TRADE AGREEMENTS ACT OF 1979

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1376

A BILL TO APPROVE AND IMPLEMENT THE TRADE AGREEMENTS NEGOTIATED UNDER THE TRADE ACT OF 1974, AND FOR OTHER PURPOSES

JULY 10 AND 11, 1979

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TRADE AGREEMENTS ACT OF 1979

WEDNESDAY, JULY 11, 1979

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 2:30 p.m., pursuant to notice, in room 2221, Dirksen Senate Office Building, Hon. Abraham A. Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Bentsen, and Moynihan.

Senator RIBICOFF. The subcommittee will be in order.

Our first witness will be Mr. Robert Ames. Your statement will go in the record as if read in entirety. So you may give us a summary of your testimony.

STATEMENT OF ROBERT S. AMES, EXECUTIVE VICE PRESIDENT, AEROSPACE, TEXTRON

Mr. AMES. This will be a summary of the testimony. Mr. Chairman, I am Robert S. Ames, executive vice president, Aerospace of Textron. Textron has always supported a decrease in the barriers to world trade and we continue to do so.

We wholeheartedly support the standards embodied in the MTN agreements and the statement made by George Prill covering civil aviation. Our concern in appearing before this committee is solely focused on the necessity to have rules that will insure fair competition and particularly in the high technology aerospace sector.

The reason is simple. All progressive nations realize that there is a linkage between research activities, the development of scientific and technical knowledge, investment in related facilities and, finally, economic progress. This fact sometimes produces governmental pressures to sell internationally, to buy in without regard to costs, what I might describe as a sophisticated form of technological dumping.

I would like to recount briefly what has just happened when there are no rules to be followed. I refer to the recent competition for the SRR, the short-range recovery helicopter, conducted by the Department of Transportation for the U.S. Coast Guard.

Bell Helicopter and Aerospatiale of France were finalists. Both helicopters met all specifications. The award was to Aerospatiale for $215 million for the procurement of 90 helicopters at a price one-half of 1 percent below the Bell bid.

In our opinion, the foreign content of the winning bid is artificial and unrealistically low. Textron is the——

Senator RIBICOFF. Artificially and unrealistically low. Do you infer that by the time they get going they will find that it is necessary to have extras and raise the amount of that contract?

Mr. AMES. By unrealistically low I simply refer to the percentage of costs devoted to what we could call a helicopter; and by that I mean the airframe, the rotors, the transmission, the gears, all of the things that you and I, when we see a helicopter, say: "That is a helicopter." That percentage is just unrealistically low in the total costs.

Textron is a U.S. company with 70,000 employees. Bell Helicopter is its largest unit and has 10,000 employees, mostly in Texas. Bell Helicopter maintains its position in world helicopter competition solely on merit and has no guarantee of any support from the U.S. Government.

To allow Bell to be productive, to grow, to earn the profits that built American jobs, Textron has made major investments in those very same things I just mentioned because they are the heart of the helicopter—gears, transmissions, helicopter blades, rotor systems, airframes. That is where we put our money. We have made this investment in technology and capital equipment to improve our ability to compete for helicopter business worldwide.

Aerospatiale, on the other hand, a nationalized company, has been a consistent money loser. The French Government provides capital and makes up Aerospatiale's deficits. It permits aircraft to be built either to explore a part of the market, to gain exports, to meet French military needs, or for any other reasons deemed advantageous to the long-range position of French aeronautics.

The recoupment of tooling and startup costs may artificially be delayed or altered to meet sales objectives and, if the aircraft is not successful, the losses are simply absorbed by the French Government. Development and research costs, again artificially, may not be treated as product costs at all. In short, Aerospatiale had the ability to bid the foreign content of the SRR below cost without any penalty to its own survival in the marketplace.

Now, the award to Aerospatiale is an illustration of the need for rules. Bell Helicopter is not afraid of competition. If Aerospatiale can demonstrate that it can compete on free market terms as contemplated by MTN and it therefore has incorporated all of its design, development, plant, and product support costs in its contract bid, we welcome it. However, the principles of fairness embodied in the MTN agreements should, in our judgment, be a fundamental part of the procurement of the SRR helicopters.

Now, we don't want to be presumptuous but would there be merit in asking Ambassador Strauss to examine this procurement simply to see if Aerospatiale did comply with the standards embodied in the MTN agreements?

Senator RIBICOFF. I think the problem you have is that this contract is in effect without MTN; in fact, MTN hasn't even been approved by the Congress. So we are dealing with the laws that now exist. And what bothers me is that it would seem there has been a distinct violation of the Buy American Act, which presently is the law of this land.

Now, I mentioned this to Mr. Strauss yesterday when he was testifying and he said this wasn't a problem of STR or trade but

this is a contract let by the Defense Department—whether the Defense Department or Transportation—who let this contract?

Mr. AMES. Well, you are hitting a key point. The contract is let by the Department of Transportation. And the Department of Transportation is not related in any way to military aviation. You have a complete anomaly. Even under MTN the Coast Guard is left out completely. Under MTN you will still have Government-to-Government agreements on military aircraft; but because the Coast Guard is in the Department of Transportation, it is not a military aircraft.

Now, what we are talking about really is a modified civil aircraft. But under the civil agreements under MTN, the DOT, and hence the Coast Guard is excluded. So you have an unbelievable situation in the future that it still isn't covered. It is a hole in the legislation.

George Prill was one of our negotiators and he gave you chapter and verse on how this strange situation came to pass. And it is a fact that in the future, as in the past, under Coast Guard procurement there will be no relief under MTN.

I think our point was broader than that. If we believe in MTN—and we do—if we believe in fair trade, isn't this a point to, in effect, say that, even though it isn't applicable, if we really believe in MTN, let us try to see whether the principles are being followed by the U.S. Government. There is no reason for the U.S. Government to wash its hands of a procurement because it is in no man's land.

Again it is a little unbelievable, but in Mr. Prill's testimony he can tell you why in the negotiations this situation evolved. It is a little peculiar.

Senator RIBICOFF. Senator Bentsen can ask questions. You might remain until Mr. Prill testifies. Apparently he represents the entire aerospace and general aviation manufacturers.

Mr. AMES. That is correct.

Senator RIBICOFF. And so he is probably aware of all of the nuances.

Mr. AMES. Yes, and he was a consultant with the negotiating team. As I say, he understands how it happened.

Now if I can just finish in one sentence——

Senator BENTSEN. Mr. Ames, from what you testified to, apparently the MTN standards have been violated; but, as the chairman has said, those standards are not in force yet; the MTN is not.

Now, what remedies do you have? What have you sought in that kind of a situation?

Mr. AMES. We have had two remedies and we sought them on two fronts. The two remedies—first, we have gone to the GAO with a formal protest. We backed up that formal protest with a suit filed in the Federal court, both being aimed at stopping the procurement. Our focus is on two points: One is "Buy American" and the other is the request for proposal.

Senator BENTSEN. All right; then what you were saying earlier when you said you thought that it put the components in at an artificially low price is that you think, in effect, they have subsidized those components and they have done that to try to get around the Buy American Act; is that what you are saying?

Mr. AMES. Precisely. The first statement given to us of the American content of the helicopter was 70 percent. And I would say that, if everything that you call a helicopter was made in France, it is a ridiculous number. Within a few days the DOT dropped that number to 56 percent, and I believe that under a strong investigation and our challenge we would hope that it would be proven that it is under 50 percent, in which case there is a Buy American 6-percent addition to costs computed.

Senator BENTSEN. I understand you have a copy of the contract between Aerospatiel and the Department of Transportation and the Coast Guard.

Mr. AMES. Yes.

Senator BENTSEN. From your study of that contract do you believe they have included the true cost of the design, that they have included the R. & D. in that, they are going to be able to recover the R. & D. or do you think that is something the French Government is going to pick up in the way of a subsidy? I know what you have to do and the private sector has to do in this country. Unless they plan to get back their R. & D. cost they go broke.

Mr. AMES. Also our rules, as you know, are very harsh. Under the accounting rules we live with—and I am not sure that it is good for the country—we literally have to write off the R. & D. in the year in which it is incurred. On top of that, we have to be able to explain to our outside accountants as well as our own and ultimately to the SEC that we include all costs.

Now, we have made more helicopters than anyone else in the world and we know what it costs to launch a commercial aircraft. And that is just what we are doing in the 222. So we have a very good idea of our costs and the ratios for different components. And we find the ratios to be unbelievable. Therefore we are left with the conclusion that the French Government, through picking up Aerospatiel's deficits, is subsidizing the costs of this aircraft.

Senator BENTSEN. If we pass the MTN, do you think under those conditions that Bell will be able to compete around the world—in France, for example?

Mr. AMES. I certainly would feel encouraged that we could compete on a far broader scale. We have confidence in our ability to compete anywhere in the world. We would want it that way. And this comes really to the heart of some of the remarks made yesterday by Senator Ribicoff, that we have to have in place mechanisms to make MTN work.

It has got to be in the right place in the bureaucracy. It has to have talent. It has to have people who can police this kind of sophisticated thing.

Senator BENTSEN. Let me get one more question.

Now, if we have 90 helicopters in this country, is that the limit of what we are talking about or does it go beyond that? How does that affect Bell's position in marketing around the world if the 90 helicopters are given to Aerospatiel?

Mr. AMES. It is a devastating impact. When we decided to build this commercial aircraft we did it because we believed there would be at least a $1 billion market, and perhaps a $3 billion market. When the U.S. Goverment endorses a foreign product it certainly hurts us. We know of several specific procurements. We are at a

great disadvantage the minute the U.S. Government places this contract somewhere else.

We are speculating in the future of American jobs. And we have put this on the line. And when our own Government slaps us down in this way we are hurt very badly.

I shouldn't continue but I will just say the word learning curves. They are devastating. On labor intensive products you have got to get down the curve fast. And a 90 ship block is a way to get down a learning curve very fast. So this has enormous impact on us. It really hurts us.

Senator RIBICOFF. Any questions?

Senator CHAFEE. Thank you, Senator.

I am very interested in Mr. Ames' testimony. Sorry I am late. I had another engagement.

If some of the questions I ask are repetition, I apologize.

Senator RIBICOFF. Go ahead, Senator.

Senator CHAFEE. What happened with your appeal to the Coast Guard? I admit that is not exactly under MTN but I am curious.

Mr. AMES. Well, we did discuss this. The point I did not bring out is that when we made our appeal to the GAO, we frankly thought it would have been prudent, under the evidence that seemed apparent, to us to hold up the procurement but the Department of Transportation declined to do this and they have proceeded with the procurement.

Senator CHAFEE. So the deed had been done.

Mr. AMES. Well, I hope it is reversible. We think the facts are very strong. We hope it will be reversed but we are depending on both an appeal to the GAO and a lawsuit in the Federal district court. We have taken both paths. They are the only tools available to us today.

Senator CHAFEE. I think the statistics you cited in your statement are about a one-half of 1-percent difference. Of course there are all kinds of unknowns. The capacity to produce the spare parts, I suppose, and matters such as that.

Mr. AMES. Oh, yes, and one point I have not mentioned, Senator, we did not stress the fact that we are bidding on an actual aircraft that is going down a production line and so our figures are really quite tight.

The French aircraft is only very loosely derived from what they contend is the parent aircraft. So to some extent we are comparing an actual aircraft with a paper aircraft. That makes a one-half of 1-percent difference ridiculous.

Senator CHAFEE. I see. Well, I think you have raised some serious questions here in the end of your statement there on page 5 where you say: "We don't wish to be presumptuous but would there be merit in asking Ambassador Straus to examine this procurement." And I certainly think there would be.

I am delighted you came and testified and presented this it seems to me startling case to us here.

Mr. AMES. Well, we think it a broad range classic MTN problem. This is the kind you have to lick if you are going to make MTN work. And we applaud the work of this committee. It is the only way to do it.

Senator RIBICOFF. Is there anyone here from STR?

Anybody from STR?

Senator CHAFEE. Thank you, Mr. Ames and Mr. Chairman.

Mr. AMES. Thank you for the opportunity to testify.

[The prepared statement of Mr. Ames follows:]

STATEMENT OF ROBERT S. AMES, TEXTRON, INC.

Mr. Chairman, I am Robert S. Ames, Executive Vice President-Aerospace of Textron Inc. On behalf of my company and on behalf of Bell Helicopter Textron, our largest division, I would like to thank the Committee for this opportunity to appear in connection with the Committee's consideration of the Multilateral Trade Negotiation Agreements.

Textron has always supported a decrease in the barriers to world trade. We continue to do so. We wholeheartedly support the standards embodied in the MTN Agreements. We also support the statement made before the Committee by Mr. George Prill on behalf on the Aerospace Industries Association of America.

Mr. Prill's statement has focused on a sectoral agreement for civil aircraft. As such it represents the need under MTN, to resolve in a mutually satisfactory manner the interests of competing governments in matters of high technology. All progressive nations realize that there is a linkage between research activity, the development of scientific and technical knowledge, investment in related facilities, and finally economic progress. This fact sometimes produces governmental pressures to sell internationally—without regard to cost, and in turn leads to the conclusion that, there must be rules to insure fair competition.

Thus I support Mr. Prill's characterization of MTN as requiring a set of "Marquess of Queensbury Rules." We should know. Our most recent contestant to enter the ring, Bell Helicopter, has been bloodied as a result of the fact that apparently no rules of the sort envisaged by MTN were applied by the U.S. Department of Transportation to assure a fair contest.

I refer to the recent competition conducted by the U.S. Coast Guard for the so called SRR (Short Range Recovery) helicopter, in which Bell Helicopter and Aerospatiale were finalists. The Department of Transportation, on behalf of the Coast Guard, has just awarded that contract, which aggregates $214 million and provides for the procurement of 90 SRR helicopters, to Aerospatiale.

A description of the two competitors will highlight the difficulty of ensuring fair competition between a private, American firm and a foreign, government owned entity. Textron, a corporation based in Providence, Rhode Island, is a United States company with 70,000 employees and 88,000 security holders. Bell Helicopter Textron is the largest unit of Textron and employs 10,000 Americans. Bell Helicopter maintains its position in world helicopter competitions solely on merit and has no guarantee of any support from the United States Government.

To allow Bell Helicopter to be productive and to grow, Textron has made major investments in equipment and machinery, plants and facilities, and in research and development. We have emphasized investment to produce and develop gears and transmissions, helicopter blades, rotor systems and airframe structures. We have made this investment in technology and capital equipment to improve our ability to compete for helicopter business, the decision has been ours, not the U.S. government's.

Aerospatiale, a nationalized company, has been a consistent money loser. The French Government provides capital and makes up Aerospatiale's deficits; it permits aircraft to be built either to explore a part of the market, to gain exports, to meet French military needs, or for any other reasons deemed advantageous to the long-range position of French aeronautics. The recoupment of tooling and start-up costs may artificially be delayed or altered to meet sales objectives, and if the aircraft is not successful, the losses are simply absorbed by the French government. Development and research costs again—artificially—may not be treated as product costs at all. In short, Aerospatiale had the ability to bid the foreign content of the SRR below cost without penalty to its own survival in the marketplace.

The technical issues involved in this competition and any other potential applications of MTN philosophy are and will inevitably be complex. The implementing details will only emerge over time. However, we believe that the Department of Transportation procurement of the Aerospatiale SRR helicopters raises basic issues of the type that must be faced under MTN.

1. Did Aerospatiale include it its bid the true cost of design and development of the SRR, or is this cost to be absorbed by Aerospatiale?

2. Was it considered that the award by a U.S. government agency would have an adverse effect on the U.S. helicopter industry in terms of loss of military production base and capability, and damage to commercial competitive posture?

In conclusion, the award to Aerospatiale is an illustration of the need for rules. Our questioning should not be construed as a negative judgment by us in the appraisal of the merits of the MTN Agreements. Bell Helicopter is not afraid of competition. If Aerospatiale can demonstrate that it can compete on free market terms, as contemplated by the MTN, and that it therefore has incorporated all of its design, development, plant and product support costs in its contract bid, we welcome it. We would like to believe that we will also be allowed to compete, on an equivalent basis, for French government helicopter orders.

There is another reason why MTN standards should have been applied in making the SRR award. In the U.S., we already have imposed unique and stringent accounting requirements on corporations. For instance, we are required to charge off R&D in the year in which it occurs. We must show our public accountants and stand accountable to our shareholders and to charged. These are not minor matters and they emphasize the disparity between the contestants in a competition such as the Coast Guard helicopter procurement.

We are sure that Coast Guard sought to run a fair competition, to obtain an excellent helicopter at the best price. Indeed the competition resulted in two helicopters that met all specifications. The Bell Helicopter bid was $215.8 million; the Aerospatiale figure was $214.7 million, a differance of just one-half of 1 percent. From the Coast Guard viewpoint, they probably accomplished their objective; their charter included no requirement to either provide equitable treatment to U.S. industry or monitor the rules of international trade.

But, the principles of fairness embodied in the MTN Agreements, should, in our judgement, have been a fundamental part of the procurement of the SRR helicopters by the Department of Transportation. We cannot prove without an extensive government investigation that Aerospatiale bought into this contract. It appears, however, clear from the record, that no effort was made by the Coast Guard to determine whether this happened. We do not wish to be presumptuous, Mr. Chairman, but would there be merit in asking Ambassador Strauss to examine this procurement to see if Aerospatiale did comply with the standards embodied in the MTN Agreements,

If, as we believe, the key to continued success and health of the private U.S. aerospace industry in competition with foreign government owned enterprises is the application of rules mandating fair competition, then this contract award certainly merits review.

[The letter and statement submitted by Mr. Olson follow:]

AEROSPATIALE HELICOPTER CORP.,
Grand Prairie, Tex., July 10, 1979.

Senator CHARLES H. PERCY,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: Because Aircraft Gear Corporation of Chicago is one of our major subcontractors on the U.S. Coast Guard SRR helicopter program, I thought you would want to know that Bell Helicopter Textron has filed a protest with the Controller General of the United States on the U.S. Coast Guard's award of a contract to Aerospatiale Helicopter Corporation (AHC) of Grand Prairie, Texas, for 90 Short Range Recovery (SRR) helicopters. Supplementing its protest action in the General Accounting Office (GAO), Bell is actively seeking Congressional sympathy and support for its position. After a review of the relevant facts, we think you will find that Bell's protest is completely without merit.

We at AHC are willing to let the Coast Guard's decision to award us the contract stand on its merit with the full scrutiny of the GAO. We are confident that the Coast Guard (with the aid of the U.S. Navy, which assisted in the technical and cost evaluation of the proposals submitted) has done a thorough assessment and that this will be confirmed by the GAO.

Bell submitted a written request to the Secretary of Transportation to review the Coast Guard's award of the SRR contract to AHC. We at AHC have not seen the Secretary's reply, but we understand he has advised Bell that re-examination of the Coast Guard award procedures has shown nothing improper in the selection process. The Coast Guard is now in the process of formally responding to the GAO. We understand the Coast Guard remains firm in its position. We also understand Bell has filed suit in Washington, D.C., against the Department of Transportation, to have the award to AHC set aside. The protest and the litigation, of course, should be resolved based on the relevant facts and the applicable law.

Bell has declared that the award of the SRR contract to AHC, a wholly-owned U.S. subsidiary of Aerospatiale of France, is taking jobs away from Americans. All of our employees are Americans too (except for one Frenchman who is resident at

AHC). We will utilize thirty-seven U.S. equipment suppliers distributed among 24 states in performing the contract in addition to numerous companies providing hardware, supplies and services. Our major U.S. team members are Rockwell Collins Government Avionics Divisions in Cedar Rapids, Iowa (avionics integrator); Avco Lycoming Division, Stratford, Connecticut (engine manufacturer); and Aircraft Gear Corporation, Chicago, Illinois (main gear box manufacturer). The employees of these companies also are Americans.

Our commercial business and number of employees are growing. AHC's back orders currently number 457 ships for delivery through 1982. Our employment, including staffing for the Coast Guard, will range well into the mid-500's by 1981—all Americans.

Under the Buy American Act, an item is "American" (i.e., a "domestic source end product") if it is manufactured in the United States and at least 50 percent of the cost of the components directly incorporated into the end product are manufactured in the United States. All the components directly incorporated into AHC's helicopter are manufactured in the United States within the meaning of the law, procurement regulations, and applicable cases. Therefore, the helicopter AHC will deliver to the Coast Guard is 100 percent American within the meaning of the Buy American Act and implementing regulations.

For your further information, however, we estimate that 69 percent of the purchase price received by AHC for delivery of products and services under the SRR contract will be disbursed in the United States and 31 percent to subcontractors and suppliers outside of the United States. In our initial proposal to the Coast Guard in June, 1978, these factors were 71 percent and 29 percent, but minor changes have resulted in the 69 and 31 percentages. The majority of the out-of-country expenditures will be to Aerospatiale Helicopter Division in France, subcontractor for elements of the airframe. Other disbursements go to Italy and Canada for main gear box parts, engine instruments, and direction finder.

Aerospatiale Helicopter Division, AHC's subcontractor for elements of the airframe, is a recognized world leader in advanced helicopter technology. This was recognized by the American Helicopter Society at its 1979 Annual Forum held in Washington, D.C., in May, by awarding the Alexander Klemin Award to Mr. Rene Mouille, Deputy Technical Director of Aerospatiale Helicopter Division. He was specifically cited by the American Helicopter Society for his role in the development of all-composite main rotor blades and head and fan-in-fin anti-torque rotor, uniquely incorporated in the AHC SRR.

The evaluation factors set forth in the Coast Guard Request For Proposal in order of rank were technical/program suitability, cost, and management. AHC's and Bell's prices have been reported to be less than one-half percent apart—AHC being low bidder. With this small difference, the Coast Guard and Navy technical evaluation team must have considered AHC's Dauphin 2 SRR technically superior to Bell's candidate.

AHC's management group is a spin-off from LTV's Vought Corporation. Until 1974, we were a subsidiary of the Vought organization. A number of our management personnel have 25 to 35 years' experience in government contracting. In fact, it was this experience that permitted AHC, with Rockwell Collins as avionics integrator, to assemble a technically superior and winning price proposal.

Bell implies that AHC is only a marketing outlet for Aerospatiale products in North America. Only 10 of our 280 people are salesmen. We have a compact and competent engineering and technical field service team to support our operating fleet, which now numbers approximately 385 helicopters. We are completely capable of performing the manufacture, assembly, and installation required by the SRR contract. In addition, we have a well equipped overhaul shop. In 1975, AHC in a cooperative effort with Sperry Flight Systems Division, engineered and certified the first single pilot IFR Category II helicopter—a recognized technical accomplishment by the industry.

Bell suggests also that AHC is neither financially capable, nor possesses adequate facilities, to perform the Coast Guard contract. The First National Bank of Dallas handles our banking and can vouch for our financial viability. Commencing late in 1978, we began constructing a new facility at the Grand Prairie municipal airport, which will be completed in early 1980. This provides jobs and is beneficial to the economy in the Dallas/Fort Worth metroplex. This new facility encompasses 270,000 square feet and will adequately accommodate our expanding commercial operations, plus the Coast Guard program.

On a relevant point, the GATT agreement currently before Congress has the endorsement of the U.S. aircraft industry. Whether Bell endorses GATT is not known, but it can be assumed they do, since they enjoy considerable foreign sales. One must remember that GATT sets up a two way street for international trade.

The success of the major U.S. airframe manufacturers (Boeing, Douglas, and Lockheed) in the foreign airline market has been accomplished through superior technology and access to these markets. It follows that the Coast Guard should be able to secure superior helicopter technology for their SRR helicopter, particularly when the basic product meets the Buy American Act and is being offered by the low bidder.

In conclusion then, AHC and all of its SRR subcontractor teams appeal to you and your congressional colleagues to support a GAO evaluation of the SRR award to AHC based solely on its merits. It will be shown that AHC's offer clearly gives the Coast Guard and the U.S. taxpayers the best value for their dollar.

Sincerely,

C. J. BENNER, *President.*

STATEMENT OF DEAN A. OLSON, CHAIRMAN, AIRCRAFT GEAR CORP., CHICAGO, ILL.

Mr. Chairman, I am Dean Olson, Chairman, Aircraft Gear Corporation (AGC), Chicago, Illinois. I am pleased to have this opportunity to submit a statement for the record to clarify our position with regard to certain statements made at your hearings on the MTN agreements.

We are major subcontractors to Aerospatiale Helicopter Corporation, Grand Prairie, Texas on the recently awarded Coast Guard Short Range Recovery (SRR) helicopter procurement. We will be manufacturing the gearboxes for the new Coast Guard helicopter from parts supplied by Fiat of Italy. The SRR procurement has provided the opportunity to gain added exposure in the international marketplace and we look forward to increased business as a result. We, at present, are engaged in other international efforts in Canada, the Netherlands, Germany, France, Italy, Japan and Israel and feel that approval of the MTN agreements holds the potential to expand our international business.

For the above reasons, we have serious reservations about the nature of the comments delivered by a spokesman for Textron at July 11 hearings before the subcommittee. In its statement Textron linked the recent Coast Guard decision on its Short Range Recovery (SRR) helicopter procurement and the MTN agreement at a time when the SRR decision is being reviewed by the GAO and Textron has brought suit against the Secretary of Transportation and the Commandant of the Coast Guard. This was a most unfortunate linkage. The MTN agreements have been concluded after lengthy and difficult negotiations. No extraneous problems such as the SRR procurement should be introduced which could, in any fashion, detract from the consideration of the MTN on its merits. Additionally, with the SRR matter before the courts and GAO for review, we think it improper that Textron would propose that a Senate subcommittee become an additional forum in which to try their case.

Mr. Chairman, Aircraft Gear Corporation is a small business firm employing but 225 people in Chicago. We appreciate the status we have achieved as a supplier to numerous U.S. aerospace prime contractors and we recognize that international cooperation, such as that embodied in the MTN, has contributed greatly to the success we have enjoyed with international customers. We hope to continue to improve our growth in both the domestic and foreign marketplace.

Senator RIBICOFF. Mr. Prill, do you want to testify in general, or do you have comment in this matter in particular?

STATEMENT OF GEORGE C. PRILL, SPOKESMAN FOR AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC., AND GENERAL AVIATION MANUFACTURERS ASSOCIATION

Mr. PRILL. I would like to testify in general but if there are any questions I can answer on the Coast Guard helicopter matter I will be hanpy to do so.

Senator RIBICOFF. Why don't you testify in general but I am just wondering as long as you have followed Mr. Ames and you have familiarity with this entire field, we would appreciate getting your comments and where you see the potential relief for Bell and then we will hear from you generally.

If the Senators have specific questions, you may proceed. You have heard. Do you know this case?

Mr. PRILL. Yes, I do in general.

Senator RIBICOFF. May we have your comments and your experience, sir?

Mr. PRILL. Yes, Mr. Chairman, I have been involved with the MTN negotiation from the beginning as chairman of the Aerospace Industry Advisory Committee. The Bell Helicopter competition, as Mr. Ames indicated, is not directly under the MTN agreements both because the MTN agreement has not been yet adopted and because of this peculiar hole that we have in regard to Coast Guard procurements. In U.S. law and U.S. practice, all aircraft fall into two categories: Civil or military. Military aircraft do not have an N number and have not been certificated by the FAA.

On the other hand, the Coast Guard, part of the Department of Transportation is not covered by the memorandum of understanding which the Department of Defense has signed with the French Government and which covers reciprocity in military activities. The memorandum covers the so-called two-way street and involves the concept of rationalization, standardization, and interoperability which are being being discussed by the DOD and the French Government.

So the Coast Guard falls into a peculiar hole. The issue of Department of Transportation procurement, is, therefore, one of Government policy. Does the U.S. Government want to run the bid on a purely commercial basis, trying to get a closed envelope bid, where the low bidder wins, or does it wish to look, at broader issues of policy? Does the U.S. Government believe they should apply the spirit of the multilateral trade negotiations to their own procurements?

The Department of Transportation is not included in the MTN Government Procurement Code. It has been taken out as one of the entities in that code.

I don't want to get too deeply into the intricacies of that code but this was done because the Europeans didn't want to include their railroads; for reciprocity we took out the Department if Transportation.

Senator RIBICOFF. In other words, this type of helicopter would not be included in the MTN on Government procurement which it opened up to all nations. Is that right?

Mr. PRILL. That is correct.

Senator RIBICOFF. So then this would have been excluded under MTN and yet it seems it violates the Buy American Act under the present law.

Mr. PRILL. Mr. Chairman, the buy American determination depends on the percentage of the contract that is American made.

Mr. Ames testified on these various percentages and I have no personal knowledge of those percentages.

Senator RIBICOFF. Well, it seems to me that if I were a Senator from Texas and I were an American company I would be outraged if this happneed to Sikorsky—apparently they were not a bidder on this—but I would be mighty upset.

Senator BENTSEN. You read the Senator right. That is why he is here.

Mr. PRILL. Sikorsky has been involved in similar procurements in the past. As you well know, they are a very active member of our helicopter fraternity.

This is a matter of principle for Bell.

Senator RIBICOFF. I think you have a very serious problem here because here you have an American company building a new series of aircraft and these 90 planes have a direct bearing on the overall cost of the entire line of production and also research and development. And it starts out as a symbol for world competition and the American Government does it in by showing a preference for a French plane. And of course we want fair trade but I personally am disturbed by this situation and I am at a loss to understand why such little attention was paid to it by the authorities involved, by the Department of Transportation and the Coast Goard itself.

Where do spare parts for this plane come from? Is there a facility for this helicopter in Texas too, or is it just an office they have in Texas?

Mr. PRILL. I understand there will be assembly activities in Texas. I would imagine, Senator, I don't know this for sure, but I would imagine most of the parts would come from France, the source of the original helicopters. That would be a normal way of procurement. I can't testify to that as a fact, but it would be normal in the industry.

Senator RIBICOFF. Senator Chafee and Senator Bentsen, do you have other questions on this problem?

Senator BENTSEN. I only want to emphasize the significance of this contract, when you are talking about 90 helicopters, this learning curve that develops from that, the incremental savings in costs on future contracts and what they can do in the market system as the result of that. It has substantial magnitude.

Senator RIBICOFF. You may proceed.

Senator CHAFEE. From your experience in the association have you seen the reverse of this happen where your companies get a contract for a nonmilitary aircraft away from a foreign producer in their country when the difference is so infinitesimal? What is this, one-half of 1 percent?

Mr. PRILL. I can't think of one, Senator.

Senator CHAFEE. I bet you would be hard put to find one too.

Mr. PRILL. I am fairly experienced in the business and none comes to mind. We have sold, of course, many aircraft outside the United States, usually through foreign military sales, in the DOD, but this type of nose-to-nose competition is a rather unusual circumstance. I can't remember any case where, for example, an American helicopter company won a competition for Government procurement in Europe against a nose-to-nose competitor.

Senator CHAFEE. Fine.

Senator BENTSEN. I want to thank you for giving this the priority you have and the attention you have given to it.

Senator RIBICOFF. You may proceed with your general testimony testimony.

Mr. PRILL. Just as one last thought on that, Mr. Chairman. We in the American industry are, in no way, saying Aerospatiale doesn't build good helicopters and doesn't do a fine job technically. In fact, one of the basic reasons, probably the basic reason, that we

in the American aircraft industry are so concerned and involved in the MTN is that we have high regard and great respect for the technological competence of our European, Canadian, and Japanese competitors. And we recognize very well that if we continue under the rules of the last 20 or 30 years in which they are allowed to direct Government procurements, including procurements by their airlines, and are allowed to subsidize and are allowed to demand offset, that this will be a very rough game indeed because they are competent. All of our projections have been based on a 20-year look at the future; we do everything based on the year 2000. We see ourselves competing against very well managed, very technologically competent, government-owned companies. Rolls Royce and Aerospatiale are two that come to mind. Unless we have rules and unless we monitor and enforce these rules, as you said yesterday, Senator, in a statement which we endorse fully, we see this as a very rough business for the U.S. aircraft industry. We don't see ourselves as impregnable at all.

Senator RIBICOFF. And if we don't have a proper watchdog for American overall interests, we are going to get the short end of this stick. These various codes only have meaning if we are watching them and monitoring them and doing everything we can as a Government as a force on behalf of American industry. Otherwise we have passed a Trojan horse here which could hurt American industry, because it is a cinch if we have our private industry competing with Government subsidized industry and they can take any loss and do anything in the bookkeeping they want to, we are at a decided disadvantage when it comes to price. This is something that is going to have to be monitored with exquisite skill, really, to make sure it works out.

Mr. PRILL. All I can say to that is, "Hear, Hear." You are absolutely correct. It is a very difficult job. Trying to define what is a subsidy in a large Government-owned corporation is very difficult. We don't know of any easy way to do it.

Senator RIBICOFF. I don't suppose there is any place in the Government today where there are specialized auditors who can ferret out subsidies of manufacturers and projects abroad, are there, today? I don't know of any.

Mr. PRILL. No, I don't think there are. We in our industry have looked at our competitors, as they look at us and it is very difficult to get those facts and figures.

Senator RIBICOFF. We have a big problem because you represent one of the biggest dollar earners in our whole balance of trade picture. The aeronautics and space industry represents how much?

Mr. PRILL. Well, we are doing about $8 billion to $9 billion a year exports and import under $1 billion. So we believe we have the best balance of trade figures next to hard grains of any segment of the American economy.

Senator RIBICOFF. That is right. And we have enough problems as it is without losing that world business.

Mr. PRILL. Exactly, Mr. Chairman.

Well, to a certain extent that is my testimony.

Senator RIBICOFF. That is fine. Your entire testimony will go into the record as if read.

Mr. PRILL. If I can put it in a few sentences:

One, we strongly support the agreements, we think they should be put into effect. We strongly support what you said and what you are going to implement as a followup.

We are a united industry, which is not always found around the country. We have been united through the negotiations and we intend to stay united.

And the other thing I did want to say, and which I think is very important for us, is that we do not see this agreement that we reached on trade in civil aircraft as a victory for us and a defeat for the other side. We really don't believe it is that. We think it is an agreement on the rules that we have been calling the Marquess of Queensbury rules of the international trade marketplace for the next 20 years. The good marquess did not intend to stop the boxing. He wanted to encourage it, but on a fair and equal opportunity basis. What we see is a chance to compete if these rules are implemented and enforced—and that is a big if—a chance to compete on an equal opportunity basis. We know we need a referee. The good marquess didn't take the referee out of the ring. We know we need help and support from the U.S. Government in putting this into place.

Senator RIBICOFF. Thank you very much.

Any questions?

Senator Bentsen?

Senator Long?

Thank you very much.

Mr. PRILL. Mr. Chairman, if I may I would like to put into the record——

Senator RIBICOFF. Without objection, your entire statement will go into the record.

Mr. PRILL. I will submit also a fairly long history of this negotiation.

Senator RIBICOFF. Fine. We would welcome it.

[The prepared statement of Mr. Prill follows:]

STATEMENT OF GEORGE C. PRILL, GEORGE C. PRILL & ASSOCIATES, INC.

Mr. Chairman, I appear before the Committee today as the Chairman of the Aerospace Industry Sector Advisory Committee and as a spokeman for the Aerospace Industries Association of America, Inc., and the General Aviation Manufacturers Association. The membership of these two associations includes the manufacturers of civil aircraft, engines, avionics and parts. It has been a very pleasant experience to represent all elements of the industry. The industry was united during the negotiations and will remain united in the follow-up activity, to which we attach great importance.

We have submitted to the Congress a report containing the industry's analysis of the various agreements reached during the Multilateral Trade Negotiations. To fit the purpose of the Committee today, however, I think it will suffice to say that the aerospace industry strongly supports the package of tariff reductions and agreements on non-tariff measures resulting from the Multilateral Trade Negotiations and recommends its adoption. Our interest, of course, centers on the Agreement on Trade in Civil Aircraft, but is, by no means, restricted to just that Agreement.

I would like to stress that while we strongly favor the adoption of the Agreement, we do not see it as a "victory" for our side in the sense that it would be a "defeat" for the other Signatories. Rather, we see it as a balanced agreement providing reciprocity for all of the Signatories. As with all good agreements, all Signatories benefit and there are no losers in the world's aerospace industries.

A major point of the Aircraft Agreement that I would like to stress is that it is a sectoral agreement embracing all of the tariff and non-tariff factors that affect the sector. By takig this approach, we are able to trade the U.S. tariff for a European commitment not to direct national airline procurement and for a Canadian commit-

ment not to demand compensatory contracting or offsets. We are quite convinced that the sectoral approach is the correct approach to the problems of major industries.

Further, we believe the Agreement provides the framework for the development of more detailed agreements on such subjects as export credits and international certification. We see it as a document which can be broadened by the addition of other Signatories and as the basis for addressing problems in the trade of aircraft with non-Signatories.

We believe the basic philosphy of "fair trade" and "current, commercial, competitive practices," as accepted by the Signatories, will provide the world's airlines and the other users of aircraft with the safest, most efficient and most reliable machines regardless of the country of manufacture. This is certainly in the public interest.

We sometimes refer to the Agreement as the "Marquess of Queensbury Rules" of the international marketplace. We are well aware that the good Marquess did not develop these rules to stop boxing, but rather to encourage it on a fair, and, if you would think of it in these terms, equal opportunity basis. We fully recognize that the Rules are not self-enforcing. There is a need for the referee in the ring. Similarly, we will need monitoring and enforcement to make our Agreement the very useful tool we believe it will become.

Our great interest in developing an international agreement on trade comes from our recognition that competition in the the next two decades will be very different from that in the last three. The United States' private industry is faced with competent, technologically advanced, well managed competitors, that are owned, or closely integrated with, national governments. If these competitors were to enter the ring with the brass knuckles of government-directed procurements, offset production demands and government granted subsidies,it would be a very rough affair. On the other hand, if the U.S. continued imposing tariffs on aircraft imports, or were to discriminate against imported aircraft by the use of licensing or certification procedures, we would limit Canadian, Japanese and European access to the world's largest single national market. This would result in a de facto trade war with resultant loss to the Airlines and general aviation users, as well as to the high technology aerospace industry of the U.S. and its allies. Thus, we believe that opening the borders increases competition, while requiring that compeition to be "fair."

It is important to stress that governments can, and should, budget for aerospace research and development activities. However, governments will not under the terms of the agreement, subsidize individual production programs.

Operating under the implemented MTN package, we expect that we will export more, and export on a secure basis, thereby ensuring that there will be more jobs in our industry and more business for the thousands of our small business suppliers who do not consider themselves "international traders", but who export by virtue of their sales to subcontractors or directly to the manufacturers of civil aircraft. Because we will have rules, there will be more certainity and, therefore, a better opportunity for long-range planning. This is essential to the build-up of skilled labor forces and the acquisition or construction of new facilities.

The next two decades will provide a market for the civil aerospace industry of about $300 billion—no small sum. The biggest individual market, but still less than half, will be the United States. No company in the United States, Canada, Japan or Western Europe can undertake a new program with any sense of success unless it can be assured of a fair shot at world sales. Obviously, the bigger and more advanced the aircraft, the more true this is. But the principle carries through to the smaller general aviation aircraft and helicopters, as well. In short, we all need a world market to compete, and rules are needed to define this market.

The other subject that I would like to stress today is the need for the implementing legislation to set up a strong, flexible system for industry participation in the monitoring, enforcing, consulting and amending process that will follow. If these agreements are to work, we need strong, authorized industry participation at all times and at all levels. Our industry believes we should participate primarily as a sector, but also in the cross-sector discussions on other, more general matters.

The other Signatories to the Aircraft Agreement know our industry and fully expect it to be a very active partner, along with the U.S. Government, in the follow-up process. In the same way, we know their aircraft industries. We respect them, and we are certain that representatives of their indistries will be integral parts of their national teams. It should not be otherwise.

Thank you, Mr. Chairman, for this opportunity to discuss this important subject. In summary, we in aerospace urge adoption and implementation of the complete MTN package, including the Aircraft Agreement. We also recommend continuing strong industry involvement.

Senator RIBICOFF. Mr. Bernard Falk, National Electrical Manufacturers Association.

STATEMENT OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Mr. FALK. Thank you, Mr. Chairman.

I am Bernard H. Falk, president of the National Electrical Manufacturers Association.

While we endorse on balance the MTN agreement, the heavy electrical equipment industry, which manufactures large power generating and transmission equipment, is extremely disappointed that the MTN agreement on Government procurement does not apply to the entities which purchase such products. The unwillingness of the member countries of the European Economic Community to include such entities means a continuation of the discrimination of many years whereby U.S. producers of such equipment are not permitted to obtain equivalent competitive market access for these products, and falls far short of the objectives sought by the Trade Act of 1974, section 104.

Despite our obvious disappointment, we appreciate having section 302(c) in S. 1376, which calls for economic impact reporting and recommendations for further action. This, hopefully, will keep the trade discrimination issue alive concerning large electrical equipment.

My purpose in appearing today is to urge this committee, in considering the Trade Agreements Act of 1979, particularly section 302(c) "Report on Impact of Restrictions," to include in your report on S. 1376 language to the effect that it is the committee's intent that the Presidential report required by section 302(c) address particularly trade reciprocity in heavy electrical generating and transmission equipment, as well as products affected by such restrictions.

In addition to the report and recommendations by the President called for in section 302(c) of S. 1376, we hope the Governmental Affairs Committee will request the appropriate agencies of the executive branch to keep your committee informed of the award of orders by U.S. Government agencies for imports of large electrical equipment from European countries and Japan, and to keep you informed of progress being made in preparing reports and recommendations regarding the economic effects of continuing discrimination and of proposed alternative means to obtain equity and reciprocity in the large electrical equipment sector.

The committee may recall that in the Finance Committee's report accompanying the Trade Act of 1974, electrical machinery was identified as one of the industrial product categories that should lend itself to a product sectoral negotiation—page 79, report No. 93-1298—which we did not obtain.

With the disappointing failure to achieve results in coverage of such products under an international government procurement code, which was key to achieving equivalent competitive marketing access to several major European countries for U.S. producers; and in view of the Senate Finance Committee's statement of the need for a sector negotiation for the electrical equipment industry, which was not achieved, we respectfully request the committee to

include in its report the comments we are requesting today in this brief statement. We also hope you will assist us to obtain the equitable trade treatment which we have been so long denied.

Senator RIBICOFF. Thank you very much, Mr. Falk.

Following the testimony of Mr. Ames, without objection I would like to place in the record a letter and statement on behalf of Mr. D. Olson, chairman of the board of the Aircraft Gear Corp. of Chicago, who are suppliers and subcontractors to Aerospatiale.[1]

Thank you very much.

[The prepared statement of Mr. Falk follows:]

TESTIMONY OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

I am Bernard H. Falk, President of the National Electrical Manufacturers Association. I am also Chairman of Industry Sector Advisory Committee 18, Electrical Machinery, Power Boilers, Nuclear Reactors, and Engines and Turbines.

The heavy electrical equipment industry, which manufactures large power generating and transmission equipment, is extremely disappointed that the MTN agreement on government procurement does not apply to the entities which purchase such products. The unwillingness of the member countries of the Europen Economic Community to include such entities means a continuation of the discrimination of many years whereby U.S. producers of such equipment are not permitted to obtain "equivalent competitive market access" for these products, and falls far short of the objectives sought by the Trade Act of 1974 (Sec. 104).

I want to point out also that other developed countries, whose electric utilities are not predominantly owned by government entities, have not agreed to abandon or curtail their nationalistic purchasing which discriminates against American electrical equipment.

Thus, lack of coverage by the Government Procurement Code was not the only failure of negotiating results which is detrimental to large electrical equipment.

Attached to my statement are the views I expressed before the Senate Committee on Governmental Affairs on April 26 of this year which explained the situation in more detail.

Despite our obvious disappointment, we appreciate having Section 302(c) in S. 1376, which calls for economic impact reporting and recommendations for further action. This, hopefully, will keep the trade discrimination issue alive concerning large electrical equipment.

My purpose in appearing today is to urge this Committee, in considering the "Trade Agreements Act of 1979," particularly Sec. 302(c) "Report on Impact of Restrictions," to include in your report on S. 1376 language to the effect that it is the Committee's intent that the Presidential report required by Sec. 302(c) address particularly trade reciprocity in heavy electrical generating and transmission equipment, as well as other products affected by such restrictions.

The many years of discrimination against U.S. manufacturers of large electrical equipment by European countries and Japan, and the demonstrated unwillingness of the Executive Branch to take effective action against this discrimination, prompt us to request this Committee to maintain active legislative oversight of this question.

In addition to the report and recommendations by the President called for in Section 302(c) of S. 1376, we hope the Governmental Affairs Committee will request the appropriate agencies of the Executive Branch to keep your Committee informed of the award of orders by U.S. Government agencies for imports of large electrical equipment from European countries and Japan, and to keep you informed of progress being made in preparing reports and recommendations regarding the economic effects of continuing discrimination and of proposed alternative means to obtain equity and reciprocity in the large electrical equipment sector.

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[1] See p. 503.

U.S. producers; and in view of the Senate Finance Committee's statement of the need for a sector negotiation for the electrical equipment industry, which was not achieved, we respectfully request the Committee to include in its report the comments we are requesting today in this brief statement. We also hope you will assist us to obtain the equitable trade treatment which we have been so long denied.

Attachment.

Statement of Bernard H. Falk, President, National Electrical Manufacturers Association

I am Bernard H. Falk, President of the National Electrical Manufacturers Association. I am also Chairman of Industry Sector Advisory Committee 18, Electrical Machinery, Power Boilers, Nuclear Reactors, and Engines and Turbines.

I appreciate this opportunity to appear before the Senate Governmental Affairs Committee for the purpose of presenting the views of American Manufacturers of heavy electrical equipment with regard to the MTN Government Procurement Code.

Attached to my statement is an excerpt from testimony which I presented before the Senate Finance Committee on April 1, 1974, when my Association had the opportunity to bring its views in support of what eventually became the Trade Reform Act of 1974. This attachment has been included to explain how foreign "Buy National" procurement policies have effectively foreclosed U.S. producers of heavy electrical equipment from competing in the markets of other producer nations while the suppliers of similar equipment from those nations have enjoyed relatively open access to the large U.S. marketplace.

With this in mind, we were strongly supportive of the Trade Act and particularly Section 104 which directed that a principal U.S. negotiating objective would be to obtain, to the maximum extent feasible, equivalent competitive market access in developed countries for U.S. product sectors. Obviously, one of the means to accomplish this objective was to be a comprehensive Code on non-discriminatory government procurement. This matter of the need for such a Code was not new at that time; as a matter of fact, in 1968, U.S. trade authorities became convinced that restrictive nationalistic procurement in heavy electrical equipment had created clear conditions of unfairness in international trade. Seeking correction, U.S. officials initiated discussions within the Organization of Economic Cooperation and Development which eventually was essentially transferred to the MTN negotiation for a Government Procurement Code.

What has happened in the trade negotiations, however, is that while an adequate procurement code has been negotiated, the European Community has refused to have the code apply to its national government entities that buy heavy electrical equipment. What other countries will finally agree to do relative to the procurement code is still unclear but is not promising. It is, therefore, already apparent that the United States is coming out of the trade negotiations with a failure to obtain significant increased foreign access in the main potential markets for U.S. exports for these products.

There is an important aspect in this situation that has to be understood. The extent to which each country's home market purchases in these product areas are made by national-level government entities that could be put under the procurement code varies from practically 100 percent of the total home market in France and England to practically none in Japan. In other words, the Japanese market for heavy electrical goods is practically 100 percent "private". But the foreign governments effectively block U.S. access to practically all of their home markets whether the would-be purchasers are national-level government agencies, below-national-level government agencies, or "private". The premise of section 104 of the Trade Act and of the U.S. push for a government procurement code was that a country that put under the procurement code its national-level government agencies that purchase this equipment would also urge other purchasers of such equipment within its borders to stop discriminating against U.S. suppliers. The failure to put their national-level purchasers under the code obviously means that their "across-the-board" nationwide discriminatory import control will be maintained.

In fact, unless appropriate steps are taken by Congress to compensate for this negative outcome in the trade negotiations, the United States, after the negotiations, may be even worse off than before. For example, tariffs in these product areas will be reduced. Such reductions will have a favorable impact on imports into the United States but will mean nothing for United States exports in the face of the pervasive foreign government discrimination.

The case of the worldwide heavy electrical goods market (power generating equipment, including steam-turbine generators, gas-turbines, hydro-turbines and generators, power switchgear and large power transformers) illustrates the disadvantage

to the United States of the one-sided relationship in these product areas that our trading partners are trying to continue. Over the last five years, on an average annual basis, the European heavy electrical goods market is worth about $2 billion; the Japanese market about $5 million and the United States market about $5 billion. And whereas Europe and Japan have been getting about 8 to 9 percent of the United States heavy electrical goods market, the United States has been practically totally excluded from theirs. The consequences to the United States economy in terms of jobs, sales by raw material and component suppliers (steel, for example), etc. are obviously serious.

No doubt the foreign assumption is that the status quo will continue; foreign home markets will continue protected: the United States market will stay relatively open. If this assumption proves correct, any United States hopes for liberalization in the future will obviously remain futile.

We accordingly must devise a legislative response to this onsided situation that will forcefully tell our major trading partners that their continued protectionism in these areas was and is a mistake and that greater trade liberalization in the future will be a better alternative.

How best to respond is, of course, the question. I understand the Administration proposal is merely to maintain the present "Buy American" price differential with respect to those United States agencies that are the principal purchasers of the products in question. Present "Buy American" application provides for a 6 percent price differential, increased to 12 percent where the United States supplier is in a high unemployment area. Continuation of these differentials at existing levels will not, in our judgment, serve to alter the positions of our major trading partners nor will it serve as an inducement to them. The very minimum response that would be likely to have some effect would be to increase the various sets of "Buy American" price differentials for the listed United States agencies to a level where they would have a real competitive impact. We also have to keep in mind that, by far, the larger part of the domestic market in these product areas is outside federal procurement. The non-federal parts of the United States heavy electrical market are about 85 percent.

Bearing in mind that the objective is to induce foreign governments to open up their markets and that United States countermeasures would be applied only so long as necessary, it seems reasonable that Congress resort temporarily to United States equivalents of what the Europeans and Japanese are doing; that is, Congress as a part of the legislation to implement the trade agreements—and until we obtain opening up of the counterpart foreign markets—should prohibit sales of heavy electrical goods made in non-cooperating countries to United States agencies that are the principal purchasers of such goods and, further, in recognition of the non-federal parts of the domestic markets in these product areas, Congress should prohibit the use of federal funds or credits to facilitate the domestic purchase outside of the federal procurement system (for example, purchases by state or regional cooperatives, state highway systems, municipalities, etc.) of such goods made in noncooperating countries.

Congress would empower the President to relax the countermeasures as our trading partners become more cooperative and would, of course, provide adequate safeguards against various possible contingencies such as unavailability, as it now does in the "Buy American" laws.

The Congress and the Administration are now in the final stages of determining the overall implementation aspects of the MTN trade agreements. In that connection, I respectfully recommend your support for the position set forth above.

EXCERPT FROM STATEMENT OF NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION ON H.R. 10710, THE TRADE REFORM ACT OF 1973, BEFORE THE COMMITTEE ON FINANCE, U.S. SENATE, APRIL 1, 1974

Every nation of the world regards its electrical manufacturing capability as an essential national resource which underpins its economic strength and measures its potential for growth. Consequently, every industrialized nation, to one degree or another, and with the United States as a notable exception, has historically adopted policies to protect and encourage its electrical equipment capability, in terms of research and development assistance, strict buy-national procurement policies, discriminatory standards regulations and export aids and incentives.

The buy-national procurement policies of electrical utilities owned or controlled by the governments of Western Europe, for example, have effectively foreclosed United States producers of heavy electrical equipment from competing in those foreign markets. At the same time, however, electrical machinery producers in those foreign countries, often supported by government export aids and incentives,

have enjoyed relatively open access to the large United States market, subject only to a low tariff, and the Buy-American differential in the case of Federal procurement. As a result of this one-way flow of trade, United States electrical manufacturers have sold very little equipment in the other producer countries of the world, while hundreds of millions of dollars of foreign-made equipment are now in place throughout most major U.S. electrical systems—investor owned utilities as well as Federal and municipal power authorities.

We regard this one-way flow as anti-competitive per se. Moreover, it is based on a pervasive discrimination which makes a mockery of the principle of non-discriminatory trade laid down in the General Agreement on Tariffs and Trade (GATT).

NEMA is gratified that the United States Government has tried to do something about the anti-competitive behavior of foreign governments and their government-owned or controlled electric utilities. In 1968, approximately one year after the Kennedy Round negotiations were concluded, United States trade authorities became convinced that restrictive nationalistic procurement in heavy electrical equipment had created clear conditions of unfairness in international trade. NEMA had made this point in many statements over the years, to the Congress and the Executive Branch. Seeking correction, United States officials initiated working party discussions within the Organization for Economic Cooperation and Development (OECD) to try to develop an international code on government procurement. At the request of the Treasury Department and the office of the Special Representative for Trade negotiations, NEMA submitted to a draft of a proposed international code for electrical equipment procurement, modeled on applicable United States federal procurement regulations. We believe that since 1968 United States officials have worked diligently toward adoption of an international procurement code based, at least in part, on the NEMA draft. But now, in 1974, little tangible progress has been made, and we must conclude that there is scant interest among the other OCED members in facilitating broadened access for U.S. manufacturers to these members' own home markets.

NEMA is also gratified that the Committee on Finance has recognized the inhibiting and discriminatory effects of certain government procurement practices. Appendix B to the Committee Print, "Summary and Analysis of H.R. 10710—the Trade Reform Act of 1973," dated February 26, 1974, identifies such practices as a significant non-tariff barrier [1] of particular interest to United States electrical manufacturers are the following paragraphs:

"The principal practices that inhibit foreign participation in government procurement are insufficient publicity in the solicitation of bids and in the disclosure of the criteria on the basis of which contracts are awarded. Most trading partners of the United States, such as Japan, the United Kingdom and most European Community countries use predominantly the selective and single tender bid procedures. It is generally recognized that these lend themselves much better to discriminatory practices against foreign suppliers than public tendering.

"Foreign suppliers can also be suppressed through specific conditions of bidding which put them at a disadvantage, such as certain administrative requirements or inadequate time allowed for submission of bids. Moreover, purchasing authorities may specify technical requirements in advance collaboration with domestic suppliers limiting thereby the competitiveness of the foreign bidder. *In some countries only resident firms may undertake government contracts of certain types.*" (P. 91, emphasis added.)

In sum, it would appear that both the term "competitiveness," and the Most Favored Nation principle, are viewed differently in most foreign industrial countries than in the United States to us they mean individual firms, regardless of national origin, competing among themselves on the same non-discriminatory terms and with equal competitive opportunity. To foreign governments, their power authorities and their electrical equipment manufacturers, they mean domestic and foreign economic policies which accord special treatment and discrimination in world trade to their own producers. Under these conditions, the contest between the United States and foreign manufacturers can hardly be equal—and it has not been.

Senator RIBICOFF. Ms. Jane Davis.

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[1] It should be added that appendix B also identifies two other types on nontariff barriers of concern to NEMA members: (1) Subsidies and export aids; and (2) discriminatory standards regulations.

STATEMENT OF JANE P. DAVIS, CHAIRMAN, ELECTRONIC INDUSTRIES ASSOCIATION'S INTERNATIONAL BUSINESS COUNCIL

Ms. DAVIS. I am Jane Davis, chairman of the Electronic Industries Association's International Business Council and assistant vice president of General Telephone & Electronics Corp. Accompanying me today are Peter R. Levin of the General Electric Co., chairman of ISAC-19, and Jack Lasley, international marketing consultant, chairman of ISAC-22.

The Electronic Industries Association—EIA—is grateful for this opportunity to testify on the Trade Agreements Act.

Electronic manufacturers are major exporters. Our industries have had a vital interest in these negotiations. We have participated actively in the discussions through membership in five of the industry sector advisory committees. It is on the basis of the in-depth understanding gained by this continued involvement and concern that EIA weighs advantages and disadvantages accruing to the United States after 5 years at the bargaining tables at Geneva. In balance, we feel the advantages do prevail.

EIA supports S. 1376 and recommends its passage by the Senate. We especially applaud section 1109 instructing the administration to submit promptly a separate proposal to centralize Government's trade functions. This was somewhat overtaken by yesterday's events.

We were delighted that step was taken to centralize Government's trade functions.

Also Section 1103 to make permanent the advisory process that existed between Government and the private sector during the multilateral trade negotiations—MTN.

EIA urges approval of the legislation as representing a long and important step toward improving the world trading climate, even though we recognize that in certain areas the results of MTN fall short of perfection. Further discussions are needed, specifically on the European Community's protectionist Rules of Origin, Japan's and European Community's still inadequate lists of entities conforming to the Government Procurement Code, and the GATT nations' reluctance to confront the border adjustment issue.

Since the tariff revisions reached as part of the MTN were negotiated under the authority of the Trade Act of 1974, they require no further congressional approval; however, we must note that these results, too, are less than perfect, particularly in their failure to reduce the European Community's 17-percent tariff against imported electronic semiconductors. We hope these items also will be further pursued by U.S. negotiators.

The Trade Agreements Act of 1979 would create a body of U.S. law to implement nontariff aspects of the MTN. Included are multilateral agreements, codes of conduct, on subsidies, countervailing and antidumping duties, customs valuation, Government procurement, technical barriers to trade standards, aircraft. These agreements represent the first serious effort by trading nations to reduce or eliminate increasingly onerous nontariff barriers to trade.

It is axiomatic that no single set of agreements covering so broad a range of issues could possibly contain solutions for all problems

of international trade. The agreements on standards, aircraft, subsidies, and dumping have in large measure achieved their goals. The agreement as to Government procurement, on the other hand, with its very limited coverage of European and Japanese entities, is only partially successful.

We hope that these omissions and limitations will be corrected in further negotiations, but do not consider these sufficient to outweigh the overall value of the agreements.

It is also important to realize that the negotiations' hard-won achievements will vanish unless the necessary U.S. Government structure exists to make them work. The present fragmentation of international trade responsibility among 50-odd agencies, departments and other Government entities produces confusion and dontradictions, and makes the United States fair prey for its competitors. A vigorous cabinet level department with strong advocacy and authority to administer this body of law equitably and expeditiously is essential. Thus, the instructions to the executive branch contained in section 1109 of the act are key to the long-term success of the negotiations.

To conclude within our allotted time, Mr. Chairman, we feel that the immediate and future advantages of these agreements do prevail over their disadvantages. EIA recommends passage of the Trade Agreements Act of 1979.

Thank you for your attention. We are prepared for questions.

Senator RIBICOFF. Thank you very much.

[The prepared statement of Ms. Jane Davis follows:]

STATEMENT BY THE ELECTRONIC INDUSTRIES ASSOCIATION

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EIA supports S. 1376 and recommends its passage by the Senate. We especially applaud section 1109 instructing the Administration to submit promptly a separate proposal to centralize Government's trade functions, and section 1103 to make permanent the advisory process that existed between Government and the private sector during the Multilateral Trade negotiations (MTN).

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To conclude within our allotted time, Mr. Chairman, we feel that the immediate and future advantages of these agreements do prevail over their disadvantages. EIA recommends passage of the Trade Agreements Act of 1979.

Thank you for your attention. We are prepared for questions.

SUPPLEMENT TO EIA'S JULY 10, 1979, ORAL TESTIMONY ON S. 1376

As to Section 1103, EIA's statement last March 6 to this Subcommittee made these recommendatins on "Advice from the Private Sector."

Quote

Establish permanent ISACs and LSACs along the present structural lines—that is, by industry groupings rather than in accordance with Code coverage. These committees should have assured ability to provide advice on all policy, program and negotiating activities.

For advice on purely technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation of special panels, as and when necessary, and the nomination of individuals known to possess specific expertise in the particular problem area.

Unquote

As to Section 1109, EIA's statement last March 6 to this Subcommittee made these recommendations on "Reorganizing and restructuring the international trade functions of the United States Government"

Quote

Either * * * to place virtually all trade administration functions affecting non-agricultural goods in a new Cabinet Department endowed by statute with focal responsibility, authority and accountability for U.S. trade and off-shore investment * * *

Or * * * such assignment of authorities should be given to a single existing Cabinet-level Department, which would subjected to such major reorganization that its sole responsibility and accountability would, as a result, become the administration of U.S. trade, and which would be given appropriate strength and a power base from which to operate in the interest of U.S. industry.

Unquote

The five Industry Sector Advisory Committees on which the electronic industries have members: ISAC-16 on Computers and Business Machines; ISAC-19 on Consumer Electronics and Household Appliances; ISAC-20 on Instrumentation; ISAC-22 on Telecommunications and Non-Consumer Electronics; and ISAC-24 on Aerospace.

EIA is the major trade association of the electronic industries, with 300 member companies which are manufacturers of component parts, equipment and systems for communications, government, industrial and consumer end-uses.

The 1978 sales of these goods by U.S. electronic producers were over $55 billion. Nearly 25 percent, $13.3 billion, was exported to customers outside of the USA. Almost 10 percent of all U.S. exports was in electronic products.

At the same time, imports of electronic goods reached $10.7 billion. Certain of the American electronic industries * * * namely TV, CB radios, and the simpler types of component parts * * * have become "import sensitive."

Neverthless, in the balance of U.S. trade, there is more volume exported than is imported; there is a $2.6 billion electronic trade.

Furthermore, the U.S. electronic industries directly employ 1.3 million Americans * * * of whom fully 260,000 have jobs tied to exports.

Senator RIBICOFF. Mr. Richard Langer.

STATEMENT OF RICHARD D. LANGER, VICE PRESIDENT, CONTROL DATA CORP. OF MINNEAPOLIS, MINN., APPEARING ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. LANGER. Good afternoon, Mr. Chairman.

With me are Mr. William Outman of the law firm of Baker & McKenzie, and Mr. David Elliott, manager of customs and international trade affairs for Procter & Gamble.

Our full statement has been filed so that——

Senator RIBICOFF. Without objection it will go into the record as though read.

Mr. LANGER. We are here in behalf of the Joint Industry Group, a coalition of 16 associations broadly representative of those segments of American business involved in international trade including exporters, importers, U.S. manufacturers, retailers, U.S. carriers, customs brokers, and others.

This coalition has a particular interest in the customs evaluation agreement. We believe that it is perhaps the most important of the MTN agreements since it will affect the majority of international trade transactions on a day in and day out basis.

Over 50 years ago the writer of an excellent book called, "Through the Customs Maze," noted, if you would let me but write the Administrative Act, I care not who sets the rates of duties.

Those of us involved in international trade on a daily basis have learned well how true those words relate to the various customs valuations systems now used throughout the world. Other countries have used uplifts or fair market value systems to significantly increase their effective rates of duty.

We in the United States have had the American selling price system to do the same thing but on a relatively narrow range of goods. However, we have also established administrative complexities that have become intolerable for the Customs Service and the importer alike.

We think it is a remarkable achievment to have negotiated this agreement with the major trading nations of the world and we believe it should eliminate many problems and establish a uniform trade neutral system.

We note the essence of the agreement is its reciprocal nature. Previously it is the product of negotiations. And as Ambassador Straus has noted, you get nothing for nothing.

Equally, of course, if we are to achieve the benefits from it that we seek for our exports, we must effectively implement the agreement ourselves.

A few general observations are appropriate. First, the United States entered the negotiations as virtually a minority of one confronting a world which by and large had adopted the Brussel's definition of value. The result is a system incorporating the best of both existing U.S. law and the Brussels definition of value. This was a major success for the U.S. delegation.

Second, our greatest concern about the valuation systems of other countries was the discretion extended to customs authorities to raise duties arbitrarily by raising duty valuations arbitrarily. A key feature secured in the Geneva negotiations was to minimize such administrative discretion.

Third, we believe that an excellent job was done both in negotiating the agreement and proposing its implementation into legislation because both the Congress and the administration have listened carefully to American business.

Not everything we have suggested has been adopted but all of our proposals have been carefully considered. This cooperation is appreciated.

Only three concerns remained after the drafting of the legislation and the statement of administrative action which we wish to address today. All three can be readily resolved in legislative history. We are proposing appropriate language on all three issues in the statement that we have filed.

The first concern involves a potential ambiguity in the agreement and legislation relative to royalties. We believe that the intent of the negotiators to maintain current U.S. law is clear and that this should be reflected in the report. This is important to exporters as well since we want other countries to follow the same interpretation.

The second concern relates to the provision in the agreement that importers will be given notice if their prices are not to be used for Customs value and it gives them an opportunity to respond.

The language on both of these concerns that we are proposing has been included in the Ways and Means Committee report. We respectfully suggest that this also be done by the Senate Committee on Finance.

Our third concern relates to the administrative problems for exporters who need to import foreign designs in order to insure that their export production meets the needs of their foreign markets. We believe that our proposed report should result in putting these importers on the same basis as those who want to import foreign designs for review purposes rather than production purposes.

Our proposal does not involve any reduction in duties or loss of tariff protection for the American design industry. It merely lessens administrative problems for Customs and for exporters.

Thank you, Mr. Chairman, for giving us the opportunity to appear.

Do you have any questions?

Senator RIBICOFF. No, thank you very much. We understand the situation.

Mr. LANGER. Thank you, Mr. Chairman.

[The prepared statement of Mr. Langer follows:]

Statement of the Joint Industry Group Customs Valuation

Good morning. My name is Richard D. Langer, Vice President of Control Data Corporation of Minneapolis, Minnesota. I am appearing here on behalf of the Joint Industry Group, an ad hoc coalition broadly representative of U.S. manufacturing, retailing, exporting, importing and transportation interests. I am accompanied by G. Lee Sandler, Esq. of the law firm of Sandler & Travis, Miami, Florida. Mr Sandler is available for any technical questions you may have. My testimony is directed towards the Customs Valuation Agreement which has emerged from the Tokyo Round and its implementation into U.S. law and practice.

The Joint Industry Group is composed of the following associations and the businesses they represent:

1. The Air Transport Association of America, which represents nearly all scheduled airlines of the United states.

2. The American Electronics Association, which has over 900 high technology and electronics companies. Its members are mostly small to medium in size, with two-thirds of its members employing less than 200 employees.

3. The American Importers Association, representing over 1,100 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.

4. The American Paper Institute, a national trade association of the pulp, paper and paperboard industry. Its members produce more than 90 percent of the nation's output of these products. The U.S. paper industry operates in all States of the Union employing over 700,000 people.

5. The American Retail Federation, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.

6. The Chamber of Commerce of the United States, representing 79,000 companies and 4,000 state and local Chambers of Commerce.

7. The Cigar Association of America, which includes 75 percent of all U.S. cigar sales and major cigar tobacco leaf dealers.

8. The Computer & Business Equipment Manufacturers Assocation, including nearly forty members with 750,000 employees and $45 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

9. The Council of American-Flag Ship Operators, which represents the interests of the American Liner industry.

10. The Electronic Industries Assocation, its 287 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25-$50 million annual sales range, have plants in every State in the Union.

The Foreign Trade Association of Southern California, which represents 450 firms in Southern California in the import-export trade.

12. The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75 percent of all imported hardwood products and range in size from small private businesses to the largest in the industry.

13. The Motor Vehicle Manufacturers Association, whose eleven members produce 99 percent of all U.S.-made motor vehicles.

14. The National Committee on International Trade Documentation, which includes many of the major U.S. industrial and service companies.

15. The Scientific Apparatus Makers Association, manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

16. The U.S. Council of the International Chamber of Commerce, a business policymaking organization which represents and serves the interests of several hundred multinational corporations before relevant national and international authorities.

Summary of Testimony

I. The Customs Valuation Agreement does an excellent job on a difficult subject, and many of us believe it could be the most important of all the non-tariff measures negotiated in the Tokyo Round. While the other agreements will usually affect only limited segments of international trade, this Agreement will affect the majority of transactions in dutiable goods.

The Agreement will benefit our exports particularly, since it reduces the present leeway for foreign customs to arbitrarily increase values for duty collection purposes. It will require major changes in the other nations' valuation systems. Relatively fewer changes are required in U.S. law. These changes will alleviate numerous administrative and technical problems and simplify operations both for U.S. Customs and for importers. It will lend added predictability to duty assessments.

II. Experiences with current U.S. law—significant parts of which remain inadequately defined 20 years after enactment—show that our legislative implementation should be comprehensive and specific. Only the necessary minimum should be left to administrative discretion, to regulations, and to judicial clarification. Overall this has been accomplished successfully.

The way in which the Agreement will be administered is also most important. Therefore, it is appropriate that the Statement of Administrative Action adequately reflect those parts of the Agreement and its Notes not amenable to codification. It is also necessary that it select carefully between those parts of current administrative practice that are consistent with the Agreement and those that are not. The Group believes that these needs have generally been accomplished in the Statement of Administrative Action.

III. Three technical problems remain after the Bill and the Statement were drafted. These problems relate to a potential ambiguity on certain royalties, notices to be provided to importers when their prices are not to be used as the customs value and the elimination of administrative problems for exporters that need to import designs for the export goods.

IV. Since its objectives relative to approving the Customs Valuation Agreement and to appropriately implementing it into U.S. law have been met, the Joint Industry Group endorses the Trade Agreements Act of 1979 and urges its passage by the Congress.

STATEMENT

I. Overview

The Joint Industry Group strongly endorses the Valuation Agreement—we think that all in all a remarkably good job was done in Geneva on this subject. Valuation is hardly a glamorous subject, but it is one that—unlike dumping or subsidies or safeguards—affects the majority of day-in-day-out import and export transactions. Much of its importance arises because manipulation of customs values is a way by which some nations not too subtly enhance the protection offered by their tariffs. Securing international agreement to forego these "hidden" duties and to adopt a trade-neutral system is a remarkble achievement. Many knowledgeable people in the business community regard the Valuation Agreement as the "sleeper" which will do more than any of the other MTN agreements to smooth the workaday flow of trade.

Most tariffs are expressed as a percentage of the value of the merchandise. If the percentage is reduced but the value goes up, an importer could find himself paying the same duty despite a supposed tariff reduction. Hence, the concern of the international trade community about the subject of valuation. In addition, the complexities, uncertainties and delays which are sometimes involved in valuation problems can act as a serious non-tariff barrier to trade. If an importer does not know what his duty assessment will be until after he resells his merchandise, he may be forced to assume the worst, and the commercial impact in the marketplace may be the same as if a higher rate of duty had been in effect.

The prominence of the subject of valuation in the Tokyo Round negotiations stem partly from the fact that American Selling Price (ASP), a U.S. trade barrier which particularly incensed some of our trading partners in previous negotiations, takes the form of a valuation provision. Under ASP, duty value is based not on prices in the import market but on the price of the competing domestic product—in other words, the domestic manufacturer sets the duty value for his import competition! The Kennedy Round side-agreement designed to eliminate ASP was not presented to the Congress and so did not take effect. In the Tokyo Round the elimination of ASP has been accepted in principle by our netotiators, and by the American chemical industry, for whose benefit if was originally enacted in 1921. The discussion has centered around the alternatives and the compensation to be received in return by way of duty rate increases and otherwise. It is to be emphasized that the Valuation Agreement aspect of the ASP problem is essentially non-controversial—no one has ever seriously proposed that ASP be made a part of a world wide system of valuation to be used by all countries.

The essence of the Agreement is reciprocity, at least among the developed nations. To get the valuation benefits we seek for our exports, we must agree to apply the Agreement ourselves. Indeed, the basic promise of the Geneva negotiations on valuation was that each signatory would have the same rules applied to its exports as to its imports. The awareness that each major signatory would have this balanced interest was largely responsible for the success of the negotiations.

We have three observations about the course of the negotiations in Geneva:

The first is that the United States went into the negotiations as virtually a minority of one, confronting a world which had by and large adopted the Brussels Definition of Value (BDV). We came out with a system very close to the best of existing United States law. The result may properly be considered a major success for the United States delegation.

Second, the thing we objected to the most in other valuation systems was the discretion extended to customs authorities to raise duties arbitrarily by raising duty valuations arbitrarily. One of the key features of the system we espoused and secured in the Geneva negotiations was to minimize administrative discretion and keep valuation subject to relatively tight control. Thus, in terms of implementation, while our old law on customs valuation must be repealed, the new law which will replace it will not be drastically different from the mainstream of our existing valuation law.

Third, our negotiators listened carefully to the viewpoints of the U.S. business community and in general tried very hard to negotiate for results that meet business' needs. Overall they were successful in doing so. The Joint Group has also enjoyed a very good working relationship with the Administration as it has developed its implementation proposals. While not all of our suggestions have been accepted, all have been given due consideration.

II. U.S. Implementation of the Agreement

This is not the occasion for a detailed review of the substance of the Agreement, but a few essentials regarding the problem, the objectives, and the solutions adopted should be mentioned.

1. A moment's reflection will make it obvious that the same merchandise will very likely have different values in different circumstances. There is no one "right" value for an article, even at a given time and place, nor is there one right way to arrive at a value. The valuation problem is thus inherently complex and difficult.

2. The Agreement does not and could not realistically seek to arrive at uniform duties or even uniform values for a given article in all countries or in all transactions. The Agreement seeks only to establish a uniform method of arriving at dutiable value; and even this uniform approach lays down a series of alternatives, to be applied in sequence until a proper fit is obtained, since no single method fits every situation.

3. The Agreement is trade neutral. The key objectives have been simplicity, predictability and a factual basis in commercial reality. For example, today U.S. duty values are generally based on prices prevailing at the date of exportation. The Agreement provides that where the parties to the transaction set their price at an earlier date, that price (whether higher or lower than the price on the date of export) shall normally prevail for duty valuation. Another important provision is the requirement that generally accepted accounting principles be applied in customs valuation. While this is plainly a neutral provision, it has not always been followed in the past and it is important in ensuring predictability and rationality.

4. The basic standard of value in the Agreement is Transaction Value—the price the parties themselves adopt in the marketplace. Departures from this standard are held to a minimum and are permitted only for good reason. That approach to valuation may seem very obvious, and most systems have, as a matter of practical necessity, normally adopted the invoice price as the duty value in practice. But we know of no other system—including existing United States law and the Brussels Definition of Value—which expressly makes invoice price the starting point. The benefits in terms of simplicity and predictability are obvious.

5. The principal departure from Transaction Value which the Agreement permits occurs where the exporter and importer are related and the relationship distorts the price. In such cases a series of alternative bases of value are invoked in sequence—the price of identical goods, the price of similar goods, the importer's resale price less a usual reseller's mark-up, and lastly the manufacturer's cost plus a usual manufacturer's mark-up. The sequence of the last two standards can be reversed at the importer's option. All of these are defined in the Agreement with precision and have been similarly defined in the legislation. Even the fall-backs permitted in the rare case where none of these methods will work are narrowly confined—to avoid leaving loopholes which would permit arbitrary increases in value and defeat the purpose of the Agreement.

The Joint Group has also had an opportunity to review drafts of the Statement of Administrative Action. Overall it very adequately reflects our understanding of the proper administration of the Agreement.

III. Remaining Concerns

The Group has three remaining concerns about the U.S. implementation of the Agreement. All three can be resolved in the legislative history of the Bill, as discussed below. The proposed wording on the first two, royalties and notice, has been included in the Report of the House' Committee on Ways & Means. We respectfuly suggest that the same words be included in the Report of this Committee.

The third problem, valuation of import design materials needed for export production, was not technically resolved in time for inclusion by the Ways & Means Committee.

1. Royalties

One of the more difficult areas covered in the Agreement and proposed U.S. law is that of royalties, i.e., payments for rights to manufacture and/or market a product. Typically, royalties are not included in the invoice price. Just which royalties should be added to the invoice price to arrive at a fair duty value can be a vexing problem, but one that has been clearly resolved in United States law. The Agreement, nevertheless, draws lines to indicate which royalties are to be included and which excluded, but contains a separate uninterpreted provision on "proceeds" that may be ambiguous.

The Joint Group believes that the Agreement incorporates present U.S. law, and does not require the inclusion in dutiable value of bona fide royalties paid to sellers for the right to sell a product in the U.S. market.

The matter is important because:

a. We want to avoid making dutiable in the U.S. what is not now dutiable and that negotiators do not intend to make dutiable; and,

b. Defining those royalties as dutiable here forecloses the U.S. from arguing with other countries that they should not assess duties on such royalties on U.S. exports. This issue is particularly important to the U.S. chemical, pharmaceutical, dyestuffs and plastics industries.

The Joint Industry Group respectfully suggests that the following wording, agreed to by the Administration and used in the Report of the Committee on Ways & Means also be included in the report of the Committee on Finance: "The existing treatment under law of royalties for customs purposes is intended to continue under the operation and administration of new Section 402 (b)(1). Therefore, certain elements call 'royalties' may fall within the scope of the language under either new Section 402 (b)(1)(D) or 402 (b)(1)(E) or both. Similarly, some elements called 'royalties' may not be dutiable under either 402 (b)(1)(D) or 402 (b)(1)(E). This determination will be made by Customs on a case by case basis."

2. Rejection of price as transaction value

The Agreement provides for notice to the importer when the transaction value is to be rejected. The Administration has advised us that this will be accomplished in the regulations. However, we are concerned about the matter becoming forgotten. Therefore, we suggest wording in the legislative history that tracks Article 1.2(a) of the Agreement: "It is the understanding of the Congress that the Customs Service will implement Article 1.2(a) of the Agreement by a regulation providing that if, in light of information provided by the importer or otherwise, the customs officer concerned has grounds for rejecting the price as the basis for transaction value under Section 402(b)(2)(A)(iv), the customs officer concerned shall communicate these grounds to the importer, who shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing."

(It is important that this notice provision not be confused with the importer's right to choose between deductive and computed value, or with the notice provision of Article 16. It is believed that the proposal will add little, if any, net burden to the Customs Service and facilitate resolution of issues before they become disputes.)

3. Exports requiring imported designs

Neither the present statute nor the proposed law specifically provide for the long-recognized special valuation problems of business records and technical data. While all of these materials qualify for duty-free treatment under one tariff item or another (e.g. TSUS 870.10, 864.25 etc.), the determination of their valuation is often impossible and always unnecessarily burdensome. These materials are not involved in a sale, have little or no real market value, and corporate accounting systems do not usually provide cost data for them. Nevertheless, declaration of value is required for duty-free as well as dutiable imports.

To resolve the problem, the Customs Service issued Treasury Decision 55851 on March 7, 1963 (attached) providing that these records be valued on the basis of the

cost of the media on which they are imported ("nominal value"). The Treasury Decision includes a series of qualifications for the application of nominal value, one of which states: "That the importations are not the consequence of an order or arrangement for employment abroad of engineering, architectural or other professional service in connection with any domestic manufacture or production;"

Consequently, records of designs imported for production for export are precluded from "nominal value" and the exporter and Customs have great difficulty in determining the Customs value of the materials concerned.

The result is that those U.S. exporters whose export products are dependent upon foreign designs for local legal and marketing reasons, either have to use Temporary Importation Bonds (TIBs) based upon estimated values or risk penalties for misstatement of values (since "correct" values are unknown).

TIBs require that physical control of the design record material be maintained by the importer while it passes through many hands, including suppliers over whom he may have little or no control, so that it can be reexported or destroyed under Customs supervision. This creates administrative problems for both exporters and the Customs Service at a time when it is in the national interest to minimize the administrative barriers to U.S. exports.

The Joint Industry Group's discussions with the Customs Service confirm the existence of a problem that needs resolution and a common desire to achieve one. However, so far they have not yet resulted in a determination of how this is best accomplished.

One possibility lies in Item 870.10 of the Tariff Schedules: "Records, diagrams and other data with regard to any business, engineering, or exploration operation conducted outside the United States, whether on paper cards, photographs, blueprints, tapes, or other media * * * . Free."

While this Tariff item does not specifically provide any different valuation system than those in current or proposed tariff law, the report of the Senate Committee on Finance noted when this item was enacted that: "870.10 * * * would clarify a situation now causing extra work for the Bureau of Customs and putting a burden on business firms with overseas branches. Data with regard to business, engineering, or exploration operations collected abroad and brought back to the United States for consideration by the executives of the firm may be subject to various rates of duty depending more on the type of material upon which the data are recorded than on the content or meaning. These records are not salable, *their Customs valuation is frequently in doubt, and delays and uncertainties are troublesome for business firms as well as the federal government.*" (Senate Report No. 1318, April 2, 1962.) (Emphasis added.)

This indicates that the Congress recognized the problem of valuing such records and assumed reasonable flexibilty.

Another possibility lies in a review of TD 55851 and broadening of the limitation mentioned above to admit its application to the covered materials when they are imported for production for export. Such review might be made in conjunction with proposed Section 402(f) which is entitled: "Value if Other values Cannot Be Determined or Used."

The Joint Group respectfully suggests to the Committee that the following be included in the Report:

Business records and technical data present long-recognized special valuation problems. These problems are particularly acute for U.S. exporters that need foreign-origin design materials for production of these goods, such as packaging materials artwork that must comply with foreign labeling laws. The Committee believes that the Customs Service can develop an administrative solution to the problem such as:

A. Reexamination of Treasury Decision 55851 of March 7, 1963 and its extension to include covered records and data imported for production for export. The negotiations and the proposed law do not specifically address this special valuation problem and certainty are not intended to reverse the existing "nominal value" procedure.

B. Through reexamination of Item 870.10 of the Tariff Schedule and its legislative history and/or

C. Through proposed Section 402(f), which is entitled "Value if Other Values Cannot Be Determined or Used".

However, if the Customs Service is unable to find an administrative solution, it is requested to propose appropriate legislation by September 15, 1979, preferably as a Technical Amendment Bill under the "fast track" procedures of the Trade Act of 1974.

IV. Recommendation to Congress

The Joint Industry Group strongly believes that the Customs Valuation Agreement and its proposed implementation in the Trade Agreements Act of 1979 is in the best interests of the United States. Therefore, we urge prompt passage.

[Published in the Federal Register, Mar. 15, 1963 (28 FR 2532)]

NOMINAL CUSTOMS VALUATIONS

Customs values confined to the nominal cost, price or market value of the material authorized hereunder for various articles imported that transmit business or personal records, information, or data in the main of value only to the owner, importer, or consignee, to be stored or used as a reference, to convey business, professional, or technical judgments, opinion or findings for evaluation, or to illustrate, present or forward an idea or concept, and for certain other importations.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

To Collectors of Customs, Appraisers of Merchandise, and Others Concerned:

Imported media representing or communicating business records, professional or technical data or other information, or personal records, have been appraised or valued for customs purposes at values that may include, in addition to materials costs and export packing, amounts for labor and processing, general expenses, and profit as provided for by the statutory definitions of "cost of production" or "constructed value."

Such media, many of them entitled to free entry, are primarily valuable only to the owner, importer, or ultimate consignee who uses what is recorded on the report materials. Whatever value they may have to others in the commerce of the United States would be limited to the resale value of the physical materials used as the medium to convey the words, numbers, ideas, pictures, compositions, data, or other information being communicated or transmitted.

Works of art, sculptures, or other such articles including and object of a craft, of value primarily to the owner, importer or consignee and without resale value except a nominal value; recordings, tapes, or other media bearing musical compositions, folk songs, dramatic efforts, speeches, literary readings and the like imported by or for the account of noncommercial libraries, archives, or other similar institutions; and tapes, recordings or like media imported to be broadcast, disseminated, or distributed without profit under noncommercial auspices as a public service in the United States also have been subject to valuation at the sum of materials and processing costs, including the value of talents employed, general expenses, and an addition for profit.

It is obvious that the basic valuation statutes, sections 402 and 402a. Tariff Act of 1930, as amended, were not drafted with a mind to the special customs valuation problems these import transactions raise. Most of the appraisement formulas prescribed by statute are clearly excluded because the articles in the processed forms under discussion are neither sold nor offered for sale commercially and the remaining formulas, i.e., those for "cost of production" or "constructed value," are not completely applicable. The Bureau has concluded that these are special situations calling for supplementing sections 402 and 402a by the provision in section 500 of the tariff act, as amended, authorizing a basis of valuation "by all reasonable ways and means" and by the authority in section 502(a) of the act "to secure a just, impartial, and uniform appraisement of imported merchandise."

When it is conveniently available from any commercial import shipment of punch cards, tapes, microfilm or other medium, sold at whole sale unprocessed or unused, the established appraised value on the commercial transaction, in the unit of quantity applicable, shall be assigned for an otherwise identical, eligible import. This decision provides for an additional alternative disposition of import transactions on the basis of a valuation concept of "nominal value," based on materials cost and any export packing expense but excluding all processing costs, expenses, and other elements reflected in the cost to prepare, produce or execute the medium or object in the form as imported.

When the conditions and standards hereinafter outlined are met, customs officers are authorized to apply the nominal value concept in returning or assigning a customs value for any eligible import among the following:

"Business machine punch cards, magnetic tapes, seismograms, seismographic tapes, maps, charts, blueprints, diagrams, microfilms, photographs, or other media

including material prepared by an duplicating process, representing or communicating business or personal records, professional or technical data or other information, imported for safekeeping; for reference; for storage; for review; for the evaluation of business, professional, or technical opinions, judgments, or findings; or for any other business or personal use appropriate to the character of the import as a medium for the transmission of information;

"Works of art sculptures, and other similar objects, including those of a craft, nonprofessionally conceived or executed and having no commercial value beyond physical constituents, without enhancement unrelated to artistic merit;

"Recordings, tapes, or other media bearing musical compositions, folk songs, dramatic efforts, speeches, literary readings and the like, imported by or for the account of noncommercial libraries, archives, and similar institutions; and

"Tapes, recordings and like media imported to be broadcast, disseminated, or distributed under noncommercial auspices as a public service in the United States."

Eligibility for nominal value treatment of any articles in the category of records and other business or personal data or information shall be made dependent upon the further conditions that they were not the subject of a sale or an agreement to sell to the United States; that the articles are not imported with a purpose of offering the articles for sale, exchange, or barter; that the importations are not the consequence of an order or arrangement for employment abroad of engineering, architectural or other professional services in connection with any domestic manufacture or production; that the articles are unsuitable for sale and without market value except in terms of the physical media containing the records, information, ideas, or concepts; and that the content is primarily of value only to the owner, importer or ultimate consignee;

Eligibility for nominal value of objects of art or craft shall be made dependent upon the conditions that the work or object, of value primarily to the owner, importer, or consignee, was not sold or agreed to be sold to the United States and is not being imported with an intention to offer it for sale, exchange or barter.

Eligibility of media in such forms as recordings and tapes for institutions or a noncommercial auspices depends upon the conditions that the medium was not sold or agreed to be sold to the United States, that no profit is to be realized as the consequence of any intended sale, exchange, barter or other transfer of ownership in keeping with an authorized purpose, and that the import is not intended or suitable for commercial broadcast, utility, accommodation, or advantage.

In view of the variety of the media in use to convey business and personal records and other information, it is not feasible to determine and incorporate in this decision alternative nominal values per unit which would be just, fair values for all imports of particular mediums. In deciding nominal values for these and other imports eligible hereunder, customs officers may accept as conclusive a reliable statement with the shipment as to the actual cost, price, or market value, in unprocessed or unprepared form, of the physical material alone plus any packing expenses, or such a statement filed by an importer who has knowledge of the facts. In the absence of an acceptable statement from either the shipper or the importer, customs officers shall decide nominal value from cost, price, or market value information obtained relevant to like material from any local reliable source.

Any article the customs value of which in accordance with this decision is determined not to be in excess of $1 shall be passed without entry free of duty under section 321, Tariff Act of 1930, as amended. Formal entry ordinarily shall be required only when the conditions and circumstances of importation are such as exclude the entry of the articles under one of the various forms of informal entry available.

This Treasury decision is in effect immediately and shall be applied to any eligible imporation for which there has been no determination of customs value. (332.1)

PHILIP N[illegible]OLS, Jr.,
Commissioner of Customs.

Approved March 7, 1963:
JAMES A. REED,
Assistant Secretary of the Treasury.

Senator RIBICOFF. Mr. Kurt Barnard.

STATEMENT OF KURT BARNARD, EXECUTIVE DIRECTOR, FEDERATION OF APPAREL MANUFACTURERS

Mr. BARNARD. Mr. Chairman, my name is Kurt Barnard. I am the executive director of the Federation of Apparel Manufacturers.

On behalf of the 5,500 manufacturers of women's and children's clothing who are affiliated with 24 organizations and who provide nearly 170,000 jobs, I urge you to reject the package of multitrade agreements negotiated under the Trade Act of 1979 and now before this Senate.

The price our country would have to pay if you vote "Yes" would be unbearable and cause very real economic harm coast to coast.

Permit me, in the brief span allotted for this testimony, to present to you two areas of grave objection to the agreements. Each alone raises the most serious possible questions about the wisdom of ratifying the proposed agreement. Together, they should be sufficient to prompt this august body to reject them.

I will address the two areas of objection in the following order: First, from the point of view of damage to America's women's and children's apparel manufacturing industry, should the agreements be ratified by you; and, second, from the point of view of serious adverse consequences for our entire Nation.

First, to the impact on the industry I represent. The trade agreements, negotiated largely in return for U.S. tariff cuts, open access to formerly unavailable foreign markets. The women's and children's apparel manufacturing industry, however, is unable to avail itself of such access. This as confirmed last December by the first in a series of studies commissioned by the U.S. Department of Commerce.

Nevertheless, deep tariff cuts on apparel, as revealed in a New York Times article on July 5, have been proposed by the administration. This is a grave wrong, especially in view of the industry's enormous labor-intensiveness.

The STR's response to the revelations in the New York Times tends to create an erroneous impression. STR points to trade weighted tariff cut figures that are sharply lower than those cited by the Times.

Of course they are. They are based on imports and duties paid in 1976 when apparel brought into the United States was made mostly of cotton. Tariffs on these apparel items were then, and continue now, to be very low, and no significant tariff cut has been proposed for them. But because of the low tariffs, domestic makers of these items have largely been forced out of business.

But now, if you approve the package of multitrade agreements, the President will make deep tariff cuts on the types of women's and children's clothing still manufactured in the United States. This will destroy what remains of the industry and the jobs it provides.

Senator RIBICOFF. I am assuming that you will be available tomorrow at the hearing to be conducted by Senator Moynihan.

Mr. BARNARD. Mr. Chairman, it is my understanding the hearings will be conducted Friday morning. Yes, I certainly will be.

Senator RIBICOFF. I think it would pay you to address yourself to that problem of the way that the tariff, the trade weighted tariff figures affect this. I think that becomes important for Friday morning because that raises great questions and doubts. And your suggestions on how that might be remedied, I think your testimony to that end would be much more significant there, sir.

Let me give you a friendly suggestion.

Mr. BARNARD. I thank you very much. I will take the suggestion to heart and I am sure it will be implemented.

Furthermore, the trade agreements assume the ability of domestic industries to mobilize capital and management sophistication to gain access to foreign markets. Large capital-intensive companies can do this. Smaller companies, like the 5,500 women's and children's apparel makers affiliated with the apparel manufacturers, cannot do this. Yet, thousands of other manufacturers, such as contractors and suppliers, wholly depend on these apparel makers, as do the tens of thousands of people employed by these satellite companies.

Now to the national and global considerations: The trade negotiations were conducted under provisions of the 1974 Trade Act, debated by economic realities drastically different from the realities and outlook today.

The oil crisis either had not yet broken on the world, and its shockwaves had not yet girdled the globe. Certainly, from 1970 until 1976 the United States exported about as much as it imported. In 1975 we even experience a favorable trade balance. But that was the year when the tide of economic history began to turn against us. Last year's enormous trade deficit of $28.5 billion is due largely to petroleum imports and staggering apparel imports, with apparel accounting for over $5 billion.

There can be no question that the 1974 Trade Act, however well-intentioned then, is not responsive to the economic realities of today and the foreseeable future. It is obsolete.

How does all this tie together and what will it mean for the consumer?

The astronomic oil price increases from OPEC, likely to continue their upward spiral, are dealing devastating blows, not only to the U.S. economy, but to virtually all countries. Capital resources of developing countries as well as those of the highly developed countries are being drained away in return for oil. Consequently, while many countries may have agreed to easing trade barriers to U.S. goods, they won't have money left to buy anything from the United States—but you can bet they will not be slow in taking advantage of our reduced tariffs to flood us with their commodities, particularly apparel.

We all know that much weight is attached to the so-called multifiber arrangement. That is supposed to limit each of the countries that subscribe to it to a maximum number of square yard equivalents of apparel and textile they can export to the United States.

We also know that most of these countries have successfully circumvented MFA by transshipping their apparel via countries that do not subscribe to the MFA.

Shall I continue?

Senator RIBICOFF. Your time has run out. We have a very heavy schedule.

May I respectfully suggest that your hearing for Friday morning is the important one to your industry.

Mr. BARNARD. Thank you very much.

Mr. MOYNIHAN. Mr. Chairman, may I add that Mr. Barnard is well known to the junior Senator. We are going to have that hearing. That won't be the end of this subject at all.

Mr. Barnard has raised an ominously important question and we are going to pursue it. And we will do it, sir, because we have your full support in this inquiry. And this matters a very great deal to us.

Senator RIBICOFF. May I say I have other engagements in Connecticut on Friday, so I won't be here, but I am very supportive of your efforts on this behalf, Senator Moynihan, and you can rely on and expect my support, sir.

Mr. BARNARD. Thank you.

[The prepared statement of Mr. Barnard follows:]

STATEMENT OF KURT BARNARD, EXECUTIVE DIRECTOR, FEDERATION OF APPAREL MANUFACTURERS

My name is Kurt Barnard, I am the Executive Director of the Federation of Apparel Manufacturers. On behalf of the 5,500 manufacturers of women's and children's clothing who are affiliated with 24 organizations and who provide nearly 170,000 jobs, I urge you to reject the package of Multi-Trade Agreements negotiated under the Trade Act of 1974 and now before this Senate.

The price our country would have to pay if you vote "yes" would be unbearable and cause very real economic harm coast to coast.

Permit me, in the brief span alloted for this testimony, to present to you two areas of grave objection to the agreements. Each alone raises the most serious possible questions about the wisdom of ratifying the proposed agreement. Together, they should be sufficient to prompt this august body to reject them.

I will address the two areas of objection in the following order: First, from the point of view of damage to America's women's and children's apparel manufacturing industry, should the agreements be ratified by you; and, second, from the point of view of serious adverse consequences for our entire nation.

First, to the impact on the industry I represent. The Trade Agreements, negotiated largely in return for U.S. tariff cuts, open access to formerly unavailable foreign markets. The women's and children's apparel manufacturing industry, however, is unable to avail itself of such access. This was confirmed last December by the first in a series of studies commissioned by the U.S. Department of Commerce.

Nevertheless, deep tariff cuts on apparel, as revealed in a New York Times article on July 5, have been proposed by the Administration. This is a grave wrong, especially in view of the industry's enormous labor-intensiveness.

The STR's response to the revelations in the New York Times tends to create an erroneous impression. STR points to "trade weighted" tariff cut figures that are sharply lower than those cited by the Times.

Of course they are. They are based on imports and duties paid in 1976 when apparel brought into the United States was made mostly of cotton. Tariffs on these apparel items were then, and continue now, to be very low, and no significant tariff cut has been proposed for them. But because of the low tariffs, domestic makers of these items have been largely forced out of business.

But now, if you approve the package of Multi-Trade Agreements, the President will make deep tariff cuts on the types of women's and children's clothing still manufactured in the United States. This will destroy what remains of the industry and the jobs it provides.

Furthermore, the Trade Agreements assume the ability of domestic industries to mobilize capital and management sophistication to gain access to foreign markets. Large capital-intensive companies can do this. Smaller companies, like the 5,500 woemen's and children's apparel makers affiliated with the apparel manufacturers, cannot do this. Yet, thousands of other manufacturers, such as contractors and suppliers, wholly depend on these apparel makers, as do the tens of thousands of people employed by these satellite companies.

Now to the national and global considerations: The trade negotiations were conducted under provisions of the 1974 Trade Act, debated by economic realities drastically different from the realities and outlook today.

The oil crisis either had not yet broken on the world, and its shockwaves had not yet girdled the globe. Certainly, from 1970 until 1976 the U.S. exported about as much as it imported. In 1975 we even experienced a favorable trade balance. But that was the year when the tide of economic history began to turn against us. Last year's enormous trade deficit of $28.5 billion is due largely to petroleum imports and staggering apparel imports, with apparel accounting for over $5 billion.

From 1976 to 1977 the U.S. suffered a staggering increase in its fuel trade deficit of 35 percent, from $29.7 billion to $40.1 billion and our favorable trade balance of manufactured goods in the same period sagged a disastrous 53 percent, from $14.9 billion to $7 billion. And the Commerce Department recently announced that our trade deficit in May of this year rose to $2.48 billion. There can be no question that the 1974 Trade Act, however well-intentioned then, is not responsive to the economic realities of today and the foreseeable future. It is obsolete.

How does all this tie together and what will it mean for the consumer?

The astronomic oil price increases from OPEC, likely to continue their upward spiral, are dealing devastating blows, not only to the U.S. economy, but to virtually all countries. Capital resources of developing countries as well as those of the highly developed countries are being drained away in return for oil. Consequently, while many countries may have agreed to easing trade barriers to U.S. goods, they won't have money left to buy anything from the U.S.—but you can bet they will not be slow in taking advantage of our reduced tariffs to flood us with their commodities, particularly apparel.

And how are we going tyo be able to continue to pay for our rising imports in the face of the OPEC invasion of our own treasury? I urge you, Mr. Chairman, to give this question your most serious consideration.

We all know that much weight is attached to the so-called Multi-Fiber Arrangement. That is supposed to limit each of the countries that subscribe to it to a maximum number of square yard equivalents of apparel and textile they can export to the United States. We also know that most of these countries have successfully circumvented MFA by transshipping their apparel via countries that do not subscribe to the MFA. U.S. Customs officials whom we have consulted say it is virtually impossible to identify shipments entering the U.S. in violation of the Multi-Fiber Arrangement.

Furthermore, a report prepared at the request of this Subcommittee clearly points out that "increasing U.S. reliance on imports from OPEC" will increase U.S. economic and political vulnerability. The study goes on to say that "lower-skilled U.S. labor groups may be subject to enduring and productively debilitating pressures as developing countries attempt to raise their share of world industrial production from its current 8 to 10 percent to roughly 25 percent by the year 2000."

As to savings for shoppers, let me assert once and for all that there are none. First of all, keep in mind that with every dollar we support for non-essentials, such as dresses, we cheapen currency beyond the devaluation that takes place because of dollars we must export for essentials, such as petroleum. Therefore, what may appear as a savings on an imported blouse in a store turns up as an extra bulge in the price at the gas pumps, the cost of electricity, and the grocery bill. Besides, experience indicates if you vote "yes" on the agreements, most stores will apply the tariff cut to bolster their own profits, profits under intense pressure as more and more shoppers curtail their buying trips because of inflation, and because of the high cost of gasoline and the difficulty in getting the tank filled up at all.

In conclusion, Mr. Chairman, let us not forget that the presence of OPEC, and its extortionary practices, and structural factors such as indexing—including the cost of living adjustments, social security increases, fuel cost pass-throughs, and others—have demolished the theoretical assumptions that lead to the 1974 Trade Act. Skyrocketing prices of oil, the lifeblood of our nation and all other nations, have put what appears to be an end to the kind of marketplace on which classic economic theory is based.

We respectfully suggest that instead of a global give-a-away of our protective barriers when we need them most, we must think in terms of using America's bargaining power through bi-lateral agreements.

Certainly, the fate of the women's and children's apparel manufacturing industry hangs on your vote and the vote of all your colleagues. Vote "yes" and this labor-intensive industry and the job it provides will be wiped out before the middle of the next decade. Vote "no" and you will have saved this industry and helped the entire American economy.

I thank you for this opportunity to appear before you.

Senator MOYNIHAN. The Chairman has to be at another hearing at this point and I will assume the Acting Chair on his behalf.

We have the pleasure now to call to the stand Mr. Richard Roberts, who is the president of the National Foreign Trade Council, and Mr. Louis Feffer.

Mr. Roberts and Mr. Feffer? If you are not here we will call Mr. McNeil.

It is time we had somebody in favor of foreign trade at this podium. It is a pleasure to welcome an old colleague and friend. This occasion is yours.

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

Mr. McNEILL. Thank you, Senator Moynihan.

I am pleased to be here on behalf of ECAT, an organization of 63 business leaders representing American firms with very substantial international business operations. The 63 companies that I represent had worldwide sales in 1978 of $400 billion and employed nearly 5 million workers. We are terribly concerned about American trade and we applaud Ambassador Strauss and his colleagues for concluding what we believe to be a very successful negotiation in Geneva.

We believe the objectives of the Trade Act of 1974 that we strongly supported have been achieved in the negotiation and we recommend to this committee and to the Congress that it pass the enabling bill.

The international trade codes which are before this committee have been carefully studied by us. The committee has contributed significantly to the implementing language that would give these codes legal effect in the United States.

As a long-time supporter of expansionary U.S. trade policies, ECAT has been increasingly concerned with unfair trade practices, particularly those associated with subsidies and dumping. The issue of unfair trade practices has been poisoning the international trade atmosphere.

Senator MOYNIHAN. It surely has.

Mr. McNEILL. In the United States, segments of American business and labor who were being injured by such practices rightly condemned them and rightly looked to our Government for assistance and relief. In the case of subsidies, however, our Government was often not in a position to respond, since the legal status of many of the subsidies complained of at best was murky.

There was, for example, considerable question as to whether or not the U.S. countervailing duty statute was applicable against foreign subsidies provided to production and to domestic producers. That question, in the code, has now been answered affirmatively, and we applaud that.

It is our firm belief that the code on subsidies and countervailing duties, together with improvements in the international antidumping code, provide the mechansims for addressing and resolving problems caused by these two unfair trade practices. When these codes become truly effective, the international trading system will be considerably purged of unfairness.

We believe the new trading rules will provide not only practical benefits to American producers and workers but also will help dispel public perception that the international trading system is inequitable.

The new international trade rules, however, remain to be tested. Only then will their practical worth be proven. We hope our Government will be resolute and fair in pursuing and enforcing U.S. rights and obligations provided by the codes.

ECAT and its members will be vigilant in monitoring progress and we believe others, including your committee, will do the same. In this way, the respective benefits of the trade package will best be realized. Effective implementation is what ECAT Chairman, Edwin Pratt called for when he said on June 19: "We urge the Congress to vote in such a way that the world will have no doubt as to where our nation stands in cooperation in world trade."

I must say we are delighted that this morning the House voted 395 to 7 to pass the implementing bill.

Senator MOYNIHAN. Is that right, 395 to 7? Well, that is very impressive.

Mr. MCNEILL. Congressman Vanik thought there would be a handful in opposition, but he missed it by two.

Senator MOYNIHAN. That speaks well for the influence of the emergency Committee for American Trade, but some would say, how did you lose those seven votes?

You would agree, I think, Mr. McNeill, that basically it is not tariffs that have changed so much in the bulk of this agreement as these rules of trade; and you would agree that the success or failure of the agreement will depend on how well these rules are carried out, and this is going to involve a new experience for the GATT, isn't it? These new decisions have more of a judicial or quasijudicial character.

Have you thought about your participation in how we ought to go about setting up this regime? I mean, God knows we don't want to produce another Brussels.

Mr. MCNEILL. No particular thoughts. Professor Jackson who is the next witness will talk specifically to that point, about the adjudication procedures in the GATT and rulemaking and settlement procedures. I think he finds considerable problems with them and that he shares your concern that a body of practice is going to have to be established rather quickly in order to insure the effectiveness of these codes.

You know, the GATT for many years has had procedures whereby you could adjudicate, but they have not been utilized.

Senator MOYNIHAN. They haven't come to much, and there isn't much of a GATT. I can remember when the GATT consisted of Erick Windham White and three good-looking French secretaries.

Mr. MCNEILL. And a couple of British.

Senator MOYNIHAN. That is not quite true any more, yet neither is it anything like the organization that probably will evolve from this arrangement. Would you expect the GATT to change in character, to simply enlarge? You have great experience in this field. There is not a man I know in this city who has had as consistent a record as yours.

Mr. MCNEILL. I think, Senator, that the GATT will have to add considerably to its staff to administer the codes. The character of the GATT I don't think will change. I think it may resume the character you knew years ago, when Eric Windham White was directing it. At that time GATT had a rather activist international secretariat and was enormously helpful to world trade.

I think that in recent years the GATT has not been doing that, but that it will do it again.

Senator MOYNIHAN. Would you say that again?

Mr. McNEILL. It is my opinion that in recent years, with the exception of the multinational trade negotiations, where the GATT had provided great assistance and help, that the GATT has been a rather moribund organization and not as activist as it was in the days of Eric Windham White. I think that with these new codes the GATT will resume more the nature it used to have in the 1960's, when you and I dealt with it. It will become more active and effective.

I think that GATT member countries will insist that the secretariat be an effective secretariat, so the benefits of the codes will be realized.

Senator MOYNIHAN. The present secretary is Mr. Long?

Mr. McNEILL. Olevia Long of Switzerland.

Senator MOYNIHAN. Is he Swiss or French?

Mr. McNEILL. Swiss.

Senator MOYNIHAN. I am sorry. I didn't realize that. What is the term of the head of GATT? Is there a fixed term, or is it year to year?

Mr. McNEILL. No, it is an indefinite——

Senator MOYNIHAN. It is an indefinite term?

Mr. McNEILL. Subject to the desires, I suppose, of the member countries. Eric Windham White, as you know, was secretary for decades and W. A. Long has been for some years now.

Senator MOYNIHAN. He has been there about a decade now?

Mr. McNEILL. About 6 or 7 years now.

Senator MOYNIHAN. Well, that is a subject we will want to talk about in a less public situation. You will keep close to this committee in this matter, of how the GATT actually responds? Because we will always hear from the GATT that it is well and from the State Department that it is doing well. We would like to hear from people who have a greater immediate interest, such as your organization, because if it doesn't do well, you do badly. Don't hesitate to come back; and, having said that, let me thank you once again for coming forward——

Mr. McNEILL. Thank you, Senator.

[The prepared statement of Mr. McNeill follows:]

TESTIMONY OF MR. ROBERT L. MCNEIL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. Chairman, I am Robert L. McNeil, and I am pleased to be here to express the strong support of the members of the Emergency Committee for American Trade (ECAT) for S. 1376, the Trade Agreements Act of 1979.

ECAT is an organization of 63 leaders of large U.S. firms with extensive international business operations. In 1978, worldwide sales by these companies totaled nearly $400 billion and they employed nearly five million workers last year.

Because of this great stake in American trade, ECAT worked hard for passage of the Trade Act of 1974. It was our belief that a significant improvement in the international trade rules, together with further liberalization of trade barriers, was needed and could be achieved by astute negotiation. The subsequent multilateral trade negotiations in Geneva were a massive undertaking that involved widespread participation by business, labor, consumer representatives and by leading legislators including members of your committee. We are pleased to state our view that the major objectives of the 1974 Trade Act have been accomplished.

Great credit is due Ambassador Strauss and his colleagues for their negotiating efforts and the Congress for its surveillance of the negotiations and its advice. The result is a sound and well-balanced trade package and implementing bill. We urge you to pass it.

The international trade codes have been carefully studied by this committee. You have contributed significantly to the statutory language that will give them legal

effect in the United States. As Senator Long said when S. 1376 was introduced, "Every member of the Finance Committee has worked many hours in consultations with the Administration on this bill."

Bearing in mind the variety of views that the American public has about international trade, it is remarkable that yours and the other congressional committees concerned were able to fashion S. 1376 in the commendable manner that you have. We hope that our trading partners will do as well in conforming the trade package to their domestic laws and procedures.

Our only recommendation to you about S. 1376 is that you enact it. It authorizes U.S. participation in an improved international trade structure that goes a long way toward correcting and alleviating unfair trade practices. Again, the members of ECAT agree with Senator Long who said "It is not a perfect bill. No bill is perfect. But I do believe the Trade Agreements Act of 1979 represents a long stride forward in our trade relations with the world and that it will provide an opportunity for a more realistic trade policy for this Nation and for a more efficient global trading system."

As a long-time supporter of expansionary U.S. trade policies, ECAT has been increasingly concerned with unfair trade practices, particularly those associated with subsidies and dumping. The issue of unfair trade practices has been poisoning the international trading atmosphere.

In the United States many segments of American business and labor who were being injured by such practices rightly condemned them and rightly looked to our government for assistance and relief. In the case of subsidies, however, our government was often not in a position to respond since the legal status of many of the subsidies complained of were murky. There was, for example, considerable question as to whether or not the U.S. countervailing duty statute was applicable against subsidies on production provided by foreign governments to their producers. That question has now been answered affirmatively in the new subsidies code.

It is our firm belief that the code on subsidies and countervailing duties together with improvements in the international antidumping code provide the mechanisms for addressing and resolving problems caused by these two major unfair trade practices. These and the other codes are such great advances that by themselves they would justify the five years of tough negotiations in Geneva.

When these codes become truly effective, the international trading system will be considerably purged of unfairness. We applaud this. We believe that the new trading rules will provide not only practical benefits to American producers and workers but will also help dispel public perception that the international trading system is inequitable.

The new international trade rules, however, remain to be tested. Only then will their practical worth be proven. We hope that our government will be resolute and fair in pursuing and enforcing U.S. rights and obligations provided by the codes. ECAT and its members will be vigilant in monitoring progress and we believe that others, including your committee, will do the same. I this way, the prospective benefits of the trading package will best be realized. Effective implementation was what ECAT Chairman, Edmund T. Pratt, was calling for when he said on June 19, "We urge the Congress to vote in such a way that the world will have no doubt as to where our nation stands on cooperation in world trade."

The attached summary of S. 1376 gives more specific reasons for ECAT's support of the Trade Agreement Act of 1979. Thank you for hearing us.

Trade Agreements Act of 1979—H R. 4537, S. 1376

The Trade Agreement Act of 1979 will modify U.S. statutes and regulations to give legal effect in the United States to the international trade codes negotiated in the recently-concluded Geneva multilateral trade negotiations. These negotations were authorized by the Trade Act of 1974, and took five years to complete.

MAJOR NONTARIFF AGREEMENTS

Several major international trade codes were concluded at Geneva. If Congress approves the implementing legislation, these codes will help remove objectionable international trade practices and will bring other unfair trading practices under international surveillance and control.

The major codes are as follows:

Subsidies and antidumping

The subsidies code prohibits the use of subsidies for exports and provides that domestic subsidies—or subsidies on production—shall not be used to provide unfair

trade advantages for domestic producers. Meaningful rules are included on agricultural export subsidies. In return for these benefits, the United States has agreed to accept an injury test as a condition of applying countervailing duties against subsidized imports.

The trade bill provides improved administrative procedures, including shortened time periods, for countervailing duty and antidumping duty investigations. The antidumping code establishes an international understanding on sales abroad at lower prices than domestic sales and on remedial action.

Customs valuation

The bill would approve the new customs valuation code, which provides for a uniform, fair and greatly simplified system for the valuation of imports and for the purpose of assessing duties. The code eliminates protective features of current foreign valuation systems, including arbitrariness in valuation methods, uplifts and fictitious values. The changes in law would streamline domestic customs procedures and would eliminate the American Selling Price and Final List Systems of valuation in a manner designed to avoid any domestic disruption.

Government procurement

Foreign governments have long prohibited American business firms from bidding on their purchase requirements. At the same time, foreign businessmen have been able to bid for U.S. Government procurement contracts provided that they can meet the Buy-American price preferences of 6, 12 or 50 percent that are accorded domestic materials and supplies.

The procurement code establishes procedures whereby for the first time, American business firms will be able to bid for foreign government procurement contracts. It is estimated that the code will open more than $20 billion in foreign government purchases to U.S. bidders. The code provides procedures to ensure compliance. In return for access to foreign government purchases, the code provides that U.S. Buy America price preferences will be removed for some 15 percent of U.S. Government purchases. The small business set-aside program would not be covered or affected by the code.

Standards

Product standards and the testing and certification requirements that imports meet domestic standards can be very restrictive—and at times prohibitive—of trade. The proposed standards code would establish international rights and procedures designed to discourage the discriminatory use and manipulation of standards and testing and certification systems as trade restrictive devices.

Civil aircraft

The trade bill would implement the civil aircraft agreement which eliminates all tariffs on commerical aircraft and most parts of repairs. The agreement places limitation on governments in their purchases and production of aircraft.

OTHER MATTERS

Agriculture

The Trade Agreements Act of 1979 also would implement a number of other agreements. Among them are agreements dealing with agriculture products. A 1.2 billion pound quota would be established for beef imports and new quotas would be established for cheese imports as well as for imports of chocolate crumb. In addition to these measures, U.S. agricultural exports will benefit greatly from concessions provided the United States by our trading partners.

Distilled spirits

The implementing legislation would eliminate the wine-gallon method used in establishing duties for imported bottled spirits.

GATT framework

A number of improvements have been made in the GATT in the area of dispute settlement. The United States accordingly will be in a better position to enforce its GATT rights. Included among the new dispute settlement measures are improved means for arbitration and conciliation of trade disputes.

Miscellaneous

The bill also provides the President with non-tariff barrier negotiating authority for an additinal eight years and with minor tariff negotiating authority to handle normal "housekeeping" matters that arise in te day-to-day administration of trade policy. The bill would also extend the private sector advisory system whereby the views of the public are sought. Another section of the bill requires the President to

examine the feasibility of special trade agreements between the United States, Canada and Mexico.

TARIFF REDUCTIONS

The Trade Act of 1974 authorized the President to negotiate reductions in U.S. tariffs in return for equivalent tariff reductions abroad. As a result of the trade negotiations, U.S. tariffs and those of our major trading partners will be reduced by about one-third from their present levels. The reductions will be phased in over a period of eight years. At the end of that period, the U.S. tariff will average just over five percent—it presently averages somewhat over eight percent. At the end of the eight-year period, the tariff levels of our major trading partners will aproximate that of the United States.

With few exceptions, the tariff reductions take effect without further congressional action. Great care was taken to avoid tariff reductions that could be seriously harmful to domestic producers.

Senator MOYNIHAN. A bit off the agenda, but I wanted to hear your positive views before we get to our next witness, who is Prof. John Jackson of the University of Michigan Law School, who is, I dare to say, the foremost GATT legal expert in the world, or should I say the United States? I don't want to get you into trouble with your colleagues.

STATEMENT OF PROF. JOHN JACKSON, UNIVERSITY OF MICHIGAN SCHOOL OF LAW

Mr. JACKSON. I don't want to constrain your viewpoint. I appreciate your comments.

Senator MOYNIHAN. We are honored to have you here, Professor Jackson. It just as well you are a professor; if you were practicing law in Washington and expected to make a living on producing only 5-page briefs, I would be terrified. That is a very helpful thing for you to do for the committee.

Mr. JACKSON. Well, the reason for that is, as you know, I have been a consultant for your committee during the past year. I have produced a somewhat longer report which has already been printed in your printed consultant's reports.

Senator MOYNIHAN. I was only wishing to thank you for your incautious courtesy.

Mr. JACKSON. And consequently I merely wanted to summarize a few of those points.

I should also say that it is a pleasure to follow Bob McNeill, and to contrast, in one respect, his very large constituency: He represents what sounds like most of the U.S. industry, and I represent no one, except myself perhaps. But, in any event, I did want to flag for the committee's attention a series of problems that you have alluded to, sir, and indeed, I think perhaps I am talking to the already persuaded.

I will say that in general my judgment is that the result of the MTN deserves your support and the support of your colleagues. I have no question about that.

But on the particular subject that I have been asked to look at, namely, the GATT structure—the institutions of GATT, where GATT will go—or, I should say, GATT/MTN, because it is a great enlargement of the GATT—I think there is a great deal left to be done, and indeed I describe these issues in my statement as you can see, as perhaps the weakest link of the MTN.

There are quite a series of problems that have not been addressed; and it is understandable why they have not been ad-

dressed. I go into that somewhat more at length in the report that has already been printed.

Senator MOYNIHAN. The MTN and Legal Institutions of International Trade?

Mr. JACKSON. That is correct, No. 4 in that series of 5 reports.

Senator MOYNIHAN. That is correct, No. 4.

Mr. JACKSON. Just to flag a few of these, the GATT has a structure that makes it very hard to amend and, therefore, very hard to keep abreast with current rules.

Senator MOYNIHAN. May I just say, since you are not following your text exactly, which is fine, let me first put your text into the record as a formal document and you go right ahead.

Mr. JACKSON. I would appreciate that.

[The prepared statement of Mr. Jackson follows:]

TESTIMONY OF PROF. JOHN H. JACKSON, UNIVERSITY OF MICHIGAN SCHOOL OF LAW, ANN ARBOR, MICH.

Mr. Chairman, and members of the subcommittee: As you are aware, during most of the past year I have acted as a consultant to your committee, for legal matters relating to the MTN (Multilateral Trade Negotiations). The statement I would make for the committee today has already been submitted to you and was printed several weeks ago as number 4 in your document series entitled "MTN Studies". I am here today principally to make myself available to the committee members, should anyone wish to ask questions about that study or other issues.

I might just briefly summarize, however, a few of my observations.

First let me say that in general I have no doubt that the MTN results and the legislation proposed to implement them, deserve your support. My own expertise, and the subjects on which your committee staff have asked me to comment, have led me to focus on only one aspect of the MTN results, namely the legal and institutational implications, particularly in relation to the continuing role of the GATT and to the viability or enforceability of the new MTN rules in the light of the weaknesses of the GATT. I have great admiration for the accomplishments of the negotiation, and I do not want my comments to be taken out of that overall general context. I am forced to say, however, that I think that the legal and institutional implications of the MTN results are one of its weakest links—not just because of what it did do, but more significantly, because of what it did not do. Even in the context of the substantial achievements of the MTN, it is important not to ignore some of these weaknesses since they can have significant implications for future U.S. policy and international economic relations. Let me just briefly list a few of the dangers which have either been created or are left relatively undiminished by the MTN.

First, it is very difficult if not impossible to amend the GATT. Thus it has not been possible to keep GATT rules up to date. The MTN agreements create new rules, but the procedures for amending those rules or keeping them up to date to appear in many cases to contain the defects which have plagued the GATT rules.

Second, compliance with GATT rules has been faltering. Some GATT rules are virtually ignored. Little if anything has been accomplished by the MTN to correct this problem.

Third, the dispute settlement procedure for GATT has not been working well for a variety of reasons. One MTN agreement makes some modest improvements on the GATT procedure, but other MTN agreements create a number of new and varying dispute procedures, many of which contain language similar to that which has created problems in the GATT.

Fourth, the GATT decision-making structure is awkward and not well designed to reflect the needs of the participants, or to create new rules which would likely be effective. Many of the MTN agreements create committees whose procedures promise to have similar difficulties.

Fifth, the current GATT system has relied too heavily upon major "trade negotiating rounds" for innovation and progress. These rounds have been becoming less frequent, whereas the problems of international trade seem to be more frequent. There needs to be a permanent negotiating system, with procedures for keeping abreast of events.

Sixth, the problem of international trade in agricultural goods is yet far from resolution.

Seventh, the principles of non-discriminatory treatment embodied in the Most Favored Nation clause (MFN) have been seriously eroded over the years, and the MTN further adds to this erosion. The policies of MFN need to be reconsidered, and those which are important need reinforcement.

Eight, the uneasy relationship of developing countries to the GATT rules for international trade, has not been fully resolved by the MTN. The growing industrial capacity of some developing countries promises to put additional strain on the adjustment capabilities of industrial countries, and this poses added problems for the traditional GATT rules, and the rules now established by the MTN.

Ninth, there is considerable ambiguity about the relationship of the new MTN agreements to the GATT. There will undoubtedly be a series of controversies about these relationships raised by those countries who feel it is not in their interest to sign the new agreements.

Let me elaborate on just one of the many aspects which could be mentioned to illustrate the problems listed above. In the Countervailing Duty Subsidies Agreement, an attempt has been made to design a better and more disciplined dispute settlement procedure. The enforcement of the newly defined obligation against all export subsidies (as opposed to general or production subsidies) depends heavily on this international procedure. If the United States, for example, feels that Nation X is violating its obligation to refrain from using export subsidies, it may cause a dispute settlement procedure to be initiated, including the use of an objective third party panel procedure. When the panel has completed its work, however, it can only report its findings to a Committee of Signatories. Only upon approval by the Committee of Signatories can so-called "counter measures" be taken by the complaining nation.

In contrast to the often detailed procedures of the panel, the procedures of the Committee of Signatories are very ambiguous. There is no statement on the face of the agreement about how the Committee shall conduct its deliberations. Nothing is said about voting. The Agreement states that the Committee "shall consider the panel report", but only specifies that it "may make recommendations" and that it "should" do so within thirty days. Nation X, the defendant, will be represented on the Committee and it could argue that any Committee action must be by "consensus", the traditional procedure of some GATT bodies. It may also claim that consensus implies absence of any serious dissent, and if this view prevails the defendant country will then be in a position to block any formal action under the agreement. This aspect of the procedure is not likely to help gain the confidence of nations in the value of the obligations under this new code!

Obviously this is not a fatal defect in the Countervailing—Subsidies Code. Careful, adroit and assertive U.S. government diplomacy could help minimize the potential damage to the longer run viability of the code obligations. The procedural ambiguity, however, clearly poses some risks for this longer run viability. It also poses risks for U.S. interests in seeing the use of export subsidies minimized even when they can not be shown to cause injury under the new code definitions of injury.

To close this statement and conserve time, I will simply state one general conclusion which follows from what I have said above. It would be a mistake, I believe, to treat the MTN as an effort now finished, and to turn our attention away from the GATT-MTN international economic system. In the inter-dependent world we now live in, important problems of economic cooperation continuously arise and we need appropriate international mechanisms to assist in resolving differences among nations while permitting them as much freedom of action to pursue domestic goals as possible. The birth of the MTN-GATT system should be viewed as a beginning. We must now carry through on the efforts to organize the U.S. government better to represent U.S. international economic interests, and we must also give attention to the shape and constitution of the international mechanism itself, so that the U.S. and other nations can be well-served by it in the future.

Thank you, Mr. Chairman.

Senator MOYNIHAN. First, it is hard to amend; you found it didn't work? There have been six GATT agreements, have there?

Mr. JACKSON. Well, there have been seven major trade rounds.

Senator MOYNIHAN. In about 35 years?

Mr. JACKSON. Yes. And there has been more than 1 dozen years between the last 2; and one of my conclusions is that we ought not to think in terms of trade rounds anymore; we ought to be more permanent in our thinking of the need of constant attention to some of these problems that become exacerbated between nations.

Senator MOYNIHAN. You are thinking of moving from a treaty relationship to something which approximates the pattern of legislative arrangements?

Mr. JACKSON. Well, legislative is much too strong a word in the international scene.

Senator MOYNIHAN. But a continuing conference type of arrangement that meets regularly and has rules for this purpose?

Mr. JACKSON. Yes, that is right. We have, of course, some leftovers from the MTN. We have the safeguards agreement; but there are other problems that will undoubtedly come up in connection with the MTN agreements themselves.

One is the whole question of tax incentives in international trade, which is related to the subsidies and countervailing duty code, and will need attention in the future. It is a very complex subject and it was understandable why it could not be resolved in this negotiation; but somebody is going to have to give some attention to it.

Senator MOYNIHAN. Well, this is what has been troubling me all through this thing. When I said "Legislative," I only used it in the most general terms meaning a body that meets regularly for the purpose of reaching agreement, rather than very episodic conclaves of nations.

You say the compliance has been faltering; you say some GATT rules are virtually ignored, which for instance?

Mr. JACKSON. Well, one very commonly cited example is the question of tariff surcharges for balance-of-payments reasons.

The GATT particularly would not permit them. In fact, they are probably a better method of response than those permitted by the GATT. So countries have sort of taken it on themselves to go ahead and do it.

Senator MOYNIHAN. Has the IMF encouraged them?

Mr. JACKSON. Well, I didn't mention the IMF in this statement. The relationship between the IMF and GATT has always been somewhat tenuous and difficult to work out, particularly in the balance-of-payments area; and I see very little improvement on that as the result of this MTN, and that is a subject that will have to be on the agenda for the future.

Senator MOYNIHAN. The relationship between the IMF and the GATT is something to be dealt with as a question of policy for the trading nations, and it ought to be one that the Department of State and Treasury address themselves to.

Is anybody here from the Department of State? Fine. Nobody is here. We can speak freely.

Typically, we are up here trying to devise international economic policy and where are they?

Treasury? Would that fellow from the Treasury come down to the front row and listen to what is said. You are welcome.

Mr. JACKSON. I probably won't be able to get into the Treasury door after this.

Senator MOYNIHAN. If you have any difficulties, you would be surprised to learn how friendly they are to this committee.

Mr. JACKSON. I will say, sir, that the Treasury in past years, I know, has given some attention to this and has made proposals, but they just haven't gotten very far in the international scene.

Senator MOYNIHAN. I will say, the Treasury is in this room. Where is the Department of State? I have a problem with that. I am not kidding.

The dispute settlement procedure has not been working very well in GATT?

Mr. JACKSON. Yes, sir.

Senator MOYNIHAN. What kind of examples do you have of a breakdown?

Mr. JACKSON. I think the DISC case is probably a good example. It has dragged on for many years; it is now in sort of a state of limbo, partly, at least in my view, and I have written on this separately elsewhere, because the panel conclusions were probably not the correct ones, or the best ones that should have been made.

Senator MOYNIHAN. But the DISC is our provision?

Mr. JACKSON. That is right.

Senator MOYNIHAN. Actually, we are breaking the rules?

Mr. JACKSON. That is right.

Senator MOYNIHAN. Oh, that is different. [Laughter.]

You know, we expect our lawyers to stand up for us.

Mr. JACKSON. In fact, as you know, there were three counter complaints that we brought against other countries; so there were essentially four cases lumped together under what we call the DISC.

Senator MOYNIHAN. They have just not been able to get compliance, or a judgment?

Mr. JACKSON. Well, in fact, the legal situation is very obscure; and this is part of the problem with the disputes settlement mechanism. There is a great deal of controversy about what is the result of the panel's conclusions. Is it legally binding or not? There are arguments both ways.

Senator MOYNIHAN. Well, what about the arrangements we are now agreeing to?

Mr. JACKSON. The new codes?

Senator MOYNIHAN. The new codes, yes; do we have any greater confidence or any more specific arrangements for the panels that will follow?

Mr. JACKSON. Each of these codes, or each of the principal codes, has a separate dispute settlement mechanism in it. Now that at the beginning, I think, is probably unfortunate, because when you have a balkanized set of procedures like that it is harder to manage and harder to engender the respect for the procedure.

Senator MOYNIHAN. Oh, yes. I mean, some panels are more prestigious than others because some codes are more significant than others?

Mr. JACKSON. That is right.

Second, the procedures in those codes are not uniform; they differ quite a bit in some cases, and that is going to impose an additional administrative burden on national governments and particularly on smaller countries, to try and grasp and understand the difference in these procedures.

Senator MOYNIHAN. That is a nice point.

Mr. JACKSON. And, third, I do not think the procedures themselves are very much of an improvement over the existing GATT procedures. There is some improvement, and I want to give credit

to our negotiators for trying to gain some improvement, but there are many weak links in those procedures, such as reference to the words "nullification" and "impairment" which you have probably heard, which is a GATT phrase, and which is very ambiguous, and I think it would have been better to do without that phrase.

Senator MOYNIHAN. Professor, I will be clear here: I cannot speak for the subcommittee, but I would like Mr. Cassidy to hear me say I think our report needs to deal with this as a subject to be dealt with in the years to come. I mean, clearly, we are going to go forward with this agreement, but we don't want to act like we can't see clear problems.

These are practicable things but are not done.

What was the problem? Was anybody resisting on the administrative and adjudicating ends of this?

Mr. JACKSON. I believe some of our opposing negotiators, that is, foreign government negotiators, were not as enthusiastic about reform of the dispute settlement procedures as the United States was; so it was one of the areas we ran up against considerable foreign government opposition to movement.

Senator MOYNIHAN. Do you want to name any of those foreigners?

Mr. JACKSON. The European Community.

Senator MOYNIHAN. It is nice to have the European Community, because you can insult an enormous number of foreigners without naming any.

Do we find we are more likely to have a dispute over trade rules with the EEC than other countries? Do they have so many internal arrangements and conflicts?

Mr. JACKSON. No, I think we need to understand the problems of the EEC,that they are going through a revolution in constitutional law as a matter of fact; and the relationship or the competence of the member States vis-a-vis the Community institutions, the commission and the council, is one of considerable stress right now, and so perhaps the commission is being very cautious about what it is getting itself into internationally, partly because of its worry about this political pressure from member states not to take on an additional competence under the Treaty of Rome.

So, some of these things are understandable and explainable, but they are there.

Senator MOYNIHAN. How would you advise us to go ahead, if I could ask?

Mr. JACKSON. Well, on the dispute settlement, I think the United States in its role could very well take a leadership position. It might, for example—this is one thought and I haven't thought it through completely—but the United States might enter into some discussions with like-minded nations and develop a better dispute settlement procedure which it could apply among those who wanted to apply it. And if it worked, others might come in.

Senator MOYNIHAN. Do I take it that the linkage that is weakest is between the committee of signatories and the panel?

Mr. JACKSON. Yes, this is another point that I mentioned in my statement and I would like to flag for your attention.

Senator MOYNIHAN. Please do.

Mr. JACKSON. Particularly in the countervailing duty subsidies code, where I think perhaps more progress was made on the dispute settlement procedure than in other codes. Nevertheless, when the panel procedure is through, that is, when the objective third party panel has finished its work—its conclusion is not yet binding on anyone—it must be referred to what is called the Committee of Signatories, and that committee's procedures are very ambiguous in the agreement; and it is possible that they could be abused. There is no provision on voting, for example.

Senator MOYNIHAN. Is the Committee of Signatories a new GATT institution?

Mr. JACKSON. It is. It is a new institution, set up by the code on countervailing duties and subsidies, which means that technically, I think, it stands independent of the GATT. In fact, you could call it a new international organization.

Senator MOYNIHAN. Is like the committee of the whole house in some sense?

Mr. JACKSON. Except only those who signed this code can be on that committee, not all the GATT, just those who signed this code.

Senator MOYNIHAN. What is that likely to be?

Mr. JACKSON. Well, at the beginning it might be 20 or 25 nations, mostly the OECD nations at the start.

Senator MOYNIHAN. Well then, yes, you do have a paralegal or subsidiary or there is a relationship? I mean, this is not the committee of the whole? The House has not evolved into the committee of the whole; you could say it is the Committee on Finance or something?

Mr. JACKSON. It is a different group, technically. Now, it is supposed to meet in the context of GATT and be serviced by the GATT's secretariat.

Senator MOYNIHAN. Obviously, this is not a fatal defect?

Mr. JACKSON. That is correct.

Senator MOYNIHAN. The fatal defect is what it may not and need not be, but it verges on that?

Mr. JACKSON. Well, it is a risk for U.S. policy.

Senator MOYNIHAN. Well, it is a risk; it says: "Careful, adroit, assertive U.S. diplomacy could help minimize the potential damage to the long run viability of the codable nations."

Mr. JACKSON. Yes, sir.

Senator MOYNIHAN. Mr. Cassidy, I would like to say again I think we must be very explicit about this in our report. Having had this wise counsel, this is not something, for us to ignore and later on to say: "Well, we actually knew about it, but we thought everybody did,so we didn't bother to mention it." It should be a signal to the Treasury Department and to the State Department—which is not necessarily a promising effort—but will the Treasury and our trading partners hear? They must have the same concerns.

Mr. JACKSON. Some of them certainly do, yes.

Senator MOYNIHAN. A lot depends on the vigor with which we seek to have the codes provided for, where we want agreement. I think a lot will depend on that.

Senator MOYNIHAN. And that will be one of the key issues of the President's decision on organization?

Mr. JACKSON. In fact, the final conclusion I have made in my paper is that we are really only at the beginning, and we must not view this as an end of the process.

Senator MOYNIHAN. Yes, we need the equivalent to the body of attorneys in the Department of Justice——

Mr. JACKSON. Exactly. We need——

Senator MOYNIHAN [continuing]. To prosecute. We need a group of attorneys that will represent the United States or a group of representatives that can take on those kinds of responsibilities.

Senator MOYNIHAN. And who will be on the lookout for wrongdoing and will make their reputations by winning cases and being accurate and being aggressive.

It is a career worth thinking about for young people. It is certainly a function that we could not now have; isn't that right, sir?

Mr. JACKSON. Yes; and one of the issues of the new organization within the U.S. Government is the question of career staff which can watch these kinds of issues for us.

Senator MOYNIHAN. Well, I need not say, Mr. Jackson, this has been very helpful testimony indeed. We are much in your debt, not just for this but also for your willingness to advise us throughout this past year; and if we are not wholly in the dark, it is very likely because of the light you have shed.

I would like to acknowledge this right now, and thank you very much.

Mr. JACKSON. Thank you very much for your sympathetic consideration.

Senator MOYNIHAN. Our next witness is Bruce Hahn. He is accompanied by Mr. Herbert Liebenson, who is the associate director of the Small Business Legislative Council. And Mr. Hahn, we welcome you and Mr. Levinson.

STATEMENT OF BRUCE HAHN, MANAGER OF GOVERNMENT AFFAIRS FOR THE NATIONAL TOOL, DIE & PRECISION MACHINING ASSOCIATION, ACCOMPANIED BY HERBERT LIEBENSON, ASSOCIATE DIRECTOR OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Mr. HAHN. Thank you.

We appreciate the opportunity to be here today. I am appearing on behalf of the Small Business Legislative Council, which is an organization of national trade and professional associations whose membership is primarily small business.

My name is Bruce Hahn. I am manager of government affairs for the National Tool, Die & Precision Machining Association. Our association represents over 10,000 small businesses who manufacture tooling, dies, special machines, molds, or perform precision machining in the United States.

I am appearing today on behalf of the Small Business Legislative Council—SBLC—an organization of national trade and professional associations whose membership is primarily small business. SBLC focuses on issues of common concern to the entire small business community. The SBLC membership and their affiliates represent approximately 4 million small business firms nationwide. The SBLC supports an increased share for small business in Federal procurement, and this position is supported by 40 national associ-

ations. With me today is Herbert Liebenson, associate director of the SBLC.

Our comments relate to the procurement code. We believe Congress should not approve the Multilateral Trade Agreement in its present form. This country is simply risking too much, so much more than it stands to gain. And small and minority business will be hurt the most. Some 98 countries would be eliminating restrictions on a total of around $22 billion in contracts. That averages under $250 million each. We would get to compete with these 98 countries for a share of that business. We would in effect give up, by virtue of the elimination of much of the Buy American Act and labor surplus procurement program, at least $10.2 billion of civilian executive procurement alone. GSA figures show at least $14.4 billion of this is direct small business procurement.

Of course small and minority business groups do considerable subcontracting for the remainder.

Ambassador Strauss estimated that the total amount of small business contracts which would be in jeopardy or put up for open bidding to be around $300 to $400 million in testimony March 20 before the House Committee on Small Business. Yes, Mr. Strauss told this committee that he had consulted business and industry throughout the negotiations with generally favorable responses.

Neither he nor his staff have yet consulted the small business community. There is no evidence of export assistance for small and minority business from SBA, Department of Commerce, or the Export/Import Bank, any increase in that. The administration and the small business community agree that small business is not equipped to make major export incentives without help.

All three export organizations have testifed resources available to help small and minority business are stretched to the limit. Despite administration promises, there are no significant appropriations to help these organizations take advantage of these supposed opportunities.

The Buy American Act recognizes that U.S. business has much more regulations and restrictions then its foreign competition. It also recognizes that much U.S. business profits and payroll are returned to the Government in the form of taxes, reducing the effective cost of U.S. products. It makes good economic sense and should be retained.

Finally most of the figures we see are fuzzy. Where we have been able to secure hard Government data on the tradeoffs we find the administration off by as much as 1,000 percent. Ambassador Strauss' statement of $300 to $400 million versus hard GSA figures of over $4 billion is a good example.

We believe in no case Congress should be expected to approve the trade agreement until it receives hard and specific line-by-line data on the effect of U.S. small business and minority business and on the balance of payments.

Thank you, sir.

Senator MOYNIHAN. Well, let's be as candid as we can. This legislation is going to go forward.

You saw the House vote: 395 to 7. How are we going to make certain that the kinds of events you foresee, which would represent a deviation from the stated objectives of the agreement, don't come

to pass. How are we going to see that we don't move in the direction that you think we could? What, practically, do you propose we do?

Mr. LIEBENSON. Let me go back just a bit.

In the March hearings before the House committee, the U.S. position in small business setasides, minority setasides, the Buy American Act, labor surplus, were included in the original code, the proposed code. Based on testimony given before the House committee, they restored the small business and minority setasides. People in the labor movement said, watch out, what do they give up?

And we have found out, or at least it has been rumored, that in exchange for giving that up, they threw into the pot for bid by foreign governments something like $3.4 billion of NASA contracts which are now open to foreign government contracting.

This falls pretty much in line with previous witness that were talking about the aircraft industry. If you think in terms of all the subcontractors that are in the labor surplus areas—as one key example, there is something like $14 billion that a Government contract can go into the labor surplus areas—this is now no longer a prospective device—knowing full well that you are well acquainted with the unemployment problems, Senator, could you conceive what this would do when there is no longer that preference? The areas of high unemployment, the unemployment rate would continue at a continuing alarming rate, especially in those areas where we need protection, and the same thing would be true in many senses in the Buy American areas.

The 6 to 12 percent under the current law would be set aside; the differential would be set aside; and if I recall, your question is, what do you do about it? Well, I think in the implementing legislation you might wish to change the interpretation of Buy American to 12 or 24 percent. I don't know what can be done now at this point in terms of implementing the labor surplus area, but there is an area of great concern and especially in terms of the type of recession that we may expect in the next 6 months.

Senator MOYNIHAN. Well, that is a very specific procedure. I wonder if you would be good enough to put it in a note to the committee.

Mr. LIEBENSON. Most of it is here. There are a lot of specifics, but we can give you a note relating possibly to the unemployment impact. I know that the Department of Commerce and others have talked about—the Department of Labor, in particular—have talked about the increases in employment.

Senator MOYNIHAN. Right.

Mr. LIEBENSON. But not much has been directed toward the possibility of the unemployment that would be affected here.

Senator MOYNIHAN. Yes. Well, sir, we know that you are dealing with a real question, and I don't know that we have the answer to it, but we surely don't want to act like we didn't pay any attention to it.

I appreciate your coming here. We are going to hear from you. We will need to do so.

Your statement will be be printed in full in the record.

Senator MOYNIHAN. It is a very full statement. I don't know whether we can get those tables in, partly because they are unreadable. Quite seriously, you know about the problem.

Mr. LIEBENSON. The originals were prepared by the GSA, the Department of Finance, and I think we could probably get copies to you.

Senator MOYNIHAN. Would you, because then we can photograph them, and put them in.

We want this very much to be a part of the record and might have difficulty with this set here.

Thank you very much.

[The prepared statement of Mr. Hahn follows:]

STATEMENT OF THE NATIONAL TOOL, DIE & PRECISION MACHINING ASSOCIATION AND SMALL BUSINESS LEGISLATIVE COUNCIL

Mr. Chairman and members of the subcommittee: My name is Bruce Hahn. I am Manager of Government Affairs for the National Tool, Die and Precision Machining Association. Our association represents over 10,000 small businesses who manufacture tooling, dies, special machines, molds, or perform precision machining in the United States.

I am appearing today on behalf of the Small Business Legislative Council (SBLC), an organization of national trade and professional associations whose membership is primarily small business. SBLC focuses on issues of common concern to the entire small business community. The SBLC membership and their affiliates represent approximately four million small business firms nationwide. The SBLC supports an increased share for small business in Federal procurement, and this position is supported by 40 national associations. With me today is Herbert Liebenson, Associate Executive Director of the SBLC.

On behalf of the nation's small business community, we wish to express our displeasure with the approach taken in the Administration's negotiated Multilateral Trade Agreement (MTA). This Agreement restricts many of the long-standing programs gained after many years of effort by small business.

Before action is taken on MTA, we express our concern about two aspects of the Agreement which would repeal, for all practical purposes:

(1) The Buy American Act under which foreign companies must underbid U.S. firms by 12 percent to obtain Federal Procurement Contracts:

(2) The Labor Surplus Procurement Program which restricts competition on certain contracts to firms which will perform a substantial proportion of the production under the contract in a high unemployment area.

It is true that total emasculation of these two laws—Buy American and Labor Surplus Program—will not occur since there are exemptions included in the MTA.

Ambassador Strauss stated before the House Committee on Small Business on March 20 that no exact figures were available on just how much in current small business sales to Federal agencies will be lost to MTA. He speculated that it might be $300-400 million. At his side at the time was Robert Griffin, formerly Deputy Administrator with the General Services Administration. Mr. Chairman, for many years each Federal Agency has been required to file detailed quarterly reports on procurement with the Office of Finance of the GSA. We find it hard to understand why this information could not be provided to the committee. And we also find the estimate ridiculously low. According to the data compiled, provided by GSA's Office of Finance, the annual small business procurement by the executive agencies is 28.6 billion.[1] Approximately 9 billion of this is direct small business procurement and a significant portion of the remaining 19.6 billion results in subcontracting contracts to small business. GSA figures show that only half of the small business direct contracting will be exempted. Large contractors will fare much better—about two-thirds of the large contracts will still remain exempt. We are giving away over 4 billion in small business procurement and 6.8 billion in large business procurement. Our estimate is that we are talking about five to six billion dollars in small and minority business procurement contracts—not the 300 to 400 million as Mr. Strauss has speculated.

Another matter that concerns us are rumors that the "price" for restoration of the small business set asides will be the elimination of NASA procurements from

[1] See attachments A through H.

the exempt list. If that happens subtract another $3.4 billion in exempt procurements and add it to the $10.8 billion giveaway. Remember also that you are talking about depending on foreign sources for critical technology. Technology developed for our space program is technology which is eventually applied to our defense program.

It is in the interest of the United States to be dependent on other countries for the ability to produce sophisticated systems and ordnance for our military needs? This technology also filters down into consumer products, giving domestic industry a head start in such areas as minicomputers and many other areas.

In spite of the set-aside changes already made in MTA, the business community in the United States is bound to be affected by provisions still in the Treaty. If the door is shut to big business by the elimination of the Buy American Act, considerable subcontracting to small or minority business by large business or by government will be lost. The total government procurement that could be affected permanently in sales to Civilian Executive Agencies is $22.417 billion.

Ambassador Strauss has testified that a number of products and agencies will be excluded from the Code. In addition, purchases by certain governmental agencies, not covered by the Code, are excluded tentatively.

If a foreign producer sells to one agency of the Federal government at a price lower than an American firm, the pressure will be on all agencies of government, whether or not they were included in the MTA, to purchase from the foreign producer—Canada is a good example.

Here is the breakdown by program: minority business enterprises subcontracting to large business—$1.207 billion; small business subcontracting to large business—$863,652,000; prime procurements from other than small business—$20.12 billion. Procurements in the labor surplus area would also be affected. Presently, under preference procedures for labor surplus areas an additional $227 million in contracts would be affected (see attachements A through N).

We believe it important that, in light of the tentative exemptions in the MTA, Congress should demand line-by-line specificity as to the amount of government procurement that will be affected with respect to current domestic sales by large and small business to agencies of the U.S. government. Only when that information is provided can a reasonable and fair comparison of benefits and concessions be made

The present Federal Procurement Regulations provide as follows:

Sec. 1-6.104 4 Evaluation of bids and proposals

(a) Unless otherwise determined by the head of the agency in accordance with the Buy American Act, where the procedures in this sec. 1-6.104-4 result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see sec. 1-6.103.3)

(b) Except as provided in paragraph (d) of this section, bids and proposals shall be evaluated as provided in this section so as to give preference to domestic bids. Each foreign bid shall be adjusted for purposes of evaluation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, except that a 12 percent factor shall be used instead of the 6 percent factor if the firm submitting the low acceptable domestic bid is a small business concern or a labor surplus area concern (as defined in sec. 1-1.701 and 1-1.801 respectively), or both. However, if an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, the case shall be submitted to the head of the agency for decision as to whether the award to the small business concern or labor surplus area concern would involve unreasonable cost or inconsistnecy with the public interest (see sec. 1-6.103-3. If the foregoing procedure results in a tie between a foreign bid as evaluated and a domestic bid, award shall be made on the domestic bid When more than one line item is offered in response to a invitation for bids or request for proposals the appropriate factor may be applied to any group of items as to which the invitation for bids or request for proposals specifically provides that award is to be made on a particular group of items

It is important to note that Federal procurement with certain exceptions must go to a U.S small business if its bid is within 12 percent of the foreign offer. The 12 percent differential represents partial offsetting of the lowered cost of doing business by foreign competitors who are not subject to compliance with wage laws, U.S. government regulations, pension programs, etc.[2]

The MTA scraps this 12 percent differential in favor of competition by businesses from some 98 nations. Those countries, in practical effect, will subsidize this compe-

[2] See Attachment M

tition because they need not conform to U.S. business regulations (see attachment N).

Ambassador Strauss' defense that contracts of $190,000 or less are exempt should be given no weight since he has produced no figures to show the average contract under the Buy American Act or the Labor Surplus Procurement Program.

(This same exemption of $190,000 was trumpeted by the Ambassador in advocating elimination of set-asides as negating any material effect on that program. He withdrew that defense when it was established that the average minority set-aside is $222,357, and the average set-aside for manufacturers is $526,821. As you know, the proposed MTA until approximately five weeks ago severely limited the present small and minority business set-aside program. After vigorous opposition by members of the House Small Business Subcommittee on Government Oversight and Minority Enterprise this limitation on set-aside was removed. Ambassador Strauss was able to accomplish this in 48 hours in negotiations with 98 nations.)

The erroneous answer of the Ambassador to those who question the provisions of MTA is that there will be no loss to small business but a gain. since the "quid pro quo" is that sales to the procurement offices of some 98 foreign nations (Japan is an exception) will now be opened up to U.S. business. The export "opportunities" are supposed to total $20 billion, but this means little to small business for these reasons.

(1) The $20 billion of export opportunities is not exclusively for U.S. business, but for 98 nations competing for that $20 billion;

(2) Many firms in the 98 nations can underbid U.S. business—and still make a sizable profit—because they don't have the added costs of compliance with U.S. mandatory regulations (See Attachment M). We know of no requirement that foreign firms will have to comply with such regulations;

(3) U.S. small business does not have the wherewithal or the marketing expertise to penetrate the foreign market. U.S. big business, including their already in-place multi-national companies, are in a preferred position to take advantage of MTA (See Attachment N—Journal of Commerce, March 3, 1979.) Moreover both the Small Business Administration, Export Import Bank and the Department of Commerce have testified that adequate funding for additional small business export opportunities is not available

After years of practice we have established a successful SBA program that certifies whether small business has the competency to compete on a government contract. Will the many thousands of foreign businesses, who want to compete on U.S. government contracts, be subjected to the same cetification program? Who will administer the program to ensure competency?

At the White House Conference on Small Business in Dallas, Texas, on January 23, Ambassador Strauss said "President Carter has recognized the enormous potential for small business in international trade. A principal part of the expanded export promotion policy announced by the President last September was the channeling of up to $100 million of Small Business Administration loan guarantees to small business exporters to provide seed money for entry into foreign markets."

A review of the appropriations does not indicate an additional request for loan guarantees for the purpose of exporting.

Other major industrialized nations have long histories of aggressive export promotion and blocking imports of our members products, not through trade sanctions but through customs rules, subsidies, distribution complications and all manner of delays. Will the Strauss "Open Door" change this? Are the $20 billion phantom opportunities—the birds in the bush—offered by Mr. Strauss actually better for American business than the business in hand?

One small manufacturer made this comment about the proposed MTA action: "If I were responsible for a U.S. company that was seeking Federal contracts and had not been successful, I would move my headquarters to San Marino, Bermuda, or Haiti, where I would not be concerned with OSHA, Social Security, income taxes, labor standards, minimum wages, or labor unions, and find myself in a better position to compete and actually obtain U.S. government contracts."

The end result of the MTA if adopted by Congress will mean a sizable loss to the U.S. small and large business which now sells, or hopes to sell, to Federal agencies; loss of U.S. jobs to cheap labor abroad; and a step backward for U.S. small business.

More than Federal procurement is involved. Once the door is opened more widely to U.S. Federal procurement to the nations abroad, the next step will be for foreign business to further exploit the U.S. state-county-city-metro government market.

When members of Congress stated their strong opposition to limiting the set-aside program under MTA, Ambassador Strauss was able to remedy the situation quickly. He can do the same with respect to the Buy American Act and the Labor Surplus

Program if Congress strongly registers its opposition. Unless the MTA is amended to correct these two inequities, we urge you to vote against its adoption.

The proposed MTA in reducing small business' share of Federal procurement runs counter to the position of 40 members of the Small Business Legislative Council who support an increased share for small business of Federal procurement. These 40 members are the following trade and professional organizations:

American Association of Nurserymen, Washington, D.C.; American Textile Machinery Association, Washington, D.C.; Association of Diesel Specialists, Kansas City, Mo.; Association of Physical Fitness Centers, Bethesda, Md.; Automotive Warehouse Distributors Association, Kansas City, Mo.; Building Service Contractors Association International, McLean, Va.; Business Advertising Council, Cincinnati, Ohio; Direct Selling Association, Washington, D.C.; Electronic Representatives Association, Chicago, Ill.; Furniture Rental Association of America, Washington, D.C.; Independent Bakers Association, Washington, D.C.

National Association of Plastics Distributors, Devon, Pa.; National Association of Retail Druggists; Independent Business Association of Washington, Bellevue, Wash.; Independent Sewing Machine Dealers of America, Hilliard, Ohio; International Franchise Association, Washington, D.C.; Institute of Certified Business Counselors, Lafayette, Calif.; Local and Short Haul Carriers National Conference, Washington, D.C.; Machinery Dealers National Association, Silver Spring, Md.; Manufacturers Agents National Association, Irvine, Calif.; Marking Device Association, Evanston, Ill.; Menswear Retailers of America, Washington, D.C.; National Association for Child Development and Education, Washington, D.C.; National Association of Brick Distributors, McLean, Va.; National Independent Meat Packers Association, Washington, D.C.; National Office Machine Dealers Association, Zanesville, Ohio. National Beer Wholesalers' Association of America, Falls Church, Va.; National Burglar and Fire Alarm Association, Washington, D.C.; National Electrical Contractors Association, Bethesda, Md.; National Family Business Council, West Bloomfield, Mich.; National Home Furnishings Association, Washington, D.C.; National Home Improvement Council, New York, N.Y.; National Independent Dairies Association, Washington, D.C.; National Office Products Association, Alexandria, Va.; National Paper Trade Association, New York, N.Y.; National Patent Council, Arlington, Va.; National Pest Control Association Vienna, Va.; National Small Business Association, Washington, D.C.; National Tire Dealers and Retreaders Association, Washington, D.C.; Printing Industries of America, Arlington, Va.

ATTACHMENT A

Procurement by civilian executive agencies, fiscal 1978 (in $ million)

.otal Executive Procurement	Total Procurement	Small Business Procurement	Other than Small Business	Minority Business
	28,566	8,446	20,120	580
Exempted Agencies				
DOE	7,522	1,055	6,467	64
DOT	1,131	466	665	68
TVA	5,699	2,570	3,129	5
TOTAL DOE, DOT & TVA	14,352	4,091	10,261	137
Amount not exempt (Line 1 - Line 6)	14,214	4,355	9,859	443

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Attachment B

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Attachment C

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Attachment D

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Attachment E

[illegible]

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Attachment F

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Attachment C

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PROCUREMENT BY CIVILIAN EXECUTIVE AGENCIES FOR THE PERIOD OCTOBER 1, [illegible] SEPTEMBER 30, 1978
(IN THOUSANDS)

Attachment H

[illegible]

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ATTACHMENT I

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

TOTAL	MINORITY BUSINESS ENTERPRISES SUBCONTRACTING TO GOVERNMENT	MINORITY BUSINESS ENTERPRISES SUBCONTRACTING TO LARGE BUSINESS
$ 1,359,877,000	$ 152,204,000	$ 1,207,673,000

Source: Procurement by Civilian Executive Agencies for the Period Oct. 1, 1977 to Sept. 30, 1978 (Prepared by General Services Administration, Office of Finance)

ATTACHMENT J

SMALL BUSINESS SUBCONTRACTING PROGRAM

TOTAL	SMALL BUSINESS SUBCONTRACTING TO GOVERNMENT	SMALL BUSINESS SUBCONTRACTING TO LARGE BUSINESS
$ 1,370,413,000	$ 506,761,000	$ 863,652,000

Source: Procurement by Civilian Executive Agencies for the Period Oct. 1, 1977 to Sept. 30, 1978 (Prepared by General Services Administration, Office of Finance)

ATTACHMENT K

TOTAL PRIME PROCUREMENT

TOTAL	FROM SMALL BUSINESS	FROM OTHER THAN SMALL BUSINESS	FROM MINORITY BUSINESS ENTERPRISES
28,566,252,000	$ 8,446,206,000	$ 20,120,046,000	$ 579,658,000

Source: Procurement by Civilian Executive Agencies for the Period Oct. 1, 1977 to Sept. 30, 1978 (Prepared by General Services Administration, Office of Finance)

ATTACHMENT L

PROCUREMENT IN LABOR SURPLUS AREAS

UNDER PREFERENCE PROCEDURES			UNDER NONPREFERENCE PROCEDURES	
TOTAL LABOR SURPLUS SET ASIDES (SMALL BUSINESS)	TOTAL LABOR SURPLUS SET ASIDES (GENERAL)			
Total	Total	From Small Business	Total	From Small Business
$ 54,115,000	$ 173,457,000	$ 97,876,000	$ 10,758,285,000	$ 1,947,328,000

Source: Procurement by Civilian Executive Agencies for the Period Oct. 1, 1977 to Sept. 30, 1978 (Prepared by General Services Administration, Office of Finance)

ATTACHMENT M

ILLUSTRATIVE LIST OF MANDATORY REGULATIONS
REQUIRED OF FEDERAL PROCUREMENT CONTRACTORS AND SUBCONTRACTORS

Cost Accounting Standards
Audit
Renegotiation
Allowable Cost, Fixed-Fee, and Payment
Negotiated Overhead Rates
Inspection
Standards of Work
Reports of Work
Key Personnel
Foreign Travel
Competition in Subcontracting
Changes to Make-or-Buy Program
Services of Consultants
Notice to the Government of Labor Disputes
Insurance - Liability to Third Persons
Printing
General Services Administration Supply Sources
Government Property
Authorization and Consent
Patent Rights
Rights in Technical Data
Copyright Infringement
Reporting of Royalties
Private Use of Contract Information and Data
Buy American Act Supply and Service Contracts
Clean Air and Water
Required Source for Jewel Bearing
Covenant Against Contingent Fees
Officials Not to Benefit
Utilization of Minority Business Enterprises
Utilization of Small Business Concerns
Minority Business Enterprises Subcontracting Program
Small Business Subcontracting Program
Labor Surplus Area Subcontracting Program
Convict Labor
Disabled Veterans and Veterans of the Vietnam Era
Employment of the Handicapped
Equal Opportunity
Walsh-Healey Public Contracts Act
Contract Work Hours and Safety Standards Act
Overtime Compensation
Preference for U.S. Flag Air Carriers
Use of U.S. Flag Commercial Vessels
Federal Reports Act
Workers Compensation

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ATTACHMENT N

World Trade

Defenders of Smaller US Firms Force Strauss to Amend Negotiating Plans On Procurement Practices Code

By RICHARD LAWRENCE
Journal of Commerce Staff

WASHINGTON — In these days when billions are tossed around like so much loose change (in Washington, anyway) who'd have thought that less than a half million dollars would mean so much to so many?

It happened last week. A small band of congressmen carrying the small business banner forced Trade Representative Strauss to amend his negotiating plans. As part of the government procurement practices code about to emerge from Geneva, the Carter trade team was to open up to foreigners procurement reserved for smaller U.S. companies.

But Democratic congressmen such as New York's John Falce and Joseph Addabbo and Baltimore's Parren Mitchell protested with heat that foreigners would then grab away the small, and especially minority contracts. U.S. trade negotiators are guilty of complicity. Rep. Mitchell scolded Mr. Strauss in inflicting "enormous damage" on minority enterprise.

Mr. Strauss insisted that small businessmen stood to win "substantial gains" at only "infinitesimal risk" from the proposed code. He cited estimates that only about 7 percent of federal business reserved for small business would be opened to foreign competition. In 1978 terms, that would amount to $350 0[illegible]

Opposition Vowed

Still, Rep. Mitchell vowed to "fight hard" against the code and implicitly against the entire Geneva trade package Mr. Strauss hopes to bring Congress in the next month or so. But, the congressman added, "You'll probably win."

He was wrong. A few days later, Mr. Strauss — in his latest move to try to guarantee that Congress approves the Geneva package — relented, and so the business the federal government sets aside for small and minority enterprise will not be touched by foreign hands.

Later, Mr. Strauss was said to have called the small business fuss a "tempest in a teapot," and he was right in strict dollar terms but not in politic terms — if there had been enough small business votes on Capitol Hill to threaten the code, or worse, the whole Geneva trade package.

What about this government procurement code? A lot of numbers are flying about as people try to explain its potential impact. One official estimates it could open an additional $30 to $35 billion in potential exports for U.S. firms; another talks of "upwards of $20 billion." It isn't even certain how much in foreign goods federal agencies procured last year.

At least one thing seems clear — the code is basically a creature of the U.S., which has long protested that other countries virtually exclude outsiders from government contracts. The U.S., however, has been criticized for its "Buy American" policies. But, U.S. officials counter, Washington's procurement rules are not hidden in a bureaucratic cloak. And federal purchases of foreign goods total perhaps as much as $2 billion a year, according to one agency estimate.

Basically, the code pledges nations to open government procurement to foreign suppliers in a nondiscriminatory way through the publication of procurement rules, advertising of bid requests, and by citing technical specifications that don't arbitrarily favor local suppliers.

Hardly all government entities — here, in Europe or in any adhering country — are likely to come under the code, at least at first. The U.S., for instance, may exempt completely the Departments of Energy and Transportation, NASA, TVA, the Army Corps of Engineers, Amtrak, Conrail and the Postal Service.

The code will cover only goods, not services, and not even goods purchases of less than $190,000. Goods "necessary to national security" would be excluded. State and local "Buy American" practices are beyond the code.

Moreover, the Defense Department will keep buying only domestic textiles, clothing, shoes, food, specialty metals, ship and ship components, handtools and stainless steel flatware.

The General Service Administration, the federal procurement agency, will continue to grant U.S. suppliers a 50 percent "Buy American" price differential against foreigners in its flatware and handtool purchases for civilian U.S. agencies.

What, then, will the U.S. offer foreigners? It will waive the 6 and 12 percent price preferences GSA extends to domestic suppliers for such civilian agencies as State Department, the departments of Urban Development and Housing, Education and Welfare — in other words, those now excluded from the code.

Similarly, the Defense Department's 50 percent preference for domestic suppliers will be waived on goods other than national security items and the listed exemptions.

Foreigners Share

How much U.S. procurement will go to foreigners from these moves? Nobody can say. For one thing, negotiations are still going on. Besides, U.S. agencies have not yet assembled all the background data necessary for a good guess. All that can be said now is that foreigners would win the chance to bid on something less than an additional $12 billion a year in federal contracts. How much less is unclear.

(Last year, total federal procurement — goods and services — approximated $78 billion.)

What sales gains U.S. exporters would reap from the code is also nebulous. The European Community (EC) has offered to open procurement to outside suppliers on roughly $10 billion a year in contracts. Japan's offer so far amounts to only $3 to $4 billion — quite inadequate, U.S. officials insist. Smaller concessions are expected from Canada, Switzerland and the Nordic countries.

Say, overall, that foreign nations will let U.S. and other outsiders compete on an extra $20 billion a year in government contracts. That doesn't mean an added $20 billion in U.S. exports. An uncompetitive U.S. might wind up with only a few billion in orders.

The same competitive factors hold true for foreigners seeking more U.S. government business.

from the New York Journal of Commerce 3/29/79

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Senator MOYNIHAN. Mr. Sevin, who is the chairman of Mostek, Inc., on behalf of the Semiconductor Industry Association. Mr. Sevin?

[No response.]

Senator MOYNIHAN. Mr. Sevin is not here, evidently.

[The prepared statement of L. J. Sevin follows:]

STATEMENT OF MR. L. J. SEVIN, CHAIRMAN, MOSTEK CORP., ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

SUMMARY OF PRINCIPAL POINTS

(1) The U.S. semiconductor industry faces a serious threat from Japanese competition. The threat exists because the Japanese have targeted the U.S. semiconductor market and plan to substantially expand their exports of semiconductors.

(2) Japanese manufacturers of semiconductors enjoy a protected home market which enables these companies to engage in two-tier pricing. Also, Japanese companies benefit substantially from government-assisted research and development programs. Furthermore, under the planned Japanese economy, Japanese companies receive capital by borrowing amounts which would not be available in a free market economy. Japanese companies enjoy a debt equity ratio which is many times more favorable than that which is possible for U.S. companies.

(3) The only adequate remedy to protect U.S. industry from unfair foreign competition is the bolstering and vigorous enforcement of U.S. trade laws. Particularly key is a "threat of injury" standard which is administered in such a way as to prevent serious and irreparable harm before it occurs, resulting in diminished profits and loss of U.S. jobs. Increase in market penetration is a key early warning signal of injury for the semiconductor industry. We recognize and appreciate the efforts of Senators on this committee in support of fair international trade laws.

My name is L. J. Sevin. I am Chairman of the Board of Directors and Chief Executive Officer of Mostek Corporation of Carrollton, Texas, which has annual sales in excess of 130 million dollars and employs over 5000 people.

I appear today on behalf of the Semiconductor Industry Association, ("SIA"), a trade association composed of thirty-three U.S. based manufacturers of simiconductors.

In my testimony today I would like to explain briefly the threat which confronts the U.S. semiconductor industry in the form of unfair foreign competition which is often supported by foreign governments which place a high priority on export industries. I would also like to discuss the role that our own trade laws can and should play in breaking this pattern of unfair competition, opening up foreign markets to U.S. products on a fair and competitive basis, and preventing injury to U.S. industry by providing safeguards which take effect before U.S. businesses have been irreparably injured by low profit margins and high unemployment.

INTRODUCTION

I would like to emphasize that the principles of the MTN have our full philosophical support and SIA recommends that the bill be voted upon favorable by the Congress. However, we anticipate that the lower tariffs under the MTN and the new dumping and counterveiling duty codes will not be determinative of trade patterns in semiconductors. The MTN does not address many particular problems of high technology industries. For example, product development—the key to our industry—is a direct function of research and development expenditures and the ability to fund such expenditures from our current profits. New products, in turn, finance the next phase of R. & D.

Let us examine some of the results of the MTN negotiations as they relate to semiconductors:

In the area of tariffs, the electronics industrial sector advisory group to the Special Representative for Trade Negotiations recommended in 1975 that the tariffs in semicondictors be reduced to zero.

In the course of the negotiations, the Japanese conceded a major reduction in semiconductor tariffs from an applied rate of.12 percent to 4.2 percent, which the U.S. would match by reducing tariffs from 6 percent to 4.2 percent. But in the overall negotiating trade offs, our negotiators were obliged to agree to staging the

reduction over a period of eight years.[1] In a dynamic, high-growth industry such as integrated circuits, where volume is increasing at 23 percent per year. The eight year staging is an eternity and of no practical benefit with respect to our pressing trade problems with Japan.

Also, the U.S. negotiators engaged the Europeans in discussions on trimming the 17 percent tariff on semiconductors to parity with the United States at the current 6 percent level. Although the Europeans expressed a certain flexibility in this issue in the early stages of negotiations, the ultimate result was a "stonewalling" at 17 percent, one of the highest rates on any commodity entering the European Economic Community.

In nontariff barriers, the results were similarly disappointing. Our advisory group recommended the removal of the onerous country of origin requirements in the EEC which specified application of external rates to shipments of computers and other electronic equipment between member nations within Europe if foreign semiconductor content contributed more than 3 percent of total value. The negotiations resulted in conditional removal to this barrier, but at the option of the importing nation. As a result, we predict we will gain very little.

As to nontariff barriers in Japan, our negotiators have conducted a well publicized attempt to cause Japan to place Government-owned Nippon Telegraph and Telephone (NTT) under the MTN Government Procurement Code, thus removing the current barriers to foreign procurement by NTT. Although the Japanese made concessions in the eve of Prime Minister Ohira's recent visit to Washington, they do not appear to apply to the procurement of semiconductor components and NTT continues to draw most of its requirements from the three Japanese firms which it collaborates in advanced research.

Also, U.S. exporters to Japan must still cope with import of "uplifts" or surcharges of up to 15 percent above customs invoice value. Also they frequently experience difficulty in quoting on Japanese orders because of the refusal of Japanese firms to disclose specifications, and thereby may fail to qualify on the basis of design ambiguity rather than performance. Also, semiconductor patents wholly or partially owned by the Japanese Government are not permitted to be licensed to foreign manufacturers so that subsequent procurement is limited to Japanese companies.

Not adequately addressed by the MTN codes is the targeting by the Japanese of the U.S. semiconductor market and the threat that such targeting practices will injure our industry. Targeting is specifically intended to expand Japanese semiconductor production and exports. The massive government subsidies are designed specifically to favor Japanese companies by increasing their share of foreign trade in semiconductors. The Japanese R. & D. subsidy was part of a "target industry" program designed to capture a large share of the U.S. market. The Japanese program has already succeeded by capturing approximately 35 percent of the U.S. market in only three years for an important product called the "16 thousand bit random access memory" or "16K RAM." The 16K RAM represents the very heart of present product technology that serves as the foundation of the next generation of integrated circuit products. I might add that my own company, Mostek, is currently the world leader in the production of the 16K RAM.

Thus, the basic problems facing our industry are lack of access to foreign markets, the substantial subsidization of R. & D. by foreign governments, particularly the Japanese, and business practices condoned abroad which would be unlawful in the United States. Targeting of our semiconductor market and our restricted access to foreign markets must be addressed as vital problems of international trade policy.

As explained later in my testimony, we believe that the single most important contribution which the Congress can make at this time to prevent irreparable injury from unfair foreign competition would be to adopt refined standards for determining threat of futher injury on the appearance of specific early warning signals.

BACKGROUND

Semiconductors, which contain one or more electronic functions on a silicon chip aproximately one-fourth inch square, replaced vacuum tubes 25 years ago as the primary medium for amplifying or switching electronic signals. Semiconductor technology provided the fundamental basis for the end equipment market, estimated at $100 billion in 1979, which is forecast to rise to $200 billion by 1985. The end equipment market includes computers and related equipment, telecommunications

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[1] Many of our mature industries, such as textiles and chemicals are supporting staged U.S. tariff cuts, which parallel the Japanese tariff reductions. Such staged cuts may be appropriate for these industries, but staged tariff cuts are not appropriate for a high technology industry such as semiconductors.

equipment, industrial products and consumer products. Defense systems throughout the world are increasingly reliant upon semiconductors.

The U.S. semiconductor industry has been characterized by the innovative and continuous development of semiconductor components of ever increasing complexity. These innovations evolved from single function devices such as transistors and diodes to integrated circuits which contain the equivalent of 10 to 15,000 transistors per chip, to large scale integrated circuits which contain on the same small chips 30,000 equivalent transistors. Current research points to a future complexity level of up to 1,000,000 transistors per chip in the "Very Large Scale Integration" ("VLSI") projected for the 1980's and 1990's. Ours is truly a dynamic industry and this innovation results in a short life for each generation of products.

Export problems of U.S. semiconductor industry

A. Restricted market access in Europe.— Even while maintaining a very high tariff rate of 17 percent on imports of semiconductors into the European Economic Community, the Europeans have systematically taken a series of non-tariff actions which impede imports even further. For example, European non-tariff barriers include pressure on users to purchase from domestically owned companies and discriminatory rules of origin under which tariffs can be imposed if foreign semiconductor content in equipment exceeds a specified level. The policies are clear in most countries that domestic investment is required. There have also been massive grants—perhaps in an aggregate amount of as much as $900 million—and government supported loans by various European governments to their domestic semiconductor enterprises, to develop consumer and industrial products.

The economic effect of the European higher tariff and NTB's is that European consumers of computers and telecommunications equipment have been obligated to pay incrementally higher prices. In terms of the United States national interests, the tariffs and NTB's within the European Economic Community lead to a disproportionate transfer of technology and skilled employment from the U.S. to Western Europe.

B. Denial of market access in Japan.— It is fair, I believe, to characterize the Japanese semiconductor market as having three salient characteristics:

(1) The Japanese have purchased our technology and otherwise acquired it through our universities, technical conferences and equipment suppliers;

(2) The Japanese have purchased our more sophisticated integrated circuit products, but only until they can produce the same product themselves, whereupon they effectively close their market; and

(3) At critical times, the Japanese, with rare exceptions, have effectively prohibited both construction of foreign-owned plants in Japan and foreign investment in existing Japanese semiconductor facilities.

These characteristics considered against the background of the export oriented Japanese semiconductor industry, set the stage for considerable friction between our respective industries.

There are a number of different approaches to business between the Japanese and us which should be taken into account in considering the semiconductor industry:

Japan's government directs and supports certain industries targeted for growth, and several years ago "targeted" the integrated circuit, telecommunications and computer industries;

Japanese enterprises are highly leveraged through loans by the Japanese banks which are closely controlled by the government and are frequently related to manufacturing enterprises;

Japanese semiconductor enterprises are not dependent on the equity market to finance growth and hence do not have to achieve a high rate of return in order to attract capital;

The quasi-national bank credit system permits the enterprises to finance long-run deficits necessary to penetrate foreign markets;

Japan's home market is highly protected by a variety of barriers, "Buy Japan" attitudes and restrictive business practices;

Japan frequently has two-tier pricing in target industries—a high price in the protected home market and a low foreign price designed to capture market share;

As part of its targeting of the electronics industry, Japan's government subsidized a massive research effort aimed directly at a commercial objective.

These policies have been particularly effective in accelerating the development of the Japanese semiconductor industry. New U.S. high technology semiconductor devices have been designed into Japanese equipment, only to be displaced in large part by Japanese-made devices which duplicate the U.S. product. Virtually every type of semiconductor product in use today in Japan—including diodes, transistors, bipolar IC's and MOS circuits—was initially imported from United States companies.

Imports from Japan

In Japan, domestic trade in targeted manufactured goods is the residual or an extension of export activities—rather than the other way around. This particularly true in the semiconductor industry. Japan's acquired technological base, its target industry approach and its subsidized R. & D. are all aimed at penetrating export markets for semiconductors—principally the United States—in the same manner as it penetrated export markets for steel and consumer electronic products.

A. Japan's technology base.— Japan's position in the integrated circuit industry is based on technology acquired principally in the United States. Basically, Japan purchased our R. & D. at bargain basement prices and has concentrated its efforts on commercial development of our ideas in areas where high volume production can be achieved—what I would call our "bread and butter" products. But even this development work is expensive and the Government has assisted the effort.

B. Government-assisted R. & D. for integrated circuits.—Using this substantial acquired technology as a base, the government, through the Ministry of International Trade and Industry ("MITI"), channeled research funds toward development of integrated circuits. The most significant of the research projects is the Very Large Scale Integration or "VLSI" study which MITI funded together with contributions from the leading Japanese electronics firms who would share the benefits of the research.

Let us examine for a moment the VLSI program. According to press reports,[2] it involves matching government funds to five large Japanese electronic companies: Fujitsu, Hatachi, Mitsubishi, NEC, and Toshiba.

The total cost announced publicly is $360 million, of which the government assisted portion is approximately $250 million. A key part of the program is MITI's own Electrotechnical Laboratory, the operating costs of which may not be a part of the budget figures I just mentioned. This is simply a form of government assistance to Japanese industry which permits the Japanese companies to sell their goods at lower margins.

C. The target industry approach.—The entire Japanese electronics industry is largely geared toward export markets. The Japanese have manufacturing capacity which far exceeds the needs of the domestic economy. They staff their factories to achieve a high percentage capacity utilization and consider their employees lifetime commitments of the enterprise. These fixed costs (indeed, all overhead costs) are covered by artificially high domestic prices in the protected home market.

Let me remind you of the impact which this system had on our television industry. While American consumers were paying $350 for a Japanese television, the Japanese consumers were paying $700 for an equivalent unit. U.S. television manufacturers are effectively denied access to the Japanese market, resulting in a protected, non-competitive market which generates substantial profits. The Japanese then set U.S. prices as low as necessary to gain market penetration, on the premise that export sales need only cover incremental variable costs. Our television industry was shattered and its profitability has never recovered from the flood of imports.

During an economic downturn, the two-tier pricing structure and the protected home market allow the Japanese—motivated by their heavy fixed obligations and guaranteed employment—to flood the export markets with products far below the U.S. market price, This is exactly what happened in television and steel during the downturn in 1974 and 1975—when world economies softened, the Japanese plants kept rolling with excess production sold abroad at whatever low price was necessary. If this pattern is repeated in the semiconductor market during a future recessionary period, the U.S. market would be flooded with underpriced Japanese integrated circuit and LSI products. American companies, having limited access to the Japanese market and faced with falling prices and bookings in the U.S. market and with rising inventories—and lacking government financial support—would find that their investment capital has been drained away, thereby prohibiting expenditures on long-range R&D which are so essential for survival of a high technology growth industry.

D. The role of debt in Japanese capital formation.—U.S. companies currently have about double the return on equity of Japanese competitors. Such levels of earnings are necessary to finance new R&D, to pay for the latest sophisticated equipment, and to provide for increased capacity to manufacture new products. However, the Japanese make up for this difference in efficiency by borrowing two, twenty, even forty or more times as much debt per dollar of equity as would be available in the free capital markets. This aspect of their planned economy gives them a distinctive competitive edge.

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[2] See "The Gathering Wave of Japanese Technology," Electronics, June 9, 1977, p. 99.

U.S. companies cannot counter by borrowing equally large amounts because of our free market economy. In general, the U.S. companies raise cash in the open, competitive markets in the United States. Capital formation, the key to growth, depends in our country on our free capital markets which allocate investment funds among competing applicants. American bankers make loans to companies that are on their own to live or die in the marketplace. Once bankrupt, U.S. companies cannot expect the U.S. Government to bail them out by instructing banks not to foreclose on loans.

In the Japanese system, that is not so. Large companies that get into financial difficulty have an assured source of substantial financial help from the Japanese government. Moreover, business recessions in the protected Japanese home market are virtually non-existent compared with those in America. America to a large extent absorbs Japanese unemployment.

That is why American bankers will lend only a fraction of the debt to U.S. semiconductor companies that Japanese bankers supply to Japanese companies. In fact, if you ask U.S. bankers with branches in Japan how they can justify lending as much debt to Japanese companies which have a very thin equity base, they all eventually get around to the concession that the risk in such loans is not a risk in an individual company, rather it is a loan whose risk is a country risk: Japan. Such actual or implied governmental guarantees make a substantial difference.

There is a further concern that U.S. high technology companies have: lower margins on sales. For example, a foreign company can try to buy a share of the market by reducing prices sharply. Undercutting U.S. prices in the large, fast-growing U.S. market for semiconductors is such an example. Such a threat seriously jeopardizes capital formation processes in the United States. For instance, if American companies have to meet Japanese prices and thus cut earning margins to Japanese levels, then the return to shareholders will be cut substantially and perhaps eliminated. Nippon Electric Company, a large Japanese semiconductor producer, announced profits for fiscal 1979 which constitute a return of 1.2 percent on sales.[3] American companies could not survive for long with such a low return. Lower earnings from reduced prices are not a problem for the Japanese companies, however, as they have a pipeline to the banks and do not raise capital in competitive markets.

If foreign competitors are allowed to engage in economically unrealistic price-cutting tactics, as happened in the television industry, it could be catastrophic for the U.S. semiconductor industry: no more new capital, slower growth, less earnings, lower motivation for employees.

The Japanese semiconductor spokesmen have expressed concern about the "world-wide tendency toward protectionism."This generalization simply fails to distinguish between an action and a reaction by the domestic industries in markets invaded by the Japanese. What they are seeing is a free market reaction to their grossly unfair international trade practices.

In contrast, they acted initially in the most fundamental protectionist manner by a series of formal and informal trade barriers unprecedented for a developed economy of the 1970's

Finally, we wish to make three additional points: (i) The Seciconductor industry Association feels that the United States in future trade negotiations should listen to the advice of professor Ezra Vogel: "instead of spending our political captial on the defense of small, dying industries, we should defend the large, strong industries that can be effective in the future."[4]

SIA believes, in addition, that the U.S. should make an extra effort to defend industries where the U.S. has a comparative advantage such as semiconductors, computers and telecommunications and which can substantially contribute to a favorable balance of trade.

(2) The enormity of foreign state intervention or semiconductor nationalism" totaling $1.7 billion, is startling to American industry analysts. Even South Korea, a recently emerging developed country, has joined the ranks of the microelectric technologists (aided and abetted by generous World Bank loans.)

To quote Sidney Harman: "Both the Europeans and Japanese long ago determined that reliance on the workings of impersonal, so-called free market was not adequate to produce economic growth and economic security—at a socially acceptable pace* * *. These nations identify high-growth industries* * * capital support is provided by intervention in the credit markets* * *. Firms in the industry are

[3] New York Times, Saturday, May 26, 1979.

[4] "The Miracle of Japan: How the Post-War Was Won", Ezra Vogel, Chairman, Council of East Asian Studies at Harvard University.

encouraged to merge (as in the computer example) in order to achieve economies of scale in marketing, research and development, and production.'[5]

In short, the import of State internention in high technology industries abroad compared to the United States (free enterprises approach) has not been properly assessed. As was noted in a recent Harvard Business Review article: "U.S. policy makers should consider treating imports from state-owned companies on the same basis as we have those from centrally controlled economics. Trade with any state-owned enterprise does pose essentially the same problems in policy as does trade with the communist nations. The policies of state-owned companies outside the Iron Curtain are remarkably similar to those of most Socialist Countries, which specifically disavow profit as a legitimate goal for companies, and which not even explicitly put prices on their factors or production. State-owned enterprises everywhere are so regularly used as instruments of national economics and political policy that they appear to be a significantly different species from the private, profit-maximizing company."[6]

(3.) SIA believes that the Congress should encourage the Administration under the continuing authority provisions of the NTM to conduct post Geneva bilateral negotiations on behalf of high technology industries to obtain substantially equivalent access to foreign markets.

We believe the Administration should move aggressively to remove the tariff imbalance in semiconductors—Western Europe, 17 percent; Japan, 12 percent; and U.S., 6 percent—through obtaining a reduction in the European rate to at least 10 percent, and implementation of the previously agreed reduction of rates by Japan and the United States to 4.2 percent with a minimum staging period. Also, the Administration should negotiate the reduction of NTB's in semiconductors: in Western Europe, the rules of origin and in Japan, customs uplift, specification non-disclosure and non-access to NTT.

In sum, we wholeheartedly agree with Senator Bentsen, who summarized the issue so eloquently in a speech on the floor of the Senate on May 3, 1979, which has become the Magna Carta for U.S. high technology industry: "Trade between nations is becoming an increasingly carnivorous activity, and the traditional free trader has all the advantages of an antelope in a world of lions. We can no longer tolerate situations in which foreign competitors utilize unfair trade practices to rout and destroy a domestic industry, such as television, and remain immune from punishment until they have achieved their objective."

Threat of injury

The legislation before this Committee specifies that there is to be relief when there is a showing that a foreign government is providing a subsidy for exports, or that there has been dumping of foreign merchandize and U.S. industry is materially injured or "is threatened with material injury."

We believe that this standard of threat of material injury is particularly important to high technology industries. In these industries the life span of a particular product is very short because scientific and engineering developments are constantly improving the state of the art.

We are particularly concerned because of our awareness that the ITC has been reluctant in the past to use threat of injury or likelihood of injury as a basis for providing relief. A recent study by the Comptroller General of 134 dumping cases filed from 1972 to 1977 shows that there were only seven findings of "likelihood of injury."[7]

We believe that the "threat of injury" standard is intended to permit import relief under the trade laws before actual injury occurs and should be interpreted in a manner to prevent actual injury. U.S. business should not have to wait until profits have been dramatically reduced or eliminated, until plants have closed, until there is high unemployment and under-utilized capacity, or until capital formation for the industry has become difficult or imposible, before the industry is entitled to relief from unfair forms of foreign competition.

Indicia of threat of injury may vary from industry to industry. For our own high technology industry, the critical early warning sign of future injury is a rapid surge in market penetration by imports. The ITC should place emphasis on the rate of increase of market penetration, particularly if market penetration is achieved by prices which are below U.S. price levels, but which are not maintained in the home market.

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[5] "For an America, Inc." by Sidney Harman, Newsweek, March 12, 1979.

[6] "State-owned Business Abroad", Kennth D. Walters and R. Joseph Monsen, Harvard Business Review, pp. 160-170, March—April 1979.

[7] GAO Report, "U.S. Administration of the Antidumping Act of 1921, "Appendix I, pp. 70-75, (March 15, 1979).

The Special Trade Representative, in its Statement of Administrative Action, and the House Committee on Ways and Means, in its Report on the MTN legislation, have both recognized these points.

In conclusion, it must be remembered that the U.S. semiconductor industry faces a serious and prolonged effort to undercut our domestic market. The Japanese provide their electronic industry with the kind of support which only a planned national economy can make available to a preferred export-oriented industry.

This problem can only be met through strengthening and vigorous enforcement of the U.S. laws which require fair competition in international trade and which outlaw such practices as two-tier pricing. We are aware of the efforts of this committee to try and ensure that the U.S. trade laws are adequately enforced. We would like to express our gratitude for these efforts.

Senator MOYNIHAN. And now we have a panel of New Yorkers.

We are pleased to see you, Mr. Barber. We didn't know that he would come down today. Only a man of courage and initiative would have made the trip today. Thank you all for coming.

Actually, as you know, there are important aspects of the Multinational Trade Agreement that we are just entering that deal with the dairy industry and deal with what is your expertise. I was frankly a little surprised that people have appeared representing the dairy industry, and they didn't seem to be interested in New York, although certainly they say they represent the milk producers of America. I took the liberty of asking why there were no New Yorkers, and they said it is because there aren't any members in New York.

I said, well, that is a perfectly good answer for your own purposes, but it is not for the committee's purposes. New York is the third largest dairy producer in the Nation, and California being second, Wisconsin first, and I think it is time that New York is heard from at this hearing, and I want to thank all of you. I know that all of you have come down on 1 day's notice, but we won't be able to proceed without hearing from you today.

We appreciate your coming down. I won't detain you in your remarks by continuing my own.

Let me just welcome my neighbors from Oswego County.

Commissioner Barber, why don't you commence, sir.

STATEMENTS OF JAY ROGER BARBER, NEW YORK STATE COMMISSIONER OF AGRICULTURE; FRANCIS ROBBINS, NEW YORK FARM BUREAU; CLYDE RUTHERFORD, CHAIRMAN OF THE DAIRYLEA COOPERATIVE OF NEW YORK; AND ARDEN TEWKSBURY, REPRESENTING THE EASTERN DAIRY COOPERATIVE OF NEW YORK

Mr. BARBER. I am sorry that I was delayed in La Guardia Field because of Skylab for about 3 hours, even though I left home at 7 this morning. I just arrived about one-half hour ago.

Senator MOYNIHAN. If you left at 7, it is an easy day. I understand you have written testimony which we will get next week because there was no chance to get it reproduced.

Mr. BARBER. My remarks are informal. I have talked with Dr. Story of Cornell who is a dairy economist and highly recognized in the Northeast and a leading dairy economist. He has agreed to put together some written testimony for this committee. That is in addition to the people in the department of agriculture markets who have had over 30 years' experience working with Federal Order No. 2 because, as you know, it is a joint State-Federal order.

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Senator MOYNIHAN. It is indeed.

Mr. BARBER. In New York State agriculture is the single largest industry, generating $8.1 million on farm income. Out of that, over $1 billion is the value of the milk on the farm.

So we have a major part of the agriculture industry greatly concerned in the trade negotiations. If we look back to 1973 and 1974, recognizing the tremendous amount of importing coming from the European Common Market, because of the proximity of New York City to that area, we were impacted in New York more adversely than probably any other milkshed in the Nation.

So that our dairy farmers and dairy people are concerned about subsidized foreign imports of dairy products. We have told the trade negotiations and we feel comfortable with the quota system which appears to put all of the cheese under imports.

At least it is predominantly so. As I understand in 1977 and 1978 we had as much cheese coming into this country not covered by quotas as what was covered by quotas.

Senator MOYNIHAN. I think that that is about the way it was.

Mr. BARBER. So by having that understood quota, that is a plus in these negotiations. However, the concern not only by the dairy industry but every dairy farmer in New York State is that he will be expected to not compete with the European Common Market subsidized government products coming into this country which we cannot compete with.

So, therefore, we think the U.S. Department of Agriculture, particularly their Dairy Economic Division and Secretary Bergland should have the responsibility, because they have the staff to get when those imports are being subsidized to the point where they are coming in below the cost of production which are unfair trade advantages to that country and certainly unfair to our dairy industry.

New York State is particularly concerned about cheese because the stability of the dairy industry in New York State in the last 10 years has been developed around an increasing cheese industry, one that has attracted national companies.

Kraft has built a major cheese manufacturing facility at Lawellville. Dean Foods of Chicago, a major food company, has taken over Macoham cheese in Fort Aday 4 years ago.

I understand another major company has just bought out the Mazarella Cheese Co., a company out of Chicago, so we are probably one of the best areas in the country for the production of cheese.

As you know, in New York State, cheddar cheese is famous the world over.

Senator MOYNIHAN. May I just ask you a question? Where does Philadelphia Cream Cheese come from?

Mr. BARBER. Well, believe it or not, a lot of it is produced in Philadelphia and in New York.

Senator MOYNIHAN. You are wrong. It is a common mistake. Philadelphia Cream Cheese comes from South Eddington, in Asuega County and cream cheese is primarily made in that area.

It is made in Chicago now, but when the Kraft Co. bought it, it was remembered that it came from New York. People said that it

must have come from Philadelphia, but it came from New York up in Watertown, the dairy country.

We persuaded the company in Chicago to open their facility. And they found they bought the recipe from a fellow making it near Cooperstown, N.Y.

It is a little argument that we have about that.

Mr. BARBER. I will remember that the next time. So it appears that by having a quota system more complete and more identified with what has actually happened, that this will give us additional protection for the cheese industry in New York State.

Our major concern is that the USDA and their Dairy Economic Division be given some responsibility, or the responsibility to determine when those foreign imports are subsidized to the point where they would cause injury to the U.S. dairy industry. I understand that is a problem and one that the dairy industry, because it is a combination of many cooperatives, would be very difficult to determine with their own staff and people available.

Senator MOYNIHAN. I hear you very clearly. You may have heard my statements to Professor Jackson on this whole question of implementations and the codes and the panels in particular on subsidies and countervailing duties.

The EEC buys milk at about $12.50 per hundredweight. That is about how it translates. Our price is about $10.50 now, isn't it or thereabouts?

Mr. BARBER. On the average, yes.

Senator MOYNIHAN. And so we are well below, and if they are going to dump that product, it would come in in the form of fine Italian cheeses or other cheeses which would come in our State.

But it is going to come in as grinders or as produce that is created by the economic policies of Government which subsidizes things. And your view is that the Dairy Economic Division of USDA should be the one on hand to spot any subsidy if it is involved?

Mr. BARBER. And take action that is necessary to protect the U.S. dairy industry.

Senator MOYNIHAN. Mr. Cassidy, I know that Senator Nelson and I would like to deal with this and I think we should have something in our report specifically on this. There is no one area in our relationship with Europe where the subsidy is so conspicuous as in their agricultural policy. The result is huge surpluses and they have to make an effort to get rid of this. They are a pure loss and if they can sell them for half the price, they can cut their losses in half.

I think we should be very careful about that. I could not agree more.

It depends on how we organize this Government to make this program work. The fact that we have an agreement does not mean it will be complied with. We have to find a body of young attorneys with fire in their bellies who will attack this and prosecute when the agreements are not kept. We have been depending a great deal on tariffs. These are unfair trade practices and that takes prosecution and it does not regulate itself.

You can fool around with classification but basically you can tell it is 100 pounds of cheese when you see it and you put a tariff on

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it. But when you see it, it does not say that this cheese is coming in with a 50 percent subsidy. There is no sign that says that.

Mr. BARBER. When the New York milkshed and the New York metropolitan area is used as a dumping ground for cheese that is brought in below the cost of production, then we need some protection.

Senator MOYNIHAN. You do, certainly, in my view. We will hold there for a moment. Mr. Robbins, do you have something to add?

Mr. ROBBINS. The New York Farm Bureau has kept very close watch over the negotiations. We represent about 20,500 farmers, of which about 16,000 are dairy men. We keep close watch because not only the importance of the dairy industry to our economy but because of our close proximity to one of the major ports in New York City. And the ease of bringing in imports that may be subsidized as the commissioner has talked about, and unfair disadvantage to our industry.

It was a surprise to us when the packet was delivered to Congress that the cheese quota that has been established about 32 million pounds less than was authorized under the trade pact before it went to Congress. By our calculations, the effect of an increased import was about 2½ ounces per person in the United States.

In reducing it further from 67 million pounds to 52 million pounds makes it almost insignificant. More important than the level of the quota actually is puttling virtually all of the cheese under quota under the trade pact and the only cheeses that would not be are very specialized soft goat and milk cheeses and these kinds of things which is a small part of the market.

So we look at the trade pact and the possibility of being of great benefit in the long run to the dairy industry because of the amount of products that are put under quota.

We fully realize the importance of international trade and of agricultural products in international trade and its effect on the balance of trade deficit in the United States. The balance of trade improvement is of great importance to the business climate of agriculture in not only New York but in the United States. Therefore it would be of benefit to us. That is by having a better balance of trade and just by the general economic climate in the United States.

So we have kept very close watch of trade talks and we are quite pleased at many of the provisions. But we want to make ourselves clear as the commissioner is saying, that we will not stand or tolerate the importation of subsidized cheeses into the United States at a disadvantage to our own producers. We contend, and we can prove we are the most efficient producers in the world, but we cannot compete or even begin to compete against the treasuries of the European countries.

Senator MOYNIHAN. That is precisely what the great thrust of these agreements is, Mr. Robbins, that we reach a point where tariffs as such were not a problem in trade. They were artificial barriers to entry and artificial subsidies for export. So that company was exporting our employment.

I wish the United States would be as sensitive to rural areas as the European communities are. The European community is obvi-

ously just keeping too many farmers on marginal farms. It is their business. But I do not want to see them driving our people out of work, and not just out of work. When you drive a farmer off the land, you change his whole life.

We think this is a good enough agreement if it is kept. That is really what you have heard me saying in this committee for the last year.

Mr. ROBBINS. We are very glad to hear you naturally state that you wish to follow the comments of commissioner Barber and the USDA not only have the ability and the authority but the complete authority to carry on the investigation of the proof of when injury does occur.

I agree with the Commissioner that probably no one organization, or no one cooperative or proprietary handler can begin to have the facilities and the people to determine that. And I think it is the right or responsibility of USDA.

Senator MOYNIHAN. This comes as a question here. The President is bringing to us the reorganization plan on July 15. I think I am in error on the date. The President was to have before us yesterday a reorganization plan to deal with the question of just how we are going to handle trade in the future. We have not gotten it and we know where he is. He is up at Camp David and we will be patient, but we are not so patient that we will not want the answers.

Mr. RUTHERFORD. It is a pleasure to be here and certainly on behalf of the dairy farmers who I represent, the Dairy League, it has approximately 5,500 dairy farmers of which 3,300 are New York dairy farmers.

The Dairy League is an organization with 97 million dollars' worth of assets which are owned by these dairy farmers, invested in the dairy business. We operate a cheddar cheese plant in Adams, N.Y., which produces 12 million pounds of New York State cheddar cheese.

Senator MOYNIHAN. Is that up in Watertown?

Mr. RUTHERFORD. Yes, above Watertown, and we have on the drawing board an investment of over $12 million in a new cheddar cheese operation which will be located in New York State which will have the capacity to produce 25 million pounds of cheddar cheese.

Senator MOYNIHAN. I have a farm in Pinders Corners, N.Y.

Mr. RUTHERFORD. I know your manufacturer, Cy Schumaker, and so I certainly would like to have it there. But we are looking to centralize it in the State because we feel that it is needed in the Northeast because the dairy industry in the United States has that problem of competing against some of the foreign businesses.

As Francis said, and Roger alluded to it, the dairy products that are being shipped into the United States are heavily subsidized. And we must compete not only against these farmers as farmers but against the Government which is subsidizing these people.

As an organization, we realize the trade bill is something that is needed because certainly if the other residents of the United States do not have the jobs to earn a living, they are not going to be buying our dairy products. Our major concern is protection from heavily subsidized products being put into the market to compete against us.

I would concur with Francis and Roger that we would like to have the USDA have the authority and a definite responsibility to see to it that we are competing on an equal basis.

Senator MOYNIHAN. I would have to say that the President is going to have to devise a system that will deal not just with dairy products but the whole range of trade. It clearly will be most useful if it places responsibility where the competence now exists rather than trying to reproduce them and have a Department of Trade, but a little Division of Dairy Economics. That is probably what he is going to end up doing. But we have a system which works in the Department of Agriculture and they have some experience.

Certainly it is my disposition.

Mr. RUTHERFORD. We feel, as an organization, heavily involved in the marketplace and marketing of products. We do approximately $400 million worth of business and this is all directly from the farmer to the consumer through a company owned by dairy farmers.

We feel it would be an insurmountable job for us to try to keep track of it as a businessman.

Senator MOYNIHAN. You would not know what is going on in Belgium? That is what the Government is for and it has to do it. That, we agree very much on.

Mr. Tewksbury, you are next.

Mr. TEWKSBURY. We appreciate the chance to be here and while my cooperative is based in Syracuse, N.Y., and I am president of it, I am from the State of Pennsylvania.

Pennsylvania ranks only a little bit behind New York State in the value of milk. I think the milk produced in Pennsylvania will command a value of about $1 billion on the farm level.

Senator MOYNIHAN. Almost the same as New York?

Mr. TEWKSBURY. We are a little behind New York. Also, our cheese in South Evans was probably suppled by milk producer members which makes us feel good.

But we in eastern Pennsylvania do realize this trade agreement has been controversial in some areas and our area pertains particularly to agriculture and particularly to the dairy segment of it.

We recall what happened to the dairy farmers back in the midseventies.

Senator MOYNIHAN. In 1974, wasn't it?

Mr. TEWKSBURY. When imports came into this country and destroyed our prices which we had established by that time. We have seen the present administration, at that time, urge grain farmers to produce more grain to sell across the sea to other countries. And we saw grain prices go up for farmers and for a couple of months we had a period of time when 100 pounds of milk was not sufficient to buy 100 pounds of grain.

I can tell you that put a lot of dairy farmers out of business And it put many other farmers on the threshold of being out of business. In no way can the Government of this country allow something like this to ever come close to happening again.

So we are concerned about the control of imports coming into this country. Furthermore, we are concerned about whether the present administration is going to encourage much more grain production to possibly export it across to other countries.

If this does happen, is this going to force the prices up and put dairy farmers in the same predicament they were in about 4 or 5 years ago. We should give attention to this.

We are also concerned if we are going to expand greater grain production, are we also going to put a greater grain on our already large problem of energy in this country? Some of our energy problems were created because of our demand on agriculture to export back at that period of time. So we are concerned about this.

As we look at it, we have two major concerns. One is the protection on the imports coming in. We are also in the process of building two Mazarella cheese businesses that you probably are aware of, at a cost of about $17 million which is going to produce about 45 million pounds of Mazarella cheese per year from milk coming from the States of Pennsylvania and New York.

Senator MOYNIHAN. Where are you going to build them?

Mr. TEWKSBURY. At Horsehead, N.Y., and Waverly, N.Y. Both plants are in production right now. Horsehead is in full production and Waverly about half in production and waiting for expansion programs this fall.

I think it should be very clear that the burden of taking care of the so-called surplus milk or extra milk around in certain months of the year falls back on the cooperatives like the ones represented here today, as well as other cooperatives.

We also think that for whatever reason, the American dairy farmers are producing milk just about in line with the demand in this country, much more so than other countries that are producing milk. We do not want to be penalized because we are producing milk pretty much in line with demand because we do not want to get hurt because other products come in.

There seem to be conflicting analyses as to what damage this trade agreement can do to dairy farmers. I would certainly prevail upon this committee to position themselves so that they really do know and can report back as to what that damage could be to dairy farmers.

There is too much variation in reports that we are getting as to what this damage could be on our blend prices. So, I guess I am asking you questions on a couple of these things. I think we should give it a lot of concern because there are enough reasons now for dairy farmers to go out of business and they do not need any more reasons.

Senator MOYNIHAN. I think it is the case, Mr. Tewksbury, that what the Commissioner said the first time is that under the existing arrangement we are importing twice as much cheese as the quotas provide for, and the new agreement will put 85 percent of imports under the quota.

We have to control imports. If we have the subsidy provisions and they are looked after, for the first time we have an active agreement by all of the signatories that they will not subsidize exports or that if they do they understand that they will be subject to retaliation.

We have had in our law, in our statutes, provisions which give us the right to do it, but it has not been enforced and there has been no agreement in the trading world that this is the way we are

going to behave. The issue turns on compliance which is what Mr. Robbins has said.

Mr. TEWKSBURY. I would hope that these controls and this supervision can act fast enough before these imports come in and before the prices get destroyed for a period of time because once they go down it takes a lot to get them back up again. We saw that happen 4 or 5 years ago.

Senator MOYNIHAN. You make perfect sense to me. On the other hand, on the question of feed grain prices, this Senator has no thoughts. We produce our share of feed grain.

Mr. BARBER. We are producing a larger share of feed grain in comparison to our consumption than we have for a long time.

Senator MOYNIHAN. I heard a figure which did not surprise me a while ago, that there are 50 counties in the State of New York which grow wheat for sale. I do not know how much comes from Essex County or the Bronx.

Well, gentlemen, we thank you very much. I would like to say if I can that I think this may be the first time in some years that you have appeared before this Finance Committee. As far as my records are concerned, you have never appeared while I was on the committee. I am the first New Yorker to serve on the Finance Committee since Calvin Coolidge.

Mr. BARBER. I am sure that that is the reason we had this opportunity to be here.

Senator MOYNIHAN. I say this to Mr. Barber: I am the first New York Democrat in this century. My predecessor was from Utica, the man who nominated Samuel J. Tilden for the Presidency. So, it has been a century since there has been a Democrat.

In the future we want to ask all of you to come and you will all be welcome, but we want some of you to come so that the voice of New York is heard in these matters, and I take that very seriously.

There is one remaining witness and that is Mr. Richard Roberts, the president of the National Foreign Trade Council. Mr. Roberts, your plane was delayed, I understand. The next time you have doubts about the forecasting of the U.S. Government, remember that we grounded all of the planes in La Guardia when the Skylab was disintegrating in the Indian Ocean.

We welcome you, sir, and will you go ahead with your statement? If you would like, we will put your statement in the record and if you would like to describe it in your own language you may do so.

STATEMENT OF RICHARD W. ROBERTS, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL

Mr. ROBERTS. I request that our statement be included in the record, which was submitted a few days ago to the committee.

I believe I am the last witness and I will very briefly summarize my statement.

The National Foreign Trade Council strongly supports the Trade Agreements Act of 1979. The council's membership accounts for about half of the U.S. manufacturing exports. We believe the agreements worked out in the Tokyo Round will stimulate world trade flows and open up new trade opportunities for the United States and over the long-run will strengthen the U.S. economy.

The Trade Agreements Act of 1979 is timely in that world trade is growing at a diminishing rate. In constant dollars the annual rate of expansion has fallen from 9 percent in the decade 1963 to 1973 to just over 4 percent.

Senator MOYNIHAN. That is a striking figure, isn't it?

Mr. ROBERTS. Yes. It is a genuine decline and an alarming one. That is from 9 percent to just over 4 percent between 1973 and 1978. As for the U.S. share of world exports, it has declined from 15.4 percent in 1970 to 11.8 percent in 1977.

Senator MOYNIHAN. Where is that in your testimony?

Mr. ROBERTS. It should be on page 1. It is derived from U.S. Department of Commerce figures but those are the figures. It is 15.4 percent of world exports in 1970 to 11.8 percent in 1977.

As you are well aware, the trade deficit has been at unacceptably high levels for 3 years. There are a number of factors which have contributed to these alarming trends. One of them surely which has contributed significantly is tariff and nontariff barriers.

Broadly speaking the MTN Codes for reduction of nontariff barriers involve a principle which we think is fundamental for trade expansion, that is that artificial barriers to a free and open international exchange of goods should be minimized.

Careful monitoring and the prompt use of GATT mechanisms for enforcement of obligations will be necessary to assure compliance by foreign governments with the letter and the spirit of the code.

We would caution, however, that the dispute settlement and enforcement provisions of these codes, which was adverted to by Professor Jackson earlier this afternoon, will probably require clarification and will surely require vigorous action by our Government to insure compliance by foreign governments with both the letter and spirit of this code.

It is our conclusion that if the United States fails to approve the Tokyo Round, few nations, if any, would proceed with its ratification. The United States is such a major market in the world trade that if the benefits of the Tokyo Round were inapplicable to this market, other nations would be unwilling to open their own markets.

Many countries have signed the Tokyo Round agreements reluctantly and if a significant incentive to participation were removed, they would find the political pressures to back away from the commitments involved in the Tokyo Round difficult to resist.

If the agreements were not adopted, under what ground rules would the world's major trading nations operate? It is doubtful then that the present GATT rules would continue to be observed.

The danger which we foresee is that the rise of protectionism or neomercantilism, which has mounted during the past few years, would continue to grow at a rapid pace. The growth of protectionism has been noted with concern by many economists, a number of governments including our own, and major international organizations concerned with world trade. For example:

The GATT Secretariat has warned of a worldwide and disturbing resurgence in protectionist pressures that have reached a level not experienced for more than a generation.

Robert S. McNamara, president of the World Bank, stated in an address at Manila on May 10, 1979: "Since 1976 there has been a

marked increase in protectionism in the industrialized nations and the pressures for even further restrictive measures are strong."

We, therefore, conclude that the failure by Congress to approve and implement the trade agreements negotiated under the Trade Act of 1974 would lead to a sharp increase in protectionism which would be followed by a contraction of trade, recession, and loss of employment.

This would be accompanied by a cycle of U.S. action and foreign reaction that could bring the world back to a period of trade isolationism not experienced since the 1930's.

Therefore, we strongly support U.S. approval of the Trade Agreements Act of 1979. We believe that the implementing legislation and agreements provide a potential for expanding trade and that the gains in export-related employment will outweigh the loss in import-affected employment.

Thank you, Senator.

Senator MOYNIHAN. We thank you, sir. I would like to say that we would not be here at this point in this proceeding if it were not for the National Foreign Trade Council. I was thinking the other day in some other context of the number of countries involved. I was in the United Nations and to keep myself awake I was counting the number of countries up on the scoreboard, and how many of those existed in 1914 and had not had their former government changed by force since 1914.

The number came to seven. There are not many institutions around since 1914, governmental or otherwise. You have been here and you were very much in opposition in the first quarter century of your appearance. You changed the atmosphere of American business. You did or Smoot Hawley did, I don't know which, and they learned. The key to this agreement will be implementation.

Mr. ROBERTS. Yes, sir.

Senator MOYNIHAN. And I am afraid you were not here when we had a long colloquy and we heard in great detail a very good talk from Professor Jackson on how we are going to make this work. That is, what standing do these panel reports have and what does the committee of signatories do and what are they required to do about this and that?

All of that says to me that this is not a tariff agreement where we can say: "All right, we have negotiated and let the Customs Service administer it and you look up 100 pounds of cheese and say 20 percent add volorem, and that is it."

Subsidies and procurement and things like that need vigorous adjudication. We need a cadre of young lawyers, like they have in the Antitrust Division of the Department of Justice, looking to make a reputation by nailing Australians or something like that.

It has to do with organization and we are going to be considering the President's reorganization proposals which were due in yesterday. We will get them in time, I suppose. We hope to hear your comments on that. We know we are going to disappoint ourselves very badly if we set up all of these agreements in principle and do not police them. No one will do this for us. We have compliance procedures which we have to make work.

Mr. ROBERTS. We feel it is the responsibility of the national American business community to bring to our government in the

first instance its complaints and difficulties which it may have with other nations when there is a compliance problem.

But at that stage it then becomes under the dispute resolution mechanism to the codes a responsibility of the United States to help the business community in that respect. We hope that there will be vigorous pressures brought on governments which are reluctant to fully enter into both the letter and spirit of the agreements.

Senator MOYNIHAN. I cannot make a better note on which to conclude these hearings, which are the last hearings immediately prior to a vote by the subcommittee on this matter. That is exactly what I hoped to hear from you.

I want you to go back to your business associates and tell them that that is how these hearings ended. We expect to hear not only from the Government, but this committee and this subcommittee very much wants to hear from business.

We thank you for this delayed but more than welcome testimony. We thank you for the work you have done over the last 6½ decades.

Mr. ROBERTS. We are grateful for the opportunity and we will continue to pursue the matter.

[The prepared statement of Mr. Roberts follows:]

STATEMENT OF THE NATIONAL FOREIGN TRADE COUNCIL, INC.

The National Foreign Trade Council, whose membership comprises a broad cross section of U.S. companies with highly diversified interests engaged in all aspects in the conduct of international trade and investment, welcomes the opportunity to present its views with respect to the Trade Agreements Act of 1979.

Our organization, whose membership accounts for about half of all U.S. manufacturing exports, representing about one million jobs which depend upon exports, has worked for freer and expanding world trade and investment since 1914 in the conviction that in the long run there is a significant interrelationship between the growth of the U.S. economy and the growth of world trade and the world economy. The Council supported the reciprocal trade agreements of the 1930's and the 1940's and the six rounds of tariff reductions conducted since 1947 under the General Agreements on Tariffs and Trade.

We believe that the trade agreements and the implementing provisions embodied in the Trade Agreements Act of 1979 are essential to meet the demands of a rapidly changing international economy and to provide the framework for a revitalization of world trade. The average annual rate of expansion of world trade in constant dollars has fallen from 9 percent during the period 1963-73 to just over 4 percent in the years 1973-78. This slower growth, accompanied by high unemployment among both industrialized and developing nations, has led to a rise in protectionist pressures, further imperiling the expansion of world trade.

We regard the Tokyo Round agreements concluded in April 1979 at Geneva as the most comprehensive and significant addition to the body of international trade rules since the establishment of the GATT in 1947. The Tokyo Round agreements will commit most of the world's trading nations, which account for two-thirds of all world exports and over 90 percent of all developed countries' exports.

The agreements are the result of hard bargaining over five years, with close cooperation between the U.S. negotiators and private sector advisory committees. They will constitute a sound international legal foundation for the further liberalization of world trade and the enforcement of a fair, open and equitable trading system.

One achievenment of the Tokyo Round is the worldwide reduction of tariffs, which will be phased in over a period of eight to ten years. It represents a move towards an equalization of rates on industrial products. Import duties will be lowered on many thousands of products, affecting an estimated $110 billion in terms of 1976 worldwide trade. The United States will derive the following benefits:

Reduction of industrialized countries' tariffs on U.S. exports by an average of 40 percent, while the United States will reduce its tariffs to them by 32 percent. When

the reductions are fully implemented, the average tariff rate in the industrialized world will fall from 6.2 percent to 4.2 percent.

Elimination of the adverse differential with Japanese tariffs. As a result, the tariff rate on Japanese imports from the United States will be lower than the average U.S. tariffs on goods from Japan.

Substantial reduction of the preferential tariff scheme of the European Community.

A narrowing of the gap between United States and higher Canadian duties.

Reduction of tariffs by key developing countries—for the first time.

However, the most significant accomplishment of the Tokyo Round negotiations is the series of agreements providing for the elimination or reduction of non-tariff barriers to trade. Non-tariff barriers in myriad forms have distorted natural trade patterns; have deterred smaller business from entering the export trade; have barred American companies from competing on fair and equal terms in foreign nations; and have contributed to inflation by generally increasing the cost of goods and services.

Since the principal provisions and the anticipated benefits of the agreements have been widely discussed, our comments on the codes will be brief.

Subsidies and countervailing measures

The subsidy code will strenghthen existing GATT prohibitions on outright export subsidies of manufactured goods and will begin the task of limiting domestic subsidies on goods where the effect is to disturb international trading patterns. However, it will undoubtedly be necessary to have regular recourse to the dispute resolution mechanisms set forth in the code to identify domestic subsidies, and to determine whether a particular subsidy caused injury to the domestic economy of another country, and whether the county of origin did or did not "seek to avoid" causing such injury. In our view, if the anticipated benefits are to be realized, it is essential that our government, aided by injured industries, identify unfair subsidies by foreign nations and, on behalf of U.S. companies adversely affected by such subsidies, engage in continuous and vigorous efforts to secure the compliance of foreign nations to the commitments contained in the subsidy code.

The Council endorses this code because it:

Limits foreign subidy practices without sacrificing U.S. ability to make effective use of the countervailing duty law.

Provides for improved notification, consultation and dispute settlement procedures and contemplates counter measures when breach of obligation concerning the use of subsidies is found to exist.

Establishes criteria for injury determinations.

With respect to the effect on U.S. law, we welcome the assurance by the Administration that the subsidy code will not result in the repeal of the U.S. Domestic International Sales Corporation (DISC). However, the Council is concerned that other countries may consider DISC a subsidy as defined under the code and impose countervailing duties against products sold by DISC companies.

Government procurement

The code offers substantial new opportunities both for U.S. exporters and for foreign subsidiaries of U.S. companies by calling for national treatment and non-discrimination on significant government purchases.

The Council supports this code becuase it:

Sets out rules to discourage discrimination at all stages of the procurement process.

Prescribes rules for the drafting of specifications for goods to be purchased, advertising, time allocated for the submission of bids, qualifications of suppliers, opening and evaluation of bids and award of contracts.

Establishes dispute settlement procedures.

Insures transparency by requiring publication of all bid opportunities and bidders' lists.

The Administration has estimated that, over the next five years, the code will open up a potential market of $20 billion or more and will increase U.S. exports by $1.3 to $2.3 billion and increase U.S. employment opportunities by 50,000 to 100,000 jobs. Here again, careful monitoring and the prompt use of GATT mechanisms for enforcement of obligations will be necessary to assure compliance by foreign governments with the letter and the spirit of the code.

Customs valuation

By outlawing the use of arbitrary or fictitious valuations of imported goods and services, the code will help bring about a uniform and equitable international system, conforming to commercial realities. The requirement in the code that trans-

action value be utilized where possible for customs valuation is desirable. To that end we support the conversion of the American Selling Price system of valuation to a transaction value system.

The Council supports this code because it:

Establishes new rules which are fair, simple, conform to commercial reality, and allow traders to predict with a reasonable degree of accuracy the duty that will be assessed on their products.

Sets up alternative valuation methods.

Provides flexibility in that its provisions may be applied on either an f.o.b. or c.i.f. basis.

Technical barriers to trade (standards)

This code sets up procedures to ensure that standards and certification systems are not employed for the purpose of restricting imports. Though only central governments are bound by the Code, signatories agree to take "reasonable measures" to ensure compliance by local governments.

We endorse this code because it:

Discourages discriminatory manipulation of product standards, product testing and product certification systems.

Encourages the use of open procedures in the adoption of standards.

Establishes international procedures for the handling of complaints.

Requires signatories to use their best efforts to encourage their states, provinces, local governments and private entities to comply with the agreement.

Does not interfere with the right of countries to adopt appropriate and non-discriminatory standards to protect the health, safety or environment of their citizens.

Import licensing procedures

This code will expedite U.S. exports by simplifying import licensing requirements, which in some countries often involve time-consuming, needlessly complicated and expensive procedures. We therefore support the code.

CONCLUSION

Although it is not possible to quantify completely the gains to be expected from the Tokyo Round, we hold that in the long run the agreements can be expected to help reverse the deterioration in the trade account of the United States, which the Council projects will show a substantial deficit in 1979 for the third straight year.

Our appraisal is that there will be no significant increase in trade in the short run following the signing of the Tokyo Round agreements, but that in the long run, the agreements should contribute to the expansion of international trade. Underlying all trade negotiations is the principle that expanded trade will improve the allocation of the world's resources, make investment more productive, and curtail the rise in protectionism.

The Council recognizes that the Trade Agreements Act of 1979 before the Congress cannot be perfect; it cannot offer a clearcut gain for every segment of the American economy, or be achieved without harm to some. For example, there may be dislocations of workers and of businesses, particularly in a few labor-intensive industries. (These unfavorable repercussions can be offset to a considerable extent by improved adjustment assistance for affected workers and companies).

The task of removing worldwide non-tariff barriers to trade begins rather than ends with the signing of the codes. The signatories must enact implementing legislation, amend regulations not in compliance with the codes, and make the changes in procedures which are necessary to dismantle a variety of non-tariff barriers to trade.

Moreover, when the new trading rules become effective, disputes between nations concerning interpretations of the codes, and compliance with their provisions, must be conducted promptly and with the utmost good faith. Unless trading nations proceed vigorously with these steps, the anticipated benefits of the Tokyo Round will not fully materialize.

We have some reservations about the results of the Tokyo Round, but none are so serious as to change our overall positive assessment.

A few of our concerns are:

1. No code on multilateral safeguards has yet been agreed to, and there is no code to protect trade-marked goods against counterfeiting.

2. The codes do not deal with services, which form a significant element of world trade.

We also have some reservations about the implementing legislation as provided in the Trade Agreements Act of 1979.

A few of our concerns are:

1. Certain of the provisions relating to countervailing duties and dumping, while necessary, may have the potential to exclude imports even more than existing law.

2. We do not look with favor on the provisions which require the U.S. Government to release monthly balance of trade statistics on a c.i.f. basis, 48 hours before they are released on a f.a.s. basis. Witholding of data would not only lead to confusion, but we believe would be an unprecedented action and may well established a policy of the U.S. Government to conceal or delay the release of information which should be made readily available to the public .

Furthermore, this delay would result in the reporting of a trade deficit about 7 percent larger than the deficit on an f.a.s. basis and could also have unfavorable effects on the foreign exchange markets. Actually, insurance and freight of the c.i.f. import data are incorporated in the services account of the U.S. balance of payments and are thereby also included in the balance of goods and services as well as in the balance on current account.

There is another aspect to our national deliberation over the multilateral trade negotiations which in our view should be carefully weighed by the Congress—namely, the consequences which could flow if the United States fails to ratify the agreements.

It is our conclusion that if the United States fails to approve the Tokyo Round, few nations, if any, would proceed with its ratification. The United States is such a major market in world trade that if the benefits of the Tokyo Round were inapplicable to this market, other nations would be unwilling to open their own markets. Many countries have signed the Tokyo Round agreements reluctantly, and if a significant incentive to participation were removed, they would find the political pressures to back away from the commitments involved in the Tokyo Round difficult to resist. If the agreements were not adopted, under what ground rules would the world's major trading nations operate? It is doubtful then that the present GATT rules would continue to be observed. The danger which we forsee is that the rise of protectionism or "neomercantilism", which has mounted during the past few years, would continue to grow at a rapid pace. The growth of protectionism has been noted with concern by many economists, a number of governments including our own, and major international organizations concerned with world trade. For example:

The GATT Secretariat has warned of a "worldwide and disturbing resurgence in protectionist pressures" that have reached a level "not experienced for more than a generation."

Robert S. McNamara, President of the World Bank, stated in an address at Manila on May 10, 1979: "Since 1976 there has been a marked increase in protectionism in the industrialized nations, and the pressures for even futher restrictive measures are strong."

We therefore conclude that the failure by Congress to approve and implement the trade agreements negotiated under the Trade Act of 1974 would lead to a sharp increase in protectionism which would be followed by a contraction of trade, recession and loss of employment. This would be accompanied by a cycle of U.S. action and foreign reaction that could bring the world back to a period of trade isolationism not experienced since the 1930's.

Therefore, we strongly support United States approval of the Trade Agreements Act of 1979. We believe that the implementing legislation and agreements provide a potential for expanding trade, and that the gains in export-related employment will out-weigh the loss in import-affected employment.

Senator MOYNIHAN. With that, the hearings are concluded.

[Whereupon, at 4:55 p.m., the subcommittee was adjourned subject to the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

MOTION PICTURE ASSOCIATION OF AMERICA, INC.,
Washington, D.C., July 6, 1979.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.:

Recently, my attention was directed toward the proposed application of the new Customs Agreement to motion picture film. As you know, the proposed agreement would replace the Customs Cooperation Agreement and raises certain questions about its application to films.

To clarify the American interpretation of the Customs Agreement, I wrote Ambassador Strauss, Special Representative for Trade Negotiations, pointing out our concerns and urging that he give me his interpretation of the Agreement.

Mr. Strauss responed on May 17 in his usual forthright fashion and his letter dispels the concerns which I had about the operation of the Agreement onour industry.

Because the American position should be clear about this, matter, I ask that you insert in the record of the hearings on the Trade Agreements Act of 1979 (S. 1376), legislation to implement the Tokyo Round of Multilateral Trade Negotiations, Mr. Strauss' reply, a copy of which is attached.

Sincerely,

JACK VALENTI, *President.*

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
Washington, D.C., May 17 1979.

Mr. JACK VALENTI,
President, Motion Picture Association of America, Inc.,
Washington, D.C.

DEAR JACK: In your letters of April 13 and April 20, you inquired about how the proposed Agreement on Implementation of Article XII of the GATT would affect international trade in the motion picture field. In this regard, you advised us that motion pictures are distributed by means of a license of rights under copyright, accompanied by the delivery of a motion picture print on loan, and that the legal title to neither passes to the so-called "buyer". In addition, you pointed out that most countries levy specific duties, rather than ad valorem duties, on importations of motion picture prints.

The Agreement on Customs Valuations was designed to be applied only for those importations subject to ad valorem rates of duty. I can confirm that nothing in the Agreement prohibits, nor was anything in the Agreement intended to prohibit, countires signatory to the Agreement from coninuing to apply specific duties. For the those countires that apply specific duties to imported motion picture prints, the Agreement will have no impact on the duty assessment process.

The question of how motion picture prints will be valued under the Agreement in those countries that use ad valorem rates of duty for such imports was never directly discussed in negotiating the Agreement. The only issue related to motion picture prints that was discussed was whether charges for, and income generated by, the reproduction and distribution of an imported motion picture print would be dutiable. It was agreed that such charges and income would not be dutiable. Regarding the question of how the imported prnt itself would be valued, I can only give you the interpretation of the U.S. negotiators, based on the facts you presented.

Inasmuch as motion picture prints are not sold but are only leased and licensed, the methods of valuation prescribed in Articles 1, 2, 3, and 5 of the Agreement can by definition not be applied to the importation of motion picture prints. Therefore, the customs value of motion picture prints would have to be determined under the computed value method contained in Article 6 of the Agreement. The exact manner in which computed value is applied is subject to the use of generally accepted accounting principles in the country of production of the imported merchandise being appraised.

We have determined that all those countries that have initialed the Agreement until now apply specific duties to importations of motion picture prints. If other countries initialing the Agreement in the future apply ad valorem rates, instead of specific duties, we will consult with them to ensure that they value imports of motion picture prints in a manner no less favorable than the way they are currently valuing such imports.

Please don't hesitate to contact us if you have any further ideas on how to proceed on this matter.

Sincerely,

ROBERT S. STRAUSS.

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International Brotherhood of Electrical Workers,
Washington, D.C., July 10, 1979.

Senator Abraham Ribicoff,
Chairman, International Trade Subcommittee,
The Russell Building, Washington, D.C.

Dear Senator Ribicoff: The International Brotherhood of Electrical Workers had intended to offer testimony before your committee on International Trade on Senate Bill 1376—the Trade Agreements Act of 1979; however, we were advised that because of the large number of parties that had made requests for the opportunity to present their views on S. 1376 our verbal testimony would be limited to five minutes.

In view of that limitation, we attempted to focus our comments on those areas of the Trade Agreements Act of 1979 that we felt were of more serious concern to us. With that aim in mind, we were still unable to narrow our views down to the aforementioned time frame. This presented us with a dilemma in that, on the one hand, we felt that perhaps we could express our views in a more emphatic manner through a verbal presentation; but on the other hand, because of the scarcity of time, we could perhaps present our views on the legislation in a more meaningful and coherent fashion by submitting them in written form to you and the members of your committee; thus we have opted for the latter.

We consider the legislation before your committee very important legislation; thus we have attempted to evaluate the legislation and the various codes that it embodies from our perspective as an international union as to how these codes would impact upon our members who are employed in the electrical industry and how the trade agreements could impact upon our country.

I trust that you and your committee will carefully and fully consider the Trade Agreements Act of 1979 and that you will take our views into consideration in your deliberations.

Respectfully yours,

Charles H. Pillard,
International President.

Enclosure.

IBEW Comments on the Trade Agreements Act of 1979—(Senate Bill 1376)

The IBEW is an international union representing over a million workers employed in the electrical/electronics industry. Our members are employed in performing all facets of work in that industry. For example, we have members employed in the electrical construction industry, maintenance industry, electric and gas utility industry, telephone industry, radio-TV broadcast, sign and motor shop and electrical manufacturing—just to name a few of the various sectors. Because our members are employed throughout the scope of the entire electrical industry, we have been able to observe on a first-hand basis when jobs are lost in one sector of an industry as a result of imports, how other sectors of the industry are also affected by that same action. When foreign-made products enter our marketplace and displace American-made goods resulting in American manufacturing workers losing their jobs, we see and experience the following cumulative processes.

As U.S. plants close their operations or cease to expand their existing facilities and cease building new plants, there are less work opportunities for American workers. Likewise, there is less need for electrical power, telecommunications, and other services. Thus, employment opportunities for workers in those sectors are also reduced. Because of the job losses that many of our members have experienced as a result of imports, we have for sometime expressed our concern about the import sensitivity of the electrical industry. We have also actively participated in our advisory roles with regard to the multilateral trade negotiations in accordance with the Trade Act of 1974.

We have seen thousands of jobs in the television industry and in the electronic components industry completely abolished in this country as a result of imports. We have experienced not only job losses in the consumer electronics portion of our industry, but have seen job losses in commercial and industrially related segments. To illustrate this point, please see Attachment No. 1.

While we have seen many of our members lose their jobs from the flood of imports and while we recognize that our industry is import sensitive, we have never enunciated the view that our country should not engage in foreign commerce. However, we believe that a number of our trading partners have not carried on international trade with us in a fair manner. We are aware that it was the objective of the multilateral trade negotiations to bring about agreements that would result in fair trade. Our marketplace has been very accessible to our trading partners. We

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have an economy that is largely based upon free and private enterprise. Hence, our trading partners have been able to export their products to the United States with relative ease.

Additionally, we have experienced a movement of U.S. firms towards setting up and expanding operations in foreign countries. Many of these firms have established operations in developing countries producing products in those countries for export to the United States which results in further job losses for American workers. Thus, I believe that you can appreciate our concern for any legislation and agreements with regard to international trade that we feel could result in job losses for our members.

With regard to Bill S1376, which is before this Committee for consideration, I wish to address several parts of the Bill that are of special concern to my organization.

The IBEW is aware of the fact that the President already has the authority to cut tariffs. However, it is also true that the tariff and non-tariff negotiations were conducted interdependently. Moreover, in order to evaluate the economic consequences of the multilateral trade negotiations, the tariff cuts must also be considered.

Indeed, the Administration has publicized the supposed benefits that will result from the tariff cuts and the codes dealing with non-tariff barriers. The Government's forecasts, in our opinion, are too speculative to be given very much weight. Our apprehension is intensified by the wide range in the employment effects predicted by different studies. For example, assuming fixed exchange rates, the Department of Labor predicts a net gain of 30,000 jobs, while the Deardorff-Stern study (prepared for the Senate Finance Committee) predicts a net loss of over 47,000 jobs for the U.S. economy. Combining the effects of the tariff and non-tariff agreements, the Department of Labor and STR predict a net increase in employment ranging from 80,000 to 130,000, while Deardorff and Stern foresee a net decline in employment of close to 30,000. The projected outcome changes as the authors alter their assumptions regarding exchange rates, elasticities of demand or supply and so forth.

Given the lack of consensus displayed in these projections, we don't find it too difficult to ignore them. What we cannot ignore, however, is the fact that in the four year period from April 1975 to May 1979 close to half a million American workers lost their jobs due to imports and were certified as being eligible for trade adjustment assistance, as illustrated in Attachment No. 2. This is an historic fact, not a projection into the future. Another fact is that close to 50,000 workers in the electrical/electronics manufacturing industry lost their jobs due to imports during this period. Moreover, from 1968 through 1976 the import penetration ratio (value of imports as a percent of new supply) for this industry increased 172.5 percent (from 4 percent to 10.9 percent). This can only lead to the conclusion that the electrical/electronics manufacturing industry is highly sensitive to imports. However, the list of products for which the tariff cuts were less than the formula or for which there were no cuts includes few products in this industry.

The Trade Act of 1974 authorized negotiations to gain equivalency or harmonization of tariffs. The MTN tariff offers were reportedly based upon some version of the Swiss formula, subject to exceptions at the discretion of individual countries. As the Deardorff-Stern study points out, "the conclusion that can be drawn is that aside from the U.S., most countries paid lip service to the Swiss formula but departed from it in major ways in determining their tariff offers in the MTN." As a result, the 34.1 percent tariff reduction on industrial products offered by the U.S. was the largest cut offered by any of the major industrialized countries. Offers that were less than the formula were indicative that the industries were considered vulnerable to imports. We, therefore, find it particularly disturbing that the United States cut tariffs on electrical products by 33.3 percent, which exceeded the 31.8 percent cut that would have been dictated by the Swiss formula. Such an approach appears to us as lacking regard for an import sensitive industry.

The International Brotherhood of Electrical Workers is extremely apprehensive regarding the potential impact of the Government Procurement Code and its implementing legislation upon the workers we represent. We view the concessions that were made in this area to far outweigh any potential benefits. It is particularly disturbing to us that foreign entities involved in the fields of power generation and communication were almost uniformly excluded from coverage by this code. The workers represented by the IBEW have extensive involvement in both power generation and communication, and to have these industries excluded by our trading partners from their covered entities is particularly objectionable to us.

During the course of the Multilateral Trade Negotiations much rhetoric surrounded the Government Procurement Code. One of its intended purposes was to eliminate the discriminatory purchasing practices regarding electrical equipment and

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communication equipment by government-owned utilities particularly by the Europeans and also the Japanese Buy-in-Japan policy toward electrical and communication equipment which is followed by their privately-owned utilities.

A review of the results of these negotiations indicates this has not happened. We have allowed our trading partners to effectively protect power generation equipment and communication equipment from U.S. producers while increasing their own already pervasive access to our market. While we have withheld certain government agencies which purchase power generation equipment, we have more than offset this action with our other concessions. Those entities which the U.S. withheld will only be protected by the 6 percent and 12 percent Buy American differentials and these will be partially offset by the tariff reductions on those items. Meanwhile U.S. investor-owned utilities, which comprise 80 percent of the U.S. market for power generation equipment and are not subject to any Buy American differentials, will increase their own extensive use of foreign produced equipment due to the additional advantage gained from duty reductions on these items. With the development of these types of scenarios, it should be quite evident why we at the IBEW are so concerned with this code.

It is our perception that in the area of Government Procurement the U.S. negotiators took a system that was already being heavily impacted upon by foreign imports; traded away the only available protection—Buy American—and gained only vague promises of access to markets long based on systems designed to exclude imports.

Title 4 of the Bill—Technical Barriers to Trade (Standards) is of considerable concern to the IBEW and we have expressed this concern on numerous occasions through the conduit of our advisory roles pursuant to the Trade Act of 1974.

In the electrical/electronics industry, an industry in which our members are employed, product standards, product testing and product certification are extremely important. Today, we all use electrical appliances, equipment and other apparatus with complete comfort in knowing that that particular product has been produced in accordance with prescribed standards. Moreover, our homes, factories and public buildings in the United States are constructed in a manner in which the occupant and/or user's safety and well-being is given prime consideration. That prime consideration is based upon essential product standards and various building codes that result in the construction of buildings that meet the safety requirements demanded by the American public. It is widely recognized that our concern for safety and health occupies a very high priority in this country. Because of that objective, numerous standards and many building and safety codes have been established.

In the electrical industry, virtually all products that are installed either bear the Underwriters Laboratories Label (UL) or another similar testing/certifying organization's mark. Also, in the electrical industry, many local governments mandate that installation of electrical work be in accordance with the National Electrical Code. The National Electrical Code is a very comprehensive document which sets forth requirements governing electrical installations that are considered necessary to ensure safety. The National Electrical Code is sponsored by the National Fire Protection Association under the auspices of the American National Standards Institute (ANSI). Thus, we can see in the electrical industry standards and regulations and codes play a vital role. We consider these standards absolutely essential. We also hold the view that in the United States, particularly with regard to electrification, the philosophy of the public has been one in which safety has always been paramount. In the European Community and in some other foreign countries their philosophy with regard to electrification has not been one of the same penchant.

In Section 402 of the Bill, it is stated that each federal agency in developing standards shall take into consideration international standards and shall, if appropriate, base these standards on international standards. It is our view that the product standards of foreign governments, especially with respect to electrical products, are often not comparable to U.S. standards and we do not believe that U.S. standards should be undermined as parties to the agreement pursue the harmonization of standards through the pursuit of international standards.

Based on our understanding of the product standards code and the implementing legislation, it appears to us that if this Bill became law we will have subordinated our standards making processes to the international arena. We, in the labor movement, believe that we have made a significant stride forward with the passage of the Occupational Safety and Health Act (OSHA) and we know all too well that this accomplishment and others did not come easily. Therefore, we can not avoid expressing serious concern about any process that holds a potential for subjecting U.S. standards to international review.

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I want to emphasize that we believe that Title 4 of the Trade Agreements Act of 1979 is very significant and warrants very careful and thorough consideration. To underscore that point, I wish to note that Mr. Derek Barton, senior vice president of Underwriters Laboratories, Inc., in his testimony before the Transportation and Commerce Subcommittee, stated that his organization has not had an opportunity to analyze fully the proposed legislation with regard to its potential general impact on public safety in this country. In view of that statement and in view of the aforementioned points I have made, we believe it's incumbent upon Congress through its normal legislative processes to fully assess the impact the Bill and the code could have upon public safety in this country and to what extent Congress' ability to legislate laws that in essence incorporate product standards are impeded by the legislation before you.

The Product Standards Agreement states that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and methods for certifying conformity with technical regulations and standards and then sets forth special and differential treatment for developing countries. While on the surface this appears to be a noble objective, it confronts us with a serious dilemma in that United States based multinational corporations have established and are continuing to establish more of their operations in developing countries to take advantage of low wage workers at the expense of a loss of jobs for U.S. workers.

The Generalized System of Preferences (GSP) is a prime example of how decent intentions have reaped job losses upon American workers. I am sad to say that my union can speak with experience with regard to this example. Hence, it appears to us that by allowing special and differential treatment for developing countries, we could be creating a monumental loophole for multinational corporations to exploit. Further it is extremely important to recognize the vital role of product standards in the U.S. Product standards should not be treated in trade negotiations as an area in which economic "trade-offs" or concessions can be made. If products are being manufactured in a developing country for export to the U.S., those products should conform to U.S. standards. We ask earnestly that this Committee fully weigh the significance of Title 4.

With regard to the legislation and agreement relating to subsidies, countervailing and anti-dumping duties, there are two particular points of concern to us. We hold the view that the subsidization of a product and/or the dumping of a product are unfair trade practices and should not be tolerated. We have seen IBEW members and American industry injured by such practices. The fact that subsidies and dumping are illegal is sufficient reason that such practices should not be allowed to harm U.S. industry and workers. To require a material injury test, in our view, is unwarranted.

The other area that concerns us is that relating to upstream and downstream problems with regard to the manufacture of components, parts or subassemblies that are related to the completed product that may have been or may be experiencing injury. In our industry it is not uncommon for various manufactured products to experience problems either upstream or downstream in the manufacturing processes of electical and electronic equipment. For example, a short time ago, one of our local unions experienced job losses that resulted from the importation of smoke detectors. The members of this local union were involved in manufacturing buzzers for smoke detectors. As more and more foreign made smoke detectors (a finished product) entered our marketplace, there was less and less demand for the buzzers our members were producing. Hence, this is an example of an upstream problem that we do not believe has been adequately resolved by the agreement.

Many examples as such could be cited to illustrate our concern for upstream and downstream situations because they are relatively common for our industry. Thus, we consider these two areas of significant concern and hope that you will be mindful of them as you consider the legislation.

The IBEW has in excess of 50,000 members employed in the electrical/electronics industry producing equipment and systems relating to the aircraft industry, and, needless to say, much of that production is geared to civil aircraft. A large portion of our work enters around the avionics package (electronics systems, navigation, communication and basic operation) that is installed in the aircraft. Title 6 of the Bill and the civil aircraft agreement contain provisions for reducing the tariffs to zero on a host of products used in civil aircraft. By reducing the tariffs to zero, it is our view that the jobs of many of our members will be jeopardized simply because many of the multinational corporations producing civil aircraft in the United States will find it more profitable to import electronic systems, subassemblies and components thereof.

There are a number of other industries that could be hurt by this tariff cut. For the tariff cut, the U.S. is supposed to get in return the opportunity to bid on civil aircraft owned by foreign countries, a "phantom" concession from which it is very unlikely we will benefit. A short while back one of the executives for Swiss Air (Switzerland Airlines) stated that in their decision to purchase aircraft, if all things were equal with regard to the aircraft offered by the U.S. compared with the aircraft offered by the European community, they would purchase their aircraft from the European country. In short, I think that attitude demonstrates the unlikelihood of the U.S. having any significant success through this code in improving its position within the European aircraft market.

Therefore, it is our view that the civil aircraft agreement holds potential for the loss of American workers' jobs in that industry, while holding little promise for any significant improvement of U.S. trade in this area.

We realize that the Trade Agreements Act of 1979 along with the various agreements negotiated in Geneva are very broad in scope and in many areas rather complex. Because of this, we have endeavored to address ourselves to those specific areas that cause us serious concern.

Because the implementing legislation before Congress could have a rather serious impact upon future trade negotiations and because such legislation could impact seriously upon American workers, we have attempted to highlight certain potential problem areas. Since it is our understnding that Congress must vote on the Bill as it is with no amendments that is, there must be an up or down vote on the Bill, we have attempted in formulating our views to assess the Bill from an on-balance perspective. We feel that while some improvements appear to have been negotiated in a few areas, there are those aforementioned areas that are of serious concern to the IBEW. Therefore, it is our overall assessment that the Trade Agreements Act of 1979 will not lead to international trade conduct that will enhance the United States' trade position, but on the contrary, will likely result in a further deterioration in our trade position. Again, I wish to thank you for the opportunity to express my views.

ATTACHMENT 1

ELECTRICAL/ELECTRONIC MANUFACTURING

IMPORT PENETRATION AND TRADE-RELATED JOB LOSSES

SIC	Industry	Import Penetration Ratio1/ 1968	1976 latest available	Cumulative Job Losses2/ April, 1975 - May, 1979
36	Electric & Electronic Equipment	4.0	10.9	47,291
3621	Motors & Generators	2.5	5.5	636
3622	Industrial Controls	1.5	5.2	481
3624	Carbon & Graphite Products	6.6	5.4	73
3631	Household Cooking Equipment	1.7	6.3	476
3634	Electric Housewares3/	16.5	42.0 (1974)	920
3641	Electric Lamps	2.8	5.1	37
3644	Noncurrent Carrying Wiring Devices	0.7	0.5	11
3648	Lighting Fixtures, Nec	2.5	3.0	155
3651	Radio & TV Receiving Sets	14.8	41.6	21,812
3662	Radio & TV Transmitting, Signalling & Detection Equipment	2.3	14.3	3,099
3671	Electronic Receiving Tubes	7.1	18.5	4,930
3672	Cathode Ray Tubes	3.0	2.5	100
3673	Transmitting, Industrial & Special Purpose Electron Tubes	2.6	6.0	48
3674	Semiconductors	5.2	19.9	7,033
3675	Electronic Capacitors4/	1.7	6.1	1,368
3676	Resistors, for electronic applications4/	1.7	6.1	2,848
3677	Electronic Coils4/	1.7	6.1	142
3679	Electronic Components, Nec4/	1.7	6.1	2,985
3691	Storage Batteries	1.4	1.8	120
3694	Electrical Equipment for Internal Combustion Engines	2.9	6.1	17

1/Value of imports as a percentage of new supply. Source: U.S. Department of Labor, Bureau of Labor Statistics.
2/Number of workers certified eligible for Trade Adjustment Assistance. Source: U.S. Department of Labor, Bureau of International Labor Affairs.
3/Import penetration ratio is for shavers with self-contained motors.
4/Import penetration ratio covers the aggregate of these industries.

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ATTACHMENT 2

REPORT K6630RP2

US DEPARTMENT OF LABOR
BUREAU OF INTERNATIONAL LABOR AFFAIRS
TRADE ADJUSTMENT ASSISTANCE SYSTEM

RUN DATE 06/06/79 PAGE 1
THROUGH MAY, 1979

S U M M A R Y B Y S I C
(2 DIGIT)

SIC	CASES CERTIFIED	WORKERS CERTIFIED	CASES PART CERT	WORKERS PART CERT	CASES DENIED	WORKERS DENIED	CASES TERMINATED	WORKERS TERMINATED	CASES WITHDRAWN	WORKERS WITHDRAWN
01	30	2,432								
02					1	30	1			
09	50	126			62	469			1	2
10	69	18,674	1	66	28	4,535	8	70	1	260
11	91	1,720			87	3,512	39			
12	8	301			15	410	6			
13							1			
14	1	66								
15					1					
16					6					
17					7	69				
20	38	5,548			29	1,290	1	616		
21					1	630				
22	132	16,940	9	1,568	198	19,065	19	397		
23	718	84,187	27	3,846	651	31,819	100	5,834	21	1,900
24	4	353			19	431				
25	3	330			11	1,099	1	100		
26	5	463			9	1,444	1			
27	2	69			2	238				
28	18	1,937	1	380	37	4,377	3	130	2	9
29					6	82				
30	52	17,971	1	670	36	3,598	2		1	12
31	315	51,249	6	778	193	10,198	15	886	4	62
32	24	956			96	3,033	3	115	2	33
33	172	93,244	19	9,225	369	83,682	26	1,639	11	1,960
34	90	19,310	3	150	189	10,300	16	639	4	555
35	45	9,965	2	84	120	22,811	3	54	1	17
36	134	44,872	4	927	121	17,757	7	707	1	150
37	52	80,991	5	4,177	125	66,191	11	20	2	3,901
38	19	4,058	1	152	9	2,823	1			
39	68	7,323	4	522	96	3,248	6	343	1	6
40	9	645			29	1,553	4	60		
42	6	158			95	205	7	6,600		
44					1	258	1			
45										
47					1	193				
49										
50	1	20			2	1,714	1			
51	2	136			11	339	1	50		
52							1	200		
53	1	11			1	2				
55	1	450			21	688	1	50		
56						40				
57										
58					6	93				
59					6					

REPORT KG630RP2

US DEPARTMENT OF LABOR
BUREAU OF INTERNATIONAL LABOR AFFAIRS
TRADE ADJUSTMENT ASSISTANCE SYSTEM

RUN DATE 04/06/79 PAGE 8

S U M M A R Y B Y S I C
(2 DIGIT)

SIC	CASES CERTIFIED	WORKERS CERTIFIED	CASES PART CERT	WORKERS PART CERT	CASES DENIED	WORKERS DENIED	CASES TERMINATED	WORKERS TERMINATED	CASES WITHDRAWN	WORKERS WITHDRAWN
61					1					
65					1					
72	1	116			1					
73	28	3,998	12	700	40	835	10	118		
75					9	62				
76					5	30				
78					1					
79					1	3				
80					2	80				
83										
89					2	8	1			
TOTAL	2,197	470,725	90	23,295	2,606	299,098	295	17,292	52	8,851

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Summary of Testimony by the American Restaurant China Council

The American Restaurant China Council is a trade association representing the majority of American manufacturers of Hotel and Restaurant china. We have asked to testify here today because we endorse the trade agreements negotiated under the Trade Act of 1974 and recommend that Congress approve and implement Senate Bill 1376, the Trade Agreements Act of 1979.

The Hotel and Restaurant china industry throughout the world is labor intensive and competitive problems for the American industry are created when goods from low wage countries or subsidized exports are sold in the U.S.A. This problem is further aggravated when tariff loopholes are exploited because forty year old product definitions no longer conform to current commercial conditions. Without Section 509 (Dinnerware) of Senate Bill 1376, the loopholes will remain open and the domestic commerical china industry will be severely jeopardized.

Prepared Statement of John C. Heebner, President, American Restaurant China Council, Inc.

My name is John C. Heebner and I am President of Buffalo China, Inc., Buffalo, New York. I am appearing here today as President of the American Restaurant China Council, Inc. With me are Samuel D. Magavern, Counsel for the American Restaurant China Council, Irving J. Mills, the Executive Director, and Edwin E. Stahura, Vice President and General Manager of Shenango China Company. The China Council is a trade association representing the majority of American manufacturers of Hotel and Restaurant china.

Mr. Chairman, we have asked to testify here today because we endorse the trade agreements negotiated under the Trade Act of 1974 and wish to recommend that Congress approve and implement Senate Bill 1376, the Trade Agreement Act of 1979. The Trade Act is vitally important to us because we are a small industry and imports from the low wage countries of the world have a direct impact on our market.

The Hotel and Restaurant china industry throughout the world is labor intensive and factory employment costs range as high as 65 percent of manufacturing cost here in the U.S.A. Our industry is a modern industry that is professionally managed and where capital investments are increasingly being made in plant and equipment to increase productivity. Although our plants are as efficient as any in the world today, the labor intensity makes it difficult to compete with foreign low wage countries where standards of living are simply lower than ours. This problem is magnified when those exports are subsidized by foreign governments. We can do a lot to offset some of the foreign wage differential through capital investment, research and marketing programs. However, we are virtually defenseless against subsidized exports from a foreign nation.

Our market has not lacked for domestic price competition. In fact, the severity of price competition has at times impeded capital investment. In addition to the domestic china manufacturers, there are two large glass companies also selling dishes; there are many large companies making disposable plastic and paper products; and also many companies of all sizes making tableware items of wood and metal. Clearly, the domestic china manufacturers do not dominate the Hotel and Restaurant market.

Faced with the realities of the trade negotiations and an inevitable tariff reduction we have done our best to present the facts and our point of view to the International Trade Commission and the Special Trade Representative. We participated in all of their public hearings and in many less formal sessions. We believe we have been given a fair hearing and that a true effort has been made to understand the problems of our industry and the limited transferability of clay working skills.

The general framework of the ceramic tableware package negotiated by Ambassador Strauss is an effective compromise in reducing tariffs while still providing a reasonable opportunity for our industry to survive. We believe that a realistic tariff reduction will not produce industry disaster if the proposed nomenclature changes are kept as part of the package so that the tariff loopholes are closed.

The present tariff schedules clearly intended a distinction between Hotel and Restaurant chinaware and Household chinaware. Unfortunately, the nomenclature contains definitions which are both vague and contradictory when defining Stoneware, Bone China, Porcelain and Subporcelain. This has made it impossible for the U.S. Customs officials to determine which product was really Hotel and Restaurant china. The loophole created is not only contrary to the intent of Congress but it has allowed foreign imports from low wage foreign nations to impact adversely on our market.

The ceramic tableware package negotiated in Geneva corrects the existing confusion by applying a simple in-use test to differentiate between the Household market and the Hotel and Restaurant market. If the ceramic tableware is for the Household market, it will be so classified, and if it is for the Hotel and Restaurant market, it will be so classified. These changes will restore the original intent of the existing tariff schedules and make the job of the customs people more manageable while saving our industry from being injured in a way never intended. The loopholes will be closed by harmonizing the rates of duty on all ceramic ware imported for Hotel and Restaurant use and the intention of the law will be clarified and reaffirmed.

The present nomenclature served its intended purpose well for over forty years. Now is the time, we suggest, to implement the President's request to "generally bring the nomenclature into conformance with commercial conditions prevailing at the present time". By taking this action we will restore the historic distinction between commercial ware and household ware and bring that definition in line with the President's request.

We see another benefit in the Multilateral Trade Agreement in addition to the closing of the loopholes. We understand that a tighter control of subsidies granted by foreign governments to their exporting industries is part of the total Agreement. As already stated, we consider the foreign subsidies a serious problem and are pleased to see it included in the negotiations.

We realize that this had been a difficult and complex negotiation and we wish to commend Ambassador Strauss and his associates for negotiating a ceramic tableware package that reduces an existing tariff, closes significant loopholes in the law and yet allows a small, labor intensive industry the chance to compete.

Thank you.

AMERCIAN RESTAURANT CHINA COUNCIL, INC.—MEMBERSHIP LIST

Buffalo China, Inc., Buffalo, N.Y.
Mayer China, Beaver Falls, Pa.
Sterling China Co., Wellsville, Ohio.
Walker China Co., Bedford Heights, Ohio.
Jackson China, Inc., Falls Creek, Pa.
Shenango China, New Castle, Pa.
Syracuse China Corp., Syracuse, N.Y.

STATEMENT OF J. STANFORD SMITH, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL PAPER CO., ON BEHALF OF THE AMERICAN PAPER INSTITUTE AND NATIONAL FOREST PRODUCTS ASSOCIATION, AND DR. IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL AMERICAN PAPER INSTITUTE, ON BEHALF OF THE AMERICAN PAPER INSTITUTE

SUMMARY

The multilateral trade agreements are in the best interest of the nation, and of the forest products industry. Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. The testimony makes a number of specific recommendations on export expansion and implementing legislation.

For the U.S. forest products industry, these new trade agreements open up opportunities. Specifically:

1. New export opportunities will open up through lowering of tariffs by the European Community, Japan, and Canada—three of the largest markets for products such as plywood, linerboard, and printing/writing papers.
2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards, and customs valuation.
3. The potential for expanded trade for the forest products industry resulting from the MTN agreements, as well as growing domestic requirements, could boost our rate of investment to at least 15% a year in the decade ahead.
4. Increased exports and investment will create new job opportunities—not only within the forest products industry, but in the capital goods and raw materials industries which supply our needs.
5. An overall increase in U.S. exports will have a multiplier effect on the domestic sale of forest products such as packaging for exported products, and paper for exported printed matter.

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements are made part of an aggressive export policy. The

House Ways and Means Committee has voted unanimously for the bill. We hope that the rest of Congress will support this most important legislation.

WRITTEN STATEMENT FOR THE RECORD OF J. STANFORD SMITH, SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE COMMITTEE ON FINANCE

Mr. Chairman, members of the committee: I am J. Stanford Smith, Chairman and Chief Executive Officer of International Paper Company. I am submitting this statement on behalf of the American Paper Institute and the National Forest Products Association. These organizations represent manufacturers producing 90 percent of the nation's pulp, paper, and paperboard, and over 3,000 companies who produce the vast bulk of the nation's solid wood products. Also enclosed is a statement by Dr. Irene W. Meister, Vice President of the A.P.I. and Chairman of the Industry Advisory Committee on Paper.

I wish to emphasize the crucial importance of the multilateral trade agreements to the nation as a whole and to the forest products industry—an industry which employs about 8 percent of the U.S. manufacturing labor force, sells roughly $100 billion worth of products, invests around $5 billion dollars a year in new facilities, accounts for $5 billion dollars of direct exports, and whose products make possible many more billions of dollars of exports by other industries.

In addition, the U.S. is also an importer of forest products—mostly softwood lumber, newsprint, and pulp from Canada. The industry's heavy involvement in both imports and exports gives it a broad perspective from which to judge the merits of this trade package.

I have had the opportunity to serve on the President's Advisory Committee for Trade Negotiations as well as the Industry Policy Advisory Committee. And I am deeply impressed by the Herculean job that Ambassador Strauss, and his associates have done in the most ambitious round of trade negotiations ever held.

Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. By greatly increasing export opportunities for U.S. industries, the trade agreements will: Contribute to economic growth; create more jobs; improve productivity; help to reduce inflation; and provide better values for consumers.

For the U.S. forest products industry, these new trade agreements open up opportunities. The industry's raw material—trees—is a renewable resource. The productivity of U.S. forests has increased dramatically as a result of the large investments made by the industry. As a result, the forest products industry can compete successfully anywhere in the world provided it's not hampered by unfair trade barriers. Specifically:

1. New export opportunities will open up for the U.S. forest products industry through lowering of world tariffs on such products as plywood, linerboard, and printing/writing papers.
2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards and customs valuation.
3. Reductions in tariff and non-tariff barriers, combined with proper domestic incentives, will create opportunities for additional investment to meet growing demand for forest products worldwide. Investments by the forest products industry to serve domestic and world markets have grown at 11 percent a year during the past ten years. The potential for expanded trade resulting from the MTN agreements, as well as growing domestic requirements, could boost the rate of investment of the forest products industry to at least 15 percent a year in the decade ahead.
4. Increased exports and investment will mean more U.S. jobs. Today approximately 140,000 jobs, or close to 10 percent of the total employment in the forest products industry, are either directly or indirectly dependent on exports. A significant portion of this employment is in the South where minorities are an important segment of the work force.

And in addition to increased employment in the forest products industry, will come added job opportunities in the capital goods and raw materials industries which supply our needs.

No trade package could succeed in gaining all the advantages that any single industry or any country is looking for. But these agreements go a long way toward setting down some workable solutions to the complex trading problems we face today.

I am pleased to see that publications like the New York Times, Wall Street Journal, and Washington Post have all come out strongly in favor of the new trade package. An editorial in a recent issue of Business Week emphasizes that "The U.S. must look out for its exporters and push their interests in every way it can. If this

country does not claim its fair share of expanding world markets, it can be sure that aggressive exporters from Europe and Japan will."

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements become part of an aggressive export policy. We hope the Congress will take leadership in this.

Specifically, consideration should be given to the following:

1. Secure a strong legislative commitment to a national export policy to regain and strengthen a balance in our trade position.
2. Create investment incentives that would improve the competitiveness of American industry in world markets. This is especially important, given the decline in the U.S. manufactures trade balance from a surplus of $3.6 billion in 1977 to a deficit of $5.8 billion in 1978.
3. Maintain a strong system of advisory committees, which has proven effective in this round of negotiations. Change ACTN into International Trade Advisory Council, reporting to both the President and the Congress.
4. Assure fairer tax treatment for U.S. business nationals who work abroad. This would help to maintain effective personnel for the sale of U.S. products abroad.
5. Authorize the Trade Policy Staff Committee to hold hearings annually in several parts of the country in order to take testimony regarding the U.S. international trade position and policies. This committee would then submit reports to the STR and the International Trade Advisory Council.
6. Legislatively establish a National Commission on Productivity consisting of 20 members representing labor, industry, the academic community, the Congress, and the Executive Branch. Their mission would be to analyze the causes of declining productivity in America including their impact on foreign trade, and to recommend to the President ways of correcting the problem. The President should then submit a report to the Congress within four months on the same subject.

These recommendations for expanding U.S. exports are in line with those being put forth by the Advisory Committee for Trade Negotiations.

In addition, there is a strong need to establish a focal point within the Executive Branch for the management of U.S. trade policy. In the past, lack of effective coordination and sustained attention to the formulation and execution of trade policy contributed to a decline in our trade balance.

Written Testimony of Irene W. Meister

Mr. Chairman, members of the committee: Mr Smith has just outlined the broad reasons for our industry's strong support of the Trade Package that you have before you. Your committee will be receiving a detailed report completed last week from the Industry Sector Advisory Committee on Paper (ISAC #4), which I chair. The ISAC report outlines the reasons for our support of the MTN nontariff agreements as well as the attained tariff concessions. Let me, therefore, comment briefly on the ISAC #4 position within the framework of our industry's particular needs.

The export performance of the U.S. paper industry has shown steady growth. Comparing 1967 with 1977—and taking into account that 1977 was not paper's best year due to lagging recovery in other industrial countries—the industry's export tonnage, including exports of waste paper, increased by almost 83% and the value of exports rose by 237% to $2.6 billion. This means that the industry's average annual growth in volume was over 6% and in value almost 13%. In view of this good performance why then do we need trade liberalization? Let me outline some of the reasons.

The European Community

The paper industry's major market is the European Community, where the value of dutiable exports in 1977 accounted for $322.7 million. In the E.C., our industry has been experiencing and will continue to experience a growing tariff disadvantage vis-a-vis our major competitors, the Nordic countries. By January 1984, under the treaty between the E.C. and the European Free Trade Association (EFTA), imports of paper and paperboard from the EFTA countries will enter all nine E.C. nations completely duty-free. Without meaningful tariff reductions in the E.C. for North America, the tariff disparity would adversely affect our competitive position and could lead to a loss of this important market. This, of course, is unacceptable to the industry, and would also have an adverse affect on the U.S. balance of payments. Although the lack of tariff parity in the E.C. will not be eliminated by the results of the Tokyo Round, without the agreed-upon tariff reductions the disparity would be much greater. Decreased tariffs are needed to keep and attract steady, long-term U.S. exporters to the market—a plus for the U.S. paper industry but also for our foreign customers.

Japan

The Japanese Pulp and Paper Industry is the second largest in the world. Yet the high tariffs on paper and paperboard, most of them in the 12 to 15% range, have been effectively dampening our industry's efforts to expand in this market. The reduction of the Japanese tariffs coupled, we hope, with an effective reduction of powerful nontariff barriers, will permit our companies to develop the export potential for this large consuming market.

Canada

Ninety percent of paper industry imports into the U.S. are from Canada, and the bulk of this Canadian tonnage enters duty-free. These imports consist mainly of newsprint and pulp. The U.S. tariffs on the rest of the imports from Canada are low in comparison to current Canadian duties on paper and board products, which mostly range from 12 to 15%. While under the present offer the U.S. will make extensive reductions in its tariffs on paper industry's items, the substantial Canadian concessions will have narrowed the tariff gap between our two countries, thereby expanding the U.S. potenial in that market. It has been the consensus of ISAC #4 that the U.S. industry will benefit from these concessions.

Nontariff barriers

Among the nontariff barrier agreements negotiated in Geneva, three codes are of particular interest to the paper industry although other agreements are also significant since they will improve, we believe, the overall aspects of the international trading system.

The U.S. paper industry is international in its character, and with proper incentives—an improved international trading system being a key one—will continue to expand. Yet in a world where subsidies for exports and domestic subsidies on production, especially for capital intensive industries such as paper, are an ever growing practice, we will be at a great disadvantage. We believe that the recently negotiated GATT code on subsides, when coupled with effective domestic legislation on countervailing duies, will provide a very significant safeguard for our industry in the domestic as well as in third country markets.

In the past, we have experienced trade problems caused by the establishment by foreign countries of standards—such as, for example, specific product definitions—of which we were not even aware. The key word of the new GATT standards code, as we understand it, is "transparency." In other words, standards in all their many forms can no longer be trade barriers. When standards are formulated by individual countries, the signatories to the code will have a chance to object, if their effect will be detrimental to trade. We believe that it is indeed a great step forward in diminishing trade distortions.

We are also encouraged by the adoption of the code on customs valuation. All too often, arbitrary actions by customs authorities distort the true value of exported products by so-called "uplifts" or other arbitrary methods of valuation, thus effectively raising tariff duties without appearing to do so. The new code on customs valuation promises to decrease any uncertainty in export valuation and thus encourage more companies to enter the export field.

In reviewing the impact of the negotiated agreements on trade in general and on the paper industry specifically, the ISAC No. 4 felt strongly that the success of these agreements will depend greatly on their fair and effective enforcement. This in turn will require continued vigilance on the part of the U.S. government as well as U.S. industry.

Indirect exports

Let me now turn to another reason why the paper industry strongly supports trade liberalization. This reason, I believe, is usually not given enough consideration in the evaluation of the impact of trade on the domestic economy. I am now speaking of the multiplier effect of indirect exports on domestic production and employment. We define the paper industry's indirect exports as domestic sales that take place only because of export demand for the products of other industries. Packaging for exported products, paper for exported printed matter, and paper used in export documentation are examples of indirect exports for our industry. Practically every basic industry in this country has indirect exports with its own particular multiplier. As overall U.S. exports increase—and we assume that they will through a better trading system and liberalization of tariffs—so too will the paper industry's indirect exports, which in 1977 totaled an estimated $5 billion and resulted in the employment of 67,000 people.

From the national standpoint, exports must be a job-creating activity and an antidote to the loss of jobs occurring in industries that have lost their domestic or international competitiveness. Therefore, the export-creating potential of indirect

exports with its multiplier effect is worthy of serious consideration by the U.S. government. Earlier this year, we urged the U.S. Department of Commerce to carry out a study based on the current Census data that would show in understandable terms the impact of indirect exports on domestic production and employment in the basic industries. We still think it is a very worthwhile effort, judging from the results we have obtained from a study that was limited to our own industry.

We are attaching a tabulation recently completed by the American Paper Institute, which estimates the foreign trade related employment in our industry. We have estimated that about 15% of total industry employment, or over 103,000 workers, is related to paper industry's direct or indirect exports. As total U.S. exports increase, so will the indirect exports of the U.S. paper industry—another reason why we support successful conclusion of the MTNs.

Our industry did not get everything we wanted out of these negotiations. No one ever does. And, we also had to give up a major portion of our domestic tariffs on paper and paperboard.

Nevertheless, it is the unanimous consensus of the Industry Sector Advisory Committee on paper that on balance our negotiators have done a good job and that our industry will be better off in the years to come, once the package has received Congressional approval. We also believe that the adoption of this package will signal to industry the commitment of the U.S. Congress and the Executive Branch that export expansion is a key national priority.

In the course of its meeting on April 19, the ISAC No. 4 made four recommendations pertaining to enabling legislation. They were as follows:

1. Implementing legislation should reflect provisions of negotiated codes and agreements as closely as possible.
2. Enforcement of the countervailing duties and antidumping laws must be strong, fair and effective. At the same time, in fashioning relief for the injured industry, the government must have the necessary flexibility to effect relief without creating widespread retaliatory trade problems. Such relief would include negotiated solution where appropriate.
3. Implementing legislation must contain provisions for the continuation of the private sector advisory process with each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well, and each sectoral committee should be given an opportunity to participate when appropriate.
4. The President should be given an extension of his tariff negotiating authority.
5. There should be an expression of legislative intent that foreign trade is a national priority and thus effective U.S. governmental organization for dealing with foreign trade policy and programs is imperative. Better coordination of trade policy and programs is necessary, but specific legislation dealing with governmental reorganization should be left to the immediate post-MTN period.

We are very pleased that on the whole these recommendations are reflected in the "Trade Agreements Act of 1979."

In summary, export expansion should be clearly identified by the Congress and the Executive Branch as a national priority. To reach this goal will require a concerted effort on the part of the U.S. government and industry. The paper industry is convinced that Congressional approval of the MTN package is essential if the country is to succeed in this undertaking.

U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976

STATE	VALUE OF SHIPMENTS ($ mil.): TOTAL INDUSTRY 26 SHIPMENTS[a]	DIRECT EXPORTS[b]	INDIRECT EXPORTS[c]	TOTAL OF DIRECT & INDIRECT EXPORTS	(Thousands of Employees): TOTAL INDUSTRY 26 EMPLOYMENT[d]	EMPLOYMENT RELATED TO DIRECT EXPORTS[e]	EMPLOYMENT RELATED TO INDIRECT EXPORTS[f]	EMPLOYMENT RELATED TO TOTAL OF DIRECT & INDIRECT EXPORTS	DIRECT & INDIRECT EXPORT-RELATED EMPLOYMENT AS % OF TOTAL INDUSTRY 26 EMPLOYMENT	RANK OF INDUSTRY 26 IN TERMS OF EXPORT VALUE WITHIN STATE
Alabama	1,815.7	83.1	182.4	265.5	19.9	1.2	2.5	3.7	18.6	Fourth
Arizona	92.4	3.4	9.6	13.0	1.2	0.1	0.1	0.2	16.7	Ninth
Arkansas	934.0	91.0	93.6	184.6	11.1	1.3	1.3	2.6	23.4	Second
California	3,066.5	128.2	308.6	436.8	40.7	1.8	4.3	6.1	15.0	Tenth
Connecticut	563.4	28.5	56.2	84.7	8.9	0.4	0.8	1.2	13.5	Sixth
Florida	1,446.8	212.0	129.6	341.6	16.6	3.0	1.8	4.8	28.9	Second
Georgia	2,344.2	124.7	233.1	357.8	26.9	1.8	3.3	5.1	19.0	Third
Illinois	2,152.1	34.0	222.2	256.2	38.3	0.5	3.1	3.6	9.4	Thirteenth
Indiana	861.3	12.2	88.8	101.0	14.4	0.2	1.3	1.5	10.4	Fourteenth
Iowa	354.0	10.1	36.0	46.1	4.9	0.1	0.5	0.6	12.2	Twelfth
Kentucky	515.2	53.8	48.5	102.3	8.0	0.8	0.7	1.5	18.8	Sixth
Louisiana	1,450.2	126.2	139.2	265.4	16.0	1.8	1.9	3.7	23.1	Fourth
Maine	1,406.0	107.9	136.3	244.2	17.8	1.6	1.9	3.5	19.7	First
Maryland	548.3	12.3	56.2	68.5	9.6	0.2	0.8	1.0	10.4	Eighth
Massachusetts	1,603.1	71.3	160.8	232.1	31.2	1.0	2.2	3.2	10.3	Seventh
Michigan	1,764.3	44.2	1[illegible].4	226.6	24.8	0.6	2.5	3.1	12.5	Tenth
Minnesota	1,321.0	44.9	133.9	178.8	18.1	0.6	1.9	2.5	13.8	Eighth
Mississippi	577.3	189.4	40.3	229.7	6.3	2.7	0.6	3.3	52.4	First
Missouri	787.1	12.8	81.6	94.4	14.8	0.2	1.1	1.3	8.8	Thirteenth
New Hampshire	434.5	72.8	38.4	111.2	7.3	1.0	0.5	1.5	20.5	Second
New Jersey	1,807.0	51.5	184.3	235.8	31.3	0.7	2.6	3.3	10.5	Tenth
New York	2,620.2	77.2	266.9	344.1	48.6	1.1	3.7	4.8	9.9	Fifth
N. Carolina	1,319.1	80.6	130.1	210.7	17.5	1.2	1.8	3.0	17.1	Sixth
Ohio	2,190.3	44.9	225.6	270.5	37.6	0.6	3.2	3.8	10.1	Twelfth

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U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976

STATE	VALUE OF SHIPMENTS ($ mil.): TOTAL INDUSTRY 26 SHIPMENTS a/	DIRECT EXPORTS b/	INDIRECT EXPORTS c/	TOTAL OF DIRECT & INDIRECT EXPORTS	(Thousands of Employees): TOTAL INDUSTRY 26 EMPLOYMENT d/	EMPLOYMENT RELATED TO DIRECT EXPORTS e/	EMPLOYMENT RELATED TO INDIRECT EXPORTS f/	EMPLOYMENT RELATED TO TOTAL OF DIRECT & INDIRECT EXPORTS	DIRECT & INDIRECT EXPORT-RELATED EMPLOYMENT AS % OF TOTAL INDUSTRY 26 EMPLOYMENT	RANK OF INDUSTRY 26 IN TERMS OF EXPORT VALUE WITHIN STATE
Oregon	1,046.1	39.1	105.6	144.7	9.9	0.6	1.5	2.1	21.2	Fourth
Pennsylvania	3,075.2	62.1	316.3	378.4	42.4	0.9	4.4	5.3	12.5	Fourteenth
Rhode Island	103.1	4.3	10.1	14.4	2.4	0.1	0.1	0.2	8.3	Fourteenth
S. Carolina	1,112.6	135.4	102.2	237.6	13.8	1.9	1.4	3.3	23.9	Fourth
Tennessee	1,267.6	47.6	129.6	177.2	17.1	0.7	1.8	2.5	14.6	Tenth
Texas	1,402.9	43.3	142.6	185.9	20.7	0.6	2.0	2.6	12.6	Eleventh
Vermont	184.7	8.6	18.2	26.8	2.3	0.1	0.3	0.4	17.4	Second
Virginia	1,100.4	47.9	110.4	158.3	16.2	0.7	1.6	2.3	14.2	Ninth
Washington	1,733.5	203.0	160.8	363.8	17.6	2.9	2.3	5.2	29.5	Third
West Virginia	90.3	3.3	9.1	12.4	1.9	0.1	0.1	0.2	10.5	Tenth
Wisconsin	3,704.6	78.9	380.6	459.5	44.1	1.1	5.3	6.4	14.5	Sixth
BALANCE OF STATES (15)	1,373.1	146.1	129.6	275.7	15.3	2.1	1.8	3.9	26.5	
TOTAL	48,218.1	2,536.6	4,799.7	7,336.3	675.5	36.3	67.0	103.3	15.3	

a/ Paper and Allied Products industry is designated Industry 26 by the Bureau of the Census.

b/ Value of export shipments is based on individual State data reported by the Bureau of the Census and adjusted to the revised Census figure for the value of total Industry 26 export shipments.

c/ Indirect exports are domestic sales which take place because of export demand for the products of all other industries. Total indirect exports, estimated to be $4.8 billion in 1976, allocated among states on the basis of each state's share of total non-export shipments.

d/ Total industry employment based on Census state employment data, adjusted to Bureau of Labor Statistics total Industry 26 employment figure for 1976.

e/ API estimates.   f/ API estimates.

Source: Annual Survey of Manufactures, 1976, Origin of Exports of Manufacturing Establishments, issued by the Bureau of the Census, Department of Commerce, June, 1978.

American Paper Institute
International Department
April 17, 1979

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Statement of the Motor Vehicle Manufacturers Association of the United States, Inc.

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA) commends the Subcommittee on International Trade of the Finance Committee for holding public hearings on the results of the Multilateral Trade Negotiations and appreciates this opportunity to comment on this important national issue. MVMA represents eleven[1] of the major U.S. manufacturers of automobiles, trucks and buses. These companies produce more than 99 percent of this country's domestically manufactured motor vehicles.

MVMA has traditionally supported the expansion of international trade and the participation of the U.S. government in negotiations to eliminate distortions to trade because the benefits of this policy to our members and to the nation are considerable. In continuation of this policy we have supported the participation of the U.S. government in this Tokyo Round of negotiations. We believe that these negotiations have achieved considerable success.

Substantial progress has been made in applying greater international discipline over the use of nontariff barriers to trade. The code of conduct approach to achieving this discipline was imaginative and yielded comprehensive and well-drafted documents. The effective implementation of these agreements holds promise for the attainment of an improved international trading environment in which an expansion of U.S. exports can more likely occur.

With respect to the Codes on Standards, Government Procurement, and, if its negotiation is successfully concluded, Safeguards, a greater international consensus has been achieved that governmental practices should be more open and subject to procedural due process.

Progress has also been made in establishing a framework which may prove to be effective in applying greater international discipline over the trade distorting effects of government subsidies and dumping.

The Customs Valuation Code will rationalize customs procedures internationally, including those in the United States. And the Commercial Counterfeiting Code, if it is successfully concluded, will discourage an increasingly prevalent international practice.

The immediate impact of these agreements on trade in motor vehicles is difficult to assess but is not expected to be dramatic. However, over time they should facilitate the growth of U.S. exports of vehicles and components.

Although fully supportive of the outcome of the negotiations, we must point out certain areas where important objectives of MVMA were not achieved. Most importantly, tariff equity on automotive products among major producing countries was not attained. While the United States and Japan accord little or no tariff protection to most automotive products, the European Community still maintains a sizeable level of protection, particularly in large trucks. This inequity should receive priority attention in the post-MTN period. Not addressed in this round of negotiations was the potential distortions to trade resulting from governmental requirements that certain levels of domestic content be maintained in local manufacturing operations and from related measures constraining the operational flexibility of local manufacturing facilities. These practices are likely to lead to serious trade disputes between developed and developing countries so they should be addressed in international discussions as soon as possible. Notwithstanding these shortcomings, we believe that on balance the potential benefits to the U.S. economy arising out of the MTN agreements outweigh the costs and therefore strongly urge Congressional approval of the trade agreements implementing legislation.

After the legislative implementation of the agreements is concluded, the crucial phase of converting the MTN agreements into actual improvements in the conduct of international trade will have just begun. The U.S. Executive Branch will then have the responsibility to assure that the rights obtained in the negotiations are fully exercised on behalf of the international commercial interests of U.S. industry and agriculture. In exercising this responsibility the U.S. government must provide effective access for U.S. firms to secure the official support of the U.S. government in correcting (through the appropriate domestic and multilateral mechanisms) those violations of the MTN agreements they encounter in the marketplace.

The nature of the organization by which the U.S. government undertakes its expanded responsibilities arising from the negotiations is far less important than how vigorously and effectively these new responsibilities are executed. The Congress

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[1] Members are: American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Ford Motor Company, Freightliner Corporation, General Motors Corporation, International Harvester Company, PACCAR, Inc., the Nolan Company, Walter Motor Truck Company, and White Motor Corporation.

should assure that adequate resources and organizational flexibility are available for this purpose.

We are particularly pleased to endorse the legislative provision for continued use of private sector advisors. Their use will greatly facilitate the U.S. government's efforts to assure the effective implementation of the agreements. MVMA and its member companies stand ready to cooperate fully with those government agencies responsible for the implementation and enforcement of the trade agreements.

Our evaluation of each of the agreements having a potential impact on our member companies follows.

Subsidies, countervailing duties, and antidumping

The Subsidies Code is clearly the most complex nontariff measure code and deals with the most difficult, controversial issue tackled in the MTN because it touches basic aspects of a country's economic/social/political system. We believe that the Code is probably the best result that could have been achieved in this negotiation, given the divergent interests of the countries involved.

Governments are becoming increasingly involved in the actual conduct of commercial enterprise. Because of the intrinsic importance of transportation and because of the size and economic and social impact of the motor vehicle industry in many countries, automotive production and trade decisions outside the United States have increasingly been subject to the dictates of government social, economic, and political considerations and less to the forces of market competition. The forms and depth of government participation vary greatly from country to country and from case to case. This involvement ranges from governmental subsidization of essentially privately held and managed firms by fiscal, industrial, financial and regional policies, through shared ownership between the government and private sector, to direct government ownership and management of nationalized industry.

The participation of government in commercial enterprise is almost always motivated by considerations other than profit. The objective may be maintaining or expanding employment, or implementing government-mandated changes in the structure of an economy or society. Government participation almost inevitably leads to a distortion of the economic forces and financial parameters which determine producers' costs and prices, and thus creates the potential for serious distortions of trade flows. U.S. motor vehicle manufacturers could be placed at serious disadvantage in competing with foreign firms backed by the taxing powers of their governments. This situation can only result in a growing number of problems and controversies in international trade, particularly in times of recession.

The explicit prohibition of export subsidies and the general recognition that governmental industry-supportive policies undertaken to achieve domestic social and economic objectives might also damage the interest of other countries are useful extensions of GATT discipline. The elaboration of a dispute settlement process within the GATT by which governments may pursue their rights in seeking redress for the injurious trade effects of foreign subsidy practices is a definite improvement in the GATT dispute settlement procedure.

To obtain agreement on a subsidies code, the United States has agreed to make a major concession regarding the application of its countervailing duty statute, i.e., the addition of a requirements that, with respect to imports that have benefited from a foreign government's subsidies, the petitioning U.S. industry must demonstrate that it is incurring injury from these subsidized imports. This concession was probably the most important bargaining chip the U.S. had in the negotiations. Whether it was played well will depend upon how forcefully the U.S. exercises its new rights as well as upon the extent to which our trading partners' acceptance of the Code reflects a good faith commitment to applying greater discipline to the use of the trade-distorting subsidies.

Technical barriers to trade (standards)

The principles contained in the Standards Code address what is becoming one of the most serious constraints on international trade in motor vehicles. Product standards and the certification systems and test procedures associated with them have been and continue to be limiting U.S. vehicle exports to foreign markets largely by significantly increasing the costs, sometimes to prohibitive levels, involved in bringing vehicles into conformance with foreign standards.

Product standards as nontariff measures are particularly difficult to overcome because standards are justified by governments as necessary to ensure public safety, prevent environmental degradation or for some other public benefit. While these objectives may well be legitimate, the product standards created to achieve them and the certification system and test procedures utilized often unnecessarily become trade barriers.

The resulting distortions in international trade patterns that result may be a proper price to pay for the protection of public welfare; differing conditions among countries may very well require different solutions as reflected in differing product standards. However, countries should be aware of the trade effects of such standards-setting activities and seek to minimize the costs associated with these distortions.

MVMA strongly supports international efforts to harmonize, wherever appropriate, regulations pertaining to required performance or capabilities of motor vehicles. Even in those instances where countries feel compelled to promulgate regulations that require different levels of performance, the methods by which they define and measure performance can be made compatible. This can be accomplished through international agreement to adopt standardized test procedures to measure performance characteristics. Differences among countries over level of performance required do not preclude the use of identical measurement and testing techniques. International agreement can also be achieved with respect to the type of equipment used in testing and measurement.

The Code's encouragement of signatory governments' full participation in appropriate international organizations working toward standards harmonization is welcomed. In the automotive area, we hope that the Code will stimulate more active U.S. government participation (specifically by the National Highway Traffic Safety Administration and the Environmental Protection Agency) in international harmonization activities. This more active role by the U.S. government should encompass each of the three phases of the standards development process. First, much greater cooperation and exchange of information with foreign governments should occur in the area of basic research on automotive topics, particularly those expected to be the subject of future regulatory activity. Second, the U.S. government should participate more actively in international efforts to achieve common standards for measuring performance. In the automotive, as in other technical fields, the International Standardization Organization is in the forefront of these efforts; it should receive more U.S. government support and participation.

Finally, the U.S. government should cooperate much more openly and effectively with foreign governments in efforts to harmonize governmental regulation of the motor vehicle. In this area, the U.S. government should substantially increase it commitment to participation within Working Party 29 of the Road Transport Committee of the United Nations Economic Commission for Europe. Coordination and cooperation between Working Party 29 and the International Standardization Organization can facilitate efforts to achieve greater international harmonization of motor vehicle standards and regulations.

The process by which governments administer their standards is often more of a hindrance to trade than the standards themselves. The Code's recognition of the benefits arising from the appropriate use of the manufacturer's self-certification of the compliance of its products with standards is laudable. That such certificating can be effectively used is demonstrated by the experience since 1966 of the National Highway Traffic Safety Administration in administering U.S. Federal motor vehicle safety standards. On the other hand the U.S. Environmental Protection Agency has demonstrated that a type-approval system also has its proper place. Hopefully, with the Code's encouragement, more countries will intelligently and effectively use both systems.

Another standards-based trade problem encountered by MVMA member companies is the exclusivity arising from the activities of regional standards-setting and administering bodies. For example, U.S. manufacturers have encountered some difficulties in obtaining full rights of participation in the motor vehicle certification system of the European Communities. The Code addresses this type of problem by directing signatories to operate regional certification systems so as to grant access to suppliers located in countries outside the region on terms no less favorable than those extended to regionally based suppliers. We will press for strict adherence to this commitment.

The Code will provide a means by which manufacturers may seek the removal of standards that are unjustifiable trade barriers. The commitment to this end is the most important principle contained in the agreement. However, if the Code succeeds only in assuring uniform non-discriminatory treatment for all manufacturers in the administration of product certification and testing procedures, then the negotiations of this Code can be considered a great step forward. As with all the principles contained in the various codes, the proof of their worth will depend upon the extent to which they are implemented in good faith by the signatories.

Customs valuation

Valuation procedures utilized by industrial countries are now infrequently a major deterrent to trade. This is not to say, however, that they have no commercial

significance. In the automotive sector, for example, quite small increments in costs can have a major impact on a company's competitive position. Thus a relatively minor uplift in customs valuation can have a competitive impact of much larger relative proportions.

Accordingly, we are very supportive of the effort, the fruits of which are contained in this Code, to minimize arbitrary practices in customs valuation thereby promoting more predictability and uniformity in customs practices among the developed countries of the world. While we understand that immediate acceptance of the Code by developing countries is unlikely, except possibly for one or two, we hope that, as the Code is implemented by the developed country signatories, the developing countries also will decide that adopting an increasingly internationalized practice of customs valuation is in their best interests as well.

With respect to changes in U.S. Customs practices required by the Code, we are particularly pleased to see that the Code places some limitation on U.S. Customs ability to assess duties on "intangible assists," e.g., engineering drawing, artwork, and development support provided by the U.S. importer to the foreign producer. The current practice allows the use of excessively arbitrary and unreasonable procedures to determine the dutiable value of these assists. The termination of duty assessments on components of value created in the United States is certainly a positive step. We suspect that the revenue collected from duties on intangible assists is exceed by Customs' administrative costs in collecting them and is certainly exceeded by the expense incurred by business firms in attempting to quantify, to Customs' satisfaction, the precise amount of these assists.

Government procurement

The rapid growth of government in general has been fully reflected in its equally rapid growth as a consumer of manufactured products. Governments are therefore very substantial customers for many industries, the automotive being no exception. "Buy national" policies have effectively restricted government procurements to their domestic supplies unless the products needed were not produced domestically. This has certainly been the case with motor vehicles, a product whose national origin is very much evident. The inherent tendency to want to purchase goods made in one's own country will be extremely difficult to overcome, particularly when the purchases are to be made by governmental entities using revenue derived from national taxation. Notwithstanding this inherent problem, the Government Procurement Code is a useful attempt to limit the discriminatory aversion of governments to the purchase of comparable, competitively priced foreign goods.

While the Code may provide greater opportunities than currently exist for U.S. producers to bid on foreign government procurement contracts, the costs to U.S. firms from our adherence to the Code, i.e., the loss of the several price preferences they currently enjoy when bidding on U.S. government contracts, could well be significant. The U.S. negotiators should be commended, however, for their prudence in achieving a balance between those procurements subject to the Code's discipline and those which are not.

The commitments other governments will have to make by signing this Code and the obligations they will assume in adopting more orderly and transparent procurement procedures may indeed make it more difficult for them to discriminate against U.S. firms and in favor of domestic suppliers. We do not expect, however, to see the government of any major motor vehicle producing country purchase for its official fleet significant numbers of vehicles not made within its own borders.[2] Nevertheless, we hope that all signatories will honor the letter and the spirit of this Code as vigorously as we expect the U.S. government will.

Safeguards

The absence to date of an improved international arrangement on safeguards as part of the MTN package of agreements is disappointing. Hopefully, a Code can still be obtained.

Tariffs

The value of U.S. tariff reductions on automotive products exceeds by many times the value of automotive duty reductions agreed to by our trading partners. The foreign tariff reductions achieved in this negotiation are of modest proportions. Consequently, it is difficult to believe they will have any significant stimulative

[2] Several but not all MVMA member companies believe that the U.S. government may be an exception here. Its past procurement decisions have provided opportunities to foreign bidders and some recent actions suggest that foreign suppliers of motor vehicles may even be receiving preferential treatment.

impact on U.S. automotive exports whereas the U.S. market will become even more open and attractive.

Particularly disappointing is the lack of any significant reduction in the European Communities' tariffs on regular trucks and on truck tractors for semitrailers, which will be dutiable at 20 percent. The same types of trucks are imported into the United States as "cab chassis" or as automotive "parts" both dutiable at 4 percent.

MVMA has consistently urged U.S. negotiators to seek a significant reduction in the EC truck duty since it is a major hindrance to increased U.S. exports. The EC also still maintains a tariff on passenger cars that is substantially higher than the level of tariff protection maintained by the United States and Japan. These should receive priority attention in the post-MTN period.

Commercial counterfeiting

International trade in counterfeit goods is a rapidly worsening problem for manufacturers of brand name products. Increasing volumes of counterfeit brand name automotive repair parts are found in the international marketplace. Thus the attempt to address this problem in the MTN context is timely and commendable. We strongly support the negotiation of this agreement and hope that it can be concluded in time for implementation with the present set of MTN agreements.

Import licensing

U.S. automotive exports are sometimes subject to needless bureaucratic delays as a result of cumbersome import licensing systems maintained by some of our trading partners. Procedures and documentation necessary to obtain such licenses are often complicated and frequently delay the clearance of products through customs. This problem is particularly acute in developing countries.

The Code will promote more expedited import licensing by our trading partners by encouraging neutral administration, transparency, simplified procedures, and approval of license applications despite minor errors. Its value to U.S. producers of automotive products will depend on the number of developing countries that agree to adhere to it and implement its provisions in good faith.

TESTIMONY OF IRWIN SCHNEIDER, PRESIDENT, IMPERIAL ARTS CORP.

Mr. Chairman and members of the committee: My name is Irwin Schneider. I am President of Imperial Arts Corporation of Elk Grove Village, Illinois. Our company imports dinnerware which is sold to a variety of institutional users such as airlines, hotels, restaurants, schools and hospitals.

I am here because the Administration proposes to raise the duty on the dinnerware that I import from 11 percent to more than 48 percent—an increase in duty of more than 400 percent.

For this astronomical duty increase to be part of a package that supposedly is designed to liberalize trade is, in my view, outrageous.

There is no economic need for an increase in the duty on dinnerware from Japan from 11 to more than 48 percent. The particular variety of dinnerware that we import from Japan is not even made in this country. It is not dumped by the Japanese. It is not subsidized by the Japanese. It is fairly exported by them and fairly imported by us and it hurts no one.

I make these economic points to this Committee, Mr. Chairman, because I was never given an opportunity to make them anywhere else. My understanding is that the laws of this country—such as Section 201 of the Trade Act of 1974—normally give people on all sides of an issue an opportuity to state their case before a decision to restrain imports by astronomically high duties is made. But Ambassador Strauss' office did not do that in the case of the dinnerware we import.

Candor requires me to inform the Committee that Mr. Strauss' office would deny that we never had an opportunity to make our case. I am sure that the Office of the Special Representative for Trade Negotiations would tell the Committee, as they have told us, that the STR and the International Trade Commission held hearings on this matter at which we had an "opportunity" to testify. Indeed, they did have hearings. The notices, which appeared in the Federal Register of April 4, 1978 for the ITC and April 27, 1978 for the STR, listed the dinnerware which I import (TSUS Item 533.38) as: "Articles which may be considered for increases in existing duties, to the extent permitted by Section 101(a) and 101(c) of the Trade Act, *incidental to modifications in the tariff nomenclature.*" (Emphasis added).

Mr. Chairman, how can anyone honestly and fairly say that this statement gave us fair notice that the STR was thinking of increasing the duty on the dinnerware we import from 11 to 48 percent? How can anyone honestly and fairly describe an increase in duty from 11 to 48 percent as "incidental to modifications in the tariff

nomenclature"? Attached to my testimony are copies of the two notices that appeared in the Federal Register—the only notice that was given that any action was in any way being contemplated. Committee members may decide for themselves whether that is fair and adequate notice to anyone.

Mr. Chairman, everything I have heard or read about the actions of the Congress and the U.S. Government in these trade negotiations was to try to liberalize trade and to improve the rules of international trade. How can an increase in duty of 400 percent in any way fit into a program like that?

The Constitution gives the Congress the authority to regulate foreign trade, and through hearings such as this, you are doing that. I realize that the bill before this Committee and the Congress is not subject to amendment, and my sense of reality tells me Congress would not reject the entire bill because of the dinnerware tariff. Nonetheless, this Committee, as the watchdog on foreign trade for the Congress, should not silently permit any duty increase on any product at anytime to be accomplished in the way the Administration tried to accomplish the dinnerware duty increase—by totally inadequate, if not misleading, announcements in the Federal Register about products which "may be considered for increases" "incidental to modifications in the tariff nomenclature". If the Administration proposed to raise a duty on a product, they should be required to say so clearly and accurately to give everyone an opportunity to make a case.

This Committee should not tolerate such procedures nor should it tolerate the inclusion of an unjustified duty increase as part of a package designed to liberalize and reform international trade. I ask that the Committee direct the Administration to submit legislation forthwith to the Congress that would restore the rate of duty on the dinnerware we import to 11 percent ad valorem equivalent.

to Nissei neither increased Nissei's market share nor decreased that of U.S. producers. U.S. converters increased their sales significantly during this period and increased their market share by 123 percent. In addition, some purchasers indicated that orders were sometimes placed for Japanese fabric because of quality.

Likelihood of injury.—Information compiled in this investigation does not reveal that an industry in the United States is being or is likely to be injured by LTFV imports. To the contrary, there is evidence of a healthy recovery from the level of operations in the recession year 1975. In view of the increasing trends noted above with respect to U.S. producers' shipments, employment, and profitability and the decreasing trend of LTFV imports, we do not feel that there is likelihood of injury to the U.S. industry. Furthermore, discussions pending between the governments of the United States and Japan with respect to Japanese exports of impression fabric to the United States may preclude any significant increase in the quantity of such exports.

CONCLUSION

It is clear from the above considerations that the U.S. industry slitting impression fabric in the United States is not being and is not likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan found by Treasury to be, or likely to be, sold in the United States at LTFV. Therefore, we find in the negative.

By order of the Commission:

Issued: March 29, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-8668 Filed 4-3-78; 8:45 am]

[7020-02]

[TA-203-4; TA-131(b)-2; 332-100]

CERTAIN CERAMIC ARTICLES

Consolidated Investigations and Hearings

Notice is hereby given that the United States International Trade Commission on March 30, 1978, at the request of the Special Representative for Trade Negotiations, instituted consolidated investigations under sections 203(i)(2) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2) and 19 U.S.C. 2151(b), respectively) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to certain ceramic articles. The letter from the Special Representative requesting the investigations is attached hereto and made a part thereof.

Section 203 investigation. The investigation under section 203(i)(2) of the Trade Act is for the purpose of advising the President of the Commission's judgment as to the probable economic effect on the industry concerned of the immediate termination of the relief provided for by Proclamation 4436 of April 30, 1976, with respect to the ceramic articles provided for in items 923.01, 923.07, 923.13, and 923.15 of the Appendix to the Tariff Schedules of the United States (TSUS).

Section 131(b) investigation. The investigation under section 131(b) of the Trade Act is for the purpose of advising the President of the Commission's judgment—

(a) With respect to each article described in List I[1] of the Special Representative's notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers, and

(b) With respect to all articles provided for in TSUS items 533.11 through 533.77, described in List II[2] of the Special Representative's notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under Paragraph 1 of his notice would have on domestic industries producing like or directly competitive articles and on consumers.

Section 332 investigation. The investigation under section 332(g) of the Tariff Act of 1930 is for the purpose of providing the Special Representative—

with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

A proposed draft nomenclature for such ceramic articles is attached to this notice and made a part thereof.

Consolidated Public Hearings Ordered. Public hearings in connection with these consolidated investigations will be held in the Commission's Hearing Room in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 9:30 a.m., e.d.t., Monday, May 1, 1978. Persons requesting to appear at the hearings should advise the Secretary of the Commission, in writing, at his office in Washington, 701 E Street NW., Washington, D.C. 20436, not later than noon, Wednesday, April 26, 1978.

The hearings will proceed continuously and consecutively. The Commission will hear testimony and receive information first with respect to the section 203(i)(2) investigation; second with respect to the section 131(b) investigation; and third with respect to the section 332(g) investigation. It is requested that persons submitting requests to appear indicate the hearing or hearings for which the appearance is requested.

Issued: March 30, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

THE SPECIAL REPRESENTATIVE FOR
TRADE NEGOTIATIONS,
Washington.

HON. DANIEL MINCHEW,
Chairman, U.S. International Trade Commission, Washington, D.C. 20436

DEAR CHAIRMAN MINCHEW: In announcing his decision on April 30, 1976, to terminate import relief and restore concession rates of duty on imported ceramic tableware, President Ford directed the Special Trade Representative to review the classifications and rates of duty on ceramic dinnerware and related articles in the Tariff Schedules of the United States (TSUS) and to determine if changes are necessary to close tariff loopholes and change obsolete descriptions brought about by currency changes and inflation, and to enter into negotiations to modify trade agreement concessions on these articles in order to make such changes as would be determined necessary. The ceramic tableware provisions of the TSUS were subsequently reviewed by the Trade Policy Staff Committee, which concluded that a renegotiation of virtually all of the provisions is necessary, including those items which are still subject to increased rates of duty.

If possible, it is our intention to handle the modification of the tableware provisions in the context of the Multilateral Trade Negotiations. However, before we can proceed further with this project, we need the following advice from the Commission:

1. Under the provisions of section 332(g) of the Tariff Act of 1930, I request, at the direction of the President, that the Commission provide me with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

2. Pursuant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846, I request that the Commission advise the President, through the Special Trade Representative, of its judgment as to the probable economic effect on the domestic industry concerned of the immediate termination of import relief on the ceramic articles temporarily provided for in TSUS items 923.01, 923.07, 923.13, and 923.15.

3. In accordance with section 131(a) of the Trade Act of 1974 and section 4(c) of Execu-

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[1] List I attached to the STR request covers all articles for which the President originally proclaimed import relief pursuant to the provisions of section 351 of the Trade Expansion Act of 1962. In view of this import relief action, the President has not previously requested from the Commission "probable economic effect" advice on these articles.

[2] List II attached to the STR request covers the current permanent provisions of items 533.11 through 533.77 in subpart C of Part 2 of schedule 5 of the TSUS.

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the Order 11846, I am furnishing the Commission herewith the notice, which is being published in the Federal Register, that the ceramic articles initially excluded from the original notice of international trade negotiations, issued in January 1975, may in the future be considered in such negotiations. I request that the Commission provide me with its advice, in accordance with section 131(b) of the Act—

(a) With respect to each article described in List I of the present notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers, and

(b) With respect to all articles provided for in TSUS items 533.11 through 533.77, described in List II of the present notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under paragraph 1 above would have on domestic industries producing like or directly competitive articles and on consumers.

I would appreciate your supplying me with the above advice as expeditiously as possible, but not later than June 1, 1978.

Sincerely,

ROBERT S. STRAUSS.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

NOTICE OF ARTICLES THAT MAY BE CONSIDERED FOR MODIFICATION OR CONTINUANCE OF UNITED STATES DUTIES OR ADDITIONAL DUTIES

1. In conformity with Section 131 of the Trade Act of 1974 (19 U.S.C. 2151), notice is hereby given of articles that may be considered for modification or continuance of United States duties, or additional duties. These articles are set forth in List I and List II below.

2. Some of the articles in List I and parts of some of the items in List II (those that are marked with an asterisk) currently are subject to import relief provided initially pursuant to Section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)). In accordance with Section 127(b) of the Trade Act of 1974 (19 U.S.C. 2137), *the President is reserving such articles, or parts of items, from international trade negotiations as long as any import relief action is in effect with respect to them.* This notice of the possible future consideration of such articles or parts or items in international trade negotiations, and the request for advice of the U.S. International Trade Commission referred to in paragraph 3 below, are being taken to prepare for the possibility of negotiations with respect to them should the import relief action terminate.

3. The U.S. International Trade Commission is being requested to furnish its advice, pursuant to Section 131 of the Trade Act of 1974, as to the probable economic effects of modifications or continuances of existing import duties for the articles in List I; and of increases in existing duties, incidental to modifications in the tariff nomenclature, for the items in List II.

ROBERT S. STRAUSS,
Special Representative for Trade Negotiations.

LIST I

Articles which will be considered for modification or continuance of the existing[1] United States duties, or additional duties, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act.

TSUS item[2] and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16 of the Tariff Schedules of the United States) or of fine-grained stoneware:

Available in specified sets:

533.28 pt.[3] In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States in over $12 but not over $22.

Not available in specified sets:

533.31 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.33 pt. Cups valued not over $0.50 per dozen; saucers valued not over $0.30 per dozen; plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $1 per dozen.

533.35 pt. Cups valued over $0.50 but not over $1 per dozen; saucers valued over $0.30 but not over $0.55 per dozen; plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $1 but not over $2 per dozen.

533.36 pt. Cups valued over $1 but not over $1.70 per dozen; saucers valued over $0.55 but not over $0.95 per dozen; plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chopdishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $2 but not over $3.40 per dozen.

533.38 pt.[3] Cups valued over $1.70 but not over $3.10 per dozen; saucers valued over $0.95 but not over $1.75 per dozen; plates not over 9 inches in maximum diameter and valued over $1.55 but not over $3.35 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 but not over $4.85 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $3.40 but not over $6.20 per dozen.

[1] The term "existing" is used herein as defined in section 601(7) of the Trade Act: "The term 'existing' means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of the schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A)."

[2] Tariff Schedules of the United States (19 U.S.C. 1202).

[3] These articles are currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

LIST II

Articles which may be considered for increases in existing duties, to the extent permitted by sections 101(a) and 101(c) of the Trade Act, incidental to modifications in the tariff nomenclature.

TSUS item and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11 Of coarse-grained earthenware, or of coarse-grained stoneware.

Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:

533.14 Valued not over $1.50 per dozen articles.

533.16 Valued over $1.50 per dozen articles.

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:

Available in specified sets:

533.23 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is not over $3.30.

533.25 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $3.30 but not over $7.

533.26 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $7 but not over $12.

533.28* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12.

Not available in specified sets:

*Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

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533.31 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
533.41 Of bone chinaware.
Of nonbone chinaware or of subporcelain:
533.51 Hotel or restaurant ware and other ware not household ware.
Household ware available in specified sets:
533.63 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is not over $10.
533.65 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $10 but not over $24.
533.66 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $24 but not over $56.
533.68 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $56.
533.69 Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $8.
Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:
533.71 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
Other articles:
533.73[1] Cups valued not over $1.35 per dozen, saucers valued not over $0.60 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.
533.75[1] Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.60 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen.
533.77[1] Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen.

The attachment "Tentative Nomenclature Proposal" is provided to project the issues involved in the President's request received March 13, 1978, for—

A proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

The TSUS items 533.11 through 533.77 referred to in the President's request are ceramic "articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients", which are included in subpart C of part 2 of schedule 5 of the TSUS. The basic headnote definitions of ceramic articles in part 2 and the basic headnote concept of "available in specified sets" set forth in subpart C are believed to be sound and commercially acceptable. The tariff "loopholes" and obsolescence involved in these provisions are the direct result of the inadequacy of value as a descriptive technique to distinguish between articles which are inherently the same, but are distinguishable only by their source or brand name.

With the advent and continuation of the Trade-agreements program, the predecessor tariff provisions covering the articles here involved were subdivided into a melange of tariff descriptions distinguishing between specific articles on the bases of their sizes and values. Predictably, inflation and the ingenuity of importers resulted in increasing obsolescence and the introduction of tariff avoidance practices.

Although these problems were addressed in the development of the TSUS provisions, they were only partially and, due to continuing inflation, temporarily solved. Ideally, all the provisions attempting to distinguish between articles on the basis of their values should be eliminated for the reason that they are inexact, difficult to administer, and generate unreliable data for analytical purposes. In the attached tentative proposal, product distinctions based upon value would be reduced to four, all of which would be applicable to ceramic articles "available in specified sets," viz., two provisions for earthenware and stoneware and two for chinaware and subporcelain. The specifics of the tentative proposal are outlined below.

On the attached sheets, there are reproduced: (1) the current permanent tariff provisions applicable to earthenware and stoneware (TSUS items 533.11 through 533.38), and the tentative nomenclature proposal for such articles; and (2) the current permanent tariff provisions applicable to chinaware and subporcelain (TSUS items 533.41 through 533.77), and the tentative nomenclature proposal therefor.

The tentative proposals would involve the following changes in the current provisions:

(a) As a "housecleaning" measure, items 533.14 and 533.16 would be replaced by a single item 533.15 without rate change.

(b) The four items 533.23 through 533.28 applicable to articles "available in specified sets" would be replaced by two new items 533.22 and 533.24. Thus, all such stoneware and earthenware would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(c) Item 533.31 would be replaced by a new item 533.32 that would be limited to steins and mugs which are the only articles presently named in item 533.31 that are being imported in commercially significant quantities.

(d) The four items 533.33 through 533.38 would be replaced by a single new provision item 533.37 that would apply to all other articles of stoneware and earthenware "not available in specified sets", including the items enumerated, except steins and mugs, in item 533.31.

(e) The four items 533.63 through 533.68 applicable to articles "available in specified sets" would be replaced by two new items 533.62 and 533.64. Thus, all such chinaware and subporcelain would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(f) Item 533.69 and three items 533.73 through 533.77 would be replaced by a single new provision, item 533.74,[2] that would apply to "articles available in specified sets not covered by items 533.63 through 533.68" and all other chinaware and subporcelain "not available in specified sets".

(g) Conforming changes in subpart C headnote 2 would be made, i.e., (A) the parenthetical "(items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, 533.68, and 533.69)" would be deleted from lines two through four of paragraph (a) and the parenthetical "(items 533.22, 533.24, 533.62, and 533.64)" would be inserted; (B) "or (c)" would be deleted from the next to the last line of paragraph (a); (C) the phrase "items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, and 533.68" would be deleted from lines three and four of paragraph (b) and the phrase "items 533.22, 533.24, 533.62, and 533.64" would be inserted; (D) paragraph (c) would be deleted and paragraph (d) would be redesignated as "(c)"; and (E) headnote 3 would be deleted.

It can be seen from the foregoing that the major tentative nomenclature proposals are those described in (b) and (d) for stoneware and earthenware and in (e) and (f) for chinaware and subporcelain.

Presumably, the ceramic articles available in specified sets provided for in lower value brackets of new TSUS items 533.22 and 533.62 would be those which are the most directly competitive with domestic production and

[1] Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

[2] Of the nine individual articles described in TSUS item 533.71, steins and mugs are the only ones imported in commercially significant quantities. It would be desirable to provide for a new TSUS item 533.72 limited to steins and mugs, with the other named articles falling into proposed new TSUS item 533.74. However, such proposal is not being made for the reason that the proposal would require a change in the column numbered 2 rate of duty for such other named articles which change would require legislative approval.

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would be made dutiable at higher rates than would the products provided for in the higher value brackets of TSUS items 533.24 and 533.64. The effectiveness of the new provisions would depend upon the extent to which realistic value brackets were established for these provisions taking into account the current and anticipated impact of inflation on U.S. markets for ceramic articles.

New TSUS items 533.37 and 533.74 would not only eliminate a number of tariff descriptions based upon the sizes and values of individual ceramic articles, but would provide an opportunity to establish for such TSUS item a rate of duty the same as would be made applicable respectively for the lower value brackets of new TSUS items 533.22 and 533.62. This arrangement would greatly simplify the nomenclature, facilitate customs administration and also would eliminate the "loopholes" inherent in the current permanent provisions.

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CURRENT PERMANENT PROVISIONS FOR E[illegible]HENWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware..................................	2.5% ad val.	15% ad val.
	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:		
533.14	Valued not over $1.50 per dozen articles......	6% ad val.	25% ad val.
533.16	Valued over $1.50 per dozen articles..........	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
	Available in specified sets:		
533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30................	5¢ per doz. pcs. + 14% ad val. (14.3 AVE)	10¢ per doz. pcs. + 50% ad val.
533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7...............	10¢ per doz. pcs. + 21% ad val. (21.8 AVE)	10¢ per doz. pcs. + 50% ad val.
533.26	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.........................	10¢ per doz. pcs. + 21% ad val. (26.1 AVE)	10¢ per doz. pcs. + 50% ad val.
533.28	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12......................................	5¢ per doz. pcs. + 10.5% ad val. 1/ (11.4 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

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CURRENT PERMANENT PROVISIONS FOR EARTHENWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty 1	Rates of Duty 2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of fine-grained earthenware, etc. (con.):		
	Not available in specified sets:		
533.31	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes....................................	5¢ per doz. pcs. + 11.5% ad val. (13.6 AVE)	10¢ per doz. pcs. + 50% ad val.
	Other articles:		
533.33	Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen....................	5¢ per doz. pcs. + 12.5% ad val. (19.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.35	Cups valued over $0 50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen................	10¢ per doz. pcs. + 21% ad val. (27.5 AVE)	10¢ per doz. pcs. + 50% ad val.
533.36	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen....................................	10¢ per doz. pcs. + 21% ad val. (24.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.38	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen..........	5¢ per doz. pcs. + 11% ad val. 1/ (11.6 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

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TENTATIVE NOMENCLATURE PRO[illegible]L
FOR EARTHENWARE AND STONEWARE

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware..............................	2.5% ad val.	15% ad val.
533.15	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt...........	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in item 533.15) or of fine-grained stoneware:		
	Available in specified sets:		
533.22	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $ 1/	1/	10¢ per doz. pcs. + 50% ad val.
533.24	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $ 1/	5¢ per doz. pcs. + 10.5% ad val.	10¢ per doz. pcs. + 50% ad val.
	Not available in specified sets:		
533.32	Steins and mugs........................	5¢ per doz. pcs. + 12.5% ad val.	10¢ per doz. pcs. + 50% ad val.
533.37	Other articles........................	1/	10¢ per doz. pcs. + 50% ad val.

1/ The values and/or rates of duty to be determined by the President.

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CURRENT PERMANENT PROVISIONS FOR CHINAWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty 1	Rates of Duty 2
	Articles chiefly used for preparing, serving, etc. (con.):		
533.41	Of bone chinaware	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val. (48.2 AVE)	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.63	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10	10¢ per doz. pcs. + 48% ad val. (50.6 AVE)	10¢ per doz. pcs. + 70% ad val.
533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24	10¢ per doz. pcs. + 55% ad val. (57.0 AVE)	10¢ per doz. pcs. + 70% ad val.
533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56	10¢ per doz. pcs. + 36% ad val. (37.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.68	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56	5¢ per doz. pcs. + 18% ad val. (18.3 AVE)	10¢ per doz. pcs. + 70% ad val.
533.69	Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $8	5¢ per doz. pcs. + 18% ad val. (19.9 AVE)	10¢ per doz. pcs. + 70% ad val.

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CURRENT PERMANENT PROVISIONS FOR C[illegible] [illegible]AWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of nonbone chinaware or of subporcelain (con.):		
	Household ware not covered by item 533.63, 533.65, 533.65, 533.65, or 533.69:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes....................................	22.5% ad val.	70% ad val.
	Other articles:		
533.73	Cups valued not over $1.35 per dozen, saucers valued not over $0.50 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen......................	5¢ per doz. pcs. + 22.5% ad val. 1/ (24.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.75	Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.50 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen................	5¢ per doz. pcs. + 30% ad val. 2/ (30.9 AVE)	10¢ per doz. pcs. + 70% ad val.
533.77	Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen...........................	5¢ per doz. pcs. + 17.5% ad val. (18.0 AVE)	10¢ per doz. pcs. + 70% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 48% ad val.)
2/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 55% ad val.)

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TENTATIVE NOMENCLATURE PROPOSAL
FOR CHINAWARE AND SUBPORCELAIN

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving:		
533.41	Of bone china	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.62	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $ 1/	1/	10¢ per doz. pcs. + 70% ad val.
533.64	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $ 1/	5¢ per doz. pcs. + 16% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware not available in specified sets:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	22.5% ad val.	70% ad val.
533.74	Other articles	1/	10¢ per doz. pcs. + 70% ad val.

1/ The values and/or rates of duty to be determined by the President.

[FR Doc. 78-8872 Filed 4-3-78; 8:45 am]

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[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

Public Hearing

Pursuant to Public Law 92-463, notice is hereby given of a public hearing to be held by the Office of Management and Budget under the provisions of the Federal Reports Act of 1942 (44 U.S.C. 3506).

The purpose of the hearing is for the Office of Management and Budget to give interested persons an opportunity to be heard before determining whether or not the provisions for public reports contained in the proposed information collection protocol, "Generic Description of Data Collection for Sections 301, 304, 306, and 307 of the Clean Water Act of 1976" are necessary for the proper performance of the functions of the Environmental Protection Agency or for any other proper purpose.

The hearing, to be held in Room 2008, New Executive Office Building, 725 Jackson Place NW., Washington, D.C. on May 8, 1978, at 9:30 a.m., will be open to public observation and participation.

Further information regarding the hearing may be obtained from the Regulatory Policy and Reports Management Division, Room 10201, New Executive Office Building, Washington, D.C. 20503, telephone 202-395-3772.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-11470 Filed 4-26-78; 8:45 a.m.]

[3190-01]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

CERTAIN IMPORTED CERAMIC TABLEWARE

Public Hearings in Connection With Consideration of Articles for Modification or Continuance of U.S. Duties or Additional Duties

1. In accordance with section 133 of the Trade Act of 1974 (19 U.S.C. 2153), notice is hereby given of public hearings to be held by the Trade Policy Staff Committee (TPSC) in connection with the current consideration by the TPSC of possible modification or continuance of U.S. import duties, or possible additional import duties, for certain imported ceramic tableware items. These hearings will be held on May 23, 1978, in room 730, at the Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C. 20506. The hearings will begin at 10 a.m. Information regarding the hearings may be obtained from Mrs. Carolyn Frank, Secretary, Trade Policy Staff Committee, at the address given above, and at telephone 202-395-7210.

2. In the FEDERAL REGISTER of March 14, 1978, the Special Representative for Trade Negotiations provided the following notice:

In conformity with section 131 of the Trade Act of 1974 (19 U.S.C. 2151), notice is hereby given of articles that may be considered for modification or continuance of U.S. duties, or additional duties. These articles are set forth in list I and list II below.

Some of the articles in list I and parts of some of the items in list II (those that are marked with an asterisk) currently are subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)). In accordance with section 127(b) of the Trade Act of 1974 (19 U.S.C. 2137), the President is reserving such articles, or parts of items, from international trade negotiations as long as any import relief action is in effect with respect to them. This notice of the possible future consideration of such articles or parts of items in international trade negotiations, and the request for advice of the U.S. International Trade Commission referred to in paragraph 3 below, are being given to prepare for the possibility of negotiations with respect to them should the import relief action terminate.

The U.S. International Trade Commission is being requested to furnish its advice, pursuant to section 131 of the Trade Act of 1974, as to the probable economic effects of: (a) Modifications or continuances of existing import duties for the articles in list I; and (b) increases in existing duties, incidental to modifications in the tariff nomenclature, for the items in list II.

3. Public hearings in connection with the possible modifications or continuances of existing import duties for the articles set forth in list I, and regarding the possible increase in existing duties incidental to modifications in the tariff nomenclature for the items in list II, will be held at the time and place described in paragraph (1) above.

4. Persons requesting to appear at the hearings should advise the Secretary of the Trade Policy Staff Committee, in writing, at the address given in paragraph (1), not later than the close of business on May 17, 1978. Briefs or other written material may be submitted in 20 copies in support of, or in lieu of, an oral presentation at the hearings, but are not required. There is no prescribed format for such written submissions, but they should: (a) Clearly designate on the first page the name and address of the persons submitting the brief, and (b) present in nonconfidential form a summary statement of the views submitted. Persons making such submissions are requested to designate clearly each page for which they request confidential treatment and so indicate such pages on the cover of submissions. Any material for which confidential treatment is requested, and for which the TPSC determines that it cannot accord such treatment, will be returned to the person who submitted it.

WILLIAM B. KELLY, Jr.,
Chairman,
Trade Policy Staff Committee.

LIST I

Articles which will be considered for modification or continuance of the existing[1] U.S. duties, or additional duties, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act.

TSUS Item[2] and Articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.15 of the Tariff Schedules of the United States) or of fine-grained stoneware:

Available in specified sets:

533.28 pt.* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12 but not over $22.

Not available in specified sets:

533.31 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.33 pt. Cups valued not over $0.50 per dozen; saucers valued not over $0.30 per dozen; plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $1 per dozen.

533.35 pt. Cups valued over $0.50 but not over $1 per dozen; saucers valued over $0.30 but not over $0.55 per dozen; plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen; plates over 9 but

[1] The term "existing" is used herein as defined in section 601(7) of the Trade Act: "The term 'existing' means: (A) When used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of the schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A)."

[2] Tariff Schedules of the United States (19 U.S.C. 1202).

*These articles are currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

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not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $1 but not over $2 per dozen.

533.36 pt. Cups valued over $1 but not over $1.50 per dozen; saucers valued over $0.55 but not over $0.95 per dozen; plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $2 but not over $3.40 per dozen.

533.38 pt.* Cups valued over $1.70 but not over $3.10 per dozen; saucers valued over $0.95 but not over $1.75 per dozen; plates not over 9 inches in maximum diameter and valued over $1.55 but not over $2.85 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 but not over $4.85 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $3.40 but not over $6.20 per dozen.

Of nonbone chinaware or of subporcelain:
Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69 of the Tariff Schedules of the United States:

533.71 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.73 pt.* Cups valued not over $1.35 per dozen; saucers valued not over $0.90 per dozen; plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $4.50 per dozen.

533.75 pt.* Cups valued over $1.35 but not over $4 per dozen; saucers valued over $0.90 but not over $1.90 per dozen; plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $4.50 but not over $11.50 per dozen.

LIST II

Articles which may be considered for increases in existing duties, to the extent permitted by sections 101(a) and 101(c) of the Trade Act, incidental to modifications in the tariff nomenclature.

TSUS Item and Articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11 Of coarse-grained earthenware, or of coarse-grained stoneware.

: Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:

533.14 Valued not over $1.50 per dozen articles.

533.16 Valued over $1.50 per dozen articles.

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:

Available in specific sets:

533.23 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is not over $3.30.

533.25 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $3.30 but not over $7.

533.26 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $7 but not over $12.

533.28* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12.

Not available in specified sets:

533.31 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.

Other articles:

533.33 Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.

533.35 Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.

533.36 Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen.

533.38* Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen.

533.41 Of bone chinaware.

Of nonbone chinaware or of subporcelain:

533.51 Hotel or restaurant ware and other ware not household ware.

Household ware available in specified sets:

533.63 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is not over $10.

533.65 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $10 but not over $24.

533.66 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $24 but not over $56.

533.68 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $56.

533.69 [illegible]ot covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2 (c) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $5.

Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:

533.71 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.

Other articles:

533.73* Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.

533.75* Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen.

533.77 Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen.

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*Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

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Statement of the American Soybean Association

The American Soybean Association supports the MTN agreements as a whole because of our belief and dependence in an open system of world trade. More than half of the soybeans produced by American farmers are exported. Soybean exports require a climate of trade that permits the free interchange of goods. The MTN agreements will further such a system and will prevent a regressive trend to protectionism and restricted trade.

At the same time that our Association supports the MTN agreements, we feel compelled to say that the binding of the U.S. palm oil tariff at ½ cent per pound in the negotiations was an unfortunate and arbitrary action. This concession will give a signal to the rest of the world that the U.S. encourages palm oil production and stands ready to accept all future increases of production in the face of future prospects for a more than ample world vegetable oil supply situation and relatively weak prices. This action was contrary to the recommendations of the industry leaders who advised the U.S. negotiators; moreover, the binding does not provide much reciprocal concessions to the United States by palm oil producers. Finally, the concession accorded palm oil appears to exceed the authority to reduce tariffs contained in the Trade Act of 1974 which permits reductions of 60 percent in tariffs in the MTN. The palm oil reduction is 83.3 percent.

Our Association also has had questions concerning the "subsidy code" as it applies to agriculture, particularly the code's provisions concerning equitable shares of world trade which should not be taken to mean the freezing of market shares to a base period. Congress should make clear that trade shares derived from natural advantages and efficiency are protected by the code as opposed to shares acquired as the result of export subsidies. And "prices materially below those of other suppliers to the same market," as stated in the code, should be defined in the U.S. implementing legislation as "prices which cause sales diversion or price disruption."

With respect to subsidies, the American Soybean Association is also concerned with the lending practices of international lending institutions. Their low interest loans have the effect of subsidizing palm oil production. It is hard for soybean farmers and other taxpayers to understand why their tax dollars are used to create competition for U.S. agricultural commodities. This is especially puzzling since: (1) Soybeans and soybean products are the U.S.'s largest agricultural export, contributing nearly $7 billion annually to the positive side of our balance of payments; (2) vegetable oil is projected to be in relative surplus on world markets in the 1980's; and (3) palm oil production is highly profitable and does not need to be subsidized to encourage production.

Although our Association has these reservations about parts of the MTN agreements, we recommend ratification by the Congress because, on balance, the agreements will be of net benefit to American soybean farmers and to the United States.

Statement by Robert M. Frederick, Legislative Director, the National Grange

Summary

1. The Grange expresses its long history of support for trade expansion and believes that the Tokyo Round trade package meets its objectives in this area.

2. Reviews the changes in world conditions since the start of the Tokyo Round five years ago and makes reference to the gains for agriculture as compared to previous trade negotiations.

3. Points out that U.S. agriculture's approval of subsidy "disciplines" on the Common Agricultural Policy of the European Community should not be interpreted as U.S. acceptance of export subsidies or the CAP.

4. Recommends ongoing discussions and negotiations with trading partners to gain increased access to foreign markets, and the continuation of the trade advisory committees.

5. The Grange, while endorsing the trade package, has some strong reservations about the section dealing with dairy imports. We point out that increased cheese imports and countervailing duties and injury test are problem areas.

6. The Grange recommends that the best way to deal with the dairy farmers' fears is in continued negotiations and strong enforcement of the codes and legislative language. We suggest that the legislative history should be used to spell out that it is the intent of Congress that the subsidy and countervailing codes and implementing language should be administered to relieve the dairy industry from unfair competition.

STATEMENT

Mr. Chairman and members of the committee: I am Robert M. Frederick, Legislative Director of the National Grange. My offices are in the Grange Building at 1616 H Street, N.W., Washington, D.C.

The National Grange is the nation's oldest farm organization, being organized in 1867. The 500,000 members of the Grange are located in 41 states and represent a cross-section of farmers and rural and suburban residents; therefore, our policy is not dictated by agricultural interest alone.

The National Grange reaffirmed its policy on foreign trade in November of 1973, about the same time the Trade Act of 1974 was being considered by Congress. That policy remains in effect today and has guided the Grange through the Tokyo Round of multilateral trade negotiations.

"FOREIGN TRADE"

"In the field of foreign trade policy, the National Grange reaffirms its support of the principle of expanding international trade through trade agreements under which tariff and non-tariff barriers to trade can be progressively reduced and eliminated on a reciprocal and mutually-benefitting basis. We stand firm in our belief that a prosperous and expanding world economy is vital to the economic progress of the United States and the attainment of peace.

"In adopting measures to expand trade we recommend that the U.S. continue to adhere to the principles of the General Agreement on Tariffs and Trade (GATT) under which our nation has taken the lead in working toward a reduction in the obstacles to trade and in expanding trade on the basis of sound economic principles.

"Although encouraging progress has been made under the GATT in promoting less restrictive trade between the nations of the world, we are concerned by the obstacles to trade in agricultural products through the use of non-tariff barriers. These measures oppress our commerce and deny our agricultural commodities market access on terms which are consistent with the terms of access which goods from foreign producers enjoy in the United States.

"Because of the importance of exports to the well-being of our economy and to our balance of payments problem, the National Grange recommends that far more vigorous action and hard bargaining needs to be undertaken on the part of our government to bring about the elimination of non-tariff trade restrictions being maintained against U.S. agricultural products.

"The support of Foreign Trade policies essential to the expansion of trade for our agricultural products does not require the exposure of any segment of our domestic economy to unfair competition or to economic aggression. The National Grange has consistently supported Section 22 of the Agricultural Adjustment Act of 1933, as amended, and other measures designed to protect against unfair competition or imports of a magnitude which will inflict serious injury to domestic producers.

"Extreme care must taken to protect the tax and fiscal policies of the U.S. whenever our government becomes involved by offering credit or interest concessions to foreign buyers or insurance against losses to exporters in negotiations for foreign sales.

"The use of export controls can sitmulate uneconomic production abroad and must be avoided. It is important that our policies assure other nations that they can depend on U.S. production, unless, of course, we experience some unforeseen disaster.

"It is essential in all trade negotiations that nations agree not to adopt measures which will transfer the costs of needed domestic adjustments to farmers of other nations.

"They should also provide some assurance of continued access to traditional markets and limit the use of export subsidies."

Likewise, at the same Annual Meeting, the Grange adopted a resolution in support of the Trade Act of 1974:

"TRADE LEGISLATION"

"Be it resolved, that the National Grange endorse the objectives of the Trade Reform Act of 1973, which would give the President sufficient authority to negotiate effectively for a reduction of international trade barriers, both tariff and non-tariff, in the interest of trade expansion. It is essential that trade-distorting measures such as high export subsidies used to unload unwanted surpluses be prevented or reduced."

The Grange played an active part in securing the enactment of the Trade Act of 1974 and has been involved in the advisory committees that were created by that Act.

The National Grange believes that the final trade package that we initialed in Geneva on April 12th falls within the policy adopted by the Grange and therefore is worthy of our support. In January, the Grange released a statement in support of the final trade package with a provision that we would withhold final judgment pending language in the implementing legislation. In general, we felt that the long-term gains for agriculture outweighed any short-term losses, and while not getting everything U.S. agriculture sought and giving up a little in some highly sensitive areas, it was the best agriculture package that could be obtained under present world circumstances.

One must remember that the negotiations started 5 years age, at a time when world economic conditions were such that there was solid support for changing the rules so as to improve and expand world trade. This was especially true in the agriculture sector. Since that time a lot has happened to change the industrialized world that is responsible for the largest percentage of products exchanged in world trade, which eroded that support. The talks were stymied for two years which the major trading partners jockeyed for an advantageous position. Much of this stalling was brought about by a lack of sincere dedication on the part of our trading partners to bring the negotiations to a successful conclusion. If it were not for the insistence of the United States that the trade talks continue and placing the discussions on a timetable, there would not have been a trade package to initial on April 12th. In judging the final trade package, one must keep in mind the history of the past 5 years and the fact that at the end only the U.S., among the major trading blocs, wanted the trade negotiations to be continued to their conclusion.

In the history of trade negotiations there never has been a clearly-defined winner or loser. Each country or bloc or countries must give and take, and the Tokoyo Round was no different. As we judge the Tokyo Round against the Dillon and Kennedy Rounds, U.S. agriculture came out a winner—not as big a winner as we would have liked to see, but nonetheless a winner. For the first time since the creation of the Common Agricultural Policy of the European Common Market we are able to apply some discipline to their use of export subsidies, not only in our domestic market, but also in third markets. But let me make it clear to our friends in the EC: the fact that we accepted disciplines on export subsidies rather than total prohibition of such subsidies should not be interpreted by them or anyone else as acceptance by U.S. agriculture of their trade-distorting Common Agricultural Policy. We still find it highly protective and disruptive to world trade expansion. The failure to gain additional market access through relaxing of the variable levy system of the Common Agricultural Policy is one major disappointment of the Tokyo Round. The other would be our failure to gain sufficient access for agricultural products into Japan. Progress had been made on both fronts, but much more needs to be done and we look forward to ongoing trade discussions with these two trading blocs to obtain further access to these markets.

The Grange supports the ongoing discussions and negotiations that will be continued later this year on a Multilateral Agriculture Framework (the so-called "Cathedral"). We feel that within this framework barriers to world trade in agricultural commodities can be successfully addressed and greater access to world markets for U.S. agricultural commodities can be achieved. In this regard, we fully endorse the recommendation that our trade negotiators continue to have the advice from private sector representatives through the advisory committee procedure. The private sector advisory committee process, while not being perfect, has been a tremendous assist to the negotiators as well as to the representative organizations.

The National Grange, while endorsing the trade poackage, still has some strong reservations about the section of that package that affects the American dairy industry. The implementing legislation has to some extent alleviated some of our fears. But that section continues to trouble our dairy members to the extent that they may oppose the entire trade package.

Our dairy members' concerns are real and the National Grange would be doing them a disservice if we did not bring those concerns to the Committee's attention. Their primary concerns are that even though a cap is in place on all cheese imports, with the exception of some specialty cheeses, history has proven that each new quota level has simply been a higher plateau from which to work. Thus, the new level of import quotas will only be the cap until a new evasion product is developed or higher quotas have been negotiated. That has been the history of dairy imports.

The other major concern deals with the subsidy and countervailing duty codes. Our dairy members do not have faith in the fast track for determining injury from quota cheeses nor do they accept the injury test or the investigative time before countervailing duties on other non-quota dairy imports.

These are important questions for dairy farmers, questions that need answers if the trade package and implementing legislation are to secure the support of the dairy industry.

We believe that the best way to deal with the fear among dairy farmers is seeing that our trade negotiators continue to press for improvements in the process of Congressional review and legislative history in the key problem areas:

The establishment of injury test criteria and strong administrative procedures within the subsidy CVD code which would fully assure U.S. dairy interests of prompt countervailing duty relief against unfair subsidy competition. Legislative history should be developed to assure carrying out the intent of the legislative language regarding the reduction of any detrimental effects of additional cheese imports on U.S. dairy farmers. This should include that any attempt by importers to circumvent the Sec. 22 quotas on new products would be dealt with in a swift and judicious manner. Further assurance should be given the dairy industry that the cheese quota under Sec. 22 would not be increased without detailed consultation with the representatives of the industry.

The National Grange is very much aware of the importance of approval of S. 1376 to our total national ecomomy and will give it our strong support, As we have stated before, this is not the end of the negotiations, it's only the beginning. Negotiations in trade expansion will only end if this Congress fails to pass the trade package, with its implementing legislative language.

We appreciate the dedicated efforts of the Special Trade Representative, Robert Strauss, and his fine staff, as well as the Secretary of Agriculture, Bob Bergland, and his staff. As I said earlier, I believe they have done a commendable job as have the committees of Congress. It has been a team effort and we sincerely hope that this dedication to the task of trade expansion continues because we believe it is in the national interest.

Thank you, Mr. Chairman, for providing the Grange this opportunity to express our views.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION PRESENTED BY ALLAN GRANT, PRESIDENT, AMERICAN FARM BUREAU FEDERATION

As a farmer, and president of the American Farm Bureau Federation, I have been deeply interested in the Geneva trade talks. This keen interest is shared throughout our 3-million-family-member organization. The American Farm Bureau has been represented on each of the advisory groups to the U.S. trade negotiators and has followed the progress of the negotiations from their inception. In addition to this active role Farm Bureau presidents, staff, and others visited Geneva several times during the negotiations and have worked closely with the Special Trade Representative's office in Washington.

Why are farmers so interested in a successful outcome of these talks which started about five years ago in Tokyo? The answer is that trade among nations and the rules that govern that trade affect the well-being of the American farmer and his family in a profound manner.

In general, the American farmer has been a force for freer international trade since the first shipment of tobacco from John Rolfe's farm at Jamestown, Virginia, in 1613. Since that beginning, the American farmer has found his economic well-being linked substantially to world markets. This is especially true if he produces commodities such as wheat, cotton, or soybeans where one-half to two-thirds of his production goes to overseas customers. It is significant even to those exporting a lower proportion of their production because they could not produce at an efficient level if their production was geared to the domestic market only.

Viewed in broader terms, the American farmer today is interested in a sound dollar and the control of inflation, both of which have a linkage to export earnings. The $30-billion trade deficit our country experienced in 1978 would have been considerably worse if we had not had a RECORD $29 billion of agricultural exports. With agricultural imports subtracted, U.S. agriculture made a positive contribution to our balance of payments of around $15 billion last year.

In our judgment the most positive way to address the balance-of-payment difficulties is to stimulate U.S. exports. Some people in the Congress and elsewhere have suggested a surcharge on imports arriving in the United States. That would be a negative measure, and it could invite retaliation from our trading partners. Therefore, the American Farm Bureau would like to see our trade deficit reduced in a positive manner; i.e., through increased U.S. exports.

This positive approach has been the objective of the U.S. negotiators with whom we have worked and whom we have advised through the course of the negotiations.

These goals have been to; (1) Reduce tariffs; (2) eliminate or enlarge quotas; (3) eliminate disguised trade restrictions; (4) establish codes of trading conduct; (5) bring agricultural trade within the system; and (6) create forums for consultations, cooperation, and the exchange of information.

Achievement of these goals is of interest to the American farmer who receives about 30 cents out of each dollar of his gross income from exports. When the American Farm Bureau Federation asked Ambassador Robert Strauss to bring back from Geneva something meaningful to American Farmers, we had in mind the removal of trade barriers and restrictions, to the extent possible, and improvement of the rules under which trade takes place. Over the years there has been considerable erosion of the GATT trading rules. Complaints against violators have been processed slowly and often with ineffective results. In addition, efficient American farmers have found themselves denied access to markets by ingenious contrivances set up to impede or deny the flow of their exports. The problem has been further compounded by the use of subsidies by some of our trading partners, not only to increase their exports to the United States but also to displace U.S. agricultural exports in third country markets.

The nature and extent of the trade problems facing the American farmer in many overseas markets made the task of the U.S. trade negotiators a formidable one. This has been especially true in view of the protectionist climate that has prevailed during the course of the negotiations and which continues at this moment. Protectionism feeds on high unemployment, inflation, weak currencies, energy crises—all of which have characterized most of the national economies of both the advanced and developing countries in recent years. Some industries and some labor groups in our own country and in those countries that are our trading partners feel that they would be better off behind a wall of protection. These groups give lip service to the idea of trade expansion but immediately recite their own case as one that is so exceptional that they must be "protected." The American farmer heard similar protectionist arguments in the early days of our nation when he sold his commodities on world markets at competitive prices but had to buy manufactures from protected "infant industries." The American farmer is hopeful that the drift toward protectionism can be halted and reversed. American agriculture has a great deal to lose if the Geneva trade package should not be approved by the Congress. Within the past 10 years, the U.S. share of world trade has increased from 13 percent to 17 percent. We want to improve on this record.

Earlier I mentioned that, in view of the importance of increased agricultural trade not only to the American farmer but also to our national economy, the American Farm Bureau had asked Ambassador Strauss to be certain that the trade package contained something meaningful to American agriculture. Ambassador Strauss and his negotiators accepted our challenge; and, with the difficulties that are usual to international negotiators, have concluded and submitted a trade package for examination by the U.S. Congress.

That trade package should result in a net increase in U.S. farm exports of $500 million annually and will strengthen international trading rules that have been eroded under the GATT.

Concessions received or granted.—A number of studies conclude that U.S. agriculture is a major beneficiary of the trade negotiation results.

Concessions were made by foreign countries on approximately one-fourth of thse U.S. agricultural exports presently restricted by trade barriers. Concessions were received on about $4 billion worth of U.S. agricultural exports.

Concessions were made by the United States on $2.6 billion worth of agricultural imports into the United States. Foreign agricultural imports into the United States are expected to increase annually by about $175 million—compared to an increase of $500 million in exports.

Codes of trade conduct.—Two codes of importance to agriculture were negotiated—a subsidies/countervailing duty code and a standards code. Although a "proof of injury" test, which we opposed, is a part of the subsidies code, there was a tradeoff for the establishment of mechanisms for defense against injurious subsidized import competition such as price undercutting in domestic markets and more effective rules on the use of export subsidies in third country markets. The purpose of the standards code is to discourage the use of product standards, testing and certification systems as barriers to trade. the new code will establish dispute settlement procedures, facilitate the handling of complaints and provide for retaliatory actions.

Commodity arrangements.—Negotiations included: (1) an International Diary Arrangement to provide for an exchange of information and consultations to identify remedies for serious market imbalances, as well as floor prices for world trade in cheese, butter and nonfat dry milk; (2) a Bovine Meat Arrangement to provide for information-sharing, market-monitoring, and regular consultations. These two com-

modity arrangements will have virtually no effect on American agriculture. The negotiations failed to produce a Grains Arrangement which, had it materialized, would have caused concern to Farm Bureau.

I realize that some commodity groups may feel that the benefits to them are not substantial. Some may even feel that certain aspects are negative. Farm Bureau however, must view the trade package in its totality. We must array the positive factors against the negative ones. We have examined the package in this manner, and I am pleased to inform this Committee that the American Farm Bureau Federation Board of Directors met on June 6, 1979, and unanimously endorsed the Geneva trade package. I have commended the U.S. trade negotiators for their effective negotiations in Geneva which produced a trade package that will be beneficial to U.S. agricultural exports and the incomes of American farmers.

Although we were hopeful that trade restrictions on American farm exports would be lifted even more than they were, we are certain that the trade package, viewed in its entirety, offers American farmers improved opportunities in overseas markets. What was given in the form of concessions on imports is relatively modest in comparison with the benefits gained.

We are pleased that, in addition to better market access and lower duties on U.S. farm exports, the trade package reflects considerable progress throught the establishment of new codes of conduct under which the ever-increasing volume of agricultural trade will be carried out.

We believe that, considering the protectionist climate that currently prevails in international forums, the U.S. trade negotiators obtained a result worthy of support. Therefore, Farm Bureau urges the Congress to approve the trade package and implementing legislation at an early date.

Statement of the Consumers for World Trade

Consumers for World Trade is gratified at the successful conclusion of the Multilateral Trade Negotiations in Geneva, and respectfully urges this Committee and the Congress to act favorably on the Trade Agreements Act of 1979 to implement the agreements which have been reached.

Consumers for World Trade was organized early in 1978 by concerned citizens, economists, trade experts and others alarmed by the growth of protectionist attitudes in many quarters. We are keenly aware of inflationary pressures which are hurting all Americans, especially the most vulnerable lower, middle and fixed-income families. CWT supports expanded foreign trade to help promote healthy economic growth at stable prices. We believe it is essential to support policies that will expand choices for consumers, and will help to counteract inflationary price increases which are now reported in almost every sector of the economy.

We have considered the negotiated agreements and the Trade Agreements Act in the light of their impact upon the interests of American consumers—the one "special interest" group which includes all Americans, regardless of job, income level, age, sex or state of residence. We believe that this trade package, by lowering trade barriers and expanding world trade, will help to provide consumers with the widest possible choice of goods at the lowest possible prices, a matter of highest priority in this time of continuing inflation.

In general, CWT believes that the agreements and the implementing legislation constitute a major step towards modernizing and strengthening the world's commercial code, the GATT, as requested by Congress in the Trade Act of 1974. The agreements provide a strong basis from which the trading world can—with determined leadership—progress towards a further liberalization of trade and the enforcement of a fair, open and equitable trading system. On the other hand, failure by the United States to implement the agreements would signal our trading partners that the U.S. is ready and willing to encourage the trading world to retreat to a system of global protectionism—with the invevitable consequences of increased inflation, loss of jobs, a further weakening of American industry's productivity and competitiveness, and stagnation of the world economy.

With respect to the reduction of tariff rates by 33 percent phased over a period of eight years, CWT welcomes this step towards eventual further dismantling of tariff barriers to trade. However we deeply regret that certain products which have a very direct economic impact upon the consumer (e.g., certain types of shoes and apparel, televisions, and steel products) were excluded from rate reduction. Of particular concern to us are the steep price increases we will face for imported footwear. In converting American Selling Price schedules to ad valorem duties, the administration has imposed duties which in effect are much higher than those levied under the old ASP system. Even worse news for consumers, tariffs on lower-priced non-leather

shoes will be almost double those imposed on higher-priced lines. And the administration has proposed no phased cuts in shoe tariffs under the MTN agreements.

It is sometimes stated that tariffs no longer matter. The truth is that they remain as the most pervasive restraint on international trade. Their effect is to raise prices to consumers, to distort the use of productive resources and to make national economies less efficient.

With respect to the non-tariff barriers to trade, CWT strongly supports the negotiated trade codes and the implementing legislation relating to these codes. Non-tariff barriers have obstructed world trade at great costs to American exporters of farm and manufactured products and have resulted in an additional inflationary burden for the American consumer.

The major codes covering subsidies and anti-dumping, customs valuations, Government procurement and standards should, if properly implemented and enforced, substantially alleviate the negative aspects of unfair trade practices. We are disappointed, however, that the code of conduct with respect to import controls, the safeguards code, has not yet been successfully negotiated. We hope that Congress will stress the importance of reaching an agreement on this code without undue delays. The absence of such a code could contribute to a resurgence of world protectionism that would seriously restrict the flow of world trade at great cost to American consumers.

CWT would also like to express its strong concern that consumers will be excluded from representation on general policy advisory committees authorized under Section 1103 of Title XI of the implementing legislation entitled "Advice from Private Sector." This Section, in amending Section 135 of the Trade Act of 1974, fails to include consumer spokesmen along with representatives of U.S. industry, labor, agriculture, small business and other sectors on the advisory committees. We believe it is imperative that the American consumer be directly represented in this important advisory group and in others concerned with the formulation of U.S. trade policies. It is essential that the American consumer's interests be taken into account in the consideration of such policies.

We emphasize that CWT supports vigorous and fair administration of statutes designed to protect U.S. workers and industries from unfair or unlawful foreign competition. Those companies or workers adversely affected should be able to obtain prompt resolution of their appeals and effective adjustment assistance, and those suppliers who violate internationally-accepted codes should be subject to penalties as provided by law.

In conclusion, Consumers for World Trade supports the thrust of the MTN agreements as constructive steps in the direction of expanded trade that will benefit all American consumers. We urge the Congress to approve the legislation necessary to implement these agreements.

Testimony of Rev. J. Bryan Hehir for the United States Catholic Conference

Mr. Chairman and members of the committee: I am Reverend J. Bryan Hehir, Associate Secretary of the Office of International Justice and Peace, United States Catholic Conference (USCC). The USCC is the national-level, action agency of the Catholic Bishops and represents the views and concerns of the Church on a broad range of international and domestic policy issues.

I wish to thank you and other members of the Committee for this opportunity to present the views of the USCC on the recently negotiated multilateral trade agreements and the accompanying implementing legislation.

I. Perspective of the USCC

Other witnesses before this Committee have focused primarily on questions relating to how the MTN package will impact the U.S. economy. The USCC shares their views that the trade agreements negotiated in Geneva must be carefully evaluated in terms of their potential domestic effects particularly on employment and the general economic welfare of the American public. We will touch on these questions but propose to address the trade package primarily as regards its effects on the interest of the developing countries. We do so because of the Church's deep concerns about the prevailing patterns of wealth and income distribution which condemn hundreds of millions of people in developing countries to a life of abject poverty. With growing global interdependence, the international economic policies of the United States and other major industrial powers are of increasing importance to the success of developing countries' efforts to achieve satisfactory rates of economic growth and improve the welfare of their people. Of particular importance in this

regard is the continuation of the post-World War II liberal trade policies so as to promote the further expansion of world trade and provide greater access to developed countries' markets for the products of developing countries.

Exports are the principal source of developing countries' foreign exchange earnings needed to finance essential imports for development. The export earnings of the non-oil producing developing countries now exceed the amount of concessional aid they receive from western industrialized countries and Japan by more than nine to one. Moreover, these earnings are becoming of increasing importance with the persistent slow-down in the flow of development assistance in real terms and the reluctance of major donor countries to significantly improve their present inadequate aid performance. Private and multilateral development bank financing have helped importantly to bridge the gap between developing countries foreign exchange earnings and import requirements but there is a limit to how much additional debt servicing many of these countries can carry unless their exports expand at a satisfactory rate.

Without improved access for their exports the prospects of developing countries being able to achieve even the most modest rates of economic growth in the years immediately ahead appear very bleak indeed. Except for the oil producers, most developing countries face growing foreign exchange stringencies as a result of soaring petroleum and other import costs, the slow-down in the economic growth rates of industrialized countries and rising debt service burdens. After a brief period of improvement following the huge 1974–75 increases, the current account balance-of-payments deficits of the non-oil producing developing countries, are again rising rapidly and approaching what the managing director of the International Monetary Fund describes as "alarming levels." In 1979, these deficits are expected to exceed $40 billion as compared with $31 billion last year and $11 billion in 1973. The extenal debts of developing countries are estimated to be approaching $300 billion, and some borrowers are verging on the edge of bankruptcy with debt service charges accounting for 30 percent of their export earnings.

The liberal trade policies of the past quarter century contributed importantly to the unprecedented post-war expansion of world trade. A number of developing countries with the productive capacity to take advantage of the increasing export market opportunities clearly benefited. But in general these benefits were not shared equitably between developed and developing countries. In part at least this was a consequence of: (1) The weak bargaining power of most developing countries; (2) the emphasis in previous multilateral trade negotiations on tariff reductions for products principally of interest to developed countries willing and able to offer reciprocal concessions; and (3) the reluctance of industrialized countries to free up their markets for sensitive labor intensive products like textiles for which the developing countries enjoy a comparative advantage.

The late Pope Paul VI, in his encyclical letter The Development of Peoples, argued that, "in the trade carried on between rich and poorer economies conditions are too disimilar and opportunities for action too unequal." Therefore, "The concept of justice to be worthy of man and correct demands that in international trade at least some equitable and equal opportunity of buying and selling be given to competitors."

Although the GATT rules recognize the need for special measures to promote the trade of developing countries which may derogate from the most-favored-nation principle, modest acceptance of this concept occurred only recently with the adoption of the generalized system of preferences.

That the benefits of the post-war expansion of trade were not shared equitably is acknowledged in the Tokyo ministerial declaration of 1973 launching the MTN which called for "a better balance as between developed and developing countries in the sharing of the advantages resulting from this expansion * * *."

II. THE USCC EVALUATION OF THE MTN

The USCC finds the results of the MTN disappointing in terms of achieving this better balance. The depth of tariff cuts is considerably less than authorized by the Trade Act of 1974. As in previous multilateral trade negotiations, products mainly of interest to developed countries received the greatest consideration even though one of the principle objectives of the negotiations as stated in the Tokyo Declaration was to provide a "substantial improvement in the conditions of access for the products of interests to developing countries." A number of major developing country exports either were excluded or given lower tariff cuts than the average. No steps were taken to dismantle existing rigid quantitative restrictions on important developing country products. Quite the contrary the United States and other industrialized countries imposed a heavy price on domestic consumers and developing country suppliers in terms of additional quantitative restrictions in imports, in

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order to appease domestic protectionist interests. While "differential and more favorable treatment" of developing countries is authorized, it is left to individual developed countries to decide whether and to what extent they should provide such treatment. And some important objectives of the Trade Act were not achieved or even addressed. We hope the extended negotiating authority provided in the implementing legislation will give primary attention to filling in these gaps and correcting these imbalances.

Despite these severe limitations, the USCC supports the MTN package. On balance it represents a worthwile step forward along the path of trade liberalization which should serve the best interests of both developing countries and the United States. In fact it is somewhat surprising that the MTN accomplished as much as it did given the serious domestic and international economic problems facing most of the participants.

The tariff cuts will bring some modest benefits to developing countries especially the newly industrialized ones. How much the developing countries will benefit from the codes depends importantly on how they are enforced by the United States and other industrialized countries. If they are applied in the spirit of the agreed framework language of the GATT and the codes which calls for "differential and more favorable treatment" of developing countries they could benefit them significantly. However, if the codes are interpreted and enforced restrictively to accommodate domestic protectionist pressures the developing countries would be the main victims. Therefore, it is important Congress and the Administration take whatever steps may be necessary to prevent this from happening and to see that the codes are applied in a fair and even-handed manner.

Approval of the MTN package is no less important to help ensure the continuation of the post-war liberal trade policies. If the United States rejects the agreements it would be a clear signal to other countries that this country has chosen instead to go down the path of increased protectionism. Undoubtedly they would follow our lead and begin to take for cover. Urgently needed closer international cooperation in other vital areas like energy, monetary and fiscal policy and growth rates would be seriously undermined. The end result could be a disastrous beggermy-neighbor-policy in the difficult period immediately ahead when just the opposite approach is required.

III. THE DEVELOPING COUNTRIES AND THE MTN

(a) Tariffs.— As in previous multilateral trade negotiations the tariff cuts agreed to in the MTN will not benefit developing countries as much as the developed nations. According to an analysis prepared by the GATT Secretariat, duties on products of interest to developing countries will decline about 25 percent as compared with average overall reductions of 35 to 38 percent. On the other hand it must be recognized that the deeper cuts on higher technology products could bring fairly quick benefits to a limited number of developing countries with advanced industrial capabilities.

In the case of the United States, the average depth of cut on imports from developing countries is approximately 25 percent against 30 percent overall. The lower figure largely reflects below average reductions on sensitive items of major export interest to developing countries like textiles and clothing (20 percent), rubber, leather and travel goods (16 percent) and the complete exclusion of products like steel, color televisions, shoes, industrial fasteners and glass beads. Limiting or excluding these products would appear to smack of overkill since they already are subject to rigorous quantitative limitations. Unlike other developed countries, the United States in 20 bilateral agreements negotiated with developing countries required some, (although not full) reciprocal tariff and non-tariff concessions.

Some tariff concessions were made in the U.S. implementing legislation which should bring modest additional benefits to developing countries. For example, staging of tariff cuts will not be required on non-sensitive imports from the least-developed developing countries. They will immediately enjoy the full benefits of the U.S. tariff reductions. Certain modifications also were made which liberalize the U.S. generalized system of preferences such as the elimination of the competitive need restriction on U.S. imports of products valued at $1 million or less per annum.

No estimates have come to our attention of how much U.S. imports from developing countries can be expected to increase as a result of the MTN tariff reductions. Estimates based on a recent Brookings Institution study suggest developing countries' export world-wide might increase by as much as $2 billion per annum when all the tariff reductions come into affect. While this seems rather a modest gain it is nonetheless two or three times more than the estimated trade benefits developing countries derive from the generalized system of preferences to which they attach

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such great importance. Additionally developing countries should benefit from the elimination of certain non-tariff barriers on their agricultural products.

(b) The codes.— The codes offer the advantage of stricter rules of conduct on such important government policies and practices as export subsidies, government procurement, product standards and customs valuation methods as well as strengthened dispute settlement procedures and machinery. They will also require governments to be increasingly more open in providing information about these practices. If administered fairly the codes could open up new trade opportunities for developing countries and even more importantly help deter arbitrary and unwarranted restrictive action against thier exports.

Aside from the fact that the codes recognize the need for special treatment of developing countries, there are at least three good reasons why developed countries should provide such treatment. First most developing countries cannot compete on an equal basis with the industries of developed countries. Second the previously mentioned protectionist concessions made by many industrialized countries, including the United States, to enlist the support of powerful special interest groups for the MTN were made largely at the expense of developing countries. Thus for example the Administration's recent pledge to tighten existing restrictions on imports of textiles and apparel could reduce the rate of growth of such imports into the United States under the GATT multifibers agreement from more than 6 percent per annum to as little as the domestic consumption growth rate of 2 percent. Third the non-oil producer developing countries as a group run a large trade deficit in manufactures with the United States and are not a contributor to our balance of payments problems. In a sense there is built-in reciprocity when trade concessions are made by developed to developing countries since they are chronically short of foreign exchange and spend everything they have available from exports to finance imports.

The two codes where we believe special consideration and treatment of developing countries is particularly desirable are the Subsidies and Countervailing Duties Code and the Procurement Code.

Among other things we believe the Subsidies Code should have included extension of the injury test to subsidized exports from developing countries as well as exports sold at less than fair market value whether or not these countries sign the code. We also would have favored exempting exports from the least-developed developing countries from countervailing duties, or else taxing them at reduced rates except in very exceptional circumstances. These countries which account for less than one percent of U.S. imports and are primarily exporters of raw materials would appear to offer little threat to U.S. industry for some time to come. We also believe perishables from developing countries like fruit and vegetables ought to be exempt from countervailing because of the threat such action poses for thousands of impoverished workers in Mexico, the heavy cost it will impose on American consumers and the damage it will do to U.S.-Mexican relations. We hope Congress will address these possibilities at an early date.

The only potentially valuable concession to developing countries in the code is the authority to suspend countervailing duties action provided the offending country agrees to phase out its subsidy or dumping practices within a reasonable period of time. We believe that in negotiating such phase-outs careful consideration needs to be given to the needs and particular circumstances of each developing country, as well as to how real the threat of material injury is to U.S. producers and workers.

In this connection we share the concern voiced by others about the dilution of the definition of the term "material injury" in the U.S. implementing legislation. To define material injury as "harm which is not inconsequential, material, or unimportant" seems to us to open the door to ruling that almost any kind of damage, no matter how minimal, qualifies as material. Such an interpretation would be particularly damaging to developing countries. We believe material injury should be defined, as in Webster's dictionary, to mean "having real importance or great consequence". To use countervailing measures when damage is minimal not only would appear to be contrary to the intent of the code but unfair to American consumers. We see no good reason to deny hard-pressed consumers the benefits of subsidized exports if the subsidies are causing little harm to American producers.

We are pleased to note that in the case of the Procurement Code the implementing legislation authorizes the President to designate least-developed developing countries beneficiaries without requiring that they be signatories or provide appropriate reciprocal procurement opportunities. We hope all least-developed developing countries will be so designated.

(c) Graduation.— In exchange for frame work language in the MTN package which permits differential and more favorable treatment to be extended to developing countries, the developing countries, agreed to the so-called principle of "gradua-

tion." This requires them to gradually assume greater obligations under the provisions of the GATT, including making reciprocal trade concessions, as their economic capacity to do so increases. We believe this is a reasonable requirement but one that needs to be applied very gradually to take account of continuing wide economic disparities between the less developed and developed countries. A number of developing countries like South Korea, Taiwan, Singapore and Brazil have become highly export competitive in certain industries and should be able to free up their markets gradually to foreign competition. Such action will serve both their own economic interests and those of foreign suppliers.

IV. IMPACT ON THE U.S. ECONOMY

Estimates prepared by the Brooking Institution and others indicate the MTN should bring worthwhile overall economic benefits to the U.S. economy and American consumer. When fully phased-in the tariff cuts combined with the nontariff barrier codes will yield benefits amounting to at least $10 billion annually. These gains include consumer savings on imports, greater economies of scale as a result of expanded exports and the stimulus to productivity and technological progress in American industry.

Import liberalization can play an important role in combatting inflation. According to a recent study prepared for the American Retail Federation and the National Retail Merchants Association imported goods purchased by low-income consumers may be as much as 13.1 percent cheaper than comparable U.S. produced goods. In addition to the direct benefits of lower prices imports have an important restraining effect on prices charged by domestic producers.

Arthur Okun former Chairman of the Council of Economic Advisers, in testimony before the Joint Economic Committee last month listed barriers to imports among the more important contributors to recent serious inflationary pressures in the U.S. According to the World Bank new U.S. trade restrictions applied between 1975 and 1977 are estimated to have raised consumer costs for sugar by $660 million, for meat by $400 million to $800 million, for carbon steel by $1.2 billion, for TV sets by $500 million and for footwear up $1.2 billion. This adds up to a consumer cost of $50,000 a year for each job protected. A more comprehensive study prepared by David Hartman of Harvard University puts the costs to U.S. consumer of protectionist arrangements at $15 billion per annum. Protection can be expensive.

According to a Congressional Budget Office study the tariff cuts agreed to under the MTN when fully phased-in will reduce the rate of U.S. inflation by one-half of one percent per annum. As pointed out by a Brookings Institution study this impact is fairly significant especially when looked at in terms of the trade-offs between employment and inflation. To reduce inflation by one percent in the United States, generally requires an increase in unemployment of 1.5 percentage points, costing 1.4 million jobs.

The effects of the MTN on the U.S. balance of payments and employment should be minimal but positive. Increased U.S. imports resulting from tariff cuts are expected to be moderately less than export gains of about $3 billion per year. In addition, since the U.S. trading system is generally more open than those of other major exporters it is estimated the codes will also yield a net trade advantage to this country.

Most estimates place the number of jobs that will be lost as a result of the MTN tariff cuts at somewhat more than one-tenth of one percent of the U.S. labor force or about 135,000 jobs over an eight year period. According to a Labor Department analysis, this is expected to be slightly exceeded by the job gains resulting from increased production for export.

We recognize the workers who are displaced, mostly low-paid and unskilled, are not the same as the semi-skilled and skilled as well as farm workers who will find newly created job opportunities. And we do not believe that the negative impacts of the MTN which promise substantial overall benefits to the American economy should be borne by a small group of workers and firms. We therefore strongly support effective government programs to assist these adversely impacted workers and firms.

However, we do not believe existing programs of adjustment assistance represent an adequate response to the problem. By and large such assistance appears to have operated primarily as a form of relief. According to some observers the effects have been to bolster the defenses against imports by delaying the needed transfer of resources from ailing low productivity industries to higher productivity activities. The problems these adversely impacted firms and industries face largely reflect longer-term structural weakness and loss of comparative advantage. We believe this requires that adjustment assistance programs be reshaped to give greater emphasis to shifting labor and capital to more technologically advanced and competitive

activities. This calls for greater emphasis on vocational training, placement services, technological innovation, attracting new industries to distressed areas and the like. It also calls for more advance planning and preparations, including some form of early warning system to flag potential serious dislocation problems in the years ahead as a result of import competition.

Unless the United States and other industrialized countries begin to adopt trade adjustment policies directed at promoting such needed structural changes, the opportunities for low-paid unskilled workers to improve their employment prospects will continue to be hampered, and imports of low-cost labor intensive products from developing countries will continue to be severely controlled.

Such policies could cost considerably more than present adjustment assistance programs. However, the economic benefits of trade liberalization to the population at large both now and over the longer term are many times greater than existing programs cost. There is thus a very large margin available for increasing expenditures to finance effective structural adjustments programs to deal with the adverse affects of import competition and still coming out well ahead.

V. GAPS IN THE MTN PACKAGE

The failure of the MTN to reach expected agreement on a safeguards code and a new international wheat agreement, and to deal with the problems of assuring United States access to essential raw material supplies leaves serious gaps in the trade package. We believe the United States should press vigorously to fill these gaps.

(1) The safeguards code.—It is generally recognized that the existing GATT rules (Article XIX) to safeguard domestic producers from temporary upsurges of imports have not been effective. Few countries observe the rules. So-called temporary restrictions often are maintained indefinitely; objective criteria as to when safeguard actions are justified are lacking and many restrictive arrangements such as "voluntary" export controls are negotiated outside the GATT framework to avoid retaliation. Clearly there is a need for tighter multilateral trade rules to provide better discipline in this important area and afford greater protection to both exporters and importers. Hopefully this would bring more safeguard actions under the discipline of GATT rules and procedures and help avoid present arbitrary and often unfair actions by developed countries against developing countries imports.

Efforts to meet this need by negotiating a safeguards code in the MTN have not succeeded so far because of the insistence of some industrialized countries that importers be allowed to take safeguard action selectively against the products of one or more countries rather than on such products from all sources. The developing countries understandably oppose the selectivity approach, which is a violation of existing GATT rules, since they are the most likely targets, and often have little power to retaliate. The USCC believes the United States should support the developing country position. However, in the event some concessions to selectivity are necessary in order to reach agreement on an otherwise reasonably satisfactory safeguards code, we believe the United States should insist that selective action be allowed only if justified by a multilateral fact-finding panel. We would also favor the exclusion of exports from the least-developed developing countries from safeguards action given their limited power to retaliate and very modest levels of their exports of manufactures.

(2) The wheat agreement and global food security.—The failure to negotiate a new and more effective international wheat agreement continues to block action to help stabilize wheat prices and provide for a world food security system as called for by the World Food Conference of 1974. A major reason for the breakdown of negotiations was the inability of the participants to agree on a trigger price for the release of stocks from nationally held reserves, although other issues such as the size of the stocks and their financing also could not be resolved.

The United States apparently bears a good deal of the responsibility for this disagreement because of its insistence on a high trigger release price which was unacceptable to developing countries. This price reportedly was close to the peaks reaching during the 1974-75 food crisis and well above the trigger prices governing present U.S. farmer-held reserves. A proposal by India to fix the trigger release price at the level provided by U.S. domestic legislation was rejected by the United States.

The USCC strongly supports the establishment of an international grain reserve system to help assure that commercial export demands as well as humanitarian needs can be met in times of crop shortages and to protect consumers from spiraling food costs. In periods of surplus, the diversion of supplies to the reserve will help reduce the downward pressures on prices and protect the income of farmers.

An international system of grain reserves is particularly important for developing countries which have become heavily dependent on grain imports and therefore are increasingly vulnerable to shortages and rising prices. The tripling of wheat prices between 1972 and 1974 imposed almost as severe, and in some cases more severe financial hardships on developing countries as the accompanying rises in petroleum prices. In addition, the neediest developing countries had to absorb a drastic cutback in food aid of more than 50 percent.

We, therefore, hope the United States will take a more flexible position on the release price for reserves as well as on other unresolved issues so that an effective international wheat agreement can be concluded at an early date. Unless action is taken soon the opportunity may be lost to take advantage of four years of bumper world crops and ample food supplies. Recent projections by the U.S. Department of Agriculture, the Food and Agriculture Organization and the World Food Council, indicate the world again may be entering a period of erratic production and higher prices. If there should be a recurrence of poor crops as in 1972-74, and no international system of grain reserves is in place to help stabilize prices and provide for the orderly release of stocks, another food crisis could well take place.

The USCC also supports the conclusion of a new food aid convention as a part of the wheat agreement negotiations, raising the minimum annual commitment of food assistance from all donors to poor developing countries from the present level of 4.3 million to 10 million tons, of which the U.S. share would be 4.47 million tons.

(3) Access to supplies and commodity price stabilization.—Agreements to assure orderly access to sources of supply for essential raw materials at fair and reasonable prices, was considered an important negotiating objective of the Trade Act of 1974. This no doubt reflected U.S. concerns at the time that the world might be entering a period of persistent raw material shortages. When this threat failed to materialize and the problem became generally one of oversupply rather than shortages, except for petroleum, interest in the access question apparently evaporated.

While there may be relatively few shortages now, many experts believe adequacy of supplies could be a serious problem in the not-too distant future if not addressed now. It is a question that significantly affects the interests both of developing countries, which depend heavily on raw material exports for essential foreign exchange earnings and industrialized countries, which are becoming increasingly dependent on external sources of supply.

The USCC believes the proposals of the Third World for an integrated commodity program and a so-called common fund offer a useful framework for mutually beneficial cooperation between industrialized and developing countries to bring more order into the world's raw material markets and to help assure adequacy of supplies. Commodity stabilization agreements, with buffer stock arrangements could help reduce the wild swings in commodity prices resulting from cycles of scarcity and oversupply and underinvestment and excess capacity. Recent estimates by Professor Behrman, of the University of Pennsylvania, in a study prepared for the Overseas Development Council, suggest a buffer stock program covering a limited number of commodities could yield substantial economic gains to both consumers and producers. Supprisingly these benefits, according to the study, would have been substantially greater for industrial country consumers than developing country producers if such a program had been in operation during the period 1963-72.

Such arrangements could be strengthened by including a global information and an early warning system to anticipate potential emergencies and project longer term trends. Developed country participation in the individual commodity agreements could be conditioned upon the inclusion of supply assurances, within a certain price range and agreement on international guidelines covering resort to export restraints. And steps should be taken to follow up on the U.S. proposal made at the Seventh Special Session of the U.N. General Assembly in 1975 for a new international effort to help finance the orderly expansion of raw material resources in developing countries.

All this requires the United States to take a more positive attitude toward the developing countries' commodity proposals. U.S. support and that of some other major industrialized countries for such arrangements has been at best lukewarm and, as a result, progress has been painfully slow. It has taken more than four years to reach agreement on the basic elements of a watered down common fund with many of the details still to be worked out. Even more discouraging is the lack of progress made in negotiating individual buffer stock agreements, without which the common fund will be only a hollow structure.

Statement of David C. Williams, Senior Research Fellow, Council on Hemispheric Affairs

SUMMARY

The Council on Hemispheric Affairs regrets that international fair labor standards were not negotiated in the Tokyo Round, although the Trade Act of 1974 directed the President to seek their adoption. It urges that the negotiation of international fair labor standards be placed at the top of GATT's agenda for the coming months, holding that, in this era of increasing stress on human rights in U.S. foreign policy, it is an idea whose time has come.

My name is David C. Williams, and I am a Senior Research Fellow of the Council on Hemispheric Affairs. The Council is a non-governmental organization of prominent Americans who are concerned with relations between the United States and Latin America and who come from Congressional, labor, Hispanic, business, professional, religious, and academic backgrounds. The Council has been particularly concerned with human rights in Latin America—and human rights, as you know, is becoming more and more the soul of American foreign policy.

I thank you, Mr. Chairman, for providing me with this opportunity to testify on behalf of the Council on Hemispheric Affairs with regard to the Tokyo Round package of trade agreements. I was an official in the Office of the Special Representative for Trade Negotiations during the Kennedy Round years. I have therefore followed with particular interest the progress of the Tokyo Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).

My testimony today concerns not what is included in the agreement before you, but a very important issue—a basic issue of human rights—which has been regrettably left out of it. In enacting the Trade Act of 1974, the Congress directed the President, in Section 121(a)(4) of the Act, to seek "adoption of international fair labor standards." Last year, Congressman Reuss introduced a concurrent resolution requesting the inclusion of environmental, safety, and health standards in the GATT negotiations. Responding to this initiative, Ambassador Strauss wrote to Congressman Reuss on June 27, 1978, that an inter-agency task force on labor standards and trade distortions had been set up to carry out the Congressional mandate. The Ambassador stated that "we do not want * * * U.S. willingness to protect the environment and our workers to disadvantage the very U.S. producers willing to pay such costs."

I understand that the task force did do a very substantial amount of exploratory work on this matter. So did other governments. But nothing, in fact, was achieved in this regard during the Tokyo Round—although the United States and the Nordic nations did raise the issue. It remains, in our view, the most urgent unfinished business before the GATT and the nations negotiating under its auspices.

In the meanwhile, an increasing amount of attention has been given to this issue, particularly by the trade unions. Our own AFL-CIO has been in the forefront, but so have international trade union organizations such as the International Metalworkers Federation (IMF). Incidentally, two American affiliates of the IMF—the UAW and the Machinists Union—are represented in the Council on Hemispheric Affairs and actively support international fair labor standards.

Indeed, the President of the UAW, Douglas A. Fraser, has declared: "The Congress should require the Administration to initiate a new round of GATT negotiations on international fair labor standards, backed by a provision that would limit approval of the (Tokyo Round) trade ageement to a specified period of time, unless, within that period, there is submitted to and approved by Congress an additional agreement providing for such labor standards."

What do these unions want? First and foremost, they stress freedom of association. Free to organize and bargain collectively, unions can—experience has shown—deal very effectively with many of the problems which confront workers.

The banning of child labor and of forced labor are high on the unions' agenda. So are equal pay for equal work and the banning of discrimination against minorities.

Minimum wages and maximum hours are long-standing goals of the labor movement.

New among labor's objectives, but of rapidly growing importance, is the protection of workers against toxic substances in the workplace.

For America's workers, international fair labor standards are a matter not only of the traditional solidarity among the world's workers, but of simple self-defense. Our world is becoming, economically, increasingly interdependent. The sweatshop exploitation of workers today in some remote corner of the world can tomorrow mean the loss of jobs for American workers. The loss of these jobs—and the human dignity

that goes with employment—is a calamity for the workers involved; it can also be a disaster for the community in which they live.

The expansion of international trade—designed to promote the security and living standards of the world's peoples—becomes a mockery when the products of starvation-pay workers abroad drive out of the marketplace the products of more adequately-paid American workers. Indeed, the products of foreign sweatshops appear in our stores not only under their own names. Thanks to the mushrooming of the industrial practice known as "foreign sourcing," they turn up as components of products which, to all appearances, look 100% American.

Mr. Chairman, it is not fair international trade for our workers to have to compete with the exports of countries like Argentina and Chile, where unions are ruthlessly repressed and where their leaders are imprisoned or murdered. In Chile, for example, the purchasing power of the workers' wages has been forced down 40% since 1974. Argentine workers have also suffered a dramatic drop in their real wages. Tragically, these two nations had previously been in the forefront of efforts to create a vigorous and democratic trade union movement.

Mr. Chairman, it is not fair international trade when U.S. asbestos processors, unwilling to meet the legal standards for occupational health and safety in the United States, transfer their "dirty" operations across the border into Mexico—where they are carrying them on with apparent utter disregard not only for the health of their workers, but that of the residents of surrounding communities as well. And then they export their products back to the United States!

This may be only the beginning. A study by the Congressional Office of Technology Assessment warns that: "U.S. pollution control laws and occupational health standards may soon lead to wholesale exodus in major industries, as manufacturers move to avoid the large costs imposed here while continuing to sell their products in the United States."

We recognize that it is obviously impossible to impose U.S. standards on the rest of the world. But it does seem to us possible—indeed, urgent—to secure multinational agreement that certain workplace practices, many of which are already widely acknowledged to be offensive to human dignity, are no longer tolerable in the production of goods for international trade. It should be possible to outlaw wages which are obscenely low, even for traditionally low-wage economies—for example, the top wage for miners at Bolivia's largest tin mine is $14 for a seven-day week.

Many important work standards are already embodied in the conventions adopted over the years by the International Labor Organization (ILO). These conventions, as you know, are formulated on a tripartite consensus basis, with government, management, and labor representatives from many nations participating.

The inclusion of ILO-type fair labor standards—as a "social clause" in the GATT or as a code to which the nations can subscribe—will require patient and persistent multinational negotiations. The international trade of some countries has been based upon the denial of fair labor standards, sometimes with the excuse that this is essential to meet their development needs. But this kind of development is self-defeating, as it benefits only a privileged elite in the countries concerned, leaving the vast mass of the people mired in poverty.

I should note at this point that the United States need not rely exclusively on multinational negotiations. It can unilaterally give or withhold tariff concessions under the Generalized System of Preferences (GSP). This is already subject to conditions—for example, preferences are withheld from Venezuela and Ecuador, unfairly in our view, because they are members of OPEC, even though they did not participate in the 1973 Arab oil boycott. The United States could, at its own discretion, withhold preferences from countries which flagrantly violate human rights—and, indeed, the European Community is already considering doing so.

It does, inevitably, take longer to achieve results in multinational negotiations. It may be necessary to pick and choose—this, after all, is the art of the skilled negotiator—those labor standards on which agreement can most readily and promptly be reached. Once the principle is established, the area of agreement can be expanded in subsequent years and subsequent negotiations.

The important thing is to make a beginning. That is why, on behalf of the Council on Hemispheric Affairs, I urge that the United States call for the negotiation of international fair labor standards to be placed at the top of GATT's agenda of work for the coming months. It is high time that GATT acquired that kind of a human dimension.

It has been said that more powerful than an army with banners is an idea whose time has come. I maintain that the inclusion of international fair labor standards in the rules of world trade is indeed an idea whose time has come. It is more than a

matter of economics. It is a simple imperative of human rights. And, as President Carter said last December: "Human rights is the soul of our foreign policy."

WASHINGTON, D.C., *July 16, 1979.*

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Finance, Subcommittee on International Trade, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to the Press Release of the Subcommittee on International Trade, Committee on Finance, United States Senate (sometimes hereinafter referred to as the "Subcommittee"), of June 21, 1979, regarding the Subcommittee's public hearing on the Trade Agreements Act of 1979 (S. 1376).

The purpose of this letter and the attached materials submitted on behalf of Cargill Incorporated is to provide Members and staff of the Subcommittee with our comments and recommendations regarding needed changes in United States taxation of foreign source income and related matters with particular reference to the linkage of tax and trade issues and the need for legislative changes in the context of the Tokyo Round of multilateral trade negotiations ("MTN") and related international proceedings to preserve the competitive position of United States firms engaged in international trading of agricultural commodities.

We wish to thank the Members of the Subcommittee for their continuing efforts to provide representatives of the private sector an opportunity to express views on international tax and trade matters. We are particularly concerned about the need for timely changes regarding United States taxation of foreign source income in the context of the MTN agreements and related international trade proceedings. Previous materials concerning certain of these issues were provided to the House Ways and Means Committee and the Senate Finance Committee during years 1975 through 1978.

In accordance with recent international tax and trade developments, including the MTN, with particular reference to the subsidies and Countervailing Duty Code, the November 1976 Panel Decisions under the auspices of the General Agreement of Tariffs and Trade on certain tax practices of the United States, France, Belgium and the Netherlands, and various proceedings and deliberations of the House Ways and Means Committee and the Senate Finance Committee, we urge the United States Congress, and more specifically the Members, of the House Ways and Means Committee and the Senate Finance Committee, to adopt necessary changes in United States federal income tax law to place United States owned firms engaged in international trading of agricultural commodities on a substantially equivalent tax footing with their foreign owned competitors.

Again, we wish to express our appreciation to the Members and staff of the Subcommittee, and we urge the Congress to proceed, as expeditiously as possible, with the necessary legislative changes to preserve and improve the competitive position of United States firms engaged in international trading of agricultural commodities in an effort to reduce the continuing and substantial United States trade deficit with other trading nations.

Respectifully submitted,

PAUL H. DELANEY, Jr.

Enclosure.

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Comments and Recommendations regarding United States Taxation of Foreign Source Income and Related Matters with Particular Reference to the Linkage of Tax and Trade Issues and the Need for Legislative Changes in the Context of the Tokyo Round of Multilateral Trade Negotiations and Related International Proceedings to Preserve the Competitive Position of United States Firms Engaged in International Trading of Agricultural Commodities

INTRODUCTION

The purpose of this memorandum is to recommend needed changes in United States taxation of foreign source income in the context of the Tokyo Round of multilateral trade negotiations ("MTN") and related international proceedings to preserve the competitive position of United States firms engaged in international trading of agricultural commodities. The proposed changes have important international trade implications, and recent developments suggest the timeliness of making these changes during Congressional consideration of the Trade Agreements Act of 1979 and implementation of the MTN international agreements.

In accordance with recent international tax and trade developments, including the MTN, with particular reference to the Subsidies and Countervailing Duty Code ("Subsidies Code"), the November 1976 Panel Decisions under the auspices of the General Agreement on Tariffs and Trade ("GATT") on certain tax practices of the United States, France, Belgium and the Netherlands ("GATT Panel Decisions"), and various proceedings and deliberations of the House Ways and Means Committee and the Senate Finance Committee, it is urged that the United States Congress, and more specifically the Members of the House Ways and Means Committee and the Senate Finance Committee, adopt necessary changes in United States federal income tax law to place United States owned firms engaged in international trading of agricultural commodities on a substantially equivalent tax footing with their foreign owned competitors.

Subpart F was added to the United States Internal Revenue Code under the provisions of the Revenue Act of 1962. Its effect is to tax on a current basis the undistributed earnings and profits of United States owned foreign based trading companies (contolled foreign corporations). Before 1962 such income was taxed like income of other foreign corporations, only when it was repatriated to the United States. The effect of Subpart F has been to discourage the formation and operation of United States owned foreign based trading companies by placing them at a significant disadvantage in their competition with foreign owned trading companies. No other major trading nation taxes such income of international trading companies prior to repatriation, and in point of fact, many countries do not tax this income at all. Instead, recognizing the value of such trading companies in expanding domestic exports, most nations have actively encouraged and supported the formation and growth of such companies. Japanese and European international trading companies have been especially successful in exploiting opportunities in world markets.

It is understandable that international trade considerations played so limited a part in the discussions and considerations which led to Subpart F in 1962. At that time, the United States was still the dominant world economic power, with large year-to-year surpluses on trade account. These circumstances have changed in recent years. The United States position in world trade has deteriorated as other nations have emerged as strong competitors. Consistent United States surpluses have given way to large deficits. There is a growing concensus that steps must now be taken to increase United States competitiveness in all international markets.

Notwithstanding the enactment of Subpart F in 1962, several United States based international trading companies were able to continue operations under significant exceptions and escape valves which the Congress included as a part of Subpart F. These firms have played a major role in the rapid expansion of United States farm exports in the past 15 years.

Further amendments to the Internal Revenue Code enacted in 1975 have eliminated or drastically reduced the scope of these exceptions. The effect has been to undermine the competitive position of United States international agricultural trading firms. These firms cannot absorb the tax disadvantages imposed by amended Subpart F as they possess no unique advantages such as established brand franchises or product superiority. The products which these United States international trading firms offer, raw or semi-processed agricultural commodities, are the same products offered by their foreign owned competitors; these products are acquired from the same sources and sold to the same ultimate customers. Traditionally low margins in this commerce offer limited, if any, opportunity for absorbing significant cost disadvantages.

United States owned international trading firms faced with this reality have two choices: they can slowly surrender their business to foreign owned trading firms not subject to United States tax jurisdiction and control, or they can share (or give up) control of their foreign based international trading operations with foreign interests not subject to United States tax jurisdiction and control. In either event, the United States loses in this process. First, the United States is surrendering important advantages in world trade. While foreign based trading companies typically trade in farm commodities from all origins, United States owned firms gain most from sales of United States commodities because such firms maintain large capital investments in facilities which can be used only in originating commodities produced in the United States. Active participation in all world markets by United States firms assures that in any negotiation involving agricultural products, United States interests in selling are actively represented. Sharing of ownership and control of these firms with foreign interests (or surrendering control to such interests) will dilute the primary interest of United States firms in selling United States commodities in the world resellers market. Second, to the extent this activity passes beyond United States tax jurisdiction and control, the United States loses the opportunity to tax the earnings and profits derived from this international commerce when such income is subsequently repatriated to the United States.

More recently, based in large part on these changes in economic circumstances, the United States Congress has become increasingly concerned about the declining position of United States firms in international trading markets, and the Congress has indicated a willingness to proceed with necessary changes in United States law including United States tax law, to enable United States firms to be more competitive in world markets.

As a consequence of the major differences in the historical evolution of United States tax law as it impacts on international trading activity and the tax laws of other major trading nations of the world as they impact on international trading activity, it is not surprising that there are generally no United States counterparts to the Japanese trading companies or other foreign based international trading companies, although certain United States firms do participate in international agricultural commodities trade. Furthermore, foreign based international trading companies have played a major role in expanding the trade of other nations which compete with the United States. Nations such as Japan, West Germany, and the Netherlands have placed the highest priority on international trade considerations and have provided substantial incentives to trading firms located within their borders. If the United States is to be competitive in international trading markets, it must also develop policies and provide incentives directed towards encouraging international trading activity by United States based firms.

The substantial emphasis directed to international trading activities by most of the major trading nations is clearly demonstrated by the tax systems adopted by such countries designed to stimulate their exports and international trading activities. More particularly, the territorial system of taxation utilized by most of these countries clearly places United States based firms at a competitive tax disadvantage in competing for world markets.

Although the Congress has recognized this problem and the importance of providing necessary incentives to United States firms, it has yet to enact changes in United States tax law needed to accomplish this objective. The proposed exception to Subpart F for income from international trading in agricultural commodities is designed specifically to encourage further expansion of agricultural trade by placing United States owned international trading companies on a more equal tax footing with their foreign owned competitors which are beyond United States tax jurisdiction and control.

Several recent events suggest the importance and timeliness of Congressional action on this issue now:

1. Both the House Ways and Means Committee and the Senate Finance Committee have recognized that application of Subpart F to United States owned firms engaged in trading of agriculture commodities reduces their competitiveness and their ability to market United States agricultural products abroad effectively;

2. The provisions of the Trade Act of 1974 and various statements by Congressional Committees recognize that taxes play an important role in trade and that present arrangements favor exports of other nations;

3. Despite the decisions by GATT panels that the tax practices of certain European countries which are designed to stimulate exports and international trading activities, the United States has not been able to secure changes in these practices;

4. United States trade negotiators have been unsuccessful in the Tokyo Round of multilateral trade negotiations in obtaining concessions or agreement from other major trading nations regarding the impact taxes on international trade under the provisions of the Subsidies Countervailing Duty Code;

5. Findings and determinations of the House Ways and Means Committee and the Senate Finance Committee suggest that United States based firms are now operating at a competitive tax disadvantage relative to their foreign based competitors;

6. In seeking broad agreement with the other leading trading nations of the world, United States negotiating efforts directed towards obtaining international rules to assure tax equity and fairness are strengthened by placing United States based companies on a similar tax footing with their foreign based competitors as it is clear that so long as others enjoy advantages in world trade under present arrangements they have little incentive to enter into negotiations designed to create equality in the tax treatment of firms involved in international trade.

This memorandum proposes that the United States Congress amend the provisions of the Internal Revenue Code to exclude from current taxation, under Subpart F, income derived from international sales of agricultural commodities. This would expand the concept already accepted by the Congress and embodied in the present limited agricultural commodities exception to Subpart F. Furthermore, both the House Ways and Means Committee and the Senate Finance Committee have previously agreed on an expanded version of this agriculture commodities exception.

Adoption of this amendment in the context of Congressional consideration of the Trade Agreements Act of 1979 and implementation of the MTN international agreements would assure that United States firms could compete more effectively in international trading markets for agricultural commodities and would also provide needed leverage for meaningful international discussions designed to achieve equity in the tax treatment of all international trading enterprises.

DISCUSSION

United States Taxation of Foreign Source Income

Tax Jurisdiction and Taxation of Foreign Source Income

A particular nation may tax the worldwide income of its nationals, restrict the scope of its tax jurisdiction to a territorial basis (tax only domestic source income), or provide for other means of limiting the taxation of foreign source income.

In response to a United States Congressional inquiry in March 1973, a study was prepared under the auspices of the Council on International Economic Policy ("CIEP") regarding tax treatment by other nations of their own multinational firms (taxation of foreign source income). 1/

This study summarized the basic rules of the following countries with respect to taxation of foreign source income: Belgium, Brazil, Canada, Denmark, France, Federal Republic of Germany, Ireland, Italy, Japan, the Netherlands, Norway, Switzerland, and the United Kingdom.

Although it is difficult to generalize concerning the effect of foreign tax systems with respect to taxation of foreign source income, it should be noted that despite varied approaches to taxation (worldwide, territorial, and varied forms of exemptions and credits), not one of the nations considered in the CIEP study taxed currently the undistributed profits of a foreign subsidiary controlled by local residents. Accordingly, to the extent that The United States taxes undistributed profits of United States controlled foreign corporations on a current basis, this places United States based companies engaged in international operations at a competitive disadvantage and constitutes a departure from the general scheme of international taxation practiced by other nations.

1/ See information submitted for the record by the Council on International Economic Policy to the Subcommittee on International Trade, Senate Finance Committee, Hearings on Multinational Enterprises, February 26 through March 6, 1973.

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United States Tax Jurisdiction

United States federal tax jurisdiction is based on two general principles: 2/

1. Nationality, under which the United States taxes worldwide income of "United States persons"; 3/ and

2. Source of income, under which the United States taxes "United States source income" of United States persons and "foreign persons", including "nonresident aliens" and "foreign corporations" (in limited circumstances, the United States taxes "foreign source income" of foreign persons "effectively connected with a United States trade or business").

The term "United States person" includes United States domestic corporations. 4/

United States Taxation of United States Corporations and Foreign Corporations

As noted above, the United States tax jurisdiction is based on both nationality and source of income. The United States taxes United States persons (citizens, residents, corporations, partnerships, trusts, etc.) on income from all sources.

The modern United States corporate income tax dates from 1909. At that time, domestic corporations were taxed on income from all sources and foreign corporations on income from business transacted and capital invested within the United States. This jurisdictional pattern remained substantially unchanged until 1962.

The impact of tax on the foreign source income of United States persons was softened somewhat in 1918 with the adoption of a foreign tax credit. Previously, foreign taxes had merely been deductable, like state and local taxes. The credit can apply to both the earnings and profits of foreign subsidiary corporations and foreign branches. Only payments treated as income taxes, or "in lieu of income taxes", qualify for the credit. 5/

2/ See Internal Revenue Code of 1954, as amended, Title 26 U.S.C. §§1 and 11(a) (sometimes hereinafter referred to as the "I.R.C.") which set forth very broad jurisdictional rules, imposing tax on the taxable income of "every individual" and "every corporation," respectively.

3/ The term "United States person" and other relevant terms pertaining to United States tax jurisdiction are defined and discussed subsequently in this memorandum.

4/ I.R.C. § 7701(a)(30) defines "United States person" to include citizens, residents, domestic partnerships, domestic corporations, and domestic estates and trusts.

5/ See I.R.C. §§ 901-906.

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The income of foreign corporations, if derived from business conducted outside the United States, is generally not subject to current United States income taxation.

In broad terms, a corporation is treated as a United States domestic corporation if it is incorporated in any of the states of the United States or the District of Columbia and is treated as a foreign corporation if it derives its charter from a foreign government.

Foreign source income earned by a foreign corporation controlled by United States persons is generally exempt from United States taxation until distributed to shareholders who are United States persons. 6/ The effect of these provisions of the Internal Revenue Code is that a United States person (United States shareholder) is allowed to defer paying the United States income tax on undistributed earnings and profits of a controlled foreign subsidiary corporation until such earnings and profits are repatriated to the United States (this development is often referred to as "deferral" of tax with respect to foreign investment).

A corporation receiving a dividend from a controlled United States domestic corporation is generally entitled to exclude most of that dividend from its taxable income on the theory that it has already been subject to tax. 7/ Dividends from a foreign corporation are not entitled to this exclusion. Likewise, dividends from a foreign corporation are not entitled to the $100 exclusion of dividends received by individuals. 8/ Therefore, United States shareholders of foreign corporations are generally taxed fully on dividends received from foreign corporations.

A United States corporation which in any taxable year owns at least 10 percent of the voting stock of a foreign corporation from which it received dividends is entitled to a foreign tax credit for income taxes paid by that foreign corporation. 9/

6/ See I.R.C. §§1, 11, 861-864, 881-883, and 1201.

7/ See I.R.C. §243.

8/ See I.R.C. §116.

9/ See I.R.C. §902.

Current Taxation of Undistributed Earnings and Profits of Foreign Corporations

Although United States shareholders (United States persons) of foreign corporations are generally not subject to United States tax on the income of such foreign corporations unless, and until, such income is repatriated to the United States in the form of dividends (or remittances in the nature of a dividend), United States shareholders of two categories of foreign corporations are effectively subject to current United States taxation on certain types of undistributed income:

1. "Foreign personal holding companies"; and

2. "Controlled foreign corporations".

United States Taxation of Controlled Foreign Corporations under Subpart F

In accordance with the provisions of the Revenue Act of 1962, 10/ the United States Congress added Subpart F to the Internal Revenue Code in an effort to deal with the problem of tax haven operations. 11/ Under this approach, United States shareholders of controlled foreign corporations ("CFCs") are subject to current United States income taxation on certain forms of undistributed tainted income (tax haven or Subpart F income):

1. Subpart F income, including foreign base company income and income derived from insurance of United States risks;

2. Previously untaxed Subpart F income withdrawn from investment in less developed countries; and

3. Any increase in investment in United States property to the extent it would be taxable as a dividend if distributed to United States shareholders.

It should be understood that Subpart F taxes United States shareholders not on their own income, but on the income of CFCs in which they own an interest. This development relates to the consideration that there may be no jurisdictional basis for taxing a foreign corporation unless it earns income from sources within the country asserting jurisdiction to tax (or has income effectively connected with business operations in such country). Therefore, Subpart F jurisdiction is predicated on United States citizenship or residence, rather than source of income.

10/ See Revenue Act of 1962, P.L. 87-834, H.R. 10650, 87th Cong. 2d Sess., 76 Stat, 960, October 16, 1962.

11/ See I.R.C. §951(a)(1).

Recent Legislative History of United States Taxation of Foreign Source Income Including International Trading Income

1973 and 1974 Tax Proceedings

In January 1973, the Chairman of the House Ways and Means Committee, announced that extensive public hearings would be held on tax reform, specifically noting taxation of foreign income.

In November 1974, pursuant to tentative decisions on tax reform proposals, the House Ways and Means Committee agreed to modify the definition of foreign base company sales income to exclude income arising from the sale of goods manufactured abroad. This change was reflected in a bill entitled, the "Energy Tax and Individual Relief Act of 1974", introduced by Congressman Mills and referred to the Committee on Ways and Means. 12/

The Report of the House Ways and Means Committee accompanying the "Energy Tax and Individual Relief Act of 1974" provided an explanation of the Committee's reasons for this contemplated change in the definition of foreign base company sales income: 13/

> "Your committee's bill changes the definition of foreign base company sales income (i.e., what sales income constitutes tax haven income) to exclude sales income from goods manufactured, produced, grown, or extracted outside of the United States."

Tax Reduction Act of 1975

In March 1975, the President of the United States signed the Tax Reduction Act of 1975 (sometimes hereinafter referred to as the "TRA"), thus providing for several significant modifications concerning United States taxation of foreign source income: 14/

1. The so-called "30-70" "safe haven" or "shielding" rules which had applied to CFCs where foreign based company income constitutes less than 30 percent of gross income were amended to reduce the relevant threshold test to less than 10 percent;

12/ See §332, Energy Tax and Individual Relief Act of 1974, H.R. 17488, 93rd Cong. 2d Sess., November 21, 1974.

13/ See Report of House Ways and Means Committee accompanying H.R. 17488, pp. 313 and 132, H. Rep. No. 93-1502, 83rd Cong. 2d Sess., November 26, 1974.

14/ See §602, Tax Reduction Act of 1975, P.L. 94-12, H.R. 2166, 94th Cong. 1st Sess., 89 Stat. 58, March 29, 1975.

2. The minimum distribution exception to current taxation of Subpart F income was terminated;

3. The exclusion for certain foreign personal holding company income reinvested in less developed countries was eliminated; and,

4. The exception for foreign base company shipping income was limited to income reinvested in shipping operations.

The relevant House bill had contained no provisions amending United States rules for CFCs and their United States shareholders. 15/ Nor did the Senate Finance Committee recommend changes in this area of United States tax law. 16/ Nevertheless, pursuant to amendments voted on the floor of the Senate, it was provided that United States persons holding a one percent or greater interest in a foreign corporation would be taxed currently on their proportionate share of the income from such a corporation in cases where more than 50 percent of the stock of the corporation was controlled by United States persons.

The House and Senate conferees adopted a compromise approach which did not eliminate deferral across-the-board, but rather expanded on the Subpart F approach to tax specific categories of income on a current basis: 17/

> "The conference substitute provides for a number of specific measures which substantially expand the extent to which foreign subsidiaries of U.S. corporations are subject to current U.S. taxation on tax haven types of income under the so-called Subpart F rules of the Code.

* * *

15/ See Tax Reduction Act of 1975, H.R. 2166, 94th Cong. 1st Sess., March 17, 1975.

16/ See Report of the Senate Finance Committee accompanying H.R. 2166, Sen. Rep. No. 94-36, 94th Cong. 1st Sess., March 17, 1975.

17/ See Conference Report accompanying H.R. 2166, p. 70, Rep. No. 94-120, 94th Cong. 1st Sess., March 26, 1975.

"The conference substitute repeals the minimum distribution exception to the Subpart F rules which, under present law, permits a deferral of U.S. taxation on tax haven types of income in cases where the foreign corporation (or various combinations of foreign-related corporations) distributed certain minimum dividends to their U.S. shareholders. The effect of repealing this exception is to tax currently all income of foreign subsidiaries of U.S. corporations which is deemed to be tax haven income under the existing so-called Subpart F rules of the Code. An exception to this provision was made for agricultural commodities not produced in commercially marketable quantities in the United States. Under the exception, these commodities grown (or raised) abroad are to be excluded from foreign base company sales income."

It was noted at the time of conference, that unless an agricultural commodities exception was adopted, the competitive position of the United States owned firms participating in international agricultural commodities trade would be undermined with the result that this important business would be transferred to foreign owned firms beyond United States tax jurisdiction and control and that this would be contrary to important United States national and international interests.

It was recognized that under United States tax law, United States owned firms had for many years competed on an equal tax footing with foreign owned firms in world agricultural trade. As a result United States owned firms were involved in a significant portion of this trade. However, if United States owned firms were required to pay taxes on a current basis they could not compete in this market, as they possess no special advantages such as technology or established brand names, that would enable them to absorb such a significant tax disadvantage. United States firms buy and sell the same commodities as their foreign owned competitors. No other country in the world taxes earnings on this trade on a current basis.

Following enactment of the Tax Reduction Act of 1975, it was recognized that certain ambiguity was inherent in language chosen to create the new agricultural commodities exception.

Tax Reform Act of 1975

The issue of the agricultural exception was raised again during proceedings of the House Ways and Means Committee in late 1975. 18/ The concensus was that a technical amendment was probably incorporated in the 1975 House Bill to accomplish this purpose, provided: 19/

> "(a) IN GENERAL.-The last sentence of paragraph (1) of section 954(d) (relating to definition of foreign based company sales income) is amended to read as follows:
>
> > 'For purposes of this subsection, personal property does not include agricultural commodities which are significantly different in grade or type from and are determined by Secretary of the Treasury after consultation with the Secretary of Agriculture not to be readily substitutable for (taking into account consumer preferences) agricultural products grown in the United States in commercially marketable quantities.'"

The House Ways and Means Committee advanced the following agruments in support of revising the language of the Tax Reduction Act of 1975: 20/

> ". . . One of the categories of tax haven income subject to current taxation under the Subpart F provisions of the code is base company sales income. The Tax Reduction Act of 1975 contained an amendment

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18/ See Committee Print prepared for the use of the Committee on Ways and Means by the staff of the Joint Committee on Internal Revenue Taxation concerning U.S. Taxation of Foreign Source Income, p. 8, September 27, 1975.

19/ See Section 1025 of the Tax Reform Act of 1975 (concerning limitation on definition of foreign base company sales income in the case of certain agricultural products), H.R. 10612, p. 211 and 212, Rep. No. 94-658, 94th Cong., 1st Sess., November 12, 1975.

20/ See Report of the House Ways and Means Committee accompanying H.R. 10612, p. 221, Rep. No. 94-658, 94th Cong., 1st Sess., November 12, 1975.

which provides that base company sales income does not include the sale of agricultural commodities which are not grown in the United States in commercially marketable quantities. It has come to your committee's attention that questions have been raised as to the extent that this exclusion applies to agricultural products which are of a different grade or variety from the same product grown in the United States. Your committee believes that sales of foreign-grown agricultural products which are not readily substitutable for U.S.-grown agricultural products should not be included within the definition of foreign base company sales income in the case of sales made to third countries. Your committee is aware that these sales are highly competitive and that if the profits on these sales were subject to U.S. tax on a current basis, U.S.-controlled foreign companies would have difficulty competing with foreign-controlled companies. Accordingly, your committee believes it is appropriate to permit this category of income to retain the tax advantages of deferral until the profits are repatriated to the United States." (Emphasis supplied.)

Notwithstanding the clear concern of the House Ways and Means Committee that the United States owned companies be given a continuing opportunity to compete for this important business, it was recognized that substantial complexity might be involved in interpreting this language as a consequence of inherently difficult constructions.

Tax Reform Act of 1976

In early December 1975, the full House passed the Tax Reform Act of 1975, H.R. 10612, and referred the bill to the Senate. Because of time constraints and other considerations, the Senate Finance Committee directed its immediate attention to the tax reduction provisions of the 1975 House bill and did not undertake consideration of the tax reform provisions of the bill.

During the month of December 1975, the House and Senate debated and acted on this legislation and then forwarded a bill to the President to extend tax reductions until June 30, 1976. The tax reform provisions of the 1975 House bill, including the provisions modifying the agricultural exception to Subpart F, were not considered by the Senate Finance Committee in 1975.

In February 1976, the Chairman of the Senate Finance Committee announced that the Committee would begin hearings in March 1976 on major tax revision proposals and extension of expiring tax cut provisions. Following these hearings, the Senate Finance Committee proceeded with mark-up of the subject tax legislation and reported out a bill for consideration of the full Senate in June 1976. 21/

Based on considerations noted above, the Senate Finance Committee initially adopted an agricultural commodities exception based on the third market country approach: 22/

"SEC. 1025. LIMITATION ON DEFINITION OF FOREIGN BASE COMPANY SALES INCOME IN THE CASE OF CERTAIN AGRICULTURAL PRODUCTS.

(a) IN GENERAL.--The last sentence of paragraph (10) of section 954(d) (relating to definition of foreign base company sales income) is amended to read as follows: 'For purposes of this subsection, personal property does not include agricultural commodities grown or produced outside the United States if sold for use, consumption or disposition outside the United States.'"

This approach provided a clear and easily administered standard which would enable United States owned firms to compete for this important third country trade without significant doubts about the tax consequences under United States laws.

The following reasons for adopting this approach were noted in the Senate Finance Committee report. 23/

21/ See Report of the Committee on Finance, United States Senate, accompanying H.R. 10612, Rep. No. 94-938, 94th Cong., 2d Sess., June 10, 1976.

22/ See H.R. 10612, Rep. No. 94-938, 94th Cong., 2d Sess, p. 471, June 10, 1976.

23/ See Report of the Committee on Finance, United States Senate, accompanying H.R. 10612, Rep. No. 94-938, 94th Cong., 2d Sess., pp. 232-233, June 10, 1976.

"Certain agricultural products

Reasons for change

As indicated above, one of the categories of tax haven income subject to current taxation under the Subpart F provisions of the code is base company sales income. The Tax Reduction Act of 1975 contained an amendment which provides that base company sales income does not include the sale of agricultural commodities which are not grown in the United States in commercially marketable quantities. It has come to the committee's attention that questions have been raised as to the extent that this exclusion applies to agricultural products which are of different grade or variety from the same product grown in the United States. The committee believes that sales of foreign-grown agricultural products for use, consumption, or disposition outside the United States should not be included within the definition of foreign base company sales income. The committee is aware that these sales are highly competitive and that if the profits on these sales were subject to U.S. tax on a current basis, U.S.-controlled foreign companies could have difficulty competing with foreign-controlled companies. Accordingly, the committee believes it is appropriate to permit this category of income to retain the tax advantages of deferral until the profits are repatriated to the United States. [Emphasis supplied.]

Explanation of provisions

The committee's amendment provides that for purposes of the tax haven foreign base company sales rules of Subpart F, personal property does not include agricultural commodities grown or produced outside the United States if sold for use, consumption or disposition outside the United States. The committee believes that this rule will be easier for the Internal Revenue Service to administer than either the rule contained in present law or the rule contained in the House bill."

As noted above, in accordance with its consideration of the House-passed Tax Reform Act of 1975, the Senate Finance Committee

initially adopted an agricultural commodities exception based on the third market country approach. This language was subsequently dropped from the Senate-passed Tax Reform Act of 1976. 24/

Although the House-Senate Conference Committee on the Tax Reform Act of 1976 chose not to adopt the agricultural exception to Subpart F under Section 1025 of the House-passed Tax Reform Act of 1975, it is significant that both the House Ways and Means Committee and the Senate Finance Committee had determined that important United States national and international interest would be served by perserving an ongoing opportunity for United States owned firms to participate in international agricultural trade, the final provisions of the Tax Reform Act of 1976 left unchanged the language of the Tax Reduction Act of 1975 on this matter. 25/

24/ See H.R. 10612, 94th Cong., 2d Sess., August 6, 1976.

25/ See Tax Reform Act of 1976, P.L. 94-455, H.R. 10612, 94th Cong., 2d Sess., 90 Stat. 1520, October 4, 1976.

Economic and Transactional Distinctions Involving International Trading Operations

The decisions of the House Ways and Means Committee and the Senate Finance Committee to create a new Subpart F exception for income derived from sales of agricultural products produced abroad reflected awareness that in certain instances, United States interests are not served by taxing the operations of United States owned foreign corporations on a current basis. More specifically, the Congress recognized inherent economic distinctions between manufacturing and mining activities on the one hand and agricultural marketing and international trading operations on the other. These industries involve fundamentally different international economic and marketing considerations. A manufacturing company may utilize a trading affiliate in a low-tax jurisdiction to handle exports of its products manufactured within or without the United States. Owing to the nature of manufacturing processes, such arrangements could potentially displace United States exports of domestically manufactured goods as a consequence of the ability to shift manufacturing processes to various countries.

Conversely, trading of commodities in international commerce is not similarly susceptible to this form of shifting and United States export displacement. For example, grains, oilseeds, and other agricultural commodities are produced by individual farmers in particular countries. The nature and quantity of agricultural commodities depends on matters such as climate, available land, etc. Although most production is consumed in the producing country, residual supplies are sold in world trade channels by exporters and intermediate resellers unrelated to the farmer-producers. Consequently, international agricultural trading activities have traditionally involved a structure that includes intermediate resellers (organized in low-tax jurisdictions) which are controlled by both United States owned companies and foreign owned companies.

As noted above, the Congress has recognized that the effect of taxing on a current basis the income of United States owned international trading companies would be to shift important commercial advantages to foreign based international trading companies.

International Commodities Trading

United States controlled foreign based trading companies compete in a complex business requiring skilled management and extensive resources. The basic role of international commodity traders is to anticipate demand for commodities throughout the world and to position themselves in relation to each of the basic elements of commodities trade--for example, the commodity itself, freight, foreign exchange and, in some cases, import levies--so that they can compete for sales as demand emerges. Back-to-back purchases and sales are rarely possible. Instead, positions must be taken before the emergence of new demand or new supply is fully reflected in price adjustments. Risk is unavoidable because values of each of the elements of a commodity trade are subject to continuous change. Effective management of risk in this environment is critical to success. Both the volume and value of the commodities involved in international transactions are enormous. Therefore, substantial working capital is required. Trading firms traditionally operate facilities required to handle and transport commodities.

The Need for Related Companies in International Trading Operations

Although theoretically, United States trading companies could avoid Subpart F problems by dealing only with unrelated companies, as a matter of practical necessity, this is not possible. As noted below, related companies have been required not for tax reasons, but rather for business and marketing purposes. Furthermore, as noted elsewhere, it is essentially impossible to shift earnings and profits among related companies as a consequence of other provisions of United States tax law.

A number of considerations are involved in deciding whether a domestic affiliated company is necessary to be competitive in buying commodities from or selling commodities to a particular country. For example, the limited amount of business available may not justify the costs of organizing a separate company (Greece, Norway, Sweden, Kenya and Tanzania). Limitations imposed by the local government often are decisive (Eastern Europe and in the People's Republic of China). The dominant role of a government marketing agency may limit competitive opportunities for domestic affiliates (South Africa).

On the other hand, in other countries it is often necessary to use a local subsidiary engaged in domestic marketing, exporting and importing grain. To the extent that a significant free

market operates within an exporting country, it is seldom possible to compete as an f.o.b. buyer with other international trading firms which can originate grain through offices and elevators controlled by a domestic affiliate. Sellers in these countries sometimes require and usually prefer to deal with a domestic subsidiary whose representatives are available to provide continuing service and whose assets are physically located within the jurisdiction of the host country. The same considerations often apply to selling grain in countries of ultimate destination. Moreover, both in selling and buying countries, market intelligence gained through involvement in domestic market operations improves opportunities for concluding trades. This can be true even in countries in which government marketing boards play an important role (for example, Canada and Australia). Thus, the decision to organize and deal through a domestic affiliate both in buying and selling agricultural commodities turns mainly on business considerations as distinguished from tax considerations.

For example, most grain imported into the European Common Market is handled by consumers on a levy-paid basis. The Corporation paying the levy is required to register within the European Common Market, and therefore if a United States trading company wishes to export efficiently to the European Common Market, it must have local subsidiary corporations in the European Common Market countries.

Although related companies are often used in these transactions, as a practical matter, there is limited need for concern regarding prospects for shifting earnings and profits among a group of related companies for tax purposes. Policing of inter-company pricing among related firms dealing in agricultural commodities is more simple and effective than policing of transactions in manufactured goods. Prices are easily established based on transactions publicly noted by commodity futures exchanges. Furthermore, comparisons are possible between transactions involving identical commodities with related and unrelated firms. Therefore, in this context, the United States Internal Revenue Service can effectively audit these transactions under Section 482 of the Internal Revenue Code (pertaining to arms-length standards for related companies), on a continuous basis, which provides further support for the proposition that the decision to establish domestic marketing subsidiaries in supplying and consuming countries (and transactions among these related companies) are predicated on business and marketing considerations rather than on considerations.

Typical Transactions

The following transactions will illustrate the operations of related companies in international agricultural trade; the limited scope of proposed exceptions; and competition at each stage among United States controlled and foreign controlled foreign based firms. In each case, transactions can involve the related company organized in the country or origin to assemble commodities from producers and local resellers; a related company operating in a country of ultimate use to receive the shipment, break it down, and resell it to local users; and, between these different elements, a separate risk taking profit center capable of assessing world market conditions anticipating demand, identifying supplies available from diverse sources, assembling other elements of an international transaction and putting them all together in a saleable package that meets the needs of sellers in originating countries and buyers in countries of ultimate use.

Production and Use Abroad (Third Market Countries)

ABC Grain Company, Ltd., a Canadian corporation may buy wheat from the Canadian Wheat Board and resell it f.o.b. Canadian port to ABC International, a United States affiliated international trading company. ABC International, in turn, will resell it c.i.f., or c and f, to an Italian buyer for redistribution to flour millers within Italy (Italian buyer may be a related ocmpany). In such a transaction, the ABC group of companies would compete at each stage with foreign controlled international commodities trading firms.

Production in United States and Use Abroad (United States Exports)

Sales of United States grains and other agricultural commodities to foreign destinations typically involve a number of different channels, usually beginning in a company organized in the United States. Sales of wheat to India, for example, almost always involve direct sales from a United States company to the Indian Buying Mission, which maintains offices in the United States. A sale of United States corn to Western Europe could involve a United States company as the f.o.b. seller to an affiliated international trading corporation which avails itself of United States tax incentives designed to stimulate United States exports f.o.b. an American port. The affiliated international trading corporation, in turn, could resell c.i.f. to an unrelated third party for resale in Western Europe. A sale of United States wheat to the Soviet Union also might involve a sale by a United States company to an affiliated international trading corporation f.o.b. delivered on board at an American or St. Lawrence port and a resale by the affiliated international trading corporation to the Soviet grain buying agency.

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Production Abroad and Use in United States

Sales of agricultural commodities produced abroad and imported into the United States also involve somewhat different patterns, usually culminating with a purchase by a United States company. For example, a United States controlled affiliated company in the Philippines, purchases coconut oil and coconut meal from local firms and resells to buyers in the United States (including its United States parent) and in Western Europe (possibly to an affiliated company for resale in the country of ultimate consumption).

Effects of Current Taxation on Competition between United States Owned Foreign Sales Companies and their Foreign Owned Competitors

Without an appropriate exception, United States controlled international trading companies would be subject to United States current taxation on undistributed earnings of most sales of agricultural commodities produced and consumed outside the United States. Such transactions would not have been subject to current taxation in the past. Foreign controlled foreign based international trading companies, able to utilize arrangements which do not subject them to current taxation on income derived from these transactions, will possess a decisive competitive advantage.

The effect of differential tax treatment can be illustrated by an example:

A French based company and a United States based company may engage in similar transactions involving international trade of agricultural commodities. Such commodities can originate from any of a number of major exporting nations, such as the United States, Canada, Brazil, Argentina, South Africa, Australia or the European Community, and move to a number of major importing areas, such as Western Europe, the Indian subcontinent, the Middle East, Central America or elsewhere. A French based company and a United States based company may operate through foreign subsidiaries established in Panama in order to participate on a competitive basis in such international agricultural trade. Each of these companies may purchase soybeans grown in Brazil and ship the commodity to a European nation, realizing a profit of $100 on this type of transaction.

If a Panamanian subsidiary of a United States based company is forced to pay accelerated United States income tax (current taxation of $48 by means of eliminating deferral), the United States based company would have substantially less capital available for competitive purposes ($52 as a result of the $48 United States tax on $100 profit). In contrast, a Panamanian subsidiary

of a French based company would pay no immediate tax, as neither Panama nor France would impose a current tax on this type of transaction, thus, all $100 of pre-tax profits would be available for future competitive purposes. Furthermore, even where such profits of the Panamanian subsidiary were repatriated to the French based parent, France would not impose any significant tax on such profits, thus providing a further competitive advantage to French owned trading companies.

Thus, under these circumstances, the United States controlled counterparts in the third market countries trade in agricultural commodities:

Limited Capacity to Absorb Tax Disadvantages

Unlike United States controlled firms manufacturing products abroad and distributing them in world markets through a foreign based sales company, United States traders in basic agricultural commodities in world markets possess no unique advantages like established brand franchises or product superiority to offset fundamental tax disadvantages. The products they offer--agricultural surpluses of other countries--are the same products offered by foreign based competitors, acquired from the same sources, and distributed to the same markets.

Financing International Trade

An essential requirement for successful competition in this trade is access to adequate amounts of capital. Major sources are retained earnings and borrowings. Impact of differential tax treatment on retained earnings is clear. However, the impact of differential tax treatment on the ability to borrow capital to finance trade is less clear, but equally important.

Capital requirements for international trading operations have increased significantly as commodity prices have risen above levels in the 1960s. Moreover, because prices now fluctuate through a broader range than before, the risks to lenders financing international agricultural trade has increased. Thus, risks associated with lending funds to international traders have increased simultaneously with their capital needs.

There is substantial competition for capital in this area, and foreign based firms (operating with the same prudence and skill as United States based firms) would have a substantial competitive edge over United States based firms if United States based firms are penalized by changes in United States tax law which would provide a comparative advantage to their foreign based competitors.

Human Resources

As noted above, risk is unavoidable in international trading of agricultural commodities because the values of all elements of a commodity trade are subject to continuous change. Back-to-back transactions involving these elements are rarely possible and therefore success is heavily dependent upon human judgments of future events. Skilled merchants and traders, capable of managing risk in this environment, are an essential resource in international trading operations. United States owned firms cannot attract and hold skilled merchants and traders also sought by foreign based firms if, because of substantial tax advantages, earnings from operations reflecting the same level of skill and insight are no more than half the earnings of their foreign competitors.

Collateral Effects on United States Exports

An ability to compete effectively on an international basis in global commodities transactions would severly limit the capacity of United States based international trading companies to locate and expand markets for surplus agricultural commodities produced in this country.

The needs of buyers of agricultural commodities in international markets often can be met by supplies from a number of possible origins. Indeed, sellers are often given the option of supplying agricultural commodities produced in different countries. United States based international trading firms typically have substantially greater investments in facilities for originating, handling, transporting, storing and delivering agricultural commodities produced in the United States, and therefore have a greater incentive to encourage the purchase of commodities produced in this country wherever possible. Their inability to compete in all international transactions involving agricultural commodities would deprive the United States of opportunities that would otherwise exist for substituting exportable surpluses of agricultural commodities produced in the United States.

It is important for another reason that United States based firms participate in transactions involving commodities produced abroad even where the possibility of substituting United States commodities does not exist. Market intelligence gained in these transactions increases the effectiveness of U.S. based international trading firms in selling United States produced commodities abroad. Market intelligence enables a trader to anticipate events and to take positions before prices adjust to reflect the influence of new supply and demand. By trading in all international markets, United States based international trading companies are better positioned to sell agricultural products produced in the United States.

Congressional Concern about the Competitive Position of the United States in International Trade Negotiations

Trade Act of 1974

In his opening statement of March 4, 1974, commencing the Senate Finance Committee hearings on the Trade Reform Act of 1973, H.R. 10710 (later to be voted into law as the Trade Act of 1974), Chairman Russell B. Long stated: 26/

> " I was very much in favor of the Trade Expansion Act of 1962. I still desire an 'open nondiscriminatory, and fair world economic system' but I am tired of the United States being the 'least favored nation' in a world which is full of discrimination. We can no longer expose our markets, while the rest of the world hides behind variable levies, export subsidies, import equalization fees, border taxes, cartels, government procurement practices, dumping, import quotas, and a host of other practices which effectively bar our products." [Emphasis supplied.]

GATT Reform

In the context of reform of the General Agreement on Tariffs and Trade ("GATT"), the Congress has specifically instructed United States trade negotiators to seek revision of those GATT articles which discriminate against the United States, and it is clear from the statutory language that the Congress was particularly concerned about this matter with respect to the DISC: 27/

26/ See Hearings before the Senate Finance Committee concerning The Trade Reform Act of 1973, H.R. 10710, Part 1, p. 2, 93rd Cong., 2d Sess., March 4 and 5, 1974.

27/ See §121 of the Trade Act of 1974, P.L. 93-618, H.R. 10710, 93rd Cong., 2d Sess., 88 Stat. 1978, January 3, 1975.

" The President shall, as soon as practicable, take such action as may be necessary to bring trade agreements heretofore entered into, and the application thereof, into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system. The action and principles referred to in the preceding sentence include, but are not limited to, the following -

* * *

"The revision of GATT articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs . . ."

Congressional Oversight Involving
International Trade Negotiations

The Senate Finance Committee has stated that the Congress will be actively involved in securing full reciprocity and equal competitive opportunities for United States interests: 28/

" The Trade Reform Act, as reported by the Committee, is intended to be more than a delegation of authority for negotiated reduction in the rates of duty. While a significant authority to reduce tariffs would be provided to insure the flexibility the trade negotiations will require, our foreign trading partners and our negotiators are on notice that the authority must be exercised to obtain full reciprocity and equal competitive opportunities for U.S. commerce."

House Ways and Means Committee Task Force on
United States Taxation on Foreign Source Income

During the course of consideration of the Tax Reform Act of 1975, the House Ways and Means Committee established a special task force to study the United States taxation of foreign

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28/ See Report of the Senate Finance Committee accompanying H.R. 10710, p. 18, S. Rep. No. 93-1298, 93rd Cong., 2d Sess., November 26, 1974.

source income (sometimes hereinafter referred to as the "Foreign Source Income Task Force"). This task force was instructed to report its findings and recommendations to the full Committee. 29/

On March 8, 1977, the Foreign Source Income Task Force issued its report (sometimes hereinafter referred to as the "Foreign Source Income Task Force Report"). 30/

Based on its deliberations, the Foreign Source Income Task Force recommended no changes with respect to the tax treatment of deferred earnings of foreign corporations controlled by United States shareholders. 31/

The final statement of the Foreign Source Income Task Force on this matter not only reconfirms strong support for international and multilateral approaches to certain international tax policy issues (as distinguished from unilateral action under the Internal the Internal Revenue Code), but the language chosen for this purpose is even broader in scope than the language contained in earlier draft reports: 32/

> "In its consideration of the several questions referred to it, the task force found that fundamental change by the United States in the taxation of foreign source income many areas requires the agreement and cooperation of foreign governments. Certain changes which might otherwise have been appropriate were found not to be acceptable if unilaterally adopted by the United States because they would subject U.S. businesses operating abroad to tax while their foreign competitors would not be similarly taxed, thus placing the U.S. businesses at a competitive disadvantage. Others were found to be unacceptable because they would subject foreign businesses to U.S. tax under circumstances involving a substantial possibility of retaliatory taxes by foreign governments against U.S. businesses operating abroad. Therefore, in addition to its specific recommendations directed toward the particular issues considered by the task force, the task force strongly recommends that steps be taken to initiate multilateral discussions between the United States and our major trading partners to consider a broad range of tax and investment questions, in particular those areas where unilateral action by any single nation is not feasible." [Emphasis supplied.]

29/ See Press Release No. 12, House Ways and Means Committee, January 5, 1976.

30/ See House Ways and Means Committee report entitled, "Recommendations of the Task Force on Foreign Source Income", 95th Cong. 1st Sess., March 8, 1977.

31/ *Id.* at p. 59.

32/ *Id.* at p. 2.

GATT Panel Decisions on Certain Tax Practices
of the United States, France, Belgium and the Netherlands

GATT DISC Panel Decisions

In accordance with procedures under the provisions of the General Agreement on Tariffs and Trade ("GATT"), a panel was established in July 1973 to examine a complaint submitted by the European Communities ("EC"), pursuant to paragraph 2 of Article XXIII of the GATT, relating to United States tax legislation on the Domestic International Sales Corporation ("DISC"), and to make such findings as would assist the Contracting Parties of GATT to make recommendations or rulings provided for in paragraph 2 of Article XXIII of GATT (this panel is sometimes hereinafter referred to as the "GATT DISC Panel").

The EC requested the GATT DISC Panel to find that the DISC system was incompatible with the relevant clauses of GATT regarding export subsidies.

In the course of its proceedings, the GATT DISC Panel held consultations with the EC and the United States, and background arguments and information were submitted by both parties.

Based on its findings, in November 1976, the GATT DISC Panel concluded that the DISC legislation, in some cases, had effects which were not in accordance with United States' obligations under Article XVI(4) of GATT and that as it had found the DISC legislation to constitute an export subsidy which had led to an increase in exports it was also covered by the notification obligation contained in Article XVI(1) of GATT and that accordingly there was *prima facie* case of nullification or impairment of benefits under GATT.

GATT Eurpoean Tax Practices Panel Decisions

Partially in response to the aforementioned EC complaint, the United States initiated counter claims and proceedings against certain tax practices of France, Belgium and the Netherlands alleging that such tax practices constituted export subsidies in violation of GATT. In accordance with GATT procedures, separate GATT panels were established in July 1973 to examine the United States complaints with respect to each of the subject countries, pursuant to paragraph 2 of Article XXIII of the GATT, and to make recommendations or rulings provided for in paragraph 2 of Article XXIII of the GATT (these panels are sometimes hereinafter collectively referred to as the "GATT European Tax Practices Panels").

The United States requested the GATT European Tax Practices Panels to find that certain tax practices of France, Belgium and the Netherlands violated Article XVI(4) of GATT and that these were therefore a prima facie case that these practices were nullifying or impairing benefits accruing to the United States under GATT.

The United States also suggested that the four complaints involving the DISC and certain tax practices of France, Belgium and the Netherlands should be considered together because they raised the same principles concerning application of GATT.

In the course of its proceedings the GATT European Tax Practices Panels held consultations with the United States, France, Belgium and the Netherlands, and background arguments and relevant information were submitted by each of these parties.

Based on their findings, in November 1976, the GATT European Tax Practices Panels concluded that the tax practices of France, Belgium and the Netherlands, in some cases, had effects which were not in accordance with the respective obligations of these countries under Article XVI(4) of GATT and that as these practices had been found to constitute export subsidies which had led to increases in exports they were also covered by the notification obligations contained in Article XVI(1) of GATT and that accordingly there were prima facie cases of nullification or impairment of benefits under GATT with respect to the subject practices of each of these countries.

Representative GATT Panel Findings and Determinations on Income Tax Practices of France

The GATT panel on French tax practices related the following factual aspects regarding the tax practices in question. 33/

> "The French income tax system for corporations is based on the territoriality principle which, in general, taxes income earned in France but not income arising outside France. It is a principle deriving from the history of the French system dating back to the beginning of the century. French companies are liable to corporation tax solely in respect of profits made by enterprises operating in France and of profits taxable by France under an international double taxation agreement (Article 209:1 of Code Generale des Impots).

33/ See Report of GATT Panel on Income Taxes Maintained by France, p. 2, November 2, 1976.

Under the territorality rule as applied by France profits generated by undertakings operated abroad are exempt from French taxation. On the other hand, a French company is not entitled to any foreign tax credit and cannot deduct losses suffered abroad, apart from exceptions specified below.

Ninety-five per cent of dividends from the French or foreign subsidiaries of a French company is excluded from the profits of the parent corporation. Participation by the parent in the subsidiary must exceed 10 per cent (Article 145 and 216 of CGI)."

On the effects of the territorality principle as applied by France for taxation of foreign profits, the panel noted: 34/

"The representatives of the United States pointed out that France followed the territoriality principle of taxation, and that as a result, did not tax the export sales income of foreign branches or foreign sales subsidiaries of domestic manufacturing firms. Taxes on such income were the most part permanently forgiven rather than merely deferred. He stated that the exclusion apparently extended to foreign source income from activities carried out by a French selling corporation through its own agents or employees abroad even without a foreign permanent establishment, as imcome from transactions which were separate from the corporation's French operations and which constituted complete commercial cycles outside France were excludable. The representative of the United States argued that these provisions, and relaxed intercompany pricing rules and other practices in relation to export transactions, created a distortion in conditions of international competition in that they afforded remission or exemption of direct taxes in respect of exports in violation of France's commitment as a contracting party under Article XVI:4. The permanent exemption could be freely used by the domestic manufacturing firm. The relative tax burden on the sales of products for export as against domestic sales was lower as a result of the remission.

34/ Id. at p. 4.

The representatives of the United States argued that, by organizing a foreign branch or subsidiary in a low-tax country, a French manufacturing firm could enjoy the low-tax rate on that portion of the total export sales income which was allocated to the foreign branch or foreign sales subsidiary, that the amount of export sales income allocated to foreign sources was generally substantial, that under the French system the right to tax foreign income was given up. He concluded that at a minimum the sales element of export earnings was exempt from taxation and therefore subsidized in violation of Article XVI:4."

The panel stated the following concerning the effects of the territoriality principle as applied by France for taxation of foreign dividends: 35/

"The representatives of the United States stated that under the territorial principle, profits of a foreign subsidiary were not consolidated with the profits of its French parent, and so not taxed in France. He went on to make the point that even if the subsidiaries' profits were repatriated in the form of a dividend, 95 per cent of it was deducted from the taxable income of the company, whether or not the foreign subsidiary was subject to taxes in its country of residence, and whether or not the rate of tax applied by that country was less than the French rate. In fact, the dividend was not expected to be taxed at all, as the remaining 5 per cent was considered to be deducted as ordinary expenses against the taxes of the recipient corporation. He argued that this amounted to a permanent exemption from taxation."

In its conclusion and recommendations, the panel determined the following: 36/

"The Panel noted that the particular application of the territorality principle by France allowed some part of export activities, belonging to an economic process originating in the country, to be outside the scope of French taxes. In this way France has foregone revenue

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35/ Id. at p. 7.

36/ Id. at pp. 11-13.

from this source and created a possibility of a pecuniary benefit to exports in those cases where income and corporation tax provisions were significantly more liberal in foreign countries.

The Panel found that however much the practices may have been an incidental consequence of French taxation principles rather than a specific policy intention, they nonetheless constituted a subsidy on exports because the above-mentioned benefits to exports did not apply to domestic activities for the internal market. The Panel also considered that the fact that the practices might also act as an incentive to investment abroad was not relevant in this context.

The Panel also noted that the tax treatment of dividends from abroad ensured that the benefits referred to above were fully preserved."

* * *

"The Panel therefore concluded that the French tax practices in some cases had effects which were not in accordance with French obligations under Article XVI:4."

* * *

"The Panel considered that the fact that these arrangements might have existed before the General Agreement was not ajustification for them and noted that France had made no reservation with respect to the standstill agreement or to the 1960 Declaration (BISD, 9 Suppl. p. 32).

The Panel was of the view that, given the size and breadth of the export subsidy, it was likely that it had led to an increase in French exports in some sectors and, although the possibility could not be ruled out that the tax arrangements would encourage production abroad and a decrease in exports in other sectors, nonetheless concluded that it was also covered by the notification obligation of Article XVI:1.

In the light of the above, and bearing in mind the precedent set by the Uruguayan cases (BISD, 11 Suppl. p. 100), the Panel found that there was a _prima facie_ case of nullification or impairment of benefits which other contracting parties were entitled to expect under the General Agreement."

The relevant GATT panels charged with responsibility for reviewing the income tax practices of Belgium and the Netherlands made findings and determinations similar to those for France in concluding that the tax practices of Belgium and the Netherlands were also in violation of GATT obligations.

Congressional Involvement in GATT Panel Proceedings

During the course of GATT consideration of DISC and certain tax practices of France, Belgium and the Netherlands, Members of the House Ways and Means Committee and the Senate Finance Committee participated in the GATT sessions in Geneva, Switzerland. Based on these international proceedings, and other arguments and submissions, Members of the House Ways and Means Committee and the Senate Finance Committee have recently indicated that the United States should take a hardline position on these issues in international trade negotiations (as distinguished from United States unilateral action on DISC), and that such an approach comports with United States international tax and trade policy objectives and United States international negotiating opportunities.

Although representatives of the European Communities and the United States raised the GATT Panel Decisions at the GATT Council meeting in Geneva, Switzerland on March 2, 1977, it is understood that this matter has, on several occasions, been postponed for further consideration. In this regard, it is important for the representatives of the United States to be well prepared on substantive and procedural issues and negotiating techniques in order to maximize opportunities for obtaining beneficial results for the United States in these proceedings. Such efforts should emphasize consultations and technical analysis involving Members and staff of the House Ways and Means Committee and the Senate Finance Committee, staff of the Joint Committee on Taxation, and officials of STR and Treasury in an effort to obtain a United States domestic consensus on these issues before undertaking specific initiatives in an international context.

In the past, representatives of the United States federal government have experienced ongoing difficulties in attempting to secure open and nondiscriminatory treatment for United States exports through elimination or reduction of trade distorting practices of other nations.

Nevertheless, new opportunities are now available concerning the relationship of United States domestic tax legislation and international trade proceedings and negotiations, particularly in the context of the GATT Panel Decisions. Based on the continued

unwillingness of the subject European governments to adopt or proceed with the findings of the GATT Panels, it is particularly important that the United States Congress proceed with necessary changes in United States federal income tax law to offset, in part, the tax incentives of other countries which are directed to providing a competitive advantage for the exports and international trading activities of such countries.

In this regard, it should be recognized that the European countries which were found in violation of GATT obligations by the subject GATT Panels have refused to make any concessions whatever on this matter and have resisted any form of international solution concerning these decisions. If the United States is to proceed with its efforts to obtain an international resolution of this problem by means of international trade negotiations, it is necessary and proper, and in accordance with United States international tax and trade policy objectives, that the United States Congress adopt requisite changes in United States tax law to obtain comparability with the tax practices of other countries and thus strengthen the United States bargaining position by providing needed leverage and negotiating tools for dealing with the trade distorting and discriminatory tax practices of other nations.

United States Congressional Concern about
Substantial United States Trade Deficit with Japan

House Ways and Means Committee Task
Force on United States-Japan Trade

The report of the House Ways and Means Committee Task Force on United States-Japan Trade related that despite Japanese trade liberalization in recent years, a wide range of trade and structural barriers remain in Japan which restrict imports, interfere with the currency alignment process, and perpetuate the United States-Japan trade imbalance.

Members of the Task Force related that they had attempted to express this urgent message to Japanese government and business representatives, although such Members were not sure that they were heard or understood. In some cases, it was felt that Japanese officials believed that the situation was serious and were trying to correct the problems, while in other cases, the Members encountered absolutely no understanding of how destructive Japan's excessive trade surpluses were to the world economy, and how much concern these trade imbalances had created in other nations.

The Members related the following in the Task Force Report: 37/

> "We have offered some observations and proposals on these longer range issues. Some of these proposals extend outside of the jurisdiction of the Subcommittee on Trade and involve issues such as tax policy, antitrust, export promotion, and government organization.
> We hope that interested parties will comment on the proposals in this report and assist the Subcommittee in exploring ways to deal with the problems we have identified. The need is urgent for a long-range national policy to deal with these international trade issues." [Emphasis supplied.]

* * *

> "It is probable that in addition to curbing domestic inflation, more important, long-range encouragement of exports rests with the U.S. Government in terms of
> (a) tax incentives, consistent with U.S. multilateral obligations, which will encourage firms to undertake the heavy costs of entering new markets;

37/ See House Ways and Means Committee, Subcommittee on Trade Task Force Report on United States-Japan Trade, 95th Cong., 2d Sess., pp. V, 6, 44 and 45, January 2, 1979.

(b) relaxation or exemption of anti-trust laws in certain overseas situations, while continuing competition domestically;
(c) increased emphasis in the United States on industrial R & D innovation;
(d) access to capital for small U.S. firms selling or operating abroad;
(e) willingness to match the full range of export credit services offered by foreign export organizations (pending agreement with trading partners to limit such export competition);
(f) better organization of Federal government to encourage U.S. commercial interests abroad and to give more emphasis and visability to the importance of exports." [Emphasis supplied.]

* * *

"It is probable, however, that more important, long-range encouragement of exports rests with the U.S. Government in terms of such issues as:
(a) tax incentives;
(b) clarification of U.S. anti-trust laws to export sales abroad;
(c) renewed R & D emphasis along with easier conversion of R & D into industrial innovation;
(d) access to capital for small U.S. firms selling/operating abroad;
(e) improved Eximbank services;
(f) increased coordination among, and status for U.S. agencies promoting exports;
(g) development of the trading company concept for U.S. companies.

While we recognize that many economists question the need for export promotion programs, particularly in a world of freely floating exchange rates, we are concerned that this view is somewhat unrealistic in light of the many export promotion programs provided by our major competitors. For example the Library of Congress has recently prepared a report entitled "Export Stimulation Programs in the Major Industrial Countries: The United States and Eight Major Competitors," which contains several table comparisons showing the need for the United States to (1) either obtain agreement among its trading partners to limit export promotion programs or (2) to improve the quality of its own programs.

Therefore, we believe that the general ideas listed above should be discussed at greater length.

1. The Task Force is reviewing a number of proposals in the general area of taxation to encourage U.S. competition in world markets. It is important,

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of course, that any such changes not violate existing GATT rules or provide the kind of export subsidies which will be covered by the Subsidies Code in the MTN Agreement." [Emphasis supplied.]

Advantages Provided by the Japanese Government to Japanese Trading Companies

Although major Japanese trading companies are publicly owned, large Japanese banks and insurance companies often own substantial blocks of the stock of such trading companies. Japanese trading companies typically operate through a Japanese parent corporation and various local subsidiary corporations in countries where the trading company does business.

Japanese trading companies rely extensively on debt financing as the primary source of funds for international business operations, and debt to equity ratios of such companies are exceedingly high by United States standards. Interest is deductable, and net profits after interest tend to be relatively modest owing to substantial debt carried by the trading ocmpanies. A key factor supporting the competitive position of Japanese trading companies in world trading markets is the extent to which debt is considered to be permanently invested in the business. In this regard, it is particularly important to understand the manner in which debt and equity are generally viewed in Japan. Japanese banks which provide permanent short-term debt, although not having strict voting power as a shareholder, nevertheless because of the unusually high debt to equity ratios (seldom less than 9 to 1), have a very real direct influence on the thrust and direction of Japanese trading companies. It is implicit in this almost partnership-like relationship that the banks will not call their loans should the trading company run into temporary unfortuante trading experiences. This type of relationship, although not found, nor probably permitted, in the United States, nevertheless, accounts for the relatively substantial exposures that a Japanese trading company may undertake, based on the very high debt to equity ratios. Apparently this type of financing is an intergal part of the total Japanese economic system which encourages and permits Japanese trading companies engage in very large volume and very low margin business which in turn promotes Japanese industrial growth margins.

The Japanese system has other built-in advantages, such as limited, if any, concern about anti-trust considerations, intercompany investments, and seemingly inexhaustible availability of credit. Of course, none of these advantages are readily available under the United States system.

The following excerpt from a business periodical recognizes the advantages which accrue to Japanese trading companies and supports the points noted above. 38/

> "There are 6,000 or so trading companies in all, but most of the business is done by the Big Six (which also includes C. Itoh & Co., Marubeni Corp., Sumitomo Shoji and Missho-Iwai Co.).
>
> The trading companies do things which would send the Justice Department rushing into court if American companies did them. Often their business comes to them from banks that are large investors not only in the trading companies but also in the companies whose goods the trading firms deal. Thus, for example, Dai-Ichi Kangyo Bank owns nearly 10% of C. Itoh & Co.; Fuji Bank owns over 7% of Marubeni Corp. Both banks are large investors in several textile companies with which the two trading companies do business. There is ample room for restraining trade and fixing prices by Japanese managers who tend to be more interested in orderly markets than abstract principles of perfect competition.
>
> Their balance sheets would shock most American security analysts. They go after huge volumes with razor-thin margins - usually 3%, often less - on the theory that profits will take care of themselves. And they do it all on a shoestring, piling ponderous debt on minimal equity. With a debt-to-equity ratio of 9.4 (based on total debt), Mitsubishi is the group's least leveraged outfit." [Emphasis supplied.]

Based in part on the points and considerations noted above, it is suggested that the United States tax system should be modified to permit, and indeed to encourage, United States owned trading companies to compete with Japanese trading companies by adopting a tax policy more in line with other countries of the Western World.

38/ See A Business in Billions, A Profit in Thousands, Forbes, p. 90, July 10, 1978.

Subsidies and Countervailing Duty Code

During the course of the MTN and in accordance with the provisions of the Trade Act of 1974, United States trade negotiators have attempted to obtain greater discipline over the use of foreign subsidies that confer unfair competitive advantages upon the products of the subsidizing country. The MTN agreement on subsidies and countervailing duties affords an opportunity to achieve certain of these United States objectives by permitting the United States to limit foreign subsidy practices without sacrificing the ability to make effective use of United States countervailing duty law.

The Subsidies and Countervailing Duty Code ("Subsidies Code") has now been signed by the delegations of the major industrialized countries. 39/ This code represents an interpretation and elaboration of GATT Articles VI, XVI and XXIII, relating to subsidies and countervailing measures. Key elements of the Subsidies Code include the following:

"1. A flat prohibition on export subsidies on nonprimary products as well as primary mineral products;

2. Special rules for developing countries under which signatories would agree to reduce and eliminate their export subsidies on nonprimary products, as well as primary mineral products;

3. Illustrative provisions on subsidies other than export subsidies which recognize the legitimacy of such programs but also recognize that such subsidies may cause injury or serious prejudice, or nullify or impair GATT benefits accruing to their signatories, particularly when such subsidies are granted on noncommercial terms, and a commitment to seek to avoid such trade effects and provision for remedies where they are causes;

4. Improved rules on agricultural export subsidies, with particular reference to interests in third-country markets;

5. A two track set of remedies designed to provide expeditious countermeasures when subsidized competition causes problems in the United States market or in United States export markets;

6. A dispute settlement mechanism designed to provide quick resolution of subsidy and countervailing disputes and to provide a growing case law in the GATT on such problems."

39/ See Subsidies/Countervailing Measures Text of the Multilateral Trade Negotiations Group on Nontariff Measures, subgroup on Subsidies and Countervailing Duties, April 5, 1979.

Under the provisions of the Subsidies Code, the signatories recognized that subsidies are used by governments to promote important objectives of social and economic policy and also recognized that subsidies may cause adverse effects to the interests of other signatories.

The signatories agreed not to use export subsidies in a manner inconsistent with the provisions of the Subsidies Code.

Article 9 of the Subsidies Code, pertaining to export subsidies, provides: 40/

> "1. Signatories shall not grant export subsidies on products other than certain primary products.
>
> 2. The practices listed in points (a) to (l) in Annex are illustrative of export subsidies."

Article 18, Section 6 of the Subsidies Code, pertaining to dispute settlement and review, provides: 41/

> "6. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.[1]
>
> [1] At the first such review, the Committee shall, in addition to its general review of the operation or Agreement, offer all interested signatories an opportunity to raise questions and discuss issues concerning specific subsidy practices and the impact on trade, if any, of certain direct tax practices." [Emphasis supplied.]

Note 2 of the Annex to the Subsidies Code provides: 42/

> "The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories further recognize that nothing in this text prejudges the disposition by the Contracting Parties of the specific issues raised in GATT document L/4422." [Emphasis supplied.]

The language cited above expressly provides that the GATT Panel Decision involving DISC is not covered by the Subsidies Code, and based on an earlier draft of the text it appears that the GATT Panel Decisions involving the tax practices of France, Belgium and the Netherlands are also not covered by the Subsidies Code.

40/ Id. at p. 20.

41/ Id. at p. 35.

42/ Id. at p. 40.

Accordingly, despite the major efforts of United States trade negotiators, it is clear that the Subsidies Code does not resolve the basic issues of direct tax incentives for exports and that it sidesteps the findings under the GATT Panel Decisions, although the Subsidies Code Committee is obligated to provide the United States an opportunity to raise again the matter of the impact of direct tax practices on trade.

The considerations related above further support the proposition that the United States Congress should now proceed with changes in the United States tax law, as recommended in this memorandum, to protect important United States interests and to provide needed negotiating leverage to United States trade negotiators in the forthcoming international deliberations on the subject issues.

CONCLUSION AND RECOMMENDATIONS

Although it is difficult to generalize concerning the effect of foreign tax systems with respect to taxation of foreign source income, it should be noted that despite varied approaches to taxation (worldwide, territorial, and certain forms of exemptions and credits), not one of the major free market trading nations of the world, other than the United States, taxes currently the undistributed earnings and profits of a foreign subsidiary controlled by local residents. Accordingly, to the extent that the United States taxes undistributed earnings and profits of United States owned international trading firms on a current basis, this places United States based companies engaged in international trading operations at a substantial competitive disadvantage and constitutes a departure from the general scheme of international taxation practiced by other nations.

During the course of consideration and evaluation of the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Tax Reduction Act of 1978, the deliberations and recommendations of the House Ways and Means Committee Task Force on Taxation of Foreign Source Income, the House Ways and Means Committee Task Force on United States-Japan Trade, the GATT Panel Decisions, the Subsidies Code and most recently the deliberations and recommendations of the House Ways and Means Committee and the Senate Finance Committee concerning the Tokyo Round of MTN international agreements and related domestic legislation, the United States Congress had indicated an increasing awareness that, in certain instances, United States interests are not served by taxing currently the undistributed earnings and profits of United States owned foreign corporations.

More specifically, the Congress has recognized inherent economic distinctions between manufacturing and production operations on the one hand, and international marketing and trading activities on the other. These industries involve fundamentally different transactional considerations. A manufacturing company may utilize a trading affiliate in a low-tax jurisdiction to handle exports of its products manufactured within or without the United States. Owing to the nature of manufacturing processes, such arrangements could potentially displace United States exports of domestically manufactured goods (and United States jobs) as a consequence of the ability to shift manufacturing processes to foreign countries. Conversely, trading operations in international commerce are not similarly susceptible to this form of shifting which could result in displacement of United States exports and jobs.

Unless the United States provides an exception from current taxation of earnings and profits of United States owned firms derived from international trading activities (similar to the practice of other countries which do not tax such income on a current basis), the competitive position of United States trading firms will be undermined and ultimately this business will be transferred to foreign owned firms beyond United States tax jurisdiction and control.

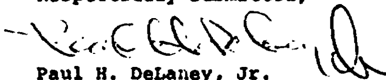
Furthermore, the continuing substantial United States trade deficit suggests that it is extremely important that United States owned international trading firms be provided an opportunity to compete on a substantially equivalent tax footing with foreign owned firms in world trade. Unless United States firms are accorded similar tax treatment to their foreign owned competitors, such United States firms will be displaced in world trading markets. In this regard, United States firms possess no special advantages which would enable them to absorb significant additional tax burdens. United States firms buy and sell the same products and commodities as thier foreign owned competitors.

During the consideration of the legislation which was enacted into law as the Trade Act of 1974, various representatives of the United States Congress expressed concern about the United States position in world trade while specifically noting the need for an open nondiscriminatory and fair world trading system. It was recognized that the United States could no longer expose its markets while other nations utilize all manner of government-instituted practices to effectively bar United States products and distort international trade.

The Members of the House Ways and Means Committee, the Senate Finance Committee and the Congress as a whole have stressed the need for utilizing both international and domestic approaches with respect to United States international tax and trade policy issues so as to preserve important United States interests. Unfortunately, based on the continuing refusal of various European countries to adopt and proceed with the GATT Panel Decisions and the inability of United States trade negotiations to obtain requisite limitations and international rules on the use of direct tax export incentives under the provisions of the Subsidies Code (despite major efforts by our trade negotiations in both of these areas), the United States is now faced with a pressing need to make changes in United States tax law to obtain comparability with the tax practices of other countries which compete with the United States for world trading markets.

Based on the points, authorities, developments and considerations set forth above, it is urged that the Members of the House Ways and Means Committee, the Senate Finance Committee and the Congress as a whole proceed expeditiously with necessary changes in United States federal income tax law to assure that United States owned firms engaged in international trading of agricultural commodities will be placed on a substantially equivalent tax footing with their foreign owned competitors.

Respectfully submitted,



July 16, 1979

Paul H. DeLaney, Jr.

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ATTACHMENT A

General Considerations Regarding
United States Taxation of Foreign Source Income

Tax Jurisdiction and Taxation of Foreign Source Income

A particular nation may tax the worldwide income of its nationals, restrict the scope of its tax jurisdiction to a territorial basis (tax only domestic source income), or provide for other means of limiting the taxation of foreign source income.

In response to a United States Congressional inquiry in March 1973, a study was prepared under the auspices of the Council on International Economic Policy ("CIEP") (regarding tax treatment by other nations of their own multinational firms (taxation of foreign source income). 1/

This study summarized the basic rules of the following countries with respect to taxation of foreign source income: Belgium, Brazil, Canada, Denmark, France, Federal Republic of Germany, Ireland, Italy, Japan, the Netherlands, Norway, Switzerland, and the United Kingdon.

The analysis included:

1. Taxation of income of foreign branches of domestic corporations;

2. Taxation of foreign subsidiaries of domestic corporations;

3. Taxation of interest, dividends and patent royalties received from abroad; and

4. Treatment of foreign taxes paid by domestic corporations and their subsidiaries (in certain instances, inter-company pricing practices were considered)

1/ See information submitted for the record by the Council on International Economic Policy to the Subcommittee on International Trade, Senate Finance Committee, Hearings on Multinational Enterprises, February 26 through March 6, 1973.

Although it is difficult to generalize concerning the effect of foreign tax systems with respect to taxation of foreign source income, it should be noted that despite varied approaches to taxation (worldwide, territorial, and varied forms of exemptions and credits), not one of the nations considered in the CIEP study taxed currently the undistributed profits of a foreign subsidiary controlled by local residents. Accordingly, to the extent that the United States taxes undistributed profits of United States controlled foreign corporations on a current basis, this places United States based companies engaged in international operations at a competitive disadvantage and constitutes a departure from the general scheme of international taxation practiced by other nations.

United States Constitutional Considerations

In accordance with the principal taxation provisions of the Constitution of the United States (sometimes hereinafter referred to as the "Constitution"), the United States Congress (sometimes hereinafter referred to as the "Congress"), possesses the power to lay and collect, taxes, duties, imposts, and excises to pay the debts and provide for common defense and general welfare of the United States, provided such duties, imposts and excises shall be uniform through the United States. 2/

Under the Constitution, as initially ratified, the Congress could only impose direct taxes in proportion to the census (apportionment on the basis of population). 3/ However, pursuant to Constitutional Amendment, the Congress is now empowered to lay and collect taxes on income from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. 4/ Although the Congress has exercised its Constitutional tax authority in enacting the provisions of the United States Internal Revenue Code, 5/ administration of United States federal income tax laws has generally been delegated to the United States Treasury Department and the Internal Revenue Service. 6/

2/ See U.S. Const. Art. I, Sec. 8.

3/ See U.S. Const. Art. I, Sec. 9.

4/ See U.S. Const. Amend. XVI.

5/ See Internal Revenue Code of 1954, as amended, Title 26 U.S.C. §1 *et seq.* (sometimes hereinafter referred to as the "I.R.C.").

6/ The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is charged with the responsibility for prescribing and publishing rules and regulations for the enforcement of United States income taxes. See I.R.C. §62.

United States Tax Jurisdiction

United States federal tax jurisdiction is based on two general principles: 7/

1. Nationality, under which the United States taxes worldwide income of "United States persons"; 8/ and

2. Source of income, under which the United States taxes "United States source income" of United States persons and "foreign persons", including "nonresident aliens" and "foreign corporations" (in limited circumstances, the United States taxes "foreign source income" of foreign persons "effectively connected with a United States trade or buisness").

Accordingly, under relevant provisions of the Internal Revenue Code, nonresident aliens and foreign corporations are subject to United States federal income tax on: 9/

1. Income derived from United States sources; and

2. Income effectively connected with a United States trade or business.

The term "United States person" includes United States domestic corporation. 10/

7/ I.R.C. §§1 and 11(a) set forth very broad jurisdictional rules, imposing tax on the taxable income of "every individual" and "every corporation", respectively.

8/ The term "United States person" and other relevant terms pertaining to United States tax jurisdiction are defined and discusses subsequently in this memorandum.

9/ See I.R.C. §§871, 872, 881 and 882 which limit United States tax jurisdiction with respect to taxation of nonresident aliens and foreign corporations to income from sources within the United States and income effectively connected with the conduct of a United States trade or business.

10/ I.R.C. §7701(a)(30) defines "United States person" to include citizens, residents, domestic partnerships, domestic corporations and domestic estates and trusts.

United States Taxation of United States
Corporations and Foreign Corporations

As noted above, United States tax jurisdiction is based on both nationality and source of income. The United States taxes United States persons (citizens, residents, corporations, partnerships, trusts, etc.) on income from all sources.

The modern United States corporate income tax dates from 1909. At that time, domestic corporations were taxed on income from all sources and foreign corporations on income from business transacted and capital invested within the United States. This jurisdictional pattern remained substantially unchanged until 1962.

The impact of tax on the foreign source income of United States persons was softened somewhat in 1918 with the adoption of a foreign tax credit. Previously, foreign taxes had merely been deductable, like state and local taxes. The credit can apply to both the earnings and profits of foreign subsidiary corporations and foreign branches. Only payments treated as income taxes, or "in lieu of income taxes", qualify for the credit. 11/

The income of foreign corporations, if derived from business conducted outside the United States, is generally not subject to current United States income taxation.

In broad terms, a corporation is treated as a United States domestic corporation if it is incorporated in any of the states of the United States or the District of Columbia and is treated as a foreign corporation if it derives its charter from a foreign government.

Foreign source income earned by a foreign corporation controlled by United States persons is generally exempt from United States taxation until distributed to shareholders who are United States persons. 12/ The effect of these provisions of the Internal Revenue Code is that a United States person (United States shareholder) is

11 See I.R.C. §§901-906.

12/ See I.R.C. §§1, 11, 861-864, 881-883, and 1201.

allowed to defer paying United States income tax on undistributed earnings and profits of a controlled foreign subsidiary corporation until such earnings and profits are repatriated to the United States (this development is often referred to as "deferral" of tax with respect to foreign investment).

A corporation recieving a dividend from a controlled United States domestic corporation is generally entitled to exclude most of that dividend from its taxable income on the theory that it has already been subject to tax. 13/ Dividends from a foreign corporation are not entitled to this exclusion. Likewise, dividends from a foreign corporation are not entitled to the $100 exclusion of dividends received by individuals. 14/ Therefore, United States shareholders of foreign corporations are generally taxed fully on dividends received from foreign corporations.

A United States corporation which in any taxable year owns at least 10 percent of the voting stock of a foreign corporation from which it received dividends is entitled to a foreign tax credit for income taxes paid by that foreign corporation. 15/

Current Taxation of Undistributed Earnings and Profits of Foreign Corporations

Although United States shareholders (United States persons) of foreign corporations are generally not subject to United States tax on the income of such foreign corporations unless, and until, such income is repatriated to the United States in the form of dividends (or remittances in the nature of a dividend), United States shareholders of two categories of foreign corporations are effectively subject to current United States taxation on certain types of undistributed income:

1. "Foreign personal holding companies"; and

2. "Controlled foreign corporations".

13/ See I.R.C. §243.

14/ See I.R.C. §116.

15/ See I.R.C. §902.

United States Taxation of
Foreign Personal Holding Companies

A foreign corporation is treated as a foreign personal holding company:

1. If at least 60 percent of the corporation's gross income for the taxable year is foreign personal holding company income (passive income such as dividends, interest, rents and royalties); and

2. If at any time during the taxable year, more than 50 percent in value of the corporation's outstanding stock is held directly or indirectly by not more than five individuals who are citizens or residents of the United States. 16/

The rationale for the foreign personal holding company provisions is to prevent a small group of United States taxpayers from incorporating their investments overseas in order to escape taxation of investment income at the individual level. The shareholders of a foreign personal holding company are subject to current United States taxation on their pro-rata share of the corporation's personal holding company income.

16/ See I.R.C. §§551-558.

United States Taxation of Controlled
Foreign Corporations Under Subpart F

In accordance with the provisions of the Revenue Act of 1962, 17/ the United States Congress added Subpart F to the Internal Revenue Code in an effort to deal with the problem of tax haven operations. 18/ Under this approach, United States shareholders of controlled foreign corporations ("CFCs") are subject to current United States income taxation on certain forms of undistributed tainted income (tax haven or Subpart F income):

1. Subpart F income, including foreign base company income and income derived from insurance of United States risks;

2. Previously untaxed Subpart F income withdrawn from investment in less developed countries; and

3. Any increase in investment in United States property to the extent it would be taxable as a dividend if distributed to United States shareholders.

It should be understood that Subpart F taxes United States shareholders not on their own income, but on the income of CFCs in which they own an interest. This development relates to the consideration that there may be no jurisdictional basis for taxing a foreign corporation unless it earns income from sources within the country asserting jurisdiction to tax (or has income effectively connected with business operations in such country). Therefore, Subpart F jurisdiction is predicated on United States citizenship or residence, rather than source of income.

Controlled Foreign Corporations

A CFC is defined as a foreign corporation whose total combined voting power of all classes of stock entitled to vote is more than 50 percent owned, on any day during the taxable year, by United States shareholders. 19/

17/ See Revenue Act of 1962, P.L. 87-834, H.R. 10650, 87th Cong., 2d Sess., 76 Stat. 960, October 16, 1962.

18/ See I.R.C. §951(a)(1).

19/ See I.R.C. §957.

A "United States shareholder" is defined as a United States person owning, actually or constructively, 10 percent or more of the total combined voting power of a CFC. 20/

Foreign Base Company Income

Foreign base company income (as noted before, foreign base company income is included in the definition of Subpart F income) is computed on the basis of three components: 21/

1. Foreign personal holding company income;

2. Foreign base company sales income; and

3. Foreign base company services income.

For operational purposes, a primary issue often pertains to tax treatment of foreign base company sales income. Essentially, a CFC engaged in buying and selling personal property to, from, or on behalf of, a related person is treated as generating foreign base company sales income, unless the property has been manufactured, produced, grown, or extracted in the CFC's country of incorporation or is intended to be used, consumed, or disposed of in that country, or both. 22/ These rules are designed to subject to current taxation the income of CFCs primarily engaged in selling, as opposed to manufacturing or similar activities.

In applying the foreign base company sales income rules, the income of a branch operation outside the CFC's country of incorporation is treated as foreign base company sales income of the CFC when use of the branch has substatntially the same tax effect as if the branch were a wholly-owned subsidiary. 23/ The Treasury Income Tax Regulations set forth detailed rules for making this determination with respect to both sales and manufacturing branches. The effect of this procedure is to prevent avoidance of tax by United States shareholders on income which in substance is identical to foreign base company sales income where the existence of such income would not otherwise be recognized because of formal unity of a CFC and its branch as a single corporate entity. 24/

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20 See I.R.C. §951(b).

21/ See I.R.C. §954(a).

22/ See I.R.C. §954(d)(1).

23/ See I.R.C. §954(d)(2).

24/ See Treas. Reg. §1.954-3(b).

Legislative Chronology of Subpart F

In accordance with the legislative history of Subpart F under the Revenue Act of 1962, it is clear that the United States Congress adopted the percentage of voting power test contained in Section 957 (pertaining to the definition of a controlled foreign corporation) and specifically rejecting percentage of value and effective control tests, recognizing that United States shareholders should only be taxed currently on undistributed foreign corporate profits where such shareholders possess sufficient power to cause payment of dividends.

An anlaysis of the specific legislative chronology on this matter reveals the following:

1. Treasury Department's original proposal to tax United States shareholders currently on undistributed earnings of foreign corporations was rejected by Congress as overreaching;

2. In a second and narrower proposal, the Treasury Department pressed Congress to adopt a definition for CFCs which would be based on either a value test or a voting power test (it should be noted that the Congress, on its own initiative, did not consider a test beyond a voting power test);

3. Despite the suggestions and arguments of the Treasury Department, the Congress selected the voting power test to determine CFC status.

4. The Congress concluded that United States shareholders should not be taxed on undistributed earnings of a foreign corporation unless such shareholders had the requisite voting power to cause the declaration and payment of dividends.

5. The Congress was aware of other types of tests for determining CFC status, such as percentage of value, practical control, effective control, etc. (the Congress had often used such various control tests either individually or in combination to remedy specific problems) and therefore, it is particularly significant that the Congress did not select any test other than that of voting power for the CFC definition.

House Ways and Means Committee Hearings

It is important to recognize that early in the process of the legislative history of Subpart F, various members of the House Ways and Means Committee expressed concern about the apparent approach of the Treasury Department regarding standards for the definition of a CFC. Apparently, the Treasury had hoped to give the newly-proposed taxing mechanism the broadest possible scope as demonstrated by its proposal that with respect to a corporation created after enactment of the legislation, any United States shareholder owning ten percent or more of the stock of a foreign corporation would be taxed on its share of the foreign corporation's earnings even though no other United States shareholder owned stock in the subsidiary, i.e. a 10 percent ownership test rather than a 50 percent ownership test would be applied to new foreign subsidiaries.

This approach attracted substantial opposition within the House Ways and Means Committee, and the Treasury Department withdrew the proposal and advanced another. The second Treasury initiative provided that a ten percent or greater United States shareholder would be taxed currently on its pro rata share of the foreign corporation's income only if five or fewer United States shareholders owned either (1) more than 50 percent of the voting power, or (2) more than 50 percent of the value, of the foreign corporation's stock. 25/ Under this method, the Treasury's test of control was a two-pronged alternative test, i.e. ownership of either more than 50 percent in value or voting power would cause a foreign corporation to be classified as a CFC.

Again, key members of the House Ways and Means Committee expressed reservations about this type of control test. Senior Committee member Hale Boggs and ranking Republican member John Byrnes (recognized within the Committee as active and knowledgeable members in the foreign income area) doubted that the United States had the power to pierce the veil of foreign corporate entities in the manner proposed by the Treasury, despite Secretary of the Treasury Dillon's opinion that the manner in which United States shareholders of foreign personal holding companies were taxed established that the Treasury approach was legally proper. Accordingly, Congressman Boggs (who was not satisfied with Secretary Dillon's statement) asked that the staff of the Joint Committee on Internal Revenue Taxation prepare and submit a memorandum to the House Ways and Means Committee on this issue, such memorandum to be made an official part of the record of the hearings. 26/ As noted below, this Joint Committee staff memorandum provides better evidence of Congressional intent on this issue than the pronouncements of the Treasury.

25/ See U.S. Treas. Dept. Press Release D-186 (July 28, 1961).

26/ See Hearings on President's 1961 Tax Recommendations Before the House Ways and Means Committee, Vol. 1, p. 310, 87th Cong., 1st Sess., May 4, 1961.

Treasury Department Legal Memorandum

In a legal memorandum from General Counsel of the Treasury Department Robert H. Knight to Secretary of the Treasury Dillon, it was the opinion of the Treasury Department that the subject Treasury proposal, including both the 50 percent threshold test for existing foreign corporations and the 10 percent threshold test for future foreign corporations, would be held valid under the United States Constitution both with respect to the taxing power and the power to regulate foreign commerce. 27/

Joint Committee Staff Legal Memorandum

The Joint Committee staff memorandum confirmed the basic concern and thinking of members of the House Ways and Means Committee, particularly on the question of the appropriateness under the United States Constitution of subjecting United States taxpayers to current tax treatment with respect to undistributed corporate income on the basis of constructive receipt: 28/

> "The administration's proposal is that the income earned by foreign corporations be taxed to the American shareholders without any distribution or dividend declaration. This raises certain basic questions as to whether or not the shareholder has income within the meaning of the 16th amendment when he has received nothing and does not have the right and power to demand any payment. [Emphasis supplied.]

The staff memorandum emphasized the separateness of corporate entities, even in the case of a United States subsidiary wholly-owned by a foreign government, and distinguished the Subpart F proposal from the foreign personal holding ocmpany provisions which were described as a special case which must be viewed as depending on the power of Congress to prevent an obvious tax-evasion device. Finding no basis to justify current dividend-like taxation of undistributed foreign corporate earnings, the staff memorandum further concluded that the constructive receipt had no application because the United States shareholder had no power to declare a dividend and therefore lacked the power to demand the payment which makes the constructive receipt doctrine operative. Accordingly, the Joint Committee staff memorandum rejected The Treasury Department's contentions and adopted the view that only when a United States shoreholder possessed the power to declare a divident would the constructive receipt theory provide an appropriate basis for current taxation.

27/ See memorandum prepared by the United States Treasury Department entitled, "Opinion re Proposal to Include in Gross Income of United States Shareholders Undistributed Earnings and Profits of a Controlled Foreign Corporation", June 12, 1961.

28/ See memorandum prepared by the staff of the Joint Committee on Internal Revenue Taxation entitled, "Constitutional Power to Tax Shareholders on Undistributed Income of a Corporation", p. 311.

Statement of Millers' National Federation

SUMMARY

The Millers' National Federation supports passage of the Trade Agreements Act of 1979. Our members are pleased with the importance placed on agriculture in the multilateral trade negotiations. Now that the negotiations have been concluded, the U.S. flour millers urge speedy resolution of their Section 301 case involving the European Community's subsidy on its exports of wheat flour. This matter has been pending for over 3½ years. The Federation is hopeful that the new subsidies code will be an effective tool in the future against the EC's practice of subsidizing its wheat flour exports.

STATEMENT

Introduction

This statement is submitted on behalf of the Millers' National Federation, the national trade association of the flour milling industry of the United States. Our members represent approximately 87 percent of the commercial flour milling capacity in the United States.

The Millers' National Federation has been active in international trade matters on behalf of its members since 1952. The Export Subcommittee of the Federation is charged with direct responsibility for assisting the U.S. flour milling industry with its interest in international trade. Wheat flour is exported from approximately 30 states through 40 ports on the Atlantic, Pacific, Gulf Coast and Great Lakes and has gone to more than 100 countries in the world.

The Millers' National Federation has followed the Tokyo Round of the Multilateral Trade Negotiations with keen interest. We in the flour milling industry are pleased with the importance that Ambassador Strauss and other members of the U.S. negotiating team have placed on agriculture in the negotiations. The further reduction of both non-tariff and tariff trade barriers for individual agricultural products and the establishment of new international rules to assure that trade will be conducted more fairly and equitably between nations are two goals that we support.

The Millers' pending section 301 case: The EC's wheat flour subsidy

The United States is the world's major producer of wheat. It was the largest exporter of wheat (including wheat flour in flour equivalent) in the world until the formation of the European Economic Community. The U.S. capacity to mill wheat is approximately one million hundredweight daily on a five-day basis. With wheat supplies far in excess of domestic need, this milling capacity has assured a flour production reserve far in excess of domesic requirements and normal export demand. There is a type of flour available from American sources to meet the specifications of every wheat product in every country. Further, wheat flour can be supplied in any kind of package to meet any world need.

Within the European Community, wheat is produced primarily in France and Italy. EC wheat production is uneconomical. The EC has established a means of protecting its flour milling industry from outside competition and forcing its uneconomical production onto the world market through the use of export subsidies granted to EC flour millers.

Exports of wheat flour from the United States have been severely damaged as a result of the EC's practice of subsidizing its exports of wheat flour. With the aid of export subsidies, EC flour millers have been able to displace sales of U.S. flour in third country markets. In addition, the EC's protectionist system has virtually eliminated previously existing market opportunities for U.S. flour within the EC itself.

In order to seek remedial relief from the EC's illegal subsidy on wheat flour, milling industry filed a petition pursuant to Section 301 of the Trade Act of 1974. This section provides that the President must use the full authority of his office to cause foreign governments to remove export subsidies which reduce exports of competitive U.S. products. The brief in Docket 301-6 was filed on November 21, 1975, over 3½ years ago. The Office of the Special Trade Representative held hearings the following January. Nonetheless, the matter remains unresolved. No corrective action has been taken by the President.

The Millers also submitted a brief in support of the Section 301 complaint filed in November, 1978 by Great Plains Wheat, Inc. against the EC's use of export subsidies on wheat. We recommended that the flour miller's complaint be reviewed at the same time.

The U.S. flour millers urged the United States to make elimination of the EC export subsidy on flour one of its highest priorities during the multilateral trade

negotiations. The negotiations have now been concluded. The matter of the EC's subsidy on wheat flour was not resolved. The Millers' National Federation now urges this Committee to specify in its report accompanyng the Trade Agreements Act that pending cases ought not be adversely affected by amendments Special Representative for Trade Negotiations should give pending cases priority over cases filed subsequent to enactment of this legislation and should take pending cases up in the order in which were filed.

The EC's wheat flour subsidy: The new subsidies code

The efforts of our negotiators to ameliorate nontariff trade barriers represent a new dimension in multilateral trade negotiations. Of importance to Millers' National Federation and to U.S. agriculture is the proposed non-tariff code on subsidies. Under the provisions of the new subsidies code, use of export subsidies in such a manner as to displace the trade of other countries in third markets, or to result in material price undercutting in such market, would be prohibited

The U.S. flour milling industry has confidence that the United States can successfully resolve its pending Section 301 cases involving the EC's export subsidy on wheat flour expeditiously. On January 1, 1980, the new subsidies code will become effective. In terms of long-range considerations, the initial development of non-tariff codes, such as the code governing subsidies, may be most noteworthy accomplishment of the Tokyo Round. However, in order to be effective, the new codes must be enforced.

The Millers' National Federation is hopeful that the subsidies code will enhance the ability of the United States to insist that the EC honor its commitments under the General Agreement on Tariffs and Trade (GATT). However, we have no assurance that the EC intends to abide by the spirit and intend of the new subsidies code. The EC has repeatedly committed blatant violations of Article XVI of GATT. The United States must demonstrate to the EC that it will forcefully pursue its rights under both existing laws and under the new subsidies code. It is both fair and reasonable for the United States to insist that the EC adhere to its contractual commitments under GATT and under the new subsidies code. This should mean an end to the EC's practices which it knows are damaging U.S. wheat flour exports.

CONCLUSION

The Millers' National Federation believes that Ambassador Strauss has kept his pledge that any package he brought back would include meaningful gains for U.S. agriculture as a whole. Chief among these gains is the proposed subsidies code.

The question presented by the wheat flour industry's pending Section 301 case is much broader than the EC's subsidy on its what flour. The policy of the United States for some time has been to eliminate foreign export subsidies which damage U.S. exports in third markets. This case squarely presents the issue as to whether or not the U.S. will use the laws available to it to eliminate export subsidies. If the challenge to the EC wheat flour export subsidy is not successful, then it will signal to the EC and other GATT members that the U.S. does not intend to enforce its domestic law or to prevent export subsidies by foreign countries. The Millers' National Federation urges that a successful resolution of its case involving the EC's damaging export subsidies on its wheat flour would be a most appropriate follow-up to the negotiations. The Millers' National Federation urges swift passages of the Trade Agreements Act of 1979.

Respectfully submitted,

WAYNE E. SW EGLE, *President.*

STATEMENT OF CLING PEACH ADVISORY BOARD

INTRODUCTION

This statement is made on behalf of the Cling Peach Advisory Board, which represents all peach producers and marketers in the State of California. The Board is organized pursuant to statutory requirements of the State of California and engages in market development, promotional, advertising, research, and quality control programs, as well as matters involving public affairs for its members. There are approximately 1,200 peach growers in California who grow over 40,000 acres of cling peach trees. This is an average of about 30 acres per grower. Total sales are close to $500 million annually. Exports presently account for approximately $70 million on an annual basis. Cling peaches are marketed in the form of canned peaches, canned fruit cocktail and other products containing cling peaches.

THE TOKYO ROUND—AN OVERVIEW

The Cling Peach Advisory Board has a long history of involvement in international trade matters. In the Kennedy Round of trade negotiations, the groundwork was laid for the removal of the Japanese quota on our products. As a result, our exports to Japan are now worth about $25 million.

Cling peach growers felt very fortunate to receive some benefits from the Kennedy Round. The Tokyo Round, however, represents the first time in a major trade negotiation that agriculture has been put in the forefront. Ambassador Strauss, our negotiators, and the United States Department of Agriculture deserve congratulations for focusing on the difficult and complex issues of agricultural trade in a manner consistent with President Carter's mandate, which was expressed in his 1977 Annual Report to Congress on the Trade Agreements Program: "* * * Across-the-board we are pressing for equality of access for our exports in the markets of developed countries. In particular, ways must be found to deal with problems of *agricultural trade* and nontariff measures, which received relatively little emphasis in earlier negotiations." (Emphasis added.)

The priority which our negotiators gave agriculture was well deserved. Our balance of trade deficit is already at a crisis level. Without agricultural exports, including $3 billion of exports from the State of California, the deficit would be at a level that is difficult to imagine.

TARIFF CONCESSIONS

No official data exists with respect to specific trade concessions received for products of interest to the Cling Peach Advisory Board. However, based on currently available information, we anticipate that import duties for canned peaches and canned fruit cocktail will be somewhat reduced in ten countries. Seven of these are developed countries where fairly significant increases in trade appear possible. The remaining three are developing countries where only very small export increases can be anticipated. Until the concessions are confirmed and the specific level of tariff decrease identified, it will be difficult to project the impact on trade with any degree of certainty. If the unofficial reports are close to being accurate, we anticipate that millions of dollars in additional trade will be generated for our products.

THE PENDING SECTION 301 CASE ON EC IMPORT RESTRICTIONS

In September of 1975, a complaint was filed pursuant to Section 301 of the Trade Act of 1974 covering certain import restrictions on processed fruits and vegetables established by the European Community ("EC"). The Cling Peach Advisory Board has actively participated in this case. The import restrictions involved minimum import prices; import certificates (which are actually import licenses); provision for suspension of imports of all processed fruits and vegetables (whether subject to import certificates or not); and an added duty based on sugar content. Pursuant to the 301 complaint, a panel of GATT contracting parties found the minimum import price procedure to be contrary to the international trade rules. The proposal was subsequently dropped by the EC.

However, the other impediments remain in effect and the UC has since adopted another policy which we believe is in contravention of the provisions of GATT. A grower subsidy program has been introducte to encourage increased internal production of fruits and vegetables.

These policies have adversely affected exports of our products to the EC. Therefore, we are quite interested in any amendments to Section 301.

Title IX of the new trade act will revise Section 301 so that it specifically includes enforcement of U.S. rights under the new trade agreements, such as the subsidies code. We urge this Committee to specify in its Report that any such amendments should have no adverse affect on cases presently pending under this Section. Such cases should not need to be refiled. Also, resolution of such cases should take absolute priority over cases filed subsequent to enactment of any new legislation.

The Board feels that the specific time limits established in Title IX for investigating and taking action on petitions are significant. We are hopeful that this will mean a speedy resoultion of pending, as well as future, cases.

NONTARIFF CODES

In terms of long range considerations, the most noteworthy accomplishment of this negotiation will probably be the initial development of non-tariff codes to govern rules of the game in international trade. These codes, covering such matters as licensing, government procurement, standards, subsidies and countervailing duties will, if effectively enforced, have a dramatic influence in increasing world

trade. For agriculture in general, and cling peaches in particular, the proposed code on subsidies is the most significant. As we have already noted in discussing trade impediments implemented by the EC, subsidies are commonly used against U.S. agriculture exporters under the guise of encouraging and improving local production of the commodity in question. The validity of Ambassador Strauss' plea for equal competitive opportunities in world trade has been no better illustrated than by the indiscriminate use of subsidies. We do not suggest the subsidies code will be a panacea and by itself eliminate this problem. However, it is certainly a step in the right direction.

The Cling Peach Advisory Board is hopeful that the new subsidies code will enhance the ability of the United States to insist that the EC honor its commitments under the General Agreement on Tariffs and Trade (GATT). However, we have no assurance that the EC intends to abide by the spirit and intent of the subsidies code. The EC has repeatedly violated Article XVI of GATT with regard to various agricultural products.

The United States, on the other hand, has made a major effort to conform to the principally accepted criteria for fair international trade, and we have tended to be extremely tolerant of the indiscretions of others. The time would seem to be right for the United States to move to a reciprocal "Most Favored Nation" policy. In the long run, if the codes are to operate effectively, we believe this Committee must at least consider a policy that involves granting Most Favored Nation rights only to those countries which accede to GATT (or the new trade codes) or which bilaterally agree to comparable trade rules. It is submitted that an effective policy in this regard should be self-enforcing and could be accomplished by modifying our tariff schedules to provide for different rates of duty for those countries complying with the referenced rules of trade as compared to the rate for those which fail to comply.

CONCLUSION

The Cling Peach Advisory Board urges speedy passage of the Trade Agreements Act of 1979. We congratulate Ambassador Strauss and his negotiating team, as well as those Department of Agriculture officials connected with the negotiations. They have worked long hours against difficult odds in the interest of American agriculture. Those concessions which have apparently been achieved will result in increased exports of our products.

In terms of long-range considerations, the development of non-tariff codes, such as the code governing subsidies, may be the most noteworthy accomplishment of these negotiations. However, in order to be effective, the new codes must be enforced. Title IX of the new trade bill revises Section 301 to provide the mechanism for the enforcement of U.S. rights under the new codes. The Cling Peach Advisory Board urges the U.S. to use the laws available to it to assure that our trading partners live up to their commitments under the new codes.

This negotiation represents a healthy step forward for U.S. agriculture. Peach growers in California hope that the momentum established by Ambassador Strauss and his negotiators will continue forward until complete equity in world trade has been achieved.

Respectfully submitted.

W. R. HOARD, *Manager.*

STATEMENT OF WILLIAM S. SNEATH, CHEMICAL INDUSTRY TRADE ADVISER

The Office of the Chemical Industry Trade Advisor represents five major chemical industry trade associations: (1) Chemical Manufacturers Association; (2) Dry Color Manufacturers Association; (3) The Fertilizer Institute; (4) The Society of the Plastics Industry, Inc.; and (5) Synthetic Organic Chemical Manufacturers Association.

It is this amalgamation of associations that has made it possible for the chemical industry to articulate and communicate its views throughout the Tokyo Round of trade negotiations. It also provided a focal point for the interchange of views between government and the chemical industry on issues affecting international trade.

This industry has a very large stake in world trade and therefore in the MTN and the Trade Agreements Act of 1979. Its $12.6 billion of exports amount to nine percent of all U.S. exports and 10 percent of the industry's total sales. If not for the industry's trade surplus of $6.2 billion in 1978, the U.S. $31 billion deficit would have been even larger.

THE TRADE AGREEMENTS

The chemical industry supports the Trade Agreements Act of 1979 (H.R. 4537) which implements the nontariff agreements of the MTN. Viewed as a "package", the Tokyo Round agreements appear to include mutual concessions by the major trading partners that are both equitable and reasonable.

The negoatiated tariff cuts on U.S. chemical imports will average about 35 percent to be phased in over eight years. These cuts are considerably smaller than originally proposed by the United States government, due largely, we believe, to the positive contribution of the industry sector advisory process

Furthermore, the U.S. average tariff cut will be close to the average tariff cuts agreed to by the major trading partners. We are convinced that this level of tariff cuts offers the potential for increased world trade in chemicals.

The new international codes also represent an important step toward the reduction of many types of barriers to international trade. The code against subsidies, in particular, should help reduce such governmental interference in the international market place. We hope that the U.S. government will supply the resources and commitment to make sure that the new codes are complied with both here and abroad.

There is, of course, no sure way to forecast the future of chemical trade, but the trade agreements, taken as a package, offer opportunities to open markets aborad and to mitigate some of the unacceptable trade practices that curtail activity in both domestic and international markets.

DISCLOSURE OF CONFIDENTIAL INFORMATION

A problem arises from certain requirements of the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act that there will be disclosure and sharing of test data. As currently written, these provisions compel the innovative producer to disclose data and information obtained at a very high cost. Such forced disclosure of valuable proprietary information could itself take on the aspect of a non-tariff barrier, and unless modified, might serve to undermine the potential for trade expansion the MTN has created.

Countries exporting chemicals to the U.S. have already protested the effect of the requirements. Ultimately, challenges will be brought under settlement procedures of the code on technical barriers to trade (standards). Thus the disclosure requirement opens the possibility of compensatory reprisals against U.S. chemical exports if the U.S. law is not changed.

The chemcial industry has strongly emphasized to both the Congress and the Administration that unreasonable disclosure of data amounts to loss of property, and has urgently sought relief from these requirements. The industry believes the matter can be resolved satisfactorily through provisions of Section 411 of the Trade Agreements Act of 1979, through administrative action and through the legislative history. We believe the latter should provide an opportunity for the Office of the Special Trade Representative to enter into multilateral negotiations to protect the property value of data submitted under environmental law and regulations. The Congress should insist that this approach be undertaken without delay.

FUTURE OUTLOOK

The Trade Act, of course, deals only with U.S. implementation of the codes into law. It cannot and does not assure the same compliance by other signatory countries. For this reason, it is extremely important that the Congress support monitoring provisions in the Trade Act with appropriate language in its report on the bill and that the U.S. government's Executive Branch be properly organized to assure compliance with the Codes.

The relationships with the less developed countries for example will assume new directions as certain practices in world trade come under the disciplines of the new international codes. It is hoped, for example, that a better understanding of the effects of government policies on international trade will evolve as the codes are implemented and that trade-distorting policies will be minimized.

The reference to a North American Alliance in the Trade Agreements Act is timely. The size and strength of the Canadian and Mexican chemical industries will become increasingly significant both as a source and a market for chemicals. The chemical industry will cooperate with the Congress and Administration as this question is addressed.

ADVISORY SYSTEM

The chemical industry pledges its support of the private sector advisory system provided for in Section 1103. A large commitment of manpower was made to the Industry Sector Advisory Committees provided for in the Trade Act of 1974. The liaison with the government was a worthwhile effort that must be continued in the post-MTN period. The MTN was a mammoth task successfully concluded under difficult circumstances. To make it truly successful, continued participation and cooperation by both the public and private sectors will be necessary.

CONCLUSION

The chemical industry, in supporting the total package represented by the Trade Agreements Act of 1979 will meet its responsibilities to assist the government and the Congress in the important follow-up work which must be undertaken to make the MTN a success.

WILLIAM S. SNEATH,
Chemical Industry Trade Adviser.

AMERICAN IRON & STEEL INSTITUTE,
Washington, D.C., July 17, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The American Iron and Steel Institute was pleased to note that your committee urged the Administration to submit promptly its trade reorganization proposal.

Contrary to press reports, we have not yet publicly taken a position on any trade reorganization proposal. However, because trade reorganization will very likely affect responsibility for the enforcement of our laws against unfair trade practices, we would like to set forth at an early point two principles that we strongly believe should be adhered to in determining the location of that responsibility:

1. Responsibility for enforcement of the trade laws should not be placed with a governmental organization that also has responsibility for either international trade negotiations or export promotion.
2. Responsibility within a governmental organization for determinations in trade proceedings should be separate from other functions of the organization, so that these determinations will be based on criteria specified by law and not unduly influenced by political considerations.

We will be pleased to comment on specific trade reorganization proposals at an appropriate time.

Sincerely,

ROBERT R. PEABODY.

STATEMENT OF U.S. COUNCIL FOR AN OPEN WORLD ECONOMY, INC.

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, in hearings on legislation to implement the new multilateral trade agreement, before the Subcommittee on International Trade of the Senate Finance Committee, July 16, 1979.

The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of achieving an open international economic system in the overall public interest. The Council speaks for no private, commercial interest, only for what its Board of Trustees regards as the total national interest in this policy area. The Council believes that freer and fairer international trade advances the national interest. It advocates attainment, with deliberate speed, of the most open and most equitable world trading system. It also advocates effective adjustment strategies to backstop such a policy.

OVERALL VIEW OF THE TRADE AGREEMENT

The agreement just negotiated merits the enactment of implementing legislation that fosters the freest and fairest international trade consistent with those sectors of the agreement that require follow-up Congressional action. The new pact, however, is in many respects a major disappointment, taking account of what needed to be

and could have been accomplished even within the unfortunate limitations of the Trade Act of 1974.

The discretionary (over and above the statutory) exemption of some products from further trade liberalization, and the less-than-permissible tariff cuts on others, are among the regrettable features of this trade agreement. These and other import-restrictive measures (including special restrictions on textiles, and tariff increases on rubber footwear as the price for eliminating the "American selling price" abomination in customs valuation of these imports) constitute subsidies without the framework of coherent adjustment strategies of balanced, cost-effective government assistance to these industries. They also lessen U.S. leverage in negotiating freer access to foreign markets.

The agreement lacks adequate attention to the critical needs of the less-developed countries (needs meriting a high priority in U.S. strategy), to the proven potential of these countries as major markets for U.S. exports, and to the need (much heralded in the legislative history of the Trade Act of 1974) for international agreement ensuring equitable access to foreign sources of critical materials.

Other shortcomings include procedural aspects of the anti-dumping and anti-subsidy codes, and the failure to reform the "safeguard" provisions of the General Agreement on Tariffs and Trade in the manner this Council considers essential. The "safeguard" issue is discussed in some detail below.

On balance, however, the new trade agreement will foster a more equitable international trading system and achieve many significant reductions in world trade barriers. The agreement will bring important benefits for U.S. export expansion, a major national priority, and for more effective international cooperation across the board. Failure to approve this agreement, and to enact implementing legislation consistent with its provisions and purpose, would be a serious setback for avowed U.S. trade objectives and for other U.S. policy goals both foreign and domestic.

The agreement, like the 1974 trade legislation that provided the U.S. negotiating authority, is not all we had hoped for and all that the national interest requires. It nevertheless merits equitable and expeditious implementation.

THE SAFEGUARD ISSUE

A basic flaw in import-relief or "safeguard" standards, both in the U.S. policy and in the General Agreement on Tariffs and Trade, remains uncorrected and will encumber world trade for many years to come. There is no indication that the safeguard code which may possibly be added to the new agreement at a later date will incorporate the reform we consider essential.

The flaw is the absence of a requirement that no trade restrictions of any kind may be imposed to assist an industry seriously injured by legitimate imports except as part of (and if found indispensable to) a coherent, balanced, industry-adjustment strategy addressing the real problems and needs of that industry. Such a strategy should be developed by the industry, approved by the government (if government aid is indeed to be provided), and monitored by the government to ensure that aids provided at public expense fully advance the public interest and effectively serve the adjustment objective for which they are intended. The adjustment strategy should include reassessemnt of all governemnt policies materially affecting the industry to make sure that none of these policies unfairly impedes effective adjustment and to determine the possible need for special assistance in these policy areas.

Industry adjustment should not, as now, be just a vague hope, a result that is passively expected from the beneficiary of the import restrictions which are the only industry-wide remedy provided under the safeguard provisions of existing trade legislation. This approach is something akin to a "pig in a poke." What the industry does with the adjustment time provided by trade restrictions should be the subject of a publicy delineated commitment. The government does not permit a pig-in-a-poke approach in adjustment assistance to firms, workers and communities; it should not do so in import relief—in essence a form of adjustment assistance—to import-impacted industries. Thus, there should be no textile import restrictions without a coherent textile policy, no steel import restrictions without a coherent steel policy, and so forth.

Failure to move along these lines would be an error of omission. There also appears to be an error of commission in the proposed safeguard provisions—namely, permitting selective, discriminatory action against imports from particular countries when these imports are deemed the cause of the serious injury that is found to have occurred. To permit selective action against imports from some countries (but not all as now required) in cases where the issue is not unfairness of trade but rather injury to a domestic injury from legitimate imports would penalize exporters legitimately making the most of their opportunities in the importing country. Moreover, it could open the way for import controls not totally related to the industry

situation for which relief was found necessary—that is, for ulterior motives involving the exporting country's trade or other policies. Permitting discriminatory import controls would be a Pandora's box.

Requirement of an industry-adjustment strategy as the framework for import controls should also extend to "buy national" policies in government procurement (except where "buy national" policies may be necessary to deal with national emergencies such as a serious economic depression). It should also extend to the use of import controls for national-security purposes. The U.S. could have prevented or at least alleviated the present energy problem if a quarter century ago the national-security clause written into the trade legistation had required a coherent industry-development strategy as the framework for any import controls considered essential for national-security purposes. Twenty years ago the government imposed oil import controls but without a coherent oil policy aimed at strengthening this sector of the mobilization base. This flaw in the national-security clause still exists—making the national-security clause a threat to national security in the sense that simplistic recourse to import control tends to divert attention from the search for real solutions to real security needs.

Although special efforts to assist the developing countries are urgently needed, it is not clear how import restrictions against developing countries in import-injury cases can be avoided or ameliorated where imports from such sources are substantial without impairing the adjustment effort of the domestic industry found to require import restraint to provide adjustment time. Help for the developing countries would best be achieved through the adjustment-strategy reform proposed in this testimony, inasmuch as this reform would aim at the earliest removal of whatever trade restrictions are necessary.

Statement of Claude E. Hobbs, Vice President, Government Relations, Westinghouse Electric Corp.

Mr. Chairman, and members of the committee: Westinghouse appreciates this opportunity to express its views on the outcome of the Tokyo Round of Multilateral Trade Negotiations and on S. 1376 to implement the agreements consummated. Our company, headquartered in Pittsburgh, Pennsylvania, is broadly diversified, with 1978 worldwide sales of 6.7 billion dollars and exports from the U.S. of approximately 800 million dollars. The manufacturing operations of the corporation are divided among three Westinghouse companies.

Power Systems Co.—Manufactures and services products which generate, transmit, distribute, and measure electricity. These range from nuclear reactors and turbine generators to residential electric meters.

Industry Products Co.—Manufactures and services equipment for industry including the steel, construction, petrochemical, mining, pulp and paper, and textile industries. Products include motors, process control equipment and systems, electrical controls, lighting fixtures and lamps, power semiconductors, plastic laminates, and transport refrigeration equipment.

Public Systems Co.—Provides a variety of products and services for domestic and foreign governments and government agencies and consumers. Products include sophisticated defense and communication systems, elevators and escalators, heating and cooling equipment, land development, fine watches, learning systems, and bottled soft drinks.

Westinghouse Broadcasting Company operates television and radio broadcasting stations, a television production company and cable television franchises. Westinghouse Credit Corporation finances loans for industrial, commercial, consumer product customers, and others. Westinghouse Canada, Limited, manufactures more than 8,000 industrial and utility products.

We are vitally interested in the results of the recently completed Multilateral Trade Negotiations, both the tariff and non-tariff agreements.

Our company is necessarily disappointed in the outcome of this Round of negotiations because of the failure to eliminate or effectively curtail the long-standing discrimination against American manufacturers of large electrical equipment in international trade with the developed countries of the world. The developed countries provide the principal markets for large electrical generating and transmission equipment. The major developed countries, whether or not their electric utility entities are government-owned, or privately owned, have refused to agree to give up their discriminatory nationalistic purchasing of large electrical equipment.

Despite our disappointment, recognizing the potential for expanding world trade, and realizing the agreements cannot be changed to rectify the failure of results with respect to electrical equipment, we believe that the Tokyo Round agreements should

be approved and implemented. We therefore recommend that S. 1376 should be enacted into law.

To avoid lengthy repetition here, we want to endorse the statement made by Mr. Bernard Falk, President of the National Manufacturers Association to this Committee on July 10, 1979. We believe there is a need for legislative history which can help to eliminate the discrimination we have experienced for many years, and we hope the Committee will accept and carry out the recommendations set forth in Mr. Falk's testimony.

We also hope you will provide clarification we believe is needed with respect to the implementing legislation affecting the Subsidies Code, the Countervailing Duty law and the Anti-dumping law.

We want to emphasize our appreciation of the action of Chairman Long and other members of the Committee in limiting the changes in the Antidumping Act to those needed to implement the Subsidies Code.

GOVERNMENT PROCUREMENT CODE

Discrimination against American-made large electrical equipment has existed for many years. During the Kennedy Round of Trade Negotiations, completed in 1967, Westinghouse and others strongly urged that the U.S. obtain reciprocity of access to the markets of other industrial countries for American-made electrical equipment—such access to be at least equivalent to the access manufacturers in those countries have had to the U.S. market for such equipment. No such results were obtained during the Kennedy Round.

Soon after the Kennedy Round, representatives of our company and others met with U.S. Government personnel and helped to initiate the idea that a government procurement code might help to break down a significant part of this trade discrimination. Mr. Falk's testimony refers to similar efforts by American electrical equipment manufacturers during the present Round of negotiations. The Code which has been agreed to provides basically good procedures, if it is properly implemented by the countries that have agreed to be bound by it. Unfortunately, many government entities have been omitted from Code coverage, thus failing to accomplish a major objective of breaking down the highly nationalistic purchasing practices of government-owned utility entities in the developed nations with respect to large electrical equipment. Nationalized entities which purchase transportation equipment and telecommunications equipment regrettably have also been largely exempted from the Government Procurement Code. And there has been no agreement by industrialized countries whose utilities are privately owned to eliminate their rigid nationalistic purchasing of large electrical equipment. Our disappointment is readily understandable.

There is said to be some 20 billion dollars of international business opportunity under the Code. The export opportunities arising from the Code are, to say the least, speculative.

The Code will be applicable only to a limited number of government entities and the products they usually purchase, and one can only guess how foreign governments will treat American bidders under the Code.

We are apprehensive that implementation of the Procurement Code by other countries might fail to provide equitable, reciprocal treatment for American suppliers.

The disputes mechanism in the Code calling for bilateral consultations between a foreign procuring government and our Government in the case of an aggrieved American supplier, and the subsequent multilateral conciliation procedures which are provided, are vastly different from the procedures of the United States whereby an aggrieved bidder can seek justice with respect to a particular procurement.

In case of a dispute over a foreign entity procurement, the U.S. Government would first decide whether an aggrieved American bidder has a meritorious case, and whether our Government will pursue his complaint. This determination can readily be influenced by foreign policy or other considerations rather than by the objective application of judgment under established procurement practice. If STR or other administering agency determines the aggrieved American supplier has a valid complaint or protest, the agency would then consult with the foreign purchasing government. If that is not productive, multilateral conciliation may be invoked. But there appears to be no clearcut procedure to withhold award of a disputed procurement contract or to assure the kind of effective advocacy needed to obtain a specific contract award for the American bidder. If enough bids are lost by Americans to be disturbing to U.S. Government officials, the U.S. can take retaliatory trade measures, but by then pending orders would be lost to Americans in a maze of international red tape. We fear the consultation process will be political rather than quasi-judicial.

While these vague and untried new procedures are awaiting implementation, the U.S. Government will presumably continue to provide its establsihed remedies for aggrieved suppliers, domestic or foreign, seeking orders from U.S. Government agencies, regardless of whether the U.S. entities are subject to a new Procurement Code.

Some of the U.S. Government entities which purchase a tremendous dollar volume of equipment and machinery will not be subject to the Procurement Code. Nevertheless, unlike entities in other developed countries, they will continue to purchase on an international basis, because they value competitive bidding. Foreign bidders for such U.S. procurement will continue to have a direct right of protest to the General Accounting Office and the remedies this affords.

Such unique policies of non-discrimination against foreign bidders by the U.S. Government, so far as we are aware, have not been accepted or practiced by any other government.

We hope the Congress will not be confused by idealistic descriptions of some hypothetical trade value which might be expected to result from the Government Procurement Code. Instead, we urge the Congress to maintain careful and attentive legislative oversight of the administration of the Procurement Code and the other Codes by which it is hoped to break down non-tariff barriers to trade and discrimination by other countries.

ENFORCEMENT OF U.S. RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN PRACTICES

Section 901 of S. 1376 prescribes the procedures under which U.S. firms can request STR or the agency acting for the President to take action pursuant to the GATT to enforce rights created under the several new Codes (in addition to the Government Procurement Code) and new laws. As in Government Procurement disputes, these procedures may well be inadequate in that STR or other cognizant agency will have broad discretion whether or not to initiate an investigation after a petition is filed. Citizens can request assistance by the U.S. Government, but our Government will then decide whether and how aggressively to proceed.

We realize that international trade disputes are principally government to government matters. We hope our own Government will be strongly pro-American in handling international trade disputes, and we urge the Finance Committee to include in its report a directive to STR or other administering agency to investigate and pursue all legitimate complaints unless the agency concludes that an investigation would jeopardize some important specific interest of the United States. If the various Codes which have been agreed upon are to be implemented effectively on behalf of manufacturers and other citizens of the United States, the U.S. administering authority must act on their petitions or requests objectively under the provisions of the Codes and must not be permitted to allow unrelated diplomatic or other considerations to govern decisions and enforcement attitudes with respect to trade rights.

COUNTERVAILING DUTY ACT AND ANTIDUMPING ACT

Our views on the need for clarifying statements in the report of the Finance Committee concerning amendments to the Countervailing Duty Act and the Antidumping Act are listed under sub-headings:

Effect of Antidumping Act repeal

S. 1376, for convenience and clarity in drafting, includes a technical repeal of the Antidumpting Act of 1929 as Amended, then re-enacts verbatim many of the provisions of that Act. Other provisions have been changed as needed to implement the new Subsidies Code. We believe it is important for the Committee to state in its report that this method of enacting was merely for drafting convenience and was not intended to invalidate the 58 years of judicial and administrative interpretation of that Act, except to the extent that specific provisions of the law are being altered by S. 1376.

Re-enactment of Communist country dumping section without amendment

There is a rule of legislative interpretation which stated that Congress is presumed to have adopted the administering authority's interpretation of a statutory provision where Congress re-enacts that provision without amendment in full knowledge of the existence of the administrative interpretation. To prevent application of this principle to the Treasury Department's 1978 regulation (perverting Sec. 205(c), which deals with Communist Country dumping), the legislative history should state clearly that enactment of this Bill, S.1376, constitutes neither approval

nor disapproval of the Treasury regulation, and that Congress intends to review the issue of Communist dumping at a later date.

Importance of monitoring price assurance

The Bill, S.1376 clearly implies that more and more dumping and countervailing duty cases will be "settled" by accepting price assurances offered by the foreign exporters. This emphasizes the importance of effective monitoring, to ensure that these price assurances are not violated. The Bill already has some good language on this point. However, the record of the Treasury Department's monitoring of price assurance received for terminating antidumping orders has been deplorable, and we urge that there be strong language in the report of the Finance Committee emphasizing that all price assurances hereafter must be effectively and actively monitored by the Treasury Department.

International Trade Commission application of the material injury standard

Under the Bill, the word "injury" in the Antidumping Act of 1921 will be changed to "material injury". Even though "material injury" is specifically defined in the bill as "harm which is not inconsequential, immaterial, or unimportant", we are apprehensive that the Commission may interpret "material injury" as a significant raising of the injury standard.

We hope this Committee will discourage such an interpretation. We also recommend that the Committee take specific exception to one aspect of the Commission's recent decisions in dumping cases—the Commission's current requirement that the affected U.S. industry show performance trends which are actually declining. In a number of recent decisions, this approach has been instrumental in denying relief to complaining U.S. industries, as indicated by the following excerpt from an ITC report: "The last several years have been strong years for the U.S. economy. In such an economic climate, most U.S. industries can normally be expected to be enjoying rising sales, profits, employment, etc. In some cases, however, domestic producers have argued that dumped imports have deprived them of much of the benefit which they had every right to expect from these rising trends in the economy. Although the U.S. producers' profits, sales and other indicators may well have been stable or even rising slightly, they point out to the Commission that LTFV imports have captured an increasing share of their markets and have deprived them of the substantially larger gains in sales, profits, etc. which they otherwise would have enjoyed. In the late 1960s and early 1970s, such an argument—if properly substantiated—would have resulted in an affirmative injury determination. Today, that is not the case. Rather, the Commission is likely to find that the U.S. industry in not "injured" unless its performance indicators have actually declined."

We believe that the Antidumping Act was never intended to be operative only in times of general economic decline. Where dumping by foreign exporters deprives a U.S. industry of the increased sales, profits and employment which would normally occur to it in good times, that constitutes injury which is just as "material" as the aggravation of declining trends in profits, sales and employment in periods of economic recession. The issue is especially important for companies like Westinghouse, which participate in markets which are cyclical in nature. The electrical equipment industry, which is extremely capital-intensive and characterized by a high level of fixed costs, must be able to take advantage of profits which normally accrue in times of general economic prosperity in order to offset the adverse operating results which we experience at the other end of the business cycle. If foreign dumpers are allowed to "skim the cream" off of our market, we are "materially injured" even if we do not actually suffer operating losses at that time.

In summary, then, Westinghouse urges that the Report make the following important points on the issue of "material injury":

First, the Committee's Report should emphasize that "material injury" represents no significant increase over the standard which was set forth in the Antidumping Act of 1921, as that standard was explained in this Committee's Report on the Trade Act of 1974.

Second, the Report should make it clear that "material injury" does not require a showing of declines in the sales, profits, employment and other operating results of the affected U.S. industry. Where dumping is found to have reduced the industry's sales, profits, employment, etc., below the levels which those indicators would have reached after the impact of dumping, that suppression is sufficient to constitute "material injury".

Atlantic Council Reaction to Tokyo Round Trade Agreements

The Board of Directors of the Atlantic Council welcomes the successful conclusion of the Multilateral Trade Negotiations (MTN) initiated at Tokyo by a ministerial meeting in September 1973. The Council has been concerned for some years about the adequacy of the international trading system to meet the changing requirements of an increasingly interdependent world and the strains to which existing trade arrangements are being subjected by inflation, lagging economic growth, and rising protectionism in industrialized countries. It believes that the new agreements constitute a major step toward meeting this concern.

The Council notes with satisfaction that the new agreements are very much in accord with recommendations for reform of the world trading system which it made in 1973, before the Tokyo Round was initiated, and in its more detailed proposals published in *GATT Plus* in 1975. The achievement of agreements to liberalize trade over a broad spectrum is all the more remarkable in view of the difficult economic conditions which have prevailed during recent years and the spirit of protectionism which they have engendered.

The United States is now confronted with the question of adoption of legislation by the Congress approving these agreements and giving effect to them by necessary changes in U.S. laws. Positive action by the Congress is essential.

Failure by Congress to approve the agreements which have been laboriously negotiated over a period of five years would constitute a major setback in the effort to strengthen the international economy and bring greater order to it. Moreover, it would risk major trade conflicts with serious political consequences for U.S. relations with its allies and with other countries which are important markets for our exports and sources of our new raw material supply.

The Council hopes that the Congress will enact this legislation expeditiously. The provisions in the legislation empowering the President to negotiate further trade agreements on the lines of the existing legislation are particularly important. They give recognition to the need for continuing effort to improve the world trading system and to protect and improve U.S. trading interests.

The Tokyo Round agreements do not deal with all the trade problems confronting the trading nations of the world. Once it is possible to measure their effects in depth, careful thought should be given to the further measures needed to strengthen and improve the international trading system. The Council looks forward to playing its part in making studies and recommendations on these matters.

Statement of David Boaz, Executive Director of Council for a Competitive Economy

The Council for a Competitive Economy is a new national organization of business men and women dedicated to a truly competitive economy and opposed to government favors and protection for business.

The Multilateral Trade Negotiations Agreement has been hailed as a tremendous breakthrough toward freer world trade. It is indeed a step in the right direction and we urge Congress to support it.

However, by no means should this agreement be regarded as a great leap forward. It is, rather, a very small step which should be immediately followed up by further liberalization of American trade policies.

A new study by David Hartman of Harvard indicates that the cost of current protectionist legislation to American consumers is about $15 billion a year. None of these legislative devices is ended by the agreement.

The treaty actually boosts shoe tariffs sharply, particularly on low-priced shoes. Textile tariff cuts are delayed until 1982. Textile imports quotas have been extended to the People's Republic of China. In each case, the public interest has been sacrificed to satisfy a handful of special interests.

We urge the Congress and the Administration to regard this agreement as only a first step, and to begin immediately to move toward more reductions of tariffs and non-tariff barriers to international trade.

Perhaps no economic argument is more clear than that for free trade. Trade barriers between two countries can only hurt the people of both countries. Barriers among all countries hurt consumers—and businesses—around the world.

Under a system of free trade, specialization and the division of labor can take place on the widest possible scale. Goods can be produced wherever the comparative advantage is greatest. And in each country, resources—land, labor, and capital—will flow to those industries where they can be used most efficiently. In such a system, prices are as low as possible and wages as high as possible—surely a most desirable outcome.

Indeed, if we are to have trade barriers between nations, why not between states, or cities? Why should California trade with New York? Why should Los Angeles trade with San Francisco? Why, indeed, should I trade with the corner grocer? I could grow my own food and make my own clothes; in that case I would certainly be fully employed and could never have a "balance of trade deficit." Yet I would obviously be less wealthy than if I exchanged goods with others, and the same thing is true for the country—and the world—as a whole.

We hear a lot today about the demands of Third World countries and our responsibility toward them. The way in which we can help developing countries—*and* ourselves—most effectively is to reduce or eliminate trade barriers. If we reduce the barriers to imports—of raw materials or manufactured goods—from the Third World, we lower prices for American consumers, help Third World economies, and give those countries the foreign exchange needed to buy American products. Everyone gains, not at the expense of someone else but as a result of increased production in both countries.

We should take the occasion of this bill to consider our entire trade policy. If this agreement is beneficial to the United States, is there any reason to stop there?

Let's face facts. Either free trade benefits Americans or it doesn't. If you believe it does not, then there is no reason to approve this agreement. But if you accept the validity of either the moral, the economic, or the political arguments for free trade, then the treaty must be viewed as only a start in the right direction.

Morally, it seems clear that individuals should have the right to engage in trade with anyone they may choose, whether in the United States or abroad. Economically, the case for free trade is apparent: everyone benefits when resources are allocated most efficiently. In the field of international politics, free trade helps to establish friendly relations with other countries, surely a major goal of our foreign policy.

In terms of domestic politics, trade restrictions are clearly inequitable. They never benefit the majority of Americans. Trade restrictions protect certain businesses from competition at the expense of consumers and other businesses.

They create an economy of privilege where success is based on political power, not consumer satisfaction. They create economic inefficiency and lower our overall productivity and standard of living. And they create political and economic inequity, leading to resentment on the part of those consumers and businesses hurt by the protection granted to others.

In a time of rapidly rising prices, we don't need policies that increase consumer prices. And in a time of concern about the equity of our economic and political system, we don't need policies that favor one group at the expense of others. Government should not put obstacles in the way of some businesses or give assistance to others; it should let every business compete for the favor of consumers in a free market.

The goal of free trade is a noble one. It offers us an opportunity to help other countries, especially developing nations, at the same time that we help ourselves. The United States should seize the opportunity to lead the world toward a more open system of international trade by reducing or eliminating its trade barriers and urging other countries to do the same.

We urge Congress to view this treaty as a first step toward a free and open world trade system.

Statement of Ruth J. Hinerfeld, President, League of Women Voters of the United States

Mr. Chairman, members of the subcommittee, I am Ruth J. Hinerfeld, President of the League of Women Voters of the United States. The League of Women Voters is a volunteer political action organization with 1400 Leagues in 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. We welcome this opportunity to express our support for the Trade Agreements Act of 1979.

It has been almost four months since the League testified before this subcommittee in support of the extension of the waiver on countervailing duties. That was one of the many hurdles which this subcommittee successfully cleared in the process of bringing the multilateral trade agreements before the Congress. Throughout the past few months, the cooperative efforts of this committee, the Administration, and public and private sector representative have built a strong foundation of expertise on the trade agreements. And, as a result, there is broad support for the Trade Agreements Act of 1979.

League members believe that the multilateral trade agreements and implementing provisions contained in S1376 provide the United States with an opportunity to contain and control the nontariff barriers that present the most significant re-

straints to international trade today. Moreover, while the Trade Agreements Act of 1979 culminates five years of U.S. participation in the Tokyo round of multilateral trade negotiations, it also lays the groundwork for addressing future trade problems. Thus, this legislation is one phase of an ongoing process aimed at further liberalization of U.S. trade policy—an objective which the League had advocated for almost half a century.

Such a policy, League members believe, serves the political and economic interests of this country and of its citizens, collectively and individually, because it paves the way for political harmony among nations, promotes economic development at home and abroad, and expands consumer choice.

It is impossible to know precisely how much trade or how many dollars will be affected by the trade agreements. What we do know, however, is that multilateral reductions in tariffs will allow many U.S. producers to compete more effectively in foreign markets and will reduce the prices U.S. consumers pay for foreign products imported into the United States. Customs valuation procedures and licensing requirements will be made more uniform; standard setting and government procurement procedures will be opened up; and a trade distorting subsidy practices will be restrained. By increasing export opportunities for agricultural and other products, billions of dollars of U.S. goods will gain entry into foreign markets.

These benefits to the nation as a whole must not be at the expense of a single group of workers or a sector of our economy. The League believes that a more effective trade adjustment assistance program is the keystone of a policy that promotes trade expansion. We believe, too, that a good program should and could provide prompt and effective assistance without damage to our foreign relations and at a lower cost to the economy than import restrictions. For these reasons, the League supports this subcommittee's efforts at reform of the Trade Adjustment Assistance program, as contained in S 227.

The League also shares the concerns expressed by many of you on this committee and in the Senate that these agreements will solve all of our trade problems. Pressures to protect domestic economies throughout the world have been building for the past five years and will not be dissipated by the enactment of these agreements. The failure of the United States to approve the Trade Agreements Act of 1979, however, would signal to the rest of the world that we, the major industrialized nation, are unwilling to join in a cooperative effort to reduce barriers to trade. Further, it would bring a halt to future negotiations on other trade problems, such as those relating to safeguards, commercial counterfeiting, and international trade and services. The history of the 1930's and the trade war precipitated by passage of the Smoot Hawley Act are enough of a lesson to illustrate the consequences of such a decision.

What is needed today is a commitment by all nations to fully and effectively implement and enforce the multilateral trade agreements. Unfair trade practices cannot go unchecked. To this end, the trade agreements provide assurances that where predatory practices adversely disrupt trade, governments can intervene in an orderly and timely manner to seek relief for domestic industries. In addition, the agreements greatly improve international mechanisms for monitoring compliance, sharing information, resolving disputes and consulting on trade problems.

Trade among nations means more than the exchange of goods and services across national border. Good trading relations can facilitate cooperation in all international and national endeavors. Conversely, a breakdown of cooperation in trade can signal the deterioration of relations. Viewed in this context, the trade agreements and U.S. implementing provisions are more than a package of technical agreements. They are a blueprint that nations pledge to follow in an effort to avoid disharmony and misunderstanding. It is, finally, in this context that all of us, both as individuals an as nations, must judge the agreement. The League of Women Voters believes it is in the economic and political interests of this nation to support the Trade Agreements Act of 1979.

STATEMENT OF NOEL HEMMENDINGER

I am senior partner of the Washington law firm of Arter Hadden & Hemmendinger,[1] 1919 Pennsylvania Avenue, N.E., Washington, D.C. 20006. The purpose of this statement is to offer the Subcommittee my views based on many years of experience in representing U.S. importers and foreign exporters in proceedings under the escape clause, the antidumping act, and the countervailing duty law. For

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[1] Arter Hadden & Hemmendinger is the Washington office of a law firm with offices in Cleveland (Arter & Hadden) and Columbus, Ohio (Knepper White Arter & Hadden). The Washington office succeeded the firm of Stitt, Hemmendinger and Kennedy on July 1, 1977.

example, during the past year, my firm has represented importers and exporters in connection with: Countervailing duty cases involving textiles and men's and boys' apparel from Brazil, Colombia, the Philippines, Thailand, and Malaysia; the trigger price system as it concerns steel from Japan; dumping cases involving steel and wire products, motorcycles and typewriters from Japan; dumping cases involving nails and cement from Canada; and escape clause matters involving specialty steel and cookware from Japan, footwear from various sources, and ferrochromium for Yugoslavia.

The statement is submitted on my own behalf and does not necessarily reflect the views of my clients or partners.[1]

Some of the general views included in this statement were submitted to the Subcommittee on International Trade in February of this year in the course of my testimony at that hearing. This statement is intended: (1) To express my view of the basic issue before the Subcommittee—i.e., that the bill to implement for the United States the results of the Tokyo Round of Multilateral Trade Negotiations should be approved by the Congress; (2) to comment generally on the undesirability of using the antidumping and countervailing duty laws to deal with the increasingly difficult issues of international trade; and (3) to bring to the attention of the Subcommittee a number of potential problems that will be created by the legislation, to which the Congress may have to respond in the near future.

At the outset, I should note that, in general, I concur with the presentation made to the Subcommittee on behalf of the American Importers' Association (AIA). My firm is a member of the AIA and participates in the work of a number of its committees.

The implementing legislation should be approved

The results of the Tokyo Round of the Multilateral Trade Negotiations are a major accomplishment; and, in spite of my reservations, I believe that approval of the implementing legislation is in the overall interest of the United States. A refusal by the United States to implement the MTN agreements would be a major blow to the international trading system which would strengthen the already strong protectionist forces which exist in the world today. S. 1376 is far from perfect and, in certain areas, creates problems which may call for corrective legislation in the near future. However, the consequences of disapproval are such that, in my opinion, the Congress has no choice but to approve the legislation.

Fundamental problems with the antidumping and countervailing duty laws

Before discussing the specific problems created by the bill, I would like to comment on a far larger issue, namely that the antidumping and countervailing duty laws are poor instruments for dealing with the country's increasingly difficult trade problems.

Our firm's experience in dealing with international trade matters over the past twenty-five years has led me to two basic conclusions, which are strongly at variance with the philosophy of the revisions of the antidumping and countervailing duty laws found in S. 1376:

(1) The distinction between "fair" and "unfair" trade and the benefits of remedies based on that distinction are greatly overvalued; and

(2) The Countervailing Duty Law and the Antidumping Act are inherently not effective instruments for conducting U.S. trade policy.

The countervailing duty and antidumping laws deal with two somewhat related practices, which are characterized as unfair—(1) subsidization and (2) selling for export at prices below the home market price, or at prices which do not cover full costs. I would not discard these concepts and the international codes which have been worked out embodying them. I would, however, urge the recognition of major qualifications.

First, "unfairness" is a complex and difficult concept in international trade because: (a) all trade is conditioned by either current or historical governmental interventions of one character or another; and (b) as regards dumping, differential pricing in international markets is often procompetitive and anti-inflationary.

Second, automatic remedy through legal proceedings based upon rigorous legal standards is not appropriate to the resolution of international economic issues such as are involved in trade among nations. This is especially true of a countervailing duty proceeding since it questions the political judgment of foreign governments adopted out of their conviction as to what is necessary in their sovereign interests. The attempt to resolve these political/economic issues through meticulous investiga-

[1] The law firm is registered under the Foreign Agents' Registration Act for a number of clients. A copy of its latest registration statement is not being tendered to this Subcommittee because the statement is not being given for or in the interest of our clients.

tions under legal standards is inevitably time-consuming and often places the staffs that are assigned to administer the laws in an impossible situation. This implies that the source of the dissatisfaction which members of the Congress have frequently expressed with the execution of these laws lies more in the inherent impossibility of the task assigned than in the way the staffs have carried out their responsibilities.

Third, when truly difficult and major trade issues arise, they are not solved by application of the antidumping or countervailing duty laws. Rather, they are generally resolved by international agreements between the producing and importing countries or by special programs or measures to deal with a specific problem. The general ineffectiveness of these laws to deal with important trade issues is evidenced by the experience with textiles, automobiles, steel, footwear, television sets, and most recently, Mexican tomatoes.

It follows from these propositions that (1) there should always be a balancing of the various interests involved in determining what remedies (if any) are to be taken when unfair trade practices are found and (2) automatic remedies should not be imposed. Rather, strong encouragement should be given to negotiated solutions. The sections in the bill providing for suspension of countervailing duty or antidumping investigations by negotiating agreements between the U.S. government and the foreign government and/or exporters are a definite step in the right direction but they are too burdened with restrictions, as indicated below. In the long run, there should probably be a single type of proceeding for remedies against imports, with the president making the final decision, based on the overall national interest. (See in this connection the 1974 testimony of Noel Hemmendinger before the Senate Finance Committee, Hearings before the Committee on Finance, United States Senate, 93rd Congress, 2nd Session, on H.R. 10710.)

I recognize that the antidumping and countervailing duty laws and the concepts embodied in them have become so embedded in our system that they will be a part of U.S. trade law for the foreseeable future. However, I believe that it is necessary to question their usefulness in resolving trade issues and to seek more appropriate mechanisms to deal with the world's trade problems.

Problems created by the legislation

Most of the bill's defects stem from two basic causes: (1) the excessive reliance on the techniques of law enforcement and the adjudicative process to resolve difficult issues in the field of foreign economic relations discussed above, and (2) a distrust of administrative authority and procedures. These two factors mean that the bill contains excessive detail in areas which should be left to regulation or practice.

The comments that follow are concentrated on the problems which arise out of the changes in the antidumping and countervailing duty laws contained in Title I of the bill. In particular, they focus on: (1) The changes in the procedures for investigation which, from the perspective of a practitioner representing foreign export interests and U.S. import interests, will operate as substantial barriers to full and fair investigations and (2) the increasingly adjudicative nature of investigations under the statutes and the adverse impact this has on meeting current or proposed time limits and in resolving difficult issues of international trade.

Specific problems with the revisions in the countervailing duty law

Time periods.—The introduction of overlapping subsidy/injury investigations is a sound idea and an improvement over existing practice. However, the bill's severe time limits may lead to arbitrary decisions by the Administering Authority. For example, the bill requires a preliminary determination by the Authority within 85 days after the receipt of a petition and only 65 days after the Authority's decision to initiate an investigation.

These new deadlines do not take adequate account of the time required to conduct an investigation. A typical countervailing duty investigation requires time for: (1) Preparation by the Administering Authority of an adequate questionnaire to the interested foreigh parties; (2) transmittal of the questionnaire to the responsible foreign government officials; (3) foreign government officials to (a) become informed on U.S. law and practice (b) prepare their own questionnaire to collect data from the local exporters (c) analyze the data collected and (d) prepare a submission to the U.S. Administering Authority; (4) the U.S. Authority to review and analyze the foreign submission and (5) the internal review and approval process to take place within the Authority. We believe that it may prove physically impossible between day 20, when the authority initiates an investigation, and day 85 for the U.S. Administering Authority and the responsible foreign government and private officials to accomplish these tasks.

As we have pointed out in previous testimony, this significantly shortened time period makes virtually impossible (even in relatively simple cases) a fair decision on

the merits at the preliminary determination stage of the investigation. The shortened time period provided in the bill makes it likely that the preliminary determination will be based on the information received from the complaining party as the "best evidence" available. Because liquidation is suspended upon an affirmative preliminary determination, a U.S. complainant can obtain disruption of the competing import trade in the products being investigated merely by filing a petition.

There is a clear trade-off between speed in determining the existence of a net subsidy and the quality and fairness of the result. Most of the experienced practitioners in the trade field believe that the bill tips too far in the interest of speed with a corresponding reduction in the quality and fairness of the investigation.

Confidentiality.—The provisions of the new bill permitting interested parties increased access to confidential information are also disturbing. Antidumping and countervailing duty investigations will no longer be impartial and objective proceedings but will become quasi-adjudicative proceedings with all parties analyzing and commenting on the submissions of the other. An abundance of lawyers will be submitting procedural and substantive protests, volumes of data and counter data, and legal and factual arguments whether frivolous or serious. Increased access to confidential data through the availabaility of a protective order will further and substantially complicate these cases. Furthermore, the new bill would insert an essentially adjudicative mechanism, the protective order, into a proceeding which is not governed by the Administrative Procedure Act and which, therefore, provides few if any procedural safeguards to parties submitting information. These new provisions may well operate as a substantial deterrent to the full cooperation of foreign parties and could compromise the rights of parties seeking to conduct an orderly import trade into the United States.

The basic purpose of disclosure in the countervailing duty context is to ensure that the Administering Authority does a fair job in evaluating the data it receives. Disclosure of non-confidential summaries by the Treasury Department to complaining parties has been adequate to allow them to monitor the adequacy and legality of that agency's investigations. To allow opposing counsel access to confidential information goes far beyond what is necessary to achieve the desired purposes of disclosure. Access to confidential proprietory information will allow counsel to function in the role of prosecutor and will make these investigations into adjudicative proceedings.

Conducting countervailing duty investigations in an adjudicative manner is particularly inappropriate. Countervailing duty investigations by their nature involve disputes between governments which call into question practices which the foreign government believes to be appropriate exercises of its sovereignty vis-a-vis its own economy. These are not problems which lend themselves to resolutions through adversary proceedings through private parties. With respect to both countervailing duty and dumping investigations, increasingly adjudicative procedures act as a barrier to the interest of the domestic industry in a prompt decision and are contrary to the public interest in assuring full and fair decisions with a minimum of unnecessary disruption to trade. Finally, the astronomical costs which adjudicative procedures impose on exporting industries are equivalent to a non-tariff barrier. It would indeed be ironic if the MTN, which has focused on the elimination of non-tariff barriers to trade, resulted in implementing legislation which increased rather than decreased such barriers.

Injury.—The adoption of the "material injury" test, which has long been the standard of the GATT and which is now contained in the international code, is a major improvement over existing law. It does not make economic sense to deny U.S. consumers the benefit of low prices unless there is really a significant degree of prejudice to some producing sector in the United States economy. In the final analysis, the application of the "material injury" test implies a weighing of competing interests on the part of the International Trade Commission, and the ITC should not recommend action which will deny the public the benefits of low priced imports unless there is a clear prejudice to a U.S. industry. We hope that the Senate Finance Committee will indicate in its report that the ITC is to fairly apply the new language and not feel bound by practice in determining injury under previous law.

In addition, an important U.S. objective should be to create conditions that would permit as many developing nations as possible to adhere to the Agreement on Subsidies and Countervailing Measures. If this is to be accomplished, it is of the utmost importance that the injury test be a significant one.

Definition of net subsidy.—The definition of a net subsidy which is found in the proposed bill may unduly limit the discretion of the Administering Authority to determine net subsidies. It is difficult to conceive of all of the circumstances which may be applicable and which may cause the value of governmentally furnished aid

to be affected. This means that the Authority should be given adequate discretion and flexibility in arriving at a net rather than a gross subsidy.

We are aware from experience as practitioners of at least two situations in which Authority discretion would be required. One is in the case where a nominal credit representing a percentage of the export value is given to the exporter and is usable only for the payment of certain taxes. In practice it has been demonstrated that many exporters are not able to utilize such credits and the real value to them of the subsidy is a small percent of the nominal value. Countries should have the opportunity to demonstrate such circumstances, and the Authority should be able to make appropriate adjustments when determining net subsidy. We gather from the Statement of Administrative Action (House Document No. 96-153, Part II, 96th Cong., 1st Sess. p. 433) and the Ways and Means Committee Report (House Report No. 96-317, 96th Cong., 1st Sess., p. 74) that such adjustments are contemplated in determining the subsidy.

The other situation involves bounties considered by the granting country to be offsets to indirect taxes levied on the product in the country of exportation which could be rebated upon export under the GATT. In some countries, the offsets are not organically related in the legislation of the exporting country to the bounty which is granted. In such cases, to disallow these offsets is to create unnecessary discord with friendly trading nations who believe that they have been acting in complete accordance with internationally accepted principles. They should not be required to change their domestic legislation in order to obtain recognition that the credits given upon exportation are properly regarded as offsets of the indirect taxes, but this is the likely effect of the bill.

Suspension of investigations.—The provision for suspension contained in the new law is a major improvement in the existing law and provides an excellent way to avoid potential vexatious and costly proceedings. It is entirely appropriate that countervailing duty investigations should be regarded as economic disputes arising between the United States and friendly foreign governments which should be resolved, where possible, by mutual agreement. Agreements which are consistent with the interests and needs of the exporting country and which avoid serious prejudice to the American producer should be encouraged.

The provisions in the bill permitting suspension of investigation pursuant to agreements are a step in this direction. However, the suspension provisions still have serious problems. First, they are so complex (covering thirteen pages of the bill and six pages of the Statement of Administrative Action) and so qualified with restrictions that their actual usefulness may be far less than appears at first glance. They are, perhaps, the clearest example of overdrafting by reason of mistrust of the Administering Authority in the bill. Second, it appears that, even if an agreement is acceptable to the Authority, any "interested party" can require continuation of a vexatious investigation, under 704(g). Third, it is not clear what happens to countervailing duty proceedings in cases where the U.S. has already imposed quantitative restrictions by reason of an escape clause action or special arrangements such as exist in textiles. We suggest that the Committee state its view that where the U.S. has already imposed quantitative limitations, there may well be no need for special measures under the countervailing duty law. It is very difficult for exporting countries to understand that, having been required as a condition of continuing to sell their goods to the United States to agree to quantitative limitations in the interest of avoiding injury to the domestic industry, they should also be subjected to countervailing duties. One form of protection should be sufficient. Fourth, the penalty provision for intentional violations appear to be unduly punitive in spirit and probably unenforceable in practice.

Specific problems with the revisions in the antidumping act

General.—Most of the general comments, and many of the specific comments, made in connection with countervailing duty proceedings are equally applicable to antidumping investigations. Therefore, they are not all repeated in this section which concentrates on problems peculiar to antidumping.

Time periods.—An antidumping investigation is a complex proceeding involving an extensive analysis of prices, selling costs, differences in merchandise, differences in circumstances of sale and, generally, some elements of production costs. Preparing a response to an extensive Treasury questionnaire alone requires 30 to 45 days. If one adds to this time for preparation of an appropriate questionnaire by Treasury, time for verification and the preparation of a verification report, adequate time for Customs to analyze the data and decide major issues, and time for the Treasury review process, it is clear that in most cases six months is the minimum time required for a preliminary determination.

The complexity of the less-than-fair-value stage of an antidumping investigation can be illustrated by a concrete example, the investigation of motorcycles from

Japan. In this case alone, the submissions by all parties, including responses to questionnaires, correspondence with Treasury, and briefing of issues during the Treasury phase would, if piled one on top of the other, be taller than a normal man. On one issue alone—i.e., adjustments to reflect differences in the merchandise sold in the U.S. and Japan—a technical expert had to compare virtually each and every one of more than 100 motorcycle models sold in the United States with the most similar models sold abroad to determine the basis for appropriate adjustment. The Customs Service had to examine the prices and adjustments for literally hundreds of thousands of sales. The Treasury Department had to evaluate and decide numerous legal and factual issues such as the existence of a model year in the motorcycle industry, the treatment of various selling costs, and the application of regulations to novel adjustments. The proceeding as a whole could not have been more thorough and could not have been completed in less than one year without seriously compromising the interests of both the domestic industry and the importers. To be sure, all investigations are not so complex. However, complex investigations are the rule today, rather than the exception. Unrealistic time limits only result in arbitrary decisions which are as damaging to the interests of the U.S. industry as they are to importers.

Provisional remedies.—As an attorney who has frequently represented exporter's and importer's involved in dumping cases, I believe the conception of tightening the law with respect to provisional remedies is based upon a fundamental misunderstanding, and is a misreading of the unfortunate failure of Treasury to fix dumping duties in the Television Cases. Suspension of liquidation and the necessity to file bond on products entered into the United States while there is still substantial uncertainty with respect to the final duties to be due is a heavy and serious sanction at present. In most cases, the mere filing of a dumping complaint is a deterrent to trade because many parties will not wish to take the risks inherent in continuing to import. The deterrent effect increases as a dumping case proceeds through the tentative determination to the final dumping finding. The bill's requirements that estimated duties be paid upon the final dumping finding is essentially punitive in nature and inconsistent with the purpose of the Antidumping Act. It is ameliorated, however, by Section 736(c) permitting bonding for an additional 90 days under certain conditions.

We are not aware of any situations under current practice in which the government's ability to collect the required duties has been inadequate. Differential pricing is normal business practice and is highly appropriate in many circumstances. Only when it injures are countermeasures justified, and they should not be regarded as penalties. Dumping calculations are usually complex, and whether there has been dumping at all is frequently not known to the parties until the investigation has proceeded through the preliminary stages. As soon as the direction of the Treasury's finding is apparent, a prudent exporter modifies his prices to be sure that there will be no further dumping. Thus, in most cases there never will be a dumping duty collected. This should not be regarded as poor enforcement of the law, but rather as success in accomplishing the purposes of the law.

Suspension of investigations.—The bill appears to eliminate the possibility of suspending investigations for individual companies by requiring agreement from exporters who account for no less than 85% of the total exports of the merchandise in question. This is a serious defect in the bill, because there can be no suspension without the participation of companies with good prospects of receiving a tentative negative finding. For example, if there are four approximately equal foreign suppliers and two are dumping and two are not, the bill appears to prohibit suspension unless *all* companies accept a preliminary affirmative determination and give price assurances. Prudent counsel would probably not advise a company that had a favorable record to participate. The suspension provisions of the bill are extremely important, and properly drafted, give promise to ameliorate many of the other aspects that are unduly burdensome upon trade. Legislation to eliminate this defect should be initiated without delay.

Judicial review provisions.—Finally, the judicial review provisions of the bill provide another example of excessively detailed provisions and excessive reliance on the adjudicative process to resolve international trade disputes. In Section 1001 of the bill there appear to be no fewer than ten opportunities for judicial review, some of which can be taken simultaneously. In a few years, U.S. law has gone from one extreme to another—inadequate review provisions before the 1974 Act and excessive review provisions in the proposed bill. If used, the review provisions will lead to a proliferation of litigation and increase the burdens of countervailing duty and antidumping investigations.

STATEMENT OF THE DISTILLED SPIRITS COMMITTEE FOR INTERNATIONAL TRADE

The Distilled Spirits Committee for International Trade (hereinafter called "DISCIT") wishes to register strong support for Senate Bill 1376, the Trade Agreements Act of 1979. Our specific concern is with the following provisions in S. 1376: Title VIII—Treatment of Distilled Spirits, repeal of the provision in current law that each wine gallon is to be counted as at least one proof gallon for Tariff purposes, [Sections 851, 852 and 853].

DISCIT is composed of nine companies, including The Buckingham Corporation, Kobrand Corporation, The Paddington Corporation, Renfield Importers, Ltd., Schieffelin & Co., Schenley Industries, Inc., Joseph E. Seagram & Sons, Inc. and Hiram Walker & Sons, Inc., which firms account for approximately one-half of total United States production of distilled spirits. Employment in the U.S.A. by DISCIT members exceeds 50% of total workers in the industry. As domestic producers and as importers, a number of our members have opposed the so-called Wine Gallon-Proof Gallon tax applicable to imported bottled spirits for twenty-five or more years. We were pleased to note that identical provisions in H.R. 4537, the House version of the Trade Agreements Act of 1979, were adopted by that Body on July 12, 1979 by a vote of 395-7. Certainly there is broad recognition of the need to implement the recently initialed non-tariff provisions of agreements concluded pursuant to the Tokyo Round. Wine gallon taxes, the inherently unfair, obsolete and inequitable method of assessing imported bottled spirits, are set for elimination in S. 1376.

Committee Staff has set-forth in detail the precise nature of the wine gallon/proof gallon tax. Suffice it for DISCIT to say that the unfair wine gallon method, dating back to 1868, was the result of fraudulent exporting practices being conducted by domestic distillers at that time, not importers. The reason for this tax basis disappeared over 100 years ago but it has been carried forward in spite of recognition by our Government of its discriminatory application. All spirits are at or above proof when they are distilled and are reduced to a strength acceptable to the consumer by addition of deionized water, immediately before bottling. Under the present law, applicable taxes are assessed on domestically produced spirits before the water is added and on foreign bottled distilled spirits after it is added. The result is an overtax on foreign bottled spirits at $10.50 per gallon on about 18 percent of additional water! The initial effect of this discrimination has been to require importers to pay about 30 cents a fifth or $3.60 per case, additional excise tax on the imported product as opposed to the domestic bottled spirits. However, the discrimination does not stop. Because of the three tier distribution system in the U.S. industry (producer to wholesaler to retailer), the consumer has to pay about 45 cents more per fifth of imported distilled bottled spirits than he or she would if there was no water tax.

It is recognized, of course, that multilateral trade negotiations must result in "payment" for any material tariff or tax reductions, regardless of how discriminatory they may have been. We are pleased to know that the Special Representative for Trade Negotiations (STR) has obtained adequate concessions for United States exports and therefore Congress may now view this long-standing discriminatory tax in an objective way. The discrimination has been recognized by our Government for years as an unfair method of tax assessment. In 1962, the Bureau of Alcohol, Tobacco and Firearms (BATF), singled-out the wine gallon method as "absolete and discriminatory." Again in 1977 the Comptroller General of the United States reported that the methods used for the determination and payment of excise tax had generally remained unchanged since 1868 and required excessive form-filling and manpower both for the BATF and for the Industry. Sweeping recommendations for change and improvement were made which could not be fully implemented because of the wine gallon method of assessing imported bottled distilled spirits.

In the context of trade agreement negotiations, recognition of this discrimination has been bipartisan and dates from the time of Congressional review of the Customs Simplification Act of 1951. At that time, the U.S. Department of Treasury reported: "* * * [It] operates inequitably as between domestic and imported distilled spirits, since the domestic are nearly always above proof at the time of tax payment while imported beverage distilled spirits are generally under proof at the time of importation." In October 1954 the Assistant Secretary of State for Economic Affairs, also recognized the discriminatory nature of this tax. In fact, the GATT working party on border tax adjustments, at page 80 of its Report dated April 28, 1970, recognized the wine gallon tax as a "major non-tariff barrier" to trade. Now, after almost 112 years of operation, we can see the end to this impediment to our normalized relations with major trading partners. DISCIT believes that no more important non-tariff measure against historic trading partners is included in S. 1376.

There has been considerable unsubstantiated argument that elimination of the wine gallon tax might have a negative impact on U.S. workers. As members of the

Committee know, DISCIT commissioned Professor Robert Stobaugh, of Harvard University to study this matter and make an objective report on the probable effects on American jobs. This report has been filed with Staff and establishes that impact on U.S. jobs will be minimal. Of direct relevance are the following factors:

(1) There is no excess or surplus bottling capacity available in principal supplying countries. Under current economic conditions, in order to provide capacity to bottle all imported whisky presently imported in bulk and bottled in the United States, approximately $200,000,000 capital expenditures would be required. Such a program, if one could exist, would take five or more years and would add significantly to the total cost burden for off-shore suppliers.

(2) Since substantial freight savings are realized by shipping bulk, rather than packaged goods, we see no indication that world freight charges will be reduced.

(3) Foreign labor rates are no longer as low or lower than U.S. rates. Productivity aside, there is no inducement for companies to increase labor intensive activities related to bulk distilled spirits exports.

(4) Glassware, cartons, labels and closures now cost more in Scotland, than they do in the U.S.A. Additionally, ocean freight for cased whisky is much more expensive than for bulk. In February 1979, for example, the importer of bulk whisky already saved $2.60 per case and it is expected that this cost basis has changed substantially due to additional change in every sector of the industry.

(5) Perhaps most important, is the fact that companies have built important brand identification names for "Bottled in Canada" and "Bottled in Scotland," etc. products. There is no logical incentive to move these types of distilled spirits to off-shore bottling operations.

Undoubtedly, then, change in the wine gallon tax will have no negative impact on capital investment and labor in the United States. On the other hand, concessions granted to the United States by major supplying areas are guaranteed by requirements in S. 1376.

For the foregoing reasons it is urged that the Senate Committee on Finance and the U.S. Senate should approve S. 1376, including those provisions of Title VIII applicable to imported distilled bottled spirits.