

1 EXECUTIVE COMMITTEE MEETING  
2 THURSDAY, OCTOBER 21, 1993  
3 U.S. Senate,  
4 Committee on Finance,  
5 Washington, DC.

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6 The meeting was convened, pursuant to recess, at  
7 10:08 a.m., Hon. Daniel P. Moynihan (Chairman of the  
8 committee) presiding.

9 Also present: Senators Baucus, Bradley, Riegle,  
10 Rockefeller, Daschle, Breaux, Roth, Danforth, Chafee,  
11 Grassley, Hatch and Wallop.

12 Also present: Lawrence O'Donnell, Jr., Staff  
13 Director; Edmund Mihalski, Chief of Staff, Minority.

14 Also present: Rufus Yerxa, Deputy U.S. Trade  
15 Representative; Ira Shapiro, Esq., General Counsel, U.S.  
16 Trade Representative; John Weiss, Commissioner, U.S.  
17 Customs Service; and Jose Padillia, Esq. Assistant  
18 Commissioner, Department of the Treasury, U.S. Customs  
19 Services, Congressional and Public Affairs.

20 Also present: Marcia Miller, Majority Chief  
21 International Trade Counsel; Debbie Lamb, Majority Trade  
22 Counsel; and Brad Figel, Minority International Trade  
23 Counsel.

24  
25

1           The Chairman. A very good morning to our guests and  
2 to our ever-industrious staff. Good morning to  
3 Ambassador Yerxa and to Mr. Shapiro.

4           Yesterday morning, Senator Hatch asked that we  
5 might, at one point, proceed to the Customs Moderation  
6 -- Modernization. No. No moderation. Strike  
7 moderation. Veracity. Vigilance.

8           Senator Hatch asked that the Customs Modernization  
9 amendment would be considered. We have had some  
10 informal counseling among ourselves, and I think it is  
11 our judgment that, within the strictures that the  
12 Majority Leader very properly set forth yesterday about  
13 not putting too many things on a measure but would be  
14 strictly limited in the consideration that we would have  
15 on the Senate floor, this comes within the trade area.

16           And, if there is no objection--and I believe there  
17 is none--Senator Hatch, I would like to recognize you,  
18 sir, to make this measure or propose what you will.

19           Senator Hatch. Well, thank you, Mr. Chairman. In  
20 the interest of time, a complete statement for the  
21 record has been provided in advance to each of the  
22 committee members.

23           And we would like to move this Customs Modernization  
24 Act amendment to the NAFTA implementing proposal because  
25 I think the committee has a compelling interest, if not

1 a duty, to add the MOD Act amendment to the implementing  
2 legislation because NAFTA and the MOD Act are  
3 inseparable.

4 As we all know, NAFTA is a framework or conceptual  
5 agreement between three Nations to expand trade, but the  
6 MOD Act is the machinery, the practical dimension that  
7 we need to make NAFTA work the way it was negotiated.

8 Now, we passed this by unanimous consent in the  
9 committee last year, but we were not able to get it  
10 through because the legislation we attached it to did  
11 not go through.

12 But, by adding the MOD Act to NAFTA, we underline  
13 the importance of the three NAFTA goals: we can prevent  
14 or deter import surges and react promptly if they occur;  
15 we can assure an orderly phase-out of tariffs and  
16 prevent deceptive import practices; and we can  
17 accelerate the flow of goods needed by our manufacturing  
18 community to support and increase jobs.

19 I understand the Ways and Means Committee in the  
20 House shares this view, as yesterday it reported out  
21 H.R. 700 as an amendment to NAFTA. The committee did  
22 slightly modify my version, S. 106, which I introduced  
23 in January. There are two major differences.

24 First, H.R. 700 gives the broker community four  
25 years to achieve electronic filing capability, a

1 standard widely accepted by the vast majority of  
2 importers; and, second, the House has eliminated all  
3 tariff suspension provisions which were in the initial  
4 committee draft. And, I repeat, there are no duty  
5 suspensions in this bill.

6 Let me also remind the committee that the MOD Act  
7 was adopted by both houses in the previous Congress but  
8 was vetoed by President Bush as part of the 1992 Revenue  
9 Act, H.R. 11.

10 Finally, Mr. Chairman, I want to remind my committee  
11 colleagues that the administration is solidly behind  
12 inclusion of the MOD Act in NAFTA. USTR, the Treasury  
13 Department, and the administration's Interagency Task  
14 Force on NAFTA all support the offering of this  
15 amendment.

16 I do not want to take any more time of the  
17 committee, but I would move the amendment at this time.  
18 I understand that Senator Breaux does have an amendment  
19 to it that I suppose he will offer at a later date.

20 The Chairman. Fine. Would it be agreeable to you,  
21 Senator Hatch, if we just accepted the amendment as  
22 having been moved? An amendment will be in order.  
23 Senator Breaux, no doubt, will appear. We do not have  
24 enough members present to vote, in any event.

25 Senator Hatch. Right.

1           The Chairman. We will stack the vote and await  
2 other members.

3           Senator Hatch. If you could. If you would take  
4 care of that for me, Mr. Chairman, I would very much  
5 appreciate it. I think everybody here agrees it is  
6 good.

7           The Chairman. It certainly is. I believe it has  
8 had unanimous support of the committee, and it is very  
9 much in order. I am pleased to hear that the House has  
10 added it, now, to the NAFTA, with some amendment that  
11 you will understand and work out with them.

12          Senator Hatch. Sure. We can. I would say, if any  
13 member of the committee has any questions in detail on  
14 this, the Customs Commissioner is here. I am sure he  
15 would be happy to answer those questions.

16          The Chairman. Fine. We welcome Commissioner Weiss.  
17 Where are you?

18          Commissioner Weiss. Right here.

19          The Chairman. There you are. I am sorry. Would  
20 you like to make a statement about the administration's  
21 position at this point?

22          Commissioner Weiss. I simply would like to thank  
23 Senator Hatch, the sponsor on the Senate side, and you,  
24 Mr. Chairman, and this committee.

25          We believe very strongly, in the Customs Service and

1 I think the entire administration does believe, we can  
2 do a much more effective job of enforcing the provisions  
3 of NAFTA with the provisions of the Customs  
4 Modernization Act as part of it.

5 We are very grateful that these two measures have  
6 been joined together, and we are very enthusiastic about  
7 our ability to effectively enforce the provisions of  
8 NAFTA with this marriage.

9 The Chairman. Well said, sir.

10 Commissioner Weiss. Thank you, Mr. Chairman.

11 The Chairman. Thank you very much, Senator Hatch.  
12 Senator, you are next.

13 Senator Grassley. I do not have to go now, but I  
14 would like to go sometime pretty soon.

15 The Chairman. I will bet you get a chance.

16 Senator Grassley. It is all right.

17 The Chairman. Senator Baucus, the Chairman of our  
18 Subcommittee on Trade, has a dread amendment which he  
19 will now offer.

20 Senator Baucus. Thank you, Mr. Chairman.

21 I would like to begin by pointing out that NAFTA  
22 itself runs 2,000 pages in length. And, as Ross Perot  
23 is good enough to point out, some of us may not have had  
24 a chance to read every page. For that reason, I would  
25 like to point out that there are two sections in NAFTA

1 which I think most people really have not focused much  
2 attention on.

3 First, the preamble. The United States, Canada and  
4 Mexico lay out 15 goals for NAFTA in the preamble.  
5 Among these goals are: reduce distortions to trade,  
6 enhance the competitiveness of their firms in global  
7 markets, create an expanded and secure market for goods  
8 and services produced in their territories.

9 Interestingly, none of those goals are limited to  
10 just the North American market; nearly all countries  
11 have their eyes on world markets. That is why the NAFTA  
12 also includes a second provision, an accession clause to  
13 allow other nations that provide promising trade  
14 opportunities to join the NAFTA in the future.

15 To implement this accession clause, I am offering,  
16 today, an amendment to extend the provision of the 1988  
17 Trade Act, known as a provision "to identify trade  
18 liberalization priorities."

19 This process for identifying the foreign markets  
20 that provide the largest potential markets for U.S.  
21 goods and services and to identify trade barriers are  
22 sometimes known by the shorthand as Super 301.

23 I think we are all familiar with Super 301. It is  
24 an annual process under which the U.S. identifies those  
25 markets where the U.S. should focus its trade

1 negotiating resources.

2 The markets are identified, and then negotiations  
3 are commenced to open them under Section 301. Those  
4 Section 301 negotiations can lay the basis for future  
5 trade negotiations to join NAFTA.

6 Super 301 passed the Senate by an overwhelming vote  
7 of 87 to 7. It was also included in a bill, H.R. 5100,  
8 that passed the House of Representatives just last year  
9 by a vote of 280 to 145.

10 The amendment I am offering today is identical to  
11 the provision that passed the House last year. It  
12 provides a straight extension of Super 301 through 1997.

13 Yesterday, some members of the committee mentioned  
14 their concern that perhaps Super 301 would hinder other  
15 trade negotiations, namely, the Uruguay Round. I  
16 question this, since Super 301 was conceived and  
17 implemented during the Uruguay Round.

18 There was and is a wide consensus in the Congress  
19 and in the administration that U.S. bilateral efforts  
20 through Super 301 actually spurred along the Uruguay  
21 Round and helped make it happen. If bilateral  
22 negotiations like the NAFTA spur the Round, why not  
23 similar bilateral negotiations under Super 301?

24 I would also remind those concerned that, in 1990,  
25 the Bush Administration used Super 301 to identify the



1 Uruguay Round as the top trade liberalization priority.

2 Super 301 and the GATT negotiations are not only  
3 complementary, without the threat of action under Super  
4 301 I doubt we would have made as much progress as we  
5 have already made in the Uruguay Round.

6 Super 301 has worked for market opening objectives,  
7 and can now work hand in hand with both the NAFTA and  
8 the Round to further those objectives. I urge the  
9 committee to approve the amendment.

10 The Chairman. Thank you. Is there discussion?  
11 Senator Riegle.

12 Senator Riegle. Mr. Chairman, I want to add my  
13 voice in support of Super 301. It is vital. It  
14 originated in this committee with discussions going way  
15 back with Senator Danforth and myself, and incorporating  
16 many other people that came down the track. So, I feel  
17 strongly that it is an important step.

18 The Chairman. This has, of course, passed this  
19 committee before.

20 Senator Danforth is present. You may want to say  
21 something.

22 Senator Danforth. Well, Mr. Chairman, this is a  
23 provision that has been in the law before. It was part  
24 of the 1988 Trade Act. It was supposed to have a life  
25 of two years, but it was actually used for one year.

1           The previous administration did not much like the  
2           idea. But Carla Hills said, at one point, that 30 days  
3           before the designation of the countries under Super 301  
4           was the most active period of trade negotiations we have  
5           ever had as a country. I believe that is correct. I  
6           think there is a lot to be said for having a systematic  
7           approach to trade problems.

8           I think one of the problems that we have now,  
9           particularly with countries that do have pattern and  
10          practices of trade barriers, is that, if all we do is to  
11          proceed on an instance-by-instance basis, it is very  
12          much like cutting the grass: you cut it and it grows  
13          back up again, or maybe grows up in a somewhat different  
14          form.

15          So, I think Super 301 is a very good idea and it is  
16          very, very important to rekindle it. I know that it is  
17          supported by the administration, which is positive.

18          I think that the only question is whether NAFTA is  
19          in too delicate a shape today to carry it. But,  
20          certainly, on principle, I suppose.

21          The Chairman. I wonder if I could ask Ambassador  
22          Yerxa to comment on the administration's position.

23          Ambassador Yerxa. Mr. Chairman, Senator Baucus, the  
24          President has repeatedly stated his support for this  
25          provision, and Ambassador Kantor, I think, has testified

1 before this committee our support for extension of Super  
2 301. I do not think there should be any doubt that this  
3 administration intends to effectively and fully utilize  
4 Section 301 to identify --

5 The Chairman. If it is enacted.

6 Ambassador Yerxa. Well, Mr. Chairman, you will  
7 recall, there are two aspects to 301. One, is the  
8 normal 301 statute which is in law today, and the other,  
9 is the Super 301 provision.

10 I am merely suggesting that we intend to fully  
11 utilize the statute that is on the books today, and, if  
12 Super 301 is enacted, to also fully use it to identify  
13 trade liberalization priorities and to pursue them  
14 aggressively in order to open foreign markets.

15 The Chairman. Fine.

16 Ambassador Yerxa. The question of whether this is  
17 necessary or appropriate to the NAFTA is a question for  
18 the Congress to decide. This is a matter of, as Senator  
19 Danforth said, some delicacy. I know that this is  
20 likely to be an issue in conference between you and the  
21 House if the committee does adopt this. The  
22 administration, at this point, would take no position on  
23 that. That is really a determination for the Congress.

24 The Chairman. Fine. Thank you, Ambassador.  
25 Senator Rockefeller.

1 Senator Rockefeller. Mr. Chairman, I would identify  
2 myself with the comments that have come before my own.

3 The Chairman. Thank you. Senator Breaux?

4 Senator Breaux. No, Mr. Chairman.

5 The Chairman. Well, if there is no further comment  
6 on this, we are going to wait just a little while until  
7 we have a little more attendance.

8 We have already heard from Senator Hatch, who has  
9 proposed the Customs Modernization Act, which I  
10 understand Senator Breaux will have an amendment to. We  
11 will get to that shortly. We will stack them, as we  
12 say.

13 Senator Grassley, you had something to say.

14 Senator Grassley. Yes. This is in regard to home  
15 appliances.

16 The Chairman. You have an amendment.

17 Senator Grassley. My amendment would be co-  
18 sponsored by Senator Riegle. I think that we have  
19 probably worked it out between the administration and  
20 the committee and myself, so I will not go into much  
21 detail except to just give some statistics for what the  
22 problem is, and then how my amendment tries to solve the  
23 problem.

24 Number one, remember that the International Trade  
25 Commission has specifically identified the home

1 appliance industry, and particularly as it is located in  
2 the midwest, to be a major loser from the standpoint of  
3 unemployment: immediately, five percent, and long-term,  
4 15-20 percent. So, there are a lot of nebulous things  
5 that have not been studied about unemployment versus  
6 employment caused by NAFTA, but this is one where there  
7 have been studies identified.

8 And then the second set of figures I will give you,  
9 then I will go immediately to my amendment, are in  
10 regard to dramatic increases in imports for Mexico just  
11 between 1990 and 1992. Gas ranges: from 75,000 units to  
12 650,000; that is an 862 percent increase; refrigerators:  
13 524,000 up to 944,00 by 1992; that is 180 percent  
14 increase; clothes washers: from 4,000 up to 54,000; that  
15 is a 1,300 percent increase.

16 So, in my amendment, which would be what we passed  
17 out yesterday in a thick packet but is the same as what  
18 you would have read yesterday, Amendment A specifies the  
19 categories of home appliances that are covered by this  
20 package.

21 Amendment B applies existing U.S. code  
22 considerations governing ITC determinations of serious  
23 injury or threat of serious injury, and makes clear that  
24 removal of MFN rates of duty are considered reductions  
25 in duty.

1           Amendments C and D clarify how the domestic industry  
2           is to be defined if an entity in the domestic industry  
3           is also an importer.

4           Amendments E and F specify that the remedy for  
5           injury caused by imports is a reinstatement of MFN rates  
6           of duty.

7           Now, A, B, C, and D are the same as what you had  
8           passed out yesterday in my explanation. I would only  
9           change E and F this way, and this is because of our  
10          negotiations with the administration.

11          In regard to E, the explanation would read this way,  
12          "With full respect to injury as a result of imports from  
13          NAFTA parties, the remedy provided shall be  
14          reinstatement of MFN rates," and then strike the rest of  
15          that sentence. And, instead of the striking, have these  
16          words in there, "as provided for in Article 801."

17          Then in F, you would strike the word, "shall," and  
18          put in the word, "may." Now, those are all of my  
19          amendments, except a sense of the Senate amendment that  
20          I will bring up separately. So, these will be offered  
21          en bloc.

22          Now, it is my understanding that the administration  
23          would like to have me say that they accept these as a  
24          matter of principle. And, except for just technical  
25          changes, that they would like to work out with language

1 with us which we have agreed to do, they would say that  
2 this is all right. I will let them speak for  
3 themselves. It is this way, at my understanding,  
4 except for technical changes in language.

5 The Chairman. I see. Senator Grassley, just as a  
6 matter of procedure, we do not really have your language  
7 on E. On F, when you say, change shall to may, that we  
8 can manage. Can we not get your actual language?

9 Senator Grassley. Yes. On the back of the packet,  
10 if they pass out the same packet we had on your table  
11 yesterday.

12 The Chairman. There would not be any difficulty in  
13 your giving the language to a secretary in the back, and  
14 we will have copies before us in no time.

15 Senator Grassley. It is my understanding that there  
16 are copies to be passed out.

17 The Chairman. Oh. Good. Good. All right.

18 Senator Grassley. All right.

19 The Chairman. This is the substitute E for the  
20 provision which is marked #9 in the upper right-hand  
21 column. Let us get clear what we are doing here.

22 Is the document I have the corrected one?

23 Senator Grassley. Yes.

24 The Chairman. It is. We are quite capable of  
25 settling this. Do we have your corrected version?

1 Senator Grassley. What you have before you is my  
2 amendment, except for the strikes that I have indicated.

3 The Chairman. Well, I do not know what you mean by  
4 strike. You asked that shall be changed to may.

5 Senator Grassley. And on amendment F.

6 The Chairman. No, E. You gave us a very different  
7 version of E.

8 Senator Grassley. Part E of the amendment. On the  
9 second page of what you have in front of you, E.

10 The Chairman. Yes, sir.

11 Senator Grassley. Starting with the "(not GSF  
12 rates.)"

13 The Chairman. GSP.

14 Senator Grassley. GSP rate. Strike the rest of  
15 that sentence. Everything after the word, rates. MFN  
16 rates. Strike the rest of that sentence.

17 The Chairman. We strike, "in effect prior to the  
18 implementation of NAFTA, as provided in the agreement."

19 Senator Grassley. Yes. Then put in the words --

20 The Chairman. No, Senator Grassley. You have to  
21 give us the amendment in writing.

22 Senator Grassley. All right. Then go and duplicate  
23 that.

24 The Chairman. And we have time. Thank you,  
25 Senator.



1 Senator Riegle, did you want to make a comment?

2 Senator Riegle. Just a brief word, Mr. Chairman.

3 First of all, I want to speak in strong support with  
4 Senator Grassley on this issue. We would not want NAFTA  
5 to confer benefits on companies that moved operations  
6 already to Mexico over and above those that we would  
7 provide for companies that have remained here in the  
8 United States. We do not want to have that kind of an  
9 imbalance.

10 I must tell you, we produce a lot of appliances in  
11 Michigan in different operations. Some companies in  
12 Michigan have gone to Mexico to take advantage of low  
13 labor rates, others are staying in Michigan.

14 I visited one Frigidaire plant recently in  
15 Greenville, Michigan which has a work force that has  
16 come down from about 5,000 to 2,600 people. They are  
17 working about as hard as they can right now to try to  
18 keep their jobs, and this amendment will give them a  
19 real chance to do that, not just there, but any other  
20 place.

21 My understanding is that the administration supports  
22 this amendment, so this is something that has, in  
23 effect, been worked out or is in the process of being  
24 worked out. So, I think it is important to do.

25 The Chairman. Thank you, Senator Riegle.

1 Senator Grassley. Mr. Chairman.

2 The Chairman. Senator Grassley.

3 Senator Grassley. Mr. Chairman, I might say that  
4 one of the major points that I left out of my opening  
5 statement when I gave those statistics is, what NAFTA  
6 does is that it immediately reduces the 2 and 2.8  
7 percent tariffs for home appliances coming into the  
8 United States--our present tariff--but it has a 10-year  
9 phase-out of the Mexican percent tariff.

10 The Chairman. Right.

11 Senator Grassley. So, this really is not going to  
12 change NAFTA, but it does put in place a process,  
13 through the ITC, for our industry to ask for a study and  
14 to take action if there is harm, under existing  
15 definitions of harm.

16 Senator Bradley. Mr. Chairman.

17 The Chairman. Senator Bradley.

18 Senator Bradley. Could I ask, what does the  
19 administration think of this?

20 The Chairman. I was about to ask Ambassador Yerxa  
21 if would tell us.

22 Ambassador Yerxa. As Senator Grassley has stated,  
23 we are in agreement on the principle of the amendment.  
24 There are some technical concerns. We have been working  
25 with the International Trade Commission, which, of

1 course, would be the agency administering the import  
2 relief decision. We do ask to reserve the right to make  
3 some changes in order to make sure that this is  
4 administrable.

5 I do just want to point out one other thing, Mr.  
6 Chairman. And that is, I want Senator Grassley and  
7 Senator Riegle to understand that we recognize the  
8 concern here, but also that we see some significant  
9 opportunities in NAFTA.

10 For example, two of our largest appliance  
11 manufacturers are substantial exporters from the United  
12 States, and actually export more than they import. So,  
13 I think we do have to recognize that there are also  
14 benefits in the NAFTA for the United States in this  
15 sector.

16 The Chairman. Fine.

17 Senator Grassley. Well, the simple response to that  
18 is, if everything is all right, then this procedure of  
19 our amendment will never be used.

20 Ambassador Yerxa. I agree. Well, that is why we  
21 support the amendment.

22 Senator Grassley. We would not expect it to be.

23 The Chairman. Fine. Fine. And when you have that  
24 sub-section F, we will pass it around.

25 Now, we will pass on to Senator Breaux.

1           May I say to the committee that there are enough of  
2 us here; we have a representative attendance here. So,  
3 we are going to vote on the three amendments we have  
4 before us shortly, just the informal vote we would have.

5           Senator Breaux, you had an amendment to the Customs  
6 Modernization Act.

7           Senator Breaux. Mr. Chairman, I have. I think we  
8 have passed it out to the staff. This deals with the  
9 Customs Modernization Act, and, I assure you, it has  
10 been very difficult for me to understand this.

11           When we introduced a Customs Modernization Act this  
12 year and it was sponsored by Senators Hatch,  
13 Rockefeller, Roth, Grassley, and Danforth on this  
14 committee, that bill really reflected a compromise  
15 between the large Customs brokers and the smaller  
16 Customs brokers at work at all of these ports.

17           The smaller Customs brokers are concerned about the  
18 remote filings. My amendment simply puts the starting  
19 date of the requirement that they use remote filings for  
20 Customs fees at the date that was in the bill that our  
21 colleagues had introduced, and that is a start-up date  
22 of 1999, as opposed to the start-up date of 1997.

23           This amendment does not affect any increase in  
24 Customs fees or any increase in the amount that Customs  
25 charges. We had our meeting yesterday, and some of our

1 colleagues may remember, I asked Leon Panetta whether  
2 they had a problem with how they were filed. He said he  
3 did not have a problem with that, they are concerned  
4 about the money they get. That is not affected by my  
5 amendment.

6 So, there was a lot of negotiation on remote  
7 filings. And the agreed start-up date was going to be  
8 1999. It is going to take Customs a long time--probably  
9 to 1999--to change the ability to file Customs tariffs  
10 and fees by brokers through the remote system anyway.

11 So, I think that what I would like to do in this  
12 amendment--1999 was a date that was in the bill we all  
13 introduced--is to reinstate the start-up date of 1999,  
14 reflecting that it does not affect the amount of money  
15 Customs collects in any way. That was the compromise  
16 between the large groups and the small groups.

17 The Chairman. Your language says, provides for a  
18 sunset date.

19 Senator Breaux. Well, we changed that, because that  
20 was the language that the technical people used. And I  
21 said, a sunset means an end, not a beginning.

22 The Chairman. Yes.

23 Senator Breaux. So, we have changed that. That is  
24 a start-up date. Do not ask me why they --

25 The Chairman. Well, I am not going to spend my

1 morning asking you to retype your amendment.

2 Senator Breaux. Yes.

3 The Chairman. But, instead of sunset, we say start-  
4 up.

5 Senator Breaux. It is a start-up date of 1999. It  
6 should have been --

7 The Chairman. Is that understood?

8 Senator Breaux. Yes.

9 Ms. Miller. Yes, Mr. Chairman.

10 The Chairman. Ms. Miller, Mr. Figel, is that  
11 understood? Start-up instead of sunset.

12 Ms. Miller. Mr. Chairman.

13 The Chairman. Ms. Miller.

14 Ms. Miller. We do have someone from the Customs  
15 Service here to comment on the amendment if the Chairman  
16 would like.

17 The Chairman. Good morning, sir. And your name is?

18 Commissioner Padillia. Jose Padillia. I am an  
19 Assistant Commissioner.

20 The Chairman. Good morning, Commissioner. We  
21 welcome you. Could we hear your comment on Mr. Breaux's  
22 amendment? Mr. Weiss, the Commissioner, has welcomed  
23 the general proposal.

24 Commissioner Padillia. The only thing I would like  
25 to add, as I understand, as to the 1999 date versus 1997

1 which is presently in the Hatch amendment, is that was a  
2 sunset date. What Customs MOD Act--as in Senator  
3 Hatch's amendment--would permit us to do is actually  
4 immediately start permitting electronic filings in those  
5 provisions.

6 The Chairman. Right.

7 Commissioner Padillia. What the 1997 sunset date in  
8 the Hatch amendment would do is extend to 1997 the  
9 ability of brokers to file physically, in paper, non-  
10 automated documents, State documents that are not  
11 capable of being sent electronically by computer, and  
12 documents that also are central for release.

13 Senator Breaux. You understand what I am trying to  
14 do. You all understand what I am trying to do. What  
15 should be the correct language to accomplish what I am  
16 trying to do?

17 Commissioner Padillia. Well, the language in your  
18 handout here, Senator, is correct.

19 The Chairman. Well, now, wait. The language in the  
20 handout says, sunset. Come on. Everybody, let us get  
21 ordered here. But it has been amended to say start-up.  
22 Now, which is correct?

23 Senator Breaux. Yes. What do I need?

24 Ms. Miller. Mr. Chairman, Ms. Lamb might be able to  
25 help us clarify this.

1 The Chairman. Ms. Lamb, help us.

2 Ms. Lamb. Thank you, Mr. Chairman. I will try, Mr.  
3 Chairman. Senator Breaux's interpretation is, I think,  
4 perhaps the more accurate as to what the committee  
5 approved and what the Congress approved last year.

6 The dates in the bill permitted full implementation  
7 of remote filing as of 1999 rather than 1997. It was  
8 not actually a sunset date in terms of terminating the  
9 program, but, rather, that 1999 was the date by which  
10 the full effect of the program could be brought into  
11 being.

12 The Chairman. It meant you had to be up and running  
13 on your electronic filing.

14 Ms. Lamb. And that you could take advantage of the  
15 remote filing provisions for certain Customs  
16 transactions, but not before 1999.

17 Senator Breaux. I would like to do what we did last  
18 year.

19 Ms. Lamb. Right. That is right.

20 The Chairman. Well, Commissioner, is that agreeable  
21 to you?

22 Ms. Lamb. Well, it is the official position of the  
23 administration to prefer the 1997 date. But, Mr.  
24 Chairman, if the committee decides to revert back to  
25 1999, which Senator Breaux correctly says was in last



1 year's bill, naturally, we would work with the committee  
2 to follow your lead.

3 The Chairman. Good. It is good to get along with  
4 us.

5 (Laughter)

6 The Chairman. I think Senator Daschle asked next.

7 Senator Daschle. With that explanation, I am just  
8 curious as to why it is called a sunset date.

9 Ms. Lamb. I would agree.

10 The Chairman. Ms. Lamb, you would agree.

11 Ms. Lamb. Sorry, Mr. Chairman.

12 The Chairman. Should we work on the language if we  
13 have agreed on the object?

14 Ms. Lamb. Mr. Chairman, I think it would be  
15 desirable to choose slightly different language for the  
16 amendment, and we would be happy to work with Senator  
17 Breaux's staff to prepare that.

18 The Chairman. Senator Baucus.

19 Senator Baucus. Mr. Chairman, I would urge us to  
20 work on the language to convey the actual intent.

21 The Chairman. All right.

22 Senator Baucus. Second, because I am sure Senator  
23 Daschle was about to say the same, this is very  
24 important to a lot of us on the Canadian border from  
25 less populous States.

1           Now, I hear many, many complaints from Customs  
2 brokers about going too fast. These are smaller  
3 brokers. They want to automate, but they just cannot  
4 get up and running as quickly as some of the larger  
5 brokers. This is very important.

6           The Chairman. All right. Now, since we are working  
7 on language and we are not actually adopting language  
8 here, this can be done. Are you agreeable?

9           Senator Danforth, this was partly your measure. Is  
10 this agreeable to you?

11          Senator Danforth. Yes.

12          The Chairman. Senator Chafee.

13          Senator Chafee. When we are through that, Mr.  
14 Chairman --

15          The Chairman. We are now through that. We have the  
16 language, with corrected Sections E and F of Senator  
17 Grassley's amendment. So, those are the three that we  
18 have now awaiting us.

19          Let us hear from Senator Chafee. Good morning, sir.

20          Senator Chafee. Mr. Chairman, I have an amendment  
21 that deals with that old, familiar section we have dealt  
22 with so many times. That is, Section 11 of Part B, of  
23 Annex 401, in Appendix 16 --

24          The Chairman. I know it well.

25          Senator Chafee. I just do not want to chew over it

1 again. It is Annex 300-B of Chapter 3.

2 The Chairman. I could not forget it.

3 Senator Chafee. Well, everybody is familiar with  
4 it, so there is no point in explaining it further, Mr.  
5 Chairman. But it is an amendment that has the support  
6 of the administration and was passed unanimously in the  
7 House.

8 What it does, is it says that, once the President  
9 has proclaimed the rules of origin contained in this  
10 section that we know so well, these rules may not be  
11 modified or terminated by Presidential proclamation or  
12 other administrative action, except for purely technical  
13 matters.

14 This amendment does nothing to modify the rules of  
15 origin that were agreed to by our negotiators or their  
16 counterparts. My amendment simply specifies that the  
17 authority to make any agreed upon modification of these  
18 rules will lie with Congress.

19 This deals, Mr. Chairman, with the rules of origin  
20 for textiles. One of the reasons that the ATMA,  
21 American Textile Manufacturers Association, has  
22 supported NAFTA so wholeheartedly is because of the  
23 rules of origin that are in there, which Ambassador  
24 Yerxa, I believe, is quite familiar with.

25 I do not know how much time you want me to spend on

1 this.

2 The Chairman. As little as possible.

3 Senator Chafee. Well, based on that, Mr. Chairman,  
4 I have a rather lengthy statement here which I will  
5 forego.

6 The Chairman. It can be placed in the record.

7 Senator Bradley. Mr. Chairman, may we ask Mr. Yerxa  
8 and the administration --

9 The Chairman. Well, we will let Senator Chafee  
10 finish. Senator Chafee, you know I meant you take as  
11 much time as you want.

12 Senator Chafee. All right. What this does,  
13 basically, Mr. Chairman, is in the agreement of NAFTA  
14 there are rules of origin that deal with textiles which,  
15 in the most simplistic form, say that you just cannot  
16 bring in a whole bunch of textiles from Taiwan, or from  
17 Malaysia, or Hong Kong into Mexico and say, these are  
18 Mexican textiles, and, thus, bring them into the U.S.  
19 under NAFTA. These are rules of origin that apply to  
20 automobiles; they apply right across the board.

21 So, what this says, further, is that the rules of  
22 origin that have been carefully negotiated cannot now be  
23 changed once they are in except by Congress, except for  
24 technical amendments. Is that a fair description of it,  
25 Ambassador Yerxa?

1           The Chairman. Why do we not ask Ms. Miller if it is  
2 a fair description?

3           Senator Chafee. Ms. Miller.

4           Ms. Miller. Yes, Senator Chafee. That is our  
5 understanding of the agreement and your amendment.

6           The Chairman. Thank you.

7           Senator Chafee. I understand I have a distinguished  
8 co-sponsor in the form of Senator Rockefeller.

9           The Chairman. Person of Senator Rockefeller.

10          Senator Chafee. And, if he should wish to indicate  
11 support for this amendment --

12          Senator Rockefeller. I do.

13          The Chairman. He does. Ambassador Yerxa.

14          Ambassador Yerxa. Well, first, Mr. Chairman, I  
15 would like to agree with Senator Chafee. This really is  
16 my favorite article of the agreement. It has kept me up  
17 many nights. I do want to indicate that we are in full  
18 agreement with the amendment. This is similar to  
19 language that has been proposed on the House side. I  
20 would say, first of all, that we agree with the  
21 proposal.

22          But, I would want to confirm one important point,  
23 Mr. Chairman. That is, we understand that this  
24 amendment is not intended to prevent proclamation of  
25 modifications as a result of short supply decisions by

1 the committee for implementation of textile agreements,  
2 the CETA.

3 And, thus, under the Chafee amendment, the President  
4 would be allowed to proclaim any short supply changes  
5 decided by CETA. And, in addition, as Senator Chafee  
6 has mentioned, the President would be able to proclaim  
7 for a one-year period any purely technical changes to  
8 those rules of origin, as discussed in the Chafee  
9 amendment.

10 Senator Chafee. Mr. Chairman.

11 The Chairman. Senator Chafee.

12 Senator Chafee. I agree with Ambassador Yerxa.

13 That is, indeed, the correct interpretation of my  
14 amendment. It should be emphasized that my amendment is  
15 not intended to affect short supply decisions. I would  
16 request that the administration make this point clear in  
17 the implementing bill and in its Statement of  
18 Administrative Action.

19 Ambassador Yerxa. And we would be agreeable to  
20 doing that, Senator.

21 Senator Chafee. Well, thank you.

22 The Chairman. Thank you, Senator Chafee. Senator  
23 Grassley. No. Senator Rockefeller.

24 Senator Rockefeller. Thank you, Mr. Chairman. I  
25 have an amendment which has been worked over.

1           The Chairman. May I just record, I believe we now  
2 have four amendments. Ms. Miller, I dare to hope you  
3 are keeping --

4           Ms. Miller. I am, Mr. Chairman. I understand that  
5 there are five amendments before us at this point. The  
6 one difference could be your understanding --

7           The Chairman. Well, Mr. Hatch's amendment, as  
8 amended by Senator Breaux, is one of them.

9           Ms. Miller. Exactly. Exactly.

10          The Chairman. Yes. Senator Rockefeller.

11          Senator Rockefeller. Mr. Chairman, before I do  
12 this, I want to say that I am aware that this amendment  
13 which I am offering in no way affects West Virginia. It  
14 does affect such States as Pennsylvania, and New York,  
15 and, perhaps, New Jersey. But it does not represent  
16 West Virginia. I simply choose to say that.

17                 It has to do with a very sensitive sector in trade  
18 relations, generally, with Mexico, and that has to do  
19 with television sets, and, in particular, color picture  
20 tubes. There is a very well-documented, 20-year history  
21 of cheating, dumping, fraud, circumvention on this.

22                 Now, Mr. Chairman, because I think you will strongly  
23 wish me not to do this, there are two sets of charts  
24 here that reflect today's situation. The purpose of  
25 this is to encourage NAFTA to pass and Mexico not to

1 become a dumping platform for manufacturing from Asian  
2 countries, which is the pattern which now is in  
3 development.

4 These two charts, which I will not explain but which  
5 I do want to enter into the record --

6 The Chairman. So ordered.

7 Senator Rockefeller. -- show that NAFTA takes steps  
8 to try to disadvantage efforts of Asian countries to use  
9 Mexico as a manufacturing jumping ground for exports  
10 back into the United States by virtue of dumping, fraud,  
11 and circumvention. So, there is special tariff  
12 treatment in NAFTA that changes the tariff treatment, as  
13 with color picture tubes and television sets.

14 Just to give one example, tubes are made in various  
15 places, and they are inside, obviously, the television  
16 set. There can be some from Taiwan, some from Japan,  
17 some from the United States, and people do not open up  
18 the television set to look at the tubes.

19 As a result, there is a lot of all-Asian tubes in  
20 there that may be claiming to be U.S. tubes, and it is a  
21 very nasty, yet effective business. So, what this  
22 special tariff amendment does is to request for very  
23 special monitoring to prevent this kind of --

24 The Chairman. Monitoring to prevent fraud.

25 Senator Rockefeller. Yes. Particularly for the



1 mixing of North American and Asian or other tubes, and  
2 also for under-valuing tube imports into Mexico in order  
3 to reduce the duties which will come into effect with  
4 NAFTA. It has been thoroughly worked through, and I  
5 believe that it is acceptable. I would move it.  
6 Everybody has it in front of them.

7 The Chairman. I appreciate that. I see no one --  
8 Senator Rockefeller. I would like to put these in  
9 the record.

10 The Chairman. Please. They are so ordered.

11 [The charts appear in the appendix.]

12 The Chairman. No one seems to have any comments.

13 Senator Bradley. Mr. Chairman.

14 The Chairman. Senator Bradley.

15 Senator Bradley. Does the administration have a  
16 view?

17 The Chairman. I am about to ask Ambassador Yerxa.  
18 Ambassador Yerxa.

19 Ambassador Yerxa. I want to say, first, Mr.  
20 Chairman, as we have stated earlier, the administration  
21 wants to emphasize that, under this agreement, the U.S.  
22 retains full authority to discipline unfair trade  
23 practices; antidumping and countervailing duty laws  
24 remain in effect. We also have the mechanisms that are  
25 specified under the agreement in this act to ensure that

1 various rules of origin are complied with.

2 Senator Rockefeller has pointed to a specific case  
3 which does raise particular problems of compliance and  
4 verification, and, therefore, we have worked with his  
5 staff on this monitoring mechanism. It ultimately does  
6 not change the application of the unfair trade laws to  
7 these products, but it ensures that they can be  
8 adequately --

9 The Chairman. Fine.

10 Senator Rockefeller. It changes no trade laws.

11 Ambassador Yerxa. That is correct. And the  
12 administration would find this form of monitoring  
13 acceptable, as we have worked it out with the Customs  
14 Service and with the Commerce Department.

15 The Chairman. Thank you, Ambassador.

16 Now, Senator Danforth, I hope you do not have an  
17 amendment.

18 Senator Danforth. I do.

19 The Chairman. Well, all right.

20 Senator Danforth. It is a good amendment.

21 The Chairman. Is it a good amendment?

22 (Laughter)

23 The Chairman. That is not what concerns me at this  
24 moment. We are going to have a vote very shortly. We  
25 have five amendments stacked.

1 Senator Grassley. The Republican cloak room just  
2 told us it is going to come at 11:20.

3 The Chairman. Senator Danforth, proceed.

4 Senator Wallop. Mr. Chairman.

5 Senator Wallop. Mr. Chairman, I do not have an  
6 amendment, but I have a quick thing to discuss and a  
7 request of the administration to make, if this is an  
8 appropriate time.

9 The Chairman. Of course. I think Senator  
10 Danforth --

11 Senator Wallop. No. I will just amend it at an  
12 appropriate time. I wanted you to know it, sir.

13 The Chairman. Yes. You are next.

14 Senator Danforth. Mr. Chairman, thank you very  
15 much. Mr. Chairman, this is an amendment which I think  
16 is being passed out right now, together with a summary  
17 of the amendment relating to the question of accession.  
18 The NAFTA provides for at least the possibility of  
19 accession to the agreement by other countries subject to  
20 the applicable laws of the members of the parties to  
21 NAFTA, but there is not anything said about the  
22 conditions of accession, or what the goals of accession  
23 are to be.

24 The purpose of this amendment is to do that by  
25 providing for two reports by the USTR to the Finance and

1 Ways and Means Committees, one on May 1st, 1994, and May  
2 1st, 1997.

3 The reports would concern those foreign countries,  
4 and really list those foreign countries which either  
5 currently provide fair and equitable market access to  
6 the U.S. exports beyond that required by GATT, or have  
7 made significant progress in opening their markets to  
8 U.S. exports, and, further, opening to whose markets has  
9 the greatest potential to increase U.S. exports, either  
10 directly or through the establishment of beneficial  
11 precedent.

12 Then, further, it provides that, in July of 1994  
13 into 1997, the President submits to the Finance and Ways  
14 and Means Committee a report that contains the  
15 President's recommendations for free trade area  
16 negotiations with foreign countries and specific  
17 negotiating objectives and legislative proposals for  
18 Congress granting negotiating authority.

19 This amendment that I offer is not a fast-track  
20 amendment. It does not expand on fast-track; it does  
21 not extend fast-track in any way. But it is designed to  
22 make a point, and the point is this.

23 The problem with the international trading system as  
24 it now exists is that, in multilateral agreements, we,  
25 the world trading community, establish the lowest

1 standard of international trade. Then we attempt to  
2 enforce that standard by retaliating or by taking action  
3 against unfair trade practices. So, it is a minimal  
4 standard with penalties for non-compliance. When it  
5 comes down to acting on non-compliance, oftentimes we  
6 flinch.

7 I think that it would be useful to try to provide  
8 not only a stick in the international trading  
9 arrangement, but also a carrot, an incentive, to say, in  
10 effect, to other countries, that if you are a market  
11 opening country, then there will be a possibility of  
12 entering into a better deal than GATT provides.

13 The Chairman. Into a free trade zone.

14 Senator Danforth. Into a free trade agreement.

15 Now, this does not go as far as I think we should at  
16 some point, which is really providing for a unilateral  
17 contract. I think, in essence, what the United States  
18 should say to the world is, look, to those countries  
19 that really do have open markets, we want free trade.  
20 We will extend to you certain benefits if you extend the  
21 same to us. This does not go that far.

22 What it does, is to open up the possibility of  
23 negotiations toward a free trade agreement with those  
24 countries that make a special effort or have moved in  
25 the right direction. That, really, is the nature of it.

1 I want to point out one other provision in this, and  
2 that is that there is a sense of the Congress provision  
3 that says that it is --

4 The Chairman. Senator, could you point it out to  
5 us? You have given us the full text.

6 Senator Danforth. The very last four lines of the  
7 text. It says, "It is the sense of the Congress that no  
8 future free trade agreement should extend the provisions  
9 of Chapter 19 of NAFTA to additional foreign countries."

10 Now, Chapter 19 is the binational panel provision.  
11 This is kind of an addition to the thrust of the  
12 amendment, but it does say, just in the sense of the  
13 Senate language, that we just should not have Chapter 19  
14 as a model for how we are going to conduct business in  
15 the future.

16 I think that Chapter 19 holds out the possibility of  
17 weakening or vitiating antidumping and countervailing  
18 duty laws of the United States. And, to the extent that  
19 it extends beyond Canada, and now Mexico, it is just not  
20 a good thing to do. I wanted to point out that  
21 particular provision.

22 The Chairman. Thank you, Senator.

23 Senator Rockefeller. Mr. Chairman.

24 The Chairman. Senator Rockefeller.

25 Senator Rockefeller. Accustomed as I am to praising

1 Senator Danforth, I think this is a classic example of  
2 far-reaching thinking, and of thoughtful thinking about  
3 the future. I think it is untypical of the kind of  
4 amendments which are often offered in here, and is  
5 particularly worthy.

6 The Chairman. Thank you, Senator Rockefeller.

7 This, in effect, asserts that NAFTA is an  
8 arrangement we would like to see expanded. The  
9 Senator's point is, that there are minimum standards in  
10 the GATT in trying to deal with the Asians through  
11 domestic statute.

12 Senator Danforth. Well, it says that we really  
13 believe in opening markets, not in closing them. We  
14 believe that the United States is capable of doing  
15 business anywhere in the world, provided that the  
16 markets of the rest of the world are open for our goods  
17 and our services.

18 And, for those countries that exceed the minimal  
19 standards of GATT, those are the countries that we are  
20 going to be keeping our eyes on with respect to the  
21 possibility of the accession of NAFTA by other --

22 The Chairman. Thank you, Senator.

23 Senator Baucus. Mr. Chairman, I might add that I  
24 agree, it is a far-reaching effort to encourage  
25 countries, as Senator Danforth said, by offering a

1 carrot. It is very important.

2 I might add, too, it fits hand in glove with  
3 provisions of the Super 301 which attempt the same, that  
4 is, to identify trade liberalizing opportunities for the  
5 United States. This is more explicit. It adds to  
6 efforts that we are jointly trying to undertake. It  
7 does say to countries, all right, you open up more, you  
8 are a prime candidate for a trade agreement with the  
9 United States.

10 Senator Bradley. Mr. Chairman, I would like to ask  
11 Senator Danforth one question.

12 The Chairman. Would you do?

13 Senator Bradley. There is not a presumption that a  
14 country that opens a little bit more than another  
15 country should have preference in terms of future NAFTA,  
16 it simply says, as I understand it, that, in considering  
17 if there are future NAFTA expansions, that the extent to  
18 which and the degree to which a country has exceeded a  
19 GATT norm is a relevant and an important consideration.

20 Senator Danforth. Well, I think that is basically  
21 right. In the little summary sheet that was passed out,  
22 the second dot basically says what we have in mind. The  
23 countries that either currently provide fair and  
24 equitable market access to the U.S. exports beyond that  
25 required by the GATT, or have made significant progress



1 in opening their markets to the U.S., and the further  
2 opening of whose markets has the greatest potential to  
3 increase U.S. exports, either directly or through the  
4 establishment of a beneficial precedent.

5 Then the President makes his recommendations based  
6 on that report. What it states is, the President's  
7 recommendations are those countries that he feels we  
8 should proceed to negotiate with, if any. In other  
9 words, it does not require that the President designate  
10 any particular country.

11 Senator Bradley. So, this is kind of the mirror  
12 image of 301. In 301, we focus on the bad guys, and, in  
13 this provision, we focus on the good guys.

14 Senator Baucus. Oh, no. That is not --

15 Senator Danforth. Of Super 301, really.

16 Senator Bradley. Right.

17 The Chairman. I think Senator Baucus would describe  
18 it as, looks to opportunity rather than --

19 Senator Baucus. It is both. I mean, Super 301 has  
20 language to do both, both directions. Might I ask the  
21 Senator, does this mean that we should conduct a free  
22 trade agreement with Hong Kong, to lock in Hong Kong  
23 prior to 1997?

24 Senator Danforth. That does not name any countries.  
25 But Hong Kong and Singapore, and countries that are

1 obviously open markets should be the countries that were  
2 encouraged.

3 The Chairman. Can I suggest, this is a sense of the  
4 committee and would become a sense of the Senate, and,  
5 indeed, the Congress if it should be adopted. But the  
6 negotiating procedures are still those which are in  
7 place. The administration will look to what it thinks  
8 to be in the interests of the country, and come back to  
9 the Congress with that proposal.

10 Senator Danforth. But this is more than sense of  
11 the Congress. Other than the part about the binational  
12 panels, it is an attempt to be a system for identifying  
13 countries that have opened markets. But, it does not do  
14 anything to create new laws, or even an extension of  
15 fast-track regarding how we actually add countries.

16 The Chairman. Then can I ask Ambassador Yerxa what  
17 the administration would think about this matter?

18 Ambassador Yerxa. Yes, Mr. Chairman. We do have  
19 some comments on this provision. I think it is a very  
20 important step to, as Senator Danforth said, provide a  
21 disciplined way of looking at our possibilities for  
22 future free trade arrangements, future preferential  
23 trading agreements.

24 I want to point out that the NAFTA itself has an  
25 accession clause which allows for future accessions,

1 and, of course, those future accessions have to be  
2 agreed upon by the parties. So, one option that is  
3 available to us in negotiating future agreements is to  
4 negotiate for countries to accede to the NAFTA.

5 This procedure that Senator Danforth is proposing  
6 would require the administration to come up and present  
7 to the committee reports as to what we see as the most  
8 likely countries for achieving those kinds of  
9 agreements.

10 It is important to point out that we would not have  
11 the fast-track authority to actually conclude and  
12 implement such an agreement until the Congress gives us  
13 a grant of that authority.

14 And, as I understand the Senator's amendment, this  
15 would provide a foundation for deciding what authority  
16 to grant, and I think, in that context, it is very  
17 appropriate that the first report would be in May of  
18 1994.

19 I do have two concerns about the amendment. The  
20 first, is a relatively minor one. We have looked at the  
21 negotiating objectives here, and, while in general they  
22 seem to be fine, I am a little bit concerned about the  
23 language in #2, which talks about preferential treatment  
24 for United States goods, services, and foreign direct  
25 investment.

1 The Chairman. Number 2.

2 Ambassador Yerxa. Under E2, General Negotiating  
3 Objectives.

4 The Chairman. General Negotiating Objectives.

5 Ambassador Yerxa. That is correct. On page 2.

6 The standard that we are seeking in these agreements  
7 is --

8 The Chairman. Equal treatment.

9 Ambassador Yerxa. -- national treatment for our  
10 investment and for our services. These agreements are  
11 preferential in terms of access for goods, because we  
12 negotiate a preferential tariff rate that is less than  
13 the -- I think the Chairman decided, or the committee  
14 decided.

15 The Chairman. The non-discriminatory.

16 Ambassador Yerxa. The non-discriminatory rate,  
17 which, in itself, is not entirely accurate either,  
18 because if we have a preferential rate and a non-  
19 discriminatory rate and they are different, there must  
20 be some discrimination. The important point I wanted to  
21 make is I think we need to just work with that language  
22 a little bit, if you do not mind.

23 The Chairman. Senator Danforth, is that agreeable  
24 to you?

25 Senator Danforth. Yes. We thought that this was

1 what you wanted. This is why it is in there. The point  
2 of it is that, relative to other countries trading with  
3 the country we are negotiating with --

4 Ambassador Yerxa. Yes. That is correct.

5 Senator Danforth. -- we would expect a better deal.  
6 I mean, why have a free trade arrangement with them?

7 Ambassador Yerxa. The standard in the NAFTA, for  
8 example, on investment, is a national treatment  
9 standard. We want to make sure that we achieve national  
10 treatment. I just want to retain the chance to work  
11 with you on that particular language.

12 The second concern is a little more substantive, and  
13 that is on page 3, the sense of the Congress provision.  
14 I do not think the administration can agree to this  
15 language.

16 I know it is stated as a sense of the Congress, but  
17 this is in a bill that is submitted by the President to  
18 the Congress to implement the NAFTA, and I do not think  
19 that we are prepared to prejudge the question of whether  
20 future agreements should include a Chapter 19-like  
21 mechanism.

22 Perhaps it would be best if that is something that,  
23 in our report to you and in future consideration of this  
24 matter, we discuss. That would certainly be appropriate  
25 when we bring a report back to the committee. But I

1 would prefer not to see something that indicates or  
2 presumes that we would not agree to such an arrangement  
3 in the future.

4 The Chairman. Senator Danforth.

5 Senator Danforth. Well, it is a separate subject  
6 from the rest of this amendment, and I would be willing  
7 to delete it from the amendment.

8 The Chairman. Done.

9 Senator Danforth. It is kind of an editorial  
10 comment, to say the least.

11 The Chairman. Done. Thank you, Senator Danforth.

12 Senator Wallop, you had a comment you wanted to  
13 make.

14 Senator Wallop. Yes, Mr. Chairman. I appreciate  
15 it. I want to raise an issue which I have been told  
16 falls partially, but not entirely, under the  
17 jurisdiction of our committee.

18 I am concerned about the protection of export  
19 trading companies. The Export Trading Company Act of  
20 1982, as amended by the Omnibus Act of 1988, provides  
21 for the establishment of an export trading company.

22 The basic purpose of that act was to stimulate U.S.  
23 exports by small- and medium-sized businesses. Because  
24 few of these firms, individually, have the knowledge,  
25 resources or expertise to sell overseas, the export

1 trading companies combine the resources of several of  
2 them for the purpose of handling their export  
3 operations, called Webb-Pomerene. This includes things  
4 like foreign market research, distribution, and  
5 financing.

6 The Export Trading Company Act enabled these ETCs to  
7 do this by removing two impediments. One, a restriction  
8 on trade financing, and, two, uncertainty about the  
9 application of U.S. anti-trust laws to export trade.

10 The Justice Department NAFTA negotiators indicate  
11 that the U.S. export trading companies and similar Webb-  
12 Pomerene export associations will not be adversely  
13 affected by the NAFTA. I would like to offer some  
14 committee report language that reflects this.

15 Because Mexico did offer language during the NAFTA  
16 negotiations that could provide challenges to U.S.  
17 export associations, I want to ask the administration to  
18 include in its Statement of Administrative Action a  
19 statement which reflects the Justice Department's view  
20 that NAFTA does not adversely affect these export  
21 associations.

22 The Chairman. Fair enough. Ambassador Yerxa.

23 Ambassador Yerxa. Senator, I do not have a  
24 representative from the Justice Department here at this  
25 time. I will consult with them immediately and see.

1           The Chairman. Could you do that immediately? We  
2 will return later and address the subject. I am sure  
3 Senator Wallop has a fair point, but it is fair to have  
4 your lawyer here. Is that agreeable?

5           Senator Wallop. Indeed, yes. They have made the  
6 statement. I just wanted to make certain they make it  
7 out loud.

8           Senator Chafee. Mr. Chairman, I had a statement in  
9 connection with my amendment. Could I put that in the  
10 record?

11          The Chairman. Without objection.

12          [The statement of Senator Chafee appears in the  
13 appendix.]

14          The Chairman. Ms. Miller, is there a jurisdictional  
15 question that arises with Senator Wallop's request?

16          Ms. Miller. Yes, Mr. Chairman. The Export Trading  
17 Company Act is not under --

18          The Chairman. Right. Will you address these  
19 matters with the administration and with Senator Wallop?  
20 We want to accommodate him, and we will. We will find  
21 out a way to do this. Is that all right for you to do  
22 it this way?

23          Senator Wallop. Yes, sir. Thank you.

24          The Chairman. Fine. Mr. Chafee, we will be happy  
25 to put your amendment in the record.



1 Senator Grassley, could you be brief?

2 Senator Grassley. In the packet of amendments that  
3 I sent out, I have a second amendment.

4 The Chairman. Senator Grassley, if you want to have  
5 a vote on your amendment, you had better leave it be for  
6 the moment. All right? We are coming back.

7 Senator Grassley. I will wait.

8 The Chairman. We are coming back. All right.

9 Senator Bradley. Mr. Chairman.

10 The Chairman. Senator Bradley.

11 Senator Bradley. I missed the discussion on Section  
12 301, Super 301 --

13 The Chairman. That is right.

14 Senator Bradley. -- that I think Senator Baucus  
15 introduced. And I was just curious, what is the  
16 administration position on whether Super 301 --

17 The Chairman. The administration supported it.  
18 Ambassador Yerxa.

19 Ambassador Yerxa. The statement I made was that the  
20 President has previously indicated his support for  
21 extension of Super 301, but that the question of whether  
22 it was necessary or appropriate to implementation of  
23 NAFTA is a question for the committee. I know that this  
24 is likely, also, to be an issue in conference with the  
25 House. We have had indications of some concern from the

1 other side.

2 The Chairman. That is right.

3 Senator Chafee. Mr. Chairman.

4 The Chairman. Senator Chafee.

5 Senator Chafee. On that same subject, I am a Super  
6 301 supporter. But, I must say, does this not get to  
7 the problem that the Majority Leader raised yesterday?  
8 I mean, it does not seem to me that 301 and Super 301 is  
9 solely pertinent to NAFTA.

10 Here we sit and we add it, and then there are people  
11 on the floor who might have strong feelings are  
12 prevented from amending it. It just gives me concern.  
13 My credentials are clear on Super 301, but putting it on  
14 this does give me doubts. It is a problem because of  
15 what the Majority Leader said yesterday.

16 Senator Wallop. Mr. Chairman, I would reflect that.  
17 But, from the opposite perspective, I am not a Super 301  
18 supporter. I do not like the idea of putting government  
19 on auto pilot and removing all judgment from its  
20 negotiators.

21 Senator Baucus. Mr. Chairman.

22 The Chairman. Senator Baucus.

23 Senator Baucus. Not to prolong this discussion  
24 longer than it need be, I might remind Senators that  
25 accession provisions of NAFTA do provide for looking for

1 opportunities for trade liberalization, and Super 301 is  
2 intended to do that. That is its point.

3 In fact, the accession clause in NAFTA applies not  
4 only to potential trade agreements with the United  
5 States in the western hemisphere, but globally. Again,  
6 Super 301 has several purposes, but the main purpose is  
7 trade liberalization and identifying trade  
8 liberalization opportunities. That is the reason why I  
9 think this is very appropriate to NAFTA.

10 Senator Chafee. I do not know where, procedurally,  
11 this stands. Did we approve this?

12 The Chairman. No. No. This is the question I am  
13 going to put to the committee. We have a bare 10  
14 members present. Do you feel that is enough to go  
15 through the informal vote? I think we are  
16 representative. There is a quorum. All right. Then we  
17 can always revisit any decision we make.

18 We have six amendments before us. I am going to ask  
19 for a voice vote. Anyone who wishes people to raise  
20 hands -- Senator Boren is arriving. Now, we are going  
21 to just have to do this if we are going to get our  
22 business done.

23 The first amendment by Senator Hatch, as amended by  
24 Mr. Breaux, has to do with the Customs Modernization  
25 Act, which we have passed in this committee more than

1 once.

2 Those in favor will say, aye.

3 (A chorus of ayes)

4 The Chairman. Those opposed?

5 (No response)

6 The Chairman. The ayes have it.

7 The second, is the Super 301 amendment offered by

8 Mr. Baucus. Those in favor will say, aye.

9 (A chorus of ayes)

10 The Chairman. Those opposed?

11 (A chorus of nays)

12 The Chairman. I think I would like to ask that  
13 hands be raised. Those in favor will raise their hands.

14 Someone count. I do not count very well. Please.

15 (A showing of hands)

16 The Chairman. Eight ayes. Nine. Those opposed?

17 (A showing of hands)

18 The Chairman. Nine to two. I count that well.

19 Senator Wallop. They are a resonant two, you will  
20 have to admit.

21 The Chairman. A resonant two. Resounding two.

22 Mr. Grassley's amendment having to do with washing  
23 machines.

24 Senator Grassley. Home appliances. I am sorry.

25 Maytag home appliances.

1 Those in favor will say, aye.

2 (A chorus of ayes)

3 The Chairman. Those opposed?

4 (No response)

5 The Chairman. The ayes have it.

6 Mr. Chafee's amendment concerning the statements of  
7 origin for textiles. Those in favor will say, aye.

8 (A chorus of ayes)

9 The Chairman. Can we hear that again?

10 (A chorus of ayes)

11 The Chairman. Those opposed will say, nay.

12 (No response)

13 The Chairman. The ayes have it, for Mr. Chafee.

14 Mr. Rockefeller's proposal. Those in favor will  
15 say, aye.

16 (A chorus of ayes)

17 The Chairman. Those opposed?

18 (No response)

19 The Chairman. Mr. Rockefeller's proposal is agreed  
20 to.

21 And, finally, Mr. Danforth's much larger proposal.  
22 Again, let us have a voice vote. If anybody wants to  
23 have a show of hands, we will have it.

24 Mr. Danforth's Future Free Trade Area Negotiations  
25 amendment. Those in favor will say, aye.

1 (A chorus of ayes)

2 The Chairman. Those opposed?

3 (No response)

4 The Chairman. The amendment is agreed to.

5 Senators, we have done a fair amount of work. Now,  
6 Senator Grassley has further amendments. Senator Riegle  
7 also has further amendments.

8 Senator Grassley. We have five minutes before I  
9 think we have to go vote.

10 The Chairman. Well, how many do you have?

11 Senator Grassley. Well, I just have one, now, that  
12 I want to take up. It is sense of the Senate on the  
13 same subject.

14 The Chairman. Hurry along, then. May I just make  
15 the point before Senators leave that we have no proposal  
16 from the administration on finance? Inasmuch as we do  
17 not have it, I think we really might well as adjourn for  
18 the morning and we will come back the moment we have  
19 something. We have no financing proposal. None are  
20 here. We can just come back. This invites more  
21 mischief.

22 Hearing no protest, this is the last amendment. We  
23 will come back.

24 Senator Grassley. This is sense of the Senate that  
25 the USTR would immediately initiate negotiations with

1 the Mexican Government to accelerate reductions in the  
2 high Mexican tariffs on home appliances.

3 This is to back up what Ambassador Kantor has been  
4 trying to do with the Mexican Government prior to our  
5 enactment of this to get their agreement to this. He  
6 does not know yet if he will be able to get that done,  
7 but he is making a good faith effort to do it. In this  
8 sense of the plan, it would just express our view that,  
9 if that is not done before we vote on this, that the  
10 USTR would try to do this immediately afterward.

11 The Chairman. I see. Can I ask Ambassador Yerxa  
12 his view in this matter?

13 Ambassador Yerxa. Mr. Chairman, I previously  
14 indicated that there are a number of areas where the  
15 United States will want to pursue tariff acceleration.  
16 We discussed this in Executive Session.

17 The Chairman. Yes, we did. We did.

18 Ambassador Yerxa. I do not propose to go back into  
19 that discussion here. I do not feel that this amendment  
20 is necessary in order to have us to this matter. I  
21 would ask if the committee would withhold these kinds of  
22 amendments on acceleration until after the  
23 administration has had a chance to respond more fully on  
24 what steps we have taken to have an exchange of letters  
25 on tariff acceleration.

1 The Chairman. By which you mean, when?

2 Ambassador Yerxa. Well, since this is an informal  
3 process, my suggestion would be that we look at this  
4 again when the Finance and Ways and Means Committees  
5 discuss the matter. Presumably, you would want to do  
6 that next week, I would hope.

7 The Chairman. You mean when we meet in our  
8 equivalent of committee of conference.

9 Ambassador Yerxa. So called conference.

10 The Chairman. Yes. Well, then Senator Grassley, I  
11 think that is a fair matter.

12 Senator Grassley. Well, let me ask you this.

13 The Chairman. We will keep it open. And, if you  
14 are not satisfied, we will --

15 Senator Grassley. So, in other words, in this group  
16 of our membership of this committee, you are saying that  
17 I will have another opportunity to bring this up before  
18 we vote in conference?

19 The Chairman. That is certainly possible. More  
20 likely, we will have to take it up in the committee in  
21 conference, which we will do if you wish it done. Is  
22 that all right?

23 Senator Grassley. All right.

24 The Chairman. That being the case, and seeing no  
25 other amendments to be offered, the committee stands in



1 adjournment. Thank you, Ambassador.

2 (Whereupon, at 11:20 a.m., the meeting was recessed  
3 at the call of the Chair.)

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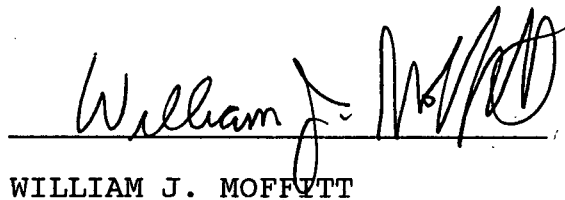
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## C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting, Committee on Finance, United States Senate, held on October 21, 1993, were transcribed as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT

Official Court Reporter

My Commission Expires April 14, 1994

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

LAWRENCE O'DONNELL, JR., STAFF DIRECTOR  
EDMUND J. MIHALSKI, MINORITY CHIEF OF STAFF

## EXECUTIVE SESSION

Thursday, October 21, 1993 -- 10:00 a.m.  
Room SD-215 Dirksen Senate Office Building

## A G E N D A

To consider recommendations for legislation to  
implement the North American Free Trade Agreement

**Appliance Amendment  
to  
NAFTA Implement Legislation  
Senator Charles E. Grassley**

- \* This amendment is designed to clarify the circumstances under which the President shall impose import duties on specific major home appliances entering the U.S. from Mexico.
- \* The amendment is in response to reports by the Congressional Research Service and the International Trade Commission which conclude that U.S. appliance manufacturing will be a job loser under NAFTA. The ITC, for example, estimates that NAFTA will cause a reduction in production and employment in the U.S. appliance industry of 5% in the short term, and 10-15% in the long term. These losses, according to the ITC, will occur in the Midwest -- in states like Iowa where 7,500 people are employed directly by such companies as Maytag, Amana and Frigidaire.
- \* The main thrust of the amendment is to use the GSP competitive need threshold in current U.S. law to indicate "threat of injury" under Article 801. This would mean that if imports of specific appliances from Mexico exceed standard GSP limits, then the normal U.S. "Most Favored Nation" tariffs would apply. At present, these MFN tariffs range from 2.8% to 5.1%, depending on the product.
- \* It is important to note that under NAFTA's current language there will be no tariffs whatsoever on major appliances coming into the U.S. from Mexico. Further, Mexican tariffs on appliances built in the U.S. will begin at 20% and will phaseout slowly over a 10 year period.
- \* The "import surge" mechanism in NAFTA is of no help to appliance manufacturers because import-related injury to an entire domestic industry must be established. As a practical matter, this would be impossible to demonstrate since the two largest U.S. appliance firms have production facilities both in the U.S. and in Mexico, and are themselves major exporters of appliances to the U.S.
- \* The amendment provides a measure of fairness to those U.S. appliance manufacturers who will have to compete with appliances built in Mexico by their U.S. competitors and, at the same time, will be unable to sell their products in Mexico because of unreasonably high tariffs.

**Proposed Language for NAFTA Implementing Legislation  
Concerning Safeguard Measures To Address Imbalance of Tariff  
Reductions For Major Household Appliances**

With respect to the following products:

7321.11.30	gas cooking stoves or ranges (other than portable)
8418.10.00 8418.21.00 8418.22.00 8418.29.00	refrigerators and combined refrigerator/ freezers
8418.30.00 8418.40.00	freezers, chest and upright
8422.11.00	dishwashing machines (household type)
8450.11.00 8450.12.00 8450.19.00 8450.20.00	clothes washing machines (household laundry type)
8451.21.00 8451.29.00	clothes drying machines (household type)
8516.60.40	electric stoves or ranges

if a domestic producer of any such product files a petition for action under Article 801 of NAFTA concerning such product, the post-NAFTA volume of imports shall be deemed to be threatening the domestic industry producing such product with serious injury if that import volume exceeds the Generalized System of Preference competitive need criteria that, but for NAFTA, would be applicable to such imports from Mexico; in such event the President shall for three years impose on such imports from Mexico the MFN rate of duty applicable to such imports regardless whether such imports were or could be eligible for zero duty status under GSP in any of the three years prior to the effective date of NAFTA.

**Recommendation on Major Household Appliances  
by Senator Charles Grassley**

Include in the implementing language, the following provision:

(a) If a petition is filed under Article 801 of the NAFTA, the International Trade Commission shall determine that the article, if specified in subsection (d), is being imported into the United States in such increased quantities as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

(b) Within 10 days after a determination under subsection (a), the President shall impose the MFN rate of duty in effect on the day immediately preceding date of enactment on the volume of imports of the article subject to the petition which exceed the competitive need limits applicable under the GSP program that were in effect on December 31, 1993.

(c) The competitive need limit shall be increased by the same percentage and on the same timetable as the comparable rate of duty on the imported article subject to the petition.

(d) Articles subject to these provisions:

7321.11.30 Gas cooking stoves or ranges (other than portables)

8418.10.00

8418.21.00 Refrigerators and combined refrigerator/freezers

8418.22.00

8418.29.00

8418.30.00 Freezers, chest and upright

8418.40.00

8422.11.00 Dishwashing machines (household type)

8450.11.00

8450.12.00 Clothes washing machines (household laundry type)

8450.19.00

8450.20.00

8451.21.00 Clothes drying machines (household type)

8451.29.00

8516.60.40 Electric stoves or ranges

### **Amendment offered by Senator Charles Grassley**

To clarify provisions of Section 801 - Emergency Action and to codify some practices of the U.S. International Trade Commission.

1. "... as a result of the reduction or elimination of a duty provided for in this Agreement ..."

The duty which reduced or eliminated shall include tariff concessions of MFN rates and competitive need limits.

(This is consistent with the language of Section 201 of GATT)

2. "... substantial cause of serious injury, or threat thereof ..."

In making this determination the commission shall take into account all factors set forth in 19 U.S.C. Section 2252 (c).

(This is consistent with the language of Section 201 of GATT)

## **Recommendation on Safeguard's Mechanism**

**by Senator Charles Grassley**

In the Statement of Administrative Action, with respect to petitions seeking relief from injurious imports under Chapter 8 (section 201 of the Trade Act of 1974), clarify that:

- (1) In determining whether a petition is filed by an entity or entities which is "representative of an industry", the International Trade Commission shall discount objections to the petition from producers in such industry if such producers are related parties to importers of the article subject to the petition.
- (2) In considering injury or threat of injury to the industry, the ITC shall consider whether producers of the like or directly competitive product which are related to the importer have shielded their domestic production from competition from such related party importer.
- (3) If relief is provided, it shall be at MFN levels that would be in effect by for NAFTA



Suggested Language for Statement of Administrative Action to  
Accompany Proposed Legislation Implementing NAFTA

With respect to the following HTS Items:

7321.11.30	Gas Ranges
8516.60.00	Electric Cooking Ranges
8418.10.00	Refrigerators and Refrigerator/
8418.21.00	Freezers
8422.11.00	Dishwashing Machines.
8450.11.00	Clothes Washing Machines
8450.19.00	
8451.21.00	Clothes Drying Machines
8451.29.00	
8418.30.00	Freezer Chest
8418.40.00	Freezer Upright

(a) the Office of the United States Trade Representative shall seek the unconditional agreement of the Mexican Government to eliminate all duties on imports of such HTS items from the United States within thirty days after the effective date of the North American Free Trade Agreement;

(b) in the event the Mexican Government does not eliminate such import duties, as provided above, then notwithstanding the reference in Annex 302.2, paragraph 2, to "the rate of duty in effect on July 1, 1991, including rates under the U.S. Generalized System of Preferences," the schedule of the United States attached to Annex 302.2 shall be changed to delete the reference to "G" for those HTS items, and the staging code for such item shall be changed to "A"; however, the staging code for any such item shall be subsequently changed to "C", and the MFN duty rate shall apply to imports from Mexico of such item until such time as the relevant Mexican duty rate shall be reduced to zero, if at any time within nine years of the effective date of NAFTA the volume of imports from Mexico of such item exceeds any of the GSP competitive need criteria that, but for NAFTA, would be applicable to such imports from Mexico;

(c) if the Mexican Government agrees to phase out its duties on imports of any such items from the United States over a period less than nine years from the effective date of NAFTA, then the United States shall adopt a staging code for such item providing for the phase-out of duties over the same time period, but in all other respects the provisions of paragraph (B) herein shall apply until such time as the Mexican duty rate is reduced to zero.

**PROPOSED SENSE OF THE SENATE LANGUAGE FOR NAFTA IMPLEMENTING  
LEGISLATION  
SENATOR CHARLES E. GRASSLEY**

**IT IS THE SENSE OF THE SENATE THAT THE U.S. TRADE REPRESENTATIVE SHOULD IMMEDIATELY INITIATE NEGOTIATIONS WITH THE MEXICAN GOVERNMENT TO ACCELERATE REDUCTIONS IN MEXICAN TARIFFS ON THE FOLLOWING MAJOR APPLIANCE PRODUCTS:**

7321.11.30	GAS COOKING STOVES OR RANGES (OTHER THAN PORTABLE)
8418.10.00 8418.21.00 8418.22.00 8418.29.00	REFRIGERATORS AND COMBINED REFRIGERATOR/FREEZERS
8418.30.00 8418.40.00	FREEZERS, CHEST AND UPRIGHT
8422.11.00	DISHWASHING MACHINES (HOUSEHOLD TYPE)
8450.11.00 8450.12.00 8450.19.00 8450.20.00	CLOTHES WASHING MACHINES (HOUSEHOLD LAUNDRY TYPE)
8451.21.00 8451.29.00	CLOTHES DRYING MACHINES (HOUSEHOLD TYPE)
8516.60.40	ELECTRIC STOVES OR RANGES

**THE SENATE BELIEVES THIS ACTION IS NECESSARY FOR THE FOLLOWING REASONS:**

1. A TARIFF IMBALANCE EXISTS IN NAFTA WHEREBY UNREASONABLY HIGH MEXICAN TARIFFS (20%) ON MAJOR APPLIANCES WILL PHASE OUT OVER A TEN YEAR PERIOD, WHILE U.S. TARIFFS ON MAJOR APPLIANCES WILL BE IMMEDIATELY ELIMINATED; AND
2. SUCH TARIFF IMBALANCE ENCOURAGES THE PRODUCTION OF MAJOR APPLIANCES IN MEXICO BY JOINT VENTURES BETWEEN U.S. AND MEXICAN APPLIANCE FIRMS WHICH ARE ALREADY TAKING AN INCREASING SHARE OF THE U.S. MARKET; AND
3. THE TEN YEAR PHASE OUT OF MEXICAN TARIFFS WILL EFFECTIVELY DENY APPLIANCE MANUFACTURERS LOCATED IN THE U.S. ANY OPPORTUNITY TO PARTICIPATE IN THE MEXICAN MARKET; AND
4. ACCORDING TO THE INTERNATIONAL TRADE COMMISSION, THE APPLIANCE TARIFF IMBALANCE WILL LIKELY RESULT IN A DECLINE IN U.S. MAJOR APPLIANCE PRODUCTION AND EMPLOYMENT OF 5 PERCENT IN THE SHORT TERM AND 10-15 PERCENT IN THE LONG TERM, MOST OF WHICH WILL OCCUR IN MIDWESTERN STATES.

PROPOSED LANGUAGE FOR NAFTA IMPLEMENTING LEGISLATION  
 SENATOR CHARLES E. GRASSLEY

WITH RESPECT TO THE FOLLOWING PRODUCTS:

7321.11.30	GAS COOKING STOVES OR RANGES (OTHER THAN PORTABLE)
8418.10.00	REFRIGERATOR AND COMBINED REFRIGERATOR/ FREEZERS
8418.21.00	
8418.22.00	
8418.29.00	
8418.30.00	FREEZERS, CHEST AND UPRIGHT . . .
8418.40.00	
8422.11.00	DISHWASHING MACHINES (HOUSEHOLD TYPE)
8450.11.00	CLOTHES WASHING MACHINES (HOUSEHOLD LAUNDRY TYPE)
8450.12.00	
8450.19.00	
8450.20.00	
8451.21.00	CLOTHES DRYING MACHINES (HOUSEHOLD TYPE)
8451.29.00	
8516.60.40	ELECTRIC STOVES OR RANGES

IMMEDIATELY UPON PASSAGE OF THE IMPLEMENTING LANGUAGE A TWO STEP PROCESS SHALL BE ESTABLISHED WHEREBY IN THE FIRST STEP THE TRADE REPRESENTATIVE SHALL INSTITUTE A MECHANISM TO MONITOR THE IMPORT VOLUME OF THESE PRODUCTS FROM MEXICO AND CANADA AND IN THE SECOND STEP SHOULD A SERIOUS THREAT OF INJURY EXIST AN EXPEDITED CONSIDERATION FOR AN INVESTIGATION BY THE ITC OF A PETITION BY A DOMESTIC ENTITY (INCLUDING A TRADE ASSOCIATION FIRM, UNION, OR GROUP OF WORKERS) THAT IS REPRESENTATIVE OF THE INDUSTRY SHALL BE INITIATED WITHIN 90 DAYS INSTEAD OF THE 120 DAYS FOR AN ITC DECISION. IN DETERMINING WHETHER A PETITION IS FILED BY A ENTITY OR ENTITIES WHICH ARE "REPRESENTATIVE OF AN INDUSTRY", THE ITC SHALL DISCOUNT OBJECTIONS TO THE PETITION FROM PRODUCERS IN SUCH INDUSTRY IF SUCH PRODUCERS ARE RELATED PARTIES TO IMPORTERS OF THE ARTICLE SUBJECT TO THE PETITION.

**Appliance Amendment  
to  
NAFTA Statement of Administrative Action  
Senator Charles E. Grassley**

Language to be included in the Statement of Administrative Action to clarify the appliance of Chapter 8 of the NAFTA to the industry or industries producing major appliances, "white goods," in the United States.

7321.11.30 Gas cooking stoves or ranges (other than portables)

8418.10.00

8418.21.00 refrigerators and combined refrigerator/freezers

8418.22.00

8418.29.00

8418.30.00 Freezers, chest and upright

8418.40.00

8422.11.00 Dishwashing machines (household type)

8450.11.00

8450.12.00 Clothes washing machines (household laundry type)

8450.19.00

8450.20.00

8451.21.00 Clothes drying machines (household type)

8451.29.00

8516.60.40 Electric stoves or ranges

1. In making its determination as to whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, the U.S. International Trade Commission shall take into account all economic factors which it considers relevant, including (but not limited to) those set out at 19 U.S.C. section 2252 (c)(1)(A) (with respect to serious injury) or 19 U.S.C. section 2252 (c)(1)(B) (with respect to threat of serious injury). When making the determination a duty which is reduced or eliminated shall include tariff concessions of MFN rates and competitive need limits.

2. In determining whether a petition is filed by an entity that is "representative of an industry", the Commission shall disregard in determining the percentage of domestic production of the like or directly competitive domestic article that the firms or workers represented in the petition account for, firms that are related to exporters or importers or are themselves importers of the like or directly competitive article.
  
3. In considering whether a domestic industry has suffered serious injury or threat thereof, the Commission may take into account whether firms that are related to exports or importers or are themselves importers of the like or directly competitive article have benefited from the presence in the U.S. market of the increased quantities of imports. If the Commission determines that any such firm has benefited from the imports, the Commission may exclude such firm from the domestic industry for purposes of its analysis of serious injury or threat thereof.

Applies to both global and NAFTA petitions.

If relief is provided, it shall be at MFN levels prior to the implementation of NAFTA.

## FACT SHEET

### Impact of NAFTA on U.S. Appliance Manufacturers

#### THE PROBLEM

The North American Free Trade Agreement strongly tilts the playing field toward appliance manufacturing in Mexico by:

- \* keeping high Mexican tariffs on major appliances over the next decade (current 20% tariffs will slowly phase out);
- \* immediately dropping to 0% all U.S. tariffs on major appliances; and
- \* removing existing "competitive need" limits on import surges from Mexico.

As a result of this needless tariff imbalance (20% for Mexico, 0% for the U.S.), U.S.-located appliance manufacturers will be denied an opportunity to participate in the growing Mexican market. At the same time, they are faced with a rising tide of appliances built in Mexico by U.S. \Mexican conglomerates (the two largest U.S. manufacturers have joined with the two largest Mexican producers):

	<u>Imports from Mexico (units)</u>		
	<u>1990</u>	<u>1992</u>	<u>Increase</u>
Gas Ranges	75,454	650,584	862 %
Refrigerators	524,574	944,585	180 %
Clothes Washers	4,188	54,476	1,300 %

The NAFTA tariff imbalance provides the U.S. \Mexican appliance conglomerates with tariff protection to sell their Mexican-built products in Mexico free of tariffs, and to export as many to the U.S. as they wish without paying any tariff at all.

#### THE POTENTIAL IMPACT

- \* The U.S. appliance market will be increasingly vulnerable to Mexican-built appliances produced at significantly less cost and subject to no U.S. tariff whatsoever. This will impact directly on U.S.-based manufacturers like Maytag, Frigidaire and Amana -- all of whom are making substantial capital investments in the U.S. (see next page).
- \* Major appliance production and employment in the U.S. will drop 5% in the short term and 10-15% in the long term, according to the U.S. International Trade Commission. The U.S. appliance industry will be a "job loser", says the Congressional Research Service Report for Congress. These direct job losses will

occur in Midwestern and Southern states where appliance factories are the primary source of employment for thousands of people in medium and small-sized communities.

- \* A decade of incremental tariff reduction in México will protect the U.S.-Mexican appliance conglomerates from U.S.-built products, allowing them to consolidate their lock on the Mexican market when the tariffs are finally removed.

**Some Appliance Facilities Adversely Impacted by NAFTA**

**Amana**

Arkansas  
Iowa  
Ohio  
Tennessee  
South Carolina  
Wisconsin

**Frigidaire**

Indiana  
Iowa  
Michigan  
Minnesota  
North Carolina  
Ohio  
South Carolina  
Tennessee

**Maytag**

Illinois  
Indiana  
Iowa  
Missouri  
Tennessee

## US IMPORTS FROM MEXICO

<u>Gas Cooking Ranges *</u>	<u>CY 1990</u>	<u>CY 1991</u>	<u>CY 1992</u>
Units	75,454	418,221	650,584
Customs Value	\$16,502,003	\$94,447,608	\$160,839,614
<u>Clothes Washing Machines</u>	<u>CY 1990</u>	<u>CY 1991</u>	<u>CY 1992</u>
Units	4,188	5,821	54,476
Customs Value	\$736,227	\$1,333,438	\$11,330,848
<u>Refrigerators and Refrigerator/Freezers</u>	<u>CY 1990</u>	<u>CY 1991</u>	<u>CY 1992</u>
Units	524,574	633,842	944,585
Customs Value	\$41,693,298	\$46,568,031	\$74,871,462
<u>Freezers</u>	<u>CY 1990</u>	<u>CY 1991</u>	<u>CY 1992</u>
Units	39,062	60,149	54,014
Customs Value	\$5,274,984	\$12,891,627	\$11,953,452

\*exceeding GSP competitive need limit in 1991

Source: Bureau of the Census (IM 145 - General Imports)



## **Industry & Trade Summary**

### **Appliance Industry**

**Senator Charles E. Grassley**

1. In 1990, the industry producing major electric household appliances consisted of approximately 65 companies with 145 establishments. Over 50 percent of the establishments had 20 or more employees. Establishments manufacturing these products were located throughout the United States, with the heaviest concentration (over 50 percent of all major appliance establishments) in the following four states: Ohio, Illinois, Wisconsin, and Michigan. The industry is mature and highly concentrated, with five companies (General Electric, Whirlpool, White Consolidated/AB Electrolux, Maytag, and Raytheon) holding over 95 percent of domestic production of major appliances and an 85 percent share of the domestic market.

2. Productivity, as measured by output per employee hour, increased by 3.5 percent during 1988-90, compared with a 2.3 percent increase for all manufacturing. The industry producing major appliances is considered to be moderately labor-intensive. The industry labor intensity in 1990, as measured by the ratio of payroll to value added by manufacture, averaged 38 percent for major home appliances, 2 percent lower than the ratio for total domestic manufacturing.

3. In 1991, approximately 20 percent of all electric appliances entered duty free. Sixteen percent of major electrical household appliance imports entered the United States duty free, while nearly 19 percent of small household appliances and certain heating equipment were duty free.

4. The leading suppliers of appliances to the United States in 1991 were China, Korea, Japan, Mexico, and Taiwan. Korea, Hong Kong, and Taiwan, however, recorded declines in the value of U.S. imports in 1991 compared with that in 1989. China and Mexico, on the other hand, increased their share of the U.S. market from 15 to 10 percent, respectively, in 1989 to 21 and 15 percent in 1991. In recent years, U.S. imports from Japan have been losing ground to imports from low-wage developing countries as well as to production from Japanese-owned U.S. plants. Hong Kong and Taiwan appear to have been affected by the loss of eligibility for duty-free treatment under the Generalized System of Preferences (GSP) beginning in 1989. Korea and Singapore, in addition to losing their benefits under the GSP, were also affected by increased labor costs.

5. A common practice for some of the large multinational corporations is to take

advantage of GSP benefits afforded to developing countries by establishing affiliations with manufacturing facilities in such countries. When a developing country loses GSP benefits, the corporations, to avoid duties on the imported products, will usually switch operations without much difficulty to other GSP beneficiaries. Other emerging GSP beneficiary countries, such as Mexico, have the capacity to increase production and to supply nearly all of the lost duty-free imports observed by the U.S. small appliance market.

The total value of all imports entered duty free amounted to \$557 million in 1991, up from \$220 million reported in 1987. Articles imported from GSP countries accounted for nearly 20 percent of total imports in 1991 and were predominantly electrothermic appliances from Mexico. Mexico accounted for nearly 72 percent of duty-free GSP entries in 1991.

6. The leading U.S. export markets for household appliances and certain heating equipment in 1991 were Canada, Mexico, Taiwan, and Japan. Exports to Canada and Mexico grew at a faster rate than total exports primarily because of the lowering of tariff barriers between the United States and Canada and of the unilateral duty reduction implemented in Mexico. Under the United States-Canada Free-Trade Agreement, tariffs between Canada and the United States are to be reduced in annual increments and eliminated by 1998. Whereas most tariffs for appliances are being reduced over a 10-year period, some are being reduced over a 5-year period, and others have already been eliminated.

7. Both GE and Whirlpool have entered into joint-venture agreements with the Mexican companies Mabe and Vitro SA, respectively, to produce appliances in Mexico for sale in the United States under GE and Whirlpool labels. Shipments will begin after these products have been redesigned for the U.S. market.

# Despite Support of Pact, An Uncertainty Lingers

By BARNABY J. FEDER

Caterpillar is unusual among the corporate supporters of Nafta in its willingness to put a dollar estimate on the gains it expects.

Other corporate executives also support Nafta by an overwhelming margin, even though they are hard-pressed to project with any confidence what will happen.

Most endorse the general premise that Nafta will stimulate Mexico's economy enough to help the United States, that it will help the United States become more competitive in Latin America, and could spur acceptance in Europe and Japan of other free trade agreements that would boost American exports.

That consensus is one reason that a recent survey, conducted by Caterpillar's engine division, of top shipping and logistics executives at the 500 largest companies, found three of four assumed Nafta would lead to economic growth that would expand trucking and other distribution activities. A similar proportion, however, were unsure of how their own companies would be affected.

## A Small Market

Much of the haziness about the value of Nafta is because Mexico, a country with an economy about the size of the Chicago-Milwaukee region, is still a relatively small market for American manufacturers.

However uncertain the benefits, by the time the negotiators finished with the 2,000-page text last year, few industries faced risks large enough to create strong opposition among executives.

The textile industry, for instance, is in danger of losing some of its production to Mexico under Nafta. And yet many leading textile and apparel

manufacturers now favor the treaty. They expect Asian textile companies, with which Mexico will compete for the lower end of the market, to be even bigger losers. Meanwhile the prospects for sending American textiles and raw materials into Mexico could improve sharply.

"We would not be supporting the agreement if we thought that it would jeopardize our investment here," said Ronald J. Sorini, the senior vice president for international development at Fruit of the Loom Inc. The apparel maker, based in Chicago, has more than 30,000 employees in the Southeastern United States and spent more than \$250 million to upgrade domestic production last year.

## Divided Views

The appliance industry shows how the wording of specific provisions has divided views about the pact. Maytag, Amana, and Frigidaire are among the appliance makers that object to the phased removal of the 20 percent Mexican appliance tariff over a 10-year period, especially since the 2.8 percent to 5.1 percent American tariffs are eliminated immediately.

The companies say it unfairly rewards rivals like General Electric and Whirlpool for their big investments in joint ventures with Mexican appliance companies.

"We are being penalized by Nafta for having invested in the United States," said Douglass Horstmann, the director for government affairs for Maytag. G.E., for its part, said it supported the immediate removal of all tariffs but was only a minority partner in the Mexican venture and did not control its lobbying.

Whirlpool said it supported the phased reduction of the Mexican tariffs to prevent the Mexican industry from being wiped out by American competition.

U.S. - Mexican Tariff Phaseout  
Schedule Under NAFTA

Phaseout Schedules: Three phaseout categories are of interest to US appliance manufacturers:

- A: Tariffs are eliminated when NAFTA goes into effect, currently expected January 1, 1994. All US tariffs (for AHAM products) are in this category.
- B: Tariffs will be reduced in five equal stages, 20% per year until zeroed out. If NAFTA becomes effective 1/1/94 these tariffs are completely eliminated 1/1/98.
- C: Tariffs will be reduced in ten equal stages, 10% each year until zeroed out. If NAFTA becomes effective 1/1/94, these tariffs are completed Jan. 1, 2003.

MAJOR APPLIANCES

HTS Subheading	Product	US DUTY		MEXICAN DUTY	
		Now*	NAFTA	Now*	NAFTA
7321.11.30	Gas Ranges	4.2%	A	20%	C
8418.10.00	Refrigerator/ Freezer, Com- pression type	2.9	A	20	C
8418.21.00	Refrigerator Com- pression type	2.9	A	20	C
8418.30.00	Chest freezer	2.9	A	20	C
8418.40.00	Upright Freezer	2.9	A	20	C
8422.11.00	Dishwashers	3.6	A	20	B
8450.11.00	Clothes Washer	2.8	A	20	C
8450.12.00	Clothes Washer & Centrifugal Dryer	5.1	A	20	C
8450.19.00	Other Washer	2.8	A	20	C
8451.21.00	Clothes Dryers	5.1	A	20	C
8516.60.00	Other Electric Stoves, Ranges, Ovens	Free	A	20	C

Source: Office of the United States Trade Representative, NAFTA Tariff Schedules, 8/27/92

\* Almost all Mexican appliances now enter the US under the Generalized System of Preferences. GSP products enter duty-free unless they reach a "competitive need limit." Then they may be subject to increase to the rates indicated above.

**TRANSITIONAL WORKER ADJUSTMENT PROPOSAL  
FOR NAFTA-IMPACTED WORKERS**

**FACT SHEET**

**Challenge:** The U.S is expected to realize overall economic benefits as a result of the North American Free Trade Agreement (NAFTA). While the net effect of NAFTA will be positive, some workers--including those who lose their jobs because their plants move to Mexico or Canada--will have to find new employment.

The Administration is preparing a comprehensive program to provide workers who have permanently lost their jobs with the opportunities and resources to find another appropriate job as quickly as possible and, when necessary, enhance their skills in order to secure employment that will protect their earnings. The program will be customer-oriented, outcome based, and provide flexibility for local decision-making. This program will establish a single standard of eligibility to encompass all permanently laid-off workers without regard to the cause of their dislocation, including those resulting from international trade agreements such as NAFTA.

The challenge is to assure full support and assistance for any worker who may be permanently dislocated between January 1, 1994, when NAFTA will take effect, and July 1, 1995, when the new comprehensive program is expected to become operational.

**Proposal:** In response to this challenge, the Administration proposes to amend the Trade Act of 1974 to provide services and benefits for NAFTA-impacted dislocated workers from January 1, 1994 through June 30, 1995. This initiative would draw upon the best aspects of existing programs, EDWAA and Trade Adjustment Assistance, and provide affected workers with both rapid and early intervention and the ability to engage in long term training and receive income support.

Under this proposal, a group of workers or their authorized representative (including substate grantees under Title III of JTPA and community based organizations) would file a petition for certification of eligibility for services with the Governor in the state where the firm is located. Within ten days, the Governor would make a preliminary finding as to whether the petition meets the criteria described below, except for the "contributed importantly" criterion. Upon making such a finding, the Governor is to provide rapid response and basic readjustment services to covered workers. The Governor will forward all petitions to the Secretary of Labor, who will review all criteria and make a decision regarding certification for eligibility within thirty days.

**Cost Estimate:** \$90 million over 18 months, with \$45 million for training and \$45 million for income support. This is classified as mandatory spending, to be appropriated annually in the FUBA account.

**Impact:** Estimates vary as to the number of workers who may be affected during the next ten years as a result of NAFTA implementation, but only a relatively small number would be expected to lose their jobs during this 18-month bridge period. Of those who are adversely affected, some will find new jobs with counseling and job search assistance; others will need extensive retraining.

o either

\* the following

- sales or production of such firm or subdivision have decreased absolutely; and
- there have been increases in imports from Mexico or Canada of articles like or directly competitive with articles produced by such workers' firm or subdivision; and
- the increase in imports contributed importantly to the workers' layoff and to the firm's decline in sales or production; or

\* there has been a shift in production by the workers' firm to Mexico or Canada of articles like or directly competitive with articles which are produced by the workers' firm or subdivision.

Once the Governor finds that the group's petition meets the criteria, workers covered under the petition will receive rapid response services available under Section 314(b) of the Job Training Partnership Act (JTPA) and basic readjustment services under Section 314(c) of JTPA.

Once the Secretary has certified eligibility, the adversely affected workers shall be provided with a broad range of adjustment services, including:

- o employment services, including counseling, testing, and job placement assistance services, and supportive services;
- o appropriate training that has a reasonable expectation of leading to employment upon completion;
- o trade readjustment allowances (i.e., income support payments), except that:
  - waivers of the training requirement for certified workers shall no longer be permitted, as they are under TAA; and
  - workers must be enrolled in a training program by the end of the 16th week of the worker's initial unemployment compensation benefit period in order to qualify for trade readjustment allowances.
- o job search allowances providing reimbursement for job search expenses; and
- o relocation allowances.

MITCHELL AMENDMENT TO THE DRAFT IMPLEMENTING BILL

Discriminatory Taxes

It is the sense of Congress that states, provinces, or other governmental entities of a signatory nation that impose or selectively enforce sales or other taxes which have the effect of discriminating against the goods or services of a signatory nation are in violation of the terms of this agreement. When such discriminatory treatment occurs against U.S. goods or services, the United States Trade Representatives should pursue all appropriate remedies provided for under this agreement.



SENATOR JOHN BREAUX PROPOSED AMENDMENT TO  
CUSTOMS MODERNIZATION ACT  
SECTION OF NAFTA IMPLEMENTING PROPOSAL

OCTOBER 20, 1993

Amendment section 201 of the Customs Modernization Act would provide for a sunset date of 1999 rather than 1997 for purposes of requiring non-automated non-release documents to be filed at the port of examination.

Objective and Background This amendment relates to the Customs Modernization Act which is being proposed as a section of the NAFTA implementing legislation. It would restore a sunset date for certain remote entry filing to the date provided in last year's Customs bill. Congress passed last year's bill as part of HR 11. S. 106, the "Customs Modernization and Informed Compliance Act" as introduced by Senators Hatch, Rockefeller, Roth, Grassley, and Danforth on January 5, 1993 also contains the 1999 sunset date.

The restoration of the 1999 sunset date would assist in a small but important way the local trade community's adjustment to the effects of the controversial "remote entry filing" aspects of the Customs Modernization Act.

**SENATOR JOHN D. ROCKEFELLER IV**  
**STATEMENT ON THE NORTH AMERICAN FREE TRADE AGREEMENT**

Thank you, Pete.

I am here today to announce that I have decided to vote against NAFTA -- the North American Free Trade Agreement.

In trying to sort through all the arguments, my focus has always been on West Virginia. For almost 30 years, I have worked to bring more jobs to West Virginia, and to hang on to the ones we have. This has not been an easy task. Although our unemployment rate is half what it was ten years ago, it is still the highest in the country, as it has been for four years.

One of the reasons for the lack of jobs has been the lack of diversity in our economy. The fact is we are over-dependent on a few large industries -- chemicals, steel, coal -- industries that have employed thousands of our people, but now find themselves more vulnerable than most to international competition. And, too many of our workers are at the mercy of corporate headquarters, which are generally located somewhere else.

To their credit, Pete Aaron and Joe Wells have stood up against these winds. They have committed themselves to West Virginia and West Virginians. But we still don't have enough Joe Wells and Pete Aarons, and the ones we do have are living on the edge of our fragile economy.

Our people and communities feel like they're on economic thin ice. They wonder how we can take the risk of free trade with Mexico, before taking the steps to turn that ice into firm ground.

It is a risk that I have concluded we should not take right now. We shouldn't have to sacrifice any more jobs, or lose any more plants. We must first shore up the jobs and economy of states like ours and take the steps needed to be fully competitive with other countries.

Consequently, I will vote against NAFTA.

At the same time, I want to acknowledge the President's reason for promoting NAFTA. As he says, NAFTA points us toward our inevitable future. Economic integration with Canada and Mexico is going to occur, and will have to occur for our region to be competitive with other blocs in Asia and Europe.

But for the past twelve years we have labored under an Administration that encouraged companies to think that the best way to improve productivity was to lower labor costs, either by

reducing the work force or paying workers less. While labor costs can be a relatively small part of a manufacturer's total costs, they are often a large part of his controllable costs. The movement of manufacturing facilities outside our borders has been an important reflection of that.

Between 1987 and 1991, 5.6 million Americans became displaced workers. When surveyed last year, only 27 percent of them had full-time jobs as good or better than the ones they lost. Equally important, 35 percent of those displaced workers were in manufacturing. It is our growing inability to create new jobs for the displaced that led the American people to throw George Bush out of office in the 1992 election, and will be the test for Bill Clinton when he faces re-election.

NAFTA is obviously not responsible for this. But I have concluded that NAFTA is far more likely to accelerate those trends in the short term than it is to reverse them, and we are simply not prepared to deal with that possibility.

NAFTA brings certainty to the table for investors and corporate planners. It's a green light for those contemplating investment in Mexico.

As I indicated, the fragility of our state's economy already provides limited opportunities for growth, and it does not appear that more are likely to be found in Mexico, which has historically been one of our minor trading partners.

Indeed, industries like chinaware and glassware, which are labor-intensive and where the technology is stable and well-known, will face serious difficulties from Mexican competition. Steel may be in that position as well, though that is more difficult to predict.

Our biggest employer, the chemical industry, supports NAFTA and makes a good case it will lead to increased exports for them to Mexico. At the same time, it is a capital-intensive, highly mechanized industry, and it is hard to show that those increased exports will lead to more jobs in West Virginia.

I could go on, but the pattern is the same. Some industries will lose jobs; others will gain exports, but not necessarily jobs. That is not to say there are no American winners in the NAFTA. No doubt there are. But they will be hard to find in West Virginia.

This does not mean that those of us worried about the green light of NAFTA should put up a red light instead. Our interest is not in blocking economic integration, which is going to occur anyway; it is in making sure that our economy is prepared for that integration so that it can go forward with minimal

dislocation; with caution. A yellow light, perhaps.

The example of Portugal and Spain joining the European Community shows that economic integration between poor and rich partners can succeed -- if the foundation is carefully prepared and the progress closely monitored. That is, timing is an important factor. We need to prepare our own economy -- and our workers and our communities -- for the change a NAFTA will cause before we simply allow the light to turn green.

Some of that preparation is defensive -- commitments by American companies to pursue better working standards in Mexico, and actions by our government to provide effective job search assistance, job retraining, and economic support while it is going on.

But that is clearly not enough. The classic worker response to proposals for dislocated worker assistance is, "Retraining for what?" And they have a point. If there are no jobs, retraining is not only useless, it's a fraud.

So our pre-NAFTA focus must also be on job creation -- specifically high-skill, high-wage job creation. We simply must get better at that. I believe that history will show we missed a golden opportunity to do something about job creation last spring when Congress rejected the President's stimulus program. Much of the debate at that time was on its short-term aspects, like more summer jobs and more police. Relatively unnoticed in the debate was the commitment that the President and this state's delegation wanted to make to research in critical technologies, to commercialization, and to other steps aimed squarely at job creation and long-term growth.

We have recaptured some of the R&D money, but commercialization -- turning good ideas into marketable products -- is where the jobs are. I have helped put a legislative package together, called the National Competitiveness Act or S.4, which contains some of these steps, and I will push with all my might to enact that bill.

The missed opportunity of economic stimulus is also making it more difficult to enact NAFTA, because when the question is asked, "What are we doing about those who will lose their jobs due to NAFTA?" the government now doesn't have a good answer. And make no mistake about it, there will be job losses. Most studies suggest there will also be gains, and most of the debate has been over where the gains and losses net out. The more important issue is what we do about the losses. And, since many of those losses are likely to be in West Virginia, I cannot support NAFTA.

# # #

SUMMARY OF AMENDMENT ON FUTURE FREE TRADE AREA NEGOTIATIONS

- The NAFTA accession clause provides for other foreign countries to join the NAFTA free trade area subject to the applicable legal procedures of each country. This amendment is designed to provide a process by which the President would determine with which additional foreign countries the U.S. should negotiate free trade agreements:

- By May 1, 1994 and again by May 1, 1997, the USTR is required to submit to the President, the Finance Committee, and the Ways and Means Committee, a report which lists those foreign countries--

(1) that either currently provide fair and equitable market access to U.S. exports beyond that required by the GATT, OR have made significant progress in opening their markets to U.S. exports; AND

(2) the further opening of whose markets has the greatest potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent.

- The President, on the basis of the USTR report, is required to determine with which of these foreign countries, if any, the U.S. should seek to negotiate a free trade area agreement in order to increase U.S. exports.

- By July 1, 1994 and again by July 1, 1997, the President is required to submit to the Finance Committee and the Ways and Means Committee, a written report that contains--

(1) recommendations for free trade area negotiations with each foreign country selected by the President;

(2) the specific negotiating objectives of the U.S. for each country (based on general negotiating objectives set forth in the amendment); and

(3) a legislative proposal to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreements entered into by the President as a result of the negotiations.

- The amendment sets forth general negotiating objectives of the U.S. that are very similar to those that guided the NAFTA negotiations. However, it also states the sense of Congress that the Chapter 19 process should not be extended to any further countries.

- The amendment does not give the President fast track authority. It simply requires him to report on his recommendations for future free trade negotiations, but on the basis of the criteria set forth by the Congress.

SENATE FINANCE COMMITTEE  
NAFTA MARK-UP

THE "CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE ACT"

AS AN AMENDMENT TO

THE NAFTA DRAFT IMPLEMENTING LEGISLATION

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Mr. Chairman, I offer the Customs Modernization Act as an amendment to the NAFTA Implementing Proposal.

As most committee members know, the "Mod Act" has been the subject of considerable debate in the previous Congress, and was adopted by both Houses, only to fall to a presidential veto when included in H.R. 11, last year's Revenue Act.

The House Ways & Means Committee shares the commitment of many members of this committee to both NAFTA and the Mod Act. I am therefore offering the bill as reported by Ways & Means, which mirrors S.106, the Mod Act that I introduced this January, with some very minor exceptions.

The principal difference is the period for import entry filing, which would be four years, rather than six, a change that appeared in the original 102nd Congress Mod Act submission by the Bush Administration. This change is broadly supported by the import community as well as most brokers. There are also some minor changes or amendments made to my version which are all revenue neutral. If by chance they prove otherwise, I will pledge my support in removing them before this matter is voted upon by the Senate.

The Mod Act is Practicably and Conceptually  
Inseparable from NAFTA

Mr. Chairman, the modernization of our Customs Service cannot lag our aggressive - and I add, encouragingly, successful - pursuit of expanded trade. During the brief recession of the early nineties, trade was the only one of the four most accepted sources of economic growth that stoked our continuing prosperity. Government spending, consumer spending and business investment in plant and equipment, the other three, all leveled or declined. Let this lesson of economic history guide us: NAFTA promises a 90 million person consumer and capital goods market on our very doorstep.

But NAFTA won't work efficiently for us, and certainly not quickly enough unless we can realize three fundamental goals in implementing the agreement:

- Deter and prevent import surges that distort or even corrupt the negotiated purpose of NAFTA, at least from the U.S. perspective.

- Assure the orderly phase out of tariffs on both sides of the border, as agreed under NAFTA.

- Accelerate the availability of goods and services to our manufacturing and consumer sectors.

In the first instance, the Mod Act provides state-of-art automated information systems that will detect import violations, along with procedures for their enforcement.

As regards the second goal, streamlined recordkeeping procedures under the Mod Act will stabilize revenue flows during the tariff drawdown periods, while discouraging falsification of product classifications to avoid tariffs.

Finally, we want NAFTA to create jobs in the U.S. We have reduced U.S. tariffs to allow the free flow of components that our manufacturers need to make increased numbers of products to be sold in our own market as well as abroad, including to Mexico which already spends 70 percent of its consumer dollar on U.S. goods. The Mod Act greatly facilitates the flow of goods by remote entry filing - meaning that manufacturers in Minnesota, Missouri, New York, and Iowa, for example, can assure a continuous flow of imported inventory items. This allows them to maintain production and distribution schedules without tying up precious operating capital in inventory stockpiling.

Congress Has No Less an Obligation  
to Assure NAFTA's Workability

Mr. Chairman, during the past year our attention has been riveted to the negotiation of NAFTA. We are only now thinking about its implementation. They are two vastly different procedures affecting different sets of forces.

During negotiation, we put in place a conceptual framework of rules and procedures. But in considering NAFTA's implementation, we must consider the practical consequences of what we've negotiated. It makes no sense whatsoever to me, therefore, to present the American people with a jazzy looking agreement, with all sorts of bells and whistles, that won't work.

My point is that the Mod Act gives NAFTA the practical dimension that was only routinely considered during the negotiations.

Mr. Chairman, I am prepared to discuss any concerns you or any other committee member may have, and thank the chair for its attentiveness to my comments.



**SENATOR RIEGLE  
AMENDMENTS TO  
NAFTA IMPLEMENTING LEGISLATION  
October 20, 1993**

**Chapter 1**

1. The Congress approves only those letters integral to the Agreement exchanged between the U.S., Canada and Mexico that were signed by all relevant parties and made available to the public by the date the President submits the implementing legislation to Congress
2. The implementing legislation should approve the side agreements, in the same way the implementing legislation approves NAFTA, letters integral to the Agreement, and the statement of Administration action.
3. The implementing legislation should state that the U.S. will only enter into free trade agreements with countries that are democracies, that enjoy free and fair elections, free speech, free press and an independent judiciary. By entering into NAFTA, the Congress is opining that Mexico is a democracy.
4. If the Mexican government fails to received certification from an independent team of U.N. observers that the 1994 Mexican Presidential election was free of election fraud, the U.S. will withdraw from NAFTA on January 1, 1995.
5. The President must provide the Congress with a list of state laws that it has sued to overturn because the state law was determined to be in violation of NAFTA. Such list shall be provided to Congress on a semi-annual basis.

**Chapter 3**

6. On the day before NAFTA is implemented, U.S. tariffs on all goods are raised to level of Mexican tariffs and then phased out over the same time period and at the same rate as Mexican tariffs.

7. Prior to January 1, 1994, the U.S. will enter into a U.S. auto decree, with the same terms and conditions as the Mexican auto decree. The U.S. auto decree will be phased out over the same time period and at the same rate as Mexican auto decree.
8. Implementation of Appendix 300-A.3 is delayed 5 years. This provision will then be phased in over a 10 year period, with only 10 percent increase per year in vehicles manufactured in Mexico eligible for inclusion in the definition of domestically manufactured.
9. According to a recent report of the Secretary of Commerce, the "automotive industry will enjoy a \$2 billion worth of new export opportunities in the very first year of NAFTA implementation." Therefore, unless the U.S. automotive industry experiences at least a \$1 billion increase in exports to Mexico, as measured from 1993 levels, U.S. tariffs on vehicles produced in Mexico will be reinstated at 300 percent of the U.S. tariff level that existed on June 1, 1993 and Appendix 300-A.3 is abrogated.

#### Chapter 4

10. No product imported into the U.S. may obtain the benefits of NAFTA if such product has more than 20 percent of the value of good or the net cost that will ultimately be included in such product originating from a single non-Party to NAFTA.

#### Chapter 12

11. Adoption of S. Con Res. 36, which is a sense of the Senate resolution the Secretary of Transportation to uphold all United States truck safety standards, including truck sizes and weights, and safety standards such as driver hours of service and qualifications. Further, the resolution requires the Parties to standardize driver records into a North American Trucking Record System (NATRS)

## Chapter 20

12. The USTR is directed to provide the Senate Finance Committee and the House Ways and means Committee with a list of those remedies that remain available to the U.S. under section 301 in actions against Canada or Mexico.

## Chapter 22

13. Prior to exchanging notes with the governments of Canada and Mexico to implement NAFTA, the President must certify that both Canada and Mexico are democracies.
14. NAFTA shall be terminated automatically if Mexico runs a trade surplus with the United States for 2 consecutive years that in aggregate total \$10 billion or more.
15. NAFTA shall be terminated on March 31, 1996 if the commerce Department is unable to show that 200,000 net new jobs have been created as a result of NAFTA.
16. Adopt the labor side agreement as new chapter 23 and the environmental side agreement as new chapter 24.
17. No person other than the United States shall have any cause of action or defense under new chapters 23 and 24, or be able to challenge any action or inaction by the Federal government to any State or its subdivision as inconsistent with new chapters 23 and 24, unless expressly provided for in new chapters 23 and 24.

**Chapter on worker retraining/environment**

18. Certification for worker retraining proposal would be modified to delete last paragraph and replace with:

"there has been a shift in production to Mexico or Canada of articles like or directly competitive with articles produced in the U.S. that has led, either directly or indirectly, to the separation or threat of separation."

19. The Congress appropriates whatever sums are necessary to fund the worker adjustment proposal for NAFTA-impacted workers. The June 30, 1995 should be deleted from the implementing legislation.
20. Include S.1563, The American Jobs Protection Act of 1993, in the implementing legislation.
21. The USTR shall bring an action under section 301 against Mexico on January 1, 1995 if Mexico, at such time, has a persistent pattern of conduct that:
- a. denies the workers right of association
  - b. denies workers the right to organize and bargain collectively
  - c. fails to provide a minimum age for child employment
  - d. fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers
22. NAFTA is terminated if U.S. standards for pesticide, herbicide hormone level, food handling and storage are successfully challenged as trade barriers under NAFTA. Similarly, NAFTA is terminated if U.S. endangered species, fish, wildlife, natural resources and clean air laws or regulations are successfully challenged as trade barriers under NAFTA.

23. If, within any given 24 month period, a company with production operations in Mexico and the U.S., increases employment in Mexico, while such company decreases employment in the United States, a 30 percent excise tax on profits, dividends or similar payments subject to the taxing jurisdiction of the U.S. would be imposed. For purposes of this provision, "company" means an partnership, corporation, or other business entity and all affiliates and subsidiaries, as those terms are defined in the Internal Revenue Code.

Any taxes collected from this source would be used for worker retraining and income support.

24. U.S. companies affiliates with Mexican companies shall pay a 30 percent excise tax on any profits, dividends or similar payments received by such taxpayer from its Mexican-based affiliate, if the Mexican affiliate company fails to comply with U.S. laws regarding the environment.

Any taxes collected from this source would be used for environmental clean-up in the U.S.

25. U.S. companies affiliated with Mexican companies shall pay a 30 percent excise tax on any profits, dividends or similar payments received by such taxpayer from its Mexican-based affiliate, if the Mexican affiliate company fails to comply with U.S. laws regarding the labor rights.

Any taxes collected from this source would be used for worker retraining and income support.

## Potential Rockefeller amendment for NAFTA - TAA program

Problem: The Administration's proposal requires that in order to receive income support (TRA), a worker must be enrolled in a training program by the 16th week of their unemployment benefit period. The proposal eliminates broad training waivers. But it does not provide sufficient flexibility, both because of the limited time it provides to get certified and sign up for training and because of legitimate timing problems in entering training programs that necessitate waivers.

While union-represented workers can file for benefits quickly, those who are unrepresented, particularly in rural areas, need and deserve time to organize and compile the necessary information to request certification. Experience in West Virginia suggests that it could easily take 30 to 50 days or more for these groups to file for NAFTA-TAA benefits. Since it will take 40 days for the Department of Labor to make a final decision on certification, that would leave only a few weeks (22 to 42 days) for workers to find and enroll in a training course.

Further, since layoffs do not occur conveniently at the beginning of training programs, workers interested in training may have considerable difficulty finding a program and waiting for it to begin. At the same time, it is unfair to expect dislocated workers to enroll in long-term training before they are assured of NAFTA-TAA benefits.

Solution: Modify the Administration proposal in two ways:

1) provide workers must enroll in training by the 16th week of their unemployment benefit period or by the 6th week after NAFTA-TAA certification, whichever is later.

2) Permit workers who fail to meet the deadline for a justifiable cause to receive a limited extension from the training requirement.

Report language will define "justifiable cause," which will include: the enrollment date of a training course is beyond the deadline, or, when a course in which a worker is enrolled is canceled and the workers need additional time to enroll in a new course.

**THE HATCH AMENDMENT: THE CUSTOMS MODERNIZATION AND  
INFORMED COMPLIANCE ACT (THE "MOD ACT")**

**Brief Summary of Major Features**

**I) The Mod Act's National Customs Automation Program ("NCAP"):**

Outdated Customs laws require importers to file paper entry documents with Customs at the ports where their imports arrive. NCAP would permit importers to dispense with paper and to file electronically, if they choose to and if they meet Customs' computer requirements. NCAP would also permit "remote entry filing," in which importers can file entry data electronically from locations other than the ports where the imports enter. Importers would be able to file entry data and pay estimated duties periodically. The drawback provisions would clarify conditions under which duty drawback claims may be made and would provide for drawback for finished petroleum derivatives. Technical changes would also be made to accounting procedures for bonded aviation fuel transported by pipeline and for fuel withdrawn from bonded warehouses for use on qualifying aircraft.

**II) Enforcement Under The Mod Act:**

For the first time, importers would have a statutory duty to exercise "reasonable care" in providing Customs with accurate and timely data upon entering cargo. An importer's failure to exercise reasonable care might subject it to penalties. Customs would fix final classification, appraisement, and rate of duty based upon the importer's data. To ensure compliance with our laws, new recordkeeping penalties and audit procedures would be established, as well as a new civil drawback penalty.

**III) Informed Compliance Under The Mod Act:**

Informed compliance would require that Customs better inform the trade community of Customs procedures, with the goal of creating greater compliance with Customs laws and regulations. Examples of informed compliance in the bill would include accrediting private laboratories and providing new procedures for the seizure of merchandise and for the publication of Customs rulings and protest procedures.

**IV) The Mod Act's Administrative Provisions:**

Customs would have the authority to use private collection agencies to recover indebtedness, including duties. New authority would be provided to raise the administrative exemptions (gifts, and accompanying articles). Customs would be reimbursed its administrative costs from the fees collected on behalf of other agencies. The aggregate value for informal shipments would be increased. Archaic administrative procedures would be eliminated, such as the centuries old requirement that ships report the number of cannons on board.

## WHY THE MOD ACT IS ESSENTIAL FOR ADMINISTERING NAFTA

Since the Mod Act is designed to update Customs statutes and provide Customs with full legal authority for total electronic processing it is an essential element of our NAFTA implementation strategy. We had hoped to have the Mod Act passed last year as part of H.R. 11 (the Tax Bill) but it was vetoed by President Bush for reasons other than the Mod Act. Specific provisions that will have a major impact on Customs NAFTA enforcement are:

- o Legal Burden (Section 207) - Current law does not provide Customs with the legal authority needed to fully utilize selectivity techniques. The Mod Act establishes that legal basis by clearly defining that it is the importer's responsibility to appraise and classify the merchandise correctly and Customs responsibility to verify that it was done correctly. This is essential for the effective implementation of NAFTA because NAFTA is predicted to significantly increase trade among the 3 countries. Due to budgetary pressures, Customs is tasked to reduce its staff significantly in the next several years. Customs must make even greater use of selectivity to do its job - without the Mod Act we will not have the necessary legal authority to do that.
  
- o Automation (Title II and various sections) - Customs has invested significantly in automation during the 1990s. Unfortunately, our current statutes do not permit Customs and the trade to reap the full benefits from that automation. The Mod Act establishes that legal basis and removes provisions of the current law that limit our capability. This will significantly increase Customs and the trade's ability to process electronically. Electronic processing is essential for NAFTA to be effectively enforced.
  
- o Recordkeeping (Section 104) - The Mod Act establishes clear responsibility on the importer to maintain supporting records for the entry data. Very sizable penalties of up to \$100,000 per release are provided if they fail to do so. Current law does not provide this significant enforcement incentive.
  
- o Drawback Penalties (Section 112/593) Customs payments for drawback have increased by over \$150 million in recent years. Unfortunately, current law provides no penalties for companies filing negligent claims. The current enforcement posture is one of "catch us if you can" with no legal incentive for the claimants to invest the time and effort to file the claims correctly. The Mod Act solves that problem by establishing penalties for intentional and/or negligent claims. This creates a strong incentive for the claimants to invest the time and manpower to file the claims correctly and with the necessary supporting records.



NAFTA will gradually phase out drawback but until that is accomplished a very complex administrative scheme requiring the 3 countries to closely monitor drawback information is mandated. This can only be effectively done by the exchange of electronic information. The Mod Act both establishes the needed drawback penalty structure and facilitates the automated entry processing. Very significant for administering the drawback provisions of NAFTA.

This section also establishes a drawback compliance program which will not only facilitate processing of NAFTA drawback claims for both Customs and the trade, but will also provide a measure of assurance of the veracity of claims.

o Value Content Calculations - Reconciliation Process (Section 207) This feature of the Mod Act may be utilized for a variety of legal issues but will be particularly useful in dealing with the value content averaging for automobiles. Under the NAFTA, automobiles and automobile parts use the net cost method for calculating regional value content to qualify as originating goods. The producer may average its calculation over its fiscal year. Use of the reconciliation concept as provided for in this section will greatly simplify the process of appraisement and final liquidation of these entries.

o Regulatory Audit Procedures (Section 105) Under the CFTA, a significant issue arose over CFTA content of Canadian components for Honda vehicles. Inherent in that dispute was some criticism of Customs Regulatory Audit procedures. The Mod Act contains various statutory requirements which were negotiated with the import groups to establish some standard requirements for the conduct of all audits. These procedures will provide a clear set of requirements for such audits under NAFTA.

o Judicial Enforcement (section 106)- This section will allow district court judges in addition to holding a violative party in contempt of court for failure to produce records to issue a monetary penalty. This will reinforce our authority for production of necessary and appropriate records.

**United States Customs Service  
Office of Air and Marine Interdiction**

**P-3 PROGRAM JUSTIFICATION**

## TABLE OF CONTENTS

- Overview of Customs Air Program
- **Appendix A** - Evolution of Air Smuggling Threat to U.S. Borders: 1970 to Present
- **Appendix B** - Letter from Dr. Lee Brown to George J. Weise, Commissioner of Customs, regarding orientation visit to Latin America
- **Appendix C** - Excerpt from statement of General George A. Joulwan, Commander in Chief, U.S. Southern Command, before the Senate Appropriations Subcommittee on Defense; July 15, 1993

# UNITED STATES CUSTOMS SERVICE AIR INTERDICTION PROGRAM

## Introduction

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The United States Customs Service believes that the "Air Interdiction Program" is clearly one of the most successful of all interdiction programs and one that needs to be maintained. In recent hearings before the Senate Appropriations Subcommittee on Treasury, Postal Service and General Government (February 24 and 25, 1993), the successes of the program were documented and near unanimous interagency support for the vital role of air interdiction was placed in the record. Not only has the program achieved its objective of reducing general aviation smuggling into the United States, but it has contributed significantly to the capability of other like-minded nations to disrupt the flow of narcotics into the U.S.

The Customs Aviation Program is not a one-dimensional entity. It is a three-phased approach to air interdiction. First and foremost Customs maintains a border interdiction posture with its domestic aviation branches and units; second, it provides assets to support foreign interdiction initiatives directly related to smuggling into the United States; and third, the Customs Aviation Program provides aerial support to investigative initiatives of the Customs Service and other federal, state, and local law enforcement agencies which serves as a force multiplier to domestic drug enforcement efforts. By maintaining a diverse and flexible fleet of aircraft and recognizing that protection of U.S. borders neither begins nor ends at the border, the Customs air program has been able to consistently and effectively meet the challenges of the ever changing drug smuggling threat to our nation.

The focus of any realignment of priorities or resources should not be to decrease the capabilities and effectiveness of proven programs. The air interdiction program is fully funded and in place and should not be arbitrarily scaled back. Any reduction in capability now would simply open the door to increased aviation smuggling which, in turn, will create the need to reestablish the Aviation Program at an increased cost in the future. Additionally, the elimination of the P-3 Program would be in direct contradiction to the soon to be adopted Presidential Decision Directive 18 (PDD-18) on international counternarcotics activities. PDD-18 shifts the interdiction focus from the transit zone to the South American source countries where Customs aviation assets, especially the P-3's, are key to the success of these programs. **Without these assets in the theater, there is virtually no prospect for success for the Administration's source country interdiction strategy.**

## WHY AIR INTERDICTION?

Interdiction is a proactive attack on our nation's drug problems. Interdiction occurs at or beyond our borders, where the drugs are in wholesale quantities and at their highest level of purity - before they can enter the market, become widely dispersed, and begin inflicting their damage. To try to address the drug enforcement problem at the local level - on our nation's streets - would place an insurmountable burden on local police departments. In Fiscal Year 1992, the entire U.S. Customs Service seized over 111 metric tons of cocaine (80% of the cocaine seized by all federal agencies). Had that cocaine not been seized before it entered the U.S., the Drug Enforcement Administration (DEA) and state and local police departments, in theory, would have been faced with the equivalent of an additional *222 million grams of cocaine* on our nation's streets - equalling millions of street level transactions and drug-related crimes.

Of the interdiction programs, air interdiction has been the most successful and the most easy to address. This is due largely to the stringent regulations guiding the movement of aircraft which makes it relatively easy to sort illegitimate from legitimate air traffic.

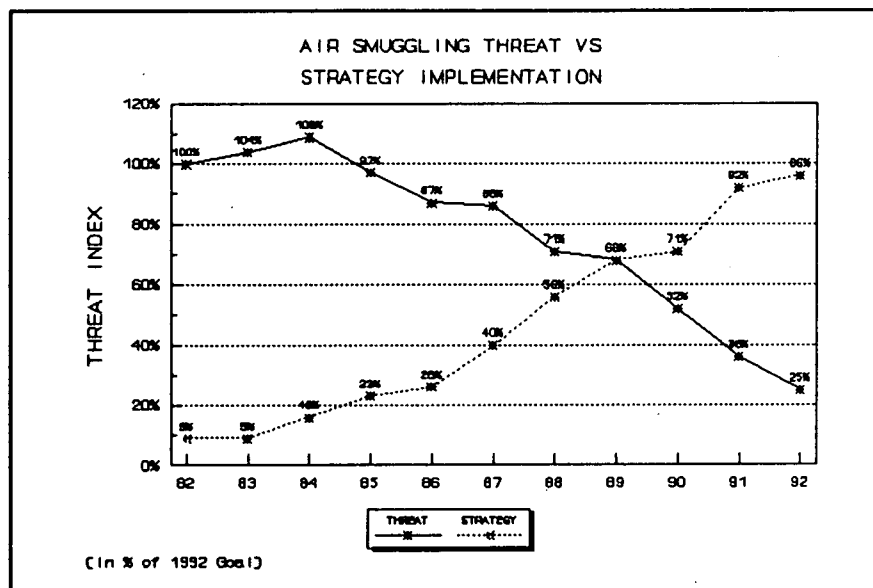
## Evolution of the Air Smuggling Threat

Over the past decade, the U.S. Customs Service Air Interdiction program has been remarkably successful in reducing the flow of narcotics smuggled across U.S. borders via general aviation aircraft.

Throughout the 1970's and early 1980's, drug smugglers flew their loads into the U.S. in great frequency.

However, as Customs air interdiction

resources grew in number and sophistication, air smuggling activity across U.S. borders shifted geographically and then diminished altogether. By 1990, the drug smuggler, although continuing to use private aircraft to transport his cargo out of Colombia, had been virtually denied access to U.S. airspace and was forced to



resort to airdrops to vessels and landings short of the U.S. border to deliver his cargo within reach of the U.S. market. (Appendix A illustrates these trends in the geographic distribution of the drug smuggling threat to the U.S. border and how it has shifted in response to the acquisition and deployment of Customs air interdiction resources.)

In response to this shift in the drug smuggling threat, in 1990, the U.S. Customs Service and the Government of Mexico joined forces to address the increasing use of Mexico as an air transshipment point for cocaine destined for the U.S. Initially, this effort involved only activity by the Customs P-3 AEW and P-3A ("Slick") aircraft, along with a variety of seized aircraft being used by the Mexican Northern Border Response Force (NBRF). During the early months of the operations, the P-3's enjoyed the unprecedented privilege of unrestricted VFR overflight of Mexico. The Mexican Initiative was an immediate success, and on October 8, 1990, two Customs Citation II aircraft were deployed to Mexico and have since been operating there to provide interdiction training and technical and tactical advice to the NBRF. On May 2, 1991, the Government of Mexico took delivery of two of their own Citation II aircraft which they had purchased for drug interdiction operations.

The results of this joint USCS/NBRF venture have been more than encouraging. In fact, in 1991, the then Attorney General of Mexico credited 80 percent of his country's drug seizures to direct U.S. Customs Service support. According to data from the "Interagency Counterdrug Performance Assessment", Mexican end-game performance has improved dramatically throughout the years<sup>1</sup>.

Just as air interdiction success at the U.S. border eventually resulted in an overall decline in air smuggling activity across U.S. borders, the successes of U.S. interdiction efforts in the transit zone appear to be having a similar impact. FY93 Known FY93 air smuggling activity in the transit zone has declined from FY92 levels. Although it is too soon to draw any firm conclusions, and the present level of air smuggling activity in the transit zone still poses a tremendous threat to U.S. security, some analysts speculate that the drug smuggler is beginning to react to

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<sup>1</sup> The "Interagency Counterdrug Performance Assessment" is generated on a quarterly basis by a working group consisting of intelligence and operational representatives from nearly every U.S. agency involved in counternarcotic operations. The focus of this group, which was established in May 1992 by NSC mandate, is to quantitatively assess D&M and interdiction performance in the transit zone. (NOTE: Beginning first quarter FY94, the group will add to its agenda Andean Ridge source country activity and counterdrug performance.) Data and reports generated from this interagency working group are classified CONFIDENTIAL and are available upon request.

increasing air interdiction pressure in the transit zone and is moving away from general aviation aircraft for transport from Colombian departure sites to less detectable, albeit more costly and complex, methods of transportation such as containerized cargo, "stealth" vessels, and overland transport.

In anticipation of the air smuggler's reaction to increased pressure in the transit zone, Customs has been working with the United States Southern Command (USSOUTHCOM) in the implementation of the President's source country initiatives in South America.

Customs maintains, at locations in Honduras and Panama, four intercept/tracker aircraft (usually Citation II), one P-3 AEW detection aircraft, and one P-3 "Slick" interceptor/tracker. Although all aircraft can be used for either source country or transit zone missions, the P-3 aircraft are now typically used to support USSOUTHCOM D&M and Host Nation interdiction operations in South America.

The Customs P-3 AEW, equipped with 360° AN/APS-138 radar, provides South American host nations with a nonintrusive, flexible, and relatively inexpensive means of detecting and monitoring smuggler aircraft. The Customs P-3 Slick, recognized as "the only tracker with the range and endurance necessary to follow suspect tracks the long distances from Colombia to Mexico/Central America,"<sup>2</sup> is then used to track suspect aircraft, acquired by the Customs P-3 AEW or DOD AWACS, to processing sites in South America or transshipment points in Mexico, Central America, the Caribbean, or the Bahamas. Flying either solo or paired together in a "Double Eagle" mission, last year Customs P-3 aircraft achieved a seizure per flight hour ratio of 11.7 pounds of cocaine per flight hour, and have proved to be an indispensable ally in the, now hemispheric, War on Drugs.

Due largely to the flexibility and political unobtrusiveness of Customs aircraft, Customs's support to foreign host nations in Mexico, Central America, and South America has yielded tremendous results - not the least of which has been the positive impact U.S. training and support has had on host nation's counterdrug efforts and multilateral relations. The following illustrates just some of the results Customs and U.S. interdiction efforts have had on foreign host nations. These results are particularly impressive when one considers the fact that, at any given time, Customs has deployed abroad only *eight* aircraft.

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<sup>2</sup> *Report of the Interagency Study on Detection and Monitoring* (Washington, D.C.: Joint Chiefs of Staff, July 1992), p.14

- Customs foreign interdiction training and support have enabled host nations to shoulder a much greater share of the burden, filling foreign prisons instead of our own.
- Mexican interdiction performance has improved dramatically since Customs began supporting Mexican counterdrug initiatives in 1990. As a result of this effort, it has become more difficult for the smuggler to fly cocaine directly to storage sites in northern Mexico. Instead, the air smuggler has been forced to offload his cargo in southern Mexico or Central America and resort to time consuming and tortuous overland routes to the U.S.
- U.S. counterdrug support to Colombia has resulted in a substantial increase in their nation's counterdrug determination and effectiveness. According to the "Interagency Counterdrug Performance Assessment," Colombian counterdrug forces are responding to an increasing percentage of suspect aircraft tracked back from the transit zone to Colombia. This is a tremendous step from the years when Colombian cooperation in counternarcotics efforts was nonexistent.
- Likewise, U.S. support to counterdrug efforts in Peru, Ecuador, and Bolivia has resulted in significant gains in host nation capabilities and also in an unprecedented level of regional cooperation once thought unachievable.

## **CONTINUED THREAT**

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Although the level of air smuggling activity has declined in recent years due to U.S. and host nation air interdiction efforts at and beyond our borders, that the narcotic smuggler, given the opportunity, would return to private aircraft as his primary method of transportation is indisputable when one considers its advantages over alternative modes. General aviation aircraft provides a swift, direct, relatively inexpensive means for smuggling narcotics into the U.S. To illustrate this point, consider last year's seizure of 14.5 metric tons of cocaine smuggled into the Customs Port of Entry in Miami, Florida, via concrete cement posts: On August 15, 1992, the ship upon which the cement fence posts were laden departed Venezuela. It was not until August 29, 1992, eight days later, that the ship arrived in Miami. Conversely, in November of 1992, a Convair 580 aircraft, laden with nearly 4 metric tons of cocaine, departed Colombia and only 10 hours later, landed in Canada where it was seized by Canadian and U.S. Customs forces. Additional factors, such as the ability to have direct, exclusive control over the cargo and the lack of a requirement to pass through Customs, make private air smuggling the method of choice for the cocaine smuggler. It is therefore imperative that, while we strategically begin to focus our resources in current areas of high air smuggling activity, we do not merely abandon those fronts we have already secured.



## **CUSTOMS P-3 PROGRAM**

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The necessity for the P-3 program, operating both foreign and domestically, needs to be emphasized. The Aviation Program is governed by a well-conceived and clearly thought-out strategy which calls for the detection of potential smugglers as near to their points of origin as possible. By projecting the border southward, Customs (along with DOD) has been able to effectively track targets from Andean Ridge source countries to Colombia and from Colombia to points in Central America, Mexico, the U.S., and even Canada. Without the ability to detect these aircraft early in their flights, the likelihood of successfully interdicting them is greatly diminished. Detection and Monitoring (D&M), as provided by the P-3s, is a significant link in the interdiction process. If it is eliminated or reduced, the likelihood of successful interdiction is reduced.

Customs P-3s do not duplicate DOD assets. The P-3 AEW is the premier detection and Host Nation interdiction coordination platform for counterdrug operations in South America and is in high demand by the countries of the region. The operation of these aircraft by a law enforcement agency like Customs provides the essential link with Host Nation police forces that cannot be duplicated by DOD assets. According to USSOUTHCOM, the USCS P3 is a workhorse and force multiplier that has enabled the countries of the region to mount ever more successful interdiction programs such as the Support Justice Series.

Moreover, Customs P-3s are the most cost effective of the airborne detections assets. They are a third the cost per hour of the Air Force AWACS and have far greater capabilities than the Navy E-2s.

The utility of having detection platforms (i.e. the P-3 AEW) under Customs operational control is best illustrated by the following points:

- Law Enforcement aircraft, vice U.S. military aircraft, are much more readily accepted by foreign host nations. In fact, according to the interagency community "The USCS P-3 AEW has proven to be a critical, although scarce resource for the detection of suspect air tracks...These assets are often more politically acceptable to Host Nations than U.S. military aircraft, thus allowing ease of overflight for repositioning and pursuit."<sup>3</sup>
- Since 1990, the P-3's have been permitted to overfly Mexico with Mexican police liaison representatives on board.

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<sup>3</sup> *Report of the Interagency Study on Detection and Monitoring* (Washington, D.C.: Joint Chiefs of Staff, July 1992), p.36

- The Government of Colombia has allowed Customs P-3's to follow suspect aircraft into Colombian airspace since late 1990.
  - The Governments of Ecuador, Peru, and Bolivia have approved Customs P-3 detection and monitoring missions within its airspace.
  - Long-term Customs P-3 overflight agreements are in place with the Governments of Guatemala, Belize and Honduras.
- Host Nation representatives/law enforcement officers are more readily allowed by USCS to fly on board our P-3 aircraft. This has served to break down traditional national barriers and has united the Host Nations against the regional threat of narcotics trafficking and terrorism. Host Nation representatives are not allowed to fly on many DOD aircraft, and are also restricted from much of the intelligence collected by military aircraft.
  - Customs P-3 personnel are able to present their mission results expeditiously to a court of law. Generally, DOD is reluctant to have their personnel and records present in court. Furthermore, prosecution of suspects could be hampered because of DOD's stringent classification requirements for counternarcotics material.

## **Conclusion**

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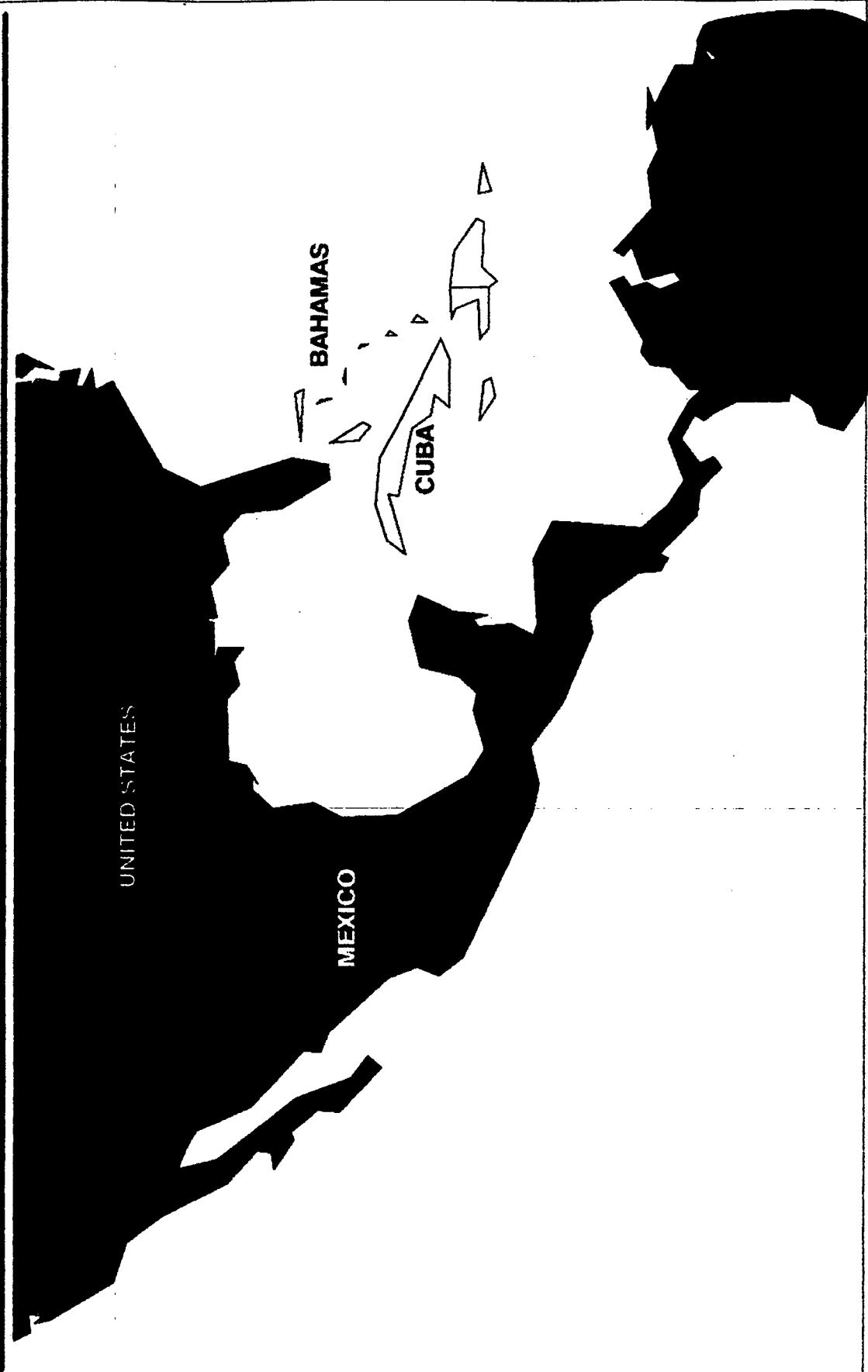
The U.S. Customs Service has been fighting the battle against drug smuggling, on all fronts, for decades. Throughout the years Customs air interdiction efforts have forced the drug smuggler to constantly alter his methods and routes of transporting his cargo into the U.S.

Over the past decade, Customs has built a successful, multifaceted Aviation Program (which includes aircraft, facilities, and C3I Centers). Customs is not a single-mission air force, but one that can presently meet the domestic border threat, support international interdiction initiatives, and significantly contribute to the effectiveness of investigative efforts. The aircraft and personnel are not underutilized. In fact the demand on our aircraft is often greater than their availability. The pilots and air officers within the program are some of the most skilled and highly trained individuals in federal law enforcement. **There is a highly successful and fully funded program in place that is key to the Administration's future counternarcotics plans (PDD-18).** The cost to reestablish this program down the road, should key portions be eliminated, would be substantial.

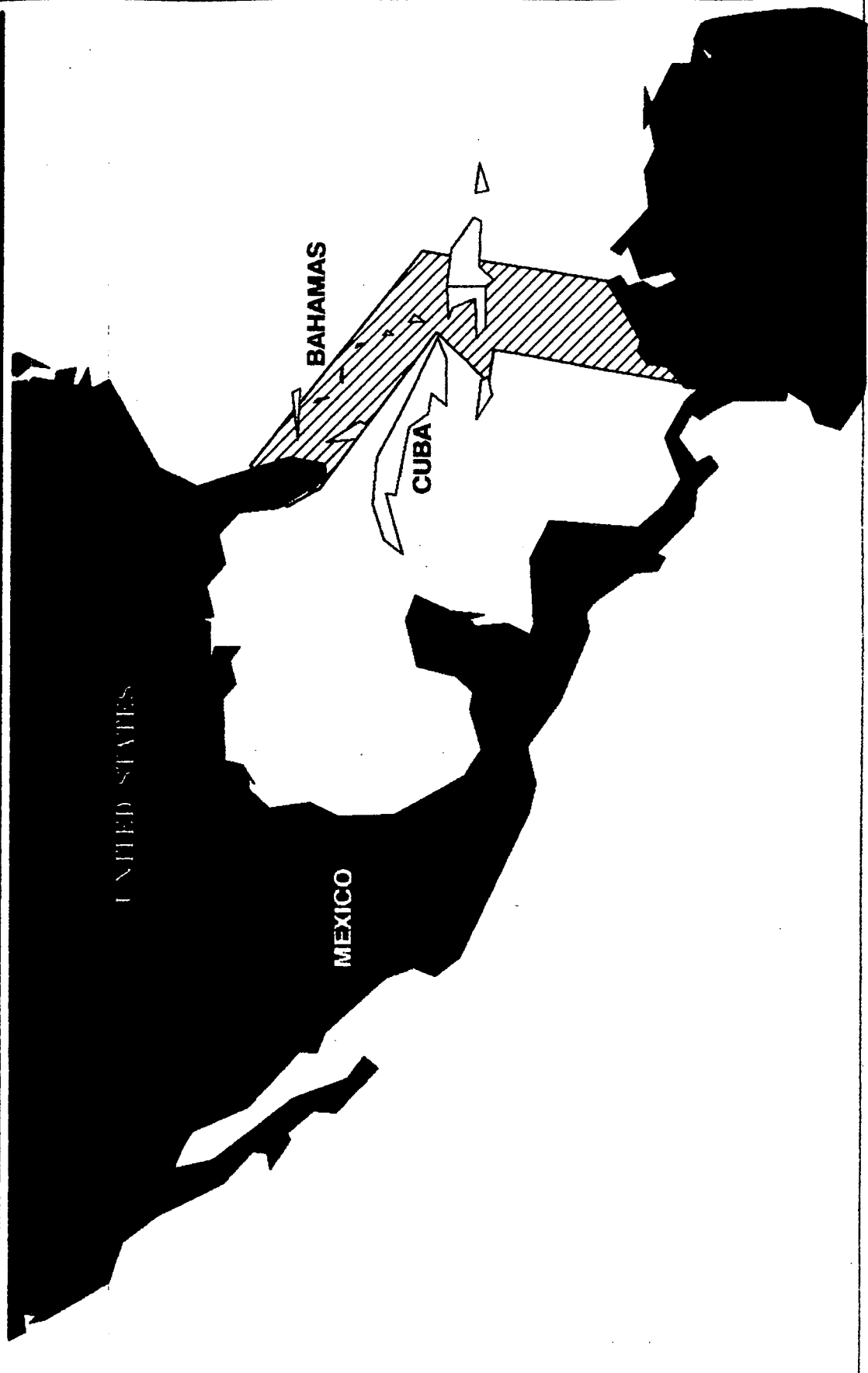
Customs firmly believes that the solution to our nation's drug problem does not lie in enhancing one program at the expense of another, but rather in continuing to build upon what has already been achieved.

# APPENDIX A

**PRIMARY AIR SMUGGLING THREAT  
THROUGH 1970s**

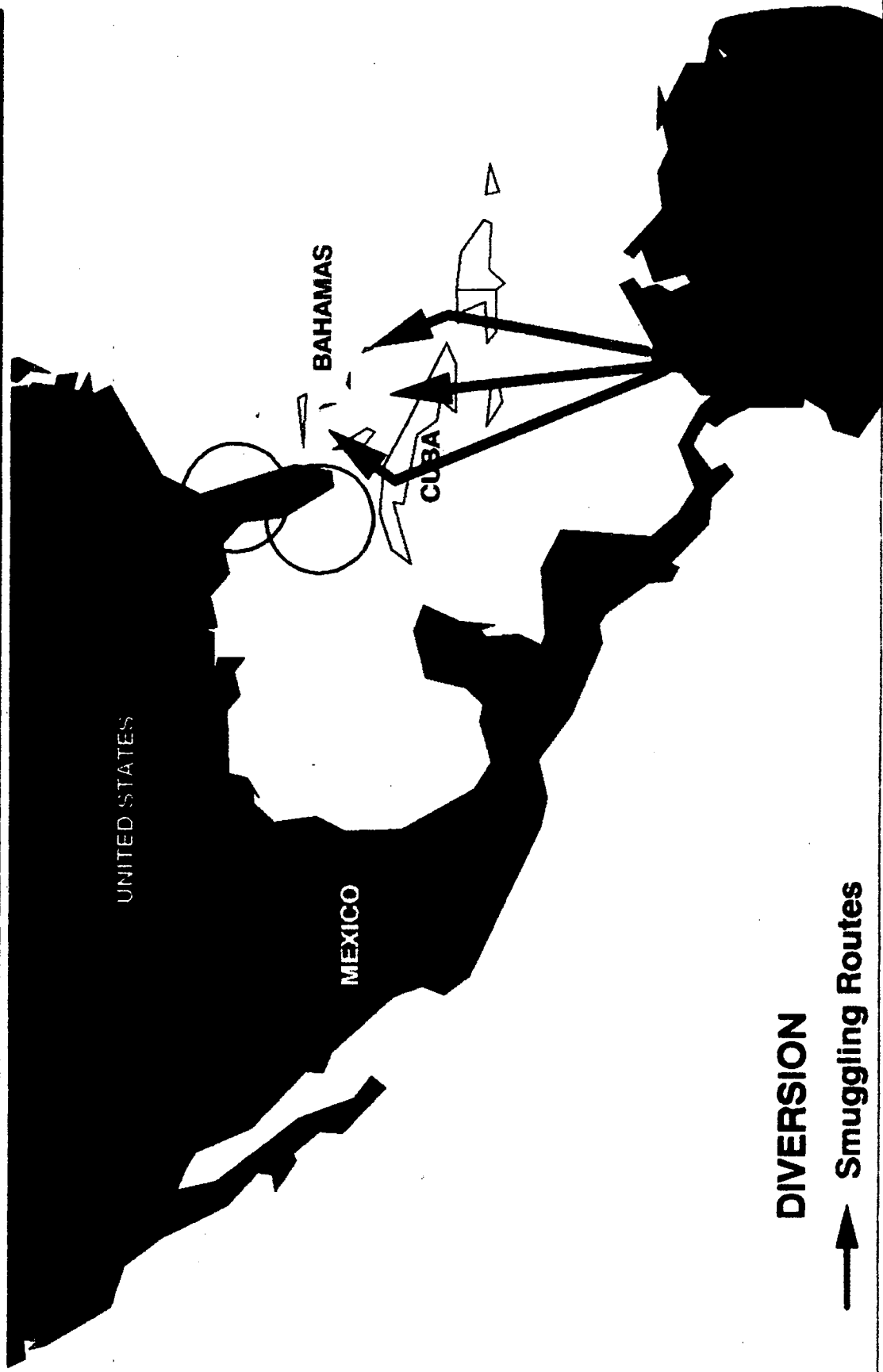


**PRIMARY AIR SMUGGLING CORRIDOR  
1979 TO 1982**



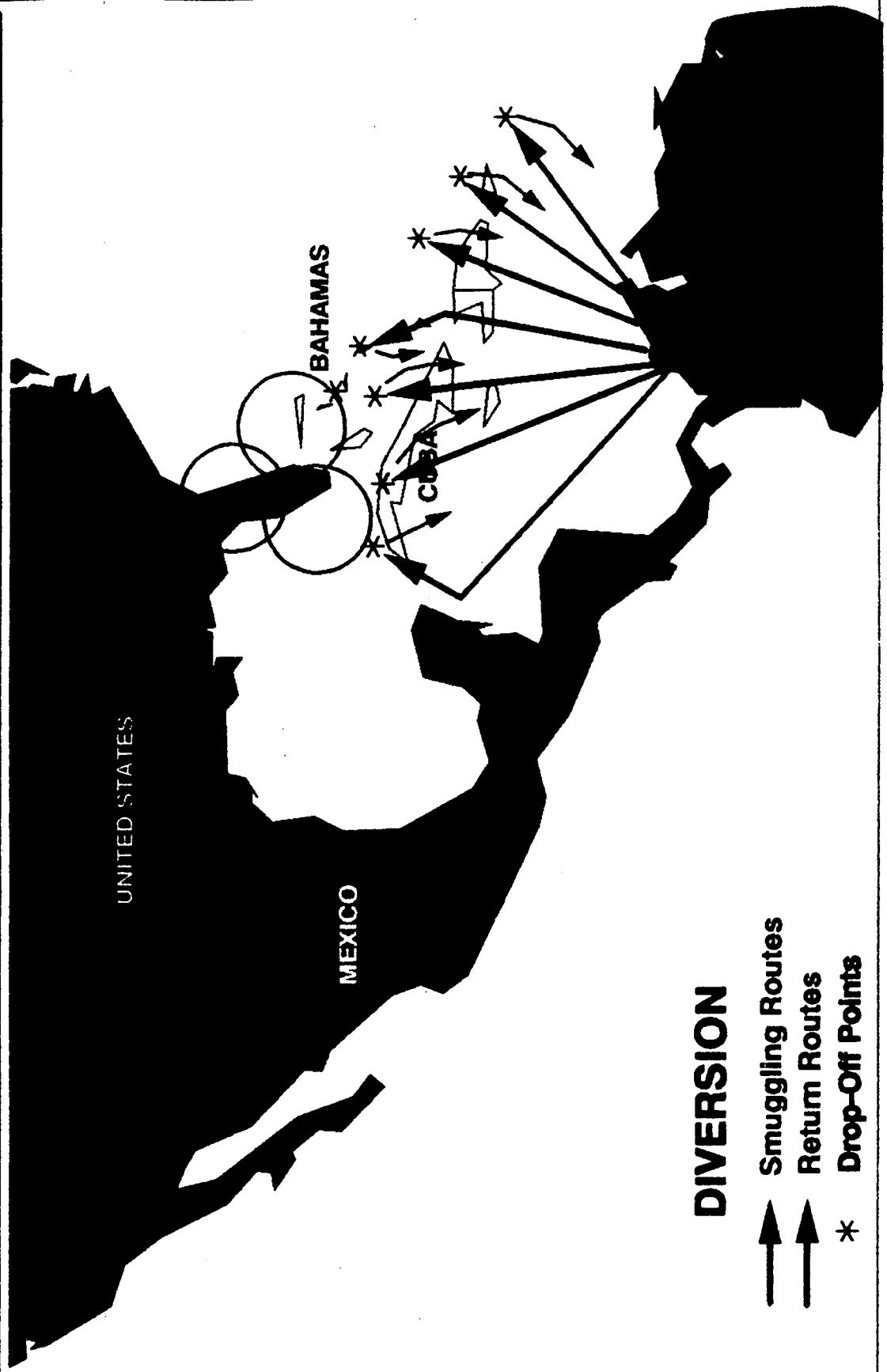
**IMPLEMENTATION OF CUSTOMS AIR INTERDICTION STRATEGY  
IN EAST FORCES SMUGGLERS TO BAHAMAS**

**1982 TO 1987**



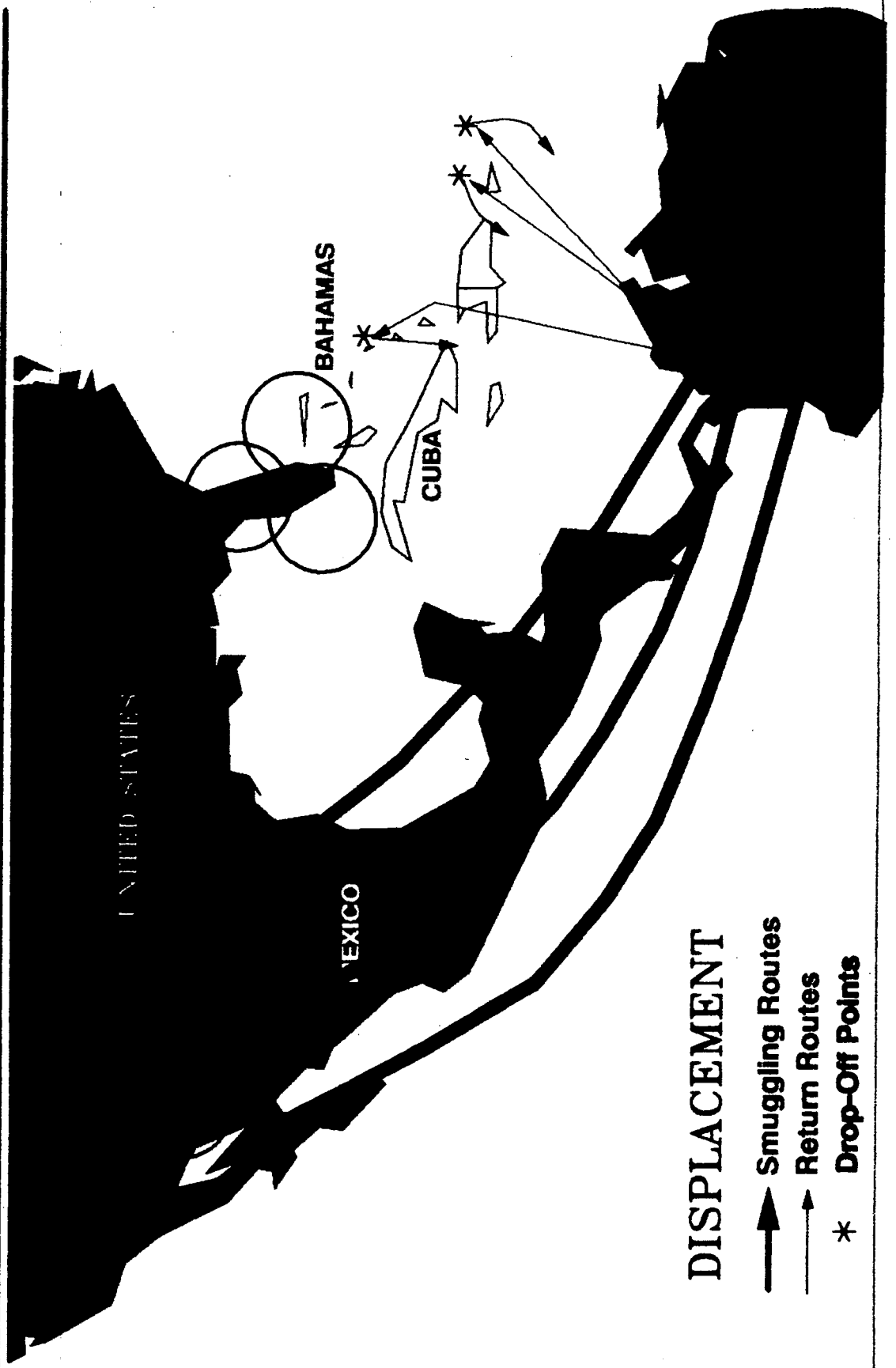
**ESTABLISHMENT OF BAHAMIAN ENFORCEMENT TEAMS  
AND INSTALLATION OF 3rd AEROSTAT  
DIVERT SMUGGLERS TO AIRDROPS AND TURNAROUNDS**

**1987 TO 1989**



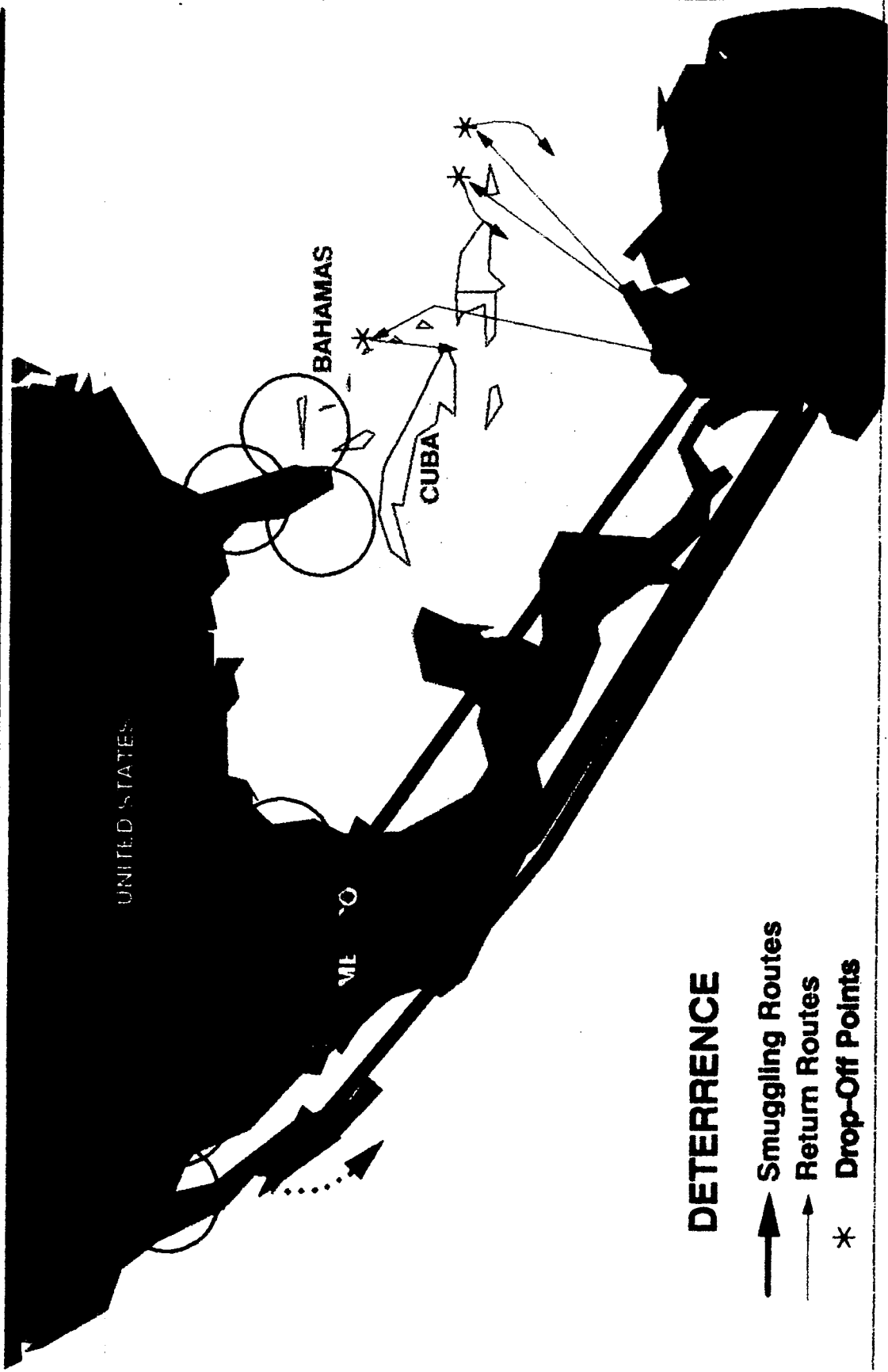
# EARLY SUCCESS OF NATIONAL AIR INTERDICTION STRATEGY DISPLACES SMUGGLERS TO SOUTHWEST BORDER AND MEXICO

1989

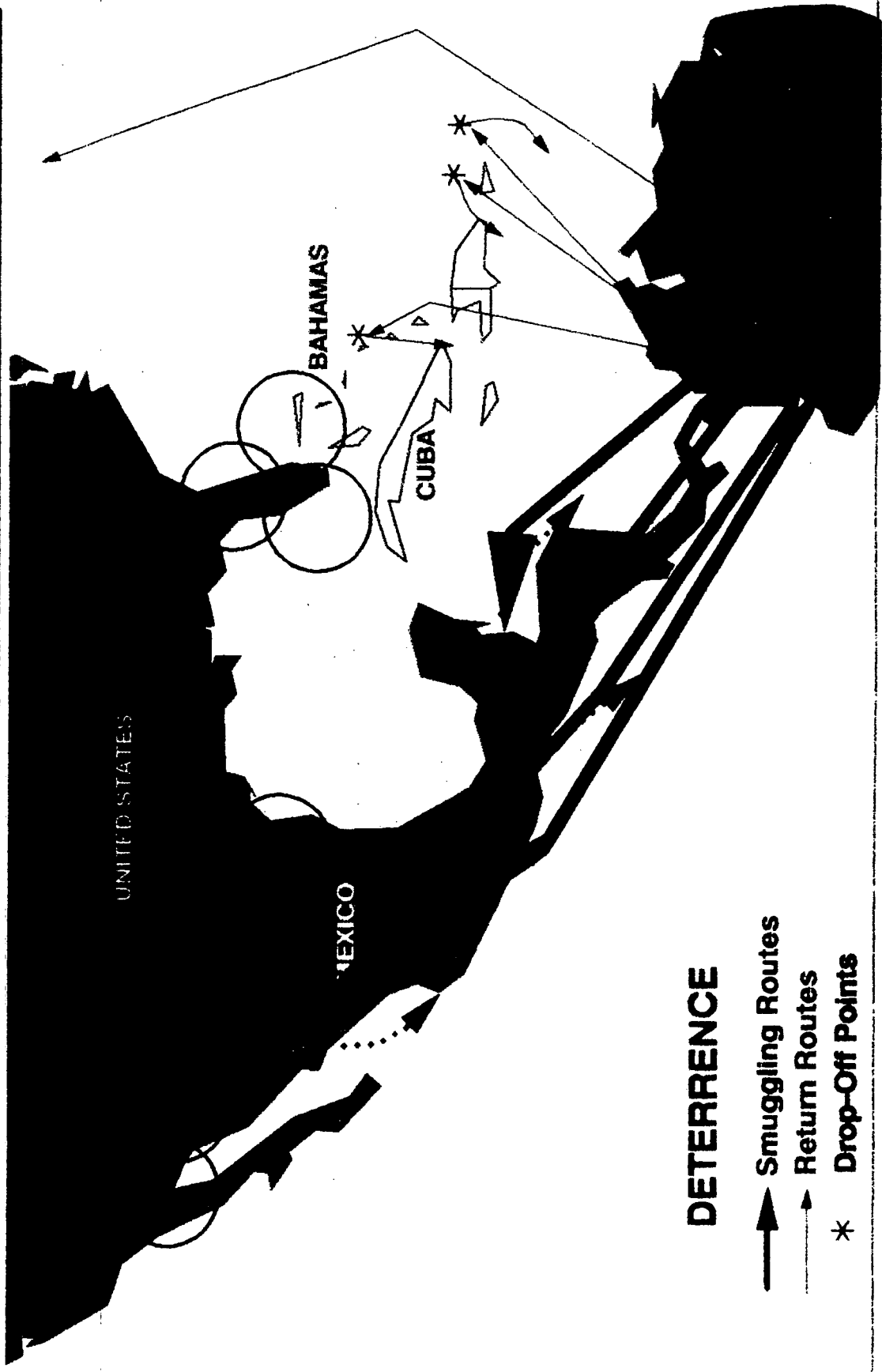




**FURTHER IMPLEMENTATION OF NATIONAL AIR INTERDICTION  
STRATEGY LEADS TO AIR DETERRENCE FORCING SMUGGLERS  
TO CHANGE TRANSPORTATION MODE  
1990 to 1992**



**FURTHER IMPLEMENTATION OF NATIONAL AIR INTERDICTION  
STRATEGY LEADS TO AIR DETERRENCE FORCING SMUGGLERS  
TO CHANGE TRANSPORTATION MODE  
1992 TO PRESENT**



**DETERRENCE**

- ➔ Smuggling Routes
- - - Return Routes
- \* Drop-Off Points

# **APPENDIX B**



# **APPENDIX C**

**FOR OFFICIAL USE ONLY  
UNTIL RELEASED BY THE SENATE APPROPRIATIONS COMMITTEE**

**STATEMENT OF  
GENERAL GEORGE A. JOULWAN  
COMMANDER IN CHIEF, U.S. SOUTHERN COMMAND  
BEFORE THE  
SENATE APPROPRIATIONS SUBCOMMITTEE ON DEFENSE  
15 July 1993**

but ambassadors and country teams comment that without them, programs would be far less effective.

As with intelligence, detection and monitoring is an area which affords us the opportunity to bring significant capabilities to the fight. Since the end of FY89, we have stepped up the time flown by DoD airborne platforms, such as the E-3 AWACS, and deployed temporary ground based mobile radars (GBRs) to key areas. I am very pleased with the Customs P-3 and Citations -- they are truly the workhorses in this fight. We are well into fielding the Caribbean Basin Radar Network (CBRN). Tied into both the Southern Region Operations Center (SROC) in Panama and JTF4 in Key West, CBRN will be an essential piece of our surveillance capability for drug trafficking aircraft transiting to and from the United States. U.S. detection and monitoring support has been instrumental in increasing our understanding of the air patterns of the drug trafficking network. As this database expands, we will be able to get out in front of the narcotrafficker and cut off his means of distribution from the theater.

Despite the capabilities we bring to the fight, the host nation actually fights the battles. Our security assistance efforts provide the right equipment and focused training to improve their ability to fight the narcotrafficker. As I mentioned, there was little in the way of host nation counterdrug capability in 1989, but today I can report that a substantial capability exists among the Andean Ridge nations. Host nations have significantly increased numbers of police forces specially trained in counternarcotics techniques and have developed aviation units to support police forces. These mobile forces can now respond more effectively to our intelligence cueing. Colombia and Bolivia have developed counterdrug capabilities within their armed forces.