# MONITORING AND ENFORCEMENT OF INTERNATIONAL TRADE AGREEMENTS

## HEARING

BEFORE THE

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

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# MONITORING AND ENFORCEMENT OF INTERNATIONAL TRADE AGREEMENTS

TUESDAY, FEBRUARY 23, 1999

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

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, Thompson, Moynihan, Baucus, Rockefeller, Conrad, Graham, Kerrey, and Robb.

## OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order.

First, it is a pleasure to welcome our two distinguished guests. I have a short opening statement that I would like to make.

Two weeks ago, the Finance Committee began a series of hearings on American trade policy in a global economy. Of course, today, Pat, we are continuing these hearings with an in-depth review of our tools, both international and domestic, for enforcing our trade agreement rights.

As I indicated at our earlier hearings, our goal is to rebuild a bipartisan consensus on trade. Based on what we heard two weeks ago, I believe that strengthening our ability to enforce our international trade agreements is essential to that goal.

The U.S. is among the most open, trade-friendly nations in the world and American consumers are reaping the benefits created by a rise in their real income through lower prices, strong economic growth, low unemployment, and capital attractiveness.

However, our ability to both maintain an open market and to launch a new round of trade negotiations at November's WTO ministerial in Seattle depend on our capacity to convince the American people that they benefit from agreements already reached.

Given that fact, we confront a number of troubling challenges. The European Union's institutional failure to comply with its WTO commitments or any decision of the WTO dispute settlement body, whether on bananas or beef hormones, deeply erodes the benefits America had reason to expect would flow from the Uruguay Round Agreement. Canada's response to the WTO ruling on magazines has had the same effect.

Indeed, rather than devoting their energies to complying with their own WTO commitments, the Europeans, instead, propose to challenge Section 301 of the Trade Act of 1974, by which American business and labor petition the U.S. Government to investigate foreign unfair trade practice, in an effort to disarm the U.S. from enforcing its rights.

We must, in light of these developments, examine how we can reinforce our ability to secure the trade agreement rights. I applaud the strong stance the administration has taken in that regard in the ongoing review of WTO dispute settlement rules.

I also applaud the administration's reinstatement of Super 301 and Title 7 of the 1988 Act, which addresses the failure of our trading partners to fulfill their commitment with respect to access to government procurement markets.

Furthermore, I look forward to working closely with the administration and the committee in fostering improvement in both the WTO dispute settlement process, as well as in our domestic enforcement tools.

With that, I am pleased to call on you, Senator Moynihan.

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

Senator MOYNIHAN. I could not change a word. I think it is so important that you are leading this committee in the direction you just suggested. We have to continue our open trading policies and we have to insist on the rules of that system. We have had success.

We thought the WTO rules were a true advance on the problems we had had with citrus in the EU, for example, only to find that people can agree to the rules and then not abide by them. That, we cannot have.

The CHAIRMAN. Absolutely. We certainly have bipartisan consensus on that.

Senator MOYNIHAN. Exactly so, sir. I would put my statement in the record. I see our newest member is here, so I hope we will get a chance to hear from him this morning.

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

The CHAIRMAN. I would ask that the opening statements of the other members be included as if read. I would like to proceed with our first panel.

As I said, we have two very distinguished representatives of the administration. First, Ambassador David Aaron, who of course is the Under Secretary of Commerce for International Trade. Prior to that, he served as the U.S. Permanent Representative to the OECD. It is a pleasure to have you here, Mr. Ambassador.

Sue Esserman is, of course, the General Counsel for the U.S. Trade Representative and is the President's nominee for Deputy Trade Representative.

She formerly served as the Acting General Counsel at the Department of Commerce, and as the Assistant Secretary for Import Administration. It is a pleasure to have you here.

Ms. ESSERMAN. Thank you.

The CHAIRMAN. At this time, we would be pleased to hear from you, Ambassador.

## STATEMENT OF HON. DAVID AARON, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, WASHINGTON, DC

Ambassador AARON. Thank you very much, Mr. Chairman. I am pleased to be here this morning to discuss monitoring and compliance with our trade agreements. I have prepared a statement for the record and some brief remarks that I would like to make at this time.

Compliance is one of Secretary Daley's top trade objectives, as he told the committee recently. Our Trade Compliance Center is the nerve center for monitoring and compliance, but I have made compliance a priority throughout the International Trade Administration.

We have tailored much of our Trade Compliance Center's work to smaller companies because they lack the time and resources to deal with foreign governments, or our own government, for that matter, on the matter of trade barriers.

We have set up a complaint hot-line on the Internet, and initiated an outreach program through out Export Assistance Centers around the country. The text of all U.S. trade agreements are now available on the Internet, and we are writing plain-language how-to guides to help small companies understand their rights and where to go for help.

Our increased monitoring tells us that most countries are attempting to live up to their trade agreements, but we have seen some actions inconsistent with obligations. In those instances, we first try to persuade the countries to comply. If they do not, we work with USTR on enforcement under dispute settlement procedures.

Japan represents a special compliance problem. Market access remains limited and that must change. Japan is also at the heart of another problem: non-competitive practices by private companies. Recent examples are the Film case, which we brought to the WTO, and the disappointing results of our bilateral agreement on Flat Glass. We are working on a number of compliance issues as we speak. One major problem concerns the European Union's regulation that would prevent many U.S. aircraft from being used or sold within the EU because they use so-called "hush kits" or replacement engines to comply with international noise standards.

These aircraft meet the international standard to which all ICAO members, including the EU, agreed. Exclusion of U.S. aircraft is protectionism guised as environmental regulation. It is unilateralism of the kind the Europeans are quick to decry.

Secretaries Daley, Slater, Albright, and Ambassador Barshefsky, in the past few days, have all asked the EU not to proceed further with this regulation until we discuss the problem. Yet, the council of the EU may yet approve this regulation this week. The member states of the EU must understand that the United States is prepared to respond if our industry suffers harm.

In another instance, we have been trying to get Korea to live up to its obligation to allow American companies to compete fairly on contracts for its new, $6 billion airport. Despite months of effort led by our Trade Compliance Center, Korea has not relented. We have had to turn to the dispute settlement process through the USTR.

We are also concerned about recent Chinese actions in the direction of import substitution, particularly on telecommunications, soda ash, and in the power sector.

Mr. Chairman, although your focus is on exports, I would like to cite, briefly, some current priorities of our Import Administration as well.

Last year, we created a new Subsidies Enforcement Office to protect our interests under the WTO Subsidies Agreement. We got, for example, written assurances from Korea that it will stop providing heavy subsidies to Hanbo Steel.

We also have shifted substantial resources to focus on the problem of soaring steel imports. We have expedited the antidumping investigations of Hot-Rolled Steel from Japan, Russia, and Brazil, which account for more than 70 percent of the import surge we experienced last year.

We have issued a preliminary finding on Japan and Brazil on February 12, almost a month ahead of schedule. Yesterday, we reached two agreements with Russia that are structured to provide effective relief to the U.S. steel industry and its workers.

The first establishes a moratorium on Russian hot-rolled steel for 6 months. In other words, zero imports for 6 months. That will put imports from Russia at less than 345,000 tons this year, a more than 80 percent decrease from last year.

In the following years, the quota will be set at 750,000 tons, the level of 1996, at a time when our industry was healthy and doing well. A minimum price also will be set that ensures no price suppression.

A second agreement is a broad-ranging agreement, limiting the exports of virtually all other steel products from Russia to pre-surge levels. The first month of data under our new expedited procedures confirmed a drop in steel imports, although 1 month of good data is not definitive.

Mr. Chairman, in conclusion, let me note that, while we are making good effort on compliance, we lack the resources to do the job fully. Over the years, the Congress has focused on Commerce's trade promotion role and has not provided requested funding for our market access and compliance efforts.

The budget just requested by the President provides added resources for our access and compliance priorities, including a special strike force. I commend that initiative to the committee's attention.

One specific area that needs to be addressed is that of private sector anti-competitive practices that act as trade barriers. The Private Sector International Policy Advisory Committee, the Justice Department, and the Federal Trade Commission are developing recommendations on this issue. I also welcome suggestions from this committee and other members of Congress.

Specific issues notwithstanding, most of our trade agreements are effective, but vigilance and monitoring are essential. We look forward to working with members of this committee as we enforce our trade agreements and fair trade laws.

Thank you, Mr. Chairman. I am ready to take questions.

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

The CHAIRMAN. Thank you, Ambassador Aaron. Next, we will hear from you, Ms. Esserman.

## STATEMENT OF HON. SUSAN G. ESSERMAN, GENERAL COUNSEL, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Ms. ESSERMAN. Good morning, Mr. Chairman and members of the committee. Thank you very much for this opportunity to review our efforts to enforce our trade agreements, to hear your concerns, and to get your advice.

Let me just begin by saying, overall, the trade policy that we have developed, in cooperation with this committee and the Congress, is yielding very good results for our country. Since 1992, exports have grown by more than 50 percent, and this has helped to create the longest peacetime economic expansion in American history, reduce unemployment, and create a net gain of nearly 18 million jobs.

Our deepening and widening network of trade agreements has helped to promote this success in exports. In the last 6 years, we have concluded 270 separate trade agreements in every industrial and with most of our trading partners.

We have concluded five agreements of truly historic importance, the Uruguay Round Agreements creating the WTO, the NAFTA, and three multilateral agreements on Telecom Financial Services and Information Technology.

Full implementation of these agreements is critical to ensuring their full benefits, to maintaining public confidence in our open trading system, and to ensuring the success of our trade policy, generally.

To ensure that these agreements yield benefits, we have developed a strategy of vigorous monitoring and enforcement of trade agreements, strategic application of U.S. trade laws, active use of dispute settlement provisions in our trade agreements, and continued engagement in multilateral, regional, bilateral, and sectoral negotiations.

Of course, one of our primary venues for enforcing agreements and asserting U.S. rights is in the WTO's dispute settlement mechanism. To ensure that the United States secures the full benefits of the WTO agreement, the United States insisted on a strong, binding, and expeditious dispute settlement system for the WTO.

This system, in its short history, has so far proven valuable in achieving tangible gain for American companies and workers, and also it has served as a deterrent. Our trading partners know it is ready and available for us to use if they do not fulfill their obligations.

As the world's largest exporter, we are the WTO's most frequent user of the system. So far, we have settled favorably 10 cases, and we have won through dispute panels and appellate body reports 9 others. We have won favorable settlements and panel victories in virtually all sectors, including manufacturing, intellectual property, agriculture, and services.

Our most effective use of dispute settlement, though, is when we secure early relief through settlement without having to go through full litigation. Let me just cite a few examples of our successes in dispute settlement: removal of barriers to pork and poultry prod-

ucts in the Philippines; elimination of aspects of Indonesia's national car program; decisions requiring the removal of unfair barriers to liquor imports in Japan and Korea; protection of intellectual property rights in Sweden; full protection for copyright for sound records in Japan; and elimination of Korea's unfair shelf-life standards on agricultural products. Only yesterday, the WTO appellate body upheld our panel victory against Japan in a case involving Japan's varietal testing requirements for U.S. apples and other fruit.

In almost all cases, losing parties have acted quickly to come into compliance. This being the case, we find totally unacceptable the failure of the European Union to implement the WTO panel and appellate body reports on bananas, and we expect the EU to meet its compliance deadlines on beef hormones.

While not as high profile as the WTO dispute settlement, it is important to know that we actively use the WTO committees charged with surveillance to secure compliance. These committees provide us with the opportunity to raise issues early on in the process without having to invoke dispute settlement to solve problems.

Our trade laws, including Section 301, Special 301 for intellectual property, and Section 1377, as well as Super 301 in Title 7, which we will reauthorize by Executive Order, are of critical importance to ensure full implementation of both bilateral and multilateral agreements.

They work in tandem with dispute settlement procedures and also assist us in completing and enforcing agreements with trading partners that are not WTO members, or in areas not covered by WTO rules.

Recently, to strengthen our Section 301 capability, Ambassador Barshefsky announced the renewal, by Executive Order, of Super 301 authority. This will enable USTR to identify the most significant unfair trade practices facing U.S. exports and focus exports on eliminating those practices. We have also renewed by Executive Order Title 7, enabling USTR to address discriminatory government procurement practices more effectively.

I would like, if I could, just to point out one very strategic use of the trade laws in conjunction with WTO dispute settlement and the other mechanisms in the WTO, that is, in the area of intellectual property.

Through the Special 301 process, through invocation of our laws, we systematically monitor implementation of U.S. rights under the WTO and bilateral intellectual property rights agreements.

Through this process, we have negotiated successful bilateral agreements and brought a number of WTO cases, secured early settlements in a number of cases, and we have even prompted compliance by countries not targeted in these cases once they saw that we went to WTO dispute settlement.

Let me turn, briefly, to enforcement of our bilateral agreements. This is a very critical part of our enforcement strategy. In the case of Japan, we have negotiated 35 agreements, many containing provisions to promote deregulation and to eliminate anti-competitive and discriminatory practices.

To deliver results in this area, there must be constant vigilance. We are intensively working with our private sector, constantly

pressing a wide array of officials at all levels in Japan to bring pressure to bear, while building domestic support in Japan for our agenda.

In China, to build an intellectual property infrastructure there and to enforce our intellectual property agreements, we have worked integrally and on a constant basis with Chinese customs, copyright and trademark officials, prosecutors and judges, receiving critical input from our industries, and relying on an extensive array of intellectual property and legal experts in the U.S. Government. In order to secure effective intellectual property protection, it really must be done on this very coordinated basis.

As a final point, let me say that, as in all other areas of our trade policy, to be successful in enforcing our trade agreements, this requires effective bilateral cooperation between the administration and the Congress, and we are committed to continuing to work with you on this important area. Thank you.

[The prepared statement of Ms. Esserman appears in the appendix.]

The CHAIRMAN. Thank you, Ms. Esserman.

Mr. Ambassador, I am concerned about the proposed EU legislation on hush kits. How will it affect our U.S. aircraft industry, and what action do you propose to take if this legislation is not withdrawn in Europe?

Ambassador AARON. Well, we are deeply concerned about this issue. I have been dealing with the European Union on this issue now for some time. It has been difficult, frankly, to get them to pay attention to the fact that we have a real issue here. I think, finally, we are getting through to them.

The effect of this regulation essentially would be that any aircraft not registered in the European Union as of April 1 of this year would not be allowed to operate within the European Union with hush-kitted aircraft.

In other words, aircraft that achieve the ICAO sound suppression level that has been established by the ICAO through the use of either hush kits, which are these kits that quiet the engine, or by re-engined aircraft that have quieter engines in them.

The rule, in effect, draws a line that is a design parameter. It does not say that the aircraft have to reach a certain noise level or have to be below a certain noise level, it says that it has to be a certain kind of engine, that it has to be an engine with a bypass ratio of less than three.

Now, the fact of the matter is, all the aircraft engines with that bypass ratio are American. There are European engines—for example, two British engines—whose bypass ratio is 3.1. The line was drawn quite clearly to exclude us and include them.

Moreover, these engines that are permitted under this regulation, many of them generate more noise than the U.S. hush kits or the U.S. engines that are, in fact, excluded by the resolution.

So this is a regulation that, number one, is not effective. Number two, it is clearly discriminatory. Finally, it reduces the value of our air fleet in the United States because only certain aircraft can be equipped with hush kits, and those aircraft, if they cannot fly to Europe, will not have the same resale value. So it will have an immediate impact on our airlines' balance sheets.

We consider this an extremely troubling regulation. We consider it to be discriminatory. We are asking the European Union to delay the implementation of this regulation so that we can work out a reasonable compromise.

The CHAIRMAN. I am not quite clear on this. Now, if this regulation goes into effect, how many U.S. planes might be affected, do we have any idea? How many could no longer be used?

Ambassador AARON. Literally hundreds of U.S. aircraft.

The CHAIRMAN. Hundreds. So it is a very, very serious matter.

Ambassador AARON. We are talking about a net financial impact on U.S. airlines and in lost opportunities to sell hush kits and sell re-engined aircraft approaching $1 billion.

The CHAIRMAN. With all due deference to what you are doing, do the Europeans understand the seriousness of this threat?

Ambassador AARON. I think they are beginning to, but just beginning. Part of it, quite frankly, is due to the actions of Congress in the submission of various legislation that would retaliate against European aircraft, against the Concord, for example, if this regulation were put into effect. That seems to have gotten their attention.

The CHAIRMAN. Well, I think it is critically important that they understand at the highest level that this country is not going to sit idly by and let this happen. To me, it is outrageous. It is the kind of case that, if we do not show that we are enforcing it strictly, I think it could create great problems. I cannot emphasize too much the seriousness I see if this comes to pass.

Ambassador AARON. Well, thank you, Mr. Chairman, for your support. I think it will be very meaningful in our discussions with the European Union.

The CHAIRMAN. Let me ask you another question. You did mention that you had reached a suspension agreement with Russia on steel. Now, are the results consistent with what our steel industry would have gotten if the case had proceeded to a final determination without a suspension agreement?

Ambassador AARON. Mr. Chairman, we believe that this package of agreements, both the suspension agreement and the comprehensive agreement on other Russian steel products, is, in fact, superior in meeting our public interests than a simple finding of our obligations under the——

The CHAIRMAN. But by saying that are you taking into consideration the international impact on Russia, or are you looking at it strictly from the point of view of enforcing a trade agreement?

Ambassador AARON. Well, let me leave the impact on Russia for the foreign policy people to make the point.

The CHAIRMAN. But is that not implicit in your answer?

Ambassador AARON. It is certainly not an issue that we were not considering. I think, as Secretary Daley said yesterday, we are trying to rectify and remedy a very difficult situation, but we are not trying to bring Russia to its knees. But, on its own merits—on its own merits—let me just say there are several advantages to this suspension agreement and this comprehensive agreement.

Number one, it establishes a six-month moratorium at zero—zero—Russian hot-rolled steel imports into the United States. This is an unprecedented achievement in a suspension agreement.

Second, the amount of steel that is permitted for the rest of the year will be under 345,000 tons. You have to compare that with the roughly 20 million tons of hot-rolled steel that is consumed in the United States annually.

Third, it provides an iron-clad guarantee against circumvention or the possibility that any other steel product could then surge and upset the U.S. steel industry. So we have got, I think, strong guarantees against non-circumvention, strong guarantees against surges from other areas.

Finally, it provides a predictable level of imports that, in fact, the antidumping order would not provide. The antidumping order provides a certain margin, but whether those margins would stay the same on final determination, whether they would stay the same over the next 5 years on annual review, how it would impact on the market as the market went forward.

So I think there are a lot of reasons here why this is a good agreement from the standpoint of the U.S. steel industry. What it does, in effect, it takes us back to 1996 for hot-rolled steel, and 1997 for all other steel products. That was a time when our industry was extremely competitive, employment was good, income was good, and we believe our industry can compete under those circumstances.

The CHAIRMAN. I will just make one comment. My concern, and I hear you, but I think it does raise some questions as to the kind of strict enforcement of the trade agreements that we think are so important.

Let me ask you, Ms. Esserman. I am very concerned about our ongoing disputes with Europe, in particular, as well as Canada and others that have really exposed, I think, some very significant flaws in the current WTO disputes procedure.

By making some minor changes, they really avoid decisions in our favor, they do not take the action that they are supposed to, and they are getting away with it. It sort of means continuous litigation. What we are going to do about that?

Ms. ESSERMAN. Well, we are going to do a number of things. First and foremost, in those proceedings we are going to exercise fully our rights. We are going to make clear to the Europeans and to the Canadians that we expect compliance, and if they do not comply, that there will be consequence to pay for it.

We have done that systematically in the Bananas case, and we have been making that clear in the Beef Hormones case. We, in the Beef Hormones case, seek to secure access for our beef exports. We have told the European Union that we are willing to discuss a resolution of this. In fact, we put forward a proposal which we are discussing with the Europeans right now.

However, given our experience in Bananas, and given that the clock is running, we have made it clear to the Europeans that, if there is not compliance by May 13, there will be consequences to pay.

With Canada, we are now——

The CHAIRMAN. Let me just make one comment, if I may, there. When we say there will be consequences, I worry a little bit. I know you cannot spell out at this time what they will be, but I think it is critically important that, when we say there are going

to be consequences, that they will be serious, significant consequences.

Too often in other areas recently, we make threats and nothing happens. We cannot permit that to happen in this area if we are going to build a bipartisan consensus on trade. I just cannot emphasize how critically important I think this is.

Go ahead. Let me just add to my question. How are we going to correct this situation for the future?

Ms. ESSERMAN. Let me share your concern and just offer, by way of example, our Bananas case in which I think we have demonstrated at each phase how serious we are about demonstrating the cost of noncompliance. We have done that at every phase of the proceeding.

I think you raise a very important question, though, as to how we are going to address this in the future. We are, right now, engaged in dealing with that. There is an ongoing review of dispute settlement that was required at the time that we signed our WTO agreements and created this dispute settlement system.

We have an opportunity, through this review, to try to correct this issue. Indeed, we are focusing on the issue of compliance. We had a very productive meeting last week in the WTO. The chairman of the dispute settlement body called a special meeting on this and we presented a range of ideas in this regard. I will tell you that a number of our trading partners share our concern.

So we are going to work intently in this review process to resolve this issue. What we are seeking to ensure is that a country, like the EU, cannot simply replace its WTO-inconsistent regime with another one. That is what we are working toward resolving.

We are also, of course, in this process seeking to address other issues, such as the transparency of the dispute settlement system itself.

The CHAIRMAN. Well, I just want to reemphasize the importance. In fact, we are going to invite you and members to come and meet with the committee in the near future on this because it is of such critical importance if we are going to really develop a new consensus.

I worry when we talk about consequences we not only make sure it hurts but have a solution to it in the future. We talk about letting China become a member of WTO and how important that is. But if China can ignore the consequences of taking something to the dispute settlement, why bother? I just think it raises very serious questions.

Ms. ESSERMAN. Well, let me agree with you. Again, it is particularly disturbing that the EU, as one of the important trading partners in creating this system, would not comply with its dispute settlement obligations when many other countries have done that, certainly we have done that, Japan has done that.

So we expect Europe to comply and we also believe that they should join us in seeking to resolve the problems in the dispute settlement process. Having said that about the EU, I would say that there has been compliance, generally.

As I mentioned in my testimony, we have gotten some very early results simply through filing consultations. Countries know that we are serious about litigation and, rather than go through full litiga-

tion and being branded not being in compliance with the WTO, they have chosen to change their regimes.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Thank you.

Ambassador Aaron and Ms. Esserman, and any who might be listening, if the Chairman seems aggressive on this matter, keep in mind that this committee last year, under his leadership, by a near-unanimous vote, proposed to reauthorize the negotiating authority that the President has requested and which he is requesting again. But we are not going to get it if we have not got something to show.

Sir, you mentioned that the Koreans are building a $7 billion airport, Asia's largest, at Inchon. Well, to people of my generation, Inchon resonates. It was one of the largest amphibious landings we ever had.

We still have 37,000 troops in Korea and they will not let us sell escalators to their new airport? Well, maybe they do not need 37,000 troops. I mean, we can talk that way. We have a right to talk that way.

I would say to you, Ms. Esserman, one of the great achievements of American technology in recent years was fiber optics. It all happened down in Corning near Cornell in a very rapid sequence and it has quite changed the world.

The Chinese are now saying that Corning cannot sell fiber optics in China if they do not give Chinese the technology. And they want to get into the WTO? Tell them, just do not even think about it.

Ms. ESSERMAN. Well, let me tell you what we are telling them. We are telling them that those policies are unacceptable. We have raised, at the highest levels, concerns about import substitution policies and about this technology transfer. We are going to approach this, not only through our WTO accession talks, but on a bilateral basis. Rest assured that we will seek to get this issue resolved, and this must be resolved in order for us to secure an effective accession.

Senator MOYNIHAN. Well, will you tell them that this committee, which is for trade, has to persuade the American people that these things are not going to take place with impunity?

Ms. ESSERMAN. I would be delighted to convey that message, Senator.

Senator MOYNIHAN. I wish you would. Call up Panmunjon, will you, and tell the troops they might get ready to pack. Seriously.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Next, Senator Grassley?

Senator GRASSLEY. I am going to start with Mr. Aaron, and I am going to use a very narrow example. You can answer just to the narrow example I am giving you, but you can also use it as an example of what you might try to accomplish for like things in other countries.

In March of 1998, I raised an issue with Ambassador Barshefsky regarding the effort of the Maytag Corporation my State of Iowa to sell its new horizontal access clothes washers in Korea. This washer is highly energy and water efficient, saving 58 to 70 per-

cent of energy and 30 to 48 percent of water used by conventional washers.

Maytag, of course, could sell a substantial number of washers in the Korean market, but they are blocked by Korean regulation banning the importing of appliances that contain internal electric transformers.

Maytag officials tell me that no Korean official will tell them which exact law or regulation applies, nor will they provide any information in writing, even after a year of trying by Maytag, to nail down what Korean regulation might be impacting this.

These are, of course, non-tariff barriers by Korea and most likely violate the reciprocal national treatment provisions of the U.S.-Korea Friendship, Commerce, and Navigation Treaty, which would certainly form the basis for a 301A action.

I understand that Secretary Daley will soon lead a business development trade mission to Korea. So what can you do to use this as an example of our efforts to fight non-tariff trade barriers, to let people in other countries know that we are serious, as Chairman Roth has so forthrightly stated during this hearing, that we must do in order to let them know we mean business. What can you do in the context of maybe Secretary Daley's mission to resolve this problem?

Ambassador AARON. Well, first of all, I can assure you that we will raise this issue with the Koreans on Secretary Daley's mission. Secretary Daley met with the Maytag Corporation officials not long ago to discuss this matter, and he intends to follow through on it.

Our understanding of the rule that seems to be at issue here is that the Korean Government does not allow, for washing machines, a step-down transformer to be used. The electric power for this particular Neptune Maytag machine is for 110-volt, 60 cycles, of the sort that we have here in the United States, while they have 220 at 60 cycles. There is no basis for this rule.

The fact that they have a rule is not an excuse, in our judgment, to exclude U.S. products and we will take this up directly with them. I have to say, this is an example of exactly the sort of thing we are trying to deal with with our Trade Compliance Center.

We are now working on 20 cases around the world in which certifications, various kinds of red tape, bureaucratic obstacles, certain kinds of technical requirements, are all at issue. I think this is one of the most important areas where we really have to be very vigorous in defending our rights, and will do so in this case as well.

Senator GRASSLEY. Yes.

Ms. Esserman, I would like to use an example that involves Canada and poultry, but at a little different angle than what I used as Korean. Again, you can use either the example as it affects a part of our agricultural industry and my State of Iowa, or you can use it as a wider basis for giving us some evidence of the administration's efforts to counteract this sort of non-tariff—or I should say in this case, not non-tariff, but what is a conflict between an agreement and U.S. law. Bad treaties or treaties with huge problem areas can still cause a lot of trouble that even reasonably good dispute settlement procedures cannot fix.

So I would point to an example of poultry producers in not just Iowa, but it affects all U.S. poultry producers. When the United

States and Canada concluded a free trade agreement, we expected that all agricultural trade between the United States and Canada would be duty-free by 1998.

But another treaty, the Uruguay Round Agreement on agriculture, permitted some countries like Canada to retain high tariffs on a broad range of U.S. agricultural exports. When U.S. poultry producers tried to export their products to Canada, they were stunned to learn that Canada still had a tariff of a whopping 285 percent.

When the U.S. poultry producers challenged these tariffs in a NAFTA panel proceeding, the NAFTA panel sided with Canada. The NAFTA panel ruled that, under the agreement on agriculture, the Uruguay Round, Canada could keep its huge tariffs on U.S. poultry, despite earlier commitments that Canada made to phase out these high tariffs under the Free Trade Agreement.

So, the agreement on agriculture effectively stops Iowa poultry to Canada. I believe that this pitfall should have been spotted before it became so serious. What can you do to make sure that the trade agreements that we sign with our trading partners do not have these harsh, unintended consequences?

Ms. ESSERMAN. Senator, I think the important thing, as we satisfy our agreements, is that we make sure that we, in subsequent agreements, do not do anything that nullifies or impairs the rights that our producers have achieved in earlier agreements. We need to be very careful to make sure that the NAFTA and our multilateral agreements work in tandem to promote greater access rather than to reduce access.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. I would just make one comment. This is a fight that has been going on for years now, and nothing happens. I just find that totally unsatisfactory.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

In somewhat the same vein, I guess I will ask you, Ms. Esserman. Well, I can tell you, people are becoming very impatient about the beef matter. It has been 10 years. Ten years since Europe slapped on its regulation prohibiting the import of American beef. Ten years. The estimate back then was, as I recall, $1 million lost annually. Maybe that is $1 billion lost, I do not know, over the last 10 years.

I do not know what the United States has done about it. I know we have taken a lot of action, but it does not really seem to have stopped the Europeans from imposing this unfair barrier. We know it is unfair. The WTO has ruled that it is unfair many times. It is wrong and Europe has to open up.

A small anecdote. When Margaret Thatcher was Prime Minister, several of us were visiting with her and I asked her about this. She agreed that it was a bogus trade barrier, that it was the continent, she said, that was the cause of it.

Regardless of whose fault, we know it is unfair. All organizations have looked at this on a scientific basis and found it to be unfair. As I understand through the WTO rules, we have, as late as July—by the time we Americans give our retaliatory lists and they appeal

the list, and back and forth, it is July, perhaps. Who knows what is going to happen by then.

I mean, I do not want to have to sit and ask this question any more. Certainly, producers around the country do not want to have me and others ask this question any more. I mean, what gives here?

Ms. ESSERMAN. Well, we share your impatience, Senator. You are quite right to be impatient. That is why we have begun the process. We have been telling Europe for quite some time that we were serious about this May compliance date. We are, as I said, in discussions with the Europeans, because, after all, what we are seeking here for the industry is access. That is what they have been seeking for all these years.

However, if we cannot reach any kind of resolution with the Europeans, we are prepared to demonstrate, at a time certain, that there are consequences. We have made it clear. We have developed a schedule and we will work according to that schedule.

Senator BAUCUS. I may be missing something. What is there to discuss? I mean, they have violated WTO and so we retaliate, period. What is there to discuss?

Ms. ESSERMAN. Well, if they cannot afford access, which is what our beef exporters want, then there will be nothing to discuss. But what we are trying to discuss is a resolution that would afford our beef exporters access to the market. And if that is not possible, then we will take steps to retaliate.

Senator BAUCUS. Again, what is there to discuss? Why not, if they do not allow access, they do not allow our beef in by a certain date, why do we not just plain retaliate?

See, I think the more we talk, the more we play their game, the more they play us like a violin, the more they just keep stringing us out. It is the old thing, "Walk softly, but carry a big stick." There is no use arguing with them. I do not see any point in arguing with them. The WTO has ruled. There is no further discussion. We just retaliate, period, until they finally relent.

Ms. ESSERMAN. Again, we are prepared to retaliate, Senator. But since the——

Senator BAUCUS. So when are you going to retaliate?

Ms. ESSERMAN. We are working according to the schedule that we have laid out. And if there is not compliance by May 13, then we will take actions consistent with the WTO deadlines.

Senator BAUCUS. Whoa, whoa, whoa. Those are weasel words. You will take actions consistent with the WTO deadlines? I am not asking about actions consistent with the WTO deadlines, I am asking, when is the United States going to retaliate, pure and simple?

Ms. ESSERMAN. I believe the schedule would lead to a retaliation date, I believe, in July.

Senator BAUCUS. So I was right. Under WTO, the earliest that I can expect, and our meat producers can expect, any action is not until July.

Ms. ESSERMAN. Well, Senator, I would say that every day we are taking steps to make the Europeans understand that we are serious. I do believe it is worthwhile to be in discussions so we can see if there is a way to afford access quickly, since certainly that is better than retaliation for our beef exporters.

Senator BAUCUS. What would happen if we were to, just to plain and simply, retaliate today? Why can we not do that? What if we were to do so, force the issue, make something happen here?

Ms. ESSERMAN. We could retaliate today.

Senator BAUCUS. Why do we not? What would the adverse consequences be of retaliating today?

Ms. ESSERMAN. Well, the adverse consequences may be that we would ultimately not have market access and it would be just a chain of——

Senator BAUCUS. I thought WTO ruled in our favor.

Ms. ESSERMAN. It did. And after the WTO rules in your favor, you seek to achieve access through discussions with our trading partners. In fact, that has worked with many other trading partners, and that is what we are seeking to achieve.

Senator BAUCUS. Well, with all due respect—believe me, I know you are trying hard—I just think we are being too easy. I think we are being too nice. I think we are being too process oriented here. We are not results oriented. We are not just sticking up for our people in the way that it allows us. I strongly suggest that the United States simply retaliate.

My experience in these matters is that actions speak louder than words, that when they see us finally acting, that they are going to finally do something. But we are not acting, we are just talking, and they are not going to do anything.

My very deep experience is that no country altruistically, out of the goodness of its heart, lowers a trade barrier. They never do, they never will. They will only lower a trade barrier when there is leverage, and the leverage we have is retaliation. I urge you very strongly to retaliate and let them squawk and let them finally open up, because they are not going to until you do.

The CHAIRMAN. Senator Thompson, it is your turn.

Senator THOMPSON. Well, I never thought I would attend a hearing where I would feel like maybe I was the wimp in the crowd. [Laughter.] I am beginning to get that impression.

It looks to me, in listening to this, that we have got a procedure here that inherently leads to frustration. You say the average time is two and a half years for resolution of these matters. Clearly, some of them have been going on much, much longer. It looks as if minor adjustments are made sometimes.

We win at the WTO, minor adjustments are made, and they insist that you go back through the entire procedure again. I do not see why another country would have any incentive not to take the two and a half years, five years, or 6 years, whatever is available to it, because there is nothing to be lost by doing that. I certainly do not see what the resolution of that is.

But am I correct, as far as WTO dispute resolution procedure is concerned, in cases where we have taken it there and we have won and we are still having problems, we have never really imposed sanctions pursuant to any of those WTO procedures, have we?

Ms. ESSERMAN. No.

Senator THOMPSON. When we talk about sanctions and retaliation and so forth, when we do it, it will be a case of first impression, will it not? I mean, you are talking about, what are the re-

sults? We do not know what the results of that will be because we have never done it, have we?

Ms. ESSERMAN. Well, first of all, we are very early in the testing of the WTO dispute settlement system. And let me just say, generally, though, there has been compliance with WTO dispute settlement decisions. And we have achieved early settlement in many cases. I just think it is important to provide that background.

We are, indeed, having very serious problems with the Europeans and we need to make sure that we correct this problem. We are, indeed, very much in the process of demonstrating to the Europeans our seriousness in Bananas, and we have taken——

Senator THOMPSON. So you are saying, let us not forget our successes along with the problems that are there.

Ms. ESSERMAN. Well, we have much to gain from this system.

Senator THOMPSON. That is a legitimate point. With regard to the question of, what are some of the consequences, if you go down that road and you have to impose sanctions or retaliate in some way, I was interested in reading the statement by Mr. Orr of the liquor industry.

He was saying that he was looking at the Beef Hormone case and saying, "We are concerned that trade in distilled spirits may be disrupted by U.S. retaliatory measures in the Beef Hormones dispute with the EU."

So you have got industries over here saying, go against them but do not mess us up. They suggest that we have a targeted approach to retaliatory measures, perhaps limiting them to the specific sectors involved.

Do you know what that means, or is that possible so that when you start choosing how you retaliate and what industries you retaliate with regard to, how do you minimize disruption of other industries who have their own WTO situations going and they are pretty satisfied, maybe, with the direction in which they are going?

Ms. ESSERMAN. Well, Senator, I think you have hit on some of the issues that have been raised by retaliation. Again, I would say that retaliation is a very important mechanism, particularly when you have recalcitrant countries like the EU.

When we are fashioning retaliation lists, we take into account the comments of our industries because certainly we want to minimize any impact on our own industries when we are seeking to resolve a problem of one of our export industries.

Senator THOMPSON. With regard to intellectual property rights, clearly, American companies are at the forefront here. I suppose it is not surprising when piracy occurs, but it is especially disconcerting, I think, when it is happening with regard to our close friends.

I am referring to Israel. I read something last month that says, "U.S. companies lost over $170 million in revenue during 1997 because of Israel's export-driven pirate auto CD market." The same article said, "According to the Business Software Alliance, the U.S.-based industry lobby, nearly 70 percent of all software installed on computers in Israeli businesses in 1996 was illegal."

What steps are the United States taking with regard to this, either unilaterally or within the WTO, to address the piracy problem in Israel?

Ms. ESSERMAN. Well, we share your concern about this piracy problem. We have raised it at the highest levels of the Israeli Government and we will continue to do so. As I mentioned earlier today, we do have a domestic legal process, the Special 301 process, in which we identify countries that have problems with intellectual property protection.

Senator THOMPSON. What does Special 301 give you that you would not have without 301, other than identifying the problem? The problem has been identified.

Ms. ESSERMAN. Well, actually, Special 301 has been enormously effective because countries do not like to be labeled as non-compliant with intellectual property norms, so it has led to us securing important changes in intellectual property regimes. We have used that also in conjunction with the WTO where we filed cases and gotten very, very early results.

So, as we are going through this Special 301 process, we are going to be looking very carefully at the situation with Israel, pressing them to change immediately to avoid these kinds of designations. We will also be working with them to secure their implementation with their WTO obligations.

Senator THOMPSON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thompson.

Next, we have Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Thank you for holding this hearing. I know the purpose of this hearing is to develop a record for purposes of possible statutory reform where we find the current enforcement measures not to be operating. I am particularly focused on those aspects of enforcement that relate to the North American Free Trade Agreement.

One of those has to do with the agricultural provisions as they affect perishable fruits and vegetables. One of the problems is that the relief mechanisms require such a time to initiate that, by the time any relief is available, the product has lost its value.

Does the administration have any suggestions as to what can be done within the current enforcement regimes as it relates to perishable agricultural products, or will you be recommending any legislative changes that might provide some effective expedited enforcement in these particular areas, either one of them?

Ambassador AARON. Yes, Senator. We have been looking at your proposals very carefully. I think, as you may know, our staff at the Import Administration has met with your staff earlier this month to go over those proposals. We would hope that we could develop something out of that.

I am not in a position, simply because I only the Commerce Department, to say whether we can either put forward or endorse a legislative package that would include some elements there. But we are optimistic. We want to work with you on it and we are hopeful that something can be done to meet this obviously very different kind of situation with perishable goods.

Senator GRAHAM. I appreciate those encouraging words and hope that, in the new few weeks, that we can continue to move this process through the Department of Commerce and other agencies of the Executive.

It was just about 22 months ago that I was in Mexico City, slightly in advance of a visit that the President took to Mexico City, and we were very pleased to hear that, as part of the meeting between the two Presidents, that we could anticipate an opening, at long last, for Florida citrus into Mexico.

It is now 22 months later and we still have not gotten any opening for Florida citrus into Mexico. Do we have any time table as to when that might happen, under the NAFTA?

Ms. ESSERMAN. Senator, I do not have specific information for you, but I am happy to talk to those at USTR that might know and give you an update.

Senator GRAHAM. All right. During the course of NAFTA enforcement, we had some experience with the antidumping provisions. And while the result that we ultimately received, I think, was generally thought to be a constructive one, there was concern about the expense and the time required to access the antidumping provisions.

Does the administration have any thoughts as to what could be done to expedite the use of the antidumping provision when it is determined that a country is selling at below its cost of production?

Ambassador AARON. I will be frank, I do not think that we have looked at that carefully. But we will, and I will definitely get back to you as to whether there are ways to make that an issue that can be resolved.

I know we have run into this question, for example, in some of the other agricultural areas, where it is basically not feasible for some of the potential parties to put together the resources that are required. I think we are going to have to find some way to do that.

Ms. ESSERMAN. Senator, one of the difficulties is that, over the years, in working with industry and in working with this committee to ensure that we have strong trade laws, we now have a number of very highly complex provisions. One of the difficulties, honestly, is that, for small industries, it makes it a little bit more difficult to understand those provisions.

I would say that the Commerce Department has really done something quite admirable in finding a way to provide a signal to those countries that are engaged in unfair trade practices by amending their procedures on critical circumstances to secure really earlier effective relief. I think that is a new, important change by the Commerce Department that could be valuable for the fruit and vegetable producers.

Senator GRAHAM. Well, in my remaining seconds, I know I am speaking to the choir, to the two of you. But I want to join with the comments that have been made. If we have any chance of passing expanded trade legislation, it is going to be the result of the administration demonstrating its capacity and will to be effective in enforcing those agreements that we already have.

I believe that the most significant sector of our economy for this is agriculture, both because it feels particularly wounded by failures to enforce in the past, while its tradition is one of exporting expanded trade. So that of all the groups that are currently opposed to expanded trade, in my judgment, agriculture is the most retrievable. The key to that retrieving operation is going to be effective enforcement of existing agreements.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Ms. Esserman, do you operate solely within your particular area, that is, you can recommend retaliations but you cannot get beyond that? Let me give you an illustration of what I am talking about.

There have been two examples brought up here today which I am not familiar with, but I just garnered from listening, one involving Korea, the other involving Israel.

Now, in both of these instances, these are nations which we are giving a big hand to outside of your sphere, in Israel's case, massive aid we are sending to them every year, in the case of Korea, as was mentioned, we have 37,000 troops over there.

So you have these situations arise. I am repeating what has been said. I do not have personal knowledge of this, but in one case, apparently in this massive airport they are building off Inchon, we are excluded. In the case of Israel, apparently there is tremendous piracy going on in connection with intellectual property.

Now, what tools do you have at your disposal if you want to do something about that? Do you have a way of transmitting your concerns to a broader area, to those who are determining what number of troops we will have in Korea, or how much aid we will give to Israel? What can you do about that?

Ms. ESSERMAN. Well, let me say that, when we are making our trade policy decisions, we actively involve those in the administration that are involved in these broader policy areas.

When we are seeking to secure compliance, we do not go only on our own in meeting with our counterparts, we engage the State Department, the Commerce Department, the NSC, to assist as they are dealing with other issues, to secure compliance and to bring the other issues to bear. So this is something that we do not do in isolation.

Senator CHAFEE. I mean, it seems so bizarre that these two countries which we are helping in a very, very substantial fashion, are, as reported—and again, I am relying on others for this information—are acting in the fashion that you just determined.

The CHAIRMAN. May I just make a comment, because I think you have just made a very valid point. I am concerned about the clout of the USTR. Would a Secretary of Trade not have a lot more say? Today you have to bring all these other groups in, and obviously there has to be some inter-cabinet discussion, but I worry. Where is the clout of the trade people currently? I think that is something we ought to be concerned about.

Senator CHAFEE. That is fine.

How would you raise how the U.S. behaves in connection with decisions that go against us? First, I would say, in throwing you a lifeline, that you indicated under the WTO settlement process we have prevailed in 19 out of 21 cases. So you are doing your best, with considerable success.

But how is our record? How do we behave? Are we beyond reproach, the U.S., when a decision goes against us? Do we comply? How would you rate us?

Ms. ESSERMAN. I rate us well. We have taken steps to comply when decisions have gone against us in these cases, though. We have been able to make minor adjustments to secure compliance.

Senator CHAFEE. Well, I think it is terribly important that we behave correctly. And I must say, I am stunned by the EU's situation, the bananas. We won the decision and they have just, in effect, told us to buzz off, they are not interested in doing anything about it?

Ms. ESSERMAN. They have not done anything about it, that is exactly correct. That is why we have been determined to take action and have been taking steps at every phase. That is why we actually also look into the future.

We are making sure that we change the system to prevent a country to simply replace one WTO-inconsistent action with another. That is what we want to try to address in this ongoing dispute settlement review in the WTO.

Senator BAUCUS. I am sorry. Could I ask her to repeat that? I did not understand that last statement. Could you repeat that, please?

Ms. ESSERMAN. Senator, when we signed the WTO agreements we agreed that there would be a review of the dispute settlement processes within 4 years. We are engaged in that review now. We do believe that this is an important time to fix this problem, and we are engaged in doing that now.

Senator BAUCUS. Thank you.

Senator CHAFEE. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Chafee.

Senator Kerrey, please.

Senator KERREY. Thank you, Mr. Chairman.

I want to thank both Ambassador Aaron and Ambassador Esserman. I appreciate, very much, the testimony. I found it to be very helpful in sort of outlining both the successes and the challenges, the shortfalls, where we need to strengthen. This committee is very much aware that it is going to be very difficult to get Normal Trade Authority passed through this Congress.

We are going to have to persuade, especially, members of the House of Representatives who stand for election every 2 years and who I think, as you can tell from the tone here, are picking up from their people that they do not feel much success.

One of the reasons, I think, is that, in spite of these numbers—the numbers are quite impressive, Ambassador Esserman. I think you did a very good job of stepping back and getting the big picture. The economy has grown from $7.1 trillion to $8.7 trillion, there are 18 million more jobs since 1992, the average wages have increased. I mean, it is an impressive performance. But, in addition to that, there has been a lot of trauma out there in America, a lot of restructuring. That is a name that is euphemistically applied to the behavior.

But just take one sector. For example, in sugar, which is a parochial interest of mine. I voted for NAFTA, and one of the reasons I did, was there was a side agreement. Mexico now does not want to abide by the side agreement, and the reason is, they do not want to go through the trauma.

We did. We down-sized our domestic sugar industries. We went through the trauma. We experienced a decline in employment, a decline in profit, a decline in acreage. I mean, we adjusted because the sugar industry knew they could not come to the Congress and

get protection. Well, Mexico does not want to go through the trauma. I understand that.

Senator Chafee asked, how do we do? We sometimes get in the mood of not wanting to go through the trauma either when adjustment is needed. But, in general terms, the reason we have lifted our standard of living is that we have had a pretty light hand, the government has, on industry. We have had a very open trade policy.

One of the concerns that I have got is, it seems to me, as hard as you and Ambassador Aaron, Ambassador Barshefsky, and Secretary Daley are working to try to expand trade, sometimes other areas of the government do not seem to put as big of an emphasis on it.

For example, it seems to me that the IMF did substantially dampen demand, and we hailed that as a great victory. But if you look at the exports right now in Asia, they are heading south, and are likely to head further south.

In the visitations that were made to Japan, trying to get Japan to stimulate its economy. I did not hear it, and maybe it was out there, but we should have led with trade. It would stimulate their economy, to give their consumers a break and allow them to buy cheaper goods from the United States. They certainly have no trouble wanting to ship cheaper goods to us.

Likewise, in China. When we talk to China about the WTO, it is not about WTO accession. They have got a tremendous economic problem. It would benefit them to knock back tariffs on pork.

It would benefit me, as well. But they have got a 14 percent tariff on pork, a 17 percent value-added tax, plus lack of transparency. They need laws that will enable their consumers to get a reduction in price that would stimulate their economy.

So here we are asked for $17 billion of new authority for IMF, and I hear the administration hammering like mad trying to get that approved, and we finally did. But I do not hear in either the high-level bilateral discussions or in the requests for IMF funding, them saying, change laws to liberalize your trade because your consumers will get a break, you will stimulate your economy.

Everybody looks at our economy right now. The latest seems to be that the good news is, Americans not only are not saving, because they are not saving, they are consuming, they are buying things, and that consumption is fueling our economy. That is why trade liberalization in China would benefit them.

I just, with great respect for you and the Trade Representative and Secretary Daley, what I do not hear consistently from the administration is the need for these nations to change their laws that will enable them to make progress.

I mean, take Russia. It is a heck of a lot more important for the Duma to pass a law allowing for the protection of private property than it is to do star two. We surrounded ourselves with some of the most corrupt industrialists on the planet in Russia. Their privatization experiment has been a disaster. We are whacking them now on steel.

So it seems to me that trade is not going to work very well unless the standard of living in the rest of the world rises. The only way that standard of living is going to rise is for them to do what

we have done. It is not just in our interests, it is in their interests to pass laws that will liberalize their trade and liberalize their economy.

I mean, the failure of NAFTA, in my judgment, is that after they devalued the peso, we did not hammer Mexico and work with them to try to get them to take off the price controls that they had, to reduce the amount of corruption that exists throughout their economy, to be more liberal, and perhaps to a bilateral development deal that will enable them to raise their standard of living. And this is just a lecture to all of you.

For your information, I think we are going to have to get something that is permissive on labor and a trade agreement. We are not going to get it passed. But we are also going to have to put a round in the chamber and strengthen 301 to shorten the process, as Senator Baucus has mentioned with beef, and Senator Graham has as well, something that will give our citizens a sense that we are going to be able to enforce these agreements.

I suspect, once again, I am going to vote for it, but it is getting increasingly difficult to vote for it when we have to go back home and say, here is why it takes so long, here is why the restructuring that you have done is not going to be reciprocal.

So, there is no question at the end of this long statement. I just wanted to let you know that, in general terms, I do support the Trade Negotiating Authority, but I will be looking, as this committee develops legislation, for ways to strengthen our ability to make certain that our trading partners do what we do.

But I have got to say to you, I hope that the balance of the administration, from the President on down, understands that there are bigger areas of concern that could actually dwarf what we get out of trade agreements in terms of improving the economy of the United States of America and the economy of the rest of the world.

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Just following up on Senator Kerrey's question. Mr. Chairman, I would just like to say for the record——

Senator KERREY. Did you want me to laugh, is that what I was supposed to do? I am sorry I did not acknowledge you, Senator. That was very funny and witty. [Laughter.]

Senator ROCKEFELLER. Mr. Chairman, I just want to say publicly that I am very, very unhappy—and this has nothing to do with you, because you have done everything in the world you possibly could—that Sue Esserman, who has to take off this afternoon for Geneva to debate exactly in the position called General Counsel of USTR, which is not unimportant, it is huge, has once again had a hold put on her nomination. You negotiated that out last time. It was bananas, it was Trent Lott, whatever. But she is not confirmed, and she is excellent. I have fought for her at every stage of her progress. What does it mean, talking about enforcing trade laws, when we in the Congress will not confirm the General Counsel for the U.S. Trade Representative's Office? I would say, both to you and to Senator Moynihan, because I guess I cannot presume that the hold has been put on on the Republican side, but I suspect it is—and it may still be over bananas; I have no idea—but it is an absolutely unconscionable situation for Sue Esserman.

She goes over there with all the full standing of her brain, her will, and her tenacity, but with sort of the pettiness of the Congress of refusing to recognize her position, which is already fully recognized and which we have fully worked out.

I do not expect an answer on that, I just want to register a great sense of grief, really, of us, the Congress, shooting ourselves in the foot, where we could be doing something about that.

Now, I want to take to my more familiar position, to attacking the administration. [Laughter.] On steel, when Bob Kerrey mentioned we were whacking the Russians, I beg to differ. We did not whack the Russians. What we did, is we decided that Russia was in such precarious position that we did a suspension agreement with them, which is still going to allow them to do imports too cheaply.

So, in a sense, in this whole context, Ambassador Aaron and General Counsel Esserman, you are going to have a harder time, as I have already said, on fast track with me. I could not imagine myself not voting against fast track, but I can now because the deal is all changed. When I came to understand what Max Baucus, North Dakota, and some of these States were going through on abuse. We are taking it now in West Virginia, but it is not West Virginia.

It is masked, which I have said before and which you know very well, by the United Steel Workers contract, which has a no lay-off clause in it. Those people are, in fact, laid off, they just happen to be being paid until July comes, when the contract runs out, then they will be out in the street. They are cleaning machinery and sweeping floors right now. That is going to be close to 100,000 more people.

Now, we talk about enforcing trade laws. We have a trade law. We know of at least three countries and plenty of others that are already violating it. The President is talking about resorting to something called Section 125, which I do not think has ever been used, in which he talks about a proclamation on quotas, which he may then try to pass off as a quota bill, because the American people do not follow these things very closely. They will say, oh, the President is doing a quota proclamation or a quota something. But it is a proclamation, it does not mean anything.

I do not know how to get through to the administration. I am doing a Bob Kerrey. I would say to both of you, I simply do not know how to get through to them. I made that comment about Bob Rubin. I understand the world. I was brought up in the international environment, an international family.

I am going to the Japanese Embassy for dinner for my Uncle David, Chairman Roth. In the meantime, I am giving the Japanese all kinds of trouble because they are 42 percent of our import and dumping problem. I do not know how to get through.

Whether it is the legacy building thing or bringing the whole world back up, but does the world have to work like that, that you either cure the world in a generic sense, holistically, purely, perfectly, or that you do that in general terms, but that you also understand that, where people are violating trade laws, that you do not allow that and that you come back at that? The Department of Commerce did it, and they did it on two countries with one prod-

uct. And then you have the suspension agreement with Russia, which is not going to work.

So Section 201, to me—and Chairman Roth, and Ranking Member Moynihan have both spoken to that, have written, I think, to Secretary Daley about that. Yes. I do not know what to do about the administration on this.

I went to Pittsburgh last week and I had a steel hearing with Steel Caucus Chairman Specter. I asked the Weirdon Steel guy, who was the only person there, what would you do? Gore is running for President. What would you do if he came to Weirdon? He said, I would run him out of town. I would run him out of town.

Why did I ask that question? I am trying, in every way I can, to try to penetrate the Oval Office, where I think Rubin dominates on these issues. The President called me after his impeachment—and then I will get off my soap box—and after the conviction vote to apologize for the problem that he put all of us through, and what he should have done, et cetera. I am sure that many people got those phone calls.

I just lit into steel, thinking that he might be open to hearing something. It is just like, if he is going to do a Section 125, it does not mean anything. So if we are talking about enforcement of trade laws, we have got a little situation out there called steel which has put 10,000 people out of work, with another 75,000 to 90,000 to follow in July. I just want to register, it is going to get very, very hard for me to support a lot of things that I would otherwise support. That is my question.

The CHAIRMAN. Senator Conrad.

Do you have a comment? Yes.

Ambassador AARON. Yes. I would like to comment, because I think we keenly feel the very frustration and concern that the steel industry has expressed, the steel union has expressed, and that Senator Rockefeller has been so eloquent about here.

But I also would ask the committee and those who are deeply interested in this issue to look at what has been accomplished by our steel agreements with Russia.

First of all, steel imports into the United States from Russia, hot-rolled steel which was covered by the dumping case, will be reduced 90 percent this year. That is not a trivial accomplishment.

Second, all other forms of steel from Russia will be held at their 1997 level. In other words, there will be no possibility of circumvention by surges in other steel, there will be no possibility of surges, circumvention notwithstanding. We think this is an important accomplishment.

We believe that this goes a long ways towards meeting the relief that the steel industry needs and deserves. We will, in effect, have turned the clock back to 1996 as far as hot-rolled steel is concerned, and 1997 as far as the other steel products are concerned.

Those were years in which the steel industry was able to compete effectively. It is the most competitive steel industry in the world. We believe that this agreement is a good one for the country.

The CHAIRMAN. We will have to move on now, Mr. Ambassador.

Senator Conrad?

Senator CONRAD. Thank you, Mr. Chairman. Thank you very much for holding this hearing.

This has been a frustration of the people I represent for a very long time, ever since the Canadian Free Trade Agreement. When that agreement passed, the Canadians had zero percent of the U.S. durham market. Zero. They promptly went to 20 percent of the U.S. durham market. Durham, of course, is the grain that goes to make pasta.

My State produces over 80 percent of the durham produced in this country. The economic injury to my State has been enormous. It had nothing to do with them being more competitive, it had nothing to do with them being more efficient.

In fact, there is not a dime's worth of difference between the efficiency and competitiveness of our two countries. I have farmers who farm on both sides of the border, United States and Canada.

Our problem is, once a mistake is made in a treaty, what law is available to correct the mistake? This is not a matter of enforcing the law. This is a matter of, there is no way to fix it.

I have repeatedly, repeatedly asked my colleagues to allow us to have some corrections mechanism created in these agreements so that, if a mistake is made and if some part of our country is hung out to try as ours has been, that there is a means of getting it redressed. There is no means now. There is no law. Well, somebody can talk about Section 301. Good luck. Good luck, that that is going to be used to correct the mistake, if it is made.

I urge my colleagues, I implore my colleagues, can we not figure out a corrections mechanism so, periodically, if there are mistakes made in these agreements, you can go back?

I can tell you, it costs us the respect of people who want to support more open trading regimens. But if there is no means of correcting a mistake, people cannot see that this has a value.

I can tell you, in my State, if somebody wants to stand up and be for one of these trade agreements, after our experience with the Canadian Free Trade Agreement, they are in desperate trouble.

So I would just implore my colleagues and implore the Trade Representative to have a more open mind with respect to this question of a corrections mechanism. Every time I have brought it up, trade representatives come up, we have this little meeting in the back room, and they shoot it down.

So that has been our experience. I have just completed a series of community forums all across my State. I tell you, this was a key issue brought up at every single one of my meetings.

So this is not a matter of enforcing a trade law, this is a matter of, we do not have a law to enforce that can deal with the problem, that I know of. I would be interested to hear from Ms. Esserman or Ambassador Aaron.

Ms. ESSERMAN. Well, Senator, I have been thinking about your comments about the lack of a corrections mechanism in trade agreements. I would just say that maybe we ought to look to the model of some of the WTO agreements.

In a number of those agreements, for example, the dispute settlement mechanism that we have been discussing today, there is a provision for review. What we are doing now, is we are going back through that review and trying to correct the problems that we are now seeing as we use the dispute settlement mechanism. So, I

would like to think about whether or not we can adapt some of those mechanisms to deal with some of your concerns.

Senator CONRAD. Mr. Aaron?

Ambassador AARON. Yes, Senator. I think the point you raise, and also the whole issue that we have been dealing with on the wheat issue, raises a concern that was, I think, also raised earlier by Senator Graham.

This is the question of, how our dumping laws, for example, in the case that you are talking about, require a certain amount of organization and financial strength in order to pursue the remedies that exist in the law.

When it comes to farmers, individuals, we have to have a certain amount of industry support. But there are tens, hundreds of thousands of farmers, so how do they get organized?

They are already in a terrible condition, I think, as Senator Baucus pointed out the difficulties that the farming community faces in this country. They do not really have the resources and they have no organization to come together, to use the rights that they have under our trade laws.

Senator CONRAD. Can I also indicate to you that that is a problem. I mean, it costs $1 million, minimum, to bring a dumping case. If you have got a small industry like durham, how you bring it together to have $1 million is a big question.

But, beyond that, because of the defects in the trade agreement with Canada, it is highly questionable whether we would win a dumping case, because our Ambassador at the time told the Canadians, you do not have to count, for purposes of determining your costs, the final and interim payments made by the Canadian Government to Canadian farmers. And what did they do? They doubled the amount of those payments.

So they have got a loophole here big enough to drive all of those semis right through, right into our State, and dump that grain at what, in effect, is below their cost. But they have been given a loophole. It is enormously frustrating. I will tell you, the temperature is rising out there on this question.

The CHAIRMAN. Thank you, Senator Conrad.

Time has run out. One question I would ask you to consider. You have the same problem not only with the farmers, but with small business.

Ms. ESSERMAN. Yes.

The CHAIRMAN. And I think it is important that we look at the process to ensure that they have the opportunity to raise issues that conflict with their best interests.

Senator MOYNIHAN. Mr. Chairman, could I just ask, would Ambassador Aaron give us some thoughts on how we might address this issue of dumping in the manner that Senator Conrad has talked about? We were talking about this when we had a special hearing on steel 2 weeks ago. You can renegotiate treaties. It happens all the time. It may be that the time is at hand to ask the Canadians to renegotiate after this 10-year experience. That surely is the case, is it not, that a partner to a treaty can ask to renegotiate it?

Ms. Esserman. Yes.

Senator MOYNIHAN. Yes. Why do you not give us some thoughts on that?

Ms. ESSERMAN. We will do that.

Senator MOYNIHAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Do not forget poultry.

Ambassador AARON. I will not forget.

The CHAIRMAN. Well, thank you very much for being here today. I know it has been a pleasant morning for you. [Laughter.] But we hope you will come back soon, and the next time we see you, Ms. Esserman, we hope you are the Deputy.

Ms. ESSERMAN. Thank you very much.

The CHAIRMAN. I would now like to turn to our second panel. We are very fortunate to have with us five experienced members of the private sector. Dennis Doyle is the executive vice president of the International Division of Chiquita Brands International; Jeff Lang, we all know, is a partner with Wilmer, Cutler & Pickering and is a former Deputy U.S. Trade Representative. Charles Lambert is the chief economist with the National Cattlemen's Beef Association. Mark Orr is the vice president of the Distilled Spirits Council of the United States. Finally, Ira Wolf is currently president of IW Consulting and is a former U.S. Trade Representative for Japan and China, and former vice president of Kodak in Japan.

Gentlemen, as you well know, your full statement will be included as if read, so I ask you to be as reasonably brief as you can.

Mr. Doyle, we will start with you.

**STATEMENT OF DENNIS DOYLE, EXECUTIVE VICE PRESIDENT, CORPORATE AFFAIRS, CHIQUITA BRANDS INTERNATIONAL, CINCINNATI, OH**

Mr. DOYLE. Good morning, Mr. Chairman.

Chiquita Brands International was the leading banana supplier to the European Union as of 1992. Just a little bit of history. In 1992, the European Union, as you know, was going to be coming together into the common market.

At that time, 7 of the then 12 member states had different policies regarding the regulation of bananas produced in Latin America. Five countries allowed bananas from Latin America to enter their countries, and seven, in effect, did not.

It was our understanding at the time the common market would come together that the barriers to trade would fall, that it would not be Fortress Europe, and that people that had previously traded in a country which permitted access would be permitted to trade in the other countries once the barriers as between the borders of those respective countries fell.

As of 1992, the Latin American banana industry had already received two GATT panel decisions holding that the discriminatory banana regimes existing in 7 of the 12 member states were GATT-illegal.

Under the old GATT, you may recall, it was possible for the European Union to block the implementation of a ruling. So the European Union did block the implementation of those two GATT panel rulings and did not permit, as of 1992, bananas from Latin America to enter in any substantial terms 7 of the 12 member states.

In 1993, the European Union promulgated a new banana regime which was to take effect for the entire 12 member states, giving effect to the fact that the common market was coming together.

Rather than liberalizing the market, that is to say, rather than borrowing the elements from the regimes of those countries which had permitted Latin American bananas to enter the countries, the European Union chose the most regressive protectionist elements of the banana regimes that had existed in the seven countries whose regimes had been ruled GATT-illegal.

So as of January 1, 1993, Chiquita Brands International, which, over a period of 60 years, had acquired a 40 percent market share in the European market, suddenly saw our access to the market substantially reduced.

We were selling 60 million boxes. We sell our boxes in 18 kilos, or 40-pound boxes of bananas. From 60 million boxes, below 10 million boxes. How did that happen? It happened because the European Union instituted a new banana regime which had as its purpose and effect the expropriation of our historical market share.

Now, what did we do about it? Well, we already had the benefit of two GATT panel decisions that had held that the discriminatory elements now present in the new regime were found to be violative of GATT under the old regimes in those seven countries.

So we went to USTR and we presented USTR with the facts and circumstances regrading the new banana regime. We laid out for them the discrete measures that had been taken in the new banana regime to expropriate our market share.

USTR agreed that this situation was egregious and accepted a 301 case against the European Union. Pursuant to 301, they made an investigation and the investigation concluded that American interests had been harmed by the European banana regime in an amount in excess of hundreds of millions of dollars.

As of 1994, you will recall that the Uruguay Round was being negotiated and the new WTO was going to come into existence by reason of that Uruguay Round. The United States Trade Representative elected, instead of proceeding under Section 301, which they had the right to do, and retaliating immediately against the European Union, to refer the case to the WTO for a WTO decision. That was done.

We went to the WTO and the panel. And then the appellate panel, over a 2-year period, found over 20 discrete violations of WTO law existing in the new banana regime.

What did the European Union do to come into compliance with those rulings? Nothing. In fact, they have made what they said were going to be substantive changes to the regime, which turned out to be cosmetic, which again had as their purpose and effect a further disenfranchisement of our company from the banana market. That is to say, they made the situation worse, effective January 1, 1999. So rather than coming into compliance with the new regime, they went further out of compliance.

USTR, through the administration, has agreed to retaliate against the European Union on March 3, 1999 if the European Union has not now, again, come into compliance with these panel decisions.

We ask the Chairman and this committee's support in supporting the administration to take that initiative, since it is only through that initiative that compliance will be held. Thank you.

The CHAIRMAN. Thank you, Mr. Doyle.

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

The CHAIRMAN. I am going to turn to Mr. Lang now, because I know he has to leave in a few minutes.

**STATEMENT OF HON. JEFFREY M. LANG, FORMER DEPUTY U.S. TRADE REPRESENTATIVE; PARTNER, WILMER, CUTLER & PICKERING, WASHINGTON, DC**

Mr. LANG. I appreciate that very much, Mr. Chairman.

May I say, I am just appearing on my own behalf at the committee's request this morning. So I listened carefully to the discussion that occurred with Ambassador Esserman and Ambassador Aaron.

Having served both in the administration and on the staff of the Congress, I think the most important thing to remember about this situation on enforcement of trade agreements is how vital is the involvement of this committee.

I cannot tell you how it empowers those negotiators for you all to take the time for this kind of meeting this morning because your words carry far and they carry enormous weight. Our system of government is well understood most places in the world, and for you to participate in this way is——

Senator MOYNIHAN. We sometimes have problems with it here in Washington. [Laughter.]

Mr. LANG. Yes. No, I understand. In fact, the Chairman made a comment about this subject in the course of the discussion this morning, which I think is terribly important.

You also empower USTR within the administration. You all created this strange animal some years ago and put it at the right hand of the President, as it were, in part to deal with that problem of trade kind of sitting below the salt, in any administration. I do not mean it as a partisan, political comment.

That remains, in my opinion, a valid undertaking. However, it does place some responsibility on the committee because, if the other agencies perceive that you are not involved in these matters, then quite naturally the system does not work very well.

Can I just say two other things that I think are important to your deliberations? One, is from a negotiating point of view, this is now an enormously complex system. When I came to work on these matters some years ago, you could probably talk to 20 or 25 countries and you had a working deal that would affect 90 or 95 percent of U.S. exports.

On the telecommunications negotiation, which I handled for the administration, there were 70 active participants, on financial services, 102. We have all of these obligations now spread across countries who are having a great deal of difficulty even understanding how this system works, let alone implementing their obligations.

I am not even counting in that statement countries that still do not have, in my opinion, an adequate system of law which is essential to undertaking these obligations. You cannot undertake obligations in trade if you do not have a legal system that will enforce those obligations against your own people.

But above and beyond that, imagine putting into effect not just changes in the tariff schedule, but in an intellectual property regime, re-regulating in telecommunications—not deregulating, re-regulating—in the interest of competition. Countries like Japan are having difficulty doing this, let alone 70 developing countries.

So in thinking about how to make this system more effective, you obviously do have to look at the larger issues that Sue Esserman raised about the overall benefits of trade for the country and that sort of thing.

But where the rubber meets the road, when these agreements are not working, as much as possible, I would encourage these people to be very efficient in the allocation of their resources. Think of dispute settlement as litigation. If you think of litigation as being efficient, you are missing something. It is not, and it never will be, in my opinion.

But there are efficient ways to do this that will be enormously beneficial for the American people. For example, in intellectual property, we have a number of obligations in developing countries snapping into place next year.

We have been doing some work, our government has and our industry has, in trying to train these countries in how to carry out their obligations. Those that are willing to accept that training and help should do it.

My last comment. There are cases in which this dispute settlement system misses a problem that is important. That is because it is a system driven by complaints. You have basically set up a system for people to complain.

Now, there are some obvious problems with that which cause us to miss some problems I think are enormously important. The first, is the person who has not the money to complain, of course. That relates to agriculture, but it may relate to other kinds of issues, an issue union members would want to raise, for example, but do not have the money to raise.

The second problem, is if people have money to raise the problem, but have so extended their range into this economy of the world that the 301 system is not particularly useful to them. But the problem is, nonetheless, important to the United States.

Let me give you a quick example. The European Union, for a number of years, has been negotiating agreements which it calls free trade agreements. It began with their countries to the east, but they have now extended this to the Middle East, Africa, and there is work going on extending it to Latin America and Mexico.

Those agreements are not free trade agreements. They do not adhere to the rules in the WTO because they do not cover substantially all of the trade. They are denying us Most Favored Nation treatment, and they should be the subject of some kind of discipline. Thank you, Mr. Chairman.

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

The CHAIRMAN. I appreciate those comments. We do have some questions. I know you have to leave, so we will submit them in writing. We will keep the record open until 7:00 tonight and get your comments.

[The questions appear in the appendix.]

Mr. LANG. If I can be helpful, in a few minutes. I am told I have about seven or eight minutes until I must jump in a car.

The CHAIRMAN. Let me ask you one question about the European Union. Is it institutionally incapable of complying with its commitments?

Mr. LANG. No. It is capable of complying, but it has an institutional propensity not to do so in agriculture. The difficulty is a little like our problems with fast track. The member states are reluctant to devolve power to the commission.

So, for example, on issues like services and investment, the commission has no delegated authority, under either the Treaty of Rome or the other constitutional documents of the community, or under any specific action of the council in Europe. A similar thing is true in agriculture, although there at least the commission is entitled to bargain with us.

I will tell you that there were many nights when I was in Geneva negotiating with people at my level. The only ministers in town were the ministers of the European community because they had not delegated to their representatives the authority to make a deal. Fast track is as much a limitation in Europe today as it is in the United States.

The fact that they are having difficulty coming into compliance with these WTO decisions, I think, is part of their absorption with trying to realize the governmental system of Europe, which is a major challenge for them.

But I think what they are focused on is when, and whether, the United States will retaliate, not on the larger problem I sense is concerning all of you, which is, we cannot stay in a system that does not work.

I think it is very difficult for even our major trading partners like Japan and Europe to realize that there comes a point at which we cannot remain in a system where the systems do not work.

The CHAIRMAN. How do we make them aware of that?

Mr. LANG. Well, I would go there and talk to them, for one thing. It is very rare for the Finance Committee to travel. I know it was rare at the time I worked for the committee, and it is rare now. But when it happened, boy, did it make a difference.

The CHAIRMAN. Thank you.

Senator MOYNIHAN. I just want to say to Jeff, that was very good advice. We want to persist in that. May I say, we now speak of trade negotiating authority. There is no more of that fast track.

Mr. LANG. Yes, sir. [Laughter.] In fact, I do not even think that is accurate. I think the President has the authority to negotiate with anybody he wants. What you are really talking about——

Senator MOYNIHAN. But who will negotiate with the President if they do not know? That is it.

The CHAIRMAN. Sure.

Mr. LANG. Thanks.

The CHAIRMAN. Thank you, Jeff.

Mr. LANG. I apologize, if I may be excused.

The CHAIRMAN. It is good to see you again.

Mr. LANG. Thank you.

The CHAIRMAN. Mr. Orr, do you want to proceed?

## STATEMENT OF MARK ORR, VICE PRESIDENT, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, WASHINGTON, DC

Mr. ORR. Thank you, Mr. Chairman, Senator Moynihan. I am vice president with the Distilled Spirits Council of the United States, and we represent U.S. exporters of distilled spirits, with annual export sales of nearly $600 million.

The World Trade Organization has played a key role in our industry's efforts to eliminate trade barriers and expand exports. I appreciate very much this opportunity to report on our very positive experience with dispute settlement under the WTO.

For the U.S. distilled spirits industry, the WTO's dispute settlement mechanism has worked, and it has worked very well. At our request, the United States has initiated dispute settlement proceedings against discriminatory tax measures imposed on imported distilled spirits by Japan and Korea, and has actively participated in a third proceeding initiated by the EU against similar measures maintained by Chile.

These proceedings have produced very strong and clear rulings against Japan and Korea. A ruling in the third proceeding against Chile is expected by late April. We are confident that the panel also will rule that Chile's tax measures are inconsistent with the WTO rules.

The WTO rulings have created the leverage needed by U.S. negotiators to secure the removal of the discriminatory practices which have impeded access to these markets for our products.

The settlement negotiated with Japan in 1997 secured our two principal market access objectives. First, the establishment of a nondiscriminatory tax regime in which U.S. products are taxed equally with Japanese products, and second, the complete eliminate of Japan's tariffs on all spirits products imported from the United States.

Mr. Chairman, we estimate the tax and tariff savings for U.S. exporters resulting from this agreement to be approximately $94 million per year. One year later after the agreement, U.S. exports to Japan have increased by 23 percent and have grown faster than overall U.S. spirits exports to the world, all this at the same time the Japanese market remains in recession.

Last week, the WTO formally adopted the ruling against Korea's tax measures. We are already working closely with USTR to secure Korea's full compliance with that ruling as soon as possible, and we look forward to achieving similar results in the Korean marketplace.

Based on our experience, the WTO dispute settlement has proven to be much more effective than its GATT predecessor, and a more desirable avenue than Section 301 for pursuing our concerns.

Because of its stronger provisions, Japan and Korea had to agree to the formation of panels to examine their tax measures. They also had to agree to the adoption of the panel rulings and to accept the obligation to conform their measures with the WTO rules.

Throughout these proceedings, the focus has remained on the measures themselves rather than on the vehicle chosen by the United States to challenge the measures. Using WTO dispute settlement also has enabled us to mobilize an international coalition with the European Union and Canada, at both industry and gov-

ernment level, to challenge these offending measures. This would not have been possible under Section 301. Indeed, the use of Section 301 would have negated our efforts in this regard.

Notwithstanding our very positive experience, Mr. Chairman, certain aspects of the WTO dispute settlement process can be improved. The process takes too long to complete. Countries can maintain offending measures for at least two and a half years following the initiation of the complaint.

One possible improvement may be to begin the time frame for compliance from the date on which a panel report is issued rather than the date on which it is adopted. Countries would still be free to appeal, but the clock for compliance would continue to tick during the appellate process.

Another improvement would be to better calibrate the reasonable period for compliance to the actual measure at issue. For example, Korea implements tax changes as part of its annual budget legislation enacted each December. Thus, there should be no reason why Korea should be given 15 months to come into full compliance with the ruling adopted earlier this month. Eleven months should be more than sufficient.

The recent efforts of losing parties to avoid full compliance is a cause for major concern. We fully support the efforts of the administration and the Congress to make clear that the United States will insist upon full compliance. WTO members must realize that there will be significant costs involved if they choose not to fully comply.

That said, however, retaliation should be a last resort and should be carefully tailored to reflect the broad range of U.S. interests involved. In those instances where retaliation is deemed necessary, we would urge the United States to pursue a flexible, targeted approach, limiting such measures to the specific sectors involved so that unrelated industries, such as ours, which have used WTO dispute settlement to their advantage may continue to do so in the future.

In closing, Mr. Chairman, I would reiterate that WTO dispute settlement has been an unqualified success for the U.S. distilled spirits industry. We look forward to working with the Congress and the administration to build upon the success to create a stronger, more effective WTO dispute mechanism for the future.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Orr.

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

The CHAIRMAN. Dr. Lambert?

**STATEMENT OF CHARLES D. LAMBERT, Ph.D., CHIEF ECONOMIST, NATIONAL CATTLEMEN'S BEEF ASSOCIATION, WASHINGTON, DC**

Dr. LAMBERT. Thank you, Chairman Roth, Mr. Moynihan. I am pleased to discuss an issue that has frustrated the beef industry since the mid-1980's, and I think those frustrations were very amply expressed by other members of the committee this morning.

The beef industry, in the mid-1980's, exported less than one-half of 1 percent of our annual production. In 1998, that had increased to more than 8 percent. Indeed, more than 12 percent of the annual

sales accomplished by the beef industry come from the export market.

Given the current demographics of the U.S. population, and given that only four percent of the world's population lives in the U.S., we anticipate that we will increasingly look to other economies with rising populations, with increasing disposable consumer income, for a growing share of beef's overall demand.

The European Union has basically kept U.S. beef out of the European market since 1989. They have imposed a ban on beef based on the use of hormones, three of which are naturally occurring. They are basically the catalyst for life. They are in all plant and animal life.

The other three are synthetics that very closely resemble the activities of the naturally occurring hormones. These have been approved through FDA and through USDA approval processes. There has never been scientific proof that they are unsafe, and this has been basically a non-tariff trade barrier imposed by the European Union.

The U.S. filed its formal complaint against the European Union under the WTO in January of 1996. We have won the case. The case has been upheld on appeal. The arbitrator granted the European Union a 15-month reasonable period to bring their regulations into compliance with WTO guidelines. The end of that period is May 13 of 1999.

We have watched very closely the activities of the European Union and the response with respect to the banana case, given that these are the first two cases that have been brought against the European Union. So, their response to the Banana case, we view, is somewhat precedent-setting for how they may respond with respect to the beef industry come May 13.

Retaliation does not benefit. There is no retaliation that will directly benefit the U.S. beef industry, nor is there any compensation that will directly benefit the beef industry for the loss of market that we have experienced in Europe.

However, we do feel and we do agree that the European Union will not comply unless there is absolute assurance that there will be consequences suffered from their inaction.

We have recommended one that the highest damage figure allowable or that can be justified be calculated with respect to the injury figure for the beef industry. Second, that May 13, or as immediately thereafter as the process allows, that retaliation take place, and that that retaliation be targeted so that it can bring the maximum likelihood of compliance with the WTO ruling.

Our objective all along has been to gain access to the European market and to be able to grow that market over time. In the instance of Japan, which opened at about the same time the European market closed, we now export about $1.5 billion worth of product to the Japanese market.

Canada, a market that is one-seventh the population of the European Union but has basically the same demographics and income profile, we will export $300 million worth of product to Canada in 1998.

So we feel that there is a market in Europe. We feel that, given access to that market and the ability to grow that market, that it can be a very, very good market for U.S. producers.

Finally, I would concur that the European Union is damaging the credibility of the WTO as a dispute settlement mechanism, and it is also raising grave concerns even among the more free trade representatives of our membership because the concerns are that the U.S. has complied.

We have basically abandoned the old meat import law. We have tariff rate quotas that are very high. Rarely, if ever, would they be triggered. So, it raises questions, why are we participating in a system when we are the only ones playing by the rules?

So the Europeans' failure to live up to the agreement is not only damaging the WTO, but it is damaging our ability to continue to support and raising questions and skepticism about the validity of trade and trade agreements.

Thank you. I would be glad to address any questions.

The CHAIRMAN. Thank you, Dr. Lambert.

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

The CHAIRMAN. Mr. Wolf?

## STATEMENT OF IRA WOLF, FORMER ASSISTANT U.S. TRADE REPRESENTATIVE FOR JAPAN AND CHINA; IW ASSOCIATES, WASHINGTON, DC

Mr. WOLF. Thank you, Mr. Chairman, Senator Moynihan, for the invitation to appear today.

I would like to focus on Japan. First, on negotiation of new agreements and how that relates to the WTO dispute settlement process, and second, on the problems of implementation of existing agreements.

These two issues, negotiation and implementation, are intertwined. Bilateral trade agreements with Japan are not self-executing. As hard as it is to reach an agreement, it is much harder to ensure implementation.

The recent Film case is particularly important because it represented a turning point in U.S. negotiations with Japan, and also demonstrated the limitations of the WTO process.

After a 1-year Section 301 investigation of the Japanese Government's toleration of anti-competitive practices, the U.S. issued a positive finding and then put the dispute before the WTO.

Our government presented a compelling case outlining 30 years of Japanese Government actions that closed off all possible distribution channels to foreign film. But the WTO panel chose to ignore the realities facing foreign companies in Japan, and instead took a narrow, legalistic approach, concluding that there was no evidence of discrimination.

In my view, the panel demonstrated that the WTO is unable to deal with the ubiquitous, opaque, and unwritten barriers that so many foreign companies face in Japan.

This case taught the Japanese Government two major lessons. First, it is not necessary to negotiate seriously with the United States bilaterally.

Second, let the U.S. take it to the WTO. If the barriers come from unwritten government guidance and the unseen, close working relationship between government and industry, there is little to fear. And if the issue relates to private anti-competitive practices to which the Japanese Government turns a blind eye, then you are home free.

Turning to the problem of implementation of agreements. The American Chamber of Commerce in Japan, in a recent study, concluded that only 13 out of 45 major agreements were fully successful.

Although more people in the government are working on this issue of compliance than ever before, the problems in enforcing trade agreements with Japan continue today in insurance, flat glass, telecommunications, government procurement, auto parts, maybe rice, and computer procurement.

I do not believe that our negotiators have the proper tools to deal with the problems with Japan. Let me offer several suggestions for the committee's consideration.

First, a January report from LICIT recommends amending 301 to use it against foreign anti-competitive practices that have an impact on the U.S. market, or that restrict access of U.S. goods and services in foreign markets. I think this would be a good start.

Second, a comprehensive inventory of WTO-consistent actions that could be taken in response to discriminatory treatment in a foreign market should be developed. New legislation might link use of these measures to specific types of trade barriers.

Third, consultation prior to bilateral trade negotiations is important in reaching a good agreement. A bilateral forum that could perform such a function, such as the U.S-Japan Trade Committee did in the past, should be created.

Finally, a priority in the next set of multilateral trade negotiations should be that the real trade barriers facing foreign firms in Japan be adequately addressed. I think these four changes would provide our trade negotiators with some of the new tools that they need to help open the Japanese market.

Thank you.

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

The CHAIRMAN. As I stated earlier, we are going to keep the record open because I have a number of questions that I do want to submit to you.

But I would like to have each of you answer: are we confronting a failure of our tools or a failure of will on the part of the administration to enforce our agreements? Dr. Lambert?

Dr. LAMBERT. I think, generally, the will is there on the part of the administration. From the beef industry standpoint, we have had very good access, very good cooperation with both USTR, USDA. Generally, the system has worked.

In the case of the European Union, it seems that, for whatever reason, they have been unwilling to sit down and negotiate a settlement, at least until the eleventh hour, where the U.S., in the cases they have lost, they have sat down, reached an agreement, a negotiated settlement. And at least, to this date in the Beef case, the Europeans, while suggesting two or three alternatives, are just in

the beginning stages of that process and the time is rapidly running through the hour glass.

The CHAIRMAN. Is part of the problem with the EU that, while negotiations are in Brussels, they still have to go back to each of the countries and get concurrence? Is that basically a significant part of the problem?

Dr. LAMBERT. As I understand the system, the empowerment of the commission from the Parliament, and the fact that the power still rests in the Parliament, is part of the inability to get all parties moving in the same direction.

The CHAIRMAN. Mr. Orr?

Mr. ORR. Mr. Chairman, I think the tools are adequate. I think, as I said in my testimony, on balance, the WTO system has worked quite well. The difficult points have been moved considerably downstream in the process from where they were in the previous arrangements under the GATT, and now at this point the crunch point is compliance.

I think it is important to keep in mind that the system does make provision for three outcomes to disputes. Obviously, full compliance and the elimination of the offending measures is the most desirable outcome, but the system does make provision for compensation as an alternative, and also as a last resort, retaliation.

So I think the system is quite an improvement, but not perfect and can be improved further. I would certainly say that the government, at least on behalf of our industry, has been very aggressive at every turn to make sure that the system has worked for our benefit. Thank you.

The CHAIRMAN. Mr. Doyle?

Mr. DOYLE. The tool is imperfect, Mr. Chairman. The WTO is a voluntary organization. There is a great misapprehension, I think, among American businessmen as to what the WTO really is. They think it is an international tribunal. They think it is a tribunal which has powers to invoke damages against an offending party as of the time that the damages are incurred.

As you know, Mr. Chairman, under the American judicial system, we have a rule that speaks to the question of accrued damages. That is to say, that if I injure you and you take me to court, that injury, from the time that I begin to injure you through the date of the court decision, accrues and is compensable to you.

In addition, if you appeal the case, the injury to you continues to accrue damages, and in many instances, you even have to post a bond, or I will have to post a bond to pay you for the injuries.

After the appeal, I have the ability, or you have the ability, to attach assets of mine based upon the decision of the tribunal, that is, the American judicial system. You do not have that in the WTO. What do you have in the WTO?

You have a system which is elongated in terms of the briefing process, in terms of getting the panel to a decision, in terms of going to an appeal process. All the way along, there is nothing that encourages the offending party to change the situation. There are no damages. No damages are accruing.

So the system has built into it an avenue for people that do not want to comply not to comply, because you cannot get to the point that you can get damages on that person for years. And even after

you get to a point where the WTO tribunal can exercise a damage award, they do not have to follow it. They do not have to agree with the damage assessment.

So the tool is imperfect. I think that people misunderstand what the system can produce for American companies. I think that, without the retention of 301 to be used until the system is brought into a state that it offers people the opportunity for expeditious justice, that this country will have to continue to use 301.

The CHAIRMAN. Thank you.

Mr. Wolf?

Mr. WOLF. Certainly, the tools to deal bilaterally with the Japanese market are inadequate, but I do not know how you separate tools and will. Both you, Mr. Chairman, and Senator Moynihan, as well as several of the other members this morning addressed the issue of will.

I think there was a high level of confidence in the actions of the trade negotiators, but serious questions raised about the willingness of the interagency process of the government as a whole to take the necessary action to ensure trade agreements, and then compliance. So, I think their tools and will, certainly vis-a-vis Japan, are totally intertwined and inseparable.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Well, just to thank this extraordinary panel.

I would like to say to Mr. Orr, and I do not mean in any way to denigrate your reports, but I once asked, got curious, what was the first law the United States passed? Sure enough, it was the oath of office. Congress did that. That led to the obvious question, what was the second law? The second law imposed a tariff on Jamaican rum to help the American producers. So you have been in a favored position for a very long while. [Laughter.]

I thought we heard—and I am sure Mr. Wolf, as a career officer, had this experience—something pretty serious, Mr. Chairman. When Jeff Lang said that he was not sure that the United States would be able to maintain or continue its participation in a system that does not work. We have not heard comments like that, and we have to think very hard. Any comments you might have to us, we would very much appreciate it. You can think about it over the weekend. I know we would be deeply grateful.

Thank you, Mr. Chairman. This was a very important hearing.

The CHAIRMAN. Thank you, Senator Moynihan. I think you raised a very interesting and important factor that is worthy of further looking into, and I would appreciate the comments for the committee.

Thank you, gentlemen. We appreciate your being here very much today, and look forward to continuing to work with you.

[Whereupon, at 12:19 p.m., the hearing was concluded.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

### PREPARED STATEMENT OF DAVID L. AARON

#### INTRODUCTION

Mr. Chairman, when Secretary Daley testified before this committee only a few weeks ago regarding the Administration's trade policies, he stressed that ensuring compliance with our trade agreements was one of his top trade objectives. I am very pleased to have the opportunity to appear before the Committee this morning to discuss what we are doing to achieve this priority. Under the Secretary's leadership the Commerce Department, and particularly the International Trade Administration, has been actively increasing its efforts to monitor and obtain compliance with our trade agreements. Today I would like to describe what the Department does in this area, how our activities relate to USTR's enforcement activities, and how we see the global compliance situation both multilaterally and bilaterally.

#### THE TRADE SITUATION

In beginning my statement, I think it is useful to review our trade position briefly so that compliance activities may be placed in the context of our overall situation.

U.S. exports have been at the forefront of our economy, and through 1997 provided one-third of all our economic growth. Jobs supported by exports of goods pay significantly more than the average. Good jobs and good wages are the keys to an expanding economy and a rising standard of living. In February, the U.S. economic expansion reached 95 months, the longest peacetime expansion in history. Employment is at record levels, and unemployment is at nearly a 30-year low. Inflation is low and economic growth and productivity are strong.

Still, we face challenges.

Our trade deficit this year looks as though it may set a new record which will be the fifth straight year of record deficits. It is important to recognize that the surge in our deficit is not, so far, due to a wave of imports into the United States from Asia—except for steel, where we have a serious problem the Administration has been addressing aggressively. Other than steel, however, our imports from Asia grew less rapidly than our imports from the rest of the world. The key problem in our trade today is our plunging exports to Asia. U.S. exports to the rest of the world grew 4 percent last year, but to Asia they fell a staggering 14 percent. That drop represented the loss of almost $26 billion of U.S. exports—roughly one-half of the total deterioration in the U.S. merchandise trade position.

It is, however, a mistake to blame all our deficit on the recent economic crisis in Asia. Longer term forces are also at work—including the continued existence of trade barriers that have held back U.S. export opportunities. Amazing though it may now seem, from 1894 to 1970 the United States had an unbroken string of trade surpluses, but since 1970 we have had virtually an unbroken string of merchandise trade deficits that have cumulated to over $2 trillion dollars. Most of our trade growth, and most of our deficit occurred in the last ten years. Nearly 80 percent of the deficit was with Asia—and fully 40 percent was with one country, Japan.

Nothing could do as much to bring about a resurgence in the growth of our exports as an economic recovery abroad, especially in Asia. We also know that the United States must continue to lead the world in a more open trade policy. We must resist efforts at protectionism anywhere in the world. American companies still face trade barriers abroad, and we must continue to remove these so that U.S. companies and workers have the full ability to compete in world markets as surely as we welcome foreign competition in our market.

## OPENING UP EXPORT MARKETS

There are two aspects to removing trade barriers and opening up markets for American exports. The first is negotiating agreements that eliminate the remaining important barriers; and the second—which is equally important—is ensuring that our trade agreements are actually implemented and that American firms and workers get the benefits we bargained for.

America is committed to open trade among all nations, a principle which has been reaffirmed vigorously in recent weeks by the President and by Secretary Daley and other cabinet officers. The cornerstone of our trade policy remains, as it has been since World War II, to reduce trade barriers globally, multilaterally as well as regionally and bilaterally. This effort has produced remarkable benefits to the world and the U.S. economy. Since the formation of the WTO's predecessor the GATT in 1948, world trade has grown 15-fold and tariffs have been reduced by 90%. The WTO now includes 134 members—most of them developing economies. Trade has contributed to better living conditions, economic development, the spread of democracy and human rights, and to peace.

The U.S. trade agreements program works. The roughly 270 agreements concluded by this Administration have opened markets around the world for American companies. These agreements have created new opportunities and new rights for U.S. exporters. I would like to cite just some examples of how far we have come. Nearly all of our exports to our two largest markets—Canada and Mexico—now are shipped virtually duty-free under the NAFTA. This accounts for more than one-third of our global exports. An additional 8 percent of our exports outside these two countries will become free of foreign duties once the Information Technology Agreement goes into effect in less than a year. Just these two agreements together will eliminate duties on 42 percent of our global exports. Other zero-zero duty agreements in the Uruguay Round raise that figure even higher.

Despite years of negotiations, though, there is no question that American exporters still face formidable barriers in some parts of the world. In Asia, for example, we need to work on reducing the gap between bound tariff rates and applied tariff rates. It is inconceivable to me that a country could apply a tariff of, say, 15 percent to our exports for years—high as that may be—yet face no penalties under international trade rules for raising that tariff several times over if it chooses to offer protection, for example, to a new investment. In South America tariffs are still on average 4 times higher than U.S. duties. In Europe and in other parts of the world we need to address standards and certification requirements that are newly important obstacles to our market access. We need to continue to level the playing field by engaging our trading partners in new negotiations. We cannot rest on past accomplishments, especially in today's turbulent trade world that is changing so rapidly in terms of markets and technologies.

## TRADE COMPLIANCE

Let me now turn to the second aspect of opening foreign markets—compliance with the agreements we negotiate. Secretary Daley put it well when he said, "Compliance with agreements is the true litmus test for what we achieve in our negotiations and trade practices." There is little benefit in negotiating measures addressing trade barriers without ensuring that the agreements are honored and that American firms and workers obtain the benefits and opportunities intended. Getting what we bargained for is good for American business and American workers. It is also one of the best ways to help create confidence among business, labor, and the general public that trade agreements actually work and actually create new business and employment opportunities. If the perception is that agreements are not being honored by our trading partners or that there is widespread lack of compliance, there can be little interest and support for extending agreements further.

It is for these reasons that monitoring agreements and securing compliance is such a top priority throughout the International Trade Administration. We are changing our organizational ethic and the entire way we work so as to devote the most attention to compliance that we can. This is true not only for our Market Access and Compliance unit, but also for Trade Development, Import Administration, and the U.S. and Foreign Commercial Service. The effort is spearheaded by the Trade Compliance Center we have created in our Market Access and Compliance unit. The Trade Compliance Center coordinates our compliance activities and serves as the nerve center, but I want to emphasize that all of our country market access officers and all of our industry sector experts are deeply involved in the compliance effort.

In this, our Trade Compliance Center and USTR's Monitoring and Enforcement Unit complement each other and work hand in glove. Their responsibilities, how-

ever, are different; and I think it would be useful for me to explain to the Committee how "compliance" differs from "enforcement" so the Committee can know who does what. Last year, to ensure both efficient use of resources and effective cooperation, ITA and USTR staff delineated their respective responsibilities in a work program that was approved both by Secretary Daley and Ambassador Barshefsky.

*Difference Between Commerce and USTR roles*—Commerce and USTR share responsibilities for monitoring and compliance. By "monitoring," we mean using the resources and outreach capabilities of the Commerce Department to identify problems in foreign implementation of U.S. trade agreements. It is our mission to find out where U.S. companies may not be receiving the benefits to which they are entitled under trade agreements, and where foreign governments may not have followed through fully on their commitments. Through aggressively undertaking policy and compliance advocacy efforts aimed at improving foreign implementation of trade agreements, we in Commerce address compliance problems short of dispute settlement wherever possible. We also support USTR with analyses and strategies when dispute settlement cases or remedies under U.S. law are necessary.

The significance of compliance advocacy lies in attempting to resolve problems rapidly without the necessity of the United States having to enforce its rights through formal dispute settlement mechanisms. In other words, our compliance activities are aimed at achieving the desired results "out of court." If we are not successful, then we give full support to USTR so that its enforcement office has the best opportunity to win the case. But everyone would agree that compliance today is more valuable to firms and workers than a successful dispute settlement case tomorrow.

*Trade Compliance Center*—The nerve center for our activities is our Trade Compliance Center, the "TCC," which performs three key functions, the first of which is coordinating the monitoring function—the process of utilizing government and private resources to identify compliance problems. In this, the TCC works closely with ITA's country and industry officers who are constantly evaluating information from industry contacts, the foreign and domestic press, cables from our embassies, and other information.

In addition, we have made it a priority for the Department's overseas commercial officers to constantly be on the lookout for potential compliance problems. Working day in and day out with U.S. exporters, they are frequently the first to know when a U.S. company is being treated unfairly or is not getting the benefits it should. We also asked our U.S. Export Assistance Centers to be on the lookout. Additionally, Secretary Daley wrote to the heads of business groups last year, inviting them to designate "compliance liaisons" to work with the Trade Compliance Center to identify potential problems. Over 65 organizations have done so, and they are becoming an important source of information about trade problems.

Finally, we have established a "Trade Complaint Hotline" (http://www.mac.doc.gov/tcc) on the Internet, with a novel on-line complaint form designed particularly to enable small and medium-sized companies experiencing trade problems to reach the entire trade policy and market access resources of U.S. government easily and inexpensively. While the primary objective of the on-line system is to deal with compliance problems, we ensure that any market access problem is addressed. Companies should not have to experience harm before we step in to help.

The TCC's second function is to provide information to American companies about trade agreements, how to use them, and how to know if their rights under these agreements are being violated. Last year the TCC unveiled "TARA"—the Trade and Related Agreements database that now contains 306 agreements negotiated by the United States—about 270 of which have been concluded during this Administration. This database (http://www.mac.doc.gov/tcc) is on the Internet in an easily-searchable fashion. It also contains Commerce Department, State Department, and USTR information on market access. Our database has received praise from the private sector, and one example is attached to my statement. In order to make the database even more useful for small firms, we are now in the process of writing plain language "how-to" guides that will tell firms how to use trade agreements to expand exports, how to know if they are being treated unfairly, and where to go for help. These guides will be posted on our website.

The TCC's third, and most important, function is that of coordinating ITA's compliance effort. Utilizing the country and industry experts in the International Trade Administration, and working with trade lawyers in the General Counsel's office, with the U.S. and Foreign Commercial Service country experts, and others, we examine carefully the provisions of the agreements and the areas in which we believe there may be a failure to implement or follow through with the agreement. We then seek to utilize vigorous compliance advocacy, including my efforts and those of Secretary Daley, to bring about resolution of problems impeding U.S. exports.

Most countries enter into trade agreements with the expectation that there are mutual benefits, and they generally live up to their commitments. Still, as a result of our heightened and more focused effort, we are finding an increasing number of potential compliance problems. This is not really surprising. As we cast our nets out further and address our tasks with increased vigor, we should expect to uncover a higher percentage of the problems American exporters are facing. This stems both from the fact that we have more trade agreements that give us an expanded set of trade rights, and from the fact that we are beginning to do a better job of finding compliance problems than in the past. We are also able to focus our resources more quickly on seeking resolutions to problems and are able to provide more cohesive support to USTR in enforcement cases. Our staff regularly briefs the USTR enforcement staff on what we are finding, and seeks to provide the fullest support we can.

At Commerce, we are now working actively on close to 20 compliance issues, and I would like to illustrate several of these for the committee:

*European aircraft noise regulations*—A pressing problem, and one that I recently raised face-to-face with European officials in Brussels concerns the European aircraft market. The European Commission has proposed a regulation that would prevent many U.S. aircraft from being operated within the European Union or sold to E.U. Member States or third countries after 2001 because they use "hushkits" or replacement engines to comply with international noise standards.

We understand the concern regarding noise at European airports. However, the proper approach for addressing those concerns is within the international standards setting process of the International Civil Aviation Organization (ICAO), not through unilateral adoption of a discriminatory design standard. Hushkitted and reengined airplanes comply with the ICAO Chapter 3 noise standards which were adopted by all ICAO members, including the E.U. Member States. The EU has not conducted any studies which demonstrate that the regulation would reduce engine noise. In fact, the regulation would ban the use of equipment whose sole function is to limit engine noise. The EU regulation, if put into effect, carries serious implications for future cooperative work in the ICAO. It calls into question the commitment of the EU to agreements on international standards including ICAO and the WTO.

Furthermore, EU concerns about hushkitted U.S. aircraft flooding the European market are unfounded. Such aircraft registered in the United States can and will continue to operate here after 2000 because they meet ICAO Chapter 3 noise standards. Unlike the EU, the United States is applying a performance standard—aircraft must be quiet enough to meet the internationally-agreed standard, and if airlines meet that requirement by hushkitting existing aircraft rather than by purchasing new aircraft, that is fine. The European Union, though, specified a particular engine design rather than a noise standard, and it seems that the EU is attempting to use any rationale possible to justify its actions except a sound, scientific study to demonstrate that the regulation would reduce noise.

Regrettably, the European Parliament accelerated action and approved the regulation without amendment on February 10. Now it appears that the regulation may be considered by council meetings scheduled for as early as February 25 or March 9, instead of waiting for the Transport Council meeting in late March. The acceleration of consideration at the Council level appears aimed at precluding consultations between the United States and the EU before implementation on April 1, 1999. Because of its potential impact on our bilateral commerce, Secretaries Daley and Slater, and Ambassador Barshefsky have written not only to the Commission, but also to Ministers of the Member States asking that the Council not proceed with adoption of the regulation until consultations could be held.

While I have received some assurances that the Commission is prepared to modulate the regulation's impact through implementation and enforcement procedures, and to clarify some ambiguous provisions, we remain deeply concerned that this regulation remains on track for approval without meaningful consultations having taken place. We continue to ask the EU to delay the adoption of this regulation so that we can resolve our concerns. I have informed the EU that the United States is prepared to respond appropriately to the harm our industry will suffer.

*Government Procurement in Korea*—Another example is a Korean procurement for the new $6 billion Inchon International airport—the largest in Asia. In response to our request that our Foreign Commercial Officers be on the alert for possible trade compliance violations, our Commercial Office in Seoul notified us that a U.S. firm—a world technological leader in elevators and escalators—had been told by the Koreans it was ineligible to bid for business at the new airport. Upon investigation, we learned of other examples of contracts in which the Koreans were imposing requirements that are inconsistent with its WTO commitments in the Government procure-

ment Agreement (GPA). Korea has imposed discriminatory licensing requirements, joint venturing requirements and does not provide access to bid challenge procedures. We have protested these practices, which are not consistent with Korea's international trade obligations and the principles of free and open competition. I have written to and met w.th senior Korean officials on this issue, and recently Secretary Daley and Amb. Barshefsky jointly wrote to the Korean trade minister in an effort to resolve the problem.

Unfortunately, Korea still denies that it has obligations to us and has not responded favorably to our repeated requests that it comply. Consequently, last week USTR submitted a request in Geneva for consultations under the GPS's dispute settlement provisions. We remain hopeful that these consultations will result in a market opening settlement that affirms our rights. Mr. Chairman, this is an area where we must be firm.

*Mexican reference pricing*—One of the trade associations participating in our "compliance liaison" program brought to our attention that Mexico requires a bond be posted if the declared value of a good is less than the estimated price. The bond is refunded after Mexican Customs verifies that the product was actually sold at the declared value. Mexican Customs claims it established this practice in an attempt to combat the under-invoicing of imports, but we are concerned it is not in compliance with Mexico's NAFTA and WTO obligations and are working to reverse it. We are concerned this is a growing practice in several regions, and are examining its WTO consistency and impact on U.S. industry.

*Central European trade preferences*—Along with USTR and other agencies, we are looking closely at the tariff preferences given to the European Union by Central European countries. We are examining these in the context of our international trade rights and also from the perspective of the requirements of the law under which GSP (Generalized System of Preferences) duty preferences are given to these countries by the United States.

In each of these cases, Commerce, USTR and other agencies are making every effort to obtain full compliance. Our staffs are cooperating very closely. The WTO case on Korea Distilled Spirits which the United States won and which was recently upheld by the WTO appellate body, is an example. The TCC produced for USTR detailed economic analyses of the impact of the Korean taxes to support the U.S. claim that the Korean alcohol (sohju) and U.S. distilled spirits are "like" or "substitutable" products. This analysis was a key element in the successful U.S. case.

## MONITORING ACTIVITIES

In addition to working on problems that are uncovered in our compliance activities, we are actively monitoring key agreements. Here again, Commerce, USTR and the other agencies work as a team to identify problems, share information and propose solutions.

*Information Technology Agreement*—An extremely important new agreement is the Information Technology Agreement (ITA) negotiation in the WTO which by next January will eliminate duties on U.S. infotech products to 90 percent of the world market—giving duty-free treatment to over one in every ten dollars of U.S. exports. Working with USTR, the Compliance Center and U.S. industry, our Trade Development analysts are monitoring to ensure that countries actually eliminate duties. Our analysts coordinate reporting activities and provide American companies updated tariff and staging schedules. To verify compliance with the agreement, the industry analysts prioritize the 43 signatories and focus Departmental compliance and monitoring efforts on specific signatories of greatest interest to U.S. Our Trade Development industry analysts consults regularly with the Information Technology Coalition and individual companies. Additionally, we disseminate information regarding the agreement via the Internet, where we maintain a contact list of specialists to respond to inquiries, country tariff and staging schedules, the full text of the agreement, a product landscape detailing covered products, information on U.S. implementation, and links to other web sites providing additional insight.

*Anti-Bribery*—Twenty-one years ago, the United States Congress passed the Foreign Corrupt Practices Act (FCPA)—a courageous and farsighted act. Congress also showed its foresight in the 1988 trade bill, which directed negotiating such an agreement in the OECD. This Administration placed a high priority on getting the OECD to bring the world's largest industrialized countries up to the high standard we had been following, and with the strong support of the business community and Congress, we have achieved that goal. Thirty four nations have agreed to enact criminal laws that will follow closely the prohibitions found in our FCPA. So far 12 of the 34 signatories accounting for 60 percent of OECD exports, have deposited their instruments of ratification and the convention entered into force last week.

We will be working with the State and Justice Departments and the Commerce Department's General Counsel to continue efforts to encourage the remaining signatories to ratify the Convention, and will work with the OECD to ensure effective compliance. A particular responsibility of the Trade Compliance Center is producing the annual report mandated by the Senate in ratifying the convention last December. Our first report will be completed by July 1, 1999, and will include descriptions of domestic laws enacted by participants, an assessment of implementation measures taken by countries, an explanation of laws to prohibit the tax deductibility of bribes, and other information requested by the Congress.

*U.S.-EU Mutual Recognition Agreements (MRAs)*—The U.S.-EU MRA went into force in December, and industry estimates it will reduce exporting costs by more than $1.5 billion a year if properly implemented. The agreement covers six industry sectors for which testing and certification requirements are important potential non tariff barriers in the European Union—telecomm equipment, electrical equipment, electronics and aviation equipment, medical devices, pharmaceuticals, and recreational craft. Implementation is complicated in that we must deal not just with the European Commission, but also with the 15 member states. Commerce's Market Access and Compliance unit has started this process, working with other U.S. government agencies. U.S. regulatory agencies began confidence building exchanges with the competent EU authorities to ensure that all national domestic safety requirements for the covered sectors are respected under the MRA. The FDA, FCC and the OSHA met with their counterparts in the EU to establish implementation guidelines. We expect the first U.S. exporters' reports under the MRA to be submitted to the EU in March 1999.

*WTO Agreement Monitoring*—New members of the World Trade Organization (WTO) enjoy the security of its multilateral trading rules and the commercial privileges granted by other members. In return, we expect new members to live up to the WTO rules and commitments. As part of our efforts to monitor the results of WTO accession negotiations, the TCC conducts top-to-bottom reviews of newer WTO members' implementation of their WTO accession protocols and obligations. Recently, for example, in examining Ecuador's record we found that it had failed to meet some of its obligations. Working closely with USTR, the TCC's analysis was used in consultations with Ecuador to improve its compliance record. Similarly, we monitor countries' implementation of the various WTO agreements such as the WTO Agreement on Customs Valuation, the Agreement on Preshipment Inspection, and the Agreement on Technical Barriers to Trade. When we identify problems, we work closely with USTR, the State Department, U.S. Embassies and industry to seek resolution.

*Investment Agreements*—The Departments of Commerce and State participate in a joint program to ensure that all U.S. Bilateral Investment Treaties (BITs) in force are being properly implemented. To date, twelve BIT compliance reviews have been concluded. Three others are in progress. These reviews complement our longstanding effort to ensure that U.S. investors overseas are protected. Often a company does not have the necessary expertise to gauge whether a BIT violation is occurring, and aggressive monitoring by the U.S. Government can dissuade a treaty partner government from acting in a manner inconsistent with the BIT.

We have focused extensively on performance requirements that are prohibited by the WTO Agreement on Trade Related Investment Measures (TRIMs). We have worked aggressively to combat such practices in Indonesia and have pressed the countries of the Andean Pact to abide by their commitments. We are currently pursuing other possible violations of the Agreement in India and Egypt and are working with U.S. companies to evaluate restrictions in Malaysia. We will be particularly vigilant when, next January, all developing countries are required to remove any non-conforming measures. We have urged member countries to comply with this requirement.

*Intellectual Property Rights*—Of course the Department of Commerce provides USTR with extensive assistance on the "Special 301" review to determine whether our trading partners' provide adequate and effective protection of intellectual property rights. But throughout the year, the TCC and country specialists review industry complaints regarding lack of IPR protection for their exports, monitor foreign governments' implementation of the commitments they made in the WTO and other international agreements and support USTR in IPR-related WTO dispute settlement actions. To give you a current example of our monitoring activity, TCC staff created a monitoring plan that is being used both by U.S. Government agencies and the Government of Paraguay to track Paraguay's implementation of the recently-concluded bilateral intellectual property agreement. The monitoring plan tracks each commitment, and allows us to ensure that all the elements of the agreement are being implemented.

*Import Monitoring*—In anticipation of potential trade problems arising out of the global financial crises, early last year the Commerce Department established an extensive import monitoring program that closely tracks imports and prices in key import-sensitive sectors, such as steel, semiconductors and auto parts. This program was designed to provide an early warning system that the Administration could use to formulate a swift response to potential import surges.

With respect to steel, we have enhanced our monitoring efforts by obtaining preliminary Census data on steel imports 20-25 days prior to the official release date. Recognizing the importance of receiving this data early, Commerce staff worked with other agencies to develop guidelines that allow the release of the preliminary import data, in limited situations, to the public. Such guidelines were recently adopted and on January 28, Commerce released the preliminary steel import statistics for December. The release of this data allows the steel industry to make decisions based on the most current, reliable information available on steel imports. The January data will be released two days from now.

The import monitoring program has been an extremely useful tool to the Administration. This information is discussed regularly in interagency meetings, and we have used it to guide the administration's policy with respect to steel import surges.

*Subsidies Agreement*—Under the Subsidies Agreement, U.S. industries have a remedy through the WTO against foreign subsidies that affect their business in markets other than the United States. The WTO Subsidies Agreement establishes multilateral disciplines on subsidies and provides mechanisms for challenging government programs that violate these disciplines. The ITA is fully engaged in monitoring compliance with this agreement.

In 1997, ITA created a new Subsidies Enforcement Office dedicated to identifying possible violations of the WTO or U.S. trade law and helping U.S. producers combat unfair competition in the United States and foreign markets due to subsidies. Since its inception, the Subsidies Enforcement Office has counseled a wide variety of industries concerned about foreign subsidies and has compiled a comprehensive database of foreign government subsidy practices. As we noted in the Annual Subsidies Enforcement Report sent to Congress on February 1, this information is now available on ITA's web site.

The Subsidies Enforcement Office has worked closely with USTR on several prominent WTO cases involving subsidies, such as the Indonesian autos case. That case resulted in a favorable panel decision and the elimination of subsidies to the Indonesian auto industry that undercut the ability of our auto producers to enter the Indonesian market.

When the financial crisis began to spread last year, a number of U.S. industries, particularly the steel and semiconductor industries, expressed concern that foreign governments would resort to subsidies in an attempt to export their way out of the crisis. Commerce's Subsidies Enforcement Office responded by expanding its activities and working closely with USTR to evaluate industry concerns about possible new subsidies abroad. As a result of these activities, the U.S. government has actively engaged countries that have announced new programs before their implementation to seek changes.

One area of particular importance to the steel industry where these efforts have made a difference has been Hanbo Steel. In response to a complaint from U.S. steel producers alleging that Hanbo Steel, a Korean mini-mill, had been provided government subsidies, Ambassador Barshefsky and Secretary Daley engaged the Korean Government in substantive and detailed consultations on this issue. In addition, President Clinton raised concerns about Hanbo in his meeting with Korean President Kim Dae Jung here in Washington. Through these efforts, the Administration obtained written assurances from the Korean Government that it will not support or direct others to support Hanbo.

Hanbo has now temporarily shut down production of hot-rolled sheet. We also have received assurances that the Hanbo creditors and the independent agent managing the sale of Hanbo will take all steps necessary to ensure a market-driven sale. We continue to monitor these assurances. These Korean Government undertakings constitute the most timely, direct, and commercially meaningful means to address our industry's concerns about Hanbo.

The Administration also expanded the steel dialogue to encompass broader concerns about the Korean steel industry—in particular, regarding the privatization of POSCO, the world's largest steel producer. Our goal is to ensure that this company is fully and expeditiously privatized. Effective privatization of POSCO would help ensure that its pricing, production, and other business decisions are made at arm's length from the Korean government, thereby addressing industry concerns about POSCO's operations. During his trip to Korea in November, President Clinton urged President Kim Dae Jung to ensure that subsidies are not being provided to the steel

and semiconductor industries. Through all of these efforts, the Administration is working to ensure that U.S. companies face fair competition, both in U.S. and overseas markets, and that American workers get a fair shake.

*Antidumping Agreement*—Commerce closely monitors the laws and proceedings of its trading partners to make certain their actions are consistent with the WTO Antidumping and Subsidies Agreements. To this end, Commerce has assisted exporters in identifying the procedural and technical requirements they must meet in responding to foreign antidumping duty investigations. By keeping a close eye on how other nations enforce their trade laws, we can hold our trading partners accountable. For example, if a case is not being handled in a transparent manner, this could be a violation of the WTO Antidumping or Subsidies Agreements. When the U.S. discovers a potential WTO violation, it acts quickly to consult with the offending trade partner to effect a resolution of our exporters' problem. In many cases, we first consult informally with the offending trade partner. However, when we have been unable to reach a mutually satisfactory resolution, the Administration has pursued dispute settlement proceedings before the WTO.

The United States last year requested the establishment of a WTO panel in the antidumping duty case initiated by Mexico against U.S. exports of high fructose corn syrup. To assist U.S. companies in other antidumping investigations initiated by Mexico, U.S. officials met with U.S. exporters of live cattle, fresh and frozen beef, and bond paper. The United States continues to examine carefully Mexico's antidumping actions against U.S. steel companies. The United States in 1998 contested before the WTO Committee on Antidumping Practices Argentina's failure to complete an antidumping investigation of U.S. fiber optic cables within 18 months, as required under the WTO Antidumping Agreement. Meanwhile, U.S. officials have undertaken bilateral discussions with trade officials of the European Commission on cases filed by the EC against U.S. exports of certain polymers and on a certain type of capacitors. The United States also continues to monitor closely the first antidumping investigation by the People's Republic of China against U.S. exports of newsprint initiated in December 1997.

Commerce keeps a list of current and past foreign AD/CVD actions filed against U.S. exporters, which is maintained on the Import Administration web-site. The list provides U.S. exporters with updated information collected from U.S. and foreign embassies worldwide. U.S. companies and the U.S. government can better determine whether cases are being handled in conformity with applicable bilateral and multilateral agreements by reviewing events in the investigations as they occur.

### FAIR TRADE LAWS AND STEEL

Fair Trade Laws—Although the focus of this hearing is on trade agreements and compliance before I leave the subject let me say Commerce will always vigorously enforce the fair trade laws. Over the years, these laws have proven to be extremely effective in addressing unfair trade practices involving a wide array of goods, including steel products, semiconductors, capital goods, and agricultural products. We currently enforce more than 300 antidumping and countervailing duty orders, including more than 100 on steel products from a variety of countries. In addition, in 1998 we initiated 47 antidumping and countervailing duty investigations.

Over the past several years, Commerce has been working on several sets of regulations that reflect our strong commitment to offsetting unfair trade practices. In November, we released final countervailing duty regulations that will guide our analysis and calculation of foreign subsidies. Our final regulations are designed to enhance strong enforcement of the trade laws, and send an important signal to our trading partners that we will not tolerate the subsidization of imports that harm our industries and workers. One area where we have strengthened our subsidy rules concerns the government's provision of equity to an unhealthy company. In order to fully offset the benefit of such a subsidy, we have adopted a final rule that treats the entire amount of the equity infusion as a grant.

In the past year, we have taken some important steps to enhance overall enforcement of the fair trade laws. For example, we are addressing import surges more quickly that may occur once a petition is filed or there is public knowledge that it will be filed. The mechanism for addressing this issue under our law is called critical circumstances. While there are strict legal requirements, such a finding allows for the imposition of duties up to 90 days before a preliminary dumping determination, which otherwise would be the starting date for relief. Last year, we issued a policy bulletin on critical circumstances which laid out Commerce's policy in this area and made clear that, under the statute and regulations, a preliminary critical circumstances determination could be made prior to the preliminary dumping determination, as long as all of the statutory criteria were met. Pursuant to this policy,

last November we issued an affirmative preliminary finding of critical circumstances in the dumping investigations of hot-rolled steel from Japan and Russia. I would emphasize that our policy on critical circumstances is not specific to the steel cases. We will apply this policy whenever it is relevant and appropriate to do so, in light of the statutory criteria and the facts before us in a particular case.

Last week, we issued preliminary determinations in the antidumping investigations on hot-rolled, flat-rolled, carbon-quality steel products from Brazil and Japan. These determinations were made an unprecedented 25 days early, part of the Administration's comprehensive action plan on steel. Although expedited, these investigations have been conducted fully in accordance with U.S. law and our international obligations.

As a result of these determinations, importers will now have to pay cash deposits or post a bond on imports of these products, in some cases as far back as mid-November. The antidumping margins on imports of hot-rolled steel products from Japan ranged from 25.14 to 67.59 percent and for Brazil from 50.66 to 71.02 percent. In addition, the Department found subsidy rates on imports of hot-rolled steel products from Brazil ranging from 6.62 to 9.45 percent.

We are also conducting an antidumping investigation on hot-rolled steel products from Russia. Yesterday, we reached two tentative agreements with Russia on steel trade. The first suspends the hot-rolled steel investigation and the second is a broader agreement that will limit exports to the United States on virtually all other steel products. These proposed agreements are structured to provide effective relief to the U.S. industry and steel workers from the surge in Russian steel imports.

## JAPAN

Let me turn now to Japan, which poses special challenges. While concrete progress has been made over time under the deregulation initiative, and in areas such as medical technology, semiconductors, and banking and securities, there are real problems in other areas such as construction and flat glass. Last year, our $64 billion bilateral deficit was near record levels, and we experienced a disruptive surge in imports of steel from that nation that is harming our industry and workers and which is completely unacceptable. We have told Japan this must end and their exports must revert to pre-crisis levels or we will act.

The trade problem with Japan cannot be explained away simply by pointing to the current Japanese recession. A major reason has been, and remains, lack of market access. The Administration recognized this very early, and has concluded 35 trade agreements with Japan since 1993. Several of our trade agreements have proven very successful—notably the cellular phones, medical technology and semiconductor agreements. Unfortunately, other agreements have yielded disappointing results that have not succeeded in remedying the market access problems they were designed to address. Some of these agreements have been undermined by continuing anticompetitive practices in the Japanese economy or by overly narrow interpretations by Japan of the agreements' provisions.

Japan has been recalcitrant in some cases. In certain sectors, Japan will not take the necessary steps to make our agreements work. Glass, insurance, construction, and computers are key examples. In others, it is contemplating measures which could make matters much worse. Pharmaceutical pricing and changes in medical device reimbursement procedures are examples. Let me look briefly at some our major agreements in which Commerce has a leading role. It gives a good picture of where we stand and what we are doing.

At our January 28-29 meeting to review results in the medical and pharmaceutical area, we noted progress in certain areas such as product approval, but we also stated clearly that reference pricing for pharmaceuticals would impede the introduction in Japan of innovative drugs—our industry is the most innovative in the world—and that reference pricing, in any form, is not compatible with innovation nor with our bilateral deregulation initiative. We told Japan that introduction of such legislation would raise very serious bilateral problems and we will continue to oppose such a system in any form. We also made clear that the system to reimburse medical devices should not be changed until provisions are made to reward innovative products.

Regarding construction, although U.S. firms have won some significant contracts, they are low in value. The most recent annual data show foreign design and construction firms won only $50 million dollars in contracts—half of the previous year's figure and less than one percent of Japan's $250 billion public works design/construction market. U.S. constructions firms are among the best in the world and are globally competitive. Outside of Japan, U.S. firms have about a 20 percent share of the global market.

Subsequent to the Special Consultations on the U.S.-Japan Construction Agreements on January 27-28, Secretary Daley stated he was "seriously disappointed" by the continued lack of opportunities in Japan's construction market. During the consultations, Japan made two proposals that may increase the number of design/consulting procurements open to foreign firms, but rejected our request to eliminate restrictions on joint venture formation for construction projects. Because of our serious concerns in this sector, I have proposed to Japan that I chair the U.S. side of the 1999 annual construction review tentatively scheduled for July in Tokyo.

Autos and parts comprise the largest single factor in our bilateral trade deficit. Our 1995 U.S.-Japan Automotive Framework Agreement, U.S. implementation of which is co-led by Commerce and USTR, contains a number of measures intended to open the automotive vehicle and parts markets in Japan. Some of these measures call for specific actions to be taken by the Japanese Government with concrete deadlines. The Agreement called for Japan to study its regulatory system and to respond to requests by foreign vehicle and parts manufacturers with the goal of improving market access.

Japan should take additional steps to open its vehicle and parts markets, particularly in the area of deregulation. Accordingly, in the annual review of the Agreement last October we presented to Japan a series of proposals aimed at further opening and deregulating this important market. The current economic difficulties in Japan do not justify any backtracking on their commitments. In fact, further deregulatory and other market-opening measures would enhance competition and help strengthen the economy. We are holding working level consultations to follow up on our deregulatory and market opening proposals the Japanese Government must undertake to open the Japanese market to U.S. and other foreign manufacturers.

Finally, let me say that I think that results under the U.S.-Japan Flat Glass Agreement have been disappointing. The agreement has achieved progress in energy standards affecting glass use and in model projects featuring U.S. glass. But the main objective of the agreement, opening Japan's closed distribution system, has not been achieved. U.S. industry market share in Japan's $4.5 billion glass market is about two percent, compared to approximately 10-30 percent in other countries' flat glass markets.

Japanese companies freely admit U.S. glass is technically superior and less expensive than Japanese glass even after U.S. companies ship it across the ocean, but exclusionary business practices within the industry and keiretsu ties between suppliers and customers have combined to prevent the success of U.S. firms in Japan. We continue to press Japan to take open its distribution system, and have recently submitted several proposals to our Japanese counterparts to achieve this objective. Ambassador Fisher will be discussing this issue next week in Toyko.

Japan is in a serious recession. The Japanese Government has formulated an economic recovery program, and we deeply hope it works. But recession is no reason for Japan not to live up to its trade obligations to further open and deregulate its market, or to do its part to absorb imports from recovering nations. It is a responsibility Japan must meet. Things must change. Japan must accelerate its structural reform program, fix its financial sector, and open its domestic market to greater competition.

## CHINA

Our trade policy and compliance efforts must also address the unacceptable discrepancy between China's exports to the United States that have grown at an average annual rate of 25 percent for twelve years and China's imports from the United States that have grown at an annual rate of only 10 percent—resulting in a $57 billion U.S. trade deficit last year, second only to our deficit with Japan. The best solution to these problems would be a commitment by the Chinese to WTO accession on a commercially meaningful basis. We are hopeful that the upcoming visit of Premier Zhu Rongi will provide impetus to Chinese negotiators to develop the needed solid WTO package that provides genuine market access and adherence to WTO principles and rules.

But while we continue on this process, we must push for the full measure of the trade rights for which we have already bargained. This includes the 1992 Memorandum of Understanding on Market Access. Importantly, Mr. Chairman, China promised in the 1992 agreement that it would not maintain import substitution programs or policies. Here we have some significant concerns. We intend to pursue these concerns vigorously, while we simultaneously continue to support and work for China's commercially meaningful accession to the WTO.

For example, the Department is reviewing the concerns raised by the American Natural Soda Ash Corporation alleging Chinese import substitution measures keep

out U.S. soda ash even though it is of superior quality and much less expensive than domestic production. Though soda ash is America's largest inorganic chemical export and we are the world's major supplier, hardly any can now be sold in China.

Restrictions on soda ash are but one example of a growing list of market barriers on the rise in China. In preparation for the 12th session of the U.S.—China Joint Commission on Commerce and Trade (JCCT) held last December, Secretary Daley requested that Ambassador Sasser provide an update on new market access barriers. He provided a list of eight new restrictions, including those imposed on the procurement of telecommunications equipment and services, power generation equipment, retailing operations, pharmaceutical pricing, and soda ash as mentioned above. These restrictions and their impact on U.S.-China commercial relations figured prominently in Secretary Daley's discussions with Chinese Trade Minister Shi Guangsheng who co-chaired the JCCT with the Secretary.

The JCCT, established in 1983, is a government-to-government forum that meets throughout the year at senior and working levels to enhance senior level dialogue on U.S.-China commercial relations. Particularly through the working groups, we will be continuing our discussions on market restrictions as a means of seeking the progress in our trade relations that is more important than ever to our overall relationship with China. Without progress, we face coping with a growing source of irritation.

At our urging during the JCCT, on February 11th China's Ministry of Trade, other Chinese agencies, the Amcham in Beijing and other industry groups convened a meeting of industry on both sides to air concerns about the rising number of business impediments in China. While these discussions were useful, we are seeking agreement with the Chinese to hold government-to-government discussions on these restrictions in the hope of resolving a number of them prior to Premier Zhu's visit. Secretary Daley will be urging progress on these restrictions and much greater commercial cooperation in infrastructure during his upcoming multi-agency infrastructure mission to China March 28-April 1. We want to make progress on specific projects of interest to U.S. firms as well as on issues affecting market access in infrastructure over the long term.

### DO WE HAVE THE TOOLS TO MAKE THE AGREEMENTS WORK?

Having given the Committee a description of what the Commerce Department is doing in terms of monitoring and seeking compliance with our trade agreements, and an overview of some of the specific problems on which we are now working, I would like finally to turn to an assessment of foreign compliance, and whether we have the tools we need to do the job.

The Clinton Administration has entered into about 270 trade agreements. These agreements have greatly increased market access for American companies and have given U.S. exporters an expanded set of trading rights. There is no question that American exports have benefitted greatly as a result and that in many ways the playing field is more level than it was. But there is also no question that compliance on the part of foreign governments is neither uniform nor complete. Ensuring our trade rights requires systematic follow-up on our part. In the course of this effort, we have found, and are working on, compliance problems. I enumerated some earlier in my statement, and I anticipate that as we continue to work with American companies we will find more.

Sometimes we are able through our compliance effort to resolve problems without having to take them to dispute settlement and enforcement. An example was the success our Market Access and Compliance staff had last year in resolving a labeling problem that halted exports of beer to Mexico by several U.S. brewers. Working cooperatively with the Mexican Government we were able to have the NAFTA-inconsistent regulation reversed, and within weeks of the emergence of the trade barrier the problem was resolved and the beer began flowing to Mexico again—restoring about $14 million of exports at an annual rate.

At other times we are unable to bring about compliance without having to turn to the dispute settlement mechanisms. The TCC's effort to obtain fair access for U.S. companies wanting to sell to the huge Korean airport construction market is an example. After months of seeking Korean compliance short of resorting to dispute settlement, it has proven necessary to ask for WTO dispute settlement consultations. We remain hopeful that these consultations will result in a market opening settlement that affirms our rights. We have provided all our analyses, case information, and other data to USTR and we look forward to working with USTR as this process moves ahead.

The important thing is that American companies and workers, and the public at large, recognize that we are vigorously seeking and pursuing compliance. There are

certainly cases in which we are not getting the full measure of what we bargained for, and we want to find and resolve as many as we can. But I want the Committee to recognize that in the vast majority of cases, we are finding that most countries entered into trade agreements with the expectation that there are mutual benefits, and that they generally are attempting to live up to their commitments. We do not see a general pattern of entering into agreements and then disregarding them.

A particular area of concern, however, is Japan. While Japan has done a good job of implementing many agreements, a number have been implemented in a manner falling far short of the effort needed to actually provide the market access that was anticipated. What is particularly distressing is when agreements are implemented by doing the minimal possible. The ironic thing is that these market opening agreements are actually just the thing Japan needs to spur internal competition and greater efficiency in the domestic economy. I would venture to say that if studies were done in Japan about how well the economy was doing in various sectors, they would find our trade Japan is considerably better off in medical devices, cellular phones and the other areas where agreements have succeeded. Japanese consumers and producers, just as in other countries, always benefit from more open competition.

This leads me to my final area of thought: do we have the tools we need to bring about compliance with our trade agreements?

*Resources*—Within the last two years we have placed an increased emphasis on compliance, and we are getting results. But there is still more we could do. For several years, the Congress has tended to look at the Commerce Department's trade role as being principally export promotion. The appropriations process has generally provided sufficient funding to allow us to do an excellent job in this area. But for several years, Congress has consistently provided considerably less funding to our Market Access and Compliance unit than has been requested in the President's budget.

Despite the need to monitor compliance with 35 Japanese agreements and work on a growing number of market access complaints by U.S. companies, our Japan staff has fallen from 18 to 8 in the past eight years. Our China staff declined from 9 to 4. Our European Union office, which has just assumed the enormous new task of compliance with the $1.5 billion Mutual Recognition Agreement, is down from 11 to 6. In his FY 2000 budget the President has requested an increase of 11 people for increased market access resources and 9 people for a compliance "Strike Force" that would concentrate on opening markets for U.S. firms, especially small and medium-sized firms. I commend this budget initiative to this Committee's attention, for adequate funding for access and compliance will pay dividends in increased exports.

*Tools*—We need to have strong and effective tools to help us in the effort to ensure compliance. Frankly, the better and more effective the tools that are available to us, the better the agreements and the quicker the compliance. It is that simple. We are pleased at with the Administration's decision to reinstitute Super 301 and Title VII procedures by Executive Order. This enables the Trade Representative to identify U.S. trade expansion priorities and discriminatory foreign government procurement practices and to cite significant foreign trade barriers which should be identified as priority foreign country practices and those countries that are not in compliance with obligations under the World Trade Organization's Agreement on Government Procurement, the NAFTA chapter on government procurement or other agreement or countries that maintain a significant and persistent pattern or practices of discrimination against U.S. products or services in their government purchases.

As Secretary Daley noted last week, Super 301 and Title VII have been effective tools in identifying foreign unfair practices and encouraging their removal. At the Department of Commerce, we intend to ensure that U.S. firms and workers reap the benefits of the trade agreements which we have negotiated. We will work with USTR to ensure that we identify the most significant trade barriers affecting U.S. goods and services exports and that we are taking effective actions to address them.

There is, however, one area that is very troubling; and it is not one for which I currently have a proposal or a solution. That is the area of private sector anti-competitive practices that act as trade barriers. Japan is the example that comes to mind, but it is not the only country. And in that regard I am looking forward to reviewing the recommendations of the private sector International Competition Policy Advisory Committee, the Justice Department, and the Federal Trade Commission as well as suggestions from the members of the Committee and other members of Congress.

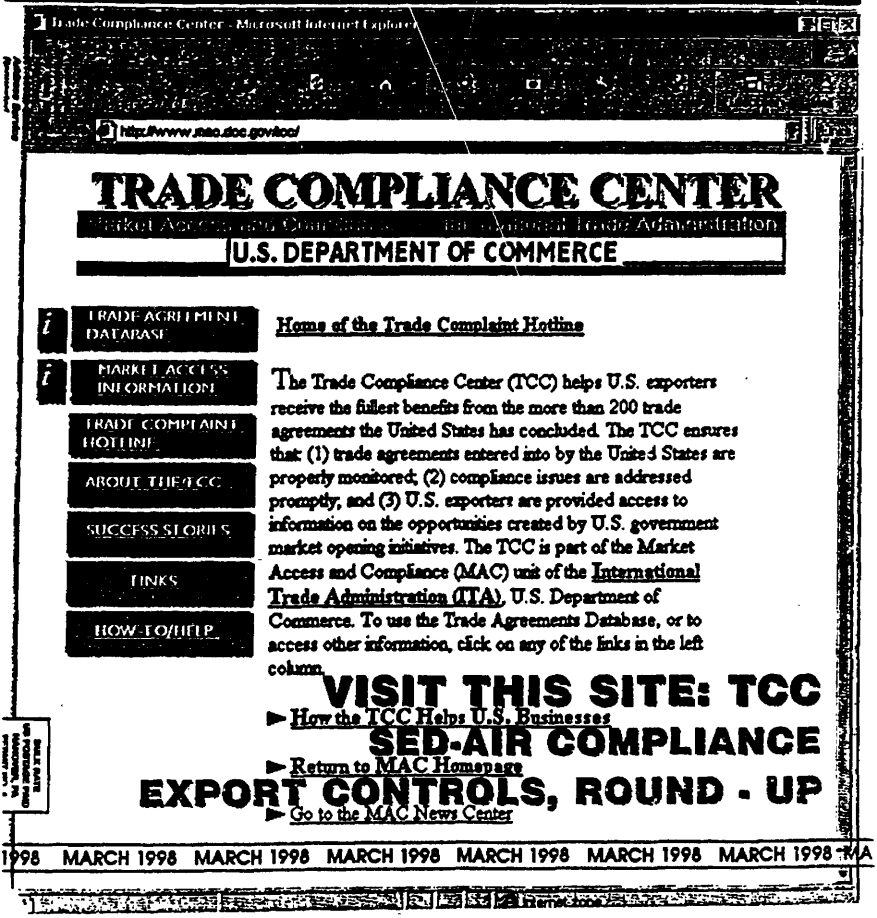
Thank you for the opportunity of allowing me to present my views, and I look forward to your questions.

Attachments.

Attachment 1

# the exporter

March 1997 Vol.18 No. 7 NETWORKING THE TRADE COMMUNITY



# Visit This Site: TCC

*by Leslie Stroh*

*Visit This Site*

*Surfing International Trade*

*Exceptions Are the New Rule*

*IEC Updates*

This Internet site - www.mac.doc.gov/tcc/- represents excellent use of your tax dollars because it addresses a substantive international trade issue in a timely and efficient fashion, allowing for business input. Our only criticism of this excellent site is that it will be hard for the TCC to demonstrate its level of response to the concerns and problems of US exporters.

This new trade compliance center site is so good that The EXPORTER probed with them certain issues and practices in the context of our soon to be announced site redesign, making the 8,000 item Exporter magazine archive available to US exporters.

The EXPORTER talked with Steve Jacobs, director of the TCC, about the site design and development. The Market Access Center, of which the TCC is an integral part, was created when the International Economic Policy unit was split into the Trade Information Center, concerned with providing exporters with specific answers on "how to", and the Market Access Center which was created to monitor foreign countries compliance with market opening agreements. This publication and others noted that the US negotiated agreements, but didn't always follow up to see that they were implemented.

For those of our readers who haven't already dialed in to the TCC on the web, (see cover for address- or www.mac.doc.gov/tcc/) the following is a brief non-nonsense, no purple prose, no over-blown claims explanation we obtained by clicking on the ABOUT TCC button.

"The Trade Compliance Center (TCC) helps U.S. exporters receive the fullest benefits from the more than 200 trade agreements the United States has concluded. The TCC ensures that:

(1) trade agreements entered into by the United States are properly monitored;

(2) compliance issues are addressed promptly; and

(3) U.S. exporters are provided with access to trade agreements. The TCC is part of the Market Access and Compliance (MAC) unit of the International Trade Administration (ITA), U.S. Department of Commerce."

"The TCC comprises two main functions: Data Systems Management and Compliance Analysis."

"Data Systems Management is taking an innovative approach, using the information superhighway to provide data and government assistance directly to businesses."

"The Trade and Related Agreements database contains texts of trade agreements, and in the future will contain associated documents and TCC monitoring and compliance reports that will help U.S. companies more readily understand their international trade rights as well as the obligations of U.S. foreign trade partners."

"Compliance Analysis, together with other elements of the International Trade Administration (ITA) and the Office of the U.S. Trade Representative, analyzes foreign compliance with trade agreements. These investigations involve a multi-disciplinary approach in which Compliance Analysis staff, in conjunction with other specialists in the ITA, the Office of the General Counsel, and the Office of the U.S. Trade Representative, review legal, economic and policy issues."

"Once a market access problem or a potential violation of an agreement or standard of conduct has been identified, the economic impact upon the U.S. economy is assessed and strategies for ensuring foreign compliance are created. The Center works with US businesses throughout the process."

## Source Documents

The information contained in the TCC site is original source content. In some cases it is treaty, in some cases it is exchanges of memoranda, in some cases it is original analytic compilations within the Department of Commerce (country estimates). The only questions are timeliness, and political correctness.

According to Mr. Jacobs, material provided in electronic form will be available within two weeks, and hard copy will be available within two weeks of key stroking. Treaties are not filtered for political spin, and with the demise of communism, one hopes that the rose colored glasses used to observe our political allies have been exchanged for a less tinted glass for economic issues. Some of the best people in the Department of Commerce work in the area of country reports and economic analysis.

There are two databases- Trade agreements, and Market Access. Treaties, particularly bi-lateral investment treaties are what they are, – the Senate approved the treaties– interpretation and application still require knowledgeable practioners.

The Market Access material is comprised of three key pieces: Country reports, Economic analysis, and National Trade Estimates (trade barriers).

No report will contain all the precise details needed for one exporter in one line of business, but if you read all the now easily available information in these reports, you will have a context within which to phrase questions about your particular needs.

And if you want another point of view, you can always turn to the European Unions website for market access http://mkaccdb.eu.int/mkdb/mkdp/pl). [note that the last characters are P as in Peter, L as in Larry, written lower case].

The Europeans also have an extensive market access database which will be found listed on the EXPORTER WEBSITE (www.exporter.com-revised April 1998), and in the meantime at the above noted address. As an example E U comments on the US follow:

"The US Administration has stressed that its trade policy is based on the values of openness, transparency and the respect for the rule of law. These are principles to which the EU also firmly subscribes. Both regard the WTO as a fundamental element in achieving a world of open markets."

"Bilaterally, this shared commitment has contributed to the adoption of the New Transatlantic Agenda (NTA) and has fostered the development of a healthy economic relationship. But despite this reinforced cooperation, there remain two particular tendencies in US trade policy which are a source of concern to the EU."

"The first is extraterritoriality. This is a long-standing and growing feature of the US legal system manifesting itself in - among others - the fields of environment, banking, tax and export-control"... and about 100 more lines.

"There is a second element in US trade policy-making about which the EU has regularly complained: unilateralism. This tendency takes the form of either unilateral sanctions or retaliatory measures against 'offending' countries or companies. These measures are unilateral in the sense that they are based on an exclusive US appreciation of the trade-related behavior of a foreign country or its legislation and administrative practice, without reference to, and sometimes in defiance of, multilaterally agreed rules. This approach casts doubt on US support for a multilateral rules-based system of addressing trade problems and can also lead to bilateral agreements with elements of discrimination. Admittedly, the US has used its unilateral trade policy arsenal more sparingly in the recent past and has made a greater use of the WTO dispute settlement system. However, the potential still exists to take unilateral measures which risk undermining the global trading system that both partners have greatly contributed to building and promoting"... plus hundreds of more lines.

It is possible that US business may be more in tune with the European perspective on these particular issues than with the Washington position.

As an example of the usefulness of this database in the context of EU information and country information, if you want to look at South Africa, you can now get not only a South African perspective, but a European perspective, and a US official perspective with a few key strokes.

The ability to obtain several perspectives actually led me to ask Mr. Jacobs, if in fact, any thought had been given to the ubiquitousness nature of the web, that data primarily intended for US exporters actually is available globally. His response was that all of this information was public domain, it was a distribution efficiency that led them to the web as a way of communicating with the US business community.

## Guaranteed 10 Day Response

Push the Trade Complaint Hotline button, fill out the form, or do it the old fashioned way and call-- and the trade compliance center guarantees a response in 10 days, not a solution, a response.

They also need success stories. Congresspeople need simple visuals along the lines of "They kicked sand in my face until I read....." Basically, they need funding, so that the more opportunity you give the TCC to respond to your legitimate needs, the more they can show the budget types that this is an important use of twenty-five people.

Publishers Note: To understand how important The EXPORTER feels this database is, let me tell you a very

simple story. About 2,000 years ago, some Essenes wrote some stories in parchment, put them in some jars and stored them. An explorer finds them, the academic community realizes that they will illuminate our understanding of the development of Christianity, and seven or nine scholars get exclusive access to photos of the fragments that survive that are matched piece by piece.

One of the scholars puts all of the pictures of fragments, matched and unmatched, on a CD-ROM, contrary to the agreed rules of disclosure, and releases it to the biblical scholarship world at large, both competent and incompetent. Results-two. First a lot of fragments got matched more quickly than previously and with larger units more scholars worked on more complete texts, and Second, an explosion of biblical scholarship.

The EXPORTER thinks that the creation of this database is as seminal to trade as was the distribution of the DEAD SEA SCROLLS on CD was to biblical scholarship, a turning point. You may also want to point out to your international law lawyers that retrieving treaties is no longer a billable item.

Try it, you'll like it.

Attachment 2

**TRADE COMPLIANCE CENTER**

MARKET ACCESS AND COMPLIANCE / INTERNATIONAL TRADE ADMINISTRATION

U.S. DEPARTMENT OF COMMERCE

# TARA

## Trade and Related Agreements Database

**An On-Line Database**
**at:**
**http://www.mac.doc.gov/tcc**

**Market Access and Compliance**
**International Trade Administration**
**U.S. DEPARTMENT OF COMMERCE**

# TARA
## Trade and Related Agreements Database

**An On-Line Database**
**at:**
**http://www.mac.doc.gov/tcc**

**SUMMARY STATISTICS**

As of February 5, 1999, TARA contained 306 trade and related agreements:

263 bilateral trade agreements
*of which:*
*27 are bilateral investment treaties,*
*4 are trade and investment framework agreements (TIFA's), and*
*40 are textile agreements)*

41 multilateral trade agreements
*(among them the various WTO agreements, NAFTA and OECD)*

2 plurilateral trade agreements
*(WTO Government Procurement Agreement and the WTOAgreement on Trade in Civil Aircraft)*

**On a regional basis, the bilateral agreements break down accordingly:**

| | |
|---|---|
| Asia/Pacific | 131 |
| Africa/Middle East | 23 |
| Europe | 65 |
| Western Hemisphere | 44 |
| | 263 |

**Trading Partners with the Most Agreements:**

| | |
|---|---|
| Japan | 45 agreements |
| Korea | 21 agreements |
| China | 20 agreemnts |
| EU | 13 agreements |

**The Trade Compliance Center**
**Market Access and Compliance**
**International Trade Administration**
**U.S. DEPARTMENT OF COMMERCE**

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ALBANIA AGREEMENT ON TRADE RELATIONS
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## PREPARED STATEMENT OF DENNIS M. DOYLE

Good Morning, Mr. Chairman. My name is Dennis M. Doyle. I am Executive Vice President, Chiquita Banana—International Division. I appreciate the opportunity to testify before this Committee to discuss the issue of non-compliance with international trade agreements.

As a result of the United States' banana case against Europe, Chiquita has had direct and extensive experience with the issue of non-compliance by the European Union with the world's most important trade agreement, the WTO. Europe's obstruction in the banana case has not only caused considerable damage to our company, it now threatens to undermine the WTO and harm the cause of fair trade for years to come.

Let me briefly review for you the unfortunate toll this case has already taken on U.S. commerce, our company, and the WTO system.

This trade dispute started in 1992. In 1992 and again in 1993, two successive GATT dispute settlement panels were formed at the request of Honduras, Guatemala, Mexico and other Latin American countries to review Europe's then current banana policies. Despite two explicit panel rulings against the EU's banana policies, Europe blocked them both. Rather than complying with these multilateral rulings, the EU saw fit to make its banana policy even worse in 1993.

Immediately prior to the implementation of the EU's banana policy, Chiquita was responsible for 40% of all Latin American bananas sold into the EU. The company had by then invested billions of dollars in U.S. content and employed thousands of Americans in helping to build the European banana market.

By the end of 1993, as a direct result of the EU's new common banana policy, the company's substantial gains in Europe had been abruptly reversed. New discriminatory quotas and reduced access slashed Chiquita's European market share, volume and profits, with consequent price declines, structural and investment losses, employment declines, stock price declines, and other forms of commercial harm. As intended by this regime, Chiquita's displaced market position meant proportionate gains for EU multinational banana firms and middlemen.

Faced with widely verified injury, Chiquita petitioned USTR in 1994 for relief under Section 301 of the Trade Act. After an extensive review, USTR made a preliminary determination in January 1995 that the EU's discriminatory and punitive banana policies had "already cost U.S. banana marketing and distribution firms hundreds of millions of dollars at a minimum." Rather than retaliate under Section 301, the United States elected to initiate a case within the WTO against the European Union.

Our case thus represented the first U.S. action against the European Union in the WTO. Most believed that the newly enacted WTO reforms would accord a streamlined "fool proof" means for achieving relief that the European Union could not thwart. It is now four years later and we have received no relief.

Annual harm to the U.S. economy has now been calculated by U.S. government economists to be approximately $520 million. This means that in the nearly six years the EU regime has been in effect, total harm to U.S. commerce has been in excess of $3 billion. Few would dispute that this constitutes grave injury to U.S. commerce.

While the legal phase of the WTO system has worked well—delivering a strong and comprehensive ruling against the EU banana regime—the compliance phase of the system has fallen far short of its promise. Rather than coming into compliance with the WTO ruling, as the United States has always done when faced with negative WTO rulings, Europe has reverted to the same block-and-delay tactics that it used to destroy the old GATT.

Its approach in the banana case has come to be called the "endless loop." In simplest terms, the endless loop means that the winning party never receives relief and is confined, instead, to repetitive rounds of litigation that languishes for years. Many WTO members, practitioners and scholars have correctly pointed out that if the endless loop prevails, it would render dispute settlement meaningless and ultimately doom the WTO system.

The present outlook for the WTO is uncertain. After more than three years of WTO litigation over Europe's banana policies, no one can yet say whether the system will be capable of protecting U.S. interests. The United States and Europe are now actively engaged in arbitration over the issue of damages resulting from the banana regime. In theory, those proceedings should lead to WTO-authorized retaliation by March 3. In practice, however, Europe is again expected to try to block WTO authorization to retaliate, consistent with its long policy of obstruction at every turn.

March 3 will be a decisive date for the WTO system. If the United States retaliates by no later than March 3—as the Administration has committed would be the case—the WTO dispute settlement process will be widely understood to have teeth. Conversely, if retaliation is not taken, it will signal to the world that the United States and WTO have acquiesced to Europe's endless loop.

If the latter happens, many will ask what legitimate purpose is served by the WTO if the United States repeatedly wins its cases, but is prevented from, or is otherwise unwilling to, exercise the tools needed to secure relief. Few industries, farmers or companies will be willing to subject themselves to prolonged litigation under a system that proves incapable of forcing compliance.

With the banana case setting a precedent for beef and all other WTO cases to come, no effort should be spared to ensure that U.S. retaliation is taken no later than March 3. Timely retaliation has become an unfortunate, but vitally necessary step in order to demonstrate that compliance under the WTO is mandatory and that relief for U.S. interests under that Agreement is still possible.

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## PREPARED STATEMENT OF SUSAN G. ESSERMAN

Mr. Chairman, Senator Moynihan, and Members of the Committee, thank you very much for inviting us to testify at this hearing today on full implementation and enforcement of trade agreements.

Our trade policy is based upon the principle of fair and open trade. We pursue this principle in the multilateral trading system; in our regional, bilateral and sectoral talks; in our response to the Asian financial crisis and the sudden increase in steel imports it has created; and in ensuring full implementation of the agreements we reach.

Ambassador Barshefsky has made implementation a top priority in her service as U.S. Trade Representative. Full implementation of trade agreements is critical to securing their full benefits, to maintaining public confidence in an open trading system, and therefore to the success of trade policy generally. To ensure that agreements yield the benefits bargained for, we have developed an ongoing strategy of active use of the dispute settlement provisions of our trade agreements, vigorous monitoring and enforcement of trade agreements, strategic application of U.S. trade laws, and continued engagement in multilateral, regional, bilateral and sectoral negotiations. I am very pleased to be here today to discuss our work with the Committee.

### ROLE OF TRADE IN THE US ECONOMY

Let me begin, however, with some broader context.

Today, the United States has the most dynamic, creative and competitive economy in the world, and is ideally placed to succeed in the next century.

Since 1992, we have had uninterrupted growth—our economy has expanded from $7.1 trillion to $8.5 trillion in real terms (1998 dollars) and last month, the present economic expansion became America's longest in history.

We have created jobs. Employment in America has risen from 109.5 to 127.2 million jobs, a net gain of nearly 18 million, as unemployment rates fell from 7.4% to 4.3%.

And we have raised wages. Since 1992, average wages have reversed a twenty-year decline and have grown by 6.0% in real terms, to $449 a week on average. This family prosperity is reflected, for example, in record rates of home ownership.

Altogether, we have achieved an historic combination of high growth, low unemployment, low inflation, low interest rates and rising wages. There are, of course, many reasons for this, including improved support for education and job training and an uninterrupted reduction in the federal deficit beginning in 1993 and culminating with the budget surpluses of the past two years.

But trade and participation in the world economy have played an irreplaceable role. Last year we exported $932 billion in goods and services—a 51% increase from the 1992 level of $617 billion, despite a slowing in export growth due to the Asian financial crisis.

### THE NEGOTIATING RECORD

This export growth has been facilitated by our negotiating accomplishments.

Since President Clinton took office in 1993, we have concluded 270 separate trade agreements which have helped open markets, address topics of increasing complexity, and create opportunity for Americans. These agreements include five of truly historic importance:

- the Uruguay Round Agreements, which created the World Trade Organization with a binding dispute settlement mechanism and extended international trade rules to new areas through agreements on agriculture, services and intellectual property; and offers a forum for continuing negotiations and liberalization;
- three multilateral agreements on information technology, financia' services and basic telecommunications—sectors at the heart of the 21st century economy; and
- the North American Free Trade Agreement, which cemented our strategic trade relationship with our immediate neighbors and provides a basis for more progress.

## MAKING AGREEMENTS WORK

The scope and depth of our network of agreements has thus grown considerably. And we recognize and share the high value Congress places on ensuring the full implementation of these agreements.

Consequently, we devote more attention and resources to ensuring that these agreements yield the maximum possible advantage in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open and predictable world marketplace. And we consult regularly with Congress on our enforcement strategy and specific goals. In the broad sense, as Ambassador Barshefsky stated in her testimony of January 26th, ensuring full implementation of agreements is one of USTR's strategic priorities. We seek to achieve this goal through a variety of means, including:

- We assert U.S. rights through the mechanisms in the World Trade Organization, including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO Committees and Bodies charged with monitoring implementation and surveillance of agreements and disciplines.
- We vigorously monitor and enforce our bilateral agreements.
- We invoke U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance.
- We provide technical assistance to trade partners, especially in developing countries, to ensure that key Agreements like the Agreement on Basic Telecommunications and TRIPs are implemented on schedule.
- Through NAFTA's trilateral work program, tariff acceleration, and use or threat of NAFTA's dispute settlement mechanism, we seek to promote America's interests under the Agreement, as well as using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

To carry out this work as effectively as possible, with the help of the Finance Committee we have added new personnel to carry out a larger enforcement workload, without compromising our efforts to negotiate further market access in key markets. Specifically, we have created an Enforcement unit headed by an Assistant U.S. Trade Representative, and Congress last year provided us with funds to hire seven new attorneys to handle the added volume of work at the WTO and elsewhere. We also work closely with the Commerce Department, the Customs Service, the Department of Agriculture, the State Department, the Department of Labor, the Treasury Department and other agencies involved in enforcement of trade laws and agreements.

## I. WORLD TRADE ORGANIZATION

The WTO is now a full-fledged international institution, and we are working hard to ensure that it reaches its full potential to benefit the U.S. economy, support world prosperity, and advance the rule of law. Full implementation of WTO commitments is fundamental to ensure all of these benefits, and to confidence in the WTO at home and abroad. Implementation is therefore a critical part of our work at the WTO, and includes invocation of dispute settlement, full and extensive participation in the Committees, Councils and Bodies to oversee the effective operation of the Agreements, and providing technical assistance where needed.

### *1. Dispute Settlement*

One of our primary venues for enforcing agreements and asserting U.S. rights is the WTO's dispute settlement mechanism. To ensure that the United States secures the full benefits of the WTO Agreements, we insisted on a strong, binding and expeditious dispute settlement system for the WTO. With the advice and support of Congress, we have developed a WTO dispute settlement system that provides certainty for American businesses and workers that their disputes will be heard by a panel of impartial experts, and that the defendant will not be able unilaterally to derail

the process. In short, under the WTO we have better enforcement of U.S. rights and more certainty that a deal will stick.

The WTO dispute settlement system has proven valuable in achieving tangible gains for American companies and workers, and also as a deterrent—our trading partners know it is ready and available to us if they do not fulfill their obligations. We have been successful in reaching rapid resolution of our complaints through early settlement, and have also achieved substantial benefits from full litigation and resulting panel decisions which enforce our rights.

Since the WTO's creation in 1995 we have filed more complaints—43 to date—than any other WTO member. At present, we have 29 active cases, including 20 as plaintiff and 9 as defendant, and are involved as a third party in a number of other cases. Our overall record of success is very strong. We have prevailed on 19 of the 21 American complaints acted upon so far, either by successful settlement or panel victory. These favorable rulings and settlements have involved an array of sectors within manufacturing, agriculture, services, and intellectual property.

Only yesterday the WTO Appellate Body upheld our panel victory against Japan in a case involving Japan's "varietal testing" requirements for U.S. apples and other fruit. This should eventually result in increased exports of more than $50 million a year of these products. Just as importantly, the case establishes a valuable precedent that will be useful in future challenges against thinly veiled protectionist measures directed at our agricultural exports. In addition, our pursuit of the varietal testing case has already had a valuable deterrent effect. We understand that one country that was considering the adoption of testing requirements like Japan's decided to abandon those plans after we brought our case. The case illustrates the benefits we are already realizing from the new Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures.

A few other examples of successes thus far include:

- Removal of barriers to pork and poultry products in the Philippines;
- Elimination of provisions of Indonesia's "national car program" that involved WTO-inconsistent subsidies and violations of national treatment;
- Removal of unfair barriers to liquor in Japan and Korea;
- Protection of intellectual property rights in Sweden;
- Full protection of copyright for sound recordings in Japan; and
- Elimination of Korea's unfair shelf-life standards on agricultural products.

Each of these cases, and our other dispute settlement victories, provide concrete economic benefits to the United States. And in each case, we have insisted that our partners act rapidly to address the problems. This will remain the case in all our disputes; and in most cases our partners have taken their responsibilities seriously.

This being the case, we find unacceptable the failure of the European Union to implement the WTO panel and Appellate Body rulings on bananas, and we expect the EU to meet its compliance deadline on beef hormones in May. As to both of these matters, we will continue to insist on full compliance, and as our actions on the banana case have shown, we will exercise our full rights to secure it.

Our experience here has also shown that, while by and large the panel system works well, it can still more effectively ensure compliance with panel and Appellate Body reports. We are working on this issue now in the ongoing review of the WTO Dispute Settlement Understanding. (When the WTO was created, Ministers agreed to review the dispute settlement rules after they had been in force for four years, and we have agreed to review those rules by July of this year to enable us to decide what modifications we may need.) In that review, we are seeking improvements with respect to compliance, which the banana case shows is an area where the rules need clarification, to ensure that one violation of WTO obligations is not simply replaced with another. We are also seeking greater transparency of the dispute settlement process. In the interim, we will continue to press our dispute settlement rights vigorously.

*2. WTO Councils, Committees and Subsidiary Bodies*

One of our priorities in the Uruguay Round was to ensure that the WTO would be a forum for ongoing liberalization, implementation and consultation. Strict attention to implementation of agreements by the Committees and Bodies that report to the WTO General Council has helped ensure the realization of this goal.

These Committees are charged with reviewing implementation and regulation of each WTO agreement. They thus often provide us with our first opportunity to raise concerns about implementation without having to begin the process of dispute settlement, and offer a chance to ensure compliance before resorting to dispute settlement. We have done this, for example, in the case of the Agriculture Agreement, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-Related Investment Measures.

To take a specific case, in agriculture WTO members are required to notify the Committee on Agriculture on compliance with their commitments on market access, export subsidies, and domestic support. In Committee meetings, we question other Members on their notifications and operations of programs and policies, making their policies more transparent and helping us ascertain compliance with commitments, solve potential problems early, and identify areas in which we can improve the system. And in conjunction with these meetings, countries present formal papers in an Analysis and Information Exchange process, which allows us to raise issues and exchange informal opinions on interpretation of the Agriculture Agreement. In response to these papers and discussions, the Secretariat has prepared papers to elucidate implementation and compliance issues, such as tariff-rate quota administration and export subsidies.

Work in the Committee on Agriculture and through the dispute settlement process has identified areas for improvement, including establishing disciplines on tariff-rate quota (TRQ) administration, bringing greater certainty and transparency to complex (and perhaps discriminatory) tariff regimes, and tightening rules to prevent circumvention of export subsidy commitments. In the new WTO agriculture negotiations that will be launched at the Seattle Ministerial late this year, we will seek both to strengthen the rules in this important area and to clarify what constitutes compliance under the rules.

These bodies also give us a chance to ensure full implementation of commitments on schedule, which is especially important since most of the Agreements negotiated in the Uruguay Round that contain transition periods or phase-in provisions are to be fully implemented by the end of this year. Several examples include:

- Intellectual Property—WTO developing country members are required to implement most of their WTO IPR commitments by the end of this year. We are monitoring this closely and are prepared both to assist countries in developing laws and enforcement mechanisms at their request, and to file dispute cases in the event members fail to meet their obligations.
- Customs Valuation—More than 50 countries are required to fully implement the obligations of the Agreement on Customs Valuation—a critical obligation in realizing market access. Full and effective implementation with this Agreement will head off disputes in the future.
- Textiles—The WTO's textile agreement has a longer phase-in period, but we are also vigilant in ensuring enforcement of textile quotas and implementation of textile market access requirements overseas. A number of our trading partners clearly have further work to do in market access, including some of our largest and fastest growing textile suppliers. Preventing circumvention is a high priority as well. Last year, we reached an important new agreement with Hong Kong on measures to improve information-sharing and strengthen cooperation to prevent circumvention, and we are working with Macao, China and others on similar initiatives.

In still other areas, we have used our participation in WTO committees to complement and buttress the enforcement of U.S. unfair trade laws in an integrated approach to further U.S. commercial objectives. For example, in the WTO Subsidies Committee, we have pressed for increased transparency by our trading partners in their notification of subsidies to the WTO, and we have used the notification review process to push others to modify or eliminate those subsidy practices which appear to violate WTO rules and/or are most prejudicial to U.S. interests. In the Antidumping Committee, we have gone to bat for U.S. exporters across a wide spectrum of manufacturing and agricultural sectors when we have uncovered evidence that antidumping actions brought by foreign governments may not measure up to the due process and participation rights or other obligations guaranteed by the WTO Agreement. Some of these efforts have led to the initiation of dispute settlement complaints on behalf of U.S. industries.

As we have affirmed in many other settings, the Clinton Administration is strongly committed to the full enforcement of U.S. unfair trade laws to ensure that U.S. industries do not have to compete against injurious foreign pricing and unfair subsidy practices in the U.S. market. The assurance of fair trade is integral to the bargain of keeping and pursuing open markets, and USTR works closely with the Commerce Department to defend the consistency of U.S. law and practice whenever it is challenged in the WTO. By the same token, however, that bargain also requires that other countries play by the same rules when they take antidumping or countervailing duty actions which affect U.S. exporters. The steps we have taken, with critical help from the Commerce Department, to advance and protect U.S. interests in foreign markets ensure that U.S. policy with respect to unfair trade practices is comprehensive, vigorous and balanced so as to provide the maximum benefit for our companies and workers.

### 3. ENSURING EFFECTIVE IMPLEMENTATION THROUGH TECHNICAL ASSISTANCE

Finally, in some cases technical assistance can help ensure full and timely implementation of agreements. One example is the TRIPs agreement on intellectual property. In part because of encouragement from the United States, the WTO and the World Intellectual Property Organization announced last year that they would begin a major training and technical assistance program to help less developed countries comply. Certain U.S. government agencies and the private sector continue to provide significant technical assistance as well.

A second example is the Agreement on Basic Telecommunications concluded in 1997. Under this agreement, fifty-five countries representing 90 percent of the world market have bound themselves to enforceable regulatory principles based upon the framework for competition that our Congress enacted in the Telecommunications Act of 1996. To ensure full implementation, the United States, the International Telecommunications Union (ITU) and many WTO Members' telecommunications agencies are responding to countries' increasing requests for assistance in regulatory reform efforts. The need for technical assistance appears widely and deeply felt, in the developing and also the industrialized world, regarding, e.g., the establishment of an independent regulator; the setting of cost-oriented, non-discriminatory interconnection prices; the prevention of anti-competitive practices; and the establishment of transparent government regulations.

Technical assistance efforts by the United States have included regulatory reform seminars hosted in Washington and abroad for Latin American, European, African and Asian regulators; in-country visits by regulatory and policy experts; and private consulting projects sponsored by AID. The success of these efforts, so far, has been demonstrated by continued growth in interest among our trade partners in every region for further information and assistance in these areas; and the support U.S. industry has expressed for these activities.

While the WTO is not a technical assistance agency and need not become one, it is clear, especially given the complexity of the agreements, that implementation of existing agreements must be facilitated by technical cooperation by international organizations. One area we have highlighted for further consideration in terms of institutional reform of the WTO is the increasing demand for assistance as new and complex agreements are negotiated.

## II. BILATERAL AGREEMENTS

The second principal area I will address is enforcement of bilateral agreements with key trading partners. This involves vigorous oversight and monitoring, WTO procedures when these help us address bilateral issues, and U.S. trade laws.

### *1. Japan*

Since 1993 the United States has concluded 35 separate market-opening agreements with Japan—more than with any other trading partner. These cover fields from agriculture to insurance and high technology to manufacturing, and are important steps toward our goal of an open, deregulated and fair Japanese market. To achieve this goal, the agreements contain provisions to promote deregulation, eliminate anti-competitive practices, increase transparency and curtail discriminatory practices. Full implementation of these agreements by Japan is one of the chief items on our trade agenda with Japan.

Several of these agreements have been highly successful. In the medical devices sector, U.S. suppliers hold over 41 percent of the Japanese public procurement market. As a result of our 1994 agreement on cellular phones, our companies captured over $1 billion in contracts for second-generation digital systems. With respect to semiconductors, foreign market share now exceeds 30 percent, a significant increase from the 8.6 percent foreign share held when the first semiconductor agreement was concluded in 1986.

In other areas, we are less satisfied and have pressed Japan to implement fully both the letter and spirit of the agreements. We are working intensely on these areas, and hope to see substantial progress on these issues as Prime Minister Obuchi's spring visit approaches. Ambassador Fisher pressed the Japanese government on insurance, flat glass, auto/auto parts, computers, and other issues when he was in Tokyo in late January and will follow up next week when he returns to Japan.

Despite initial gains under the 1995 automotive agreement, for example, progress has virtually stalled with respect to both improved access for vehicles and further deregulation of auto parts. We have recently submitted proposals to Japan to generate further progress under the agreement. An interagency team is in Tokyo this week discussing these proposals in detail.

We have achieved some progress under the 1995 Flat Glass agreement, particularly with respect to issues relating to standards for insulated glass and model construction projects using foreign glass. However, the key objective of the agreement, penetration of Japan's closed distribution system, has not been achieved. U.S. industry market share in Japan's $4.5 billion glass market is less than three percent, versus approximately 10 to 30 percent in other countries' markets. Moreover, we have lately observed that Japanese glass manufacturers have taken advantage of weakness in the financial structure of glass distributors to further their hold on the domestic glass market. We have urged our Japanese counterparts in the strongest terms to achieve concrete progress on this issue, particularly prior to the President's meeting with Prime Minister Obuchi this spring. A team of U.S. experts met with these Japanese counterparts last week to discuss in detail specific suggestions for improving access to this important market, and Ambassador Fisher will follow up on these proposals when he meets with the MITI Vice Minister next week in Tokyo.

Finally, we have serious concerns about implementation of our bilateral insurance agreement. Japan has not taken the necessary steps to substantially deregulate its primary insurance sector which comprises 95 percent of Japan's $335 billion insurance market. We also have concerns with respect to Japan's implementation of the third sector provisions of the agreement. We have stressed our concern on this issue and expect Japan to get back to the table with us quickly to resolve these outstanding issues.

*2. China*

In China, we are enforcing agreements on intellectual property, a Memorandum of Understanding on Market Access negotiated in 1992, and agreements on textiles. To secure implementation, we have not hesitated to use our trade laws. Let me discuss two instances in particular, intellectual property rights and textiles.

Since our IPR Agreements were concluded in 1995 and 1996, the scale of copyright piracy has been significantly reduced. In 1994, American copyright firms reported losses of over $2 billion from piracy of software, CDs and CD-ROMs, books, and audio and videocassettes in China. They faced further losses in third markets caused by exports from Chinese pirates. Our agreements in 1995 and 1996 committed China to pass and enforce copyright and patent laws and to shut down pirate operations. Follow-up work to ensure enforcement of these agreements has won significant results. China has closed over 64 CD and CD-ROM production lines, and destroyed their masters and molds; arrested more than 800 people for IPR piracy; seized more than fifteen million pirated CDs and CD-ROMs, including those illegally smuggled into China. Recently, a major U.S. software company won its first court case in China relating to end-user piracy of software. The Chinese court handed down stiff fines to two companies that illegally loaded software onto computer hard-drives.

Vigilance and sustained enforcement efforts are critical to addressing the many facets of the IPR problem in China, and U.S. IPR experts are monitoring, meeting and working with their counterparts on a continuing basis. The work is not at an end. Pirated CDs, CD-ROMs, and VCDs remain available in retail shops in China. Chinese Customs and local anti-piracy officials must be more vigilant in enforcement. Unauthorized use of software in Chinese government ministries is a problem. Ambassador Barshefsky, Secretary Daley and others have urged Chinese authorities to take effective measures to address this problem. We now understand that work is underway in China to address these concerns. Protection of well-known trademarks is inadequate in China, and trademark counterfeiting remains widespread. China is in the process of amending its copyright, trademark and patent laws. We will be working to ensure that China fully implements its obligations under TRIPs and our bilateral agreements. We are putting additional emphasis on trademark issues in our meetings.

With respect to textiles, we reached two agreements in 1994 and 1997 to fight illegal transshipments and secure market access for American firms. The 1994 agreement cut back textile quota growth rates, and the 1997 agreement further reduced the overall quota to respond to enforcement issues such as circumvention. Also in 1997, for the first time our bilateral agreement provides for market access for U.S. textiles and apparel into China's market. China has also agreed to ensure that non-tariff barriers do not impede the achievement of real and effective access for US textile and apparel exports into China's market. We continue to exercise our rights to ensure strict enforcement, including triple-charging against China's quotas.

## III. U.S. TRADE LAWS

Let me now turn to our domestic trade laws for which USTR has enforcement responsibility. These laws—including Section 301, "Special 301" for intellectual prop-

erty and Section 1377, as well as Super 301 and Title VII, which we will re-authorize by Executive Order—are of critical importance to ensure full implementation of both bilateral and multilateral agreements. They work in tandem with dispute settlement procedures, and also assist us in completing and enforcing agreements with trading partners that are not WTO members or in areas not covered by WTO rules.

Section 301 is an effective tool for securing compliance through the WTO dispute settlement system. Section 301 and the new WTO rules are stronger in combination than either would be alone. That is because the WTO provides us, for the first time, the automatic right to suspend trade benefits if a trading partner fails to implement a WTO panel report. This means we can use the leverage inherent in Section 301 in those situations across the full range of products and sectors covered by the WTO without the risk of running afoul of our own trade commitments or drawing counter-retaliation.

Recently, Ambassador Barshefsky announced the Administration's decision to strengthen its ability to use Section 301 authority by announcing the renewal by Executive Order of much of the substance of Super 301 authority, which expired in 1997. This enables USTR to identify the most significant unfair trade practices facing U.S. exports and focus resources on eliminating those practices. At the same time, she announced renewal by Executive Order of the substance of Title VII, enabling USTR to address discriminatory government procurement practices more effectively.

An excellent example of the strategic use of our trade laws in conjunction with WTO dispute settlement and technical assistance is in the area of intellectual property. Through the Special 301 process, we systematically monitor implementation of U.S. rights under the WTO and bilateral intellectual property rights agreements. We have brought a number of WTO cases based on practices identified in this annual review, thereby reinforcing the message to our trading partners that we will aggressively enforce intellectual property obligations using all of the tools at our disposal.

Apart from identifying potential dispute settlement cases, Special 301 itself continues to be an effective tool for enforcing intellectual property obligations. Every year, USTR identifies countries that deny adequate and effective protection of U.S. copyrights, patents and trademarks, and opens bilateral negotiations to ensure passage and enforcement of strong intellectual property laws. Recent action under Special 301 has resulted in:

- Ensuring passage and enforcement of new copyright and trademark laws in Paraguay, culminating in the signature of a Memorandum of Understanding on intellectual property on November 17, 1998;
- Continued monitoring of China under Section 306 to ensure adherence to our intellectual property agreements;
- Dramatically improving intellectual property protection in Brazil;
- Strengthening Bulgaria's enforcement of laws against piracy of CDs and CD-ROMs. Previously, Bulgaria had been among the largest exporters of pirate products in Europe.

Most recently, Ambassador Barshefsky has announced a worldwide initiative to ensure full implementation of the WTO intellectual property commitments (all developing country members of the WTO are required to pass and enforce modern intellectual property laws by the end of this year), improve worldwide efforts to fight piracy of newly developed optical media technologies, and combat end-user piracy of software.

## IV. NORTH AMERICAN FREE TRADE AGREEMENT

Finally, let me address the North American Free Trade Agreement. This agreement governs the majority of our trade with our two largest export markets, and apart from the WTO is our only major trade agreement with a binding dispute settlement mechanism. On both counts, ensuring full implementation of this agreement is very important to us.

Since NAFTA entered into force on January 1, 1994, trade with Mexico and Canada has grown dramatically. Through December, 1998, our NAFTA exports are up 90%, compared with 47% growth for the entire world. Canada is our largest trading partner and Mexico surpassed Japan in September to become our second-largest trading partner. Our trade increases with Mexico have helped to offset the negative effect on our exports of the Asia Crisis, where U.S. exports dropped 14% last year.

The government-to-government dispute settlement provisions of the NAFTA are vitally important to ensure that we receive the full benefits to which our partners committed. To date, we have been able to address most NAFTA-related disputes through consultations, without resort to NAFTA arbitration panel procedures. Over

the five-year history of the agreement, fewer than four matters per year have been referred to government-to-government consultations under NAFTA Chapter 20, and a total of only two matters have been submitted to Chapter 20 arbitration panels.

This infrequent use of panel procedures reflects the commitment of the three NAFTA governments to reach agreement on areas of dispute, and the strength of the NAFTA's institutions. These include working groups on each of NAFTA's substantive areas, frequent discussions among NAFTA coordinators, and meetings of the NAFTA Free Trade Commission at both the Deputy and Ministerial levels. When issues have been referred to NAFTA consultations, the consultations and subsequent meetings of the Free Trade Commission have been able to focus the issues and draw political-level attention where needed, often resulting in a settlement without resort to arbitration.

Furthermore, we have had significant success in advancing beyond the obligations on the books. For example, on two occasions, all three NAFTA members have agreed to implement tariff phase-outs ahead of schedule. Most recently, in 1998 we were able to eliminate tariffs on approximately $1 billion worth of trade ahead of schedule. We are also using NAFTA's trilateral work program, which includes over 25 committees and working groups, to avoid disputes, improve oversight and find new areas of mutual benefit.

We do, however, have several important issues with Mexico and Canada that must be resolved. These include telecommunications and corn syrup in Mexico, and magazines in Canada. At the same time, we are working on a number of additional market access concerns outside the context of NAFTA. For example, we took an important step to win fairness in agricultural trade last December by concluding a market access package opening opportunities in Canada for American grain farmers, cattle ranchers and other agricultural producers.

## CONCLUSION

In summary, Mr. Chairman, the last few years have witnessed both a large expansion of our network of bilateral and multilateral agreements, and a strategic effort to ensure full enforcement of these agreements. We have devoted more resources to enforcement as the need has grown, and have effectively used the authority Congress has given us to concentrate on the trading partners and sectors of most importance to the United States. And our work has paid off in rising exports and improving job opportunities in the United States, and the advance of the rule of law abroad.

This success, of course, has been the result of a strong working partnership between the Executive Branch and Congress. Your decision to call this hearing is a sign of the Committee's intention to continue this broad partnership and focus on enforcement of agreements in the future. We welcome that and thank you very much for the opportunity to participate.

Thank you, Mr. Chairman.

## RESPONSES TO QUESTIONS FROM SENATOR LOTT

*Question:* As part of its Uruguay Round commitments, the European Union agreed to make certain adjustments to its regime for the importation of long-grain rice. The so-called margin-of-preference (MOP) undertaking granted, among other things, certain tariff concessions to rice imported from the United States. Faced with a U.S. request for dispute settlement proceedings to address its failure to fully implement the MOP commitment, the EU adopted the Cumulative Recovery System (CRS), which expired at the end of 1998. Throughout these various adjustments to the underlying EU regime, U.S. exporters of long-grained rice have faced unfair and discriminatory treatment.

What steps is the Administration taking—in light of the expiration of the CRS and the EU's international commitments—to ensure that the EU adopts a regime for the importation of rice that is fair and equitable, and that will benefit all sectors of the U.S. rice industry, including producers of brown, brown parboiled, and rough rice?

*Answer:* In December 1998, we agreed with the EU on the establishment of a temporary import regime for rice in the EU following the expiration of the CRS on December 31. U.S. agreement on the terms of the interim EU regime was reached only after consultation with U.S. producers. This temporary regime is in place for a period not to exceed one year, and is designed to allow both sides to develop a replacement for the CRS. In January 1999, we initiated discussions with officials of the European Commission on a replacement regime. We also understand that the Commission is formalizing at this time a reform proposal for the EU's domestic support and import regimes for rice. Large intervention stocks are driving the reform effort,

and should the EU reduce the intervention price for rice, this will reduce in turn the amount of import tariffs that can be charged on imported rice under the U.S.-EU Grains Agreement. We intend to monitor the development of the EU reform effort and to continue bilateral discussions with Commission officials to ensure that the EU adopts a new import regime for rice that is in the best interests of the entire U.S. rice industry.

*Question:* U.S. producers have faced difficulty in the EU's administration of the CRS, and in particular in the prompt and complete payment of rebates to reimburse importers for excessive payment of duties. What steps is the Administration taking to ensure that the EU abides by its commitments under the CRS, including its agreement to make full repayment of excessive tariffs?

*Answer:* There have been continuing difficulties over the issue of refunding excessive import duties paid by exporters of U.S. rice to the EU. Last year, U.S. Government intervention was necessary to obtain rebates for the first six months of the period during which the CRS system was in operation. More recently, as problems arose respecting the payment of rebates for additional periods, we have made repeated contacts within the Commission and member states to resolve this difficulty. Most recently, U.S. Ambassador to the EU Weaver sent a letter to the Commission outlining the need for excess import duties to be rebated, and Ambassador Cejas in Belgium has written to the Belgian Finance Minister urging resolutions. This issue is essentially a dispute between Belgian customs officials, who have determined that rebates are in order, and the European Commission which has raised questions regarding the rebates. We will continue our efforts to resolve this issue.

## Responses to Questions from Senator Mack

*Question 1:* Many agricultural interests have argued against going forward on any broad-based trade agreement that excludes agriculture. These interests maintain that the only way the United States can get a fair agricultural agreement is by applying cross-sectoral leverage. Of particular concern is the so-called New Transatlantic Marketplace, an agreement with the EU who is reportedly attempting to exclude agriculture from the agreement. Given the EU's record on agriculture, does it make sense to give up cross-sectoral leverage and pursue agriculture agreements in isolation?

*Answer 1:* The United States is engaged in agricultural negotiations in several fora including:

- The World Trade Organization (WTO), in which this fall, the United States will host the Third Ministerial Conference in Seattle;
- The US-EU Transatlantic Economic Partnership (TEP), for which an action plan adopted last December includes agriculture;
- The Asia-Pacific Economic Cooperation (APEC) forum, in which oilseeds and processed foods are two of fifteen sectors proposed for trade liberalization; and,
- The Free Trade Area of the Americas (FTAA), in which agriculture is one of a range of sectors for which hemispheric free trade negotiations began in September 1998.

The first two undertakings involve the United States and Europe. Agriculture is explicitly a part of the TEP, in which we are engaged in bilateral talks with the EU to address a range of issues. Specifically, under the TEP, we are seeking to address one of the most critical bilateral agricultural issues—the EU approval process for biotechnology products. Under the TEP action plan, a biotechnology working group has been convened and will work to establish a more transparent and timely procedure for approval of these products. The TEP also calls for enhanced cooperation in the area of plant health and food safety.

Agriculture is also part of the mandated (built-in) agenda for the new WTO negotiations, which will also include services and potentially other sectors. President Clinton has called for a new WTO round of negotiations, and agriculture will be a core element of those negotiations that will be launched at the end of this year. Between now and the Seattle Ministerial meeting, the United States Government will continue to consult broadly with the Congress, private sector, and other interested parties and members of civil society on the issues to be addressed in the new round of trade negotiations.

*Question 2:* The Standards Code agreed to in the Uruguay Round sought to limit technical barriers on trade. Among other things, it provides a country's regulations:

—will not discriminate against domestic goods;

—be no more restrictive than necessary to meet a legitimate objective; and,

—shall use international standards where they exist.

However, exempt from the Standards Code are regulations relating to "process and production methods" (PPMs). The EU has argued that the hormone ban was

a legitimate PPM, and to be a GATT violation the US would have to prove it was the challenged party's intent to evade the Standards Code. Obviously, this standard would be nearly impossible to prove.

Compounding matters, nearly all standards can be drafted in terms of a PPM. Clearly, this has the potential to create major trade barriers for a variety of agricultural goods. How does USTR plan to address this issue?

*Answer 2:* Both the Tokyo Round Standards Code, and its successor WTO Agreement on Technical Barriers to Trade ("TBT Agreement") discipline the use of standards, technical regulations and conformity assessment procedures so as to prevent the creation of unnecessary obstacles to international trade. Non-discriminatory treatment of products with respect to the applicable technical requirements is a fundamental obligation, as noted in the question above. Governments and private bodies are also encouraged to base their technical requirements on international standards when they exist and are appropriate for the legitimate domestic objective (e.g., protection of human health, safety, protection of the environment).

The coverage of PPMs under international trade rules became a prominent issue during the U.S. dispute with the EC over its hormone ban over ten years ago. In response to positions taken by the EC, the United States sought and obtained explicit coverage of PPMs in the Uruguay Round negotiations. The United States was successful in reaching consensus to include explicit reference to PPMs in the definitions for "standard" and "technical regulation" in Annex 1 of the TBT Agreement. The explicit coverage of such measures under the TBT Agreement confirms our right to pursue perceived technical barriers to trade arising from their development, adoption and/or application. We will continue to monitor the practices of foreign countries with respect to the technical requirements imposed on U.S. exports, including PPMs, and pursue the resolution of any technical barriers to trade.

Furthermore, the WTO Agreement now also includes the Agreement on the Application of Sanitary and Phytosanitary Measures. Sanitary and phytosanitary (SPS) measures are measures to protect human, animal or plant life or health from certain specified types of risk. Under the WTO, SPS measures are covered by the SPS Agreement, not the TBT Agreement. The hormones dispute in the WTO was decided on the basis of this agreement, which similarly does not exempt PPMs.

*Question 3:* In a related concern, the Uruguay Round implement Sanitary and Phytosanitary Standards (SPS). SPS measures are applied only to the extent necessary to protect human, animal or plant health, are based on scientific principles and are not maintained against available scientific evidence. Moreover, these measures require nations to take into account international risk assessment techniques, and the objective of minimizing negative trade effects.

Like PPMs, it appears SPSs are prone to abuse as they are based on "scientific principles" which is loosely defined. As a consequence, many countries are able to restrict U.S. imports. Again, this is an area which disproportionately impacts agricultural goods. What, if any, plan does USTR have to address this problem?

*Answer 3:* The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) contains the following language: "Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal, or plant life or health, is based on scientific principles, and is not maintained without sufficient scientific evidence . . . (Article 2.2). The Senator has noted that the term "scientific principles" is not defined in the SPS Agreement and expresses concern that as a consequence countries can restrict U.S. imports based on their own construction of that and other terms in the Agreement.

In fact, prior to the SPS Agreement U.S. agricultural exports confronted a broad array of trade impediments which were often cloaked as health or safety measures. The SPS Agreement has not prevented countries from attempts to continue those practices, but it has provided a tool for the United States to confront those practices and eliminate them when they are not based on science. In two separate actions, those involving the EC ban on imports of meat from livestock treated with hormones and Japan's varietal testing regime, the United States has successfully challenged measures which were not based on either scientific principles or scientific evidence. In the third case under the SPS Agreement, that involving Australia's ban on fresh, chilled salmon, the United States will benefit as a result of the challenge mounted by Canada. In each of these cases, the WTO panel and Appellate Body found that the countries maintaining the measure had not performed a risk assessment or provided sufficient scientific evidence to support its measure. Thus, the lack of a specific definition for certain terms in the SPS Agreement has not impeded the ability of the United States to enforce its rights under the WTO. Moreover, the SPS Agreement has provided precisely the mechanism that was previously needed to contest trade barriers masquerading as health measures. While WTO dispute settlement procedures have provided an avenue to challenge measures that are not science

based, the existence of the obligations established in the SPS Agreement has enabled the United States to obtain the modification or removal of other measures without going through the WTO litigation process.

Secondly, the United States is working with other countries in several fora to develop interpretative guidelines that will enhance the SPS Agreement, without altering the Agreement's text. For example, USTR, with the support of other agencies, is working within the WTO Committee on the Application of Sanitary and Phytosanitary Measures to build consensus on interpretation and implementation of the SPS Agreement. During the last year, the Committee has been overseeing the triennial review of the Agreement. Additionally, the United States is actively engaged in international standard setting organizations, such as the Codex Alimentarius, the International Plant Protection Convention, and the International Organization for Epizootics, which play a significant role in establishing standards, guidelines, and recommendations relating to sanitary and phytosanitary matters. Each of these activities is advancing the principles of science as the basis for the establishment of sanitary and phytosanitary measures.

## Responses to Questions From Senator Frank Murkowski

*Question:* Last July, USTR publically stated that Japan that failed to completely implement its insurance obligations with the United States. Last Monday Ambassador Barshefsky made the following statement regarding Japan's insurance obligations:

> "The entry into force of the WTO (Financial Services) agreement establishes powerful new disciplines to ensure that Japan fulfills its obligations in this critical sector. We will not hesitate to exercise our bilateral and now, new multilateral rights to ensure US insurance providers receive the full market access benefits they are entitled to in Japan."

Specifically, how does the administration intend to ensure that "US insurance providers receive the full market access benefits they are entitled to in Japan?

How will USTR employ our bilateral and multilateral rights to ensure Japanese compliance?

*Answer:* "Ms Esserman is recused from addressing the Japan Insurance matter due to her spouse's relationship to one of the affected American insurers." The following is a response to your question from USTR.

**USTR's Response:** The U.S.-Japan Insurance Agreement is designed to increase market access for U.S. firms by addressing a number of different aspects of the Japanese insurance market. Japan has made some progress in opening and deregulating its insurance market. For example, in September 1997 the Ministry of Finance granted the first ever license for direct marketing of risk-differentiated automobile insurance to a U.S. firm. Nevertheless, the Administration is seriously concerned about Japan's unwillingness to fully implement all of the specific deregulation actions called for under our bilateral insurance agreement.

We have conveyed to Japan our disappointment with its unwillingness to open its insurance market to genuine competition. We would urge Japan to take all necessary actions to ensure that the provisions of the Insurance Agreement are fully implemented.

A USTR-led an interagency team met with Japanese government representatives on March 4 in Tokyo to discuss preparation for the next round of consultations under the bilateral U.S.-Japan insurance agreements. Both governments agreed to hold consultations in mid-April. The venue and exact dates of these working level talks will be decided through diplomatic channels. Both governments agreed to address a wide range of issues and concerns related to primary sector deregulation, as well as the activities of large Japanese insurers and their subsidiaries in the third sector. The Japanese side was represented by officials from the Ministry of Foreign Affairs, Ministry of Finance, and the Financial Supervisory Agency. We have requested that, in addition to these three agencies, the Japan Fair Trade Commission also attend the upcoming consultations. We are working closely with other agencies and with U.S. industry as we seek to resolve these important issues.

The Administration is prepared to utilize all of the tools at our disposal to ensure the full benefits to U.S. industry from our bilateral Insurance Agreement. With the entry into force of the WTO Financial Services Agreement on March 1, the United States now enjoys multilateral rights of enforcement under the WTO Dispute Settlement rules with respect to measures Japan has committed to take to deregulate and open its insurance market. Of course, we continue to retain our rights under U.S. trade law to enforce our trade agreements.

*Question:* USTR has suggested allowing amicus briefs from outside interests in WTO dispute settlement cases. Is there any concern that non-trade related groups,

such as environmental groups, might use this tool to slow up case settlements? If not, why not?

*Answer:* In his speech to the WTO Ministerial Meeting in May 1998, President Clinton proposed that the WTO provide the opportunity in each trade dispute for stakeholders to convey their views, such as the ability to file amicus briefs to help inform panels in their deliberations. In its decision on the U.S. "shrimp-turtle" law, the WTO Appellate Body ruled that the WTO's dispute rules do not now prevent a panel from receiving such submissions. The President's speech also included proposals to open all WTO panel and appellate hearings to observers from the public, and to make all briefs by the parties public. These proposals were made in order to strengthen public understanding of the WTO processes.

The Administration has always pushed for expeditious dispute settlement in the WTO, and for prompt compliance with the results of dispute settlement. We do not believe that receipt of amicus submissions will slow dispute settlement in the WTO. Judges in the United States have devised rules on amicus submissions which are completely compatible with speedy trials and an efficient judicial system. The WTO is certainly capable of establishing rules for amicus submissions that will provide stakeholders the opportunity to be heard, while preserving the rights of the parties to expeditious justice.

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## PREPARED STATEMENT OF HON. ORRIN G. HATCH

Mr. Chairman, once again I commend your initiative in raising public awareness of the seemingly dichotomous character of trade. Consumers love the low prices that derive from cheap imports; but these same consumers will not tolerate imports that undermine their economic well-being, which is to say jobs.

Congress deals with these problems in two basic, legislative ways. We enact domestic trade laws that challenge unfair trade practices. And, we have adopted an interesting, if not uniquely American corollary to the theory of international trade: we have created a trade adjustment assistance program that is supposed to provide compensation to persons who lose from trade (those who lose jobs) from persons who benefit from trade. The beneficiaries are, of course, represented by the taxpayers, which is the real source of compensation. Just for the record, I'll mention but take a pass on a conceptual pitfall in this corollary: the losers also pay taxes, and, therefore, are also categorized as beneficiaries! But this is not the only social program in America that has serious, some would say axiomatic anomalies.

Let me return to the first method of dealing with unfair trade. Our domestic trade laws seem to have an imbalance of attention. And understandably so, dumped products, unfairly marked prices that benefit from foreign government subsidies, and temporary safeguards against ruinous foreign imports are issues that tend to have a direct economic impact here at home. A much broader segment of the American population is more immediately affected. Our domestic trade laws, like those of other countries, are less likely to be the subject of WTO and other international-level. controversies, with the obvious exception of the continuing attacks on US anti-dumping laws. We often make unusual efforts in our trade negotiations to agree to what each country signatory to a trade convention can do to ensure sovereign control over its own markets. There are cultural concessions, and other exceptions, many made just to get the treaty done with.

Much more controversial, and certainly more evasive of easy actions and remedies, is enforcement of the *changes to domestic laws and regulations* that countries agree to *implement* under the provisions of an international treaty or convention, like the GATT Uruguay Round. In fact, Mr. Chairman, this is the very problem this hearing will address today.

For those of us who worry about such things, we see adversity on both sides of the issue:

- Our steel, apparel and textile sectors face heavy pressure from import prices deflated by foreign economic crises. In my state of Utah, Geneva Steel, the largest steel manufacturer West of the Mississippi, has just slipped into Chapter I I as a result of steel imports—and I regrettably add, Mr. Chairman, the administration's steel rescue plan is much too little and certainly much too late. From my perspective, our anti-dumping and safeguard laws are far too weak!
- And the problem is no less severe with regard to the enforcement of existing trade agreements. Our medical devices, other health and medical products, and intellectual property products are routinely shut out of markets, or viciously pirated in many.

We tend to be less successful in dealing with foreign market access issues, and for many reasons. Overseas problems are often beyond immediate resolution. High income growth in the US magnetizes imports while foreign economic crises accelerate them toward our shores, all of which is helped along by the appreciation of the US dollar in both real and nominal terms. In addition, we are dealing with sovereign entities that, like the French, will wrap agricultural subsidies in a cultural legacy that has always sustained rural life; or the early Japanese defense of keiretsu practices. Despite years of negotiations on both of these matters, little resolution is in sight: ask US beef, poultry and pork exporters, or US semiconductor and medical device manufacturers, or retailers.

Today's panel knows precisely what I'm talking about. They are, all of them, either current or former trade negotiators, or trade association principals, like Chuck Lambert of the National Cattlemen's Beef Association—now here's someone we need to listen to. In my state of Utah, cattle ranching is just as much as heritage industry as farming in France. However, we have no cattle subsidies at a time from the EU's Central Agricultural Plan seems inclined to adopt the French point of view on them. Our panel will have a tough job. Congress and its constituents are simply tired of talking. As the world's largest market, we have strength in our ability to employ sanctions that will make a difference, and buttress the credibility of our trade negotiators. I sense, Mr. Chairman, that we're getting close that point-and I am, and have always been, a free-but-fair-trade proponent; I am definitely not a protectionist.

I appreciate the Chair's consideration of my remarks and look forward to hearing from our witnesses.

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PREPARED STATEMENT OF CHARLES D. "CHUCK" LAMBERT, PH.D.

Thank you Chairman Roth and the Committee for holding hearings regarding issues to be addressed in the 1999 round of multinational negotiations on agricultural trade scheduled in the World Trade Organization (WTO). NCBA commends your continuing efforts to improve the export outlook for U.S. agricultural products. I am Chuck Lambert, Chief Economist for the National Cattlemen's Beef Association.

*Importance of Trade:* Expanding access to international markets is critical to the economic growth of U.S. agriculture. For the beef industry alone, 1997 beef exports accounted for approximately 8 percent of total U.S. production and 12 percent of beef's total wholesale value. Through November 1998, exports of U.S. beef and beef variety meats had increased 4.7 percent in tonnage, but declined 6.1 percent in value.

The aggressive pursuit of export marketing opportunities was one of the critical underlying strategies to ensure that replacing traditional farm programs with the more market oriented "Freedom to Farm" policy would be successful. As Secretary Glickman has been quoted as saying, "for American agriculture, it is export or die." America's ranchers and packers are so productive that closing our borders is no longer an option—we must have access to world markets.

Only 4 percent of the world's population live in the United States. Population demographics suggest that America in general, and agriculture specifically, need to aggressively seize opportunities to market products in countries with young, fast-growing populations that have increasing disposable incomes. A recent independent analysis of potential export markets found that $10 trillion will be added to world Gross Domestic Product during the next decade. Even with the current financial crisis, 48 percent of that growth is projected to occur in Asia; 23 percent in Europe and 19 percent in the U.S.

Again, access to these emerging markets is vital. We must be working ahead of the curve to penetrate these regions of economic growth if there is to be any hope of maintaining, let alone expanding, demand for U.S. agricultural products.

*The EU Beef Case:* The EU has banned U.S. beef since 1989. This thinly disguised trade barrier was implemented in the name of consumer protection in spite of ample scientific evidence that production technologies in question were safe. When the ban was initiated, U.S. beef producers lost $100 million annually in beef trade to the EU. The value of that trade would now be hundreds of millions of dollars as can be seen from the percent of increase in U.S. beef exports to the rest of the world.

During the past decade, the EU has not been able to cite scientifically valid reasons for the ban. Scientific evidence clearly shows that growth promotants used by the U.S. beef industry are safe. Indeed, three of the hormones in question are essential for life and occur naturally in widely ranging amounts in all plants and animals. The other three compounds are synthetic alternatives that closely resemble

the three natural hormones. These synthetic compounds do not leave residues and it is impossible to differentiate between beef produced with and without their use.

The U.S. filed its formal complaint with the WTO in January 1996, claiming the beef ban was a non-tariff trade barrier. Argentina, Australia, and New Zealand joined the United States in the action. Canada filed a separate case, and the final report addressed issues raised in both (U.S. and Canadian) cases.

The EU filed appeal in September 1997 of the May 1997 WTO ruling that the EU ban was not based on sound science and therefore, not consistent with WTO obligations. On January 15, 1998 the WTO Appellate panel released its final ruling that the European Union (EU) ban on beef produced with growth promotants is a non-tariff trade barrier and does not comply with global trading rules. An arbitrator from the Word Trade Organization (WTO) upheld the previous rulings and gave the EU until May 13, 1999 to bring regulations into compliance with WTO guidelines. Under WTO procedures the EU must now modify its regulations by May 13, 1999 to comply with the ruling or the United States can retaliate.

The objective of U.S. the beef industry is to re-gain access to the European beef market, not retaliation. Retaliation or compensation will not benefit the beef industry, and should be viewed only as a means to an end—market access—not the primary objective. Unfortunately, the EU's track record indicates that it will only seriously consider resolving trade disputes if it is confronted with the reality that retaliation is inevitable. With this objective in mind, NCBA has urged the Administration to determine the amount that the U.S. could sell without the ban, to provide a clear and concise timeline for implementing retaliation, and to develop strategies for targeting retaliation to maximize the potential that the EU will comply.

The established timeline to plan for possible non-compliance by the EU calls for a public notice of the initial list of products for possible retaliation on March 15, 1999, with the public notice of the final list published April 30. Retaliation could begin as early as June 12 when authorized by the WTO Dispute Settlement Body, or on July 12, 1999 if the EU appeals the amount of retaliation.

For more than a decade, the U.S. beef industry has been unfairly shut out of the European market. Since 1988, the United States has shown extreme patience relative to efforts to remove this scientifically, economically, and legally indefensible barrier to U.S. beef. We have been shut out of the European Market even though U.S. beef has not caused a single case of "mad cow disease." Our patience is gone. U.S. cattle producers have won all rounds in the effort to require the European Union to comply with international trading rules and drop its ban on U.S. beef. We are anxious to work with the Committee, your counterparts in the House, as well as the Administration and Congressional leadership to assure the U.S.'s right to sell beef in Europe.

*Maintain Integrity of the WTO Dispute Settlement Mechanism:* The EU's commitment to the WTO is being tested by its reactions to recent WTO rulings that went against their position on the EU banana policy and the EU beef ban. In the EU beef case, the EU's response has been to announce intentions to initiate yet another risk assessment, despite the fact they have been conducting risk assessments for over five years without being able to show credible evidence of risk. This blatant stonewalling is unacceptable and requires for aggressive and decisive action to address their blatant disregard of the WTO trade rulings and policy, especially since the EU is quick to insist on compliance with WTO rulings when they fall in their favor.

Many U.S. cattlemen have a perception that the EU is undermining the current system and has perfected the stall and delay tactic with immunity. Our concern is the perception that the U.S. does not have the will to retaliate to ensure our right to sell in Europe—and Europe's right to buy our beef.

Cattlemen, as do most Americans, expect to experience the rewards of winning when they are declared the winners, just as the U.S. has complied when it has lost WTO cases. Many are asking why the U.S. continues to participate in a system that does not provide a clear and prompt resolution to trade disputes. This growing loss of confidence, increasing distrust and dissatisfaction has resulted in declining grassroots support for trade and trade negotiations in general.

The integrity and validity of the WTO as a dispute settlement body requires that WTO members promptly comply with recommendations and rulings of the dispute settlement process. The EU must bring its policies regarding beef hormones into compliance with science-based WTO guidelines by eliminating the ban.

If they do not, the full force of WTO's enforcement measures must be applied. NCBA urges continued, coordinated efforts and pressure from Congress and the Administration to assure that the EU lives up to its responsibilities. It is essential that the EU comply with this ruling in a timely fashion to ensure the integrity and credibility of the SPS Agreement and the WTO dispute settlement mechanism.

*Political Climate:* Despite the overwhelming evidence that the international market must be the focal point for market growth and economic vitality, there is a growing protectionist sentiment at the grassroots level. This sentiment is the result of increased questioning at state and local levels about the impacts of trade on individual agricultural producers and increased skepticism about the willingness of federal officials to aggressively negotiate agreements favoring U.S. interests.

In addition, there is a growing lack of confidence even among "free" traders that our trading partners will live up to their obligations under negotiated agreements. As evidence, I would offer the example of the EU's non-compliance with the hormone ban rulings. Simply put, U.S. producers are tired of facing their international competition on a persistently tilted playing field.

There also is a somewhat accurate perception that U.S. negotiators and regulatory agencies are more focused on developing protocols and modifying regulations to address concerns of countries seeking access to U.S. markets rather than on identifying and addressing regulations in importing countries that limit access of U.S. products.

NCBA supports the WTO and free trade. Not in a starry-eyed, ideal-driven manner, but because cattlemen understand that our growth market is beyond U.S. borders. But we need enforceable global trading rules in place and in use that grant market access, settle disputes on the basis of science and reduce tariffs. Regulations of concern run the gamut of grading, labeling, animal health, pharmaceutical and other technology applications, inspection and a broad range of sanitary and phytosanitary measures (SPS issues). Developing interagency agreement and focus is important for maintaining public support for trade agreements, successfully negotiating increased access to international markets, and ensuring interests of U.S. producers are not compromised.

USDA asserts there are not enough resources available to form a team dedicated to negotiating veterinary agreements to facilitate U.S. participation in emerging markets. This needs to be addressed. The Canadian government established just such a team nearly two years ago. As a result, Canada has had a considerable head start in developing a presence and customer loyalty in emerging international markets including China and Chile. The clock is ticking and the U.S. still is unable to pursue these same markets.

It is clear that Congress and the Administration do not have a unified strategy to systematically attack the problems of U.S. agriculture as part of the upcoming multi-lateral trade negotiations. The inability to secure approval of fast-track negotiating authority in the 105th Congress is evidence of the lack of unified strategy. Agricultural producers are justifiably concerned about sending a team to the negotiating table that has a more consistent track record of in-fighting among Congressional and Administration ranks than engaging the opposition. NCBA urges Congress to coordinate with USDA to assure that adequate resources are allocated so U.S. negotiators can credibly participate in both the multilateral and bilateral negotiations necessary to address America's trade concerns. In addition, critical homework must be completed to provide strong, consistent and solid bargaining positions and messages throughout the negotiations.

*Objectives for 1999 WTO Negotiations:*

NCBA and the U.S. beef industry believe that the overall policy objective for U.S. trade is to maintain and increase access to existing markets for U.S. beef, beef by-products, cattle, semen and embryos, and to gain access in emerging markets for these products. NCBA and other meat industry groups support the following specific points to be addressed during the 1999 round of WTO negotiations:

- Prevent the EU from rolling back progress made during the previous GATT agreement. Enforcement of the strict science-based trading rules established in the Uruguay Round Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement) is critical to continued expansion of U.S. beef exports.
- Ensure that science remains the only basis for resolving SPS issues. To ensure this outcome, the red meat industry does not support opening the SPS Agreement for further negotiation in the next trade round.
- Protect scientifically approved technologies, such as Genetically Modified Organisms (GMOs) and beef growth promotants that enhance production efficiency or food safety by establishing transparent, science-based rules.
- Negotiate elimination of State Trading Entities (STEs) and increased access to wholesale and retail trade in importing countries (especially relevant in China, Australia and Canada).
- Negotiate reduction and eventual elimination of production-distorting price supports and export subsidy programs. In addition, stricter disciplines and tougher enforcement mechanisms should be established to prevent the emergence of new schemes to circumvent WTO rules.

- Negotiate continued reduction of tariffs and expansion of Tariff Rate Quotas (TRQs). Existing duties in key export markets such as Japan and Korea must be reduced significantly. Establish a target date for reducing all tariffs to zero. Until this elimination of duties can be accomplished, expand existing tariff rate quotas to permit continued growth in exports. Country-specific targets must be established for these broad objectives and NCBA is currently coordinating beef industry efforts to establish specific targets and guidelines.

The U.S. must hold its trading partners to commitments agreed to in previous trade agreements or risk losing public support for additional trade negotiation authority. NCBA appreciates the initiatives that have been undertaken to gain access to international markets and to resolve lingering issues that restrict the ability of the U.S. beef industry to offer its products to international consumers. Without fast track authority, the U.S. will lose the initiative in gaining access to emerging markets and enforcing existing trade agreements.

The National Cattlemen's Beef Association is prepared to participate in the process of evaluating critical trade issues within the beef industry. NCBA looks forward to providing additional input as the U.S. addresses other trade issues, including accession of China to the WTO, resolving a host of other access issues with the European Union and passing regulatory authority legislation to provide continuing authority for negotiating additional trade agreements. Thank you for the opportunity to present this information.

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## PREPARED STATEMENT OF JEFF LANG

My assignment today is to provide a personal point of view on the issues that confront the United States today in the area of monitoring and enforcement of international trade agreements. I do not appear today on behalf of or represent the views of any client of mine or of the law firm of which I am a member, but obviously our clients have many interests in these matters. I will simply try to put those interests aside for the purpose of this hearing and testify on the basis of my training and experience.

### SECTION 301

Trade agreement enforcement was the last issue addressed by the conferees on the Omnibus Trade Act of 1988. That statute, which is still the law, provides that where a domestic industry or the Congress complains, or the President acts on his own motion, and he finds that a foreign government has acted contrary to its obligations under a trade agreement, then the President must retaliate. The statutory exceptions to this basic policy are few and narrow.

The world, and the United States' position in the world, has changed in significant ways over the eleven years since the Congress put this policy into effect, but in my opinion, it is still the right policy. The people of the United States cannot be expected to support a trade policy based upon international agreements if they have reason to believe that their government lacks the means or the political will to assure that our trading partners are persuaded to fulfill their obligations under those trade agreements.

As the largest importing nation in the world, the United States has the means to retaliate, if need be. And Section 301 gives it the political will.

Having said this, the practicalities of assuring compliance with trade agreements raises some complex issues, which I have grouped in six categories. These categories are as follows:

(1) The legality in international law of our domestic law.

(2) The problem of a lack of support for addressing important trade agreement enforcement issues.

(3) Measures other than legal proceedings (such as dispute settlement and Section 301) for assuring compliance with trade agreements, with special attention to the issues arising from the increasing importance of developing country adherence to obligations.

(4) The special problems of weak domestic legal systems.

(5) Problems that arise with a few major trading partners, namely Japan and the EU.

(6) U.S. compliance with trade agreements.

I don't propose a detailed legal brief on this matter, but rather a practical analysis of the issue. Essentially, while this issue is occasionally raised, so far it has not become a practical problem.

United States law demonstrates on its face a preference for using international agreements, especially the WTO centralized dispute settlement system, to resolve U.S. complaints about foreign performance under trade agreements. For example, Section 301 action is not mandatory if a WTO panel fails to support the U.S. position in dispute settlement. In fact, Section 301 has served primarily as a means of identifying trade agreement enforcement issues and forcing the Executive Branch to develop strategies for addressing these problems in virtually all cases since 1988, rather than as a compulsion to retaliate. In most cases, the best strategy has been to use the dispute settlement mechanism of the trade agreement itself to enforce the agreement.

The reason is that, for the most part, trade agreements represent an agreed balancing of the trading interests of the United States and the other countries that are party to them. The purpose of the threat of retaliation is to assure that governments adhere to these agreed-to terms, nothing more. If using the dispute settlement provisions of trade agreements is the most likely means to achieve that end, then it is quite natural for U.S. law to prefer it.

It is also true that these trade agreements have become more effective at dispute resolution than in the past. Mostly, this is because the WTO system explicitly allows for retaliation without getting the permission of the offending party, whereas the old GATT never did. While it is still early days for the new centralized dispute settlement system of the WTO, it appears to be better at inducing governments to adhere to their obligations than its predecessor under the General Agreement on Tariffs and Trade. The most important measure of this impact is the hardest to quantify; namely, the number of cases that are threatened but not brought, and those that are settled favorably. This number for the United States, which is the most frequent complainant in the WTO, is fairly large.

Finally, trade agreements today address more of the issues that distort trade than in the past. Issues such as intellectual property enforcement and the objective use of health regulations are examples. There are still many new issues to address, and many countries not fully committed to the existing disciplines, but the trading system is better able to address trade distortions than in the past.

Thus, the needs of U.S. trade agreement enforcement law have so far been addressed within the confines of the international legal system. I suppose it is conceivable that circumstances may arise at some point where the United States would find it necessary to retaliate without using the WTO or some other applicable dispute settlement system. It is also conceivable, but not necessarily true, that to do so would be inconsistent with these agreements. These issues have never arisen. Such a situation is most likely to occur when trade agreements fail to address some aspect of the trade between our countries that undermines our confidence the trade agreement will work as expected, or the dispute settlement system itself is frustrated. Under those circumstances, it is appropriate that the President be in a position to weigh the harm of the practice concerned against the value to the United States of not violating the trade agreement dispute settlement provisions. This possibility makes it necessary that U.S. law allow the Executive Branch to retaliate, even if to do so may be inconsistent with our dispute settlement obligations. Trade agreements are and should be a constraint, but they are not a straitjacket.

## PROBLEMS NOT ADDRESSED

Our domestic law is designed to assure that the Executive Branch is in a position to act on trade agreement enforcement compliance either at the instance of the private sector or on its own motion. This latter provision is important, because it may be beyond the means of the private sector to pursue remedies that are in its own interest, and it may even be important to act on a compliance issue that no industry, labor union, or other private person in the U.S. is prepared to raise. For example, when the EU's Uruguay Round obligations in agricultural matters first came into force in July of 1995, the European Commission put into effect a so-called reference price system that was contrary to their obligations. I was involved in that matter as a Administration official at the time, and while we consulted with the private sector, we proceeded in WTO dispute settlement against that problem without requiring the private sector first to proceed under Section 301. A similar situation is the U.S. proceeding against WTO-inconsistent quotas on imports in India, a case of enormous potential impact on U.S/ trade. A legitimate concern in this regard is to identify what critical cases are not being brought. I don't have all the information

necessary to such a decision, but what comes to mind is the WTO-consistency of the European Union association agreements. The association agreements are trade agreements between the EU and other countries that phase in reductions in certain trade barriers between them. The EU evidently takes the position that these agreements are consistent with Article 24 of the WTO/GATT 1994, even though the agreements do not cover substantial areas of trade. This is an issue of some concern. They deny the United States most favored nation treatment. As such agreements spread to the Middle East, South Africa, MERCOSUR, and Mexico, they probably should be addressed by the United States, even if no company complains. In fact, the consultative mechanism with Poland is a move in this direction. While trade agreement enforcement resources are thin, there are a few cases of this broad nature that should be considered.

MONITORING AND PRE-ENFORCEMENT ACTIONS

I have focused so far on disputes and retaliation because these issues are highly visible and our trading partners are sensitive about them. However, if we look at the matter of assuring compliance with trade agreements from a practical perspective, the national interest suggests that at least as much effort should be devoted to monitoring and other actions, which might be called "pre-enforcement" actions. The reason for this is simple efficiency.

The number of countries active in trade today is significantly larger than ever. While other major industrialized countries have global interests, the United States is still the only country with sufficient domestic support to act on our global interests. We therefore have a larger enforcement job than in the past, but no real increase in assistance from other countries in accomplishing this task.

If we wait until all the compliance problems in the world harden into dispute settlement proceedings, the cost of our trade programs will increase unacceptably. Dispute settlement, not unlike domestic court litigation, is expensive. The Congress has provided extremely limited resources for handling trade matters in the federal government, compared to the resources it provides for other international functions. This is good. Lean budgets force agencies to choose priorities. However, lean budgets should also encourage us to get compliance wholesale, rather than wait to solve the problems retail, if we can.

For most of the last 65 years, trade agreement compliance has largely been assumed. With 10,000 lines in each country's tariff schedule, and obligations on many or most of those lines, failure or refusal to implement a change in rates of duty was rare when there were only 25 or so active players in the system. Today, with nearly 100 active players, who have obligations in tariffs, customs valuation, licensing, preshipment inspection, intellectual property, financial services, and sanitary and phytosanitary matters, we cannot assume compliance. In many cases, fulfilling their trade agreement obligations is simply beyond the current capacities of many WTO member governments, or would be without assistance.

For example, next year, intellectual property obligations arise for a large number of developing countries. They can't live up to those obligations if they don't have the machinery to enforce patents. In the next five years or so, 70 countries, including many developing countries, have obligations to open their markets to telecommunications competition. To have competition in telecommunications is not a matter of deregulation; it requires re-regulation, which is something completely different. Many developing and some developed countries don't have this capacity.

The U.S. Government does have resources for this purpose. In many cases, the Executive Branch sends its experts abroad to teach these countries how to implement obligations they have undertaken. Dollar-for-dollar this activity is highly effective, because it is likely to result in compliance across a broad spectrum of obligations. For example, the U.S. Customs Service has sent outstanding public servants to the far corners of the world to train their counterparts in abstruse but essential subjects, such as customs valuation. As more countries become more active in trade, the type of activity should increase, and the United States should seek cooperation in it from our trading partners.

The other non-traditional aspect of compliance today arises from the institutional benefits of the trading system, particularly of the WTO. There is a contrast here with the old GATT. The GATT was a substantive trade agreement, but it was only applied provisionally. There was slim if any legal basis for an organization called the GATT. As a result, to decide something, we used to have to create a separate organization to make that decision. In contrast, the World Trade Organization has a clear organizational mandate, with councils and committees that have a mandate to act.

There is a tendency to think of these councils and committees as merely a matter of form, and it is true they can really only act by consensus. However, the Congress should not underestimate the possibilities of international consensus. As an employee of the Senate some years ago, I learned how much is regularly accomplished here by unanimous consent. I have tried to apply some of those same skills in working in the new WTO. We still have a lot to learn in this regard, but I have been involved in situations where compliance with trade agreement obligations was achieved through developing an apparent consensus in a WTO committee that the country should alter its practice.

There is one WTO device of this nature about which I am somewhat skeptical, however. This is the Trade Policy Review Mechanism, or TPRM. The TPRM was developed to apply peer pressure to a country. However, because it is a one-time review of everything a country does that affects its trading partners' interests, the process now absorbs resources without delivering enough benefit. I think it can be abolished and the committee process be used to serve the same function more efficiently.

The staff has also asked me to speak to monitoring trade agreements. Monitoring performance under 20,000 pages of treaty text in 150 countries is a daunting task. The Executive Branch depends to a great extent on complaints from American business, but the Congress needs to be careful not to put too much weight on the complaint system. For one thing, American companies may not complain about practices that are questionable under our trade agreements because they have broader interests to defend. More importantly, many medium-sized American businesses can't maintain an overseas presence sufficient to advise them on practices they should bring to the attention of the U.S. Government. This is where our outstanding network of financial, customs and agricultural attaches and the foreign commercial service have an important role to play. They are integral part of the monitoring process, and I would suggest that they and economic ministers from US embassies in each major region of the world be funded to meet with senior USTR people on a regular basis to discuss and exchange notes on this subject. The cost will be manageable compared to the benefits to our workers and businesses.

## WEAK LEGAL SYSTEMS

There are a number of unspoken assumptions in the trading system, one of which is that a country is actually able to implement obligations it undertakes. With the fall of the Soviet Union and the growth of China, our negotiators find themselves discussing trade agreement obligations with officials of governments who are working to develop legal systems that have authority and respect assumed.

Ten years ago last month, I provided staff assistance to the Chairman of this committee on a visit to Moscow. It was a time of change. Outside one of the many meetings on that visit, a Russian official asked me quite sincerely whether a legal system was necessary to a market economy. Since then, our negotiators, cabinet officers, private groups (such as the bar associations), and political officials including the Vice President, have worked closely with many officials in many countries on this problem. I can tell you from personal experience that a great deal of learning has occurred, but there are still questions about whether these legal systems are capable of delivering on commitments made as a condition of joining the WTO.

One of the ways the Congress can help on this problem is, I believe, by travel to and meeting with your parliamentary counterparts in these countries. They have great respect for the US Congress and the role of law in American society. They will be interested to hear your concerns. In the end, however, if we are not convinced that a country can administer its legal system in an objective and fair manner, we need either to refuse their entry into agreements with us or build in appropriate safeguards.

## JAPAN AND THE EU

There is usually a great deal of press attention extended to US disputes with Japan and the EU. It is perhaps dangerous to treat these disputes separately from other problems of no less importance, but there is a perception that the issues with these governments are persistent, so much so they could undermine support in this country for trade negotiations.

In terms of dispute settlement, Japan has actually been able to develop a domestic constituency for its own compliance with WTO dispute settlement decisions. This is admirable. However, Japan still presents some of the most vexing problems in trade. It is now widely recognized not just that the government of Japan has discouraged importing, but that this practice has reduced the ability of that government to adjust to changes in the international economic environment.

Many people in this country and on this committee know more about Japan than I, and I do not purport to have a solution to this problem. However, this is to a great extent a problem of reaching adequate agreements rather than enforcement I have often doubted that we would want to live by an agreement that would truly open Japan. Recently, however, we have seen a new class of agreements in the services sector that may move us forward.

Particular attention should be devoted to monitoring the re-regulation of the Japanese financial sector under the WTO financial services agreement and related bilateral agreements. As a member of the U.S. team that negotiated the Financial Services Agreement, I can tell you it was not easy for the government of Japan to undertake these obligations. I believe the reason was that the agreement required fundamental change, not just in this sector, but in the Japanese economy. If efficient non-Japanese banks and other financial intermediaries (such as insurance companies) can get access to the enormous savings of the Japanese people, those institutions will recycle those savings at much higher rates of return than the closed Japanese system currently does. This will affect corporate behavior in Japan. Those corporations will need low-cost, high-quality foreign components and services. I would therefore urge this Committee and the Banking committees to monitor closely the implementation of the Japanese government's obligations undertaken in the WTO financial services agreement. Based on a recent visit to Japan, I believe that change is under way and needs only to be reinforced.

By the way, the same could be true of the telecommunications sector, where the Japanese government undertook for the first time, so far as I can tell, obligations to re-regulate in a pro-competitive manner in the WTO Basic Telecommunications Agreement. It may be worth exploring whether pro-competitive regulation is a subject that we can address in future trade agreements, partly as a way of helping to assure that Japan takes up its share of the importing burden in the global system.

The European Union presents a completely different problem. The EU has a more balanced trade relationship with the United States than Japan, evidenced not just by the trade flows, but by investment flows. There is no fundamental trade agreement problem here, but there is a serious problem in compliance.

The United States has had many types of disputes with the EU and its Member States, but most of these have been resolved by some kind of settlement. The real problem in trade agreement compliance with the EU is in agriculture. This problem has nothing to do with the reform of the Common Agriculture Policy. It has to do with complying with existing trade agreement obligations of the EU. It has gotten to the point that this issue could also endanger American support for a new round. It is hard to see how it can be addressed short of the EU taking the same risks Japan and the United States have taken by bending to adverse WTO decisions.

## US COMPLIANCE

The United States has reason to be proud of its ability to comply with trade agreements. The Congress of the United States has chosen to bring US law into line with WTO decisions in particular. In trade, importing is a measure of power, and, by that measure, we are the most powerful country in the world. It is significant that such a powerful country chooses to abide by these decisions. However. I think there is one area Congress has an interest in examining further.

Under the WTO and most of our other trade agreements, countries are permitted a period of time to implement changes in domestic law to comply with WTO decisions, if and only if it announces it is prepared to comply. I think the United States should lead an effort in the new round to explore how to provide greater assurance that once a WTO member government announces the decision to comply, it can deliver on that announcement. We have little, if anything, to lose, since Congress has amassed such a good record. For example, our offer might be that the Congress would be willing to vote up or down on legislation to comply with a WTO decision, after close consultation with the Administration. It could be some other device. In exchange, we ought to seek commitment to an analogous device, particularly from the countries and regions that do not have pure parliamentary systems and therefore cannot give reasonable assurance they will comply, such as the EU.

## CONCLUSION

If it is in the national interest to enter into trade agreements, then it is worth doing the best we can to assure our trading partners live up to their obligations. As the only country today pursuing global trade interests, the United States has an enormous burden in this regard. A variety of approaches will be needed to get a satisfactory result In the years ahead.

## RESPONSES TO QUESTIONS FROM SENATOR ROTH

*Question 1:* You have been involved in various ways in the development of the current WTO dispute settlement system throughout your career, during your years with the Committee, as Deputy USTR, and as an attorney for a number of U.S. interests while in private practice. What is your assessment of how well the WTO dispute settlement system has been working for American interests? Has it been a notable improvement over the GATT?

*Answer:* With respect to the WTO dispute settlement system specifically, it has been a success from the perspective of the United States, up to this point. The United States is the most frequent complainant under the system; it wins the vast majority of these cases, in the sense of obtaining a favorable panel or Appellate Body ruling; and—most importantly—it is able to settle on favorable terms these, as well as most other cases before or shortly after complaints are filed. Moreover, the WTO system seems to allow the United States full latitude to defend those programs, policies and laws of the United States that are attacked in the system, although the United States has lost some of these cases.

The main strength of the system—which is mildly surprising—has been the quality of decisions. In this regard, many panels have generally done a workmanlike job, and the Appellate Body seems to have been able to correct or at least lessen the impact of unfortunate reasoning and results from some of the panels. Another strength of the WTO dispute settlement system is that time limits have, until recently, obviated the inordinate delays of the past. This compares favorably with the GATT System, where both the US government and other governments delayed decisions for years. The automatic authorization to retaliate has also been a strength to date, mainly because it was used effectively as a threat. This threat has so far both attracted more matters to the dispute settlement system and forced quicker and more favorable settlements at least from the US perspective as a complainant than the GATT system.

However, recent developments leave considerable doubt as to the viability of the new system. The EU decision to respond to the banana decision with measures that at least facially do not remove the offending conduct call into question whether the system actually delivers benefits. Effective implementation of decisions is essential. Losing the strength of effectiveness would also tend to cancel out the advantages of the new time limits, because of course it would mean disputes would continue essentially unresolved for an indefinite time.

*Question 2:* How would you suggest we improve upon the current model? What, in your view, are the two or three most important improvements we should make in the WTO dispute settlement process?

*Answer:* The weakness of the system is that it may lack sufficient support from major trading nations. US and Japanese implementation of decisions against them seems to have been fairly widely accepted, but EU implementation of decisions in respect of agriculture has raised questions among a number of countries. If these questions persist, countries will begin to use the EU's tactics against it and each other, and the process will, gradually or quickly, unravel. This problem has afflicted the predecessors of the WTO trade dispute settlement system, although none of them collapsed entirely.

The most important improvement that can be made in the system now is to attempt to address the details of how countries respond to decisions unfavorable to them, in order to assure the system is not frustrated.

*Question 3:* You have spent a great deal of time negotiating with the European Union, both in trying to open their markets and in trying to secure their compliance with agreements we had already reached. Is the EU institutionally incapable of complying with their commitments and, if so, is there any value in launching a new round of multilateral negotiations where EU commitments on agricultural will perhaps be the single most important U.S. objective in the negotiations?

*Answer:* The EU is institutionally incapable of complying with trade agreement obligations only when and if the Member States have failed to grant the European Commission the authority to order Member State regulatory and other authorities to come into compliance with their commitments. Even in this circumstance, Member States are usually co-obligees under GATT and WTO agreements, so the United States can and usually does name both the European Union and the offending Member State or States in WTO dispute settlement complaints,

It is another question whether institutions of the European Union are optimal in terms of achieving compliance with trade agreements. There are cases where Commissioners, the Commission, the Commission staff or all of them have deferred to the views of a Member State particularly concerned about a trade complaint, rather than to take an independent view of the matter that would conflict with the position

of the affected Member State. In these cases, there is a marked tendency to explore legal options that undermine trade agreements, such as inordinate delay, rather than negotiate compliance acceptable to the EU's trading partners. This has not been true in all cases—indeed, there are some remarkable cases of the Commission or its staff standing up to Member States. But the institutional arrangements certainly make this a continuing issue, especially in agricultural matters.

As to the impact of US-EU disputes in agricultural on a new round: There are actually two problems. There is the possibility that U.S. constituencies will not support a round Europe will not abide by. I have suggested some approaches to this problem in my answer to the previous question.

The deeper point is that the institutional concerns of your question also have an impact on the EU's ability to negotiate on behalf of the Member States. It is generally better for both the United States and its other trading partners if the Member States give the Commission the power to bind them in trade agreements. The alternative is the vague "mandate" system now used by the EU in most subjects. This system tends to make current European practice the EU's bottom line. This, in turn, makes moving toward real trade liberalization in Europe more difficult than it has to be.

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## PREPARED STATEMENT OF HON. DANIEL PATRICK MOYNIHAN

In the mid-1980s, the United States was very much frustrated by the old GATT rules that allowed countries that lost dispute settlement cases to "block" the adoption of panel reports. That meant that the losing country was under no obligation to eliminate the offending practice and the winning party—often the United States—had no legal rights to enforce compliance or seek other compensation.

The object of our ire at the time was the European Community, and the cases concerned the EC's agricultural trade policy—specifically its tariff preferences on citrus products (which the EC blocked in 1985), export subsidies on pasta (blocked in 1986), and production subsidies on canned fruit (blocked twice, in 1984 and 1985).

The WTO's new dispute settlement rules were meant to change all that. But here we are, with four years' experience under the new system, and we find ourselves in much the same place—frustrated by the Europeans' actions in agricultural trade disputes, this time on bananas and hormone-treated beef It seems that they have found a way arcund the new rules.

To be sure, the Europeans are not alone. The Canadians appear to be doing much the same thing—replacing clearly discriminatory measures directed at American split-run magazines with new, but equally discriminatory measures, directed at the very same periodicals. I would hope that Secretary Aaron and Ms. Esserman will be able to reassure us that the new rules will, in fact, prove to be better than the old.

We have now had five years' experience as well with the dispute settlement rules under the NAFTA. I would call your attention to a very curious article that appeared in The Times of January 28, 1999. It discusses a claim that a Canadian funeral home company has filed under the NAFTA investment dispute rules, claiming that a $500 million verdict against the Canadian company in a Mississippi court amounted to unfair treatment of a foreign investor. The Canadian company has claimed that the verdict was "infected by repeated appeals to the jury's anti-Canadian, racial and class biases." I doubt that it was much expected that the NAFTA rules could provide a basis for challenging court rulings. I look forward to our witnesses' assessments of where we are heading with this.

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## PREPARED STATEMENT OF HON. CONNIE MACK

Mr. Chairman, Senator Moynihan I would like to thank you for scheduling this important hearing. I am pleased that Ambassador David Aaron, Undersecretary of Commerce for International Trade and Ms. Susan Esserman, General Counsel for the United States Trade Representative are here with us today. I am aware that both have been very involved in matters of trade enforcement and compliance. I welcome you this morning and look forward to your hearing your testimony.

As you know, I am a strong proponent of open trade. Our silence on the issue of trade agreement compliance has, I think, contributed to a general public perception that American jobs and American workers have suffered due to trade agreements that have given an unfair advantage to foreign competitors.

Prior to the implementation of NAFTA, Florida's fruit and vegetable growers sought and received assurances from the Administration that they would be given

relief from any substantial harm caused by imports. In response, the Administration negotiated a side agreement to the NAFTA which included the following provisions:

- An extended phase-out provision (10 years for tomatoes);
- Provisional Relief (price monitoring allowing expedited consideration by the International Trade Commission, Sec. 202(d)), and;
- A Tariff Rate Quota (TRQ) with a "snap-back" provision that reverted to pre-NAFTA tariff rates if imports exceed a certain quota level.

I believe the witnesses will understand when I say there is a good deal of reticence among some segments of Florida's agriculture community based on their experience with the North American Free Trade Agreement (NAFTA). I have been informed by Florida's industry that since the passage of NAFTA, over 100 tomato farmers have gone out of business and 24 packing houses have ceased to operate. Florida's growers maintain this is due to the failure of the safeguard provisions to provide the promised relief. They contend these provisions failed for the following reasons:

**Tariff Phase-out failed:** Any benefits resulting from the phase-out were almost immediately undermined by the devaluation of the Mexican peso in December of 1994, and by the Administration's intention to accelerate the phase-out period.

**Provisional relief failed:** Winter tomatoes were one of the few enumerated import sensitive industries eligible for this relief. However, the ITC failed to provide relief as they disregarded arguments considering "seasonality" as a factor when determining whether certain domestic producers of perishable commodities were injured.

**Tariff Rate Quota with "snap-back" failed:** The initial "base-line"quota was from an abnormally high year of Mexican production. And, notwithstanding a price sensitive snap-back mechanism which only triggered when the market price in the U.S. dropped below the cost of production, the snap-back provisions were never applied despite the fact that Mexico has exceeded its quota every year since the NAFTA.

As you may be aware, and I know Ms. Esserman is particularly familiar with this matter, it was only after several years of substantial harm that Florida's tomato industry finally was able to receive some measure of relief via a petition filed with the Department of Commerce. Pursuant to this petition, Commerce found that dumping had occurred and negotiated a settlement with the Mexican producers and exporters. Furthermore, this agreement was recently amended to show partiality to California and Baja Mexico because of "seasonal" differences—a distinction the ITC had previously refused to recognize and said "never existed."

Additionally, I should note that when asked, the new ITC Commissioners indicated that they believe seasonality is a factor which could be considered when determining whether a domestic industry had been injured by virtue of foreign imports.

Notwithstanding the eventual settlement agreement, and despite assurances to the contrary both during and subsequent to NAFTA deliberations, the Administration had been unable or unwilling to mitigate substantial harm to Florida's fruit and vegetable industry from surges in Mexican imports.

As you can imagine, this puts me in somewhat of a difficult position. While I am firmly committed to open trade, I have a responsibility to my constituents in Florida and that responsibility includes ensuring that the federal government lives up to its promises.

In light of these concerns, I would like to address the following two questions to both witnesses:.

- Can you clarify, from your own view, why the safeguard provisions included in the NAFTA side agreement failed to provide the relief promised?
- What changes have been made post-NAFTA, or would you now recommend, which might alleviate the concerns of Florida's fruit and vegetable industry and convince them that they could expect different treatment under any new trade agreement?

My final comment lies with the apparent unwillingness of the European Union to abide by its trade commitments. From the beef hormone issue to bananas, the EU appears to be trying to circumvent or disregard the decisions of the World Trade Organization's Dispute Settlement Panel.

This behavior has been further evidenced in a proposed aviation regulation which would restrict certain reengined aircraft. Not surprisingly, it appears this regulation would only impact U.S. origin aircraft. No rational basis for this proposed exclusion been offered. And finally, it is worth mentioning that this proposal appears to be in direct violation of international air service agreements. My final question addressed to Ambassador Aaron is:

- Since it my understanding that you have been very involved in this matter, can you tell me the status of this vote and what are the Administration's plans to address this troubling proposal?

I know both of you, Ambassador Aaron and Ms. Esserman, have been aggressively engaged in the task of shoring up our enforcement and compliance procedures. I greatly appreciate your efforts in this area thus far and look forward to working with you on these matters in the future.

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PREPARED STATEMENT OF MARK Z. ORR

Good morning, Mr. Chairman; members of the Committee.

My name is Mark Orr. I am Vice President for International Issues and Trade with the Distilled Spirits Council of the United States, Inc. (DISCUS). DISCUS is the national trade association representing U.S. manufacturers and marketers of distilled spirits products. Our members export distilled spirits products to approximately 120 countries around the world, with annual export sales of nearly $600 million.

Like many U.S. industries, the U.S. distilled spirits industry came to the realization that it must compete on an international basis in order to survive in the global economy. Our members adopted a pro-trade orientation and have strongly supported U.S. efforts to eliminate tariff and nontariff trade barriers in foreign markets. This positive approach to international trade has paid generous dividends. Over the past ten years, U.S. exports of distilled spirits products have more than doubled in value, and exports' share of our members' total sales has grown from 11 percent to 25 percent.

The World Trade Organization (WTO) has played an integral role in our members' efforts to reduce or eliminate trade barriers and expand their exports to foreign markets. During the Uruguay Round negotiations, the distilled spirits industry joined with a number of like minded U.S. industries in pressing for tariff elimination. The agreements negotiated by the United States during the Round and at the December 1996 WTO Ministerial secured duty free access to several of our principal export markets, including the European Union and Japan.

Since then, we have concentrated our efforts on utilizing the WTO's dispute settlement mechanism to secure the elimination of discriminatory nontariff barriers to our exports. I want to thank you, Mr. Chairman, for this opportunity to report on our very positive experience to date with dispute settlement under the WTO.

I also want to commend you and your colleagues for initiating this series of hearings. It is critically important that we forge a new national consensus in support of further trade liberalization in preparation for the WTO Ministerial meeting in Seattle later this year. We look forward to working with you and the Committee in support of legislation to provide the political and statutory authority required to strengthen and expand the WTO and reaffirm the leading role of United States in the international trading system.

DISPUTE SETTLEMENT UNDER THE WTO

For the U.S. distilled spirits industry, the World Trade Organization's dispute settlement mechanism has worked; and worked very well. At our request, the Office of the United States Trade Representative (USTR) has initiated or participated in dispute settlement proceedings under the WTO against the discriminatory tax measures imposed on imported distilled spirits products by Japan, Korea, and Chile. These proceedings have produced two very strong and unequivocal rulings against the tax measures maintained by Japan and Korea.

The rulings in turn have created the leverage needed by U.S. trade negotiators to secure the removal of the discriminatory tax practices and open these markets on our behalf. The settlement agreement reached with Japan by USTR in 1997 will ensure that U.S. exporters receive equal tax treatment and duty free entry for their products in their second largest export market. We look forward to working closely with USTR negotiators in the months ahead to achieve similar results with respect to Korea.

A ruling in the third proceeding against Chile is expected by late-April. We are confident that it will be an equally strong and clear ruling that Chile's tax measures discriminate against imported spirits in violation of the WTO rules.

In addition, the rulings secured to date have established useful precedents for attacking similar discriminatory tax practices employed by other WTO members in a variety of sectors. U.S. trade negotiators have been able to use these precedents to press these countries to alter existing discriminatory practices and to deter others from instituting new discriminatory regimes.

Japan represents one of the most potentially lucrative markets for U.S. distilled spirits companies. However, from the early 1960s, Japan maintained a system of liquor taxation which discriminated against various types of imported distilled spirits products in favor of Japan's national spirit, shochu. This system of taxation was designed so that only shochu—a clear, grain based spirit that is similar to vodka—could be eligible for the most favorable tax rates. All other spirits, including whisky, brandy, vodka, rum and gin, were taxed at considerably higher rates. Indeed, the tax rates for whisky and brandy were four to six times higher than the rates assessed on shochu.

Not surprisingly, Japan's shochu makers parlayed this considerable tax advantage into a dominant position in the Japanese distilled spirits market. Sales of shochu accounted for approximately 75 percent of the total market. Imports of all spirits accounted for less than 8 percent of the market, with sales of Japanese whisky making up the remainder.

In 1985, the United States joined the European Community in challenging Japan's discriminatory taxation under the dispute settlement mechanism of the GATT. The GATT panel issued its report in 1987, ruling that Japan's tax measures discriminated against imported products in violation of the GATT Article III (national treatment). After considerable procedural wrangling, the report was finally adopted. However, Japan failed to fully implement the panel's ruling. A partial reform enacted in 1989 eliminated the most overtly discriminatory elements of the system, but left the system in place in its basic form. Subsequent efforts to persuade Japan to eliminate the remaining discrimination against imported products proved fruitless.

Following the establishment of the World Trade Organization, the United States joined the European Union and Canada in May 1995 in requesting consultations with Japan on the remaining discriminatory tax measures. The complaint was the first brought by the United States under the strengthened WTO dispute settlement mechanism. A single panel was established in September 1995 to rule on the three parties' complaints. The panel issued its report in June 1996, ruling that by taxing imported distilled spirits at rates higher than those for shochu, Japan's system of liquor taxation clearly discriminated against imported distilled spirits in a manner which provided protection for domestic products. The panel called upon Japan to bring its system of taxation into conformity with its national treatment obligations under GATT Article III.

In August 1996, Japan lodged an appeal of the panel's ruling with the WTO's Appellate Body. In early October, the Appellate Body issued its ruling, rejecting Japan's appeal. In its report, the Appellate Body confirmed the panel's conclusion that the Japanese system was inconsistent with GATT rules. The Appellate Body made a number of useful clarifications which not only strengthened the ruling against Japan, but also clarified the appropriate approach to be taken by future panels in evaluating whether various tax measures comply with the national treatment requirements of GATT Article III.

The panel and Appellate Body reports were adopted by the WTO's Dispute Settlement Body on November 1, 1996. In ensuing discussions with the United States, the EU and Canada, Japan proposed to bring its tax system into compliance with the ruling in three stages over a five year period. The EU agreed to this proposal; however, the United States rejected it and insisted upon a much shorter period for compliance. When no agreement was reached with Japan within the allotted 45 day period, the United States referred the matter to arbitration. On February 14, 1997, the WTO arbitrator ruled that fifteen months (i.e., by February 1, 1998) was a "reasonable period " of time for Japan to bring its tax system into full compliance with the ruling.

On October 1, 1997, Japan implemented the first stage of its tax reform. The tax rates for whisky and brandy were reduced and the tax rates for shochu were increased, thereby substantially narrowing the discriminatory tax differential faced by imported distilled spirits.

Meanwhile, U.S. trade negotiators continued to press Japan for full compliance with the ruling by February 1, 1998. These efforts produced a settlement agreement in December 1997. Japan agreed to implement the second stage of tax reform on May 1, 1998—five months in advance of its original proposal. This stage completed the harmonization of tax rates for all spirits, with the exception of one category of shochu. Japan also agreed to bring the third and final stage of tax reform forward by twelve months to October 1, 2000, at which time the tax rate for the remaining category of shochu would be harmonized with the existing rates for all other distilled spirits.

The United States insisted upon and received compensation from Japan in return for agreeing to the additional period of time for Japan to bring its tax system into full compliance with the panel's ruling. Japan agreed to accelerate the schedule for eliminating tariffs on whisky and brandy agreed to in the Uruguay Round by two years to April 1, 2002. In addition, Japan agreed for the first time to eliminate tariffs on all other distilled spirits, also by April 1, 2002. The latter had been an objective which had eluded the spirits industry and the United States in the Uruguay Round negotiations.

The leverage provided by the WTO dispute settlement ruling allowed USTR negotiators to secure the U.S. distilled spirits industry's two primary market access objectives in Japan—the establishment of a nondiscriminatory tax regime in which U.S. distilled spirits products are taxed equally with domestic Japanese products and the elimination of tariffs on all U.S. distilled spirits exported to Japan. We estimate the annual tax and tariff savings for U.S. exporters resulting from the WTO ruling and the U.S.-Japan settlement agreement to be approximately $94 million per year.

Last month, we evaluated the results of the U.S.-Japan settlement agreement after one year. We found that the tax reform brought about by the WTO ruling has already begun to transform the Japanese distilled spirits market. U.S. exports to Japan have increased by 23 percent over the previous year, and have grown faster than overall U.S. distilled spirits exports to the world. These positive trends have occurred despite Japan's continuing recession. We are very excited about prospects for future growth in the Japanese market, particularly once Japan's economy finally emerges from recession.

## KOREA

Like Japan, Korea also has long maintained an origin neutral, but nevertheless discriminatory, system of taxation for distilled spirits. Under Korea's system, soju, the type of distilled spirits produced domestically in Korea, is taxed at the rate of 35 percent ad valorem. In contrast, whisky and brandy, which are almost exclusively imported, are taxed at the rate of 100 percent ad valorem, while other spirits are taxed at the rate of 80 percent ad valorem. Asecondary tax measure also discriminates against imported products, bringing the total tax on imported whisky to 130 percent ad valorem, while the total tax applicable to soju is only 38.5 percent ad valorem.

In May 1997, at our request, the United States joined the European Union in challenging Korea's discriminatory tax system under the WTO dispute settlement procedures. A panel subsequently was formed in October 1997. Last July, the panel issued its report, which clearly and unequivocally ruled that Korea's system of taxation unfairly discriminates against imported distilled spirits products. In reaching its ruling, the panel drew heavily on the precedents established in the earlier proceeding against Japan, both in terms of the methodology for evaluating the consistency of measures with the national treatment requirements of GATT Article III, and the facts necessary to establish violations.

Korea chose to appeal the panel's ruling to the WTO's Appellate Body. Last month, the Appellate body issued its ruling, which upheld the panel's ruling in every respect. The panel and Appellate Body reports were formally adopted by the WTO Dispute Settlement Body at its meeting last week (February 17).

We look forward to working closely with USTR in the months ahead to secure Korea's full compliance with the WTO ruling at the earliest possible date. We will seek to persuade Korea to adopt a single rate of specific taxation for all distilled spirits—as we have here in the United States—as soon as possible.

## CHILE

The industry's third recourse to WTO dispute settlement is presently underway against a somewhat different, but no less discriminatory, system of taxation employed by Chile. In December 1997, the both United States and the European Union requested WTO consultations with Chile on this system. At the request of the EU, a panel was formed in March 1998, with the United States actively participating in the proceedings as an interested third party.

The panel is expected to issue its final ruling by late-April. We expect that the rulings and interpretations reached in the earlier proceedings involving Japan and Korea will have a major bearing on the outcome of this challenge, and we are confident that the panel will rule that Chile's tax system—like those of Japan and Korea—unfairly discriminates against imported distilled spirits in a manner which provides protection to domestic producers.

## ADDITIONAL COMMITMENTS

The WTO rulings also have been an effective tool for U.S. trade negotiators to use in convincing other countries to abandon their discriminatory tax measures or to foregoimplementing new tax measures which may discriminate against imports. U.S. negotiators have used these rulings to convince a number of countries currently in the process of acceding to the WTO to bring their tax systems into conformity with the WTO rules. The ruling against Japan, for example, was instrumental in securing Taiwan's agreement, as part of its terms of accession to the WTO, to implement a single specific rate of taxation for all distilled spirits, and to progressively increase and eventually harmonize the preferential rate of taxation currently assessed on certain domestic products.

The EU has made similar use of the rulings to convince other countries maintaining discriminatory tax regimes to bring them into compliance with the WTO or face the prospect of dispute settlement. We understand, for example, that Uruguay is actively considering reforming its current system of taxation, which discriminates against imports of whisky, in response to such pressure from the EU.

## WTO DISPUTE SETTLEMENT AND SECTION 301

The WTO dispute settlement process has provided the U.S. distilled spirits industry with the necessary leverage to secure the elimination of longstanding unfair trade practices in key export markets. It is difficult for us to imagine that we would have been able to generate the same amount of leverage through other means, including through the use of section 301.

At least in our experience, the WTO dispute settlement mechanism has proven to be more effective than that of its predecessor under the GATT. The WTO procedures and time frames generally have been respected and the process has been largely insulated from the political pressures that plagued the GATT dispute settlement process. Because of the strong provisions of the WTO mechanism, Japan and Korea have had no choice but to agree to the requests of the United States for the formation of panels to examine their taxation systems. They also have had no choice but to agree to the adoption of the panel and Appellate Body rulings against their respective tax systems and to assume the obligation to conform their systems with the WTO rules or face the prospect of retaliation.

While the WTO dispute settlement mechanism has provided a strong institutional framework as well as set time frames for addressing the various unfair trade practices facing our industry, it also has preserved enough flexibility in the system to enable parties to a dispute to work out mutually acceptable settlements. Our experience in the proceeding against Japan is an excellent example. The panel's ruling and the time frame for compliance established by the arbitrator provided the United States the leverage to insist upon full compliance within a set period of time. However, it also made it possible for the United States to agree to a longer compliance period, in return for compensation in the form of tariff concessions from Japan which it had been unable to secure in the Uruguay Round negotiations.

The WTO dispute settlement mechanism also has proven to be a more desirable avenue to pursue our concerns than through section 301 proceedings. At several key junctures in the proceeding against Japan, the Japanese government made clear to its domestic industry, that Japan had no choice but to comply with the WTO's ruling. Moreover, as a stakeholder in the WTO system, it was in Japan's self-interest to respect the WTO process. A determination issued by the United States under section 301 would not have had the same salutary effect. On the contrary, the Japanese government would have been forced politically to resist the U.S. action, rather than search for acceptable ways to eliminate the discriminatory aspects of its tax system.

Using the WTO dispute settlement mechanism also enabled us to mobilize an international coalition with our industry counterparts in Europe and Canada. This coalition was instrumental in encouraging the respective governments to work together in a coordinated manner to secure the elimination of the discriminatory tax measures maintained by Japan, Korea and Chile. It would not have been possible to mobilize such a coalition in support of action under section 301. The sharp disagreements which exist over the use of that mechanism would have overshadowed any agreement of the value of eliminating the offending tax practices.

## FUTURE IMPROVEMENTS

The U.S. distilled spirits industry's extremely positive experience with dispute settlement under the WTO notwithstanding, certain aspects of the dispute settlement process can be improved. For example, the process takes a long time to complete.

At the outset of a complaint, a country maintaining an offending practice can reasonably expect to be able to maintain that practice for an additional two and one half years before being forced to comply with an adverse ruling. As a result, there is very little incentive to settle complaints at the early stages of the dispute settlement process.

One possible solution may be to begin the time frame for compliance from the date on which the panel report is issued, rather than the date on which it is adopted. Countries would still be free to appeal, but the clock for compliance would continue to tick during the appellate process.

Another area for improvement involves the "reasonable period" for compliance. In all but a few instances, losing parties have been given fifteen months to bring their measures into full compliance, even though the Dispute Settlement Understanding (DSU) calls for immediate compliance where possible. Greater effort should be made to better calibrate the time frame for compliance to the actual measures at issue.

For example, many countries, including Korea, enact tax changes as part of their annual budget legislation. Thus, with respect to the WTO ruling against Korea, a "reasonable period" for compliance should be no more than eleven months (from February 17), in order to ensure that the required changes to Korea's tax system are enacted in this year's budget legislation later this fall.

Perhaps the most serious threat to the WTO's dispute settlement mechanism is the recent tendency of losing parties to evade complying fully with rulings by implementing only incremental changes to their offending practices. We fully support the strong stance taken by the Administration and the Congress in this regard. The United States needs to make absolutely clear to its trading partners that it will settle for nothing less than full compliance with WTO rulings, and that there will be a significant cost involved if they choose not to fully comply.

At the same time, retaliation should be a last resort and should be carefully tailored to best achieve its goal, taking into account the broad range of U.S. interests. For example, like many other U.S. industries engaged in trans-Atlantic trade, we are concerned that trade in distilled spirits may be disrupted by U.S. retaliatory measures in the beef hormones dispute with the EU. The EU is the leading market for our members' exports; our members also market European spirits products in the United States. Not only would retaliation severely damage our members' commercial interests, it also would place in jeopardy our joint efforts with European industry to use the WTO dispute settlement mechanism to eliminate discriminatory barriers in third country markets.

The inclination to retaliate forcefully in instances such as the beef hormones dispute is strong and understandable. Nevertheless, we would urge the U.S. government to pursue a flexible, targeted approach to retaliatory measures, perhaps limiting them to the specific sectors involved, so that unrelated industries, such as ours, which have used WTO dispute settlement to their advantage in the past, will be able to continue to do so in the future.

## CONCLUSION

In summary, the WTO dispute settlement process has worked extremely well for the U.S. distilled spirits industry. The rulings which have been secured to date against the discriminatory tax practices of Japan and Korea have provided the leverage needed to secure the elimination of the discrimination faced by U.S. exports in these markets. In the case of Japan, USTR negotiators used this leverage skillfully to secure not only the elimination of the offending tax practices, but also the elimination of Japan's tariffs on all types of distilled spirits products exported by the United States. We look forward to similar results from the dispute settlement proceedings against Korea and Chile.

We also look forward to working with the Committee and the Administration in the run-up to the Seattle Ministerial, and in the negotiations thereafter, to build upon and strengthen the WTO dispute settlement mechanism so that it will continue to provide an effective means for industries like ours to secure the elimination of discriminatory foreign trade barriers which restrict access for U.S. exports.

Thank you very much.

## RESPONSES TO QUESTIONS FROM SENATOR ROTH

*Question 1:* The distilled spirits industry has won a series of WTO cases. Has the industry been satisfied with the implementation of those decisions?

*Answer:* Yes. In the first case, Japan agreed to bring its liquor tax regime into compliance with its WTO obligations in three stages. The first stage was implemented eleven months after adoption of the WTO panel's ruling; the second stage was implemented seventeen months after adoption. These two stages completed the

changes in taxation of imported spirits. The third stage, which involves a tax increase on one type of shochu, will be implemented on October 1, 2000. In return for this additional time to come into full compliance with the panel ruling, Japan agreed to provide compensation to the United States, the EU and Canada in the form of new commitments to completely eliminate tariffs on imported distilled spirits by April 1, 2002.

In the second case involving Korea, the panel and Appellate Body rulings were adopted on February 17, 1999. Korea has not yet made known its intentions with respect to bringing its tax regime into conformity with its WTO obligations. We are working with the U.S. Trade Representative to secure Korea's full compliance with the ruling as quickly as possible.

The third case involving Chile is still being considered by the dispute settlement panel.

*Question 2:* Given your experience with the dispute settlement system, and with the section 301 process that triggered those successful cases, what should we be doing to strengthen both the dispute settlement process and the provisions of U.S. domestic law to encourage greater compliance by our trading partners?

*Answer:* The WTO dispute settlement mechanism is much stronger and more effective than its GATT predecessor. On the whole, it has functioned well and according to design. However, certain aspects require improvement. The relationship between Article 21:5 and Article 22 -which is at the heart of the current U.S.-EU bananas dispute—is the prime example. A clear understanding of the procedural relationship between these two articles could discourage losing parties from making incremental changes in their offending practices in hopes of avoiding full compliance.

Under the present system, compliance, compensation and retaliation are identified as acceptable outcomes to the dispute settlement process. As long as losing parties have the option to provide compensation, or to accept retaliation, in an amount equivalent to the annual trade lost as result of the offending practice, they may choose to maintain the offending practice. A greater incentive for losing parties to come into full compliance needs to be created. One possibility might be to calculate the amount of trade damage for compensation or retaliation purposes based on the duration of the offending measure. Another might be to make provision for doubling or trebling the annual trade loss when calculating compensation or retaliation. Either approach would make compensation or retaliation more onerous for the losing party, thus increasing the incentive to come into compliance with the ruling by eliminating the offending measure.

In our view, no changes in U.S. law are necessary. Section 301 provides ample legal basis for the United States to withdraw concessions in the event the WTO authorizes retaliation in response to the failure of a losing party to come into compliance or provide satisfactory compensation.

*Question 3.* Prior to your current position, you served at USTR in Brussels trying to keep the European Union honest on a variety of different matters. What is your view of how best to ensure European compliance with our existing agreements?

*Answer:* There are several steps that the United States can take to enhance the likelihood that the EU will comply with its agreements with the United States. First, it is extremely important that U.S. trade officials and diplomats scrutinize and analyze all EU proposals and policies and closely monitor their progress from the outset. Second, the United States must raise its concerns with respect to these proposals and policies early and often, using all available bilateral and multilateral channels to ensure that the EU is aware of and understands U.S. concerns. Third, the United States must make clear to the EU that it will vigorously exercise its rights under the WTO to protect U.S. interests, and back up these assertions with appropriate action, when necessary. In doing so, it is essential, however, that the United States act fully in accordance with the WTO rules, so as not to provide the EU a pretext for shifting the focus of the issue from the EU's offending measures to the U.S. response.

## Responses to Questions From Senator Moynihan

*Question:* Jeff Lang commented that it's very difficult for our trading partners, like Japan and Europe, to realize that there comes a point at which we cannot remain in a system that doesn't work. How do you evaluate the operation of the WTO, and in particular its dispute settlement rules, to date? What are the strengths? Weaknesses? What improvements ought to be made to the dispute settlement rules? Is the system working?

*Answer:* From the distilled spirits industry's perspective, the WTO and its dispute settlement mechanism are working quite well. It has produced two very strong and

unequivocal rulings against the discriminatory liquor tax regimes of Japan and Korea. A third ruling, against Chile, is expected next month.

The WTO dispute settlement mechanism is much more effective than its GATT predecessor. The procedures and time frames generally have been respected and the process has been largely insulated from the political pressures that plagued the GATT mechanism. Unlike under the GATT, countries are obligated to agree to the requests of other countries for the formation of panels to examine practices at issue. They also are obligated to agree to the adoption of panel and Appellate Body rulings against their practices. Most importantly, countries must assume the obligation to conform their systems with WTO rulings or face the prospect of retaliation.

That said, certain aspects of the WTO dispute settlement process can be improved. The process takes too long to complete. One possible solution may be to begin the time frame for compliance from the date on which the panel report is issued, rather than the date on which it is adopted. Another improvement would be to better calibrate the time frame for compliance to the actual measures at issue, rather than simply allowing the now standard fifteen month period.

The relationship between Article 21:5 and Article 22—which is at the heart of the current U.S.-EU bananas dispute—also needs to be clarified. As noted above, a clear understanding of the procedural relationship between these two articles could discourage losing parties from making incremental changes in their offending practices in hopes of avoiding full compliance. It would also make the threat of retaliation more credible, in instances where the losing parties refuse to comply or provide satisfactory compensation.

Finally, some thought should be given to ways to increase the incentive for losing parties to bring their measures into full compliance. One possibility might be to make compensation or retaliation more onerous for the losing party, perhaps by expanding the basis for calculating the amount of trade damage to be offset by compensation or retaliation in the event of noncompliance.

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PREPARED STATEMENT OF IRA WOLF

It is an honor to testify before the Senate Finance Committee on the subject of trade negotiations and trade agreements. I have been working to improve access in foreign markets for American goods and services for most of the last 16 years in the executive branch at USTR and the State Department as a foreign service officer, in the Senate as a Legislative Assistant to Senator Rockefeller, and in the private sector, working in Japan for Motorola and, until recently, Eastman Kodak. I am appearing today, however, as a private citizen and do not speak for any of these entities.

Over the last two decades, there has been a continuing improvement in access to Japan's markets. There are many successful American companies that have reaped the benefits of this change which was due to a combination of U.S. government action, hard work by the American private sector, use of the GATT, market pressures inside Japan and globally, and action by enlightened Japanese business and government leaders. However, it is disappointing that we have not seen even more opening in the world's second largest economy.

I would like to focus on two issues today. First, I will discuss negotiation of new agreements or commitments and how that relates to the WTO dispute settlement process. Second, I will discuss the problems of implementation of existing agreements. Although I will focus on Japan, much of my discussion applies to other trading partners as well.

These two issues—negotiation and subsequent implementation—are, of course, intertwined. History shows us that bilateral trade agreements with Japan are, generally, not self-executing. As hard as it is to reach an agreement, it has proven to be significantly harder to ensure proper implementation. A number of American business sectors are suffering from this problem today, and it consumes significant resources at USTR, the Commerce Department, and other agencies.

Let me begin with the issue of negotiation of trade agreements and the WTO dispute settlement process. I will start with a brief review of the recent photographic film case which involved anti-competitive practices in Japan and the Japanese government's support and toleration of those practices. This case is particularly important because it represented a turning point in U.S. bilateral negotiations with Japan and also demonstrated the limitations of the WTO dispute settlement process in dealing with many of the barriers confronting foreigners in this market.

In 1995, USTR began a Section 301 investigation of the Japanese government's toleration of anti-competitive practices. Normally, the one year 301 process includes not only research but also consultation and negotiation in the hope of reaching bilat-

eral resolution before the deadline. In this case, however, the Japanese government, principally in the form of MITI, the Ministry of International Trade and Industry, refused to negotiate, talk, or even meet with U.S. government negotiators.

This was the first time that the Japanese government had ever refused totally to talk about a bilateral trade problem. In Japan, there is an expression called "Monzenbarai" which means shutting the gates to keep one outside. In Japanese culture, this is one of the worst possible types of treatment, and it was astonishing that the Japanese government treated the United States, its best friend, its number one trading partner, and its only treaty ally, in such a way.

One year later, in mid-1996, the U.S. government completed its 301 investigation and issued a positive finding that the Japanese government had tolerated anti-competitive practices in this area, a violation of U.S. trade law. Rather than taking retaliation, the U.S. government, with the concurrence of Kodak, put the case before a WTO dispute settlement panel.

The U.S. government produced a comprehensive brief, outlining thirty years of intricate and interwoven Japanese government policies, regulations, and practices that closed off all possible distribution channels to foreign film. The expectation was that multilateral action would be taken. The Japanese government would then enforce its anti-competition laws, stop supporting those in the private sector who were keeping the market closed, and permit competitive forces to operate in the photographic film sector in Japan.

However, the WTO panel, rather than looking at the realities facing foreign companies in Japan and analyzing how the Japanese government and the Japanese market actually operate, took a narrow, legalistic approach to conclude that there was no evidence of discrimination against foreign film practices.

The decision remains controversial today. Some people believe that the United States should never have brought the case because private anti-competitive practices are not covered by WTO rules. Others argue that the U.S. government ably demonstrated that there were Japanese government actions taken over decades to stimulate and support those private anti-competitive practices, and that the government actions were a violation of Japan's GATT and WTO commitments.

In my view, the panel demonstrated that the WTO was unable to deal with the ubiquitous trade barriers that so many foreign companies face in Japan, that is, those trade barriers that are the most opaque, subtle, and complex.

The Japanese government learned several lessons from this WTO experience. First, it is not necessary to negotiate seriously with the United States. In fact, it is possible simply to refuse to meet with American negotiators bilaterally.

Second, let the United States take you to the WTO on a dispute. If the barriers stem from unwritten administrative guidance, the close working relationship between government and industry, and subtle and invisible discrimination against foreign products and services, then there is little to fear from the WTO. And, certainly, if the issue relates to private anti-competitive practices to which the Japanese government and the Japan Fair Trade Commission, the JFTC, turn a blind eye, you are home free. Only in cases where there is a clear and precise violation of GATT rules, such as a discriminatory tax measure or quarantine requirements not based on scientific evidence, may you lose.

It is true that many traditional trade barriers have been removed in Japan. But those that remain—such as non-transparent bureaucratic actions, continuing overregulation that stymies foreign business efforts, unique product and service standards, and private anti-competitive practices—are far more difficult to address. Neither U.S. trade law nor the WTO dispute settlement process is able to address these problems. This manifests today in many areas: insurance, flat glass, paper, photographic film, and public works, to name a few.

Let me stress that nothing I say is meant as a criticism of U.S. government negotiators. On the contrary, I have nothing but the utmost respect for our trade negotiators. But, as I have tried to explain, within the current U.S. and WTO trade law framework, they do not have the necessary tools to deal with many of the barriers in Japan's markets.

Let me now turn to the second issue—implementation and enforcement of trade agreements. In 1997, the American Chamber of Commerce in Japan, the ACCJ, examined 45 major U.S.-Japan trade agreements reached over a 16 year period that encompassed the Reagan, Bush, and Clinton Administrations. The ACCJ concluded that only 13 of the 45 agreements were fully successful, 18 were marginally successful, ten were failures, and four were too vague or too new to draw any conclusion.

The critical lesson from the ACCJ report was the need for a mechanism and a process to ensure compliance with bilateral trade agreements. Today, the Commerce Department has a trade agreements compliance office, and USTR has increased the

number of its trade litigators. Other agencies have more people working on trade issues than ever before.

But the problems in enforcement of trade agreements continue. There is a controversy over the insurance agreement and the Japanese government's failure to honor some of its key provisions. The flat glass agreement has not produced much change in market conditions, yet it is about to expire. The effectiveness of the NTT Procurement Agreement is a continuing issue. Government procurement in the telecommunications sector may not be following the precise terms of the bilateral agreement. And the list goes on. Rice trade may be emerging again as a problem area, and there are questions about the success of the computer procurement agreement.

The Administration and the Congress need to give our trade negotiators the proper tools to reach solid market opening agreements with Japan and to ensure that those agreements are fully implemented. Without such tools, market access will not improve. The Congress has enhanced those tools in the past, and I believe that it is time to provide our negotiators with additional leverage. Let me offer several ideas.

First, a January report from LICIT, the Labor/Industry Coalition for International Trade, recommends amendment of Section 301 so that it can be used directly against foreign anti-competitive practices that have an impact on the U.S. market or that restrict access of U.S. goods and services in foreign markets. This could be a good start.

Second, I have never seen a full and comprehensive inventory of tools available to U.S. trade officials—that is, WTO-consistent measures that can be taken in response to discriminatory treatment in a foreign market. I would recommend preparation of such an inventory, perhaps by the GAO or the International Trade Commission. They should also address how these measures could be used, and in what circumstances. Perhaps new legislation could link use of these measures to specific types of trade barriers.

Third, discussion and consultation prior to commencing actual negotiations is an important factor in reaching an acceptable trade agreement. I am very concerned that this informal, pre-negotiation phase may now be lost. In the past, the U.S./Japan Trade Committee was a good vehicle for early warning of trade problems and for gaining an understanding of each other's positions. In some cases, it was able to resolve emerging problems. It would be useful to create a bilateral forum that could perform a similar function.

Fourth, a priority in the next set of multilateral trade negotiations should be to ensure that the real trade barriers facing foreign firms in selling goods and services in Japan are adequately addressed. A special focus could be put on repairing the WTO dispute settlement process so that it could deal with the remaining non-traditional Japanese trade barriers.

These four changes would begin to provide our trade negotiators with the tools they need to open the Japanese market.

Let me conclude with a few general comments about American trade law which receives a lot of negative criticism around the world. I have a much more positive view of the contributions made by U.S. trade law to market opening and free trade. Clearly, U.S. trade law has helped Americans improve their access to Japan in many sectors—telecommunications through Section 1377; semiconductors, beef and citrus, and supercomputers through 301; satellites through Super 301, to name but a few.

But it is not only these American (and, at the same time, European and other foreign) manufacturers, farmers and exporters who have been helped by aggressive U.S. actions. Japan has also been served well. Japanese consumers today, and I refer here to both individual purchases and corporate procurement, have far greater choice than ever before. Prices are lower. There is access to new products and new technology from new competitors. Open markets have injected vitality and energy into Japanese industry and the Japanese economy. What Japan needs now is more competition, more openness, and less regulation. In Japan's current stagnating economy, this is more necessary than ever. I don't expect anyone to thank us, but it is a fact that U.S. trade law and trade policy has been a major catalyst for constructive change in Japan over the past twenty years.

Thank you.

# COMMUNICATIONS

## STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation represents more than 4.8 million member families in the United States and Puerto Rico. Our members produce every type of farm commodity grown in America and depend on export sales for more than one-third of their production.

U.S. farmers and ranchers are increasingly dependent on foreign markets and rely on timely enforcement of existing trade agreements to ensure access on fair and competitive terms. New rules governing trade in agricultural goods have made substantial progress in increasing access and resolving trade disputes. The Understanding on the Rules and Procedures Governing the Settlement of Disputes (DSU) in the GATT 1994 addressed several weaknesses of the old GATT system. For example, adoption of panel reports is automatic and cannot be blocked by member countries.

Under this new dispute settlement system of the World Trade Organization, there have been several satisfactory settlements on agricultural trade cases without the need to resort to formal dispute settlement procedures. For example, disputes regarding Hungarian export subsidies, Philippine pork and poultry tariff-rate quotas and Korean shelf life rules have been resolved in consultation without the need to resort to a WTO panel.

Despite these early successes, two recent WTO cases point to a lack of willingness of some member countries to comply with panel decisions. American agriculture will not have confidence in the multilateral trading system if WTO members are permitted to disregard dispute settlement findings, as the European Union is now doing in the banana and beef hormone cases. The United States must take all actions necessary to ensure that our trading partners comply with WTO panel rulings. The obligation of compliance should not be taken lightly. Our trading partners cannot be allowed to unilaterally weaken the very principles that the United States negotiated in the Uruguay Round agreement.

The United States and the EU are now embroiled in a dispute regarding the EU's compliance with the WTO ruling on bananas. This case is important to agriculture for many reasons. It is the first ruling to set limits on the application and administration of agricultural tariff rate quotas and licensing procedures. It also is the first action against the EU, America's largest trading partner and the second largest market for U.S. agricultural exports. Perhaps most important, it is the first case to test the effectiveness of the WTO when a losing party refuses to come into compliance with a WTO ruling. As such, it sets a crucial precedent for the WTO beef hormone case, in which the EU has made known its unwillingness to come into compliance effective May 13, 1999.

The United States was poised to retaliate against certain European imports effective February 1, 1999, in response to the EU's noncompliance on bananas. However, the U.S. intent to retaliate has been delayed due to the EU's stalling tactics during the WTO Dispute Settlement Body (DSB) meeting at which the United States requested authorization to retaliate against the EU. Instead, the U.S. request to retaliate has been referred to a panel of arbitrators which is expected to render a decision on damage compensation no later than March 3, 1999.

The EU now is engaged in further legal maneuvering in the banana case, which holds serious implications for the viability of the entire WTO dispute settlement process. It is the EU's position that the original panel should be reconvened to first determine whether or not changes it made to its banana regime are WTO-consistent before the arbitrators issue a ruling on damage compensation. It is abundantly clear that the changes to the EU banana regime are cosmetic only and are not WTO-consistent. More importantly, the EU intends to codify its "consultation before damage compensation" position in the DSB, which will significantly prolong the resolution

of future dispute settlement cases in the WTO and could result in an endless loop of litigation.

The American Farm Bureau Federation believes strongly that the WTO dispute settlement process is too slow in rendering decisions on agricultural cases and that changes should be made to facilitate and shorten dispute settlement resolution procedures and processes. If the EU is successful in garnering support for its endless loop litigation, the WTO dispute settlement system will be rendered completely ineffective for agriculture and will seriously undermine U.S. farmer and rancher support for the system. Every action must be taken to insist on compliance with WTO rulings and to thwart the EU's attempts to obliterate the WTO dispute settlement process.

The notification process in the WTO is another area that requires improvement. The notification process is an important trade enforcement tool whereby member countries report on their progress to date in implementing commitments made during the Uruguay Round. There is a need to improve the transparency, comprehensiveness and timeliness of notification requirements. For example, more timely annual notifications are needed on subsidy levels, tariff-rate quota fill rates and more comprehensive descriptions of domestic support policies. Notifications serve as one of the first signals that a member country is not fulfilling its Uruguay Round obligations. The lack of timely and complete notifications is placing an unnecessary strain on the United States' ability to monitor the compliance rate of WTO member countries and should be addressed.

Regarding trade enforcement pursuant to the North American Free Trade Agreement (NAFTA), it has become apparent that certain NAFTA provisions governing trade in perishable agricultural products are seriously lacking. The trade relief measures provided in NAFTA have proven ineffective as originally designed and should be negotiated to protect regional producers of fresh fruits and vegetables.

Moreover, domestic laws governing trade remedy procedures do not adequately protect U.S. agricultural producers in certain instances and represent significant litigation costs for industries that are financially under siege. In the case of import surges, U.S. domestic law needs to be revised to address issues concerning seasonality and regionality. In addition, producers of raw agricultural commodities should have legal standing to petition for relief from imports of processed agricultural products. For example, dumped imports of apple juice concentrate from China and other countries are currently causing serious injury to U.S. apple juice processors and apple growers. However, U.S. apple growers are barred from petitioning for relief in this case because they lack legal standing to do so. Such inequities need to be addressed by our domestic trade law and corresponding international trade laws governing dumping cases. Financial assistance for costs of legal services incurred by farmers or their representatives who successfully file trade relief petitions seeking relief from unfair trade practices should also be instituted.

U.S. domestic law provides for the imposition of countervailing duties when a foreign government unfairly subsidizes its exports to the United States. Countervailing duties should be imposed on imports which are subsidized outside of GATT negotiated levels, and the U.S. government should not waive such duties until it finds that the production or export of the commodity exported to the United States is no longer subsidized. Countervailing duties should be imposed quickly when such subsidies are proven.

Countries that deny fair and equitable market access to U.S. agricultural commodities through nontariff trade barriers, unfair export subsidies, unreasonable delay in the implementation of a WTO panel ruling, or other discriminatory practices should be identified annually by the United States Trade Representative (USTR) in a Super 301 process for agriculture. Timely action should be taken by the USTR against those countries that are identified as priority countries in a Super 301 process.

Trade enforcement is an increasingly important function of the USTR and the U.S. Agriculture Department. Sufficient resources should be provided to these agencies to enable them to aggressively and effectively monitor and enforce trade agreements.

In summary, the future of U.S. agriculture will rely increasingly on access to foreign markets on fair terms. The playing field for agricultural trade has been tipped out of balance by WTO noncompliance, certain ineffective NAFTA and domestic trade remedy procedures and an increasing inability of governmental agencies to adequately monitor and enforce trade agreements due to limited resources. The U.S. government must act to ensure that trade agreements are strictly monitored and enforced and that U.S. agricultural producers have equitable access to foreign markets and are adequately protected from unfair trading practices.

This statement is submitted by the American Textile Manufacturers Institute (ATMI), the national association of the domestic textile mill products industry. ATMI's member companies represent 75% of the textile fiber consumption in the United States and employ approximately 600,000 workers.

ATMI commends the Finance Committee for its timely inquiry into trade agreements compliance and international dispute settlement. Trade compliance, particularly in the area of market access, is vitally important to the U.S. textile industry. Last year, our industry exported over $16 billion worth of yarns, fabrics and home furnishing products – over 15 percent of our output – to more than 60 countries. We could, however, have exported a lot more if major textile exporting countries had honored their commitments and permitted real market access to occur.

Unfortunately, with respect to trade in textiles and apparel, and particularly with regard to the Uruguay Round Agreement on Textiles and Clothing (ATC), which governs international trade in those goods until January 1, 2005, the recent record of agreements compliance and the efficacy of dispute settlement has been a disappointment, to say the least.

In the Uruguay Round negotiations, the textile/apparel importing nations – the United States, members of the European Union, Canada, etc. – made concessions worth tens of billions of dollars per year to the textile/apparel exporting nations[1]. They agreed to the phaseout of the quantitative restraints on imports, which had been maintained under the Multifiber Agreement, and they further lowered their tariffs. That was the quid. The quo was supposed to be the exporting nations, after having kept their domestic markets tightly closed to imports (while exporting $200 billion worth of goods annually), and at long last agreeing to provide access to their markets. Indeed, Article 7 of the ATC contains the following language:

> "Members shall (emphasis added) take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to:
>
> a.) achieve improved access to markets for textiles and clothing products through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administration and licensing formalities."

All signatories to the Uruguay Round Agreements bound themselves to commit to these undertakings. But many major exporting countries have done little or nothing to increase access for U.S. textile and apparel products. Among these are the so-called "big emerging markets" of

[1] The United States, as the largest textile and apparel importing nation in the world, made the largest share of these concessions.

Argentina, Brazil, India, South Africa and the ASEAN bloc nations which remain, unfortunately, mostly "big closed markets" when it comes to the export of U.S. textile products.

There should be no mistake - - these are big markets we are losing out on. India alone contains a middle class larger by some estimates than the population of the United States. Brazil used to be one of our fastest growing textile export markets before its government started raising barriers. All told, these countries alone represent billions of dollars in potential exports for U.S. textile manufacturers. They represent thousands of new U.S. jobs. But none of this will happen if these countries are allowed to continue to ignore their obligations under Article 7 or to impose the kinds of barriers that are described below.

The ATC "transition period" (1995-2004) had hardly begun when, instead of liberalizing its textile/apparel import regime, Brazil raised its import tariffs on a wide range of textile products to rates which far exceed those which it had notified ("bound") to the World Trade Organization. In addition, Brazil imposed onerous payment requirements for importers to finance their purchases. As if that weren't enough, Brazil reverted to its long-standing practice of imposing additional imposts and fees on imports, measures which have the effect of raising the tariff to astronomical levels. Thus, it is no surprise that U.S. exports of textiles and apparel to Brazil, the largest market in the Western Hemisphere after the United States, fell 28 percent from 1997 to 1998.

Argentina has perhaps been even more heavy-handed. After having bound ad valorem tariffs on textile/apparel imports to the WTO, Argentina introduced an abundance of specific tariffs, calculated in dollars per kilogram, on textile/apparel imports. These tariffs had the effect, in many cases, of raising the tariffs to levels that exceeded the ad valorem rates that Argentina had bound to the WTO.

In response, the United States lodged a formal complaint with the WTO, which after the proper review, determined that Argentina had violated its Uruguay Round commitments and so notified Argentina

For a half century, Pakistan has been one of the most resolutely protectionist countries in the world with respect to trade in textiles and apparel. While building one of the largest textile export industries on the planet, Pakistan has sheltered its domestic market from foreign competition with high tariffs and, as an extra measure of protection, outright bans on the importation of most textile products and all apparel.

With respect to tariffs, Pakistan did indeed commit to significant reductions, over a ten-year period, of some of its textile and apparel import

tariffs, meaning that they will be reduced from stratospheric levels to the merely excessive. There is still no effective, meaningful access to the Pakistani market for U.S. producers nor will there be.

None, however, can match India for blatant disregard of the ATC and its determination to keep trade in textiles and apparel a one-way street. India, like Pakistan, has kept its market closed for fifty years through a combination of excessive tariffs and bans on the import of most textiles and all apparel and claimed its actions justifiable for balance of payments reasons. The World Trade Organization has notified India, in no uncertain terms, that its import regime is no longer justifiable for balance of payment reasons. But India has ignored the WTO's admonition.

India has abrogated its Uruguay Round tariff commitments by introducing new special taxes and duties which result in an ad valorem equivalent tariff on textiles and apparel reaching as high as 89 percent. It maintains a "negative restricted list" covering many textile products and nearly all apparel. Inclusion on the list means that the product cannot be imported. Also, import licenses are required for textiles not on the negative restricted list. These may be obtained only by entities that will use the imported goods to produce something for export.

And, as if all of this was not enough, administrative delays in obtaining import licenses and clearing imports have the effect of raising the price of the import significantly or incurring confiscatory demurrage changes.

India is clearly in violation of its Uruguay Round commitments and more than deserving of a response by the United States. That response should be the withdrawal of India's GSP privileges and enhanced textile/apparel quota growth, as set out in Article 2 of the ATC. The United States has the right to take these actions and it should do so.

In short, as the United States continues to provide increased access for textile and apparel products from these and other countries, it is only fair that other countries should provide increased, not decreased, access to their textile markets. This was the promise and the intent of the Uruguay Round agreements.

Unfortunately, as we have noted, this promise has not been fulfilled. Not only is the playing field not level, the other team is not playing by the rules. The United States must insist that all WTO members live up to the spirit and the letter of the ATC and provide effective market access. When they do not, the United States should take the strongest possible actions. ATMI is hopeful that Congress will take a leadership role in bringing this to fruition.

## STATEMENT OF THE HEALTH INDUSTRY MANUFACTURERS ASSOCIATION (HIMA)

[SUBMITTED BY EDWARD M. ROZYNSKI]

On behalf of the Health Industry Manufacturers Association (HIMA), I am pleased to submit this testimony for the record. Among other responsibilities, I have been HIMA's chief international representative for the past 10 years. Over the past 18 years, I have also traveled to Japan more than 50 times to advocate on behalf of U.S. interests, starting with my days at the Office of the U.S. Trade Representative (USTR.)

HIMA is a Washington, D.C. based trade association that represents more than 800 manufacturers of medical devices, diagnostic products and other products designed to improve the quality of people's lives. Our members make more than 5,000 different kinds of medical technology, including heart pacemakers, patient monitors, diagnostic test kits and health imaging equipment, such as MRIs—products used to treat patients in doctor's offices and hospitals everyday throughout this nation and the world. HIMA's member companies comprise one of America's most globally active and competitive industries, an industry that still supplies nearly 50 percent of the $147 billion worth of medical technology purchased each year around the globe. In 1998, our industry generated a $6.6 billion U.S. trade surplus, including a modest but shrinking trade surplus with Japan.

### KEYS TO OUR SUCCESS IN GLOBAL MARKETS

Since both HIMA and its member companies operate on a global basis we have participated in many different kinds of health care systems and have gained some unique insights and experience in terms of finding out what works and what doesn't work when it comes to delivering high-quality, cost-effective health care. We deeply appreciate the many opportunities that we have had over the years to gain these insights and, in return, we have tried to use this knowledge to improve people's lives . . . and to streamline outdated bureaucratic processes as well as to create new jobs and opportunities.

We believe that one of the essential keys to our industry's success has been the ability to continuously innovate and improve our products based on constant feedback from medical doctors, other medical practitioners, and patients.

In many ways, the innovation process for medical technology is analogous to that of the computer industry, an industry where innovation is also continuous, and where people get more features, benefits and value over relatively short periods of time, i.e., more bang for less buck. Our industry's natural dynamics bode well for health care leaders and providers as everyone around the world seeks to contain health care costs and do more with less. Over the past 10 years, medical technology prices in the United States have risen an average of only 1.3 percent per year, or less than the overall Producer Price Index (PPI). Since 1996, U.S. medical technology prices have actually fallen 2.5 percent as compared to the prices of other key health care inputs, which have risen by 12.5 percent during this same 2-year period. So, much like the computer industry, we have been successful in the highly competitive, market-oriented U.S. environment by continuously making cost-effective, technological advances both big and small. The average life cycle for many advanced medical products, such as smaller, more-powerful heart pacemakers, is only two to three years compared to pharmaceuticals which are used for 10 to 20 years in tens of thousands or even hundreds of thousands of patients. More importantly, we are making these rapid strides forward in ways that fundamentally touch the quality of people's lives.

### OUR MUTUAL CHALLENGES IN JAPAN

*Deteriorating Trade Balance with Japan*

- At more than $20 billion, Japan ranks second only to the U.S. among the world's markets for medical technologies. American companies maintain a 30 percent share of the Japanese market for these products, though this figure is well below the U.S. industry average of nearly 50 percent market share overseas. U.S. companies are the primary supplier of the latest medical innovations to the Japanese market, including all implantable medical devices.
- In 1998, the U.S. medical technology industry's trade surplus with Japan decreased by more than $217 million. While still maintaining a positive balance of $870 million in medical technologies with Japan, the decrease in the trade balance in 1998 marks a disturbing reversal for one of the top performing U.S. industries in the Japanese market.

*Market Access Determined by Japanese Government*

- The Japanese government determines whether a medical device is safe, but even after that process is complete, most products still cannot be sold until the government also sets an official reimbursement price. Delays in Japanese government approval and reimbursement of new U.S. medical devices is becoming especially problematic considering the industry's 2-3 year product life-cycle, as opposed to drugs which have a 10-20 year cycle. Bureaucratic resistance to expediting approvals and to implementing much needed structural reform in the health care sector threatens to significantly deteriorate our position in a market and at a time that Japan's population is rapidly aging and in need of higher quality health care.
- Rather than undertake earnest deregulation and reform in their heath care system to promote competition, Japan has instead sought to impose even more regulation on the sale and pricing of medical devices, sometimes through inappropriate means aimed at foreign suppliers. For example, Japanese officials routinely seek transfer price information, internal cost data and other data so as to dissect, regulate and manage both the product and integral services that make U.S. companies successful health care providers in Japan. These measures simply add to the cost and inefficiency of the Japanese health care system.

*Diminished Trade Profile Would Hinder Progress*

- We are concerned that the Japanese government could be getting the impression that the U.S. government may not be raising medical technology issues at the same political level, or with as much gravity, as other trade disputes, e.g., steel, pharmaceuticals, insurance, etc.
- The Enhanced Initiative on Deregulation and Competition Policy talks, led by the U.S. Trade Representative's Office, and the Market-Oriented, Sector-Selective (MOSS) medical and pharmaceutical agreement talks, led by the Department of Commerce, have not yet delivered concrete results in major problem areas. Significant new pressure from the U.S. government may be required to re-establish the effectiveness of these sectoral trade talks, and to achieve genuine reform and deregulation in Japan's health care system.
- During the Birmingham Summit in May, 1998, the U.S. and Japanese governments issued the "Joint Statement" in which the Japanese government committed to specific reforms of the pricing system for medical technologies, to expedite product approvals and reimbursement listings, and to improve ministry-industry consultations. To date, no progress has been achieved.

*Specific Medical Device Industry Recommendations*

- *Expediting Regulatory and Reimbursement Approvals:* Despite commitments made to expedite product entry, the approval process has been slowing over the past couple of years. The Ministry of Health and Welfare (MHW) needs to simplify and accelerate product regulatory approvals by harmonizing with global standards and streamlining the internal approval process. Reimbursement coverage decisions are also growing increasingly long. MHW should begin a process of simultaneous review of medical devices for regulatory and reimbursement approval, or introduce other ways to prevent unnecessary delays. Also, MHW should reclassify products that are no longer new to Japan, such as coronary stents, and automatically list these products within 20 days of receiving product approval.
- *Reform of the Pricing System for Devices:* U.S. industry submitted a proposal to the Ministry of Health and Welfare in June 1998 to reform the mechanisms through which prices and product categorizations are determined. This reform is critical because the system as it currently functions is effectively biased against high quality U.S. products. Despite explicit commitments made to the U.S. government in trade talks (with USTR and Commerce), zero progress has been achieved thus far to improve the system, and MHW has refused to accept or seek compromise solutions on any of the recommendations contained in the U.S. industry proposal.
- *Industry Consultations:* The Ministry of Health and Welfare often takes a closed-door approach to pricing system changes as mentioned above, though they are required by the bilateral 1986 MOSS Medical and Pharmaceutical trade agreement to conduct meaningful consultations with industry prior to any changes in the reimbursement or regulatory systems. The consultation process must be honored, and industry must have the opportunity to actively participate in some meaningful capacity in the various committees charged with the development of new reimbursement and regulatory policies.

CONCLUSION: WORKING TOGETHER TO ADDRESS KEY TRADE AND HEALTH CARE CONCERNS

As important as our trade concerns with Japan are in the area of medical technology, they pale in comparison to Japan's health care challenges. Japan has the most rapidly aging population in the industrialized world, which will necessitate higher levels of health care spending in the very near future. The Japanese health care system also has many costly features that contribute to the inefficient pricing and allocation of their current health care resources. For example, Japan has the most hospitals and the longest hospital stays in the world, 35 days, which is 4 times the world norm. The average U.S. hospital stay is less than 6 days, in part because of the more rapid introduction and greater use of cost-effective medical technology in this country.

Currently, Japan spends less than 7 percent of its budget on medical technology, which is in line with world norms. More important, however, is how medical technology could be used as a cost-effective alternative to address some of the main cost-drivers in the Japanese health care system, such as to shorten lengthy hospital stays. HIMA and the medical device industry have repeatedly offered specific suggestions to the Japanese government regarding needed structural changes to its health care system:

- Create "centers of excellence" to consolidate the delivery of cost-effective high tech care,
- Speed cost-saving and competing medical devices into the Japanese marketplace,
- Improve the process for purchasing and delivering products to doctors and hospitals,
- Encourage long-term partnerships in managing health care costs, and
- Restructure the bureaucracy to encourage a system-wide view of the benefits of medical technology.

Unfortunately, the current Japanese health care system and health ministry are not structured so as to allow a system-wide view regarding the value of new medical technology in reducing health care costs or improving outcomes. Nor are Japanese health care officials inclined to let the market help establish prices and efficiently allocate resources where they are needed; hence the Japanese health care system is a web of inefficiencies and distortions that deter the infusion of new technology, ideas, and other changes in the status quo.

The U.S. medical technology industry is a dynamic, vibrant industry that would appreciate more U.S. government support, as well as the involvement of other Japanese ministries and political leaders, in order to resolve these important trade and health care issues in Japan. Our bilateral trade agreement processes must be reinvigorated, and Japan must be compelled to address potentially discriminatory and shortsighted policy issues. Such deregulation and associated changes will truly benefit all parties involved.

A significant opportunity exists to compel Japan to go forward with needed structural reforms and deregulation in this sector at the upcoming Enhanced Initiative on Deregulation and Competition Policy talks in Tokyo, March 1-2. Your efforts to highlight and elevate these issues on the U.S.-Japan trade agenda and to seek their resolution would be greatly appreciated.

Lastly, we fully support the Administration's and your efforts to establish and maintain a free and open trading system both in Japan and around the world. Please let us know if we can help in any way. Thank you for this opportunity.

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