.

I have other concerns with certain aspects of the Uruguay Round, such as the "green light" category for subsidies and the 10-year transition granted to developing countries for adopting the new rules on patent protection, a time frame which is clearly too long. I hope to address these and other important provisions in the agreement later on.

PREPARED STATEMENT OF ROBERT B. SHAPIRO

Mr. Chairman and members of the Committee, I am Robert B. Shapiro, president and chief operating officer of Monsanto. Thank you for giving me this opportunity to discuss the importance of the Uruguay Round Agreement to U.S. industry . . . American workers . . . and the U.S. economy.

My company, Monsanto, manufactures specialty chemicals, agricultural products, pharmaceuticals and food additives. About 35 percent of our annual sales of $8 billion take place outside the United States. Thus, international trade is critical to us.

I am speaking today not only on behalf of my own company, but also for the Alliance for GATT NOW. Together, GATT NOW represents more than 200,000 companies, large and small. Many of these companies are directly involved in exporting American products and services; all are affected in one way or another by the global economy. These 200,000 U.S. companies, their investors and their employees, all stand to benefit from speedy passage of the GATT.

We believe GATT stands for opportunity. Opportunity to break down trade barriers and sell more American products and services to the world's growing economies from Latin America to Asia.

While history teaches us that open and free trade is the surest engine of global economic growth, virtually all national governments continue to face significant protectionist pressures within their borders. These pressures are greatest during difficult economic times, when uncertainty about the future is at its peak

Protectionism, however, impedes international trade and stifles economic growth. No major developed country, least of all our own, can afford to turn its back on the opportunity to expand markets and increase exports. This country's economic objectives—growth, jobs and prosperity—are tied to a healthy balance of trade, which is best served by a policy that will foster economic growth and reduce the potential for economic gridlock

This gridlock is created by complex and ever-changing trade laws which are developed on a nation-by-nation basis. What this does is create uncertainty for companies as they try to build their international business. With a single legislative or regulatory action—as we have seen all too often—any country can adversely impact the competitiveness of an American company or an entire industry. When this happens, whether it be an increase in tariffs on an agricultural product, or the raising of local content regulations on manufacturing goods, the results can be harsh and the effects devastating.

In order for businesses to operate with some degree of certainty amid the world's complex array of trade rules, we must have a trading framework—a framework that replaces chaos with order, and uncertainty with predictability. Moreover, the framework has to be clear, fair and relevant.

Although it is not perfect, we believe that the GATT Uruguay Round Agreement provides a much improved framework for the world's trading system—and will be advantageous to American business and American workers. On the whole, it is a major step in the continuing efforts to eliminate barriers to trade and investment, and to expand world economic growth.

We support speedy approval of GATT this year because it establishes the much needed framework for consistent international trade. Specifically, GATT is right for the following reasons:

First and foremost, the Uruguay Round will significantly reduce or eliminate tariffs on a wide range of products. Overall, developed-country tariffs will be reduced by about one third, while European Union import duties will be slashed in half. Though sufficient tariff cuts have not been made in all industry sectors, this Round is a major step toward the U.S. goal of improving market access for a broad range of our products.

Secondly, and for the first time, GATT will include agriculture, textiles and apparels, construction, tourism, education, healthcare, and service industries.

Thirdly, the Uruguay Round also represents a substantial step forward in the international protection of intellectual property. This protection is essential for a company like Monsanto that devoted $626 million to research and development last year.

Our competitors abroad should not be allowed to reap the benefits of our innovation and our substantial commitment to research and development. Leaving U.S. companies unprotected deprives the American economy of the proper fruits of its investments. These intellectual property rights—patents, trademarks, copy rights and proprietary information—are especially important to my company and to virtually all of the innovative companies in our economy. Although GATT did not achieve all of the objectives one could want, it is nevertheless a significant step forward.

While the Uruguay Round Agreement will not eliminate all bad rules, it will make it more difficult for countries to impose investment restrictions that distort trade and inhibit job creation by establishing mechanisms that make it easier to set fair standards and challenge unreasonable ones.

The agreement may not be a perfect fix, but it is a giant step forward. We would like to see the U.S. continue to pursue policies that keep pressure on our trading partners to remove trade and investment barriers. We, therefore, advocate the following initiatives:

- Extend negotiating authority to continue bilateral and multilateral trade initiatives;
- Expand the NAFTA agreement to appropriate countries in Latin America;
- Pay special attention to Asian-country membership in GATT, because this is where many of the world's fastest growing economies are developing; and
- Preserve U.S. rights to take unilateral action to open closed foreign markets, if necessary.

There is one more point I would like to make. Approval of this landmark agreement this year will help maintain the positive momentum of the U.S. economy and fuel lagging economies in other corners of the world. Like us, our trading partners are now facing the arguments of those with narrower, protectionist interests. The Uruguay Round Agreement is a milestone in our evolving world economy.

Consider this. The U.S. economy, by conservative estimates, is expected to expand by an estimated $100 billion per year after full implementation of this agreement. According to the Department of Commerce, each $1 billion in new American exports will create more than 19,000 domestic jobs. The stakes for all of us are, indeed, high.

The Uruguay Round is not a cure-all for U.S. business. But on balance, it is an important step toward a more prosperous economy for the United States and our trading partners. And we urge its swift passage.

Thank you.

RESPONSE OF ROBERT B. SHAPIRO TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Question No. 1. Both the anti-dumping and subsidies code provide for the termination or "sunsetting" of orders after five years, unless the administering authority has conducted a special sunset review and determined that, absent continuation of the order, dumping and injury to the domestic injury will continue or recur. Since

the code does not spell out how or when reviews of existing orders are to be carried out, my questions to you are:

1. Does this mean that no existing order shall be terminated under the sunset provision for at least five years after the codes go into effect?

2. In situations where the dumping or subsidization has continued during the five year period, does the legislation place the burden on foreign producers to demonstrate that injury to the domestic industry has not continued and will not recur?

Answer. You invited me here to testify on behalf of the Alliance for GATT NOW. This group bridges a variety of opinions on the issue of dumping and subsidies. Therefore, we have not taken a position on proposal that would affect the AD/CVD provisions of the Round. The Alliance for GATT NOW is an umbrella group that has been formed to support the Uruguay Round agreement as a whole.

Question No. 2. Do you believe the final GATT agreement would substantially weaken our antidumping and countervailing duty trade laws? If so, what recommendations would you make for changes in the implementing language?

Answer. The Uruguay Round will curb abuses abroad in the application of antidumping laws that harm the competitiveness of U.S. companies and cost U.S. jobs. With appropriate implementing legislation, essential elements of U.S. anti-dumping law will be enhanced. As stated above, the Alliance does not intend to make specific recommendations on this aspect of the implementing legislation.

Question No. 3. I would like each of you to tell me what, if any, impact there would be on the U.S. economy if Congress failed to pass the GATT agreement before this committee? I would also like to know your opinion as to the extension of fast-track to conclude several issues which will not be successfully negotiated before the final conclusion of this agreement in July of 1995.

Answer. It is absolutely critical for the U.S. to pass the GATT legislation this year to allow industry to implement their business plans. The Uruguay Round provides for enormous economic opportunities. By passing GATT legislation now, the United States will increase economic growth and create new jobs for U.S. workers. Economists estimate that the Uruguay Round will increase U.S. GDP by up to $200 billion annually once the agreement is fully implemented. It would be foolish not to seize this opportunity. Failure to implement the Round would negate eight years of negotiation and call into question U.S. commitment to promote expansion of trade throughout the world.

PREPARED STATEMENT OF JACK SHEINKMAN

Chairman Moynihan and Members of the Committee:

I am Jack Sheinkman, President of the Amalgamated Clothing and Textile Workers Union. ACTWU represents some 230,000 workers, most making fibers, textile fabrics and home furnishings, all types of apparel and footwear. In addition, we have significant numbers of members who make photocopying machines, auto parts, various plastic products and other durable goods.

We appear here today with mixed feelings. This GATT agreement is not the best trade agreement the US could have negotiated. Without the introduction of human and social concerns into international trade pacts, however, it will be even worse. Trade is not an end in itself, but rather a vehicle that will hopefully -- but not necessarily -- lead to greater shared prosperity, higher living standards and an overall improvement in the human condition. Our union believes it is long overdue that the body and agreements that govern international exchange of goods and services address the social and human goals we make coequal to, if not even more important, to the goal of maximizing market efficiency and enhancing productivity.

Our members in the textile and apparel industry feel particularly betrayed by this agreement. The Multifiber Arrangement (MFA) allowed an orderly domestic transition process, while likewise creating opportunity for most of the developing nations to share in our market. Phase out of the MFA will result in at least a million lost jobs here at home, with a bogus or inconsequential reduction in consumer prices as supposed compensation. The largest "entry level" industry for millions of people with limited alternatives will be decimated.

We feel further betrayed because the Punta del Este Declaration stated MFA phase-out would only occur under conditions of strengthened unfair trade laws and real market access everywhere. Neither of these latter conditions were met. Subsidy opportunities and dumping abuses were expanded, not contracted. The equally important unfair trade practices (most government mandated) of lax or non-existent environmental, labor rights and work standards were again ignored. Market access for American exports were only obtained from those countries who were already opening up their own internal markets for economic reasons. Not one country was forced into significant increased access in textiles and apparel due to these negotiations!

What is equally disturbing is that most of the third world will lose their export development opportunities as a result of MFA phase-out. Only 4 or 5 countries -- China, Pakistan, Bangladesh, India and maybe Indonesia and Thailand, will come to oligopolize the market, taking 75, 80, maybe 85% of all imports into our market. "Greater" China which includes the mainland, Hong Kong, Macau and Taiwan already supplies one-third of our total apparel imports. It is common knowledge that essentially all Hong Kong and Taiwan production really takes place on the mainland, while Macau's industry is already 100% mainland workers. If fraud and transshipment are included, China already supplies de facto 40 percent of our imports.

Much nonsense has been stated about how costly the MFA quotas are to our economy. But the study just released a few months ago by the Institute for International Economics stated the total net welfare cost to our economy of all quotas, tariffs,

VRA's, dumping cases, etc. in all sectors is just $11 billion, or less than .2 of 1% of our Gross Domestic Product. Is this so terrible?! And if you revise some of their assumptions on reemployment based on reality, the net welfare effect for our economy is positive, not negative. The Economic Strategy Institute has estimated this GATT agreement will cost our economy between $36 to $62 Billion of GDP.

And for all those economic experts who argue that greater exports is the answer to ending the stagnation in our economy we ask, what about Japan? It is not an oversimplification to note that while last year that country had the highest post-war trade surplus of any nation it also swung deeper into recession.

As the US continues to run $100 billion plus trade deficits we would love to see economic analysts do a study of the net job gain or loss as a consequence of a more open trading system. All we hear about is the 17,000 jobs created by each $1 billion of exports. But we never hear about the 25,000 jobs lost due to each $1 billion of imports. (Imports generally come in at a lower unit price for the equivalent item exported.) Further never mentioned is that these exports are frequently supplies or imputs for manufacturing that was previously located here and thus result in no new job created. In fact I would estimate that approximately one-half of all trade is just intracorporate shipments between units of multinational corporations.

But then theory in the trade area has frequently been more propaganda than explanations of reality. Everyone cites Adam Smith as the patron saint of free markets, but never once mentioning that he also advocated establishing strong trade unions and other checks to prevent abuse of market power.

The Riccardo world of exchanging English textiles for Portuguese Port no longer exists. Governments and transnational companies now determine comparative advantage to a much greater degree than economic elements.

Similarly, constantly cited is how expanded trade and greater foreign competition will drive down consumer prices. The exact same logic drives labor markets, but that is conveniently ignored. By removing trade barriers a defacto world labor market is created and this intensified foreign competition will drive down the "price" of US workers -- which is to say wages, benefits and working conditions. An open world trading system does not necessarily lead to a more "rational" exchange of comparative advantage but rather to an overwhelming pressure to move to the lowest common denominator of workers wages and conditions of work.

Then we are told to forget the low skilled or semi-skilled, labor intensive industries as being "inappropriate" for our advanced economy. Future job creation will be in the high-tech, high knowledge sectors in our economy. Unfortunately this view has little relationship to the reality we face today.

First there is no assurance "high-tech" production will remain in the US. Our rocket and space industry is the very model of where future employment is to come. But what happens when it costs $12,000 per pound of payload to put objects in orbit by US rockets, $8,000 per pound using French rockets, and only $4,000 per pound using Chinese or Russian rockets? You don't need a Cray computer to figure it out.

Good jobs are being destroyed, not created. The majority of jobs being created are part-time, temporary and low wage -- what we used to call the secondary labor market. Not just textile and apparel workers are being made, in the more value laden European term, redundant. The high wage, high skill industries are also downsizing:

Examples of Layoffs

Xerox	5,000
IBM	60,000
AT&T & Baby Bells	120;000
GTE	17,000

We represent the workers at Xerox nationwide. Recently the company came to us calling for a one-third reduction in costs at their big Versatex facility in California. While management and overhead will bear a good part of this reduction, our members are also being asked to make sacrifices. This at a plant which manufactures one of the most sophisticated, complex pieces of electronic equipment in all of American industry.

Further, the export potential of Xerox equipment is very limited, given the company's joint production in Japan with Fuji Xerox and in Europe with Rank Xerox.

Moreover, other countries are catching up quickly in many sophisticated high tech and skilled areas of production or service and there is no reason to expect that most other US workers will be exempt from the same pressures that affect our members in the unglamorous rag business.

Secondly where will the millions of new immigrants, the 20-25% of our citizens who are functionally illiterate, the millions who aren't rocket scientists find work? Shouldn't entry level jobs continue to exist here; or jobs whereby a person's major contribution is physical rather than mental? Policy makers better figure out the creation of new job markets as quickly as we are losing basic manufacturing jobs by the millions. Otherwise the number of people who have no opportunity or see no stake in the system for themselves will mushroom enormously. It is no coincidence that crime and drug use increase enormously as good jobs and income potential decrease equally strongly.

Given the failure posed by GATT as negotiated, Congress must address solutions through implementing legislation you are beginning to consider. As we anticipate you will give the President continuing negotiating authority there is need to remember the words of President Franklin Roosevelt when he signed the Fair Labor Standards Act in 1937, where mandatory minimum labor standards and prohibition of child labor was enacted nationally: "Goods produced under conditions which do not meet a rudimentary standard of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate commerce." [1]

President Roosevelt and Congress were seeking to prevent states from using working conditions as a means of cut throat competition, which had resulted in a downward spiral of expanded

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[1]. As cited in "Time for a Global New Deal" by Collingsworth, Goold and Harvey. Foreign Affairs. Jan/Feb 1994.

poverty, murderous physical conditions in work places and no hope of expanding a consumer based economy. What was true then domestically is equally true today internationally. It is time we stopped rewarding companies or countries who use degraded human conditions as a means to gain profit and market share!

This is not exactly a novel idea. Congress has already set certain moral terms on trade. We ban any imported products made by slave or other forced labor. We restrain US companies from using corrupt practices or in acquiescence with the Arab boycott of doing business with Israel as legitimate trade practices. We exclude products which result from stolen intellectual property rights.

What we seek is a simple extension of these principles to set minimum standards of human decency for workers. Child labor is just as onerous as slave and prison labor. Requiring 20 hour work days for less than subsistence wages is a worse crime than engaging in bribery.

The old saw that "poverty is the greatest barrier to trade" is even more true today than previously. As formal barriers come down all that remains is naked aggression against workers as the main means of competition.

Minimum work standards and enforceable labor rights are not back door protectionism but front door means to raise living standards everywhere. Such principles have worked reasonably well in our domestic free market system over the last half-century, producing widespread prosperity. Just as the GATT seeks to move the world more toward a free market system in economic terms, it should do so in more just social and human terms!

ACTWU asks that this Committee require the President to seek a work program and institutional structures in the GATT to include worker rights and minimum work standards as part of the rules of trade. There should be an integration of the internationally accepted Conventions of the International Labor Organization (ILO) into the GATT process. Time limits for conclusion of these negotiations should be included just as Congress has done in prior extensions of negotiating authority.

We should expand our prohibition on slave labor products to those produced in violation of ILO standards.

Just as we now set certain codes of conduct for multinational corporations, we should expand them to include any violation of local labor, health and safety or environmental laws as a basis for denying entry or setting forth some sort of penalty.

In fact a handful of American companies have already set forth a code of conduct for sourcing and selecting business partners abroad. We have worked with the Levi Strauss company in determining their criteria. Their standards are appended to our testimony. More than commending it to all multinational corporations, we urge Congress to enact such a set of principles to apply to all firms engaged in cross-national commerce.

As there is a strong possibility that extension of GSP will be included in this implementing package our union advocates a strengthening of the worker rights criteria to retain eligibility. In addition there has to be a major reduction in the President's discretion on whether a country retains its benefits so that the abuse of sheer political manipulation is removed. If the package includes NAFTA parity for the CBI countries, our simple position is NO, we're opposed to this. NAFTA is bad enough.

We would urge that a permanent monitoring of worker and human rights be set up in the Labor Department, with yearly reports, so that action can be taken quickly as abuses become known.

Since Section 301 actions can be taken for labor rights violations, we would urge Congress to reaffirm 301 and set forth a specific list of remedies and countervailing trade actions that would be GATT legal so as to retain the effectiveness of this statute.

Finally, we want a true effort by Congress to stimulate a full employment economy. Right now our members pay twice for the dislocations produced by expanded trade. First they lose their jobs and their health care. Then they lose again when no meaningful transition program is available to them. The trade adjustment program, all the various retraining programs, have been major failures. Our safety net of income maintenance and support services has been reduced to unconscionably low levels. Studies have shown that fully one half of unemployed apparel workers never find another job and another one quarter only find new jobs at lower wages. This is a disgrace.

Add to this competition the new effort to force some 3 million welfare recipients into the job market, either directly or through government subsidy. Where will all these new jobs be created and how will we get workers into them?

Congress seems to be in no mood to appropriate the necessary funds for such major job creation or a needed economic stimulus package.

What happened to us being a nation of compassion? We rightfully rush to extend Federal resources to quake victims in California, flood victims in the Midwest and hurricane victims in the Southeast. But we do nothing for the hundreds of thousands of victims of government trade policy who suffer in quiet, lonely desperation, hidden from view because there is no physical cause to make it starkly visible.

The Clinton Administration has proposed a program to handle the restructuring that is occurring in our economy. But the dimensions of resources and effort being considered are far too meager.

As this Committee considers this GATT agreement, it should create a simultaneous program of economic expansion, job creation and transition services to the millions who suffer through no fault of their own.

Voters in the last election sought these commitments and thus far their expectations are unfulfilled. The consequences of expanded international trade now are too intimately tied to our domestic economy to be handled as separate and unique areas of action. Our union awaits the opportunity to support legislation that fulfills what the majority of the electorate has every right to expect.

One final point, Mr. Chairman, we are working with the Committee staff on technical issues for implementing the MFA phase-out. Since many of these items are still in flux we shall include our views on these technical issues before the written record is closed.

ACTWU
AFL-CIO, CLC

JACK SHEINKMAN
President

ARTHUR LOEVY
Secretary-Treasurer

CAROLYN KAZDIN, Director
Legislative Department

August 1, 1994

By Fax 228-5568

Ms. Gail Fralin
Senate Finance Committee
Room 254 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Ms. Fralin,

Response to questions submitted during the Finance Committee's hearings on the Results of the Uruguay Round GATT Negotiations on March 16, 1994

1. Senator Hatch's question on future changes in the textile industry.

Our response has to be divided into three parts: effects on the textile mill sector, the apparel sector, and upon workers as opposed to companies in both.

It is my anticipation that the textile mill sector will shrink to about half its current size. The 45 percent capacity dedicated to producing apparel fabrics will shrink to very marginal status. It will produce a few specialty fabrics, become a secondary supplier of denim and retain a portion of the high fashion knit fabrics area. But as the apparel industry accelerates by moving offshore or to Mexico, the textile mills producing apparel fabrics will loose their primary customer. I view their export potential as very, very limited. In Asia its basically non existent and in Mexico and CBI it will increasingly be displaced by transplanted Asian or even U.S. jointly owned but locally situated plants.

The market for domestic industrial fabrics and home furnishings will be essentially retained by American mills. The superior efficiency, closeness to market and technical innovativeness of American plants will provide sufficient advantage for them to continue their domination over foreign sourcing.

For the apparel industry the game is over for domestic production. The only question is how fast the lights get turned out; I predict apparel will emulate footwear in being 90 percent foreign sourced in 5 - 6 years. Over half a million people will become unemployed. Dislocations in many communities will be very severe.

While many companies will survive in name and profit by using overseas production, the workers will be the big losers, both unemployed and employed! Close to a million people mostly women, minorities and new entrants into the work force will loose their jobs. For the remaining workers they will suffer even lower wages and worse working conditions than most endure today. Just as the laws of supply and demand encourage free markets and greater competition to drive down consumer prices, so will the same principle destroy American living standards. As we defacto create

a world labor market and direct competition between workers in China earning 20 cents an hour and Americans earning 40 times as much, the "price" of workers here has to decline precipitously. American Workers earn less today than they did two decades ago in real terms. With this new GATT agreement, the only thing that will change is the slope of the downward trending -- it will accelerate its downward pitch. For the Senate to endorse this process is an outrage.

2. Senator Grassley's question on national sovereignty.

Our experience in textiles and apparel with 20 years of an international dispute settling mechanism has been a disaster. We have had to live with the Textiles Surveillance Body under the MFA, which has only advisory capacity, as contrasted with the WTO's compulsory character. Furthermore, the TSB is equally divided between importing and exporting nations which means we start on a somewhat equable basis.

Despite the TSB having no trade sanction authority the U.S. government has treated its decisions as binding. Essentially most of the of the cases have gone against us. At best our representatives have prevailed on the TSB to not make a decision, but rather ask both parties to continue negotiating. We have never been able to convince the free trade idealogies who control the process that there was full justification for the U.S. to impose import restraints under the conditions set forth in the MFA. This is because no mater how many facts, statistics, or economic arguments weigh in our favor there are always a few numbers in the other direction that are ceased on, or "definitive" proof demands never met that make winning even the best of cases impossible.

Under the WTO dispute settlement process, the deck will be even more stacked against us and the proceeding entirely secret, so that the panels can be as arbitrary and capricious as they want with no real useful sanctions to prevent their behavior. The USTR agreed to the WTO process and its super sovereignty because they naively believe the U.S. is always right and will be so adjudged by the panels. How stupid!

In fact what really happened in textiles - and will happen under WTO is that our government will refuse to act, even in justifiable circumstances, because it imagines and fears the potential of a negative outcome in Geneva! Many times the Committee to Implement Textile Agreements failed to support domestic industry because they prejudged or just wanted to avoid the international dispute settlement process.

If fear of a toothless TSB brought such gutless U.S. Government action what can we anticipate with the WTO? Every foreign nation will take its case to the WTO because they know either we will capitulate quickly or loose most cases by the skewed nature of the process. Congress will be reversing a lot of our current law or accepting lots of retaliatory penalties! In effect you will have nominal power over our laws affecting trade issues, but real power and true consequences will shift to the most irresponsible, unaccountable process in Geneva.

Sincerely,

Jack Sheinkman

Jack Sheinkman

PREPARED STATEMENT OF THOMAS I. USHER

Thank you, Mr. Chairman. I am testifying today on behalf of the 31 U.S. member companies of the American Iron and Steel Institute, which account for about two-thirds of the annual raw steel production in the United States. I'm accompanied by Mr. Tom Howell of the firm Dewey, Ballantine, and a principal author of the 1988 book, Steel and the State, which has won the highest praise from steel trade experts.

Subsidies and the GATT Uruguay Round -- the focus of today's hearing -- are of enormous importance to U.S. steel producers. The structural crisis that's beset the world steel industry since the mid-1970s results in large measure from some 100 million tons of global overcapacity -- much of it the result of foreign government subsidies. This ongoing foreign government largesse to steel has helped build and keep afloat uneconomic and unneeded foreign steel mills. And the amounts in question -- foreign government subsidies that have exceeded $100 billion since 1980 -- are truly staggering.

Let me cite a few examples:

- In France, state-owned Usinor and Sacilor (which merged in 1988) suffered huge losses between 1975 and 1986 and, by 1985, were literally worth less than nothing. Yet thanks to $16 billion in government subsidies, the firms survived, modernized and even spent over $1.6 billion to acquire other steel enterprises and distributors.

- In Italy, the state steel sector lost more money than it was worth, on average, every 18 months between 1975 and 1991 and, once again, due to an estimated $20 billion in government subsidies, the state steel group not only survived but modernized and expanded.

- In Brazil, the state steel holding company invested over $14 billion to finance a tripling of capacity between 1973 and 1986. Plagued by operational chaos, huge losses and enormous overcapacity, it was in a continual state of crisis from the start. By the end, the debt burden exceeding $14 billion. Yet in Brazil, too, the industry survived and continued to expand, thanks to repeated injections of government money.

- All around the world in fact -- in Britain, Sweden, New Zealand, Venezuela, Belgium, Austria, Luxembourg, Indonesia and elsewhere -- the story is much the same: collapsing foreign steel companies have been bailed out and modernized by government subsidies totalling tens of billions of dollars.

Our foreign competitors have benefitted from a wide array of countervailable subsidies, including: equity infusions, subsidized loans and cash grants, debt forgiveness, regional development grants, government construction assistance, preferential income tax benefits, short-term export financing, government social and retirement aid, import duty exemptions, electricity rate discounts, and so-called "shareholders' advances" (in which money disbursed by the government carries with it absolutely no obligation to repay).

Not surprisingly, given the trade-distorting, injurious and unfair foreign competition that continues to confront our industry, we have availed ourselves of our rights under the GATT and U.S. countervailing duty (CVD) law, most recently on a large scale in the 36 flat rolled steel CVD cases filed on June 30, 1992. And even though, in the end, CVD orders did not go into effect in many cases -- due to the failure of the ITC to follow the dictates of Congress and U.S. law -- the final determinations that were announced by the Commerce Department on June 22nd of last year proved subsidy rates for foreign steel ranging up to 73 percent!

And so, U.S. steelmakers are under no illusions about the nature of the foreign competition facing us, and we appreciate the concern expressed by Senator Danforth and others about the new Uruguay Round "green lights" that will make certain subsidies permissible and non-countervailable under U.S. law. The point is: no U.S. industry -- no matter how competitive it is -- can compete against the treasuries of foreign governments.

And this is precisely why we have consistently and strongly supported our own government's two-pronged approach to the problem of foreign government subsidies to steel. What we hoped would be achieved by now was: (i) a comprehensive, effective and enforceable Multilateral Steel Agreement (MSA) that would eliminate steel subsidies, open steel markets and end other trade-distorting practices in steel; and (ii) a GATT Uruguay Round result that would produce stronger, generic international disciplines against subsidies and other unfair foreign practices. Unfortunately, we have reached an impasse so far in efforts to obtain an MSA, while the GATT Round has produced a net weakening of U.S. CVD law.

Before turning to specific problems in the subsidy/CVD area of the Uruguay Round Agreement, I'd like to summarize in a sentence why it is that we feel so strongly about this issue. It's simply this: at enormous corporate, financial and personal cost, and without the benefit of significant U.S. government subsidies, our industry has downsized, restructured and modernized in the face of global competition from highly subsidized foreign producers.

Our industry changed the old fashioned way. We spent over $35 billion of our own money on modernization since 1980, and witnessed the painful loss of nearly 300,000 U.S. steelworker jobs in the process. And the change that occurred was both dramatic and hard-earned. Today, we are the most productive steel industry in the world and the low-cost supplier of quality steel products to the U.S. market. But much of the rest of the world's steel industry has unfortunately not changed. Many other steel industries are still overbloated and dependent on government subsidies. They're still exporting their overcapacity and unemployment to our country. And the only defense that we have to ensure that our competitive gains are not undone by foreign unfair trade is U.S. trade law.

And that brings me to our concerns about subsidies and the Round. The U.S. goal was that international discipline in this area might be significantly strengthened by the Round. But the new Code fails to cover input subsidies and export targeting practices. And while it does include a new presumption of "serious prejudice" and improved due process and transparency in other countries' laws, these gains are far outweighed by the damage done to U.S. law -- especially (i) the new "green lights" for basic and applied research, regional development and certain purchases of environmental equipment and (ii) the narrow definition of subsidy as a "financial contribution by government," which could become another loophole in the law.

This Committee can help minimize the damage -- if you use the discretion available under the new GATT to strengthen all of our laws against unfair trade to the maximum extent possible consistent with U.S. obligations under the GATT.

I say all of our laws, because there is a clear connection between foreign government subsidies and other unfair foreign trade practices -- especially dumping, which subsidies facilitate. Accordingly, it is imperative that Congress take a broad approach to the Uruguay Round implementing legislation and that you not just do the minimum "necessary" to implement the GATT Round. We ask that you make sure that U.S. antidumping (AD) law and Section 301, as well as our CVD law, are as effective as possible.

A broad approach is needed, because virtually all of the Uruguay Round's trade law changes are weakening ones. Take dumping, for example. In spite of the valiant efforts of USTR Kantor and Under Secretary Garten in Geneva at the eleventh hour, the Round results threaten to weaken our dumping law in significant ways. Henceforth, U.S. AD cases will (i) be harder to bring, (ii) be more difficult to win, (iii) provide less relief for a shorter period of time and (iv) cost more money. And the loser will be both the American economy and U.S. trade policy because, unless the bill to implement the Round contains the strongest possible antidumping provisions consistent with our GATT obligations, we will never be able to deal effectively with U.S.-Japan trade problems or obtain solutions to other critical trade disputes.

The attachment to my statement lists 6 areas and 12 ways in which U.S. trade laws can be amended to minimize the damage done from the Round. It highlights key issues -- including those such as "sunset" and dispute settlement -- that are common to both AD and CVD law. We urge you to read it carefully.

Two key issues for steel in the CVD area are what to do about "greenlighting" and the definition of financial contribution.

- As for the three new "green lights" -- which are exactly the types of subsidy that are most likely to be provided in the future, we urge that the bill: (i) define these categories as narrowly as possible; (ii) not allow "green lights" for subsidies that predate the effective date of the Round; (iii) require that "greenlighted" subsidies be included in the calculation of dumping and analysis of injury; (iv) allow these "green light" provisions to expire after five years; and (v) not let them be re-enacted if there is evidence of abuse.

- With respect to the definition of financial contribution, the implementing legislation should clarify that countervailable subsidy programs include those where private action is compelled by government.

Steel's concerns in these areas are real. In terms of the new "green lights," for example, many unneeded foreign steel plants are located in depressed economic regions, so the regional development "green light" is of particular concern to our industry. Likewise, we have real world experience with foreign governments in Korea and elsewhere compelling private banks to allocate large amounts of capital at preferential rates to their steel sector.

In sum, while we support, on balance, the GATT Uruguay Round, there are some serious problems and we want to work with you to help fix them.

Before I close, I'd like to add a point or two about the proposed MSA. AISI's U.S. member companies continue to support the Administration's opposition to "green lights" and extensive waivers in an MSA. In point of fact, because of what the GATT Round has done in authorizing the three "green lights," achievement of an acceptable MSA -- with a higher level of subsidy discipline for the steel sector -- is now more important than ever.

But not just any MSA. Within two weeks of the GATT Agreement, the European Commission approved a $7.7 billion aid package for six state-owned steel companies and, just last month, the Commission imposed a record fine on 16 leading European Union steelmakers for operating a price-fixing and market-sharing cartel. These are the very same companies that would like us to say yes to subsidy "green lights" and to subsidy waivers in an MSA -- and yes also to a diminution of U.S. trade laws and our trade law rights.

Well, we must learn from history! In the 1970s, we had a Trigger Price Mechanism or "TPM" that didn't stop dumping. In the 1980s, we had the Voluntary Restraint Agreements or "VRAs" that didn't stop subsidies. And in the 1990s, we have our trade laws -- and we can't afford to see them weakened, even with an MSA. Remember: while an acceptable, "trade laws plus" MSA will be the best way to deal with the pervasive problem of world steel subsidies, we will still need effective trade laws to deal with past subsidies and present and future dumping.

The GATT Uruguay Round implementing bill will have enormous significance for the future effectiveness of U.S. trade laws and our national economy. We thank you for allowing us to testify on the issue of subsidies, CVD law and the Round, and look forward to working closely with you to ensure that this legislation truly serves the national interest.

URUGUAY ROUND IMPLEMENTING LEGISLATION

In spite of the impressive effort of our trade negotiating team, U.S. trade laws will be weakened as a result of the Uruguay Round Agreement. It will be more difficult for U.S. companies and workers to successfully use all three principal trade laws -- the antidumping law, the countervailing duty law and Section 301. The damage done to these statutes can, however, be minimized if the Administration uses available discretion under the new GATT to do everything possible to strengthen these laws.

INJURY

In order to obtain relief under the antidumping and countervailing duty statutes, U.S. companies must prove that the unfair trading practices of other countries are causing them injury. A number of provisions should be included in the implementing legislation to assure that American industry has a fair opportunity to prove its case.

Negligible Imports

Currently, the International Trade Commission can determine that unfairly traded imports are not causing injury because they are "negligible". The new GATT agreement specifies that countries that account for less than 3% of total imports are negligible and not causing injury (unless the combination of all the smaller unfairly traded imports constitute more than seven percent of total imports). This new standard should be included in the implementing legislation as a clear numerical test. Imports above these amounts should not be found to be negligible.

Captive Production

The import penetration ratio -- imports divided by the total U.S. market in a product - is a major factor in the injury analysis at the ITC. In some recent cases, some commissioners have included in the U.S. market for purposes of this calculation, all upstream interim product which was later transformed into a more advanced product by U.S. manufacturers. The effect of this arti-

ficial computation is to reduce import penetration by as much as two-thirds. The implementing legislation should require that internally consumed upstream interim products only be included in this calculation when they are shown to directly compete with the imported product.

Margins Analysis

The new GATT Agreement requires that the ITC Commissioners consider the size of unfair trade margins in their injury analysis and that margins below two percent not be actionable. The implementing bill should clarify that the Commission need only determine whether the unfairly traded imports are a cause of injury. Margins are but one of a number of factors to be considered.

ANTIDUMPING PROVISIONS

At the insistence of those trading partners that often dump in the United States market, several methodological changes were included in the Agreement. These changes have the effect of reducing the dumping margins in numerous cases. Here again, the new law should minimize the adverse effects of the Agreement.

Averaging

Under current U.S. practices, the average foreign market prices of a product are compared to specific sales prices in the U.S. This discourages targeted dumping by customers or geographic regions. The new agreement requires comparisons of averages both domestically and in the foreign market unless the Department of Commerce finds a pattern of targeting by the foreign dumper. The implementing legislation should specify that this change only applies to investigations and not to administrative reviews as provided in the Agreement and that an undue burden not be placed on petitioners to demonstrate the existence of a pattern of targeting.

Sales Below Cost

Under current U.S. practice, certain foreign market sales when made at prices less than the cost of production can be disregarded. The new Code adopts broad and confusing definitions of several of the important terms in the U.S. test. The implementing bill should clarify these definitions and stay as close as possible to current U.S. practice.

Normal Profit

Under current U.S. practice, when the Department of Commerce is calculating a constructed value, an eight percent profit must be included. The new Agreement eliminates the eight percent adjustment and substitute for it a "normal profit". The implementing legislation should ensure that the procedure for arriving at this "normal profit" does not rely upon abnormally depressed operating results.

COUNTERVAILING DUTY PROVISIONS

The new GATT agreement provides, for the first time, that U.S. companies cannot take action against certain subsidies, even though they cause injury to our industry in our market. The Implementing bill should be drafted to minimize the harm to the United States.

Greenlighting

Three specific kinds of injurious subsidies are no longer actionable under the new Agreement -- regional development subsidies, subsidies for research and applied research, and certain environmental subsidies. The implementing bill should narrowly define all of these greenlight categories. Further, it should provide that subsidies which predate the effective date of the Uruguay Round are not greenlighted; that greenlighted subsidies should be included in the calculation of dumping and in the analysis of injury; that the entire greenlighting provision will expire after five years; and that it will not be re-enacted if there is evidence of abuse.

Financial Contribution

Some subsidies may escape action because they do not represent a "financial contribution" within the meaning of the new Agreement. The implementing legislation should make it clear that subsidy programs can be countervailed where they are provided through private action compelled by the government.

COMMON ISSUES FOR AD/CVD

Sunset

Under current U.S. practice, unfair trade duties continue as long as the unfair trade continues. The new Agreement provides that both antidumping and countervailing duties will sunset (terminate) after five years unless the administering authority has conducted a review and has determined that absent continuation of the order, dumping and injury to the domestic industry are likely to continue or recur.

The implementing legislation should contain a standard for the review which reflects the low threshold for continuation of an order intended by the agreement's language -- "likely to lead to a continuation or recurrence of dumping and injury." Reasonable and rebuttable prescriptions should be established by statute. Further, all respondent information should be verified.

It should further make it clear that no existing order should be terminated for at least five years after the new rule goes into effect.

Best Information Available

Under current U.S. law, when foreign respondents do not provide needed data, the Department of Commerce may use the best information available to fill information gaps. The new agreement provides that the administering authority should not disregard less than ideal information if the submitter "acted to the best of his ability". The implementing legislation should clari-

fy that the rule of adverse inference should continue to apply and that any exception should be narrowly construed.

DISPUTE SETTLEMENT

Under current GATT practice, panels of international bureaucrats determine whether actions of member countries violate their international agreements. These decisions, however, are only adopted by the GATT by unanimous agreement. For the first time, under this new Agreement these panel decisions will be automatically adopted. The implementing legislation should clarify that these decisions are not automatically implemented but still require Congressional review and action where a settled interpretation of U.S. law is overturned. Further, it should clarify that Congress will provide criteria for assessing the efficacy of this dispute settlement process as part of a four year review. The Administration should be required to report annually on the fairness of the dispute settlement decisions.

SECTION 301

Foreign governments are claiming that the new GATT Agreement eliminates the ability of the U.S. to use Section 301 other than with the concurrence of GATT panels. The implementing legislation should provide, consistent with the USTR representations to the Industry Policy Advisory Committee, that Section 301 will be used when appropriate even when such use is GATT inconsistent and will open up the U.S. to retaliation. In addition, the implementing bill should create a mechanism whereby the U.S. can act unilaterally to address burdens on U.S. commerce caused by anti-competitive activity in foreign markets.

CONCLUSION

The inclusion of these provisions in the Uruguay Round implementing legislation will assure that U.S. companies and workers still have access to effective remedies to redress unfair trade.

PREPARED STATEMENT OF SENATOR MALCOLM WALLOP

All too often debates about whether the Government can be effective in targeting and supporting industries has resulted in opposing ideological camps simply talking past each other. On the one side are people like myself who are convinced, in principle, that the market will deliver the goods and want it left alone. On the other side, perhaps just as much convinced by principle, perhaps more by intellectual hubris, are those who believe that a group of economic planners in Washington can compensate for the "failings" of the free market and, in fact, outsmart it.

While I want to talk about the differences in principle, I also want to talk about the real experiences of industrial policy. I know that those on the other side of the aisle dislike the term industrial policy, but let's call a spade a spade. What we are talking about is a government policy to improve, supposedly, industrial competitiveness.

A couple of years ago, the *Washington Post* business section ran the headline: "Japanese Government Ends Development of Computer: 'Fifth Generation' Falls Short of Goals." That day, the *Post* reads, "Japan's Government had formally closed the books on its 'fifth generation' computer project, a decade-long research effort that was supposed to create a new world of computing power but turned out to have little impact on the global computer market. . . . When Japan's MITI launched the project in 1982, . . . [it] sparked a near panic in the United States that the Japanese Government and industry were about to do to silicon valley what the Japanese auto industry has done to Detroit" But $400 million later, the fifth generation project did not give Japan global hegemony in big computers. In fact, according to the *Post*, "American technology is generally considered dominant today in the computing field at the heart of the fifth generation idea: massive "parallel processing.". . . while Japan's official research team has been working on the approach, U.S. firms—some of which didn't even build computers back when fifth generation was begun—have leapfrogged past Japan in parallel-processing technology."

This one example bears witness to the dynamic power of the market. Those who call for getting the Government in bed with industry forget something that Adam Smith saw clearly: Every advantage granted by Government to one part of the economy puts the rest at a disadvantage. Government subsidies and support of specific industries is offered as though it costs nothing; the beneficiaries demand it as of right.

But subsidies are financed not by themselves but by taxes. And taxpayers, forces to spend money on the Government-determined product, will spend less on other things they do want, so that other producers will sell less, earn less and employ fewer people.

I have heard some in the administration say the December-negotiated subsidy changes are a continuation of the Bush policy, that, as Ambassador Kantor says in his testimony, we are simply protecting *existing* research programs. I don't buy it. Ambassador Kantor states that "under this provision the United States will be able to continue to cooperate with industry to develop the technologies of tomorrow . . . " That is new policy. It follows President Clinton's announcement on September 29 of a "Historic New Partnership" with the big three automakers to develop a new generation of super fuel-efficient cars. It follows Clinton's new general export promotion policy that will commit $150 million to match export subsidies Japan and Europe offer their industries. It follows a Transportation Department guarantee program for $3 billion in private loans to prop up the weak American shipbuilding industry. The thrust of Clinton's industrial policy runs wider and deeper than anything that has gone before.

Past experience with Government trying to "force feed" technological innovation is not comforting. Three billion dollars was wasted in the abortive attempt to develop a commercial synthetic fuels industry. Similar failures occurred in the supersonic transport project and in the clinch river breeder reactor. Today, look at the space shuttle still seeking to define its mission and the Federal Governments attempts to develop new supercomputing technology.

Proponents of Federal subsidies to private business cite the example of Japan's ministry of international trade and industry. But its decisions have not always been wise, least of all for Japanese consumers. MITI attempted to keep Sony from entering the consumer electronics market and Mazda and Honda from getting into the auto business. The man know as the father of industrial policy, Naohiro Amaya, says that "What Japan needs now is a negative industrial policy." Japan's sudden craze for deregulation is not surprising after years of industrial policy have left productivity rates low and have turned protected industries into hotbeds of corruption. As the *New York Times* reported in October, "The scandals that ultimately brought down the ruling liberal democratic party after 38 years had a common root: new

competitors paid politicians to get past the maze of vague rules, remnants of industrial policy that kept them from lucrative near-monopolies."

Another example of Japanese government failure is high-definition television. Japan chose the technology to be used for HDTV and financed its development. But the analog technology it selected turns out to be inferior to the alternatives that U.S. industry has developed using a higher-quality digital technology—absent Government programs, I might add. In fact, last Wednesday's *Washington Post* ran the headline, "Japan Backs U.S. Design for High-Definition TV; Japanese Firms Face Expensive Shift."

The current Clinton proposal for Government to build a new high-tech telecommunications network, a data "superhighway," is a completely avoidable Government subsidy. The quickest way to achieve a data superhighway is to permit the phone and cable companies to compete on the basis of their existing and prospective technologies. Government is not good at choosing which areas of technology to support and which organizations should do the work. America has succeeded because we have relied on the ingenuity of American engineers and technicians and on the marketplace.

Government can play an important role—mostly it's getting out of the way. Numerous regulatory restrictions inhibit the growth and application of corporate R&D. Overly strict anti-trust rules prohibit companies from collaborating on research. Pouring vast sums into high tech enterprises while we continue to erect statutory and administrative roadblocks is like having one foot on the gas pedal and the other on the brake.

PREPARED STATEMENT OF RUFUS H. YERXA

Mr. Chairman, thank you for the opportunity to present to you the position of the Administration regarding the Uruguay Round Subsidies Agreement. My testimony will highlight four key points. First, the Uruguay Round Subsidies Agreement establishes the strictest subsidy discipline ever on all members of the new World Trade Organization. Second, the United States has provided, and continues to provide, more support to industrial research and development (R&D) than any other country. Without a "green light" category for R&D many of our key R&D programs would have been at risk. Third, we successfully redrafted the R&D provisions of the Subsidies Agreement to protect existing U.S. research programs. Fourth, there is no danger that this provision will become a loophole under which other countries will be able to provide production or marketing subsidies. I will now expand on these points.

THE URUGUAY ROUND AGREEMENT IS THE RIGHT AGREEMENT AT THE RIGHT TIME FOR THE UNITED STATES

The United States is uniquely positioned to benefit from the Uruguay Round trade agreements and the new world trade system it will create. U.S. workers will gain from significant new employment opportunities and additional high-paying jobs associated with increased production for export. U.S. companies will gain from significant opportunities to export more agricultural products, manufactured goods and services. U.S. consumers will gain from greater access to a wider range of lower-priced, higher-quality goods and services. As a nation, we will compete; and we will prosper.

This historic agreement will:

—cut foreign tariffs on manufactured products by over one-third, the largest reduction in history;
—protect the intellectual property of U.S. industries such as pharmaceuticals and software from piracy in world markets;
—ensure open foreign markets for U.S. exporters of services such as accounting, advertising, computer services, tourism, engineering and construction;
—greatly expand export opportunities for U.S. agricultural products by limiting the ability of foreign governments to block exports through non-tariff barriers, quotas, subsidies, and a variety of other domestic policies and regulations;
—protect the right of the United States to provide relief from unfairly traded imports;
—assure that developing countries live by the same trade rules as developed countries; and
—create an effective set of rules for the prompt settlement of disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like.

Strong bipartisan support in the Senate for the Round strengthened our negotiating hand in Geneva and was of great assistance in our successful effort to achieve this historic result. I hope that we can count on the strong support of this Committee for the final implementing bill, and we look forward to working closely with you in this effort.

THE SUBSIDIES AGREEMENT PROVIDES THE STRICTEST SUBSIDIES DISCIPLINE EVER

The Subsidies Agreement establishes a three-class framework for the categorization of subsidies and subsidy remedies:

(1) the "red light" category for prohibited subsidies;
(2) the "yellow light" category for actionable subsidies which are subject to dispute settlement under the WTO in Geneva and countervailable unilaterally under domestic laws if they cause adverse trade effects; and
(3) the "green light" category for protected subsidies which are non-actionable and non-countervailable if they are structured according to criteria intended to limit their potential for distortion.

The strict new disciplines and effective new dispute settlement system of the Subsidy Agreement will apply to all 117 members of the World Trade Organization. This is a vast improvement on the Tokyo Round Subsidies Code, which has only 27 signatories.

The Agreement sets forth (for the first time in the GATT) the definition of a subsidy and the conditions which must exist in order for a subsidy to be actionable (*i.e.*, U.S. rules on "specificity"). It retains U.S. countervailing duty practice with respect to the specificity of sub-national subsidies, so that generally available subsidies provided by state governments will not be considered specific, but central government subsidies to a region will be specific except where the criteria for assistance to a disadvantaged region are met.

The Agreement extends and clarifies the 1979 Subsidies Code's list of prohibited practices to include *de facto* as well as *de jure* export subsidies and subsidies contingent upon the use of local content. Whenever the facts demonstrate that a subsidy is in fact tied to actual or anticipated exportation or export earnings, we will be able to use the WTO dispute settlement process to force the country to remove it. Other countries no longer will be able to argue, as they now can, that only those subsidies expressly linked to exportation in the text of a law are prohibited

The Agreement also specifies how to prove "serious prejudice" (adverse effects) to a country's trade interests and creates an obligation for the subsidizing country to withdraw the subsidy or remove the adverse effects when such effects are identified. The absence of such a provision in the 1979 Subsidies Code has been one of that Code's greatest deficiencies. In our 1981 dispute settlement challenge to the EC's subsidies regime affecting Wheat Flour, in fact, the dispute settlement panel refused to make a substantive decision because it said that certain key terms were not defined and the panel was unsure how to interpret them. The present Agreement clearly defines all key terms!

The Agreement introduces a presumption of serious prejudice in situations where the total *ad valorem* subsidization of a product exceeds 5 percent (calculated on the basis of the cost to the subsidizing government of granting the subsidies), or when subsidies are provided for debt forgiveness or to cover operating losses. (In circumstances where serious prejudice is presumed, the burden is upon the subsidizing government to demonstrate that serious prejudice did not result from the subsidization in question).

Countervailing duty rules have been made more precise, and the effectiveness of the U.S. countervailing duty law and practice has been preserved. For the first time there is international acceptance of U.S. "benefit-to-the-recipient" calculation methodologies for purposes of determining the "benefit conferred" by subsidies.

Multilateral subsidy disciplines will be introduced for developing countries (another first). This is a tremendous achievement. Developing countries were virtually exempt from the 1979 Subsidies Code and the Code provided no incentive for them to bring their subsidy practices into conformity. Given that the Uruguay Round package must be accepted as a "single undertaking," all World Trade Organization members will be subject to a framework for the elimination of their export subsidies. No country can join the WTO without also accepting the disciplines of the new Subsidies Agreement.

The strengthening of multilateral disciplines and clarification of terms, combined with speedier and binding dispute settlement, will make multilateral subsidy remedies significantly more "user-friendly" than in the past. This will help U.S. indus-

tries that must increasingly rely on global markets, as well as the U.S. market, to maintain their competitiveness.

THE R&D PROVISION WILL NOT BE A LOOPHOLE

Other countries will not be able to use the R&D provision to provide production subsidies in the guise of research assistance. The Subsidies Agreement establishes clear rules and strong disciplines designed to avoid the potential that government assistance to R&D will significantly harm U.S. commercial interests. The criteria for entitlement to claim green light coverage are clear and limiting. Assistance may cover only:

(1) those personnel and consultancy costs (and associated overhead) *exclusively* relating to permissible R&D; and
(2) the cost of instruments, equipment, buildings and land (a) which relate *exclusively* to permissible R&D and (b) which can never be used for commercial activity.

The prescribed way to secure green light status is to earn the approval of the Subsidies Committee after it reviews the subsidy notification to determine if the criteria for green light status are met. To do this, a country must notify the program for which it seeks such status, providing whatever information Members of the Committee believe necessary. I can assure you that this Administration intends to scrutinize very carefully all requests by other countries for green light status. (A country may choose not to notify programs that meet the green light criteria. If a program that is not notified is later challenged in a countervailing duty action or WTO dispute settlement in Geneva, it still will be immune from sanction if it is found to conform with the green light criteria).

Even if the Committee grants green light status to a program, it can be stripped whenever it is established that a particular R&D program has resulted in production which causes serious adverse effects to the competing industry of another World Trade Organization member. In addition, the Agreement requires a review of the R&D provision after 18 months with a view to making all necessary modifications to improve the operation of the provision. This will give us an opportunity to correct any deficiencies that have come to light.

Our efforts to ensure strict compliance with the terms of the green light provisions certainly will not be limited to Geneva. There is much that we intend to do here at home to ensure that these provisions do not permit our trading partners to sidestep the important new disciplines which we have negotiated. First, in close collaboration and cooperation with Congress, we will enact tough implementing legislation. We intend to make explicit in U.S. law what is implicit in the Agreement—*e.g.*, that subsidies which exceed the green light parameters on, for example, allowable government funding will be countervailable in *full*, not just with respect to the amount of assistance which exceeds the green light levels. We also intend to include interpretative, statutory guidance for green light terminology in the Subsidies Agreement that is open to interpretation. Whatever clarifications we establish will serve two purposes: (1) they will serve as statutory guidance for the Commerce Department in judging whether or not a subsidy has been provided in conformity with green light criteria in the context of a countervailing duty case; and (2) they will send a strong signal to our trading partners in Geneva as to the strict criteria which the United States will be applying as the WTO Subsidies Committee reviews green light subsidy notifications.

Another step which we intend to take to prevent abuse is to increase our surveillance of other countries1 subsidy programs. By pooling and coordinating the gathering of information obtainable from public and diplomatic sources, the United States will be well-positioned to monitor foreign compliance with green light requirements. (These ongoing efforts would, of course, supplement the close cooperation which we expect to have with the private sector in identifying and analyzing information for possible green light violations). Evidence suggestive of violations could be used to initiate dispute settlement challenges under the Subsidies Agreement.

The Agreement also provides the ultimate safety valve: both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice will expire automatically 5 years after the entry into force of the agreement, unless it is decided by consensus to continue them in current or modified form. Thus, if the United States objects to the continuation of these provisions, they will not continue.

The existence of this five-year provision is significant not only for the termination option it provides us. In addition, since it will be clear to our trading partners that a strict interpretation and application of the green light provisions will be crucial to the decision of the United States on whether to renew the green light provisions,

we expect that other countries will try to avoid even the appearance of abusing the provisions. Thus, we believe that it will be in the interest of all countries to see that the Agreement operates effectively and does not undermine the improved subsidy disciplines.

THE 1991 DRAFT FINAL ACT TEXT ON SUBSIDIES WOULD NOT HAVE PROVIDED GREEN LIGHT SAFE HARBOR PROTECTION TO IMPORTANT EXISTING U.S. R&D PROGRAMS

The United States has been, and continues to be, the greatest supporter of industrial research in the world. In 1991, for example (the most recent year for which comparative data are available), the U.S. spent one-third more on R&D than Japan, the former West Germany, the United Kingdom and France combined. Where one looks solely at non-defense R&D spending, that of the U.S. still exceeded that of Japan, German, and the United Kingdom combined.

Over the last several years these programs, for which there is a long history of bipartisan support, have contributed to the promotion of America's competitiveness.

The text of the 1991 Uruguay Round Draft Final Act on subsidies would **not** have provided so-called "green light" safe harbor protection from countervailing duty investigations or GATT dispute settlement proceedings for important existing U.S. R&D programs. These programs include:

Cooperative Research and Development Agreements (CRADA's) in several agencies, notably the Technology Transfer Initiative of the Department of Energy (FY94 funding in DOE for CRADA's is $225 million);
the Partnership for a New Generation of Vehicles;
the Advanced Technology Program at NIST (FY94 funding is $200 million);
NASA's Center for the Commercial Development of Space;
biomedical research and commercialization at NIH; and
the Technology Reinvestment Project (FY94 funding is $554 million) and other cost-shared dual use programs of the Defense Department's Advanced Research Projects Agency (ARPA).

These programs support and create thousands of jobs across the country. They enhance our ability to stay on the leading edge of technology—a step ahead of our competition. Without the assurance of freedom from countervailing duty actions or dispute settlement in Geneva, many of our industries would not be willing to engage in cooperative research programs with the Government. This would frustrate development of the technologies of tomorrow and stifle competitiveness. We as a country would be the loser.

THE FINAL TEXT OF THE SUBSIDIES AGREEMENT REFLECTS THE STRUCTURE OF EXISTING U.S. TECHNOLOGY PROGRAMS

In response to the urgent concerns of our science and technology community and Members of Congress from both parties, we sought incremental changes to the 1991 Uruguay Round Draft Final Act to increase our ability to protect government-sponsored research programs. We succeeded. The changes made to the Subsidies Agreement's provisions governing R&D (which we drafted) protect the nature and level of ongoing U.S. Government assistance in R&D activities. These changes were made in order to provide greater certainty that existing U.S. technology programs and the firms which participate in them would not be subjected to unwarranted trade harassment by our trading partners. What we achieved was the reversal of a situation in which only foreign R&D programs would have been protected by new subsidy rules.

Let me repeat, because it is very important—the final R&D provisions protect the type of technology programs the U.S. currently has, while excluding the type of development and production assistance which other countries typically grant. U.S. support of technologies relevant to competitive industrial performance and economic growth is mostly in the form of R&D funding. Other countries customarily use a whole range of technology policies in support of industry. For example, Japan and EU member states (e.g., France and Germany) have used government procurement quite extensively to support selected industrial sectors. Very large success-dependent loans have been the principle subsidy mechanism for Airbus. Other typical forms of foreign industrial support include quasi-public leasing companies that buy high tech equipment from domestic manufacturers and lease it at below-market rates to domestic users (Japan has several such systems).

Only two operative changes were made to the 1991 Uruguay Round Draft Final Act:

(1) The cut-off for activity which can be supported by the government within the green light safe harbor was expanded slightly—going from immediately before cre-

ation of any prototype to allowing involvement in the creation of the first *non-commercial prototype; and*

(2) the permissible level of government assistance was increased from 50% of basic industrial research to 75% and from 25% of applied research to 50/00 of what is now called "pre-competitive development activity" (*i.e.*, up to the first non-commercial prototype).

The protected levels of government assistance were not selected at random. Rather, they reflect the level of assistance provided in U.S. programs. This also is true of the choice of the first non-commercial prototype as the cut-off for the green light safe harbor. This cut-off will ensure that we will be able to continue to provide the type of R&D support which we already provide while ensuring that other countries cannot provide development or production subsidies free from countervailing duty actions or dispute settlement in Geneva.

CONCLUSION

In closing, I believe we struck the appropriate balance between strict subsidies discipline and protecting the cooperative government-industry partnerships which have existed for years in the United States. The Subsidies Agreement does not promote competitive subsidization. Rather than stimulating higher levels of subsidization, it provides clearer and improved rules of the road to prohibit or discipline subsidies.

As I said at the start of this testimony, the Administration believes that the Uruguay Round agreement is a good deal for America. American business, workers and consumers will benefit. The Round represents the latest step in a long-term bipartisan effort to expand global trading opportunities for our companies and to enhance U.S. competitiveness. We look forward to working with you to achieve implementation of this historic trade agreement.

RESPONSES OF RUFUS H. YERXA TO QUESTIONS SUBMITTED BY SENATOR CHAFEE

Q1. It's my understanding that the French are arguing that their actions are not protectionist, but rather based on health standards. They say they are concerned about the quality of our seafood.

a. Has the quality of our seafood been called into question by foreign nations other that France? Are you aware that our fishermen are gearing up for implementation of the highly-stringent H.A.C.C.P. inspection system?

b. U.S. monkfish, dogfish, and skate exports were and are being held up at French ports of entry. Yet one fish exporter in my State tells me that his shipments of frozen squid are going through without difficulty; apparently some lobster is getting through as well. Why are the French holding up monkfish, dogfish, and skate to the apparent exclusion of other fish?

c. One day before the new French concern about health standards was transformed into a ban on foreign imports of fish, some French fishermen rioted in the city of Rennes against "cheap" imports. What do you make of this coincidence in timing?

A1. USTR treated the French regulatory measures from the outset as arbitrary and unacceptable barriers against U.S. exports. We have consistently maintained that these measures were not defensible on any grounds of legitimate health or trade policy. The French measures were taken without advance notice and in the absence of any known health problem. U.S. seafood's worldwide popularity reflects its high quality and safety.

Q2. Last Friday, a "preliminary agreement" between the U.S. and France was announced. The French now say that they have opened the Charles de Gaulle airport and are allowing U.S. fish exports into the country. But the harassment continues.

a. Our fish is, of course, subject to French health inspection, as it should be. But the French aren't telling us what criteria the fish must meet to be certified. That means our fishermen can't be sure the French will accept our fish. they cannot meet any new health standards if they don't know what those standards are. The U.S. recently sent technical inspection experts from FDA and Commerce to France to meet with their counterparts. Has any information been forthcoming?

b. Apparently the French also have put in place a new requirement that U.S. exporters give 24 hours advance notice of shipments coming over. This new requirement is impractical. It smells suspiciously like harassment to me. Please comment.

A2. The visit of the technical team to Paris was very useful in clarifying Government of France technical requirements and inspection methodologies. The overall assessment of the team is that the requirements and procedures are reasonable and no more strenuous than those which would be used in he United States, with the exception of the use of certain microbiological and chemical tests that have the potential for rejecting product which is suitable for human consumption. French Government officials acknowledged problems with the "total plate count" test and indicated that they would cease to apply it.

The technical team made copies of its trip report to the U.S. private sector and provided a briefing at the Boston Seafood show on March 16, 1994. They will also analyze documents detailing French testing methodologies once translation of the documents into English is completed.

With regard to the 24 hour advance notice requirement, we understand that it was quickly lifted after we objected.

Q3. I commend Ambassador Mickey Kantor and USTR officials for their quick response to this outrage, and for making it clear to France that the restrictions cannot continue. But this is by no means over. Until our fishermen can be assured that their fish exports will go through -- without harassment -- the ban effectively remains in place. And our industry will continue to suffer.

a. On March 2, I wrote to Ambassador Kantor demanding retaliation if France does not cease and desist. Last night the Senate approved Senate Resolution 183, which I cosponsored. This resolution expresses the Sense of the Senate that France should end its harassment of U.S. fish and provide fair compensation to the U.S. fishermen, and that the U.S. should prepare to retaliate if harassment continues. Are you aware of my letter, and of this resolution?

b. Is USTR prepared to take retaliatory action if the normal flow of U.S. fish exports is not resumed? Has a list of possible target products -- such as cheese or wine -- been prepared? How fast could such sanctions be taken?

c. In the view of the USTR, what would constitute a satisfactory response by the French? In other words, what needs to happen on the French side for the U.S. to refrain from imposing sanctions? Is the current status good enough, even though our fish are not getting through?

d. We are approaching the time of year for Easter, and for Lent. This time traditionally is an enormous boom time for our fishermen and their product. The National Fisheries Institute estimates that the industry's regular weekly fish sales to France are $200,000; but that around Easter, weekly U.S. fish shipments can reach $1 million. Are you aware of this, and is timing an issue in USTR's thinking regarding retaliation?

A3. USTR is well aware of Senate Resolution 183 and of your letter, and we approach your support for and solidarity with the Administration's actions to resolve this issue. We believe strongly that this uniformity of purpose between the Administration and Congress was key to persuading the French Government that it was in their interest to remove the trade barrier. We are prepared to react swiftly should the harassment of our trade resume, though we prefer to keep our retaliatory options open and not comment at this time on which action we would take.

At our request, the National Fisheries Institute recently polled its membership on outstanding problems in shipping to France. Based on their report, reporting from our embassy in Paris and a document from the French Ministry of Agriculture, it appears that no more U.S. companies are on the detention list and that only one shipment is currently being detained. We are working with the French Government to address the problems facing the one shipment.

Q4. I have mentioned the loss of potential sales incurred by Rhode Islanders. There are considerable losses suffered by other New England fishermen. What can USTR do to gain compensation for any losses they have suffered? Please outline options.

A4. We are well aware that U.S. exporters suffered financial damages as a result of the French Government's actions. Unfortunately, we do not have a fixed procedure to obtain reimbursement for these damages under either trade agreements or under our other bilateral arrangements with France. We have been looking into the compensation situation on an interagency basis and will exhaust all possible avenues

My question is, in agreeing to greenlight certain subsidies, shouldn't the catalyst behind our negotiating position be the level of distortion a given subsidy creates rather than if we think it may protect current U.S. R&D programs?

Response:

The development of strong rules to discipline distortive subsidization was a paramount objective in this negotiation, one which was substantially met. Large subsidies are most distortive, and the rules set forth in the "serious prejudice" section of the agreement address that problem in an unprecedented manner. Even in the case of non-actionable subsidies, if serious adverse effects are caused, the problem can be reviewed and the distortive aspects and consequences of the program can be corrected.

However, the Administration took the position that it was critical both to strengthen rules against subsidies that adversely affect trade and to protect U.S. technology programs to the maximum extent possible without jeopardizing subsidy disciplines. These goals were complementary because (as you point out) most U.S. technology programs tend to focus on pre-competitive R&D activities that are less likely to distort trade than subsidies which are provided to directly aid product development and commercialization.

The difficulty with the Dunkel Draft's provisions governing treatment of R&D is that they reflected the manner in which R&D is funded and conducted in Europe, but not the way our own technology programs are administered. Thus, these rules could have fully protected European R&D programs without offering any degree of protection to U.S. firms participating in U.S. technology partnerships. Faced with this inequity, many U.S. businesses indicated that they would not want to participate in the very initiatives which the Congress and previous administrations had established to help spark technological innovation and rejuvenate U.S. industrial competitiveness.

It also bears noting that U.S. programs may be more vulnerable to trade challenges in the future than they have been in the past because of the overall toughening of international subsidy rules in the Uruguay Round and the increased scrutiny given our programs by our trading partners. For example, contrary to what was reported in Business Week, the Department of Defense modified its recoupment policy in June 1992 to eliminate recoupment of nonrecurring costs for items developed with appropriated funds on direct commercial sales of major defense equipment sold on or after January 13, 1993. While the U.S. Government continues to recoup nonrecurring costs for sales of major defense equipment under the foreign military sales program, legislation is currently pending in Congress which would eliminate these remaining recoupment requirements. Moreover, it can no longer be said with any assurance that most U.S. programs would not be found to be "specific" to a particular industry. From automobiles to pharmaceuticals, there are a variety of U.S. programs which either on their face or in fact could appear to be limited to a specific industry. Given the tough, new language in the Uruguay Round agreement on the definition and specificity of a subsidy and the standards for showing adverse trade effects, we can no longer assume that our manufacturers need not fear the possibility of investigation and potential trade sanctions by foreign governments.

Of course, the problem of Airbus and the circumstances of the aircraft sector are somewhat unique. The subsidies agreement was not shaped around the special needs of a particular industry, but rather is intended for general application. For that reason, we succeeded in exempting aircraft from the provisions which make certain government assistance for R&D non-actionable, and it remains our expectation that new multilateral rules governing aircraft will be negotiated.

to see if the French Government is willing to provide appropriate reimbursement. We have been told that the French seafood importers are bringing civil actions against the French Government which seek compensation for their damages. Some of our seafood exporters have also informed us that they expect to receive reimbursement for all or part of their losses from their French buyers.

Q5. In my view, the French actions -- which are blatantly protectionist -- set a dangerous policy precedent.

a. First of all, there is the possibility that other nations may be tempted to undertake similar for their fishermen: close the border for a short time, and then reopen slowly and at great trouble for those seeking entry. GATT moves too slowly to punish these countries before they have gained some economic and political action from this kind of step. Please comment.

b. Second, this is exactly what we hoped would not happen with regard to a nation's domestic health, safety, and environmental standards. We in the U.S. have tried, in our trade dealings, to provide for health and environmental standards that a nation believes is necessary for its population. But in this case we see France using health standards as an excuse to bar imports of a sensitive product after political uproar at home. I believe this has potential to do great damage to the question of domestic standards and international trade. Please comment.

A5. USTR shares your concern that the French actions set a dangerous policy precedent. It is extremely important that the French Government, as well as all other governments in the world, including our own, never yield to the temptation to use health or sanitary regulation as an excuse for restricting trade. Once governments start doing this, we will have chaos in international trade.

The credibility of sanitary and health standards and methodologies requires that they be based on scientific soundness, not on the basis of trade policy. Should any of our trading partners be tempted to use such a measure as a disguised form of protectionism, it is our hope that the U.S. Government's resolve to respond swiftly and firmly in this case will give them pause.

RESPONSES OF RUFUS H. YERXA TO QUESTIONS SUBMITTED BY SENATOR HATCH

Question 1:

The Administration has made the argument that the new subsidies text strengthens the language and specificity of former GATT subsidy texts, especially that of the Dunkel Draft and that this provides protection not previously afforded to U.S. government R&D programs. However, Business Week recently reported that much of U.S. space and defense R&D is not only non-accruing to commercial applications, but by law the U.S. government must recoup the benefits of technology transfer to U.S. commercial aviation, which had repaid $170 million as of March 1992.

This is in contrast to $26 billion in government loans that Airbus has notted, which may never be fully repaid. This contrast seems to clarify that there is a substantial difference between U.S. R&D subsidies and foreign subsidization of commercial industries, and this would make it fairly simple to defend a countervailing duty action against the U.S. because the type of U.S. R&D are not industry-specific and no injury would result from it.

Question 2:

The Agreement specifies the three types of government assistance, or subsidies, that are considered non-actionable. However, I can foresee some difficulties in applying the criteria to an airplane agreement.

For example, we know that subsidies are allowable where they contribute to regional economic development; constitute industrial research limited to 75 percent of all pre-competitive costs; and pay for facility improvements to comply with environmental standards.

My question is quite simple: Give me a scenario, and one that leans to the maximum extent possible on any existing case history, where a U.S. company, such as Boeing or McDonnell Douglas, could jointly produce a new generation of commercial passenger aircraft through a venture with a Chinese organization such as Xien Aircraft.

Response:

There is nothing in the Subsidies Agreement itself which would prohibit or discourage (or, for that matter, encourage) Boeing or McDonnell Douglas from entering into a joint production venture with a Chinese organization. However, if subsidies were to be considered for such a joint venture, the scenario that you suggest may well give rise to novel questions concerning the applicability of trade and subsidy rules, but such questions would arise irrespective of whether there was a "greenlight" category of non-actionable subsidies.

Because subsidy rules are based on the typical circumstance in which a government provides assistance to an industry producing a product within the territorial jurisdiction of that government, and because the rules apply to trade in goods between nations, it is difficult to predict how such rules may be applied to situations in which the production of a product is performed through an international joint venture in which various production stages take place in different countries. How the rules might apply would depend very much on the specific facts of the case at issue.

For example, U.S. countervailing duty law contains a special provision authorizing the cumulation of subsidies provided by several national governments when the product under investigation is produced by an international consortium the members of which are located within those same nations. There is no explicit counterpart to this in either the current or the prospective GATT/WTO subsidies agreements. However, neither is there an explicit bar to such an interpretation of the customary "one country/one industry/one product" rules. Additionally, the United States recently prevailed in a dispute settlement action brought under the GATT Subsidies Code against an export subsidy program benefiting sales of aircraft fuselages from Deutsche Airbus in Germany to Airbus Industrie in France. In that case, the European Community argued unsuccessfully that GATT export subsidy prohibitions should not apply because the "transfers" of fuselages did not constitute true sales and GATT subsidy rules could not apply to intra-EC trade. The panel in that case disagreed, finding the transactions to be exports because the relevant goods moved from the territory of one GATT contracting party (Germany) to the territory of another GATT contracting party (France). In that panel's view, the intertwined legal relationships between Airbus Industrie and its partners did not alter the fact that the transaction was an export within the meaning of the GATT and the Subsidies Code.

In short, the applicability of trade and subsidy rules to the scenario you raised would depend greatly upon the nature of any subsidies being provided by any of the governments involved, as well as the kinds of products being traded internationally. Of course, the specific example you cite might be further complicated by the fact that, at least under U.S. countervailing duty practice, it is not considered possible to identify or measure a subsidy within a nonmarket economy such as China's. In any event, however, we do not believe that the potential difficulties you describe can be attributed to the presence of non-actionable subsidy provisions in the new agreement. Indeed, because the example you cited involved the production of aircraft, we again would note that the agreement exempts civil aircraft from the rules which make certain government assistance for R&D non-actionable.

COMMUNICATIONS

STATEMENT OF THE ACTPN TASK FORCE ON INDUSTRIAL SUBSIDIES

My name is Stanley Gault, and I am chairman and chief executive officer of The Goodyear Tire and Rubber Company. Since 1988, I have been a member of the Advisory Committee on Trade Policy and Negotiations (ACTPN).[1] In July of 1988, I was asked by the chairman of the ACTPN, James Robinson, and by then-U.S. Trade Representative, Clayton Yeutter, to chair a Task Force on Industrial Subsidies. I still chair that group. It has not been formally disbanded, but it should be recognized that the task for which it was created is now behind it. That task was to assist the ACTPN in advising the Administration and the Congress on those aspects of the Uruguay Round Multilateral Trade Negotiations that dealt with industrial subsidies.

This statement is a product of my work with the ACTPN Task Force on Industrial Subsidies, but the views it expresses are my own.

As the Committee knows, the ACTPN issued a report on the results of the Uruguay Round on January 15.[2] That report includes a full section on the Uruguay Round Subsidies Agreement. I was very much involved in the process that produced that advice, and I concur in it. It is my sincere hope that Members of Congress will give significant weight to the ACTPN report on the Uruguay Round in forming their own opinions of the agreement and in their work on the U.S. implementing legislation. The conclusion of the subsidies section of this report is correct but perhaps somewhat understated. It reads as follows:

> On balance, the ACTPN believes that the Subsidies Agreement is acceptable. Although it contains new risks, the Subsidies Agreement includes improved disciplines and strengthens the global trading system. In addition, the Subsidies Agreement is part of the total Uruguay Round package that will bring substantial benefits to the United States.[3]

SUBSIDIES: A FIVE YEAR SUMMARY

To repeat an earlier observation, the views in this statement are my own. They are the reflections of one ACTPN member on the problem of subsidies in international trade and the way in which our negotiators have dealt with it. Before discussing those aspects of the agreement that are currently the most contentious, a short history of the negotiations on subsidies and countervailing measures (SCM) may be helpful to the Committee.

In the summer of 1988, the United States position in the subsidies negotiations was bleak. It was an important period, because it was the summer before the Montreal Mid-Term Review of the Uruguay Round. This meeting was to set the course of negotiations for the last two years before the then-scheduled conclusion of the Uruguay Round in December of 1990.

If the focus of the subsidies negotiations had in fact been subsidies, the U.S. should have been in a fairly comfortable negotiating seat. From that perspective, America was the injured party, for it was clear that American companies had incurred losses in the marketplace as a result of foreign subsidies. We suffered those losses both here and abroad, but only in the U.S. market did we have anything like

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[1] ACTPN is part of the private sector advisory system for trade policy that was created by the Trade Act of 1974. Its members are appointed by the President, and their charge is to advise the President and the Congress on proposed trade policies and agreements.

[2] A REPORT TO THE PRESIDENT, THE CONGRESS, AND THE UNITED STATES TRADE REPRESENTATIVE CONCERNING THE URUGUAY ROUND OF NEGOTIATIONS ON THE GENES AGREEMENT ON TARIFFS AND TRADE, submitted by the Advisory Committee on Trade Policy and Negotiations, January 25, 1994.

[3] *Ibid.*, page 103.

an effective defense against the injurious effects of foreign subsidies, namely, U.S. countervailing duty law.

In the early stages of the Uruguay Round, however, subsidies were not the focus of the negotiations. Instead, the emphasis was on U.S. countervailing duty, or CVD, law. In the period from 1981 to 1988, the United States had issued roughly 100 countervailing duty orders against a wide range of products and countries, resulting in higher tariffs on the products concerned. These actions were taken under a law that is fully consistent with international law, namely, the General Agreement on Tariffs and Trade and GATT Subsidies Code of 1979. Even so, my understanding is that the United States was really the only GATT Contracting Party to use countervailing duties against imports. I believe there are two reasons for this. One is that others were more comfortable with less transparent means of blocking imports, such as standards. The other is that most countries have been reluctant to formally attack the political decisions of other governments, specifically the decisions to subsidize certain industries.

This meant that few countries saw much advantage in strengthening the international disciplines for subsidies, but virtually all countries—all but the United States—stood to gain from a successful assault on U.S. countervailing duty law. As a result, the United States found itself very much on the defensive in the Uruguay Round subsidies negotiations.

I believe Ambassador Yeutter was determined to change the dynamic of these negotiations. Our trading partners were engaged in negotiations based on the question: What can be done about U.S. CVD law? That was the wrong question. Ambassador Yeutter and his team succeeded, I believe, in changing the basis of the negotiations to the question: What can the Uruguay Round do to reduce the use of subsidies, to reduce the trade-distorting effects of subsidies, and to reduce the international acrimony associated with disputes over subsidies?

I would like to think that the ACTPN was instrumental in helping to alter the focus of the negotiations from an unproductive obsession with U.S. countervailing duty actions to a more useful attempt to deal with the broader issue of domestic subsidies and international trade.

On October 20, 1988, just before the Montreal Mid-Term Review, the ACTPN Task Force on Industrial Subsidies issued its first report. That report contained eleven specific recommendations. To a large extent, these objectives or recommendations were met, but there were instances in which the failure to adhere to the ACTPN advice has in my view been costly to American industry.

A full listing and status assessment of the 1988 ACTPN Task Force Recommendations appears below as Annex A along with comments on the recommendation from the ACTPN's 1990 report on Industrial Subsidies. Here I would simply note that in its 1988 report, the Task Force recommended that the U.S. negotiators explore further the idea of a traffic-light approach to subsidies. At the time, this idea was contained in a Swiss proposal in the GATT Negotiating Group on Subsidies and Countervailing Measures.

The Montreal Mid-Term Review produced agreement to carry this model further, and it is now the centerpiece of the Uruguay Round Subsidies Agreement. It is referred to as a traffic light because it divides subsidies into three categories: prohibited or "red-light subsidies;" permitted or "green-light subsidies," against which no counter actions can be taken; and those that are allowable but nevertheless actionable subsidies, which are the "yellow/amber-light subsidies." This last category is, in effect, a residual category. It includes all subsidies that are not expressly red or green.

Throughout our subsequent discussions and in later writings, evidence can be found for our deep suspicion of green light, non-actionable subsidies. Still, the Task Force did, early on, support exploration of the traffic light model, and in doing so offered this comment:

> The Task Force recognizes that, in the final analysis, increased international—discipline over subsidies may have to mean more shared understandings about the nature of different subsidies.[4]

In one sense, the reference to a shared understanding is ironic in light of subsequent developments. A good deal of discussion over the last year, including recent testimony before this Committee, has dealt with the question of the compatibility of the new Uruguay Round subsidy rules with American subsidy practices. That issue is addressed directly in a later part of this statement.

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[4] REPORT OF THE TASK FORCE ON INDUSTRIAL SUBSIDIES OF THE ADVISORY COMMITTEE ON TRADE NEGOTIATIONS, October 20, 1988, p. 16.

The reference in our 1988 report, however, was something quite different. At that time, we were concerned with the disparity between the U.S. view of subsidies and the view held by most foreign governments. The U.S. position then was that subsidies are always suspect ad to be disciplined. Our trading partners held the view that subsidies are legitimate tools of governments. The 1979 GATT Subsidies Code neither narrowed nor resolved these differences. It barely papered over them.

Not all credit is due to the negotiators, but it nevertheless is the case that the differences in the U.S. and non-U.S. views on subsidies, though still great, are not as great as they used to be.

The 1990 ACTPN Report. After the 1988 Mid-Term Review, the reports we received from our negotiators dealt with the ideas that were being discussed for transforming the traffic light concept into an international legal reality. Properly, I believe, the discussions of the Task Force were concentrated on the dangers to American industry inherent in some of these ideas. We were especially concerned about the potential misuse of the proposed green-light categories.

The Committee will remember that the Uruguay Round was, from its inception, slated to conclude at a ministerial meeting in Brussels in December of 1990. In the summer and early fall of 1990, the ACTPN, assuming that the end was near and concerned about the way the negotiations were going, offered additional formal advice to the Administration in the form a second paper. This paper[5] was presented to Ambassador Hills on behalf of the full ACTPN on October 10, 1990.

The ACTPN's 1990 comments on green-light subsidies seemed for a while, at least, to comport with subsequent developments. When the report was written, the discussion text for negotiating purposes was a document prepared by the chairman of the Negotiating Group on Subsidies and Countervailing Measures, Mr. Michael Cartland. In the period preceding the Brussels Ministerial, that document suggested that the new GATT provide for four different kinds of green-light subsidies as follows:

(I) **Research and Development.** (a) The ACTPN's advice on this subject was that there should be no green light for development. Indeed we suggested that certain development subsidies be banned altogether.

(b) In principle the ACTPN accepted the notion that basic research could be non-actionable.

(c) The ACTPN urged the Administration to undertake immediately a study of the definitions involved in research and development. It was clear to us that how the GATT defined research and development could have significant implications for U.S. policy ad for the trading system, though it was not clear just what those definitions should be.

(II) **Regional Subsidies.** The ACTPN did not rule out green light regional subsidies. My recollection was that there was an implicit recognition that this category was something the EC badly needed and to reject it outright would be a body blow to the negotiations. In any case, the 1990 ACTPN subsidies report said that "Any such safe haven must be very narrowly limited."[6]

(III) **Environmental Subsidies.** The ACTPN was even less tolerant of the proposal for environmental safe haven or green subsidies. We noted that such subsidies run counter to the "polluter pays" principle and then commented as follows:

> Insofar as the Uruguay Round SCM negotiations are concerned, the ACTPN believes that environmental subsidies should not be included in an expanded list of non-actionable subsidies. They should continue to be actionable. Recognizing the importance of the environmental problems facing governments and firms around the world, as well as the potential commercial effects of environmental subsidies, the ACTPN recommends that the contracting parties begin a new series of negotiations on trade and the environment after the conclusion of the Uruguay Round.[7]

(IV) **Structural Adjustment Subsidies.** The ACTPN also took a firm position against so-called structural adjustment subsidies in its 1990 report. By that time, provisions for these kinds of subsidies had been dropped from the Chairman's Draft. Such a provision had been included in earlier drafts and remained a goal of the European Community.

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[5] RECOMMENDATIONS OF THE ADVISORY COMMITTEE ON TRADE POLICY AND NEGOTIATIONS FOR THE FINAL PHASE OF THE URUGUAY NEGOTIATIONS ON SUBSIDIES AND COUNTERVAILING MEASURES, OCTOBER 10, 1990.

[6] *Op. cit.*, 1990 ACTPN report, page 21.

[7] Uruguay Round Agreement on Subsidies and Countervailing Measures, Article 8.2)

The Brussels Ministerial and the Dunkel Draft. Though separated by more than a year, these two events run together insofar as the saga of industrial subsidies is concerned. The GATT Contracting Parties were not able to bring the Uruguay Round to a conclusion at the ministerial meeting in Brussels in December of 1990. In the subsidies area, as in most others, no new papers were issued as a result of the discussions in Brussels.

Nevertheless, it was my understanding that the discussions there did result in a narrowing of differences, at least between the United States and the EC. Specifically, I was given to believe that the EC had agreed to limit future discussion of the subsidies green light categories to R&D subsidies and regional subsidies, dropping their case for both environmental subsidies and structural adjustment subsidies.

Later when Arthur Dunkel, the previous Director General of the GATT, was preparing a draft final act, he incorporated this understanding in that document. He did so after discussions with representatives from interested parties, including the negotiators from the United States and the EC. I know this because I was consulted on this development in the late fall of 1991, prior to the publication of the Dunkel Draft. Our negotiators asked me whether I thought the United States would be better off with a document that reflected the narrower but very informal green light list of the post-Brussels period or the last Cartland draft.

After taking some sounding among the members of the Task Force, I advised our negotiators that I thought U.S. interests would be better served by having the post-Brussels understanding incorporated in the Dunkel Draft than the alternative.

The 1992 R&D Discussion. Task Force meetings in 1992 focused primarily on the R&D provisions of the Dunkel Draft. The ACTPN continued to be concerned about the potential abuse of green light provisions, but there were new issues to consider as well. The science adviser to President Bush, Dr. Allan Bromley, and other officials alerted us to their concerns about possible threats to U.S. research and technology programs if the Dunkel Draft's subsidies provisions became international law.

As a result of those meetings, I wrote to Ambassador Carla Hills on December 11, 1992, setting forth the advice of the Task Force with respect to the R&D negotiations. A copy of that letter is included here as Annex B.

November–December 1993. The ACTPN Task Force on Industrial Subsidies was relatively quiet throughout 1993. The following three developments, however, should be noted, especially since they occurred shortly before the December 15 conclusion of the Uruguay Round in Geneva.

Energy Inputs. On November 29, my assistant for Task Force work, Mr. Morris of NAM, together with a few members of the Task Force, participated in a meeting at USTR with one of the lead negotiators on this issue. This session was primarily a briefing for the Task Force. I mention it only because a new issue was raised at this meeting.

This is the issue of the treatment of energy inputs under the international subsidies rules. It became clear during the debate over the proposed BTU tax that the current Subsidies Code differentiates between energy products *consumed* in the production of other products, e.g., as heat in the production of aluminum, and energy *incorporated* in other products. Petroleum used in making plastic would be an example of the latter. Under the current Subsidies Code, a country could, arguable, rebate a tax on energy incorporated in other products without that rebate itself becoming vulnerable to countervailing duty actions. The current (pre-Uruguay Round) code does not, however, allow rebates of taxes on energy that is consumed in the manufacturing process.

But the Uruguay Round Subsidies Agreement would allow such rebates. In this it follows the Dunkel Draft. Our concern was that this could mean yet another obstacle in U.S.-EC trade, even though the change was made at the request of a developing country. In the wake of the BTU tax debate in the United States, it is not likely that the United States will be in a position to make use of the right to rebate taxes on energy in the foreseeable future.

In Europe, however, a carbon tax is under active consideration, and so the situation there is quite different. If Europe or another major trading partner were to institute such a tax, they would undoubtedly avail themselves of the new rebate opportunities of the Uruguay Round. Such a development could undercut U.S. competitiveness in a broad range of products, and we so informed USTR.

I would note that in September, 1993, the president of the U.S. Council for International Business, Abraham Katz, raised this same issue in a letter to Ambassador Kantor. A copy of Mr. Katz's letter is included as Annex C.

Geneva Letters. I wrote to Ambassador Kantor twice during the final stages of the Geneva negotiations. In my letter of December 6, 1993, I reiterated the Task

Force's concern that the provision for regional subsidies was not adequately circumscribed ad thus posed serious, competitive risks to American industry.

In the same letter I expressed to him ideas similar to those I had communicated to Ambassador Hills on the subjects of green lights for research and development. Briefly, these were:

- that there was nothing to be gained by having a percentage cap on the contributions of governments to basic research activities and
- that we strongly opposed a non-actionable, green-light status for development activities.

That letter is Annex D to this report.

Aerospace. My last letter of advice to Ambassador Kantor on the subsidies negotiations was sent on December 13. It expressed two important ideas. The first was that, whatever arrangement was agreed upon in the subsidies area had to be compatible with the interests of U.S. aerospace companies. This is one of the sectors in which U.S. firms have been most severely disadvantaged by foreign subsidies, and I felt it imperative that the Uruguay Round not make the current situation any worse.

My impression is that the Administration, aided by clear Congressional advice, did a brilliant job in a difficult situation. I join the representatives of the major aerospace companies in complimenting the Administration on successfully managing the aerospace negotiations that were, in effect, a subset of the subsidies negotiations.

Environment. Also in my letter of December 13 to Ambassador Kantor I urged him to reject a proposal then under consideration to re-insert a green-light environmental provision into the Subsidies Agreement. To my deep regret, a proposal along these lines was accepted by the United States and is now part of the Uruguay Round Subsidies Agreement.

In view of the pace of events in that second week of December, 1993, I frankly do not know whether my December 13 letter to Ambassador Kantor reached him before the deal on environmental subsidies was closed. It may not have. It is nevertheless included as Annex E to this report as contemporary evidence of the ACTPN's understanding of this issue and our views on it. I would note that the latter are broadly the same as those expressed in the 1990 report.

SUBSIDIES: SEVEN KEY ISSUES

Against, this background, I should like to comment briefly on the following seven issues: The Safe Haven Concept, Research Subsidies, Industrial Policy, Environmental Subsidies, Serious Prejudice, and the Sunset. Many if not all of these have surfaced in recent discussions of the Subsidies Agreement, and each is critical to any serious assessment of it.

The Safe Haven Concept Generally and Research Subsidies. In my judgment the debate with our trading partners over R&D subsidies has been useful and so has the discussion in the United States between trade policy officials and those with responsibility for U.S. science and technology policy.

The differences with our trading partners have been narrowed somewhat as a result, and we are all likely to benefit from the explicit adoption of the traffic light paradigm. It is true that the United State runs the risk that the green-light categories will be seen a licenses to subsidize by-governments far more willing to do so than our own and, further, that the controls on those subsidies will prove inadequate if not illusory. In this regard, I am especially concerned:

(a) by the open-ended character of the provision for regional development subsidies,[8] and

(b) by the footnote defining "pre-competitive development activity,"[9] which others may well attempt to use in ways that are trade distorting and harmful to American competitiveness.

These, however, are only dangers. They are not yet realities. Further, they are dangers that the Uruguay Round negotiators clearly appreciated. Their concern and their caution are expressed in several ways. These include a requirement for a review of the green-light provision on research eighteen months after it enters into

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[8] Uruguay Round Agreement on Subsidies and Countervailing Measures, Article 8.2(b).

[9] *Ibid,* Footnote 28.

force;[10] the opportunity for countries adversely affected by green-light subsidies to challenge them;[11] and the five-year sunset provision discussed below.

On the other side of the ledger, new categories of subsidies have been flatly prohibited, and the requirements for notification of subsidies should make this critical aspect of the trading system more transparent than it has ever been.

The Industrial Policy Debate. I am aware that the wisdom of the Subsidies Agreement generally and the provisions relating to research subsidies specifically have been severely challenged in the Senate for, in effect, forcing a no-win choice on the United States: either subsidize massively or watch American industry fall behind the rest of the world for lack of subsidies.

I understand this concern but I do not share it. Most governments have explicit industrial policies, and a good many have been fairly generous with their subsidies to a broad range of industries, including cookies, fish, steel, railroads, and airplanes. America's relatively heavy use of countervailing duties is in itself testimony to the fact that other governments have not been loath to subsidize. Against this background, we would be mistaken to fear that the Uruguay Round agreement will unleash a pent-up desire to subsidize.

Rather I believe we may see the opposite result: a relative reduction in global subsidies, partly as a consequence of the new disciplines of the Subsidies Agreement and partly because of fiscal constraints around the world.

Environmental Subsidies. The special and very explicit language in the Subsidies Agreement on environmental subsidies is one of the more regrettable aspects of the Uruguay Round. As I argued in my letter of December 13 to Ambassador Kantor, this provision undercuts the polluter pays principle. It inserts a major environmental idea in the GATT that the Contracting Parties barely had a chance to consider and in advance even of the establishment of a GATT/WTO Committee on Trade and 'Environment. The real tragedy, though, is that it will, almost certainly, put American companies at a competitive disadvantage at least for the next five years.

This provision, embodied in Article 8.2(c) of the Subsidies Agreement, allows governments to subsidize up to 20 percent of one-time adaptations to new environmental requirements. This is different from the other green-light provisions. It is so specific that it all but begs governments to take advantage of it, and I suspect many will. U.S. industry will suffer as a result, unless of course Congress acts to ensure that American companies get the same kind of assistance from their government. As a citizen and a business person, I urge Congress to provide the assistance to American firms that the Uruguay Round has authorized. I understand, though, that politically that will be very difficult, especially this year.

Serious Prejudice. It is not just in the U.S. market that the products of American companies are unfairly displaced by the subsidized production of foreign rivals. It happens in the markets of the country offering the subsidy, and it happens in the rest of the world. Yet today we only have a useful, though not entirely effective, remedy when the problem occurs in this market. I refer, of course, to U.S. countervailing duty law.

As exports and international trade have become a larger portion of American business, the need to be able to counter unfair subsidies in foreign markets has become more acute. And the Uruguay Round Subsidies Agreement does something about it. Article 6 of the Agreement, most notably Paragraph 6.1, sets out new and credible standards for determining whether foreign subsidies are undercutting our exports to foreign markets.

The idea that if a subsidy is equal to more than five percent of the value of a particular product it will be presumed harmful to the trade of others is especially noteworthy. Arguably, the threshold could be lower, but the fact of any reasonable threshold is a big step in an important direction.

The ability to make clear determinations about subsidies, coupled with the new, no-nonsense dispute settlement rules, will, for the first time, give us in the United States a meaningful, internationally sanctioned method for dealing with foreign subsidies that undercut, or, in the language of the Agreement, give rise to "serious prejudice" against our exports.[12] This provision is a major achievement of the Uruguay

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[10] *Ibid.* Article 8.2(a), Footnote 24.

[11] *Ibid.* Article 9.

[12] The concept of serious prejudice, and hence this provision, apply to U.S. exports to all destinations except those in the subsidizing country. Subsidy problems in that market are conceptually different. The injured party needs to demonstrate to the GATT/World Trade Organization, not serious prejudice, but rather nullification and impairment of GATT concessions.

Round. Over time, I believe it will have the effect of reducing the number and value of trade distorting subsidies.

The Sunset Provision. Just as we in the United States are concerned about the potentially adverse consequences of the new green light provisions, our trading partners have reservations about the new language on serious prejudice. Our hope that this language will be effective is mirrored by their fear. The agreement recognizes these concerns with a sunset provision, Article 31. This says simply that.

> The provisions of paragraph 1 of Article 6 [serious prejudice], and the provisions of Article 8 [the green lights] and Article 9 [remedies] shall apply for a period of five years . . .

After that, the members of the World Trade Organization must revisit these issues and decide whether to continue this arrangement, modify it, or scrap it.

It goes without saying that we in the United States need to monitor the functioning of all three of these provisions very closely. It is imperative that the judgment that the U.S. Government makes in five or six years genuinely reflects American interests. That will only be the case if we honestly count the pluses and minuses of these provisions in the intervening years.

As I have indicated, I believe that we will find that, overall, the new subsidies code—including the serious prejudice and green-light provisions—works to our advantage. Even if it does not, we need not fear a major threat to U.S. commercial interests from only five years of activity under the Uruguay Round Subsidies Code.

Countervailing Duty Provisions. From start to finish, the ACTPN Task Force on Industrial Subsidies consistently expressed the view that the U.S. countervailing duty laws should not be weakened. In our 1988 report, we said there should be no change in U.S. countervailing duty law "except as a consequence of tighter international discipline over subsidies."

That standard is subjective but tough. The judgment about whether it was met depends primarily on one's view of the green-light provisions. I believe that there is more than a fair chance that, taken in conjunction with the balance of the agreement, they will contribute to greater discipline over subsidies. I am, therefore, prepared to support the changes in U.S. countervailing duty law that would be necessary to make it consistent with the new Subsidies Agreement.

CONCLUSION

To conclude, I believe that the Uruguay Round Agreement on Subsidies and Countervailing Measures is a good agreement and that it should be supported and implemented by the Congress of the United States. I do not see it as a spur to new foreign industrial policies. To the contrary, I believe it will in time reduce the use of subsidies in international trade:

(a) because the transparency requirements of the Agreement will cause governments to act more cautiously in this area, and
(b) because the new provisions on serious prejudice will deny exporting countries some of the benefits of subsidies that they had enjoyed in the past.

I do have serious reservations about some of the provisions of this agreement, notably the safe havens provided for regional development and for adaptation to environmental requirements. These reservations notwithstanding, however, I believe it is a good agreement.

NOTE OF APPRECIATION

I should like conclude this submission with an expression of gratitude to all those who have worked with me on this project. I am grateful to President Reagan, President Bush and President Clinton and to their Trade Representatives—Ambassador Yeutter, Ambassador Hills, and Ambassador Kantor—for aiding and encouraging the ACTPN Task Force on Industrial Subsidies and for listening to our views.

The USTR staff and the subsidies experts at the Department of Commerce could not have been more generous with their time or more responsive to our questions. They deserve a great deal of credit for this achievement.

Jim Robinson and my other ACTPN colleagues paid close attention to the subsidies developments throughout the negotiations. For that and for their confidence in me I am very grateful.

In the Task Force itself, a lot of our work was done at what staff people like to call the working level. A number of sectors and interests were represented on the Task Force, including steel, paper, computers, aerospace, motor vehicles and organized labor. All of the staff representatives who participated for their principals on the Task Force on Industrial Subsidies made significant contributions. I am grateful

to each and every one of them for the hard work and dedication they showed throughout this long process.

I am not sure that all of them would agree entirely with the assessment of the Subsidies Agreement that I have given here. I think they would agree that together we were able to make a constructive contribution to this historic agreement.

Finally, I would like to thank the Committee for giving the subsidies provisions of the Uruguay Round the close scrutiny they merit and for its interest in my views on the Subsidies Agreement.

Attachments:

Annex A: A table of ACTPN Recommendations and The Uruguay Round Outcomes on Subsidies.
Annex B: Stanley C. Gault's letter to Ambassador Carla Hills dated December 11, 1992.
Annex C: Abraham Katz's letter to Ambassador Michael Kantor, dated September 24, 1993.
Annex D: Stanley C. Gault's letter to Ambassador Michael Kantor, dated December 6, 1993.
Annex E: Stanley C. Gault's letter to Ambassador Michael Kantor, dated December 13, 1993.

ANNEX A

A TABLE OF ACTPN RECOMMENDATIONS AND URUGUAY ROUND OUTCOMES ON SUBSIDIES AND COUNTERVAILING MEASURES

The following table consists of two parts: i) a listing and assessment of the ACTPN recommendations of 1988 and ii) a listing and assessment of the ACTPN recommendations of 1990. There is a certain amount of overlap between these two lists but they are not identical.

Recommendations from the 1988 Report of the Task Force on Industrial Subsidies and Outcome Assessment

1) The U.S. Trade Representative should use the forthcoming Mid-Term Review to make it clear that enhanced discipline over industrial subsidies must be a high priority for the Uruguay Round.	**This was done.**
2) There can be no change in U.S. countervailing duty law except as a consequence of tighter international discipline over subsidies.	**In broad terms, this standard was met, but that is a subjective judgment.**
3) The U.S. Government should not attempt to pay for gains in the Uruguay Round for one sector (e.g. agriculture) with concessions in another (e.g. the industrial sector).	**It is impossible to say definitively that there were no trade-offs among the various Uruguay Round negotiating groups. One can say that the Subsidies Agreement on its own represents a net gain for the United States.**
4) Industrial export targeting should be recognized as a form of subsidization, and the Contracting Parties should strive for new disciplines over this kind of subsidy.	**The Uruguay Round made virtually no progress on this important issue. U.S. negotiators could be criticized for not pushing this issue hard enough. The real disappointment, however, was that Japan and Europe were so unwilling to address this important issue.**
5) The GATT should not allow different levels of discipline in the area of subsidies. Less developed countries too must accept limitations on their ability to subsidize.	**When the Uruguay Round is fully implemented, the problem identified here will be solved. One of the most important achievements of the Round is embodied in the concept of a single undertaking, with all World Trade Organization members accepting all of the multilateral obligations.**

6) Rules need to be established regarding governmentally controlled natural resources. These should be available to all trading partners on an equal basis.	This issue is not dealt with expressly in the Subsidies Agreement. There is, however, sufficient scope in the Agreement to cover these kinds of subsidies. Congress should use the occasion of the implementing bill to make it clear that natural resource subsidies will be countervailable under U.S. law.
7) The GATT should recognize that certain exchange rate arrangements can operate as subsidies. When they do, they should be subject to subsidies discipline.	Subsequent to the 1988 ACTPN Task Force Report the existing GATT issued a ruling against a German exchange rate scheme. The issue of exchange rates is not addressed explicitly in the Uruguay Round Subsidies Agreement. Here too, though, the language of the agreement can and should be read as prohibiting such schemes.
8) The U.S. negotiators should explore further the suggestion for a traffic-light approach to subsidies.	This was done.
9) U.S. negotiators should also explore the suggestion that countries injured by subsidies in their export markets be allowed to take offsetting measures against the subsidizing country.	This concept was not adopted in the form in which it was originally proposed. There is, however, an important echo of it in the remedies section of the Subsidies Agreement.
10) Sectoral negotiations on subsidies would not serve U.S. interests. U.S. negotiators should pursue the goal of enhanced discipline over industrial subsidies by means of new, generic understandings.	This objective was achieved. The Subsidies Agreement covers all industrial sectors.
11) Whatever the outcome of the Mid-Term Review, the U.S. Trade Representative should consult regularly with the ACTPN and other elements of the private sector on decisions regarding negotiations in the area of subsidies and countervailing measures and their implications for U.S. policy.	This was done.

Recommendations from the
1990 ACTPN Report on Industrial Subsidies
and Outcome Assessment

This report contained three overarching objectives. Judgments about whether these goals were met are inherently subjective. I believe they were, but no one can be certain until we have had several years experience under the new Agreement. These goals were:

- Achievement of new and effective discipline over subsidies, including domestic subsidies, and a concomitant reduction in the total value of subsidies provided by governments to commercial enterprises;

- Broader country coverage for GATT discipline on subsidies, including agreement by the developing countries to abide by GATT restraints; and
- Enhanced defenses of U.S. industry and workers against the effects of trade distorting subsidies.

The more detailed, specific goals set out in 1990 ACTPN subsidies report were these:

1) Expanded and clearer definitions of subsidies;	This was achieved. The definitions may not be as clear as, ultimately, they need to be. Without doubt, however, they are clearer than the current rules.
2) Elimination of export-performance based subsidies;	This was done.
3) Elimination of subsidies based on the use of domestic products;	This was done.
4) Elimination of certain exchange rate related subsidies;	To a certain extent this was done under the existing GATT. The new Subsidies Agreement provides scope for further discipline over exchange rate subsidies.
5) Elimination of subsidies above certain thresholds;	This was achieved in the serious prejudice language of Article 6.1.
6) New disciplines for industrial targeting;	The Uruguay Round made virtually no progress on this important issue. U.S. negotiators could be criticized for not pushing this issue hard enough. The real disappointment, however, was that Japan and Europe were so unwilling to address this important issue.
7) Clear and effective dispute settlement mechanisms;	These appear to have been achieved.
8) New provisions for integrating the developing countries into a GATT regime on subsidies and countervailing measures, including the full participation of the stronger developing countries;	These were achieved. The concept of a single undertaking is especially important in this connection.
9) A framework for absorbing the non-market economies of Eastern Europe and the Soviet Union into the GATT system;	This was achieved. It is expected that the major transitional economies, e.g., China and Russia, will soon be members of the World Trade Organization.
10) New understandings regarding subsidies for research and development;	These were achieved, but further improvements in this area may be necessary in the next five to six years.
11) Establishment, in relevant cases, of a rebuttable presumption that the subsidized exports from one country do seriously prejudice the export opportunities of non-subsidized firms of another country;	This was done.

12) New countervailing duty provisions regarding goods subject to processing in third countries; and	There is no specific reference to this problem in the text of the agreement. There is, however, sufficient scope in the agreement for this problem to be addressed in the U.S. implementing legislation.
13) countervailing duty provisions regarding practices designed to circumvent legitimate countervailing duty orders.	There is no specific reference to this problem in the text of the agreement. There is, however, sufficient scope in the agreement for this problem to be addressed in the U.S. implementing legislation.

Stanley C. Gault
April 4, 1994

ANNEX B

The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

STANLEY C. GAULT
CHAIRMAN OF THE BOARD
CHIEF EXECUTIVE OFFICER

December 11, 1992

The Honorable Carla A. Hills
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, DC 20506

Dear Carla:

First, I want to congratulate you on last month's breakthrough in the Uruguay Round negotiations. I know it was a hard won victory, and because of it, there is now at least the possibility of a successful conclusion to the Round within the framework of the current U.S. negotiating authority. I certainly hope this can be achieved.

I speak for the full ACTPN when I say that all of us want to be as helpful to you in this undertaking as possible. As you know, the ACTPN Task Force on Industrial Subsidies met at USTR last Wednesday (December 2) to review again the language of the Dunkel Draft affecting industrial subsidies. While I am not sure that it would make sense to attempt a third ACTPN paper on this subject, at least not at this time, it is important that I share with you the concerns of this Task Force at this stage in the negotiations. The following comments are by no means exhaustive. They are meant only to offer or reinforce the advice of the Task Force on the subjects they address. These are:

RELATIVE IMPORTANCE OF THE SUBSIDIES CHAPTER. It continues to be the view of the Task Force on Industrial Subsidies, as it has been of the ACTPN, that any new GATT agreement on subsidies and countervailing measures must be beneficial in its own terms. We feel strongly that the United States cannot afford to make concessions on subsidies and countervailing measures for gains in other areas. In its October 1990 report on subsidies, the ACTPN stated the problem clearly and once again we reaffirm our position:

> ...the status quo vis-a-vis subsidies and countervailing measures would be very disappointing to the ACTPN and could influence ACTPN's evaluation of a final Uruguay Round package. Anything less than the status quo would clearly be unacceptable to the ACTPN. (emphasis added)

RESEARCH SUBSIDIES. The last two meetings of the ACTPN Task Force on Industrial Subsidies have been largely devoted to the treatment of research in Part IV of the Dunkel Draft. As it is currently written, the Dunkel Draft makes certain basic and applied research nonactionable, but under different terms. It confers this special status on basic research, provided that the subsidy component of the research is equal to no more than 50 percent of the total cost. Applied research is capped at 25 percent.

The Task Force believes that, in this context, the distinction between basic and applied research is more likely to be mischievous than helpful. We also feel that there is little to be gained by insisting on a percentage limit to the subsidy component of such research.

The Task Force believes that the nonactionability status of qualifying research should not be made contingent upon a prenotification process.

We can imagine two ways in which an entity benefiting from a nonactionable subsidy might take advantage of the special character of that benefit. The first would be to notify the GATT with respect to each nonactionable program and then to operate on the assumption that that program would be free from challenge under national countervailing duty laws and other anti-subsidy instruments. Alternatively, nonactionability might be invoked, not by means of a notification procedure, but as a defense in the event that the benefiting entity becomes a respondent in an anti-subsidy case. Where research is concerned, the Task Force favors this latter method of giving meaning to nonactionability. Research is purposeful exploration. Those who undertake significant research efforts cannot say precisely where they are going or map out in detail the character of their prospective labors.

Finally, the Task Force believes that, if the Dunkel Draft's definitions of basic and applied research are to be retained, the definition of applied research should be modified. This is necessary to make clear that development subsidies are actionable.

In summary, the Task Force recommends the following changes with respect to research:

- There should be a single category that includes both basic and experimental (or applied research as defined below), all subsidies for which should be regarded as nonactionable.
- There should be no limitation on the percentage of a particular, nonactionable research project that can be funded by government.
- Nonactionability for research subsidies should not be contingent upon notification to the GATT.
- The definition of applied research should be modified to read as follows:

  > The term 'applied research' means investigations or experimental work based on the results of basic industrial research to acquire new knowledge to facilitate the attainment of specific practical objectives such as the subsequent creation of new products, production processes, services or prototype development. Subsidies for these subsequent creations shall be actionable. (Underlining indicates new language.)

- Subsidies for development should be actionable.

REGIONAL SUBSIDIES. The Task Force remains highly skeptical about the language in the Dunkel Draft providing for nonactionable regional subsidies. We would prefer a text that did not contain such a provision. We understand, however, that this language does not reflect a U.S. initiative but rather a U.S. accommodation to the requests of others. If a provision for regional, nonactionable subsidies is to be retained, it is essential that it include:

a) a limit on the amount of nonactionable subsidies, expressed either in terms of the project and/or of the resulting product; and

b) a notification requirement so that all GATT Contracting Parties can evaluate the legitimacy of the regional subsidy program at issue before accepting its nonactionability.

SCOPE OF THE SUBSIDIES TEXT. The Task Force believes that the language of the Uruguay Round final agreement on subsidies and countervailing measures should apply to all sectors.

As I said at the outset, all of us are hopeful that a successful agreement can be concluded soon. I must say, however, that no one thinks it will be easy and few of the members of the Task Force on Industrial Subsidies are sanguine. There is confidence, however, that you will not accept a bad deal.

I trust these comments are helpful to you and your associates.

Most sincerely,

Stanley C. Gault

ANNEX C

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United States Council for International Business

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organization of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

September 21, 1993

Ambassador Michael Kantor
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Ambassador Kantor:

The United States Council for International Business wishes to call your attention to a provision in the current draft of the Subsidies and Countervailing Duties section of the MTN Final Act which is a matter of considerable concern to many of our members. The provisions in question are contained in Annexes I and II to the Subsidies Code chapter (Section I, pages 37 and 40 of the version of the draft final act dated 20 December 1991) which would exempt the remission of indirect taxes on products consumed in the production of other products from the definition of a countervailable export subsidy.

Under current U.S. law, as we understand it, remission of taxes on products consumed during production is considered a subsidy against which countervailing duties may be levied if imports of the products concerned cause injury. The provisions in Annex I (Illustrative List of Export Subsidies) exempt indirect taxes from the list" if the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product" Annex II (Guidelines on Consumption of Inputs in the Production Process) further makes it clear that such inputs include not only those which are physically incorporated but also inputs such as "energy, fuels and oil used in the production process."

Agreement to these provisions could open up a potentially large loophole in the integrity of both the U.S. and current international legal regimes which now limit the use of tax remission as a vehicle for subsidizing exports. At least as important to many of our members is the precedent which acceptance of this change in GATT practice would create for the use of border tax adjustments for indirect taxes on the energy consumed in the manufacture of virtually all products. For example, if the European Community were to proceed to implement its current proposal for a carbon tax, it could use the new GATT rules in the Subsidies Code to justify the extension of border tax adjustments beyond the current practice of adjusting for value-added taxes on inputs incorporated in the final product to include the new carbon tax on imputs consumed as well. This would be a major new departure in international practice and would create substantial new charges on imports into the E.C. and financial assistance to exports from the E.C.

The question of whether there should be adjustment at the border for imports and exports of products to reflect taxes levied on the energy consumed in their production is controversial. Some of our members in fact favored the use of such an adjustment for imports when the Congress was considering the broad based energy tax earlier this year. Regardless of whether this is a good idea or not, we believe it would be most unfortunate if the concept were to be endorsed not as the result of an international debate and negotiation on its merits but merely by reference to an obscure provision in the new version of the Subsidies Code, inserted to deal with an entirely different and unrelated concern.

To deal with this problem, the U.S. Council recommends:

1) That the U.S. seek changes in the provisions in the draft of the new subsidies section to make them consistent with current U.S. law which regards taxes remitted or exempted on inputs consumed in production to be a potentially countervailable subsidy.

2) That the U.S. proceed with a comprehensive analysis of the implications of border tax adjustments for taxes on inputs (especially energy) consumed in the production process, and that a full international discussion of such adjustments be undertaken (e.g., in the GATT Group on Environmental Measures in International Trade and/or in the OECD Working Group on Trade and Environment) before a policy on such adjustments is established by the U.S. or its main trade partners.

3) Should the current unsatisfactory provisions remain in the MTN Final Act when it is concluded, the U.S. should make it clear that it does not regard these provisions as a precedent for or against border tax adjustments for energy and that it work with its major partners (and especially the E.C.) to agree not to use the Subsidies Code provisions for that purpose pending the full analysis suggested above.

The United States Council for International Business would be delighted to work with you on this matter as you see fit.

Sincerely,

Abraham Katz

Abraham Katz
President

ANNEX D

The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

STANLEY C. GAULT
CHAIRMAN OF THE BOARD
CHIEF EXECUTIVE OFFICER

December 6, 1993

The Honorable Michael Kantor
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, DC 20506

Dear Ambassador Kantor:

The progress you have made towards bringing the Uruguay Round to a successful conclusion is truly impressive, and I commend you for it. I fully appreciate though that, in negotiating terms, December 15 is still a long way off. Many items need to fall into place before you will be able to give your approval to a new set of GATT commitments. Because I have great confidence in you and your team, and because it appears that our trading partners now know the importance of the Uruguay Round to them, I am optimistic. Still, it is important to state that if you are forced by circumstances to reject an inadequate agreement, you will have my support and, I believe, that of other U.S. business leaders.

SUBSIDIES

There are three specific issues I wanted to raise with you in my capacity as chairman of the ACTPN Task Force on Industrial Subsidies. These issues are subsidies for regional development, subsidies for research, and subsidies for development.

Regional Subsidies. As you know, the Draft Final Act contains a "green light" or safe harbor for regional subsidies. The ACTPN was never happy with this provision. However, we have consistently taken the view that, properly bounded, such a provision might be consistent with a new, more realistic and and more rigorous code of industrial subsidies.

The difficulty is that the regional assistance provision of the Draft Final Act (Article 8.2 (b)) is simply not properly bounded. There are no limits or caps to the subsidies that can be provided under this provision. Some such limits, expressed either in terms of the project and/or the resulting product, must be included. The issue is not what subsidizing governments are allowed to do. Even with meaningful financial caps, subsidizing governments would be free to pour as much money into depressed regions as they wanted. The issue is what their trading partners must tolerate. I submit that the idea of providing a safe harbor for regional subsidies that are not subject to clear limits, and whose products would not be even potentially subject to U.S. countervailing duties, is extremely unwise and unacceptable.

My purpose in making this point about regional subsidies as forcefully as I have is twofold. First, I believe it is correct. Second, the outcome of this particular aspect of the subsidies negotiations could have a significant effect on the political dynamic in the United States, when Congress considers implementing legislation for the Uruguay Round. A Uruguay Round provision allowing for uncapped regional subsidies would, I fear, greatly jeopardize the package as a whole.

Research Subsidies. As you know, ACTPN has in principle taken a more favorable view of the idea of a green light or safe harbor for research subsidies than it has of any other category of subsidies. Indeed, I was very pleased to learn that the Administration had adopted the position that there would be no limit on the non-actionable component of research subsidies. That is, they should be 100 percent green. This is a view that the ACTPN Subsidies Task Force has advocated for some time. If in fact you can achieve this change in the relevant portion of the Draft Final Act (Article 8.2 (a)), our concern about pre-notification of research subsidies would be significantly lessened. If all of a government's contribution to a particular research project were in a safe harbor category, there should be no need to reveal detailed financial statements about the project to the GATT. And if that requirement can be eliminated, the ACTPN is, I think, unlikely to object to pre-notification to GATT of safe harbor research.

Development Subsidies. I must tell you, though, that the ACTPN members with whom we have been working remain deeply concerned about Article 8.2 (a). Their concern hinges upon the proposed rules regarding development, as distinct from research. It remains our view that there should be no safe harbor or green light provision for the production of prototypes and/or other development activities.

All of us who have considered these issues understand that you are dealing with a difficult mix of concepts and that no one can be precisely certain how language fashioned now in Brussels and Geneva will ultimately affect world trade. Of course, our first concern is to achieve the goals that I know you are pursuing. Beyond that, I hope the world can avoid outcomes that reflect negotiating postures rather than interests. It is hard to imagine that any major Contracting Party really has an interest in limiting government funding for research, especially since so much of it ends up in the public domain relatively quickly.

I mention this point to discourage the notion that a sensible trade-off can be made between the amount of green light coverage for basic and applied research on the one hand and the amount of similar coverage for development on the other. It is the system as a whole, not just the United States, that would benefit from providing full safe harbor protection for research. The situation *vis a vis* a safe harbor for development, however, is substantially different. I am convinced that not just one but a number of U.S. industries could find themselves severely disadvantaged in international competition if the GATT were to create a non-actionable category for development subsidies.

I have focused in this letter on the three topics of regional subsidies, research subsidies, and development subsidies in the hope that advice on these topics might be helpful to you at this critical time. I do not mean to suggest, however, that other issues, such as good language on "serious prejudice" and the maintenance of an effective countervailing duty system are less important. They are not, and we greatly appreciate your work on behalf of the U.S. private sector in these areas as well.

If I can be of any assistance to you at any time during these negotiations, I hope you will let me know. With my best wishes.

Most sincerely,

Stanley C. Gault

ANNEX E

The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

STANLEY C. GAULT
CHAIRMAN OF THE BOARD
CHIEF EXECUTIVE OFFICER

December 13, 1993

The Honorable Michael Kantor
United States Trade Representative
Executive Office of the President
Washington, DC 20506

Dear Ambassador Kantor:

It is my understanding that substantial progress has been made on the issues of industrial subsidies since my December 6 letter to you on this subject. It would be premature of me to comment on those issues which, for purposes of the Geneva negotiations, are now settled. I do commend you and your team for giving them a high priority and assure you that the subsidies provisions of the Uruguay Round will receive an early and thorough review by me and the other members of the ACTPN.

It is also my understanding that the work on the subsidies negotiations is not completely finished, and there are two areas where important decisions have yet to be made: i) the treatment of aircraft and aircraft engines and ii) Mexico's proposal on subsidies for environmental purposes.

AIRCRAFT

I know you have received considerable advice from Boeing and others in the U.S. aircraft industry. I would supplement that with two points. First, the situation has changed dramatically since the ACTPN recommended that the Uruguay Round subsidies code be a generic one, applicable to all industries. It now appears that, in order to bring the full Uruguay Round to a supportable conclusion, it may be necessary for airframe producers to be kept out of the new subsidies code. That industry would then continue to be governed by the 1979 Civil Aircraft Agreement and the 1979 Subsidies Code.

Second, it is my personal view that a Uruguay Round package that does not work for America's largest manufacturing exporters, namely the producers of airplanes and engines, is unlikely to have the support of the preponderance of American industry.

NO TO ENVIRONMENTAL SUBSIDIES

I would also encourage you to reject firmly the recent Mexican proposal to incorporate a new non-actionable category for certain environmentally related subsidies. As the ACTPN argued in its 1990 report on subsidies, environmental subsidies undercut the polluter pays principle, and they should not be encouraged by rendering them non-actionable in the subsidies agreement.

The Mexican proposal is worse than some of those offered earlier in the Round. It would introduce a new form of special treatment for developing countries and, unlike NAFTA, it would confer a clear benefit, an environmental subsidy, on those North American firms that choose to operate in Mexico rather than the United States. In that sense, it could cost America jobs. Finally, such a provision would short-circuit and so undercut the efforts in the OECD and in the GATT to develop agreed international understandings on the relationship between the trade policies and environmental policies around the world. The Mexican proposal is at best premature and at worst a serious mistake with adverse consequences for the United States. It should not be part of the Uruguay Round package.

I hope these comments are helpful to you and your associates, and I wish you success in these last, most difficult days of the Uruguay Round.

Most sincerely,

Stanley C. Gault

STATEMENT OF THE AD HOC COALITION ON CRUSHED LIMESTONE: TEXAS CRUSHED STONE CO., PARKER LAFARGE, INC. AND GULF COAST LIMESTONE, INC.

These comments are submitted on behalf of the Ad Hoc Coalition on Crushed Limestone, in response to the Committee's notice dated January 26, 1994, providing the opportunity to submit written statements regarding the trade agreements resulting from the Uruguay Round of multilateral trade negotiations. The Ad Hoc Coalition on Crushed Limestone is comprised of the following producers and distributors of crushed limestone in the Southeast Texas region: Texas Crushed Stone Company; Parker Lafarge, Inc.; and Gulf Coast Limestone, Inc.[1]

Texas Crushed Stone Company is a crushed limestone producer located in Southeast Texas. Texas Crushed Stone Company operates a limestone quarry in Georgetown, Texas, and the company headquarters is also located in Georgetown, Texas.

Parker Lafarge, Inc. (PLI) is similarly a crushed limestone producer located in Southeast Texas. PLI operates a crushed limestone quarry at New Braunfels, Texas and the headquarters of Parker Lafarge is located in Houston, Texas. PLI is owned by Lafarge Corporation, Reston, Virginia, and Parker Brothers & Co., Inc., Houston, Texas.

Gulf Coast Limestone, Inc., a distributor of crushed limestone, is also located in Southeast Texas. The company headquarters is located in Seabrook, Texas.

The Ad Hoc Coalition on Crushed Limestone limits its comments to issues that it believes the Administration and Congress should include in the implementing bill to address concerns with the existing U.S. antidumping law and to implement the Uruguay Round antidumping agreement.

I. REGIONAL INDUSTRIES

The U.S. antidumping law, as is true for the antidumping laws in other countries, generally is utilized where an industry in the country is experiencing injury by dumped imports. U.S. law and administrative practice have long recognized that for cases involving particular products (generally products with a low value-to-weight ratio such as cement), the impact of imports may be focused on specific regional markets which are highly self-contained from a domestic supply base. Relief from dumped imports in such situations has been specifically provided for in U.S. law [19 U.S.C. §1677(4)(C)] and in the existing GATT antidumping Code [Art. 4:1(ii)].

Our understanding is that most regional industry cases involve multiple states. *E.g., Cut-To-Length Carbon Steel Plate from the Federal Republic of Germany,* Inv. No. 731–TA–147 (Prelim.-Remand), USITC Pub. 1550 (July 1984) (imports entered the western area of the United States consisting of the states of California, Washington, and Oregon); *Gray Portland Cement and Cement Clinker from Mexico,* Inv. No. 731–TA–451 (Final), USITC Pub. 2305 (Aug. 1990) (imports entered a southern-tier region consisting of California, Texas, Arizona, New Mexico, Alabama, Louisiana, Mississippi and Florida). However, the law does not require a substantial part of the nation for there to be a "regional industry." In our case, crushed limestone has a very low value-to-weight ratio making competition over significant distances economically impossible because of freight costs. Indeed, the International Trade Commission agreed that an area constituting roughly one-third of Texas was an appropriate regional market. Nonetheless we were denied a full investigation on the basis that our regional market (which constituted just 3% of U.S. consumption of crushed limestone) did not receive a sufficiently high proportion of imports from the country claimed to be dumping (50–60% of imports from Mexico were into the regional market). Yet the statutory test and the GATT Code test is whether "there is a concentration of dumped imports into such an isolated market" [Art. 4:1(ii) of GATT Antidumping Code; 19 U.S.C. §1677(4)(C)]. We are unaware of any case where the import concentration was as high as the 17–20:1 ratio in crushed limestone. The question which arises is whether Congress intended for relief to be denied where a small regional industry is materially injured by dumped imports simply because the regional industry is a small one and takes a disproportionate but not nearly all of the imports? We don't believe that Congress could have intended such a result, but that is the effect of the Commission's determination in our case.

[1] The Southeast Texas crushed limestone industry has developed a highly efficient rail transportation system to economically transport and distribute crushed limestone products in the Southeast Texas region. These crushed limestone products are used for the production of ready-mixed concrete, hot-mixed asphaltic concrete, stabilized products and construction bases.

Crushed Limestone from Mexico, Inv. No. 731–TA–562 (Prelim.), USITC Pub. 2533 (July 1992).[2]

It is our understanding that Congress has long been concerned that relief under our trade laws be available regardless of size of the business and that the burdens of petitioning not pose an insurmountable burden to petitioners. Our experience with the law in 1992 suggests that a change in the statute is necessary to adequately safeguard the rights of smaller companies faced with unusual fact patterns, i.e., cases involving small geographic areas. Let us review the facts of our situation in a little more detail.

In our case, the Commission was confronted with the question of whether the import "concentration" in the region was sufficient. The Commission found insufficient import "concentration" in the region (USITC Pub. 2533 at 14–15), even though the Southeast Texas region accounted for only 3% of total national consumption of crushed limestone (USITC Pub. 2533 at 23) and received almost 60% of the imports of crushed limestone from Mexico in 1991 (USITC Pub. 2533 at 14–15). Hence, the volume of dumped imports into the Southeast Texas region amounted to *approximately twenty times what could be expected if such imports were to be distributed evenly nationwide. In contrast, the Commission has found sufficient concentration where the volume of imports in the region was only twice* what could be expected if such imports had been distributed evenly nationwide. *E.g., Certain Steel Wire Nails from the Republic of Korea,* Inv. No. 731–TA–26 (Final), USITC Pub. 1088 (Aug. 1980) at 11–12. An administrative standard (share of total imports should normally be 80% or more into the region) that may make sense when applied to larger regions, such as the entire West Coast, does not make sense when applied to smaller regions which only comprise a portion of a single state (in our case approximately one-third of the counties in the state of Texas). Indeed, the Commission's interpretation appears to ignore the clear congressional intent exhibited in the legislative history of the Trade Agreements Act of 1979. See S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979) ("[t]he requisite concentration will be found to exist in at least those cases where the ratio of the subsidized, or less-than-fair-value, imports to consumption of the imports and domestically produced like product is clearly higher in the relevant regional market than in the rest of the U.S. market"); H.R. Rep. No. 317, 96th Cong., 1st Sess. 73 (1979) ("[such] concentration could be found to exist if the ratio of such imports to consumption is clearly higher in the regional market than in the rest of the U.S. market").

Recommended Legislative Change. Congress should clarify in the implementing legislation for the Uruguay Round that the International Trade Commission is to compare the relative market shares for dumped imports when evaluating the concentration of imports affecting regional industries. Congress should include the following amendment to the implementing legislation:

Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. §1677(4)(C)) is amended by adding at the end thereof the following new sentences: *"Concentration of subsidized or dumped imports in a regional market will be determined by comparing the imports in the region divided by the regional production or consumption versus the imports to the rest of the country divided by the national production or consumption. The import concentration criteria will be satisfied whenever the ratio of imports in the region is greater than the ratio of imports in the rest of the nation."*

Such a clarification is consistent with existing GATT Antidumping Code language and the language contained in the Final Act. Compare Uruguay Round Final Act, Antidumping Code, Art. 4.1 with 1979 GATT Antidumping Code, Art. 4.1. Thus, while the concerns raised herein are not anchored in changes to the antidumping code pursuant to the Uruguay Round Final Results, the changes do implement the Code language that presently exists that has been misconstrued by the Commission.

II. OTHER ISSUES

Assuming Congress modifies existing law to eliminate the disparate treatment afforded industries in small isolated markets, there are a series of issues in the Uruguay Round antidumping text that could be of importance to our industry in any future antidumping action. We address them below.

A. Changes Which Are Permitted By the Uruguay Round Final Results

As the Committee is aware, import transactions are broadly divided into two categories—imports by unrelated parties (so-called purchase price situations) and im-

[2] Because the Commission has been given broad discretion to administer the antidumping statute, the determination was affirmed by the Court of International Trade on May 25, 1993. *Texas Crushed Stone Co. v. United States,* 822 F. Supp. 773 (CIT 1993). The matter is now on appeal before the Court of Appeals for the Federal Circuit. CAFC Ct. No. 93–1481.

ports by related parties (generally "exporter's sales price" ("ESP") but also certain purchase price transactions). It is our understanding that when Congress first adopted the Antidumping Act, 1921, the "ESP" option was adopted to provide protection to domestic producers from transfer price manipulation or difficulties in valuing consignment sales. It is ironic that a provision designed to provide extra protection to domestic producers is widely viewed as shielding related parties from the full impact of the law.

Imports by related parties are not given the same scrutiny as to absorption of antidumping duties by the foreign exporter, essentially giving related party importers carte blanche to absorb duties and frustrate the market-correcting forces that the antidumping law is intended to address. Absorption in purchase price situations is clearly actionable under existing U.S. law, regulations and practice. Similarly, we have been informed that counsel for foreign producers have indicated in public statements and law reviews that the U.S. practice of not deducting reasonable profits on resale give foreign producers selling through related party importers an advantage over those selling to unrelated importers. Similarly, only the United States has a provision called the "ESP offset"—an administrative creation which negates specific statutory (and GATT directed) deductions from the resale price in the United States. There is no justification for these distinctions which prevent our trade laws from being effective when related party importers are involved.

While the U.S. law and administrative practice have prevented the absorption of dumping duties in purchase price situations, the Uruguay Round results provide a specific measure to address the same problem of duty absorption in related party importation and reconfirms the right of countries to deduct profits on resale in related party situations.

Article 9.3.3 of the Uruguay Round Final Act Antidumping Text permits the antidumping duties paid to be treated as a cost where price changes reflecting the dumping duties have not been passed on to unrelated customers. This is another way of stating that dumping duties can't be absorbed by the foreign producer or its related party importer. This provision should be added to U.S. law. Concerns over possible paper transaction games by related party importers who raise the price of the product covered by an order but reduce prices for other products to create a false impression of elimination of dumping can be handled in the U.S. by a certification by the importer after resale or upon importation that no price manipulation of other products will or has occurred.

Similarly, Article 2.4 of the Uruguay Round Final Act Antidumping text and Article 2.6 of the existing Antidumping Code specifically authorizes the deduction of profits on resale ["allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made"]. Similar language existed in the 1967 Antidumping Code. Our major trading partners with active antidumping duty laws deduct reasonable profits on resale and do not permit a deduction from foreign market for a so-called "ESP offset." Our trading partners act in conformance with GATT rights and obligations. The U.S. did not convince the rest of the world that it was "wrong" nor was the GATT modified in Geneva. In such circumstances the Administration and Congress should stop penalizing U.S. producers by understating the dumping margins in related party importer situations.

In our case, the importer of the product from Mexico is a related party to the foreign producer. Hence, correction of these problems will have a direct and immediate impact on any case that our industry brings in the future.

B. Important Issues Not Specifically Addressed By the New Or Existing Antidumping Code

Compensation. Small- and medium-sized industries such as our own, have a difficult task of marshalling resources to bring antidumping cases. Pursuant to the now mandatory sunset review provisions of Article 11.3 of the Uruguay Round Final Act Antidumping text, relief available under U.S. law may be shorter lived regardless of the continued presence of dumping by foreign producers and such relief will certainly cost domestic producers more to pursue because of additional injury proceedings on a periodic basis.

The Congress can and should see that our antidumping law accomplishes its objectives. If relief may be available for shorter periods, it is critical that relief be available earlier so that industries are not subject to waves of unfair trade practices driving them out in stages. While existing U.S. law arguably permits early relief, practice before the Commission suggests that the existing injury and threat standard as applied, if not modified at least in practice, may have the unintended effect of forcing companies to reduce operations, employment, R&D and capital expenditures before relief is available and then not being able to justify reinvestment because of the continued dumping of foreign competitors and the potentially short-life

of the relief preventing a reasonable return on building and plant expenditures. Such a result should be viewed as unacceptable.

Similarly, providing compensation to the petitioner and those supporting the petition where dumping continues would provide a strong incentive to foreign producers to stop dumping (as all duties would now go to their domestic competitors), would provide a partial offset to the continued dumping permitting U.S. companies to remain competitive, would reduce the barriers to bringing meritorious cases and would help companies actually obtain a "level playing field" long promised by this and prior Administrations and by the Congress. Compensation should be limited to money actually collected by the Treasury Department in the form of antidumping duties. Such relief is not prohibited by the GATT.

III. CONCLUSION

Our law as presently administered discriminates against certain small regional industries regardless of the harm experienced by reason of dumped imports. Congress should clarify in the implementing legislation for the Uruguay Round that the International Trade Commission is to compare the relative market shares for dumped imports when evaluating the concentration of imports affecting regional industries. Congress should include the following amendment to the implementing legislation:

Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. §1677(4)(C)) is amended by adding at the end thereof the following new sentences: *"Concentration of subsidized or dumped imports in a regional market will be determined by comparing the imports in the region divided by the regional production or consumption versus the imports to the rest of the country divided by the national production or consumption. The import concentration criteria will be satisfied whenever the ratio of imports in the region is greater than the ratio of imports in the rest of the nation."*

Domestic producers facing dumped foreign merchandise should be entitled to (1) a fair hearing on whether such practices are causing or threatening harm, (2) effective relief, and (3) a process which does not encourage evasion or continued dumping. Our law as administered, unfortunately, does not provide effective relief where related party importers are involved and unwittingly encourages evasion and continued dumping. Congress can and should address the problems causing these distortions to occur.

STATEMENT OF ALLIANCE FOR GATT NOW

Mr. Chairman and members of the Committee, I am Robert B. Shapiro, president and chief operating officer of Monsanto. Thank you for giving me this opportunity to discuss the importance of the Uruguay Round Agreement to U.S. industry . . . American workers . . . and the U.S. economy.

My company, Monsanto, manufactures specialty chemicals, agricultural products, pharmaceuticals and food additives. About 35 percent of our annual sales of $8 billion take place outside the United States. Thus, international trade is critical to us.

I am speaking today not only on behalf of my own company, but also for the Alliance for GATT NOW. Together, GATT NOW represents more than 200,000 companies, large and small. Many of these companies are directly involved in exporting American products and services; all are affected in one way or another by the global economy. These 200,000 U.S. companies, their investors and their employees, all stand to benefit from speedy passage of the GATT.

We believe GATT stands for opportunity. Opportunity to break down trade barriers and sell more American products and services to the world's growing economies from Latin America to Asia.

While history teaches us that open and free trade is the surest engine of global economic growth, virtually all national governments continue to face significant protectionist pressures within their borders. These pressures are greatest during difficult economic times, when uncertainty about the future is at its peak.

Protectionism, however, impedes international trade and stifles economic growth. No major developed country, least of all our own, can afford to turn its back on the opportunity to expand markets and increase exports. This country's economic objectives—growth, jobs and prosperity—are tied to a healthy balance of trade, which is best served by a policy that will foster economic growth and reduce the potential for economic gridlock.

This gridlock is created by complex and ever-changing trade laws which are developed on a nation-by-nation basis. What this does is create uncertainty for companies as they try to build their international business. With a single legislative or regulatory action as we have seen all too often—any country can adversely impact the

competitiveness of an American company or an entire industry. When this happens, whether it be an increase in tariffs on an agricultural product, or the raising of local content regulations on manufacturing goods, the results can be harsh and the effects devastating.

In order for businesses to operate with some degree of certainty amid the world's complex array of trade rules, we must have a trading framework—a framework that replaces chaos with order, and uncertainty with predictability. Moreover, the framework has to be clear, fair and relevant.

Although it is not perfect, we believe that the GATT Uruguay Round Agreement provides a much improved framework for the world's trading system—and will be advantageous to American business and American workers. On the whole, it is a major step in the continuing efforts to eliminate barriers to trade and investment, and to expand world economic growth.

We support speedy approval of GATT this year because it establishes the much needed framework for consistent international trade. Specifically, GATT is right for the following reasons:

First and foremost, the Uruguay Round will significantly reduce or eliminate tariffs on a wide range of products. Overall, developed-country tariffs will be reduced by about one third, while European Union import duties will be slashed in half. Though sufficient tariff cuts have not been made in all industry sectors, this Round is a major step toward the U.S. goal of improving market access for a broad range of our products.

Secondly, and for the first time, GATT will include agriculture, textiles and apparels, construction, tourism, education, healthcare, and service industries.

Thirdly, the Uruguay Round also represents a substantial step forward in the international protection of intellectual property. This protection is essential for a company like Monsanto that devoted $626 million to research and development last year.

Our competitors abroad should not be allowed to reap the benefits of our innovation and our substantial commitment to research and development. Leaving U.S. companies unprotected deprives the American economy of the proper fruits of its investments. These intellectual property rights—patents, trademarks, copy rights and proprietary information—are especially important to my company and to virtually all of the innovative companies in our economy. Although GATT did not achieve all of the objectives one could want, it is nevertheless a significant step forward.

While the Uruguay Round Agreement will not eliminate all bad rules, it will make it more difficult for countries to impose investment restrictions that distort trade and inhibit job creation by establishing mechanisms that make it easier to set fair standards and challenge unreasonable ones.

The agreement may not be a perfect fix, but it is a giant step forward. We would like to see the U.S. continue to pursue policies that keep pressure on our trading partners to remove trade and investment barriers. We, therefore, advocate the following initiatives:

- Extend negotiating authority to continue bilateral and multilateral trade initiatives;
- Expand the NAFTA agreement to appropriate countries in Latin America;
- Pay special attention to Asian-country membership in GATT, because this is where many of the world's fastest growing economies are developing; and
- Preserve U.S. rights to take unilateral action to open closed foreign markets, if necessary.

There is one more point I would like to make. Approval of this landmark agreement this year will help maintain the positive momentum of the U.S. economy and fuel lagging economies in other corners of the world. Like us, our trading partners are now facing the arguments of those with narrower, protectionist interests. The Uruguay Round Agreement is a milestone in our evolving world economy.

Consider this. The U.S. economy, by conservative estimates, is expected to expand by an estimated $100 billion per year after full implementation of this agreement. According to the Department of Commerce, each $1 billion in new American exports will create more than 19,000 domestic jobs. The stakes for all of us are, indeed, high.

The Uruguay Round is not a cure-all for U.S. business. But on balance, it is an important step toward a more prosperous economy for the United States and our trading partners. And we urge its swift passage.

Thank you.

STATEMENT OF THE AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Thank you, Mr. Chairman. I am Larry Martin, Director of Government Relations for the American Apparel Manufacturers Association.

AAMA is the central trade association for the American manufacturers of clothing, responsible for about 70 percent of domestic production. Our industry employs about one million workers, produces every type of garment and is located in every state. While virtually all of our members manufacture domestically, many also operate in Mexico, Central America or the Caribbean and some import from other parts of the world.

Our Association today has no formal position on the Uruguay Round.

This lack of a current position, however, does not preclude us commenting on the content of the agreement.

In the first place, the Uruguay Round agreement seems to us a classic example of the United States Government providing a benefit with one hand and then taking it away with the other. Just over four months ago, Congress approved the North American Free Trade Agreement, giving special treatment to Mexico for apparel, among other things. NAFTA represented an opportunity for American apparel manufacturers to share some of their production, lower their overall costs, maintain domestic employment and compete with the Far East which already has a major share of our apparel market. It also provided the prospect of accelerated economic development for Mexico.

Now the Administration has agreed to—and this Committee and Congress soon will be asked to approve—a Uruguay Round agreement that will open our borders to expanded imports from every low-wage country in the world. This certainly will reduce the benefit Mexico will receive under NAFTA.

Fortunately, it will be several years before the full effect of the Uruguay Round apparel agreement is felt. Hopefully in the interim, American companies with production in Mexico can consolidate their positions, enabling them to retain their shares of the market.

This is another reason why it is so important for congress, at the earliest possible date, to extend the treatment Mexico receives for apparel under NAFTA to the countries of the Caribbean Basin Initiative. We supported NAFTA, but we were very concerned because NAFTA would put apparel production in the Caribbean and Central America at a serious disadvantage. We already are seeing evidence of this with CBI investment being postponed and customers demanding the same price reduction on goods from the CBI that they are receiving on goods from Mexico. We have three times as many members with facilities in the CBI as there are in Mexico and they already are feeling the heat of Mexican competition.

It has long been an accepted principal in the United States and throughout the world that trade in apparel and textiles was a sensitive issue and deserved special treatment. Accordingly, the United States has employed some form of comprehensive quota system on imports of apparel and textiles since 1961. Voluntary restraints on the part of other countries have existed 1937.

However, it was apparent from the onset of the Uruguay Round negotiations in 1986, that the United States was willing, even anxious, to end the apparel and textile restraint system in exchange for perceived concessions by other countries on other products and issues.

With that background, AAMA concentrated its efforts in three areas: It insisted that tariff reductions on apparel should not take place or be minimal. It argued for the longest possible phase-out period for the quotas under the Multifiber Arrangement, at least 15 years. And it insisted that the trade liberalization provided by the Uruguay Round should be denied countries which fail to open their own markets.

Though we would prefer to have maintained all our duties, the market access package which still is on the table provides an average eight percent tariff reduction on apparel. We can accept that level of reduction, but we earnestly hope that our negotiators do not expand that package between now and the time the agreement is signed on April 15.

On the other two subjects, the results are much less acceptable. Quotas in place on the date the Uruguay Round becomes effective will remain in force during the phase-out. However, the timetable for the phase-out covers only 10 years and many items will be integrated into the General Agreement on Trade and Tariffs well before that. Under the agreement, 16 percent of items must lose their quota protection on the first day. Another 17 percent will be integrated in the fourth year and another 18 percent will be integrated in the eighth year.

The text largely leaves the order of product integration up to the importing country. This Administration has repeatedly stated that it plans to integrate products less threatened by imports early and save the most import-sensitive to last. In prin-

ciple, we agree with that position and we think the implementing legislation should require it.

In addition to integration, there is a provision called growth on growth which provides accelerated quota growth. Under this a quota with a normal six percent growth rate will be accelerated by 16 percent on day one, 25 percent in the fourth year and 27 percent in the eighth year. The successive yearly growth rates then become 6.96 percent, 8.7 percent and 11.1 percent.

Thus, fully 51 percent of our market will be decontrolled in the eighth year after the onset of the round and the growth rates arrived at during bilateral negotiations will be nearly doubled on the products remaining under control.

On market access, the Administration argued that other countries should reduce their tariffs to a maximum 35 percent on apparel and agree to remove their non-tariff barriers to trade. These actions were to be accomplished over a 10-year period. Thus, a country with a prohibitive 100 percent tariff on apparel would have 10 years to reduce that tariff to 35 percent, still much higher than our tariff rates.

AAMA argued that countries with prohibitive tariffs should bring them down at a much faster pace. We also suggested that quota growth and integration should be denied countries which fail to come forward with satisfactory market-opening offers.

However, the final document offers up as a penalty only the loss of the growth-on-growth provision. And that only after a lengthy and successful appeal through the dispute settlement process of the new World Trade Organization. It might be added that the dispute settlement process is stacked against developed countries because of the balance of membership in GATT.

We have examined the market access offers provided to date and find them largely unsatisfactory. Some major apparel exporters such as India and Pakistan have failed to come forward with any offer.

The failure to achieve real market access in apparel is a major failure of the round. American apparel manufacturers are anxious to open export markets in places they are denied. India, for instance, sent us $800 million worth of apparel last year and accepted none. India has 100 million people with incomes higher than the U.S. median income We firmly believe that many of those 100 million people would buy American brand name apparel if it were available to them.

Yet the Uruguay Round apparel and textile text provides no real incentive for India to open up. Under the agreement they are guaranteed the whole cake of our market within 10 years or sooner. Failure to open their market possibly would cost them only the icing of the growth-on-growth provision.

It should be pointed out that several apparel exporting countries are not members of GATT and, therefore, not eligible for the liberalization provided by the Uruguay Round apparel and textile text. Foremost among these is China, the single largest exporter of garments to the United States. We have urged the Administration to very carefully negotiate accession terms for China when it seeks to become a member of the World Trade Organization.

In addition to the apparel and textile text, we have concerns in several other areas of the Uruguay Round document.

The antidumping text requires compensating duties to end in five years unless the domestic industry can show that their revocation is "likely to lead to renewed dumping or injury." Current U.S. law leaves an antidumping order in place unless the exporter can show the opposite.

In addition, the text sets 2 percent as a de minimis dumping margin, compared to the current U.S. de minimis figure of 0.5 percent. In an industry with very small profit margins such as ours, that difference is considerable and sales may be won or lost on the basis of a few cents a garment.

The subsidies code also is of concern because of the "green light" it gives to a certain kinds of subsidies. Under the code, subsidies for environmental improvement, research and development, and regional assistance are not actionable. We submit these three provisions constitute a major loophole which will be exploited in some countries to gain export advantages.

In summary, Mr. Chairman, AAMA now has no formal position on the Uruguay Round and we may not take a position until after the market access negotiations are complete or until the implementing legislation is drafted. We do, however, have serious concerns with many provisions in the text and we hope that we will have the opportunity to work with the Administration and with this Subcommittee for improvements in the implementing legislation wherever possible.

Thank you very much.

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STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

AAEI is a national organization of approximately 1,200 U.S. firms, active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. The Association's members also include service industries such as customs brokers, freight forwarders, banks, attorneys, and insurance carriers.

As the largest member organization in the country concerned solely with international commerce, we are particularly appreciative of this opportunity to appear before this committee to discuss the results of the multilateral trade negotiations.

You may recall, we appeared before this committee on November 4 to urge the prompt completion of the Uruguay Round. AAEI is delighted to now submit to this committee its views on the results of the Round and its implementation. As you know, Mr. Chairman, conclusion of this Round was a long time in coming. The President's team of trade negotiators has done an admirable job in concluding this agreement and they and their predecessors in the Bush and Reagan Administrations deserve our appreciation.

While clearly none of the parties to the Agreements achieved everything it wanted from the Round, this is true both for the United States and for our trading partners, but give and take is the simple reality of trade negotiations. Importantly, adoption of the Uruguay Round agreements by 117 nations injects renewed vitality into the multilateral trading system at a time when grumblings of beggar-thy-neighbor policies and bilateralism were causing concern about the continued commitment of the major trading nations to a rules-oriented system.

The Uruguay Round agreements are expected to cut worldwide tariffs by an average of 40 percent and will bring agriculture, services, intellectual property, and textiles and apparel within the scope of multilateral trade rules. The goals for the Uruguay Round were ambitious, but the pay-off, hopefully, will be well-worth the seven year wait. As we noted in our testimony before this committee in November, the World Bank recently estimated that the Uruguay Round would generate a gain of *over $200 billion* in world income annually in the agricultural and manufacturing sectors alone by the year 2002, by which time the full impact of the Round will be in effect. If all trade distortions and tariffs were completely removed in all regions, the study estimates total gains in the year 2002 would measure about *$450 billion.* And many say the World Bank underestimated!

Economists tell us that freer trade increases global welfare, and so the United States, as the world's most important player in the global economy, is sure to benefit in a major way. But it does not take an economist to know that improvements in intellectual property protection, creation and expansion of rules for insurance, banking, accounting and other services, liberalization of global trade in textiles and apparel, and discipline for agricultural export subsidies and over the use of trade-restrictive trade remedy procedures by importing countries will benefit the United States today and into the future.

And the Uruguay Round is a jobs bill. By 2005, the U.S. can expect 2 million additional jobs as a result of trade liberalization under the Uruguay Round, according to a study commissioned by the USTR last year.

While AAEI supports the Uruguay Round Agreements, our enthusiasm is tempered by long experience with the political power and resilience of special interests which will undoubtedly attempt to use the legislative process for implementing the Round's agreements to minimize the liberalizing effects of the Round, and especially to distort for their own advantage the trade remedy laws of the United States. AAEI urges this committee and the Congress to resist these efforts and to insure that the implementating legislation is consistent with both the spirit and the letter of the agreements.

I would now like to turn to those specific topics of special concern to the members of AAEI.

DISPUTE RESOLUTION AND THE WTO

The World Trade Organization NTO) represents a significant advance in the reform of the GATT. The Uruguay Round final provisions on dispute settlement and the WTO represent a major victory for U.S. negotiators, who had rejected the WTO concept as proposed early in the Round by Canada and the EC. The U.S. held out on the WTO as a means to ensure that its own trade laws, including Section 301, would not be unreasonably limited. And it worked! The WTO strikes a reasonable balance between the need to increase the effectiveness of the GATT panel system and the interests of the United States as the world's largest trading country.

AAEI supports the results reached on the WTO and dispute settlement in the Uruguay Round. The WTO will—for the first time—offer a structure for the coordi-

nation of trade in goods, services and intellectual property. Dispute resolution will be significantly improved by becoming automatic, transparent and binding. The most important change incorporated into the WTO procedures is the automatic adoption of both panel reports and authorization to retaliate, unless there is a consensus to reject the panel report or retaliation authorization. No longer can a single vote of a Contracting Party prevent the adoption of a report or the authorization of retaliation. The WTO also guarantees the right to a panel, creates mandatory time limits to expedite the process, provides for appellate review of matters of law, mandates strict surveillance of a country's efforts to conform with panel reports, and establishes expeditious arbitration procedures.

Dispute settlement under the WTO will allow for "cross-retaliation" among sectors so that barriers on services, for example, can be addressed by raising tariffs on goods. U.S. concerns about delay in the panel process have been answered and a strong presumption in favor of adoption of panel reports will bring more discipline to the world trading system. Likewise, the presumption that authorization to retaliate will be granted means that now when a country refuses to comply with the WTO, retaliation can be done with the full authority of the WTO and without danger of counter-retaliation as was true under GATT.

The United States, in pressing for freer trade and as the world's leading exporting nation, has historically been a plaintiff at the GATT more often than a defendant. It is the United States that therefore has the greatest interest in an effective and expeditious GATT dispute settlement mechanism. We should be particularly pleased at the result of the Uruguay Round because the United States won inclusion of many of the provisions increasing the effectiveness of the dispute resolution process that it had suggested. Now that we have advanced our objectives in the negotiations, the Congress must ensure that U.S. trade laws are drafted and implemented in a manner consistent with our obligations under the WTO, and so as not to undermine the significant progress achieved in the creation of an international referee for trade disputes.

Most particularly, we must ensure that where a dispute with a trading partner concerns subjects covered by the GATT or the various agreements negotiated under its aegis, and is therefore appropriate for settlement under WTO, that in fact the U.S. submits to WTO settlement procedures and avoids the temptation to engage in unauthorized unilateral action. Section 301 of the Trade Act of 1974 must be critically re-examined. At a minimum, legislative history should be added, clearly setting forth the intent of Congress that trade restrictive actions under this provision of law may only be taken in a manner which is compatible with U.S. obligations under international, agreement and in conformity with WTO dispute settlement procedures.

The United States has always been a leader in ensuring a fair and open trading system. The WTO and the newly agreed upon dispute settlement rules will serve those interests. It is therefore incumbent upon this body to continue its leadership by drafting legislation that supports the advances made in the Uruguay Round, particularly those in the area of dispute resolution.

TARIFF REDUCTIONS

AAEI supports the tariff reductions achieved in the market access agreement and is hopeful that the continued negotiations with our trading partners will result in even more duty reductions and zero for zero tariff agreements.

The reduction or elimination of tariffs on a broad range of consumer products, including toys, furniture, certain footwear, distilled spirits, beer, and ceramics, as a result of the Uruguay Round market access negotiations is an important accomplishment. AAEI is also pleased by Administration statements that it will include in the package of immediate duty eliminations and reductions those products that were the subject of noncontroversial duty suspensions in place until January 1, 1993 and those products that have been subject of noncontroversial duty suspension legislation introduced in Congress.

RULES OF ORIGIN

The U.S. has agreed to the establishment of a GATT Committee on Rules of Origin and a Customs Cooperation Council Technical Committee on Rules of Origin. The Agreement calls for these working groups to develop, within 3 years, a multilateral and harmonized set of rules for determining the origin of goods. The product of these working groups will be annexed as an integral part of the Agreement. AAEI fully supports this multilateral effort to afford predictability for U.S. exporters, importers, and manufacturers in origin determinations.

Notwithstanding this commitment to the multilateral development of rules of origin, the U.S. has, within weeks of inking the Agreement, unilaterally proposed new rules changing the way origin determinations would be made. AAEI believes that this initiative by U.S. Customs is ill-advised and counter-productive—it undermines the effort to develop multilateral rules, has unknown practical application, and would require the trade community to learn and adjust to a new set of rules which may well be changed in a few years.

The proposed new set of origin rules parallels the NAFTA marking rules that the U.S. has adopted on an interim basis. AAEI is already hearing from its members about problems and complications with the NAFTA marking rules. We suggest that the more prudent and efficient approach, from the perspectives of both the government and the trade community, is to use the NAFTA marking rules as the "laboratory" to test the workability of the concept for broader and universal application. The U.S. would then have the chance to adapt, change, modify or refine the set of rules before they are implemented. This more prudent course would minimize the inevitable dislocations and disruptions to existing trading patterns that are based on the current, longstanding rules of origin.

AAEI intends to contribute to the efforts of the GATT and CCC committees in developing worldwide rules of origin that are transparent, objective, and predictable. Until such time as these committees complete their work, it makes no sense for the U.S. to go off on its own and change its rules of origin. The current rules, based on the concept of substantial transformation as developed by a wealth of precedential rulings and cases over many decades, are at least well-known and familiar. AAEI strongly urges that no changes be made in U.S. law and practice until the multilateral, harmonized rules are developed.

THE TEXTILES AGREEMENT

The Uruguay Round textiles agreement is a significant accomplishment, guaranteeing the complete phase-out of the Multifiber Arrangement restraints over a 10-year period. AAEI urges Congress to establish transparent procedures to determine which quotas will be eliminated during each stage of the phase-out and the need for transition safeguard measures. Such procedures will be essential to ensure that the transition to free trade in textiles and apparel provides both domestic producers and U.S. importers with the ability to plan their businesses, and that the liberalization objective is met.

The agreement provides for a 10-year phase out of restraints established under the Multifiber Arrangement (MFA) and for reducing tariffs on textile and apparel products by an average of 12 percent over 10 years. These represent major steps toward bringing textile trade under normal trading rules, although this industry still retains greater protection than any other industrial sector.

Congress, however, must insure that this agreement is implemented properly. Unless the spirit of liberalization is included in the procedures necessary to implement the agreement, the domestic industry will not take the steps necessary to compete with freely-traded imports and most assuredly will come back to Congress later for renewed protection. This is especially significant since most trade will not be liberalized until the end of the 10 year phase-out period. For that reason, AAEI makes the following recommendations:

First, the agreement instructs each importing country to determine which products it will integrate into the WTO during each stage of the phase-out. The only instructions provided are that products must be chosen from each of four groups (tops and yarns; fabrics; made-up textile products; and clothing). It is inevitable that the domestic industry will seek to have the phase-out for the most sensitive products (particularly, clothing) postponed until the end of the 10 year period. Deferring the inevitable may create tremendous pressures later on for continued protection. Some of that pressure could be alleviated by requiring that the phase-out schedule for all products be determined up front. This is an idea that has been presented by Industry Sector Advisory Committee No. 17. Under that proposal, which AAEI endorses, an independent body, such as the U.S. International Trade Commission, would be instructed to hold public hearings and make a recommendation regarding which products should be included within each stage of the phase-out program. Such a proceeding would allow all interested parties to participate and provide all with notice as to which products are going to be liberalized when.

We note that because the product phase-out determinations could mean that only some products within a particular textile category number are moved out of MFA-type disciplines and into GATT disciplines in a particular stage, Congress should act to ensure that these phase-outs do not result in the tightening of existing quotas. That would happen if the category quotas were allowed to be reduced each

time to reflect the movement of trade into GATT rules. Instead, the implementing legislation or the legislative history should include a statement of Congress' intention that category quotas not be reduced by the quantity that is moved into GATT disciplines.

Second, AAEI notes that the transition safeguard procedures provided for under the Uruguay Round textiles agreement which are substantially different than the procedures currently in place for the establishment of country-specific quotas. Under the MFA, the Committee for the Implementation of Textile Agreements (CITA) makes a determination that imports of a particular category of products from a particular country are causing market disruption or threatening to cause market disruption. It then seeks to negotiate a quota with the country whose exports are at issue, and if no agreement is reached, unilaterally imposes a quota under a formula established under the MFA.

Under the Uruguay Round agreement, the standard for seeking a restraint is "serious damage," and it would apply globally, to all products in a category that are not already subject to restraints under a bilateral agreement. Given the substantially broader application of the transition safeguard mechanism and the different standard that will apply, AAEI urges that the Committee legislate new procedures for transition safeguard measures. CITA's current modus operandi is to make these decisions in secret inter-agency meetings relying upon Census Bureau data that is not even yet publicly available. CITA then contacts the foreign government before advising U.S. companies of the contemplated restraint. These procedures have always been unfair, but the continuation of such procedures under a system that allows even broader application of restraints is totally unacceptable and hypocritical in light of the transparency and due process demands the U.S. is making upon its trading partners.

AAEI proposes a procedure that would be substantially more transparent, allowing suppliers, importers, and domestic industry to present evidence and arguments in an open forum. This could be accomplished by requiring that the independent U.S. International Trade Commission, which has substantial experience in handling these types of matters, take on this responsibility. If the ITC makes a positive determination on the issue of damage, CITA could then have responsibility for negotiating any necessary quotas.

Third, U.S. negotiators have indicated an intention not to apply the Uruguay Round textile agreement to non-GATT members, including China and Taiwan, among others. AAEI is extremely hopeful that both countries will accede to the WTO within the next few years. Upon their accession, these suppliers should be provided the full benefits of membership, including liberalization of textiles trade. AAEI will strenuously oppose any provision in the implementing legislation that would appear to prevent subsequent signatories to the agreement from receiving equal benefits upon their accession.

Finally, AAEI was pleased to see that under the final Uruguay Round textile agreement, an importing country, such as the United States, cannot unilaterally determine that it will deny increases in quota growth to countries it views as failing to have taken sufficient steps to open their markets to foreign products. Instead, the U.S. will be allowed to ask the WTO's Council on Trade In Goods to decide if the balance of rights and obligations has been upset by a country failing to open its market. If that body makes a positive determination, the Dispute Settlement Body would then be empowered to authorize "adjustments to the annual growth rate of quotas." AAEI strongly supports market opening initiatives, which will help U.S. companies expand sales abroad, and believes that the U.S. should not hesitate to make appropriate use of this mechanism. Under no circumstances, however, should U.S. implementing legislation permit the U.S. to unilaterally determine that it is going to deny a supplier access to the U.S. market or an increase in quota growth. For the reasons previously discussed, it is imperative that the United States not be perceived as avoiding or minimizing the disciplines of the WTO dispute settlement procedures.

ANTIDUMPING

As the world's leading exporting nation, the United States has a very strong interest in the adoption and universal implementation of an effective and even-handed GATT antidumping Code. In recent years, countries such as Korea and Mexico have been increasingly active in using their antidumping procedures to protect their domestic industries, frequently at the expense of American companies. In order to ensure fair treatment of U.S. exporters in these and other foreign countries and to insure that our national legislation is not used for overtly protectionist purposes, the U.S. must take the lead in fully and fairly implementing the new GATT antidump-

ing Code and in giving full effect to the WTO dispute settlement mechanism interpretations of our international obligations.

This is particularly important in the review, under WTO procedures, of domestic antidumping determinations. The new Code contains, in Article 17, comprehensive provisions for panel reviews and dispute resolutions. The standard of review contained therein provides full protection to U.S. industries who bring antidumping cases against foreign importers. Under the Code, a panel may not substitute its own conclusions for that of the domestic agency—a panel may not disturb antidumping determinations that are found to be unbiased and objective in their factual findings and that are based on a legally permissible interpretation of the provisions of the Code. This standard of review is similar to that presently used by the U.S. courts to review the Department of Commerce's and the International Trade Commission's antidumping determinations, and provides full protection to the interests of U.S. industries.

In the past, the Department of Commerce, the ITC ad the federal courts have, unfortunately, been reluctant to pay deference to the GATT antidumping Code when interpreting U.S. law. Despite a clear statement in the Trade Agreements Act of 1979 that its purpose was to implement Tokyo Round agreements, including the GATT Code, the U.S. courts have frequently allowed the Department of Commerce in administering the statute to interpret ambiguous provisions of U.S. law in a manner contrary to the Code. For example, in the *Suramerica* case,[1] the Federal Circuit expressly refused to follow a GATT panel ruling on the standing provisions of the Code, and instead upheld as a reasonable exercise of the agency's discretion Commerce procedures which were clearly contrary to the Code.

This reluctance to give full effect to the Code in U.S. law is counterproductive. The United States is the world's leading exporting nation and in most years is the number one target of antidumping actions around the world. Thus, the lack of international discipline over antidumping procedures has exposed U.S. export industries to arbitrary and biased trade restrictive proceedings under the antidumping laws of foreign countries.

Now that the United States has negotiated a new GATT Antidumping Code that incorporates many of the changes sought by U.S. industry, it is time to ensure that this Code gains widespread and whole-hearted acceptance. Congress must make it clear, preferably in the statutory language and also in the legislative history, that the U.S. antidumping law is to be interpreted and administered in a manner consistent with the spirit and the letter of the antidumping Code, unless the statute is clearly contrary to Code provisions and is identified in the legislative history as being not in conformity. Congress should specify that in all other instances the administering authorities and reviewing courts must favor an interpretation of the U.S. law that is consistent with the Code and with interpretations of the Code by appropriate bodies of the GATT and WTO.

Such a strong endorsement of the Code and the international dispute settlement mechanism will protect U.S. exporters from foreign protectionism and greatly enhance international discipline over unilateral attempts to minimize the effectiveness of the Uruguay Round agreement.

The new Code incorporates many new provisions, a number of which were sought by U.S. industry. These should also be implemented fully by Congress, without changes. The major new provisions are as follows:

Standing. In the past, the Department of Commerce (DOC) has for the most part ignored the requirement of the Code and U.S. law that petitions be filed "on behalf" of the domestic industry. In effect, the DOC has required *respondents* to demonstrate that petitioners do not represent the industry. The new Agreement requires that a major portion of the industry support the petition. A major portion is defined as producers accounting for at least 25 percent of domestic production in absolute terms, and 50 percent of producers expressing either support or opposition. Implementation will require procedures for making appropriate inquiries, and an increased period of time after receipt of a petition and prior to initiation to make the necessary determinations, as well as provisions for terminating an initiated investigation should it be determined that the necessary industry support is not present.

De minimis Margins. The present interpretation of U.S. law is that margins of dumping are *de minimis* if below 0.5 percent. The new agreement sets 2 percent as the standard and requires termination of investigations when margins are below this level. The statute, or alternatively the legislative history, should establish 2 percent as the standard for negative LTFV determinations, and zero estimated duty deposit rates, as the precondition for revocation under U.S. procedures.

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[1] Suramerica De Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 667 (Fed. Cir. 1992).

Calculation of Constructed Value. The implementing legislation must eliminate the current mandatory minimum for general expenses and profit for the calculation of constructed value under U.S. law, and apply the Code requirement that these amounts be based on actual data.

Exchange Rates. U.S. law will need to be amended to reflect the provision in the new Agreement which provides that exporters shall have at least 60 days following sustained movements in exchange rates to adjust export prices.

Weighted Average Prices. The Agreement provides that normally weighted average foreign market value will be compared to weighted average U.S. prices. While current U.S. law permits this method for calculating margins, the DOC has, with only minor exception, compared weighted average FMW with transaction specific U.S. prices. This is an inherently unfair calculation, almost guaranteed to find the existence of dumping even where none exists. While the Agreement provides an exception to permit the current preferred DOC methodology under limited circumstances, the legislative history should express the intent of Congress that this exception is to be construed very narrowly and that weighted average to weighted average price comparisons are to be the rule.

New Shippers. The Agreement will require amendment of U.S. law to provide for an expedited administrative review for "new shippers" of a product that is subject to an antidumping order.

Automatic Termination of Orders. The statute must be amended to provide that AD orders shall be terminated five years from the date of the order, unless there is a determination by the appropriate authorities that termination is likely to result in future dumping and injury to the domestic industry. This amendment will require the establishment of appropriate procedures for both the DOC and ITC in order to facilitate the necessary determinations in a timely manner. It will be important that the basis for making these determinations mirror, as closely as possible, the initial findings of LTFV sales and material injury. Under current law and practice both the DOC and International Trade Commission (ITC) have made revocation of AD orders almost impossible. As a result, DOC struggles continuously with a tremendous backlog of administrative reviews, some based on initial determinations 20 or more years old. Congress should clearly state its intention that this "sunset" provision become a meaningful method of eliminating orders which are based on out-of-date analyses, and that the agencies, especially the ITC, make a careful and reasoned examination of the continued need for the order.

The provision will create some difficult transition problems since we understand that there are some 300 outstanding AD and countervailing duty (CVD) orders which will have to be reviewed in the one year period prior to the 5th anniversary of the effective date of the Agreement. It is unfortunate that this 5 year grace period for pre-existing orders was established, and the commitment to it should be re-examined. A more rational approach would be to begin immediately to review the oldest pre-existing orders, and to complete all such reviews by the end of the 5 year period. However, if the grace period is to remain, Congress must make clear to the ITC that its reviews must be conducted as diligently as any other agency investigation, regardless of the burden on the agency.

Finally, Congress must be alert to efforts, already underway, to amend the U.S. antidumping law in ways not required by the new Agreement so as to offset and even reverse any liberalizing results of the Uruguay Round. Special interests are attempting to take advantage of the admitted ambiguity of the Agreement in many areas, in order to further distort U.S. antidumping procedures and make them even more biased against imports and more protectionist than they already are.

Flying under the false flag of creating a "level playing field," these interests will try to create in the trade remedy laws, and particularly the antidumping law, an impenetrable barrier to global competition. The specific proposals that we are aware of are too numerous to address individually. Some have been resurrected from previous failed efforts to change the law, some are new variations on an old theme. Their objective is to rewrite the definition of "dumping" and then cry loudly about "unfair trade." We trust that this committee and the Congress as a whole will resist these efforts, remembering that in the trade liberalization process, as we sow so shall we reap.

CONCLUSION

The completion of the Uruguay Round presents us with the opportunity to take a major step forward in the liberalization of International Commerce, a step which will greatly benefit the U.S. economy, our workers and our businesses. It is critical that the results of the implementing process reflect both the letter of the agreements reached, and their spirit. Attempts to use this process to undo the Round's

historic market opening effects must be rejected both by the Administration and the Congress.

STATEMENT OF THE AMERICAN BAR ASSOCIATION

One of the focal points of the recently concluded GATT negotiations is the protection of intellectual property rights. Specifically, the final results of these negotiations include the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), which requires World Trade Organization members to maintain transparent and expeditious administrative and judicial procedures for the enforcement of intellectual property rights. The Agreement underscores the importance of the protection of intellectual property rights in the context of international trade.

This development provides a compelling occasion for including within the implementing legislation of the GATT Agreements amendments to Section 337 of the Tariff Act of 1930. First, inclusion of § 337 amendments in GATT implementing legislation is in keeping with the overall program recognition of the importance of intellectual property rights reflects in the final results of the GATT negotiations. Second, the proposed amendments meet the principal objections raised by the GATT Panel Report, thereby bringing this important provision of our law in line with the obligations of the United States under GATT. The amendments do not eliminate the special procedure applied to imports but attempt to provide equal opportunities for domestic and foreign parties to obtain rapid rulings on the claims they may assert (and raise in defense) in such cases. Finally and perhaps more importantly, the proposed amendments maintain Section 337 as a viable and effective tool for the enforcement of U.S. intellectual property rights, thereby reflecting the high level of enforcement contemplated by the final GATT agreement.

DELETION OF TIME PERIODS

In direct response to the GATT panel report, the proposed amendments delete from the language of the statute the 12 and 18 month time limits for completion of investigations. The deletion of these absolute time limitations, however, should not result in an abandonment of the current general policy of the Commission in administering and concluding these investigations expeditiously. It is expected that most investigations can and will be conducted within periods no longer than the current 12 month time limit, with any extension beyond 12 months up to 18 months, reserved for usually complex cases. Extension of an investigation beyond 18 months should only occur in rare extraordinary circumstances.

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June 30, 1994

BY HAND

Honorable Ira Shapiro
General Counsel
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20506

Re: § 337 Reform

Dear Ira:

This will follow up on our telephone conversation of June 28, in which I reported to you the results of my earlier discussion with Diane Wood and requested your office to take a second look at the ABA resolution as a basis for achieving reform of § 337 that is both sufficient for GATT compliance purposes and useful for owners of U.S. intellectual property rights. As I told you, our ABA Working Group believes that Diane and the DOJ misunderstood some of the language being used by lawyers in this field. By using more technically correct language, we hope that the basic ideas of our resolution can be supported by your office. Moreover, we are concerned that recent support for the USTR proposal from certain industry groups -- based on some significant changes to that proposal -- will render § 337 procedures so unfair to foreign respondents that the new law (if it were to incorporate these proposals) would truly be vulnerable to new claims for noncompliance with the GATT.

1. The ABA resolution used the term "counterclaim," although the term should have been "defense."

The second paragraph of the ABA resolution suggests a change to § 337 so that it would:

> "allow any respondent in an investigation under Section 337 to assert any directly related counterclaim, solely to avoid affirmative relief against such respondent."

The purposes of this recommended change were (a) to preserve the existing practice of the ITC in which it considers such defenses as fraud in the procurement of a patent, misuse in the licensing of the patent, or violation of the antitrust laws in the acquisition of the patent, in rendering its decision on whether to order the exclusion of an imported article or to order any person to cease and desist identified activities found to infringe the patent on which the complaint is based, and (b) to overrule the ITC decision in the Aramid Fiber case (that gave rise to the GATT Report) that

precluded the respondent from asserting the defense that the complainant lacked "clean hands" through its own infringement of U.S. patents owned by the respondent in the production of the very products that constituted the "industry" on behalf of which the proceeding was brought. The proposal had no element of broadening the ITC's jurisdiction over any subject matter or claim beyond the scope of the defenses it had traditionally considered, with the single exception of the Aramid type patent infringement claim, which would be permitted solely as a defense to allegations that § 337 had been violated by respondent.

The GATT Panel referred to the defenses available to respondents is the ITC as "counterclaims." Lawyers for parties in § 337 cases refer to these defenses as "counterclaims." The Rockefeller Bill refers to these defenses as "counterclaims." The ABA resolution did the same -- although the concluding part of the ABA Resolution attempted to underscore its limited dimension. The Department of Justice properly objected to proposals for a statute that would permit the ITC to adjudicate true counterclaims, as they are understood in the Judicial Code and Federal Rules of Civil Procedure. However, Diane confirmed that her Department would have no objection to either the preservation in § 337 of the present practice of the ITC to consider defenses that would persuade the ITC to withhold the remedies it may order, or the expansion of that practice to the limited situation illustrated by the Aramid Fibers case. If "true" counterclaims were asserted by a respondent, seeking any type of affirmative relief other than a decision of the ITC to deny the complainant the remedy it seeks, such claims should be pursued in a District Court. The ABA has no objection to that policy. Our objection addresses the USTR's action that goes too far, and is apparently based on an incorrect understanding of our proposal.

Please substitute the word "defense" for "counterclaim" in our resolution and then consider the ABA proposal on its merits. We hope you will find it acceptable and proper -- reflecting the views of both IP and international lawyers representing both domestic and foreign interests in the United States. Our proposal was carefully developed over months of discussion. It should not be rejected on the grounds of a misunderstanding or belated special pleading.

2. Proposals recently made to create exclusive jurisdiction over "counterclaims" in the District Courts and to specify that court actions on such counterclaims "will not delay or otherwise impact the Section 337 proceeding" render the "reform" inadequate to overcome GATT-based objections.

Some industry groups have recently decided to support the USTR's proposals for § 337 reform even though they, as so many others who have studied and followed this matter, expressed disappointment when the proposals were announced. What has changed their minds? The change has occurred as a result of the idea that by building on the mistaken use of the word "counterclaim" in the Rockefeller Bill and the ABA proposal, the ITC could be prevented from considering any defense to a complaint based on the legal theories on which a "counterclaim" would be based. Any issue of that type would be "removed to" the District Court -- but the ITC's exclusion or cease and desist orders could not be affected by the Court's consideration of the counterclaim until the Court rules. (The court could, in theory, rule on the counterclaim(s) before the ITC Is to act on the complaint, but that seems improbable in fact.) That result -- insulating the ITC proceeding from any consideration of the subject matter of "counterclaims" -- would clearly skew § 337 proceedings in favor of domestic patent holders and against importers by denying importers the opportunity to interpose valid and timely defenses. In our judgment, it would render the alleged "reform" of § 337 inadequate to overcome objections that the procedure denies importers "national treatment."

It seems to us that it ought to be fundamental due process for U.S. procedures (in which many U.S. interests are also involved on the side of importers), that respondents be able to urge an adjudicatory tribunal to withhold relief on the basis of any equitable or legal defense available. In essence, the notion is one of the "clean hands" of the complainant. The ABA proposal slightly enlarged the "clean hands" idea to overcome the specific objections of the GATT Panel to existing ITC practice. The USTR's proposals to the Congress should focus only on that narrow problem and no more. And it should surely not look in the opposite direction by supporting a proposal that would create a larger unfairness than the Panel found in present law.

3. The ABA proposal included a balanced approach to the problems of injunctive relief and duplicative proceedings.

The fourth paragraph of the ABA proposal suggested that the statute be amended:

> "to direct the U.S. District Court or the U.S. ITC, when proceedings are simultaneously pending in both based on the complaints of the same party, on timely motion of an opposing party common to both procedures, to stay proceedings in that forum that relate to overlapping issues, pending completion of the trial level proceedings on such issues in the other forum."

This proposal was the most extensively debated within the ABA and the text adopted reflected a final and mature resolution of many different points of view. It provides a "neat" balance of domestic and foreign concerns and responds directly to one of the major issues raised by the GATT Report. It allows the U.S. complainant to select one or two fora (or even more) in which to seek enforcement of its IP rights -- including both the courts and the ITC for the differing relief each may provide. However, that complainant runs the risk that if it proceeds against the same party on the same issues in both the courts and the ITC, the respondent/defendant may chose the proceeding it will defend first.

Adoption of this recommendation avoids all of the debate that has recently emerged about limits on injunctive relief or depriving parties of a realistic opportunity to use § 337. Its adoption would preserve the existing ability of courts to grant injunctions on the timetables and under the criteria they now apply and keep the ability of the ITC to issue TEO's and final exclusion orders under timetables that we believe will be little different that are now applied (even if they will not be legislatively mandated). It would only prevent a domestic patentee from proceeding against the same party on the same claims in two fora at once. This is unlikely even to impede contemporaneous actions against foreign companies that both import and produce domestically the articles claimed to infringe, since the foreign and domestic producer are likely to be different companies (even if commonly owned). An understanding to that effect should be inserted in the legislative history.

We sincerely thank you for considering our further views of this matter. To facilitate your review, I am enclosing a copy of the letter I sent to Chairman Gibbons after our last meeting at your office, to which you will find attached the ABA Resolution and Report in question.

Sincerely,

Peter D. Ehrenhaft
Chair, § 337 Working Group

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July 9, 1994

BY HAND

Honorable Ira Shapiro
General Counsel
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Re: §337 Reform

Dear Ira:

I regret my letter to you of June 30 was insufficient to persuade the USTR to reconsider the Administration's proposal to amend §337. It remains our view that the present proposal is insufficient to bring United States practice into compliance with the Report of the GATT Panel. Therefore, I am taking the liberty of writing one more letter asking that two elements of both the ABA's Recommendation and S. 148 be restored:

1. The ability of respondents to raise "all" defenses. The principal basis on which the respondents in the Aramid Fibers case sought GATT review was the ITC's refusal to consider their claims that the complainant was infringing their patents in making the very products on which the complainant's case rested. The respondents thought the ITC should not grant relief to a party that was, itself, an infringer of patents directly related to its own patent being asserted. The refusal of the ITC to consider this defense was a key element in the GATT Panel Report's conclusion.

Our main proposal was to overrule Aramid. Instead, your staff has created a monumental edifice and confusing procedure involving the compulsory the removal of "counterclaims" to the U.S. District Court. This all seems to us to create new problems for respondents and new bases for claims on non-compliance with GATT.

We think the USTR's approach will result in a reduction of the ability of respondents to assert "defenses" before the Commission. Moreover, it will compel the respondent that wishes to defend claims of infringement on the bases of the complainant's lack of "clean hands," to pursue those defenses in two fora at the same time – precisely the major objection of the GATT Panel to existing U.S. procedure. District Court consideration of "counterclaims" is likely to take extended periods of time, while the USITC is, nevertheless, directed by the Congress to complete its "expeditious adjudication" within the time frame similar to the one that now exists. Thus, the defenses of respondents are unlikely to receive full, timely consideration at the ITC, as it may regard those matters the responsibility of the courts. Finally, under the USTR proposal, it is the respondent that "must" seek removal of counterclaims to the District Court. This is an added burden on the respondent and is an odd allocation of responsibility. Normally, under U.S. practice, it is the party against which a claim is asserted that has the obligation to seek any removal it may prefer. The consequences of a failure to remove are not clearly indicated and may be a trap. It could hinder respondent's ability to defend itself.

All these problems could have been avoided by the relatively simple suggestion included in our Recommendation and S. 148. Although the Aramid type of defense may have been viewed as "counterclaim," that, under Rule 13, Fed.R.Civ.P., analysis would normally only be heard by a District Court, Congress could change that view in the very limited circumstances at issue. We attach a proposal to achieve that purpose. We urge you to adopt it and to scrap the "counterclaim" provisions that have recently emerged.

2. The opportunity of potential respondents to seek declaratory judgments. The ABA Recommendation and S. 148 proposed a provision allowing foreign parties to seek a declaratory judgment from the ITC of no violation of §337. While we do not know how many foreign parties would use such a procedure, it seemed to us a sensible provision to equalize the opportunities for initiating legal actions. A foreign party may now initiate a court action if threatened by a U.S. patent holder. Why not also grant it the right to initiate an ITC proceeding to "clear" its ability to import goods into the U.S.? We have received no adequate explanation of why this suggestion has been rejected by your office. This provision should be restored and should help protect the new §337 against further GATT challenge.

Please let me know if we can discuss this further. Thank you very much for your continued interest and consideration.

Sincerely,

Peter D. Ehrenhaft
Chair, §337 Working Group

Enclosure

11850

ABA PROPOSAL ON SECTION 337 REFORM
July 9, 1994

1. Section 337(c) of the Tariff Act of 1930 (19 U.S §1337(c)) is amended:

(1) by inserting in the third sentence after "cases," the following:

"including any claim that the complainant, in its production or investment in the industry to which the patent, copyright, trademark or maskwork relates and on which the complaint is based, is, itself, infringing a patent, copyright, trademark or maskwork of a respondent in the case."

2. Delete the present proposed amendment to Section 337(c) in (B)(2) regarding counterclaims.

3. Delete the present proposed amendment to 28 U.S.C. §1659 in (C) regarding counterclaims.

4. Restore the declaratory judgment section of S. 148.

STATEMENT OF THE AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)

The American Forest & Paper Association (AF&PA) represents approximately 550 member companies and related trade associations (whose membership is in the thousands). Our members 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, AF&PA represents a vital national industry which accounts for over seven percent of the total U.S. manufacturing output.

The forest and paper products industry employs some 1.4 million people, and ranks among the top 10 manufacturing employers in 46 states, with annual wages paid of about $46 billion. The forest and paper products industry generates sales of $200 billion annually. With exports of $17 billion in 1992, the industry makes an important contribution to the U.S. balance of payments. Exports have been, and will remain, the future growth segment for our industry.

The U.S. forest products industry has been ranked among the most competitive in the world. We have historically relied on competitive strength—not protectionism—to win markets.

In March 16, 1994, testimony before this Committee we will provide our overall comments on the GATT Uruguay Round Agreement. However, we are submitting this separate statement on the Agreement's subsidies provisions because of their significant implications for our industry.

Among the objectives of the U.S. forest products industry in the Uruguay Round was the strengthening of the GATT Subsidies Code in order to establish greater discipline over foreign government subsidies to competing wood and paper producers. At the same time, our industry wanted to ensure that the U.S. countervailing duty laws were not diluted and would continue to be the valuable tool they have been in the past in fighting unfairly traded imports.

We are particularly concerned that these two goals have not been met under the Agreement's language with respect to non-actionable subsidies. According to the Executive Summary of the Uruguay Round Agreement, the objective of some negotiating parties in the GATT was to restrict the application of U.S. countervailing duty remedies and to protect certain forms of subsidies from any type of trade action. We in the U.S. forest products industry are concerned that those other "negotiating parties" may have succeeded only too well. We are concerned that large loopholes have been created that will greatly weaken the effectiveness of our countervailing duty laws

ENVIRONMENTAL SUBSIDIES

The U.S. forest products industry is concerned with the provision, which the U.S. accepted without any consultation, allowing all countries to offer subsidies to cover up to 20 percent of the cost of meeting new or stricter environmental regulations. Although the Agreement limits such subsidies to "a one-time measure" to cover the cost of adapting existing facilities to new environmental regulations, it is difficult to consider how a measure could be sufficiently circumscribed as to eliminate ancillary benefits such as increased levels of output or improved cost competitiveness. Moreover, since capital is fungible, when governments cover the cost of environmental compliance, they free up funds for other investments. Further, it is our understanding that this "one-time" benefit could be made available for compliance with subsequent enhancements to environmental regulations, as well.

The "greenlighting" of environmental subsidies is of particular concern to the U.S. forest products industry. Our industry is among the most capital intensive of all U.S. manufacturing industries, and one that is subject to environmental regulations which are often much more stringent than those of major competitors. It is unlikely U.S. industry can expect to benefit from any domestic government subsidies to assist it in meeting its environmental compliance costs.

The cost of industry compliance with environmental requirements was focused upon in the recently-released Office of Technology Assessment report, Industry, Technology, and the Environment. That report reveals that the U.S. pulp and paper industry is one of the four U.S. industrial sectors most affected by U.S. environmental regulations (the other sectors are chemicals, petroleum, and primary metals). Together, these four industries account for 75% of the $25 billion spent by U.S. manufacturers each year to comply with environmental regulations. The report also notes that U.S. environmental compliance costs, whether measured as a percent of sales or as a portion of capital investments, hit U.S. manufacturers harder than competitors in either Europe or Japan. The disparity with suppliers from newly industrialized countries (NICs) is even greater.

Since the greenlighting of environmental subsidies could have a significant effect on competitiveness in our industry, the U.S. forest products industry believes it is important that the Congress and the Administration limit the provision's applicability by definition in the Statement of Administrative Action and the implementing legislation. Further, we strongly urge that this Committee, in particular, consider providing some subsidy-offsetting vehicle to provide for comparable investment equity for affected U.S. producers.

REGIONAL SUBSIDIES

The language in the Agreement which confirms "certain sub-federal level financial assistance as non-actionable under the Agreement" is also troublesome to our industry. On many occasions, the U.S. forest products industry has sought U.S. government intervention to counter Canadian federal and provincial subsidies to the Canadian pulp and paper industry. The prohibition of such subsidies was a main objective of the U.S.-Canada Free Trade Agreement and the NAFTA. On both occasions, the U.S. government indicated that resolution of this issue would have to await Uruguay Round GATT Subsidies Code negotiations.

We still firmly believe that subsidies, at any governmental level, provided to firms producing products that are primarily exported to the U.S. market, or that compete with U.S. products in third country markets, should be prohibited. In addition, we are concerned by and dissatisfied with the lengthy implementation period granted developing countries for elimination of prohibited subsidies. We hope to work with the Committee and the Administration to address these concerns in the implementing legislation.

STATEMENT OF AT&T

AT&T strongly favors adoption of the new Subsidies Code which was negotiated in the Uruguay Round of the GATT. The Subsidies Agreement establishes new standards to identify non-actionable subsidies that will clarify a previously murky and problematic area of the Subsidies Code. Moreover, the Agreement provides for the extension of multilateral GATT disciplines to disputes arising under the Code. We are convinced that these new provisions will help high-tech American companies, such as AT&T, remain at the forefront of innovation in an increasingly competitive global environment.

I. OVERVIEW

We believe that the Subsidies Agreement will enhance the competitiveness of high-tech U.S. industries for several reasons. First, the greenlighting provisions are based on standards that will safeguard critical existing U.S. subsidy programs. Second, these same standards will help curtail objectionable foreign subsidies. Third, the Subsidies Agreement includes provisions that will enable the U.S. to challenge the non-actionable status of approved foreign subsidies through the Subsidies Committee which oversees administration of the Code. Fourth, multiple built-in safeguards in the Subsidies Agreement will enable the U.S. to seek any adjustments in the application of the greenlighting provisions that may prove necessary following implementation.

II. HIGH-TECH AMERICAN COMPANIES LIKE AT&T RELY ON LONG-STANDING U.S. SUBSIDY PROGRAMS

To command export markets and succeed in high-tech industries today, AT&T and other high-tech American companies rely on a variety of U.S. subsidy programs to support critical research and development efforts. In recent years, AT&T has particularly benefited from programs in the area of semiconductor and x-ray lithography research.

These programs are essential to the development of cutting edge technologies and products that drive American entry into foreign markets. It is well known that many foreign countries heavily subsidize the development and production of new technologies by their domestic industries. In the context of global competition, it is clear that without our own subsidy programs, American high-tech industries would almost certainly fall behind in the marketplace.

III. THE GREENLIGHTING PROVISIONS OF THE SUBSIDIES AGREEMENT WILL SAFEGUARD ESTABLISHED U.S. PROGRAMS THAT SUPPORT AMERICAN COMPETITIVENESS IN HIGH-TECH INDUSTRIES

The greenlighting provisions of the new Code will help to safeguard such established U.S. subsidy programs under the GATT. These provisions are based on American proposals that mirror current U.S. subsidy practices. Consequently, they promise to facilitate approval of existing U.S. programs by the Subsidy Committee which will administer greenlighting eligibility review.

The USTR Kantor has pointed out, eligibility for "non-actionable" status under the greenlighting provisions will be determined on the basis of criteria that are consistent with U.S. standards and levels of government support for applied research and development initiatives. Thus, these provisions limit permissible assistance for "industrial research" to 75 percent of eligible research costs, restrict support for "precompetitive" (applied research and development) activity to 50 percent of eligible costs, and place a 20 percent ceiling on government assistance for the modification of existing plant and equipment to comply with environmental protection standards. The greenlighting provisions also limit exemption of government assistance programs for regional development to cases in which a recipient region can be demonstrated to be disadvantaged on the basis of "neutral and objective criteria." For such regional programs to qualify as non-actionable, moreover, government assistance may not target a specific industry or group of regional recipients.

Looking back at previous efforts to renegotiate the Subsidies Code, it is clear that the greenlighting provisions of the current agreement represent a substantial achievement by U.S. negotiators and a step forward for American high-tech industries. It is important to remember that the 1991 draft Uruguay Round Agreement did not include any such standards or safeguards for critical U.S. subsidy programs. Under that draft agreement, U.S. support for the pre-commercial development of new technologies would have remained open to legal challenges from abroad. Such challenges would have been costly for American companies to combat and could have seriously jeopardized the competitiveness of U.S. high-tech industries, such as telecommunications. The new greenlighting provisions will help us to dedicate our resources more productively to the development of new products and the creation of American jobs.

The Subsidies Agreement also provides an important multilateral mechanism to review and challenge unfair foreign subsidy practices. For greenlighting recognition to apply under the new Code, the Agreement requires that specific programs be reviewed and approved by a special multilateral Subsidies Committee. Given that the standards and levels of assistance for permissible subsidies that this agreement recognizes closely parallel the types of assistance provided to American entities by established U.S. subsidy programs, as previously noted, we expect that this review process will favor approval of non-actionable status for existing American programs.

IV. RESTRICTIONS ON OTHER TYPES OF SUBSIDIES UNDER THE NEW CODE WILL PREVENT EXPANSION OF OBJECTIONABLE FOREIGN PRACTICES

Another advantage of the greenlighting provisions is that they impose collateral restrictions on certain other types of subsidies. In effect, the green-lighting standards will tightly constrain permissible programs so as to limit a variety of problematic practices historically associated with out fiercest foreign competitors.

As others have suggested, the greenlight ceiling on permissible government assistance, while entirely consistent with established U.S. subsidies, appears to be somewhat lower than subsidy levels in other GATT member countries. Consequently, this ceiling may cause some foreign governments to reduce their current level of support for private initiatives.

These important limitations will help ensure that the new greenlighting provisions do not encourage foreign governments to expand their own subsidy programs, as some critics of the Subsidies Agreement have suggested. On the contrary, taken as a whole, these limitations provide a basis to restrict new subsidization efforts and may help to eliminate some of the types of foreign subsidies that have been most effective in blocking American market access and expansion in the past.

V. THE SUBSIDIES AGREEMENT WILL FACILITATE U.S. CHALLENGES TO FOREIGN SUBSIDIES THROUGH GATT DISPUTE SETTLEMENT

It is also important to evaluate the new Subsidies Code in the context of the availability of multilateral disciplines under the GATT. Under the Uruguay Round Agreement, these disciplines will not apply to all 117 members of the World Trade Organization for purposes of resolving subsidy disputes. GATT dispute resolution af-

fords an important multilateral basis for the United States to challenge unfair foreign subsidies.

The availability of GATT dispute resolution should complement the use of U.S. countervailing duty laws to combat foreign subsidies. Moreover, recourse to this multilateral forum may help the United States preempt international challenges to domestic trade proceedings.

VI. THE SUBSIDIES AGREEMENT CONTAINS ADDITIONAL BUILT-IN SAFEGUARDS AGAINST UNFORESEEN PROBLEMS

Apart from these clear advantages, it is important to recognize that the Subsidies Agreement provides ample opportunity to correct any problems that arise following implementation of the new Code. First, the Subsidies Committee has authority to consider challenges and revoke greenlight status for specific subsidies at any time based on the determination that a related research and development initiative has a serious adverse impact on another country's competing industry. It is noteworthy that revocation on this basis will be possible regardless of conformity in other respects with the Code's formal guidelines for determinations of non-actionable greenlight status.

Second, the Subsidies Agreement mandates periodic review of green-lighted programs. A preliminary review is required 18 months following initial approval of greenlight eligibility. Based on that review, the Committee may direct that adjustments be made in order for a particular program to retain its non-actionable status. Where such adjustments are not made, or if the Committee finds that a program otherwise fails to conform with Subsidies Code guidelines, it may simply revoke greenlight approval at that time.

Third, the greenlighting provisions are set to expire five years after they take effect, unless renewed. This termination deadline provides a final failsafe against any attempt by other countries to abuse the greenlighting provisions. As the termination date approaches, the United States will have a further opportunity to raise and remedy any fundamental concerns that arise as a precondition for renewal. Alternatively, the United States may simply let these provisions expire, consistent with the Subsidies Agreement, if the greenlighting approach should prove to be inherently flawed. In either case, the five-year termination provision assures that any problems that do arise following implementation will be of limited duration.

VII. AT&T URGES CONGRESS TO ADOPT THE NEW SUBSIDIES CODE TO ADVANCE U.S. COMPETITIVENESS IN THE GLOBAL MARKETPLACE

For all these reasons, we are convinced that the new Subsidies Code will significantly benefit AT&T and other U.S. companies in high-tech industries. By safeguarding the types of subsidies that encourage innovation by American companies, like AT&T, the new Code will enable the United States to maintain its leadership in global telecommunications and other critical industries.

We know that Congress shares our conviction that the federal government should dedicate itself to the opening of foreign markets and the advancement of U.S. competitiveness in the global marketplace. We therefore urge Members of Congress to seize the opportunity presented by the Subsidies Agreement to further these important goals.

STATEMENT OF DR. RICHARD L. BERNAL[1]

Thank you for providing this opportunity to submit testimony on the impact on the Caribbean of the recently concluded Uruguay Round of the General Agreement on Tariffs and Trade (GATT). The Caribbean perspective on the GATT is important, not only to understanding the GATT's impact on an important trading partner of the United States, but also to discerning the full effect of the GATT on the trade-propelled economy of the United States.

Last December, the world took another step forward in the establishment of a more liberalized trade regime. Although less ambitious than originally planned, the Uruguay Round accords will lower many trade barriers and strengthen the disciplines governing many sectors. Ultimately, the agreement seeks to stimulate worldwide economic growth through increased trading opportunities.

[1] Dr. Richard L. Bernal is Jamaica's Ambassador to the United States and Permanent Representative to the Organization of American States.

I. JAMAICA'S COMMITMENT TO TRADE LIBERALIZATION

Jamaica is convinced that an open multilateral trading system is a stimulant to economic growth, both through the static gains from increased efficiency in the utilization of its existing resources and the dynamic gains from the opportunities to expand productive capacity through new technology, investment, and innovative entrepreneurship.

Jamaica is fully committed to trade liberalization within the hemisphere and to a multilateral trading system that approaches free trade as far as possible. Jamaica subscribes to, and its policy has always been fully consistent with, the principles and disciplines of the GATT. Jamaica joined the GATT in the early 1960's and has been an active participant in, and has contributed to, successive negotiating rounds aimed at further liberalization of global trade.

Moreover, Jamaica actively participates in several regional trade-liberalization arrangements with the United States (the Caribbean Basin Initiative—CBI), Europe (the LOME Convention), Canada (CARIBCAN), and the other English speaking countries in the Caribbean (the Caribbean Common Market—CARICOM). All of these arrangements are intended to promote trade between the member countries.

Finally, Jamaica also has supported the creation of free trade within the Western Hemisphere through the North American Free Trade Area (NAFTA), which constitutes the first building block of free trade within the hemisphere.

II. TRADE LIBERALIZATION AS A KEY TO ECONOMIC GROWTH

Jamaica realizes that there is now a new phase of globalisation of production and finance which is rapidly sweeping away national barriers to the movement of goods, services, capital, and finance. The speed at which these flows move throughout the global economy requires a rapidity of decision-making which cannot be sustained if there are national impediments. This is the fundamental economic impetus behind the dismantling of national barriers (e.g. tariffs, quotas, exchange controls) and the movement of regional groups within which there is a free market for capital and goods.

During the 1980's, Jamaica's economic policies focused on economic reform, stabilization, and structural adjustment in an attempt to create an environment conducive to a private sector-led, market-driven, outward-looking growth strategy. An important aspect has been a comprehensive program of trade liberalization involving substantially reduced tariffs and the elimination of quantitative trade restrictions. This has been complemented by freeing market forces within the domestic economy through the abolition of price controls by a vigorously implemented campaign of privatisation and fiscal and monetary discipline.

In the last four years there has been a substantial acceleration in the process of liberalizing the trade regime of Jamaica, with an emphasis on the removal of import restrictions and the lowering of tariffs. This commitment to outward-looking trade and development policies is firmly based on the knowledge that the benefits to be derived are those of higher growth rates and enhanced capacity to adjust to external shocks. Expanding trade contributes to growth by enabling the economy to improve its productivity by specializing in exports in which it has a comparative advantage. Production for the world market allows firms to achieve the economies of scale which are precluded by a small domestic market. Exposure to competition from imports serves to improve cost efficiency and benefits consumers by lower prices.

III. THE U.S./CARIBBEAN ECONOMIC PARTNERSHIP

Stimulated primarily through regional textile and apparel trade, the United States and the Caribbean Basin nations have developed an important economic partnership. The U.S. Department of Commerce recently reported that total U.S. apparel exports, about two-thirds of which are assembled in the Caribbean Basin from U.S. manufactured and cut cloth, have expanded by close to 80 percent since 1990. From 1989 to 1992, U.S. textile and apparel exports to the Caribbean increased by 63 percent.

These successes are reflected in other industries as well. Since the mid-1980's, U.S. overall exports to the Caribbean have expanded by over 100 percent and Caribbean exports to the United States have climbed by roughly 50 percent. The Caribbean Basin now comprises the tenth largest market for the United States, and is one of the few regions where the United States consistently posts a trade surplus. With combined trade exceeding $22.5 billion in 1993, U.S./Caribbean commercial links support close to 250,000 jobs in the United States and countless more throughout the Caribbean and Central America.

The new structure of trade means that economic growth and development in the Caribbean now directly translate into expanded export opportunities for the United States. Roughly 60 cents of each dollar Jamaica earns from exports to your country is spent in the United States buying American-made consumer goods, food products, industry inputs, and capital equipment. When compared with each dollar of Asian imports, which only generates about 10 cents worth of subsequent U.S. purchases, trade with the Caribbean becomes an important priority for the United States.

As Congress considers and adopts legislation to implement the GATT accords, it also should explore ways to simultaneously preserve the strong production interdependency that exists between U.S. and Caribbean workers. Without such a mechanism, GATT's implementation potentially will create a long term, and unnecessary, trade-off between "free trade" and sustained regional economic growth.

IV. GATT TREATMENT OF TEXTILES AND APPAREL

The textile provisions of the draft GATT accord is likely to undermine economic growth in the Caribbean Basin. Over the next decade, the GATT textile agreement will phase out the worldwide quota regime governing textiles and apparel trade, known as the Multifibre Arrangement (MFA).

The accelerated phase-out of the MFA will dismantle a mechanism that has been instrumental in fostering trade-based economic growth throughout the world, and particularly in small countries such as Jamaica. Without the MFA framework, the garment exports of very low wage countries that subsidize their production will be permitted to compete with those of countries that maintain acceptable working conditions and workers' rights. Such unfair competition will be detrimental to U.S. and Caribbean producers. Low wage exports will undersell Caribbean products and result in reduced production, trade, and investment.

The textile industry has proved an important stimulus for economic growth and job creation throughout the Caribbean and in the United States. As the U.S. apparel industry has sought to retain its national and worldwide competitive advantages, especially in the face of low cost imports from Asia, it has established strategic production alliances with factories based in Jamaica and other countries throughout the Caribbean. U.S. apparel makers have been able to preserve high skilled U.S. jobs by combining U.S. capital and technology with Caribbean assembly skills to produce garments from U.S. textiles. It is this complementary production that enables U.S. firms to remain competitive in the global marketplace.

V. U.S./CARIBBEAN TEXTILE AND APPAREL COMPLEMENTARY

In many countries, and especially throughout the Caribbean and Central America, the development of the textile and apparel sector has been the gateway to industrialization and sustained economic growth. Because it is labour intensive and relatively easy to start production, the garment industry acts as a magnet for investment capital and an employment catalyst in many parts of the world. Ultimately, the textile and apparel industry can set countries on the path of private sector-led development, breaking their long-term dependency on foreign aid.

For these reasons, Jamaica views this sector as integral to the viability of its long-term development objectives. Currently, one in four Jamaicans is employed by the textile and apparel industry, making it the single largest employer in the country. It is also one of the largest foreign exchange earners, acting as the engine of export growth and generating close to $400 million in foreign exchange annually.

Much of our success in this area has been based upon our linkages to the United States textile and apparel sector. During the past decade, the U.S. and Caribbean Basin textile and apparel industries have become increasingly linked in complementary production and assembly operations. U.S. firms combine their capital and technology with Caribbean low-cost assembly operations to generate employment opportunities in both our countries while producing garments that are competitive in both the international and domestic markets. Roughly 80 percent of the cost of a finished garment assembled in Jamaica consists of U.S. labour, fabric, or other inputs. Because so many of Jamaica's inputs originate in the United States, the Jamaican garment industry has emerged as an important catalyst for U.S. employment.

Through this sector, Jamaica has been able to diversify its export portfolio to reduce its dependency on mining and tourism. By creating employment opportunities, Jamaica has been able to provide legitimate alternatives to destabilizing activities such as drug trafficking. The development of an industrial workforce has taken place in a context of strong labour and environmental codes. Increased reliance on international trade links has reinforced the liberalization of Jamaica's own import and foreign exchange regimes.

Given this context, the short time-frame provided for the phase-out of the MFA concerns the Government of Jamaica. Jamaica has developed its textile and apparel industry under the aegis of the MFA, which guarantees fair access to the U.S. market and establishes a safeguard against a flood of imports into the U.S. market from low-cost, and often subsidized, suppliers in Asia. As the MFA is dismantled, this safeguard will be eliminated and Jamaica's exports could dwindle amid a surge in imports from those Asian producers. Such unfair import penetration would devastate both U.S. and Jamaican garment industries, thus undermining a key engine of economic growth in the region.

As part of the GATT negotiations, Jamaica had long advocated a slower phase-out period—perhaps over 15 years—to provide more time for developing counties to prepare for increased competition. A longer transition period also would guarantee that improved market access in the United States would benefit those countries that had made long term commitments to liberalize their own markets. Furthermore, the textile trade might have been brought into the GATT framework without sacrificing the economic development of the most vulnerable countries.

VI. PARITY AS AN APPLICATION OF GATT PRINCIPLES

It is imperative, therefore, to identify trade liberalizing measures in addition to the framework that will eliminate the MFA over the next decade, which will re-level the playing field and preserve the U.S./Caribbean competitive partnership.

A. Caribbean Parity Framework

One mechanism, which was discussed during last year's Congressional debate on the North American Free Trade Agreement (NAFTA), would link certain Caribbean Basin countries to the trade measures established between the United States and Mexico. Two such legislative proposals were introduced last year by Congressman Sam Gibbons and Senator Bob Graham. Their bills, (H.R. 1403 and S. 1155, respectively), which provide a good framework for the parity dialogue were ultimately endorsed by roughly 70 other lawmakers.

By extending parity with NAFTA to the Caribbean Basin countries, the United States could take a decisive step towards trade liberalization while offsetting the market displacement effects of the phased-out MFA. Reducing tariffs on Caribbean-assembled garments, which use U.S. components and inputs, would re-establish a price competitiveness with low-cost suppliers from other parts of the world.

Moreover, Caribbean parity would ease an unintended side effect of the NAFTA, which, without correction, threatens to turn the CBI into a "depreciated asset." Because of the quota and tariff reductions that NAFTA affords Mexico, combined with Mexico's access to inexpensive labour, cheap energy and transportation, and economies of scale, the Caribbean countries are now trading at a competitive disadvantage in terms of access to the U.S. market. As investors and traders begin to demand of Caribbean countries the "Mexican discount" in order to make their Caribbean businesses competitive with similar operations in Mexico, this disadvantage will lead to investment and trade diversion, a relocation of productive capacity, job losses, and an eventual loss of economic confidence.

One of the best examples of this potential for displacement is in the area of textiles. Under NAFTA, Mexican textiles and apparel will benefit from a progressive tariff reduction over a ten-year period. This introduces a new dimension of competition, creating a situation whereby CBI-produced garments made from U.S. textiles will have to compete at a price disadvantage against Mexican apparel made from Mexican textile. This will displace both CBI apparel producers and U.S. textile manufacturers.

B. Jamaica's Reciprocity Commitments Under Parity

Jamaica has long viewed its relationship with the United States under the Caribbean Basin Initiative (CBI) as one of mutual commitment and obligation. In the context of Caribbean parity, which would guarantee non-discriminatory market access to the United States, Jamaica understands the importance of measures to assure "reciprocity" of trade benefits. Although reciprocity may not reflect strict equivalence in tariff reduction or elimination of quantitative restrictions, it should encompass the range of bilateral commercial issues, namely measures to protect trade in goods and services, investment, and intellectual property rights.

In that regard, Jamaica signed a Tax Information Exchange Agreement (TIEA) with the United States in the mid-1980's to facilitate U.S. efforts to combat illegal tax activities. Jamaica was also the first Caribbean country to establish an Environmental Framework Agreement with the United States to channel U.S. bilateral debt to support environmental programmes. More recently, Jamaica and the United

States have concluded an Intellectual Property Rights (IPR) agreement, a Bilateral Investment Treaty (BIT), and an agreement to prevent illegal textile transhipment.

VII. CONCLUSION

As Congress debates the passage of the GATT, serious attention should be directed at the adverse implications of the proposed phase-out of the MFA on the U.S./Caribbean textile and apparel industry. A phase-out mechanism that provides a transition period that is too short to facilitate an orderly adjustment process could have detrimental effects as it will expose firms to unfair, subsidized, cheap-labour imports. Such a hasty phase-out will, in fact, defeat the very objectives of GATT in providing for fair competition on a level playing field. Appropriate mechanisms can still be developed to allow for a suitable period of adjustment. In this way, Caribbean economies and the U.S. industries dependent upon healthy U.S./Caribbean trade links, can engage in an adjustment process that is insulated from unfair competition.

A fifteen-year phase-out of the MFA and the provision of NAFTA parity for Caribbean countries is a logical complement to the principles of GATT and would facilitate the achievement of more liberalized global trade and promote economic growth.

Table 1.—U.S./JAMAICAN TRADE STATISTICS (1985–1993)

[Millions of U.S. Dollars]

Year	U.S. imports	U.S. exports	Annual export growth	Trade balance
1985	267	404	.....	137
1986	298	457	13.1%	159
1987	394	601	31.5	207
1988	441	762	26.8	321
1989	527	1006	32.0	479
1990	564	943	−6.3	379
1991	576	963	2.1	387
1992	599	938	−2.6	339
1993	720	1113	18.7	393
Average Annual U.S. Export Growth			14.4	

Note: U.S. trade surplus in 1993 is three times the level of the 1985 U.S. trade surplus.

Source: U.S. Department of Commerce U.S. International Trade Commission.

Table 2.—U.S./CBI TRADE STATISTICS (1985–1993)

[Millions of U.S Dollars]

Year	U.S. imports	U.S. exports	Annual export growth	Trade balance
1985	6,687	5,942	.....	−745
1986	6,065	6,362	7.1%	297
1987	6,039	6,906	8.6	867
1988	6,061	7,690	11.4	1,629
1989	6,637	8,290	7.8	1,653
1990	7,525	9,569	15.4	2,044
1991	8,372	10,013	4.6	1,641
1992	9,559	11,075	10.6	1,516
1993	10,252	12,278	10.9	2,026
Average Annual U.S. Export Growth			9.5	

Note: 1993 marked the 8th straight year of U.S. trade surpluses.

Source: U.S. Department of Commerce U.S. International Trade Commission.

Table 3.—NUMBER OF U.S. WORKERS DEPENDENT ON TRADE WITH THE CARIBBEAN BASIN NATIONS

Year	Total number of U.S. workers[1]	Number of new U.S. jobs created per year
1985	118,840	
1986	127,240	8,400
1987	138,120	10,880
1988	153,800	15,680
1989	165,800	12,000
1990	191,380	25,580
1991	200,260	8,880
1992	221,500	21,240
1993	245,560	24,060
Average Annual Job Creation		15,840

[1] Using the figure that $1 billion in exports creates 20,000 U.S. trade-related jobs.

Source: U.S. Department of Commerce U.S. International Trade Commission.

STATEMENT OF THE CHOCOLATE MANUFACTURERS ASSOCIATION OF THE U.S.A. AND NATIONAL CONFECTIONERS ASSOCIATION OF THE U.S.

Mr. Chairman, thank you for the opportunity to submit testimony on behalf of the members of the Chocolate Manufacturers Association of the United States of America and the National Confectioners Association of the United States concerning the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations.

The Chocolate Manufacturers Association represents manufacturers of finished and semi-finished chocolate products. The industry's products are used extensively in the confectionery, bakery and dairy industries.

The National Confectioners Association represents U.S. manufacturers of chocolate and non-chocolate candy products, as well as chewing gum and candied nuts.

The Associations together represent 100 companies who operate 125 facilities across 32 states and employ 65,000 people. In 1992, member companies produced over $10.3 billion (wholesale value) of confectionery products. The wholesale value of the industry exports in 1992 was $342 million.

Our two Associations have long been proponents of eliminating barriers to trade in the U.S. and around the world. Our position is well documented.

In the 1979 Tokyo Round, U.S. import duties on finished chocolate and non-chocolate confectionery were immediately cut to 5% and 7% and bound at that rate. Reductions to the equivalent level were not obtained from trading partners. U.S. duties were set at the lowest rate of any nation save Hong Kong. As a consequence, U.S. semi-manufactured and finished confectionery exports have been, and continue to be at a considerable disadvantage in penetrating foreign markets where tariffs remain between 10% and 80%.

The U.S. industry has looked upon the Uruguay Round as an opportunity to redress this inequity and obtain the same opportunities for U.S. confectionery in foreign markets as foreign confectionery manufacturers have in the United States, especially in the lucrative new markets of eastern and central Europe or Asia.

We communicated extensively with the U.S. trade representative, the U.S. Department of Agriculture, and the Department of Commerce (through participation in an Industrial Sector Advisory Committee) beginning in 1988 regarding our priorities for the Round. We based our priorities on industry activity to develop a particular foreign market; consumption trends and long-term potential demand in the country; and the degree of access to the U.S. market enjoyed by that country's cocoa, sugar, and confectionery exports.

We clearly noted that high tariffs are the most pervasive obstacle to the confectionery industry's export effort. They are a major deterrent to market entry and are an insurmountable obstacle to our companies' attempts to reach consumers and build market share. We also noted that we were not prepared to have U.S. confectionery duties go below 5 and 7% without a multilateral resolution removal of the agriculture subsidies issue and removal of the cost penalty on the industry's essential raw materials—sugar, milk and peanuts.

While full details of the results of the Uruguay Round are yet to be revealed, what we have learned about the "successes" of the Round for U.S. confectioners is dis-

appointing, especially since confectionery was on the U.S. Department of Agriculture's "priority" negotiating list.

For instance:

- Japan will reduce its 35% tariff on non-chocolate confectionery to only 25% by the year 2001.
- Hungary will replace its onerous quota on chocolate with a 50% duty, apparently reducing to only 30% over a long-staging period. It will reduce its tariffs on sugar confectionery to below "currently applied rates."
- Poland has offered a 135% tariff on confectionery, declining to 86% by 2001.
- The EC confectionery industry will receive a 10% preferential rate for EC confectionery exported into eastern and central Europe.
- The Philippines will reduce its tariff on sugar confectionery from 50 to 45%.
- Domestic price support programs for sugar, peanuts, and milk will be largely unaffected by Uruguay Round results.

And these are the successes! For many other countries, there were no changes.[1] However, the U.S. appears to have agreed to cut U.S. confectionery tariffs 15–20% across the board to all Uruguay Round participants.

These results are unsatisfactory. To be successful from our industry's perspective, the Uruguay Round must quickly bring equivalent access to important markets which we have repeatedly identified to the appropriate agencies. At a minimum, the Uruguay Round should record substantial progress, and the United States should continue to demand equal access for its confectionery products to all foreign markets.

Statement of the Coalition for Fair Lumber Imports

The Coalition for Fair Lumber Imports is pleased to have this opportunity to submit testimony to this committee about an issue which is extremely important to the coalition's members and other industries injured by unfair foreign subsidies: implementing legislation for the Uruguay Round of the GATT which will both enhance and strengthen the ability of U.S. industries to respond to unfair trade.

The coalition—a broad group of lumber manufacturing associations and companies—has been in the forefront of efforts to redress Canadian lumber subsidies. Canadian provinces give their lumber companies timber at a fraction of its market value and protect those subsidies with log export restrictions so that only Canadian mills can benefit from the subsidies. while U.S. mills have no objection to competing against other mills, we cannot—and cannot be expected to—compete against foreign treasuries.

The lumber industry is a strong supporter of free trade. We are world-class competitors and were early proponents of the North American Free Trade Agreement (NAFTA). We would vigorously support an Uruguay Round that provided real market access to foreign markets—for example, by eliminating wood products tariffs in Japan—while preserving the ability of the United States to offset unfair trade that is not eliminated by the Uruguay Round—such as subsidized imports.

Our negotiators, led by Ambassador Kantor and supported by key Members of Congress, did an excellent job under trying circumstances of improving earlier drafts of a new GATT agreement. But we still do not know whether we have achieved acceptable market access to Japan. Furthermore, we know that some disciplines on subsidies to our foreign competitors have been relaxed.

It is essential, therefore, to the lumber industry and other industries plagued by foreign subsidies that the implementing legislation to the Uruguay Round be drafted to strengthen U.S. trade laws to the maximum extent permissible under the new Subsidies Code. On issues of great importance to the lumber industry, such as the definition of a subsidy, the new Code permits sufficient latitude for the United States to preserve its ability to offset unfair Canadian wood resource pricing practices. This should be codified.

To preserve the ability of the U.S. industry to offset injurious subsidies, the following six proposals should be adopted in legislation implementing the Uruguay Round of GATT negotiations:

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[1] In addition to Japan, Hungary and the Philippines, the U.S. industry requested action in Argentina, Korea, Switzerland, Brazil, Indonesia, Malaysia, Thailand, European Community, and Turkey.

FINANCIAL CONTRIBUTION

The new Subsidies Code defines subsidies broadly to include subsidies granted directly by the government to industries and subsidies indirectly given through private parties at the direction of a government. For example, governments can use log export' restrictions to reduce artificially the demand for logs so that, in conjunction with timber pricing subsidies, lumber mills obtain their logs from the "private market" at below-market prices. This is precisely the sort of indirect government action that subparagraph (iv) of Article I of the Subsidies Code is intended to capture. The law should define countervailable subsidies to include government actions that effectively direct private parties to provide subsidies which, if given by the government, would be countervailable.

ECONOMIC EFFECTS

In light of the recent misinterpretation of U.S. law by a U.S.-Canada Free Trade Agreement binational panel, U.S. law should be clarified to ensure that if a subsidy is provided, the U.S. industry need not prove the effects of that subsidy on the price or output of the products under investigation. Requiring such a showing is not only unnecessary, but would undermine the lawn efficacy by imposing insurmountable burdens of proof.

Legislative history, U.S. court decisions and Department of Commerce practice all make clear that the Department need not consider the use to which subsidies are put or their effect on the recipient's subsequent performance. The new Subsidies Code is completely consistent with this framework and interpretation of U.S. law. Uruguay Round implementing legislation must therefore clarify that if a subsidy is provided within the meaning of the statute, the Department should be precluded from assessing whether or how the subsidy has a price or output effect on the subject merchandise. In fact, NAFTA legislative history explicitly indicated that if this problem continued to arise—and it has—that legislation should correct the error.

SPECIFICITY

As in the case of economic effects, past binational panels have misinterpreted U.S. law to require the Department to make findings about the sector specificity of subsidies that are not required by the law, court interpretations or consistent Department practice.

To countervail goods, the Department must first find that a subsidy is provided to a limited, or "specific," group of industries. The issue is whether the subsidy is capable of potentially distorting the economy—as opposed to roadbuilding or schools which, while subsidies in one sense, spread their benefits throughout the economy. Implementing legislation must clarify what was intended by the 1988 amendments to the law—when analyzing whether a subsidy is provided to a specific industry group, the subsidy beneficiaries must be compared to the economy as a whole. If a limited group benefits, it is irrelevant that the subsidy had a limited "universe of users." Implementing legislation must also unambiguously state that the Department need not analyze whether the "inherent characteristics" of a subsidy limit the universe of its potential users. Thus, for example, an iron ore subsidy used almost exclusively by steel mills is specific, and it is irrelevant that only steel mills desire the ore. Again, while the NAFTA legislative history made this clear, panels have continued to misinterpret the issue.

INDIRECT/DIRECT EVIDENCE

The binational panel in *Softwood Lumber from Canada*—a case of central importance to the U.S. lumber industry—misconstrued U.S. law to require the International Trade commission ("ITC") to ignore indirect or circumstantial evidence in analyzing causes of injury. This is a ridiculous holding since evidence of causation is often, if not usually, indirect. Uruguay Round implementing legislation must make clear that an injury finding by the ITC may be supported by any relevant direct, indirect, or circumstantial evidence indicating whether or not subject imports are a cause of material injury. Such legislation should also clarify that there is no "default mode" of a negative determination which obtains unless some requisite type or quantity of evidence is in the record.

CROSS-SECTORAL COMPARISON

The ITC has broad latitude to determine the appropriate methodology it will apply in each case. Implementing legislation to the Uruguay Round agreements should specify that where appropriate, the ITC has authority to compare the performance of the industry under investigation to the performance of a closely related

industry if (i) the related industry is insulated from import competition and if (ii) the ITC finds that adequate data for such an analysis exists. Of course, a general comparison of the condition of the industry under investigation to the economy as a whole or unrelated industry would generally be fruitless, but in these unique circumstances, certainly such a comparison can be probative.

GREENLIGHTED SUBSIDIES

U.S. industries, including the lumber industry, are concerned about the potential for foreign governments to abuse Article 8 of the Agreement on Subsidies and countervailing Measures. This article provisionally makes non-actionable several forms of subsidies, including subsidies for certain types of research and development1 regional subsidies, and subsidies to pay for environmental equipment. It is critical that these exempted, or "greenlighted," subsidies be narrowly defined and closely monitored to ensure they are not improperly used to justify injurious subsidies and circumvent international disciplines and U.S. countervailing duty law.

CONCLUSION

The proposals set out above will faithfully implement the GATT Subsidies Code while ensuring that Canadian lumber subsidies—and many other forms of unfair trade faced by other industries—will be effectively offset. We look forward to working closely with the Members of this Committee as well as others on Capitol Hill and in the Administration to insure an Uruguay Round implementation bill which will expand world trade and preserve our ability to address unfair trade where it continues to exist. Only through the fullest possible implementation of the U.S. right to respond to unfair trade can it truly be said that the Uruguay Round will serve U.S. interests.

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 January 26, 1994, announcement of hearings on the trade agreements resulting from 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). The Floral Trade Council respectfully requests that Congress adopt implementing legislation that (1) strengthens the antidumping law, (2) protects U.S. breeders' rights under plant variety patents, (3) ensures country of origin marking for fresh cut flowers, and (4) directs that pesticide residues on imported fresh cut flowers be studied. The Floral Trade Council urges Congress to consider the following comments in finalizing implementing legislation for the Final Act text.

II. ANTIDUMPING DUTY PROVISIONS

The United States is a net importer of fresh cut flowers. Over the past twenty years, the U.S. fresh cut flower industry has competed with surging, low-priced imports of fresh cut flowers. Because flowers compete in the U.S. market primarily on the basis of price, the result has been the loss of over 5,000 U.S. cut flower growers with a resulting loss of over 30,000 jobs. For these reasons, it has been necessary for the fresh cut flower industry to resort to various trade remedies, including the antidumping and countervailing duty laws.

As early as 1979, Roses Incorporated filed a petition which established that rose imports from Israel benefitted from countervailable subsidies. In 1982, Roses Incorporated filed a petition alleging that roses and other fresh cut flowers from Colombia were unfairly subsidized. The Floral Trade Council also filed petitions in 1986, which established that imports from various countries were being dumped in the U.S. market or unfairly subsidized. After proving material injury by reasons of those imports, the International Trade Administration ("ITA") issued a series of antidumping and countervailing duty orders and suspension agreements in 1987. The following list reflects those countries with flowers subject to orders or suspension agreements in 1994:

LIST OF OUTSTANDING ANTIDUMPING/COUNTERVAILING DUTY ORDERS/SUSPENSION AGREEMENTS

YEAR	ORDER/AGREEMENT	COUNTRY
1981	countervailing duty order	Israel
1983	countervailing duty suspension agreement	Colombia
1987	countervailing duty suspension agreement	Colombia
1987	antidumping duty order	Colombia
1987	antidumping duty order	Chile
1987	countervailing duty order	Chile
1987	countervailing duty suspension agreement	Costa Rica
1987	antidumping duty order	Ecuador
1987	countervailing duty order	Ecuador
1987	antidumping duty order	Kenya
1987	antidumping duty order	Mexico

1987	countervailing duty order	Netherlands
1987	countervailing duty order	Peru

On February 14, 1994, the Floral Trade Council filed a petition with the International Trade Administration and International Trade Commission alleging that rose imports from Colombia and Ecuador were being dumped in the U.S. market. As an import sensitive industry, the U.S. fresh cut flower industry needs strong trade remedies. Given the number of antidumping duty orders outstanding on imported flowers, the U.S. fresh cut flower industry has a particular interest in Uruguay Round implementing legislation that reflects its concerns regarding the final agreement's provisions on antidumping.

Standing: Implementation of Article 5 of the final GATT text regarding the initiation of antidumping proceedings could significantly affect the ability fresh cut flowers growers to obtain the relief envisioned by Congress. Upon receipt of a petition, Article 5 will require the International Trade Administration to conduct a pre-initiation investigation which examines the degree of "support for, or opposition to, the application expressed by domestic producers of the like product." Final Text at Art. 5.4. The agency must determine that the application has been made "by or on behalf of the domestic industry." The relevant test is whether the petition is supported by those domestic producers whose collective output is more than 50 percent of total production of the like product produced by that portion of the domestic industry expressing their support. If the domestic producers in support of the petition constitute less than 25 percent of total production of the like product produced by the domestic industry, no investigation will be initiated.

The negotiators, however, recognized that the pre-initiation standing investigation must be modified when the petition is brought on behalf of a fragmented industry. Footnote 13 to Article 5.4 explicitly permits the use of statistically valid sampling techniques to determine support for the petition filed on behalf of fragmented industries with an exceptionally large number of producers. Implementing legislation for Article 5.4 should account for the difficulty of domestic producers in a fragmented industry, such as the flower industry, to establish the support of producers responsible for over 25 percent of total production.

The U.S. fresh cut flower industry is comprised of hundreds of growers, many of which are small, family-owned and operated businesses. As explained above, the U.S. fresh cut flower industry continues to experience the loss of growers. To date, there is no known comprehensive list of U.S. fresh cut flower growers. Hence, without the ability to sample, flower growers might not be able to satisfy the requirement of Article 5 on an absolute basis.

In the legislative history to the implementing legislation, Congress should make it clear that footnote 13 should apply, at minimum, to fragmented industries such as the fresh cut flower industry. ITA should be authorized to sample in order to determine the support for a petition. As the Court of International Trade has recognized:

> Unfair trade proceedings are very expensive, thus, they are often brought by trade associations as opposed to individuals. Individuals may file petitions. The filing of a petition by a trade association, however, is normally some indication, in itself, of industry support. Certainly it is unlikely that FTC would file a petition if the majority of its members opposed it.

Florex v. United States, 705 F. Supp. 582, 587-88 (CIT 1989).

Further, a certain number of fresh cut flower growers are either related to foreign exporters/U.S. importers or are themselves importers of fresh cut flowers. For this reason, it is important that these growers are excluded from any poll taken to determine support for a petition. Article 4.1 of the final GATT text specifically directs the agency to exclude from the definition of "domestic industry" producers that are related to foreign exporters or importers or are themselves importers of the allegedly dumped product. Congress should ensure that implementing legislation specifically excludes those producers from a pre-initiation standing investigation. Finally, in order to relieve the burden on the agency and expedite the proceedings, ITA should be able to rely upon an affirmative

allegation of standing by a petitioner (accompanied by evidence that the petitioner has obtained the minimum support). ITA should thereafter conduct a pre-initiation standing investigation only after receiving a challenge to petitioner's standing.

Sunset: Article 11 of the final GATT text limits the duration and, necessarily, the utility of antidumping duty orders. Under Article 11, all antidumping duty orders will have a lifespan of only five years. After that time, the agency may conduct a review upon its own initiative or upon a "duly substantiated request" by the domestic industry. The order will be terminated unless the agency determines that the expiration of the order "would be likely to lead to continuation or recurrence of dumping and injury."

As recognized by Congress and the courts, antidumping duty proceedings are extremely costly and burdensome. While Article 11 may balance the interests of domestic and foreign producers of manufactured goods, implementing legislation should account for the needs of all domestic industries, including agricultural industries. The U.S. fresh cut flower industry cannot financially support a campaign every four years to protect crucial orders. Flowers are grown year round, and flower production is labor intensive. Flower growers do not have in-house counsel or trade divisions to collect market research data regarding dumping and injury. Many growers jeopardize the productivity of family-operated greenhouses when they devote their time and energy to the collection of financial data for submissions to the International Trade Commission. The Administration and Congress should make certain that sunset reviews are not unnecessarily complicated, do not require unnecessary information or involve unnecessary expense for domestic producers. For these reasons, adoption of implementing legislation for the sunset provision in Article 11 should reflect the limitations of U.S. industries in need of a strong antidumping duty law.

First, implementing legislation should provide that all existing orders, findings and suspension agreements are to be viewed as effective for "sunset" reviews from the effective date of the World Trade Organization. Likewise, implementing legislation should specifically provide for the full five year period permitted under Article 11 before sunset reviews are required. Second, a "duly substantiated request" by the domestic industry for a sunset review should not require petitioner to file the equivalent of a new petition. Rather, ITA should accept, inter alia, evidence of dumping margins in any previous review as sufficient evidence of the likelihood of the continuation or recurrence of dumping. It can be expected that foreign producers have an incentive to curtail dumping during the fourth year of the order prior to a sunset review. Thus, ITA should not revoke an order solely on the basis of lack of dumping during the fourth year. Likewise, with sufficient evidence of dumping, it should be presumed that dumping causes injury to the domestic industry for purposes of initiating a sunset review. The International Trade Commission should also presume that imports will increase where there is underutilized capacity in the exporting countries or plans to increase capacity. Such presumptions could be rebutted by evidence submitted by parties seeking revocation of the order, but otherwise would require the agencies to continue orders in force.

Finally, foreign producers should have the burden to establish affirmatively that continued or recurring dumping is not likely. Current U.S. law provides for the revocation of antidumping duty orders or findings under certain circumstances: (a) cessation of dumping and (b) changed circumstances. Foreign producers have the burden of persuasion under existing law where changed circumstances are claimed (unless the issue is lack of ongoing interest by the domestic industry). Since much of the information relevant to the dumping inquiry is in the possession of the foreign producers and since dumping has not ceased, current U.S. law reasonably allocates burden. The implementing legislation should, therefore, require foreign producers to establish entitlement to revocation.

Compensation: As both the standing and sunset provisions of the final text substantially limit the relief available from injurious dumping, Congress should consider whether the antidumping duty law can continue to be useful tool as it is currently administered. Relief is generally made available only after imports have caused a devastating amount of damage, evidenced by yearly losses, bankruptcies, closed factories, forced layoffs of significant numbers of employees, reduced investments in research and development, and capital expenditures. Yet, neither the GATT nor U.S. law requires industries to exhibit such an extreme level of injury before relief is available. The International Trade Commission should be encouraged to reconsider its current interpretations of the antidumping statute so that relief is, in fact, made available early enough to be useful.

More importantly, petitioners and those in support of the petition should receive all duties finally collected by Customs under the orders. Such funds would (a) provide a powerful disincentive to foreign producers to continue dumping (as all such dumping duties would flow to the domestic producers), (b) offset the ability of related party importers to pay antidumping duties without passing them on to an unrelated purchaser, and (c) allow the injured industry to regain its position in the U.S. market or channel the funds to develop alternative products.

In this regard, Congress should note that GATT Article VI does not prohibit the payment of dumping duties collected to the petitioner and those in support of the petition. While some may argue that such funds are a form of subsidy, even assuming arguendo potential actionability (not clear under Article 2 of the Uruguay Round Final Act Subsidy Agreement), such payments would not be prohibited. Based on the first annual report from the Customs Service and the Department of Commerce (covering fiscal year 1992), potential duties paid to domestic industries would be about $351 million/year (using fiscal year 1992 as typical). While not a significant amount of money to the Federal Government, such amounts would be important to the domestic producers facing continued dumping.

Constructed value: In order to calculate a margin of dumping, Congress has directed ITA to compare the U.S. price of the imported goods to the "foreign market value" of the merchandise. The statute provides three possible bases for foreign market value: (1) the price paid in the home market, (2) the price paid in a third country market, or (3) the constructed value of the merchandise. 19 U.S.C. § 1677b. The statute defines "constructed value" as the cost of manufacturing/cultivation plus general, selling, and administrative costs, plus profit. 19 U.S.C. § 1677b(e)(1). The statute also specifies that general expenses are not to be less than 10 percent of the cost of manufacturing/cultivation and that profit be not less than 8 percent of the cost of manufacturing/cultivation plus general expenses.

The final GATT text eliminates the statutory minimum general expenses and profit amounts in Article 2.2.2. Article 2.2.2 requires that "amounts for administrative selling and any other costs and for profits" be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer. These changes are troublesome given that, unlike sales prices, constructed value has been viewed as being particularly susceptible to manipulation. The elimination of a statutory minimum amount of general expenses and profit heightens these concerns.

Implementing legislation should address two issues. First, by definition, profit cannot be earned on below cost sales. Yet, under ITA's current practice, ITA will use all sales, whether or not below cost, to determine if the profit amount is above the 8 percent statutory minimum. See Antifriction Bearings from Various Countries, 58 Fed. Reg. 39,729, 39,751 (Dep't Comm. 1993) (Final Results Admin. Rev.). The result is to dilute the amount of profit earned on sales made in the ordinary course of trade, thereby reducing constructed value and the dumping margin. In implementing legislation, Congress should specifically prohibit ITA from using profit amounts that were based on both above cost and below cost-sales. According to Article 2.2.2., the profit figure is to be based on actual data pertaining to production and sales in the ordinary course of trade.

For example, in the case of perishable products such as flowers, ITA currently applies a modified cost test to determine if flowers are being sold in the home or third country markets at prices below the cost of production. See 19 U.S.C. § 1677b(b). ITA will use all sales sold if less than 50 percent of respondent's sales were below cost of production. If between 50 to 90 percent of respondent's sales were below cost of production, ITA would disregard only the below cost sales. If over 90 percent of respondent's sales were below cost of production, ITA will not use any of those sales as a basis for foreign market value and would use, instead, constructed value. See Certain Fresh Cut Flowers from Mexico, 57 Fed. Reg. 7732, 7733 (Dep't Comm. 1992) (Prelim. Results Admin. Rev.). Implementing legislation should require respondents to report actual profits on production and sales in the "ordinary course of trade" which excludes those sales excluded under the cost test. Further, Section 1677(15) defining "ordinary course of trade" should specifically exclude sales below cost. 19 U.S.C. § 1677(15).

Second, the profit earned by a related importer should be recognized in the dumping margin calculation. In reporting U.S. sales, exporters with related importers must report the sales price paid by the first unrelated purchaser (or the importer's resale price). This resale price is a proxy for the f.o.b. foreign port price that would have been paid by an unrelated importer. On a sale from an exporter to a related importer, the reported U.S. price

will reflect both the exporter and the importer's profit on that sale. On a sale from an exporter to an unrelated importer, the reported U.S. price will reflect only the exporter's profit. Thus, it is necessary to deduct the related importer's (or reseller's) profit from the U.S. sales price for a fair comparison.

Despite the fact that many other countries deduct reseller profit, ITA has refrained from making the deduction because it is not specifically provided for under U.S. law. See Antifriction Bearings from Various Countries, 58 Fed. Reg. at 39,778. In implementing legislation, Congress should amend 19 U.S.C. § 1677a(d) & (e) to direct ITA to deduct the reseller's profit from U.S. sale price.

III. INTELLECTUAL PROPERTY RIGHTS

Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights requires Members to provide for the protection of plant varieties "either by patents or by an effective sui generis system or by any combination thereof." U.S. growers do not generally "own" their flowering plants. For example, rose plants are leased or rented from companies that hold patents. Patents are enforced in the United States by frequent on-site inspections to determine whether new plants are being propagated from the leased plants without payment of royalties.

U.S. breeders have limited ability to enforce their patents on plants in foreign countries. By monitoring the volume of flowers imported from a given country versus the royalty payments, patent holders could detect cheating. But, flowers are not even marked with country of origin information. As a result, U.S. patentholders cannot determine whether imported merchandise is being propagated and sold without payment of royalties. Thus, breeders have an incentive to collect much lower royalties from foreign growers in order to obtain any payments at all. In contrast, U.S. flower growers face high royalties for patented flowers. U.S. growers' royalty payments can be as high as $10 of a $10.50 plant, depending on the type of plant. More typically, the royalty on a rose plant is likely to be $.65 of a $3.00 plant (including royalty). This situation also translates into a competitive disadvantage for U.S. growers that do pay substantial royalties.

An important objective of the TRIPS agreement is to "promote effective and adequate protection of intellectual property rights." Part I. Toward this end, Congress should direct the Administration to investigate and report on the enforcement of patent rights on plant varieties. The following language is suggested:

> In order to obtain complete information on whether foreign flower growers ignore U.S. patents or pay lower royalty payments, it is envisioned that an agency, such as the U.S. International Trade Commission or U.S Department of Agriculture, will issue an annual report for five years which reviews, inter alia, (1) fresh cut flower exporting countries that recognize U.S. breeder's rights to patented plant varieties under domestic law, (2) fresh cut flower exporting countries that adhere to bilateral or multilateral treaties recognizing patent protection of plant varieties, (3) royalty payments made by U.S. growers as compared to foreign fresh cut flower growers/exporters.

IV. COUNTRY OF ORIGIN MARKING

U.S. law requires that merchandise imported into the United States be marked with country of origin information. 19 U.S.C. § 1304. Under § 1304(a)(3)(J), fresh cut flowers, however, have been excepted from this requirement under Customs' "J-List" of articles since 1939. 19 C.R.F. § 134.33. Only the immediate container in which the imported flower ordinarily reaches the ultimate purchaser must be marked with country of origin information. 19 U.S.C. § 1304(b). In practice, only the box or other container of imported flowers will be marked, if at all. Imported flowers are taken out of these containers either by wholesalers or retailers (including grocery stores) before resale to consumers. Hence, the ultimate purchaser rarely sees the country of origin designation on imported flowers.

If the box or other container of imported flowers is marked, the information is often incorrect or misleading. For example, some containers have been marked with the location of corporate headquarters or location of the importer as the "country of origin." Some flowers are even bei repackaged in the United States and labeled "made in California." Indeed, Custom as noted in Information Bulletin No. 90-91 (11/28/90) that, through examination of fresh f ower imports, "some containers show a U.S. address and bear no country of origin marking." Under these circumstances, Customs, the patent holder, and the ultimate purchaser may not know the actual country of origin of imported fresh cut flowers. Of those sleeves with country of origin marking, the ultimate consumer's ability to determine country of origin is frustrated. When flowers are placed in a refrigerated room in buckets, country of origin marking on the bottom of the sleeve in dark printing is not conspicuous to ultimate purchasers.

Congress removed three types of merchandise from the J-List in the Trade and Tariff Act of 1984 to address a similar problem: (1) certain pipe and fittings, (2) compressed gas cylinders, and (3) certain manhole rings or frames, covers, and assemblies thereof. 19 U.S.C. §§ 1304(c), (d), & (e). The legislative history of that amendment indicates that significant evasion of the law prompted Congress to amend the scope of the J-List because conspicuous marking included marking the underside of a manhole cover. 1984 U.S. Code Cong. & Admin. News 4941-42. For these reasons, Congress should specifically remove flowers from the J-List and impose more specific marking requirements, such as tagging every sixth stem. The following language is suggested:

> (f) MARKING OF FRESH CUT FLOWERS. -- No exception may be made under subsection (a)(3) of this title with respect to fresh cut flowers which shall be marked with the English name of the country of origin by means of tagging the stems if imported without sleeving or packaging, or by means of printed sleeving or other packaging if imported with sleeving or packaging.

In sum, there appears to have been significant evasion of the law with regard to the marking of fresh cut flowers. Because current law requires that only the outermost container in which the imported flower ordinarily reaches the ultimate purchaser must be marked with country of origin, only the box is so marked. This requirement has been interpreted by exporters to require country of origin marking of the box containing flowers. If the box or other container of imported flowers is marked, the information is often incorrect or misleading. Hence, the law should provide for correct marking in order to safeguard U.S. producers and breeders' interests.

V. PESTICIDE RESIDUES

U.S. pesticide registration requirements discourage the marketing of safer, more effective pesticides which are available to foreign growers, but not U.S. growers. Foreign flower growers, however, are permitted to use more effective, yet extremely toxic, pesticides than U.S. flower growers. As a result, misuse of pesticides has been associated with flower production in Colombia, a chief competitor in the U.S. market. For example, a National Public Radio report has suggested that not only does the use of pesticides in Colombia endanger workers, but they may be contaminating the water table. See Morning Edition, National Public Radio (Oct. 12, 1992); Kendall, Financial Problems Take The Bloom Off A Colombian Success Story, Fin. Times 28 (9/14/93) ("The heavy use of pesticides -- required if flowers are to meet most import standards -- has caused health and environmental problems."). Although pesticide misuse in foreign cut flower production has been reported to cause harm to workers and the environment, the U.S. Department of Agriculture has not recently reviewed the consumer safety issue of pesticide residues on imported fresh cut flowers.

In the late 1970's, the U.S. government reported on the potential harm to U.S. florists and consumers of pesticide residues left on imported flowers. In February 1993, the Floral Trade Council requested information updating the U.S. Department of Agriculture's finding of potentially dangerous pesticide residues on imported fresh cut flowers in the late 1970's. According to information released pursuant to a Freedom of Information Act request, a comprehensive residue analysis of imported flowers has not been conducted since 1983. The 1983 study found that, although Plant Protection and Quarantine ("PPQ") officers were not in danger of "high exposure pesticide risk," PPQ officers were to use "Organic Vapor Monitoring Badges" to monitor exposure levels.

In establishing the Multilateral Trade Organization, Members sought to raise standards of living and to "protect and preserve the environment and enhance the means for doing so in manner consistent with their respective needs and concerns at different levels of economic development." Agreement Establishing The MTO, at Introduction. Congress can see to this important objective by requiring the U.S. Department of Agriculture to update its study of pesticide residues on imported fresh cut flowers.

Respectfully submitted,

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STATEMENT OF DYD CO.

On behalf of DYD Co. (formerly Lloyds Electronics, Inc.), a wholly owned subsidiary of Bacardi Corporation, I am submitting the following comments recommending that S.461, "Customs Technical Tariff Corrections Bill" be enacted as part of the Uruguay Round implementing bill. This is a technical correction of the kind usually included in an omnibus trade bill. However, since the Uruguay Round bill is the only trade bill expected to be enacted in this session, we suggest that S.461 be included in that bill.

TECHNICAL TARIFF CORRECTION

S.461 remedies a Customs Service computer error that resulted in the mistaken printing of liquidation notices covering entries for which final duties had not yet been determined. Customs admits the error and has recommended passage of the legislation. The legislation is revenue neutral and probably represents a unique situation since the Customs Modernization Act has since remedied practices that led to this occurrence in the first place.

DYD Co. (formerly Lloyds Electronics Inc.) imported merchandise into the United States in 1984. Liquidation of the Customs entries covering nine shipments was suspended by the involved import specialist. Unbeknownst to the import specialist as well as to the importer, Customs' computer printed liquidation notices for these entries in 1985. In 1990, the import specialist discovered that the liquidation notices were printed, and related this fact to DYD Co. Shortly thereafter, a petition was filed with United States Customs requesting that the notices be deleted so that liquidation could ultimately proceed at a correct rate of duty. It was respectfully submitted that since no liquidations ever took place, the liquidation notices should rightfully be withdrawn.

S.461 will achieve relief for DYD by resolving a technical legal issue regarding timeliness of the petition. The need for technical corrections legislation will likely be unique to this case since the recently enacted Customs Modernization Act regarding notification should prevent any recurrence.

Upon investigation it was found that there is no known record, with Customs or any other entity, that this matter was brought to DYD's attention before expiration of the period in which Customs, as a matter of policy, extends administrative redress. Years later, when this was discovered by the company as well as by the Customs Service, the agency took the position that it was then too late to consider a petition to correct this error. However, they suggested that the appropriate vehicle for redress would be legislation. S.461 was introduced in response to this advice.

LEGISLATIVE SUPPORT BASED ON EQUITY

Attaching S.461 to the Uruguay Round implementing legislation appears to be the best way to remedy this injustice once and for all. Where there is an admitted error, corrective legislation is particularly deserving of prompt consideration. Since the implementing bill for the Round may be the only vehicle for passage in 1994, the opportunity should not be missed to address this deficiency by including S.461.

LEGISLATIVE SUPPORT BASED ON REVENUE NEUTRALITY

We have been told that passage of this bill would be considered revenue neutral and thus does not require offsetting revenue. It is unclear at this time whether the final duty assessed on the import would be more or less than the rate included in the incorrectly printed liquidation notices. This legislation does nothing more than maintain the status quo regarding liquidation of the nine entries in question. The amount of duties owed the government upon liquidation has yet to be determined. Neither the legislation nor our client's petition in any way affects what this amount will ultimately be.

Further, Customs recognizes that monies which were deposited at the time of entry likely differ from that which will be assessed. The government does not anticipate keeping anything in excess of what is due.

This legislation will enable Customs to remedy an admitted error by removing a legal impediment to doing justice, to the detriment of neither the government nor the public.

STATEMENT OF THE FLORSHEIM SHOE CO.

I. INTRODUCTION

This brief is submitted on behalf of The Florsheim Shoe Co., a Division of Interco, Inc. ("Florsheim"), in support of its request that the United States government seek to eliminate the duties on imported calfskin, kidskin, and sheepskin leather, through the implementation of the agreements negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade ("GATT").

Florsheim, headquartered in Chicago, Illinois, is the largest domestic manufacturer of quality men's dress shoes and has been a leader in the footwear industry for the past 100 years. Florsheim distributes domestic and imported nonrubber footwear through a network of dealers, specialty shops, and department stores throughout the United States, Australia, Canada, Mexico, the Orient, and Europe.

Florsheim urges the U.S. government to eliminate the duties imposed on imports of calfskin, kidskin, and sheepskin leather, through the prompt implementation of the GATT-negotiated agreements. Reducing the cost of these necessary raw materials will promote domestic production of fine leather footwear, as well as the domestic production of other fine leather articles. As there are no longer substantial calfskin, kidskin, or sheepskin tanning industries in the United States, these duties simply penalize U.S. shoe manufacturers and other importers of fine leathers with no benefit accruing to any perceivable constituent. Inevitably these duties may lead to future shoe manufacturing plant closings and greater reliance on foreign factories to produce fine leather goods.

II. LEATHER

Leather is animal skin or hide that has undergone a tanning process. In the leather industry, the term "skin" is used to refer to the skin of smaller or immature animals, such as calves, pigs, sheep and young goats. The term "hide" is used to refer to the skin of large full-grown animals, such as cows or horses. The leathers of different animals have different textures and are suitable for different uses.

Animal skin or hide used to make leather consists of three main layers: (a) the epidermis, a thin outer layer which contains hair, hair follicles, as well as oil and sweat glands; (b) the dermis or corium, a thick middle layer which constitutes the main substance of the skin; and (c) the adipose, a thin inner layer of fatty tissue. In the processing of animal skins into leather, the epidermis and adipose layers are removed leaving the middle layer which is converted to the leather used to make shoes, handbags, upholstery, and other leather goods.

The skins and hides used to produce leather are by-products of the slaughter of animals for the meat-packing industry. Producing leather from animal skins and hides consists of four basic steps. First the skin is cured with a salting or drying procedure in order to preserve the skin during transportation from the slaughterhouse to the tanning facilities. This curing is necessary since animal skins and hides are highly susceptible to decay. After curing, the animal skins are tanned.

Tanning is a chemical treatment which converts the perishable skin into a stable, non-decaying material. There are various methods used to tan skins, including tanning through the use of vegetable tannins and tanning through the use of chromium salts. Chrome tanning, using chromium salts, is the major tanning process used today. Unless the tannery effluents are properly treated, chromium salts can be a major source of water pollution. After the skin is tanned, the leather is dried and softened. Lubricants, dyes, and other finishing materials are then applied to the leather.

III. CALFSKIN, KIDSKIN, AND SHEEPSKIN LEATHERS

All leathers are not alike. The look, feel, texture, and use of leather depends upon the type of animal skin or hide and the tanning and finishing processes utilized. Different kinds of leather are not fungible. The leather used to make the sole of an expensive, high-quality men's dress shoe differs drastically from the shiny, supple calfskin leather used to make the upper of the same shoe.

Leather made from the hide of a full-grown cow is thick and durable, but not very pliable. The animal's pores and hair follicles, as well as scars and other defects are often visible in cow-hide leather. In contrast, calfskin leather tends be a lightweight, extremely supple material without visible pores, scars, or other defects.

Calfskin leather is leather made from the skins of young cattle. Calfskin leather is renowned for its high quality and beautiful appearance. Invariably a product made with calfskin leather will be identified as such due to calfskin leather's reputation for quality. The identification of leather goods as being of calfskin leather is used as a marketing tool in the leather goods industry.

Calfskin leather is lighter in weight than cowhide leather and is extremely supple. It has tight pores and a fine grain which give calfskin its slick high-polished look. Because of the high quality of calfskin leather, fine leather footwear is almost exclusively made of calfskin uppers. Calfskin leather is also used in the production of fine handbags and small leather goods. Sheepskin leather is leather made from the skin of sheep. It is an extremely supple material which is easily manipulated in the production of fine leather shoes. Kidskin leather is leather made from the skin of young goat. It is not as supple as calfskin or sheepskin leather, nor is it as rigid and tough as cowhide leather.

Imports of calfskin leather in 1993 totaled $13,335,724. Imports of sheepskin leather in 1993 totaled $33,959,221. The dutiable imports of kidskin leather in 1993 totaled $12,495,161. Please see Appendix A for a complete breakdown of calfskin, sheepskin, and kidskin leather import statistics for 1990 through 1993.

Leather is also distinguishable by the purpose for which it was tanned. Calfskin leather used to make fine leather shoes would be unsuitable for use in the manufacture of handbags and vice versa. Likewise, calfskin leather used for the production of leather garments is unsuitable for use in the manufacture of fine leather shoes, and vice versa.

IV. THE PRESENT STATE OF THE LEATHER TANNING INDUSTRY

The leather tanning and finishing industry, as defined by the Department of Commerce, consists of (1) establishments engaged in tanning, currying, and finishing raw or cured animal hides and skins into leather, as well as (2) dealers who buy hides, skins or leathers for processing under contract with tanners or finishers.[1] The leather tanning and finishing industry is a capital intensive industry, not a labor-intensive industry. The skins and hides used to produce leather are by-products of the meat-packing and dairy industries.

The tanning industry suffered a decline between 1982 and 1987. This decline may be attributed to the decline in the availability of skins and hides for tanning, increased global competition for untanned U.S. skins and hides, as well as increasing environmental regulation of the leather industry. The number of plants tanning leather during that period dropped from 342 to 308. In 1992, 110 tanning facilities remained in the United States.

The U.S. Department of Commerce statistics forecasted an increase in leather production in 1992. The Department of Commerce also forecasts additional increases in domestic leather production in 1993.[2] The *U.S. Industrial Outlook 1993* characterizes the long-term outlook for the tanning and finishing industry to be good[3], after approximately ten years of consolidation. Industry employment was estimated at 12,700 in 1992. This figure represents a six percent increase from 1991. Production employment was estimated at 10,800 in 1992. This figure also represents a 6 percent increase from 1991.[4] It appears that the U.S. leather tanning industry will concentrate on producing leathers for use in the automotive and furniture markets.

V. U.S. PRODUCTION OF CALFSKIN, KIDSKIN, AND SHEEPSKIN LEATHERS

According to the Department of Commerce, the United States produces only a small amount of calfskins for tanning, most of which are exported for sale.[5] In 1992, the number of sheepskins produced domestically totaled approximately 5.8 million skins for tanning.[6] Kidskin is no longer tanned in significant quantities in the United States due to the limited supplies of goat skins available for tanning.[7]

The last major calfskin tanner in the United States capable of supplying calfskin leather in commercial quantities to the domestic shoe manufacturers was A.F. Gallun & Sons of Milwaukee. Throughout the years, Florsheim was a loyal customer of A.F. Gallun & Sons. Although there may be other tanners in the United States capable of tanning calfskin, no other tanner offered calfskin leather suitable for use in the manufacture of fine leather footwear. Last spring, A.F. Gallun & Sons announced that it was closing its calfskin tanning operations. This closing left domestic shoe manufacturers and other users of calfskin leather completely reliant upon imports to supply their raw material requirements.

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[1] U.S. Department of Commerce, *U.S. Industrial Outlook 1993*, 33–2. *See* Appendix B for text.
[2] Id., 33–1–33–2.
[3] Id., 33–5.
[4] Id., 33–2.
[5] Id., 33–4.
[6] Id., 33–4.
[7] Id., 33–4.

VI. THE U.S. FOOTWEAR INDUSTRY

The U.S. footwear industry is struggling. The industry suffers from a general decline in sales, as well as a serious downward trend in production, profits, and employment opportunities. Over the past 24 years since 1968, the U.S. domestic shoe industry has been declining at a compound annual rate of 5.5 percent.[8] Since 1987, the domestic nonrubber shoe manufacturing industry has suffered a sharp decline.

Because many of the manufacturing steps in the production of fine leather shoes require direct human involvement, the shoe manufacturing industry is highly labor intensive. The decline in the industry has had a profound impact on American shoe workers. Shoe plant closings have continued since 1987. These closings have had a devastating affect on U.S. shoe workers and the communities in which these plants are located. See Appendix C.

Total employment in the nonrubber shoe industry has declined to approximately 54,900 workers, this represents a 3.5 percent decline. The number of production shoe workers in the nonrubber shoe industry have decreased about 4.3 percent to only 46,600 workers. Florsheim itself has been forced to close factories during the past few years.

According to the Department of Commerce, the long-term outlook for the nonrubber footwear manufacturing industry is bleak. It is predicted that the U.S. domestic production of shoes will continue to decrease and amount of shoes manufactured abroad and imported into the United States will increase.[9]

VII. DUTY ELIMINATION THROUGH THE GATT AGREEMENTS IS WARRANTED

The GATT market access agreements offer the elimination of duties on calfskin, sheepskin, and kidskin leather, among other merchandise, which will decrease the cost of manufacturing shoes and other fine leather goods in the United States. This decrease in cost will aid the struggling U.S. shoe manufacturing industry, as well as other U.S. manufacturers of fine leather goods.

No U.S. industry will be negatively impacted by the elimination of duties on these articles of commerce because there is no substantial U.S. industry producing such materials domestically. The present duties on these imports serve only to increase domestic production costs for shoe manufacturers and thereby diminish their global competitiveness without benefitting any distinguishable U.S. industry.

By lowering the cost of producing shoes domestically, the elimination of duties on calfskin, sheepskin, and kidskin leathers will increase the viability of domestic shoe plants. Such an elimination of duties will have a significant and positive financial impact on shoe manufacturers, shoe workers, and the communities in which shoe factories are located. Such a result will surely be greeted enthusiastically by shoe workers throughout the country, especially in flood-ravaged Missouri. See Appendix C.

Consumers will also benefit from the elimination of duties. Relieved of the burden of paying duties on basic raw materials that are unavailable domestically, U.S. footwear manufacturers will be able to produce more footwear at an affordable cost to consumers. This cost differential will give consumers greater access to high-quality fine leather shoes at reasonable prices. In January 1993, Florsheim reduced prices on several of its best selling fine dress shoes. See Appendix D. The elimination of duties on the leathers used to make these shoes will enable Florsheim to further hold the line on prices or to decrease the prices of its shoes in the future.

The import duties assessed on calfskin, kidskin, and sheepskin leather are effectively penalizing a struggling U.S. leather shoe industry. The elimination of these duties through the successful implementation of the GATT agreements will help limit the future loss of U.S. shoe manufacturing jobs to workers overseas. These duties are no longer needed to serve the purpose of protecting an American industry, since substantial production of these products no longer exists in the United States.

VIII. CONCLUSIONS

The elimination of duties on imports of calfskin, kidskin, and sheepskin leather will enable U.S. manufacturers to continue to produce fine leather goods in the United States. This duty elimination will be achieved by the implementation of the GATT agreements in general, and by the implementation of the GATT market access agreements in particular. In addition to the implementation of these agreements, we also strongly encourage the U.S. Congress to seek retroactivity for the duty eliminations embodied in the market access agreements. Such retroactivity

[8] Id., 33–6.
[9] Id., 33–10.

would affect imports of these products since January 1, 1993, the date on which all prior U.S. duty suspension bills expired. The retroactivity of duty elimination will simply serve to accrue the financial and cost of production benefits to U.S. manufacturers sooner than the 1995 implementation date of the GATT agreements.

Such an elimination of duties will protect U.S. jobs and strengthen the global competitiveness of U.S. shoe manufacturers. The elimination of these duties will not injure any existing U.S. industry as there are no U.S. tanners currently supplying these highly specialized goods in commercial quantities and users of these leathers are forced to import to fulfill their leather needs. Therefore, we strongly urge the United States government to take any and all appropriate steps necessary in the completion of the negotiations surrounding the General Agreement on Tariffs and Trade, in order to achieve an elimination of the duties assessed on calfskin, kidskin, and sheepskin leather.

STATEMENT OF FOOD FOR PEACE

"Because of world famine threat, and financial markets breakdown, U.S. should cancel GATT Uruguay Round signing, and initiate emergency national economic measures"

Whatever arguments, rationalizations and defenses may have been offered along the way since the Uruguay Round of the GATT was initiated in Punta del Este in 1986, the current circumstances of world economic crisis—eight years later, make it clear, as, unfortunately, nothing else did, that the so-called "free trade reforms" of this GATT Round should not only NOT be ratified this year, but, should be eschewed in all their regional and other forms as well. To ratify this treaty, and to continue to pursue these policies will guarantee world economic catastrophe.

Therefore, we urge the Administration and the Congress to cancel signing the draft treaty April 15 in Morocco, and call on the relevant U.S. leadership to initiate emergency measures to rebuild the national economy, and to collaborate with other nations to undertake the same.

Although the procedures of Congressional "advise and consent" have mandated the Administration to sign the GATT treaty, the emergency circumstances we now face make that mandate inapplicable. There are many areas of economic crisis that could be discussed here, but we draw to your attention just these two: the world food crisis, and the derivatives "meltdown" now causing the world financial system to disintegrate.

It is guaranteed that there will be floods again this crop year in the U.S. grain belt. The soils in most places are more saturated than at this time last year, and the run-off from the snow pack—even without record monthly precipitation, will guarantee flooding.

Western Europe. The leveling downward of productive potential is seen in the lowered food stocks and reserves. Food stocks in the European Community decreased last year to a historic low for most commodities. Stocks are so low compared to consumption, that the supply for the European population and consumer prices are becoming more and more vulnerable and influenced by the ups and downs of the world market.

Southern Africa. In South Africa—once a reliable exporter of corn and other commodities, now 10,000 out of the nation's 70,000 family farm operations face ruin. This is just the beginning, as civil war engulfs the region.

Former Soviet Union. Here food output has declined over just the last three years across the board in all staples, except for potatoes (grown in private arrangements on the model of the monoculture that gave rise to the Irish potato famine). Wheat output is down 9%, coarse grains down 11%, vegetables, down 20%, and livestock products down by even higher percentages.

Australia. Years of lack of infrastructure, recent drought, and the financial ruin of family farmers have knocked out the potential of this country for exportable surplus.

South America. The situation of farmers in Mexico—once a grain exporting region, examples the crisis throughout the continent. Under "free trade" excuses, farmers are being dispossessed, while the nation goes lacking in either imported or home-produced food, and malnutrition now affects over one-third of the total 63 million population.

DERIVATIVES MELTDOWN TAKES DOWN FINANCIAL SYSTEM

All the while the physical economy of whole nations is collapsing—as the metric of food supply shows, the cancerous financial activity of derivatives speculation has

grown at rates which no other swindle in history ever showed before. As was forewarned one year ago this month, by economist Lyndon LaRouche, if action was not taken against the derivatives speculation bubble, and for economic rebuilding measures, an economic blow-out was inevitable. We will be glad to supply you with LaRouche's proposal made at that time to impose a per transaction tax of one-tenth of one percent on derivatives trade, which would be a means of "drying out" the practice, while useful investment could be fostered. Despite one year of talk, no action was taken.

At the time of preparation of this testimony, the derivatives meltdown is underway at breathtaking speed. Eliminating national barriers to such "financial services" activities as trading in derivatives was all along a key part of the GATT Uruguay Round process. Now, the evidence of the folly and evil of this policy is evident in current events.

Everything the derivatives traders calculated upon to anticipate their profits was thrown out the window when Alan Greenspan changed the "trend" and lowered interest rates. This has not yet registered in the United States as it has in Europe. A massive sell off of bonds has been triggered in Europe, spilling over into the stock markets. Rumors abound that the U.S. banks which are heaviest into derivatives trading are bankrupt. It is time to shut these markets down, if it is not already too late to prevent a crash, and to redirect credit flows in the economy into wealth production.

END THE GATT "FREE TRADE" POLICY

What the above brief summary of the world agriculture and derivatives/financial blow-out picture shows is that the grounds exist for staying any commitment of the United States to the GATT Uruguay Round treaty. And it is time to abandon any and all forms of the destructive "free trade" practices.

STATEMENT OF FRIENDS OF THE EARTH, USA

Mr. Chairman, Members of the Subcommittee: I am Andrea Durbin, Trade Policy Analyst for Friends of the Earth, USA. Founded in 1969, Friends of the Earth is an international environmental organization, with affiliated groups in 52 countries around the world.

We appreciate the opportunity to appear before the committee today to provide an environmental analysis of the Final Agreement of the Uruguay Round of GATT.

The environmental community is unanimous in its criticism of the environmental problems in the GATT agreement, and the failure of the negotiators to even meet the standard of what was achieved in the NAFTA for the environment. If adopted as presently negotiated, this GATT would be a step back from the progress made in NAFTA, as well as pose serious risks to global environmental protection and decision-making.

Based on our commitment to environmental protection, Friends of the Earth-US is opposing the Final Agreement of GATT and we urge Congress to fully consider its environmental ramifications. Furthermore, we urge Congress to insist on environmental provisions and a comprehensive work program for the newly created World Trade Organizations before voting on the Agreement.

Friends of the Earth's decision to oppose the GATT should not be seen as being against trade. We are however making a judgment about how the Final Agreement will impact the environment and what needs to he done in order to make liberalized trade protect the global environment and become environmentally sustainable. The assumption that more trade will lead to wealth, and therefore an improved well-being for all, must no longer go unchallenged. Perhaps it is time to recognize that free trade, in its purest form, may not serve our goals of improving the quality of life for present and future generations to come. In fact, these principles may be harming our progress toward that goal.

In evaluating the effects of the Final Agreement on the environment, we have looked at four areas:

1. Whether or not the GATT rules protect a country's right to set environmental standards higher than international standards, so long as they are applied equally and not with the intention of impeding trade;
2. Whether or not the GATT will promote trade that protects the environment, conserves natural resources and leads to environmentally sustainable development;
3. Whether or not the GATT rules will allow for openness, transparency and environmental representation in its decision making processes;

4. Whether or not the World Trade Organization (WTO) will have a strong environmental mandate, environmental directives and a plan of operation focused on resolving broader trade and environmental issues.

As of today, the Final Agreement of GATT fails to provide adequate environmental safeguards in each of these areas.

1. RISKS TO U.S. ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS

The Final Agreement of GATT sets forth language and criteria that will allow our trading partners to file a complaint against a U.S. environmental law, forcing a judgment of whether or not that law meets the requirements of the GATT or if it is a "non-tariff trade barrier."

Regrettably, the criteria that will be used to judge an environmental law or standard is unnecessarily narrow, favoring the principles of free trade rather than environmental principles. The flawed language could result in legitimate environmental and health laws being challenged and possibly found to he inconsistent with current GATT rules.

If a law is found to be contrary to the terms of the GATT, the offending country will be required to change its law to adapt to the panel's ruling, or face penalties. Because of political and economic pressures, such a ruling would put tremendous pressure on the U.S. to conform with the GATT ruling and change the law. A country that refuses to conform with a GATT ruling and maintains its contested law could be forced to pay compensatory measures or face sanctions.[1]

The environmental community is concerned about onerous requirements that environmental standards must meet for GATT, such as the necessity that economic risk assessments be done or that laws are based on scientific principles, when not every law passed is based on these criteria.[2]

Another biased requirement is that a law not be 5more trade restrictive than necessary."[3] While this Kind of requirement may work for standards regulating commerce, it is not always possible or desirable to institute the least trade restrictive environmental standard and achieve equivalent environmental protection. The GATT rule does not recognize other factors about why a particular law was instituted as opposed to another, such as the political or economic feasibility of passing a different version.

The likelihood of countries targeting U.S. environmental laws for future disputes is great. Already, the U.S. is defending three environmental laws that are being challenged in GATT by the European Union: the Corporate Average Fuel Economy Standards (CAFE) for automobile fleets, the Gas Guzzler Tax on inefficient cars and the Marine Mammal Protection Act. The decisions on all three of these cases should be released in the next few months.

However, these are not the only cases expected. The European Union has also complained about other laws, including the High Seas Driftnet Act and California's Safe Drinking and Water Toxic Enforcement Act. Criticism of California's state law raises the question of whether or not state and local laws are safe from the rules of GATT. But the Final Agreement explicitly states that the Members of the GATT must take measures to ensure that the standards of state and local governments conform with the standards set forth in the GATT, on Sanitary and Phytosanitary Measures and Technical Barriers to Trade,[4] meaning that state and local laws are susceptible to challenge.

Language problems embodied in the GATT should raise many flags in lawmakers minds as they consider approval of the Final Agreement. We urge Congress and the Administration to seek a moratorium on any challenges to U.S. federal, state or local environmental or health-based law until acceptable criteria can be negotiated and approved that support environmental goals. President Clinton has already said he will seek resolution to these problems by pushing for a Green Round of GATT. Until that time, U.S. environmental laws, which have been passed and adopted in a democratic process, should not be open for attack in a separate forum by our trading partners.

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[1] Dispute Settlement Understanding, article 22.

[2] Agreement on Sanitary and Phytosanitary Measures, article 16.

[3] Agreement on Technical Barriers to Trade, article 2.2. In SPS, but not in TBT, the U.S. negotiators were able to get the parties to clarify the "not more trade restrictive than required," by footnoting article 21, note 3 that "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade." Despite the clarification, the environmental concerns remain.

[4] SPS annex 1, article 1 and TBT article 3.1.

II. SUSTAINABLE DEVELOPMENT & GLOBAL TRADE RULES AT ODDS

The objective of the seven years of global trade talks was to liberalize international trade rules, but the process proceeded with minimal regard for its environment consequences. During the same time, the U.S. participated at the Earth Summit in Rio and committed itself to adopting policies that will lead to more sustainable development.

It is clear that neither of these two goals, free trade and sustainable development, were reconciled in the negotiation process for the GATT. Instead, we have an agreement which directly conflicts with the goals of sustainable development and will exacerbate environmental problems worldwide. It is our hope that the two paths can finally converge because the establishment of sound trade rules is crucial for achieving development that is more sustainable and equitable, environmentally and socially.

Many of the direct impacts of the GATT are largely unknown because a comprehensive environmental impact statement (EIS) has not been undertaken by the Administration, as the National Environmental Policy Act (NEPA) requires for any major federal action. An EIS would provide Congress and the American public with critical information about the full impacts of such an agreement on the environment.

But perhaps more importantly, if undertaken in accordance with NEPA procedures, an EIS would analyze the environmental impacts from the outset, and help policy makers and negotiators determine alternative proposals that can mitigate or prevent potential problems. This would allow decision makers to identify and adopt the least environmentally harmful way to engage in trade.

Since it appears that opening up markets and negotiating trade agreements with other countries has become a fundamental part of the Administration's economic and foreign policy platform, it should complete environmental analyses of trade agreements from the outset of negotiations, so that the information can be incorporated in the negotiations. As soon as the Administration announces its decision to begin negotiations with Chile to join the NAFTA, it should immediately begin the process of drafting an environmental impact statement.

We urge Members of Congress to make it known that this information is critical for Congress' full understanding of the range of impacts trade agreements might have on the environment. We believe that Congress and the American public are entitled to the complete information.

A comprehensive environmental analyses would document how the new multilateral trade rules will affect a number of areas, including investment decisions and locations, the rate of natural resource exports and changes in other industrial and agricultural practices. All of these areas are critical to investigate further because they go to the heart of this question: how can trade rules be more environmentally and socially sustainable?

A. Investment

In the eyes of economists, a major accomplishment of the Uruguay Round of GATT was to liberalize the rules for foreign investment. These new rules will lead to increased investment, but they do not guarantee that those investments will be sound environmentally, or that they will not further contribute to environmental problems. The Agreement on Trade Related Investment Measures is silent on the issue of establishing environmental requirements for investors.

While the evidence is not conclusive that companies base an investment decision on lax environmental laws or enforcement, it is confirmed that there is a strong temptation to avoid environmental compliance in countries with a weaker environmental enforcement structure.[5] Studies have also shown that industrial flight or migration is more likely where environmental costs for certain industries that face higher environmental costs for investment in technologies or compliance measures.[6]

The debate around NAFTA highlighted how maquiladora industries have violated and continue to violate Mexican and U.S. environmental laws. A study of those industries found that companies increased their profit margin by 100 percent when they did not comply with the environmental requirements.[7] Thus, there is a strong economic incentive for companies to violate environmental laws when they are not held directly accountable for their violations. The result may be higher profits for

[5] Friends of the Earth study, "Standards Down, Profits Up," January, 1993.

[6] Summary Report of the Workshop on Environmental Policies and Industrial Competitiveness, January 28–29, 1993, OECD, pg 7.

[7] FoE Study, "Standards Down, Profits Up," January 1993.

industry, but at a high cost of more pollution and environmental problems elsewhere.

The investment rules in GATT do not require that investors meet certain environmental standards or provide the community and public with information about pollutants or emissions from the operations. Neither are there requirements that countries cannot lower or deviate from their environmental laws or enforcement in order to attract investment. At a time when countries, particularly developing countries, are struggling to attract investment to earn revenue and provide employment, it is conceivable that countries will choose to weaken or avoid instituting environmental standards to provide jobs. The unintended environmental effect of the GATT will he to provide incentives for polluting operations to relocate to areas with lower environmental standards, creating pollution havens in other countries.

A second effect is that competing industries operating in the U.S. which abide by U.S. environmental laws, will suffer competitively. If their competition avoids paying the same environmental costs it must pay, the competitor will gain a competitive advantage. This puts the company in the U.S. In a difficult position. It may choose to move 'its operations outside the U.S., or to put pressure on Congress and the Administration to reduce the environmental requirements it must meet so that it can compete more effectively.

The investment rules in GATT completely ignore the environmental impacts of investment decisions. Furthermore, they permit trade that will allow competitive advantages to be gained at the expense of environmental costs being externalized and avoided.

B. Natural Resource Use and Production Methods

Many of the parties to GATT are dependent on the export of natural resources. The Final Agreement will increase the exchange of goods between countries, including natural resource exports, but there is no discussion or regard for how those resources are extracted, at what rate and at what impact to either the national or global environment.

According to the way growth is currently measured, if a country cuts down all of its trees and exports them, it will appear as an increase in the Gross Domestic Product. The accounting mechanism does not factor in the loss of the forest resources, the effects of soil erosion, the loss of habitat and biological diversity or the adverse impacts on climate.

The short-sightedness of the conventional accounting mechanism and existing trade rules is obvious, which is why Congress has taken steps to get the World Bank and the International Monetary Fund to develop new ways to measure economic growth and performance. It is inconceivable that a country should he rewarded economically for clearcutting its forests for export, but that is exactly what the Final Agreement of GATT does. Countries are encouraged to export more, but there are no guidelines to promote more sustainable practices or harvesting methods, nor are there incentives to adopt these methods because the trade rules are encouraging countries to increase exports and to export more quickly, not to slow their exports and extract resources at a more sustainable rate and in more sustainable ways.

As a result of the export oriented economic model that has been promoted by the World Bank and International Monetary Fund, Ghana, for instance, is rapidly being transformed into a net timber importing country, despite once having a substantial forest cover. Because Ghana was so heavily dependent on the export of timber, its forests have been devastated. The push for exports lead to logging practices which caused significant environmental problems, such as the degradation of land, leading to soil erosion, and its impact on water quality and wildlife, but none of these costs have been quanitied when determining its annual growth rate.[8]

In fact, the current rules do not even encourage countries to take measures to protect natural resources. GATT precedence prohibits countries from adopting policies that will affect other countries resource practices. The GATT rules do not allow a country to restrict imports that are harvested or produced in an environmentally harmful manner.

The precedence was set in 1992. It was then that a GATT panel ruled that the U.S. ban on tuna from Mexico was contrary to GATT rules because it was a ban on the way in which the tuna was being harvested (by killing too many dolphins) rather than on the safety of the tuna itself. With that ruling, the GATT established a precedent that countries cannot base import decisions on how a product is produced. But many environmental issues are related to how a product is produced,

[8] Report by Friends of the Earth-UK and Friends of the Earth-Ghana, 1993.

such as whether or not toxics are released into the atmosphere, wildlife are killed or forest systems are destroyed.

If we are ever to be successful in setting trade rules that will lead countries to adopt a more sustainable path of development, process and production methods will have to be recognized as legitimate measures to restrict imports, and countries will he allowed and encouraged to adopt them.

III. GATT LACKS BASIC PRINCIPLES: PARTICIPATION AND TRANSPARENCY

In the State of the Union address, President Clinton stated that commitment to democratic principles is important criterion for evaluating our trading relationships.

We believe that trade agreements should recognize those same principles. Trade agreements should be transparent and allow for public participation in developing policies, decision-making, interpretation and dispute resolution. The Final Agreement of GATT fails to recognize and abide by those very basic democratic principles the President deemed so important.

It is now agreed that international trade rules and the environment are interrelated in many ways. Thus, it is critical that environmental non-governmental organizations and the public are allowed to participate in the decision making process on trade agreements in order to make the process more representative and fair, and to address the connections directly.

The Final Agreement of GATT maintains the previously closed process of dispute resolution and decision making. Meetings are closed and there is no public record or notification of the meetings.[9] There is no requirement that the panel decisions and final reports must be released publicly Parties can release "non-confidential" information if they so choose, but it is not required.[10] Although the United States Trade Representative's Office has improved its practice of sharing documents with U.S. NGOs, other countries are not following their lead. Access to information is one of the most basic principles of democracy.

A second democratic principle is fair representation. If a dispute panel is established to decide an environmental case, currently there is no requirement that environmental experts serve on the panel. Panels are allowed, but not required, to seek advice from experts on a "scientific or technical matter,"[11] but the panel itself does not need to represent a full range of views, which would include environmental experts in environmental cases.[12] NGOs have no guaranteed access to these panels.

Without full and fair representation of views, trade experts that have traditionally served on these panels will continue to represent the Parties,[13] despite their lack of the environmental expertise that should be required to present a fair case when an environmental law or standard is in question.

IV. WORLD TRADE ORGANIZATION: BLIND TO ENVIRONMENTAL GOALS

The Uruguay Round of GATT establishes a World Trade Organization (WTO) which will serve to strengthen and further develop global trade rules. Along the same lines of the World Bank and the International Monetary Fund, the WTO will be a multilateral institution that sets and enforces international trade rules.

Friends of the Earth does not disagree with the need for a stronger multilateral arrangement to regulate world trade, so long as that arrangement facilitates the evolution of the trading regime to become environmentally and socially sustainable.

From an environmental perspective, the current formation of the WTO and its draft work program does not even begin to address the interconnectedness of the issues, nor does it set forth a comprehensive plan to resolve some of the conflicts countries have regarding differing levels of environmental protection.

The WTO could be the forum where many of the questions and problems Friends of the Earth and other environmental organizations have raised before the committee today are addressed.

However, it will not be such a forum unless amendments are made to the draft work program and deadlines set. We urge Congress not to let this issue go by and be left to chance and the political wills of other countries. It is absolutely necessary that the WTO encompass a strong environmental platform and directives for a permanent committee to begin to resolve some of the conflicts.

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[9] Dispute Settlement Understanding, article 14.

[10] Dispute Settlement Understanding, article 18.2.

[11] Dispute Settlement Understanding, article 13.2.

[12] Dispute Settlement Understanding, article 8.

[13] Dispute Settlement Understanding, article 8.1. The requirements include "persons who have served on or presented a case to a panel, served as a representative of an Member or of a contracting party to the GATT 1947, . . . taught or published on international trade law or policy, or served as a senior trade policy official of a Member."

Much of the resistance to such a position and the establishment of a permanent committee on trade and environment issues is emanating from developing countries, who are concerned that these policies will restrict market access. The WTO should address broad areas of concern of industrialized and developing countries, with the goal of making trade rules truly sustainable.

At the conclusion of the December talks, the GATT members agreed to draw up a plan to address environmental issues. A work program and an institution for the program's execution will be presented for adoption no later than the Ministerial Conference meeting in April, 1994.

To contribute to that process, Friends of the Earth is developing recommendations that should he considered and adopted at the Ministerial Meeting this spring. Our initial recommendations are attached to this testimony.

The success of implementing environmental safeguards in Final Agreement of GATT is critical to how trade and environment issues will be resolved. We strongly urge Members of Congress to raise the level of debate and the imperativeness of instituting rules that protect the global environment. It is critical that Congress oversee this process, pay attention to the development of the work program and set expectations for what should he achieved at the April Ministerial Meeting. Furthermore, Congress should fully understand the environmental ramifications of this Agreement before it votes.

Attachment.

FRIENDS OF THE EARTH-US; RECOMMENDATIONS FOR ENVIRONMENTAL AMENDMENTS TO THE WORLD TRADE ORGANIZATION

Preambular Language of the WTO:

- *Rocognizing* the inter-relationships between international trade policy, ecologically sustainable and socially just development, poverty eradication and environmental protection;
- *Recognizing* the need to establish international trade rules that will promote environmental protection, the conservation of natural resources and sustainable development;
- *Recognizing* the need to take a precautionary approach at all times;
- *Recognizing* the precedence of existing and future international environmental agreements containing multi late rally agreed trade-related provisions;

Structure of the WTO:

- The Ministerial Conference shall establish a permanent Committee on Trade and the Environment to examine and resolve trade and environment conflicts, with the objective of setting forth trade rules that recognize the goals of environmental protection and sustainable development, and the right of each country right to adopt strong policies to protect their environment and the global commons, including standards that are more stringent than international standards;
- The Committee on Trade and the Environment shall he made up of environmental representatives from each Member of the WTO. The Committee shall meet as necessary to carry out its functions;
- An independent panel of environmental experts will be established to provide advice to the Committee on Trade and the Environment;
- The Committee on Trade and the Environment will operate in a transparent and open process, by holding open meetings, providing adequate notice for meetings and policy decisions, allowing the public and non-governmental organizations to submit comment and monitor negotiations, and by releasing documents and reports to the public;
- The Committee on Trade and the Environment will consult regularly with the United Nations Environment Program and the United Nations Commission on Sustainable Development to develop and seek the most environmentally beneficially and sustainable trade policies;

The Work Program of the Committee on Trade and the Environment should include:

- Develop a process for environmental analyses of trade rules to be conducted as rules are negotiated;
- Establish environmental guidelines for investment rules, which would include establishing international environmental standards for investors to meet, require that countries not lower or derogate from their environmental laws to at-

tract investment and provide the public and communities with full information about the investment operations and its environmental and health impact;
- Agree that each country will recognize a moratorium on challenges to domestic environmental, health or safety laws until the Committee negotiates new criteria for such standards to meet;
- Establish rules for the process and production methods;
- Promote trade rules which recognize the importance and value in the conservation, protection and efficient use of natural resources and energy;
- Develop an ecologically adjusted pricing mechanism so that goods and products become more reflective of their full environmental cost in the market, including the energy costs of transporting products and the impacts of increased transportation on air and water quality;
- Develop a "green" tax on all traded goods that will be transferred to developing countries that have difficulty meeting the requirements set forth, that need additional assistance to develop environmental standards and enforcement structures;
- Actively promote increased environmental cooperation globally, the transfer of technology and resources and develop compensatory financing mechanisms for developing countries to raise environmental standards;
- Together with the World Bank and the International Monetary Fund, examine the environmental and social impacts of structural adjustment policies in developing countries and identify ways to ease their negative effects. Such policies encourage the export of products, particularly natural resources, to earn foreign exchange;
- Address the debt problems of developing countries which constrain countries from establishing environmental laws and structures to ensure enforcement, and increase their dependence on the export of natural resources, by working with the World Bank and the International Monetary Fund to evaluate the environmental impacts and lessen the debt burdens of developing countries;
- Establish criteria that preserves the right of each Member to use unilateral trade measures to protect the environment;
- Evaluate how GATT's agricultural policies impact sustainable agriculture practices and rural communities, and develop recommendations that will lead to more sustainable agricultural practices worldwide, including examining how subsidies in industrialized countries affect farmers in developing countries;
- Examine how intellectual property rights rules will affect the preservation and conservation of biological resources, including its impact on the Biodiversity Convention. Develop policies that will ensure that biological resources are protected and that the rights of indigenous people and knowledge is recognized. Address how liberalized trade rules may increase the trade in illegal wildlife and plant species, or allow for the introduction of exotic species into non-native habitats.

STATEMENT OF THE INTELLECTUAL PROPERTY COMMITTEE

This written statement provides the Intellectual Property Committee's (IPC)[1] assessment of the TRIPS (intellectual property) Agreement, Annex 1C of the Final Act, and its commercial implications. It also provides the IPC's recommendations for the development of a post-Uruguay Round strategy on intellectual property that is necessary both to implement the TRIPS Agreement and offset the agreement's shortcomings, especially the long transition periods before the TRIPS provisions are fully implemented.

1. ASSESSMENT OF THE TRIPS AGREEMENT

The TRIPS text goes a long way in providing the type of international intellectual property protection that the IPC, three successive Administrations and the U.S. Congress sought together over the last seven years through the GATT. On balance, 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. Among the critical improvements in the worldwide protection of intellectual property that are contained in the TRIPS Agreement are the following:

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[1] The members of the IPC—Bristol-Myers Squibb, Digital Equipment Corporation, FMC, General Electric, Hewlett-Packard, IBM, Johnson & Johnson, Merck, Pfizer, Procter & Gamble, Rockwell International and Time Warner—represent the broad spectrum of U.S. private sector intellectual property interests.

(a) In *copyright*, the TRIPS Agreement requires WTO Members to comply with the Berne Convention, with the exception of the "moral rights" provisions. Members are required to grant protection to databases and computer programs as literary works under Berne. Rightholders of computer programs and sound recordings receive the right to authorize or prohibit rental of these products. The duration of copyright protection must be compatible with Berne and the TRIPS Agreement provides a 50-year term for the protection of sound recordings. The agreement's enforcement provisions mandate the imposition of deterrent criminal penalties against copyright piracy.

(b) With respect to *patents*, the agreement provides for product and process patents for virtually all types of inventions, including pharmaceuticals and agrichemicals. Members agree to protect patents for at least 20 years from the filing of a patent application, and to make "patents available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced." Members will thus have to recognize the importation of patented products as satisfying local working requirements for purposes of compulsory licensing. The IPC believes that the compulsory licensing provisions of the Final Act, which were carried over from the Dunkel draft text, will prove to be effective in limiting the most egregious compulsory licensing practices that its members currently face in many countries. While compulsory licensing is not prohibited, its use is subject to very specific conditions, including a requirement of adequate notification and remuneration and judicial review. In an affirmation of the territorial principle of intellectual property rights, the TRIPS Agreement confers on patent holders the exclusive right to prevent third parties from importing a patented product.

(c) In the area of *proprietary information*, the agreement protects trade secrets against third-party acquisition, and prohibits unfair commercial use of proprietary test data submitted by firms to government agencies to demonstrate the safety and efficacy of pharmaceutical and agrichemical products that utilize new chemical entities.

(d) With respect to *semiconductor layout designs*, the TRIPS Agreement addresses the major weaknesses of the WIPO Washington Chip Treaty. The term of protection is extended to 10 years and the innocent infringer provisions are strengthened. Compulsory licensing of the semiconductor industry's patents and layout designs, while subject to the same conditions as other patent compulsory licensing, is further limited to public, noncommercial use or to remedy a practice determined after judicial or administrative process to be anticompetitive.

(e) With respect to *enforcement measures*, Members agree to make available effective enforcement procedures for intellectual property rights. The TRIPS Agreement covers both civil and administrative remedies and includes provisions on damages, injunctive relief, and due process. In addition, the agreement includes provisional measures, with safeguards, for expeditious action. Members also agree to make available special border measures to permit suspension of release by customs authorities of suspected infringing imports. These measures are mandatory for counterfeit trademark and pirated copyrighted goods, and may be extended to goods involving industrial designs, patents, integrated circuits, or undisclosed information.

Unfortunately, the final TRIPS text also contains certain gaps in protection. Among the major deficiencies are:

(a) *The overly long and discriminatory transition periods before the developing countries (LDCs) have to undertake their TRIPS obligations.* The generally adequate and effective standards of intellectual property protection, described above, will be of little immediate help to U.S. industry, which must now wait five to ten years before it can begin to reap any commercial benefits in the LDCs from TRIPS. Newly industrializing countries (NICs), such as Argentina and Korea, which already compete very effectively with the United States and other developed countries across a broad range of technologically-advanced products, will not have to provide TRIPS-level intellectual property protection until July 1, 2000. Least developed countries will have an additional six years—until July 1, 2006—to conform their laws to the TRIPS Agreement. In addition to being overly long, the transition periods discriminate among industrial sectors by providing a longer transition for pharmaceutical, agrichemical and chemical products. Thus, those LDCs that will not have in place product patent protection for pharmaceutical and agrichemical products on the date that the TRIPS Agreement enters into force (July 1, 1995) will be permitted to continue their piracy of such products for an additional five years—until July 1, 2005. This discrimination among industrial sectors is compounded by the absence

from the TRIPS text of any pipeline protection that would 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.

(b) *Exceptions to "national treatment."* Our negotiators failed to gain a clarification of the ambiguities in the copyright provisions of the TRIPS Agreement regarding the provision of full national treatment to all intellectual property rightholders. This failure to deal with exceptions to the cardinal trade principle of "national treatment" will permit WTO Members to argue that their discrimination against U.S. nationals is permitted under TRIPS. This alone will cost the U.S. entertainment industry by 1998 in excess of $200 million per year in lost revenue in Europe.

In addition, the TRIPS text contains two other deficiencies, which the IPC considers to be "technical" in nature. These involve the protection of proprietary registration data provided to governments for the marketing approval of pharmaceutical or agricultural chemical products ("me too registration") and the protection of existing subject matter under TRIPS Article 70(9). Finally, the IPC is deeply disappointed with the addition, in the closing days of the round, of the five-year moratorium on the application of the "nullification and impairment" provisions to TRIPS. This moratorium may adversely affect our ability to reap early commercial benefits from TRIPS in the industrialized countries, which must implement TRIPS after one year (by July 1, 1996), and some of which are the most likely WTO Members to attempt to evade the "spirit" as opposed to the "letter" of the TRIPS provisions.

We continue to be deeply troubled by these and the other substantive gaps in the TRIPS Agreement that the IPC had identified in its communications with the Administration during the final stages of the Uruguay Round negotiations. However, on balance, the benefits of the TRIPS Agreement outweigh our particular concerns, especially since the agreement's deficiencies can still be overcome through the development and implementation of a comprehensive U.S. strategy. Under these circumstances, the IPC supports the TRIPS Agreement and the adoption of the legislation necessary to implement U.S. obligations under the accord.

2. POST-URUGUAY ROUND TRADE STRATEGY ON INTELLECTUAL PROPERTY

One of the original objectives of the IPC in seeking an intellectual property agreement in the GATT was the discipline that a multilateral dispute settlement mechanism would place on countries with respect to their protection and enforcement of intellectual property. The IPC, thus, welcomes, in principle, the application of the provisions of the WTO dispute settlement understanding to TRIPS and would be supporting the sole use of the enforcement measures contained in the understanding were it not for the gaps in the protection and the overly long and discriminatory transition periods. With the possible exception of agriculture, the TRIPS Agreement is the only Uruguay Round text that bars, for the next five to ten years, a Member from taking any effective action, under the WTO multilateral dispute settlement mechanism, against a developing country Member that has not met its Uruguay Round obligations. Because this safe harbor is so egregious, the IPC regards the lengthy transition periods to be a substantive TRIPS failing and a significant gap in protection. The negative impact of the long transition periods cannot be dismissed.

Furthermore, U.S. industry continues to face assaults on its intellectual property that seek to undermine even those rights to which Members have committed under the TRIPS Agreement. These attacks are not limited to the problems that the U.S. pharmaceutical, agrichemical and audiovisual industries will continue to face so long as the gaps in the TRIPS provisions are not filled. These assaults affect other highly competitive U.S. industries as well. For example, the Japanese Government is currently reviewing its copyright laws with an eye to substantially weakening its already limited protection for computer programs. Across the Atlantic, the European Telecommunications Standards Institute (ETSI), which the EU Commission argues is a private organization outside the scope of TRIPS, is essentially requiring the compulsory licensing of critical intellectual property for those who wish to participate in drafting ETSI standards, which then become mandatory throughout the world. The IPC believes that so long as the LDCs avail themselves of the lengthy transition periods and these and other assaults on our intellectual property continue, it is premature for the United States to rely solely on the WTO dispute settlement process.

The United States cannot be complacent. The U.S. private sector needs a strategy to deal with what we believe to be the unique situation facing TRIPS—the long

transition periods when our "multilateral" hands are tied—and the continued assaults on our intellectual property—the very lifeblood of U.S. creativity and competitiveness. In the absence of such a strategy, U.S. rightholders will continue to face hundreds of millions of dollars in lost commercial benefits. The U.S. private sector is prepared to work with the Congress and the Administration to develop such a strategy to be used after July 1, 1995. Until then, the IPC urges the Administration to continue the current Special 301 program in support of strong intellectual property protection abroad.

U.S. successes of the last ten years in gaining improved intellectual property protection for U.S. rightholders abroad have been the result of a judicious mix of bilateral, regional and multilateral instruments. The leverage provided against certain countries such as Korea, and Taiwan by Section 301, and after 1988, by Special 301; the negotiation of bilateral intellectual property agreements with such countries as the PRC and Ecuador; the negotiation of the NAFTA accord with Mexico and Canada and finally, the completion of the TRIPS text have all contributed to improvements in intellectual property protection abroad.

The recent agreement that terminated the Special 301 investigation of Brazil's intellectual property practices is especially noteworthy, in that Brazil pledged to accelerate its implementation of the provisions of the Uruguay Round TRIPS Agreement. The IPC congratulates Ambassador Kantor and his staff in gaining Brazil's pledge to seek passage of improved intellectual property legislation by the end of this year. If passed by the Brazilian Congress, the improved legislation will provide commercial benefits to both U.S. and Brazilian inventors and creators. However, there is still much unfinished business that needs to be addressed, especially in the more advanced developing countries—the so-called newly industrialized countries—which must be encouraged to follow the example set by Brazil. The IPC believes that each of the elements of current U.S. intellectual property policy should be revisited and restructured, where necessary, to reflect the post-Uruguay Round international trading environment that will color the process after July 1, 1995, when the Uruguay Round agreements are expected to enter into force.

(a) Bilateral dimension

The uniqueness of the TRIPS situation and the continued assaults on our intellectual property require the development of a concerted U.S. intellectual property strategy. Such a strategy must rest on the recognition of the vital importance of strong intellectual property protection to the continued global competitiveness of U.S. industry and job growth in the United States. A declaration to this effect should be included in the Statement of Administrative Action and repeated in the implementing legislation as a signal to our trading partners from both branches of the U.S. Government that the task of securing high levels of intellectual property protection will not be complete until the TRIPS gaps are filled and the LDC implementation of, at a minimum, the TRIPS standards of intellectual property protection and enforcement is accelerated.

To this end, the IPC, the International Intellectual Property Alliance and the Pharmaceutical Manufacturers Association have jointly developed a concepts paper that highlights the need for continued vigorous trade policy initiatives in support of strong intellectual property protection. In addition, the IPC has drafted a package of amendments to the Uruguay Round implementing legislation that would provide the statutory basis for such a U.S. trade initiative on intellectual property. An outline of the major features of the IPC amendments is appended to this statement. The IPC amendments would also commit all agencies of the U.S. Government—not solely the Office of the U.S. Trade Representative, the Patent and Trademark Office and the parts of the Commerce and State Departments that deal with intellectual property matters—to the attainment of this particular trade objective. Among the elements of the IPC package are:

(i) *Country Reviews*—Special 301 should be improved through an expanded annual government-wide review of the past year's international intellectual property-related activities and developments.

(ii) *Additional U.S. Government levers*—Consideration of additional levers may well require a fine tuning of selected U.S Government programs to enhance their ability to serve as instruments of U.S. intellectual property policy. In some cases, such fine tuning may require changes in their statutory authorities or regulatory practices. Possible levers include but are not limited to:

- *Benefits under U.S. preferential schemes*—The United States provides preferential trade benefits to beneficiary countries under the Generalized System of Preferences (GSP), the Caribbean Basin Initiative

(CBI) and the Andean Trade Preference Act (ATPA). Under all these programs, the extent to which the beneficiary country provides adequate and effective protection of intellectual property is among the factors that the President must take into account in determining whether to extend beneficiary status to a country. Since the TRIPS Agreement will be recognized by the over one hundred countries that are expected to sign the Uruguay Round package at Marrakesh on April 15th as the basic international standard for intellectual property protection, the IPC believes that current TRIPS-level protection should now be a prerequisite for receiving benefits under these preferential schemes.

• U.S. foreign assistance and OPIC programs—The Agency for International Development and the State Department should be encouraged to develop programs that will provide technical assistance to build up the intellectual property-related infrastructures of the LDCs. For example, training of patent examiners and establishment of patent search facilities as well as the training of the judiciary and police officials in the enforcement of intellectual property laws. are as critical to the development of a successful intellectual property regime as the passage of adequate laws. To this end, a council should be established, as a joint effort between AID and the private sector, to facilitate and provide intellectual property-related technical assistance. The Overseas Private Investment Corporation should also be encouraged to examine whether intellectual property assets might be coverable under U.S. Government investment insurance programs in developing countries that provide adequate and effective intellectual property protection. Conversely, the U.S. should consider the conditions under which foreign aid and OPIC benefits would be withdrawn from countries that continue to deny intellectual property protection to U.S. rightholders.

• *World Bank and Regional Development Bank Programs and IMF Activities*—U.S. Executive Directors to the World Bank, the regional development banks such as the Interamerican Development Bank and the International Monetary Fund should be instructed to undertake a campaign within these institutions to ensure that their programs support the objective of improved intellectual property protection. U.S. Executive Directors should be instructed to vote against any loans or programs that will benefit countries that continue to deny intellectual property protection to U.S. rightholders. Conversely, the U.S. Executive Directors should encourage the banks and their affiliates to develop programs that will fund the establishment of the infrastructure needed to implement strong intellectual property laws.

(iii) *Bilateral intellectual property agreements*—There is a growing number of countries that have expressed an interest in working with the United States to improve their intellectual property protection. The United States should undertake the negotiation of bilateral intellectual property agreements with these countries, using as the starting point a model U.S. intellectual property agreement, which the IPC believes should be maintained by our negotiators in consultation with the private sector. Such a document, which is provided to countries that express an interest in entering into a bilateral intellectual property accord with the United States, must include the optimum level of intellectual property protection that the United States seeks. In many instances, this means the inclusion of superior provisions that our negotiators were not able to get into the NAFTA intellectual property chapter. In addition, the United States should maintain the pressure on countries after the successful negotiation of bilateral intellectual property agreements in order to ensure that they adopt implementing legislation in a timely manner. Countries should be held to the specific terms of the bilateral agreements that they have negotiated.

(b) Regional Dimension

Intellectual property protection should be an important component of all U.S. regional initiatives. Countries such as Argentina and Chile that have expressed an interest in joining NAFTA should be required to adopt TRIPS-level protection and express a willingness to negotiate towards "NAFTA-plus" level of intellectual property protection prior to the start of accession negotiations. Similarly, NAFTA-level intellectual property protection should play a prominent role in the U.S. strategy with respect to Asia Pacific Economic Cooperation group. As a first step, a technical cooperation committee on intellectual property standards should be established within APEC.

(c) Multilateral Dimension

(i) *World Trade Organization (WTO)*—While the IPC looks principally to an invigorated and highly targeted bilateral program to fill the gaps in the TRIPS Agreement and to accelerate the LDC transition periods, active involvement by the United States in the establishment of the TRIPS regime in the WTO is critical to long term U.S. intellectual property-related interests and could play some role in dealing with our transition problem.

In the first instance, the United States must ensure that the WTO work program for TRIPS, which will be announced at the April 15 Marrakesh meeting, will lead to the establishment of a workable TRIPS Council ready to undertake on July 1, 1995, activities and interpretations that support adequate and effective intellectual property protection. Strong U.S. involvement in the organization of the TRIPS Council and later in the work of the Council itself will help ensure that ambiguous TRIPS provisions will be correctly interpreted; that the WTO Secretariat will be able to actively encourage accelerated LDC implementation of the "correct" TRIPS standards; and that all LDCs will have in place on July 1, 1995 the "black box" process required by Article 70(8) for the filing of patent applications for pharmaceutical and agrichemical products. In this regard, the U.S. should urge that a conference of WTO signatories be convened as soon as possible after the Marrakesh meeting to consider possible approaches, such as a single filing system akin to the current system under the Patent Cooperation Treaty, for the implementation of Article 70(8) and the establishment of a monitoring system to ensure that all affected LDCs have in place a functioning "black box" process on July 1, 1995. Finally, the IPC believes that an active U.S. involvement in the establishment of the TRIPS regime will serve as a clear signal that we intend to pursue our TRIPS rights as they become available to us in the WTO.

Given the pivotal role that panels and the Appellate Body will play in the new WTO dispute settlement process, the United States must ensure that the roster of panelists and the seven person Appellate Body include specialists from the U.S. and other developed countries whose expertise in intellectual property is not limited to academia or governmental service but includes private sector experience. It is the intellectual property counsel of U.S. industry who have acquired the relevant expertise that will be especially valuable when WTO panels and the Appellate Body are called upon to make a judgment whether a national law, regulation or practice violates the TRIPS Agreement.

(ii) World Intellectual Property Organization (WIPO)—Article 68 of the TRIPS Agreement calls on the TRIPS Council to seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with WIPO bodies. The IPC believes that the WTO Secretariat should be encouraged to work out suitable arrangements with WIPO officials to assist the LDCs in meeting their TRIPS commitments on an expedited basis. It would be a shame if the extensive intellectual property expertise that resides in WIPO would not be used in support of TRIPS.

The successful completion of the TRIPS negotiations was the result of the close cooperation between officials of both branches of our government and the U.S. private sector. Such cooperation must continue as we develop and implement the new intellectual property strategy. The IPC will also continue to work with its European and Japanese colleagues to complete the TRIPS agenda. The creative and inventive industries of Europe and Japan stand to lose as much as U.S. industry from the substantive gaps and the overly long and discriminatory transition periods in TRIPS. The IPC will urge them to undertake parallel efforts in the LDCs to fill these gaps and accelerate LDC implementation of the TRIPS standards. The IPC will also seek their cooperation and that of their governments and the EU Commission in the development of the TRIPS regime in the WTO, by, for example, working with the United States to gain the correct interpretations of the ambiguous provisions of the TRIPS text.

The IPC is also in the process of thinking through on how best to meet the GATT panel's decision mandating changes in Section 337. Section 337 has proved to be effective in stopping in a timely fashion infringing imports at the border and the IPC, therefore, believes that any proposals must retain the essential features of Section 337.

3. CONCLUSION

The IPC supports the implementation of the TRIPS Agreement. It, however, also believes that a comprehensive strategy, which may require modifying U.S. statutory authorities must be developed not only to "complete" the TRIPS negotiations but also to effectively repel the continuing assaults on our intellectual property. U.S. industry cannot and will not complacently look beyond the lengthy and discriminatory transition periods as if they were a mere inconvenience. Neither will U.S. industry sit idly by as the very foundation of U.S competitiveness, creativity and job growth—its intellectual property—is misappropriated abroad. The IPC stands ready to work with the Congress—and especially this Committee and its counterpart in the House—and the Administration in the development of a comprehensive intellectual property strategy for the 21st century.

STATEMENT OF THE MEAT IMPORTERS COUNCIL OF AMERICA, INC.

My statement concerns imported meat and the effect that those portions of the Uruguay Round agreement relating to imported meat would have on the domestic economy, particularly on U.S. consumers, importers, users and handlers of imported meat.

I am Chairman of The Meat Importers Council of America Inc., ("MICA") and Chief Executive Officer of JBJ Trading Corporation of Pittsburgh, Pennsylvania. "MICA" is a New York not-for-profit corporation whose membership includes U.S. meat importers such as my company, meat processors, and other users and handlers of imported meat, such as shipping companies, port authorities, cold storage facilities, warehouses and others.

MICA's members are responsible for over 90% of the fresh frozen beef imported into this country—the principal product covered by the Meat Import Law ("MIL").[1] This statute has saddled our industry and the U.S. economy with the worst form of protectionism—quotas and "voluntary" restraint agreements—since the mid 1960's. This trade restrictive statute would be replaced pursuant to the recent GATT agreement.

MICA and its members strongly support efforts to liberalize trade. In particular we support the portion of the Uruguay Round which would replace the MIL meat quota system with a tariff rate quota system permitting entry of a base quantity of 657,000 metric tons of meat with provision for a possible 40,000 additional metric tons in certain circumstances. The current MIL is a trade barrier which has caused significant disruption to meat processors and all the other industries which use and handle imported meat, and has harmed the U.S. economy and U.S. consumers.

Unfortunately, the agreement would impose an ad valorem tariff upon meat in excess of the base quantity at the prohibitive level of 31.4 percent, to be reduced only down to approximately 27 percent over six years. Despite our disappointment at the imposition of this prohibitive tariff, MICA supports the GATT outcome because the base amount is reasonable. On balance, therefore, the agreement potentially liberalizes trade in meat products and should provide significant benefit to the United States economy and industry.

THE ROLE OF IMPORTED MEAT IN THE UNITED STATES

Imports make up less than 10 percent of total U.S. beef consumption. According to the U.S. International Trade Commission, imports of red meat products totaled $3 billion in 1991 while U.S. exports of red meat products were valued at $4.3 billion.[2]

MIL restricted meat enters through many U.S. ports on the West, Gulf and East Coasts. The principal port area is Philadelphia/Wilmington. Representatives from the port of Philadelphia provided testimony to the Trade Subcommittee of the House Committee on Ways and Means on February 22, 1994 on the importance of imported meat to the economy of the region. The imports are transported to domestic meat processors across the country who process the meat for fast-food restaurants, and to make ground beef or other processed food products. Thus, almost all imported meat goes to the restaurant trade as hamburger patties, steak sandwiches, taco and pizza toppings, sausage manufacturing and specialty deli items, and other manufacturing uses such as production of supermarket ground beef.

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[1] "Meat Import Act of 1979," Public Law 96–177, Dec. 31, 1979; replacing Section 2 of Public Law 88–482, Aug. 22, 1964.

[2] United States International Trade Commission, Investigation 332–325, November, 1993 p. 34.

Imports of frozen manufacturing grade beef (grinding meat) account for around 39 percent of the total grinding beef market and 93 percent of the frozen grinding beef market. The distinction between the fresh and frozen markets is important because U.S. manufacturing beef producers concentrate on producing for the fresh beef market.

Domestic production of frozen grinding meat is low because of the high costs of freezing and storage and the fact that fresh meat is perfectly well suited to most manufacturing needs. Many processors, however, need to use a certain quantity of frozen material for temperature control in their grinding process, and in some formulations frozen imported lean beef is needed to blend with fresh domestic beef in order to achieve the correct lean meat content and binding qualities, in a standard hamburger patty, for example.[3] Thus, frozen imported beef and fresh domestic beef are complementary rather than competitive products.

It is important to remember that imported meat undergoes significant value-added processing in this country. Thus, in addition to generating revenues for ports, shipping companies, trucking and warehouse industries, imported meat creates jobs in the meat processing industry. It does so without taking away jobs created by domestic beef because, as mentioned, imported beef complements, and does not displace, domestic beef. These benefits have been undercut by the operation of the MIL which imposes a quantitative limit on the amount of meat allowed into the United States.

THE NEGATIVE EFFECT OF U.S. MEAT ACCESS RESTRICTIONS ON THE DOMESTIC MARKET

The negative effect of meat access restrictions on the domestic economy is well-documented. The MIL established a quantitative limitation on the amount of imported meat which could enter the United States in any given year. In years when it appeared that imports would exceed that limit, the United States negotiated voluntary restraint agreements with Australia and New Zealand, two countries which, combined, supply about 90% of U.S. imports. For the most part, these volume limitations have come into effect in the last quarter of the year, thereby disrupting the continuity of supply and forcing product into bonded storage. That product would then be released at the beginning of the new calendar year causing additional market disruption. Thus, the MIL has two primary effects on the U.S. market—volume reduction and supply disruption.

The volume reduction results in a loss of economic activity to the ports, shipping companies, trucking and warehouse industries that transport and store imported product. U.S. fast-food chains and processors also suffer significant injury. When the supply of frozen manufacturing grade beef is restricted, U.S. processors must pay more for frozen product or face shortages of raw material. This has a negative effect on the U.S. economy as fast-food chains and processors face increased costs of production and limitations on growth. Ultimately these costs are passed on in the form of higher prices.

The U.S. International Trade Commission estimated the net benefit to the U.S. economy of eliminating restrictions on meat access would be $177 million for 1991.[4] This alone would be reason to eliminate these restrictions, yet this amount seriously underestimates the negative effect of this law on the domestic economy because it fails to recognize the disruption caused by the imposition of a quota. When quotas or VRAs are imposed, supplies are curtailed, meat must be stored in cold storage incurring added costs and overhanging the market in the next year, and the workers and infrastructure that support the trade are idle. Thus, the benefits to the economy of eliminating these restrictions are even more significant than estimated by the U.S. International Trade Commission.

THE URUGUAY ROUND AGREEMENT

For meat processors and meat importers, the Uruguay Round outcome, as we understand it, would be a substantial improvement over the access allowed in 1993 and this year for meat imports. However, 1993 and 1994 meat access is at its lowest point in decades and market disruption is at its highest. During the negotiations, MICA supported a base quantity amount of 700,000 metric tons to allow for growth in the marketplace. In addition, MICA urged the Administration to seek a reasonable tariff, one less than 10% rather than the current unreasonable tariff of 31.4%. Despite the fact that the Uruguay Round has not provided all of the access to im-

[3] One of MICA's Board members, Donald F. Blackburn, testified that this was the case with respect to his own hamburger patty company at the February 22, 1994 Ways and Means hearing.

[4] *Id.* at 36.

ported product which we sought, and which we feel the United States needs to ensure growth in a dynamic marketplace, we nonetheless have determined to support Congressional implementation of the Agreement.

The Uruguay Round Agreement will improve the current situation with respect to meat access and will provide a measure of stability to the imported meat market. Under this agreement, imports of 657,000 metric tons will be allowed each year. An additional 40,000 metric tons is reserved for new entrants. Imports over the base quantity amount will be permitted by paying a tariff of 31.4 percent ad valorem which will be reduced down to about 27 percent over a six year period. The need for stable access to the United States market is particularly clear in view of the substantial success that the U.S. cattle industry has had in penetrating foreign markets. This agreement recognizes that the international market in meat is a reality and that the reduction in trade barriers benefits all participants in this trade. This is particularly true for meat, as the U.S. cattle industry will gain substantially through increased access to Asian and other markets.

IMPLEMENTATION

The meat access provisions of the Uruguay Round can provide substantial benefit to domestic meat processors, restaurant chains and other users and handlers of imported meat, and will have a corresponding benefit to the U.S. economy as a whole and U.S. consumers. In view of these benefits, we endorse the Uruguay Round outcome.

However, there is an important qualification: careful attention must be paid to the implementing legislation and regulations to ensure that these potential benefits of the Agreement are realized.

One area of particular concern to our industry is the need for procedures to be worked out which will avoid market disruption in any year when the base amount is or may be exceeded, either on a global, or individual country basis. It is difficult to imagine how buyers and sellers can negotiate prices and terms unless there is certainty whether product will, or will not, incur the 31.4% duty. This could be a real problem in view of the fact that contracts are made months ahead of actual importation and delivery. If a U.S. company (importer) purchases meat on the representation and/or expectation that it will enter the country as part of the base amount, and it turns out that this expectation proves erroneous and Customs holds that company responsible for payment of 31.4% ad valorem, this could be devastating, particularly to a small private company such as my own.

To prevent this kind of risk, we believe that a degree of cooperation will be needed between the United States and foreign supplying countries. Usual Customs procedures by which product may sometimes be allowed into the country tentatively on a preferential basis, but then be retroactively assessed, must not be allowed in this instance. Our organization is currently involved in discussions with representatives of the administration in the Department of Agriculture and elsewhere concerning possible procedures. We tentatively favor a system involving certification of product by an appropriate authority, either in Australia and New Zealand (both of which countries have been guaranteed finite minimum access levels under the Agreement) or in this country, such certification to be honored by U.S. Customs.

The implementing legislation would not, we presume, properly go into great detail with respect to such system. However, we urge that the legislation delegate to the appropriate officer, presumably the Secretary of Agriculture, authority and responsibility for creating an equitable system under which United States businesses will be able to operate at least as freely as was the case prior to the Uruguay Round Agreement. We would hope that in the legislation, or underlying legislative history, there would be a statement of intention that an import certification, or other, program be worked out so that the implementation of GATT, which should liberalize trade, does not in fact create new obstacles to trade.

Another possible problem area deals with the countries which supply smaller amounts, primarily located in Central America. As was mentioned, Australia and New Zealand supply about 90% of the product in question and these two countries have and the United States have negotiated individual market access amounts at this level. The remaining approximately 10% is to be divided between all other countries who have not been given individual country allocations under the Uruguay Round Agreement as we understand it.

In the past, Central American Countries, which supply most of the 10% in question, have effectively been exempted from the strictures of the MIL. Under the Caribbean Basin initiative legislation (19 U.S.C. §2700, *et sec.*) products from these countries have been free of the regular duty (4.4¢/kg). Further, these countries have never been requested or required to enter into Voluntary Restraint Agreements. On

the other hand, existence of Voluntary Restraint Agreements with Australia and New Zealand have technically avoided the necessity of quota sanctions being imposed by Customs vis-a-vis all countries. Thus, the CBI program has effectively exempted Central American suppliers not only from the normal duty, but also from the quota provisions of the MIL. In order to avoid an increase in protectionism flowing from the Uruguay Round, rather than the liberalization which is envisaged, it is important that implementation of the Agreement extend Caribbean Basin Initiative exemption to the new 31.4% ad valorem duty.

Related questions deal with procedures for reallocation between, and with consent of, individual countries when economic conditions warrant, and review of adequacy of procedures for refund of estimated duty paid above the base amount if it turns out not to properly have been due. Careful attention will also need to be paid as to how the transition from the MIL to the Uruguay agreement will be made if, as appears possible, the change is effective during, rather than at the beginning of, a calendar year.

If such practical concerns are not handled properly, it is possible that the new system could be more trade restrictive than the old system. However, MICA feels confident that these questions can be duly resolved, and looks forward to working closely with the Administration and Congress to implement the Uruguay Round Agreement.

STATEMENT OF THE MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

The Motor & Equipment Manufacturers Association (MEMA) welcomes the opportunity to present its views to the Finance Committee regarding the impact of the GATT Uruguay Round agreement on the U.S. motor vehicle parts and equipment industry.

On balance, MEMA believes this agreement represents a modest step toward greater international trade liberalization in the huge, and increasingly integrated global motor vehicle parts and equipment industry. This view is a preliminary one, based on certain expectations about the outcome of final tariff negotiations still in progress.

Based on our understanding of the results to date, the Uruguay Round agreement would narrow the disparity in tariffs between the United States and its major industrialized trading partners for our industry's products. It also would mandate the elimination of local content requirements and certain export-related performance requirements. Further, it would help ensure improved international protection of intellectual property rights without requiring undesirable changes in U.S. industrial design laws.

However, the agreement appears to fall well short of our industry's expectations regarding improved market access in major newly industrialized economies such as Korea, the ASEANs, and Turkey. These fast-growing automotive markets offer major new export opportunities for our industry which will not be realized if their substantial remaining tariff and non-tariff barriers are not removed.

MEMA is thus urging the Administration to seek additional concessions from these countries prior to the tabling of final tariff offers later this month. We ask this Committee to lend its strong support to this initiative, which to date seems to focus only on Korea.

In addition, MEMA is concerned that the new GATT agreement could make it more difficult for U.S. industries such as our own to seek and obtain future relief from unfairly traded imports. We thus urge Congress to insist on certain clarifications with respect to these U.S. laws through implementing legislation for the GATT Uruguay Round. Specific concerns and suggested remedies are outlined in an attachment to this statement.

Founded in 1904, MEMA exclusively represents and serves U.S. manufacturers of motor vehicle parts, service tools and equipment, and automotive chemicals. Its members produce and sell original equipment components to all classes of vehicle manufacturers and replacement parts and allied service products used in the repair and maintenance of motor vehicles.

MEMA has played an active advisory role to the Commerce Department and Office of the U.S. Trade Representative throughout the GATT Uruguay Round negotiations. The Association places highest priority on specific agreements related to market access trade-related investment measures (TRIMs), trade-related aspects of intellectual property rights (TRIPs), antidumping measures, and dispute settlement.

Other issues of significant concern to MEMA include the agreements: (1) forming the World Trade Organization (WTO); (2) reforming GATT Articles XVIII (balance

of payments waivers) and XIX (import safeguards); and (3) establishing international principles and a work plan to harmonize customs-related rules of origin.

MEMA OBJECTIVES IN THE GATT URUGUAY ROUND

MEMA defined six primary objectives for the GATT Uruguay Round:

- Harmonization of industrialized country tariffs on passenger cars and motor vehicle parts at 2–2.5% ad valorem;
- Significant reductions in and binding of developing-country tariffs on motor vehicle parts, particularly in the key emerging markets of Korea, the ASEANs, and Latin America;
- New prohibitions on use of local content and export performance requirements, the main non-tariff barriers limiting our industry's exports to developing countries.
- Improvements in international protection of intellectual property rights in a manner consistent with the high level of protection now afforded in our market under U.S. law
- Preservation of U.S. laws protecting our industry and others from dumping and other forms of unfair trade.
- Strengthening of the GATT and 1979 Tokyo Round codes, principally by requiring developing countries to increasingly play by the same trading rules as the United States and other industrialized nations.

In addition, MEMA supported the market access goals of U.S. medium and heavy truck builders to obtain parity in international tariffs at or near the very low (4% ad valorem) U.S. rate, as an indirect means to promote parts exports. In most instances, other countries maintain rates of 20% or more against U.S. medium and heavy trucks. Unfortunately, this particular market access goal was not achieved.

TARIFF PROTOCOL—MARKET ACCESS

Because the Uruguay Round tariff negotiations are still in progress, it is difficult for MEMA to comment authoritatively on the impact of this portion of the Round on U.S. producers of motor vehicle parts and allied products.

The market access talks represent the single most important area of the GATT negotiations for our industry. To date, our expectations in this area have not been met to the degree necessary to gain our full endorsement of the Uruguay Round package. Our support for U.S. legislation to implement the Round will be determined by the final results of the tariff negotiations and congressional steps to address the other concerns laid out in this testimony.

On the positive side of the ledger, the Round provides for a five-year schedule of tariff reductions, a more rapid phase-out than provided in prior GATT rounds. MEMA also welcomes the EC's decision to move its higher tariffs on motor vehicle parts into closer alignment with those of the United States. In addition, we are pleased that major developing countries in Latin America and Asia have committed themselves to binding most of their tariffs, many for the first time.

These gains are offset by the unwillingness of developing countries to offer genuine cuts in applied tariffs in addition to ceiling bindings. In effect, our industry has achieved protection against major backsliding on tariffs in advanced developing countries, but little new market access.

In Latin America, our industry now has a preferential free trade agreement with Mexico and has realistic expectations of additional regional trade liberalization initiatives within the next few years. In Asia this is not the case, and thus the Uruguay Round results assume relatively greater importance. This is particularly troubling given the high-growth trajectory of most auto-producing nations in Asia and the easy access automotive producers in those countries already enjoy to the U.S. market.

Without further action to obtain significant cuts in applied tariffs in Korea and the ASEANs in particular, U.S. parts producers will continue to face high tariffs in addition to non-tariff barriers in those key markets through the balance of this decade. Bad precedents also will be set for GATT accession talks with China and Taiwan. This will limit U.S. export growth and force some U.S. producers to gain access principally through direct investment in key Asian markets.

Given the magnitude of trade in our industry and the openness of our market, we strongly urge Congress to work with us to insist on further tariff reductions in Korea and the ASEANs before the Round is officially concluded.

TRADE-RELATED INVESTMENT MEASURES (TRIMS)

The GATT TRIMs text imposes new prohibitions on the use of local content and trade balancing requirements within a 2-year period for developed countries, a 5-year period for developing countries, and a 7-year period for the least developed nations. The TRIMs agreement also requires a self-audit after five years, creating an opportunity to expand prohibitions to include other trade-distorting forms of performance requirements.

MEMA believes this agreement is a highly positive one which should progressively limit the ability of developing countries to manipulate trade through local content and minimum export rules. However, coverage of the agreement is incomplete, and transitional provisions encourage, but do *not* require users of TRIMs to apply them in a non-discriminatory manner while they are being phased out.

U.S. automotive producers have major investment positions in many developing foreign markets. As such, our industry is heavily at risk of discrimination in application of performance requirements whenever new competitors (mostly European or Japanese) enter these markets.

MEMA therefore asks Congress to monitor closely implementation of the TRIMs agreement by mandating, in U.S. implementing legislation, an annual Commerce Department review and congressional report on this subject. In addition, we ask that Congress clearly signal its intent to seek official U.S. redress in any cases where discrimination occurs.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

MEMA has been most interested in the TRIPs agreement's treatment of industrial design and trademark protection. We believe this agreement would improve international protection of U.S. trademarks, principally through provisions establishing GATT rules on: (a) minimum terms for initial and subsequent trademark registration; and (b) trademark use requirements to maintain validity.

Of particular importance to MEMA members serving the replacement parts market, the agreement does not require the United States to amend its current law on industrial designs. Certain proposals before the GATT during the negotiations could have forced changes in U.S. law that would have severely harmed U.S. producers serving the independent aftermarket. The agreement avoids such an outcome by simply requiring GATT members to provide some form of protection for industrial designs for a minimum term.

AGREEMENT ON GATT ARTICLE VI (ANTIDUMPING)

With respect to antidumping, MEMA's goal in the Uruguay Round was to improve, clarify and expand the existing GATT Antidumping Code. We sought improvements in minimum procedural standards of the existing Code, including greater transparency in foreign dumping investigations and new provisions on anti-circumvention of dumping determinations. We also sought substantive clarifications to certain provisions of the Code to ensure effective relief from injurious dumping under U.S. law.

The Uruguay Round dumping text represents a step forward in the area of improving transparency in international rules for handling dumping cases. The agreement should provide U.S. parts manufacturers with better legal protection in foreign antidumping proceedings, a minor but growing concern to our industry.

In other respects, the Uruguay Round text on dumping appears to have made progress mostly in a defensive sense; that is, U.S. negotiators were able to prevail with our trading partners to preserve (with or without modifications) some key concepts and elements of current U.S. law and practice in the areas of anti-circumvention, definition of the "domestic industry," and cumulation of the effects of dumped imports from all sources in injury determinations.

In the process of negotiating the final provisions, however, U.S. negotiators may have acquiesced to a shift in the procedural, and thus financial, burden from those charged with injurious dumping to those U.S. parties making the dumping allegation. MEMA urges Congress to adopt the recommendations contained in Appendix I to this testimony in order to minimize the chance that the GATT dumping text could lead to a substantial diminishing of the rights of domestic industries under U.S. law.

AGREEMENT ON DISPUTE SETTLEMENT

The U.S. government gave high priority to establishment of a dispute settlement body within the World Trade Organization (WTO) to operate a new, much stronger and efficient dispute settlement process. In concept, MEMA supported this objective,

but cautioned against U.S. acceptance of new constraints on its ability to act unilaterally, particularly under Section 301 of the Trade Act.

Under the proposed new dispute settlement structure, there would be two types of cases: (1) those subject to WTO oversight, in which the U.S. and other WTO members would refrain from taking unilateral action; and (2) those beyond the scope of WTO oversight, in which we and others would have much greater freedom of independent action.

MEMA is concerned that the GATT dispute settlement text could hinder the use of Section 301 in opening foreign markets closed by anti-competitive practices, for which the GATT provides no effective alternative remedies. Of special concern to our industry is the potential for undermining the 1988 Trade Act amendment to Section 301 which permits U.S. retaliation against a foreign government's toleration of unfair practices, rather than simply against government practices alone.

For this reason, MEMA strongly supports the insertion of language in U.S. legislation implementing the GATT Uruguay Round agreement which would clarify Congress' intent that the U.S. maintains its rights to act unilaterally if a foreign act, policy or practice, while not violating a specific WTO agreement, burdens or restricts U.S. commerce.

WORLD TRADE ORGANIZATION

This text establishes the World Trade Organization as a new institutional framework responsible for implementation of the 1994 GATT Uruguay Round agreements and understandings, and for coordination of future multilateral trade negotiations.

MEMA, while having important concerns about the operation of the new dispute settlement provisions for the WTO, believes this agreement may be one of the most important results of the Uruguay Round. This view is based on the fact that the WTO will require all members who accede to this agreement to accept the full obligations as well as the benefits of the Uruguay Round. Waivers to this principle will be permitted only selectively after a stringent review and approval process of the WTO governing bodies.

To the extent that most major U.S. trading partners become members of the WTO, this new body will help reduce a major shortcoming of the 1947 GATT Agreement, namely "free ridership" for most developing and some industrialized nations. MEMA thus recommends that Congress voice its strong support for Administration efforts to ensure that all major U.S. trading partners join the new WTO no later than its proposed July 1, 1995 effective date.

AGREEMENT ON GATT ARTICLE XLX (SAFEGUARDS)

MEMA gives mixed reviews to the Uruguay Round text on safeguards. On the positive side, the text would require GATT members to apply safeguard measures only if they determine imports cause or threaten to cause "serious injury" to a domestic industry. This is language equivalent to Section 201 of the U.S. Trade Act and is fully acceptable to our industry.

Our concerns with this agreement relate to its provision "grandfathering" the recent Japan-EC agreement limiting exports of Japanese automobiles into the European Communities. While the U.S. would have a similar right to impose one "gray area" measure, there is no assurance that the U.S. government will be inclined or able to negotiate such an agreement with Japan on auto exports to the United States. This situation could lead to a diversion of trade to the U.S. market, particularly if the present dollar/yen exchange rate situation later shifts in favor of Japanese industry.

An alternative which MEMA supports is to ensure that the U.S. and Japan reach a viable "Framework" agreement this year that will lead to a more balanced bilateral automotive trade situation as the 1990s proceed. Absent such an agreement, a new U.S.-Japan restraint arrangement may become necessary to ensure that excess capacity pressures in Japan and Europe are not shifted unfairly to the U.S. market.

AGREEMENT ON GATT ARTICLE XVIII (BALANCE OF PAYMENTS)

MEMA had two primary goals in negotiations to tighten GATT control over developing countries' use of balance of payments restrictions: (1) to discourage improper use of balance of payments restrictions to disguise "infant industry" development programs in the automotive sector; and (2) to require developing countries to announce timetables for removing balance of payments restrictions as soon as possible following their imposition.

We believe the latter goal was largely achieved in the Uruguay Round, and trust the U.S. government will work to ensure that the agreement is implemented in a

way that addresses the first objective in a meaningful way. A more rigorous GATT/WTO review process is established which provides a stronger mechanism to achieve that goal. However, because the text provides only loose rules related to enforcement of future abuses of balance of payments waivers, MEMA is not optimistic about the U.S. government's ability to achieve this goal. As such, the practical impact of this agreement on our industry may be minimal.

AGREEMENT ON RULES OF ORIGIN

MEMA supports this agreement, which defines general principles for application of preferential rules of origin and a joint GATT/Customs Cooperation Council workplan for harmonization of non-preferential rules of origin. Our primary objective in these negotiations was to ensure maximum consistency in the GATT text with our industry's efforts to develop strong, value-content based preferential rules of origin in the North American Free Trade Agreement. This goal was achieved.

CONCLUSION

Like past GATT rounds, the Uruguay Round agreement includes a number of potentially important procedural reforms, the impacts of which are difficult to predict, especially at the individual industry level. As such, MEMA focused most attention on the market access negotiations, which to date have made only modest and uneven progress. We also sought to ensure that the effectiveness of U.S. trade laws as potential tools for our industry would not be undermined by the GATT Uruguay Round. We have some important remaining concerns in this area.

MEMA asks that this Committee and the entire Congress join us in urging that special efforts be made in ongoing market access negotiations with Korea and the ASEANS, as well as Turkey, to gain more reciprocal concessions that will improve U.S. export opportunities.

In addition, we urge congressional support, through implementing legislation, to minimize the potentially adverse impacts of the Uruguay Round agreements on the ability of industries such as our own to make effective use of U.S. unfair trading laws.

Finally, MEMA proposes that Congress include in implementing legislation an annual Commerce Department reporting requirement on the TRIMs agreement to monitor and encourage its effective implementation. Such a report also will serve as a benchmark for the mandated five-year GATT/WTO review of the TRIMs agreement.

Thank you for your attention to these important matters.

STATEMENT OF PPG INDUSTRIES, INC., GLASS GROUP

This statement on the Uruguay Round results is made on behalf of PPG Industries, Inc., Glass Group, a U.S. manufacturer of float (flat) glass and fabricated float glass products.[1] The principal uses of float glass and fabricated float glass is as an architectural and motor vehicle glazing (i.e., window) material.

On balance, PPG is supportive of the Uruguay Round results, provided that serious concerns are handled effectively by the Administration and Congress in implementing legislation and in continuing negotiations and reviews.

1. MARKET ACCESS

PPG does not object to the tariff cuts on flat glass and fabricated flat glass products to which the United States has agreed in the Round (HTS items 7005–7008). It expects that any additional negotiations on market access between December 15, 1993, and finalization of the market access talks will not result in any additional cuts of U.S. tariffs on these products.

2. THE SUBSIDIES AND ANTIDUMPING CODES, AND RELATED ISSUES CONCERNING THE COUNTRY OF ORIGIN PROVISIONS

Effective relief from subsidized and dumped imports has long been important for U.S. flat glass producers. The industry has brought numerous countervailing duty and antidumping duty cases against imports from Europe, Asia and the Americas. The effectiveness of those remedies was limited by interpretations of current U.S. law implementing the Subsidies Code and Dumping Code. Flat glass producers

[1] These comments are filed for inclusion in the hearing record pursuant to the Committee's press release #H–3 (January 26, 1994).

were, therefore, encouraged when Congress aimed at strengthening disciplines on subsidies and dumping by authorizing negotiations in the Uruguay Round:

> to improve the provision of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices.

Section 1101(b)(8)(A), Omnibus Trade and Competitiveness Act of 1988; 19 U.S.C. §2901(b)(8)(A). As discussed below, not only do the final texts from the Uruguay Round fall short of these goals, they actually, on balance, decrease disciplines on unfair trade practices.

A. Subsidies

Although there are some positive aspects of the Final Act's provisions on Subsidies, there are numerous provisions exempting subsidies from prohibitions and otherwise reducing subsidy disciplines.

The positive aspects of the new subsidy provisions include a slight expansion of expressly prohibited subsidies, to include those contingent upon use of domestic goods as well as those relating to export performance. Another potentially positive aspect is a definition of "serious prejudice" in the context of a government's right to consultations when "seriously prejudiced" by another country's subsidy practices. The definition which provides certainty in a previously obscure area, deeming serious prejudice to exist, for instance, when ad valorem subsidization exceeds 5 per cent.

There are, however, numerous negative aspects to the text which reduce disciplines on subsidies. For instance, four broad categories of subsidies are made non-actionable. Those expressly permitted categories are (1) subsidies which are not specific to certain enterprises (thus, the ability of other countries to offset subsidies is reduced as the benefit is broadly conferred), plus the following three categories, made non-actionable even when specific to certain enterprises: (2) assistance for research activities (up to certain limits), (3) assistance to disadvantaged regions, (4) assistance for costs of meeting new environmental requirements (up to certain limits). Other negative aspects are the text's defining away private subsidies (preventing recourse, e.g., when export targeting is financed by a company's cross subsidization), and making non-actionable subsidies which are given in a form other than a financial contribution by a government or public body (making non-actionable, e.g., benefits conferred through export bans).

A commitment to address the serious concerns on subsidies in the implementing legislation is needed to render the subsidies text acceptable.

B. Antidumping

Although the U.S. negotiators worked hard in the final days of the negotiations to lessen some of the negative aspects of the earlier draft text (the so called "Dunkel draft"), at the end of the day they were able only to convert a totally unacceptable text into a bad text.

The final text will make it more difficult and costly to bring dumping cases, to cause antidumping duty orders to be issued, and to keep orders in force when dumping continues. There are no positive aspects accompanying the negative aspects of the dumping text. Flat glass producers are very concerned about the weakening of this important remedy against international price discrimination.

Among the negative aspects of the dumping text is the absence of any reference to diversionary dumping, dumped inputs, and export targeting practices, the three items explicitly identified by Congress (19 U.S.C. 2901(b)(8)(a), quoted above) as not adequately covered by the current multilateral provisions.

Additionally, there is a serious weakening of existing U.S. law in many areas. The Final Act of the Uruguay Round includes: a sunset provision, aimed at terminating antidumping duty orders at the end of a certain time period unless injured industries facing continued dumping prove continuing harm or its likely reoccurence; *standing requirements* which make it more difficult for a petitioner to act in the interest of domestic producers or workers; *limitations on the values that can be used in constructing the foreign market value of imports; limits on when foreign market sales made at prices below the cost of production may be disregarded; authorization of averaging of the import prices in investigations,* decreasing the likelihood of finding margins on individual sales; a *high "de minimis" margin floor,* below which dumping will not cause issuance of an antidumping duty order; *import volume* levels considered negligible, and therefore exempt from antidumping disciplines, which are

unacceptable for many industries; and *restriction on cross cumulation.* Although negotiations are to continue, there are not yet any provisions to address the numerous ways in which antidumping duty orders can be, and are being, circumvented.

Hence, the final text remains seriously flawed. As with subsidies, acceptability of the agreement will require administration and congressional commitment to address fundamental concerns in implementing legislation and in the continuing WTO processes.

C. Agreement on Rules of Origin

While recognizing that uniform rules of origin are generally positive, flat glass producers would be concerned by automatic application of the general rules of origin in determining the country of origin of products covered by antidumping duty or countervailing duty orders. Specifically, although minor changes of a product may be sufficient to change the country of origin for normal customs purposes, such changes should not permit circumvention of trade remedies.

With respect to both normal country of origin concerns and those in connection with antidumping and countervailing duty coverage, the acceptability of this agreement will depend on whether the domestic industry is provided the opportunity for early input to U.S. officials participating in drafting specific rules through the WTO and Customs Cooperation Council, and whether the United States retains the ability to prevent minor product modifications from changing the country of origin in the antidumping and countervailing duty context.

3. SECTION 337 AND 301 REMEDIES

Section 337 (Tariff Act of 1930). Although not addressed in the Round, the implementing legislation should provide for maintenance of a strong section 337 remedy, critical for manufacturers with intellectual property interests. GATT consistency would be relevant, of course, in drafting the provisions following the GATT panel finding that the current 337 provision violates the GATT's national treatment requirement.

Section 301 (Trade Act of 1974). The final text's provision for automatic adoption of the reports of dispute panels raises some questions about the ability of the United States to take actions, such as retaliation, under section 301 without authority under WTO procedures. Section 301 remains the only vehicle for addressing certain countries' practices covered by the U.S. negotiating objectives but not the final text. This will be true until additional rules and disciplines are developed through further multilateral or other negotiations. As section 301 will continue to be a critical tool for many industries against unfair practices not expressly disciplined by the multilateral agreements, it is important that implementing legislation maximize the potential utility of this important tool.

4. AGREEMENT ON IMPLEMENTATION OF ARTICLE VII (CUSTOMS VALUATION), DECISION REGARDING CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE, AND TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES

Changes concerning customs valuation are generally positive. The expressed authority to pursue the accuracy of declared values is certainly important, as is the balance achieved by assuring notification and other due process protections and access to the dispute settlement mechanism. Authority to challenge declared values is particularly important in related-party transactions and when an import is the subject of an antidumping or countervailing duty proceeding or order.

PPG supports the texts regarding minimum values, and their aim of eliminating minimum value practices, which are protectionist, trade distortive and unjustified under any criteria. Accordingly, any period for transition to transaction values should be short. The acceptability of the changes in the agreement and the supplemental texts on minimum values will depend, therefore, on the transition periods agreed to by the Committee on Customs Valuation.

PPG also supports the provision of technical assistance to countries concerned with particular issues such as sole agents, but notes that such issues should not be used to delay transition of customs activity from minimum prices to transaction values.

5. AGREEMENT ON PRESHIPMENT INSPECTION

Although of only minor importance to flat glass producers, PPG supports the changes accomplished in the Round concerning preshipment inspection.

6. AGREEMENT ON IMPORT LICENSING PROCEDURES

The agreement on import licensing procedures in the Final Act would be mandatory for all members—unlike the discretionary Tokyo Round provisions which the new text refines. This is a favorable development.

7. GOVERNMENT PROCUREMENT

A one-page decision in the final act ("Decision on Implementation of Article XXIV:2 of the Agreement on Government Procurement") refers to document GPR/Spec/77, which represents the outcome of efforts on government procurement rules conducted in parallel with the Uruguay Round. PPG views the changes concerning procurement, particularly inclusion of subnational governments within the regime, as positive developments.

8. UNDERSTANDINGS ON VARIOUS GATT ARTICLES

PPG would support the understandings on GATT articles set forth in the Final Act.

Understanding on Art. II:1(b). PPG supports the restriction upon countries using increases in "other duties and charges" to indirectly increase bound tariffs. PPG is disappointed, however, by the inconsistency between paragraphs 2, 4 and 8 of the Understanding concerning the date on which other duties and charges are bound, and in particular by the suggestion at paragraph 8 that paragraph 2 supersedes the decision by the GATT Council in 1980, which decision is tracked in Paragraph 4. The 1980 decision should, through paragraph 4, remain the policy.

Understanding on the Interpretation of Art. XVII (state trading enterprises). This understanding—improving notification transparency and establishing a working party to review notifications and the adequacy of information, and to handle counter-notifications—represents a strengthening in areas of importance to the flat glass industry vis-a-vis developing countries and countries in transition.

Understanding on the Balance-of-Payments. This understanding slightly improves the balance of payment provisions by requiring: first resort to price-based measures rather than, e.g., quotas; transparent administration of restrictions; and consultations on steps being taken toward elimination of the restrictions.

Understanding on the Interpretation of Art. XXIV. The understanding on Article XXIV gives welcomed guidance on rights and obligations to accompany creation of customs unions and free trade areas.

Understanding on the interpretation of Art. XXVIII. PPG supports the provision of certain compensation rights to developing countries when withdrawal or modification of concessions under Art. XXVIII impact their important trade flows.

Understanding on the interpretation of Art. XXXV. PPG supports this understanding's allowing countries to engage in negotiations on a possible schedule of concessions while retaining the right of non-application under Article XXXV.

9. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES (TRIMS)

PPG supports progress in the Round toward reducing trade distorting investment measures. Distortive measures are not eliminated by the new provisions, however, and additional U.S. negotiations will be necessary, therefore—as part of the WTO processes, as well as on bilateral and plurilateral bases—to move nearer U.S. objectives on TRIMs, which include:

—to obtain enforcement of GATT rules against the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that substantial direct investment in the foreign country be made;
—to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and
—to develop internationally agreed rules, including dispute settlement procedures, which will help ensure a free flow of foreign direct investment and will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

Section 1101(b)(11), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2901(b)(11)).

U.S. investors abroad have long faced local content, trade balancing and foreign exchange requirements in foreign markets notwithstanding their prohibition under GATT. The final text on TRIMs confirms the prohibition of such practices under Articles III or XI of the GATT. The agreement does not address other important issues, however, such as mandatory technology transfer and maximum foreign equity

rules, which have obvious trade impacts. It is critical that these issues be addressed in the review of trade related investment measures envisioned in the agreement. Finally, a basis for serious concern arises from the long transition rules for practices which are admittedly already prohibited by the GATT.

10. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

Trademarks, patents (product and process), and trade secrets ("undisclosed information") are intellectual property areas of particular concern to flat glass producers. The U.S. negotiating objectives were:

—to seek the enactment and effective enforcement by foreign countries of laws which (i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and (ii) provide protection against unfair competition;

—to establish in the GATT obligations (i) to implement adequate substantive standards based on (I) the standards in existing international agreements that provide adequate protection, and (II) the standards in national laws if international agreement standards are inadequate or do not exist, (ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented, and (iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

—to recognize that the inclusion in the GATT of adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and dispute settlement provisions and enforcement procedures is without prejudice to other complementary initiatives undertaken in other international organizations; and

—to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

Section 1101(b)(10), Omnibus Trade and Competitiveness Act of 1988 (19 §U.S.C. 2901(b)(10)). The the United States negotiators were able to obtain most of these objectives. Particularly positive is the agreement's aim to cause improved enforcement rights, remedies, standards and dispute settlement procedures in the member States.

Long transition rules for certain countries or technology areas, however, will be troublesome for certain domestic industries, as would defeat of the agreement's purpose through countries' improper use of the provisions on "control of anti-competitive practices in contractual licenses."

11. AGREEMENT ON SAFEGUARDS

On safeguards, as with TRIPs, the U.S. did well in meeting its principal negotiating objectives, which were:

—to improve and expand rules and procedures covering safeguard measures;

—to ensure that safeguard measures are (i) transparent, (ii) temporary, (iii) digressive, and (iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

—to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

Section 1101(b)(12), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2901(b)(12).

Countries should become more willing to provide some forms of escape clause relief as a result of the agreement's elimination of the compensation requirement when relief is for only a short-term. The quota modulation provision, although technically inconsistent with the most favored nation rules, is also a positive modification, increasing the likelihood of relief by focusing the remedy at the specific country or countries generating the trading activity.

12. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

PPG is generally supportive of the modification to the Code on technical barriers to trade as they reduce the likelihood that technical standards will be used to discriminate against international trade.

13. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Bearing in mind the need for the continued availability of section 301-type relief (discussed above), PPG is generally supportive of the dispute settlement agreement, particularly the streamlined, time-specific procedures, which should make dispute settlement actions subject to completion within reasonable time limits.

The acceptability of mandatory dispute settlement will depend on the standard and scope of review applied by the panels. It supports the general concept, however, including opportunity for appeal.

Also, an important aspect of the dispute settlement understanding, enhancing enforcement of U.S. rights, is the ability to cross retaliate where it is not practicable or effective to do so within the area of a violation. PPG supports that authority.

14. TRADE POLICY REVIEW MECHANISM

PPG is generally supportive of the trade policy review mechanism (TPRM). It has been an important, unified source of information, increasing the transparency of the trade practices of our major trading partners. The only limitation to date has been the editorial positions of the Secretariat, describing remedies expressly authorized by the GATT, such as countervailing duties and antidumping duties, in terms suggesting they somehow undermine or are contrary to the GATT.

The future value of the TPRM will depend on what the contracting parties and the Secretariat do with the information collected and disseminated.

15. DECLARATION ON THE CONTRIBUTION OF THE WTO TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

An objective of the 1988 Act achieved in the Round is one seeking coordination of trade and monetary policy: "to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions." Section 1101(b)(6), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2901(b)(6)).

The GATT in fact has had a program to improve coordination with the IMF and World Bank since the Mid-term review results in 1989. The declaration on the contribution of the WTO to achieving greater coherence in global economic policymaking is a further step in this direction. Paragraph 5 of the declaration sums up the direction and is generally supported by PPG:

> The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The WTO should therefore pursue and develop cooperation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further invite the Director-General of the WTO to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.

PPG retains as a reservation to its support of this paragraph that the caveats added to accommodate concerns of the developing countries be revisited within five years.

16. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

The principal U.S. negotiating objectives included "(1) to enhance the status of the GATT; (2) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and (3) to expand country participation in particular agreements or arrangements, where appropriate. Section 1101(b)(2), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2901(b)(2)).

Important revisions to the draft text were accomplished through U.S. efforts toward the conclusion of the negotiations which should make the WTO concept more acceptable. The United States has minimized loss of sovereignty (necessarily flowing, in particular, from binding dispute resolution) through articles dealing with interpretation of amendments, and those in the dispute settlement text concerning the findings a panel may make.

17. U.S. NEGOTIATING OBJECTIVES NOT IN THE ROUND'S RESULTS

There are several U.S. negotiating objectives that were not addressed in the final text and which are not otherwise considered above. Several are of significant importance to U.S. industry: (1) the objectives with regard to countries running large and persistent global current account imbalances; (2) redressing the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes; (3) objectives on worker rights; and (4) objectives promoting improved access to high technology. PPG would urge the Administration and the Congress to see that these issues as well as others identified as part of the review of the Final Act provisions be addressed as expeditiously as possible in the WTO, otherwise on a multilateral basis, or in bilateral or plurilateral negotiations.

18. CONCLUSION

On balance, PPG supports the Uruguay Round agreement, on condition that the serious issues of concern be addressed in implementing legislation. Of particular concern are the areas of antidumping duties, subsidies and countervailing duties, sections 301 and 337, and country of origin.

PPG also urges that ongoing bilateral negotiations with countries whose practices inhibit access to U.S. flat glass and fabricated flat glass be moved forward vigorously and that other serious bilateral problems with certain major trading partners be promptly addressed. Early examination of negotiating objectives not addressed in the Round is also necessary.

STATEMENT OF THE RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS

The Rubber and Plastic Footwear Manufacturers Association (RPFMA) is the spokesman for manufacturers of most of the waterproof footwear, rubber soled fabric-upper footwear and slippers produced in this country. The names and addresses of the Association's members appear on Appendix I.

Although we realize that there are aspects of the Uruguay Round's market access agreement which remain to be negotiated, we have been assured that there will be no change in the footwear offer made by the United States. On that assurance, it is the view of the RPFMA that Congress should look favorably on the outcome of this Round. In taking this view, we should note that the rubber footwear and slipper manufacturers for whom we speak are the principal domestic producers in a labor-intensive, import-sensitive industry whose primary concern has been that imports from low-wage countries not be permitted to overwhelm what is left of our domestic market. For the most recent quarter reported by the International Trade Commission, imports of fabric upper footwear took 83% of this market and imports of waterproof footwear took 44%. The ability of producers in countries such as China, Korea, Indonesia and Thailand to undersell United States producers has limited the export potential of this industry; consequently, our focus on the Uruguay Round has been limited to efforts to prevent reduction of United States footwear and slipper tariffs.

Over the past seven years, the Government—more particularly the Office of the Trade Representative and the Department of Commerce—has devoted a great deal of time to a consideration of the relative perils and benefits of tariff cuts in the 106 rubber and non-rubber footwear Harmonized System classifications. The result has been offers of substantial Uruguay Round cuts in thirty-six categories—including the total elimination of duties in fifteen—but the retention of existing duties in the seventy categories of most vital importance to the domestic industry. In the Uruguay Round, as was true in the Kennedy and Tokyo Rounds, American negotiators acted with responsible caution so that what remains of this domestic industry has a reasonable chance for continued survival.

Surely we would have preferred it if all 106 footwear categories were left untouched but that was not to be and the resulting agreement is far better than the trade anarchy and the rush to regional free trade agreements which would have been the alternative. Accordingly, we have no hesitation in asking the Congress to endorse the outcome of the Uruguay Round.

The restraint shown by the Uruguay Round negotiators, as well as by the NAFTA negotiators of a fifteen year phaseout and 55% local content requirement for rubber footwear and slippers coming from Mexico, provide a worthy contrast to the impact on this industry of instant duty-free treatment of footwear from the Caribbean. The Trade Act of 1990 eliminated the exemption from duty-free treatment for Caribbean footwear made with American components. Since the implementation of that provision, rubber footwear imports from the Dominican Republic alone have increased by well over 400% at the direct expense of domestic manufacturers and employees. We

previously advised this Committee of two major companies which closed its plants in Ohio and Georgia and promptly expanded its plants in Honduras and the Dominican Republic. Recently, a major slipper producer closed its operations in Pennsylvania and opened in the Dominican Republic, and another slipper company slashed its orders from a Maine manufacturer and has begun production in the Dominican Republic.

We mention the CBI problem at this time to stress the significance of the care taken by the Government in dealing with rubber footwear and slipper tariffs in the Uruguay Round. But as important as is your consideration of the impact of the Uruguay Round agreements, we hope that this Committee will include S. 530 in the Uruguay Round implementing legislation. S. 530 is a bill designed to correct the devastating impact CBI duty-free treatment has had on American manufacturers of rubber footwear and slippers. This bill is similar to the one passed by Congress in 1992 as part of the Urban Aid Tax bill vetoed by President Bush.

STATEMENT OF TERENCE P. STEWART, ESQ.

I. INTRODUCTION

This written statement presents my personal views on the Uruguay Round Final Act. 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[1] which was recently published; we are in the process of updating it to reflect the Final Act and events in Marrakech.

In November 1993, prior to the conclusion of the Uruguay Round, I prepared an analysis of how the negotiations stood as of November 1, 1993, compared with the Congressional objectives articulated in the Omnibus Trade and Competitiveness Act of 1988. It was my summary view then that there were too many C's, D's and F's in the various areas and that the U.S. needed to do better before the December 15, 1993, scheduled conclusion.

The United States negotiators accomplished a great deal in the last weeks of the negotiations and have attempted since December 15th to improve the market access package, albeit with minimal success. Some of the major accomplishments of the Administration in the waning hours of the negotiations include the following: (1) obtaining a package of changes to the antidumping text which address some of the major concerns of domestic users, (2) addressing some of the concerns of environmental and consumer groups in maintaining the ability to have higher standards than international norms where there is a scientific basis to support the standards, (3) obtaining a final agreement on agriculture, including psychologically-important and difficult commitments from certain countries to open up to a minimal extent product sectors historically excluded from international trade, (4) obtaining an important modification to the compulsory licensing provisions of the TRIPs agreement, (5) obtaining selective changes in certain texts to reduce potential concerns about national sovereignty, (6) obtaining some improvements in selected markets for textiles and apparel, (7) concluding a market access package with some important sectoral advances in duty reductions, although the extent of the coverage and the qualifications by some countries on particular sectors was less than desired by U.S. companies, (8) securing a service package which preserves leverage for the United States in attempting to open financial service markets abroad, (9) completing a revised government procurement code text, and (10) leaving the civil aircraft negotiations to continue to another day.

There were, of course, a range of important issues that were not resolved satisfactorily from the U.S. perspective. The Administration was able on some issues to reserve the right to fight another day. The media coverage of the problems for our audio-visual interests in the first half of December provided a vivid image of the difficulties that industry faced in obtaining market access and other commitments in an area carrying significant emotional appeal in many countries. Similarly, concerns in the intellectual property area for lengthy transition periods for pharmaceuticals and agricultural chemicals and the lack of coverage for biotechnology were not satisfactorily resolved with our trading partners. While the service negotiations constitute a major success for some sectors and went a long way in defining the critical issues, for many of the major initial proponents of the Round, "success" was spelled in not concluding the negotiations in fact, but instead giving additional time to obtain commitments that have been impossible to accomplish to date. In agri-

[1] Stewart and Stewart, *The GATT Uruguay Round: A Negotiating History (1986–1992)* (Terence P. Stewart, General Editor) (1993) (Kluwer Law and Taxation Publishers).

culture, while completing a package was itself remarkable in light of past failures in the area, the actual extent of improved market access or controls on subsidies is yet to be seen, with many negotiators privately admitting that many or most of the agricultural offers involve significant "dirtying" of the tarffication process. Similarly, many important export sectors of the U.S. industrial landscape have found that the zero-for-zero or harmonization of tariffs expected from the agreement have significant limitations as to country coverage or have been qualified by important trading partners. And on subsidies, while the Administration accomplished a major late objective of obtaining protection for various U.S. R&D subsidy programs, serious concerns have been raised in this Committee on whether the price paid was too high and whether the Subsidy agreement provides cover for too much government assistance. In textiles and apparel despite Administration efforts, there has been no significant market access within certain important textile exporting countries. Nor was the Administration able to enlarge the period for reintegration.

Moreover, certain issues of importance to the Congress in 1988 were never part of the Uruguay Round package. Some may be part of the Marrakech declaration. Others may be being addressed partially on a bilateral level. Examples include current account surpluses (rules to address large and persistent global current account imbalances), worker rights, access to high technology in foreign countries, treatment of border taxes under GATT.

I have not, as yet, prepared an updated report card, because the magnitude of market access improvements is still not known in detail. I will hopefully update the report card in May.

ANTIDUMPING AND COUNTERVAILING DUTY IMPLEMENTING LEGISLATION

While many areas of the Uruguay Round final act will require careful study in preparing the implementing legislation to safeguard U.S. interests and the value of the negotiation, the rest of this statement is limited to an area of particular interest to me, antidumping and countervailing duty law.

As the Administration works with the Congress on the preparation of draft implementing legislation on the Uruguay Round for antidumping and countervailing duties, this Committee should bear in mind certain major policy questions in evaluating the proposed implementing package.

First, if the agreements constitute a potential weakening of U.S. trade laws (*i.e.*, if one implements only those changes necessary to bring the U.S. into compliance), does the Administration or Congress want to "rebalance" U.S. law by: (a) implementing changes authorized by the GATT agreement that would help domestic industries that file cases, and (b) adopting changes not prohibited by the GATT agreement that could reduce the negative reaction to certain changes?

Second, does the Administration or Congress wish to make the laws more effective by closing loopholes and incentives for evasion?

Third, does the Administration or Congress wish to use this agreement to adopt certain simplification proposals and, if so, should they be outcome and margin neutral?

I believe that the answers should be "yes" to all of the above. If so, it is critical that the draft implementing legislation, before being formally submitted to the Congress, reflect the rebalancing, closing of loopholes and simplification steps.

I. Despite Major Efforts By the Administration the Current Antidumping and Countervailing Duty Agreements Constitute Potential Bad Deals for the United States.

U.S. negotiating objectives in antidumping and subsidies during the Uruguay Round were to:

(a) "improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices" and

(b) "obtain the application of similar rules to the treatment of primary and nonprimary products" in the subsides agreement.

Unfortunately, the U.S. was unable to accomplish its objectives in these critical areas as many of our trading partners pushed to limit the utility of Articles VI and XVI of the GATT. The Administration *did* manage to lessen the problems through its November-December negotiations in Geneva. Rebalancing, however, remains critical if U.S. laws are to remain strong.

1. Antidumping

In antidumping, *cases will be harder to bring. harder to win. and provide less relief for a shorter period and cost more for injured industries.* Diversionary dumping, dumped inputs, and export targeting practices are not specifically covered in the Final Act. Weakening of existing U.S. law has occurred in many areas—*e.g.*, sunset, standing, constructed value, sales below cost, averaging in investigations, de minimis margins (raised to a value equal to roughly half of U.S. corporate profitability), negligible import volumes which are unrealistically high for many industries, cross cumulation. Nor was the U.S. able to get coverage (although negotiations are to continue) on the rampant circumvention problems facing many domestic industries.

2. Subsidies and Countervailing Measures

In subsidies and countervailing duties, while the U.S. did obtain a somewhat expanded list of prohibited subsidies and (for the first time) definition for serious prejudice and a presumption of its existence if certain ad valorem equivalent benefits have been conferred, the U.S. lost its current ability to pursue private subsidies (critical if the U.S. is ever to address meaningfully most export targeting which is financed by cross-subsidization within a single company), its ability to address trade distorting practices mandated by foreign governments that don't involve a "financial contribution" (e.g., export bans of raw materials which artificially reduce the price of key materials used in exported products), and the U.S. accepted the creation of significant loopholes through three greenlight categories of subsidies—(1) research and development (expanded at the U.S. insistence), (2) regional development, and (3) environmental subsidies. Moreover, resource input subsidies, subsidized inputs, and export targeting practices are not addressed.

3. Efforts in Geneva Helped But Did Not Solve the Problem

While the United States made a major effort to address some of the extreme problems in the Draft Final Act during December, the resulting text remains seriously flawed.

II. The Administration and Congress Can Rebalance the Package in Implementing Legislation in a GATT/WTO Consistent Manner

Despite the major problems presented by the Uruguay Round texts in antidumping and subsidies, the Administration and Congress can through implementing legislation provide domestic industries and their workers with effective relief from unfair trade practices. Both the Administration and the Congress must exhibit the *will* to do so.

Implementing legislation should provide for: (1) rebalancing U.S. law by—accepting agreement changes where necessary and taking advantage of agreement provisions not presently part of U.S. law and other affirmative measures not prohibited by the agreements, (2) closure of loopholes in existing U.S. law and practice, (3) elimination of incentives for avoidance of antidumping duty or countervailing duty orders or for "creative accounting" in reviews, and (4) simplification of the process without prejudicing domestic-user rights.

1. Rebalancing

A. Minimizing the Harm From Negative Provisions

To conform to the new agreements, many provisions will need to be modified. Such changes should, of course, be made. However, provisions which will reduce the effectiveness of the law should be implemented in ways which do not expand their reach beyond what is required in the agreement. Hence, a number of provisions should be restricted to the investigation phase of cases (as they are presently in our trading partners): de minimis, averaging, negligibility are three obvious examples. In subsidies, green light provisions should be narrowly defined and carefully reviewed at the end of five years before accepting any continuation.

Other provisions which will restrict existing U.S. law and practice should take advantage to the maximum extent of transition rules or the ability to reduce the burden on domestic users through reasonable standards or presumptions:

(1) all existing orders and findings should be treated as coming into effect on the date of the WTO (estimated at July 1, 1995) and given the full five years before sunset reviews are commenced by the agency;

(2) polling to establish standing should be required only where the petition on its face doesn't establish the requisite standing (including the exclusion of companies U.S. operations when they are the target of the dumping practices);

(3) logical presumptions should be created to simplify the review process in sunset cases, minimum data should be required from domestic parties (no more than two years), and verification should be required of all data from foreign producers; if presumptions are not viewed as possible, the Administration and Congress should craft definitions of new terms ["likely to lead to," "continuation," and "recurrence"] and the resulting six bases for affirmative determinations that will permit orders and findings to continue;

(4) exceptions to averaging in investigations should be defined as permissible where a deviation in price of more than 5 or 10% is found, ITA should continue to require individual transaction data as well as seek average data by part number.

Similarly, provisions that could be implemented in a number of ways should be implemented in ways that minimize cost to all parties [e.g., grouping "expedited" reviews for new shippers].

B. Maximizing the positive benefits from the agreement

While it would seem intuitively obvious that the U.S. should maximize the positive benefits from the agreement, past experience indicates that the United States has occasionally not implemented provisions in agreements that would minimize price discrimination, sales below cost or subsidies.

A number of important opportunities present themselves in the implementing legislation, including:

(1) deduction of reasonable profits on resale in exporter's sales situations; elimination of the ESP offset [Art. 2.4];

(2) treating antidumping or countervailing duties as a cost where the dumping or subsidies are not eliminated [Art. 9.3.3 of A/D];

(3) eliminating the loophole that presently exists under the so-called "roller chain rule" [an article covered by an order is deemed not subject to the order when it constitutes less than 1% of the value of an object into which it is incorporated] by determining dumping liability "on such reasonable basis as the authorities may determine" [Art. 2.3];

(4) simplifying determinations of negligible imports by making the test simply the satisfaction of minimum import percentages and amplifying examples of situations which will not be controlled by the minimum percentages (e.g., where imports from the country are more than a certain dollar amount, $5 million) [Art. 5.8];

(5) collecting information from all producers for other products ("same general category" but not same class or kind) to permit examination of profit and GS&A figures for constructed value purposes [Art. 2.2.2.].

C. Adding Provisions Not WTO-Prohibited which Will Reduce the Negative Consequences of Some of the Changes

A package which makes it harder to bring cases, more costly to participate, and which is likely to lead to lower margins and orders that will possibly be revoked while dumping continues, will discourage companies from bringing cases and, as importantly, will discourage companies from reinvesting when cases are successful because of the greater uncertainty that conditions of fair trade will prevail. The Administration and Congress can do several things which would reduce the disincentives that have been added, while at the same time making the reduced benefits more palatable to domestic users:

(1) Provide compensation to petitioners and those in support. Such a provision, limited to moneys actually assessed, would have several benefits and would violate no GATT/WTO provisions:

(a) provide a powerful incentive to foreign dumpers to stop dumping;
(b) reduce potential standing problems;
(c) potentially reduce the cost of bringing cases;
(d) reduce the risk of reinvesting where dumping continues;
(e) neutralize the unintended fact that imposition of dumping duties in ESP and related party Purchase Price situations often does not have the intended effect of correcting market prices because of de facto absorbtion of duties by related party importer;
(f) address fact that "level playing field" is not generally restored because of an injury standard which, as applied, leaves industries behind when relief is finally provided.

(2) Make relief available earlier (i.e., change Commission decision-making to provide relief before plants close, employees are laid off, investment is curtailed and R&D is reduced).
(3) Make relief effective:

(a) duty as a cost (supra);
(b) close loopholes (infra; supra re roller chain).

(4) Make reimposition of duties relatively easy where justification for revocation proves factually to be inaccurate.

2. Closure of Loopholes in Existing U.S. law and Practice

Where relief provided is ineffective, domestic industries and their workers are cruelly misled as to the government's commitment to neutralize unfair trade practices.
While problems of circumvention (including country hopping) and input dumping continue to plague many industries, and should be addressed in implementing legislation, other problems exist which reduce the effectiveness of the law that are not required by the GATT/WTO:

(1) "roller chain" (discussed supra);
(2) structuring of sales through "resellers;"
(3) avoidance through use of bonded warehouses or through use of FTZs (where products are incorporated into items that are exported);
(4) customs rulings, customs misclassifications or customs error which result in product being liquidated without corrective duties even though covered by an order;
(5) subdividing "class or kind" into multiple "like products" which result in only partial relief being obtained by domestic users;
(6) scope ruling procedures which don't permit retroactive capture of entries that should have been (and in fact were) subject to the order;
(7) failure of Commerce to collect interest where bonds are deposited instead of cash, encouraging delay in completion of administrative reviews.

3. Elimination of Incentives for Avoidance of Antidumping Duty or Countervailing Duty Orders or for "Creative Accounting" in Reviews

Over time, U.S. law and practice have created certain incentives for foreign producers to seek to avoid antidumping or countervailing duty orders or to engage in "creative accounting" that cannot be pursued by the agencies or domestic interested parties, including:

(1) permitting importers to escape liability because of liquidation; not surprisingly, existing law and practice encourage importers and their foreign suppliers (a) to seek customs rulings that will escape Customs suspension, (b) to engage in "creative" descriptions of merchandise or seek "expansive" legal opinions to obtain HTS classification that will not be noticed or suspended under Customs' system, (c) to not disclose premature liquidations of merchandise that is covered by orders where lower liabilities result, (d) to raise scope requests only after Customs or Commerce has discovered a problem and suspended liquidation;
(2) failure to identify in public documents the leading exporters of products covered by outstanding findings or orders can result in domestic producers not requesting reviews of companies who may be exploiting low cash deposit requirements or otherwise engaging in practices to permit dumped merchandise to enter the United States at substantially lower margins (or no margins) regardless of the actual level of dumping;
(3) the "roller chain" rule (supra);
(4) multinational corporation manipulation of reseller provisions;
(5) existing International Trade Commission practice and interpretations which essentially penalize domestic industries for (a) taking steps consistent with the underlying purpose of the antidumping and countervailing duty laws (e.g., reinvesting, hiring back employees, increasing production) when dumping from new sources arises following the issuance of a first set of antidumping or countervailing duty orders, or (b) seeking relief where overall economic performance is improving but domestic producers are losing market share;
(6) present APO system which prevents use of APO information from different time periods or in related cases to demonstrate allocation manipulations or wildly varying cost figures;
(7) present inability of Customs, IRS and Commerce to exchange information for their range of needs and for domestic parties to obtain information under APO for the relevant time periods to identify possible avoidance, errors, self-serving presentation of data, etc.;

(8) current Commerce practice which permits related party importers to avoid prohibition on reimbursement of antidumping duties simply by manipulation of transfer prices (including transfer prices below cost).

These practices, interpretations and/or statutory provisions are not required by the GATT/WTO and should be corrected in implementing legislation so that all interested parties can concentrate on the merits of the dumping and injury allegations and not be able to escape liability by hiding the underlying facts.

4. Simplification of the Process Without Prejudicing Domestic User Rights

All parties should have an interest in simplifying antidumping proceedings. The risk always present in such an exercise is that the administering authority or Commission will simplify in a manner that results in (a) elimination of domestic user rights, (b) abdication of responsibility for the decision to foreign producers.

All simplification efforts should be outcome neutral. The Customs and International Trade Bar Association identified a series of generally outcome neutral simplification steps several years ago that were agreed to by lawyers representing both petitioners and respondents. The proposals included the following matters:

(1) early establishment of schedules in all investigations and reviews;
(2) modifications to questionnaire content, permitting both parties to comment;
(3) cumulating scope reviews to reduce frequency;
(4) prompt processing of APO applications;
(5) submission of data on floppy disk where small data bases are involved;
(6) public versions: adequacy (need uniform interpretations and compliance), filing (time delay to deal with proper check), and waiver of service;
(7) early examination of adjustment questions;
(8) timely issuance of verification outlines;
(9) release of disclosure documents prior to disclosure;
(10) opportunity to comment on issues appearing in final determinations;
(11) improvements in computer program procedures.

The agencies have adopted some of these proposals to date.

Other examples of simplification that could significantly reduce costs for all parties include several involving judicial review:

(1) permitting intervening parties to raise their own issues on an investigation or review where a summons is timely filed by any party (this would eliminate the need for filing protective appeals);
(2) changing the concept of liquidation to permit collection/refund of funds at the completion of each stage of the process (*e.g.*, at the end of an administrative review, following final judgment by the Court of International Trade, following final judgment by the Court of Appeals for the Federal Circuit)[eliminate need for injunction without sacrificing the rights of all interested parties to have correct final assessment made]

Examples of simplification that would be *harmful to domestic users* include:

(1) reduction in time periods for investigations or reviews;
(2) permitting foreign producers to report only weighted average prices in investigations (as opposed to individual transaction information plus a calculated weighted average price by time period by product);
(3) further reduction in verification frequency or range of issues addressed in verification;
(4) elimination of requirement for *meaningful* public summary of information at the Commerce Department;
(5) acceptance of adjustments where proof of claimed adjustments relation to the sales under consideration and direct selling nature have not been provided and verified.

As the hearings before this Committee have made clear, implementing legislation in the antidumping and countervailing duty areas will likely be controversial. These laws are too important to domestic industry to be amended in a wooden manner. While many of the above proposals are clearly not "necessary" to implement the agreement, all should be perceived as "appropriate" to obtain the underlying Congressional objective.

STATEMENT OF SUPPORTERS OF MISCELLANEOUS TARIFF LEGISLATION

Pending an overall satisfactory conclusion of the Uruguay Round negotiations, we, the undersigned companies and associations, are submitting these comments on the

outcome of the Uruguay Round with respect to our interests and our views on provisions that we urge be considered for inclusion in the implementing legislation.

We are very pleased that the U.S. trade negotiators were able to incorporate almost all pending noncontroversial duty suspensions/reductions into the market access offers. The duties on these products will go to zero or be reduced immediately upon implementation of the agreement, now scheduled for July 1, 1995. We are very grateful for the direct support in achieving this successful outcome we received from Committee Chairman Dan Rostenkowski, from Subcommittee Chairman Sam Gibbons and from the Majority and Minority Trade Subcommittee staffs.

The inclusion of these tariff concessions recognizes the benefits that accrue to the U.S. economy from the liberalization of tariffs. As U.S. Trade Representative Mickey Kantor has frequently emphasized in testimony to the Congress, despite the estimates resulting from current methods for calculation of revenue loss figures, there will be future increases in tax revenues that far surpass the loss of tariff revenues as the dynamic effects of lowered prices to consumers and producers help spur greater economic growth, in turn leading to increased employment and production.

In addition to implementing the tariff concessions negotiated in the Uruguay Round, we feel this is an appropriate context to consider enacting a number of duty suspension and miscellaneous tariff issues that are still pending before the Congress. Duty suspensions/reductions and technical miscellaneous tariff legislation have been closely tied to U.S. trade negotiations for several years.

The pending issues we would like to be considered in the context of the Uruguay Round implementing legislation include:

—Legislation to extend existing noncontroversial duty suspensions/reductions and to enact new duty suspensions/reductions covered by the Uruguay Round market access agreement for the period prior to implementation of that agreement.
—Legislation to enact noncontroversial new duty suspensions/reductions not included in the Uruguay Round market access agreement.
—Legislation to enact technical miscellaneous tariff and customs amendments, not incorporated into the Uruguay Round market access agreement.
—Effective date provisions implementing the duty suspensions/reductions and miscellaneous tariff provisions as of January 1, 1993.
—Legislation to establish an acceptable administrative procedure for duty suspensions/reductions and certain miscellaneous tariff matters.

Thank you very much for this opportunity to submit our views. We look forward to working very closely with your Committee on these issues in the coming months.

Sincerely,

The 3M Company
Adams-Mellin, Division of Sara Lee Corp.
Agglomerate Stone Tile Importers Consortium
Albany International/Mt. Vernon
Aymerican Cyanamid Company
American Cycle Systems, Inc.
American Association of Exporters and Importers
American Electronics Association
American Stone Distributors, Fabricators & Installers Committee
American Tartaric Chemicals, Inc.
Apple Computer Inc.
Appleton Mills
Arctco, Inc.
Ashton-Drake Galleries, Ltd.
Asten Forming Fabrics, Inc.
Asten Group, Inc.
Atlanta Wire Works, Inc.
Avon Products, Inc.
BASF Corporation
Bausch & Lomb Incorporated
Baxter Healthcare Corp.
Belmont Hosiery Mills, Inc.
Bicycle Manufacturers Association of America, Inc.
Biocraft Laboratories, Inc.
Bossong Hosiery, Inc.
Buster Brown Apparel, Inc.
Canned and Cooked Meat Importers Association
Cannondale Corporation
Carolina Cook Industries, Inc.
Century Juvenile Products
Charleston Hosiery, Inc.
Cheminova, Inc.
Ciba
The Clarksville Division, Metal Forge Co.
Club Car, Inc.
Compaq Computer Corporation
Computer and Business Equipment Manufacturers Association
Crompton & Knowles Corporation
Dayco Products, Inc.
D. Klein & Sons
Department 56
Dial Corporation
E. I. Dupont De Nemours & Company
Elastic Therapy, Inc.
Engelhard Corporation
Enichem America
Essex Manufacturing Co.
Ethyl Corporation

Excel International Group
The Exylin Company
E-Z-Go Textron
Fashion Accessories Shippers Association, Inc.
Fliscinkim, Inc.
Foothills Hosiery, Inc.
Formtec, Inc.
Fourdrinier Wire Council
Fox River Mills, Inc.
Franks Hosiery Mills, Inc.
Fresh Produce Association of the Americas
Futai (USA) Inc.
The Gates Corporation
Gerry Baby Products
Groz-Beckert
Haarman & Reimer Corp.
Hampshire Hosiery, Inc.
Harris Corporation
Harris & Covington Hosiery Mills
Hartford Bearing Company
Hasbro Inc.
Hoechst-Celanese Corporation
Hollander, Div. of Stapo Industries
Holt Hosiery Mills, Inc.
Hope Hosiery Mills
Huffy Corporation
Hunt-Wilde Corporation
ICI Americas Inc.
Intel Corporation
International Mass Retailers Association
J & B Hosiery, Inc.
Kabi Pharmacia Inc.
Kayser-Roth Corp
Kimberly-Clark Corporation
Kingstate Midwest Corp.
Leath, McCarthy & Maynard, Inc.
Lemco Mills, Inc.
Len-Wayne Knitting Mills, Inc.
Lindsay Wire Weaving Company
Lonza Inc.
Luggage and Leather Goods Manufacturers of America, Inc.
Mardell Laboratories
Marion Merrell Dow, Inc.
Mattel, Inc.
Mauney Hosiery, Inc.
Mayo Knitting Mill, Inc.
Merck & Co., Inc.
Miles Inc.
Murray Ohio Manufacturing Company
National Association of Hosiery Manufacturers
National Bulk Vendors Association
National Filtration Corporation
NIPA Laboratories
Nishika Corporation
NOR-AM Chemical Company
Ohio Rod Products
OMNI USA, Inc.
The Orr Felt Company
Paul Lavitt Mills, Inc.
PBI/Gordon
PepsiCo, Inc.
Persons-Majestic Manufacturing Co.
Playhouse Import and Export Inc.
Polaris Industries L.P.
Polaroid Corporation
Polygon Industries Corporation
Pyramid Handbags
Roadmaster Corporation
Rhone-Poulenc, Inc.
Rohm & Haas Company
Romme Hosiery, Inc.
Royce Hosiery Mills, Inc.
Russ Berrie & Co., Inc.
Sate-Lite Manufacturing Company
Schering Inc.
Shedran Corporation
Shimano American Corporation
Sturmy-Archer Limited
Sun Metal Products, Inc.
Sundstrand
Swisher International, Inc.
Synthetic Organic Chemical Manufacturers Association
Tennessee Machine and Hosiery Co.
The Hendrick Co.
Totes, Inc.
Toy Manufacturers of America, Inc.
Trek Bicycle Corporation
Unaform Incorporated
Union Frondenberg USA, Co.
Uniroyal Chemical Co., Inc.
USR Optonix
United States Hosiery Corp.
Walton Knitting Mills, Inc.
Wangner Systems Corporation
Weayexx
Wippette Inc.
Xerox Corporation

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 trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. 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 urges the members of this Committee to ensure that indirect subsidies, such as export restraints, continue to be actionable under the legislation implementing the GATT agreements. Under the current countervailing duty statute, a 20-year embargo on Argentine cattlehides was found to constitute a subsidy to this South American tanning industry. By prohibiting the exportation of this raw material, the Argentine government engaged in "[t]he pro-

sion of goods or services at preferential rates" in violation of U.S. countervailing duty law. Since the new GATT Subsidies Code also defines the term "subsidy" to encompass governmental provision of goods or services, either directly or indirectly, at "less than adequate remuneration," the U.S. Congress should clarify that this provision continues to require the countervailability of export restraints.

To do otherwise would be unconscionable 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 world levels.

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. In fact, in 1993, Argentine hide dealers complained that their selling prices were 40 percent below the "true commercial value" of these hides because they were not permitted to sell them to non-Argentine customers. The price-depressing effect of this export restraint has been acknowledged by the Department of Commerce. In the *1994 U.S. Industrial Outlook*, the Department stated:

> Many of the developing countries that produce large quantities of hides and skins, including Argentina, Brazil, and India, restrict exports of domestically produced hides, thus encouraging growth of their own tanning and leather products industries. The restrictions depress the prices foreign tanners and leather products manufacturers pay for raw materials and indirectly subsidize production and exports of leather and leather products, large quantities of which are exported to the United States.

U.S. Dept. of Commerce, *1994 U.S. Industrial Outlook*, 34–3 (Jan. 1994).

Because this subsidy encouraged increased exports of leather to the United States, the Tanners' Countervailing Duty Coalition filed a petition under the countervailing duty law in February 1990. The petition charged that Argentina's unfair trade practice not only violated U.S. law but also article XI of the General Agreement on Tariffs and Trade ("GATT"), which prohibits export restrictions.

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. 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, a countervailing duty of 15 percent was imposed on the leather subject to the order, with one company assessed a duty rate of 24 percent.

The fact that Argentina converted the embargo into an export tax in 1992 does not diminish the beneficial effects provided to Argentine tanners nor alter its countervailability. See Roessler, *GATT and Access to Supplies*, 9 J. World Trade L. 25, 31 (1975) (discussing how export tariffs provide subsidies). It is therefore not surprising that the Department of Commerce found that the export taxes on Canadian logs were a countervailable subsidy under U.S. law—a determination the agency expressly found to be consistent with the GATT and the GATT Subsidies Code. *Certain Softwood Lumber Products from Canada*, 57 *Fed. Reg.* 22570, 22612 (1992).

As evident from the above discussion, governmentally-imposed export restrictions on raw materials clearly confer benefits on foreign industries, to the detriment of their American competitors. The agreements resulting from the Uruguay Round did not alter the nature or effect of these unfair practices. Moreover, since the new GATT Subsidies Code, like current U.S. countervailing duty law, deems the governmental provision of goods at preferential rates to be an actionable subsidy, the GATT implementing legislation should make clear that export restraints (in the form of embargoes or export taxes) continue to be subject to these special duties. To assist the Committee, we have attached some suggested legislative and report language for your consideration. See Attachment 2.

Thank you for your attention to our concerns.

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—SUBSIDY DEFINITION

STATUTORY LANGUAGE

Add to 19 §1677(5):

The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in Section 1303 of this title and includes, but is not limited to, the following:

(i) Any export subsidy described in Annex AI to the Agreement (relating to illustrative list of export subsidies).

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, whether or not the competitive benefit conferred by the government subsidy has been demonstrated to have an effect on the price or output of the subject merchandise, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(I) The provision of capital, loans, or loan guarantees on terms inconsistent with private commercial considerations, and the provision of grants.

(II) The provision of goods or services at rates less than those that would be paid under prevailing market conditions, or purchases of goods at rates that exceed those that would be paid under prevailing market conditions.

(III) The failure to collect government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits).

(IV) The assumption of any costs or expenses of manufacture, production, or distribution.

(V) The provision of a benefit at government direction through private bodies that, if provided directly by the government, would be a bounty or a grant.

(VI) Maintenance of any form of income or price support.

LEGISLATIVE HISTORY

This provision implements Article 1.1 of the GATT defining subsidies. With few exceptions, the new Uruguay Round Subsidies Code parallels or adopts U.S. law and makes a broad range of actions countervailable. The Code defines subsidies broadly to include not only direct outlays of money by the government but also indirect subsidies including revenue foregone by the government, the provision of goods and services below prevailing market rates, and instances in which the government entrusts or directs a private body to carry out certain enumerated functions. As a result, relatively few changes to U.S. law are necessary.

First, subparagraph (ii) clarifies existing U.S. law and Department of Commerce practice in light of some confusion evidenced by a recent decision by a binational panel established under the U.S.-Canada Free Trade Agreement in the countervailing duty case concerning certain softwood lumber products from Canada.

The panel misinterpreted U.S. law to require that even after the Department has found that a subsidy was provided—an artificial benefit provided by a government, directly or indirectly, to a specific industry—the Department must somehow prove that the subsidy has the effect of lowering the price or increasing the output of the good under investigation before a duty can be imposed. Other respondents in countervailing duty cases have also attempted to use this misinterpretation to avoid offsets to their injurious subsidies in other cases based upon an alleged lack of a demonstrated subsequent effect.

As the NAFTA legislative history explained: "Such an 'effects' test for subsidies has never been mandated by the law and is inconsistent with effective anti-subsidy enforcement." Joint Report of the Senate Committees on Finance, Agriculture, Nutrition, and Forestry, Commerce, Science, and Transportation, Government Affairs, the Judiciary, and Foreign Relations, *North American Free Trade Agreement Implementation Act* S. Rep. 103–189, 103d Cong., 1st Sess. 42 (1993). *See also* Report of the Committee on Ways and Means, *North American Free Trade Agreement Implementation Act,* H.R. Rep. 103–361 Part 1, 103d Cong., 1st Sess. 75 (1993). As the Department of Commerce noted in *Certain Flat-Rolled Carbon Steel Products:*

> Nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. *See* 19 U.S.C. section 1677(6). Nothing in the statute conditions counter-vailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies *received* by producers, regardless of their *effect.*

Similarly, the legislative history of the 1979 Act makes clear that an effects test is not needed. Both the courts and the Department have adhered consistently to this interpretation of the countervailing duty statute. Further, no such test is required under the Codes.

From a policy perspective, the prohibition against an "effects" analysis is compelling. First, "effects" analyses by nature are highly speculative. For purposes of administering the law, it is burdensome and unfruitful for the Department to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise. Where the Department finds a specific subsidy, it allocates that subsidy over a reasonable time if it is a recurring subsidy, and no further analysis is needed. Neither alleged non-effects nor subsequent events allegedly removing the effects are to be considered unless specifically provided in the statute. Second, experience shows that an "effects" test would likely be used to reduce or eliminate the ability of injured U.S. industries to offset unfair subsidies in spite of very real and deleterious effects by imposing unrealistic burdens of proof, as occurred in the *Softwood Lumber* case. Third, a strict rule that the benefit received will be offset acts as a deterrent to subsidization.

Second, subparagraph (I) clarifies that the standard under international law for assessing whether a transaction is commercially reasonable is that of a private investor, pursuant to Article 14(a) of the Subsidies Code.

Third, subparagraph (II) adopts the standard in Article 14(d) of the Subsidies Code governing when the provision of goods and services is made for adequate remuneration. Current U.S. law commands the Department of Commerce to countervail the "preferential provision of goods and services." Goods and services given at "preferential" prices has been defined, through case law and otherwise, in reference to nondiscriminatory prices regardless of whether those prices reflected the value of the goods or services. Under the Uruguay Round Subsidies Code text, however, the provision of goods and services is to be measured "in relation to prevailing market conditions for the good or service in question in the country of provision or purchase."

The measure of the subsidy will be what the price would have been in the prevailing market conditions—i.e., absent governmental interference with the normal operation of supply and demand in the marketplace. Government interference would include restrictions on the export sale of inputs, such as embargoes or export taxes that have the substantially equivalent effect of restrictions on raw materials such as hides or logs. Adjustments could be made, if necessary, for differences from normal marketplace factors (*i.e.* price, quality, availability, marketability, transportation and other conditions of purchase or sale). Where an internal market is so distorted by government intervention so as to render an evaluation of prevailing market factors difficult or impossible, the market conditions should be evaluated with reference to similar markets in third countries.

Fourth, subparagraph (III) adopts the formulation of the Subsidies Code Making countervailable a wide range of government actions by which revenue that is otherwise due, is foregone or not collected. Thus, tax credits deprive the government of revenue the government otherwise would have collected, as do tax rebates, property tax breaks, the waiver or reduction of government fees or fines, and the failure to enforce fully laws that otherwise would yield the government revenue.

Fifth, subparagraph (V) clarifies the extent to which the private provision of benefits is countervailable. As under current U.S. law, the Code defines subsidies and financial contribution broadly to include not only direct outlays of money by the government but also revenue foregone by the government, the provision of goods and services below prevailing market rates, and indirect subsidies in which the government entrusts or directs a private body to carry out certain enumerated functions.

Recognizing the inconsistency of a restrictive definition of financial contribution with U.S. laws, U.S. negotiators insisted on a broad definition that would cover instances where the government does not directly provide a benefit but indirectly acts in such a way as to confer countervailable benefits on private parties.

Subparagraph (V) captures those subsidies. Thus, for example, if the government maintains a program that results in private bodies providing equity or credit at lower rates than would be paid under prevailing market conditions, or a program that results in the provision of below-market credit, such a program represents a financial contribution and is countervailable. This is consistent with the language of the new Subsidies Code, Article 1.1(a)(1)(iv), which covers government actions through which private bodies are invested with one of the enumerated subsidy functions normally done by governments, such as providing loans at below-commercial rates. Subsidies are actionable where, based on the evidence available, the government effectively directs the private action and there is a sufficient showing of a link. between the direction of the government, the actions of the private party and the benefit provided.

Similarly, for example, export restrictions, such as embargoes or taxes that have the substantially equivalent effect as embargoes, that direct companies to sell goods only in the domestic market invests in the private body what would be a normal government subsidy function as enumerated in the Code, the preferential provision of goods and services. If there is a sufficient link between the government action and the benefit provided by the Private party and such government actions otherwise meet the requirements of U.S. law (e.g. specificity and injury) they are actionable.

In application, this provision is limited by the need to find a proximate and discernible link between the government action and the benefit provided. Moreover, specificity and injury must otherwise be demonstrated.

Finally, subparagraph (VI) incorporates the language from Article 1.1(b) any form of income or price support countervailable. It is Congress understanding that the inclusion of the word "any" by the GATT negotiators is intended to catch a broad range of measures that in fact provide income or price support, whether they are labelled as such or not.

STATEMENT OF THE TIMKEN CO.

The Timken Company ["Timken"] submits these comments on the results of the Uruguay Round to draw attention to several issues of critical importance to the effectiveness of the U.S. antidumping law. Before reviewing the issues, we provide some background on the company and its experience with the antidumping law.

1. TIMKEN IS A COMPETITIVE LEADER IN THE MANUFACTURING INDUSTRY

From the time Henry Timken invented the tapered roller bearing in the 1890s, Timken has always remained a world-leader in the production of tapered roller bearings. The performance of Timken® bearings sets the benchmark against which

others are measured. Timken also produces its own bearing quality steels. We started steel production in 1915, and today we are the nation's leading supplier of seamless alloy steel tubing and the second largest producer of alloy bars.

Because Timken is a global producer, we are directly affected by the Uruguay Round and are deeply concerned about the continued effectiveness of our trade laws. Timken has had manufacturing operations in England since 1909, in France since 1918 and in Canada since 1922. Timken bearings are also made in South Africa, Australia, Brazil and India. In 1992, 24% of our net sales and 48% of our operating income derived from our non-U.S. operations.

Apart from our global orientation, we are also a technological and quality leader in the manufacturing industry. Our leadership is built on investment, constant innovation and strict quality control. For example, in the 1980s, despite the general difficulties of the steel industry worldwide, we invested $450 million to build a new state-of-the-art steel-making facility. While the bearing and the steel industries are mature industries, our list of product innovations continues to grow. Recent innovations include our Sensor-Pac "intelligent" bearings and our line of micro-alloy Parapremium steels, offering near vacuum-degas performance at a more economical price. We also developed new steels for Chrysler's highly successful LH cars, and our bearings are found in German high-speed trains, as well as in high-tech U.S. helicopters. Our company was the first to achieve the ISO9001 quality standard for its entire European manufacturing operation at the same time on the first attempt. And in 1992, Industry Week picked one of our plants as one of the 10 best manufacturing plants in America.

2. TIMKEN HAS RELIED ON THE UNFAIR TRADE LAWS TO ATTEMPT TO OBTAIN A "LEVEL PLAYING FIELD," WITH ONLY PARTIAL SUCCESS TO DATE

Notwithstanding its global orientation and its technological leadership, Timken's U.S. operations have suffered greatly from the impact of unfair competition. Principally, Timken has faced unfair competition from Japan since the 1960s. In the U.S. market (and in other markets around the world), Japanese bearing producers first began offering high-volume commodity-type bearings. Japanese bearings penetrated and eventually captured the markets for conveyor belt applications, mobile homes, and trailers—applications where the performance of the bearing was not critical and the customers selected suppliers solely on the basis of price.

From that platform, the Japanese producers qualified with our highest-volume customers, such as automotive companies. They targeted a handful of high-volume part numbers and offered their bearings at the lowest prices in order to capture those accounts. Indeed, their sales personnel offered bearings at 15% below Timken's prices, no matter what price we quoted. As a result, our sales, production, and profitability were severely impacted.

To address the obvious price discrimination by the Japanese producers, Timken first filed for relief under the antidumping laws in the 1970s. As administered by the Treasury Department, however, relief was never afforded. Japanese producers never paid antidumping duties, but were allowed, first by Treasury and then by Commerce, to enter their merchandise under bond. To this date, because of lengthy administrative and judicial appeals, there are customs entries dating from 1974 on which no antidumping duties have been paid, despite repeated findings of dumping.

Later, to address the shortcomings of the first antidumping order and to expand the scope of the relief to address new sources of unfair import competition, the Timken Company again petitioned under the antidumping law in 1986. By this point, however, Japanese imports had captured a substantial market share at key, high-volume accounts. Imports from East Europe and China had replaced Japan in the applications where Japanese producers first penetrated the market. Faced with dumping from numerous sources, Timken's performance had further eroded.

The antidumping orders we obtained have proven to be of some assistance to The Timken Company. The margins of dumping found against the main exporters from Japan have been relatively high for all periods investigated by Commerce, generally ranging from lows of around 3% to highs of around 40%, depending on the company and the period. After antidumping duty orders were put in place, our sales increased somewhat and we were able to bring back some employees that had been laid off.

The antidumping orders, however, have not achieved their full intended beneficial effect for a variety of reasons: bureaucratic delays, evasion and circumvention of the law by our foreign competitors, premature liquidation of entries subject to the dumping orders without collection of duties, interpretations of U.S. law by the administering authority which have resulted in our major Japanese competitors being able to (1) absorb the dumping duties paid without passing them on to customers,

(2) pay duties owed without interest (essentially permitting payment of duties for pennies on each dollar that should be due), and (3) receive dumping margins below the actual level of dumping because of the biases in existing interpretations of U.S. law which reduce dumping duties where importers are related to foreign producers. While in recent years the administering authority and Customs have attempted to improve enforcement, many problems continue to exist which reduce the value of the orders to our company and which frustrate the remedial intent of the law.

3. THE URUGUAY ROUND FINAL ACT ANTIDUMPING AGREEMENT DOESN'T NEED TO WEAKEN U.S. LAW

In terms of the U.S. antidumping and countervailing duty laws, the Uruguay Round will require certain changes to U.S. law which (standing alone) will make cases harder to bring, more expensive to participate in, provide reduced margins and potentially be in place for shorter periods of time. Domestic producers like The Timken Company have been repeatedly promised "a level playing field" where injurious dumping is demonstrated. It is critical that Congress take the opportunity of the Uruguay Round implementing legislation to provide the level playing field, to see that affirmative provisions of the Uruguay Round antidumping text are included in U.S. law even where not required, to eliminate the incentives for evasion/circumvention, to eliminate or reduce the disincentives to reinvestment that periodic new injury tests where dumping continues will provide and otherwise make these laws effective. Stated differently, the United States should make U.S. laws as strong as the GATT agreement permits.

4. THE U.S. SHOULD MAKE SURE THAT IT MAXIMIZES THE ADVANTAGES OBTAINED IN THE AGREEMENT

Our negotiators worked hard to minimize the negative aspects of the antidumping agreement. Thus, for example, while accepting the need to do a "sunset" review every five years even where dumping continues, they ensured that all outstanding findings, orders and suspension agreements can be treated (for the sunset review process) as coming into effect when the World Trade Organization commences (July 1, 1995 or earlier). Similarly, "averaging" on export prices is the rule under the agreement only for investigations (not for reviews) and is subject to specific exceptions; de minimis and negligibility concepts appear to be required only for investigations. The U.S. should see that domestic producer rights are safeguarded where not specifically required to be modified. Hence, implementing legislation should have all existing orders, findings and suspension agreements viewed as effective for "sunset" reviews from the effective date of the World Trade Organization, and industries should be given the full period permitted under Article 11 before reviews are required. Similarly, items required only in investigations should be limited to investigations and the exceptions reasonably defined within investigations for issues like averaging.

a. Sunset reviews

Timken would note that United States law and regulations presently provide for the revocation of antidumping duty orders or findings under certain circumstances: (a) cessation of dumping and (b) changed circumstances. Foreign producers have the burden of persuasion under existing law where changed circumstances are claimed (unless the issue is lack of ongoing interest by the domestic industry). Since much of the information relevant to the inquiry is in the possession of the foreign producers and since dumping has not ceased, current U.S. law reasonably allocates burden. Absent the circumstances described above, U.S. law requires an order to continue in place.

The Uruguay Round text will make some significant changes to existing U.S. law and practice. First, the UR text will require that antidumping orders, findings or suspension agreements be revoked or terminated within five years of entry (or last sunset review) unless a review is conducted and a determination made that "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." Consistent with existing U.S. law, as long as reviews are commenced within five years, the order can remain in effect (and entries hence subject to duties) pending the outcome of such a review. In addition, a normative time frame is provided ("Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation"), which while consistent with U.S. law and regulations will require greater consistency of performance by the Department of Commerce.

Industries that have been injured by dumping and who face continuing dumping obviously are not desirous of incurring significant expense in demonstrating again

the likelihood of continuing or recurring injury if the order were removed. The Administration and Congress should make certain that sunset reviews are not unnecessarily complicated, do not require unnecessary information or involve unnecessary expense for domestic producers.

Similarly, because so many of the outstanding findings, orders and suspension agreements involve in whole or in part exporter's sales price situations, continuing dumping is generally reflective of continuing price depression or suppression in the marketplace. Stated differently, where related party importers are involved in cases and dumping continues, part or all of the intended relief under the law is denied to the domestic industry. In these situations in particular, it is critical that the full five years of relief after implementing legislation becomes effective be given so that the industries are provided effective relief before facing additional costs associated with a new injury investigation.

b. Timken's experience

Repeatedly, Timken has been assured by our government that we have a right to a level playing field in international trade, that the U.S. trade laws are designed to achieve this goal, and that we should pursue our remedies under the antidumping law to the fullest to obtain that benefit. That is the course we have followed.

Yet, although we obtained antidumping duty orders on our products, dumping continued that was not corrected by the imposition of duties because importers are related to foreign producers and have simply chosen to "eat" the duties—a practice that would be actionable if the importers were unrelated and were provided coverage on duties by foreign producers. Below are two tables of margins found by Commerce in various reviews of the antidumping orders on tapered roller bearings exported from Japan. As shown, dumping margins have remained high, indicating that price depression and suppression has continued, in spite of the antidumping orders.

TAPERED ROLLER BEARINGS FROM JAPAN UNDER FOUR INCHES IN DIAMETER

[Percent dumping margin]

Period	Koyo	NSK
1974–76	36	16
1976–78	27	16
1977–78	23	23 (4/78–7/78: 40)
1978–79	18	20
1979–80	pending	10
1979–86	pending	pending
1986–87	38	15
1987–88	48	18
1988–89	16	6
1989–90	16	3
1990–91	21	20
1991–92	34	13

TAPERED ROLLER BEARINGS FROM JAPAN OVER FOUR INCHES IN DIAMETER AND PARTS (FINISHED OR UNFINISHED)

[Percent dumping margin]

Period	Koyo	NTN (all product)
1986	36	37
1987–88	35	10 (purchase price)
1988–89	25	39 (purchase price)
1989–90	23	22 (purchase price)
1990–91	15	14
1991–92	20	14

This continued dumping has had a severe impact on our industry. In the table below, we show key data on the profitability of the Timken Company. While the data reflect the experience of the company as a whole (domestic and international, bearings and non-bearings), the overall picture that is apparent is the continued depressing effect massive ongoing dumping and evasion of our orders has had on our company. In 1982, the Commerce Department revoked (Timken believes erro-

neously) the original order with regard to NTN, a major Japanese bearing company. A new order covering all of NTN's products was not in place until late 1987. In recent years, a very large portion of product imported by Koyo, a second major Japanese producer, has come in as unfinished parts which were not being caught by Customs or Commerce and subjected to duties until recent months. While profits rebounded in the late 1980's (3.25–4.24%), evasion by foreign producers through a variety of apparent loopholes (e.g., use of resellers, claims of "roller chain" exemption, bonded warehouse or FTZs, parts not identified as covered by one of the orders) contributed to the decline in profitability in the early 1990s (−0.95% in 1991–92).

PROFITABILITY OF THE TIMKEN COMPANY 1975–1992

[Thousand of dollars, except per share data]

Year	Net income (Loss)	Sales	Net Income(Loss) as % of Sales
1975	$61,323	$804,491	7.62%
1976	60,888	884,427	6.88
1977	74,441	974,352	7.64
1978	88,639	1,105,818	8.02
1979	102,131	1,282,069	7.97
1980	92,632	1,338,499	6.92
1981	101,115	1,427,158	7.09
1982	(3,001)	1,014,361	(.30)
1983	530	937,320	0.06
1984	46,057	1,149,908	4.01
1985	(3,903)	1,090,674	(0.36)
1986	2,736	1,058,055	0.26
1987	10,319	1,230,258	0.84
1988	65,912	1,554,143	4.24
1989	55,345	1,532,962	3.61
1990	55,242	3.25	
	1,701,011		
1991	[1](35,687)	1,647,425	(2.17)
1992	4,452	1,642,310	0.27

[1]Losses includes a provision for restructuring of $41 million.
Sources: The Timken Company, Annual Reports, 1976–1992.

5. CONGRESS SHOULD ENSURE THAT ANTIDUMPING RELIEF IS EFFECTIVE BY TREATING DUMPING DUTIES AS A COST, BY COMPENSATING U.S. PRODUCERS AND BY ELIMINATING LOOPHOLES AND INCENTIVES TO CIRCUMVENT OR EVADE EXISTING ORDERS

a. Antidumping duties should have a direct effect on the price

The primary purpose of U.S. antidumping law is to eliminate the price discrimination, either by encouraging foreign producers and importers to charge and pay a fair value or by forcing the importer to pay the differential in addition to the price of the merchandise. This primary purpose is generally achieved where importers are unrelated to foreign producers. If foreign producers attempt to beat the system by assuming the cost of the antidumping duties, such assumption of cost is treated as an additional deduction for purposes of determining the liability of the importer. As a result, domestic producers generally experience an immediate market reaction where importers are unrelated parties.

However, such is not the case where the importer is related (whether purchase price or exporter's sales price is used). In Timken's case, even with cash deposits of 20–40% for many years, Timken has seen little if any price movements at important accounts, as the foreign producer and related party importer combine to absorb the antidumping duty rather than charge a fair price to unrelated purchasers. This situation has dramatically undermined the remedial effect of the order for the domestic industry. Timken and other companies have argued that existing U.S. law does not require such an absurd result, that the assumption of the cost of the duties should be deducted just as it would be in purchase price situations. Such arguments have to date been to no avail. However, Article 9.3.3 of the Antidumping agreement would specifically authorize treating antidumping duties as additional deductions where related party importers fail to pass the duties through to unrelated purchasers. This is a potentially critical issue if Congress is to make the antidumping law effective where related party importers are involved. Article 9.3.3 also permits the United States to deal with problems (common in the trigger price mechanism

and other U.S. programs) of companies manipulating prices for multiple products to create the appearance of elimination of dumping (raising prices on selected items and lowering prices on other items, including items not covered by the order). The U.S. should consider requiring at least a certification by the related party importer of no manipulation and subject such claims to verification.

b. Congress should eliminate incentives to evade the orders

Because a large portion of tapered roller bearings are used in automotive and other applications where the value is a small part of the total value of the end product, Timken remains deeply concerned about unnecessary loopholes in U.S. law and administrative practice. The GATT antidumping code and the Uruguay Round Final Act antidumping agreement permit countries to cover all product from a country covered by an order even where further manufacturing takes place. See Antidumping Code Art. 2:5; Uruguay Round Final Act Antidumping text Art. 2:3. The authorities are given very broad latitude in determining a methodology to use in determining what, if any, liability exists ["if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine"]. U.S. law and practice, however, permit product potentially subject to an antidumping order to be excluded from an order where it is imported by a related party and incorporated in a final product where it accounts for less than 1% of the final product's value. Many auto parts or parts for construction or agricultural equipment fit the small value exception, rendering gamesmanship particularly rampant where orders for such parts are extant. While relatively few Japanese bearing companies are related to auto or other companies within the meaning of U.S. law, a provision in U.S. law permitting "resellers" to be the basis for determining foreign market price and applicability of the related party exception has encouraged lawyers representing foreign interests to promote at seminars around the country the change in how goods are ordered by multinational companies to permit both manipulation of the benchmark foreign market value and to potentially invoke the exception to coverage of an order entirely regardless of the magnitude of the dumping in fact taking place. Such gamesmanship can gut antidumping orders by simple order entry change procedures—a result that cannot be intended by Congress. Congress should modify U.S. law (a) to drastically reduce the opportunity to use the "reseller" provision and (b) to see that all merchandise of the class or kind covered by an order is subject to the order regardless of the amount of value added in the United States (there are a variety of options available, including use of transfer prices, average arms-length prices to comparably situated companies, etc.).

Similarly, foreign trade zones and bonded warehouses continue to pose opportunities for foreign bearing companies to evade, avoid or delay antidumping liability for product that should be covered by outstanding orders. While Commerce through regulations has at least stopped the rampant problem of FTZ imports escaping entirely the reach of antidumping orders where incorporated into other products, the problem continues to exist for product exported since antidumping duties are not required to be deposited prior to entry into the zone. Moreover, entries into bonded warehouses, including situations where further manufacture takes place, presently escape entirely the reach of U.S. law. Congress should change existing law to provide that merchandise subject to an antidumping or countervailing duty order cannot enter into a bonded warehouse, free trade zone or other "duty free" environment without the payment of the existing cash deposit rate and that such deposits shall not be rebated upon exportation.

Finally, Congress should address the current structure of liability for dumping duties which encourages importers or foreign producers to find HTS numbers, customs rulings or other devices to escape initial notice (and hence any liability) or which permits human error by Customs in terms of premature liquidation to void any potential liability. In some cases, hundreds of formal requests are filed with customs for rulings to move products arguably covered by orders into HTS categories not listed in antidumping duty order notices. Domestic producers generally have little notice of these requests until they are decided and may or may not be able to even identify the requests that are efforts at evasion or avoidance. Moreover, the formal requests are undoubtedly only the tip of the iceberg of informal inquiries or opinions of counsel which move products into categories not subject to suspension of liquidation. Liquidation is the magic word. If an importer can manage to get an entry liquidated, the game is over. Domestic producers are seriously prejudiced as has been shown repeatedly in the tapered roller bearing cases. Some respondents in reviews have publicly indicated partial or total liquidations of entries covered by the review period or asserted that entries are outside the scope of the antidumping orders. Such an outcome is an outrage and makes a mockery of domestic industry rights.

Congress should require that liability stays with the importer or that entries discovered to have been erroneously liquidated (or in fact subject to the antidumping duty order) may be reliquidated within a reasonable period of discovery and notice of their liquidation.

c. Compensation of Domestic Industry for Injury Caused by Unfairly Traded Imports

In recent years there have been repeated efforts by industries and by Congress to develop a private right of action against companies engaged in dumping practices. Such efforts have generally failed because of the perceived GATT-inconsistency of a private right for conduct covered by GATT Article VI (antidumping and countervailing duties). The driving force behind such efforts, however, remains in place—the failure of the existing system as administered to in fact provide a level playing field when orders are put in place.

The problem takes several forms including: (1) relief is generally made available only after injury sufficient to close factories, force layoffs of significant numbers of employees, the reduction of R&D and capital expenditures; (2) relief is often illusory as related party importers continue to dump and simply "eat" the duties, generally with the direct or indirect assistance of their foreign parents; and (3) relief is illusory as foreign producers and their importers have large incentives to evade the orders and there are no penalties where such efforts involve product that in fact should be covered by the order.

The latter two issues have been addressed previously. The first can be addressed by several means. First, neither the GATT nor U.S. law require industries to be so injured before relief is available. The International Trade Commission should be encouraged to review their current interpretations to see that relief is in fact made available earlier. Such an approach will be particularly important with the five-year injury review if the antidumping law is not to create (unintentionally) a disincentive to reinvestment.

Second, petitioners and those in support of the petition should receive all duties finally collected by Customs under the orders. Such funds would (a) provide a powerful disincentive to foreign producers to continue to dump (as all such dumping duties would flow to the domestic producers), (b) offset to some extent (in most cases only a minor extent) the continuing price depression/price suppression experienced where related party importers are involved, (c) reduce the disincentive to domestic producers to reinvest where dumping continues and (d) reduce the disincentive to file meritorious cases that the new agreement will create (many provisions make cases harder to file, harder to win, provide less relief for shorter periods).

GATT Article VI does not prohibit the payment of dumping duties collected to the petitioner and those in support of the petition. While some may argue that such funds are a form of subsidy, even assuming arguendo potential actionability (not clear under Article 2 of the Uruguay Round Final Act Subsidy Agreement), such payments would not be prohibited.

Based on the first annual report from the Customs Service and the Department of Commerce (covering fiscal year 1992), potential duties paid to domestic industries would be about $351 million/year (using fiscal year 1992 as typical). While not a significant amount of money to the Federal Government, such amounts would be important to the domestic producers facing continuing dumping.

6. CONGRESS SHOULD FURTHER ENHANCE THE ANTIDUMPING LAW BY REMOVING BIASES EXISTING UNDER EXISTING LAW—DEDUCTION OF REASONABLE PROFITS ON RESALE, ELIMINATION OF THE SO-CALLED "ESP OFFSET"

Japanese tapered roller bearing producers typically import their products through wholly owned or related subsidiaries in the United States. In such cases, the statute requires Commerce to use the price charged by the related party importer on its resale to the first unrelated purchaser and to construct an export price. This statutory requirement is reflected in the laws and practices of our major trading partners and in the GATT itself:

> "In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer . . . In [such cases], allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made."

GATT Antidumping Code (1979), Art. 2:5 and 2:6 (bracketed material added).

U.S. law does not specifically use the word "profits" in describing deductions to be made from the resale price, using only the term "commission." While existing U.S. law is essentially identical to the Antidumping Act, 1921 language on exporter's sales price and while U.S. Customs practice and court decisions would support a position that "commission" includes profits for purpose of the ESP deductions, Commerce and Treasury before it have chosen not to deduct a reasonable profit on resale. Counsel representing foreign producers have admitted in submissions to Commerce and in law review articles that Commerce practice makes related party situations generally more advantageous.

Similarly, despite the specific statutory requirement to deduct expenses between importation and sale to the first unrelated party, the administering authority has adopted a regulation which negates the statutory deduction by making an adjustment to foreign market value not for any difference but as "an offset." Such an offset is not required by the GATT Antidumping Code and is not offered by any of our trading partners.

The result of the peculiar practices of the United States administering authority in related party situations is:

(a) the failure to construct an export price, instead creating an "export price plus" (the plus being the inclusion of a reasonable profit on resale); and

(b) the failure to determine a comparable foreign market value, instead creating a "foreign market value minus" (the minus being the deduction of the so-called ESP offset).

Congress has considered on several occasions correcting the existing agency practice which has the bizarre consequence of having U.S. companies face a calculus abroad that foreign producers do not face in the U.S., which explains away significant dumping margins and which even counsel for respondents acknowledge provides related party importers advantages in the calculus simply because of the relationship. In 1988, Commerce asked Congress to hold off consideration of the pending proposals to permit it to change the GATT and our trading partners. The same provisions are contained in the Uruguay Round Final Act Antidumping agreement. Congress should now take action to conform U.S. law with our GATT rights by mandating a deduction from the resale price to the first unrelated party of a reasonable profit and prohibiting the ESP offset.

For many global companies, like Timken, and for many domestic-only companies, maintenance of trade laws that are usable, affordable and that provide effective relief is a top priority as the Uruguay Round implementing legislation moves forward. While there are many issues in the Final Act Antidumping agreement that will, standing alone, make relief more difficult to obtain, more expensive and potentially available for shorter periods where dumping continues, the United States Government need not accept a weakening of U.S. law. There are positive elements of the agreement that the U.S. should adopt into its law and practice that would help reduce price depression when dumping orders are issued (Art. 9.3.3) or that would generate dumping margins not biased by the presence of a related party importer. There are issues (e.g., compensation) which while not specifically authorized are not prohibited that could reduce the disincentives of other changes that will need to be made. Finally, Congress and the Administration have the ability to implement changes in ways that minimize harm to domestic users of the laws. Sunset review requirements are an obvious example.

STATEMENT OF THE TORRINGTON CO.

The Torrington Company wishes to thank the Chairman and the Subcommittee for the opportunity to submit these comments concerning the results of the Uruguay Round. Although the Round offers numerous opportunities for U.S. business, Torrington, in these comments, will concentrate on the implications of the Round for U.S. antidumping and countervailing duty laws—laws which many U.S. industries have found critical in their battles to remain competitive.

THE EXPERIENCE OF THE U.S. INDUSTRY

The Torrington Company has been a petitioner and active participant in numerous antidumping and countervailing duty cases in the United States. Torrington is the world's leading producer of needle roller bearings and is the largest full-line domestic producer of antifriction bearings in the United States. Torrington began as a producer of needle bearings, which are used in everything from outboard motors to spacecraft. In the 1980s, Torrington acquired the Fafnir bearing company, which was the leading U.S. producer of ball bearings. The company, headquartered in Con-

necticut, operates facilities producing super precision bearings for aerospace and other critical applications and commodity bearings in plants in various parts of the United States. The company also has a number of foreign manufacturing facilities and foreign joint ventures.

Seven companies dominate the production of bearings, each with plants in multiple countries. These companies include SKF, FAG, INA, NSK, NTN, Koyo and Minebea. SKF, FAG, and INA are headquartered in Europe and have plants in other European countries (e.g., Austria, Germany, France, Italy, Sweden, the U.K., Spain, Portugal, Switzerland), in South America, North America and Asia. NSK, NTN, Koyo and Minebea are headquartered in Japan and have plants in various countries including Brazil, Korea, Canada, Singapore, Thailand and/or Taiwan as well as in the United States. In the 1980s, all of these companies were aggressively dumping in the United States market in a battle for increased market share. Torrington and other U.S. producers were caught in the cross-fire between the European and Japanese giants battling for control of the market. As a consequence, many U.S. producers were forced to (1) close plants, slash workforces, reduce R&D and capital expenditures, (2) go out of business, (3) merge or (4) sell at distressed prices to foreign producers. In all more than 30 plants were closed, 13,000 workers lost jobs, and $1 billion in capital disinvested.

The U.S. industry was forced in many instances to focus on niche products and specialized applications. With reduced volume, U.S. producers could not fund essential R&D to keep pace with the European and Japanese producers. Dumping by those producers thus caused deep, long-term injury, and caused significant structural changes in the industry. Unable to sell high-volume bearings at prices sufficient to cover costs and with a shrinking sales base to absorb overhead expenses, the industry found itself faced with increased unit costs on its remaining products. This not only caused plant closures and lay-offs, but it also caused many producers to fall behind in the development of new technologies.

In response to the extreme price depression, Torrington, on behalf of the domestic industry, filed antidumping and countervailing duty cases against nine countries in 1988. The dumping margins found by Commerce in the original 1988 investigation were in many cases over 100%. In response to the antidumping and countervailing duty orders there were a number of responses by the foreign producers: some engaged in a fairly massive game of circumvention for a period of time; some raised selected prices; some increased their investments in the United States and continued to sell at extremely depressed prices; nearly all continued to dump merchandise in the U.S. marketplace. Nevertheless, faced with at least partial price relief, U.S. companies like Torrington have reinvested large sums to add back capacity that was closed, or to upgrade facilities. Much of the new investment has been threatened by dumping from additional sources, by the continued dumping from the nine countries and by foreign producers' willingness to sell below cost out of their U.S. facilities.

Nonetheless, the continued viability of the U.S. antidumping and countervailing duty law remain critical to the U.S. bearing industry. As imperfect as existing laws, regulations and administration are, the orders have permitted the industry to survive. Eliminating the loopholes, eliminating the incentives to evade the orders, assuring that in fact the law provides a level playing field for domestic producers must be the objective of our implementing legislative process.

IMPLICATIONS OF THE URUGUAY ROUND

The Torrington Company would like to extend its appreciation to Ambassador Kantor and his team at USTR and to Undersecretary Garten and his team at Commerce for the significant improvements in antidumping accomplished in Geneva during November and December. A draft agreement that has been described as a bad deal by the prior U.S. negotiators was rendered less objectionable by the hard work and determination of the U.S. team. We join the many other domestic users in expressing our appreciation for this outcome.

Nonetheless, the Uruguay Round results have the potential to make U.S. antidumping and countervailing duty laws more difficult and expensive to use and to provide less relief for shorter periods. Such an outcome is not required but will result if the Administration focuses on the "minimum" needed to adopt the Uruguay Round results—the minimum in these areas would reflect changes which weaken U.S. law. The objective on these laws should be to adopt the strongest trade laws that GATT permits.

For example, changes in sales below cost methodology will certainly reduce dumping margins. Increased de minimis margins (four fold increase to 2%—roughly one half of corporate profitability) will reduce relief available. Similarly, the need to ana-

lyze foreign producer data to submit justification for deviation from weighted average to weighted average in investigations will increase costs for domestic users as will the increased complexity of determining constructed value. "Sunset" reviews every five years—which in the United States will occur only because of continued dumping by foreign producers—will significantly add to the cost of obtaining relief and will significantly increase the uncertainty associated with reinvesting following affirmative findings of dumping and injury. These and many other "negative" aspects of the Uruguay Round text will undoubtedly be included either in implementing legislation or in regulations or practice.

The U.S. fought hard to limit the negative aspects in Geneva. Neither the Congress nor the Administration should be pursuing a strategy of not maintaining the benefits obtained or maximizing the rebalancing permitted by the new text.

AN AFFIRMATIVE OUTCOME FOR DOMESTIC USERS IS POSSIBLE

We believe that Torrington's experience is typical of U.S. companies who have found the need to seek relief from unfair trade practices abroad. We need strong trade laws that work. We believe that the U.S. can adopt changes that will be consistent with our GATT obligations that nonetheless will significantly reduce the negative aspects of the agreement. A few examples:

(1) The U.S. insisted on existing antidumping findings and orders being treated as coming into effect, for sunset review purposes, on the date the World Trade Organization comes into effect. Implementing legislation should safeguard that result (hence reducing the disincentives to reinvest) and give all findings and orders the full five years before a review need be conducted.

(2) The U.S. should, consistent with our international obligations, adopt procedures for sunset reviews that minimize the amount of time and effort required for participation, properly obtain and verify information (particularly pertaining to foreign producer shipments, capacity, etc.), and adopt constructions of the key terminology (likely to continue or recur) to achieve reasonable results in light of the continued dumping practices.

(3) The statutory language or U.S. International Trade Commission practice should be modified to make relief available earlier, if relief is likely to be shorter lived.

(4) Relief provided should be effective. Many issues prevent effective relief at the present time:

(a) Compensation. The overly restrictive injury constructions result in industries being behind by the time relief is granted. Compensation—not prohibited by the GATT—is not provided to redress the actual condition of the industry.

(b) Elimination of incentives to evade antidumping orders or minimize relief. Foreign producers and their importers are provided a series of incentives to evade antidumping and countervailing duty orders or to reduce the margins of dumping or subsidization found. For example, because ultimate liability depends on merchandise being unliquidated, there are many efforts taken by foreign producers to have exports classified under HTS numbers that will not be caught by the Customs Service, permitting such entries to escape liability regardless of dumping. Similarly, premature liquidation by Customs is viewed by the agencies as non-correctible. Liability should continue for importers until all entries properly the subject of an antidumping inquiry are identified and reviewed. So too, there are a series of artificial walls that can permit manipulation of data or prevent problems being spotted and quickly corrected. Our counsel informs us that information received under administrative protective order cannot be used in subsequent administrative reviews, nor can information from the same company located in different countries being used to check for reasonableness of the responses, nor can importers' files at Customs be accessed under APO at Commerce, nor can concerns raised by APO submissions at Commerce be communicated to Customs by domestic counsel. Such artificial walls can permit gamesmanship to go undetected, reducing the effectiveness of the orders.

(c) The relative ease of converting countervailable subsidy programs into non-"specific" subsidies (hence not actionable) has gutted U.S. countervailing duty law for most industries. In Torrington's case, a press account after the orders indicated that one of the foreign producers had approached the government to have four words deleted from the existing statute so that the same benefits to the same companies would no longer be actionable!

(5) The biases in current administration, not required by the GATT agreement, that favor related party transactions or make related party reimbursement of dumping not actionable should be eliminated. The U.S. fails to deduct from related party

resale prices an amount equal to a reasonable profit on the resale. All of our trading partners make such deductions and the GATT agreements (since 1967) have specifically authorized the deduction. The result has been an acknowledgment by those representing foreign producers that U.S. law creates a bias in favor of related party transactions. This bias should be eliminated. So too, U.S. law unintentionally results in foreign producers and their related party importers being able to shield their customers from the consequences of an affirmative dumping determination where they are willing to "eat the duties." Torrington is informed that Article 9.3.3 of the antidumping agreement—the so-called "duty as a cost" provision—would permit the U.S. government to eliminate this unintended result.

There are obviously many other affirmative steps the administration could take but the above hopefully are important examples. The U.S. should safeguard not only that its victories at the negotiating table are preserved in implementing legislation but that the opportunities that exist in the agreement or that are not prohibited by the agreement which would solve some longstanding difficulties in obtaining timely relief that is effective are addressed. The bearing industry is one in which the existence of U.S. trade laws has permitted, albeit belatedly, a partial restoration to conditions of fair trade. The result has been reinvestment, hiring of workers, increased capital expenditures and R&D. Too many industries have been weakened or destroyed by the false signals that foreign dumping provides of lack of competitiveness. These laws have been important, in some cases critical, to survival. For the thousands of companies that have need to use these laws in the past and the hundreds of thousands of employees whose jobs have depended upon speedy and effective relief from these laws, Congress should not let these laws be weakened.

STATEMENT OF THE TOY MANUFACTURERS OF AMERICA, INC.

The Toy Manufacturers of America, Inc. (TMA), an association representing more than 250 U.S. manufacturers and importers of toys, dolls, and games, and which accounts for 85 percent of the toys sold in the United States, applauds the Clinton Administration on its excellent work in successfully concluding the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT). We have viewed the Uruguay Round, from its inception in 1985, as an historic opportunity to lower and eliminate trade barriers worldwide, particularly 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 strength of the U.S. toy industry.

THE U.S. TOY INDUSTRY

U.S. companies lead in the manufacturing and marketing of toy products in almost every developed country in the world. The highly competitive nature of the business and the desire to sell toys at an affordable price have caused many American toy companies to turn to offshore sources of supply in developing countries. In the 1950's, the industry was one of the first to source product from Japan. Later, when Japan's growing economy made production there too expensive, toy companies shifted production to Hong Kong, Korea and Taiwan. As those nations' economies developed, China became the primary source of toy production. Many toys are also produced in such developing nations as Malaysia, Indonesia, Thailand and Mexico, which traditionally have qualified for the Generalized System of Preferences (GSP) program. Toys produced in each of these countries by U.S. companies are sold around the world.

Nearly two-thirds of our membership is involved in export-import trade worldwide; about 60 to 70 percent of all toy inventions, designs, engineering, and marketing programs are the result of know-how emanating from United States and TMA member employees. While low-skilled U.S. toy production employment in the U.S. has declined since the 1950's, employment in product development, design, quality control, production engineering, marketing and advertising has increased. Today, the toy industry's U.S. employees are medium and high-wage earners. More than 31,000 jobs in, and related to, the toy industry in the U.S. depend upon free and open trade. International production and marketing is therefore a matter of maintaining and expanding the number of high value-added and desirable jobs in the United States.

THE OPPORTUNITY PRESENTED BY THE URUGUAY ROUND

The Uruguay Round market access agreement has presented an important opportunity for the U.S. to convince its trading partners to open their markets to our

goods. Recognizing this, and the extreme importance of a free and open global market for toys, we have been an active member of the Zero Tariff Coalition since its inception in 1991. The Zero Tariff Coalition, which represents a broad cross-section of U.S. industries, strongly advocates the reciprocal elimination of all tariffs across broad product sectors, including the toy sector.

We welcomed the Clinton Administration's commitment to a "zero for zero" proposal as part of its Uruguay Round market access offer, which included the toy sector (Chapter 95 of the Harmonized Tariff Schedule). We were encouraged when other major industrialized countries including Canada, Japan and Europe initially indicated their support as well. The U.S. toy industry has long believed the elimination of all tariffs on Chapter 95 products will significantly benefit not only the U.S., but also many Asian and Latin American countries producing substantial quantities of toys. Those nations, more and more, are becoming important consumer markets for toys as the wealth and disposable incomes of their populations improve.

MAINTAINING RECENT GAINS ON TARIFF REDUCTION

For these reasons, we continue to urge the Clinton Administration and the Congress not to permit America's trading partners to back away from the progress that was achieved on zero tariffs on toys at the conclusion of the Uruguay Round trade talks on December 15, 1993. At that time, agreement was reached on historic reductions in tariffs on toys, games and dolls in Harmonized Tariff Schedule (HTS) headings 9501–9505.

We were disappointed by the European Union (EU)'s decision to exclude products principally supplied by China from the general commitment to reduce tariffs on imported toys to zero. We are also deeply concerned about quotas recently imposed by the EU oncertain categories of Chinese toys. We believe that these actions run counter to the spirit of the Uruguay Round and, in our opinion, undermine the fabric of the entire GATT agreement reached in Geneva.

All parties agreed to reductions to zero tariffs on all products, with very few exceptions. We continue to support these tariff reductions and would prefer that all tariffs on toys be accelerated to zero *immediately* rather than over five or ten years.

CONCLUSION

We believe immediate zero tariff reductions on toys ensure the continued competitiveness of the U.S. toy industry and reduce consumer costs. Reducing all nations' tariffs to zero on Chapter 95 products (toys, dolls, games and Christmas decorations) immediately, would benefit the world economy as well as U.S. consumers. The U.S. toy industry therefore strongly urges the Administration and the Congress to recognize these goals and to continue to work for immediate zero tariffs on toys worldwide.