THE TRADE REFORM ACT OF 1973

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 10710

AN ACT TO PROMOTE THE DEVELOPMENT OF AN OPEN, NONDISCRIMINATORY, AND FAIR WORLD ECONOMIC SYSTEM, TO STIMULATE THE ECONOMIC GROWTH OF THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 4, 5, 6, 7, 21, 22, 25, 26, 27, 28, 29; APRIL 1, 2, 3, 4, 5, 8, 9, AND 10, 1974

PART 5

Public Witnesses

(April 4, 5, 8, 9, and 10)

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TRADE REFORM ACT OF 1973

THURSDAY, APRIL 4, 1974

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Willian V. Roth, Jr. presiding.

Present: Senators Packwood and Roth, Jr.,

Senator ROTH. The hearings will come to order.

We do have a long list of witnesses who will be confined to a 10-minute summary of their written statements. The 5-minute rule will remain in effect as it has throughout the hearings for the questioning of witnesses.

Our first witness will be Dr. Lev E. Dobriansky, chairman of the National Captive Nations Committee, Inc.

Dr. Dobriansky, we welcome you to these hearings and you may begin with a summary of your statement.

STATEMENT OF DR. LEV E. DOBRIANSKY, CHAIRMAN, NATIONAL CAPTIVE NATIONS COMMITTEE, INC.

Dr. DOBRIANSKY. Thank you. My statement is a short one, but, as you suggest, I will summarize it.

Immediately, at the outset, let me state that our committee—and of course this expresses my own views as well—is in complete opposition to the extension at this time of the most favored nation status and credits, both public and private, to the Soviet Union. We have right along advocated a realistic poltrade policy. We also urge at this time no short-sighted compromises with regard to the necessary concatenation of human rights and political obligations with the trade medium. And I shall endeavor here to justify a realistically extended linkage in this case, especially in the area of the so-called treaty obligations of the U.S.S.R. in connection with the Universal Declaration of Human Rights, the Genocide Convention and so on.

My first point here, a major point, is that the history of trade itself, related to totalitarian powers like Imperial Japan, Nazi Germany, and Fascist Italy, certainly shows that such trade did not contribute to the interest of world peace. The totalitarian power, the Soviet Union, far exceeds any of the three mentioned.

Actually, if we don't exercise proper caution, we will probably find ourselves abetting this whole development of the militarist U.S.S.R. whose bid for global supremacy remains undiminished.

A second point is that in terms of the economic behavior and the development of the Soviet Union—and one can certainly go into many other aspects of that, but I would simply summarize—trade has always been or has always served a utility for the entrenchment of the regime, the suppression of internal pressures, and assisted implementation of its ultimate political goals.

Now in connection with these two points, Mr. Chairman, I request by way of documentation a short chapter of my own work on the "Russian Trade Trap" which I would like very much to have appended as part of my remarks here.[1]

Senator ROTH. We will be happy to do so.

Dr. DOBRIANSKY. Thank you, sir.

My third point—and let me emphasize this, too—is that I think it has been established in the area of scholarship by Anthony Sutton and numerous others that well over 90 percent of the technology, the so-called Soviet technology, has had its primary source in the West and certainly in the United States.

Now for another point, I had occasion to testify before Mr. Mills' committee previously, but I have noticed over the past year that we have had an infusion of what I call maxi-illusions concerning the Soviet Union. I think this should be amply emphasized in view of the fact that if you have the conception, as some in our Government do have, that the Soviet Union is a nation, that the people there constitute one people called supposedly the Soviet people and that therefore, with this nation-state concept there is no ground for interference with what they call the internal affairs of this so-called nation, I would think that is a basic illusion. On the other hand, if you have an alternative and an accurate and realistic conception, that this is not a nation-state, that more properly it is an empire-state of many different nations, all of which pretty much having come under Moscow's conquest at one time or another, then there is every ground for interference. On this particular point, Mr. Chairman, I would like as an elaboration of it also to have as part of my testimony the New York Times' exposure of this in the Shabad article on the latest Solzhenitsyn letter to the Kremlin.[2] The point here, Mr. Chairman, is that the major theses of Solzhenitsyn are actually the same theses that my committee and numerous others that specialize in and analyze the U.S.S.R. have made right along. This is an empire made of many nations and it exposes, if you will, some of the myths that were even presented before this committee by several of our officials not too long ago.

Another point, if I may make it, concerns an important issue brought up many years ago, before Mr. Fulbright's Foreign Relations Committee. Actually it was in February of 1965 that there was talk of the poltrade policy. In essence the concept calls for trade in

[1] See p. 1772.
[2] See p. 1766.

return for political-social concessions. Senator Dirksen himself, a year or two later, advanced it, as did numerous others.

The point in my testimony is this, Mr. Chairman. Namely, that we talk in terms of linkages, both political and economic, but as I see it, it has been misdirected. In other words, the poltrade concept has been applied more on our side of the line, namely, in the free world, in Vietnam and now in the Middle East and Lord knows where next, rather than in the area where it was first advanced for application, namely, the Soviet Union itself.

On this score, if I may as part of my testimony, too, show the origin of poltrade and the employment of the poltrade policy in our society, I would like very much to have this letter from the American Federation for Soviet Jews be inserted as part of my remarks. Its meaning is that they adopted this poltrade concept, and applied it, if you will, in the right area with regard to the implementation of Soviet Jewish emigration.

Senator ROTH. So ordered.[3]

Dr. DOBRIANSKY. The problem has been over this year to show that this is just a relatively minor aspect. I am glad to say that legislators on the other side, such as Congressman Vanik and others, saw the need for the expansion of this area of application of the poltrade concept not only to Jews but to numerous others, which leads me to the final point and a very concrete one. Aside from the other aspects that I bring up in the course of this testimony in connection with the matter of beefing up the Soviet economy and indirectly actually supporting the priorities that they have maintained right along, I would like to conclude my summary of this particular testimony by pointing out what I consider the proportionate poltrade concessions. What I am saying is that the free and unlimited emigration of Soviet Jews is hardly enough for the billions of credits and investments proposed in this development of U.S.S.R.-U.S. trade. In this connection let me state that as a signatory of the Universal Declaration of Human Rights, the Genocide Convention and other treaties, Moscow should be caused to observe its obligations under these treaties through the poltrade process. At this point and under these treaties, Moscow itself is discriminatory and thus justifies discriminatory treatment in the form of a denied MFN status and checked credits. The poltrade concessions we should seek for its qualifying for the status and credits are initially the following:

(a) Open and free emigration not only for Soviet Jews but all the different nationals in the U.S.S.R., as Khrushchev himself suggested in "Khrushchev Remembers."

(b) The reunion of families and the elimination of extortionate Soviet duty taxes on relief packages sent by Americans to the U.S.S.R.

(c) In the spirit of religious freedom, the resurrection of the major Ukranian Orthodox and Catholic churches, which were genocided by Stalin.

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[3] See p. 1770.

On this particular point, a measure directed at Ukraine, which is the largest non-Russian republic or nation not only in the Soviet Union, but in Eastern Europe, I think it would be a very critical and constructive gesture on our part.

(d) As advanced by many prominent American scholars, the beginning of direct diplomatic relations with the national republics since possible investments would be in their areas, two of the republics—Ukraine and Byelorussia—are in the U.N., and the U.S.S.R. constitution provides for this.

(e) Surcease of psychiatric and labor camp incarceration of dissidents.

I think this is, at least in the initial stage, a worthwhile proportionate package deal for what has been contemplated in the way of offering credits and investments to the U.S.S.R. It is no bargain simply to restrict it to the relatively minor—and though I say relatively minor yet it is essentially important—matter of free emigration of Soviet Jews. Proportionately, that is no bargain.

So, in conclusion, let me just state this without elaborating on the so-called detente policy that has been expressed here. It is not because of detente that Jews have been permitted to emigrate; rather, Jewish agitation in the free world and Moscow's technological hunger account for it. It is also not because of detente that Solzhenitsyn is in Switzerland, but, again, because of this hunger and the Russian's towering stature.

Thank you, sir.

Senator ROTH. Well, thank you.

I have one question. As I understand your testimony, you are in favor of linkage but when you speak of linkage, you are talking primarily about human rights, rather than security. Other witnesses have suggested that we should not make trade concessions unless we are able to get security concessions. Do you have any comment on that?

Dr. DOBRIANSKY. Well, I don't know what the nature of those security concessions would be.

Senator ROTH. Well for example that we condition MFN on some kind of agreement in the SALT talks.

Dr. DOBRIANSKY. Well, yes, I would go along with that in a way. That would be a further expression of this poltrade policy. Yet I think one still has to bear in mind the origin of this poltrade policy, which was advocated before the Administration came in power, and the need for concentrating this on the Soviet Union itself.

In addition, I think if we can get any exchanges, they would be of temporary worth, let us say, in the area of SALT Two.

Senator ROTH. Senator Packwood?

Senator PACKWOOD. I have no questions, Mr. Chairman.

Senator ROTH. I would just make one comment. I do appreciate your being here and I might say that I know that we had heard a number of times from you in the past and I have been happy to include remarks on Ukrainians and others.

Dr. DOBRIANSKY. That is correct.

Senator ROTH. Thank you.

Dr. DOBRIANSKY. Thank you, sir.

[The prepared statement of Dr. Dobriansky and material referred to previously follow. Hearing continues on p. 1786.]

PREPARED STATEMENT OF DR. LEV E. DOBRIANSKY, PROFESSOR OF ECONOMICS, GEORGETOWN UNIVERSITY, PRESIDENT, UKRAINIAN CONGRESS COMMITTEE OF AMERICA, CHAIRMAN, NATIONAL CAPTIVE NATIONS COMMITTEE

SUMMARY

1. Denial of MFN status and credits to the USSR at this time.

2. Trade does not foster peace, but the very reverse. Trade with similar totalitarian powers, such as Imperial Japan, Nazi Germany, and Fascist Italy furthered their designs and led to World War II.

3. Indiscriminate trade with the USSR would beef up its total, totalitarian power, bolstering its economy technologically, helping to overcome its deep, economic difficulties, and facilitating its expansive military growth.

4. Need for a conceptual breakthrough on the official front as to the nature of the USSR and the scotching of perpetual myths about Soviet nation, Soviet people, non-interference in an Empire-state, and economic interdependence.

5. Need for a redirection of the poltrade concept from deals with Moscow to arrive at compromised situations on the World side of the globe for those involving nations, peoples, situations, and factors in the USSR.

6. Establishment of proportionate poltrade concessions, involving free emigration for all the different nationals in the USSR, reunion of families, elimination of extortionate Soviet duty taxes, the resurrection of Ukrainian Orthodox and Catholic Churches, direct diplomatic relations with the national republics, and surcease of psychiatric and prison incarceration of dissidents.

STATEMENT

Mr. Chairman and Members, I gratefully appreciate this opportunity to advance fundamental views and facts basing our complete opposition to the extension at this time of the most-favored-nation status and credits, both public and private, to the Soviet Union. As longtime advocates of a realistic poltrade policy toward the Soviet Union and other totalitarian communist states, we urge also that no short-sighted compromises be made with regard to the necessary concatenation of human rights and political obligations with the trade medium. In fact, considering the incalculable values of this medium, I shall endeavor here to justify a realistically extended linkage so that we wouldn't be fleeced as, in miniature, we were on the celebrated wheat deal.

Within the allotted time and having dealt with this issue several times in Congress,[1] I should like to essentialize and itemize specifically the salient points supporting our position and also, in particular, to address this testimony to some of the myths that have already been officially expressed before this committee. As my testimony before the Mills Committee last year stressed, while we're considering more liberalized trade with the Soviet Union almost two decades after the first push in the post-World War II period, substantially nothing really has changed in the broad politico-economic context except our increasing comparative disadvantage in this context and, apart from the superficialities of PR diplomacy, no concrete evidence provided by Government or private sources has been offered to disprove this emperical generalization. Here, let me emphasize, too, that trade with the USSR or any communist-dominated state cannot be evaluated in a vacuum of political and social considerations. The typical American business man may have his P&L blinders on, but this crucial issue has full life-and-death meaning in the total politico-economic context of global strife today.

(1) Trade and peace

First, as concerns tiresome tradeœpeace utterances regarding totalitarian powers, the lessons of history alone explode such rhetoric. The climate of peace fosters trade, not the other way around. Just as in the cases of persons, if a

[1] See *Trade Agreements Extension,* Hearings, H.R. 1, Part 2, 1955, pp. 2333–2356; *Trade Reform,* Hearings, Committee on Ways and Means, Part 11, pp. 3550–3591; "The Question of Expanded U.S. Trade Relations With the Soviet Union," *Congressional Digest,* Nov. 1973, pp. 285–287.

nation cannot profit from the lessons of its past experiences, it foolishly exposes itself to disaster, particularly one that is an open society, highly resourceful, and still respected worldwide for its standards of freedom and human rights. One incontestable lesson is that our trade with totalitarian powers, such as Imperial Japan, Nazi Germany, and Fascist Italy, did not serve the interests of world peace but rather contributed by the real aid given to the furtherance of their aggressive designs which led to World War II. If acute caution is not exercised today, this lesson can well apply to the militaristic USSR whose bid for global supremacy remains undiminished. Mr. Chairman, for documentation on this point, I respectfully request that the short chapter on "The Russian Trade Trap" in my recent book be printed as part of my testimony.[2]

(2) *Beefing up totalitarian Communist power*

A second historical lesson applies notably today to the USSR, i.e., the prime politico-economic utility of trade for the entrenchment of the regime, the suppression of internal pressures, and assisted implementation of its ultimate political goals. This applies to Brezhnev's policy as it did to Khrushchev's and Stalin's, with trade as a sieve to technologically bolster the USSR economy, overcome its planned deficiencies, and indirectly facilitate its top priorities of expansive military strength, a deepened dependence of the other COMECON economies, and the progressive flexing of political muscle in targeted areas of the Free World.[3] Over 90% of Soviet technology is ascribable to Western sources; as Stalin, Khrushchev and others have attested, we helped to lay the foundations of this totalitarian, imperialist economy; now Moscow seeks American technology in particular to beef up its composite totalitarian power while it pursues a course of tyrannical consolidation within its empire and one of global influence without.

(3) *Illusions of Soviet nation, noninterference and interdependence*

Of late, certain illusions have crept into this discussion of U.S.-USSR trade, such that cause one to seriously question the proponents' framework of understanding the USSR. Trade or any other matter cannot be accurately assessed within a defective, conceptual framework. Some of these illusions on the part of our leaders contributed heavily to the very formation of the USSR, to its economic growth, and to its dominance in Eastern Europe and Asia following World War, and the price we have been paying for all this is incalculable. The illusions of a Soviet "nation", a Soviet "people", and a Soviet "domestic structure" play havoc with existential facts and cannot but produce misleading policy proposals.[4] Given the different nations in the USSR, the various national republics, and the essentially international environment in the USSR, the prevalence of such illusions at this late stage really demands an official conceptual breakthrough regarding the very imperial nature of the USSR. The structure is far from being "domestic", and the concession made in the Moscow Declaration of '72, equating the USSR and U.S.A., was both contrary to objective reality and needless in fact. To underscore these points, Mr. Chairman, I request that the recent New York Times exposure of the latest Solzhenitsyn letter to the Kremlin be printed as part of my testimony.[5]

Logically, a nation-state concept and existence support non-interference in its truly domestic affairs; an empire-state concept, which is accurately conformable to the USSR, does not. With a long tradition in imperialist practice, Moscow has always insisted on non-interference in its imperial domain, and as a conceptual obverse to the Brezhnev Doctrine, it is applied also to the satellites in Central Europe. If Moscow's domain were extended to the Atlantic, the same cry of non-interference would be encountered. Moreover, the current illusion about a growing economic interdependence with the USSR indicate a miscomprehension of both the nature of the USSR economy and this empire texture of the state as a whole. The dominant economic trends in the USSR, with unremitting emphasis on heavy goods production and the military, the

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[2] "The Russian Trade Trap," *ch. 9, U.S.A. and The Soviet Myth*. The Devin-Adair Co., 1971, pp. 206–239.

[3] Keith Bush. "Soviet Economic Growth: Past, Present and Projected," *Radio Liberty Dispatch*, February 11, 1974.

[4] E.g., "Text of President Nixon's Press Conference," *The Washington Post*, Feb. 26, 1974, p. A12; Kissenger, "Detente," *Washington Star-News*, p. A-6; "U.S., Soviets Call Detente 'Irreversible'." *The Washington Post*, March 26, 1974, p. 1.

[5] Theodore Shabad, "Solzhenitsyn Asks Kremlin To Abandon Communism . . .", *The New York Times*, March 3, 1974, pp. 1, 26.

repressive consolidating process engineered by Moscow among the numerous non-Russian nations in this imperial complex, and the unrelenting push for some forms of "integration" of the satellite economies with that of the USSR point to a relative self-sufficiency that leaves little room for any meaningful interdependence with the West. To obtain grains when needed, to acquire the best of technology free of R&D costs, and for some period have all this paid with loans guaranteed by taxpayers of adversary states is a neat formula for the operation of the trade sieve, especially when strategicity, as reflected in the Kama River truck works, becomes increasingly blurred.

(4) *A needed redirection of the poltrade concept*

Perfectly consistent with this necessary overall view is the poltrade concept which I advocated several years ago in hearings before the Senate Foreign Relations Committee[6] and which Senator Dirksen later advanced.[7] Briefly, the concept calls for trade in return for politico-social concessions. It must be emphasized that this linkage concept always pointed to peoples, situations and factors in the communist-dominated states. As this copy of a letter released by the American Federation for Soviet Jews shows—and which I request to have appended as part of this testimony—the concept was first applied to the Soviet Jews and their emigration.[8] On this point of emigration, my testimony last year in the House stressed the need to expand this to all the different nationals in this imperium in imperio.

But there is now the greater need to redirect the poltrade concept from the course it apparently has taken in the conduct of our foreign policy. Instead of the concept being applied to the peoples, situations and factors in the USSR, it appears to be increasingly employed to cover our weaknesses outside the Communist orbit; in short, our economic promises and pay-offs to Moscow and Peking for their twisting the arms of clients and proxies in Vietnam, Syria and elsewhere for temporary compromises and partial surcease of ideological assaults. This was never the intended objective of the concept, and the best way to correct its present misuse is to redirect it to its original objective. The empire-state of USSR—its many nations and peoples—is the chief object of poltrade.

When one reduces all this to basic perspectives and analysis, the question of how much Moscow, our chief enemy, will gain in technological and economic returns to strengthen both its empire reins and bid for global supremacy becomes a very fundamental one. The present course of exchanging economic benefits for momentary relief, comprimises and abeyances in Free World areas is a definitely self-defeating one. The additional question is how tall a price will we be caused to pay as Moscow bolsters its sagging economy at little cost to its continued military build-up, now the largest in the world, and all sorts of intrigues, entanglements, and systemic warfare in the Free World? This real politico-economic price can be measured by having its economy shored up, indirectly facilitating its current consolidation process within, inadvertently discouraging opposition forces of freedom within its empire, and providing for much greater access for its operatives and agents in our environment than we could possibly have in its totalitarianized arena.

(5) *Proportionate poltrade concessions*

The external policy of any nation-state or of an Empire-state is reflective of its internal policies, institutions, and traditions. Changes in the latter will show in the former. The institutional nexus between the USSR's external and internal policies is almost iron-clad. For the real economic aid Moscow hungers, especially our advanced technology, we as a nation, and in terms of our traditions of freedom and humanism, should strive to exact proportionate poltrade concessions in the internal policies of what is essentially a state of many different nations. In the current phase, the free and unlimited emigration of Soviet Jews is hardly enough for the billions of credits and investments planned.

As a signatory of the Universal Declaration of Human Rights, the Genocide Convention and other treaties, Moscow should be caused to observe its obligations under these treaties through the poltrade process. At this point and under these treaties, Moscow itself is discriminatory and thus justifies discriminatory

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[6] *East-West Trade*, Hearings. Part II, 1965. pp. 94–104.

[7] Senator Everett M. Dirksen. "Needed: A Realistic East-West Trade Policy," *The Readers' Digest*, June, 1969, pp. 129–133.

[8] Letter to Mr. J. K. Jamieson, Standard Oil Company of New Jersey, June 14, 1972, p. 2.

treatment in the form of a denied MFN status and checked credits. The poltrade concessions we should seek for its qualifying for the status and credits are:

(a) open and free emigration not only for Soviet Jews but all the different nationals in the USSR, as Khrushchev himself suggested [9];

(b) the reunion of families and the elimination of extortionate Soviet duty taxes on relief packages sent by Americans to the USSR;

(c) in the spirit of religious freedom, the resurrection of the major Ukranian Orthodox and Catholic Churches, which were genocided by Stalin;

(d) as advanced by many prominent American scholars, the beginning of direct diplomatic relations with the national republics since possible investments would be in their areas, two of the republics (Ukraine and Byelorussia) are in the U.N., and the USSR Constitution provides for this; and

(e) surcease of psychiatric and labor camp incarceration of dissidents.

In conclusion, among many other things, detente may be "a process of managing relations with a potentially hostile country in order to preserve peace", but the process has also to be founded on an appreciative understanding of that Empire-state, its tyrannical institutions, and moves toward global supremacy. Fall-back arguments on nuclear war, in themselves reflective of rational desperation, cannot obscure the instrumentalism of trade in the broader politico-economic framework that involves fundamental issues of national security, human rights, and the freedom of nations. It is also not because of detente that Solzhenitsyn is in Switzerland, but again because of this hunger and the Russian's towering stature.

[From the New York Times, March 3, 1974]

SOLZHENITSYN ASKS KREMLIN TO ABANDON COMMUNISM AND SPLIT UP SOVIET UNION

(By Theodore Shabad)

Aleksandr I. Solzhenitsyn, the Russian dissident writer, addressed a long letter to the Soviet leaders last fall, asking them to abandon Communism as an alien, unworkable political philosophy, dismantle the Soviet Union and focus on developing Russia proper as a separate state.

The author's 15,000-word proposal of national priorities also urges a halt in the headlong rush into an urbanized, industrial society and a return to the traditional Russian rural way of life, including more settlement of the vast empty reaches of northern Russia and Siberia.

LETTER DATED SEPT. 5

Mr. Solzhenitsyn regards such a radical change in course over the next 10 to 30 years as the only way of instilling a new idealism in cynical youths and of averting what he views as two impending disasters: war with China and the collapse of Russian civilization, together with that of the West, in a polluted environment.

The sweeping proposals, reflecting the writer's devotion to Russian nationalistic values and his distaste for the big noisy cities and other attributes of the modern age, are dated last Sept. 5.

After several months had passed without a reply "or even the hint of one" from the authorities, the author states in a foreward, he decided to make his statement public. A copy of his letter to the Soviet leadership has been obtained by The New York Times.

CHANGES WERE MADE

But Mr. Solzhenitsyn, after his expulsion from the Soviet Union on Feb. 13, decided to make a number of changes in the original letter for publication in the West. The nature of the revisions could not be immediately ascertained. The modified text is being published in English today by The Sunday Times of London. It is also being printed in Russian by YMCA-Press, a Paris publishing house.

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[9] *Khrushchev Remembers*, 1970, pp. 522–525.

There was no explanation of why the author, who is now in Zurich, Switzerland, found it necessary to change the wording of a message that was already in the hands of the Soviet Government. This article is based on the original version, as translated by The New York Times.

Mr. Solzhenitsyn's ambitious proposals for remaking Russia as a nation after more than half a century of Communist rule recalled another statement of similar sweep, issued in 1968 by Andrei D. Sakharov, the physicist and dissident leader, in the book "Progress, Coexistence and Intellectual Freedom."

But while Mr. Sakharov saw the salvation of the world from nuclear war, pollution, overpopulation and starvation in a "convergence" between the Soviet Union and the West, particularly the United States, Mr. Solzhenitsyn would have Russia turn away from the West and look inward for a solution of her problems.

The novelist says that "some of the practical proposals in this letter may cause surprise" and that "they are being put forward with little hope—but not with none."

He sees reason for hope, for example, in the "Khruschev miracle" of 1955–56 when after the death of Stalin, millions of innocent prisoners—Mr. Solzhenitsyn has put the figure as high as 12 million—were released from the vast network of labor camps described in "The Gulag Archipelago, 1918–1956," the author's latest book.

CITES DE-STALINIZATION

Alluding to Nikita S. Khruschev's de-Stalinization program as giving rise to "the ragged beginnings of a humane code of law," Mr. Solzhenitsyn writes:

"This culmination of Khrushchev's activity goes far beyond the political steps he was obliged to take. In its essence, it was hostile to Communist ideology and incompatible with it (which is why it was so hurriedly rejected and systematically abandoned). His reforms were undoubtedly governed by genuine emotion, by penitence and open-heartedness.

"If mercy can once gleam where it seemed ruled out forever, it may yet be repeated. To rule out such a possibility would mean totally shutting the door on any hope for a peaceful evolution of our country."

Mr. Solzhenitsyn addresses the leaders of the Soviet Union as Russians, "which almost all of you are by birth," affirming his sense of Russian nationalism in the face of the many other ethnic groups that inhabit the Soviet Union.

THE UNPARALLELED SUFFERINGS

"I wish all peoples well," he declares, "and the nearer they are and the more they depend on us, the more so. But what I am chiefly concerned with is the fate of precisely the Russian people, not only because, as the proverb has it, home is where the heart is, but even more deeply because of the unparalleled sufferings Russians have undergone."

The 55-year-old writer declares that he felt entitled to advance his ideas "to the extent that my name has assumed a certain weight in our country and abroad." He says that the letter might never have been written if one or more of the Soviet leaders "out of pure curiosity" had taken a few hours for a private chat to find out what made the author so opposed to the Communist regime and its policies.

Describing Marxism as a "dark un-Russian whirlwind that descended on us from the West," Mr. Solzhenitsyn says that the Marxist economic and political syste mhas become a millstone around the Soviet leaders' necks.

"It has given you collectivization," he declares, in an allusion to the Soviet Union's farm problems, "the nationalization of small workshops and services (which has made life intolerable for the ordinary citizen, though it has had no impact on you); the necessity, for the sake of the grand international design, of pushing military development so far as to undermine the country's domestic existence, with the result that no time has been found in 55 years to develop Siberia; it has held up industrial development and technological renewal."

STALIN'S APPEAL IN WAR

Mr. Solzhenitsyn says his suggestion that the leaders of the Soviet Union abandon their ideology had a precedent in World War II, when Stalin appealed to the national patriotism and even religious feelings of Russians in the struggle against Hitler.

"Although the war appeared to be against an ideology diametrically opposed to Soviet ideology," Mr. Solzhenitsyn writes, "Stalin lost faith at the outset in its putrescent and corrupt assistance. Wisely he cast it aside, forgot it almost, and unfurled instead the ancient standard of Russia, even at times the Orthodox oriflamme. And he won!"

A major theme in the writer's "Russia First" program is the need for the settlement and development of what he calls the "Northeast," the vast forested and sparsely inhabited reaches of northern Russia and Siberia.

This region, situated to the northeast of the Russian heartland, has a territory of four million square miles and a population of only four million people in scattered coastal towns and inland mining settlements and along major river valleys.

HAVE DONE VERY LITTLE

Although the author concedes that there has been some development there under Soviet rule—the population of the "Northeast" was half a million at the time of the 1917 Revolution—he contends that "by the standards of the age, we have done very little."

He voices dismay that the Soviet leadership is now eager to enlist Western capital in the development of Siberian resources.

"What an irony!" Mr. Solzhenitsyn writes. "For half a century, since 1920, we have proudly (and properly) refused to let foreigners exploit our natural wealth, and this could have been put down to our own great national ambitions.

"But we delayed more and more, lost more and more time, and now that the depletion of world energy reserves has become evident, we, the great industrial superpower, are behaving like the most backward country by inviting foreigners to dig our earth and offering them in exchange our priceless treasure—Siberian natural gas."

FOCUS OF DEVELOPMENT

Describing Siberia as the focus of future Russian development, despite the region's harsh climate and hostile environment. Mr. Solzhenitsyn says:

"We have only one solution, and the sooner the more effective it will be—to shift the center of the Government's attention and the center of national effort (and with it, the center of settlement and the focus of search for the young) from distant continents and even from Europe, and even from the south of our country into its Northeast."

In a footnote added for the published version of his program, Mr. Solzhenitsyn makes it clear that his proposal would mean abandonment of Soviet influence over other countries and even the ultimate dissolution of the Soviet Union as an amalgam of national regions.

"Of course," he writes, "such a shift must mean sooner or later lifting our trusteeship from Eastern Europe, the Baltic republics, Transcaucasia, Central Asia and possibly even from parts of the present Ukraine. Nor can there be any question of our forcibly keeping any peripheral nation within the borders of our country."

FUTURE RUSSIAN STATE

Although Mr. Solzhenitsyn does not amplify on his plan for the dissolution of the Soviet Union, he apparently envisages a future Russian national state as consisting of the present Russian Republic and some adjacent territory with a predominantly Russian population.

In addition to abandoning Soviet sway over the countries of Eastern Europe, the Kremlin would also be expected by the author to drop its control over the Soviet Union's 14 non-Russian republics.

They are Estonia, Latvia and Lithuania in the Baltic; Armenia, Azerbaijan and Georgia in Transcaucasia; Kazakhstan, Kirghizia, Tadzhikistan, Turkmenia and Uzbekistan in Central Asia; the Ukraine, and two smaller republics not mentioned by Mr. Solzhenitsyn—Byelorussia and Moldavia.

The Soviet leadership over the years has had to contend with persistent nationalist sentiments among the major non-Russian republics within the Soviet Union, and some ethnic emigre groups in the West have been calling for ultimate independence of the areas from Russia.

HALF OF SOVIET POPULATION

The Russian Republic, which stretches from Smolensk in the west to the Pacific in the east, accounts for about three-fourths of the Soviet Union's area and a little more than half its population.

The abandonment of a Communist ideology, retrenchment of Russians within their boundaries and development of the empty spaces of the "Northeast" are also presented by Mr. Solzhenitsyn as steps that may help avert a war with a numerically superior China.

Describing such a conflict as primarily based on ideology, Mr. Solzhenitsyn contends that it may be fought over whether "the gospel truth is on Page 533 of Lenin's works or on Page 335 as our opponent contends."

By renouncing Marxist ideology and leaving it to the Chinese, in the author's view, the Soviet leadership will eliminate one possible cause of such a war.

TO AVERT CHINESE PRESSURE

Russian settlement of Siberia would avert the "dynamic pressure of a billion Chinese against our thus far undeveloped Siberian lands, not just the strip that is being disputed under the old treaties, but all of Siberia," Mr. Solzhenitsyn writes.

He is alluding to border talks that began after armed clashes between Soviet and Chinese troops in the late nineteen-sixties. Peking has charged that the Czars acquired Chinese territory under unequal treaties in the 19th century and has called for Soviet renunciation of the treaties and minor territorial adjustments.

The author predicts that a war with China would be conventional, not nuclear, would be "the longest and bloodiest in the history of mankind" and would cost the Russians at least 60 million lives.

Such a war, in Mr. Solzhenitsyn's view, would follow in general the scenario of Andrei A. Amalrik's "Will the Soviet Union Survive Until 1984?" which predicted Russia's defeat in a conflict with China.

QUESTIONS INDUSTRIAL PROGRESS

Mr. Solzhenitsyn adds that Mr. Amalrik, who was exiled to Siberia after publication of his book abroad, should instead have been made an expert adviser to the Kremlin.

In questioning the Soviet and Western premise of continual industrial progress, Mr. Solzhenitsyn refers the Kremlin leaders to Western studies that warn of global disaster unless economic growth is curbed. He quotes particularly from "The Limits of Growth," a 1972 report by a group at the Massachusetts Institute of Technology, which urged deliberate constraints on growth.

Mr. Solzhenitsyn emerges from his letter as a man who considers modern cities to be "cancerous tumors," who would outlaw the internal-combustion engine in favor of electricity and go back to the horse and buggy, if necessary.

Reverting to his cherished "Northeast" project in this context, he tells the Soviet leaders:

"The construction of more than half a country afresh in a new place would enable us to avoid a repetition of the terrible mistakes of the 20th century, mistakes involving industry, highways, cities.

PURE AIR AND WATER

"If we wish to transcend the limited economic goals of today and present our children with a land of pure air and water, we must start now by curtailing the poisonous internal-combustion engine in favor of the electric motor, even the horse in some places.

"The urban life of our day, to which more than half our population is now condemned, is completely unnatural, as all of you agree, since every evening you flee the city to your country places.

"And all of you are old enough to remember the old cities, before the advent of the automobile—cities intended for people, horses and dogs, and street cars, too: human cities, welcoming and comfortable, the air ever pure. Cities that were snow-covered in winter, while in spring the sweet scent of gardens wafted

over the fences into the streets. Almost every house had its garden, and only a few exceeded two stories,the perfect height for a human dwelling."

If Marxism goes, what political system does Mr. Solzhenits.n envisage for Russia– Certainly not Western democracy, which he says is "experiencing a great decline, perhaps its last decline."

DEMOCRACY CRITICIZED

Contending that democracy is devoid of ethical foundation, Mr. Solzhenitsyn describes it as little more than a framework in which "parties and social classes engage in a conflict of interests, just interests, nothing higher."

For his Russian national state, the novelist looks to a vaguely defined authoritarian but benevolent system based on the love of man.

"Russia is authoritarian," he declares. "Let it remain so, and let us no longer try to change that. But the authoritarian system must be based on genuine concern and love on the part of the rulers, not only for themselves and those around them, but also for all their people and all neighboring peoples, too."

Lest the Soviet leaders felt that he was seeking to oust them from power, Mr. Solzhenitsyn says that they may stay on as officials of a post-Marxist government if they renounce the all-pervasive Communist party system that now rules and parallels the governmental administration in the Soviet Union at all levels.

Elsewhere, however, the novelist suggests that he would even allow the continued existence of a strong political party provided it tolerated greater intellectual freedom.

"What have you to fear?" he writes. "Is it really such a frightening prospect? Are you really so unsure of yourselves? All your invincible power would remain intact, a single, strong closed party, an army, police, industry, transportation, communications, mineral resources, a monopoly over foreign trade, the artificial parity of the ruble—but let the people breathe, think, develop!

"Allow freedom in the arts, in literature, the freedom to publish, not political books—God Forbid!—not appeals or election leaflets, but philosophical, ethical, economic and sociological works.

"All this will yield a rich harvest, it will bear fruit—for Russia, and for you, too, and you will be serving the interests of Russia.

"Such a free growth of thought will soon save you the trouble of belatedly translating every new idea from Western languages, as has happened throughout this half-century, as you well know."

AMERICAN FEDERATION FOR SOVIET JEWS, INC.,
New York, N.Y., June 14, 1972.

Mr. J. K. JAMIESON,
Standard Oil Co. of New Jersey,
Rockefeller Plaza,
New York, N.Y.

DEAR MR. JAMIESON: We are an organization of academics, professionals and business executives dedicated to aiding the Jews of the U.S.S.R. in the fulfillment of their desire for repatriation to Israel. Your corporation is one of the 61 firms in the U.S. capable of making a material contribution to the realization of this humanitarian goal. Thus, the occasion for this letter.

High on the list of priorities discussed by President Nixon during his recent visit to Moscow was the question of expanded trade between the U.S. and the Soviet Union. Let me say at the outset that we are not opposed to such a development. On the contrary, we believe it can contribute materially to a lessening of global tensions and the improvement of the economic and social lot of both the American and Soviet peoples.

Trade negotiations, however, particularly between super-powers, cannot be pursued in a moral vacuum. I believe it was Dr. Lev E. Dobriansky of Georgetown University who delivered the most succinct statement of the

problem in testimony before a Congressional committee examining bi-latearl trade in February 1965. He labeled U.S.-Soviet trade an "economic weapon for freedom" and noted further: "we should have no hesitation or fear to utilize trade as a weapon for freedom. This policy of proportioning trade bids to political concession bids represents a middle way between complete embargo and slipshod liberalization. Any relaxation of present licensing and credit restrictions on trade with Communist countries should require reciprocal political concessions by the Soviet Union."

Mr. Jamieson, six million American Jews seek no political concessions from the U.S.S.R.—only a humanitarian one: that it permit the free and unfettered repatriation to Israel of those among the Soviet Union's 3.5 million Jews who wish to leave. This is a basic human right in accordance with the Soviet Union's own oft-stated views, the Universal Declaration of Human Rights, (to which the U.S.S.R. is a signatory), and the decent thinking of all civilized men.

In the past 18 months, the Soviet government has shown hesitant signs of relaxing its rigid anti-repatriation stance in respect to Soviet Jews. Under pressure of increasingly unfavorable world publicity and the iron determination of young Russian Jews to risk arrest and even death for the "right to live as Jews in a Jewish State", the U.S.S.R. permitted 13,500 Jews to repatriate to Israel in 1971. It may permit an equal number to leave in 1972. But this is too little and too slow. Encouraged by Premier Kosygin's own assurances that "there are no restrictions on emigration", that "the doors are open for all who wish to reunite with their families", more than 80,000 Jewish families have applied to the Soviet Ministry of the Interior for exit visas. Tens of thousands more are ready to follow. They have no ideological quarrel with the U.S.S.R. They simply want to go home, to Israel, and in their time. Six million American Jews are determined to help them—no matter what measures this may require.

One of these measures, indeed the key lever in prying open the gates to Israel for 80,000 Soviet Jewish families is trade, and this is where you and your company can play an unprecedented role. You, along with 60 of your corporate colleagues, are in the unique position of dealing directly with the U.S.S.R. on a quid pro quo basis. You have something the Soviets desperately need: U.S. goods, U.S. services and U.S. technological know-how. We ask quite simply that as part of the "quo" to this "quid" you put the question of Jewish repatriation on the bargaining table with the Soviets. You have as your most telling argument the fact that U.S.-Soviet trade can only function in an atmosphere of acquiescence on the part off the American people and that six million American Jews will not permit such an atmosphere to prevail so long as their brethren are forcibly detained in the U.S.S.R.

We believe such an argument will have a demonstrable effect on the Soviet leadership. The question of Soviet Jewry can only be of peripheral importance to a superpower with a population of 250,000,000. We believe the U.S.S.R. values trade with the U.S. far above a handful of Jews.

As for your company, its reputation among our people can only be enhanced by this humanitarian gesture. Many of our members and friends are stockholders who have a vested interest in seeing to it that this reputation grows in public esteem, free of any controversy that would demean the value of their investment, particularly one that might involve six million American Jews.

The moral imperative here is incontrovertible. The State of Israel is a homeland for every Jew who desires to live there. It is the court of last resort for those who are denied the right to live as Jews in the land of their birth. The re-awakening of Soviet Jewry to a cultural identity denied them for 25 years and their intense yearning to fulfill their destiny within the confines of a Jewish State cannot be considered a crime. There is no reason why the Soviet Government should not let them go.

We are confident that this humanitarian appeal will find a receptive ear among the officers and directors of your company. We look forward to hearing from you at your earliest convenience.

Sincerely,

MORRIS BRAFMAN,
President.

[From the book, "U.S.A. and the Soviet Myth," by Lev E. Dobriansky]

THE RUSSIAN TRADE TRAP

"The grizzly bear is huge and wild; He has devoured the infant child. The infant child is not aware it has been eaten by the bear."

(By A. E. Housman)

In a way, we, the U.S., are like the infant child. On the scale of psycho-political warfare, "peaceful co-engagement," "competitive coexistence" or whatever you wish to call it, in comparison with the Russian totalitarians we are grossly inferior in the critical areas of diplomatic maneuver, propaganda, ideological vision, totalistic thinking, long-run planning, espionage, political initiative, and sheer national will. Weare like the infant child, being devoured piece by piece in world leadership and not being aware of it. When you view it in quiet perspective, our record for the past fifty years is scarcely a laudable one: military victory in two World Wars and yet a lost peace after each; a clear-cut opportunity in both wars to end the menace of traditional Russian imperialism and in each a lost one; complete military supremacy after World War II, only to be politically squandered in relatively few years; a disease-like erosion of national will begun in Korea and perpetuated in Cuba and Vietnam; and a persistently unrealistic policy toward the USSR, based on fear, ignorance, and degrees of romanticism. As mentioned before, our strength has always resided in military power backed up by our economy, but this is only one formidable factor in the type of struggle we're engaged in, and at that a hamstrung one in environments such as Vietnam, Korea, Cuba, the Middle East and elsewhere.

The late Senator Everett M. Dirksen, the eloquent and venerable statesman from Illinois, has highlighted in a nationwide magazine the above discrepancy between Red political warfare in the area of trade and our typical commercial attitude seeking gain and "normalization" with regimes whose trademark is continual abnormalizing for the enemy, which means U.S.[1] "It's time," he wrote, "we demanded political concessions from the communist-bloc nations in return for our economic favors to them." Ascribing this position to me, the Senator was in effect adopting a suggested poltrade policy, which in essence is a politicalization of an economic instrument. The Russians and their Red offspring make great use of it; why shouldn't we, at long last. In other words, in this area it is time for us to grow up if we're not to be devoured eventually.

The subject of East-West trade is an involved and in parts a technically intricate one. It embraces a whole gamut of topical aspects, ranging from resource allocation in the USSR to West European and Japanese exploitation of the East European market.[2] The major and most important ones will be mentioned here and evaluated in terms of our working interpretation of the USSR and the Red Empire. In the compass of this chapter the reader should be able to discern the real essentials underlying this issue. Even the Russian rape of Czecho-Slovakia hasn't deterred many in this country from pressuring for more trade with the Red regimes of Eastern Europe.

Although cold war evidence of Russian and Red syndicate aggression against the Free World accumulates daily, the pressure for the swift buck in East-West trade remains unremitting.[3] Moscow's material support of totalitarian Hanoi, its triggering of the Israeli-Arab war, and indirectly, through Cuba and the Communist Party in the U.S., its political warfare exploitation of the American civil rights movement, leading to organized insurrection in our cities, make little impression on those who would beef up the Red economies to commit even greater and more disastrous cold war aggressions. To repeat, the Cold War is not at an end: on the contrary, it is more intense and complex than ever before, and trade is a vital part of it. If they knew what is being shipped to the Red Empire as "non-strategic materials" under our Govern-

[1] "Needed: A Realistic East-West Trade Policy," *The Reader's Digest*, June, 1969, pp. 129–133.

[2] For a useful inventory of all the arguments on the subject, see Samuel F. Clabaugh and Edwin J. Feulner, Jr., *Trading With the Communists*, Washington, D.C., 1968.

[3] E.g. "Policy Paper on East-West Trade," *New York Regional Export Expansion Council*, New York, 1969.

ment's irrational policy, the American people would be both horrified and rebellious.

Developments since World War II in the area of Free World trade relations with the expanded totalitarian Red Empire can be intelligibly reduced to a few essential and determining points. These are: (1) a repetition of errors committed in the prewar trade with the totalitarian Axis powers; (2) an almost total indifference to our past economic contributions to he imperium in imperio, namely the Soviet Union; (3) a grave limitation in general understanding of Red economic strategy in the Cold War; (4) a consequent lack of appreciation concerning the discernible outlines and inroads of Red trade aggression; and (5) the absence of a rationally appropriate and effective Free World trade policy to cope with the implicit dangers and threats of Red economic strategy and aggression. A thorough examination of all outstanding literature on the subject discloses the presence of one of any combination of these basic, ultimate points.

A NEW GENERATION OF ERRORS

In our thinking on East-West trade the one conspicuous oversight is the lessons taught by our experiences with totalitarian economies prior to World War II. Except for a few references here and there, it would appear from current discussion that no such experiential background existed. What in essence is transpiring is a new generation of errors, characterized by a basic repetition of self-legitimized mistakes which, with new actors and a different setting on an old stage of imperialist totalitarianism versus freedom, yield substantially the same lines and sounds.

"Trade for peace," "trade to change the attitudes of the people," trade to reduce the power of domination and influence by the totalitarian state over another, trade to re-orient a totalitarian economy from heavy capital goods production to more consumer goods activity and also toward multilateral world trade as against economic autarchy with bilateral trade sieves, trade because other democracies are profitably indulging in this with the totalitarian states, and an inability to define precisely the nature of a "strategic item"—these dominant rationalizations and aspects marked the period of the '30s as they do now. They were employed to justify Free World trade with the totalitarian Axis powers of Nazi Germany, Imperial Japan, and Fascist Italy as they are now in relation to the totalitarian economies in the extensive Red Empire.[4] Supposedly, there were "good and bad Fascists" then as there are now "good and bad Communists."

Back in 1965, when I researched a good deal of this, I found to my amaezment that there hadn't been a single book published on this subject of trade with the totalitarian economies of the '30s. Many contain a chapter or two with regard to one or the other, but none covering all three in an integrated study. Worse still, for my purposes, the Department of Commerce had to declassify certain reports and data on our trade with Japan—some 24 and more years later! The footnoted article contains some of this information.

In the welter of discussion on East-West trade the striking similarities between the '30s and now deserve incessant re-emphasis. As will be shown below, the present Cold War context with all its subtleties, evasiveness, and calculated maneuvers makes the present situation an even far more perilous one. The awareness shown, for example, by the AFL–CIO Executive Council should be generalized. Referring to business deals with Communist governments, the Council has clearly stated, "It is not true that in such deals 'the only thing that matters is profit and competitive advantage.' This practice of doing 'business as usual' with the Nazi and Fascist dictators proved disastrous before World War II. 'Business as usual' with Communist dictators will certainly be no less disastrous."[5]

Some of the ideas suggested here have received only minor emphasis in current discussion. For example, a nationally known columnist has observed, "But if, as in the 1930s, the private greed supersedes the interests of the people

[4] See my piece on "Historical Lessons in U.S.-Totalitarian Trade," *The Intercollegiate Review*, Philadelphia, Pa., November-December 1966.

[5] "Statement on East-West Trade," *AFL–CIO Executive Council*, Bal Harbour, Fla., March 1, 1965.

as a whole, the world may again see a global conflict. For it was the failure of the embargo on oil against Musoolini in 1935 and the flagrant indifference of the nations of Europe to the plea of President Roosevelt in 1937 for a 'quarantine' or economic embargo against Hitler that brought on the very conditions which made World War II inevitable."[6] Quoting a *Chicago Tribune* editorial, he observes further, "Although grain is not usually classified as 'strategic material' in the sense of arms and ammunition, it certainly becomes strategic when our enemies are hungry and can't feed themselves."

That our experience before World War II must be recalled over and over again with a necessary dimension of thought conveying the new context of protracted cold warfare is further underscored by much limited thinking in liberalizing trade with Eastern Europe. For example, a commission established by President Johnson to report on the subject well demonstrates this with its unrealistic and narrow conception of what constitutes "strategic trade" in the contemporary context. It states in its report to the President, "we rule out from these considerations any kind of strategic trade that could significantly enhance Soviet military capabilities and weaken our own position of comparative military strength." [7] Although this represents an improvement over the difficulties of thought encountered in the thirties, when far more than just scrap iron was shipped to the Axis powers, to think that strategic trade is related solely to military capability sufficiently indicates a conceptual insularity concerning the psycho-political content of the Cold War. Red propaganda employed in programs of subverting governments in the Free World, notably in Asia, Africa, and Latin America, doesn't place stress on the military powers of the USSR or even Red China but rather, and almost entirely, on the rapid economic advances of "the socialist countries."

It is noteworthy, too, that the commission virtually disregards the interrelated complexity of modern industry and agriculture, which is even more so now than in the thirties. The shipment of oil facilities, chemical plant structures, transport means, plastic and synthetic processes, high-grade fertilizers, various types of machineries for even consumer goods production, and valuable intangibles of managerial organization and talent cannot but have either direct or indirect benevcial influence for Red military capabilities. In terms of waging a psycho-political cold war, i.e., paramilitary capability, such measure of aid is absolutely unquestionable. But this perhaps more important factor escapes the understanding of not only the President's commission but also of most analysts of the subject.

Moreover, on the bases of developments over the past thirty years and an examination of all current output on East-West trade and the new Cold War dimension, it is no exaggeration to conclude and argue that up to this point we have developed an outlook of military preparedness toward the Red challenge which we did not have toward the Axis threat. But, as of now, we still are fully exposed to cold war Pearl Harbors because of our fundamental unpreparedness in cold warfare, which embraces economic weapons as well as all others. These cold war Pearl Harbors may occur in the Dominican Republic, Brazil, Sudan, Thailand, anywhere in the Middle East and numerous other areas in the Free World. Ironically, the leading economic powers of the Free World would in some indirect way be contributing to these outbreaks by beefing up the Red totalitarian economics through indiscriminate liberalized trade. In this broader framework of understanding, wheat shipped to the USSR so that it could meet its cold war commitments to Egypt, Cuba, andseveral other states is itself clearly a strategic item.

When one recounts how much the Red Empire expanded after World War II with inferior resources, one dreads to think about the long-term prospects of the empire's Cold War operations, equipped with superior resources supplied in part by the Free World. Strangely enough, most analysts ignore the cumulative long-run record and concentrate exclusively on separate annual statistics of either absolute or percentage amounts. Yet, in the case of grain, for example, it requires little imaginative thought to contemplate what the possible consequences might have been had the Red Empire been deprived of 40 million

[6] David Lawrence, "Trade With West Bolsters Reds." *Syndicated Column*, October 1965.
[7] *Report to the President*, Special Committee on U.S. Trade Relations With East European Countries and the Soviet Union. The White House, April 29, 1965, p. 1.

metric tons which it obtained from the Free World in the short period of 1960–64. There is no end in sight on this yet. In the sphere of complicated industrial equipment, the same perspective should apply on both the military and cold war scales. Over the years of the '30s, the Axis powers acquired sizable amounts of economic aid for their war plans.

Now, for a moment, let's consider briefly the substantial economic contributions made by U.S. in the past to the Soviet Russian empire wherein our chief enemy resides today.

Anastas Mikoyan, the past nominal head of the USSR, once said, "A modern Communist is one who has the zeal of a Bolshevik and the practicality of a capitalist." If the record of U.S. economic contributions to the development and power of the Soviet Russian empire is any guide, Mikoyan's "modern Communist" began operating in the early '20s. There seems to be almost a cyclical pattern in our economic assistance to the growth and protection of Moscow's empire, a swell as to the permanent captivity of numerous non-Russian nations in the USSR. In the 1920s, then the '30s, then in the '40s, our efforts worked to the benefit of the regime. Now again in the '60s and '70s, many would have this repeated for diverse, intentional and unintentional reasons.

In 1921, when the new Soviet Russian empire was being formed amidst famine and chaos, the American Relief Administration pursued its good, humanitarian intentions of feeding, clothing, and sheltering the people, but being an unconditional project, its expenditures of over $40 million also assisted the entrenchment of the imperio-colonialist Soviet Russian regime.[8] This was the first case of good intentions pursued in a void of political exactions that led to wrong ends. Woodrow Wilson's principle of national self-determination inspired nation after nation in the Tsarist Russian empire to establish its independence; then American economic assistance from 1919 on indirectly helped the Soviet Russian regime to destroy these independent nations.

The second case was the trade and all the contacts, peace, understanding, good will, and profits we pushed at the end of the '20s and in the '30s. By 1928–29, American industrial and electrical equipment, steel, dies, tools, oil refinery facilities and a host of other essential items poured into the USSR, along with basic American know-how and supervisory skill.[9] U.S. exports jumped from $62 million in 1926 to $136 million in 1930, then receded slightly in 1931, slumped heavily in 1932–34, and moved steadily upward to about $87 million by 1940.[10] Strong business pressure was exerted in 1932 and '33 to have the U.S. recognize the USSR, arguing that this step would lead to a substantial increase in exports. As we all know, this recognition was given in 1933, and in 1935 we entered into a bilateral commercial agreement with the USSR, the latter promising to import from us at least $30 million of goods annually.[11]

In his testimony on East-West trade, Secretary of State Rusk admitted all this. He observed: "Even before we recognized the USSR diplomatically, the Soviet trading company, Amtorg, operated widely in the United States, and American engineers and private corporations helped to build industrial plants and installations in the Soviet Union." [12] What the Secretary failed to point out is that this basic economic assistance was extended at a time when the first Five Year Plan was launched, when Moscow had embarked on an imperio-colonialist program of crushing the forces of non-Russian nationalism within its empire, when a man-made famine of staggering proportions was already in the making. In this whole period the percentage of U.S. exports going to the USSR was never more than 4.3 per cent but of what enormous incremental value it was to Moscow and its empire.

The third case of substantial American contributions to the Soviet Russian empire doesn't require any elaboration. Under lend-lease, U.S. exports to the

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[8] See Sister Marie Jerome Wilkerson, *The United States Contribution to the Soviet Economy*, Marquette University, Milwaukee, 1958, p. 53.

[9] S. G. Bron, *Soviet Economic Development and American Business*, New York, 1930, p. 48.

[10] U.S. Department of Commerce, *Foreign Commerce Yearbook*, Washington, D.C., 1931 through 1939.

[11] Arthur D. Gayer and Carl T. Schmidt, *American Economic Foreign Policy*, New York, 1939, p. 242.

[12] *East-West Trade*, Part I, Committee on Foreign Relations, United States Senate, 1964, p. 3.

USSR shot up to $1.3 billion in 1942, or about 17.6 per cent of our total exports. Our assistance totaled some $11 billion for our survival, to be sure, but also without political foresight and acumen. While we were expending parts of this toward the close of the war and even beyond, Moscow was already launching its Cold War against the West. When we finally became aware of this, lend-lease was terminated in 1947, and in 1949 the Export Control Act was passed. U.S. exports to Eastern Europe dropped from $120 million in 1948 to $2.6 million in 1951. Since the early '50s, U.S. trade with the USSR in what are euphemistically called non-strategic items grew at a slow rate, but in 1964 trade between the Free World and the Empire amounted to over $8 billion, with the United States participating to the tune of only $300 million and our West European allies to that of about $5 billion.

With regard to the unquestioned strengthening of the USSR, no one has raised the crucial point of such trade and aid contributing to the imperio-colonialist hold of Moscow over the dozen captive non-Russian nations in the Soviet Union. The United States, advocate of the freedom and independence of all nations, can scarcely maintain its historic principles by blindly trading with the USSR, Soviet Russia's primary empire, in effect reinforcing its imperio-colonialist reins over approximately 125 million non-Russians. Our sad record of the past may be explained away on grounds of ignorance and shortsightedness; today, there is little excuse for ignoring the effects of expanded trade with the USSR on the captive nations in the USSR. This even applies to the U.S. Chamber of Commerce resolution which calls "not only for freer trade with the Communists on non-strategic items, but also for tightening Free World export controls on products or material contribution to the 'build-up of Communist war-making potential,'" [13] Some, however, "want to repeat the massive transfer to them of Western technology which took place in the thirties and early forties." [14]

BEEFING UP THE RED EMPIRE

The past twenty years of developments surrounding the issue of trade with the Red Empire lend themselves to an intelligible patternization of dominant trends and phases, in terms of both volume and controls. Bearing in mind the experiences of the '30s, it is remarkable how easily the natural instinct to exchange, veritably the economic side of the instinct for peace, can be exploited to advance the strategic objectives of the Red economics. It is also startling to observe how few pay any heed to our substantial economic contributions in the past to the build-up of the USSR imperium in imperio.[15]

Some who do recognize this past record rationalize it away on the basis that selective trade now would not contribute nearly as much because it would constitute a small percentage of Red gross product, estimated over $500 billion, and that in time the Red economies will develop their own respective economic capabilities. But, then, the basic question still remains, "Why are they so anxious to indulge in trade with the industrial Free World?" What in this rationalization is overlooked, too, is the fact that the global goals, commitments, and cold war operations of the USSR in particular and the entire Red Empire in general are more positive, expressive, and costly today than they were decades ago. In effect, the industrial Free World is being called in to expedite these for the far-flung empire.

Control policy over the period logically bears an inverse relationship to volume of trade; a hard policy with many extensive controls means less trade, a soft policy with fewer qualitative and quantitative controls conduces to more trade. Three distinct phases punctuate the post-World War II period. Immediately after the war, in 1945–47, Western trade with the USSR and the "satellites" was on the increase, this exclusive of residual lend-lease deliveries and UNRRA operations. By 1948 controls were instituted by the U.S. and its Western allies to curb the shipment of goods important to the empire's military strength.

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[13] "Chamber Backs Red Trade Expansion," *The Washington Post*, Washington, D.C., April 30, 1964.

[14] "Trade With Soviet Russia," *Congressional Record*, May 4, 1964, p. A2227.

[15] See "Five Perspectives on East-West Trade," *East-West Trade*, Part II, Hearings, Committee on Foreign Relations, U.S. Senate, 1965, pp. 94–104.

This early control picture from 1948 to 1953 was reflected statistically in the decline of exports and imports concerning the empire, whether one views them on the basis of the OECD (Organization for Economic Cooperation and Development) countries, the Free World, or the United States alone. OECD exports to the empire declined from $1.1 billion in 1948 to $770.8 million in 1953, imports from $1.2 billion to $934.1 million.[16] During the same period, total Free World exports decreased from $1.9 billion in 1948 to $1.3 billion in 1953, imports from $2 billion to $1.6 billion. U.S. trade dropped in exports from $269 million in 1947 to $1.8 million in 1953, imports from $154 million in 1947 to $46 million in 1953.[17]

A new trend followed this early period, thus initiating the third phase. The year 1954 may rightly be accepted as the starting point of a period of liberalization or breakdown in controls which has continued to the very present, with forces and pressures seeking a marked relaxation, particularly in the U.S. The end of the Korean War, the death of Stalin, the bilateral and multilateral control stings felt by the empire, and a deceptive policy of peaceful coexistence resurrected by Moscow account for this change. COCOM (Coordinating Committee) lists were successively subjected to review and scaled down markedly in 1954, 1958, 1963, and 1964. In conformity with COCOM rules on individual country privilege, the U.S., however, had maintained its extensive control lists until recently.

The consequences of the soft multilateral control policy are plainly evident in the statistical data. OECD exports to the empire jumped from $770.8 million in 1953 to $2,481.4 million in 1960, and $2,972.4 million in 1963; for the given years its imports from the empire also rose from $934.1 million to $2,448.8 million and $3,150 million. Total Free World exports to the empire increased from $1,389 million in 1953 to $4,425 million in 1960 to $5,173 million in 1963; imports showed equally significant increases from $1,631 million to $4,462 million and $5,389 million, respectively. By virtue of a discrepancy in controls, U.S. exports to the empire rose only from $1.8 million in 1953 to $194 million in 1960 and $167 million in 1963; imports also increased from $46 million to $84 million and $85 million for those years.

Since 1962 powerful pressures have been generated in the U.S. for relaxed export controls. While the campaign progresses, numerous disquieting features of slipshod control administration have been emerging, as though to reinforce the campaign. In addition to renewed pressures for U.S. wheat sales to the USSR, clearances have been given for the sale of advanced technologies, specialized machinery and equipment, and industrial plants, products and data to the empire. Of the far too many examples that can be mentioned, a few should be observed here as being typical of the present trend, notably from the viewpoint of strategic materials.

In July 1965, for example, the Department of Commerce issued an export license for the shipment of over $3 million of chemical woodpulp to the USSR. This good is ultimately used in the production of tires, both passenger cars and trucks for both military and economic build-up uses. Another license issued that month was for over $2 million worth of grinding machines to the USSR, also important militarily and economically in the transport industry. A license for the export of polystyrene to the USSR was also issued, despite the fact that the item enters critically into the manufacture of explosives, demolition blocks, nonmagnetic mines and the like. In addition, much technical data and a broad assortment of advanced machineries are being released to Rumania, Czecho-Slovakia, Hungary, and Bulgaria without certain knowledge as to their end use. Moreover, many of the clearances give every indication of prototype purchasing by the Red regimes.[18] Through July 31, 1965, the Export-Import Bank had authorized 83 commercial credit guarantees to Red states, totaling some $66 million. The 1966–67 clearances are abounding and incredible, including steel mill components, computers, missile guidance devices, industrial chemicals, converting machinery, magnetic tape units, Boron isotopes, aircraft equipment, and wide assortments of machineries.

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[16] *Annual Trade Statistics*, Department of Commerce.

[17] *Direction of International Trade*, United Nations, 1948: Statistical Bulletins, Foreign Trade, Series A, OECD, 1953.

[18] *Export Control*, 73d Quarterly Report, 3d Quarter, 1965, Department of Commerce, pp. 4–5, 19–20.

To complete this picture in outline form, it should be emphasized that Red exports consist largely of raw materials, food, fuel, and finished natural products for imports that are chiefly of highly developed finished industrial products, whole plants, and new technologies, such as chemical processing plants, oil refineries, synthetic rubber plants, electronic computer parts, research laboratory equipment and so forth.

Given a long-run cold war viewpoint, in the 15 years of the 1950–1964 period Free World exports to the Red Empire have totaled some $49 billion, and in 1965 they well exceeded the $50 billion mark. Although total imports from the West make up only a little over 1 per cent of USSR's gross product and about 2 per cent of the combined gross product of the other East European Red States, and despite the even lower aggregate significance of this trade for Western Europe and the United States, over time this trade is substantial for the build-up and cold war potential of the Red Empire. And in any given year it bears disproportionate significance for selected Red industrial targets; trade between the Red states of Eastern Europe and the Western industrial countries was about $3.5 billion each way in 1964, or a total trade turnover of approximately $6 billion. Up to that time, it grew over the decade by nearly 10 per cent, exceeding the rate of growth in the overall trade of the Western industrial states. For Western European countries this trade has averaged about 3½ per cent of their total trade, for the United States scarcely 1 per cent.

Since the mid-'60s, the trend in overall trade has been markedly upward. In 1967, exports from the industrial West to Eastern Europe rose to $4.2 billion and imports to the West to $4.5 billion. Total East-West trade increased by 24 per cent over 1966. In 1968, U.S. exports to Eastern Europe amounted to $216.8 million and imports from the area $198.4 million. With growing West European trade in the area, the clamor for more U.S. business there has increased on the theory that the Red regimes are acquiring capital goods anyway from the West European economies. We'll weigh this theory, another vintage of the '30s, in the last section.

Those overemphasizing small U.S. proportions as justification for more liberalized trade demonstrate their insufficient grasp of Red economic strategy in the Cold War. Regardless of the facades of "increasingly independent" Yugoslavia, Poland, Czecho-Slovakia and Rumania, this strategy is substantially no different from the past totalitarian economic strategy of the Axis powers, with stress on overall self-sufficiency, accelerated build-up by overcoming current deficiencies, and controlled trade and foreign exchange operations. Again, in essence, the errors of thirty years ago are being repeated again. Some 50 per cent of all trade between the empire and the Free World is aoccunted for by the COCOM countries, predominantly the West European ones (non-European are the U.S., Canada, and Japan). In relation to the Red Chinese sector of the empire, Free World trade has also increased since the early '50s, rising from $740 million in 1953 to $1,505 million in 1963.[19] West Germany, Japan, Great Britain, France, Italy, and Canada show up in the figures as the leading traders with the Red Empire, taking into account all sectors.

When talking about "strategic items," one need exercise only a minimum of common cold war sense in assessing these typical reports: (1) according to Moscow, USSR trade with developed capitalist nations rose 15 per cent in 1964, chiefly in industrial products (by them, total USSR foreign trade increased more than 75 per cent since 1958, to about $15.3 billion, of which about 70 per cent was with other parts of the empire; in 1967, total turnover was over $16 billion, of which about 60 per cent involved the empire); (2) Swedish firms contracted to supply Red China with heavy duty trucks valued at $30 million, apparently at the time the most important single industrial contract between Red China and a Western country[20]; (3) Fiat, the Italian auto manufacturer, is constructing an $800 million plant in the USSR, aiming to produce 600,000 cars a year and by 1972 hopes to produce 900,000 vehicles annually under license in Eastern Europe; (4) Bonn and others are seriously responding to the March, 1969 Budapest declaration of the Warsaw Pact leaders on "the necessity to implement through joint East-West efforts major projects in power

[19] *A Background Study on East-West Trade,* Committee on Foreign Relations, U.S. Senate, 1965, p. 67.
[20] *Toronto Globe and Mail,* Peking, June 7, 1965.

engineering, transport, water and air space . . .," which a redirection of East European resources from military, police, and cold war enterprises could easily solve alone. Similar items abound monthly and add up to sizable absolute amounts yearly, at least in the light of their significance for Russian economic strategy.

RUSSIAN ECONOMIC STRATEGY

As stressed at the outset, there have been grave limitations in general understanding of Russian and Red economic strategy, which is part and parcel of overall Cold War strategy as directed mainly by Moscow, the chief power center of the Red Empire, and to a lesser degree by competitive Peiping. Also as indicated above, this strategy is not new, though it enjoys a considerably broader framework than prevailed prior to World War II at the hands of the Axis powers which did not command the resources now at the disposal of the Red totalitarians.

The elements of this economic strategy, which even lends itself to diagrammatic exposition, include accelerated economic growth, relative self-sufficiency, overcoming short supplies, selective bilateral trading, sustaining cold war commitments, inroads into the underdeveloped areas, East European industrial assistance for the USSR, increased productivity and fulfillment of plans, acquisition of latest technology, data, and managerial ability, Russian exploitation of the empire, concentrated deficit payments in gold, and a growing integration of the empire—all interrelated and oriented to serve the consummate goals of political subversion, takeover, and empire expansion. All of these fundamental elements fit into a working pattern of operation in which the industrial Free World countries are to play their vital, assisting role.

Many salient points in this deficient understanding, in not perceiving the situation as a whole, can be elaborated upon. Whether we recognize it or not, our past valuable assistance contributed heavily to the economic and military build-up of Soviet Russian imperio-colonialism, the effects of which have been felt by th eWest since. Today, under the illusion of fostering the "independence" of East European "satellites," we are being pressed to strengthen the extended Soviet Russian empire largely through trade with its outer integral parts. It is not generally recognized that an extraordinarily high percentage of USSR imports from its Red partners in Eastern Europe is made up of industrial equipment and machinery. Rising significantly over the recent period, this machinery component represented 39 per cent in 1958, but 45 per cent in 1963 and above since then, with greater overall trade. Thus, when one reads "Present trends toward decentralization of the economic systems of the Eastern countries deserve a positive response from the West," he cannot but wonder about the politico-economic vacuum such statements are conjured up in.[21]

Thirty years ago statements of intention and aims issuing from the Axis powers were virtually ignored and even scoffed at. It is quite evident that today similar Red statements are not read or understood. They well support the facts presented here. Just to cite a few examples, it is well to recall the Marx-oriented statement of Lenin, "When the time comes to hang the capitalist class, they will compete with each other to sell us the rope." This typifies today the American business clamor for a greater share in the East European market. Khrushchev clearly stated in 1959, "We will soon need a large amount of equipment which must be designed and produced anew. It would also be expedient to order a part of this equipment in capitalist countries, primarily the United States, West Germany, and Britain." In 1959, during his visit here, he spoke quite frankly, "Some thirty years ago when our country started building a large-scale industry, good economic contacts were established with leading United States firms. Ford helped us build the motor works in Gorky. Cooper, a prominent American specialist, acted as a consultant during the building of the hydro-electric power station on the Dnieper, which in those days was the biggest in the world. Your engineers helped us build the tractor works in Stalingrad and Kharkov. Americans, along with the British, were consultants during the construction of the Moscow subway." He also stated he wanted more, following this up to the end of his reign: "We need to study all

[21] *East-West Trade,* Committee for Economic Development, New York 1965, p. 18.

the best achievements, the best foreig experience, and apply this ourselves in order to obtain higher labor productivity." [22]

One of Khrushchev's successors, Premier Kosygin, has continued this strain by indicating the USSR's desire to "link the long-term economic planning with foreign trade prospects to expand the Soviet market for western goods and the production of Soviet goods for export." [23] In the Red trade campaign in the Middle East and Southeast Asia, the Czechoslovak Statistical Institution observed fifteen years ago: "Czechoslovak participation in this expansion of trade is not guided by purely practical considerations. It follows a plan carefully drawn up in accordance with political considerations." [24] The director of the Department of Circulation of Goods in the Rumanian State Planning Commission stated it plainly: "We put great emphasis on modern techniques. We do not purchase equipment from abroad unless we are convinced that it is at the top of the world in technology. We find that the United States, West Germany, France and Great Britain make the finest equipment and we want to procure it. This accounts for the increase in our trade with the West." [25]

An East German economist sheds light on another dimension, eventual military and political concessions by the West: "The fact that not only the working people but a substantial section of the bourgeoisie in Western Europe want closer economic relations between the two systems opens up broad opportunities for supplementing the political struggle for peaceful coexistence with economic struggle. The creation of a nuclear-free zone in the centre of Europe, renunciation by Bonn of nuclear armaments and the policy of revenge, and peaceful settlement of all outstanding questions, could create a favorable climate for closer economic collaboration between all the European countries." [26] Here a Communist writer gloats, "During 1964, big holes were torn in the remaining barriers against free trade between Socialist countries and U.S. Allies. The volume of such trade spurted forward at an accelerated rate. A further shift in domestic views put a majority of American business in favor of East-West trade." [27]

These statements are sufficient to indicate the primary factors at work in this issue. Discussion about laws, patent rights, copyrights, outstanding indebtedness and the like, is of secondary importance and suggests a blind willingness to trade with the empire. If we believe, for example, that more liberalized trade would contribute to peace, the growing independence of the "satellites," and a fairer share for American business, then an easy resolution of these secondary problems should take effect, with the Red regimes doubtlessly accommodating it in no small degree.[28] Prior to its recognition by us in 1933, the USSR repudiated debts to the U.S. valued at about $628 million. During World War II, the USSR received approximately $11 billion in U.S. lend-lease aid. By pillage, preparation, and expropriation, Moscow collected over $30 billion worth of property in Germany and elsewhere. All this did not deter us in 1951–52 from a negotiating figure of $800 million for Moscow to settle its debts. It balked with a counter-offer of $300 million.[29]

If we should disregard the content of Red economic strategy and plunge into a haphazard, liberalized East-West trade, some nominal settlement of outstanding obligations may be expected or the Johnson Act may be repealed. Concerning patents and copyrights, the trade-eager Russians have already demonstrated their civility by becoming the 68th member of the Paris Convention for the protection of industrial property. This "concession" is not without several subsidiary advantages to the Russians, such as buying the complex know-how along with the patent, obtaining foreign exchange from the sale of its own patents, and continued difficulties we would encounter in finding out how our patents are being used in the closed society of the USSR. Moreover, with the

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[22] *East Europe*, October 1964, p. 40.
[23] *New York Times*, December 10, 1964.
[24] *The Observer*, December 11, 1955.
[25] *Congressional Record*, November 12, 1965, p. A6427.
[26] Karl Domdey, "Economic Contacts Between the Socialist and Capitalist Countries of Europe." *World Marxist Review*, November 9, 1965, pp. 9–14.
[27] Victor Perlo, *New World Review*, December 1964.
[28] For a good example of this, see "East-West Trade Bill of 1969," *Congressional Record*, April 24, 1969, pp. H–3074–H3082.
[29] *Special Study Mission to Europe, 1964*, Committee on Foreign Affairs, U.S. House of Representatives, 1965, p. 8.

dubious argument of increasing their purchases here, the Russians would seek the elimination of what they consider a discrimination against their exports to us, namely withholding the most-favored-nation treatment from their exports.

Exclusive concern with these secondary problems cannot but abet the objectives of Red economic strategy, for it reinforces the underlying assumption of liberalized trade. In 1955, Khrushchev illumined the essence of Red totalitarian trade when he said, "We value trade least for economic reasons and most for political reasons." It appears rather naive for many Americans to believe that trade with the empire is a peace-contributing, normalizing agent. Trade has been and will continue to be an essential weapon in the arsenal of Red economic warfare. The outlines of Red economic strategy thus are clear for all to see: (1) acquisition of the best of Western technology in its broadest sense to augment productivity, accelerate economic growth, and reap surpluses for intensified Cold War operations; (2) furtherance of the empire's integration on the bases of national division of labor and a heightened intra-empire trade facilitated by products from the Free World; (3) marginal penetration of the markets in the underdeveloped areas, also indirectly assisted by Free World industrial trade and leading to political involvements designed for eventual takeover, and (4) playing off one Free World industrial competitor against another with the aim of advancing political divisions among allied Free World nations.

Mikoyan, the skilled Armenian trader and former President of the USSR, confirmed the foundation of this strategy when in 1961 he indicated how the industrial part of the Free World was to assist: "It will be necessary to make wide use of foreign trade as a factor for economizing in current production expenditures and in capital investment, with the aim of accelerating the development of corresponding branches." In short, whether by direct trade with Moscow or indirectly through the parts of the CEMA network (Council of Economic Mutual Assistance) meaning Bucharest, Warsaw, or Prague and others, the West is to enable the empire to leap over years of research and development cost so that it may be strengthened to pursue more rapidly its global objectives. As Czecho-Slovakia showed, the "independence" of any of these "satellites" is a patent hoax.

A POSITIVE POLTRADE POLICY

What goods are strategic? From the analysis given here it becomes clear that virtually no goods for export to the empire are non-strategic. Its cold war economies thrive on fertilizers, food, transport facilities, plastics, clothing, etc. as they do on imported technological data, heavy machinery, and military weapons. As a vital instrument of the Red States, trade covers deficiencies in the economy, influences policies of less powerful states, affords channels for acquiring useful information, permits industrial espionage, has wide propaganda uses, allows for psycho-political penetrations of countries and their dependence on the empire without having to go "communist," and gradually leads to a displacement of Western influence in the areas, primarily through political agitation for socialism, nationalization, and the imitation of totalitarian economic plans. In sharp contrast to normal, standard Western practices, the Red trading mechanism embraces all of these factors—ingredients of economic warfare.

One of the striking aspects of East-West trade discussion is the confusion surrounding the definition of "strategic materials." Either the discussant prattles the term with no precise definition offered or he defines it solely in terms of military weapons, disregarding the intermeshed military-political-economic mix in a totalitarian economy oriented fundamentally toward Cold War goals. It cannot be said that the Reds, like the Nazi and Fascist totalitarians, haven't time and time again specified their desires, methods, and aims. As another example, Eugin I. Cortemiev, deputy chairman of the USSR Committee for Inventions and Discoveries, frankly told a National Association of Manufacturers conference in New York that for the lastest and best technology, "We are prepared to conclude not only separate license contracts but also permanent agreements on the exchange of patent rights and technical information between your companies and us." [30] An examination of the reports by a U.S. business

[30] "U.S. Technology Sought in Soviet," *The New York Times*, June 12, 1965.

mission to Poland and Rumania, shows a hungry appetite by the Red regimes for American techniques. Concerning the Polish, "They are very much interested in any form of cooperation with U.S. computer manufacturers, peripheral equipment manufacturers, and U.S. producers of integrated circuits, measuring and testing instumentation." [31] The same applies to the Rumanians. American businessmen are quite capable of meeting this demand, but they also make clear their inability to determine the politico-strategic importance of such trade.

Clearly, our failure to recognize the varying strategic character of all goods, consumer and capital, to the planned cold war economies of the Red Empire has bred a series of policy failures that render our posture irrational and self-defeating. Inadequate food, for instance, does not exactly bolster a Red regime's relations with the underlying populace in terms of exacted productivity, stoic acquiescence, and reduced frictions and resistance, all of which have their impact on the overall strength of the state. Our basic failure to face up to the broad strategicity of goods has accounted for the little pressure exerted on our allies to restrict their trade with the empire, the little discipline we've displayed with our own recent exports, our own violations of the Battle Act during the Korean War and since, and the rash of Free World trade with Red China while the U.S. defends the sovereignty of South Vietnam. The proliferating anomalies in the vital situation are logically traceable back to this basic failure.

The problem is not as complex as the confused thought on strategicity would make it appear. Chemical plants, for example, are a top priority item in Red import demand. Missilery, space technology, munitions, agriculture, and general industry depend heavily on such plants. Strategic? As a restricted study by the Center for Strategic Studies at Georgetown University discloses, our Manufacturing Chemists Association knows they are and, despite naive State Department urgings on Rumanian trust as to use, the group has consistently shown a reluctance to support their export to the empire. The oil offensive of the empire is a story in itself, an excellent example of empire integration through the Friendship Oil Pipe Line and also economic aggression. Strategic? The American Petroleum Institute knows it is and has opposed exports of oil processing facilities to the empire. These cases can be multiplied along the entire spectrum of economic goods entering into a planned cold war economy.

What can we do? On the basis of given evidence, the first thing is to recognize soberly the absence of a rationally appropriate and effective Free World trade policy toward the Red Empire. Second, to urge a complete embargo, such as exists against Red China, North Korea, North Vietnam, and Cuba, or to advocate freer trade with Eastern Europe because our allies indulge in it, or because of accidental gestures on the part of the "satellites," is in the present situation an extreme course disproportionate to our strategic cold war needs. It is obviously not entirely true, as the President's Commission maintains, that "The United States has three alternatives. It can leave things as they are. It can eliminate this disparity through action across the board that would bring U.S. trading practice into line with those of our allies. Or it can modify its practices selectively and on a country-by-country basis." [32] In reality, there are two other alternatives—a complete embargo and selective country-by-country trade on the basis of political concessions; in other words, the latter being a poltrade policy with the same approach as the commission's third alternative but with a different and realistic, cold war political basis.

The poltrade policy has these five dominant characteristics: Cold War realism, freedom instrumentation, a via media approach, a formula for maximum flexibility and consistency, and a structure for positive Free World action. The first characteristic has been reflected throughout this analysis. Its content constitutes the very foundation of this poltrade policy. It refutes as illusory the basic assumptions and major reasons given for liberalized trade with Eastern Europe and emphasizes the Red economic strategy, the aggressive nature of Red trade, the vital distinction between Red states and the underlying captive nations, Red empire autarchy and integration, and the self-defeating character of unconditional Free World trade with the empire.

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[31] Thomas P. Collier, "Poles Enter Electronic Age," *International Commerce*, November 15, 1965, p. 14.
[32] Op. cit. *Report to the President*, p. 5.

Indeed, the more one contemplates the clear-cut benefits of unconditional trade to the Red totalitarians, the more concerned one becomes about the acute vulnerabilities of the Free World. The trade issue cannot be divorced from "wars of liberation" and a host of other interrelated phenomena. Even this would be indicatively pertinent: "We have evidence," disclosed the Venezuelan Minister of the Interior, Gonzalo Barrios, "that Venezuelan Communists have been getting money from the Soviet Union, using the Italian Communist party as a vehicle. The Venezuelan Communists recently asked for additional funds designed to organize a large-scale subversive plan." [33]

Freedom instrumentation is the second characteristic, meaning the full use of trade as a means of sustaining and expanding freedom. Liberal trade advocates argue in terms of freedom, too, but their false notions about the weaning process and evolution have already been noted. With cold war realism, we should scarcely hesitate or fear utilizing trade as a freedom weapon just as the Red regimes manipulate it as a weapon for conquest. Vague rhetoric about bridges of understanding, contacts with peoples, and exchanges of ideas could hardly forge such a weapon for freedom. In the present-day context only trade predicated on specific political concession values, involving even pecuniary subsidy, can guarantee such a weapon. The one striking fact that seems to be ignored by our easy trade advocates is that for some time now the USSR, under heavy pressure of self-imposed demands on its relatively limited resources, has not had the capacity to serve adequately the needs of other East European Red regimes. Naturally, the escape valve is broader but regulated East-West trade.[34]

The Red regimes would not, of course, find this poltrade policy to their liking. Early in 1965 the Polish premier, Josef Cyrankiewicz, already "warned the West not to demand political or ideological concessions in exchange for increased trade." [35] He seemed to forget that the empire desperately needs this trade, not we. On the Free World side, former Chancellor Ludwig Erhard of West Germany issued another type of warning when at the 13th Congress of the Christian Democratic Union he bemoaned the fact that some Western nations are "competing with each other to give the Communist East long-term credits without getting any political concessions in return." Short-term credits are also important, and on this basis West Germany has led the others in East-West trade. It cannot be emphasized too strongly that the United States leads in overall technological development, and it is this fact which places it in a unique position to determine how far the Red regime can partake of it. As one editorial has aptly put it, "Actually almost anything the Russians buy in the West is strategically important, because of the backwardness of their economy and their desperate need for Western technological assistance." [36] Bedazzled by Moscow's concentrated Potemkinist display of military rocketry, space explorations, and propagandized military strength, most Americans, even on the highest official levels, are unaware of the basically underdeveloped economy of the inner Soviet Russian imperium.

Another important characteristic of the poltrade policy is its via media approach, a general avenue between a complete embargo and free trade, yet participating in their negative and positive natures in unlimited possible combinations of bids and offers. The approach would be sharply differentiating, in breadth and depth far more so than that of the present policy. The reasons for this are an awareness of the general strategic character of all goods for the Red cold war economies and their varying degrees of strategic importance, and of the different political conditions existing in various parts of the empire in terms of oppression, persecution, special restrictions, and opportunities for internal pressure. These are the two broad bases for the operation of the poltrade formula, which would proportion trade bids to political concession bids; in short, fusing economic values with political values.

Much is uncritically made of Yugoslavia as an example of wisdom in our present policy, for $3.5 billion in U.S. assistance are chalked up its "independence" from Moscow, about 70 per cent of its trade being done with the West, and a cozy association with Free World economic organizations. Yet it's

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[33] *AP*, Caracas, Venezuela, April 12, 1965.
[34] e.g. Malcolm Rutherford, *Financial Times of London*, June 25, 1969.
[35] *Reuters*, Leipzig, East Germany, March 1, 1965.
[36] "East-West Trade As A Weapon," *The Chicago Tribune*, June 2, 1969.

extremely difficult to perceive the political values of this pragmatic wisdom. From viewpoints of ultimate survival and ideological hue, Belgrade's interests are inextricably tied up with Moscow's and, just to mention one example, Tito's record of condemnations against U.S. action in the Congo, Vietnam and the Dominican Republic and concerning Cuba, constitutes ironic compensation of the most indescribable type. Belgrade trades with Havana and, despite its negligible power on the global scale, has played for the empire a unique role of diplomatic broker. Also, the thought of Yugoslavia setting a pattern of profitable practice for others in the Red Empire, and to the net advantage of the empire, seems to elude many. This pattern was formed not by design but rather by necessity of response to internal and external problems. In any case, the wisdom of our policy toward Yugoslavia has worked against the freedom of the various nations in that totalitarian state, as its broadened application certainly will against those in Rumania, Poland, Hungary and others. Tito may have his recurring squabbles with Moscow, but in the last analysis the survival of his regime depends on continuing Soviet Russian power.

Turning to the poltrade formula, one can see that it would be practicable and adaptable for all changing circumstances. Scaled to priorities of political consideration, the formula allows for long-term and short-run credits, as well as cash payments. It deals in producer, capital goods and consumer goods, as well as managerial ability, organization, and technological data. In sharp contrast to present U.S. policy, it advances a principle of consistency in that its application would be directed at the Asian sectors of the empire as well as the European and Latin American. The avid use of the formula would produce considerable politico-propaganda values, since all trade transactions would necessarily be tied to specified political items. Bids for specific political concessions would make the latter integral parts of the economic valuation process just as much as Red bids for machines and so forth. It certainly would not allow us to be baited in the competitive jungle on the supposedly pragmatic basis that if an item, e.g. a computer, is available to the Red regimes elsewhere, it should be allowed for export.[37] This is tantamount to saying if others make regular attendance at a brothel, this is justification for us to do likewise.

Moreover, application of the formula would unambiguously work in behalf of the captive nations; it woul not accommodate without real cost the empire's economic plans; it would uphold the efficacy of our foreign aid program by relating Red subversive efforts in the underdeveloped areas to trade offers; and it would provide U.S. with an effective leverage to solve the problem of unconditional West European trade with the empire and reorient much of this trade toward intensified intra-Free World trade. A vigorous and well-planned poltrade policy with alternative advantages for our allies and a consuming emphasis on trade for freedom would find few, if any, Free World nations seeking to help the empire unconditionally, particularly as concern savings in intangible values of time and costs of research and development. The significant fact here is that since World War II, we have never taken the leadership in this kind of FreeW orld control over trade with the Red empire. With our power, it wouldn't be difficult to propagate such action.

Steps in applying the formula would in general be simple, methodical, and in graded order: (1) as in present policy, military weapons and space technology would face complete embargo; (2) most advanced producer goods, technology, managerialism and data would be proportioned to poltrade bids of the highest value, entailing free elections, enforcement of the national self-determination principle, the opportunity for political party pluralism, and the satisfaction of legal obligations in World War II treaties; (3) trade in less advanced producer goods, engendering the set-up of whole factories and organizational plans, would call for proportionate poltrade values in the order of dismantling the Berlin Wall, Russian, Czech, etc. exodus from Cuba, the withdrawal of USSR troops from Hungary and other captive areas, a vastly expanded cultural exchange program, proven Red support of subversion in Vietnam, etc.; (4) trade in consumer goods would also be differentiated on scales of regency, quality, and quantity and proportioned in terms of prevailing conditions and acts of religious oppression, slave labor employment, civil suppression, unjust

[37] E.g. Rowland Evans and Robert Novak. "Liberalizing of Export Act Is Given Chance as Trade Eclipses Ideology," *Syndicated column*, July, 1969.

arrests and imprisonment of Free World citizens, atrocities, the need for rehabilitating political prisoners and so forth.

These are the four general categories of poltrade application into which further specific poltrade bids would be fitted as developments and circumstances demand. Another manifest advantage of such constant predication is that the real cause of our foremost problems today will be kept in the forefront of world attention and thought. Except for a complete embargo and its justifying reasons, this is not the case with the other alternatives; indeed, they submerge these causes into temporary oblivion. Again, the argument that the empire would refuse to trade under such poltrade conditions misses the whole, crucial point of trade as a weapon for real freedom and the tremendous leverage possessed by the West. Pursuit of the present course means endowing the Red economies with intangible values of shortened time and reduced real costs of development without, in this dimension, receiving anything in return except the spurious satisfaction of believing that dispersed contacts would lead to "greater understanding" and "evolution toward peace." Also, in the cold war context, to literally aid them to undermine us in time and everywhere is the height of folly; a fact that can easily be impressed on our allies. Rationally, a quid pro quo is demanded in these dimensions and can only be realized through advanced bargaining for counterpart, intangible freedom values. If the Red states are desperately in need of this trade, as they indicate to be, the best test of their determination is this quid pro quo approach.

As mentioned earlier, the formula's application would, of course, receive detailed treatment in relation to each Red state. If Hungary, for example, seeks Free World trade, in addition to the items stated above there are the genocidal abortion laws, the case of Cardinal Mindszenty, the reduction of the Iron Curtain, release of political prisoners, freedom of assembly for the Petofi Circle and others and a reciprocal distribution of U.S. literary output in Hungary. The same detailed treatment can be applied to any other Red state. To settle, as some "high Administration official" suggests, for "Soviet goodwill in defusing the East-West German impasse over holding West Germany's presidential election in West Berlin; Soviet help in searching for the victims of the U.S. flying Pueblo . . .; Soviet goodwill in trying to find some workable peace formula for the Middle East . . ." means to settle for hollow appearances at the complete sacrifice of substance.[38] How easily a "high Administration official" can be duped. Doubtless, in enforcing our idea, the totalitarian regimes will cry about "interferences in internal affairs," their "national sovereignties" and the like, but these protestations are thoroughly arid in the light of history, the empire network, the basic solidarity of the entrenched Communist Parties, and the international Red conspiracy.

Lastly, the structure of positive Free World poltrade would to a notable degree be erected by the initiative and leadership of the U.S. and its poltrade policy. Though the structure should be built concurrently with the adoption of the policy, unilateral U.S. action would itself become a constructive, efficient cause for the moulding of the institution. The objective is, of course, a unity of action primarily with our West European allies, and there are numerous leverages of favor and disfavor to apply for such unity. The present lack of such unity is to a great extent ascribable to our own failure in providing the necessary leadership in the Cold War, over and beyond the military umbrella and foreign aid. A new, concentrated initiative by us should aim at the formation of a NATO Council on Free World Trade. The move would undoubtedly infuse a new life of working partnership in the Atlantic community. To maintain, as one senator has, that the Cold War is over and that trade restrictions are no longer in order is indicative of the folly of our present thinking.[39]

The Council's prime function would be a multi-lateralization of the poltrade policy. Free World countries, such as Japan, would be included as associates. Japan has been pushing its trade with the empire (Japan's 1968 trade with it increased 15 per cent over 1964 and amounts to less than 7 per cent; about $400 million with Red China, jumping 60 per cent over 1964, $30 million with North Korea, and small amounts with North Vietnam). With this economic

[38] Warren Unna, "Nixon Opposes Freer Red Trade," *The Washington Post*, June 30, 1969.
[39] Sen. Warren G. Magnuson, "Introduction of The East-West Trade Relations Act of 1969," *Congressional Record*, May 27, 1969, p. S5768.

power assembled, in the ratio of 3 to 1 to the entire Red Empire, the so-called Communist economic offensive would become a sterile exercise as the Free World market, particularly in the underdeveloped areas, becomes in every sense a true, free market. The new structural framework would, with qualification, accommodate the inclinations of our allies as expressed, for example, in a resolution by the six-nation Common Market Assembly stressing "the political and economic importance of trade relations with state-controlled trade, in particular with neighbor countries of East Europe, and the desirability of developing them"—yes, toward genuine freedom. Canadians selling $403 million of wheat to Red China, Italians buying natural gas from the USSR, Greeks selling wheat to Bulgaria, and multiplying day-to-day reports on unconditional Free World trade with the empire would receive an entirely new assessment under the sway of a rational poltrade policy.

Only thirty years ago we substantially committed the same trade mistake with another breed of totalitarian powers. This time it is even worse because of the cold war subtleties involved and the trained capacity of the enemy to compound the use of his relatively inferior resources. In the final analysis, the requirements of the present situation are a firm understanding of Red economic strategy, the launching of a poltrade policy to counter this strategy, and a national will to see it through. Frequent comments on the current disunity, the alleged ambiguity of strategic materials, and "our allies are trading with them" are only convenient rationalizations for less than firm action in behalf of expanded world freedom.

President Calvin Coolidge, who showed more long-run insights than some short-sighted historians credited him with, stated at the beginning of the USSR as an imperial state that "Our Government does not propose to enter into relations with another regime which refuses to recognize the sanctity of international obligations. I do not propose to barter away for the privilege of trade any of the cherished rights of humanity. I do not propose to make merchandise of any American principles." [40] Those seeking the swift buck—directly or by U.S. Government guarantee—are merchandising our principles. Let's see what more Coolidge said about principles—in our concluding chapter.

Senator ROTH. I don't know how good my pronunciation is, but at this time I would like to hear from Mr. Barbu Niculescu, who is secretary general, League of Free Romanians.

STATEMENT OF BARBU NICULESCU, SECRETARY GENERAL, LEAGUE OF FREE ROMANIANS

Mr. NICULESCU. I am trying to reduce the 10 minutes to as short as possible, Mr. Chairman.

The elements of the world economy have changed drastically in the last few years and are now in the process of searching for new rapports and balances in the world.

As I testified last year in the Ways and Means Committee on the same bill, it is appropriate that the changes on the economic scene be encountered here in the United States by a more dynamic and efficient system in order to deal expeditiously with the new problems they raise.

The bill is advancing a series of urgent proposals to meet the new world trade situation. Under the scrutiny of the Senate, the bill is responding to a pressing necessity. Supporting it I express a general opinion of Americans who are aware of its importance and who are interested in trade both here and abroad.

Particularly relevant to the projects I am associated with, is an item which deals with equal tariff treatment for Romania, mentioned on page 12 of the bill.

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[40] *Annual Message to Congress*, December 6, 1923.

It is my conviction that normalization of trade relations with the socialist countries is highly desirable, and in time this will help and stimulate the progressive opening of these new societies.

Romania has produced already a new liberalization policy concerning the freedom of movement and immigration legislation and is in the forefront of Socialist countries.

Now, as far as private ownership of small businesses, they have improved that too. The people now can own their own homes in the cities they work in as well as they can own a home in any part of the country, anywhere in the country for recreation purposes. They can buy cooperative apartments, which is the same system like in this country, except that they have to pay taxes of course to the government and the maintenance.

The new legislation provides new classes of Romanian citizens. First, Romanians who live in their country and may remain in foreign countries for a longer time if they wish so on their Romanian passports if they only conform with Romanian legislation; second, Romanians who live in foreign countries indefinitely for different purposes for, let us say, scholarship purposes or for training or for specializing in different fields; third, another class is formed by the former Romanians who have acquired foreign citizenship and who desire to live in Romania and retire there. They do have to renew their Romanian passports every year because the Romanian Government is giving them, in spite of the fact that they have their American citizenship, for example, they give them a passport every year.

Now since the second World War the Romanian Government has allowed 340,000 Jewish people out of about 420,000 to emigrate to Israel without paying tax. The rest remain in Romania, not because the government opposed their emigration, but because they were too old to emigrate or did not want to emigrate to Israel, which happens in this country too. Families have been reunited by the Romanian Emigration Authority in the past and are still continuing to reunite them.

After Romanian President Nicolae Ceausescu had declared publicly a few years ago that Romania is a country in the process of development, today many 1974 plan targets have been sharply upgraded in the drive to fulfill the 5-year economic plan at least a few months ahead of schedule next year. The 1974 plan is having many of its targets upgraded by very ambitious margins.

For example, this planning is more evident in the area of total growth of the national income. Economic efficiency and product quality are the chief concerns of the Romanian Government too.

The Romanian Government has proved to the world that Romania is a country in the process of development, which has been expressed publicly by the President and this policy is based on the fact that Romania is a country of great national resources, oil, minerals, coals, metals, plus highly trained specialists in the fields of science, engineers, chemists, physicians, doctors, good labor, and plenty of raw materials, which enable Romania to compete on any international market.

In 1950 the per capita national income was $80. Today the per capita income is $800 a year. The estimated income for 1990 is between $2,500 and $3,000 per capita.

The Romanian Government has reduced the State-owned trade companies by 13 this year, in order to allow foreign capital investments, under the new law for the mixed corporations, not only in Romania but elsewhere in the world, especially in the field of chemicals, pharmaceuticals, petroleum, coal, steel, and aluminum.

The Romanian Government has taken measures and has instructed its foreign trade companies with the purpose to serve the needs of the government, allowing a greater inflow of Western investments, as provided in its new law No. 424 of November 2, 1972, for the mixed or joint corporations.

According to the compiled information given by the U.S. Journal of Commerce, the United States has a favorable balance of payments with Romania and continues to be so.

Trade between the United States and Romania in 1974 could near $400 million according to the same source.

This fact is due to the new economic reorientation of the Romanian economy to the West and particularly to the United States.

The Soviet exports to Romania are the lowest in the last two decades compared with the share of the Russian products imported in other Eastern Socialist countries.

The industrial West, in market share terms, was worth more to Romania than ever before in 1972. Proportionately too, the slices of world sales going to East Europe and to the U.S.S.R. were the lowest in at least two decades. For example, the total Romanian trade with Western countries increased 45 percent since 1960 while the Russian share decreased to 24 percent since 1960.

Trade between the United States and Romania may well double this year for the second consecutive year.

The same Western experts predict with the region of $200 million in the bag for the last year, prospects for 1974, propelled by American exports to Romania, are good enough to near the $400 million turnover.

Romania takes delivery this year of 707 Boeing jet planes and several projects involving American equipment are getting under way.

The U.S. Department of Commerce reported last year that the petroleum and oil products accounted for about 30 percent of Romanian exports to the United States.

Among the international economic organizations, Romania is a member of GATT, IMF, World Bank, U.N. Economic Commission for Europe, and Comecon.

Meanwhile, President Nixon vowed to work for equal tariff treatment for Romanian products-duty rates charged now for non-Socialist nations.

At present, U.S. tariffs on goods from Romania, as from most Socialist countries, average about two to eight times more than the rates assessed imports from other countries.

Just to give you, Mr. Chairman, a few examples of the difference between the most favored nations and the import duty from Romania to the American market, the American economy needs terribly certain materials which they tried to get. They cannot get it because

it doesn't exist free on the market. Romania has it for export. Now let's take for example polystyrene. From any most-favored-nation tariff they pay only $30 per ton. Romania has to pay $144 per ton. In the field of polyethylene, the import duty from the most-favored-nations countries is $27 per ton and for Romania it is $88 per ton. I can give you more and more and more examples, which are in my statement.

Due to this unfair tariff treatment——

Senator ROTH. I am going to have to ask you to complete your statement. We have a number of witnesses. Would you just summarize it very quickly?

Mr. NICULESCU. Yes, I have only a few words to say.

Due to this American unfair treatment to Romania, the United States, in fact, prevents the efforts for the Romanian industrialization and economic progress.

If the U.S. policy is to build a fair and open trade world, the United States is morally obligated to insure a fair competition also on the world markets. What Romania expects therefore, is an equal and nondiscriminatory tariff treatment in order to buy all their industrial equipment from the United States.

The balance of payments is always favorable to the United States because the American Government has repeatedly declared publicly and at the international conferences that the United States believes in treating the world nations, whether large or small, as totally sovereign and as equals.

Romania today has worldwide friendly relations with all the nations in Europe, in Asia, in Africa, and in North and South America and——

Senator ROTH. I am going to have to bring this to an end because, as I said, we have a number of witnesses, but we will be happy to include your entire statement in the record.

Mr. NICULESCU. I feel it is a duty for all Americans to support the President's Trade Reform Act of 1973, which advances the cause of freedom, independence, and lasting peace through world trade and prosperity.

Senator ROTH. I do have one question.

I notice that you are secretary general, League of Free Romanians. I wonder if you would tell, for the purposes of the record, exactly what this League is and who it represents?

Mr. NICULESCU. The League was formed in 1951 by the former and last Democratic Prime Minister of Romania, General Nicolae Radescu, when we escaped from the Russian invasion in 1946. We came to this country in 1947 and he formed this organization with all of the refugees during the Nazi time and afterwards, and after the Russian invasion.

And we have organizations in the Western part of the world.

Senator ROTH. Senator Packwood?

Senator PACKWOOD. No questions.

Senator ROTH. I want to thank you for coming before us and presenting your statement.

Mr. NICULESCU. Thank you, sir.

[The prepared statement of Mr. Niculescu follows:]

PREPARED STATEMENT OF BARBU NICULESCU, SECRETARY GENERAL, LEAGUE OF FREE ROMANIANS

Mr. Barbu Niculescu, residing at 6 East 80th Street, New York, New York 10021, considering the "Trade Reform Act of 1973. H.R. 6767) presented by the U.S. Administration, and later amended (H.R. 10710) by the House of Representatives, states:

1. The Trade Reform Act of 1973", as presented by the Administration, is a well-timed initiative to determine a flexible and prompt answer to pressing world trade problems confronting the U.S.A.

As an American business man, aware of the new world economic configuration, I consider the President's Trade Reform Act an urgent and necessary legislative proposal.

The elements of world economy have changed drastically in the last few years and are now in the process of searching for new rapports and balances.

It is appropriate that the changes on the economic scene be encountered here by a more dynamic and efficient system in order to deal expeditiously with the new problems they raise.

The Bill is advancing a series of urgent proposals to meet the new world trade situation. Under the scrutiny of the Senate the Bill is responding to a pressing necessity. Supporting it I express a general opinion of Americans who are aware of its importance and who are interested in trade here and abroad.

2. Particularly relevant to the projects I am associated with, is an item which deals with equal tariff treatment for Romania, mentioned on page 12 of the Bill.

This new authority would enable the President to fulfill his commitment to Romania and to take advantage of opportunities to conclude beneficial agreements with other Sociailst countries which do not now receive the M.F.N. treatment.

I do recognize the general concern in the Congress over the freedom of movement and emigration legislation in some of these countries, but as stated by the President, I do not believe that a policy of denying M.F.N. status is a practical way of dealing with it.

It is my conviction that a normalization of trade relations with the Socialist countries is highly desirable, and in time this will help and stimulate the progressive opening up of these new societies.

3. Romania has produced already a new liberalization policy concerning the freedom of movement and emigration legislation.

The new legislation provides new classes of Romanian citizens: 1) Romanians who live in their country; 2) Romanians who live in foreign countries indefinitely; 3) Another class is formed by the former Romanians who have acquired foreign citizenship and who desire to live in Romania.

Since the Second World War the Romanian Government has allowed 340,000 Jewish people, out of about 420,000, to emigrate to Israel without paying tax. The rest remained in Romania, not because the Government opposed their emigration, but because they were too old to emigrate or did not want to emigrate. Families were reunited by the Romanian emigration authorities in the past and are still reunited.

4. Romanian economic efficiency and product quality.

After Romanian President Nicolae Ceausescu had declared publicly a few years ago that Romania is a country in the process of development, today many 1974 plan targets have been sharply upgraded. In the drive to fulfill the five-year economic plan at least a few months ahead of schedule next year, the 1974 plan is having many of its targets upgraded by very ambitious margins.

Nowhere is this ambitious planning more evident than in the areas of total growth, as seen by national income and industry, investment and foreign trade. Economic efficiency and product quality are the chief concerns of the Romanian Government.

Herewith is a summary of the 1974 plan highlights, with targets measured where possible against goals programmed for last year and guidelines originally given for this year in the 1971–75 plan law:

National Income.—Projected growth of 14.6%, highest programmed so far in any quinquennium.

Foreign Trade.—A shocking 41.3% turnover leap projected; exports are to rise 43% and imports 39%. Savings realized from fewer new investments startups are to be allocated for the import of capital goods destined for deployment in existing capacities of machinery, tools and industrial equipment.

Industry.—National industrial production should reach Fifty Billion Dollars this year, which is about 20% above the level programmed for last year and the highest rate in two decades.

Agriculture.—Here, this year's plan is toned down, with farm output 5.8% above the level programmed for last year. However, the new five-year plan calls for 36–39% expansion.

Investments.—Industry gets 60.8% of total investment, while agriculture receives 11.3% of it; transport and tele-communications 10.8%, housing 3.910 and construction 3.2% of total.

These figures show clearly the determination of the Romanian Government to prove to the world that Romania is a country in the process of development, declared publicly by President Nicolae Ceausescu. His policy is based on the fact that Romania is a country of great natural resources—oil, minerals, coal, metals, etc.—plus highly trained specialists in the field of science engineers, chemists, technicians, doctors, good labour and plenty of raw materials), which enable Romania to compete on any international market.

Let us take for example the field ofworld electronics.

Romania's electronics and electro-technical products have expanded 43.4% in the first two years of the 1971–75 economic plan. It is additionally accelerating during 1973–74 another 68.5%. Romania now exports these products to more than forty countries. They use technology licensed by firms from the United States, Japan, West Germany, France and others, besides employing Romania's own modern know-how.

In the field of industrial equipment Romania produces and exports: Equipment for the metallurgical industry; Machine tools; Welding equipment and accessories; Power machinery—pumps, compressors, motors; Quality control apparatus and devices; Equipment, installations and materials for the generation and transport of electric power; Tele-communication and electrical engineering equipment; Electronic control and automation equipment and apparatus; Electrical and electronic research, measuring and control equipment; Equipment, installations and machinery for the oil and gas industry; Equipment, installations and machinery for the chemical, plastics and rubber industries; Machinery, equipment and installations for the textiles, ready-mades, leather and Moroccan and folk goods industries, world known for their quality and beauty based on a very old culture; Equipment, installations and machinery for the mining industry and transport within plants.

Wages and jobs.—Non-farm employment is to rise by a quarter million people this year, at once higher than the increase planned last year and the biggest gain of the quinquennium, which foresees a million jobs expansion.

Real incomes of the population per head are to rise 8.6% this year. In the initial two years incomes went up 22%.

The real non-farm wage is $73. monthly, while the monthly farm wage is $48., which illustrates the government's boom of the country's industrailzation, trying to put in value its natural resources, which will bring about a faster growth of the standard of living of the population.

In 1950 the per-capita national income was $80. The per-capita income today is $800. The estimated income for 1990 is between $2,500. and $3,000.

The Romanian Government has reduced the State owned Trade Companies by 13 this year, in order to allow foreign capital investments, under the new law for the "mixed corporations", not only in Romania, but elsewhere in the world, especially in the field of chemicals, pharmaceuticals, petroleum, coal, steel and aluminum.

The Romanian Government has taken measures and has instructed its Foreign Trade Companies with the purpose to serve the needs of the country, allowing a greater inflow of Western investments, as provided in its new law No. 424 of November 2, 1972, for the "mixed or joint corporations".

The light consumer items industry sector has eight trade firms, plus another three related to handicraft corporations. The total eleven include: Tricoexport, Stirex, Centralimpex, Ipiu (a design institute), Arpimex, Confex, Romanoexport, Romsit, Ilexim, Eximcoop and Icecoop.

5. According to the compiled information given by the U.S. Journal of Commerce, the U.S.A. has a favorable balance of payments with Romania.

In 1971 the U.S. imported from Romania goods amounting to Twenty-five Million Dollars and exported to Romania goods in value of Sixty-five Million Dollars, against the 1973 amounts when the U.S. imports were almost Fifty-six Million Dollars, while the exports rose to about One Hundred-Seventeen Million Dollars.

Trade between the United States and Romania in 1974 could near Four Hundred Million Dollars according to the same source.

This fact is due to the new economic reorientation of the Romanian economy to the West and particularly to the United States.

As far as the rest of the world is concerned, among non-Socialist developing countries, the top Romanian imports came from Iran, followed by Egypt, then India and Argentina. East Europe's share of the 1972 Romanian import market is the lowest since 1967, while the Industrial West's slice is the highest since 1968. The Soviet exports to Romania are the lowest in the last two decades, compared with the share of Russian products imported in Eastern countries.

The Romanian exports to non-socialist developing countries continue to be to Lebanon, followed by Egypt and Iran, then India, Brazil. Exports to Israel ranked behind Iran, but ahead of most Eastern European members, also Japan and Canada.

The Industrial West, in market share terms, was worth more to Romania than ever before in 1972. Proportionately, too, the slices of world sales going to East Europe and to the U.S.S.R. were the lowest in at least two decades. For example, the total Romanian Trade with Western countries in 1960 was 22% and in 1972 it increased to 45%; while the U.S.S.R. share slice in 1960 was 47% and in 1972 it decreased to 24%.

6. Romanian Trade with the U.S.A. may double in 1974.

Trade between the United States and Romania may well double again in 1974, for the second consecutive year, Western experts predict.

With the region of Two Hundred Million Dollars in the bag for the last year, prospects for 1974—propelled by American exports to Romania—are good enough to near the Four Hundred Million Dollars turnover.

Romania takes delivery this year of 707 Boeing jet planes and several projects involving American Equipment are getting underway.

Moreover, the Romanians are strengthening their own export drive in the United States in several fields—meat products, beverages, machine tools, chemicals, farm equipment, etc.

One important point in the Romanian export picture is that the petroleum and oil products category have been accounting for a significant portion of sales to America.

The U.S. Department of Commerce reported last year that the petroleum and oil products accounted for about 30% of Romanian exports to the United States The same source recently published estimates showing that Romania's gross national product was in 1972 Twenty-eight Billion Eight Hundred Million Dollars compared with Twenty-four Billion Two Hundred Million at the outset of the 1970s and Eighteen Billion One Hundred Million midway through the 1960s. Within Eastern Europe the latest estimates rank Romania ahead of all the other countries.

Among the International Economic Organizations, Romania is a member of GATT, IMF, World Bank, U.N. Economic Commission for Europe and Comecon.

7. U.S. Romania Trade Package approved.

On December 5, 1973, President Nixon and Romanian President Nicolae Ceausescu, in a joint statement pledged to "facilitate economic, industrial and technological cooperation between U.S. Firms and Romanian enterprises." Among the 13 point guidelines for promoting bilateral economic relations, there were signed an income tax convention, a civil air transport pact and a fisheries agreement in West Atlantic waters.

A special emphasis was put also on machine building, electronics, energy, metallurgy, mining, chemicals, tele-communications, building materials, agriculture and tourism.

Among joint ventures the two leaders mentioned manufacturing and marketing activities, industrial licensing, the mutual exchange of banks and banking agencies and "cooperative projects" in third nations.

Other "guidelines" provided for:

Establishment of a joint Romanian-U.S. Economic Commission to meet annually for "broader" economic relations between the two countries.

A pledge not to expropriate each other's assets, except "for a public purpose", and in such cases, the assurance of prompt, adequate and effective compensation. From what other country in the world, underdeveloped or in course of development, has the U.S.A. official agreements which are beneficial to the United States? Only Romania has closed agreements with the American Corporation as "Mixed Corporations", before both governments have signed such agreements, like in the case of Central Data Corporation, Manufacturers-Hanover Trust Co, etc.

Mutual protection of inventions, trade-marks and trade names.

Settlements of disputes through arbitration procedures see by the International Chamber of Commerce in Paris.

The joint statement also suggested that the U.S., if Congress approved, might extend equal duty treatment to Romania, because it is a "developing country" This is an economical position, which Romania has achieved officially in Washington.

Meanwhile, President Nixon vowed to work for equal tariff treatment for Romanian products—duty rates charged now for non-socialist nations.

At present, U.S. tariffs on goods from Romania, as from most socialist countries, average about two to eight times more than the rates assessed imports from other countries.

The two-way trade between U.S. and Romania grew fourfold since 1969. U.S. will insure American business in Romania.

According to the U.S. Treasury Department, the United States-Romania tax treaty, which will be subject to Senate approval, is similar to recent U.S. treaties with other European countries.

8. The present Foreign Trade between the United States and Romania, due to unfair tariff treatment.

The American economy is struggling to cover the needs for Phenol, Petrochemicals, Polystyrene, Polyethylene, Synthetic Fibres, etc. in the MFN countries, but either they do not produce them or the prices are too high. For example:

Products	Import duty from MFN countries (dollars)	Import duty from Romania (dollars)
Phenol	33/T plus 9 percent tax	77/T plus 20 percent tax.
Polystyrene	30/T plus 9 percent tax	144/T plus 45 percent tax.
Polyethylene	27/T plus 7.5 percent tax	88/T plus 30 percent tax.
Synthetic fibres	1.5 percent plus 5 percent tax	10 percent plus 35 percent tax.
Rubber and plastic containers	7.5 percent tax	80 percent tax.
Polyethylene bags	8.5 percent tax	80 percent tax.
Machine tools	6–7.5 percent tax	30 percent tax.
Electrical transformers	6–12.5 percent tax	35 percent tax.
Electric motors	6–20 percent tax	35–90 percent tax.
Electric pumps	5 percent tax	35 percent tax.
Wood furniture	8.5–12.5 percent tax	40–42.5 percent tax.
Plywood	8.5 percent tax	40 percent tax.
Hardboard	7.5 percent tax	30 percent tax.
Glassware	25 percent tax	50 percent tax.
Food products approved by FDA:		
Canned beef	7.5 percent tax	30 percent tax.
Cheese et cetera	8.15 percent tax	35 percent tax.

Due to this unfair tariff treatment to Romania, the United States in fact prevents the efforts for the Romanian industrialization and economic progress.

Romania has made huge efforts to increase the trade with the United States in order to pay for the huge imports from the United States, which show a steady increase in the balance of payments favorable to America.

If the United States policy is to build a fair and open trade world, the United States is morally obligated to assure a fair competition also on the world markets. What Romania expects, therefore, is an equal and nondiscriminatory tariff treatment in order to buy all their industrial equipment from the United States.

It would be unrealistic for the American Government to expect Romania to buy all their industrial equipment and technology from the United States, while imposing three to five times higher duty on Romanian products.

9. Need for U.S. Senate separate tariff consideration for Romania.

Section 504 of the Trade Reform Act of 1973, Paragraph (a), Point (2), as proposed by the Administration, states that the President may extend M.F.N. treatment to a foreign country which has become a party to an appropriate multilateral trade agreement to which the United States is also a party—which is the case of Romania.

In 1971, Romania became a member to the General Agreement on Tariff and Trade (GATT) to which the United States is also a member, together with Poland and Yugoslavia, both Socialist countries, and at that time the United States supported the Romanian membership. Under this agreement Romania assumed duties which are similar to duties assumed under M.F.N. bilateral agreements.

It is also important to note that there are three separate Bills introduced and sponsored for the M.F.N. for Romania earlier last year, namely:

1. S.1085 by Senators Walter Mondale, a member of the Senate Finance Committee, which handles tariff bills; and Senator Edward Brooke;
2. H.R. 1931 by Representative Joe Waggoner, a member of the House Ways and Means Committee, where tariff bills are handled; and
3. H.R. 2034 by Representative Paul Findley and seven other members of the House Ways and Means Committee.

10. The United States should consider granting M.F.N. status to any country, based on her independent economic merits related to the U.S. economy and her international performance.

The American Government has repeatedly declared publicly and at the International Conferences that the U.S.A. believes in treating the world nations, whether large or small, as totally sovereign and as equals.

President Nixon has declared publicly that the Romanian contribution to the world cooperation and peace is a well known fact, especially in the U.S. efforts to reach an understanding with the Soviet Union and the Peoples' Republic of China, in order to achieve peace in Vietnam. The Romanian Government's war debt has been fully settled and paid since 1961.

Romania today has world wide friendly relations with all the nations in Europe, in Asia, in Africa and North and South America.

Her basic principles were very clearly defined during the European Security Conferences, both in Helsinki and Vienna, that she intends to be an independent, peaceful and sovereign State.

Among all Socialist countries, Romania has agreed to participate in mixed corporations on an equal basis, in the countries where the foreign investments came from, which provides complete assurance of their honest economic intentions.

In the first place it would be unfair to the American investors in Romania not to grant them the M.F.N.

Here is an opportunity for the U.S. Congress and Senate to grant Romania the M.F.N. treatment, based only on her own political merits and international economic performance.

I feel it is a duty for all Americans to support the President's Trade Reform Act of 1973, which advances the cause of freedom, independence and lasting peace through World Trade and prosperity.

SOURCES OF ECONOMIC STATISTICS AND INFORMATION ABOUT ROMANIA

1. The U.S. Jorunal of Commerce of January 14th and February 27th, 1974.
2. The New York Times Magazine of February 24th, 1974, Section 6.
3. Chase World Information Corporation, East-West Trade Consultants.
4. Business Week Magazine of December 1st, 1973 (pp. 40–44) and December 8th, 1973.
5. U.S. Commerce Department.

Senator PACKWOOD. The next witness is Lt. Col. Starr West Jones.

While the colonel is coming up let me explain again our time limit. We have, after Colonel Jones, five sets of witnesses. We are trying to hold to a 10-minute limit on direct statements so we can have time for questions and get done this morning. I will hold very firmly to this rule. Colonel?

STATEMENT OF DR. JAMES H. SHELDON, VICE PRESIDENT OF RESEARCH CENTER FOR RELIGION AND HUMAN RIGHTS IN CLOSED SOCIETIES ACCOMPANIED BY REV. BLAHOSLAV HRUBY, EXECUTIVE DIRECTOR

Mr. SHELDON. Mr. Chairman, I am not Colonel Jones. The request was that Colonel Jones and myself, and incidentally I am Dr. James Sheldon, appear. It so happens that Colonel Jones edits one of the most widely distributed religious publications in the world with a number of international editions and he had trouble with deadlines today. His statement, however, is that of the executive committee and the board of directors of the Research Center for Religion and Human Rights in Closed Societies, of which I am vice president.

I am accompanied here at this moment by our executive director, Rev. Blahoslav Hruby, a Presbyterian minister of Czech birth.

Our special concern is the retention in this bill of the material commonly known as the Jackson-Mills-Vanik amendment, which I believe is supported by a majority of the Members of both Houses in its submission and stands before you.

The Research Center was formed to help expand and support the area of human and religious freedom in the world. This is a cause in which America has been concerned ever since the days of the Mayflower Compact and the Declaration of Independence. We strongly favor any steps that expand the area of mutually beneficial trade because they help to improve the lot of all peoples, however, it is the established practice of most countries and ours in particular to make certain that negotiations, looking forward to new extensions of trade. are two-way streets with a give and take involved.

We favor detente but only when it is a two-way street. We favor the expansion of trade but only when it is a two-way street.

Now, we are being asked in this bill to open the way for most-favored-nation treatment to the Soviet Union and other countries in the nonmarket economy. I think our position comes perhaps from the Bible as well as the Declaration of Independence and the Bible teaches us that all men are brothers and we must be concerned with each others' welfare. Trade is a part of that welfare, but only a part. Other parts are: a right to practice one's religion, a right to speak freely, a right to move freely about, a right to leave one's country and to return to it.

In short, we believe that morality as well as economics should have something to do with our world affairs.

Senator PACKWOOD. I would agree with you and I am a supporter of that amendment. Let me ask you, because a number of the business groups have been opposed to leaving the Jackson-Vanik amendment in. Not because it is immoral but because it is not germane and shouldn't be in the trade bill. This is the argument. In a trade bill how far should we go in what Russia does internally? How much is our moral business? Should it extend to freedom of the press?

MR. SHELDON. I think that since the adoption of the Universal Declaration of Human Rights, negotiations might legitimately extend to any of those freedoms. The particular freedom involved in

this amendment and now a part of the bill is perhaps the most basic of all because it has to do with the right of people to move freely and if necessary to become refugees in some other countries.

This right of movement is perhaps the most basic of all and it is one that doesn't really concern the internal affairs of the country. It concerns the external affairs also in the sense that it has to do with the right of the movement of people.

Now I am aware that a lot of people say that this ought to be dealt with separately. I understand that the Secretary of State has so testified. We would take strong issue with that. The question of human rights ought not to be one that would have to be raised at all, but if they are denied in a country that is about to become our trading partner under conditions where we extend credits and investment guarantees and so on, which indeed uses tax money taken out of the pockets of all of us, then I think we are entitled to some quid pro quo in terms of improving the whole state of the world and helping people who are not able to help themselves. This has to do with the peace of the world.

Senator PACKWOOD. Well the question——

Mr. SHELDON. And if I might just have one more statement, because if you don't have a degree of freedom of movement recognized and other freedoms, you are going to have to go to war.

In this case I think that you and the others who sponsor this amendment have made yourselves the consciences of the world and also the spokesmen for many, many thousands of people who have no other spokesmen.

Senator PACKWOOD. I think we ought to put a dose of morality in much of the legislation that we pass. I also know if we were to try to apply most of the freedoms expressed in the U.N. Declaration of Human Rights to most of the countries in the world that do not observe them, we would have trade with almost none of them if our insistence was that unless they observed these rights we will not trade or extend most-favored-nation.

I just want to find out how far should we go. You and I agree on emigration. How much more should we demand? I am trying to think what the United States would think if other countries demanded certain things of us. For instance, we restrict emigration for certain people under indictment for trial and will not allow them to leave the country pending trial.

Mr. SHELDON. I would separate the right of emigration from the right of exit. I appeared before some other committees some years ago in support of liberalization of immigration policies to the extent of doing away with ethnic barriers and so on, a change which was made several years back. But here we are dealing with this just one very basic element. And I am suggesting that it is appropriate to invest upon that element because we are making important concessions besides just a matter of two-way trade. We are making concessions to a country which badly needs to purchase a lot of materials from us, a lot of technology and technological material and so on, which will help to shore up its military status.

So the question of our military arrangements with the Soviets is also involved. And also they are asking to do this on a credit basis

which means using our money at least for the immediately foreseeable future. Therefore the situation, and the same is true with all of the nonmarket economy countries, therefore the situation is a little different from negotiating a treaty with let us say Great Britain, with the United Kingdom, where this kind of issue would not be involved.

Senator PACKWOOD. What about Red China? We will soon be negotiating trade agreements with them I judge.

Mr. SHELDON. I would certainly feel that the same rules apply there. And under another hat, as a foreign correspondent, I have talked with at least two score refugees from mainland China within the last couple of years in all of the countries surrounding that area. There is a complete limitation on exist from Red China. If you go to the border at Hong Kong, if you went there a couple of years ago anyway, you would see a row of little pill boxes on the Peoples' Republic side. When I first saw that row of pill boxes I had to look at my map. I thought that I had gotten my directions wrong because the guns seemed to be pointed in the wrong direction. They weren't pointed towards Hong Kong; they were pointed towards China to keep the people in.

A lot of correspondents mentioned that beside myself and the last time I was there the pill boxes had been removed. But they typify the problem and so you have thousands of young university graduates losing their lives in the risky business of swimming through the shark-infested waters of the river there at Hong Kong just to get out of the country.

I think we ought not to make a deal where we are, again, pay for, through our loans and guarantees, pay for their side of the trade as well as our own. We ought to make such a deal without selling out the rights of people to get out.

Senator PACKWOOD. Let me ask you further. Are there any other rights we should insist upon?

Mr. SHELDON. Yes, but I suppose you can't ask for everything at once. This basic right that is contained in the amendment I believe is the one with which to begin. Perhaps then with a little work the next thing will be a little more freedom of information. If people have the right to go and come, you have to get more freedom of information and you are in a better position to argue for it. You have to begin to have some freedom of religion if people are free to go and come.

So I think that the framers of this amendment were very wise in picking this particular right as the one on which to concentrate. And of course we have already heard a great deal about the question of the migration of Soviet Jews to Israel; a matter in which our group is particularly concerned.

I would like to have a resolution of ours inserted in the record as part of my testimony if I may at this point.

Senator PACKWOOD. It will be.[1]

Mr. SHELDON. So that I believe that if we stay put in this place, with this amendment, we may start a whole new picture with regard

[1] See p. 1801.

to human rights and world affairs. It is nothing new to negotiate over a lot of things when you negotiate a trade bill.

Way back in the early days, we took 14 years negotiating a trade treaty with France. Albert Galaton and Henry Clay were the architects of that. The main thing technically involved was the tariff on French wines. What actually was involved was the settlement of a whole string of matters growing out of the Louisiana Purchase. Years ago when I taught international law, I insisted that my whole student body read this whole set of negotiations. It took us 14 years of negotiations and it was technically a trade treaty about duties on wine.

This is nothng new in American history although, for awhile, we tried to tell ourselves in the 1920's and early 1930's that we could separate trade from other things, but now the world has changed again and trade is inevitably tied up with our military relations, with the security of the world's peace and so on. How can you trust a country where a society is totally closed, where there is no freedom to know at all?

Senator PACKWOOD. I don't trust them at all. I am just curious how far the United States should go. We got burned in Viet Nam when we went in and attempted to impose upon them some of our ideas of government and what kind of freedoms we thought they should have or try to have. I am just curious how far we should go in imposing what we think other countries ought to have.

Mr. SHELDON. Yes. What I would like to do, and I take it the Senator would also be interested, would be to include a lot of freedoms, but you can't do that and make it all at once. So I believe that this selection of the right to go and come is just about the most basic of the human rights, and is the one to select.

And I think that there is no parallel with the Viet Nam situation; a situation which I would love to discuss but I know you don't have time now.

Senator PACKWOOD. No, I'm afraid we don't.

Mr. SHELDON. However, there is no proposal or no possibility rather that we are going to send an army or a navy or an air force to compel the Soviets to accept a steel mill from us or to accept the know-how to operate an assembly line or to accept some more wheat.

And I think it is utterly unlikely that anyone would suggest sending the Air Force in to collect what is due under this bill in that regard. All that is proposed here is one stark fact, to make it easier for the Soviets to purchase things like those using credit which we supply.

Senator PACKWOOD. Do you think that we ought to withhold all most-favored-nation status or any kind of trade agreement with Russia until they are willing to pay off financial debts of their predecessors?

Mr. SHELDON. I would not think so.

Senator PACKWOOD. Why?

Mr. SHELDON. But in negotiating general loans and the like, if we were ever to do so, we should deal with that.

Senator PACKWOOD. Why not in this bill? We are going to have some witnesses a little later on who are going to testify to that effect,

but why shouldn't Russia be held to its contractual obligations to citizens in this country?

Mr. SHELDON. There is no reason they shouldn't be, but on the other hand I think that one has to make some kind of tradesman's judgment as to how many things you can put into the bill at once. I mean, if you get this one thing, you have then started a whole series of new developments.

I think if we put a whole series of things in it, which I personally would like to see done and I know you would, we might end up without being able to negotiate a trade treaty at all. And I think there are some advantages in doing that.

Senator PACKWOOD. Doctor, I've got to stop you because the bell has rung and your entire statement and the resolution will be in the record.

Again, we appreciate your statement and thank you for coming.

Mr. SHELDON. Thank you.

With your permission I would like to leave with the chairman a copy of a monthly publication of our agency also.

Senator PACKWOOD. Thank you.

[The prepared statement of Colonel Jones and Mr. Sheldon and material submitted for the record follows:]

STATEMENT OF RESEARCH CENTER FOR RELIGION AND HUMAN RIGHTS IN CLOSED SOCIETIES

(BY LT. COL. (RET.) STARR WEST JONES, PRESIDENT, AND DR. JAMES H. SHELDON, VICE PRESIDENT)

SUMMARY

The extension of most-favored-nation treatment to nonmarket economy areas brings large economic advantages to them. We should require, in return, from benefiting nations some improvement in the granting of human rights—to thus help assure future peace in the world. The Research Center for Religion and Human Rights therefore urges that the provisions of the Jackson Amendment be retained in the Bill. While we favor detente, we are keenly aware of the danger of a Second Munich—and we believe that the provisions of the Amendment will help guard against that danger.

STATEMENT

Mr. Chairman, the Research Center for Religion and Human Rights in Closed Societies was formed to help expand, and support, the area of human and religious freedom in the world.

This is a cause in which America has been concerned since the days of the Mayflower Compact and the Declaration of Independence. These are purposes embodied in the Constitution of the United States, and more recently in the Universal Declaration of Human Rights.

We strongly favor steps that expand the area of mutually beneficial trade, and the free exchange of peoples and of ideas, anywhere in the world—because these help to improve the lot of everyone concerned, and make the possibility of permanent peace more likely.

It is the established practice of most all countries, however, and of the United States in particular, to make certain that all negotiations looking toward new extensions of trade (or similar exchanges) be mutually beneficial, and if possible also beneficial to the world.

In other words, we are concerned with a two-way street:

We favor detente, when that is a two-way street.

We favor trade, but when that, also, is a two-way street.

We are being asked, in this Bill, to open the way for most-favored-nation treatment with respect to the Soviet Union, and other countries in the nonmarket-economy area.

We believe that in making such extensions, which include important credit and investment advantages, we must also consider some very basic principles for which the United States has so long stood—and the expansion of world trade is only one of them.

The Bible teaches us that all men are brothers—and must be concerned with each other's welfare. Trade is a part of that welfare—but only a part. There are other matters involved—basic human rights: such as the right to move about freely, the right to worship freely, the right to free speech, etc.

This country has recently fought three wars for the freedom of the individual—and our tradition is to support the enlargement of that freedom, everywhere. To negotiate new areas of trade, without being mindful of this fact, would mean that we had failed in an obligation to our history, to our citizens today, and to our fellow-men in other countries.

In short, we believe that morality, as well as economics, must govern our negotiations with the Soviet Union and the other closed societies with whom we may make agreements under the terms of this Bill.

We must ask ourselves, how does this affect the welfare of people?

In the Universal Declaration of Human Rights, the nations of the world have declared:

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country." (Art. 13).

And again, we read:

"Everyone has the right to seek and to enjoy in other countries asylum from persecution." (Art. 14).

Events today make it obvious that these rights are not available to thousands upon thousands of people in the nonmarket-economy countries.

The recent sensational incidents, surrounding the exile of the Nobel Prize winning author Alexander Solzhenitsyn, provide one striking example, affecting the USSR. The increasing number of young intellectuals who lose their lives trying to leave the Peoples Republic of China provides other examples, as also does the very existence of the Berlin Wall.

Some people will ask, what do the rights of these people have to do with trade—with "doing business"?

We would respond: The Soviet Union and the other nonmarket-economy states have obvious need to do business; and it is now being proposed that we meet some of their needs by making available a considerable array of credit and banking privileges. Specifically, it is proposed that what is called "most-favored-nation" rights be extended to them.

Such an extension of trade areas is, in itself, desirable: but, as already noted, we believe a two-way operation must be invoked. It is here that we believe the Bill before you requires the retention of the amendment as has been proposed by Senators Jackson, Ribicoff and 76 others.

We contend that if the Soviets are sincere in their desire for true détente, then they must demonstrate it realistically, by a willingness to compromise. The Jackson amendment provides them with the opportunity for such a realistic move. Without some such giving on the part of the Soviets a two-way détente is not possible.

To extend the most-favored-nation area into the nonmarket-economy region in itself involves certain risks to the American taxpayer, and some major readjustments in our home affairs. To incur these risks, without being mindful of the unique opportunity which history has presented us for bearing testimony to the concept of freedom, would mean that we had made unjustifiable concessions to unreciprocating governments who maintain a different and less-free society. It would mean that détente had become merely a one-way street.

Andre Sakharov, the Soviet physicist, who has long been one of the chief critics of his government's totalitarian repressions, has in recent writing surged "convergence" between the Soviets and the West; but at the same time he warns the West about what he calls the "hidden dangers" of a false détente, a collusionist détente, or a capitulation détente.

We believe that Sakharov's warning coincides with the danger we see in granting most-favored-nation status without receiving in exchange some tangible benefits from the Soviets, benefits that will help insure peace in the world. At least one such concrete benefit would be ensured under the terms of the Jackson amendment.

The Secretary of State was quoted recently as saying that these freedoms, such as the Jackson amendment calls for, will be forthcoming later, in good time, without demanding them in this Trade Bill.

We ask you, gentlemen, did the peace which a totalitarian government promised to Prime Minister Chamberlain come after he signed, so trustfully, at Munich?

This Trade Bill, if passed without the provisions of the amendment, may become a similarly tragic document.

To barter away our free trade, with all its tremendous advantages, in exchange only for money or goods would be to dishonor every American who fought for freedom for ourselves and our Allies in the last three wars. Are the sacrifices of those lives, careers and fortunes to be now traded off for nothing more than dollars and shadowy promises?

The objectives being sought in the amendment are simple, and they do not affect the *internal* conduct of other countries. What we ask is only that, in their *external* relations, the other parties to any negotiation under this part of the Bill, will agree to implement for their citizens the principle that men and women shall be permitted the free exercise of the right of exit.

Mr. Chairman, it seems to us that an opportunity is actually before us in this Bill to ask for much more. Yet what is provided in the amendment is only one of many freedoms that ought to prevail in nations everywhere—and we believe this one is a bare minimum, without which a most-favored-nation status should not be granted.

There remains but one question. Some have said, why do we not deal separately with trade and with human rights? Why must these matters be incorporated into one single package?

The answer is very simple. It should not be necessary to raise questions of human rights at all—but, if they are denied in a country that is about to become our trading partner, then it is up to us to use the leverage of our negotiations to bring about some improvement.

Permanent peace is not possible until nations remove the causes of war. The denial of basic human rights is one of these. An opportunity to remove one such cause of war, without resort to force of arms, is not apt to present itself again in the near future.

To fail to use such an opportunity, when it is before us, would be to fail our obligations to our own citizens and to thousands of human beings whose misfortune it is to have no one to negotiate on their behalf. You, the members of this Committee, can therefore become the advocates for these voiceless thousands.

A few weeks ago, when discussing this Bill on television, one gentleman who heads a committee on extension of trade said in effect: "Oh, they only want to buy our Pepsi Cola."

There is no harm in people drinking Pepsi—or any other cola, we might add—but cola is only one item in a free trade. It is heavy industry and critical scientific technique which the Soviets want, and will get, once we grant them most-favored-nation status. That priceless trade will help to build a strong economy within the Soviet Union; and let us remember that military might rests upon the strength of a nation's economy. Unless we secure from the Soviets, in exchange, a realistic proof of sincere, peaceful cooperation, then we will have been utterly naive; in spite of our much vaunted Yankee sagacity we will have been bested in a trade deal, by a subtle and dangerous "Cola diplomacy".

Gentlemen, we urge you to retain in this Bill the provisions of the Jackson amendment.

STATEMENT ON THE MIDDLE EAST

(Statement Adopted by the Board of Directors of Research Center for Religion and Human Rights in Closed Societies on November 29, 1973)

PERIL TO WORLD ORDER—TERRORISM—DISREGARD OF RIGHTS OF PRISONERS—OIL BLACKMAIL—PERIL OF A NEW MUNICH AND A NEW SOVIET IMPERIALISM—AMERICAN POLICY SUPPORT FOR ISRAEL

We are deeply concerned by the peril to freedom which has been created by the war in the Middle East. The danger takes many forms—

PERIL TO WORLD ORDER

For the first time in history, observers acting for the whole international community (the United Nations Truce Supervision Organization) were able to report definitely as to which side started the fighting. They reported that troops of Syria and Egypt marched, without provocation, against Israeli positions, moving on exactly the same time schedule. The United Nations has failed to recognize this basic truth in its actions.

TERRORISM

Terroristic acts by illegal and paramilitary groups have been allowed to continue, without any discernible effort of Arab governments to prevent them. When guerrilla forces made illegal forays across the Jordan River or the Syrian boundary, no government made effective efforts to control such actions. We recall that when terrorists assassinated Israeli athletes at the Olympic Games in West Germany, the Arab leaders did not denounce the action—even though it took place in a neutral land.

There is no code of ethics, anywhere, that can justify punishing innocent third parties, in countries not party to a dispute, as part of an endeavor to achieve a military purpose—whether that purpose be good or bad.

DISREGARD OF RIGHTS OF PRISONERS

To this day, the Syrian government has refused to exchange lists of prisoners, to exchange wounded prisoners, or to allow Red Cross inspections, all this in violation of the Geneva Convention.

A basic matter of humanity is involved here. The world cannot stand idly aside when such violations of human rights take place.

OIL BLACKMAIL

The threat of an oil embargo, intended to coerce sovereign nations not involved in the Middle East fighting, is dangerous to the peace and security of the entire world. The use of such methods threatens the industries, the jobs and the rights of people everywhere.

No state or group of states, using such means, has the right to plunge the world into economic chaos, with attendant suffering of millions of people, and with the possible danger of general warfare.

THE PERIL OF A NEW MUNICH AND A NEW SOVIET IMPERIALISM

The true protagonists in the Middle East are the Communist totalitarian world and the free world. It is in the interest of justice, and in the interest of democracy throughout the world, to ensure the security and existence of Israel, as the only strong outpost of democracy in a region that is critical in both military and economic terms.

Without enormous Soviet armaments, the Egyptians and the Syrians would not have been able to mount their attack. Since the outbreak of the war, the Soviets have resupplied these countries with at least 200,000 tons of new weapons delivered by sea, plus unknown quantities delivered by air.

America, and the free world, cannot stand by while Communism seizes the crossroads between Europe, Asia and Africa, along with its enormous petroleum deposits—energy sources which the Soviet Union does not need for its own purposes, but would like to control as a means of enlarging its area of hegemony. Such a result would reduce many countries to the status of Soviet satellites, and threaten the way of life of the entire free world.

AMERICAN POLICY

The United States must beware lest our efforts at detente result in steps whereby America offers tangible benefits to the Soviet Union in exchange for nothing more than a softening of Moscow's propaganda rhetoric.

We must use every means to make sure that other free nations, and the members of NATO, understand this peril—and realize that present Soviet policy is merely an extension of the Czarist ambition to make the Mediterranean the Southern boundary of Moscow's power.

America should use every resource of economic power, diplomacy and international negotiation, to prevent the extension of Communist control which is threatened so clearly.

At the United Nations, we must prevent the endeavors of the Moscow-Cairo Axis to rewrite history by their attempt to substitute for a concern for refugees a plan to "liberate the Palestinian nation"—which is only a euphemism for the destruction of Israel as a sovereign and recognized member of the family of nations.

At home, we must not succumb to the threat of oil blackmail.

SUPPORT FOR ISRAEL

In the Middle East, we must make sure that the fragile cease fire is preserved, by supplying to Israel such support as she may need in order to maintain at least a balance of power, while negotiations proceed along more permanent lines.

If the Western World is to capitulate to the destruction of a small free nation in the Middle East, and sacrifice its freedom to an expansion of the area of Communist control or hegemony, then our children may well say that this was a generation of blinded leaders and governments devoid of moral principle.

AN APPEAL OF SOVIET JEWS TO THE CONGRESS OF U.S.A.

MARCH 8, 1973.

We, the Jews of the USSR, fighting for our repatriation to Israel, hereby appeal to the Congress of the USA because in our eyes it is not only the highest legislative organ but also the body expressing public opinion in the country.

The ever growing attention of the public and of the Congress of the USA to the problem of the free choice of one's country of residence and, in particular, to the problem of the repatriation of Soviet Jews to Israel, testifies to their profound understanding of this question that is of vital importance to us and to their interest in a just and humane solution of the problem.

This is the reason why we would like to give a brief description of the existing situation in the matter of the repatriation of Jews. This is particularly necessary at present because lately unconscientious propaganda has been trying to create the illusion that there has been some sort of positive progress in the matter. However, nothing like this has been taking place.

What is the aim of our struggle?

We demand the recognized and legally guaranteed right for every Jew who so wishes to go to Israel. The handouts, distributed from case to case in accordance with the political situation, cannot satisfy us, the Jews of the USSR, and they should not mislead our friends. It is this basic right that we are denied. We have only the right to petition for emigration. The decisions of the authorities remain absolutely arbitrary, but, in order to create an appearance of respectability in the eyes of the public opinion in the West, the refusals are given an imaginary legal basis.

"HAVING INFORMATION" OR "SECRECY"—OBSTACLES TO EMIGRATION

Thus, in the interview given by the Deputy Minister Shumilin, on December 22, 1972, it was stated that the limitations on the right to emigrate are applied only to those who by the character of their activities had been connected with work involving interests of State. On the basis of this provision, the great majority of scientists and qualified specialists in the spheres of physics, chemistry, electronics, calculating machines and other spheres of science and technology, as well as a number of economists, historians, jurists and journalists, who had worked in absolutely open and ordinary establishments, get refusals, which are unlimited by time and which are based on reasons of "having information" or "secrecy."

It should be stressed that the concept of "having information" or of "secrecy" has nothing in common with the concept accepted in the West, where secret work access to secret information and the obligations undertaken in connection with this, causing a temporary limitation of certain civil rights, are clearly defined. In the USSR, however, it is a matter of indefinite regulations that have not been made public anywhere.

In a country where even access to a number of foreign publications is not open to all citizens, the argument of "secrecy" is very convenient in order to refuse whomever one wants.

In addition, the so-called "registered access" merely means that the person concerned had been checked and can be permitted to read material of a confidential nature. This does not mean, however, that he had in fact carried out secret work or that he is informed of State secrets. Quite often the "secret" work, which serves as an obstacle for emigration, concerns matters that had taken place ten or fifteen years ago, or even during the Second World War. This is in spite of the fact that it is well known that even the gravest secrets are outdated in two or three years. In giving refusals, the authorities also refer to the presence of "a high informative potential." Nobody knows exactly what this is. Evidently this means having a wide mental outlook, which permits the person detained to judge the standard of science or technology in his sphere.

References are even made to the access to secret information on the part of relatives who remain in the USSR and who have no intention of leaving the country.

In light of the above it becomes clear that it would be difficult to find a person, working in the sphere of science or of industry, who could not be refused, if so desired, an emigration permit on the basis of one of the points mentioned above. The official and public statement of Deputy Minister Shumilin to the effect that it is even a secret to explain to the person interested the essence of his "secrecy" and the length of its effectiveness is a good illustration of the atmosphere of arbitrariness that exists in the matter.

The arbitrariness and the groundlessness of these pretexts are clearly demonstrated by the fact that a number of persons, who had allegedly also had high "secrecy" and had had their emigration permits refused for this reason, were suddenly given emigration permits in October 1972.

EMIGRATION TAX CONTRARY TO UNIVERSAL DECLARATION OF HUMAN RIGHTS

In addition to the argument of "secrecy," the Soviet authorities also make use of the prohibitive tax on education for the purpose of limiting the emigration of specialists. Certain persons in the West might get the impression that the new and widely publicized changes in the instructions for exacting payment of the education tax have greatly eased the situation. This would be a great error. In reality, the tax is contrary to Statute 121 of the Constitution of the USSR and to the Universal Declaration of Human Rights and is applied retroactively to persons who had received their education long before this normative act was adopted. In addition, in the calculation of the sum of this tax, the expenditure for education has been over-estimated to twice its amount and the period of repayment has been made five times as great. Exemption from the tax has been given only to part of the invalids and of the pensioners, depriving them at the same time of their life-term pension.

However, these changes have had almost no effect on the great majority of persons with higher education (the average age of the repatriates is 27). In the future a young specialist with a university diploma will have to put aside the money for the ransom (with the officially recognized rate of savings—6% of the salary) not for 125 years as before, but only for 90.

All the above-stated clearly shows that there has been no lessening in the two basic obstacles to repatriation of the Jews. And, in spite of a certain quantitative growth of the number of repatriates, connected in particular with the increase in the number of persons applying for issue of exit visas, the policy of the authorities towards those who insist on their right to emigrate, has become considerably harsher.

HARASSMENT AND PERSECUTION

As before, the Jews who have applied for emigration are forced, as a rule, to leave their jobs or are dismissed. In such a case a specialist is forced to look for any kind of work, including unqualified physical labor. Frequently he is deprived of that work as well and is afterwards persecuted as an idler.

Cases of judicial and extra-judicial persecution are becoming more frequent and more and more harsh. These cases include prison sentences for collective appeals to Soviet authorities, arrests of Jews without reason or explanation, etc.

This happened first during President Nixon's visit to Moscow, and since then it became a sorry tradition and an integral part of holidays or of solemn occasions in the Soviet capital.

Of particular concern are the unceasing trials of Jews who wish to go to Israel. In 1972 eight persons were convicted. In February of 1973 Lazar Lubarsky was sentenced to four years. Isak Shkolnik is now awaiting trial.

This great and tragic subject deserves fuller explanation. Therefore in this letter we shall not dwell on it.

The amnesty, declared on the occasion of the Fiftieth Anniversary of the USSR, has freed scores of thousands of thieves and hooligans, but it has not touched a single one of the Jews convicted in connection with their desire to go to Israel.

OUR ONLY DESIRE: GO TO ISRAEL

Our situation is becoming worse. Further repressive measures might be taken against us, even though the authorities know very well that we have no underground activities or secret plans, we have no secret organizations, we have only the desire to go to Israel and the resolve to fight for the realization of this desire.

We think that the public and the Congress of the USA should know the truth about the problem for which they demonstrate interest and understanding.

Signatures: Moscow—115; Kiev—17; Leningrad—34; Riga—57; Kishinev—38; Vilnius—33; Minsk—5; Kharkov—4; Odessa—3; and Tbilisi—3.

Senator PACKWOOD. Our next witness is Mr. Edwin S. Marks. I see you have Dr. Beck with you, is that right?

STATEMENT OF EDWIN S. MARKS, PRESIDENT, CARL MARKS & CO., INC. ACCOMPANIED BY DANIEL COLLIER, A VICE PRESIDENT AND MANAGER OF THE FIRM'S INTERNATIONAL COMMITMENTS DEPARTMENT, AND DOUGLAS SHANKMAN OF THE FIRM'S INTERNATIONAL COMMITMENTS DEPARTMENT; AND DR. HUBERT PARK BECK, CHAIRMAN, RUSSIAN DOLLAR BONDHOLDERS COMMITTEE OF THE UNITED STATES

Statement of Edwin S. Marks

Mr. MARKS. Thank you. My name is Edwin S. Marks, president of Carl Marks and Co., Inc. of New York. We are foreign securities specialists for over 48 years. With me is Daniel Collier, our vice president and manager of the firm's international committments department——

Senator PACKWOOD. And the name of the firm is really the Carl Marks Co.?

Mr. MARKS. That is right. That was my dad.

Senator PACKWOOD. I might state for the benefit of the audience that the name is spelled C-a-r-l M-a-r-k-s. It is not the same spelling.

Mr. MARKS [continuing]. And I also have with me Douglas Shankman of the firm's international commitments department. I wish to discuss the defaulted and repudiated Russian Government dollar bond debt and Mr. Chairman, specimens of which I request be inserted into the record—and its relation to the present legislation including the implications of extention of credit to the Soviet Union. Our firm has a position in such Russian securities, and has been a market maker in these issues for about 40 years. These bonds originally were offered to the American public by a syndicate consisting

of J.P. Morgan and Co., the National City Bank of New York, the Guaranty Trust Co. of New York, Lee, Higginson and Co., and Kidder, Peabody and Co.

We fear that any legislation which would permit the granting of most-favored-nation treatment to the Soviet Union and the de facto repeal of the Johnson Debt Default Act——

Senator PACKWOOD. What is the Johnson Debt Default Act?

Mr. MARKS. That was an act enacted by Congress in 1934, which prohibited the private sector from lending to any government in default or who had repudiated their obligations; an act refusing any further credits.

Senator PACKWOOD. In the private sector?

Mr. MARKS. That is correct. Well, actually the default has to be a default to the U.S. Government. So what you say is correct unless they are member of the World Bank and the International Bank.

Senator PACKWOOD. So not to a citizen per se or an individual bondholder, but to the U.S. Government? This applied to any country in the world if they were in default in obligations to the United States that no private citizen or lending institution could extend credit to that country, is that right?

Mr. MARKS. Yes.

Senator PACKWOOD. Thank you.

Mr. MARKS [continuing]. While this Russian-United States dollar bond debt remains in default and repudiation, will jeopardize the rights of bondholders who may feel that their only recourse for justice after all these years is the U.S. Government. Marshall Wright, Acting Assistant Secretary of State for Congressional Relations, wrote the following:

> Since the conclusion of the lend-lease settlement, we have been considering when and under what circumstances we can most effectively pursue bond claims and other private claims of American citizens against the Soviet Government. We have not yet reached any decision as to possible timing and modalities.

Gentlemen, we believe that the time for action is now.

During World War I, an agreement was reached between the Russian Ministry of Finance and a syndicate of leading American financial institutions, to issue to the American public a $50 million, 6½-percent 3-year credit in July 1916 and $25 million 5½-percent 5-year bonds in December of that year.

Today, there still remain these $75 million principal amount issued and outstanding plus over 50 years of interest thereon. The vast majority of these bonds are believed to be in the United States, estimated to be owned by over 3,000 Americans in about 40 States.

The U.S. Government has recognized the validity of these bonds to the extent that some holders of Russian dollar bonds have received partial payments through awards of the Foreign Claims Settlement Commission under Public Law 285 of 1955, if bondholders filed a claim with the Commission before March 31, 1956. Apparently, the many years of efforts by the Foreign Bondholders Protective Council, to have this bonded debt settled, have produced no results.

In a recent letter concerning this repudiation, U.S. Secretary of Treasury, George P. Shultz stated that "the U.S. Government has no intention of abandoning claims which are valid under international law."

Last year our State Department put it this way:

> The United States does not recognize the right of the Soviet Union, or any other state, to repudiate international obligations undertaken by the predecessor government. We believe that these obligations are valid under principles of international law, and intend to take no step which could be construed as a waiver of these principles which are fundamental to the conduct of our foreign relations.

Senator PACKWOOD. Let me interrupt again. These bonds are held solely by private citizens?

Mr. MARKS. Yes sir.

Senator PACKWOOD. This was not a government-to-government deal or approved by the Government but it was simply to private citizens in this country?

Mr. MARKS. Yes.

Senator PACKWOOD. And you are suggesting that even though it was strictly a private marketing of these bonds, it should be an obligation of this country to help these citizens collect what, in essence, is a private contractual obligation?

Mr. MARKS. The State Department has told us that it is an expousable cause.

Senator PACKWOOD. It is a what?

Mr. MARKS. An expousable cause. In other words, we can make any effort on our own behalf to collect these obligations. I have been informed by the legal adviser for the Department of State that:

> It is the opinion of the Department that the repudiation of the Soviet Government of Dollar Bonds floated by the Imperial Russian Government without permitting judicial action against it gives rise to an international claim, which could be expousable by the United States in accordance with the established principles of International Law.

Senator PACKWOOD. I am curious about that. At your convenience would you give me a letter on this further? [1]

Mr. MARKS. Yes.

Senator PACKWOOD. Fine.

That memorandum that you are reading suggests that the United States could interpose and sue on your behalf because Russia will not admit or allow the suit, is that the essence of it?

Mr. MARKS. That is correct.

Senator PACKWOOD. I didn't know that that was a principle of international law.

Mr. MARKS. Any government is responsible, Senator, any succeeding government is responsible for the debt of a predecessor government.

Senator PACKWOOD. I understand that. I was thinking more about the bondholders in the United States and I assumed there are bondholders in other countries in addition to U.S. citizens asking their governments to interpose on their behalf. I didn't realize it became an obligation of the Government to impose itself on behalf of the bondholders.

Mr. MARKS. The Government, as far as I know, has accepted the validity of this debt.

May I continue, sir?

Senator PACKWOOD. Yes.

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[1] See p. 1833.

Mr. MARKS. It may be covered later in my statement.

Mr. BECK. Mr. Chairman, I will testify on that issue somewhat in a few minutes.

Senator PACKWOOD. All right, thank you.

Mr. MARKS. It is our opinion that any legislation granting preferential treatment to the Soviet Union would constitute a waiver of these principles.

The World Bank would not allow the Soviets to borrow money on their past credit ratings. Why should the Soviets join the World Bank when Washington's Ex-Im Bank is only a few doors down the block? If it were in the interests of the Soviets to pay their debts to improve their credit rating. If you are overdrawn, would a banker offer to open a new unlimited account and say "forget the old debt"? The banks that distributed these bonds to private investors in 1916 ran little risk. Banks which make loans to Soviet Russia run no risk today. They are indirectly guaranteed by U.S. taxpayers through the Export-Import Bank at rates of interest which are less than it costs the Government to borrow funds.

In a letter to the New York Times written last year, George D. Woods, former Chairman of the World Bank and currently president of the Foreign Bondholders Protective Council wrote:

> However, the matter of privately held Russian debt is still unresolved. In 1916, United States private investors purchased $75 million of Imperial Russian Government notes, which have been in default as to both principal and interest since 1919. In addition, there are claims of United States citizens against the U.S.S.R. amounting to about $120 million, which were certified by the Foreign Claims Settlement Commission some years ago.
>
> All the governments in Eastern Europe with centrally planned (socialist) economics have acknowledged their pre-war debts, excepting U.S.S.R. and East Germany. In addition, Poland has announced a temporary debt settlement and intends to negotiate a final settlement by mid-1975. Hungary and Romania are engaged in conversations looking toward settlement.
>
> In the recent Nixon-Brezhnev communique there is a statement of agreement 'that mutually advantageous cooperation and peaceful relations would be strengthened by the creation of a permanent foundation of economic relationships.' This appears in the communique under 'Commercial and Economic Relations'. I submit that an important building block in such a permanent foundation would be acknowledgment of debts to private U.S. creditors, accompanied by an expression of intention by debtor U.S.S.R. to negotiate a settlement of them.

The Foreign Claims Settlement Commission fulfilled a congressionally-directed chore that took years to complete. If this Government Commission is right in implying that a bond issued the Czarist Government is a legitimate debt, how can the Government continue to ignore the basic rights of bondholders? As Paul Heffernan, formerly a financial editor of the New York Times put it:

> It looks as if the Nixon administration, in its zeal to lure a prodigal son back home to the market economy by the proffer of new goodies, is gambling inprudently in sponsoring executive clemency for the 50-year old unpaid debts of a rich state that commands one-sixth of the earth's surface.

In the light of this contempt for external debt, how can new credits be justified? Secretary of the Treasury, George Shultz, who has conceded that the United States "got burned" in the recent wheat sale to Russia, but who has since pledged that "it will not happen again." Let us pray.

A letter received by our company by the Soviet Embassy on September 5, 1973 states in full:

"Dear Edvin Marx, in response to your letter concerning bonds of 1916 please be informed, that pre-revolution bonds were abolished by Decree of the Soviet Government of January 21, 1918.

So, bonds of the Imperial Russian Government have no value now.

Now, can a foreign government arbitrarily cancel a legal debt and expect to get a new loan from the very same creditors? Gentlemen, I believe this is fiscal madness.

On a trip to the Soviet Union a little over a year ago, actually a year and a half ago, Soviet officials told me "this debt is a forgotten thing—in the archives of history". This unilateral abolition of a relatively small debt could portend dire consequences in the future when we have sunk billions into Soviet industry. They shall benefit by the use of the clamps, equipment and know-how and compete with us as they claim we shall while we hold worthless pieces of paper replete with broken promises.

In all candor, does this make sense? Will the new debts also be classified as a "forgotten thing"?

In conclusion, gentlemen international banking and financial transactions are based on a foundation of confidence and mutual trust. They always have been and they always will be. If a nation can repudiate its debt with impunity by merely changing its governmental identity, international financial transactions, as we know them today, will be finished. The example of the Soviet Union, the only major repudiation that we know of in this century, poses great danger to an already vulnerable and overly exposed national and international financial system.

We believe that H.R. 10710 should be strengthened so the legitimate claims which you have heard about today are not ignored. We believe that there should be no most-favored-nation treatment and no new credits extended to the Soviet Union until that nation acts reasonably and responsibly in a matter of past indebtedness to our Government and its citizens.

In support of the above, I request that four articles written on this subject for the Money Manager and the Daily Bond Buyer, by Paul Heffernan, former investment banking reporter for the New York Times, be inserted in the record. Thank you.

Senator PACKWOOD. Thank you, and they will be printed along with your statement.

Let me ask a couple questions and then I will go on with the panel. I thought these were not obligations to the U.S. Government but that they were private bonds.

Mr. MARKS. These were bonds which were issued by the Imperial Russian Government in 1916 to the U.S. public through investment banking houses and banks.

Senator PACKWOOD. In your statement you refer to the following:

The Johnson Debt Default Act, as amended, was created because the Congress believed that those nations who are in default or who have repudiated obligations owed to our Government and who are not members of the World Bank are poor credit risks and therefore not entitled to access to the private credit market. Why then should any government that is not merely in default but which

has repudiated its debt to the United States, be permitted renewed access to our financial markets, unless the existing situation is first remedied?

Now these bonds are not held by the United States, are they?

Mr. MARKS. Do you want to answer?

Mr. COLLIER. Mr. Chairman, may I have the floor? The problem I think that the Congress had in the 1930's, in the early 1930's was that so many of these issuers of dollar bonds went into default. In addition arising out of World War I—and this was pointed up in your own Subcommittee on International Finance and Resources material entitled "Foreign Indebtedness to the United States" of last year—was this large overhand of debt coming out of the war. And I think it was the feeling of Congress then that governments that were in default to the United States were not credit worthy enough to be allowed to go to the private market.

But on the other hand, in 1934 I think as a practical matter there was very little public market for any foreign government obligation since most of them were in default.

The Johnson Act was amended in the forties, Mr. Chairman, to exclude those countries that belonged to the Bank and the Fund so that then effectively left primarily the Communist countries subject to the Johnson Debt Default Act.

Senator PACKWOOD. I understand that, but coming back to my question, are these bonds held by the U.S. Government?

Mr. COLLIER. No, sir.

Senator PACKWOOD. So these are not an obligation of the Imperial Russian Government to the U.S. Government?

Mr. COLLIER. No, sir; they are an obligation of the Imperial Russian Government to its creditors.

Senator PACKWOOD. OK. Second question, and then we will go on with the other statement; you said that there are no other governments that have repudiated bonds——

Mr. MARKS. Major governments, Mr. Chairman.

Senator PACKWOOD. There were no bonds issued by the German Government in the mid–1920's when they went bankrupt? There are none issued by South American Governments that haven't been paid?

Mr. MARKS. Now all of the Latin American external bonds dollar are being serviced, except for the Cubans which are in default. I'm talking about a direct repudiation and not a default or an inability to pay.

The Russians have gone so far as to say these debts have been abolished.

In the 1920's in Russia and Germany, when they had that terrible inflation, the internal securities became worthless because the currency became worthless and——

Senator PACKWOOD. I understand that, but were these people who bought these bonds from their own governments?

Mr. MARKS. They were internal bonds; they were not external bonds.

Senator PACKWOOD. And there are no American citizens holding bonds from Russian and German internal issues?

Mr. MARKS. There may be, but they are internal bonds, that is, bonds issued by the government within their own countries which somehow got into the hands of Americans; bonds of a defunct currency.

Senator PACKWOOD. I understand.

Mr. MARKS. Sir, I would like to send the committee a letter through you giving you the entire history of the Johnson Debt Default Act.[1]

Senator PACKWOOD. Fine. Thank you.

STATEMENT OF DR. HUBERT PARK BECK

Dr. BECK. Mr. Chairman, I am delighted that you have done some homework on the material that has been sent in. Your questions have been very fine and appropriate and I hope I can elaborate on some of the answers.

I am Dr. Hubert Park Beck, speaking as the elected chairman of the Russian Dollar Bondholders Committee of the United States. It is a position which I have held since its formation in 1964. Also, I am professor of education at the City College of the City University of New York, and have a degree in economics, government and history from Harvard University. I have visited some 10 cities in Russia and have observed the Russian scene since the twenties.

Our committee has no employees, no payroll, no overhead expenses. All who serve the committee do so as volunteers donating their skills and expertise.

About 3,000 U.S. citizen-taxpayer-investors own Russian dollar bonds according to our estimates. These bondholders, most of whom are of modest means, live widely scattered among the 50 States of the Union, and I am here on their behalf. Many have inherited a few of these old Russian dollar bonds and held them for a full generation in the hope of getting back what their parents or grandparents paid for them during World War I.

Now, sir, I would like to depart from my previous material supplied to this committee, and explain and emphasize certain points from material which you do not have in your possession. I would like my full statement to be in the record.

Senator PACKWOOD. So ordered.

Gentlemen, the American owners of these Russian dollar bonds, together with millions of other American citizens, are hoping that this distinguished committee and the full Senate, also, will make highly constructive decisions in marking up and voting upon the Trade Reform Act.

Everybody wants a new and better pathway to world peace, world stability, and world prosperity. The question is how can this best be done?

Certainly, one essential pillar in the development of flourishing foreign trade is the just payment of debts. Without of honorable discharge of debts, foreign trade is hobbled and stifled. Yet the Trade Reform Act in its present form, as it has come from the House, embodies a great and dangerous weakness on this point.

[1] See p. 1833.

In the proposed measure at present there is no provision for enforcement or even encouragement for foreign countries to honor their just debts. Actually the measure, as it exists now, encourages the nonpayment of debts and it is without teeth. Without teeth the bill will foster foreign defaults and repudiations, but defaults and repudiations contribute to ferment international ill-will, unrest, and instability.

Consider the Soviet Union's record in this respect. The Soviet Union has been in default since 1919. Only 3 years earlier, 1916, the German armies were advancing deep into Russia from one victory to another. In order to help strengthen Russia against this onslaught two loans to Russia totalling $75 million were floated in the United States. I believe, Sir, this was done with the happy consent, or at least let us say, informal blessing of the State Department. Eventually we went in on the side of Russia just 1 year later.

These bonds were issued in 1916, the year of the Presidential election. The next year, the United States declared war on the side of Russia against Germany. In a real sense this was a preliminary loan to help resist aggression, before we declared war against Germany.

Now only 2 years later, sir, the Soviet Union defaulted on this American loan and actually even repudiated the debt. The Soviet Union has been in default since that time. The Soviet Union is the world's biggest debt repudiator. The Soviet Union is the world's most conspicuous debt repudiator. And the Soviet Union has the world's most notorious debt repudiation.

Now the repudiation has not been rescinded. Mr. Marks a moment ago just read to you and supplied you with a copy of that statement which claims that the debt doesn't exist. Now how ridiculous can the Soviet Union be?

For over 50 years literally thousands of American citizens have been waiting empty-handed without a single interest payment and without any capital repayment. Yet international law and ordinary moral standards require the U.S.S.R. settle this debt.

Senator PACKWOOD. I want you to clear up in my mind again this Johnson Act because I read your testimony and it confuses me.

Dr. BECK. May I try to clear it up?

Senator PACKWOOD. In your statement you state: "As this Committee is well aware, the Johnson Act, passed in 1934, prohibits the extension of private credits of other than conventional, i.e., the short term kind, to nations in default of obligations owing to the United States government."

Is that what the Johnson Act says? Is it only obligations owing to the U.S. Government? You are still talking about private bond holders here.

Dr. BECK. Sir, on that point I am not certain without refreshing my memory, but let me add some clarification. As you know, the Lend-Lease debt to the Soviet Union from 1941 to 1945 has been not yet paid by the Soviet Union. One of the tiny goodies now offered by the Soviet Union is a promise to pay that debt if this Trade Reform bill becomes law and grants the Soviet Union the Most-Favored-Nation Status.

Now there also are two other important debts that the Soviet Union owes directly to our government. These stem from the World

War I where again the U.S. Government provided much-needed materials to the Russians. But the debts thus created are ignored—in fact they are disclaimed—by the Soviet Union.

Senator PACKWOOD. All right. Go ahead.

Dr. BECK. Because of the great wave of defaults occasioned by the Great Depression, and by World War II; the Government has established the Foreign Claims Commission here in Washington to process claims from American citizens and American companies. Among the aggrieved claimants are Americans whose property were seized by communist governments. And these claims have been carefully examined with respect to Communist countries and then awards have been made through legal processes and our government recognizes these claims as valid against the foreign countries, including the Soviet Union, and presumably seeks through diplomatic channels to get these claims settled. And in the past it succeeded with Yugoslavia. It also succeeded in 1960 with the signing of the treaty with Poland where Poland agreed to pay $2 million a year for 20 years, to pay these private claims, and Poland began just last July to pay on its older bonds.

Senator PACKWOOD. Doctor, I have to ask you to bring your testimony to a close. We have gone about 25 minutes now and I didn't intend to go this long with this panel.

Dr. BECK. Sir, I have only given one page of my oral testimony today.

Senator PACKWOOD. I know, but I asked some questions and all of you had 10 minutes.

Dr. BECK. Oh, I am sorry. I thought each of us had 10 minutes, but I do have some other information that I think you will be interested in.

Senator PACKWOOD. Well, it will all be put in the record, but I cannot give you each 10 minutes because we have three more groups coming up.

Dr. BECK. May I just conclude with this general statement? The consequences of not using the Foreign Trade Improvement Act as a lever, as a bargaining chip against the Soviet Union—a concept which you brought in again and again—created a very grave danger. I want to emphasize that. If we continue to accede to the Soviet's defaults and also do nothing about the other Communist countries' defaults, particularly Cuba's and China's, the model is set clear and strong for other countries to default. And if we make for countries no hindrance to default, and even no hindrance to repudiation—we are heading for disaster. Even Cuba has made motions of paying up. This far The Peoples' Republic of China has avoided the subject. Now, if we bless these countries, and say, "all right, we are going to trade with you just as we do with everybody else and we are not going to give you any penalty at all for defaulting" I think this would be creating a disastrous model for the poor countries of the world to follow.

Senator PACKWOOD. When did Russia finally repudiate that?

Dr. BECK. First in 1918. Subsequent written repetitions by the U.S.S.R. are frequent. A recent instance occurs in the letter which Mr. Marks read before this committee only moments ago. The letter says: "In response to your letter concerning bonds of 1916 vis-a-vis

$75 million, the bonds were abolished by decree of the Soviet Government of January 21, 1918."

Senator PACKWOOD. What proportion of those bonds are still held by the original purchasers?

Dr. BECK. Well, persons who bought the bonds in 1916 probably have all died. They were probably all mature people at that time.

Senator PACKWOOD. Maybe I should rephrase my question. Have they been purchased by subsequent purchasers, and if so, how many hold those?

Dr. BECK. When bond owners died, sometimes the bonds were kept by the Heirs. This was done in my family with Japanese bonds, even the bonds were then in default. But in some estate settlements the executors or the lawyers advocate getting rid of the "cats and dogs" found among the securities. So occasionally some are sold in the market at a nominal price. We estimate that now about 3,000 Americans own Russian Dollar Bonds.

Senator PACKWOOD. Well, thank you gentlemen very much.

[The prepared statements of Mr. Marks and Dr. Beck and material submitted for the record follows. Hearing continues on p. 1840.]

PREPARED STATEMENT OF EDWIN S. MARKS, PRESIDENT OF CARL MARKS & CO., INC.

INTRODUCTION

1. My name is Edwin S. Marks, President of Carl Marks & Co., Inc., 77 Water Street, New York, N.Y. 10005, Foreign Securities Specialists for 48 years.With me is Daniel Collier, a Vice President and Manager of the firm's International Commitments Department and Douglas Shankman of the firm's International Commitments Department. I wish to discuss the defaulted and repudiated Russian Government Dollar Bond Debt and its relation to the present legislation including the implications of the extension of credit to the Soviet Union. Our firm has a position in these Russian securities, and has been a market maker in these issues for about forty years. These bonds originally were offered to the American public by a syndicate consisting of J. P. Morgan & Company, The National City Bank of New York, The Guaranty Trust Company of New York, Lee Higginson & Company, and Kidder, Peabody & Company.

2. We fear that any legislation which would permit the granting of "Most-Favored Nation" treatment to the Soviet Union and the repeal of the Johnson Debt Default Act, while this Russian-United States Dollar Bond Debt remains in default and repudiation, will jeopardize the rights of bondholders who may feel that their only recourse for justice after all these years is the United States Government. Marshall Wright, Acting Assistant Secretary of State for Congressional Relations, wrote the following:

"Since the conclusion of the Lend-Lease settlement, we have been considering when and under what circumstances we can most effectively pursue bond claims and other private claims of American citizens against the Soviet Government. We have not yet reached any decision as to possible timing and modalities."

We believe that time is NOW.

BACKGROUND OF THE ISSUES

3. During World War I, an agreement was reached between the Russian Ministry of Finance and a syndicate of leading American Financial Institutions, to issue to the American public a $50 million 6½% 3-year credit in July 1916 and $25 million 5-year bonds in December *of that year.*

4. Today, there still remain these $75 million principal amount issued and outstanding *plus over fifty years of interest thereon.* The vast majority of these bonds are believed to be in the United States, estimated to be owned by over 3,000 Americans in about forty states.

U.S. GOVERNMENT POSITION

5. The United States Government has recognized the validity of these bonds to the extent that some holders of Russian Dollar Bonds have received partial payments through awards of the Foreign Claims Settlement Commission under Public Law 285 of 1955, if bondholders had filed a claim with the Commission before March 31, 1956. Apparently, the many years of efforts by the Foreign Bondholders Protective Council, to have this bonded debt settled, have produced no results.

In a recent letter concerning this repudation, United States Secretary of Treasury, George P. Shultz, stated that "The U.S. Government has no intention of abandoning claims which are valid under International Law."

Last year our State Department put it this way:

"The United States does not recognize the right of the Soviet Union, or any other state, to repudiate international obligations undertaken by the predecessor government. We believe that these obligations are valid under principles of international law, and intend to take no step which could be construed as a waiver of these principles which are fundamental to the conduct of our foreign relations."

PREVIOUS DOLLAR BOND SETTLEMENTS

6. Other East European nations have settled their debts via the Foreign Bondholders Protective Council. We fail to understand how the Soviet Union can continue to neglect its obligations to Americans and at the same time be considered for preferential treatment by our Government.

Gentlemen, the passage of any legislation that grants preferential treatment to the Soviet Union would represent a completely unwarranted waiver of the basic rights of any bondholder.

EFFECT OF THE TRADE REFORM ACT

7. HR10710, as enacted by the House of Representatives, was appropriate, insofar as this legislation relates to "Most-Favored Nation" treatment of the Soviet Union, and the maintaining of the Johnson Debt Default Act.

8. We believe that both government and certain segments of the business community alike are viewing the Soviet Union as a promised land paved with trade opportunity. Quite frankly, my own observations on a trip there in 1972 confirmed no such thing. The Soviet Union will undoubtedly need substantial amounts of foreign capital—in this case American funds—to finance trade and internal development. Why, in Heaven's name, do we offer the Soviets additional dollars from public and private American sources when they have found it to their benefit not to even recognize their former legitimate debts? In effect, the American public has, for almost 50 years, been subsidizing the Russians for their past debts. Why should we continue to do so– In view of the Russian debt record, we believe that the American banking system would also become vulnerable to dtfault or even another debt repudiation. *The record of the past stands over whatever may be the hope for the future.*

9. The Johnson Debt Default Act, as amended, was created because the Congress believed that those nations who are in default or who have repudiated obligations owed to our Government and who are not members of the World Bank are poor credit risks and therefore not entitled to access to the private credit market. Why then should any Government that is not merely in default but which has repudiated its debt to the United States, be permitted renewed acces to our Financial Markets, unles the existing situation is first remedied?

Maintaining and strengthening the Johnson Debt Default Act would protect American Investors. It would prohibit any government that has repudiated its bonded debt obligations to its *American creditors* from receiving new American credits, *unless previously* repudiated *publicly outstanding Dollar bonds* are settled in some satisfactory manner.

IMPLICATION OF EXTENSION OF CREDIT TO THE SOVIET UNION

10. In view of HR10710, we believe that the extension of any credits to the Soviet Union, under the present circumstances, flaunts the will of the Congress.

Furthermore, the extension of any credits to the Soviet Union at this time, by commercial U.S. sources, whether or not in conjunction with similar loans being

considered by the Export-Import Bank, and whether or not the source of these credits may be offshore, is, at minimum, a violation of the spirit of the Johnson Debt Default Act. In this context it is interesting to note the background of the Export-Import Bank. Organized by Executive Order as an agency of our Government, the Bank was primarily created for the purpose of assisting in the financing of American trade with the Soviet Union.

The Wall Street Journal of April 10, 1934 reported that the work of the Bank was at once held up for a ruling by the State Department to determine the effect of the Johnson Debt Default Act. Within a few days, the Trustees of the Export-Import Bank passed a resolution declining to lend money for Sovie business deals until a debt settlement was reached, according to the April 18, and May 6, 1934 editions of the New York Times.

The Bank's decision was made as a matter of administrative policy and not due to the passage of the Johnson Debt Default Act Under the Johnson Debt Default Act, government agencies such as the Export-Import Bank are specifically exempted from the prohibition of the Act which are left to apply to private individuals and corporations.

It is unfortunate that the Export-Import Bank altered its original ideas. If the implications of extension of credits to the Soviet Union were not so serious, they could be dismissed as merely having certain "Alice in Wonderland" quality. In the public sector, we understand that recently the Attorney General has notified the President that the procedures followed by the Export-Import Bank in the Past were legal and could be resumed. The presumption is that the President made a finding that these loans granted to the Soviet Union and certain other Eastern European countries were in the "national interest". We fail to see, for example, how a $36 million loan toward a Trade Center in Moscow could possibly be in the national interest of the United States at this time under existing circumstances. Additionally, we fail to see how our credits extended to support the Kama River truck plant foundry could possibly be in the national interest of the United States. Furthermore we believe that this is yet another case of not complying with the spirit of the law.

Finally, when we relate this to the other events, which have occurred in our country in the past eighteen months, we have the feeling that the historic constitutional question of the relationship between the sovereign and the law should also be addressed in this instance.

11. As it relates to this matter, an important lesson of the Energy Crisis is the fact that an unreliable source of supply can endanger the security and well-being of our people. At this time, the Soviet Union as a source of supply can hardly be regarded as reliable.

12. In support of this view, I should like to insert an excerpt from the Congressional Record—Senate of March 22, 1974 entitled "Ban on Russian Energy Deal" by Hon. R. S. Schweiker, U.S. Senator from the Commonwealth of Pennsylvania:

"Mr. President, I have asked the U.S. Attorney General to support the recent ruling of the Comptroller General declaring that Export-Import Bank transactions with the Soviet Union have been contrary to law.

"I have been fighting the Eximbank on this issue because of my opposition to two Russian energy deals: a pending $49.5 million loan application for natural gas exploration in the Yakutsk field in eastern Siberia, and credits at 6-percent interest to help finance the $7.6 billion North Star gas development project in western Siberia.

"If our taxpayers are going to subsidize energy development, the improvement should be made here, not in Siberia, so that we reap the benefits of the investment, and so we do not subject ourselves to future risks of being cut off from foreign energy supplies.

"I am also concerned with this being yet another example of usurpation of congressional power by an agency of the executive branch. The GAO ruling is quite clear on the language and original intent of the law requiring the President to make a determination that each Export-Import Bank transaction with a Communist nation is in the national interest."

"There being no objection, the material was ordered to be printed in the Record, as follows:

'Hon WILLIAM B. SAXBE,
'Attorney General,
'*Department of Justice,*
'*Washington, D.C.*

'DEAR MR. ATTORNEY GENERAL: I understand that your office is being asked to consider the legal questions arising from the Comptroller General's determination that Export-Import Bank lending procedures to the Soviet Union violate existing law.

'I strongly urge you to support the Comptroller General's ruling and recommend Executive Branch compliance with the Eximbank law.

'I am unable to understand the bewilderment and confusion of the Eximbank in connection with this ruling. The law could not be more explicit. Compliance with the law simply requires the President to advise the Congress that any transaction proposed with a Communist country is in the national interest. I was shocked by the statement of an Eximbank representative, quoted in the press, that compliance with the law would be a "burdensome and time-consuming bureaucratic procedure."

'In view of our present energy situation, certainly no responsible government official can find it "burdensome and time-consuming" to receive the President's determination that any proposed American subsidy of energy exploration in Siberia is in the national interest as required by law.

'I have enclosed for your background a copy of the Comptroller General's ruling, together with a statement of my position on this issue. If I can be of further assistance, please let me know.

Sincerely,

'RICHARD S. SCHWEIKER,
'*U.S. Senator.*' "

SOVIET REPUDIATION VIOLATES INTERNATIONAL LAW

13. In addition, the Soviet repudiation of the debt of its predecessors is a clear violation of International Law. I have been informed by the office of the Legal Advisor of our Department of State that: "it is the opinion of the Department that the repudiation by the Soviet Government of the dollar bonds floated by the Imperial Russian Government without permitting judicial action against it gives rise to an international claim which could be espousable by the United States in accordance with established principles of international law."

14. In view of the Soviet Union's wholesale disregard of International Law from its beginnings until today, it is difficult indeed to understand how any additional credits can be extended while their debts remain unpaid.

I should like to insert a letter to the editor of "*The New York Times*" written last year by George D. Woods, a former President of the World Bank and current President of the Foreign Bondholders Protective Council:

"I agree wholly and unreservedly with the statement, 'it is gratifying that the leader of the Soviet Union understands the advantages of international trade and finance,' in the June 26 editorial 'Ruble Diplomacy.'

"The editorial concludes, 'The creditor must first have trust in the would-be debtor,' with which I also agree. In this regard, matters pertaining to government-to-government indebtedness between debtor U.S.S.R. and creditor U.S.A. are apparently being appropriately treated by the responsible officials on both sides.

"However, the matter of privately held Russian debt is still unresolved. In 1916, U.S. private investors purchased $75 million of Imperial Russian Government notes, which have been in default as to both principal and interest since 1919. In addition, there are claims of U.S. citizens against the U.S.S.R. amounting to about $120 million, which were certified by the Foreign Claims Settlement Commission some years ago.

"All the governments in Eastern Europe with centrally planned (socialist) economies have acknowledged their prewar debts, excepting U.S.S.R. and East Germany. In addition, Poland has announced a temporary debt settlement and intends to negotiate a final settlement by mid-1975. Hungary and Rumania are engaged in conversations looking toward settlement.

"In the recent Nixon-Brezhnev communique, there is a statement of agreement 'that mutually advantageous cooperation and peaceful relations would be strengthened by the creation of a permanent foundation of economic relationships.' This appears in the communique under "Commercial and Economic Relations." I submit that an important building block in such a permanent foundation would be acknowledgment of debts to private U.S. creditors, accompanied by an expression of intention by debtor U.S.S.R. to negotiate a settlement of them."

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15. In this connection, we wish to quote excerpts from the summary and conclusion of briefing material entitled "Foreign Indebtedness to the United States" prepared by the staff of the Committee on Finance for the use of the Subcommittee on International Finance and Resources:

"Since 1917, the U.S. Government has transferred abroad an estimated one quarter trillion dollars, yielding a net foreign indebtedness to the United States of approximately $55.2 billion and possibly more . . .

"Current law does not provide for central reporting of foreign indebtedness, though the Treasury is engaged in a program to provide a more comprehensive reporting system.

"The executive asserts broad legal authority, both statutory and inherent, to renegotiate foreign indebtedness. In the case of developing countries, the need for development capital must be balanced against the burden of external debt. Congress, under present procedures, plays a limited, ad hoc role in the process of rescheduling and renegotiating foreign debts.

"Foreign indebtedness to the United States has important implications for economic policy, including monetary policy. The Congress may wish to consider legislation to strengthen its oversight over the reporting, collection, and rescheduling of foreign indebtedness."

It is our suggestion that the Congress may also wish to consider legislation of a similar nature concerning defaulted foreign government indebtedness in the hands of private U.S. entities.

16. During my last trip to the Soviet Union, Soviet officials laughed and told me that this debt was *"a forgotten thing"*. The Soviets total disregard for this legitimate dollar obligation is expressed in the following letter:

"EMBASSY OF THE
UNION OF SOVIET SOCIALIST REPUBLICS,
Washington, D.C., September 5, 1973.

"KARL MARX & CO.,
"*New York, N.Y.*

"DEAR EDVIN MARX: In response to your letter concerning bonds of 1916 please be informed, that pre-revolution bonds were abolished by Decree of the Soviet Government of January 21, 1918.

"So, Bonds of the Imperial Russian Government has no value now.

"Sincerely yours,

"V. USPENSKY,
Vice Consul."

17. In conclusion, Gentlemen, international banking and financial transactions are based on a foundation of confidence and mutual trust. They always have been and they always will be. If a nation can repudiate its debt with impunity by merely changing its governmental identity, international financial transactions as we know them today, will be *finished*. The example of the Soviet Union, the only major repudiation that we know of in this century, poses great danger to an already vulnerable and overly exposed national and international financial system.

We believe that HR10710 should be strengthened so that the legitimate claims which you have heard about today are not ignored. We believe that there should be no "Most-Favored Nation" treatment and no credits extended to the Soviet Union until that nation acts responsibly in the matter of past indebtedness to our government and its citizens.

18. In support of the above, I request that four articles written on this subject for the *"The Money Manager"* and *"The Daily Bond Buyer"* by Paul Heffernan (former Investment Banking Reporter for *"The New York Times"*) be inserted in the record, together with specimen copies of the dollar bonds.

I thank you.

[From the Money Manager, Oct. 1, 1973]

DEBT DEFAULTS: A TOPIC IGNORED IN SOVIET-U.S. TRADE DEBATE

(By Paul Heffernan)

ZURICH.—From the standpoint of international relationships in a world of government debt contracts, the proposed United States financing of immensely enlarged trade with Russia and a concurrent granting of most-favored-nation trading status to the Soviet Union truly bespeak a most extraordinary financial excursion into unexplored regions.

Viewed in full context, the rapproachement with Russia on the financial terms agreeable to Washington may outstrip even the grand scope of the Marshall Plan, which was conceived primarily as the gift of financial mercy, one from a nation that was relatively unscathed internally by World War II to its partners and other nations ravaged by the great conflict.

The fresh-money-to-Russia negotiations are coming to a head at the same time that a delayed pile-up of dollars has become such an embarassment to the free world that proposals have been made in realistic and friendly seriousness that the time may be ripe for a reciprocal gesture—a "Marshall Plan in reverse," so to speak. Under such an arrangement, much of today's $70 billion overhang of unusable dollars held abroad could be written off by Marshall Plan beneficiaries by one accounting means or other.

A device of such kind—one brought into being by one of yesterday's postponed days of reckoning—has just been agreed upon by the United States and India to shrink away much of the postwar debt of rupees owing to the United States. This debt is so mountainous that if it were ever paid, the rupees could never be spent without debauching India's economy.

But it is something quite different for the United States, in its present international financial bind, to underwrite credits and to award a prime trading status to a nation, which, by official U.S. certification, has in the past confiscated more than $100 million of property of U.S. nationals without compensation, and, further, has dishonored for more than a half-century billions of dollars of external debt owing to private investors here and abroad.

The annual reports of the British Council of the Corporation of Foreign Bondholders set forth in sorry detail the story of Russia's unequaled contempt for external debt contracts. It is the story of the financing of the building of Russia's railroad system on about $2.5 billion of bonds of more than 40 issues sold in the markets of Europe between 1867 and 1914 and payable in non-Russian money. What the Russians spent, they had: What the investors saved, they lost.

In the light of this contempt for external debt, how can new credits be justified? Must it be that the Man from La Mancha, this time outfitted in red, white and blue, is faring forth once more? Swaying in a Moscow saddle early this month will be Secretary of the Treasury George Shultz, who has conceded that the United States "got burned" in the recent wheat sale to Russia, but who has since pledged that "It will not happen again." Let us pray.

To impart suitable scent to this courting of the most notorious governmental outlaw in international financial history, certain cosmetics of commensurate distinctiveness must have been contrived in Washington.

First of all was the "executive clemency" proffered under President Nixon's sponsorship. The official state bank—the Export-Import Bank—was quick to get the signal. Its functionaries came up with a triple-A credit rating for the Soviet state. The International Bank for Reconstruction and Development, in which the U.S. government has a multi-billion-dollar capital subscription, had nothing to say. Russia is not a member of the World Bank and the World Bank presumably was not consulted about the Russian credits.

Silent, too, were certain major commercial banks whose stockholders were defrauded of millions of dollars in Russia's 1919 confiscation of foreign-owned bank property. On the contrary, many big banks responded to the Washington green light and rushed in to grant private credits to Russia on terms—mostly not fully made public—that could be open to question in respect to conforming with the spirit, if not the letter, of the Johnson Act.

The Johnson Act prohibits the extension of private credits of other than "conventional"—that is, short-term—kind to nations in default of obligations owing to the U.S. government. There has been a flood of public Washington

announcements about the settlement (provisional) of Russia's World War II Lend-Lease debt, but not a word about Russia not having paid its $192 million World War I debt to the United States, a debt it refuses to recognize.

The Johnson Act was amended to exempt from its provisions nations joining the World Bank, an institution that Russia has never seen fit to join. Why should it, if the World Bank's policy is to shy away from credits to nations in default of their external obligations and if Russia can get what it wants direct from old Don Quixote himself? Take the wheat deal, for instance.

If the Department of Justice, either on its own or at the prodding of the White House, has ever seen fit to look into the private bank credits being extended to Russia, this must at least be one item that has succeeded in being sheltered from leakage to the press.

It certainly would be a stirring post-Watergate comeuppance if some of the ball-carriers now responding to the Nixon "Executive clemency" signals—and even members of Congress, too—were some day, like recent members of the President's cabinet, summoned before a Federal grand jury to answer questions bearing on "obstruction of justice" to private U.S. citizens whose 50-year-old claims against the Soviet state—now fully accredited—were pushed farther in the deep freeze as part of the Nixon international game plan.

So far, only three voices of influence in the world of international finance have questioned—if only by implication—the prudence of the sudden surge of loans by the Export-Import Bank and by private U.S. commercial banks to Russia under the circumstances now prevailing—circumstances essentially unchanged over 50 years.

One of these voices—that of Eugene R. Black, former executive of the Chase Manhattan Bank and former president of the World Bank—was expressed in generalities, while serving in 1965 on President Johnson's Special Committee on U.S. Trade Relations with East European Countries and the Soviet Union, Mr. Black joined with the other members of the committee in the position that nations in default of external debt and asking new credits should settle their old debts. But Mr. Black—alone—went further and declared that such nations should settle their old debts before being granted new ones.

A second voice was that of Gabriel Hauge, chairman of the Manufacturers Trust Co., who questioned specifically the terms on which Russia is being granted loans by private banks. Mr. Hauge was one of President Eisenhower's economic advisers.

The third voice is that of George D. Woods, former chairman of the First Boston Corp. and another former president of the World Bank. In a statement to the "New York Times," Mr. Woods said:

"The matter of privately held Russian debt is still unresolved. In 1916, U.S. private investors purchased $75 million of Imperial Russian government notes, which have been in default as to both principal and interest since 1919. In addition, there are claims of U.S. citizens against the Soviet Union amounting to about $120 million, which were certified by the Foreign Claims Settlement Commission some years ago.

"In the recent Nixon-Brezhnev communique," Mr. Woods said, "there is a statement of agreement 'that mutually advantageous cooperation and peaceful relations would be strengthened by the creation of a permanent foundation of economic relationships. . . .' "

Finally, the former World Bank president said: "An important building block in such a permanent foundation would be acknowledgment of debts to private U.S. creditors accompanied by an expression of intention by debtor U.S.S.R. to negotiate a settlement of them."

Why have opinions of such high professional authority as those expressed by this trio of bankers of international renown won so little notice or provoked so little thought or so few questions?

The contrast with outcries raised against Russia's charging export fees for emigrants and against Russia's oppression of free speech and a free press—issues which are of direct and legal concern only to Russia's own resident citizens—is truly remarkable.

These protests have prodded Washington into attaching strings to trade favors in behalf of matters concerning Russian—not U.S.—nationals. But no voice is raised in Washington to protest the lasting injustice being done by Russia to citizens of the United States whose property was confiscated by Russia in 1919

or who hold—either through primary subscription, inheritance, or by subsequent market purchase, defaulted bonds of the Russian state.

What can be the reason for the Washington silence about (1) Russia's unpaid World War I debt to the U.S. Government? about (2) The continuing applicability of the Johnson Act to private credits to Russia? and, (3), About the awards made by the U.S. Foreign Claims Commission to American citizens stemming from the confiscation of American property in Russia in 1919 and the repudiation of Russian bonds held by the United States and payable in dollars, in other non-Russian money, and even in Russian rubles?

Probably most people in the United States, if asked about such things, would shrug it all off. Bonds? rubles? the Czar? Why ask me? Even on Wall Street, whose business more than any other is based on the honoring of contracts made over the telephone, there is mostly indifference—indifference stemming from non-involvement rather than from ignorance of the code.

Wall Street and commercial banks have to live mostly in the world of today and tomorrow, and it is easy in their vision for the past to get blurred. The Washington political telescope is sharp enough to note this. Thus, Washington can maintain expedient silence safely about the enormous injustice of Russia's contempt of international debt contracts because no force of prominence is likely to bring the matter up.

Even if "believe-it-or-not Ripley" were to come out and proclaim that a bond issue by the Government predecessor to that of the Soviet Union is just as binding a contract as a U.S. Government bond, the reaction would be one of bemused misapprehension and disbelief.

Yet that's what the Foreign Claims Settlement Commission has ruled repeatedly in fulfilling a Congressionally-directed chore that took years to complete. If the Commission is right in implying that a bond issued by the Czarist government is just as good, legally, as a U.S. government bond, then it follows that a U.S. government bond, legally, is no better than a Russian Czarist bond.

But even for people willing to concede these legalisms, the practical further question persists:

In established practice, has a successor government—or have successor governments—to a state overturned by an unsuccessful war or by a successful revolution assumed responsibility for the external debts of the predecessor government? Anybody in the State Department will answer "Of course" in private conversation or correspondence, but any public affirmation of the duty of statecraft to enforce this elementary precept of international law seems to be enjoined effectively by the "executive privilege."

In historical fact—not mere legal theory—the responsibility of successor governments for the debts of predecessor governments is written today all over the maps of Europe and Latin America.

In Europe, conspicuous instances are the external debts of the extinct Ottoman and Austria-Hungary empires and the debts of the pre-World War I Austrian Sudbahn Gesellschaft—all settled by international conventions in 1923. In each instance, the primary debts were taken over first by successor states e, the primary debts were taken over first by successor states greater in number. Subsequently, governments of such states—among them Hungary, Poland, Yugoslavia, Czechoslovakia and Rumania—were superseded by revolutionary Communist governments.

Nevertheless, the bond payment commitments taken on by the predecessor non-communist governments were adhered to by all of the communist states mentioned, and, as a result, virtually all of the bonds—some going back into the 19th Century—were paid off by 1972.

It looks as if the Nixon Administration, in its zeal to lure a prodigal son back home to the market economy by the proffer of new goodies, is gambling imprudently in sponsoring executive clemency for the 50-year-old unpaid debts of a rich state that commands one-sixth of the Earth's surface.

If the gamble pays off—that is, if Russia's debts both new and old are in the future serviced in full and on time—well and good. But if the old debts persist in default, the gamble will not be just another Washington miscue, like the wheat deal.

Unwittingly, the Nixon Administration, like the sorcerer's apprentice, may have contrived a financial innovation whose consequences, when emulated sufficiently throughout the debtor world, could wipe out for all time that centuries-

old cultural phenomenon known as the government bond contract subscribed willingly by private investors.

[From the Daily Bond Buyer and the Money Manager, Apr. 16, 1973]

U.S. Public, Private Loans to Soviet Violate A Seasoned Precept of International Law

(By Paul Heffernan)

Is the Washington scenario of President Nixon really in earnest in holding up "law and order" as good words and down-thumbing "permissiveness" and "amnesty" as not good words?

If so, how is it that the Russian Government—for many decades in default of debt owing to the United States Government and to private United States citizens—is getting loans from the private sector of the United States economy with both the blessing and backing of our Government in violation of the intent of the Johnson Act of 1934?

Inseparable from the political and economic expediencies that are drawing the United States and Soviet Russia into the same bedroom after decades of agonizing distrust is a long-seasoned precept of international law—the responsibility of a successor government for the international obligations of the predecessor.

A related question: How should a government in default of its international obligations be won back to the alter of financial rectitude? By the vinegar of loan turndowns or by the bribery of new loans?

If the Nixon Administration is not won over to the permissive or amnesty theory for treating financial malefactors, it must be venturing to expound a new precept of international law—that a successor government, while entitled to possess incontestably the assets of the predecessor state, is under no obligation to assume the international obligations of the predecessor.

If this innovation in international practice were to prevail, it would indeed be a startling breakthrough, as a review of a century of international debt questions on most of the world's continents will show. Probably no government bonds could be sold thereafter to foreigners anywhere.

Even while American aviators, long since shot down in Vietnam by military equipment provided largely by the Soviet state, were being released after years of prisoner-of-war confinement, the Export-Import Bank was announcing agreement to lend $101.2 million direct to Russia's Foreign Trade Bank and to guarantee $101.2 million in matching loans from United States commercial banks.

The Export-Import Bank loans direct to Russia bear 6% interest, a rate lower than what it costs the U.S. Treasury to borrow money on its own name in the public market. By contrast, the Treasury is paying 6½% and 6⅝% on recent market borrowings—notes due in 3½ years and in six years and nine months.

Among the recent loans by private United States banks to Russia is one of $86 million granted by the Chase Manhattan Bank to help finance construction of a truck plant foundry on Russia's Kama River 550 miles east of Moscow. The Chase Bank refuses to make known the terms of this financial accommodation.

A singular and disquieting aspect of such credits is that the Washington and other announcements, while replete with talk about "increased East-West trade" on a "most favored nation" basis and about provisional settlement of Russia's postwar Lend Lease debt, no public reference at all is made to the Johnson Act or to Russia's unpaid World War I debt to the United States Government.

The Johnson Act was adopted before World War II when foreign governments defaulted on international debts approximating $30 billion and payable in United States dollars. As first adopted, the Act prohibited private financial interests from making loans of other than conventional commercial credits to nations in default of debt to the United States Government. Conventional commercial credits are synonymous with the short-term loans that form the basis of the commercial banking lending function.

Subsequently, the Johnson Act was amended so as not to apply to nations accepted into membership in the International Bank for Reconstruction and Development, an institution that Russia has not joined, and whose policy is not

to lend money to member nations in default of the international debts of incumbent of predecessor governments. Why should Russia join the World Bank when Washington's Export-Import Bank is only a few doors down the block?

The Johnson Act did not forbid the United States Government from lending money to defaulted international debtors, but during the law's long tenure it was held unthinkable in the financial community, until recently, that the Federal Government would undertake financial transactions that were unlawful in the private sector, and would go further and guarantee in behalf of defaulted debtors abroad private loans of a kind that, until recently, were shunned by United States banks. Can you envision an FBI agent holding the flashlight for a confirmed international bank robber?

The existence of the Johnson Act was acknowledged by official Washington, however, back in 1959. The then Secretary of the Treasury, Douglas Dillon, said that even if the Lend Lease credits to Russia were settled, private loans to Russia would still be prohibited by the Johnson Act "as presently drawn."

Otherwise, he said, there would have to be some form of legislation similar to the legislation that was passed relieving other countries of the same obligation by reason of the fact of their membership in the International Bank for Reconstruction and Development.

If such legislation has since been adopted, it was not identified at the time by Washington as a measure to denude or to supersede the remnants of the Johnson Act. Thus, if the Johnson Act is a dead letter today, it would seem to be so by virtue of extraordinary powers granted President Nixon by Congress without Congress or the public being aware that the Johnson Act was being annulled without a footnote notice of death appearing in the repealer legislation.

The Russian loan application, if at all conforming with what banks require of business and other private borrowers, would have to own up to certain unsatisfied international obligations. These include:

A World War I debt to the United States Government now totaling about $700 million ($192 million principal amount plus a half-century of interest charges) incurred in Russia's war against Germany by the Kerensky successor Government to that of the abdicated Czar.

Bond issues totaling $75 million sold in 1916 by the Imperial Russian (Czarist) Government through J. P. Morgan & Co., National City Bank, Guaranty Trust Company and other banking institutions to private investors in the United States to help Russia finance the war against Germany. The Soviet Government repudiated these obligations in 1919 but later repudiated the repudiation—in the 1933 correspondence between Foreign Affairs Commissioner Litvinoff and President Roosevelt, and otherwise. However, the repudiated liability was never formally reassumed. The next item probably explains why.

An estimated $2.5 billion of European savings borrowed by Russia between 1858 and 1914 to finance the construction of a pre-Soviet network of 40,000 miles of railroads fanning out from Moscow to penetrate most of the two-million-square-mile area that makes up the European part of the Soviet Union. This debt, on gold-clause bonds denominated in British sterling, Swiss and French francs, German marks and Dutch guilders, was repudiated in 1919 along with the $75 million of dollar bonds borrowed on U.S. dollar bonds to finance World War I against Germany. The existence of this stupendous debt on defaulted European bonds has been cited by past Soviet officials as a major reason for not settling the dollar bonds. They just owe too much abroad to pay back anything.

Other claims of American businesses and private citizens of about $119 million against the Soviet Government—claims officially certified by the United States Foreign Claims Commission. These claims originated in the Soviet confiscation of business and other property of United States ownership.

Have stockholders of United States banks and other business enterprises any interest in the outcome of this certification procedure, one completed at the expense of claimants against Russia during the last decade?

For instance, of claims totaling $39 million made by First National City Bank, the United States Government certified an "award" of $5.4 million plus $4 million interest. However, Citibank collected only about $550,000 of the award because the $9 million Russian funds of the 1933 Litvinoff Assignment of 1933 covered less than one-tenth of the awards. The cash distributed to awardees consisted of $1,000 plus 9.7% of the principal amount of the award. No cash payment was made on that part of the award stemming from back interest.

The largest award went to the Singer Manufacturing Co., which had put in for $100 million. The award on principal was $29.5 million and that on interest, $26.7 million. Consequently, all Singer got was about $3 million against the principal.

Guaranty Trust Co. (now Morgan Guaranty Trust) put in for $1 million and got in cash about $88,000 on certified awards totaling $886,000 in principal and $844,000 in interest.

New York Life Insurance Co. put forward a claim of $31 million. The award certified by the Claims Commission totaled $5 million in principal and $4 million in interest. The insurance company collected about $500,000.

Bonds of the Imperial Russian Government sold in this market in 1916 were presented by some holders for claim. Claims certified by the Government Commission on the basis of such bonds ran to about $8.6 million of the $75 million loan; of this total less than 10% was realized by the successful claimants.

With less than $1 million paid out against the 1916 market borrowing, the proceedings of the Claims Commission are implicit in the suggestion that the $74 million balance, plus interest, represent legitimate private claims against the present Russian state. It is estimated that only about one-third of these bonds of the predecessor Imperial Government were filed as claims before the Commission. They have a current volume in the over-the-counter market of about five—that is $50 per $1,000 bond.

The banks that distributed these bonds to private investors in 1916 ran little risk. They run no risk at all today in making loans to socialist Russia guaranteed by the United States taxpayers through the Export-Import Bank.

For the record, every award certified by the United States Government agency bore this official caveat:

"Payment of the award shall not be construed to have divested claimant herein, or the Government of the United States, on its behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim."

Presumably these officially certified United States private claims against the Russian Government as both a successor and incumbent state were not pressed in the months of trade negotiations between the Nixon Administration and the Russians.

If so pressed, no public reference to them was even made by the negotiators; this silence is in significant contrast to the repeated public reference to Russia's postwar (World War II) Lend Lease debt, whose agreed upon "settlement" was made by the Russians conditional upon achieving from Congress a "most favored nation" trading status with the United States.

United States balance of payments headaches to the contrary notwithstanding, our negotiators must have been more anxious to lend the money to the defaulted debtor than the defaulted debtor was to borrow it from the United States. Either that or a Soviet bluff succeeded in nudging our lenders into hasty and unconditional surrender.

Thus the leverage of "no-win war" extends itself—to paraphrase the cogent axiom of Clausewitz—into the realms of "peaceful" international economics. While spurning any thought of amnesty to American young men who shirked their military duty to resist the Russian-aided aggression against South Vietnam, the Nixon Administration is now devoting itself to granting financial amnesty to the selfsame Russian state, one otherwise notorious over a half century for the remorseless dishonoring of its international financial obligations.

What basis is there for the position taken by Soviet Russia that a successor regime may claim the assets of the predecessor and yet disclaim the predecessor's international debts? Virtually no basis.

A survey of international government debts defaulted by one regime and restored to good standing by one or more successor regimes over the last century would take the financial investigator far afield into Europe, Asia and Central and South America, and bring him into contact with all kinds of political structures—monarchies, republics and democracies stamped with ecclesiastical, capitalist or socialist orientation.

Ninety-eight years of annual reports of the Council of the Corporation of

British bondholders testify to the vital tenacity of the international debt contract.

The same goes for the 40 years that the United States counterpart of the British body—the Foreign Bondholders Protective Council—has devoted to negotiations aimed at settling foreign government bond defaults. Similarly, other international debt adjustments over the past century have been accomplished by international treaties and by private banking consortiums.

In behalf of United States bondholders, the Foreign Bondholders Protective Council here has negotiated 41 debt adjustment plans with foreign governments in its 40 years of existence. Of the national governments affected, 13 were in Latin America, nine were in Europe and two were in Asia.

Probably the most significant examples of how international debts have been taken over by successor states are those of the defunct Ottoman and Austro-Hungarian Empires, where obligations originally incurred by private property nations have been discharged by successor socialist regimes.

Other more recent instances include the external debts of Yugoslavia in full and of Hungary and Poland in part. Moreover, interesting contemporary questions bearing on the debt liabilities of successor states are presented by the insurgent Asian nation of Bangladesh, the Baltic states of Latvia, Lithuania and Estonia annexed in 1940 by Russia. Also, bonds that were sold by issuers in East Germany before World War II and—unlike West German Government bonds rehabilitated by the London International Conference of 1950—are still in partial or full default, presumably awaiting the reunification of Germany.

The breakup of the European-Near East political complex once known as the Ottoman Empire into Turkey and 14 other states was followed in 1923 by the successor states, under the Treaty of Lausanne, assuming debts of the predecessor empire totaling $8.6 million Turkish pounds.

The successor states other than Turkey were Italy, Albania, Bulgaria, Greece, Yugoslavia, Nedjd, Mesopotamia (Iraq), Syria and Lebanon, Palestine, Transjordania, Hedjaz, Assyr, Yemen, and Maan. Some of the Arab states are now part of Saudi Arabia.

The final distribution of the Ottoman Debt Council in Paris against provisional receipts issued to holders of bonds of the former Empire will be payable until the Nov. 10, 1979. Twenty-five bond issues of the old Empire were involved, some of them going back to the 19th century.

The shares of debt accepted by Italy (on account of the Dodecanese), Palestine, Syria and Lebanon, Iraq, Jordan and Yugoslavia were finally settled in 1926, 1928, 1933, 1934, 1945 and 1960, respectively. A 10% balance of Greece's share has been arranged for payment, according to the last annual report of the British Bondholders Council.

Bulgaria only partially discharged its liability, having settled in 1960 with French bondholders only. The shares of Albania, Saudi Arabia and Yemen were not settled.

Provision for the external debt of the Austro-Hungarian Empire to be taken over by the successor states was made by the Innsbruck Protocol of 1923. Under it, eight bond issues payable in Swiss francs and gold florins were made the repayment responsibility of Austria, Czechoslovakia, Poland, Hungary, Yugoslavia and Rumania.

The service of these commitments was interrupted repeatedly, notably during the money famine of the 1930's, and, again, from the convulsions of World War II. By 1972, however, all of successor states of the old Empire had made good on their commitments—Austria in 1962, Hungary in 1966, Poland in 1967, Yugoslavia in 1970 and Rumania in 1972. Germany, not a successor state, paid part of Austria's share of the Empire debt. Thus, over 50 years, the old Empire debt was redeemed in full.

Certain debts of the governments predecessor to the states of Yugoslavia, Poland and Hungary are being serviced by the Communist successor states.

Hungary has paid off certain issues of external debt through agreements with Austria, Belgium, Luxembourg, Denmark, France, Greece, the Netherlands, Norway, Sweden, Switzerland and Great Britain. Further, it announced in 1971 having "lengthy negotiations, which are still continuing, with Italy and the

United States." In 1969, Hungary paid off $6,323,000 of loans granted by United States banks during the 1931 financial crisis.

Communist Yugoslavia in 1965 came to agreement with the Foreign Bondholders Protective Council for resuming interest payments on seven issues of dollar bonds totaling $56 million that were sold in the United States market by the predecessor Kingdom of the Serbs, Croats and Slovenes from 1922 through 1936. Debt service has since been maintained without interruption.

Communist Poland announced late last year plans for resuming debt service on 16 issues of dollar bonds totaling $41 million which were sold in the United States market by predecessor governments from 1920 through 1936. A temporary plan, as yet not formally announced, is to go into effect July 1.

Soviet Russia in 1970 reached agreement with Great Britain calling for the release of certain British-held funds of the former Baltic states of Latavia, Lithuania and Estonia, which were annexed by Russia in 1940. As a consequence, certain payments were made available to holders of bonds of the cities of Wilno and Riga and the Republic of Estonia.

There are outstanding about $3 million of dollar bonds sold by Estonia in the United States market in 1927. These are in default. The United States has not recognized Russia's annexation of Estonia.

The debt of Pakistan to The World Bank presents a contemporary problem in respect to the allocation of debt to a successor state. Pakistan has not yet formally recognized Bangladesh as a soverign government, presumably because of the debt question.

Pakistan, which owes about $320 million on conventional loans to the World Bank, has also borrowed more than $400 million from the World Bank's affiliate, the International Development Association. The latter borrowings run interest-free for 50 years, with the borrower required to start repayment after 10 years. A number of the Pakistan loans were incurred to finance irrigation, flood control, railway construction and water supply and sewerage projects in Bangladesh.

How are these loans to be paid back to the World Bank?

[From the Daily Bond Buyer, Nov. 6, 1972]

THE EDITOR'S CORNER

(By Paul Heffernan)

It's a wonderland, all right; a wonderland of wholly new concepts of creditworthiness and the banking function. The only thing missing is an Alice to attest the mystifying strangeness of the new frontier. No Jabberwocky. No Red Queen. This time, it's all for real.

The first opening of the new vista was the United States-Soviet Russia wheat deal, with its overtones of multi-billion dollar business with farmers, bankers and shippers; of credits to Russia guaranteed by U.S. taxpayers through the Export-Import Bank; and of "most-favored-nation treatment" to the Communist state in future trade relationships.

Evidently the first test of the new credit yardstick—one based on the borrower's future prospects rather than the recollections of his past—is not to be made upon some little-propertied state aspiring to a minimum of living standards, but rather to the great Russian state that lies athwart Europe and Asia. Whether the debt-saddled nations of the undeveloped world will be inspired to emulate Russia's debt-repudiation practices remains to be seen.

For confirmation of the advent of a new yardstick for international credit, stockholders of First National City Bank must have been stimulated when they read about the plans of their financial institution to open a branch office in Russia, where, in 1919, the Citibank branch was closed by the Soviet state and the contents confiscated, lock stock and barrel.

And stockholders of San Francisco's Bank of America, NT&SA, and associated banks must have sensed a second coming, too, when they read about the managers of their banks syndicating a $68 million financing for the export of construction machinery by Caterpillar Tractor Co. to a Russian Government agency. The loan is being "guaranteed" by the Bank for Foreign Trade of the U.S.S.R. Well, well.

These bank stockholders must surely be pondering such questions as these:

Why do the official reports emanating from Washington and the industrial—Banking complex shun all mention of Russian-confiscated property and Russian-dishonored Government bonds? The only reference to unpaid Russian debts is to the Government-to-Government Lend-Lease account of World War II and thereafter, for which a settlement has been agreed upon. As for the claims of the private sector against Russia, there is only a great silence.

Will the Soviet Government ever make restitution for the 1919 confiscation of property owned by foreign banks, foreign corporations and non-Russian individuals?

Will the Soviet Government, as a successor state, own up to its liability to discharge the international obligations incurred by the predecessor Imperial Russian Government, by putting back into good standing the Russian Government obligations repudiated in 1919?

Does the readiness of banks to do business with defaulted-debt ridden Russia inaugurate a new banking principle—that the defaulted debtor, once appeased with new loans of money, may some day be inspired to thaw out his long-frozen resolve not to pay the old debts, and instead, to finally come clean? What could happen if banking and Government were to extend this principle to the capitalist private sector?

Does the flurry currently going on in Washington and in the nation's industrial and banking centers about engendering new business profits by taxpayer-underwritten trade with the backslider mean that the intent of the Johnson Act and the Hickenlooper Amendment—Congressional efforts of the past to shield bank stockholders and investors in general from having their good money follow the bad—is now to be relegated altogether to the waste basket?

CITIBANK BACK TO MOSCOW?

The case of First National City Bank is notable. Citibank estimated its losses from confiscated property and from dishonored bonds of the Russian state at more than $40 million. Under a claim-processing procedure financed out of the Litvinoff Assignment funds of 1933, the Foreign Claims Settlement Commission awarded Citibank $5.4 million plus $4 million representing unpaid interest going back to periods between 1917 and 1919.

Because the Litvinoff fund of assigned Russian assets totaled only about $9 million against awards against Soviet Russia running to $129 million, Citibank's award of $9.4 million ended up in a payment to the bank of less than $500,000—about 1% of its claim and about 5% of the award officially certified for it by the U.S. Government. The cash payment excluded the consideration of payment of what was awarded for back interest.

Nevertheless, the award to Citibank—as with all of the 1,925 awards against Russia certified by the Foreign Claims Settlement Commission—ended with this declaration of July 20, 1959:

"Payment of the award shall not be construed to have divested claimant herein, or the Government of the United States on claimant's behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim."

REMEMBER THE JOHNSON ACT?

The Johnson Act was enacted in 1934 to protect United States private investors from being exposed to domestic offerings of bond issues of foreign nations in default of the obligations to the U.S. Government.

It is little remembered today. The major reason is that most foreign nations, with the exception of certain Communist states, are in good standing in their financial relations with our Federal Government, and, as a consequence, are free to borrow money here from private sources in any way they want.

Much of this record of good standing is due to the negotiations carried on over 38 years by the Foreign Bondholders Protective Council with foreign governments in default of their obligations payable in U.S. dollars.

Over this period, the Council has negotiated 42 debt adjustment plans covering $3.5 billion of defaulted debt. Today, only the Communist nations of Russia,

China, Hungary, Rumania, Bulgaria, Czechoslovakia, Estonia (now part of Russia) and Poland are in default of their international obligations. Poland has worked out a temporary debt settlement plan to be given effect by 1975.

A second reason why the Johnson Act is pretty much a dead letter is that Congress subsequently voted to except from its provisions any nations belonging to the International Bank for Reconstruction and Development and the International Monetary Fund. Today, most of the world's nations belong to these international organizations.

Again, conspicuous exceptions are China, Soviet Russia and Russia's Communist satellites—Poland, Hungary, Czechoslovakia, Bulgaria and Rumania. Late this Summer, Rumania applied for membership in the World Bank and the Monetary Fund.

FINES AND IMPRISONMENT

Nevertheless, the Johnson Act did warn:

"Whoever, within the United States, purchases or sells the bonds, securities or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereto, to the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both."

As amended, however, the Johnson Act goes on to exclude from the above restriction "public corporations created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest stock ownership or otherwise."

This can be read, then, to authorize the United States to extend loans which, if extended by a bank or private corporation, would be punishable by fine and imprisonment.

HICKENLOOPER AMENDMENT

The Hickenlooper Amendment (to the Foreign Assistance Act of 1961) provides, as amended:

"The President shall suspend assistance to the government of any country to which assistance is provided under this or any other Act when the government of such country or any government agency or subdivision within such country on or after Jan. 1, 1962:

"(A) has nationalized or expropriated or seized ownership or control of property owned by any U.S. citizen or by any corporation, partnership, or association no less than 50% beneficially owned by U.S. citizens, or

"(B) has taken steps to repudiate or nullify existing contracts or agreements with any U.S. citizen or any corporation, partnership of association not less than 50% beneficially owned by U.S. citizens, or

"(C) has imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating or otherwise seizing ownership or control of property so owned . . ."

Inasmuch as the acts of Russia and certain other Communist nations in confiscating foreign-owned property and in not paying debts due to foreigners took place before 1961, they are not covered by the Hickenlooper Amendment.

This could extend the application of the "most-favored-nation" treatment principal from international trade to international debt management.

The 41 foreign nations that have rehabilitated their international obligations from a default status over three decades cannot help taking note of the impunity with which Communist nations persist in maintaining their international debts in default even while negotiating with U.S. officials for new money handouts. The temptation of lesser states to let their bonds lapse into default and still make a pitch for "most-favored-nation" treatment for new loans must be difficult to resist.

If the new credit yardstick as applied to Russia is to win general acceptance, some of the explanation would seem to lie in the Russian Government obligations of the pre-Soviet regime being regarded as private debts of certain political associates of the short-lived Kerensky Government that the Lenin Bolsheviki expelled, and other private debts of the royal family of the old order.

CAMPAIGN CONTRIBUTION

By this thinking, the $190 million that the U.S. Government lent to the Kerensky regime after the abdication of the Czar, was not a Government-to-Government loan, but merely a campaign contribution to the worn-out liberal politicians who lost out to the Communists.

Likewise, to sustain the annulment of the Soviet regime's repudiation of the external debt of the Imperial Russian Government, it would have to be argued that the money so borrowed was for the private use of the royal family, including a 36,000-mile network of railroads equipped with American-designed locomotives—a private touring plaything reserved for Nicholas, Alexander, etc. and families, with the Russian masses barred from boarding the trains.

RUSSIA'S DEBTS DIED WITH THEM!

And that when the royal family died in a cellar at Ekaterinburg at the hands of assassins, their private debts—including $2 billion or so borrowed in the European markets to finance and nationalize the Russian railroads, as well as the $75 million borrowed from private investors in the United States to help carry on the war against Germany—expired with them.

Only their assets—assets confiscated by the Soviet state—survived.

[From the Daily Bond Buyer and the Money Manager, July 17, 1972]

IS RUSSIA WORTHY OF TRADE CREDITS AFTER A HALF-CENTURY OF DEFAULT?

(By Paul Heffernan)

After spending billions of dollars upholding the international honor of the United States by checking Communist aggression against South Vietnam, will the Nixon Administration now capitulate to international dishonor by guaranteeing trade credits for Russia even though the Soviet state is in default of hundreds of millions of dollars owing to both the United States Government and its private citizens since World War I days?

The question is timely because of the tentative agreement recently reached between the two nations in respect to our exporting $750 million worth of wheat to Russia, a transaction proposed to be financed by $500 million of credits through the Export-Import Bank. Reports reaching the press suggested that the only thing delaying the deal is a settlement of the lend-lease credits extended to Russia in World War II.

This nation's lend-lease aid to Russia consisted of more than 16 million long tons of ships, airplanes, tanks, guns, and explosives as well as prodigious quantities of food and other supplies, Appraised at $11.2 billion, this war service was proposed to be settled during the Truman Administration for $800 million. Russia offered to pay $300 million, and that's where the matter now stands.

The lend-lease aid, from the standpoint of timing, was of three kinds: (1) supplies received by Russia during the war; (2) supplies in shipment before the war's end but not received until after the war; and (3) supplies shiped after the war was over. In 1945 Russia agreed to pay $222 million over 22 years for lend-lease goods supplied after the war. The Soviet state has made good on this debt.

There is something singularly deja vu, however, about these 1972 discussions of old Russian debts and new credits for the Communist state. Were not the

parties reciting the same lines in 1933, when the Soviet Government was angling for recognition from the United States?

And again in 1946, when Russia wanted a $1 billion credit from the Export-Import Bank?

And again in 1959, when Anastas Mikoyan, was the guest of First National City Bank of New York and the Economic Club of New York?

It took the plain-spoken Nikita Khrushchev in 1959 to "tell it like it was." He said that the old Russian debts were mere "archives of history."

But if the coming negotiations over the wheat exports to Russia are to confirm the Khrushchev proclamation, the Nixon Administration will have to do some fancy backtracking.

The major embarrassment would be to affix the "forget it" stamp on the voluminous 1959 report of the Foreign Claims Settlement Commission, which tried to square a $9 million 1933 assignment of Russian funds (the Litvinoff Assignment) against over 1,900 awards aggregating $129 million for losses including back-interest, sustained by American citizens by reason of Soviet Russia's seizure of American-owned property in Russia and by reason of Russia's repudiation of the external bonded debt incurred by the predecessor Imperial Russian Government.

While unable to stretch the $9 million Litvinoff fund to pay off $129 million of "awards," the report nevertheless placed the formal certification of the United States Government on the lasting right of claim of the unsatisfied balances of awards made to dispropriated owners of Russian-domiciled assets and to investors holding repudiated dollar bonds of the Imperial Russian Government.

This 1959 report of the Foreign Claims Settlement Commission (made at a nominal cost of $455,700 assessed against the $9 million Litvinoff Assignment) is not, however, the only testimonial to the dishonored Russian Government debts dismissed by Khrushchev as "archives of history."

A summary of these dishonored debts is as follows:

World War I debt to the United States Government. Counting in interest aggregating over $500 million, this debt today stands at over $700 million.

The debt incurred by the interim Kerensky regime in Russia on loans from the United States Government after the abdication of the Imperial Russian Government. These loans totaled $190 million. They were on the verge of being settled by the successor Soviet Government in 1934 by an offer to pay $100 million on condition that Russia would get a new 20-year loan of twice that amount. The negotiations fell through.

World War I loans floated by the Imperial Russian Government in the United States market on bonds subscribable and payable in dollars. There were two of such loans; they raised $75 million for Russia in the war against Imperial Germany. One loan bore 6½% interest and was to come due in 1919. The other bore 5½% interest and was to come due in 1921. Both loans were repudiated by the Soviet state in 1919. About a third of this bonded debt was made the basis for claims for awards filed with the Foreign Claims Settlement Commission and in some instances a holder of a $1,000 bond received $1,000. Cash payments to over 700 bondholders from the $9 million Litvinoff fund ran to only about $762,000, or less than 10% of the total.

The greater part of the Russian fund was paid out to a scattering of banks, insurance companies and industrial enterprises whose property was confiscated by the Soviet regime. The largest payment, one exceeding $3 million, went to Singer Sewing Machine Co. enterprises against awards totaling over $50 million.

Financial and industrial enterprises that received about 10% in cash against awards exceeding $1 million included New York Life Insurance Co., International Harvester Co., First National City Bank of New York, Eastman Kodak Co., Mobil Oil Co., General Electric Co., Chase Manhattan Bank and Morgan Guaranty Trust Co.

The final sentence of each award by the Federal Government's Commission reads as follows:

"Payment of the award shall not be construed to have divested claimant herein, or the Government of the United States, on its behalf, of any rights

against the Government of the Soviet Union for the unpaid balance, if any, of the claim."

The bravura with which Nikita Khrushchev waved away Russia's international obligations seems not to have been rooted in the postures taken repeatedly by the founding fathers of the Socialist state.

In 1919, when the ink was hardly dry on the Soviet Union's decree outlawing all obligations, both internal and external, to "landlords" and to others, Ambassador William Bullett reported: "Lenin, Chicherin, Litvinoff and all other leaders of the Soviet Government with whom I talked expressed in the most straightforward manner the determination to pay its foreign debt."

Fourteen years later the Bullett statement nearly reached prophetic proportions in the negotiations between President Roosevelt and Maxim Litvinoff, the Soviet Union's commissar for foreign affairs. The Nov. 16, 1933 letter of Litvinoff to President Roosevelt—the letter known to historians as "The Litvinoff Assignment"—begins with this suggestive language:

"Following our conversations, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals. . . ."

It should be obvious, then, to the Nixon Administration 39 years later that the "archives of history" include the Litvinoff Assignment and its implications as well as the exhaustive 1959 report of the Foreign Claims Settlement Commission, with its formal certification by the Government of the United States of the unsatisfied claims of United States nationals against the Soviet state.

What kind of reasoning can there be behind the seeming unwillingness of the Soviet Union to make good on the Russian state's international obligations? Is not the successor state responsible in the international community for the obligations of the predecessor government?

Were this not so, international debts need never be paid off: a mere change of government would do. And if such a precept were to prevail in the world of private enterprise, why should company pay off a debt when the same result could be attained by merely changing the executive management and the board of directors?

Any Soviet Russia disclaimer of responsibility for the international debts of the precedessor Imperial Russian Government can be viewed in two ways.

The first rationale would be that there never was a Russian government prior to the Soviet Union.

That there were certain Russians—Nicholas, Alexander, Catherine, Elizabeth, Peter, Paul, Ivan, etc., etc.—but there was no "government." And when these Russian celebrities died, that the Soviet state was entitled to "nationalize" their personal possessions—jewels, art masterpieces, etc., in the name of Russia's first "government." And that the international obligations of the so-called "Imperial Russian Government" were only the private debts of a few Russian men and women. Why should the Soviet Union be responsible for such "private" debts to foreigners–

The other rationale is less ingenious but more brazen. It is simply that (1) a successor government is entitled to the assets of the predecessor government (not excluding a Russian network of 65,000 kilometers of railroads financed by more than $2 billion of bonds sold to private investors of Europe, England and the United States); and that (2) a successor government is privileged to disclaim all of the international obligations of the predecessor government.

Such an innovation in the concept of credit might indeed be inspired and sponsored seriously by the force of political expediency, but the question remains: what prudent investors can be expected to buy obligations whose first-instance security is the pledge of a Communist Government in default of its international obligations for over a half-century?

Pledges of such kind conceivably could be the first-instance security of debentures to be sold publicly by the Export-Import Bank. The Federal Reserve System now has authority to purchase for its investment portfolio the U.S. Government guaranteed Export-Import Bank debentures and has made such purchases. But who else could be expected to buy them?

SPECIMEN

No. $1000

Imperial Russian Government

$50,000,000 6½% Three-Year Credit

Due June 16, 1919, unless sooner retired **Interest due January 16th and July 10th**

THIS CERTIFIES that _____
is a participant in a credit of Fifty Million Dollars ($50,000,000) in favor of the IMPERIAL RUSSIAN GOVERNMENT (hereinafter called the "Government") to the amount of

ONE THOUSAND DOLLARS

and is entitled to a ratable distribution of all sums, as and when received by the undersigned, as hereinafter set forth, on account of the principal of the said Credit and the interest hereinafter referred to, and, on final settlement of the account, to a ratable distribution of the net profits, if any, arising in the liquidation of the said Credit.

The said distribution will be made by check by The National City Bank of New York to the holder of record hereof, without endorsement of such payment hereon or presentation hereof, except for cancellation upon final distribution. A record of such payments will be kept by the said Bank; and at the request of the holder, at any time, any payment or payments theretofore made on account of principal will be indorsed hereon.

The said Credit is made pursuant to the terms of a certain contract executed on behalf of the Government, dated June 18, 1916, a copy of which is filed with each of the undersigned.

The Government agrees to retire the said Credit on June 16, 1919, by payment in dollars, unless sooner retired or liquidated, as specified in the said contract. The Government gives a rouble credit of 150,000,000 roubles with the State Bank in Russia, and it agrees to pay interest on the rouble account at the rate of six and one-half per cent. per annum, payable in dollars at the fixed rate of 33½ cents per rouble, semi-annually, in New York City on January 10 and July 10, in each year. The Government also authorizes $55,400,000, par value, of Five Year Five and One-Half Per Cent. Gold Bonds, both principal of and interest on which bonds will be payable in dollars in New York City.

During the continuation of the said Credit, the said roubles may be disposed of by the undersigned, either in whole or in part, and the proceeds applied in liquidation of the said Credit at the rate of 33½ cents per rouble. It is agreed, however, that the Government shall receive one-half of the profits arising from such transaction. The net balance will be distributed pro rata among the participants in the said Credit upon final settlement of the account.

The Five Year Five and One-Half Per Cent. Gold Bonds may also be disposed of, in whole or in lots of not less than $5,000,000; and the proceeds of all the bonds so disposed of, to the extent of $902.50 for each $1,000, par value, of bonds, will be applied to the liquidation of the said Credit. A syndicate may be formed to take over the said bonds at not less than 94¾% of the par value thereof, and interest, unless a majority in interest of the participants in the said Credit shall consent to a lower price. The undersigned may participate in any such syndicate, and out of the proceeds of the bonds so disposed of shall be entitled to reimbursement for their expenses in connection therewith and to compensation, not exceeding 1% of the par value of the bonds taken over by such syndicate. If the bonds are sold at a price higher than 94¾, the Government is to receive one-half of the excess.

In all cases where the exercise of their discretion is required, the decision of a majority of the undersigned shall be conclusive upon participants in the said Credit.

The undersigned assume no personal liability herein to the holder hereof; and no rights of any kind shall accrue to such holder except the right to share pro rata in the aforesaid distributions.

Transfer of record hereof and of the rights hereunder may be made by surrender hereof to The National City Bank of New York, duly indorsed in blank, for cancellation and re-issuance.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be signed and to be authenticated by The National City Bank of New York and to be countersigned by the Guaranty Trust Company of New York, as of the tenth day of July, 1916.

Authenticated: APR 10 1947
THE NATIONAL CITY BANK OF NEW YORK
By _____ Authorized Officer

Countersigned: APR 11 1947
GUARANTY TRUST COMPANY OF NEW YORK
By _____ Authorized Officer

J. P. MORGAN & CO.
THE NATIONAL CITY BANK OF NEW YORK
GUARANTY TRUST COMPANY OF NEW YORK
LEE, HIGGINSON & CO.
KIDDER, PEABODY & CO.

AMERICAN BANK NOTE CO. 12710

1832

CARL MARKS & CO., INC.,
New York, N.Y., April 16, 1974.

HON. BOB PACKWOOD,
Senate Finance Committee,
Dirksen Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: In connection with my testimony before the Committee on Finance on April 4, 1974 on the repudiated Imperial Russian Government Dollar Bonds and in response to your request, I submit the following information concerning: 1. The Johnson Debt Default Act. 2. The reason why this cause could be espoused by the U.S. Government. 3. The question of original ownership versus bondholdings bought below par.

Insofar as the Johnson Debt Default Act is concerned, I realize that defaulted and/or repudiated obligations by a debtor government to U.S. citizens are not *specifically* covered by the Johnson Debt Default Act. Nevertheless, we believe that this Act grants a measure of protection to such bondholders because countries in default to the U.S. Government and who are not members of the International Bank for Reconstruction and Development, and of the International Monetary Fund are precluded from raising money from U.S. private sources. The text of the Johnson Debt Default Act states that a U.S. individual or entity (as defined) is prohibited from "making any loan to such government, political subdivision, organization or association". Although this Act was not meant to interfere with trade, we believe that a literal interpretation must take cognizance of the fact that export financing, whether short-term or long-term actually involves a loan.

In this context, we believe that much of the so-called export financing contemplated by the private U.S. sector is in reality a form of project financing which should certainly be considered loans subject to the penalties of this legislation.

The relevance of the Johnson Debt Default Act to bondholders such as ourselves lies in the fact that it encourages nations to act responsibly to settle their obligations with the U.S. Government, and to join the International Financial Community. Any evidence of the Soviet Union's acceptance of financial responsibility would be an encouraging development for the bondholders.

I wish to reiterate my statement that after all these years, bondholders have no recourse but to look to the U.S. Government to persuade the Soviet Government to acknowledge and settle this debt.

In support of this, I have enclosed a letter from Fabian A. Kwiatek, Assistant Legal Advisor of the Department of State, which clearly outlines the opinion of the Department that the cause of the bondholders could be espoused by the U.S. Government in accordance with established principles of international law.

When the Foreign Bondholders Protective Council was organized in 1933, one of the questions confronting this organization was that of original ownership versus bondholdings bought below par. I would like to quote excerpts from their Annual Report of 1936:

"Not infrequently the Council is told by debtors that they are entitled to special and particularly generous treatment on the ground that the presen holders of their bonds bought them at greatly reduced prices.

"Aside from the immorality involved in a suggestion by a debtor that he should cancel his debt by paying his obligation only at the reduced market price to which his own wilful default has brought it down,—a consideration which in itself should be sufficient to brand such a contention as unworthy of notice—there are certain facts which also negative the soundness of any such contention . . .

"But there has always been another main consideration which has urged the Council to this general view, namely; There is a basic distinction between the investment of American money in domestic American enterprises, and the investment of American money in foreign enterprises, including loans to foreign governments.

"In domestic enterprises the national wealth is slightly involved in the question as to who among the people of the United States shall gain or lose with reference to the particular enterprise. If A. loses to B. in a domestic investment, the property involved in the transaction is still in the United States and the national wealth is not impaired.

"The situation is wholly different with reference to American capital invested in the bonds of foreign countries. Such an investment is an outlay of the national wealth. If that investment be not returned to the United States, the national wealth has been by that much depleted. If a foreign government were to borrow one dollar and then pay back only twenty cents, on the theory that the present holder of its obligation had paid only twenty cents for it, and therefore no more should be paid to the holder to wipe out the obligation, the national wealth involved in the investment would be depleted by eighty per cent.

"On this consideration also the Council has taken the firm position that foreign dollar debtors must pay their obligations in full, certainly as to capital, and with as slight a decrease in interest and amortization as the circumstances may seem to require."

I request that this letter and its enclosure be made a part of the record along with my written and oral statements. Should you have any further questions, I would be delighted to reply to them.

In closing, I urge you and other members of the Senate to consider the plight of bondholders in your deliberations about the Trade Reform Act, and to keep in mind that this is the only Russian Dollar debt to be floated to the American public. Because of the unusual nature of this debt and the fact that it is a unique case of repudiation in this century, I would like to see something in the Trade Reform Act that would require the Department of State in cooperation with the Foreign Bondholders Protective Council at least to initiate discussions on this matter with the Soviet Government and to give Congress a periodic status report on their progress.

While I believe that increased trade with the Soviet Union could ultimately further the cause of peace, the token settlement of the Lend Lease debt in my opinion is not sufficient evidence of their financial responsibility. Certainly the settlement of other debts owing to the U.S. Government as well as these Dollar Bonds would be a significant step forward in evidencing this responsibility.

Very truly yours,

EDWIN S. MARKS.

DEPARTMENT OF STATE,
Washington, D.C., July 21, 1972.

MR. EDWIN S. MARKS,
Carl Marks & Co., Inc., New York, N.Y.

DEAR MR. MARKS: Thank you for your letter of June 5, 1972 concerning your recent meeting with officers of the Department regarding unsettled bond claims of nationals of the U.S. against the Soviet Government. You refer to my statement during the meeting about the legal distinction between repudiated and defaulted bonds under principles of international law and request further information about the matter.

In 1916 the Imperial Russian Government floated two different types of dollar bonds. One issue, dated 1916 and due in 1919 provided for an interest rate of 6½ percent, while the other issue, dated 1916 and due in 1921 provided for an interest rate of 5½ percent. The face value of such bonds was $75,000,000—$50,000,000 for the bonds due in 1919 and $25,000,000 for the bonds due in 1921. These bonds were floated in the United States in 1916 by a bankers' syndicate headed by J. P. Morgan and Company and the National City Bank of New York.

On March 16, 1917, the Imperial Russian Government was overthrown and succeeded by a "Provisional Government" which was the immediate predecessor of the Soviet Government. On January 21, 1918, the Soviet Government issued a decree "published in No. 20 of the Gazette of The Workers' and Peasants' Government, dated January 28, 1918" with regard to "The Annulment of State Loans." That decree states:

"1. All State Loans concluded by the governments of the Russian landowners and the Russian bourgeoisie enumerated in a specially published list are annulled (abolished) beginning with December 1917. The December coupons of said loans are not subject to payment.

"2. All foreign loans are annulled unconditionally and without exception."

As you know, on August 9, 1955, the President signed Public Law 285, 84th Cong., Chapter 645—1st session, further amending the International Claims Settlement Act of 1949. Section 305(a) of the Act gave the Foreign Claims

Settlement Commission jurisdiction "to receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of . . . claims arising prior to November 16, 1933 of nationals of the United States against the Soviet Government . . ."

In the circumstances the question presented to the Commission was whether claims for the Dollar Bonds issued by the Imperial Russian Government and repudiated by the Soviet Government, were compensable under Section 305(a) of the Act and international law. The Commission answered such question in the affirmative and made awards to owners of repudiated dollar bonds.

In arriving at the above mentioned conclusion the Commission relied heavily on the position of the Department of State, textbooks on international law, the decisions of international tribunals and to a lesser extent on the legislative history of the law.

The foregoing authorities agree that a cntracting State may, in the exercise of the same sovereign power which it exerted in the issuance of its bonds, as by appropriate legislative action, endeavor to change its covenants or to repudiate them. Any such conduct on the part of a State which serves either to alter or destroy, i.e. repudiate, its covenants registered in a bond owned by an alien obligee, and simultaneously also to remove from the jurisdiction of any domestic tribunal authority to pass upon the propriety of that conduct, excuses immediate interposition by the State of the obligee, and justified the demand by the latter that the matter be referred for adjustment by an international tribunal clothed with power to determine the legality, in an international sense, of the acts of the obligor. This is true regardless of lack of proof of bad faith on the part of the obligor in doing what it did.

Repudiation constitutes a refusal to admit the binding character of an obligation. The repudiation may extend to the debts as a whole, or only to some part of it or its contractual terms. Simple default, on the other hand, admits the binding character of the debt but pleads inability to meet its terms. Repudiations have often followed revolutions, when the new government repudiated obligations contracted by a previous *de jure* or *de facto* government, on the allegation that the prior government had no authority to bind the nation. The outstanding example, of course, is the repudiation by the Soviet Government of the Czarist debt of some $20 billion.

With respect to breaches of contract as distinguished from repudiation, between a foreign state and a national of the United States, the Department of State does not intervene in the absence of a showing of a denial of justice. This practice is based on the proposition that the Government of the United States is not a collection agency.

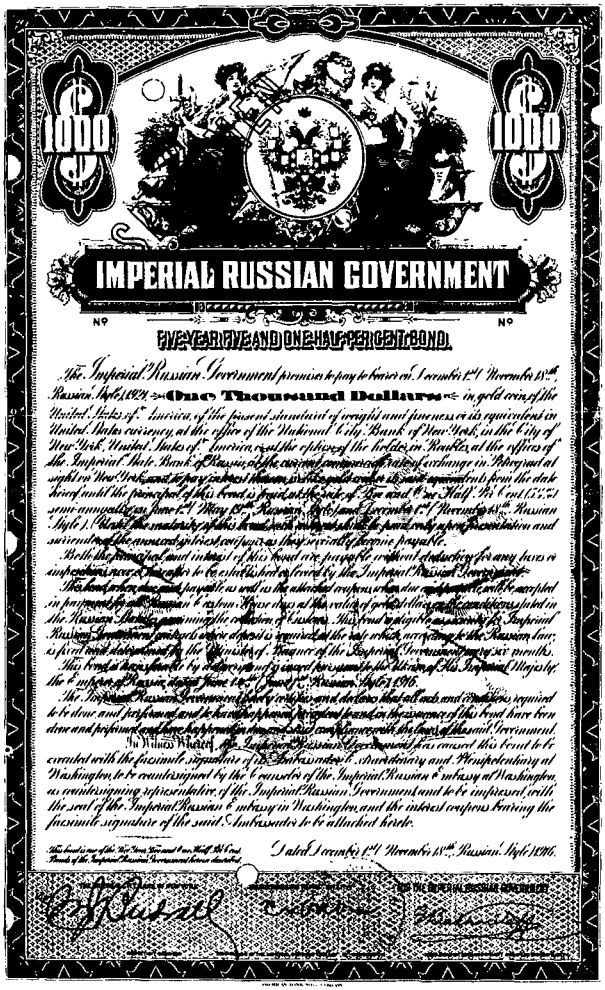
Well-recognized international legal authorities suggest that the original relation between a state and a foreign lender is not one of international law inasmuch as the government of the lending creditor will not, as a general rule, on mere default of the debtor state, undertake to intervene in his behalf. While the situations created by defaults on foreign bonds, whether partial or complete are given constant study by the Department of State, it has been the policy to consider them primarily matters for direct negotiation and settlement between the foreign debtors and the American bondholders or their representatives. The Department of State, of course, renders all appropriate informal assistance to facilitate a satisfactory settlement. In other words, international law distinguishes sharply between the legal consequences attaching to repudiation, the publicly declared refusal to pay, and mere default, usually an involuntary and not publicly declared failure to pay. Only repudiation or willful breach is regarded as violative of international law.

In view of the foregoing, it is the opinion of the Department that the repudiation by the Soviet Government of the dollar bonds floated by the Imperial Russian Government without permitting judicial action against it gives rise to an international claim which could be espousable by the United States in accordance with established principles of international law.

I hope the foregoing will be of assistance to you. If I can be of additional assistance, please do not hesitate to let me know.

Sincerely yours,

FABIAN A. KWIATEK,
Assistant Legal Adviser.



IMPERIAL RUSSIAN GOVERNMENT

No No

FIVE-YEAR FIVE AND ONE-HALF PER CENT. BOND.

The Imperial Russian Government promises to pay to bearer on 1st December / 1st November 19th Russian Style 1921 One Thousand Dollars in gold coin of the United States of America, of the present standard of weight and fineness or its equivalent in United States currency, at the office of the National City Bank of New York, in the City of New York, United States of America, at the office of the Berlin, in Berlin, at the office of the Imperial State Bank of Russia, at the current rate of exchange in Petrograd at sight on New York, and to pay interest thereon at the rate of one and one-half per cent per annum from the date hereof until the principal of this bond is paid at the rate of Five and One-Half Per Cent (5½%) semi-annually on June 1st / May 19th Russian Style and December 1st / November 19th Russian Style. Whilst the maturity of this bond is not subject to prior redemption and surrender of the annexed coupons as they severally become payable.

Both the principal and interest of this bond are payable without deduction for any taxes or impositions now or hereafter to be established or levied by the Imperial Russian Government.

The bond when due and payable as aforesaid, and the attached coupons when due and payable, will be accepted in payment for all Russian Crown Loan issues at the rate of gold dollars and kopecks fixed in the Russian Statutes governing the redemption of Crown Loans. This bond is eligible as security for Imperial Russian Government deposits where deposit is required by the law which, according to the Russian law, is fixed and determined by the Minister of Finance of the Imperial Government may be six months.

This bond is transferable by delivery and is exempt from taxation by the laws of the Imperial Ukase of the Emperor of Russia, dated June 1st / June 19th Russian Style 1916.

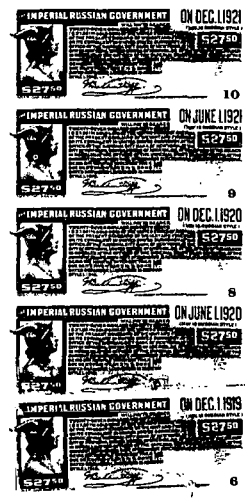
The Imperial Russian Government hereby recites and declares that all acts and conditions required to be done and performed and to happen and to exist and to be fulfilled precedent to the issuance of this bond have been duly and properly done and performed and have happened and do exist and have been fulfilled in accordance with the laws of the said Government.

In Witness Whereof, the Imperial Russian Government has caused this bond to be executed with the facsimile signature of its Ambassador Extraordinary and Plenipotentiary at Washington, to be countersigned by the Chargé d'Affaires of the Imperial Russian Embassy at Washington, as countersigning representative of the Imperial Russian Government and to be impressed with the seal of the Imperial Russian Embassy in Washington, and the interest coupons bearing the facsimile signature of the said Ambassador to be attached hereto.

This bond is one of the "Five Year Five and One-Half Per Cent" Bonds of the Imperial Russian Government thereunder described.

Dated December 1st / November 18th Russian Style 1916.

FOR THE IMPERIAL RUSSIAN GOVERNMENT



PREPARED STATEMENT OF HUBERT PARK BECK, CHAIRMAN, RUSSIAN DOLLAR BONDHOLDERS COMMITTEE OF THE U.S.A.

SUMMARY

(1) The novelty and immensity of the Trade Reform Bill, in relation only to the Soviet Union, might outstrip the Marshall Plan.

(2) Yet the Soviet Union has confiscated more than $100 million of property of U.S. nationals without compensation and has dishonored for more than half a century billions of dollars of external debt owing to private investors here and abroad.

(3) With Administration encouragement, many big banks have rushed in to grant immense private credits to Russia on terms that appear to violate the spirit of the Johnson Debt Default Act.

(4) Three distinguished American leaders in international finance have publicly criticized existing arrangements for granting these credits to the Soviet Union. These men are Eugene R. Black and George D. Woods, both former presidents of the World Bank, and Gabriel Hauge, Chairman of the Manufacturers Hanover Trust Co.

(5) The Congress and the Administration, as well, are strangely silent to the continued injustices still being perpetrated upon U.S. citizens by the Russian defaults and debt repudiations.

(6) Likewise, Wall Street and the great banks are mostly silent on these conspicuous Soviet defaults and repudiations.

(7) To prevent further defaults, the Congress must strengthen the Johnson Debt Default Act, and must withhold the Most-Favored-Nation status until the Soviet Union settles its long-defaulted debts to Americans.

STATEMENT

From the standpoint of international relationships in a world of government debt contracts, the proposed United States financing of immensely enlarged trade with Russia, together with the proposed granting of Most-Favored-Nations trading status to the Soviet Union, constitute the beginning of a most extraordinary financial excursion into unexplored regions.

Viewed in complete context, a rapprochement with Russian on the financial terms proposed by the Administration may outstrip even the grand scale of the Marshall Plan, which was conceived primarily as a rescue operation launched by a nation relatively unscathed internally by World War II to its allies and other nations ravaged by the great conflict.

However, it is something quite different for the United States in its present international financial difficulties to underwrite credits and to award a prime trading status to a nation, which, by official U.S. certification, has in the past confiscated more than $100 million of property of U.S. nationals without compensation, and, further, has dishonored for more than a half-century billions of dollars of external debt owing to private investors here and abroad.

The annual reports of the British Council of the Corporation of Foreign Bondholders set forth in sorry detail the story of Russia's unequaled contempt for external debt contracts. It is the story of the financing of the building of Russia's railroad system on $2.5 billion of bonds of more than 40 issues sold in the markets of Europe between 1867 and 1914 and payable in non-Russian money. What the Russians received and spent, they kept. What the Bondholders saved and invested, they lost.

In the light of this contempt for external debt, how can new credits be justified? To make acceptable this rehabilitation of the most notorious debt repudiator in international financial history, certain preliminary steps have been undertaken by the Administration.

First of all the olive branch was extended under President Nixon's sponsorship. The official vehicle for financing international trade—the Export-Import Bank—was quick to respond. Its functionaries came up with a triple-A credit rating for the Soviet state. The International Bank for Reconstruction and Development, in which the U.S. government has a multi-billion-dollar capital subscription, made no comment. Since Russia is not a member of the World Bank, it presumably was not consulted about extending the Russian credits.

Likewise, certain major commercial banks, whose stockholders were deprived of millions of dollars due to Russia's 1919 confiscation of foreign-owned bank property remained conspicuously silent. In fact, many big banks responding to Administration encouragement, rushed in to grant private credits to Russia on terms—mostly not made public—that could be open to question in respect to conforming with the spirit, if not the letter, of the Johnson Debt Default Act.

As this Committee is well aware, the Johnson Act, passed in 1934, prohibits the extension of private credits of other than the conventional—i.e. the short-term—kind to nations in default of obligations owing to the U.S. government. There has been a flood of public announcements from Washington about the provisional settlement of Russia's World War II Lend-Lease debt, but only silence about the fact that Russia has not paid its $192 million World War I debt to the United States, a debt it even refuses to recognize.

Although the Johnson Debt Default Act was amended to exempt from its provisions nations joining the World Bank, Russia has never seen fit to join, and, therefore, is not covered by the exemption.

While the Department of Justice in the past has ruled on the applicability of the Johnson Debt Default Act to various proposed deals with Russia, it apparently has not seen fit to examine the legal implications of the private bank credits currently being extended to Russia.

So far, only three voices of influence in the world of international finance have questioned the prudence of the sudden surge of loans by the Export-Import Bank and by private U.S. commercial banks to Russia. One of these voices was that of Eugene R. Black, former executive of the Chase Manhattan Bank and former president of the World Bank. In 1965, while serving on President Johnson's Special Committee on U.S. Trade Relations with East European Countries and the Soviet Union, Mr. Black joined with the other members of the committee holding the position that nations in default of external debt and asking new credits, should settle their old debts. But Mr. Black went further and declared that such nations should first settle their old debts before being granted new ones.

A second voice was that of Gabriel Hauge, chairman of the Manufacturers Hanover Trust Co., who questioned specifically the terms on which Russia is being granted loans by private banks. Mr. Hauge was one of President Eisenhower's economic advisers.

The third voice is that of George D. Woods, former chairman of the First Boston Corp. and another former president of the World Bank. In a letter to the editor published in the *New York Times* of July 6, 1973, Mr. Woods said:

"The matter of privately held Russian debt is still unresolved. In 1916, U.S. private investors purchased $75 million of Imperial Russian government notes, which have been in default as to both principal and interest since 1919. In addition, there are claims of U.S. citizens against the Soviet Union amounting to about $120 million, which were certified by the Foreign Claims Settlement Commission some years ago."

"In the recent Nixon-Brezhnev communique," Mr. Wood continued, "there is a statement of agreement 'that mutually advantageous cooperation and peaceful relations would be strengthened by the creation of a permanent foundation of economic relations. . . .' " "An important building block in such a permanent foundation would be acknowledgment of debts to private U.S. creditors accompanied by an expression of intention by debtor U.S.S.R. to negotiate a settlement of them."

Why have opinions of such high professional authority as those expressed by this trio of bankers of international renown won so little notice or provoked so little thought or so few questions?

Although considerable clamor has developed over the Trade Reform Bill, no voice has been raised here in official Washington to protest the continued injustice perpetrated by Russia upon citizens of the United States whose property was confiscated in 1919 or whose Russian dollar bonds still are defaulted and repudiated.

What can be the reason for the Washington silence concerning (1) Russia's unpaid World War I debt to the U.S. Government? (2) The need to strengthen the applicability of the Johnson Debt Default Act? (3) The unpaid awards made by the U.S. Foreign Claims Settlement Commission to American citizens stemming from the confiscation of American property in Russia in 1919 and the repudiation of Russian bonds held by the United States and payable in dollars, in other non-Russian money, and even in Russian rubles?

Wall Street and commercial banks live for the most part in the world of today and tomorrow. It is easy in their short-sightedness for the past to get blurred or forgotten. But why should the Administration and the Congress maintain silence about the enormous injustice of Russia's contempt of international debt contracts?

Under established principles of international law the Russian dollar bonds are just as binding on the Soviet Union as U.S. Treasury bonds are binding on this Congress and this Administration. The U.S. Foreign Claims Settlement Commission has so ruled repeatedly in fulfilling a Congressionally-directed mandate that took years to complete. If the Commission is right in maintaining that a bond issued by the Czarist government should be just as legally valid as a U.S. government bond, then the time has come for the Congress to strengthen the Johnson Debt Default Act, and to withhold Most-Favored-Nation treatment from the Soviet Union until it settles its long-defaulted debts to Americans.

Yet public affirmation by the Congress, or by the Administration, of the duty of the State Department to enforce this elementary precept of international law has been sadly lacking in recent years. Nevertheless, even the Communist countries of Eastern Europe have repeatedly acknowledged their responsibility

for debts of pre-Communist governments. Consider, for example, the external debts of the extinct Ottoman and Austria-Hungary empires and the debt of the pre-World War I Austrian Sudbahn Gesellschaft. All were settled by international convention by successor states. Subsequently, the Communist governments of Hungary, Poland, Yugoslavia, Czechoslovakia and Rumania have largely settled those very old obligations. Yet the Soviet Union still refuses to make good on its old debts. So it behooves this Finance Committee and this Congress to amend the Trade Reform bill accordingly.

To sum up: The conclusion seems inescapable that if the Congress should pass the Trade Bill as proposed by the Administration and make possible the extension of long-term credits and Most-Favored-Nation treatment to the Soviet Union, the repercussions among other debtor countries would be profound and clearly contrary to the national interest of the United States.

Gentlemen, the continued existence of the Russian Dollar Bond debt, if not settled now, is destined to steadily undermine the relationship between the two countries. If Congress should pass up this great and most promising opportunity for achieving a complete settlement of financial claims against the Soviet Union, the results can only court disaster. Consider where the Administration policy would lead. Handing the U.S.S.R. Most-Favored-Nation treatment on a silver platter, certainly would be a clear invitation to other nations to default on their debts owed to the United States and its nationals. Any country having difficulty in paying its foreign obligations would be thus encouraged to default. Likewise, it could be expected to request further loans from Washington and from Wall Street on the excuse that the affluent Soviet Union, even though in default and repudiation, had obtained similar loans. The Congress knows how eager some on Wall Street are to grant foreign loans and thereby immediately realize large profits. Above and beyond any individual or corporate desire for quick profits, it seems to us, is the fact of the interdependence of nations and the need to strengthen the sanctity of international agreements. In this spirit, the Russian Dollar Bondholders Committee respectfully urges the Senate Finance Committee and this Congress to keep and strengthen the Johnson Debt Default Act. Also, we urge this Committee and this Congress to add a provision to the proposed Trade Reform Act specifying that Most-Favored-Nation treatment shall not be granted to, nor shall it continue in effect with, any nation while that nation is in default of its debts to the United States Government or to United States citizens.

Our own American government continues to regard this debt as valid and in default. Both the U.S. Department of State, and the U.S. Foreign Claims Commission, treat these bonds as overdue, but unpaid. And this Senate Finance Committee should strengthen the present inadequate collection procedures by writing into the Trade Reform Act an escape-proof provision stating with the greatest clarity that when a foreign nation is in default either to the Government of the United States or to American investors on publicly issued securities sold on behalf of that foreign government, no agency of the American government, and no private American individual, corporation, bank, or other legal person, shall extend credit or make a further loan to the defaulting foreign government or to any of its agencies, corporations, or other legal representatives, either directly or indirectly.

In the 1930s the U.S. Congress saw a world economy with rapidly spreading defaults, due not to *willful repudiation* as is the case of Russia now, but, instead, due to lack of available foreign exchange with which to service acknowledged debts. To meet that situation, the Congress passed the Johnson Debt Default Act forbidding further American loans to defaulting governments. Later the Congress tightened that Act. However, since that time huge loopholes have been opened in the Johnson Debt Default Act, as amended, so that to a great extent it has been nullified.

This Committee now must remedy that unfortunate deveolpment.

Let us look briefly at these loopholes. One has been the outcome of legislation enacted by the Congress to permit the Export-Import Bank to guarantee payments by Eastern European purchasers, when the President of the United States declares this to be in "the national interest." Such transactions are specifically exempted from the Johnson Debt Default Act. In recent months President Nixon has used that power freely, and thus our debt-collecting strength is ebbing away. Under this exemption, American machine-tool manufac-

turers have already sold $200-million worth of equipment for the Russian Kama River trunk plant. In this manner through the Export-Import Bank our own government is extending grant credits, in effect, to the most notorious defaulting nation on the face of the earth today—the Soviet Union. Another startling example is the American credit being used to finance the new monumental foreign-trade center being erected in Moscow.

Here is how this loophole works: American corporations, eager to get profits from contracts with the Russians, agree to furnish large quantities of materials, know-how, patent rights, trade secrets, skilled technicians, supervision, and management. The Soviets agree to "buy now, but pay later." So these American firms borrow from great American banks in order to finance these enterprises inside Russia. The banks, in turn, perhaps fearful of further debt default by the Russians, hurry to the Export-Import Bank and get it to guarantee payment of the loans, which, of course, means really guaranteeing payment by Russia to the American contracting corporations. Thus our American government instrumentality, the Export-Import Bank, is really guaranteeing great new soviet debts! In a very real sense, the United States government is thus financing these huge new loans being made to that notorious defaulter and repudiator, the Soviet Union! We are making it possible for Russia to "buy now, but pay later" on a massive scale. But *will* they pay later, after the work has been completed?

This loophole really nullifies the spirit of the Johnson Debt Default Act.

A second gaping loophole allows foreign subsidiaries of American corporations freely to extend credit to the Soviet Union! And they do it.

But these great evasions of the Johnson Act are not enough to satisfy the U.S.S.R. That government wants the Johnson Debt Default Act completely repealed. And so the White House, in writing the Trade Reform Act, included a repealer of the Johnson Act.

However, that effort to repeal the Johnson Act was a huge stench in the nostrils of many Americans, including the Russian dollar bondholders whom I represent here today. So we strongly protested the repealer to members of the House of Representatives. We are gratified to hear that this provision has now been deleted from the proposed legislation. This is an important step in the right direction.

However, the Senate must now go further, and *strengthen* the Johnson Act. The two gaping loopholes must be tightly closed, and promptly, too. To recapitulate the problem briefly: (1) The President must not be permitted at will to declare the Export-Inport Bank guarantees of payments by the U.S.S.R. are in the national interest, unless there is opportunity for the Congress to over-rule the decisions. (2) The Export-Import Bank must be forbidden from financing, directly or indirectly, trade with, or aid and construction within, a *defaulting* foreign country. (3) Foreign subsidiaries of American corporations must be forbidden to make loans or give credits to a *defaulting* foreign country. We Americans who have suffered from Russian debt default and repudiation for decades urge this Senate Finance Committee to stop up these loopholes by suitable amendments to the legislation now under consideration.

In this connection the Congress must think ahead regarding the example which the Soviet record of debt default constantly sets to all other nations. After all, these other nations realize that the U.S.S.R. has refused to pay a capicious and important debt, which was incurred in order to save Russia from collapse. And the other nations see that the U.S.S.R. has "gotten away with it." How many other debtor nations, many of them greatly impoverished, must be continually tempted to follow the Soviet example? Cuba, just off our shore, is a conspicuous example. Under Fidel Castro she has defaulted on her debts to Americans. The Peoples Republic of China is likewise in default on her debts to Americans.

The Soviet, Cuban, and Chinese examples certainly will become increasingly tempting for other nations to follow during the months immediately ahead, when the full effects of greatly increased oil prices will bring a great squeeze on international payments. This Committee can help avoid future debt defaults by putting the needed teeth into the Trade Reform Act. One good way is to strengthen the Johnson Act.

Senator PACKWOOD. Our next witness is Mr. Richard S. Reese, chairman, American Dinnerware Emergency Committee.

STATEMENT OF RICHARD S. REESE, CHAIRMAN, AMERICAN DINNERWARE EMERGENCY COMMITTEE, ACCOMPANIED BY JAMES D. WILLIAMS, JR., COUNSEL

Mr. REESE. Mr. Chairman and members of the committee, my name is Richard S. Reese and I am president of the Scio Pottery Co., of Scio, Ohio, a company founded by my Uncle in 1933, and in which I have worked in one capacity or the other for 25 years. The company employs 1,000 people and is the major source of employment in Scio, a town of 1,500, and manufactures earthen dinnerware and all accessory dinnerware pieces.

The American Dinnerware Emergency Committee—ADEC—was formed in 1970 by a number of U.S. potteries in order to try to combat the highly injurious imports of popular-priced earthen and china dinnerware, primarily from Japan, that were flooding the country and threatening the very existence of the U.S. earthen dinnerware industry, having captured some 60 percent of the domestic market. The members of ADEC account for about 80 percent of the earthen dinnerware produced in the United States.

I was elected chairman of ADEC and it is in that capacity that I appear before you today. We welcome this opportunity, for we believe we can contribute to your deliberations from our direct experience under the Trade Expansion Act—TEA—by suggesting certain changes in the Trade Reform Act of 1973—H.R. 10710—which we feel are required to insure a healthy U.S. pottery industry.

The main thrust of my testimony today is in the area of the escape clause provisions of H.R. 10710, and we have seven specific recommendations to make.

ADEC is in a particularly good position to discuss the escape clause because our industry was successful in petititoning for relief under the current law in 1972. We were the only petitioners up to that time to receive four affirmative votes before the Tariff Commission. On April 22, 1972, the President implemented the Tariff Commission recommendation by increasing the rates of duty on earthen dinnerware and chinaware-not-in-sets to pre-Kennedy round levels.

However, we did not receive the complete relief we requested primarily because of the legal requirement that increased imports must be due in major part to trade agreement concessions. Even one of the dissenting Commissioners, Commissioner Leonard, stated:

> I have no trouble in finding increased imports of important categories of ceramic table and kitchen articles like or directly competitive with the products of the domestic earthenware industry, nor in finding that industry seriously injured, nor even in finding the increased imports to be the major factor causing the serious injury to the industry. . . ."

"However," Commissioner Leonard went on to say:

> Senator PACKWOOD. Let me ask you a question. You went before the Tariff Commission and got partial relief but you could not get the complete relief because the entry was not caused by a tariff concession it was simply a natural flow of imports and under the law you were therefore not entitled to relief?

Senator PACKWOOD. Let me ask you a question. You went before the Tariff Commission and got partial relief but you could not get

the complete relief because the entry was not caused by a tariff concession; it was simply a natural flow of imports and under the law you were therefore not entitled to relief?

Mr. WILLIAMS. If the Chair please, I will first identify myself as James D. Williams, Jr., counsel for ADEC. I had the honor 20 years ago of serving 4 years with Senator Taft, Sr., as his legislative counsel when he was a member of this committee. I would say on that point, Mr. Chairman, that we asked for tariff relief in two areas: earthen dinnerware and china dinnerware. And the Commission did find that injury was in major part due to trade concession agreements on the earthenware part of the request but on the chinaware part of the request they found injury but they couldn't find it in major part, so in a way, we only got half of what we were after.

Senator PACKWOOD. On the first part, what was that again?

Mr. WILLIAMS. Yes; earthenware.

Senator PACKWOOD. And did you get compensation on that?

Mr. WILLIAMS. We did get increased tariff rates on that.

Senator PACKWOOD. But in other words it is imperative that the two be related; you must have damage and it must be related to a trade concession?

Mr. WILLIAMS. Yes, sir, under the present law. And thank goodness that has changed under the present legislation as drafted.

Mr. REESE. The same legal ingredient prevented the Commission majority from giving us relief in the key china dinnerware area. As our first recommendation, we therefore, support the new standard contained in Section 201(b)(1) of H.R. 10710 which does not condition relief on trade concessions, but asks merely:

> Whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

However, our more immediate concern is to make certain that the relief which we have spent considerable time and effort to obtain under the TEA is not prematurely terminated or diminished under the proposed changes to the escape clause. H.R. 10710 is unclear as to how our present escape clause relief will fare when the new law is enacted.

The TEA had specific provision for full carryover of the prior escape clause relief applicable to previously decided cases, but the proposed legislation seems vague at best on this point. Accordingly, as our second recommendation we strongly urge that the language of the bill be clarified so that successful recipients of relief under the TEA will be entitled to at least as favorable terms of relief as under the TEA.

Senator PACKWOOD. You are not asking for any relitigation on the claim you lost, you simply want to make sure what you have is not changed by this law?

Mr. REESE. Yes.

Mr. WILLIAMS. Strange as it may seem, this new legislation treats an industry that has an escape clause relief worse than TEA. It will cut off this relief in a much more unfair way than the TEA. And the suggestion has been made, and I believe your staff is well aware of

this, that perhaps the TEA phaseout provisions should be substituted for the proposed provisions in the draft you have before you.

Senator PACKWOOD. It seems unusual.

Mr. WILLIAMS. It is most unusual.

Senator PACKWOOD. We are in essence going to terminate established relief by the passage of a new act. Thank you, go ahead.

Mr. REESE. Third, our concern about the changeover is heightened by the fact that the proposed changes to the escape clause relief provisions are more unfair to the recipient of relief than the present law. In our situation under the TEA, we can petition the Tariff Commission for a hearing on the probable economic effect of terminating the relief 9 months before our tariff adjustment is scheduled to expire—unless renewed—in 1976. But under the new proposal, there is no 4-year relief period during which the relief is unimpaired. Instead, there is a 5-year maximum period during which a phaseout of the protection must occur by the end of the third year. And under this new proposal, the industry concerned cannot petition for a hearing from the Tariff Commission on the probable adverse economic effects of the phaseout until 9 months before the final termination date. It must, contrary to present law, allow the first two phaseouts to occur without any right to object.

Furthermore, even if an industry were to prevail in asking for an extension of relief, the level of such relief is limited to that in effect immediately before such extension, and cannot be extended for more than 2 years. By that time, damage from reducing the tariff relief may have already occurred. Apart from our own interest, we believe this whole approach must be corrected.

Our fourth recommendation is that there should be no statutory phaseout of import relief. Let the President decide, as now, when and how he wants to time any phaseout, and let the affected industry, then as now, have the right to petition for a hearing on the probable economic effect thereof. Such timing will, among other things, depend upon the condition of the national economy and the particular industry involved during the import relief period. It is impossible to predict when relief is initiated what may be the economic status of the affected industry at any certain date in the future.

And, at the very least, the extension provisions should certainly not be less liberal than the TEA, as in the current proposal. We should not forget that it is 100 times easier to preserve a job than create one—and that is a fact important not to forget in these days of nagging unemployment. This has even greater importance for industries with little or no chance to benefit from exports, such as ours.

This committee should substitute the phaseout and extension provisions of the TEA for the more restrictive language of the present bill.

Fifth, we note with alarm that the proposed legislation denies to Congress the authority to override a Presidential decision not to impose import relief when recommended by the Tariff Commission. The present law provides for such action, and we believe its omission from H.R. 10710 is a serious oversight that should be corrected.

Sixth, we urge that some provisions be made in the proposed legislation for adjustment in tariff relief where necessary to account for the effects of inflation and changes in international exchange rates.

For example, in our case, what relief has been given has been eroded by inflation and changes in currency exchange rates, particularly revaluation of the Japanese yen. This is because the dinnerware tariff schedules are divided into value brackets and the escape clause relief affected only the middle value brackets—roughly $12 to $22 per 77-piece norm. When inflation in this country causes the price of an article protected by the increased tariff to rise, and at the same time the competitive foreign article increases in value due to revaluation, and so moves out of the middle value bracket, the tariff relief is no longer effective.

The seriousness of the above development in our case can readily be seen by the fact that over the past 2 years prices of U.S. earthen dinnerware have risen 10 to 20 percent, while the value of Japanese ware has also increased by virtue of a 25 percent increase in the dollar value of the yen.

Therefore, this committee should give careful consideration to authorizing the Tariff Commission to modify the relief granted by adjustment upward of appropriate value brackets to preserve protection in the face of inflation and revaluation.

Seventh, we are distressed to see that the bill ranks the four basic types of import relief in order of preference. We believe each form of relief should be coequal with the others; no one form should be preferred over the others. The Tariff Commission—in recommending—and the President—in implementing—should be given as much latitude as possible in choosing the type of relief that seems appropriate in any given case, and should not be limited by an arbitrary order of preference set out by statute.

In particular, we deplore the fact that orderly marketing agreements have been labelled as the least preferable form of relief that the President may employ. In our case, we believe that an orderly marketing agreement would have been preferable to the tariff relief we did receive. In fact, we asked for relief in the form of an orderly marketing agreement before we were given tariff relief, but we were unsuccessful.

The proposed legislation would permit a Congressional veto of either quotas or orderly marketing agreements. We believe this restriction inhibits Presidential action that would give us the type of relief we require, and for that reason we oppose the Congressional veto provision.

Our written statement covers several other areas of H.R. 10710, including the President's tariff cutting authority, adjustment assistances to firms, granting of MFN to Communist countries, and extension of preferences to underdeveloped countries. We hope the committee will give our comments on these topics their careful consideration.

I thank you.

Senator PACKWOOD. As I understand it, under the TEA once you have determined you are entitled to relief, it is renewable every 4 years forever.

Mr. REESE. I don't know about forever.

Mr. WILLIAMS. One renewal.

Senator PACKWOOD. Eight years total?

Mr. REESE. One renewal.

Mr. WILLIAMS. We haven't got into after that. We are trying to hold on to our 4 years. I am sure the staff, I am sure Bob Best has the law there——

Senator PACKWOOD. If this is indeed an adjustment act to further trade, should we have a transition period?

Mr. WILLIAMS. True, and you should have control in the Executive to take a look at how the industry is making out and then, if it is deemed appropriate, to phaseout the relief, but certainly not to lock it in as a statutory provision and certainly not to have, as we seem to have, an automatic situation where after 3 years, and not 4 years, but after 3 years you have an automatic phaseout. So that under this, over a 3-year period—and let us assume we would have one third each year—the industry cannot petition for a hearing and cannot object to this phaseout until the last leg of the phaseout, until the final third. The first two-thirds of the phaseout occur annually without the legal right for the industry to come in and say that this is going to kill us.

Senator PACKWOOD. Let me ask you this. I am reading from the committee staff review of the law under present law import relief measures remain in effect for 4 years, but may be reextended for any number of additional 4-year periods?

Mr. REESE. Yes.

Senator PACKWOOD. Assuming that it means what it says and we want to make a change so that there is finally a phaseout—and I understand the claim you have under TEA—but at some time if we want to phase it out, we are going to have to make some accommodation to our perpetual 4-year rights with a rational phasing in with the new law that we pass.

Mr. WILLIAMS. Well, you see, Senator, under the renewal you get the first 4 years. Let us take the glass situation. Let us take flat glass, which I am acquainted with and so is Mr. Chester who follows me, and you have a situation where it went for the 4 years and then it was negotiated downward at the Kennedy Round, as I recall it, and it was negotiated downward in phasing, and they phased it down over a 3-year period and then that was the end of it and it worked out fine because the companies that were getting adjustment assistance had that umbrella while they were building their new plants, and so on. So it worked out very well as you undoubtedly have evidence adduced to this effect.

So that you could have such a thing under this law, yes, you had the right but it never happened. In other words, you never had under the Trade Expansion Act—although it is possible—you never had a four and then a four and then a four.

Now if you feel that should be eliminated——

Senator PACKWOOD. Excuse me then, all you are asking is for a fair phasing so that you are not unduly hampered in exercising your existing rights?

Mr. WILLIAMS. Yes, and let us suppose that first of all we have 4 years, and as you know we don't have that under this bill, all right,

and let us assume then the President decides to extend it for another four, but actually he doesn't have to—I don't believe under the TEA that he has to do it at 100 percent for the next four; he can say I am extending it for four or I am extending it for three and I am phasing it out at 33⅓ percent each year for the next 3 years—now assuming that——

Senator PACKWOOD. In other words, in the law we are saying there is a maximum of 7 years by statute?

Mr. WILLIAMS. Yes, you are saying that it automatically goes down after the third year and so conceivably it is one-third because you do it in three steps so that by the time you get to renew that thing at the end of the 5 years, you may only have one-third of the relief left, you see.

Senator PACKWOOD. It is not worth renewing.

Mr. WILLIAMS. That is right. The death has already occurred.

Thank you, Mr. Chairman.

Senator PACKWOOD. And thank you. We appreciate your very good testimony and very good statement.

Mr. WILLIAMS. We would be pleased to give whatever further information is required to the staff and I believe the staff knows that.

Senator PACKWOOD. Thank you, and your entire statement will go in the record.

[The prepared statement of Mr. Reese follows. Hearing continues on p. 1855.]

PREPARED STATEMENT OF RICHARD S. REESE, CHAIRMAN, AMERICAN DINNERWARE EMERGENCY COMMITTEE (ADEC)

SUMMARY

I. Escape Clause Recommendations

A. Based on its own experience under the TEA, ADEC strongly supports Section 201(b)(1) of H.R. 10710 which eliminates the present condition that increased imports causing injury to domestic industry must be the result of trade agreement concessions.

B. ADEC is extremely concerned that H.R. 10710 does not expressly provide for a carryover of the import relief it received under the TEA. In fact, the proposed legislation, unless corrected, would essentially phase out ADEC's relief before giving it a chance to ask for an extension.

C. H.R. 10710 provides less protection for U.S. industry than current law because it permits a substantial phaseout of import relief before an extension can be requested, and even if granted such extension is limited to the level existing immediately preceding the request for extension.

D. There should be no *statutory* phaseout of import relief; the President should be able to adjust the phaseout timetable according to the needs of each injured industry.

E. As in the present law, Congress should be able to override any Presidential decision *not* to provide import relief recommended by the Tariff Commission.

F. ADEC's experience with escape clause relief under the TEA reveals that there is a need to provide for adjustment in tariff relief where the affected imported products are classified according to value brackets: revaluation of foreign currencies and inflation in this country have combined to erode the tariff relief given ADEC under the TEA.

G. ADEC believes its problems would be far better solved by an orderly marketing agreement than by tariff increases. Accordingly, it deplores the downgrading by H.R. 10710 of the orderly marketing agreement as a form of import relief. Both the Tariff Commission (in recommending) and the President (in implementing) should be given as much latitude as possible in choosing the type of relief that is appropriate in a given case; by ranking types of import relief in order of preference, and by then making the President's choice of either quantitative restrictions or an orderly marketing agreement subject to Congres-

sional veto, H.R. 10710 is unnecessarily restricting the forms of relief available to an injured industry.

II. Tariff-Cutting Authority

Some limitation similar to the "peril point" procedure under previous legislation should be imposed on tariff-cutting authority.

III. Adjustment Assistance

ADEC supports the strengthening of adjustment assistance provisions but suggests that injured firms be given a longer time period within which to request certification for eligibility to receive assistance.

IV. Granting of MFN treatment to Communist Countries and Extension of Preferences to Less Developed Countries

ADEC cautions against both granting of MFN treatment to some Communist countries and tariff preferences to less-developed countries because of the pottery industry's particular vulnerability to imports from low-wage countries. Accordingly with regard to the latter ADEC strongly supports the provision in H.R. 10710 that no preferences can be given where the article is or becomes subject to import relief.

STATEMENT

Mr. Chairman and members of the Committee, my name is Richard S. Reese and I am President of the Scio Pottery Co., of Scio, Ohio, a company founded by my uncle in 1933, and in which I have worked in one capacity or the other for 25 years. The company employs 1,000 people, is the major source of employment in Scio, a town of 1,500, and manufactures earthen dinnerware and all accessory dinnerware pieces.

The American Dinnerware Emergency Committee (ADEC) was formed in 1970 by a number of U.S. potteries (current membership list is attached) in order to try to combat the highly injurious imports of popular-priced earthen and china dinnerware, primarily from Japan, that were flooding the country and threatening the very existence of the U.S. earthen dinnerware industry, having captured some 60% of the domestic market. The members of ADEC account for about 80% of the earthen dinnerware produced in the United States.

I was elected chairman of ADEC and it is in that capacity that I appear before you today. We welcome this opportunity, for we believe we can contribute to your deliberations from our direct experience under the Trade Expansion Act (TEA) by suggesting certain changes in the Trade Reform Act (H.R. 10710) which we feel are required to ensure a healthy U.S. pottery industry.

ESCAPE CLAUSE EXPERIENCE

I would first like to discuss the tariff adjustment relief we received under the present escape clause. On June 1, 1971, ADEC filed a petition under Section 301(b)(1) of the TEA with the Tariff Commission aimed primarily at Japanese imports of low-end or popular-priced ceramic dinnerware (both earthenware and chinaware). Following eight days of hearings in November and December and the filing of briefs, the Commission filed its report on February 22, 1972. By a vote of 4–2 the Commission found injury to our industry from increased imports, due to tariff concessions, of earthen dinnerware and some chinaware, but not from imports of china *dinnerware* (chinaware in sets) from which we were also experiencing extreme injury. Although the Commission found existing injury from china dinnerware, the majority were blocked from finding that it was due to tariff concessions by the "in major part" requirement of the TEA. On April 22, 1972, the President implemented the Tariff Commission recommendation by increasing the rates on earthen dinnerware and certain chinaware to pre-Kennedy Round levels.

ESCAPE CLAUSE RECOMMENDATIONS

It is clear that we had an extremely good case before the Tariff Commission. Despite the over-restrictive requirements of the TEA escape clause, we were the only petitioners in the history of the TEA up to that time to receive four affirmative votes. Furthermore, both of the dissenting Commissioners found injury from increased imports. However, they were unable to link them with tariff concessions. One of the dissenting Commissioners, Commissioner Leonard,

even stated: "I have no trouble in finding increased imports of important categories of ceramic table and kitchen articles like or directly competitive with the products of the domestic earthenware industry, nor in finding that industry seriously injured, nor even in finding the increased imports to be the major factor causing the serious injury to the industry. . ."

"However", the same Commissioner went on to say, "I am unable to determine that the industry is eligible for relief under the TEA because I cannot find the second element of the law satisfied—that the increased imports are a result in major part of trade-agreement concessions. This Achilles heel of the statute once more prevents me from finding in behalf of a U.S. industry sorely beset with import-inspired problems." [1]

The same legal ingredient prevented the Commission majority from giving us relief in the key china dinnerware area. We therefore support the new standard contained in Section 201(b)(1) of H.R. 10710 which does not condition relief on trade concessions, but asks merely: "whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, To the domestic industry producing an article like or directly competitive with the imported article.'

However, our more immediate concern is to make certain that the relief which we have spent considerable time and effort to obtain under the TEA is not prematurely terminated or diminished under the proposed changes to the escape clause. H.R. 10710 is unclear as to how our present escape clause relief will fare when the new law is enacted.

The TEA had specific provision for full carryover of the provisions of the prior escape clause, Section 7 of the Trade Agreements Extension Act of 1951, as it applied to cases receiving relief under Section 7, but the proposed legislation seems vague at best on this point. Accordingly, we strongly urge that the language of the bill be clarified so that successful recipients of relief under the TEA will be entitled to *at least* as favorable terms of relief as under the TEA.

Our concern about the changeover is heightened by the fact that the proposed changes to the escape clause relief provisions are more unfair to the recipient of relief than the present law. In our situation under the TEA, we can petition the Tariff Commission for a hearing on the probable economic effect of terminating the relief nine months before our tariff adjustment is scheduled to expire (unless renewed) in 1976. But under the new proposal, there is no four-year relief period during which, unless changed by the President after a hearing followed by Tariff Commission finding, the relief is unimpaired. Instead, there is a five-year maximum period during which a phaseout of the protection *must* occur by the end of the third year (Section 203 (i)(1) and (2)). One can assume that the draftsmen of this patently unfair provision would have the President remove one third of the escape clause protection after the third year, one third after the fourth, and the final third at the end of the fifth. Yet under this new proposal, the industry concerned cannot petition for a hearing from the Tariff Commission on the probable adverse economic effects of the phaseout until nine months before the *final* termination date. It must, contrary to present law, allow the first two phaseouts to occur without any right to object (Sections 203 (j)(3) and 203 (j)(4)). And even if an industry were to prevail in asking for an extension of relief, the level of such relief is limited by Section 203 (i)(3) of the bill to that in effect immediately before such extension, and cannot be extended for more than two years. By that time, damage from reducing the tariff relief may have already occurred. Apart from our own interest, we believe this whole approach must be corrected.

Furthermore, there should be no *statutory* phaseout (Section 203 (i)(2)). Let the President decide, as now, when and how (*after* a minimum period such as four years) he wants to time any phaseout. Such timing will, among other things depend upon the condition of the national economy and the particular industry involved during the import relief period. It is impossible to predict when relief is initiated what may be the economic status of the affected industry at any certain date in the future. Thus, the President should be able to take advantage of a flexible timetable.

At the very least, the renewal provisions should certainly not be *less* liberal than the TEA, as in the current proposal. We should not forget that it is a

[1] Views of Commissioner Leonard, Report to the President on Investigation No. TEA-I-22, T.C. Publication 466, February 1972, P. 22.

hundred times easier to preserve a job than create one—and that is a fact important not to forget in these days of nagging unemployment. This has even greater relevance for industries with little or no chance to benefit from exports, such as ours.

This Committee should substitute the phaseout and extension provisions of the TEA for the more restrictive language of the present bill.

Finally, we note with alarm that the proposed legislation denies to Congress the authority to override a Presidential decision *not* to impose import relief when recommended by the Tariff Commission. The present law (Section 351 (a) (2) (B) of the TEA) provides for such action, and we believe its omission from H.R. 10710 is a serious oversight that should be corrected.

The TEA, and Section 7 of the Trade Agreements Extension Act of 1951 which preceded it, have worked reasonably well in providing relief from imports where aggrieved industries have been able to meet the statutory criteria of injury. One key to successful relief is a system of "checks and balances" such as the present law provides: the Tariff Commission recommends which relief it deems appropriate (and certainly, having conducted a thorough investigation, it is in the best position to do so), the President then acts on that recommendation, or is held accountable to Congress if he does not, in which case Congress can override his decision. If the proposed legislation is not changed to provide for a Congressional override, we believe some consideration should be given to make the Tariff Commission recommendation binding on the President.

INDUSTRY EXPERIENCE IN THE ONE YEAR SINCE THE TARIFF INCREASE

The first annual report of the Tariff Commission on the effects of increasing duties on some ceramic tableware clearly shows, we believe, that not enough relief was granted to the industry by the mere rollback on some products to 1967 tariff levels: the tariff on imports of earthen dinnerware were not increased to a high enough level and tariffs on imports of low-value dinnerware were not increased at all.

As evidence of this, the Tariff Commission's May 1973 report states that although domestic shipments of certain earthen table and kitchen articles on which the duty was increased on May 1, 1972, were 8 percent greater in 1972 than 1971, *imports were 18 percent* greater!

In addition, what relief has been given has been eroded by inflation and changes in currency exchange rates, particularly revaluation of the Japanese yen. This is because the dinnerware tariff schedules are divided into value brackets, and the escape clause relief affected only the middle value brackets ($12 to $22 per 77—piece norm). When inflation in this country causes the price of an article protected by the increased tariff to rise, and at the same time the competitive foreign article increases in value due to revaluation, and so moves out of the middle value bracket, the tariff relief is no longer effective.

The seriousness of the above phenomenom in our case can readily be seen by the fact that over the past two years prices of U.S. earthen dinnerware have risen 10 to 20 percent, while the value of Japanese ware has also increased by virtue of a 25 percent increase in the dollar value of the yen.

With the recent increases in prices of energy the high energy requirement together with increased labor and other costs for production of dinnerware will cause substantial further price rises. The top of the value bracket for imports of earthen dinnerware competitive with U.S. earthenware given tariff relief was $22 per 77-piece norm. If prices rose 25 percent the value of such ware would be $27.50 and a large part of domestic dinnerware would have "graduated" into a value range unprotected by the relief given by the escape clause.

Therefore, this Committee should give careful consideration to authorizing the Tariff Commission to modify the relief granted by periodic adjustment upward of appropriate value brackets to preserve protection in the face of inflation and revaluation.

AN IMPORTANT REMEDY: ORDERLY MARKETING AGREEMENT

These problems could have been avoided—and fully adequate relief provided—if the Administration had negotiated an orderly marketing agreement with Japan, as we had asked. Such an agreement could have been negotiated concurrently with a tariff increase, then the latter could have been withdrawn

when a satisfactory agreement was reached. This was not done because the TEA put the two remedies on an either/or basis.[2]

The proposed legislation permits such a combination of increased tariffs and orderly marketing agreement, but we are distressed to see that it considers an orderly marketing agreement as the least preferred relief available to the President. Furthermore, H.R. 10710 restricts the effectiveness of an orderly marketing agreement in two other ways: (1) Section 203 (d)(2) of the bill provides that an agreement cannot reduce the level of imports below that of a recent representative period; (2) Section 204 provides that either house of Congress may veto an orderly marketing agreement after it has been entered into.

We do not believe that orderly marketing agreements should necessarily be considered less preferable than increased tariffs, or any other form of relief. Each remedy should be considered on its own merits as applied to a particular case, and should not be arbitrarily ranked according to preference. It is our opinion that an orderly marketing agreement would afford the protection that tariff increases have not been able to, yet by making it more difficult for a President to employ such an agreement, the proposed legislation prejudices our position.

In addition, by "down-grading" both quantitative restrictions and orderly marketing agreements as possible remedies for injurious imports, the proposed legislation diminishes their effectiveness as negotiating tools: the "threat" to our trading partners of the possibility of using either remedy is not as great if they are restricted in the manner proposed by H.R. 10710. The President must have authority to impose and the Tariff Commission the duty to recommend *whatever* relief may be required: tariff imposition or increases and/or tariff rate quotas and/or quantitative restrictions and/or orderly marketing agreements necessary to accomplish the purpose of the legislation.

We still need an orderly marketing agreement and we have exhausted all administrative recourses to that end. In this regard, we are attaching the letter we filed with the Trade Information Committee on July 21, 1972 in another vain attempt to close the import loopholes that are endangering our industry. It was to no avail. We asked the Administration to withdraw tariff concessions previously given on imports from Japan of earthenware and low-value chinaware. Such action is provided for in Article 28 of the General Agreement on Tariff and Trade (GATT). We hoped that this might lead to an orderly marketing agreement. The Administration denied our request. The Congress, as in the past, is our main hope for assistance in our continuing endeavors.

TARIFF-CUTTING AUTHORITY

Just as we are concerned about the restraints against adequate protection for our industry, we have an equal concern for the tariff-cutting authority proposed for the President in H.R. 10710. We know this Committee will go over this part of the legislation most carefully. But we would like to say in passing that the old "peril point" provision in effect prior to the TEA should again be examined, to strengthen the advice of the Tariff Commission with regard to coming negotiations.

ADJUSTMENT ASSISTANCE TO FIRMS COMMENTS

We strongly support the provisions of H.R. 10710 as they relate to adjustment assistance. The present adjustment assistance provisions, when availed of, achieved excellent results, as for example in the sheet glass industry. Again, these measures are calculated to help *preserve* jobs in areas where modernization and technological improvements will make plants more competitive. However, adjustment assistance should be viewed as only a supplement to import relief in the form of quotas and increased tariffs.

At the time of our successful escape clause action, by regulation a firm had to apply for adjustment assistance within a year after the Presidential Proclamation providing for a request for certification to the Secretary of Commerce. This is not long enough, and should be increased to at least two years. Our members chose not to apply for firm certification until it became clearer just how much

[2] The Commission majority recognized the appropriateness of an orderly marketing agreement in our case by pointing to the authority for it in a footnote to its recommended relief. See p. 12, Report to the President on Investigation No. TEA-I-22, T.C. Publication 466, February 1972.

the escape clause tariff protection would mean to them—whether the umbrella—though leaky—would keep out the rain long enough to make a facilities overhaul and technological improvement program profitable. At least one of our firms now feels that such a certification might indeed have helped it, but the one year period had already run.

GRANTING OF MOST-FAVORED-NATION TREATMENT AND EXTENSION OF PREFEREECES

We in ADEC are most concerned about the continual foreign threat to our industry. We are aware that this threat has not completely materialized because much of it will come from countries such as Communist China not presently enjoying "MFN" treatment. If and when they do, we may well be inundated again. In fact MFN treatment may not even be necessary, in view of the low cost of production in countries like China, to encourage injurious imports. In any event, extension of MFN to low-wage countries should be carefully examined.

But the extension of general preferences to developing nations is even more dangerous to our industry. For the manufacture of ceramic dinnerware is a natural for any developing country—the industry being labor-intensive, the skills not too difficult to learn, and the capital investment required to get started being small. We therefore strongly support the provision in H.R. 10710 that no preference can be given where the article is or becomes subject to import relief under this act or under 351 of the TEA.

Although the existing escape clause relief protects some of our products from the effects of these preferences, we are not protected from imports of low-value china dinnerware and to these we are completely vulnerable.

CONCLUSION

ADEC's relief under the present escape clause must not be allowed to be eroded by the proposed legislation. In fact, the proposed changes are not as favorable to industry in certain respects as present law.

The escape clause should be strengthened immediately. Orderly marketing agreements should be given new importance, and value brackets in the tariff schedules should be made more flexible to cope with changes in exchange rates and inflation.

Adjustment assistance should be continued and strengthened.

The legislation as a whole should be rewritten so that the thrust is away from the blank-check approach to reducing tariffs and instead given direction and purpose with adequate guidelines based upon Congressional judgment of future probabilities and past experience.

LIST OF ADEC MEMBERS

Canonsburg Pottery Co., P. O. Box 110, Canonsburg, Pa.
Hall China Co., East Liverpool, Ohio.
The Homer Laughlin Co., Newell, W. Va.
Hull Pottery Co., Crooksville, Ohio.
The Pfaltzgraff Co., P. O. Box 2026, York, Pa.
Royal China, Inc., c/o The Jeannette Glass Co., Jeannette, Pa.
The Scio Pottery Co., P. O. Box 565, Scio, Ohio.
Stangl Potteries, P. O. Box 2080, Trenton, N.J.
Taylor, Smith & Taylor Co., P. O. Box 762, East Liverpool, Ohio.

WILLIAMS & KING,
ATTORNEYS AT LAW,
Washington, D.C., July 21, 1972.

Re Article XXVIII, General Agreement on Tariffs and Trade (GATT).

CHAIRMAN,
Trade Information Committee
Office of the Special Representative for Trade Negotiations
Washington, D.C.

DEAR MR. CHAIRMAN: The American Dinnerware Emergency Committee, (ADEC) composed of the eleven companies listed in the Appendix hereto, who together account for over eighty percent of the earthen dinnerware produced in the United States, hereby petition for withdrawal of tariff concessions on certain

articles of dinnerware, pursuant to paragraphs 1, 2 and 3 of Article XXVIII of the GATT.

The President, by proclamation on April 24, 1972 (No. 4125), modified tariff concessions on certain ceramic tableware pursuant to Section 351(a)(1) of the Trade Expansion Act of 1962 (TEA). However, it is clear from the Tariff Commission report to the President on the investigation under Section 301(b) of the TEA, that the increased tariffs recommended by the Commission under Section 301(e) of the TEA, and proclaimed in substance, by the President, are insufficient to remedy the injury found to have been caused by increased imports. This is so for two reasons: First, because the tariffs on imports of earthen dinnerware were not increased to a high enough level and second, because tariffs on imports of low-value china dinnerware were not increased at all. The enclosed table entitled Revised Collective Exhibit 2D, originally part of ADEC's presentation to the Tariff Commission, shows the imported articles that were complained of as being injurious to the U.S. earthenware industry. Enclosed Table IIA shows the tariff reductions pursuant to international trade negotiations on certain articles of earthenware and chinaware from 1930 to 1972. ADEC asked for an increase in tariffs on the articles complained of up to the 1930 rate.

The Tariff Commission found that increased imports of earthenware and low-value chinaware have seriously injured the U.S. earthenware industry (TC Publication 466, pp. 10–11, 16–18, 22). The majority and dissenting Commissioners, however, disagreed on the connection between increased imports and tariff concessions.

The Tariff Commission majority, in recommending a remedy, did not look any further than the latest tariff concessions negotiated in 1967. Apparently they did not feel they could go back to the pre-1955 rates of duty because of the restrictions of the TEA; their uneasiness about the adequacy of their recommended remedy is revealed in a footnote drawing attention to Section 352 of the TEA which authorized the President to negotiate international agreements to limit imports to the United States whenever he determines that such action would be more appropriate than the remedy authorized under Section 351(a)(1) (TC Publication 466, p. 12, footnote 1.)

The dissenting Commissioners Sutton and Leonard were even more explicit in pointing out the constraints imposed by the TEA. Commissioner Leonard agreed that increased imports had caused injury to the domestic earthenware industry, but he was unable to link the increased imports with tariff concessions granted in the Kennedy Round Trade Conference, because the imports had been increasing steadily since the mid-1950's. Commissioner Sutton pointed out that there had been no concessions since 1955 on three-fourths of all chinaware imports; yet such imports caused the most injury to the domestic earthenware industry. As for the remedies recommended by the majority, Commissioner Sutton criticized them on two counts: there is no increase recommended of the duty on low-value china dinnerware, and the duty increases that are recommended are clearly insufficient to restrict imports to the extent necessary to remedy any injury.

With regard to low and medium-value china dinnerware, it should be noted that such ware was excepted from the Kennedy Round negotiations on trade-agreement concessions. Presumably this was because injury, or threatened injury, was already foreseen from increased imports. According to both the Tariff Commission majority and dissenting members' interpretations of the TEA, however, the fact that no concessions were negotiated during the Kennedy Round prevents the industry from obtaining relief from injury caused by such imports.

It is submitted that Article XXVIII of the GATT was designed to solve just such a problem as is presented here: where injury has been determined to have resulted from increased imports due to tariff concessions, and the normal remedy provided by the TEA (pursuant to Article XIX of the GATT) is insufficient.

Accordingly, the American Dinnerware Emergency Committee requests that the 1955 tariff concessions be withdrawn or modified with respect to the follow-

ing TSUS item numbers: 533.14; 533.16; 533.23; 533.25; 533.26; 533.28; 533.31; 533.33; 533.35; 533.36; 533.38; 533.63 533.65 ! 533.66; 533.71; 533.73; 533.75; 533.77. The articles within these items numbers that are of concern to ADEC are described in the column headed "Injurious Imports" on the enclosed table labelled Revised Collective Exhibit 2B.

In connection with this request, ADEC asks that it be accorded a hearing in order to present evidence and arguments supporting its position.

Respectfully,

JAMES D. WILLIAMS, Jr.

THE AMERICAN DINNERWARE EMERGENCY COMMITTEE

Canonsburg Pottery Co., Box 110, Canonsburg, Pa.
Frankoma Pottery, Box 789, Sapulpa, Okla.
Hall China Co., East Liverpool, Ohio
The Homer Laughlin Co., Newell, W. Va.
Hull Pottery Co., Crooksville, Ohio.
Metlo Manufacturing Co., 1200 Morningside Dr., Manhattan Beach, Calif.
Mount Clemens Pottery Co., 261 Church St., Mount Clemens, Mich.
The Pfaltzgraff Co., P.O. Box 1069, York, Pa.
Royal China, Ins., South 15th St., Sebring, Ohio.
The Scio Pottery Co., Box 565, Scio, Ohio.
Taylor Smith & Taylor Co., P.O. Box 762, East Liverpool, Ohio.

Appendix B.—REVISED COLLECTIVE EXHIBIT 2B

TSUS Item	Description	Injurious imports	Not complaining of
533.114, 533.16	Red-bodied earthenware	Dinnerware and articles thereof	Teapots; kitchenware; collectors' articles.
	Earthen Dinnerware:		
533.23	Not over $3.30 per norm	All of item	None.
533.25	$3.30–$7 per norm	do	Do.
533.26	$7–$12 per norm	do	Do.
533.28	Over $12 per norm	Ware not over $23 per norm	Ware over $23 per norm.
533.31	Earthen steins, mugs, etc	Mugs not over $5 per dozen	Mugs over $5 per dozen and other articles in item.
	Earthen table and kitchen articles not available in 77-piece norm.[1]		
533.33	Bottom value category	Dinnerware articles	Kitchenware; collectors' articles, e.g., odd salt and pepper and odd cups and saucers.
533.35 and 533.36	Middle value category	do	Do.
533.38	Top value category	Same, valued not over values corresponding to $23 per norm.	Same, and dinnerware articles valued over values corresponding to $22 per norm.
533.41	Bone china dinnerware	None	All of them.
	Feldspar china dinnerware:		
533.63	Not over $10 per norm	All of item	None.
533.65	$10–$24 per norm	do	Do.
533.66	$24–$56 per norm	$24–$27 per norm	Over $27 per norm.
533.68	Over $56 per norm	None	All of item.
533.69	High-priced teaware	do	Do.
533.71	China steins, mugs, etc	Mugs not over $5 per dozen	Mugs over $5 per dozen and other articles in item.
	China table and kitchen articles not available in 77-piece norm.[1]		
533.73	Bottom value category	Dinnerware articles	Kitchenware, collectors' articles, e.g., odd salt and peppers and odd cups and saucers.
533.75	Middle value category	do	Do.
533.77	Top value category	Same, valued not over values corresponding to $27 per norm.	Same, and dinnerware article-valued over values corresponding to $27 per norm.

[1] The "norm" consists of 77 pieces—12 each of dinner plates, bread and butter or salad plates, tea cups and saucers, soups and fruits, and 1 each of platter, vegetable dish, sugar (with cover), and creamer. If soups or fruits are not available, cereals are substituted.

TABLE II A.—FINE-GRAINED EARTHENWARE AND STONEWARE AND LOW-VALUE CHINA FOOD AND DRINK WARE

[Rates of duty in specified years, 1930–72, and ad valorem equivalents of the duties based on imports in 1970. (Rates of duty in cents per dozen pieces and percent ad valmore).]

TSUS Item No.	Description	1930		1955		1968		1970		1972		Percent duty reduction 1930–72
		Rate of duty	Ad valorem equivalent	Rate of duty	Ad valorem equivalent	Rate of duty	Ad valorem equivalent	Rate of duty	Ad valorem equivalent	Rate of duty	Ad valorem equivalent	
533.14 and 533.16.	Red-bodied earthenware	25 percent	25	6.25–12.5 percent.	10	6–11 percent	9	6–7 percent	7	6 percent	6	72
	Earthen dinnerware:											
533.23	Not over $3.30 per norm.	10 cents plus 50 percent.	55	10 cents–28 percent.	33	9 cents plus 25 percent.	30	7 cents plus 19.5 percent.	24	5 cents plus 14 percent.	17	69
533.25 and 533.26.	$3.30–$12 per norm	do	53	10 cents plus 21–37 percent.	26	10 cents plus 21–33.5 percent.	25	10 cents plus 21–27 percent.	25	10 cents plus 21 percent.	24	55
533.28	Over $12 per norm	do	53	10 cents plus 21 percent.	24	9 cents plus 18.5 percent.	21	7 cents plus 14.5 percent.	17	5 cents plus 10.5 percent.	12	77
533.31	Earthen steins, mugs etc	do	55	10 cents plus 25 percent.	30	9 cents plus 22 percent.	27	7 cents plus 17 percent.	21	5 cents plus 12.5 percent.	15	73
	Earthen "other articles":											
533.33	Bottom value category.	do	63	do	38	do	34	do	26	do	19	70
533.35 and 533.36.	Middle value category.	do	57	10 cents plus 22–40 percent.	38	10 cents plus 21.5–36 percent.	36	10 cents plus 21–28.5 percent.	32	10 cents plus 21 percent.	28	51
533.38	Top value category	do	52	10 cents plus 22 percent.	24	9 cents plus 19.5 percent.	21	7 cents plus 15 percent.	15	5 cents plus 11 percent.	11	79
	China dinnerware:											
533.63	Not over $10 per norm.	10 cents plus 70 percent.	76	10 cents plus 48 percent.	54	10 cents plus 48 percent.	54	10 cents plus 48 percent.	54	10 cents plus 48 percent.	54	29
533.65	$10–$24 per norm	do	74	10 cents plus 55 percent.	59	10 cents plus 55 percent.	59	10 cents plus 55 percent.	59	10 cents plus 55 percent.	59	20
533.66	$24–$56 per norm	do	72	10 cents plus 36 percent.	38	10 cents plus 36 percent.	38	10 cents plus 36 percent.	38	10 cents plus 36 percent.	38	47
533.71	China steins, mugs etc	70 percent	70	45 percent	45	40 percent	40	31 percent	31	22.5 percent	22.5	68
	China "other articles":											
533.73	Bottom value category.	10 cents plus 70 percent.	79	10 cents plus 45 percent.	54	9 cents plus 40 percent.	48	7 cents plus 31 percent.	37	5 cents plus 22.5 percent.	27	66
533.75	Middle value category.	do	73	10 cents plus 60 percent.	63	9 cents plus 54 percent.	57	7 cents plus 42 percent.	44	5 cents plus 30 percent.	32	56
533.77	Top value category	do	71	10 cents plus 35 percent.	36	9 cents plus 31 percent.	32	5 cents plus 21 percent.	22	5 cents plus 17.5 percent.	18	75

Senator PACKWOOD. Next we have the Stone, Glass, and Clay Coordinating Committee and we have—how many of you are there? We have Mr. Parker and Mr. Tulley and Mr. Null and Mr. Miechur and Mr. Roman and Mr. Markham.

STATEMENT OF HOWARD P. CHESTER, EXECUTIVE SECRETARY, STONE, GLASS, AND CLAY COORDINATING COMMITTEE

Mr. CHESTER. I am here to represent them, Mr. Chairman, since the committee asked for a consolidation of testimony.

Senator PACKWOOD. And you are Howard Chester?

Mr. CHESTER. Yes, Howard Chester.

Senator PACKWOOD. All right, proceed.

Mr. CHESTER. And I am the executive secretary. Do you want me to proceed?

Senator PACKWOOD. Go right ahead.

Mr. CHESTER. Mr. Chairman and members of the committee, Our Stone, Glass, and Clay Coordinating Committee is composed of six international unions, all affiliated with the AFL-CIO, who have joined together to cooperate on mutual problems that affect any one or all of our six affiliates. We have a combined membership of 230,000 workers, with active locals in almost all of the 50 states. The six Unions and the principal officer of each are listed on the cover page.

The impact of imports on the industries in which many of the members of our six unions work has been devastating. The penetration of imports has been excessive and has caused considerable job loss. Over 25 percent of the work force has been lost in pottery, sheet glass. ceramic tile, T.V. tubes and glassware. In addition to these losses, dumping of cement has eroded employment in the cement industry.

The job losses of these industries, as well as many other adversely affected industries, must be stopped. With unemployment high and less purchasing power available, the entire economy is threatened. Our Nation must have a trade policy geared to maximum employment and healthy industries instead of the present policy geared to "freer" trade and the foreign policy illusion that we can remake continents.

In this summary, we would like to bring to your attention some of the current negatives that should be considered in trade legislation in this "totally new ball game" that has made H.R. 10710 obsolete.

1. Oil; the energy crisis threatens United States and most other countries with balance of trade and balance of payments deficits of huge proportions due to restricted supply and exorbitant prices.

2. The United States has been unable to obtain compensation from the EEC from the adverse effect on U.S. exports by the entry of Britain, Ireland and Denmark. Additionally, adverse effects on U.S. exports, resulting from agreements between EEC and EFTA countries, should be compensated.

3. The large tariff cuts proposed by the House-passed Trade Reform Act, of 100 percent, 75 percent and 60 percent, will cause undue harm to many U.S. industries.

4. Allowing duty free entry by LDC's can also cause undue harm to U.S. industries and accelerate multinational corporations to locate in LDC countries.

5. The House-passed bill does not address the foreign tax credit bonanza, or the fact that earnings of U.S. foreign subsidiaries are taxed only when and if repatriated. This multibillion dollar bonanza given to U.S. multinational corporations results in an additional burden on the U.S. taxpayer and in an exodus of U.S. capital, technology and jobs placed overseas, rather than in investment, development, exploration and jobs vitally needed in the United States.

Senator Packwood. Let me ask you a question there. In your industry, is this particularly dominated by multinationals? Are there many American companies that go overseas to manufacture glass and flatware?

Mr. Chester. As a matter of fact, they have, Mr. Chairman. Some of the companies that you may be familiar with that are multinational that are within our group are: Owens-Illinois, Corning Glass Works, PPG Industries, Libbey-Owens-Ford Glass. Those are all that come to mind now.

Senator Packwood. Let me ask you, is your industry regarded as a high technology industry or not?

Mr. Chester. It is to a great degree, Mr. Chairman. As you probably know, recently, especially in flat glass, they have a new process that they call the "float process" that was developed by Pilkington of England and in this process they now float glass over a molten bed of tin and it has increased their efficiency and productivity tremendously in the making of flat glass.

Senator Packwood. They float it over molten tin?

Mr. Chester. Yes, and it attains a strength, for example, of a natural, that is, it flows to a natural quarter inch. And the clarity and quality of the glass has proven out to very good and it's been a very successful process for the major companies.

Senator Packwood. If we were to change the tax credit and repatriation of income law so that in essence we forced the American companies home, would that solve the bulk of your problem or do you still have serious import problems from indigenous industries overseas?

Mr. Chester. Well, that is a pretty big question, Mr. Chairman. I would say to answer you briefly that we are concerned about multinationals and the tax situation and the credits and the depletion and the fact that they do not repatriate their funds, that they reinvest them. And most of the large multinational corporations are doing just that.

Insofar as imports, many of the industries that these six unions are involved in are really penetrated to a tremendous degree. For example, there are two gentlemen that preceded me from the pottery industry, and just off the top of my head, and I think I will be fairly close, they are penetrated by imports in earthenware to the tune of about 52 percent penetration.

Senator Packwood. No, but the point I am curious about is that penetration from American multinationals which have gone overseas to manufacture or is your basic problem foreign-owned companies simply penetrating our market and not American multinationals?

Mr. CHESTER. Well, in the case of the pottery, those are for the most part foreign companies and Japanese in particular. In glass, some of the production that the American subsidiary produces does get back to the states. The large bulk of it, however, is from foreign glass companies. But I might add, Mr. Chairman, that that is not true in many other industries like electronics and so forth as you are well aware of.

Senator PACKWOOD. Go ahead.

Mr. CHESTER. Contrary to the claims of U.S. multinational corporations that their domestic employment has increased more than their foreign employment, the facts as evidenced by three studies, one by the Department of Commerce, the other two by corporate groups—the ECAT and Business International Corporation—show that foreign employment by U.S. multinationals increased more, both in percentage and absolute terms than did their domestic employment.

7. We agree with the bill's provisions denying MFN treatment and credits to the Soviet Union and other Communist dominated countries because of restrictive emigration policies. However, another important point to consider is that, even paying the full rates of duty, these countries are increasing their penetration of the U.S. market with their exports. In 1970 we imported 40 million pounds of sheet glass from these communist dominated countries; this increased to 72 million pounds in 1971, to 141 million pounds in 1972, and to 160 million pounds in 1973.

Senator PACKWOOD. Give me comparison. What would be the sheet glass production in the United States in those years?

Mr. CHESTER. I would have to submit it to you.

Senator PACKWOOD. Could you supply it?

Mr. CHESTER. Yes Sir. I would be glad to.

[The information referred to follows:]

STONE, GLASS AND CLAY
COORDINATING COMMITTEE,
Washington, D.C., April 15, 1974.

HON. ROBERT W. PACKWOOD,
U.S. Senate,
Committee on Finance,
Washington, D.C.

DEAR SENATOR PACKWOOD: During the course of my testimony on the Trade Reform Act, H.R. 10710, April 4, 1974, before the Committee on Finance, you, as acting Chairman, asked me to submit the figures on Sheet Glass production by U.S. producers for the years referred to by me as years of increasing penetration of imports of sheet glass by Communist-dominated countries.

The information you requested is as follows:

Sheet Glass: U.S. Production, 1970–73 (Millions of Pounds): 1970, 1,372; 1971, 1,428; 1972, 1,466; 1973, 1,374; Source: U.S. Tariff Commission.

Sincerely,

HOWARD P. CHESTER,
Executive Secretary.

Mr. CHESTER. It is significant that the Communist dominated countries have increased their share of all imports of sheet glass from over 23 percent in 1972, to over 35 percent in 1973, and this notwithstanding that they now pay full or statutory rates of duty. I think that is an important point, Mr. Chairman, in that it shows notwith-

standing the fact that they pay the full rates, they are penetrating this market to a greater and greater degree.

Since the President has threatened a veto of the trade bill, if the bill contains restrictions on communist dominated countries, it seems clear that the President is interested in the political considerations rather than the economics and their effect on industry, labor and the country.

8. U.S. balance of trade statistics, until very recently, grossly understated the huge deficits sustained and, therefore, did not provide the proper facts for trade policy decisions. For example, the competitive figures on trade show that from 1967 through 1972, we sustained a trade deficit of over 27 billion dollars. To reach these competitive trade figures, two considerations must be accounted for, one, our imports figured on a C.I.F. basis instead of F.O.B., and, two, our exports must exclude U.S. Government subsidies on items such as Public Law 480 Food for Peace, A.I.D. loans and grants and military grant aid. These are not competitive exports. Your excellent staff report, "U.S. Trade and Balance of Payments," dated February 26, 1974, emphasizes this point in table 1 and clearly shows our previous lack of data in making trade policy and trade legislation decisions. The country is indebted to Senator Long, for your persistence in insisting on proper data, so that enlightened decisions can be made in the trade area.

We strongly support the excellent testimony and in depth appendix, presented by AFL-CIO President George Meany on March 27, 1974 before this committee. We respectfully suggest an in-depth analysis of his complete statement be made prior to consideration of any trade legislation.

We noted some comment on the recommendation to regulate imports and exports. Our six unions are impacted by imports very severely and have suffered unemployment and plant closings, and yet on the export side, the glass manufacturing companies have been adversely affected by a shortage of the necessary raw material—soda ash. The domestic producers of soda ash have been increasing their exports of soda ash, despite the fact of a shortage in domestic supply causing temporary plant shutdowns and unemployment. This current situation points up the need for regulation of exports as well as imports.

In conclusion, we believe that with worldwide changes occurring almost daily, and with rising unemployment in the U.S. and worldwide, that the more logical approach is to reject this bill and rewrite one that is relevant to U.S. and worldwide current conditions, incorporating provisions of the Burke-Hartke bill, such as the provisions now being considered that would eliminate foreign tax credits and foreign depletion allowances and place a tax on current earnings instead of when and if repatriated. These provisions were in the Burke-Hartke bill, previously scorned, but now being considered.

Let's give the American people legislation that meets their needs.

Thank you, Mr. Chairman. I do have an appendix——

Senator PACKWOOD. Your entire statement will be placed in the record.

And thank you again. I have no other questions.

(The prepared statement provided by Mr. Chester follows:)

PREPARED STATEMENT OF POSITION OF THE STONE, GLASS AND CLAY COORDINATING COMMITTEE

(Mr. George M. Parker, President, The American Flint Glass Workers Union of North America; Mr. Harry A. Tulley, President, The Glass Bottle Blowers Association of the United States and Canada; Mr. Lester H. Null, President, The International Brotherhood of Pottery and Allied Workers; Mr. Thomas F. Miechur, President, The United Cement, Lime & Gypsum Workers International Union; Mr. Joseph Roman, President, The United Glass and Ceramic Workers of North America; Mr. Arthur L. Markham, President, The Window Glass Cutters League of America; Stone, Glass and Clay Coordinating Committee; Lee W. Minton, Chairman; Howard P. Chester, Executive Secretary; Reuben Roe, Secretary-Treasurer.)

Mr. Chairman and Members of the committee, our Stone, Glass and Clay Coordinating Committee is composed of six International Unions, all affiliated with the AFL-CIO, who have joined together to cooperate on mutual problems that affect any one or all of our six affiliates. We have a combined membership of 230,000 workers, with active locals in almost all of the fifty states. The six Unions and the principal officer of each are listed on the cover page.

The impact of imports on the industries in which many of the members of our six Unions work has been devastating. The penetration of imports has been excessive and has caused considerable job loss. Over 25% of the work force has been lost in pottery, sheet glass, ceramic tile, T.V. tubes and glassware. In addition to these losses, dumping of cement has eroded employment in the cement industry.

The job losses of these industries, as well as many other adversely affected industries, must be stopped. With unemployment high and less purchasing power available, the entire economy is threatened. Our nation must have a trade policy geared to maximum employment and healthy industries instead of the present policy geared to "freer" trade and the foreign policy illusion that we can remake continents.

In this summary, we would like to bring to your attention some of the current negatives that should be considered in trade legislation in this "totally new ball game" that has made H.R. 10710 obsolete.

1. Oil, the energy crisis threatens U.S. and most other countries with balance of trade and balance of payments deficits of huge proportions due to restricted supply and exorbitant prices.

2. U.S. has been unable to obtain compensation from the EEC from the adverse effect on U.S. exports by the entry of Britain, Ireland and Denmark. Additionally, adverse effects on U.S. exports, resulting from agreements between EEC and EFTA countries, should be compensated.

3. The large tariff cuts proposed by the House-passed Trade Reform Act, of 100%, 75% and 60%, will cause undue harm to many U.S. industries.

4. Allowing duty free entry by LDC's can also cause undue harm to U.S. industries and accelerate multinational corporations to locate in LDC countries.

5. The House-passed bill does not address the foreign tax credit bonanza, or the fact that earnings of U.S. foreign subsidiaries are taxed only when and if repatriated. This multi-billion dollar bonanza given to U.S. multinational corporations results in an additional burden on the U.S. taxpayer and in an exodus of U.S. capital, technology and jobs placed overseas, rather than in investment, development, exploration and jobs vitally needed in the U.S.

6. Contrary to the claims of U.S. multinational corporations that their domestic employment has increased more than their foreign employment, the facts as evidenced by three studies, one by the Department of Commerce, the other two by corporate groups—the ECAT and Business International Corporation—show that foreign employment by U.S. multinationals increased more, both in percentage and absolute terms, than did their domestic employment.

7. We agree with the bill's provisions denying MFN treatment and credits to the Soviet Union and other communist dominated countries because of restrictive emigration policies. However, another important point to consider is that, even paying the full rates of duty, these countries are increasing their penetration of the U.S. market with their exports. In 1970 we imported 40 million

pounds of sheet glass from these communist dominated countries; this increased to 72 million pounds in 1971, to 141 million pounds in 1972, and to 160 million pounds in 1973. It is significant that the communist dominated countries have increased their share of all imports of sheet glass from over 23% in 1972, to over 35% in 1973, and this notwithstanding that they now pay full or statutory rates of duty.

U.S. IMPORTS—COMMUNIST-DOMINATED COUNTRIES—SHEET GLASS—1972-73

	1972	1973
U.S.S.R	40,340,060	51,792,922
Bulgaria	88,292	4,713,258
Czechoslovakia	11,381,637	2,801,379
China	30,865	9,772
Romania	72,390,996	82,539,287
East Germany	321,148	71,351
Hungary	16,909,427	18,141,212
Total	141,462,425	160,069,181

Source: Department of Commerce.

Since the President has threatened a veto of the trade bill, if the bill contains restrictions on Communist dominated countries, it seems clear that the President is interested in the political considerations rather than the economics and their effect on industry, labor and the Country.

8. U.S. balance of trade statistics, until very recently, grossly understated the huge deficits sustained and, therefore, did not provide the proper facts for trade policy decisions. For example, the competitive figures on trade show that from 1967 through 1972, we sustained a trade deficit of over 27 billion dollars. To reach these competitive trade figures, two considerations must be accounted for, (1) our imports figured on a C.I.F. basis instead of F.O.B., and (2) our exports must exclude U.S. Government subsidies on items such as P.L. 480 Food for Peace, A.I.D. loans and grants and military grant aid. These are not competitive exports. Your excellent staff report, "U.S. Trade and Balance of Payments," dated February 26, 1974, emphasizes this point in Table 1 and clearly shows our previous lack of data in making trade policy and trade legislation decisions. The Country is indebted to Senator Long, for your persistence in insisting on proper data, so that enlightened decisions can be made in the trade area.

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In conclusion, we believe that with worldwide changes occurring almost daily, and with rising unemployment in the U.S. and worldwide, that the more logical approach is to reject this bill and rewrite one that is relevant to U.S. and worldwide current conditions, incorporating provisions of the Burke-Hartke bill, such as the provisions now being considered that would eliminate foreign tax credits and foreign depletion allowances and place a tax on current earnings instead of when and if repatriated. These provisions were in the Burke-Hartke bill, previously scorned, but now being considered.

Let's give the American people legislation that meets their needs.

We would like to bring to your attention several of the long standing United States policies in Trade and Investment that have led our Country into very serious straits.

Balance of Trade

The official figures of U.S. trade deficits for 1971 and 1972 at $2.7 billion and $6.4 billion are serious enough to call for immediate action, but if we go further and look at the documented competitive trade figures, we find even more cause for alarm. *These figures show that from* 1967 *through* 1972, *we have sustained trade deficit of over 27 billion dollars.*

To document this point, we excerpted a table placed in the record of the hearings before the Ways and Means Committee by then Secretary of Commerce, Maurice H. Stans, May 12, 1970—and we have updated this table with statistics from the Department of Commerce (see attached).

The competitive trade table is based on two considerations that must be accounted for: (1) our imports figured on a c.i.f. basis instead of f.o.b., and (2) our exports must exclude U.S. Government subsidies on exports such as P.L. 480, Food for Peace, AID loans and grants, and military grant aid. *These exports are not competitive exports.* This enlightening table emphasizes that our trade statistics should truly show our position in trade, so that trade policy decisions can be based on accurate figures and not figures that undervalue imports and overvalue exports (see Table 1).

Balance Of Payments

Our U.S. balance of payments deficit exceeds 88 billion dollars. This overhang of dollars in foreign countries, together with U.S. multinationals huge liquid short term assets (est. by U.S. Tariff Commission $268 billion), has caused monetary speculation, crisis and two dollar devaluations in a 14 month period. The United States is entitled to bring about equilibrium by invoking Article XII of the G.A.T.T.

U.S. Share of World Exports Of Manufactures

The following table comparing 1962 with 1971 points up how the U.S. share of world exports of manufactures has long been slipping badly, with total manufactures in this ten year period decreasing by 19%, and many of the separate manufactures included in the total have decreased their share more than the overall total—example, chemicals down 29%, electric machinery down 23%; other manufactures down 27%.

[In percent]

Commodity	U.S. share of world exports, 1962	1971	Change in share
Manufactures, total	24.6	19.9	−19
Chemicals	27.9	19.9	−29
Nonelectric machinery	30.9	25.5	−17
Electric machinery	27.3	21.0	−23
Transport equipment	31.9	29.5	−8
Other manufacturers	16.8	12.2	−27

This table serves to point out that we are losing out in world markets in high-technology industries as well as low-technology industries. This serious situation has been brought about by *U.S. domination in exports of technology*—high, low, intermediate—exports eagerly solicited by foreign governments and corporations. Result—the American worker loses a job, the U.S. loses an export *product* and becomes an importer of that product.

This hemorrhage of U.S. technology was documented in a Report to the President by the Tariff Commission titled, "Competitiveness of U.S. Industries," released in April, 1972, page 203. The table referred to estimates U.S. receipts and payments of royalties and licensing fees with Canada, Japan and the World, 1960–69.

The figures in this chart bear out the astounding outflow of U.S. technology to all Countries. U.S. receipts were eleven billion, nine hundred forty-seven million, four hundred thousand dollars vs. payments of one billion, two hundred forty-three million with net receipts to the U.S. of almost 11 billion dollars ($10,704.4). This verifies and documents the massive outflow of U.S. technology over a ten year period and further shows how very little technology is being imported into the U.S. (see table 2).

U.S. Multinationals Create Employment—Overseas

Along with the massive outflow of job creating U.S. technology, the actual operations of U.S. subsidiaries abroad have also created large increases in employment overseas.

Let's look at three studies that analyzed the question of the effect of U.S. multinationals on domestic vs. foreign employment.

I. DEPARTMENT OF COMMERCE, "SPECIAL SURVEY OF U.S. MULTINATIONAL COMPANIES 1970"

This study, though incomplete and with serious omissions, did reveal that of the 298 firms reporting; in manufacturing, more manufacturing jobs were created in the foreign operations of the reporting firms than in their U.S. facilities—both in percentage and absolute terms—between 1966 and 1970.

In their U.S. facilities, manufacturing jobs were up 7.6%; in their foreign affiliates, manufacturing jobs were up 26.5%. This was a rise of 450,000 jobs at home, 452,000 abroad.

II. BUSINESS INTERNATIONAL CORPORATION, "EFFECTS OF U.S. CORPORATE FOREIGN INVESTMENT"

This study covering 125 companies, including many of the more intensive foreign investors, reveals that in all industries between 1966 and 1970 more jobs were created in the foreign operations of the reporting firms than in their U.S. facilities, again both in percentage and absolute terms.

In their U.S. facilities, jobs were up 14.4%; in their foreign affiliates, jobs were up 57.9%. This was a rise of 357,952 jobs at home, 496,007 abroad.

III. EMERGENCY COMMITTEE FOR AMERICAN TRADE, "THE ROLE OF THE MULTINATIONAL CORPORATION IN THE UNITED STATES AND WORLD ECONOMIES"

This study covering 74 U.S. corporations, again many of the more intensive foreign investors, reveals that in all industries between 1960 and 1970, more jobs were created in the foreign operations of the reporting firms than in their U.S. facilities, both in percentage and absolute terms.

In their U.S. facilities, jobs were up 3.3%; in their foreign affiliates, jobs were up by 7.7%. This was a rise of "nearly 900 thousand jobs" at home, 906 thousand abroad.

Covering a small percentage of U.S. multinationals, these three studies, by the Commerce Department and two separate corporate groups, point out that in both percentage and absolute terms, the U.S. multinationals studied increased foreign employment, 146,000 more than domestic, and this has been happening at a time when U.S. employment needs are greater than before—from defense cutbacks, displacement by imports and a growing labor force plagued with a 5% unemployment rate.

U.S. Private Foreign Investment.

Another important consideration affecting the export of U.S. jobs is the astounding growth of U.S. private foreign investment. U.S. private direct investment has risen from $11.8 billion in 1950, to $86 billion at the end of 1971, and no doubt has reached $100 billion by this date.

Manufacturing leads all other industry investment abroad with over 40% of the total, and this increased foreign capacity has served to decrease our exports and increase our imports, and since capital is mobile and labor is not, the result has been loss of American jobs.

This point was made with great clarity by former Deputy Under-Secretary of Labor, George Hildebrand in a speech to the National Foreign Trade Council's Labor Affairs Committee in September, 1969:

"It has often been assumed that high U.S. wages and better working conditions were largely offset by high U.S. productivity and a strong internal market. Increasingly, however, the spread of skills and technology, licensing arrangements and heavy investment in new and efficient facilities in foreign lands have all served to increase foreign productivity without comparable increases in wages. The problem we have is to assure that the social and economic gains of the American worker and the purchasing power that goes with it are not

undermined by competitive goods produced and exported on the basis of much lower standards which some may view as an exploitation of human resources."

Many of these global corporations are engaged in undermining the standards of the American worker and are exploiting human resources in foreign countries. In a recent meeting of labor leaders from the United States, South Africa, Argentina, Germany, Colombia, Venezuela and Mexico, reports of the representatives from these nations verified the stories of discrimination and exploitation in their countries. One large U.S. based multinational that employs workers in all of these countries pays wages as low as fifteen cents per hour, and if the employees object, they are threatened with all sorts of reprisal. It was also brought out at this meeting that the employees cannot afford to buy the product they are producing, such as a *refrigerator—it would take all of an employee's yearly salary* to buy a refrigerator. One of our affiliates, The American Flint Glass Workers, was represented at this meeting which took place in New York in March, 1973—a G.E./Westinghouse coordinated bargaining meeting—so the reports are quite current and do show exploitation.

The time has come for a re-evaluation of this expanded investment program in terms of the U.S. economy, employment, outflow of capital, loss of revenue to the United States and effect of imports on U.S. industry and labor.

TABLE 1.—ESTIMATED U.S. TRADE BALANCE, 1967-72

[In millions of dollars]

Year	U.S. exports					U.S. imports		U.S. trade balance based on estimated c.i.f.-valued imports and exports excluding military grant-aid, AID, and Public Law 480 shipments
	Total including reexports	Military grant-aid	AID loans and grants	Public Law 480 shipments	U.S. exports excluding military, grant-aid, and Public Law 480	F.o.b. value	Estimated c.i.f. value	
1967	31,622	592	1,300	1,237	28,493	26,889	28,745	−252
1968	34,636	573	1,056	1,178	31,929	33,226	35,519	−3,690
1969	37,988	674	994	1,018	35,302	36,052	38,539	−3,237
1970	43,224	565	957	957	40,745	39,952	42,389	−1,644
1971	44,137	581	914	971	41,671	45,602	48,384	−6,713
1972 [1]	49,676	560	760	1,073	47,283	55,555	58,944	−11,661
Total								−27,197

[1] Preliminary data.

Source: Former Secretary of Commerce Stans, testimony before Ways and Means Committee, May 12, 1970, 1967-69; Department of Commerce, 1970-72.

TABLE 2.—ESTIMATED U.S. RECEIPTS AND PAYMENTS OF ROYALTIES AND LICENSING FEES WITH CANADA, JAPAN, AND THE WORLD, 1960-69

[In millions of dollars]

Year	Canada			Japan			Total with all countries		
	Receipts	Payments	Balance	Receipts	Payments	Balance	Receipts	Payments	Balance
1960	117.6	10.8	106.8	54.4	----------	55.0	650.4	66.5	583.9
1961	132.8	17.9	114.9	61.9	----------	61.5	707.1	80.0	627.1
1962	152.4	34.0	118.4	66.6	2.9	63.7	835.6	100.6	735.0
1963	158.2	42.4	115.8	73.0	2.0	71.0	932.7	111.5	821.2
1964	183.3	37.8	145.5	82.8	1.7	81.1	1,056.7	127.4	929.3
1965	211.5	41.0	170.5	86.0	2.2	83.8	1,259.0	135.4	1,236.0
1966	244.9	22.3	222.6	96.2	3.8	92.4	1,383.1	119.4	1,263.7
1967	277.2	22.2	255.0	130.7	5.6	125.1	1,541.7	145.0	1,396.7
1968	294.7	27.0	267.7	174.1	8.0	166.1	1,702.1	165.0	1,537.1
1969	299.2	31.8	267.4	209.0	10.0	199.0	1,879.0	192.2	1,686.8

Source: Unpublished material from Office of Business Economics, Department of Commerce.

STATEMENT OF ROY D. HARMAN, NATIONAL BOARD OF FUR FARMS ORGANIZATION

MR. HARMON. Mr. Chairman, my name is Roy Harmon. I am from Christianburg, Va. I am representing the National Board of Fur Farm Organizations.

I have been a fur farmer for almost 47 years and I am thoroughly familiar with the problems of fur farming. I am on the National Board of Fur Farm Organizations and have been president of that board three times.

We fur farmers have been fortunate enough to have had some protective legislation for some years back that has enabled us to stay in business. Without it most of our people would probably have been forced out by foreign competition.

First, fur farming started in the United States and Canada but it spread to other parts of the world like the Scandinavian countries and more extensively to Soviet Russia. Russia today is producing approximately one-third of the world's production of farm-raised mink. Mink are the principal animals raised in captivity. Silver foxes are raised on a smaller scale.

Now back years ago in the Coolidge administration when fur farmers got a tariff on silver fox furs, this helped keep the furs and the fox farms in business. It kept them in business, but the fox business passed out in the 1950's by changing fashion, which is simply the women didn't want it any longer. Now, however, they have come back in fashion and foxes are worth good money.

The mink business expanded and took the place of the fox business and, as I say, these other countries have gone into it extensively. The Russian Government, the Soviet nation is producing today approximately one-third of the world's production of farm-raised mink.

Now fortunately, they can't sell them in the United States. We have an embargo on seven specific furs, from the communist nations, that was enacted back during the Truman administration and it has been enormously helpful to the American fur farmers.

However Russians sell everywhere else in the world and to people in all of the other markets in the world, like Europe and the South American countries and other places, and also Japan. They can sell anywhere. But we are not asking for any more protection, Mr. Chairman. We are just asking to hold on to what we have: the tariff on silver fox furs and the embargo on the seven specific furs from the communist nations. We have been able to live with that.

Are there any questions?

SENATOR PACKWOOD. Would you give me a rough idea of how many people are employed directly on fur farms in the United States?

MR. HARMON. We have approximately 3,000 fur farms in the United States and they would probably average 10 people per farm. A good many of them are family operations, in which the family does most of the work, but some of them are quite large and employ many people.

SENATOR PACKWOOD. Thank you, I have no other questions. We appreciate your coming.

That concludes the hearing for today.

[Whereupon at 11:50 a.m. the committee recessed, to reconvene on Friday, April 5, 1974 at 10 a.m.]

TRADE REFORM ACT OF 1973

FRIDAY, APRIL 5, 1974

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 2221, Dirksen Senate Office Building, Hon. Herman Talmadge, presiding.

Present: Senators Talmadge, Nelson, Hansen, and Packwood.

Senator TALMADGE. The committee will please come to order.

We have a long list of witnesses who will be confined to 10-minute summaries of their written statements. The 5-minute rule will remain in effect as it has throughout the hearings for the questioning of witnesses.

Our first witness will be Mr. Szabolcs Mesterhazy—I hope I pronounced that right—who is testifying as an individual and on behalf of the Hungarian Freedom Fighters' Foundation. We welcome you, Mr. Mesterhazy, and you may begin with a summary of your statement.

STATEMENT OF SZABOLCS MESTERHAZY

Mr. MESTERHAZY. Thank you, Mr. Chairman.

Sir, I am testifying here—it was possible that maybe I would testify for this Federation, but I report that I will be testifying only on my own behalf.

After so many distinguished witnesses with more distinguished organizations who testified before you, sir, I am testifying only on my own behalf. I feel that I am living proof that our great country of ours still is not only the land of the free but the land of opportunities for everyone who has the determination, the will, and a little courage to speak up when he sees necessary to help his country.

First I want to thank your staff, sir, who made this meeting possible, who it looks to me are building a bridge between the public and you, and not a wall.

I am one of the least talented people of a large group who learned firsthand from communist theoreticals the base under which they made their plans and their thinking methods. If I look at the past in the sixties and the seventies to see how our foreign policy was formulated and executed, I have to feel that not too much of this experience that we had was used. In this time I have the opportunity only to testify on trade and the Trade Reform Act of 1973, and I want to use my limited time to talk about section 402 of the bill, not

only because of my very, very limited knowledge in finance and trade only, but because I have to agree with our Secretary of State, who thinks that this is a very important section of this bill.

I fully agree with what our Secretary of State told you in his testimony March 7 in this year, and I quote: "what must remain our overriding objective—the prevention of nuclear war."

I fully agree with these words. But, at least in my conviction, he will not prevent a nuclear war, but he will invite one in the future if he succeeds, sir, to convince you to accept section 402 entitled, "Freedom of Emigration In East-West Trade" in the form that the administration presented it to Congress. He will do so by shifting the balance of power to the Soviet bloc without changing its aggressive character.

Our administration is thinking, over and over again, that he is moving our country from confrontation to negotiation. This is a beautiful thing, but we have to look how we can define this movement, the confrontation that the administration talks about and the negotiations. We must never confront the Soviet Union, the Soviet bloc or any other nation, because we must work for international understanding. We must not scare if we are confronted just because we do not want to make economic or other concessions.

It is my strong belief, based on the theorems of Marxism, Leninism, and dialectical materialism, which I saw firsthand from the Communist theoreticals—I have a master's degree in mathematics, minoring in Marxism-Leninism, with honor in the University of Budapest. I have attended many other communist courses. I have to state that in my strong conviction a nuclear war, if it ever erupts, will not be caused by confrontations between intelligent governments, but from the shifting of the balance of power to a bloc whose nature is, first expansion, and second, domination of the world.

It is my strong belief that if the Soviet Union and its allies see that they cannot expect a shift in the balance of power to their side, then they will change their nature in this little respect, that they will really work for peaceful cooperation with us when they see that they cannot make, that they cannot succeed with their expansion, with the world domination; they will be friends of ours who we can cooperate with. Then, and only then, we will achieve a peaceful world without confrontations.

Our Government through detente tried to avoid confrontations, but was unable to do so in the Middle East war. I am sure that our military alert was not a dummy one just to appease internal critics, but it was a real one. And if it was one, then there was a confrontation. This is the main reason I support the Trade Reform Act of 1973 and its section 402 as it passed the House of Representatives, because it will not invite a nuclear war, but will work for a peaceful world. But besides, I have to agree with what the House also put as a reason in the bill for this section: "To assure the continued dedication of the United States to fundamental human rights."

I support this, not only from conviction, these reasons, but also for personal reasons. I have a son behind the Iron Curtain. He is still in Hungary. In 1956, after my country—that country at that time was occupied by the Soviet Army, and its Prime Minister was captured

by the Soviet Army—after that I was able to escape from Hungary with all of my family except one son. Two years later, we all were in the United States except him, and I tried to reunite him with the rest of my family.

I based my appeal to the public statements of the government then in Hungary that every child under 14 must be reunited with his parents. I had no more hope than 1 percent, knowing their thinking methods and their practices. But as a father, I tried anyway. I did not succeed.

This involved at that time the help of Congresswoman Church of Illinois. I will be glad to share with you these experiences if you will provide me the time, how I have the proof the Communists at that time also worked under the basis of their theorems and thinking methods.

Senator TALMADGE. Mr. Mesterhazy, you are a most courageous man and in many ways your statement is the most eloquent we have heard. I assure you that our committee will look carefully at your points; in particular Hungary and other Communist nations should beware that in order to get most-favored-nation treatment from the United States, your son and others like him will have to have their basic human rights restored. We will see what we can do to help you free your son.

Any questions, Senator Packwood?

Senator PACKWOOD. I have none, Mr. Chairman.

Senator TALMADGE. Thank you very much for your eloquent statement, Mr. Mesterhazy.

[The prepared statement of Mr. Mesterhazy follows:]

PREPARED STATEMENT OF SZABOLCS MESTERHAZY

Mr. Chairman, members of the Senate Committee on Finance, with your permission I shall devote my opening remarks primarily to the foreign policy aspects of the Trade Reform Act, which is now before your Committee.

This emphasis originates not from my limited knowledge in Finance and Trade only, but it reflects as well even more my firm conviction that the world political order for years to come will be profoundly influenced by how we manage our trade and economic relations.

I graduated with honors in the University of Budapest, majoring in mathematics and minoring in Marxismus-Leninismus, and attended many Communist courses as well, with open eyes and a longing for the knowledge of the foreign policy aspects of the learned theorums and practices. Throughout history every responsible government spent much money and energy to learn the theorems and thinking methods of their adversaries to be able to predict their plans and/or actions, and to check the validity of reports gathered through Intelligence.

My talent and knowledge in this field may be limited, but my dedication to freedom and my loyalty to my country is not. Our country is lucky to have hundreds of people with the same dedication and loyalty as mine, but with much more talent and knowledge in these fields. But was the knowledge and/or experience of any of these people ever used to help formulate our foreign policy? When I examine the management of our foreign affairs from 1960 to the present, I feel it was not.

It is possible that I, one of the least talented of this group, am the first who is able to share his knowledge, learned first-hand from the Communists, if not with our Executive Branch of government, which supposedly formulates our foreign policy, at least with our Legislative Branch, which has already successfully started to correct it.

On this occasion I am limited to testify on the "Trade Reform Act of 1973". In the time available to me I wish to give my observations, mainly on Section 402, entitled Freedom of Emigration In East-West Trade.

I fully agree with the words of our Secretary of State to your Committee on March 7 of this year, relating to this section. (Page 11 in the end of Part V of his testimony). He said, and I quote: ". . . what must remain our overriding objective—the prevention of nuclear war."

I fully agree with these words. The problem is, at least in my judgment, that our Secretary of State will not prevent a nuclear war, but, instead, he will invite one in the future if he succeeds in convincing you to pass Section 402 of the Act before you, as it was presented to Congress by the Executive Branch. It will do so by shifting the balance of power on the side of the Soviet Bloc without changing its aggressive character through the Freedom of Emigration from their land.

We must never confront the Soviet Bloc or any other nation, because we must work for international understanding. But we must not be scared if someone threatens us with confrontation just because we do not make economic concessions to them.

A nuclear war, if it ever erupts, will not be caused by confrontations between intelligent government, but by the shifting of the balance of power to a Bloc whose nature requires expansion. It is my strong belief, that if the Soviet Bloc sees it cannot expect a shift in the balance of power to their side through economic or other concessions, they will give up their desire to "liberate" the whole world. Then, and only then, will we have a peaceful world without confrontations. With detente and through wheat sales on credit we were unable to avoid a near military confrontation in the last Middle-East War.

The main reason I support Section 402 of the Trade Reform Act of 1973, as it was passed by the U.S. House of Representatives, is because the section in this form will not invite a nuclear war in the future, as the Administration's version will, but rather will give us an opportunity for peaceful cooperation between nations who no longer have the potential nor the intention to "liberate" each other.

In addition to the reason just stated, I wholly agree with the humanitarian reasons stated in the House version of Section 402 itself (Line 20 and Line 21, Page 129) and I quote: "To assure the continued dedication of the United States to fundamental human rights."

I have personal reasons, besides my convictions, to support humanitarian considerations. When I escaped from Hungary in 1956, after it was occupied and its Prime Minister captured by the Soviet Army, I was able to bring with me my whole family except one son, who was 12 years old then. I tried in 1958 to re-unite him with the rest of our family in the United States. I tried this on the basis of the public statement of the government of Hungary at that time, stating that any child under 14 years of age must be re-united with his family. I was unsuccessful. My hope was less than 1%, with my knowledge of their system and their operation. But as a father, I tried anyway. I was unable to get my son re-united with us and I did not learn anything which I did not already know. But I got additional proof how the Communists operate. I will be glad to share with you the interesting experience which involved Congresswoman Church from Evanston, Illinois, if you can provide me the time for it.

Another try to re-unite our family started in 1973. My son, in the second part of this year, applied and received the so-called pre-imigrant visa for himself, wife and one-year old son from the United States in our Embassy in Budapest. After many obstacles he was able to apply for emigration passports on March 7, in the Passport Section of the Interior Ministerium in Hungary. I just received his telegram: "Application rejected."

Again I was unsuccessful. I was unable to re-unite my son with his parents and all his sisters and brothers who are now all U.S. citizens. But this time, at least, I gained additional knowledge of how our State Department and our Embassy in Budapest operates. I will be glad to share this experience as well with you if you provide me the time and opportunity.

I admire the little heroic country of Israel. It reminds me of the heroic past of my own country where I was raised. Besides I am wholeheartedly for freedom of emigration for the reasons stated above. So I am glad to see the emigration of hundreds of Jewish people daily from one foreign country to another friendly foreign country, through the efforts of our State Department. The citizens of Israel asked the help of our State Department, and so did I—the first time in May, 1973.

At that time, I went personally to the East-European desk in the State Department asking their help to re-unite my family. I have kept contact with them and with our Embassy in Budapest as well since then by mail.

I was told that my testimony might bring harm to my most unfortunate son who longs so much to be re-united not only with his parents, but with the rest of the family. Even my elimination is possible if I testify. But it is a tradition in my family to stand up and try to help our country regardless of the consequences. And my son knows this.

First, I must thank you for this opportunity to share my knowledge and experience with you even on this limited basis. I must thank, also, those of your staff who helped me appear before your Committee. I have to thank Congressman Huber from Michigan, and Congressman Hébert of Louisiana.

I am ready to answer your questions to the best of my ability. As an amateur in foreign policy, I am happy to know that a real professional in this field, Senator Fulbright, is a member of your committee. I hope that if he disagrees with any part of my testimony, he will question me. On my part, I am not afraid of his questions.

Thank you.

Senator TALMADGE. Our next witness is Mr. Noel Hemmendinger, Esq., of the firm of Stitt, Hemmendinger, & Kennedy.

Is Mr. Hemmendinger here?

We will pass over him, then, and go to Mr. Mitchell J. Cooper, counsel, Footwear Division, Rubber Manufacturers Association.

It is a pleasure to see you, Mr. Cooper, and I have had an advance copy of your statement and I read it very carefully.

STATEMENT OF MITCHELL J. COOPER, COUNSEL, FOOTWEAR DIVISION, RUBBER MANUFACTURERS ASSOCIATION

Mr. COOPER. Thank you, Mr. Chairman.

Mr. CHAIRMAN, Senator Packwood, I am Mitchell Cooper, and I am testifying as counsel to the Footwear Division of the Rubber Manufacturers Association. The members of this Division account for most of the waterproof footwear and rubber-soled footwear with fabric uppers produced in this country.

I tell this committee nothing it does not already know when I point to the extraordinary grant of executive authority embodied in the Trade Reform Act of 1973. Perhaps in some respects such a grant of authority is desirable if the Executive is to have the kind of flexibility necessary to complete a successful negotiation.

My testimony this morning as well as the more detailed written statement I have submitted to the committee——

Senator TALMADGE. It will be inserted in full in the record, sir.

Mr. COOPER. Thank you, sir.

It concerns itself with one aspect of that grant of authority which is both unnecessary and undesirable, namely Executive discretion to negotiate a conversion of American selling price as part of a large package of nontariff barriers without any assurance of reciprocity for such a conversion and without any requirement that the conversion be conditioned on congressional review and approval.

Moreover, in its present form this bill grants the Executive the right to cut ASP rates twice, first from the converted rate to the column 1 rate, and then by an additional 60 percent. As the committee knows, the principal products to which the American selling price method of evaluation applies are benzenoid chemicals and

rubber-soled footwear with fabric uppers. I was present during the impressive testimony of the chemical industry and the views they expressed in favor of ad referendum action on ASP conversion and on preventing multiple cuts on ASP duties accord with our own views. We would add, however, that any ASP agreement should be on a product basis so that a rubber footwear conversion, for example, could not be traded for a concession in some other area.

Let me outline for you briefly here this morning the facts of rubber footwear's unhappily unique situation, which demonstrate that this bill's treatment of American selling price finds justification neither in the history of previous negotiations nor in the economics of the rubber footwear trade, nor in the bill's stated objectives.

Our position that ASP should be negotiated only on an ad referendum basis is grounded on respectable precedents. In the course of the Kennedy round this committee was the breeding ground of Senate Concurrent Resolution 100, a resolution which passed the Senate with but one dissenting vote, and which put the Executive on notice that an agreement which dealt with anything other than rate reductions should be submitted to the Congress prior to adoption.

Soon thereafter, Ambassador Herter the then Special Representative for Trade Negotiations made it clear that any ASP negotiation would in fact be on an ad referendum basis. The wisdom of the Senate resolution and the Herter assurance were borne out by efforts to negotiate a conversion of ASP on rubber footwear.

After endless hours of study, the Tariff Commission came out with a proposed conversion of our 20 percent ASP rate to 58 percent. But this proposal was based on imports from Japan, and by the time the negotiators were ready for serious talks the principal source of imports had shifted from Japan to Korea and had made a fiction of the proposed rate. Had it not been for the requirement of congressional approval, the odds are that a conversion would have been concluded, which would have dealt this industry a mortal blow.

The Trade Act of 1969 accordingly did not embody an ASP agreement on rubber footwear, but it did seek congressional authority to negotiate such an agreement on carefully spelled out terms. That bill was not adopted, as you know, and the same conversion proposal was again embodied in the 1970 bill. But by the time the 1970 bill was ripe for action by the Ways and Means Committee, the executive branch confessed error and admitted that its conversion proposal for rubber footwear was both inadequate and inaccurate. When the Ways and Means Committee reported the 1970 bill to the House, it included the following significant language, and I quote:

> Elimination of ASP on rubber-soled footwear can only be achieved by submitting for congressional approval any ad referendum agreement the President may negotiate.

And the bill which passed the House specifically proscribed the conversion of ASP on rubber footwear. In short, the history of this question demonstrates that the Senate, the House, the Kennedy administration, the Johnson administration, and until the introduction of the current bill the Nixon administration, endorsed the concept of ad referendum treatment of any agreement which would convert ASP.

Moreover, the admitted inappropriateness of the proposed conversions during the Kennedy round and in 1970 illustrate the wisdom of congressional review. We are not saying—let me make this clear—we are not saying that under no circumstances should there be a conversion of American selling price. What we are saying is that no such conversion should take place without Congress having weighed its merits and passed judgment on it.

Having said this, let me add that allegations that ASP as applied to rubber footwear is a burden on trade, is a boon to the domestic industry, and is unfair to importers or the exporting countries, are directly contrary to the facts. Consider, if you will, the following:

1. Section 102(b)(1) of the bill before you speak of nontariff barriers which are, and I quote, "unduly burdening and restricting the foreign trade of the United States". On the one hand, trade in rubber footwear is a miniscule fraction of this country's total foreign trade. But on the other hand, imports of such footwear constitute some 30 percent of the domestic market.

2. Despite the fact that we went through the Kennedy round with neither a cut in the duty on rubber footwear nor a conversion of American selling price, imports in the years since then have been larger than during the Kennedy round. Imports in 1973 reached the highest level and the greatest degree of penetration of the domestic market on record, and domestic shipments in 1973 were lower than at any time during the Kennedy round.

3. Rubber footwear is a labor-intensive industry, and more than 70 percent of the total imports of rubber-soled footwear with fabric uppers now come from the low-cost countries of Korea and Taiwan. How much of an impediment to trade can ASP be when Korea was able to increase its shipments of such footwear, some of which take ASP and some of which do not, from 2 million pairs in 1969 to 27 million in 1973, and Taiwan from 8 million in 1969 to 22 million in 1973?

4. Since the Kennedy round and with all of the protection allegedly afforded by American selling price, Uniroyal has closed its plants in Woonsocket, R.I., in Mishawaka, Ind., and in Ponce, P.R., and the Uniroyal plant in Naugatuck, Conn., has remained open only by grace of two successive 3-year waivers of wage increases by the United Rubber Workers Union; Randy closed its plant in Gardon Grove, Calif.; Ramer went bankrupt and closed its plant in Brooklyn, N.Y.; Servus gave up the manufacture of fabric footwear in Rock Island, Ill.; and B. F. Goodrich gave up the manufacture of waterproof footwear in Watertown, Mass., then moved its fabric footwear operations to Elgin, S.C., and Lumberton, N.C., and finally shut those operations down with the announcement that imports had forced it out of the rubber footwear business. The Converse Rubber Co. leased the Lumberton plant under the terms of a Justice Department decree which requires it to divest itself of capacity for seven million pairs of fabric footwear a year. This happened some 2 years ago, and that capacity is still for sale.

5. This industry has long since lost its export market. It is therefore difficult to conceive of any satisfactory quid pro quo which could accrue to us in exchange for a conversion of American Selling Price.

In short, then, a history of past efforts to convert, the impact of imports on the domestic market, and the state of the domestic industry, all make it clear that the objectives of the Trade Reform Act will not be furthered by granting the administration the unfettered discretion it seeks, and will not be deterred by requiring any agreement to convert ASP to be the result of a distinct and separate negotiation and to be subject to specific Congressional review and approval.

Accordingly, then, we urge this committee to add the following language to section 102(b)(1):

"Provided that the President may not enter into an agreement providing for the conversion of the American Selling Price system of valuation on any product where it now exists unless that conversion is a result of a reciprocal agreement negotiated with the countries exporting such products, with adequate compensation for the U.S. concessions, and further, unless such agreement is submitted to and approved by the Congress."

Finally, Mr. Chairman, just a word on the question of preferences to less developed nations. The administration has given its assurance that rubber footwear would be exempted from such preferences. Past experience—and I remind you of the unhappy experience that this industry had with respect to certain assurances on waterproof footwear in 1964, with which I believe you are quite familiar—past experience has made us wary of assurances not embodied in legislation, and we therefore urge that such an exemption be written into any preference language you see fit to adopt.

Mr. Chairman, Senator Packwood, the statement we have filed with you spells out in detail the points I have touched upon. I am grateful to you for your attention.

Senator TALMADGE. Thank you very much, Mr. Cooper.

The House bill would not only give the Executive the authority to convert ASP into a different tariff rate, it would also give the President the right to eliminate the duty altogether without even staging requirements.

What would be the effect on U.S. jobs if ASP were stricken?

Mr. COOPER. There are 23,000 jobs currently in the rubber footwear industry. It is a small industry, Mr. Chairman. It is concentrated in the States of Connecticut, Georgia, about 30 percent between those two States, the rest of it scattered through other States in the country. I would hesitate—I do not want to be one who brings forebodings of doom and gloom to this committee. I do not want to enter into idle speculation. I can only tell you that with the benefit of no tariff cut during the Kennedy Round and the retention of American Selling Price, imports have continued to rise. This is essentially due to the fact that wages in domestic rubber footwear industry, wages and fringe benefits constituting roughly 50 percent of total cost, are some 8 to 10 times higher than in Korea.

Senator TALMADGE. Can you give us the geographical breakdown on where these jobs are?

Mr. COOPER. Yes. That is not too difficult to do. There are some 3,500 of them in Connecticut, 3,500 roughly, between 3,000 and 4,000

in Georgia, 1,000 or so in Wisconsin, perhaps 750 in Illinois, another 2,000 in North Carolina, several hundred in Maine, several hundred in New Hampshire, 1,000 or so in Florida, a scattering in California, totalling—there are about 12 States which still have rubber footwear plants.

Senator TALMADGE. And your statistics related only to shoes.

What about the chemical industry?

Mr. COOPER. I am not familiar with the chemical industry, Senator.

Senator TALMADGE. How many jobs have already been lost in the footwear area?

Mr. COOPER. Over a period of time—this has never been a terribly large industry. Its total employment has been perhaps 26,000, 27,000. We have never been able to realize the potential of this industry because we have no export market. We once did after World War I. The export market of the industry has long since been taken away by the Far East. The Europeans have the same problem that we do, imports from Korea.

Senator TALMADGE. You mentioned several firms that went out of business and went bankrupt.

How many jobs were lost in that operation?

Mr. COOPER. B. F. Goodrich represented at one time 7,000 employees in Watertown, Mass. There are now none there. There are about 2,000 of those jobs—not the same employees, obviously—which remain in the Lumberton plant which Goodrich had in North Carolina and which Converse is now operating. That is the most sizeable loss of employment. Several hundred jobs were lost when Servus had to close up its fabric footwear operation. Some 800 or so to 1,000 jobs perhaps were lost in Mishawaka, Ind., perhaps more than that at its height, when Uniroyal left Indiana. A similar number of jobs in Rhode Island.

Now, this is a small industry. But the communities where these jobs were lost were obviously hard hit. I do not have to tell you that Dublin, Ga. and Thompson, Ga. are not major metropolises in this country. They both have something like 1,500 rubber footwear employees at this time.

Senator TALMADGE. I have been in the plant in Dublin, Ga.

Any questions, Senator Packwood?

Senator PACKWOOD. If we are to limit bargaining on a sector by sector basis or something equivalent to it, there is nowhere we can bargain on rubber footwear. We have no export market at all.

What would be the quid pro quo in bargaining?

Mr. COOPER. Senator, I have discussed this problem with members of the executive branch, and far be it from me to tell these extremely able and extremely ingenious people what they could do by way of a quid pro quo, but I have nonetheless given them possible approaches—voluntary quotas, or higher tariff rate to compensate for the elimination of whatever protection the device of ASP itself gives.

For example, if you find that the conversion would come to 75 or 80 percent, instead of the 20 percent ASP rate, the loss of the device itself is a significant thing because the loss of the device permits the product to move to ever-lower cost countries whether it be India,

South Vietnam, or perhaps mainland China once we give them most-favored-nation treatment. It is an advantage, obviously, to the lower cost countries. So that can be compensated for.

If it is sufficiently important to get rid of ASP, then what you do is, you say, we will give a bonus on the rate if it becomes that critical. There are ways to do this. You cannot do it, obviously, by giving some benefit as was presumably done or allegedly done with respect to the chemical package that was negotiated in the Kennedy Round, by making something available to domestic rubber footwear in foreign markets, because we are not going to be able to develop a market abroad for this product.

Senator PACKWOOD. I think you have a fair complaint about the double whack that can be taken at ASP under the bill as it is. You can take the conversion, then you can take the reduction. I am not sure that you can justify ASP for some products and not for others. I fail to see why it should apply to benzenoid chemicals and rubber footwear but not others.

Mr. COOPER. Senator, I once sat down with—this is in another administration, and the employee is no longer working for the Government. But I think my clients have never been so startled as when a member of the Kennedy Round negotiating team said that the rubber footwear industry had a lollipop that other industries did not have. At that time imports were taking something like 26, 25 percent of the market. They are now taking about 30 percent of the market with ASP protection. You know, other industries may have, may come in with a grievance and say, why should rubber footwear have this?

All we can say is that no other domestic industry is hurt by virtue of the fact that the rubber footwear industry comes under an American Selling Price method of valuation. On the contrary, however, the rubber footwear industry will be hurt, if not devastated, by the removal of this device.

Senator PACKWOOD. It seems to me what you are asking, whether or not we keep the American Selling Price or go to some other method of adequate protection, what you are asking for is protection forever, because this industry will not exist without protection forever.

Mr. COOPER. No, sir. I am not asking for protection forever. What I am asking is prevention of the errors which were almost made in the Kennedy Round, namely a conversion by the Tariff Commission which was proved to be inaccurate—not due to the Tariff Commission's fault, but because of a shift in the source of trade as time went on from Japan to Korea—which would have been adopted but for the requirement of Congressional review and an opportunity to set that before the Congress. I am not saying perpetuate ASP from now on. I am saying, okay fellows, if you think it is necessary to negotiate it, you go ahead and negotiate it. But by golly, bring that package back. I want a chance to argue the merits of it with Senator Packwood and Senator Talmadge and their colleagues.

Senator PACKWOOD. I understand that and I am not necessarily quarrelling with that. You conclude your statement by saying, without the tariff protection this industry will not exist.

Mr. COOPER. That is clearly the state of affairs today. What the state of affairs may or may not be at the conclusion of the current

round, if the current round ever gets off the ground, remains to be seen. And I would assume, Senator, that if you were satisfied that this economy really ought to have some kind of a domestic rubber footwear industry, you would then examine the facts and come to a conclusion as of that time, weighing in the balance whether we should give up the industry or take the cut.

What I am suggesting to you is that that is uniquely a determination to be made by the Congress. I do not think that the Executive ought to be given the authority to say today that our relations, our trading relations, with Taiwan and Korea, require us to give this up, we are going to make the determination to sacrifice the domestic rubber footwear industry.

I want you to make that determination.

Senator PACKWOOD. I am perfectly willing to make the determination. I am perfectly willing to be on your side, but you are more expert in this than I am.

You have concluded that without protection this industry will not exist?

Mr. COOPER. I have concluded that without a fair conversion, and with the exercise of the authority which this bill would give the administration, full exercise of that authority would cut the tariff from roughly, let us say, 80 percent—I do not know what the conversion would produce—from roughly 80 percent down as low as 8 percent. And I will say to you here, this morning, that under that situation, this industry clearly will go out of existence.

I am saying to you that, given that situation, there is no reason for the Executive to get the authority in the first place. We should not have to live in that kind of jeopardy.

Senator PACKWOOD. And if Congress were to pass a law lowering the tariff to 8 percent, then that would be a Congressional decision, you would also go out of business?

Mr. COOPER. Of course we would, but we would argue our cases here, and you are the representatives of the people and you weigh the priorities.

Senator PACKWOOD. That is why I asked you the question earlier. You cannot exist without permanent protection.

Mr. COOPER. I am not saying permanent protection, at this level. I am saying, without permanent protection, I would say at this—you should excuse the expression—at this point in time, we cannot exist, that seems clear.

What the level should be, is a different question.

Senator PACKWOOD. I have no other questions.

Senator TALMADGE. Thank you very much, Mr. Cooper, for your contribution to our deliberations.

[The prepared statement of Mr. Cooper follows:]

PREPARED TESTIMONY OF THE FOOTWEAR DIVISION, RUBBER MANUFACTURERS ASSOCIATION, PRESENTED BY MITCHELL J. COOPER, COUNSEL

ON SECTION 102 AND TITLE V OF THE TRADE REFORM ACT OF 1973

My name is Mitchell J. Cooper and I am testifying as counsel to the Footwear Division of the Rubber Manufacturers Association. The members of this Division account for most of the waterproof footwear and rubber-soled footwear with fabric uppers produced in this country. Both kinds of footwear are on the so-

called Final List. In addition, the duty on rubber-soled footwear with fabric uppers is based on American Selling Price.

Section 102(b)(1) provides that the President may enter into trade agreements providing for the reduction or elimination of "barriers" to international trade, and 102(h) defines "barrier" as including the American Selling Price basis of customs valuation. Section 102(f) sets forth a procedure whereby the Congress may veto an agreement entered into under 102(b). Section 102(g) substantially equivalent tariff protection may also provide for a reduction of part or all of that rate which is attributable to the conversion.

One effect of these provisions, insofar as the Rubber Footwear industry is concerned, would be to permit the elimination of American Selling Price and the Final List without prior Congressional approval. A further effect would be to permit the conversion of American Selling Price on rubber footwear to be incorporated in a large package of non-tariff barriers, without a specific *quid pro quo* for the concession represented by the conversion. And yet another effect would be that, in addition to the 60% cut in rate provided by Section 101, the converted rate could be cut back to the Column 1 rate; thus, assuming that a conversion of the 20% rate resulted in a rate of 80%, that 80% rate could be cut back to 8%!

This unprecedented grant of discretion to a President can find justification neither in the history of previous negotiations nor in the economics of the rubber footwear trade.

This is not the first time the question has arisen as to whether an agreement which would convert American Selling Price should be concluded without having its terms subjected to Congressional approval. In the course of the Kennedy Round, the Senate adopted, with but one dissenting vote, Senate Concurrent Resolution 100, the effect of which was to put the Executive on notice that the Senate expected any such agreement o be submitted to Congress prior to final adoption. Soon thereafter, the Special Representative for Trade Negotiations made it clear that any negotiation on American Selling Price would be apart from the general Kennedy Round agreement and would be on *ad referendum* basis. Although both the Tariff Commission and the Office of the Special Representative spent many hours studying the effect of converting ASP, although our negotiators persistently decribed ASP as an anathema to our trading partners, and although there were lengthy negotiations looking toward conversion, no agreement was reached as to footwear ASP. At the heart of the matter was the fact that our negotiators found that they could not produce an agreement which would stand the scrutiny of Congress. The Office of the Special Representative, then as now, recommended the final elimination of ASP and would have concluded an agreement based on the 58% rate suggested by the Tariff Commission if Congress had not had such a vital role to play. Had any such agreement gone into effect, the competitive disadvantage suffered by the domestic industry would have been magnified, for by the time the Kennedy Round was concluded the 58% figure was invalidated (assuming, *arguendo*, that it had ever been valid) by a marked shift in the source of imports from Japan to Korea and Taiwan. In effect, there would have been a substantial tariff cut with no reciprocal benefit.

Thus, when the President sent Congress the Trade Bill of 1969, there was not embodied in it any agreement for the conversion of American Selling Price on rubber-soled fabric footwear. The bill did, however, contain a proposal to permit negotiating the conversion of the 20% ASP rate to 20% plus 25¢ a pair, but not disadvantage of being a unilateral concession, it did recognize the inadequacy of the 58%, it deferred the effective date of the conversion for some two years, and it offered the opportunity for Congressional examination of the merits.

The 1969 Trade Bill was not adopted, but the same conversion proposal was embodied in the 1970 bill. In the meantime, further shifts in the trade had invalidated that proposal just as the earlier 58% proposal had itself been invalidated. Accordingly, the domestic industry testified in opposition to the suggested conversion. But between the time the 1970 bill was introduced and the time it was ripe for action by the Ways and Means Committee, the Executive Branch confessed error; it admitted that its proposed conversion was inadequate and it withdrew its support. As a result,the bill which then passed the House

contained a provision which specifically proscribed the conversion of ASP on footwear. Significantly, the Ways and Means Report accompanying the bill contained the following language: "Elimination of ASP on . . . rubber-soled footwear can only be achieved by submitting for Congressional approval any *ad referendum* agreement the President may negotiate."

In short, the history of this question since the Kennedy Round emphasizes the danger of any approach to changing methods of valuation other than on an *ad referendum* basis, at least so far as American Selling Price on footwear is concerned. Moreover, whether the frame of reference is significant benefit to the United States or the economics of this industry, there is no credible reason for giving the President advance authority to implement any agreement eliminating American Selling Price on rubber-soled footwear or eliminating the Final List. In this regard, the following questions should be considered:

1. *How much of this country's trade is in footwear subject to ASP?* According to the March, 1973, Tariff Commission Report on Customs Valuation, the value of all commodities subject to American Selling Price constituted only 0.8% of total imports for the year 1971. ASP footwear imports constituted less than 120 of 110 of the dutiable value of all imports (but imports of rubber-soled fabric footwear amounted to 29% of domestic consumption). These figures should be viewed in the light of the Section 102(b)(1) standard of barriers which "are unduly burdening and restricting the foreign trade of the United States". I suggest that by this standard the conversion of ASP on rubber-soled, fabric footwear is hardly of such urgency as to warrant advance authority to the President to eliminate this valuation method on whatever terms he may see fit. To state the matter differently: While this item is of virtually no consequence to the country's overall trade posture, it is of such critical importance to the survival of this small domestic industry that the Congress should insist on reviewing any agreement which would govern the rules of our competition with foreign footwear manufacturers. And there can be no doubt that the rules of competition would be substantially modified by the elimination of either the Final List or ASP, for these methods of valuation admittedly serve as some brake, however inadequate, on an even freer flow of rubber footwear from the lowest-cost countries.

2. *What are the sources of waterproof and rubber-soled, fabric footwear imports?* Table 1, attached hereto, demonstrates the dramatic shift in sources which has taken place during the past few years. Whereas in 1969 Japan was still the dominant supplier of both waterproof and fabric, its position has steadily eroded since then. In waterproof it went from 2,886,000 pairs (23% of total imports) in 1969 to 205,000 (2% of the total) in 1973, and in fabric it went from 27,414,000 (62% of the total) to 9,821,000 (15%). The beneficiaries of this erosion were Korea and Taiwan. This was especially true in fabric: Korea went from 4% of the total in 1969 to 40% in 1973, and Taiwan went from 17% to 33% in the same period.

Rubber footwear is a labor-intensive industry, which is why virtually all imports are from low-cost countries in the Far East, and also why, as costs have risen in Japan, the competitive advantage has shifted to Korea and Taiwan. This change in import source occurred in spite of the fact that one of the advantages of ASP is that, by basing the rate of duty on American value rather than foreign value, the advantage of lower-cost exporters is lessened. In the face of the barrier allegedly posed by ASP, imports of rubber-soled footwear with fabric uppers from Korea (whose rubber footwear average hourly wage is about 110 that of American rubber footwear employees) rose from 2,000,000 pairs in 1969 to 3,000,000 in 1970, to 13,000,000 in 1971, to 19,000,000 in 1972, to 27,000,000 in 1973. One can but speculate on what would have happened if ASP had been eliminated in the Kennedy Round, and particularly if it had been eliminated on the basis of the Tariff Commission study of the converted value of imports from Japan.

3. *How has the domestic waterproof and rubber-soled fabric footwear industry fared since the Kennedy Round?* Since 1967, and after the elimination of American Selling Price on waterproof footwear, Uniroyal has closed its plants in Woonsocket, Rhode Island, in Mishawaka, Indiana, and in Ponce, Puerto Rico; the Uniroyal plant in Naugatuck, Connecticut has remained open only by grace of two successive three-year waivers of wage increases by the United

Rubber Workers Union; Randy closed its plant in Garden Grove, California; Ramer went bankrupt, closing its footwear plant in Brooklyn, New York; Servus gave up the manufacture of fabric footwear in Rock Island, Illinois; and Goodrich gave up the manufacture of waterproof footwear in Watertown, Massachusetts, then moved its fabric footwear operations to Lumberton, North Carolina, and Elgin, South Carolina, and finally shut those operations down with the announcement that imports had forced it out of the rubber footwear business. In 1972 Converse Rubber Company leased the Lumberton facility under the terms of a Justice Department decree which requires it to divest itself of capacity for 7,000,000 pairs of fabric footwear a year; it is a measure of the low esteem in which this industry's prospects are held that this capacity is still for sale.

As Table 2 shows, domestic shipments of fabric footwear are running well below the level of the mid-sixties, while imports currently constitute about 30% of domestic consumption and are at a much higher level, both in absolute and percentage terms, than they were during the Kennedy Round, when the Executive Branch made such a great effort to eliminate the ASP "burden" on trade. ASP remains, but imports thrive as never before. (It should be noted that it is not possible to set forth waterproof imports' share of the market, since Census does not maintain current figures on it. It seems safe to say, however, that imports of waterproof footwear continue to constitute about 45% of the domestic market.)

4. *What is the prospect of obtaining a respectable quid pro quo for converting ASP on footwear?* If past efforts are a guide, we cannot hope for much. In 1966, in the middle of Kennedy Round negotiations, the Treasury chose to amend the guidelines for the administration of ASP on rubber-soled footwear with fabric uppers. This amendment resulted in a 35% decrease in duties; it was in effect a gratuitous gift to countries exporting this footwear, unilaterally enacted and without the benefit of any reciprocity whatever. Also in the course of the Kennedy Round, Ambassador Blumenthal publicly stated that there would be no agreement negotiated for the elimination of American Selling Price on benzenoid chemicals which did not contain a reciprocal provision of direct benefit to American chemical exports. This position made—and makes—eminently good sense, but it is impossible to apply such a position to rubber footwear, for our export market has long since been lost to low-cost countries. To the best of our knowledge, the Executive Branch has never given any indication of what the domestic industry might expect as the quid for the quo of losing ASP.

In light of this history of the difficulty of arriving at a fair conversion, of the insignificant share of total trade affected by the Final List and American Selling Price, of the thriving state of imports despite these alleged barriers, of the unhealthy condition of the domestic industry, and of Executive Branch oversensitivity to foreign complaints as ASP and relative lack of sensitivity to the effect of rubber footwear imports on the domestic industry, the Administration's request for authority to eliminate the Final List and ASP valuation of rubber footwear is without warrant. There is here no such distortion of, barrier to, or burden on trade as to justify this grant of authority.

Section 102(f) purports to safeguard the legitimate interests of the domestic industry by providing that the Congress may veto a trade agreement entered into under the terms of 102. Such a safeguard would be illusory indeed. The Act gives no assurance that any agreement converting American Selling Price on rubber-soled footwear will be submitted on its own merits rather than as part of a larger package of non-tariff items; an otherwise commendable agreement could well be the instrument for destroying this domestic industry. Moreover, given the present impact of imports on the rubber footwear market and the danger to the continued survival of the domestic industry if deprived of Final List and ASP treatment, the responsibility should be the Executive Branch's to justify affirmatively any change in the valuation method made applicable to rubber footwear. In view of what the Congress knows of this industry's problems and also of what the Congress knows of past efforts to change the method of valuation, it ought not to content itself with the privilege of vetoing a proposed agreement—even were it possible to segment out any rubber footwear ASP conversion for separate consideration. Events since the Ways and Means Committee's Report on the 1970 Bill have only served to emphasize the wisdom of its

comment that "Elimination of ASP on . . . rubber-soled footwear can only be achieved by submitting for Congressional approval any *ad referendum* agreement the President may negotiate."

In the course of the Ways and Means Committee's deliberations on the present bill, an amendment was proposed to the effect that the President could not agree to the conversion of the American Selling Price system of valuation on any product where it now exists, unless such an agreement were truly reciprocal with the countries exporting such product and contained adequate compensation for United States concessions, and, further, unless such an agreement were submitted to and approved by the Congress. This amendment was defeated by a narrow margin, although it does no more than restate the view of the problem previously adopted by both Houses and by both this and preceding Administrations. We think it reasonable to ask that the Finance Committee adopt such an amendment as a means of assuring full consideration to the interests of the domestic industry without detracting from the objectives of the Trade Reform Act.

A word as to the Title II liberalization of the criteria for Escape Clause relief. These criteria would not be applicable to the problem posed by the conversion of ASP. If developments subsequent to an agreement to convert ASP were to demonstrate the inequity of the agreement, there is nothing the Tariff Commission could do, by way of the Escape Clause or otherwise, to restore ASP. The injury would be irreparable.

In addition to our concern about the degree of discretion afforded the President by Section 102, we wish to note our concern about the broad grant of authority in Title V to grant preferences to less developed countries. There can be no doubt that were duty-free treatment accorded to less developed countries for the manufacture of rubber footwear, there would no longer be such an industry in this country. In addition to the fact that this industry is labor-intensive, the technology for the manufacture of its products is readily available to other countries. At a duty of 37½% on waterproof and 20% ASP on fabric, we are already being inundated with imports from less developed countries. To its credit, the Administration has not failed to recognize this problem: The President's message accompanying the introduction of the Trade Bill stated that "It is our intention to exclude certain import-sensitive products such as . . . footwear . . . from such preferential treatment." And the United States list of exceptions in its Tariff Preferences Submission to the OECD in September, 1970, does define footwear as including products of the rubber footwear industry. Yet this matter is of such importance to this industry that we urge that the exception be written into law rather than rest on an expression of Administration intention. We are still hurting from the rescission of an earlier Administration's statement of intention with respect to waterproof footwear: In 1965, spokesmen for the Executive Branch expressed an intention to us and to members of the Finance Committee that the Administration would support a conversion of the then 12½% ASP rate on waterproof footwear to 60%, if we would withdraw our plea to extend ASP to synthetic rubber waterproof footwear. We withdrew our plea—but the Executive Branch withdrew its support for the 60% rate. The result was a conversion to a series of lower rates followed by a marked upsurge in imports. This Administration's present intention to exclude footwear from preference treatment is necessitated by the facts; let it be incorporated in the law.

The Rubber Footwear industry has been badly buffeted by imports, but it is here seeking neither further protection nor the frustration of the objectives of the Trade Reform Act. It asks merely that the President not be given such a broad grant of discretion that he can conclude an agreement converting American Selling Price on or eliminating Final List treatment of rubber-soled footwear with fabric uppers without submitting such an agreement to the Congress on an *ad referendum* basis, and that there be embodied in the law the Administration's stated intention of excluding footwear from duty-free preferential treatment to less developed countries. Other countries have long since taken our export market; we are attempting to stave off further inroads into our already precarious position in the American market, where imports now constitute 30% of consumption of fabric footwear and almost 50% of consumption of waterproof footwear.

TABLE 1.—PROTECTIVE FOOTWEAR AND FABRIC SHOE IMPORTS (IN PAIRS) INTO THE UNITED STATES, 1969-73

[In thousands]

	Total quantity	Korea		Japan		Taiwan		Hong Kong		Other	
		Quantity	Percent of total	Quantity	Percent of total	Quantity	Percent of total	Quantity	Percent of total	Quantity	Percent of total
Protective footwear with soles and uppers of rubber or plastic (TSUS 700.51. 52 and 53):											
1969	12,286	4,592	37.38	2,886	23.49	2,442	19.88	1,050	8.55	1,316	10.70
1970	14,627	6,210	42.47	2,048	14.00	3,749	26.53	794	5.42	1,826	12.48
1971	12,772	5,493	43.00	1,088	8.52	4,217	33.02	716	5.61	1,258	9.85
1972	13,098	6,898	52.66	672	5.14	3,723	28.42	715	5.46	1,090	8.32
1973	10,962	6,424	58.60	205	1.87	3,327	30.35	182	1.66	824	7.52
Footwear with rubber soles and fabric uppers (TSUS 700.60):											
1969	44,463	1,908	4.29	27,414	61.65	7,759	17.45	4,711	10.60	2,671	6.01
1970	49,726	3,145	6.32	29,692	59.71	8,473	17.04	4,659	9.37	3,757	7.56
1971	62,842	13,393	21.31	28,686	45.64	14,044	22.35	2.542	4.05	4,177	6.65
1972	58,020	19,183	33.05	15,709	27.08	15,716	27.09	2,904	5.01	4,508	7.77
1973	66,290	26,606	40.14	9,821	14.82	21,753	32.81	1,844	2.78	6,266	9.45

Source: U.S. Department of Commerce, IM 146 schedule 7, pt. 1.

TABLE 2.—RUBBER-SOLED CANVAS—UPPER FOOTWEAR, SHIPMENTS, IMPORTS, EXPORTS, APPARENT CONSUMPTION AND RATIOS, 1963-73

[Thousand pairs]

Year	Shipments	Imports	Exports	Apparent consumption	Percent imports to consumption
1963	147,813	28,676	130	176,359	16.3
1964	162,151	29,063	225	190,989	15.2
1965	165,741	33,363	195	198,909	16.8
1966	157,491	35,060	167	192,384	18.2
1967	153,656	44,659	211	198,104	22.5
1968	152,257	49,200	239	201,218	24.5
1969	140,575	44,463	195	184,843	24.5
1970	145,865	49,726	129	195,462	25.4
1971	156,489	62,872	112	219,249	28.7
1972	159,399	58,020	105	217,314	26.7
1973	153,551	66,291	29	219,813	30.2

Senator TALMADGE. The next witness is Mr. Malcolm R. Lovell, Jr., president of the Rubber Manufacturers Association.

STATEMENT OF MALCOLM R. LOVELL, JR., PRESIDENT, RUBBER MANUFACTURERS ASSOCIATION; ACCOMPANIED BY JAMES L. PATE, DIRECTOR OF BUSINESS RESEARCH OF THE B. F. GOODRICH COMPANY, AKRON, OHIO; AND DALE S. WAHLSTROM, ADMINISTRATOR, CORPORATE PURCHASING DEPARTMENT, UNIROYAL, INC., MIDDLEBURY, CONNECTICUT

Mr. LOVELL. Thank you, Mr. Chairman, Senator Packwood.

I am accompanied today by James L. Pate, to my left here, who is director of business research of the B. F. Goodrich Co. in Akron; and Mr. Dale Wahlstrom, who is administrator of corporate purchasing for Uniroyal.

As I understand your procedure here, you would like a brief oral review?

Senator TALMADGE. Yes, sir. Your entire statement will be inserted in the record, and we appreciate you summarizing it in not more than 10 minutes.

Mr. LOVELL. I will try to do it in a lot less than that, Senator.

First of all, the Rubber Manufacturers Association is here today to add its voice in support of H.R. 10710, on the grounds that Presidential authority to conduct new negotiations and the removal of barriers to international trade and to correct existing inequitable practices in international trade, will serve the national interest well.

We think it is terribly important that the United States be in the position to enter into multinational negotiations to discourage bilateral negotiations and to fully recognize the degree of dependency that the various nations of the world have on each other, and to be able to enter into meaningful and vigorous negotiations with the major trading nations of the world.

As an industry, we are not expecting necessarily great things from these negotiations, either favorably or adversely. We have many multinational corporations. We are engaged in manufacture and trade all over the world and I guess our being here today is just to

say that this rather large, important industry, feels it is terribly important as industrial citizens to express our concern that the Congress and the administration agree on a bill that would make it possible for us to enter into these negotiations, and to achieve a better multilateral understanding of the trade problems all over the world.

So we are here to basically support the House bill. Now we also do suggest some few amendments that I guess are of more narrow parochial interest to our industry.

First of all, in title III, the discretionary authority for the Secretary of the Treasury to delay imposition of countervailing duties, we think should be removed from the bill. As you know, countervailing duties are placed in response to a nation providing special export help to various industries and a countervailing duty is a response to that, and we feel that response should be an automatic one, to discourage nations doing that.

Certainly, in the present world conditions in view of the price of fuel and petrochemical products, there may be some interest on the part of other countries to increase their exports by providing special help to certain industries, and we feel that should be discouraged and that the countervail should be automatic.

In title I, section 102(b)(1) of the bill, as Mr. Cooper has very articulately presented to you, we feel that any elimination of the final list or ASP tariffs on rubber footwear should be submitted to Congress on an ad referendum basis.

Mr. Cooper, I think, has accurately reflected the status of this industry where probably over 50 percent, almost 50 percent, of the total sales come from overseas, and I think it is difficult to say whether the industry would be eliminated, but certainly it would be seriously threatened, if ASP is dropped.

And what we are saying is that before that takes place, that the industry should have an opportunity to present its case in a vigorous manner before Congress; and that it should not be something that could be traded away lightly—it is not large, in proportion to the world trade problems that will be faced by the negotiators, and we would not want it to just slip under the table, because it could destroy the industry.

And in title I, we feel it is very important that the industry advisory committees be permitted to work closely and in confidence with our negotiators, and therefore it is very important that confidentiality be protected. That, of course, would require changes in the act that would make it impossible for members of foreign governments to sit in on these discussions, as they can now.

Now, in respect to certain other major titles of the bill, of course title IV is one that is, I know, of tremendous concern to this committee. We believe that the desirability for an act of this character to be passed, is such that we urge this committee and the Congress and the administration to work out its problems on title IV and most-favored-nations status.

We appreciate the difficulties involved but we think it is so important that we have a bill, that we certainly have tremendous confidence both in this committee and in the House, and indeed, in the

administration's interest in working out such a bill. Certainly Secretary Kissinger's testimony indicates that.

We would hope that that can be done successfully and we will not try to second-guess what kind of compromise that should be, but we would hope that that will happen.

Finally, we agree with the action finally decided on by the Ways and Means Committee that matters concerning overseas taxation not be part of this bill. Certainly the complexities of the bill are great enough without adding that, and the difficulties this committee and the Congress face in contemplating the various aspects of this bill are complex enough without adding the tremendously difficult decisions involved in taxation.

Thank you.

Senator TALMADGE. Thank you, very much, for your contribution, Mr. Lovell. Any questions? Senator Packwood?

Senator PACKWOOD. Under the bill, as it is presently drawn, it is only the nontariff barriers that are submitted to Congress for veto.

Mr. LOVELL. That is right.

Senator PACKWOOD. I am not sure that that is wise, but assume we were not going to submit general tariff cuts. Why should the final list in ASP be made an exception to that?

Mr. LOVELL. Well, Senator, I think as Mr. Cooper has indicated this industry is existing in a very precarious fashion. I know of no other industry that—there may be some, but I certainly know of no other industry—which is as subject to elimination, as this one is, from foreign competition.

I suppose one could argue that if it is unable to compete, it should go, but we are saying that before such an action were taken, we would just like to have the opportunity of defending our position, because so much is at stake, from our point of view. And I suppose that that is a parochial point of view, but I think it is proper for an industry which has played a prominent role in America's history over the years, to not be just swept under the table casually in the excitement and heat of a negotiation session.

Senator PACKWOOD. You phrase it very well. I have no other questions, Mr. Chairman.

Senator TALMADGE. Thank you very much, Mr. Lovell.

[The prepared statement of Mr. Lovell follows:]

PREPARED STATEMENT OF MALCOLM R. LOVELL, JR., COUNSEL, ON BEHALF OF RUBBER MANUFACTURERS ASSOCIATION

SUMMARY

RMA *supports* the basic provisions of H. R. 10710 on the grounds that Presidential authority to conduct new negotiations on the removal of barriers to international trade and to correct existing, inequitable practices in international trade will serve the national interest, and that a failure to grant such authority could lead to serious adverse consequences for the United States. We believe H. R. 10710 contains on the whole reasonable provisions which are likely to give adequate protection to the national self-interest in the trade field.

RMA *urges* only limited *amendments* to H. R. 10710, as follows:

1. Title III, Section 331 (e): The *discretionary authority* by the Secretary of the Treasury to delay imposition of *countervailing duties* during negotiations should be removed from the Bill. U. S. objection to foreign government export

subsidies must be a firm, not a negotiable, policy of the United States if trade is to be conducted on equitable grounds.

2. Title I, Section 102 (b) (1): The Bill should specify that any proposed agreement calling for the elimination of the Final List and *ASP tariffs on footwear* must be submitted to Congress ad referendum for affirmative Congressional approval. The rubber footwear industry is an important domestic industry which has already been severely hit by foreign competition. Congress should retain full authority over negotiations in this sector to assure that any actions which will affect the industry's future are fully considered.

3. Title I, 3: Further improvements in Title I of the Bill are desirable to generate a feeling of confidence on the part of American industry that U. S. Government negotiators will act in close, working liaison with *industry advisory committees*. RMA endorses recommendations to strengthen industry liaison procedures and protect the confidentiality of industry advice.

With respect to certain major titles of the Bill, RMA wishes to emphasize:

Title IV: RMA does not believe that the controversy that has arisen over linking MFN status to emigration laws should be allowed to prevent passage of H. R. 10710, and hopes that a solution can be found which will permit H. R. 10710 to go forward.

We agree with the House Ways and Means Committee that matters concerning overseas taxation should not be made a part of the trade bill, but should be separately considered.

STATEMENT

Mr. Chairman and members of the Committee, I am Malcolm R. Lovell, Jr., President of the Rubber Manufacturers Association. Appearing with me today are Mr. James L. Pate, Director of Business Research of The B. F. Goodrich Company, Akron, Ohio, and Mr. Dale S. Wahlstrom, Administrator, Corporate Purchasing Department, Uniroyal, Inc., Middlebury, Connecticut.

The Rubber Manufacturers Association is composed of approximately 180 companies. The production of our members accounts for about 90% by value of the finished rubber products manufactured in the United States. In 1973 total industry shipments were estimated to be $12.5 billion.

The basic question in these hearings is whether the President of the United States should be authorized to enter into a new round of negotiations with foreign countries aimed at further reducing barriers to international trade. A related question is whether he needs additional statutory authority to deal with today's trade problems. We believe the answer to both questions is "yes". We endorse the bill passed by the House last year as a well-balanced bill which gives a reasonable grant of needed authority to the President

Our reasons for supporting H. R. 10710 are not based chiefly on any narrow calculation of our industry's self-interest. In general, although our Footwear Division is an exception, the probable outcome of a new round of negotiations on trade barriers is not likely to have a major impact on our companies. This is so in brief because the effective U. S. tariff on our products is already so minimal (it is 4% advalorem, for example, on tires) that any further reduction is not likely to be much of a spur to imports, while the degree of reductions in foreign tariffs and non-tariff barriers that appears negotiable is not likely to be great enough as a spur to U. S. exports to offset the economic reasons which generally have restrained international trade in manufactured rubber products. We believe the net impact of new negotiations is more likely to constitute a stimulus to U. S. exports than to U. S. imports in most manufactured rubber products, but the small gains that may occur in our own industry are not the reason why I am here today.

Our principal reason for supporting H. R. 10710 is that we believe it is fundamentally in the national interest to continue progress toward dismantling artificial obstacles to trade. Most of the remaining obstacles are maintained by foreign governments, and as a nation we stand to benefit more than to lose from keeping up momentum for the continued removal of trade barriers. In addition to the prospect that affirmative benefits to the nited States should be obtainable through further negotiations, should Congress continue to withhold negotiating authority from the President other nations will be encouraged to act unilaterally, or in concert with each other and not with the United States, in responding to the serious new issues in trade that have recently arisen. As Secretary Kissinger said to this Committee on March 7:

"Since the trade bill was introduced into the Congress some eleven months ago, the international trading system has confronted its most severe challenge. As a consequence of the energy crisis, nations have been increasingly tempted to resolve their problems unilaterally—to make bilateral deals and impose protectionist measures. This cannot be our preferred course . . . [O]ur aim must be concerted action by all major trading nations, acting in the common interest ... [to] reverse the tendencies toward bilateralism . . . The actual and potential trade disturbances of the energy situation are urgent, and we need the authority contained in the trade bill if we are to achieve a negotiated, concerted response."

Sharing this belief, that it is important at this time to equip the President wit suitable negotiating authority, we believe that a trade bill should be adopted without further delay. Moreover, we believe the provisions of H. R. 10710 modify and update existing statutes in the trade field to reflect our experience in trade matters and, with only a few exceptions, are well-designed to deal with the complex problems of assuring that the national self-interest in trade is served. To touch on the highlights only, we believe H. R. 10710 gives due protection to product sector interests in determining negotiation objectives and results, promises an improved liaison between industry and government representatives, increases appropriately the opportunity for effective relief against increased imports by sectors and workers adversely affected, and adds usefully to the President's flexibility in handling both trade discrimination and trade crises.

While we support H. R. 10710 generally, in three respects we believe amendments are desirable:

First, the discretionary authority conferred on the Secretary of the Treasury by Section 331 (e) of Title III to delay imposition of countervailing duties during trade negotiations should be removed from the Bill. Countervailing duties were recently imposed against the importation from Canada of tires subsidized by the Canadian government. If Treasury had had the authority contained in Section 331 (e) we believe diplomatic pressure would have occurred to use it, as would be likely in almost every case of trade importance. The objection by the United States to foreign government use of export subsidies and bounties should be a firm, not a negotiable, policy of the United States, and *must* be firm if trade is eventually to be conducted in a fully equitable manner.

Second, we support the position of the Footwear Division of RMA, represented here today by special counsel, in regard to any Agreement that may call for the elimination of the Final List and American Selling Price tariffs on rubber footwear. Section 102 (b) (1) should be amended to provide that any such Agreement must be negotiated on an *ad referendum* basis and receive affirmative Congressional approval. The rubber footwear industry is an important domestic industry which has already experienced severe foreign competition. Congress should retain full authority over negotiations in this sector to assure that any steps which will affect the industry's future are fully considered.

Third, although present provisions of Chapter 3, Title I, promise to improve substantially the insufficient liaison between U. S. industry and government representatives that occurred during Kennedy Round negotiations, additional provisions are needed to button down this objective. The degree of effective liaison and cooperation between U. S. industry and government representatives is likely to determine, as much as or more than any other factor, whether new trade negotiations serve overall national objectives. It is important that effective, careful bargaining take place by U. S. negotiators. It is also important that U. S. industry, agriculture, and commerce generally have confidence in the likelihood that U. S. negotiators will be working in the next round of talks to protect or advance important national commercial objectives. To this end we support refinements to Chapter 3 that would strengthen industry liaison procedures, protect the confidentiality of industry advice, and generate the feeling of confidence I referred to. Specifically, we endorse the recommendations on this subject which will be submitted to this Committee shortly by the Inter-Association Group on the Trade Bill.

While urging amendments to H. R. 10710 in the three respects mentioned above, we would also like to single out for special comment two areas in which we believe no changes in H. R. 10710 are needed or justified.

First, RMA does not believe that the controversy that has arisen over linking MFN status to emigration laws should be allowed to prevent passage of H. R.

10710, and hopes that a solution can be found which will permit H. R. 10710 to go forward.

Second, we wish to express strongly our approval of the decision by the Ways and Means Committee to remove overseas taxation matters from the trade bill so that the merits of various proposals in this field can be considered separately. We have taken a clear and strong position in prior statements to Congress that some of the proposals advanced have been ill-considered, particularly insofar as our industry's overseas operations are concerned.[1] We believe this bill already has enough issues connected with it without raising ones more appropriate for another occasion.

In conclusion, we urge the Committee to approve H. R. 10710 with the limited amendments suggested.

Senator TALMADGE. Our next witness is Mr. John E. Kaiser, Jr., President of Macwhyte Co.

STATEMENT OF JOHN E. KAISER, JR., PRESIDENT, MACWHYTE CO., KENOSHA, WIS., A DIVISION OF AMSTED INDUSTRIES, INC., ON BEHALF OF U.S. COMMITTEE OF WIRE ROPE PRODUCERS; ACCOMPANIED BY GUNTER VON CONRAD, ESQ., WASHINGTON COUNSEL

Mr. KAISER. Mr. Chairman, Senator Packwood, my name is John Kaiser. I am president of the Macwhyte Co., a wire rope producer in Kenosha, Wis., a Division of Amsted Industries, Inc. I also appear before you on behalf of the U.S. Committee of Wire Rope Producers, whose 12-member companies account for some 90 percent of the steel wire rope produced in the United States. A list of these wire rope producers has been attached to the written statement that has been submitted.

For the sake of brevity, my oral statement varies from the written statement, obviously.

Senator TALMADGE. The full statement will be inserted in the rocord, Mr. Kaiser.

Mr. KAISER. Thank you.

I will be glad to answer any questions. You may have questions of a technical nature and we, of course, will be glad to have an additional submission. I have also our Washington trade counsel, Mr. Gunter von Conrad here with me.

You will note, from our list of wire rope companies, that our wire rope companies consist of both integrated major steel companies and small independent companies. So as not to burden the record unduly, I would also like to refer here to the statement and data submitted by the Emergency Committee of the Steel Wire Industries before the Ways and Means Committee. That presentation was made on behalf of five domestic wire industry trade associations, including the Committee of Wire Rope Producers.

For the record I would first like to briefly describe our industry to you. General wire ropes—or steel cables—are basic to all industry.

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[1] See RMA study of multinational operations of five domestic tire manufacturers and the potential impact of certain proposed tax changes published in *Multinational Corporations: A Compendium of Papers Submitted to the Subcommittee on International Trade of the Committee on Finance of the United States Senate,* February 21, 1973; and see, RMA statements before the House Ways and Means Committee on "The Taxation of Foreign Income", presented April 3, 1973, and on "H.R. 6767 And Related Taxation Proposals", presented May 31, 1973.

And today, of course, it is popular to talk about the energy problems, and you do not drill oil and gas wells, or mine coal, without wire rope.

Other major industries where wire rope is used include logging, general construction, industrial cranes and hoists, maritime trade, and elevators. Specialty cables are used in automobiles, recreational vehicles, boats, and aircraft. And, incidentally, this excludes tire cord and steel belted radial tires.

The industry is characterized by high capital investment in plant machinery and equipment. Additionally, the product is frequently utilized where its failure can result in loss of life. Therefore, quality and potential liability exposure, are further cost and product characteristics inherent in our industry.

Total domestic wire rope consumption has been estimated at about 230,000 tons. In the past years, the domestic manufacturers' share of this market has been eroded by imports which now provide from 18 to 20 percent of domestic requirements; of total wire rope imports, approximately half come from Japan.

Prior to commenting on specific provisions of the act, some additional background of the industry is necessary. In July 1972, an investigation of the dumping of steel wire rope was initiated by the Bureau of Customs on a complaint from the Macwhyte Co.

The Macwhyte complaint, supported by all major domestic manufacturers, was affirmed in a determination by the U.S. Tariff Commission on September 7, 1973. Copies of the brief will be submitted to members of the Finance Committee.

With respect to the content of the present Trade Reform Act, we would have these comments. We certainly have to agree that some degree of negotiating authority is needed to move trade discussions forward.

Certainly, the United States cannot conduct negotiations without this authority. Under the proposed act, we would note, however, that complete authority would be granted to negotiate any duty less than 4 percent. It is significant to note that in the Kennedy Round—and with no consultation with the domestic wire rope industry—the duty on wire rope was decreased in incremental steps from 8.5 percent, the rate in effect on December 17, 1967, to 4 percent, effective January 1, 1972. Thus, while the domestic wire rope industry has been trying to cope with these reductions under the Trade Reform Act, unilateral authority to further reduce the duty would be granted.

In retrospect, it was concluded that the reduction of duty was a factor in attracting Japanese penetration of the U.S. market. While 5 percent may seem incidental, it can be an important margin in a fiercely competitive market.

We also believe that voluntary restraint arrangements need to be reviewed. While some products are under restraint, others, including steel wire rope, are not. It is our contention, in fact, that voluntary restraint arrangements were also a contributing factor in encouraging Japanese imports of wire rope.

Under the voluntary restraints, basic steelmill products, including wire rod—the basic raw material for wire and wire rope—were subject to tonnage limitations.

These restraints, then, created an incentive for the Japanese to shift their production to the higher-value-per-ton fabricated products which they, in fact, did—and this contention is well supported by the data that we have submitted to the Ways and Means Committee, and also to the Tariff Commission and Treasury Department, which indicated that under the voluntary restraint arrangements, the result was to bring below-cost of conversion steel wire rope into the U.S. market.

As indicated above, both tariff and nontariff negotiations have had an effect on the domestic wire rope industry. And, thus, while supporting trade expansion, we believe that industry in general, through public hearings or establishment of a prenegotiation record, should always have an opportunity to be heard.

Secondly, where findings of dumping, or determination of injury exist, a specific industry review should be held to provide negotiators with proper background and guidance.

Incidentally, we find the negotiations strange at times. Voluntary restraint arrangements are a rather odd construction, in that our Government is not negotiating with another Government, but with an industry in a foreign country.

As previously indicated, these arrangements affect us and we think we should have the opportunity to be heard. Based on our experience in the dumping area, three areas deserve consideration.

First we feel the present trade bill might be improved by assuring that an industry which has been injured would receive some standing before the Treasury Department to pursue the question of dumping duty assessment.

In our case, the dumping finding was some 6 months ago and to date we are unaware that a master assessment has been set.

Secondly, in the dumping portion of the trade bill, only a foreign manufacturer or importer would have an automatic right to appear before the Treasury Department.

A domestic industry should be considered as having shown cause once the Commissioner of Customs has affirmatively treated a complaint and agreed that an investigation is warranted.

A final problem we encountered in the antidumping investigation, but which could easily arise on countervailing duty cases as well, is that of shifting supply sources. While the investigation proceeded against Japan, the investigating agencies were limited, by law, to that country.

In practice, this means that a multinational who operates in several countries, could simply shift to a source not under complaint. That means, for example, Japan could shift their wire rope production to a Korean subsidiary.

While we do not advocate a change in the specificity now required by law with regard to investigations, we believe that in the case of termination of an antidumping suit, on the basis of assurances from a foreign supplier, such supplier should be required to maintain fair sales practices from subsidiaries in other countries, as otherwise the effect of antidumping action could easily be aborted.

We do endorse the improvements in the countervailing duty law, the escape clause, and particularly in the adjustment assistance provisions.

A brief comment on titles IV and V. As businessmen, we certainly believe that economic activity between nations is a logical development, and that the potential for establishing meaningful communications and an interdependence is basic to world peace.

Within this ideal, all we can say is we feel we must be practical. There has to be some quid pro quo. We should be able to quantify in some reliable measure the benefit we can expect to accrue, vis-a-vis the benefit which state-economy countries, or developing countries, are bound to obtain once their goods can come into the U.S. market, at much reduced duty rates and on a par with our most-favored trading nations and allies.

At the time the trade bill was introduced, it was felt that there was a well-defined area for separate discussions between nations. Subsequent economic and monetary changes, however, now indicate that trade, monetary relations, energy, and material resources management, are closely related.

Currently, the most urgent problem facing industries is the international raw materials shortage. As converters of a basic steelmill product, we will, of course, be affected by any shortfall in the world steel supply.

It is our understanding—though we have not seen it in print—that there will be an effort to insert appropriate amendments to insure our access to sufficient raw materials.

In closing, I want to assure you that we are not requesting any unreasonable or unfair protection from competition. Our industry has shown, in the face of massive imports, that we can compete, provided the trade is carried out and priced fairly.

We do not want to weaken the trade bill. We do wish to point out, however, based on our experience that specific safeguards or negotiations alone cannot resolve the problem, and discussions must proceed from an encompassing viewpoint and provide for industry input.

At this point, if we do reach the point of duty negotiations, our concessions must be based on reciprocal results to insure that our products are competitive in the world markets.

I thank you, Mr. Chairman, Senator Packwood.

Senator TALMADGE. Thank you, Mr. Kaiser.

I notice on appendix B of your statement, the exports of wire rope in the last 5 years have gone down, whereas imports have approximately doubled. I believe you testified there is now a 5-percent duty on imported wire?

Mr. KAISER. It is at the 4½—oh, I am sorry, sir, it is at the 4-percent level. From 8.5 to 4 percent.

Senator TALMADGE. If that was reduced to zero, what would that do to imports and exports?

Mr. KAISER. In the present world market situation, and under the price controls that we currently have, I would say that the price in the U.S. market now of the U.S. product is less than the world market price. The situation, because of monetary reevaluation and world demand, has changed since our dumping action.

Senator TALMADGE. Has that affected the flow of imports of wire rope?

Mr. KAISER. It has.

Senator TALMADGE. So, temporarily, the situation has improved rather than gotten worse?

Mr. KAISER. This is true, except our statistical information for 1973 would indicate that the percent of imports have gone up from 18 percent to 20 percent. And, while we feel it has some effect, at least at this time, it has not decreased the flow of imports into the United States.

We do believe, however, it will, because the Japanese, for example, are finding pricing more attractive in markets other than the United States at the present time.

Senator TALMADGE. Now is wire rope covered under the voluntary import agreements relating to steel?

Mr. KAISER. Wire rope was excluded.

Senator TALMADGE. It was specifically excluded?

Mr. KAISER. Yes. Wire rope and wire products. And, incidentally, the Japanese were going to manufacture steel for exports. Truly it was advantageous to them to fabricate that steel into higher-value-per-ton product, and they severely penetrated not only the wire rope industry, but the general wire fabricating industry in the United States.

Senator TALMADGE. Thank you, sir. Any questions, Senator Packwood?

Senator PACKWOOD. I sense, from your statement, that if you had a substantial reduction of foreign protection in nontariff areas, you have no fear about the industry's ability to compete in world markets?

Mr. KAISER. I think that we have been burnt by the Kennedy Round experience, the voluntary restraints. It is difficult to say with the present situation as you know it, that reevaluation is going to continue forever, so I think it is extremely difficult, Senator Packwood, to make a statement at this time as to what that impact may be over a long period of time.

We believe, however, all we are saying is we think that when the time comes to negotiate that rate as an industry, and based on the fact that we have been injured as an industry, that we should have an opportunity to discuss with negotiators, world pricing, domestic pricing, and the possible impact of the duty reduction.

We do not think that the President should have the authority to unilaterally reduce any duty below the 5-percent level, specifically in the case of an injured industry.

Senator PACKWOOD. I was not thinking so much of the market here. Are you able to compete adequately with the Japanese in the Brazilian market, in the European market, wherever they may want to match you?

Mr. KAISER. I think it is apparent, from our appendix B, that we have been completely incapable of participating in foreign markets.

Senator PACKWOOD. Well, we come back to my original question, then. The rubber footwear people said they simply cannot compete in world markets, period. There is no hope of it with our wages rate. Does the same apply to you? Can you compete in world markets if you have equal access to them?

Mr. KAISER. I believe that we could, at present, compete in foreign markets.

Senator PACKWOOD. I have no other questions.

Senator TALMADGE. Thank you very much for your contribution, Mr. Kaiser.

Mr. KAISER. Thank you, Mr. Chairman.

[The prepared statement of Mr. Kaiser follows:]

PREPARED STATEMENT OF JOHN E. KAISER, JR., PRESIDENT, MACWHYTE CO., KENOSHA, WIS., DIVISION OF AMSTED INDUSTRIES, INC., ON BEHALF OF U.S. COMMITTEE OF WIRE ROPE PRODUCERS

Mr. Chairman and members of the committee: my name is John E. Kaiser, Jr. I am President of Macwhyte Company, a wire rope producing company in Kenosha, Wisconsin, and a Division of AMSTED Industries Incorporated which also manufactures other steel products in other divisions. It is my privilege today to appear before you also in behalf of the U.S. Committee of Wire Rope Producers, whose 12 member companies account for approximately 90% of the steel wire rope produced in this country. A list of U.S. wire rope producers is attached to this statement and the members of the wire rope producers committee are identified on this list (Appendix A). So as not to burden the record unduly, I would like to refer here briefly to the statement and data submitted by the Emergency Committee of the Steel Wire Industries of the United States before the Ways and Means Committee (Ways and Means Hearing Print on H.R.6767, Part 12, pp.4031–4057). That presentation was made on behalf of five domestic wire industry trade associations including the Committee of Wire Rope Producers.

For background, I would first like to briefly describe our industry. General wire ropes—or steel cables—are basic to industry; major uses include logging, general construction, industrial cranes and hoists, maritime trade, elevators and the major energy markets of oil and gas drilling and strip mining. Specialty cables are used in automobiles, recreational vehicles and boats and aircraft. (Parenthetically, I wish to exclude from our term steel wire rope, the type of cord used to make steel belted radial tires. The product distinction is well recognized in the industry and by the government).

The industry is characterized by high capital investment in plant, machinery and equipment and—because of its service nature—in finished goods inventories. Additionally, the product is frequently utilized where its failure could result in loss of life; therefore, quality—and potential liability exposure—are further cost and product characteristics inherent in the industry. As indicated by the attached Appendix B, total domestic wire rope consumption has been estimated at about 230,000 tons. In the past years, the domestic manufacturers share of the market has been eroded by imports which now provide 18–20% of domestic requirements; of total wire rope imports, approximately half come from Japan.

The Trade Reform Act of 1973, now H.R. 10710, was introduced in the House of Representatives and was considered there at a time when we had not yet experienced the significant changs in economic and monetary relationships which we have since encountered. At the time of introduction of the trade bill, it was still widely believed that trade was a fairly well-defined and separate subject for discussion between nations. But we have since recognized that trade, monetary relations, energy and materials resource management, and strategic considerations are closely interrelated. Against the background of this growing recognition, the Trade Reform Act would appear to:

(1) Emcompass a number of features appropriate and needed to guide the flow of trade.

(2) Include provisions which remain questionable due to lack of information and predictability; e.g. Titles IV and V.

(3) Require additional features; e.g. materials security and negotiation considerations.

Prior to commenting on specific provisions of the Trade Reform Act, some additional industry background is also necessary. In July, 1972, an investigation into the dumping of steel wire rope was initiated by the Bureau of Customs based on a complaint filed by the Macwhyte Company. The Macwhyte complaint, supported by all major domestic manufacturers, was affirmed in a determination by the U.S. Tariff Commission on September 7, 1973; the Commission determined that the U.S. wire rope industry was injured by less than fair value imports from Japan.

With respect to the present content of the Trade Reform Act we have these comments.

I. NEGOTIATING AUTHORITY

We would agree that some type of authority is needed to move forward in trade discussions which have now been stagnant for some time. Without any authority at all, the United States is in a difficult position to respond properly to problems whether they arise here or abroad, and where responses or actions are needed other countries cannot be brought to serious or effective discussions since they know well that our Government has no substantial negotiating powers. It is difficult, even, to negotiate adequate compensation in cases where the United States unties "binding" under trade agreements which may become necessary in escape clause cases.

A. Tariff Negotiations

Under the proposed Act, complete authority would be granted to negotiate any duty less than 5%. It is significant to note that in the Kennedy Round—and with no consultation with the domestic industry—the duty on wire rope was decreased in incremental steps from 8.5%, the rate in effect on December 17, 1967 to 4% effective January 1, 1972. Now, while our industry is trying to cope with these reductions, unilateral authority to further reduce the duty would be granted under the Act. In retrospect, it was concluded that the reduction of duty was a factor in attracting Japanese penetration of the U.S. market. While 5% may seem incidental, a finished ton of wire rope or specialty cable may range in value from $600 to $6,000 a ton; thus 5% may mean a price differential of from $30 to $300 per ton.

B. Nontariff Negotiations

We believe that Voluntary Restraint Arrangements need to be reviewed. While some steel products are now under restraint, others, including our steel wire rope are not, and this entails distortions in trade which can be very burdensome. It is our contention, in fact, that Voluntary Restraint Arrangements were a contributing factor in encouraging Japanese imports of wire rope. Under the voluntary restraints, basic steel mill products, including wire rod—the basic raw material for wire and wire rope—were subject to tonnage limitations. These restraints, therefore, created an incentive for the Japanese to shift their production and exports to the U.S. to higher value per ton unrestrained wire products including wire rope. Our contention is well supported by the statistical data submitted by the Emergency Committee of the Steel Wire Industries to the Ways and Means Committee. Additionally, our analysis presented to the Treasury and to the Tariff Commission indicated that the price differentials between Japanese steel wire rope and the basic raw materials were very much smaller than we know conversion costs to be. Therefore, in effect, the Voluntary Restraint Arrangement had the result of bringing below-cost-of-conversion steel wire rope to this market, and, as the Tariff Commission found, this caused us injury. We do note with satisfaction and approval that the present Trade Bill is looking to this problem.

C. Industry Participation

While supporting trade expansion, we believe it is essential for industry to have an opportunity to be heard. As indicated above, both tariff and nontariff negotiations have had a negative effect on the domestic wire rope industry. We believe, in the future, that:

(1) Industry in general, through public hearings or establishment of a pre-negotiation record should have an opportunity to be heard.

(2) Where findings of dumping or determination of injury exist, a specific industry review should be held to provide negotiators with proper background and guidance.

We would add here that we find the processes of negotiations strange at times. As the Committee is aware, the present voluntary restraint arrangements are a rather odd construction, Antitrust law and Webb-Pomerene Act notwithstanding, in that our Government as a government negotiated not with other governments but with foreign industry. (This might be considered an "Autopact" in reverse). The propriety of this arrangement has been the subject of legal action under our Antitrust laws. As matters stand, domestic industry groups such as ours are

still at a disadvantage with respect to such negotiations. As indicated above, these arrangements can affect us very closely and we believe we should have every right and opportunity to have meaningful negotiation input.

II. UNFAIR COMPETITION

Based on our experience in the dumping area, we believe that three areas deserve consideration:

A. Standing before Treasury

I feel that the present trade bill might be improved by assuring that an industry, which has been found to have been injured, receive some standing before the Treasury Department to pursue the question of dumping duty assessment. The finding in our dumping case was made a half year ago; however, to date we are unaware that a master assessment has been set by the U.S. Customs Service. We very much believe that we should have standing to inquire how the Treasury plans to afford relief once injury has been found due to dumping sales.

B. Showing of Cause

A second item which deserves consideration in the dumping portion of the trade bill is the fact that only a foreign manufacturer or importer would have an automatic right to appear before the Treasury Department, whereas a domestic manufacturer would be required to show cause before he may make such an appearance. It occurs to us that a domestic industry—which often will be or include the complainant—should be considered as having shown cause once the Commissioner of Customs has gone from the initial review procedure to an antidumping proceeding; the affirmative treatment of a complaint by the U.S. Customs Service and agreement that an investigation is warranted would seem to be sufficient cause for a domestic industry's invitation to hearings resulting from its complaint.

C. Avoidance of Dumping—Multinational Foreign Companies

A final problem which we encountered in the antidumping investigation, but which could arise easily on countervailing duty cases as well, was that of shifting supply sources. It was our experience that while the investigation proceeded against Japan, the investigating agencies were limited to that country. This, of course, is in full accordance with the law which requires specification of the country involved and the remedy is to draw up a broad complaint. In practice this means, however, that a supplier who operates in several countries could simply shift to a source not under complaint. While we do not advocate a change in the specificity now required by law with regard to investigations, we would suggest that at least in cases of termination of antidumping proceding on the basis of acceptance of assurances from a foreign supplier, such supplier also be required to maintain fair sales practices from subsidiaries in other countries, as otherwise the effect of antidumping action can easily be aborted.

D. Other Provisions

We do endorse the improvements which are now proposed in the countervailing duty law, in the escape clause, and particularly in the adjustment assistance provisions. We believe that these safeguards must be liberalized to afford easier accessible relief, as our market becomes increasingly accessible.

III. TITLE IV

A. General

As businessmen, we believe that economic activity between nations is a logical development and provides the potential for establishing meaningful communications and an interdependence basic to future world peace. Within this ideal, we must be practical—we should know much more about what we are getting for what we are potentially giving. As businessmen, we believe it to be a sound principle that we should know the quid-pro-quo, and we believe that this should not merely be a matter of broad treaties and their implementation—much as we favor a world without tension—but that we should be able to quantify in some reliable measure the benefit we can expect to accrue to us vis-a-vis the benefit which state-economy countries are bound to obtain once their goods can move in

the U.S. market at much reduced duty rates and on a par with our most favored trading partners and allies.

IV. TITLE V

Our comment with respect to preferences for developing countries is similar: we believe that the granting of preferences should not occur on a "give-away" basis, and that we should not confuse charity (which the United States should grant those in need) with sound business judgments and expectations which should attend so significant a step as the granting of preferred access. Here again, we would call on the proponents of the policy to label, quantify, and enumerate the prospective trade effects under this liberalization.

V. PROPOSED AMENDMENTS

Currently, the most urgent problem facing industry is the international raw materials shortage. As converters of a basic steel mill product (or fabricator of wire which has as its source the basic rod) we will, of course, be affected by any "shortfall" in the world steel supply. We do understand that it is intended to insert appropriate amendments to assure our access to sufficient raw materials. Based on present conditions, we believe that such materials access security is needed to allow us to operate efficiently and to supply the industries we serve without disruptions.

In closing I want to assure you that we are not requesting any unreasonable or unfair protection from competition. I believe our industry has shown, in the face of massive imports, that we can stand toe-to-toe with the Japanese importer and that we can compete provided the trade is carried out and priced fairly. We do not want to weaken the trade bill. We do wish to point out, however, based on our experience, that specific safeguards or negotiations cannot resolve the problem; discussions must proceed from an encompassing view and must provide for industry input. In addition, and at this point we must consider priorities. If, after resolving raw material and voluntary restraint problems—and dealing with the effects of unfair trade practices—we reach a position of duty negotiations our concessions must be based on reciprocal results to assure our products are competitive in world markets. If that is accomplished we will be ready to meet all challengers in international trade with the same confidence with which American industry has become the most efficient and successful in the world. We demand simply that the challenge be fair and square.

Thank you Mr. Chairman and members of the Committee.

APPENDIX A—DOMESTIC WIRE ROPE MANUFACTURERS [1]

Armco Steel Corp.,[2] 700 Roberts St., Kansas City, Mo.
Bergen Wire Rope Co.[3], 600 Gregg St., Lodi, N.J.
Bethlehem Steel Corp.,[2] 701 East Third St., Bethlehem, Pa.
Bridon-American Corp.,[3] P.O. Box 188, West Pittston, Pa.
Broderick & Bascom Rope Co.,[2] 10440 Trenton Ave., St. Louis, Mo.
Carolina Steel & Wire Corp.,[3] P.O. Box 817, Lexington, S.C., (Hackensack Cable Corp.).
E. H. Edwards Co.,[2] 498 Industrial Way, S. San Francisco, Calif.
Jones & Laughlin Steel Corp.,[2] Wire Rope Division, Muncy, Pa.
Macwhyte Co.,[2] 2906 14th Ave., Kenosha, Wisc.
Paulsen-Webber Cordage Corp.,[2] 84 William St., New York, N.Y.
Pennsylvania Wire Rope Corp.,[3] 905 First St., Williamsport, Pa.
The Rochester Corp.,[2] P.O. Box 312, Culpeper, Va.
United States Steel Corp.[2] P.O. Box 7310, Chicago, Ill.
Universal Wire Products, Inc.,[2] 222 Universal Drive, North Haven, Conn.
Wire Rope Corp. of America, Inc.,[2] P.O. Box 288, St. Joseph, Mo.

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[1] Domestic manufacturers engaged in the manufacture and general sale of wire ropes in compliance with or similar to those covered under Federal Specification RR-W-410 (High Carbon Steel Wire Ropes), Military Specification MIL-W-5424 (Corrosion Resisting Wire Rope) or Military Specification MIL-W-1511 (Flexible Galvanized or Tinned Wire Ropes).

[2] Member Company—Committee of Wire Rope Producers. The member companies all manufacture general purpose high carbon steel wire ropes; additionally, some manufacture specialty cables (i.e. corrosion resisting, galvanized and tinned). Based on available data, member companies manufacture over 90% of the total wire rope tonnage produced domestically.

[3] Non-Member-Committee of Wire Rope Producers. The product line of these companies is restricted to specialty type cables of the type used in cable controls (i.e. automotive, recreational vehicles, aircraft, and boating industry).

APPENDIX B.—IRON OR STEEL WIRE ROPE: U.S. PRODUCERS' SHIPMENTS, IMPORTS FROM JAPAN AND ALL COUNTRIES, APPARENT CONSUMPTION, AND SHARE OF CONSUMPTION SUPPLIED BY IMPORTS FROM JAPAN AND ALL COUNTRIES, FOR DESIGNATED YEARS

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Net tons					Share of consumption supplied by imports (percent)	
	U.S. producers' shipments[1]		Imports for consumption				
Year	For domestic consumption	For export	From Japan	From all countries	Apparent U.S. consumption[2]	From Japan	From all countries
1968	211,526	5,839	9,912	22,977	234,503	4.2	9.8
1969	207,711	6,962	13,920	26,814	234,525	5.9	11.4
1970	197,577	6,672	14,268	29,070	226,647	6.3	12.8
1971	189,845	5,346	15,168	28,546	218,391	6.9	13.1
1972	189,965	5,356	18,996	41,927	231,892	8.2	18.1

[1] Basic data on domestic shipments and export shipments were collected by Price-Waterhouse & Co., from major U.S. producers who are estimated to account for about 95 percent of the total quantity of shipments of both wire rope and spliced products (i.e. lengths of wire rope fabricated with "eyes" for use as wire-rope slings, or by attachment of end fittings). The latter are believed to be insignificant in affecting the total tonnage of wire rope shipments. For the purpose of this table (for comparison with imports and for calculating the share of U.S. consumption supplied by imports), the Price-Waterhouse data on shipments for both domestic consumption and export were increased by 5 percent to approximately cover domestic producers not covered by the basic data.

[2] Calculated by adding data in column 1 to that in column 4.

Source: Data on imports, compiled from official statistics of the U.S. Department of Commerce.

Senator TALMADGE. The next witness is Mr. Robert Lockridge, cochairman, Footwear Industry Emergency Committee on Trade Policy, on behalf of the American Footwear Industries Association.

STATEMENT OF ROBERT S. LOCKRIDGE, COCHAIRMAN, FOOTWEAR INDUSTRY EMERGENCY COMMITTEE ON TRADE POLICY IN BEHALF OF THE AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION; ACCOMPANIED BY MARK RICHARDSON, PRESIDENT, AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION

Mr. LOCKRIDGE. Mr. Chairman, I am Robert S. Lockridge, president of Craddock-Terry Shoe Corp., Lynchburg, Va., and cochairman of the Footwear Industry Emergency Committee on Trade Policy. Accompanying me is Mark Richardson, president of the American Footwear Industries Association. We are here on behalf of that association which represents manufacturers of 95 percent of leather and vinyl footwear manufactured in this country; and through our associate members, about 85 percent of all the suppliers to the footwear industry.

There are approximately 500 companies with about 800 plants in our industry, located in 40 States. The industry now employs about 200,000 workers directly in its manufacturing operations. There are about 100,000 workers in allied supporting industries. A great many of our plants are located in the smaller communities of our country where the shoe manufacturer often is the major or sole employer.

The message we bring before the committee today is that the American footwear industry is suffering drastic injury because of the continuing disruptive imports which have caused reduced production, the closing of plants, loss of jobs, and approximately a $1 billion trade deficit for the United States. Imports eroding our ability to continue as a viable industry.

The remedy we seek lies in the action by Congress because the executive branch has not provided our industry with wanted and needed import relief.

The charts attached to my statements show clearly the situation confronting the domestic footwear industry. Let me summarize them briefly for you.

In 1960 the import penetration for footwear was less than 5 percent. Imports continued their steady, unchecked growth into the U.S. market. Last year it hit 40 percent of the market. No other major industry in the United States suffers from an important penetration of this magnitude. Five years ago net imports of footwear totaled 175 million pairs, valued at $330 million. By 1973, net imports had jumped to 316 million pairs valued at nearly $1 billion.

The effects of imports of this magnitude upon our industry are obvious. Production is down. Employment is down. The number of plants is down. Profits are down. The only thing that is up in the industry is its problems. Imports have cost workers over 43,000 jobs since 1960. As a result, domestic production in 1973 fell to 488 million pairs, the lowest in domestic shoe production in more than 20 years.

There are basically three main reasons why imports account for an increasingly high percentage of domestic consumption: No. 1, the substantially lower wages paid workers in the footwear industry of foreign countries; No. 2, high tariff levels and other import restrictions maintained by many importing countries; and No. 3, subsidies extended by many foreign governments to assist their footwear industries in exporting.

Most foreign manufacturers pay wage rates which would be illegal in the United States, generally less than 50 percent of the U.S. wage level. In an industry as highly labor intensive as ours, where labor represents as much as 45 percent of manufacturing costs, those lower labor costs overseas more than often offset the high productivity of the U.S. shoe industry.

Other importing countries do not permit imports as freely as does the United States. Countries which are major exporters to us are more restrictive in what they will allow to be imported.

The high tariff and nontariff barriers maintained by other countries act to funnel into the relatively open, low tariff U.S. market footwear that would otherwise go to other markets.

A recent Department of Commerce survey showed U.S. duties to be much below those of our trading partners. Furthermore, Argentina, Korea, India, and Turkey do not permit footwear imports. Japan maintains import quotas. Brazil and Taiwan have import duties ranging well over 100 percent which effectively prohibits imports.

Many countries subsidize their exports to us. To cite just one example out of many, the Argentine Government provides cash reimbursements of up to 30 percent of the f.o.b. value of exported shoes, grants low interest loans for up to 80 percent of the exports, reduces the taxable income of its exporters, and provides other tax incentives.

Brazil, Spain, and some of the Common Market countries offer similar subsidies.

Our industry feels the full impact of this unfair competition in the domestic market. It has filed two petitions under the countervailing duty statues with the Treasury Department documenting in detail the practices of the Spanish Government, filed in February 1973, 14 months ago; and the Brazilian and Argentine Governments, filed in July 1973, 9 months ago. Yet, it was only on March 8 that the Treasury Department instituted an investigation on the Brazilian footwear.

No action has been taken to date on our petition with regard to Spain or Argentina. It is essential that action be taken at once and affirmatively in the Brazilian case, and that investigations be instituted in the Spanish and Argentine cases.

We are particularly concerned about the growing imports of footwear from the developing countries, because they are today's fastest growing foreign sources of footwear in our market. Argentina provides an example with imports jumping from less than 500,000 pairs in 1972 to almost 4 million pairs a year later, an increase of above 700 percent.

We have tried to work through the established procedure of the Trade Expansion Act, namely, the escape clause. We had great hopes and expectations when in July 1970, President Nixon requested the Tariff Commission to launch an escape clause investigation on footwear. It has been over 3 years since the Tariff Commission report was submitted to President Nixon, yet to date the President has taken no action in the case. That is why we are appealing to Congress for help. What we are asking for is well within the scope of your powers.

The key question is how much import disruption, how much import penetration of the domestic market, how much loss of capacity and jobs, how much declining production must an industry endure before action is taken to restrain imports. This question poses serious concerns not only for the footwear industry but also for others who may some day find themselves in a position similar to ours.

For these reasons our industry supports the Footwear Articles Import Relief Trade Act, S. 3288. This bill represents a realistic and reasonable approach to the import problem faced by our industry. Details of this bill are contained in our full statement.

We feel strongly that the Trade Reform Act will not assist our industry any more than did the Trade Expansion Act. Frankly, if the administration has not been willing to date to use the existing procedures open to it under the present escape clause to provide import relief for an industry like ours adversly affected by imports, then we must question whether any industry can secure import relief from the executive branch when no desire to provide relief exists.

Our full statement covers in detail our recommendations for the revisions of the Trade bill.

In summary, we recommend that, No. 1, the trade bill should specifically exempt from trade negotiations industries such as ours which suffer from substantial import penetration. No. 2, the escape clause should contain a trigger mechanism which would assure relief when imports reached certain levels of penetration of the domestic market.

No. 3, the factors which the President must take into consideration in escape clause cases before reaching a decision run counter to providing relief and should be deleted.

No. 4, in countervailing duty cases, there should be a 6-month limit as the total time which Treasury may take to make a decision beginning with the date of filing a complaint.

No. 5, in antidumping cases, American manufacturers should be given the right to appear in hearings without having to show good cause.

No. 6, the provisions for a generalized system of preference should specifically exempt industries, such as ours, which are experiencing disruptive import competition.

The conclusion our industry has reached is that we cannot support the trade bill currently before you. We take this position not only because of the serious weaknesses we find in the bill itself, but also because as it now stands, the bill provides no import relief for the American footwear industry.

That is why we say to you today that we must have specific legislation to deal with the problems of the footwear industry, because the record of the Administration in meeting problems of disruptive import competition faced by our industry gives us no confidence that now or in the future under the existing trade legislation, under H.R. 10710, there will be any executive branch solution to this problem.

The growing import penetration rate, now in excess of 40 percent of U.S. market, must be arrested. The trend of declining employment and production must be reversed. The various devices used by foreign governments to give their footwear exports added advantages must be identified and quickly dealt with.

Our future, gentlemen, in part is in your hands. We ask only for fair play so that we can compete with foreign-produced merchandise on a basis which makes it economically justifiable for us to remain in business.

Thank you, gentlemen.

Senator TALMADGE. You make a devastating case, Mr. Lockridge, and I am very much impressed with it. Imports penetrate 40 percent of the American market and create an unfavorable balance of payments of $1 billion a year. It seems to me that it is time for the Congress of the United States to try to take corrective action.

Now, can you tell us something about the value of the footwear industry. First, how much of the production is from large, multinational firms like Genesco and International Shoe?

Mr. LOCKRIDGE. I would estimate, Senator, it falls somewhere in the five big companies of the country cover about 22 to 25 percent of the industry in production.

Senator TALMADGE. What would be the valuation of that?

Mr. LOCKRIDGE. In dollars?

Senator TALMADGE. Yes.

Mr. LOCKRIDGE. I would guess somewhere in the neighborhood of $1.8 to $2 billion.

Senator TALMADGE. Do these firms export shoes from subsidiaries to the United States?

Mr. LOCKRIDGE. Sir?

Senator TALMADGE. Do these large firms I have mentioned export shoes from foreign subsidiaries to the United States?

Mr. LOCKRIDGE. A very small percentage, in my opinion and judgment. It would be—you are asking exports from the United States to foreign countries?

Senator TALMADGE. No. I am talking about an American corporation that has a foreign subsidiary and brings in shoes from a foreign subsidiary.

Mr. LOCKRIDGE. Not many. Less than 1 or 2 percent.

Senator TALMADGE. In other words, the imports are coming in from foreign ownership and not American ownership?

Mr. LOCKRIDGE. Basically, yes.

Senator TALMADGE. All right.

Are most of the smaller firms labor intensive, nonintegrated firms in New England and in the South which cannot stay in business unless they get protection from Brazilian, Italian, Spanish shoes?

Mr. LOCKRIDGE. The shoe industry is structred, as you probably know, we have about 500 companies. The big 5 do less than 25 percent of the big business. So that leaves a multitude of small companies that have to compete with the foreign imports coming into the country. Most of these companies are located in small towns in New England, in the South, in the Midwest, Kentucky, Tennessee, Arkansas, places like that. Most of these people have no other employment, and they cannot be moved into areas where they make IBM machines, or ships, or aircraft.

It is a dual situation. It is a bad thing for the economy of that area when we lose jobs, and it also increases the tax burden through relief and so forth, and does not improve the buying power in the country. Most of these people are semiskilled or unskilled. They cannot do a lot of the things that we always think about American industry representing. The people just are not like that.

Senator TALMADGE. Thank you for your very comprehensive and lucid testimony.

Any questions, Senator Packwood?

Senator PACKWOOD. Your industry, Mr. Lockridge, I think presents the best dilemma we faced as we were studying this bill. The philosophy behind the bill, as I see it, is that exports and imports are good for America. By and large, the lower the barriers here, the lower the barriers overseas, the better for the total economy of the United States is the philosophy the bill starts with.

If we are going to achieve that philosophy, it is obvious that there are some industries in America that are simply not designed to compete with low wage overseas industries. There are some like agriculture in this country that can compete very well with anybody overseas.

Consequently, the bill in its adjustment assistance is designed for eventual phase-out of those industries, as I look at it. You get a 5-year support, and you give them the 2-year extension, and that is the end of it.

I take it you simply would not agree with that philosophy?

Mr. LOCKRIDGE. Well, Senator, I guess I feel this way about it. No. 1, I think if we talk about free trade and everything is on an

equal basis, then we in the American shoe industry feel that we can meet the competition, but we do not feel that we can meet competition from a country or countries which I have cited to you that they subsidize their people anywhere up to—generally it runs from 20 to 30 percent.

Now, if they did not have that subsidy, we with our high productivity rate could meet that competition.

Senator PACKWOOD. Despite the low wages?

Mr. LOCKRIDGE. Basically, despite their low wages because we have higher productivity than most of these countires have.

Senator PACKWOOD. That is encouraging to hear you say that because I sensed in listening to the rubber footwear testimony, they were not prepared to concede that they could compete.

Mr. LOCKRIDGE. Well, I think our record in productivity speaks for itself. We are about 25 percent ahead of our foreign competitors, but we cannot take lower labor costs in foreign countries, plus anywhere from 20- to 30-percent subsidies and plus a tariff situation decreasing over the past 10 years like it has and face it. By the same token, I think we as Americans have got to face up to the fact that we cannot and will never be able to assimilate all of the people in this country that are unskilled and semiskilled into the type of operations that some of us would like to see this country operate on. And for that reason, we have got to provide employment in labor intensive industries for a vast majority of people in this country.

Senator PACKWOOD. I want to come back to your point because I am encouraged by your answer.

Given adequate and effective countervailing duty statutes or antidumping laws or immediate response to what you and I would regard as unfair export subsidies by foreign countries, you could compete if we could at least combat that kind of subsidy.

Mr. LOCKRIDGE. Well, Senator, to answer that question a little differently, we have gone several times to various Government departments, also to Congress, and we have asked that we be given an opportunity with this kind of a climate for 5 years in which we would have tariff quotas based on 1970, 1971, and 1972, and stop these things that we do not think are kosher, so to speak, in the foreign countries, and give us an opportunity to see that we can compete.

Senator PACKWOOD. Well, but again in the bill it is designed hopefully for our negotiators to meet some of these nontariff barrier problems. It is much more oriented toward nontariff barriers than it is toward tariff. I just want to make sure that I understand your answer.

Given a fair opportunity to compete, given no export subsidies by foreign countries, our productivity is such that we can compete against even Taiwan if the only differences are low wage rates?

Mr. LOCKRIDGE. Well, I feel that we can do a satisfactory job along those lines, but for the last 10 years not had that—we have been just going up. On the other side of the ledger, I think the health of the country, is dependent to a large extent on footwear. All of us know that footwear has a bearing on the health of every individual. That also, if we got into a real shooting war, there is not enough well ca-

pacity in my opinion to provide footwear for our armed forces in this country.

Senator PACKWOOD. Mr. Lockridge, let me ask you this. There has not been a single industry witness that has appeared before us that has not made that statement. No matter what we might do on general concessions, we must not do anything to jeopardize that industry.

How are we going to resolve this?

Mr. RICHARDSON. May I attempt to answer, Senator?

I think that some of the questions you asked are terribly pertinent, and the kind of questions I think the Senate itself wants to really get into.

When you consider the trade legislation before you, you have to consider not only what it is designed in terms of the words or the representations, but what evidence based on past experience do you have that the administration will carry out the powers it already has.

And the story that our industry presents to you is the story of an industry that has been able to meet the criteria of a number of different laws, and the administration has not chosen to carry out the powers it already has.

Based on that type of situation, we can hardly answer you as to what the situation would be if the administration were to carry out those responsibilities. We do feel we are competitive enough. We have the productivity well above that of any other nation. That given the opportunity, given the adjustment period of three to five years such as the Act that we referred to here in Mr. Lockridge's testimony, we could make the adjustment and compete worldwide.

We do need to have an administration that is responsive to the needs of import injured industries; that utilizes the Acts available to it. And we would like to have an adjustment period.

Senator PACKWOOD. Could I pursue this just one question further, Mr. Chairman?

Senator NELSON [presiding]. Certainly. Just go ahead.

Senator PACKWOOD. I have misgivings about delegating this power to the Administration also, and I do not understand why we are going to exercise a veto on nontariff barriers but not tariff barriers. And I still do not quite understand the justification for an ASP for some products and not for others. But that is neither here nor there.

I would like to see a tighter bill, and I would like to see a bill with more congressional discretion in it generally, tariff and nontariff. But before we can even write that, when we sit down I have got to know what we can write; and that is why I am asking you these questions, what kind of limitations do we put in.

Let me ask you a final question. How do we draft a bill which gives to the Executive sufficient power to negotiate with other governments who have got the power to deliver on what they negotiate —how do we balance that fine line of giving him sufficient power to negotiate without giving away so much that we have no power left in Congress?

Mr. RICHARDSON. Senator, I think you have an extremely difficult problem there. I have some suggestions I could make. Also, I would like to submit a written response to that question if I may.

Senator PACKWOOD. Thank you.

Mr. RICHARDSON. I have one initial response, and I suspect that every other witness you have heard from industry has the same view. It would be very interesting if the U.S. negotiators would talk to the industries involved the way all the other foreign nations talk to the industries involved.

Senator PACKWOOD. I agree.

Thank you very much, Mr. Chairman.

[The following was subsequently received for the record.]

AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION,
Arlington, Va., April 26, 1974.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: At the time of the testimony of the American Footwear Industries Association before the Senate Committee on Finance (April 5, 1974) I promised the committee and Senator Packwood, in particular, that we would amplify our presentation with some additional written comments.

First, Senator Packwood inquired how we would recommend that the trade negotiators be given bargaining flexibility while still remaining subject to "Congressional scrutiny" to avoid agreements which would be harmful to the national interest.

We would recommend that an oversight committee be established made up of members of the Senate Finance and House Ways & Means Committees. By establishing such a committee, with sufficient staff participation during the trade negotiations, Congress will have a vehicle for keeping on top of the progress of negotiations as well as providing a vehicle for views to be made known to the Government negotiators.

We also recommend that oversight hearings begin six months after the trade bill is enacted to permit time for the formulation of the initial U.S. negotiating position. Such hearings should be held every three months thereafter until negotiations are concluded. A status report should accompany Administration appearance. Provision should be made for executive sessions, if necessary.

Second, Senator Parkwood inquired if the nonrubber footwear industry could be competitive in, say, 15 years if all countries engaged in trade in this product were not to resort to government subsidy, other unfair trade practices such as dumping, or quantitative restrictions on imports. Our answer was in the affirmative. We sincerely believe this to be the case, particularly with the extended adjustment period Senator Parkwood indicated. However, in order for the industry to be competitive at the end of the adjustment period, it must be in a position to survive during that period. Its ability to survive is conditioned, to a large extent, on providing prompt relief from disruptive and, in many respects, unfair import competition during the adjustment period. We endeavored to secure this through the "escape clause" procedure, but, as we pointed out during the hearings, no action has been taken on the equally-divided Tariff Commission decision of January 15, 1971. That is why we are supporting S.3288, the Footwear Articles Import Relief Trade Act, introduced by Senator Cotton.

I hope that the foregoing comments will be helpful to the Committee.

Sincerely,

MARK E. RICHARDSON.

Senator NELSON. Senator Hansen, did you have some questions?

Senator HANSEN. Mr. Lockridge, I was very much impressed with your testimony. The question has been posed repeatedly and responses are uniform, just as was indicated by Senator Packwood, that while the philosophy generally is sound, each person has his own specific exemption as to why it will not work here.

It is my impression that undergirding the free trade idea are several assumptions, one of which is that we will all live better throughout the world if each country concentrates on doing those things it is best prepared to do, such as taking advantage of climate and resources that may be in place.

I know I need not enumerate them because you are familiar with them. Along with that goes the assumption that there will be a free movement of capital, free movement of equipment and machinery, and I underscore, manpower.

Do you believe that America is ready to enter into full implementation of this theory and would be willing to commit any responsibility to assure that manpower is moved around?

Now, when we talk about displacing industries, and we talk about giving the help that is provided in this legislation to take care of people who are thrown out of work, industries that are displaced through imports that come in here, I personally have the feeling that we are not ready to tell somebody in Connecticut you can go out to Wyoming and mine coal.

How do you feel about that?

Mr. LOCKRIDGE. I think it would be very difficult.

Senator HANSEN. Do you think it would be possible?

Mr. LOCKRIDGE. Knowing human nature like it is, I doubt it very seriously.

Senator HANSEN. I doubt it, too.

Now, you know there are those who contend there is something superior about American technique, know how, manufacturing, the management, the way to organize, assembly lines and so forth. It has been my feeling that with the advent of the multinational corporations, there really is no longer anything unique about America.

We have seen industry take our latest know how and move it lock, stock, and barrel over to some foreign country. I think we are witnessing that same thing in Japan right today. They are recognizing—at least this is my feeling—that they have some pretty high wages as compared with those earned by workers in Taiwan and in other parts of the Orient, in the Far East, and what are they doing?

Mr. LOCKRIDGE. They are doing the same thing.

Senator HANSEN. They are doing the same thing. The textile mills are leaving Japan. They are going to Taiwan. I doubt that given every other even break insofar as the ability to export American products goes vis-a-vis our willingness to let other products come into this country, we still cannot overcome the basic difference in wages paid with our demonstrated ability to export our know how, our technology, our latest manufacturing devices.

Do you share the same feeling I have?

Mr. LOCKRIDGE. Not being an economist, and not being a student of that kind of——

Senator HANSEN. I am a farmer. These are just ideas I have.

Mr. LOCKRIDGE. Well, my opinion is if all of this takes place, No. 1, it will take a long time to take place; and No. 2, there will be a vast change in the American standard of living from up here versus the world down here; and the scales will have to be balanced.

Now, if we are willing to do that, then that is one thing. If we are not, that is another thing.

Senator HANSEN. You have said exactly what occurs to me. I think if we really want to embrace this philosophy and work unremittingly toward a complete elimination of all tariff barriers or of all efforts that we have made in the past to try to equalize the inequalities that result from these great differences in standards of living and the wages that people are willing to accept in Taiwan as compared with what we demand in this country, then we are going to have to take a second step and say that as their standard of living is raised, which admittedly it will be, ours will be lowered proportionately.

I do not think that most Americans, if they feel as you and I seemingly do on this issue, are going to say this is the direction that we want to take.

Mr. LOCKRIDGE. I think there is another part of the thing, too. I do not know—and here again, I do not have that knowledge—but it is doubtful to me that we have in the world the natural resources, the capabilities to maintain the standard of living that we enjoy in America throughout the entire world, for the entire population of the world in the foreseeable future or any other time.

I think we would run out, so I think we have to make some kind of choices along the line as we go as to what we want to do here and how we are going to do it.

Senator HANSEN. I agree with you.

Thank you very much, Mr. Lockridge.

Thank you, Mr. Chairman.

Mr. LOCKRIDGE. Thank you, gentlemen.

Senator NELSON. I have a couple of questions. On the question of competitive equality, is the equipment that is used by major manufacturers in this country as modernized, sophisticated, efficient, as the best equipment used elsewhere?

Mr. LOCKRIDGE. Generally speaking, Senator, the equipment in this country, the shoe-manufacturing equipment, is obtainable all over the world from the same companies. I mean, they are companies that make machines in Europe that sell them here. There are machine companies that sell them to the rest of the world, and most of the shoe machinery equipment does come from Europe and the United States; and it is exported to any other foreign country.

Senator NELSON. Are the major competitors, major manufacturers in this country and Italy and elsewhere in fact using the most modern equipment?

Mr. LOCKRIDGE. To answer that question I would have to answer it sort of twofold.

No. 1, the major manufacturers in Europe differ from the major manufacturers in this country. If we went to Spain, for example, from where we have had a lot of import problems, we would find that there would be somewhere around 6,000 to 7,000 shoe manufacturers compared to 500 in this country; but a lot of those plants do not produce over 100 to 200 pairs a day. And there are only three or four plants in Spain that produce as much as 5,000 or 6,000 pairs of shoes a day, and most of this work is done in the home—the fitting of the uppers, the stitching, and all of this. The girls, the women of the country come in and carry the work out and have it done in their homes, and bring it back.

Not only do you have the cottage labor situation to fight against where there is no government requirement on how long they work on it, or how many children work on it—I have been in Spain and seen boys and girls 12 years old that walked under the machines, stood on boxes a foot tall to work on them. They work for 3 years in Spain for no pay before they get any pay for working on shoes.

Now, this is just an example.

Now, in Italy the Italians have been exporting shoes in larger numbers for a longer time, and they have gotten into larger plants. There are more larger plants in Italy, but they do have the same machinery, the same type machinery, manufactured by the same people that we use.

Senator NELSON. What percentage of U.S. imports of nonrubber footwear are imported by U.S. manufacturers of nonrubber footwear or by their retail outlets or their import subsidiaries?

Mr. LOCKRIDGE. Senator, I do not think that anybody, unless you tabulated that company by company, can give you that answer. My opinion is that in the major companies that somewhere in the neighborhood of maybe 5 to 10 percent at most of their usage would be imported.

Senator HANSEN. You are talking about nonrubber imports by nonrubber manufacturers?

Mr. LOCKRIDGE. That is right.

What is happening is, in our industry we have a lot of distribution in this country by large chains, and these large chains to a large extent buy more of this material.

Is that basically correct?

Senator NELSON. You are talking about retail chain outlets?

Mr. NELSON. Can you give us any profit data on the large shoe companies over the past half a dozen years?

Mr. LOCKRIDGE. Well, Mr. Richardson might. I can give you roughly, I can tell you we only have one competitor, being at the bottom of the totem pole, and that is the apparel industry in sales per dollar——

Mr. RICHARDSON. The profitability of the shoe industry after taxes is at the bottom of the totem pole, as Mr. Lockridge says. Somewhere around 1.9 percent on sales. And I think that is the same as the apparel industry industry. I am not sure whether that was your question, Senator Nelson.

Senator NELSON. What would the picture be if you broke out of there the largest and most efficient of our manufacturers?

Mr. RICHARDSON. Some of the companies that you suggested earlier in the questioning.

Senator NELSON. I did not.

Mr. RICHARDSON. I am sorry. There was reference to several larger shoe manufacturers. Unfortunately, and it is obviously regrettable from our standpoint—it is regrettable to me because the shoe manufacturers pay their dues based on their net earnings—the stocks of all of our major shoe companies dropped off something like 57 percent last year when the stock market was down for Owens about 30 or 32 percent.

The earnings of major shoe companies in their shoe area have not been up to what would be expected of anywhere near the average American corporation. And they are working hard to get around that problem. But at the moment it is not as high as they would like it to be.

Senator NELSON. You are saying it would be substantially below the average for American industry?

Mr. RICHARDSON. Absolutely, absolutely. As a matter of fact, we were exempted from wage-price controls because of the very fact that the profitability of even these large, major integrated companies did not warrant the attempt to control their wages and prices.

Mr. LOCKRIDGE. Senator, if you took the major companies that we were discussing, I think before you got here, the five major companies in this country that have about 25 percent of the shoe business, manufacturing business, and you looked at them on the basis that you are talking about, we would be looking at somewhere around 3 percent average for those corporations.

Senator NELSON. Three percent of what?

Mr. LOCKRIDGE. Per dollar sales, 3 percent, profit return on sales.

Senator NELSON. On sales?

Mr. LOCKRIDGE. Yes. We said the industry level was about 1.9 percent. Those companies would be about 3 percent. So that is the top, that is the cream of the ——

Senator NELSEN. How much does that tell us when you say 3 percent of sales?

It would be very profitable in certain businesses.

Mr. LOCKRIDGE. I know you have to look at net return on assets, but we are way down on that whole operation.

Senator NELSON. Do you have anything further?

Senator PACKWOOD. I have one further question. I think I know what Senator Nelson is aiming at. I used to work in labor relations and negotiate for the food industry. As I recall they very seldom had more than 3 percent profit on sales. But they had a substantial volume and turnover, and it was a very adequate return for that kind of an industry. I am not sure if the shoe industry fits into that same type of category or not.

Mr. LOCKRIDGE. We have about a five time turn a year, five to six.

Senator PACKWOOD. It is a lot slower than lettuce.

I want to make sure I understood Mr. Lockridge's answer about wage competition, assuming all trade barriers would be eliminated. If 15 years down the road you knew there would be no trade barriers here or overseas, and no export subsidies of any kind overseas, then you are reasonably confident you could compete?

Mr. LOCKRIDGE. In how many years?

Senator PACKWOOD. 15 years.

Mr. LOCKRIDGE. I certainly think we could.

Senator PACKWOOD. So what you really need is a fair deadline in getting there and the same standards applied to everybody in the world. And so long as you could have that fairness you can beat the low wage competition if that is the only thing you have to beat.

Mr. LOCKRIDGE. That is right, because of the low wage competition 15 years out, talking about what Senator Hansen was talking about. We go together. This is going to help, and I am sure with our hard

work and know-how that we will increase our productivity. We are working on it.

Senator PACKWOOD. Thank you very much.

Senator NELSON. Thank you, gentlemen.

Mr. LOCKRIDGE. Thank you all.

[The prepared statement of Mr. Lockridge follows. Hearing continues on p. 1919.]

PREPARED TESTIMONY OF ROBERT S. LOCKRIDGE, COCHAIRMAN, FOOTWEAR INDUSTRY EMERGENCY COMMITTEE ON TRADE POLICY IN BEHALF OF THE AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION

I am Robert S. Lockridge, President of Craddock-Terry Shoe Corporation, Lynchburg, Virginia, and Co-Chairman of the Footwear Industry Emergency Committee on Trade Policy. Accompanying me is Mark Richardson, President of the American Footwear Industries Association. We are here on behalf of the American Footwear Industries Association.

Our association represents the manufacturers of 95% of the leather and vinyl footwear produced in the United States and, through our associate members, about 85% of all the suppliers to the footwear industry. There are approximately 500 companies with about 800 plants in our industry—numbers which have been declining over the last several years—located in 40 states. The industry now employs about 200,000 workers directly in its manufacturing operations— There are about 100,000 workers in allied supporting industries. A great many of our plants are located in the smaller communities of our country where the shoe manufacturer often is the major or sole employer.

The message we bring before the Committee today is a simple one. It is the same that we brought to the House Ways and Means Committee. *The American footwear industry is suffering drastic injury because of continuing disruptive imports* which have caused reduced production, the closing of plants, loss of jobs, and approximately a $1 billion net trade deficit for the United States. In every category through which the health of a particular industry is measured, an examination of the facts reveals a story that is tragic to an important industry such as ours and revealing as to the failure of the Administration to act within its professed trade policy and in keeping with existing laws. Imports are eroding our ability to continue as a viable industry. The remedy we seek lies in action by Congress, and now specifically by the Senate, because the Executive Branch has not provided our industry with warranted and needed import relief through mechanisms already at its disposal despite the serious injury caused by disruptive imports.

I. CURRENT SITUATION

Import Penetration is Growing.—In 1960, the import penetration ratio for nonrubber footwear was less than 5%. As early as 1960 our association pointed out the trend of imports. By 1968, when we first appeared before Congress asking for relief from imports it had reached 22%; in 1970 when a trade bill was again considered by Congress it had risen to 30%. And in 1973, when Congress began its consideration of H.R. 10710, import penetration of the domestic market had risen to 40%. Unfortunately our analyses had proven correct again. The import penetration for women's and misses' nonrubber footwear, which accounts for better than half of our total production, was 51% of the total market last year. (Attachment A)

No other major industry in the U.S. suffers from an import penetration of this magnitude.—The effects on the economy in general and on the nonrubber footwear industry in particular of this massive degree of import penetration are devastating.

Trade Balance is Deteriorating.—Whether or not one is concerned about the state of health of our industry, one should certainly be concerned over the effect of burgeoning imports on the nation's balance of payments. Five years ago net imports (imports less exports) of nonrubber footwear totaled 175 million pairs valued at $330 million. When we appeared before Congress last, in 1970, net imports totaled 240 million pairs valued at $560 million. By 1973, net im-

ports had jumped to 316 million pairs valued at just under $1 billion. (Attachment B)

Last year's experience represented an unbroken continuation of higher and higher imports. The import growth in 1973 over 1972 was 6.4% in terms of pairs and 16.9% in terms of value. At the same time the other two domestic industries with massive import penetration—iron and steel and textiles and apparel—enjoyed a noticeable reduction in imports last year over 1972.

All Industry Indicators Are Down.—The effects of imports of this magnitude upon our industry cannot be disregarded in any consideration of trade legislation. *Production* is down; *Employment* is down; *Number of plants* is down; and *Profits* are down.

The only thing that is up in the industry is its *problems.* Imports have cost our workers over 43,000 jobs since 1960, and total direct employment has now dipped below 200,000. In 1973, we lost an additional 3% of our work force. (Attachment C) While all manufacturing has enjoyed a better than 10% gain in employment since 1960, employment in the domestic footwear industry has dropped by more than 15%. Fewer jobs mean fewer plants. Data recently released by the U.S. Department of Commerce reveal that the number of nonrubber footwear manufacturers dropped 35% between 1967 and 1972—from 799 to 525. The number of plants also fell sharply from 1,083 to 813 during this period. (Attachment D)

As a result, domestic production in 1973 fell to 488 million pairs, the lowest level of domestic production in more than 20 years, and 7% below the 1972 level, and 150 million pairs below production only five years earlier. (Attachment E)

I also wish to point out to the Committee at this time that the nonrubber footwear industry shares the "distinction" with the apparel industry of having the lowest profit per dollar of sales of any major manufacturing industries in the U.S.

II. CAUSES OF STRONG IMPORT PENETRATION

There are basically three main reasons why imports account for an increasingly high percentage of domestic consumption each year. They are (1) the substantially lower wages paid workers in the footwear industries of exporting countries; (2) high tariff levels and other import restrictions maintained by many importing countries; and (3) subsidies extended by many foreign governments to assist their footwear industries in exporting.

Labor Costs Are Substantially Lower Abroad.—Most foreign manufacturers pay wage rates that would be illegal in the United States, generally less than 50% of the U.S. wage level. There are few prohibitions on child labor abroad. There are even fewer concerns for environmental or occupational health and safety standards. In an industry as highly labor intensive as ours, where labor input represents 20–45% of manufacturing cost, these lower labor costs overseas more than offset the higher productivity of the U.S. industry compared with that of our foreign competitors. For 1972, estimated average hourly earnings, including fringe benefits, were as follows:

United States	$3.22
Italy	1.82
Japan	1.33
Argentina	.75
Spain	.62
Brazil	.42
Taiwan (1971)	.21

Other Markets Restrict Imports To Our Detriment.—Other importing countries do not permit imports as freely as does the United States. Countries which are major exporters to us are even more restrictive in what they will allow to be imported. The high tariff and non-tariff barriers maintained by other countries act to funnel into the relatively open, low-tariff U.S. market footwear that would otherwise go to other markets. The Department of Commerce released on March 15, 1974, a survey of tariff and trade regulations of selected countries in the field of nonrubber footwear. The survey shows that the average U.S. import duty is 10% ad valorem on leather footwear and 6% on vinyl footwear. On the other hand, Argentina, India, Korea, and Turkey do not permit footwear imports. Brazil maintains import duties of 70% to 120% and Taiwan has duties of 59% to 130%. Japan has an import duty ranging from 27% to 30% for most nonrubber footwear imports and maintains import

quotas. The Common External Tariff of the European Economic Community ranges from 7% to 20% plus a value added tax that ranges from 5.2% in the case of Ireland to 20% in the case of France. Spain maintains import duties ranging from 8% to 35% plus a compensatory import tax of 10%.

Many Countries Subsidize Their Exports To Us.—So devastating to our industry are the subsidies paid by several foreign governments to assist and encourage their footwear industries to export to the U.S. The Argentine Government provides cash reimbursement of up to 30% of the f.o.b. value of exported shoes, grants low-interest loans for up to 80% of the value of exports, reduces the taxable income of exporters, and provides other tax incentives. The Brazilian Government exempts producers of footwear (and other industrial products) from various indirect taxes including exemption from taxes on import of capital goods designed to expand export capacity, and also provides low interest credits for exporters. The Spanish Government pays export bounties not simply as a credit against taxes but as cash remissions for export sales. In addition, the Spanish Government guarantees loans to local manufacturers equalling 20% of the export dollar value of the preceding year at interest rates significantly lower than prevailing commercial rates for similar purposes. Other countries, including Korea and some of the European Common Market countries, also offer subsidies to their footwear industries.

The American Footwear Industries Association is unfortunately well aware of the footwear subsidization practices of foreign governments. Our industry feels the full impact of this unfair competition in the domestic market. It has filed two petitions under the countervailing duty statutes with the Treasury Department documenting in detail the practices of the Spanish Government (filed in February 1973, 14 months ago) and the Brazilian and Argentine Governments (filed in July 1973, 9 months ago). Yet it was only on March 8, 1974 that the Treasury Department announced that it had instituted an investigation on Brazilian footwear, other than rubber. No action has been taken to date on our petition with regard to Spain or Argentina. It is essential that action be taken expeditiously and affirmatively in the Brazilian case, and that investigations be instituted in the Spanish and Argentine cases.

All of this translates into the fact that, with a relatively small duty today on imports of footwear, other than rubber, the differential between landed costs of imports and domestic average factory value is significant. In the case of leather footwear from Italy, it would require an additional duty of 31% to equalize domestic and import values. In the case of Spain, the differential is 25%, also for leather footwear. For Brazil, it is 63%. For Argentine, it is 31%. For Romania, without MFN status, it is 112%. In the case of Taiwan, for vinyl footwear, which represents 95% of the total value of nonrubber footwear shipments from Taiwan to the United States, the differential is 240%. (Attachment F)

These differentials point up the danger to our industry of extending generalized tariff preferences to footwear. We are pleased that the President said in his message to the Congress of April 10, 1973 transmitting the Administration's trade proposals that it would be the "intention to exclude certain import-sensitive products such as . . . footwear . . ." We feel that if Congress should accept the idea of generalized tariff preferences (Title V of H.R. 10710), footwear should be excluded from its provisions in the statute itself.

We are concerned about growing imports of nonrubber footwear from the developing countries because they are today the fastest growing foreign sources of nonrubber footwear in our market. (Attachment G) Taiwan has replaced Italy as the leading supplier of footwear, other than rubber, to the U.S. market—112 million pairs in 1973, 35% of total nonrubber footwear imports. Keep in mind Taiwan's hourly wage rate is $.21—the U.S. $3.22, or 15 times as great.

Brazil and Argentina are also cases in point. In 1973, the U.S. imported almost 20 million pairs of nonrubber footwear from Brazil, an increase of 65% above the 1972 level. Imports from Argentina jumped from less than 500,000 pairs in 1972 to almost 4 million pairs a year later—an increase of 733%. Greece, Mexico, and Romania have all registered similar impressive advances. The latter, despite the fact that it does not enjoy MFN status, increased its exports to us from 1 million pairs in 1972 to 2.5 million pairs in 1973, an increase of 131%. We are pleased that the Treasury Department finally initiated an anti-dumping investigation on welt work shoes from Romania on March 15, 1974. The American footwear industry first called the Treasury Department's attention to the dumping of Romanian work shoes in 1968!

III. ADMINISTRATION INACTION AND CONGRESSIONAL REMEDY

The problems faced by our industry from imports have been with us for some time. They did not arise to injure our industry for the first time in 1973 or in 1974. What is happening is that unrestrained, growing disruptive imports are weakening our industry s position by what appears to be a deliberate policy of the Administration ignoring its professed trade policy and the requirements of existing law that action be taken on a timely basis.

We have tried to work through the established procedure of the Trade Expansion Act of 1962, namely, the escape clause. We had great hopes and expectations when in July 1970, as the Congress was considering trade legislation, President Nixon requested the Tariff Commission to launch an escape clause investigation on nonrubber footwear. Six months later to the day (January 15, 1971), the Tariff Commission submitted to the President its report with an evenly-divided decision. Even the two Commissioners who voted in the negative did so because they did not feel that injury resulted in major part from tariff concessions, not because they felt there was no injury to our industry from imports.

It has been over three years since that Tariff Commission report was submitted to President Nixon. Yet to date the President has taken *no* action in the case—either affirmatively or negatively. As the Committee members know, under split Tariff Commission decisions in escape clause cases, the President can join either with the Commissioners' finding affirmatively or with those expressing a negative judgment. The promise which the escape clause investigation held for our industry has been shattered by the failure of the Administration to act on this issue. We have seen how imports have continued to mount while jobs have been lost and production has fallen since the Tariff Commission's report was filed. That is why we are appealing to the Congress for help. What we are asking for is well within the scope of your powers. The key question you must face is how much import disruption, how much import penetration of the domestic market, how much loss of capacity and jobs, how much declining production, must an industry endure before action is taken to restrain imports. This question poses serious concerns not only for the nonrubber footwear industry but also for others who may some day be in a position similar to the one we are in today.

For these reasons, our industry supports legislation such as that introduced by Representative Richard Fulton in the House (H.R. 8518), the Footwear Articles Import Relief Trade Act. We hope that the Senate would consider similar legislative language. This realistic and reasonable approach to the import problem faced by our industry would use calendar years 1970 through 1972 as the base period for establishing import quotas. At the same time, there would be provision for the automatic suspension of such quotas if international agreements are entered into to provide for restraints on exports to the United States of nonrubber footwear. The President would be authorized to increase imports where he finds that the supply of such footwear is inadequate to meet domestic demand at reasonable prices. This approach also would provide for exemption by the President from quota restrictions when he determines that such exemptions will not disrupt the domestic market.

Such legislation would be fair to producers, workers, and consumers. Consumers would be fully protected by the authority given to the President to exempt nondisruptive imports from quota controls and by allowing him to increase quotas if he should find that the supply is inadequate to meet the domestic demand at reasonable prices. At the same time, the significant erosion of the U.S. market from imports which has been so detrimental to the health of our industry would be halted.

IV. THE TRADE REFORM ACT WILL NOT HELP US

In appealing to Congress for legislation to help our industry—either as part of the trade bill or as separate legislation—we feel strongly that the Trade Reform Act will not assist our industry any more than did the Trade Expansion Act. We find serious problems with the Trade Reform Act as passed by the House.

1. *Tariff Cutting Authority.*—An analysis by the American Footwear Industries Association shows that imports of 19 types of footwear on which tariffs

were reduced during the Kennedy Round increased 110% in the five years after these tariff cuts were made compared to import levels in the years immediately preceding the Kennedy Round. On the other hand, there was a much smaller increase of 39%, in imports of 4 types of footwear on which no tariff cuts were made during the Kennedy Round.

Our industry cannot tolerate further tariff cuts. The trade bill should specifically exempt from the trade negotiations industries such as ours which suffer from substantial import penetration. Indeed it was our hope that one of the remedies which might have come out of the Tariff Commission's escape clause investigation would have been increases in tariff rates for nonrubber footwear through the application of a traiff quota system.

2. *Import Relief.*—The Trade Reform Act has been hailed by some as providing a better means of delivering import relief, primarily through the escape clause, than does existing legilsation. We disagree. We believe that the promise to delivery import relief exceeds the actual willingness to do so. If the Administration has not been willing to date to use the existing procedures open to it under the present escape clause to provide import relief for an industry such as ours, so damaged by imports, then we must question whether any industry can secure import relief from the Executive Branch, when no desire to provide relief exists.

Indeed H.R. 10710 contains new provisions under the escape clause applying to the Tariff Commission and to the President which, in our judgment, will act to preclude the delivery of import relief. The factors, for example, which the President must take into consideration under Section 202 before reaching a decision run clearly counter to providing such relief and should be deleted. I am referring here to the rquirement that the President, in deciding whether or not to provide import relief, must consider the possible effectiveness of import relief as a means to promote adjustment, the effect of import relief on consumers, the impact of such relief on industries which might be affected as a result of international obligations to provide compensation, and the economic and social costs which would be encountered by taxpayers, communities, and workers, if import relief were or were not provided. All of these factors can be the subject of major differences of opinion, and bring into question the effectiveness of the escape clause procedures in H.R. 10710 in providing import relief.

The only way in which any degree of certainty can be introduced into the escape clause procedure to sssure import relief when a case has been made that imports are a substantial cause of serious injury to an industry, would be to include a trigger mechanism that would result in relief when imports reached certain levels of penetration of the domestic market.

3. *Relief from Unfair Trade Practices: Countervailing Duties.*—The American Footwear Industries Association, as we have noted, has had much experience with the countervailing duty statutes. We know from experience that they are not being enforced by the Administration in a diligent manner. The revisions contained in Section 331 of H.R. 10710 will do nothing to correct that situation.

The provision for a one-year time limit for the Secretary of the Treasury to make a decision is meaningless. The one year does not begin until the Treasury Department staff presents the case to the Secretary for determination. No limit is set on how long the Treasury staff may take. And we know, again from experience, that it can take years.

The discretionary four-year moratorium while trade negotiations are in progress will legalize the present non-enforcement of the countervailing duty statutes.

What is needed are provisions which will (a) set a six-month time limit on the total time which the Treasurey Department may take to make a decision beginning with the date of filing of a complaint, and (b) require a published report within six months after a complaint is filed on the detailed findings of the Treasury Department in those cases where a negative decision is reached by the Treasury Department. The new Section 331 providing for judicial review in cases of negative determinations would then be available to complainants receiving such negative determinations.

4. *Relief from Unfair Trade Practices: Anti-Dumping Duties.*—We are concerned as well over the Administration's policies under the anti-dumping procedures. I referred earlier to the recent initiation of an anti-dumping inves-

tigation on welt work shoes from Romania after many years of effort on our part to have such an investigation initiated. Certainly the recent action by the Secretary of the Treasury in his role as Chairman of the Cost of Living Council in requesting the Tariff Commission to "reopen, reconsider, and reverse" its determination in the lead dumping case calls into question the intent to implement the anti-dumping statutes. We are mindful of the fact that the Secretary of the Treasury is also Chairman of the East-West Trade Policy Committee!

We object to the new provision in the trade bill (Section 321) that would give only foreign manufacturers, exporters, and domestic importers the automatic right to appear at anti-dumping hearings conducted by the Secretary of the Treasury and the Tariff Commission. American manufacturers would have to show good cause befor they could present their views. We recommend that American manufacturers be accorded the same rights as others in appearing in such hearings.

5. *Generalized System of Preference.*—There should be written into the bill specific exemption from the provisions of Title V of those industries, to be enumerated in the statute, which are experiencing disruptive import competition. Footwear should be specifically exempted from Title V.

V. CONCLUSION

The conclusion our industry has reached is that we cannot support the trade bill currently before you. We take this position not only besause of the serious weaknesses which we find in the bill itself, but also because, as it now stands, the bill provides no import relief for the American footwear industry.

In summary, we recommend the following to you:

1. We must have specific legislation to deal with the problems of the footwear industry because the record of the Administration in meeting problems of disruptive import competition faced by our industry gives us no confidence that now, or in the future, under the existing trade legislation or under H.R. 10710, there will be any Executive Branch solution to this problem.

2. The trade bill before you should be modified in several respects.

1. Industries such as ours which suffer from substantial import penetration should be specifically exempted from trade negotiations.

2. The escape clause should include a trigger mechanism that would assure relief when imports reached certain levels of penetration of the domestic market.

3. The factors which the President must take into consideration in escape clause cases before reaching a decision run counter to providing relief and should be deleted.

4. In countervailing duty cases, there should be a six-month limit as the total time which Treasury may take to make a decision beginning with the date of filing a complaint.

5. In anti-dumping cases, American manufacturers should be given the right to appear in hearings without having to show good cause.

6. The provisions for a generalized system of preference should specifically exempt industries, such as ours, which are experiencing disruptive import competition.

Effective action must be taken now to help our industry. Our future, in part, is in your hands. We ask only for fair play so that we can compete on a basis which makes it economically justifiable to remain in business.

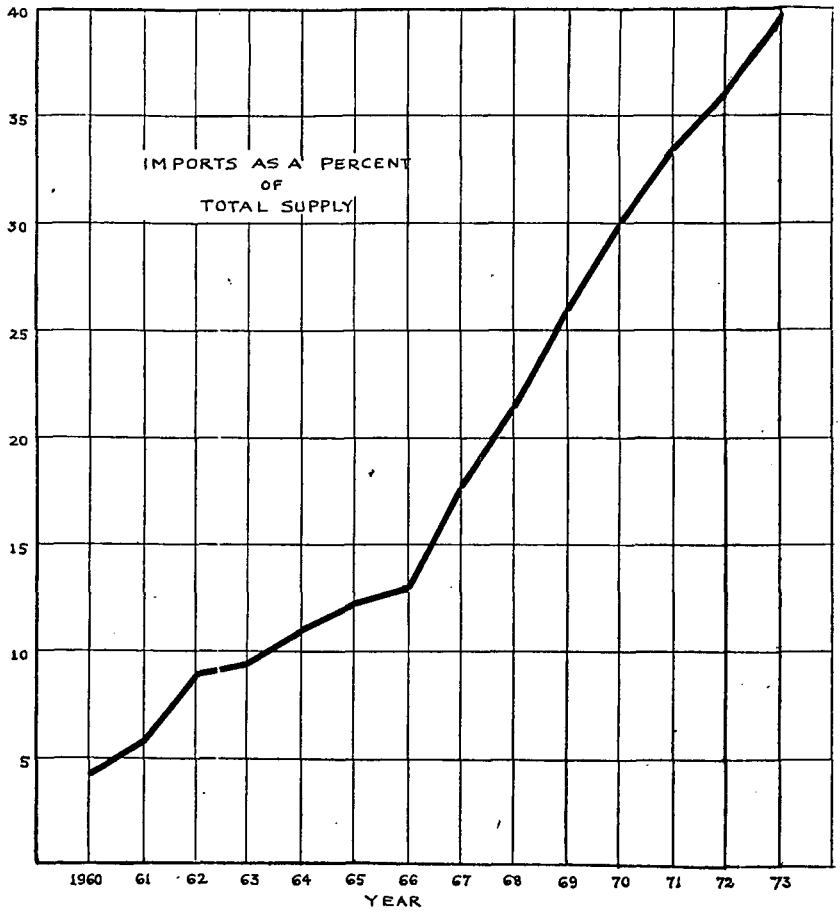
LIST OF ATTACHMENTS

A. Nonrubber Footwear: Imports as a Percent of Total Supply, 1960–1973
B. Nonrubber Footwear: Net Imports—pairs and value, 1960–1973
C. Employment in Nonrubber Footwear Manufacturing Establishments, 1960–1973
D. Net Openings and Closings of Nonrubber Footwear Manufacturing Establishments, 1960–1973
E. Nonrubber Footwear: Domestic Production and Imports, 1960–1973
F. Nonrubber Footwear: Landed Costs of Imports Compared to Domestic Average Factory Value, (Based on 1972 Data)
G. U.S. Imports of Nonrubber Footwear, 1968–1973

ATTACHMENT A

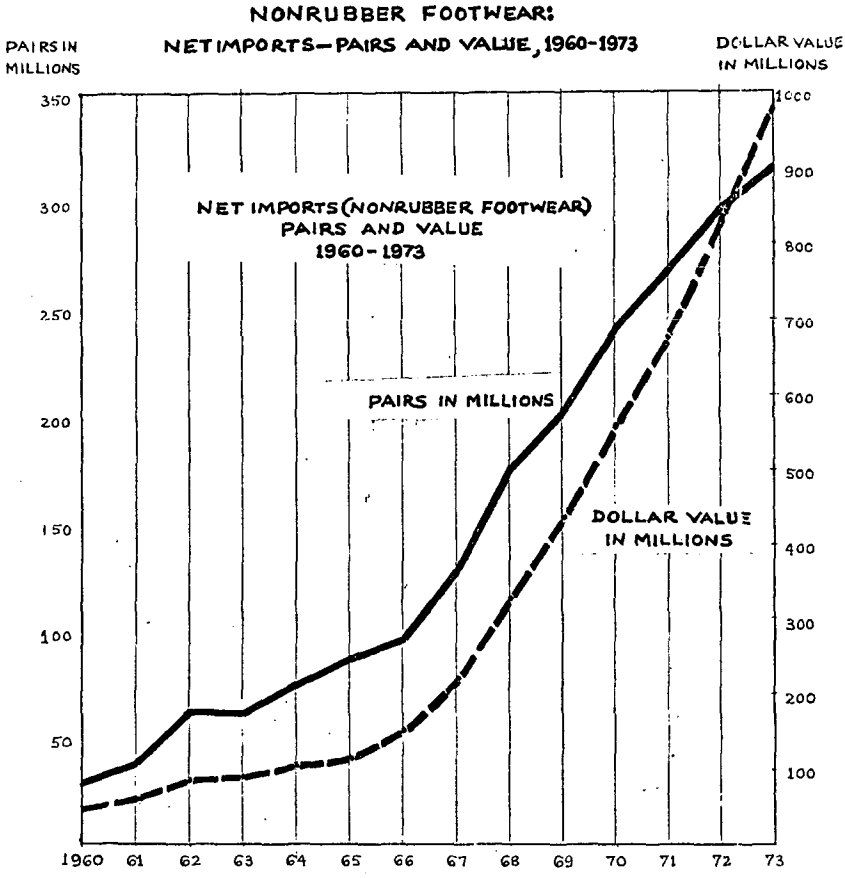
NONRUBBER FOOTWEAR: IMPORTS AS A PERCENT OF TOTAL SUPPLY

1960 - 1973



SOURCE: BASED ON DATA FROM U.S. DEPT. OF COMMERCE.

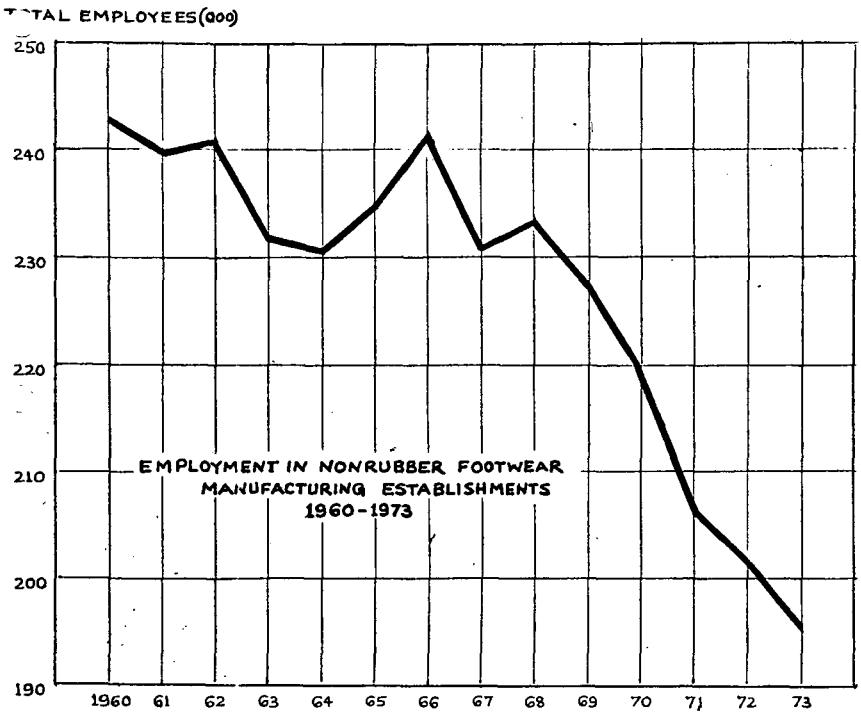
ATTACHMENT B



SOURCE: BASED ON DATA FROM U.S. DEPARTMENT OF COMMERCE

ATTACHMENT C

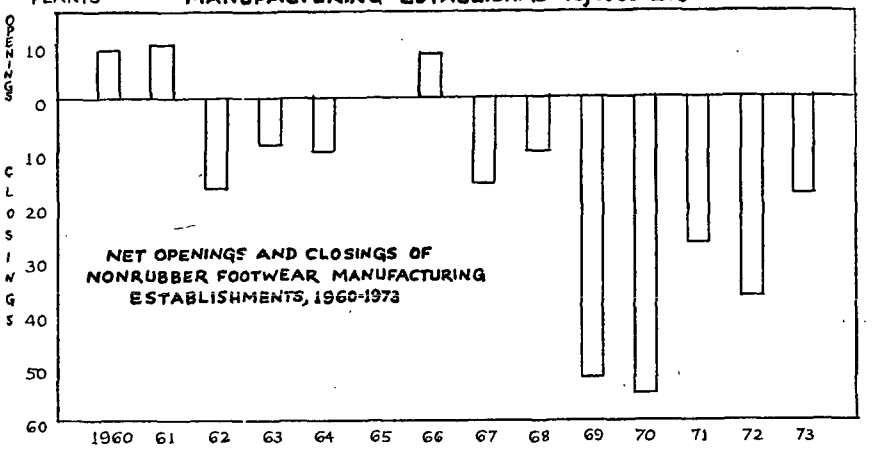
EMPLOYMENT IN NONRUBBER FOOTWEAR MANUFACTURING ESTABLISHMENTS, 1960-1973

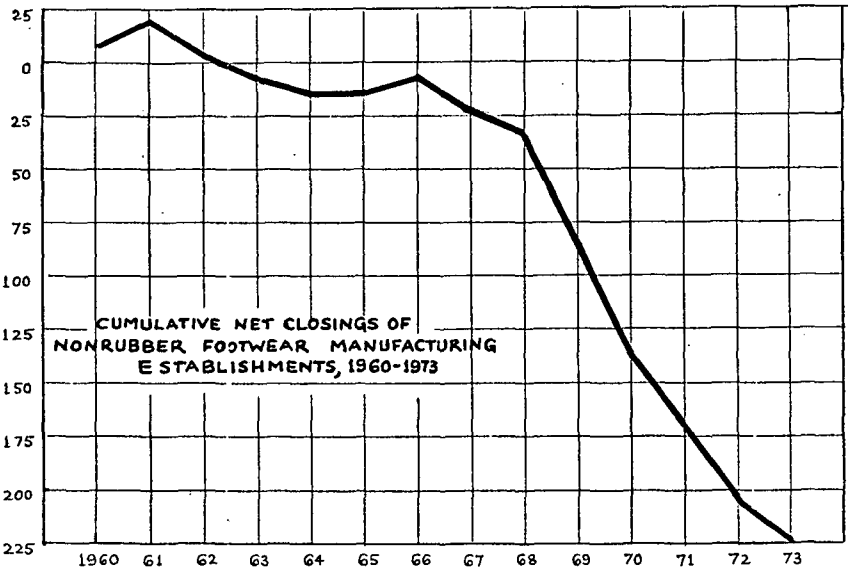


SOURCE: U.S. DEPARTMENT OF LABOR, B.L.S.

ATTACHMENT D

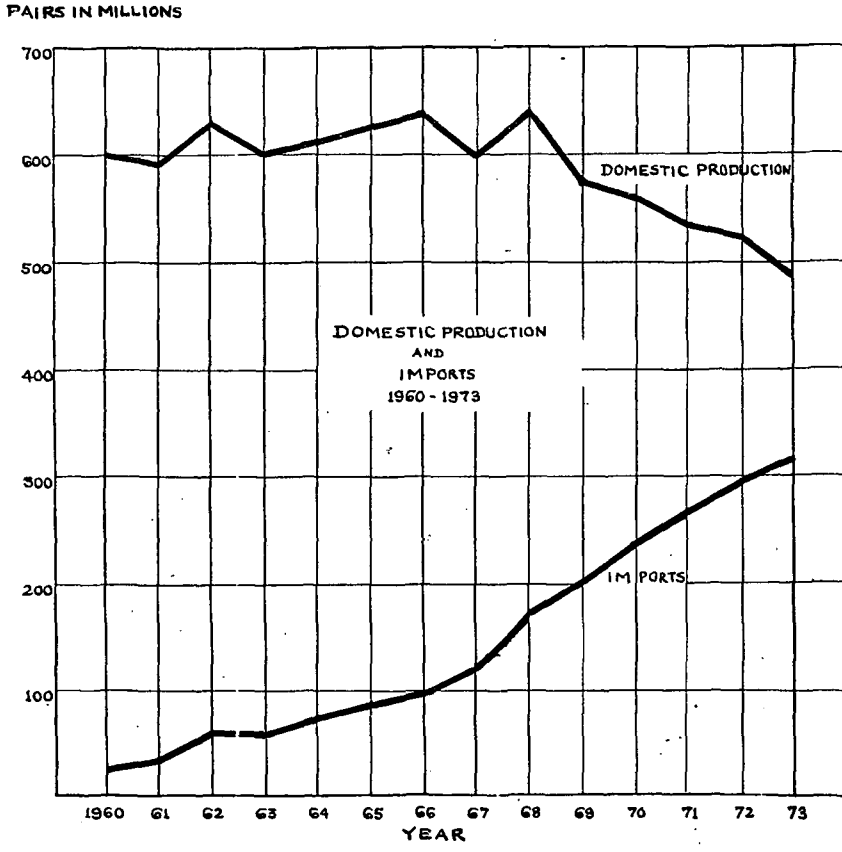
NET OPENINGS AND CLOSINGS OF NONRUBBER FOOTWEAR MANUFACTURING ESTABLISHMENTS, 1960-1973





ATTACHMENT E

NONRUBBER FOOTWEAR:
DOMESTIC PRODUCTION AND IMPORTS
1960 - 1973



SOURCE: U.S. DEPARTMENT OF COMMERCE

ATTACHMENT F.—NONRUBBER FOOTWEAR: LANDED COSTS OF IMPORTS COMPARED TO DOMESTIC AVERAGE FACTORY VALUE, BASED ON 1972 DATA

	Total Nonrubber	Men's youths', and boys'	Women's misses', children's, and infants'	Slippers including soft soles	Italy, leather footwear [1]	Spain, leather footwear [2]	Brazil, leather footwear [3]	Taiwan, Vinyl footwear [4]	Romania, leather footwear [5]	Argentina leather footwear [6]
1. F.o.b. average value per pair of imported footwear	$2.81	$4.50	$2.48	$0.88	$4.40	$4.60	$3.58	$0.85	$2.68	$4.40
2. Average duty (percent)	8.9	8.2	9.4	6.0	10.0	9.8	10.0	6.0	19.3	10.0
3. Duty in dollars (percent duty times f.o.b.)	$0.25	$0.37	$0.23	$0.05	$0.44	$0.45	$0.36	$0.05	$0.52	$0.44
4. C.i.f. costs	$.33	$.37	$.32	$.31	$.33	$.33	$.33	$.33	$.33	$.33
5. Landed cost	$3.39	$5.24	$3.02	$1.24	$5.17	$5.38	$4.27	$1.23	$3.53	$5.17
6. Average factory value per pair	$5.56	$8.21	$5.37	$1.67	$6.54	$6.54	$6.54	$3.27	$6.54	$6.54
7. Line 6 minus line 5 (difference between landed value of imports and average factory value	$2.17	$2.97	$2.35	$0.43	$1.37	$1.16	$2.27	$2.04	$3.01	$1.37
8. Required additional duty to equalize domestic and import values (percent)	77.2	66.0	94.8	48.9	3.11	25.2	63.4	240.0	112.3	31.1

[1] Leather footwear from Italy accounted for 90.4 percent of the total f.o.b. value of shipments from Italy.
[2] Leather footwear from Spain accounted for 94.4 percent of the total f.o.b. value of shipments from Spain.
[3] Leather footwear from Brazil accounted for 99.7 percent of the total f.o.b. value of shipments from Brazil.
[4] Vinyl footwear from Taiwan accounted for 95 percent of the total f.o.b. value of shipments from Taiwan.
[5] Leather footwear from Romania accounted for 100 percent of the total f.o.b. value of shipments from Romania.
[6] Leather footwear from Argentina accounted for 89.9 percent of the total f.o.b. value of shipments from Argentina.

ATTACHMENT G.—U.S. IMPORTS OF NONRUBBER FOOTWEAR, 1968–73

[In thousand pairs]

Country of origin	1968	1969	1970	1971	1972	1973
Taiwan	15,316	25,897	42,045	64,787	91,259	111,702
Italy	58,996	61,083	80,680	77,849	79,698	76,853
Spain	14,248	20,729	21,250	31,216	39,254	36,805
Brazil	(1)	377	2,410	8,136	11,809	19,528
Mexico	2,468	2,451	3,963	3,538	4,044	14,810
Japan	65,145	66,632	59,789	51,371	27,502	9,124
Korean Republic	(1)	879	1,924	3,296	7,950	7,173
Hong Kong	2,300	4,311	5,465	5,995	6,813	6,512
Argentina	(1)	(1)	56	301	465	3,875
Austria	149	199	270	365	1,373	3,108
India	1,924	2,097	2,926	3,029	3,547	2,762
France	2,622	2,520	3,102	2,883	2,957	2,742
Romania	740	601	585	681	1,068	2,467
Greece	83	228	480	776	1,581	2,381
Canada	1,731	1,978	2,527	2,194	2,272	2,265
West Germany	962	1,942	2,807	2,453	2,660	1,794

[1] Negligible.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Senator NELSON. Our next witness is Mr. Irving Glass, president of Tanners' Council of America.

Mr. Glass, the committee is very pleased to have you here today.

STATEMENT OF IRVING R. GLASS, PRESIDENT, TANNERS' COUNCIL OF AMERICA, INC.

Mr. GLASS. Senator Nelson, Senator Packwood, Senator Hansen, I am rather gratified at the request you directed at Mr. Lockridge in your dialogue with him. In a sense, it seems to reflect the very issues to which we have sought to address ourselves in the statement we have left with you.

Senator Packwood, for example, asked a question which involves the philosophy of the trade legislation that you have under consideration. It is somewhat paradoxical to us, the bill is described as the Trade Reform Act. We do not see it as a Trade Reform Act, because we do not think it comes to grips with the fundamentals of the whole context and background of trade in the world today.

Senator Hansen, for example, asked whether it would be possible under the conventional and traditional concept of the free movement of men, materials and money to achieve equity in trade today. My answer to that question, Senator Hansen, would be, we do not think it is at all possible, because the very basic context of world trade today has changed, with virtually half or more of the world's population living under controlled or semicontrolled economies.

Ours is an industry that was literally nurtured and bred with the concept of free trade. Tanners were traders. They traded all over the world. They cannot trade today. We no longer have the opportunity for the free movement of men, materials, and money.

Let me give you a very direct and pertinent illustration today. By all of the precepts and the preachments of Adam Smith in free trade, our tanning industry in the United States today should be one of the most flourishing industries in the country. We are blessed with unequalled raw material resources, in your State and others.

We have the largest supply of cattle hides, quality cattle hides, the world has ever known. We have got the techniques, the know-how, the plants, the people. We can make leather better and cheaper than anyone else in the world.

We are not permitted to export that leather. We are not permitted to bring the advantages of our productivity, our costs, our ability to anticipate style trends, our ability to give value to consumers. We are not permitted to export.

You have heard, I am sure, in the course of recent years the squawks that have come from various industries, and I trust not least ours, about the absolute embargo against U.S. leather imposed in Japan. Some 25 years ago we began addressing ourselves to various governmental agencies and to the Congress, imploring help in removing the trade barrier which Japan imposes against the import of leather from the United States.

Senator NELSON. Do they prohibit it totally, or do they have a high tariff?

Mr. GLASS. It is prohibited totally by import quota, by currency control.

Senator NELSON. Where do they get their leather?

Mr. GLASS. I would be very happy to expand on the answer, sir.

Senator NELSON. Go ahead.

Senator PACKWOOD. I would like to know, because I did not think the Japanese had any indigenous cattle industry.

Mr. GLASS. They do not, except for a very small quantity of hand-massaged Matsuoka beef. There is no beef. They import all of their hides from the United States. Japan is the largest importer of U.S. hides. Last year Japan acquired some 7 million hides in the United States.

Senator NELSON. Oh, you are saying they will not permit the tanned product to come in, but they will take the raw hide?

Mr. GLASS. Yes.

Senator HANSEN. If the witness would yield at that point, let me observe to my distinguished colleagues, I am in the cow business. I said I was a farmer. I tried to upgrade myself by describing myself as a farmer. Actually, I am a rancher. And we have caught it both ways.

Most people in America like to have cheap beef, you know. It is all right for wages and everything else to go high. But for heaven's sakes, do not let meat go high. Well, a few years ago, the Japanese demand for raw hides, as the witness has just observed, was quite dramatic in its rise and cattle hides, went from about $5 to $6 per hide to about $11 or $12. President Johnson imposed an export embargo on raw hides because, I think there was no question, had these hides continued to move out of the country, the price of shoes might have raised the price from $1.50 to $3.50 per pair.

So I know a little bit about what the witness is saying. It is absolutely right. There is a great demand over there for it.

Mr. GLASS. I would like to think, Senator Hansen, on that issue we are allies, rather than being what is described today as an adversary position.

What the Japanese have done by currency control and by a virtual embargo on U.S. leather is to lay the groundwork over a 25-

year period for their own processing and their own development of leather. But to this date, they cannot produce leather of the quality and the value which our greater productivity and know-how makes possible in this country.

The initial excuse 25 years ago was a dollar shortage. When that obviously became nonsense, several other excuses were developed by Kishi, the Japanese Minister of International Trade Ministry. They claimed there was a certain minority, a privileged group of workers who had to be protected, and therefore U.S. leather had to be excluded.

To this day they impose a quota on import of U.S. leather which is so ludicrously small it is meaningless.

Senator NELSON. It is not an absolute embargo, then?

Mr. GLASS. 99 percent.

Senator PACKWOOD. I might add, they do the same thing to logs. They will not purchase processed lumber. They have a very extensive lumber industry in Japan to use the raw logs they import and process there.

Mr. GLASS. Japan is not the only country. There are many other countries. And this in a sense addresses itself to the question raised by Senator Packwood:

What are the equities of trade today?

Where is reciprocity?

We submit to you gentlemen that we think something more fundamental has to be done in framing foreign trade legislation today. We must take account of the basic fact that there is no reciprocity. It would be heartening, encouraging to feel that somehow or other the GATT convention will conquer all. From our observation, very few nations live obsequiously to the GATT convention.

For example, throughout South America there are embargoes or prohibitions against the import of any U.S. leather or leather products. Our duty on leather averages less than 5 percent. The Argentine duty is 90 percent. The Brazilian duty is 75 percent. You have heard from other witnesses about the subsidies granted by South American governments.

We feel that very strongly in the case of leather, because the export of finished leather from Argentina and Brazil, finished shoes and finished leather garments and pocketbooks and small leather goods, is maintained, stimulated, initiated and motivated by subsidies of up to 13 percent.

We have another problem, the Common Market.

How do we cope with the situation where one group of nations derives its revenues through a value added tax?

We have an income tax. Exporters from Europe shipping leather or shoes to the United States gain a remission of the value added tax on their exports. If we ship to Europe we have to pay the full value added tax. We have an immediate barrier there, a nontariff barrier of a kind which completely changes the terms of trade.

There is another issue, I think, that must be considered in the evaluation and in the answer to the questions you have asked.

How do we cope with nations where the free market, where the judgment of the marketplace in terms of cost and price and profit is irrelevant?

If Czechoslovakia as a matter of national policy wants to ship work shoes to the United States, or if Rumania seeks to ship shoes to this country, or India or Spain, national policy is involved. Foreign trade in effect is an instrument of national policy.

How do we cope with that?

How can the free market possibly deal with that situation?

We certainly have not been able to cope with it with respect to Japan. I have had any number of visits from Japanese manufacturers, Japanese retail organizations, who in effect have pleaded with me to plead with our Government, the U.S. Government, to do something to change the Japanese intransigence against imports of U.S. leather. They want it for its value, they want it because it will give a stimulus to their consumer market.

Senator PACKWOOD. Let me ask you something there if I can. You are a labor-intensive industry.

Mr. GLASS. Yes, sir.

Senator PACKWOOD. And yet you have no fear of competing any place in the world, given a fair opportunity to get to markets?

Mr. GLASS. Yes, sir.

Senator PACKWOOD. How can this labor intensive industry do so well in the world if you have free access to the markets?

Mr. GLASS. Because, sir, we benefit from what used to be called by the classical economists certain natural advantages. We have the raw material here at home. We do not have to transport salt water and other things anywhere from 5,000 to 10,000 or 12,000 miles.

Senator PACKWOOD. Argentina has the same resources.

Mr. GLASS. Argentina is building its leather and leather manufacturing industries such as shoes today on the basis of subsidization.

Senator PACKWOOD. I am thinking of the tanning industry particularly.

Mr. GLASS. The tanning industry in this country has the advantage of raw material, the advantage of technique. We have had in he past—it has shrunk, unfortunately—a huge domestic market. That large domestic market made it possible for the typical tanning unit in this country to be a large scale enterprise.

Senator PACKWOOD. What you are saying is, you could compete with Australia or Argentina or New Zealand in markets around the world so long as it was an equal shot for all of you?

Mr. GLASS. Yes, sir. No question about it. As of today, as an industry we say, do not tie our hands behind our backs. If others do unto us as we do unto them, we can compete anywhere in the world today in the production of leather. We could be having tanning plants built in Wyoming, additional plants in Wisconsin, we could have plants going up in the southwest near the new sources of raw materials, the packing plants established throughout the Panhandle.

We could be giving employment today to 10,000, 15,000, 20,000 additional people, because as a nation blessed with raw material we could bring those blessings to the rest of the world. Japan is a direct example. I can say in all conscience that we would be giving an enormous economic advantage to Japan if they permitted us to ship leather into Japan on the same terms as we allow them to ship to us.

Would we benefit?

Of course. But that is as it should be. Any trading relationship that is equal and does not carry mutual advantages is not a good trading relationship.

Lastly, gentlemen, if I may for another moment, I would like to impress upon you the importance of recognizing that in this world with the changed character of the national economies that dominate the larger part of the world, we must give thought to labor intensive industry. I know the term has been used again and again. I know probably every witness in every industry where labor represents more than 10 or 12 percent of the sales dollar has referred to labor intensive industry. The essential, the critical point is, we as a Nation will never be able to solve our problems, the problems of our urban areas, our metropolitan areas, our minority groups, we cannot solve those problems. We cannot achieve the fundamental economic integration of all of our people without having labor intensive industries to absorb so many people, to give jobs to hundreds of thousands and millions of people.

We cannot all be astronauts or physicists or build 747's.

And so, gentlemen, our basic position is that Congress, you the Senate, in dealing with foreign trade legislation must in a sense divorce yourselves from the conventions, the traditions, that have held too many of us captive for the last 35 years. It may well be that we have to frame a new form of trade policy that can do justice to our national problems and keep our economy viable and preserve our standards of living until the blessed day comes when the entire world somehow or other approaches our ideals and our standards.

Thank you.

Senator NELSON. Does anyone have any further questions?

Senator HANSEN. Mr. Chairman, I could not help thinking as the witness was testifying that he is most persuasive. I had an experience in Japan in 1965. I toured that great country with a group of 10 Governors for a couple of weeks. And we went through one of the big steel mills over there during the time we were there.

I had been through a little steel mill. The only steel mill that I had ever been through before us in Utah, built during World War II. It served a very useful purpose and contributed mightily to the successful outcome of our war effort. But it is pretty well antiquated now, and was not any too modern, I suppose, at the time it was built.

But as I compared that mill, the Geneva plant, with the mill we were observing in Japan, I could not help comparing the number of laborers in Utah with those in Japan. The Japanese operation was run by a computer, it was programed. They punched a few keys to decide what kind of products they wanted to make. And there was hardly anyone around there.

The steel, as I recall, they were making some ribbon steel that was being extruded or moving out of the factory at a rate of about 1,500 feet per second. By comparison, the mill in Utah when I visited there just a year before reminded me almost of a sawmilling operation. They bring these hot ingots in and they roll them one way, and then they turn them over, not too much unlike a sawmilling operation that I am sure you have seen, where they turn the thing the other way and roll it again that way.

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And among the visitors to the Japanese plant that day was one of the higher officials from one of the companies in Pittsburgh. He was over there learning how the Japanese were making steel. And I am aware, too, that the investment that America made in Japan, made around the world many places, made it possible for their mills to be very modern, to employ the latest techniques.

I wish I could share your enthusiasm for the ability of American industry to compete. Now, you did make the one point that you thought gave the tanners in this country an advantage, and that was that you had access to this great source of raw material. I do not know how many cattle we have, around 110 million, 115 million head.

Mr. GLASS. 127.5 million as of January 1st.

Senator HANSEN. As a cattleman I try not to get on the high side. Nevertheless, that is an advantage and I recognize it. But when you look at industry after industry, I am inclined to think that we have got more problems than some people believe we have. We pay a lot of taxes. When one industry is hurt we have legislation on the book to give extended unemployment compensation to workers. We have special schools to train employees who are out of work because their industry has been struck.

And I say again, with the multinationals' demonstrated ability as in one case, that in the textile industry they bought a plant lock, stock and barrel and moved it abroad. They took their management personnel over there. And I cannot think that the great difference between wages paid here and paid in a foreign country is an insignificant factor in the ability to compete.

Mr. GLASS. Let me elaborate on the facts, because it offers, I think, a very striking example of the sort of product of economic inequity of indifference by our Government or our administration in assuring terms of trade which provide equity. We exported last year 17 million hides, almost 50 percent of our total production in this country.

I estimate, statistically at any rate, that almost all of those 17 million hides came back to us as fabricated proudcts, as shoes or handbags or leather garments. In other words, we were in the somewhat onerous position of being a colonial entity shipping raw material abroad to develop countries such as Japan or Taiwan or Spain or Italy, and then paying them to manufacture goods for us which were brought back here and in turn put our shoe workers, our pocketbook workers out of work.

Senator NELSON. May I ask at that point, what is the total number of hides available in the marketplace in this country?

Mr. GLASS. This year it will be 37 to 38 million hides in this country.

Senator NELSON. And we export 17 million?

Mr. GLASS. Last year 17 million.

Senator HANSEN. Mr. Chairman, if I could just add a footnote at that point, let me say that in addition to what I have said about the steel industry in Japan, it ought not to go unnoticed that they have neither an important source of ores or coal. They have to import both of these things, and they are getting a lot of it out of the

United States. And while there is still a difference, and while wages are rising in Japan more rapidly than they are in this country, I just cannot share your unrestrained enthusiasm for our ability to compete and pay substantially greater wages here than other countries pay without some other adjustment being made.

I hope you are right.

Mr. GLASS. Senator, I know our product area. I have lived with it for so many years. We can produce in one of our typical tanneries, say in Sheboygan or Milwaukee, we can produce 58 to 62 square feet of cattle side leather per hour. The highest productivity that is achieved in any tannery in Europe is roughly 22.

Senator HANSEN. Well now, let me ask you, do you think that you could take your knowledge and capital and machinery and go abroad and be able within 4 or 5 years time to recruit a labor force that might be fairly comparable to the labor force you have here?

Mr. GLASS. No, sir, I do not. And moreover, I would have to cope with the disadvantage of transporting hides from the United States.

Senator HANSEN. I grant you you have that advantage.

Mr. GLASS. And currently, as a matter of fact, because of bunker oil charges, the cost of moving hides is enormous. It is huge. Plus the fact that with money at 10 or 11 or 12 percent, the interest cost for hides that are on the scene for 6 weeks or 8 weeks or 3 months becomes a very appreciable factor.

These elements of economic cost plus our possession of raw material and our know-how gives us an advantage. So, given equality of trade opportunity, equality of competitive opportunity, we could compete.

Now, there is another consideration. We made a good deal of progress in this country on waste disposal and dealing with our ecological problem. Our own industry, for example, over the past 10 or 12 years, has made very substantial investments in cleaning up its effluent, in discharging water which meets the highest standard set now by the EPA. They have not done it in Japan. They have not done in Italy. They have not done it in Spain.

They are confronted today with a very serious problem of a capital investment, sooner or later, in order to prevent themselves from being sunk in a sea of waste.

Senator HANSEN. I have used up my time, Mr. Chairman.

Thank you very much.

Senator PACKWOOD. I just might say that what Mr. Glass has said was somewhat echoed by Mr. Lockridge where he said, given 15 years they could compete if wages were the only factor. A number of other witnesses have said that, in both labor intensive and nonlabor intensive areas: If wages were the only thing that they had to compete with, they could compete. It is the nontariff and other barriers that cause them problems, and I think it is instructive when we consider this legislation we should not be swept away solely with the argument or the fear of wage differential.

Mr. GLASS. Would you permit me, Senator, to elaborate for just a moment on the consequences of the course we have taken over the last 20 years or so?

In the United States the tanning industry has lost a huge chunk of its domestic market because of the shoes that have come in from

abroad, and now represent more than 40 percent of the shoes consumed at retail. We lost that chunk of market because those nontariff elements, obstacles, discrimination, barriers, and so on, provided havens which enabled foreign industry to develop and grow and build its productive capacity. Now, that somehow or other must be arrested. At some point the United States has got to stand up and not trust to the huddles of trade negotiation.

With all due respect to the negotiators, they too are captives of traditional convention and institutional posture. The Congress, in my opinion, should lay down the rules of the game and say, thus far and no further. In the case of Japan, for example, I do not believe there is any valid excuse whatsoever for the Japanese position maintaining an embargo against our products and expecting that they can enter our market without hindrance.

Should not someone in the Congress, should not the voice of Congress rule the negotiators when they consider that situation?

Senator HANSEN. There are some things on which we agree. I agree with you on that point.

Mr. GLASS. Thank you, sir.

Senator NELSON. Thank you very much for your very valuable testimony. I appreciate it.

Mr. GLASS. Thank you.

[The prepared statement of Mr. Glass follows:]

PREPARED STATEMENT OF TANNERS' COUNCIL OF AMERICA, INC., PRESENTED BY IRVING R. GLASS, PRESIDENT

Mr. Chairman, members of the committee, my name is Irving R. Glass and I am President of the Tanners' Council of America, the trade association of the leather industry of the United States.

The title of the legislation you are considering strikes our industry as a paradox. It is our conviction, based on bitter experience, that the foreign trade policy of the United States must be reformed. We see no evidence, however, in the Administration draft or the bill approved by the House of any reform addressed to the basic and crucial issues. In our opinion those issues are:

First, the conservation of labor intensive industry in the United States for the sake of a viable national economy.

Second, equity in foreign trade so that domestic industry is not perpetually afflicted by unfair barriers and discrimination aborad.

Third, explicit recognition that the frame of reference of foreign trade has been completely changed by the existence of controlled and semi-controlled national economies accounting for more than half the world's population. That fact cannot be denied and our national foreign trade policy must be geared to deal with it.

May I briefly address myself to these issues. The leather and leather consuming industries are labor intensive industries. A high proportion of the value added by manufacturing leather or shoes or pocketbooks is accounted for by wages and salaries. During the past ten years, and I use the decade merely as a convenient period in which to pinpoint extraordinary facts, our product area has been literally ravaged by inequitable foreign trade.

In 1963 the U. S. leather industry produced the equivalent of 31.4 million cattlehides in finished leather. By 1973 the equivalent total had declined to 21.0 million, a drop of 33.1%. In 1963 the domestic shoe industry produced 604 million pairs of shoes. The total last year was only 488 million pairs, a decline of 19.2%. The direct cause of this tremendous contraction was a flood of imports. In the same ten years shoe imports increased from 62 million pairs to 315 million.

Your Committee has had occasion in recent years to hear a great deal of discussion about shoes, leather, baseball gloves, and other products in our industry area. There is no point in belaboring the facts today. The forebodings

we have expressed have been confirmed. Domestic production and import totals speak for themselves. I merely want to call your attention to the implications of the facts in terms of our trade balance and employment.

We calculate that last year, 1973, the leather and shoe product area accounted for a trade deficit of $1.2 billion. That deficit represents the vast disparity between our export of raw material, that is cattlehides, and our import of finished leather products. In effect we imported labor and created unemployment at home. The absence of forthright policy on imports was responsible for plant liquidation by the scores and, therefore, for the loss of payroll producers in many, many communities. I submit that the loss of job opportunity when labor intensive industry shrinks has become and will remain an acute national problem.

Time and again we have been told that the United States must tolerate various ineqiuties in foreign trade because other countries have serious internal problems. Only lately has it begun to dawn on the pundits that we, too, have a grave problem. Without labor intensive manufacturing industry there is no way to relieve the relief rolls, to stop the growing vulnerability of our urban areas, to maintain a balanced economy. Adjustment assistance schemes are palliatives. They cannot cure a cancer. Nor, in my opinon, is tinkering with currency rates a true answer. Nations which are intent on maintaining employment at home will not be deterred from taking whatever action is necessary to assure their exports to the United States.

There can be only one effective and pragmatic solution if we accept the premise that labor intensive industry is vital to our national well-being. There must be some reasonable control applied to traffic on the trade bridge between ourselves and the rest of the world. In the absence of such control the stampede in our direction can leave irreparable damage. We have seen that happen in shoes and leather products.

To a very large extent the damage inflicted on us by imports derives from the second issue I want to comment on, namely inequity in foreign trade. May I give you a direct and positive illustration of how we are grossly hurt by the utter lack of reciprocity in foreign trade.

By every traditional standard, by every academic precept and preachment, the leather industry of the United States should be flourishing today. We have unequaled raw material resources, we have the know-how and the people and make leather better and cheaper than anyone else in the world. Are we permitted to bring the benefits of our productivity to other countries as freely as we allow them to enter our market? We are not. We are denied anything resembling equality of competitive opportunity and trade.

The most shocking case in point involves our trade relations with Japan. For almost 25 years the leather industry has been urging, petitioning, pleading for trade reciprocity with Japan. Their leather and leather goods are free to enter the United States without let or hindrance and on the most-favored-nation basis. We are barred to this day by quotas which are so small as to be ludicrous. Invariably the Japanese find an excuse for failure to do unto us as we do unto them. Initially it was dollar shortage. When that faded the rationale became an under-privileged or minority class of labor. The excuses are obviously nonsense and totally secondary to the overriding economic purpose of the government and business complex which controls the Japanese economy.

I can state without any qualification that unhindered access of U.S. leather into the Japanese market, that competitive opportunity similar to that which we accord to Japan, would be as beneficial to them as to us. It is economically absurd to transport raw cattlehides from the United States for ten or twelve thousand miles, to use bunker oil for salt, water as well as hide substance. I can assert, therefore, with absolutely clear conscience that Japanese consumers, retailers and manufacturers would be the primary beneficiaries of U. S. leather.

We, too, would benefit, and that is as it should be. Every other country has taken measures to promote the processing and the manufacturing at home of its hide and skin raw material. The United States is the great exception, unfortunately. We should be building plants now in the Southwest and other parts of the country to process our cattlehides, to manufacture leather, but we are not. Our trade policy in the past, our failure to gain reciprocity in trade, has led to the export of raw material for manufacture aborad and for return to us as finished goods. That is the primary reason for a trade deficit in our industry area of one billion, two hundred million dollars last year.

Japan, of course, is not the only country imposing restrictions and obstacles which totally violate the concept of reciprocity. Some of our friends in South American who enjoy most-favored-nation status with us, employ astronomical tariffs. Our duty on leather averages 5% but the Argentine duty on U. S. leather starts at 90%. Duties in Brazil, Mexico and every other country in Latin American are of a similar order of magnitude. The other side of the coin in Latin America and elsewhere is government subsidy to promote and stimulate the export of processed or manufactured goods. Argentine exports of shoes or leather garments currently get a bounty of 30%. In Brazil the subsidy is approximately 25%. Is it surprising that imports of shoes and other leather products from these countries are rising swiftly, gaining almost 100% every year?

Your Committee is aware, I am sure, of the singular problem presented by the Common Market. If we wish to sell leather or shoes to the Common Market we have to pay a border tax which is usually equivalent to the value added tax of the Common Market countries. Obviously such taxes make simple tariff rate comparisons meaningless. But, the European exporter is granted a remission of the value added tax on shipments to the United States. It is true that our tax systems are different but the critical point is that a U. S. tanner is not granted any remission of income tax and in competitive terms, therefore, we are severely handicapped in spite of our greater efficiency and greater value.

It would be pleasant and reassuring to think that the GATT convention will solve these questions of non-tariff barriers, trade discrimination and ineqiuty. We do not think so. Observance of GATT obligation is something less than sedulous. We believe that the solution must rest on our determination that reciprocity shall not be flouted, that the privileges we extend in trade must be balanced by equality on the other side.

Our industry thinks that we have temporized too long on this issue. Let us return to clear-cut principle without ifs, ands, buts, and discretion. If we are to put an end to the proliferation of inequity and inequality from which we suffer, a straightforward and mandatory observance of the principle is the sine qua non. It cannot be done otherwise and the huddling in trade negotiations, the deep absortpion with split infinitives in framing protocols will never be a cure.

Finally, everything that concerns our industry with respect to import of finished goods, export of raw material, or lack of trade reciprocity is related to the issue of controlled economies. I use that term to emphasize the remarkable change in the context of international trade or exchange in the last 30 years. In a very large part of the world the arbitrament of the market has been replaced by controlled national plan and purpose. How many countries remain where the facts of cost and price determine entrepreneurial decision? In nation after nation foreign trade is primarily an instrument of national policy, and exports or imports are ruled not by profit or loss but by their relevance to national planning.

The compelling question to which we must direct our thought in trade policy is obvious. How can the typical market oriented enterprise, without the resources of the multi-national corporations, contend with the operation of state controlled organizations? If for example Rumania, Czechoslovakia, India, or Argentina and Brazil undertake to capture a U. S. market for their purposes and on their economic terms, how does the average American manufacturer respond? His resources, to put it mildly, cannot match the recources of a foreign government in competitive buying or competitive selling. What criteria can be used in applying anti-dumping or countervailing duty provisiones of the law against state-controlled enterprises?

In our judgment there has been far too little weight given to these factors in the country's thought and appraisal of foreign trade policy. Too many people, in and out of government, have continued to think as though we were still in the 19th Century, in the heyday of the free market. We have not come to grips with reality. The impact of controlled economies on foreign trade could well be the most important reason for anticipating peril instead of surveying damage. Our recourse is simple: We must define in advance the levels or points at which unbalanced trade movements may spell disaster. At those levels or points, built-in corrective measures must become mandatory and immediately operative.

The course we recommend would be a departure in foreign trade legislation and policy. It is a departure dictated by the reality of the modern world and by our economic preservation.

Senator NELSON. Our next witness is Mr. Hemmendinger of Stitt, Hemmendinger and Kennedy.

STATEMENT OF NOEL HEMMENDINGER, ESQ., ON BEHALF OF THE LAW FIRM OF STITT, HEMMENDINGER & KENNEDY

Mr. HEMMENDINGER. Mr. Chairman, members of the committee, thank you for taking me at this time. I regret that I was not able to be here earlier at the appointed time.

I am Noel Hemmendinger of the law firm of Stitt, Hemmendinger, and Kennedy, of this city.

We have asked to appear here today not on behalf of any specific interest, but simply to bring to this committee the benefit of our experience as practitioners. At the same time, we owe candor to this committee as to the areas of our experience. We have over the years represented import interests in the trade field, many Japanese. My partner, Nelson Stitt, will appear here next week on behlaf of the United States-Japan Trade Council. We have also represented Mexican interests, and there is a possibility that we will become involved in the pending case on Brazilian footwear.

However, as I say, we have not been retained or requested to appear for any specific client. But we thought it would be useful to talk about certain sections of this act from our experience, because there are provisions, some of them highly technical, which it has seemed to us do not get the attention that they ought to have, and that it would be useful at least to make a record which can be consulted at leisure by those who care to.

I am going to skip over our testimony on section 201.

Senator NELSON. Your testimony will be printed in full in the record, and you are free to present it any way you desire.

Mr. HEMMENDINGER. Thank you.

In the interest of time I am going to skip over our comments on section 201 and on the amendments to the Antidumping Act, and come immediately to the area of the Countervailing Duty Law, on which we feel rather strongly there is much to be said that has not been said.

Our submission, basically, is that the Countervailing Duty Law, as enacted in 1897, is a very primitive enactment. It provides a principle that there should be a countervailing duty against a foreign bounty or grant. There is no injury test. There is no elaboration of what is a bounty or a grant. It should over the years have either been amended or, in my opinion, been elaborated by Treasury regulations. It was not done.

What was done was that a practice was elaborated which was largely unpublished on the part of the Treasury Department which made a considerable amount of sense—namely, rather than administer the words "bounty or grant" to the broadest statutory reach, the Treasury interpreted it in the light of international agreements under the GATT—in other words, more or less in terms of an inter-

national consensus of what kinds of incentives on the part of industrial nations might be appropriate. Because they exercised their power, if not their statutory discretion, to put cases in the drawer and to keep the drawer closed, they probably denied relief sometimes because there was no showing of injury, no real American interest to be served by giving relief, and perhaps they weighed such interests against the foreign policy interests of the problems that would be raised with the countries concerned. Because, let me point out, the Countervailing Duty Act is aimed essentially at the policies of foreign governments, not foreign industries, not foreign exporters, but foreign governments.

Now, the problem is squarely before the Congress, because amendments have been proposed, and I understand in some quarters the Treasury has been taxed with not adequately enforcing the law. And we have amendments which are really quite inadequate and unsatisfactory.

My submission is that you should go back to the bill that was proposed by the administration which would have given the Secretary of the Treasury discretion whether or not to countervail, for the very reason that this is a foreign policy tool in its basic nature. The power to countervail is very like the power to retaliate under section 301, because you are saying to a foreign government, we do not approve of one of your practices, and we are going to do something.

Now, this is something that belongs in the diplomatic arena, and the President or the Secretary should not be narrowly confined in their choices. It is also obvious that the bill should have an injury test. It makes no sense whatever to take action against importations advantageous to the American consumers unless there is some American interest which is being adversely affected.

The reason that the injury test has not been proposed by the administration for dutiable products, although they have proposed it for nondutiable products, I believe, is that they feel that it might be better to use this as a negotiating counter, and that they expect to bring back something with an injury test in it after they have negotiated on what are and are not acceptable international subsidies.

Senator NELSON. Let me ask you a question. You have heard the testimony of Mr. Glass.

Would you consider that the example he gave of the embargo on the importation of finished leather products from the United States would meet any reasonable injury test for retaliation with countervailing duties?

Mr. HEMMENDINGER. This is an injury of a different character from those that would be involved under the Countervailing Duty Law. I think this is something that the U.S. Government has very sound grounds to complain about, and that the question of what action should be taken on it does belong in the area of foreign trade diplomacy.

I happen to have known a little bit about this because I have represented Japanese footwear interests, but not leather footwear interests. I represented Japanese rubber, which is now no longer much interested in the American market, and Japanese vinyl, which is no longer much intersted in the American market, because Japan has risen and fallen in these areas. These trades have moved elsewhere.

But I have asked that question because it is an obvious irritant to U.S. trade relations, and it does arise, as Mr. Glass said, out of a fear or an apprehension which is very hard for Americans to grasp, over the attitudes of the underprivileged group known as the Eta, who are leatherworkers in Japan and who can best be understood in terms of the Indian caste system. This is a group which is to me or you undistinguishable from other Japanese, but which does not intermingle freely and is denied many privileges, not legally but just merely socially. And they have for many hundreds of years been largely confined to the leather trades.

I cannot quite grasp the attitude of Japanese officials on this. But when you consider that they have yielded on many other areas of protectionism, it is necessary to understand that this is a true reason, whether or not we like it. Now, when you come to the position of Secretary of State or Ambassador Eberle and how hard he pushes on this when he is dealing with a social phenomenon of this sort, and he is doing a lot of other things that are important with Japan, I cannot give you the answer. Maybe we should retaliate. I do not know.

Senator NELSON. Well, if there is any test of injury that would have any rationale to it, it would seem to me this would be a clear-cut case. Here you have the tanning industry saying, we do not want any barriers at all. We are not asking for any advantage whatsoever. The leather is being bought, the hides are being bought here. They bar entrance of our finished leather into the marketplace, and then export a substantial amount into our marketplace of finished shoes. If that is not an example, then I doubt whether there are any.

Mr. HEMMENDINGER. My argument, Senator, is not whether or not something should be done here, but against any concept of automaticity when we talk about injury. I have been talking about the import side. That is the context which is most common now.

Whether or not we would be able to sell the leather in Japan competitively with Japanese leather is something I do not know. The extent of the losses to our leathermakers I have no information.

Senator PACKWOOD. How do we make it clear in legislation if we want to achieve the end that the two previous witnesses have talked about?

We want equal access to markets, and that is all we are asking. If the executive will not move in that direction, how does Congress pass a law that says to foreign countries, we are going to move in that direction and we are going to do it compulsorily by statute if the executive will not do it by the delegated authority they have?

Mr. HEMMENDINGER. I do not believe that the problem that you are wrestling with is particularly going to be solved by the language of an act unless the Congress—the problem is inherent in the fact that the Congress makes policy and the President executes policy in the field of foreign affairs. That problem has existed in other areas.

Senator PACKWOOD. But a major policy decision is, is Congress going to mandate as much as we can in the statutes, that we are going to try to get rid of nontariff barriers?

Now, that is a policy decision.

Mr. HEMMENDINGER. I think the only answer is along the lines of the present bill, that the members of this committee and other com-

mittees should participate as actively as they can, constitutionally and so on, in the process of negotiation. You know, I listened to you this morning and I realized that there is a strong feeling in this committee of sympathy with the testimony that has been given today, and most of my experience is at the other end of town. And a lot of my experience is with import interests or foreign interests.

Gentlemen, it is a different world, and this is the real world, and it is a very important world here. But it is not the only world, and there is a lot more out there than there is here.

Senator PACKWOOD. I sense two different things. I sense, even among this committee and among the Congress a substantial protectionist sentiment. It is ironic we have had both Mr. Meany and the electrical industry testify as to the high technology industry, saying we cannot compete because the technology is going overseas. We have had many labor intensive, low technology industries saying we cannot compete. And yet, on the other hand, we have had those who say, we can compete. You have got the protectionist arguments on one hand. The rubber footwear people presented it very well today; we must be protected.

You have got the other argument, we can compete any place in this world, but we are not being treated fairly and we cannot compete under unequal conditions. Those are two different problems, and I think Congress is entitled to address itself to both of them and not simply leave it to the other end of town.

Mr. HEMMENDINGER. I really do not think that the executive needs much more exhortation to go out and beat down those foreign barriers. The question is what he runs into, what our ambassadors and our executives run into, in this process, and what the choices are.

Now, it has always been possible to say, well, the other guys just are not going to play our way, let us retreat into a protectionist world. But so far it has been the judgment of this Congress and the Executive that we would suffer from doing that. And therefore, we just have to keep working at it. Now, there are successes in this. There have been many complaints about the Japanese. But right this year there are very few, because they have in the course of the years that I have been representing trade interests in Washington moved from the stage of a developing economy to that of an extremely highly developed economy where they have given up even many of the manufactures they used to be sending here, and they have dismantled, I think, as Ambassador Eberle told you, they have dismantled substantially the import barriers that the United States complained of over a period.

Now, I think it can be said that they should have done it faster. But when you consider the fact that we still have ASP and a few other institutionalized anachronisms, we have to understand that other countries cannot always move instantly, either.

Senator PACKWOOD. Under the GATT rules, we can impose countervailing duties, even on export subsidies that are not illegal under GATT.

Why should other countries therefore, GATT countries, complain if we do that to countervail against export subsidies?

Mr. HEMMENDINGER. The only debate I bring before this committee is one of competing American interests, not the question of whether other countries have complained.

It brings me to another point which I hope I have time to make, because I have heard practically nothing about it and it is a great issue which has got to be considered in our trade policy, just as you are now considering a proposal first approved by the executive in 1968 for tariff preferences for developing countries.

When we do negotiate on what subsidies or incentives are legitimate, in my judgment, we are going to have to consider whether developing countries may not do things that industrialized countries may not do. And we are going to have to engage in the weighing of interests here. And that is why I speak so strongly against the illusory automaticity which you find in the Countervailing Duty Act as it stands. There is no sensible way to consider whether we are going to countervail against the incentives offered by developing countries that does not involve a weighing of interests, because those incentives can be just as legitimate and as sensible for that country as a protective tariff for an infant industry.

My final point, if my time has not expired, gentlemen, has to do with a proposal which is certainly not going to be seriously weighed if you proceed in short order to a markup of this bill. But it has struck us repeatedly that the present hodge-podge of remedies against imports does not make much sense, and that if we—whenever there is time, this year or in another year—this committee ought to ask that essentially titles II and III of this bill be rewritten to provide a single form of relief, that an industry or a union that regards itself as being injured by imports should go into the Tariff Commission and make a case—not make a case—present its facts and let the Tariff Commission report to the President the economic facts as to what the effects of the imports are. And then the President should be allowed to pick flexibly among all of the powers that exist under existing statute. There may be further investigations, such as overseas investigations that are today relevant under the Antidumping Act and the Countervailing Duties Act, that would be made by Treasury. But it simply makes no sense to have these remedies by such diverse procedures and standards, and we—this is intended to be a trade-neutral proposal. Certainly it can be made so. It does not imply that it is good or bad for importers or domestic industries.

I suggest to you that we have to look ahead, and that if we always react by a statute which is a bunch of makeshifts, dealing with compromises on present law, we will never have a statute that makes much sense.

Thank you very much.

Senator NELSON. Do you have any further questions?

Senator PACKWOOD. No, I do not think so.

Senator NELSON. Thank you very much for your testimony.

Mr. HEMMENDINGER. I appreciate very much the opportunity to appear.

Senator NELSON. The committee will adjourn until 10 a.m. Monday, April 8, 1974.

[The prepared statement of Mr. Hemmendinger follows. Hearing continues on p. 1945.]

PREPARED TESTIMONY OF NOEL HEMMENDINGER ON BEHALF OF THE LAW FIRM OF STITT, HEMMENDINGER & KENNEDY

Mr. Chairman, members of the committee, my name is Noel Hemmendinger. I am a member of the law firm of Stitt, Hemmendinger and Kennedy, 1000 Connecticut Avenue, Washington, D.C. 20036. The other partners are Nelson A. Stitt and John A. Kennedy, Jr. We have asked to appear here today in order to bring to the Committee our experience as practitioners with respect to Sections 201, 321, 322 and 341 of H.R. 10710, and to suggest a new approach to the system of import relief.

As lawyers, we represent from time to time a number of foreign trade associations and importers, on whose behalf we have appeared in various proceedings under the escape clause, the Antidumping Act, the Countervailing Duty Act, and Section 337 of the Tariff Act of 1930. This statement, however, is not made at the request of any of our clients nor on behalf of any of our clients.[1]

The position that I am taking here today represents strictly the views of myself and my partners. They represent our sincere views as to the administration of the trade laws of the United States; they may be biased but are not offered here in advocacy of any particular interest.

SECTION 201: TARIFF COMMISSION ESCAPE CLAUSE INVESTIGATION

H.R. 10710, the House-passed trade bill, substantially revises the escape clause test for import relief. First, it deletes the requirement that the increased imports result from concessions granted under past trade agreements. Second, it changes the requisite causal relationship between increased imports and serious injury from "the major factor" (under the Trade Expansion Act) to "a substantial cause".

The existing escape clause was intended to provide relief for those domestic interests adversely affected by negotiated tariff concessions; the phrase "escape clause" suggests an escape from an obligation under conditions not anticipated at the time of the negotiation. A related provision is the authority to "compensate" other countries through new concessions in return for those that have been withdrawn under the escape clause. H.R. 10710 adopts a much broader approach to import relief, by authorizing it regardless of the reason for the increased imports. That broader approach requires that the causal test be framed with care.

We are concerned that changes in the statute may be misunderstood in the light of the application of existing law by the Tariff Commission. In several instances, the Commission has sent escape clause cases to the President on a divided vote, with three Commissioners adopting the view that increased imports have been "the major factor" in causing serious injury because such injury would not have occurred "but for" the increased imports. In other cases, some Commissioners have found the requisite causal connection without articulating their reasons in terms of statutory interpretation. All in all,ywe believe that the interpretation of "the major factor" on the part of the Commission in recent years has been as liberal as is intended by Section 201 of H.R. 10710. The House Report on the bill (No. 93–571) is not altogether accurate when it states without qualification that " 'major' has been understood to mean greater than all other factors combined."

We urge that this Committee make clear in its Report that this new language clarifies the Congressional intent but does not necessarily call for affirmative findings, with regard to the relation between increased imports and serious injury, in situations where the Tariff Commission was unable to make such findings under present law.

One other point seems to us particularly in need of correction. In Section 201(b)(2), the test for determining "threat of serious injury" is looser than

[1] We have registered under the Foreign Agents Registration Act on behalf of a number of our clients, and the registration statements are available for public inspection at the Department of Justice. Because we are not speaking for any of them, we have not submitted a copy of our latest registration statement to this Committee and we believe that it would be inappropriate to do so, as implying a responsibility for the views expressed herein on the part of our clients—a responsibility that does not exist.

that for determining "serious injury" itself. This reverses the proper relationship between the two: there should be stricter standards of proof for establishing a threat, since it has not yet taken place and is inherently speculative. At the least, the standards for the two should be identical, as in the Trade Expansion Act.

SECTION 321: AMENDMENTS TO THE ANTIDUMPING ACT

We do not perceive any respect in which the proposed amendments to the Antidumping Act would significantly affect the practice under the present law which, as importers have found, has been extremely rigorous. We suggest, however, that the imposition of statutory time limits, which would be done by Section 321, is unnecessary, since time limits are already in the Treasury Regulations.

We would like to call the Committee's attention to a shortcoming in the Antidumping Act that has recently received some public notice. Secretary of the Treasury Shultz, acting in his capacity as Chairman of the Cost of Living Council, has written the Tariff Commission asking it to reconsider its decision last January that lead from Canada and Australia was injuring a U.S. industry. Under the Act, a Tariff Commission injury determination automatically leads to a dumping finding and to the calculation and assessment of dumping duties. The Act makes no specific provision for the revocation of a dumping finding, either on grounds of elimination of the dumping margin or of lack of injury due to changed market conditions. In the case of lead, Mr. Shultz said in his letter that the dumping decision had contributed to a domestic shortage, leading to inflationary pressures. He also said that the facts that led to the injury determination no longer exist.

In the lead case, it may be possible for the Tariff Commission to review the case and revise its previous determination, although the law is not specific on that point. It would be desirable to amend the Act in several respects to ensure that its application is consistent with current economic realities. First, the period of time considered by the Tariff Commission in determining injury should be as contemporary as possible with its investigation rather than limited to the period of the Treasury Department investigation, which is frequently a year or more prior to the Tariff Commission's. Second, it should be possible to withhold or revoke a dumping finding if the Secretary of the Treasury, or other appropriate official, determines that dumping duties would conflict with overriding government policies, such as combatting inflation or relieving critical supply shortages. Finally, the Act should specifically authorize the revocation of a dumping finding if it is found that either a dumping margin or injury no longer exists.

We wish to urge a further amendment of the Antidumping Act relating to circumstances of sale. The purpose of our proposed amendment is to require the Treasury Department to enforce the law in accordance with the present statutory language, which we believe is not being fairly and correctly applied. The recommendation is that Section 202 of the Antidumping Act, 1921, 19 U.S.C. Section 161, be amended to provide that the Secretary of the Treasury shall make allowance for *all* differences in circumstances of sale which are found to exist by applying accepted accounting principles, regardless of whether such differences are directly related to the sale under consideration. The purpose of this amendment is to modify Section 153.8 of the Treasury Regulations, which have for some years provided that the allowances to be made must, in general, bear a "reasonably direct relationship to the sales under consideration" and which were amended in 1973 to delete the word "reasonably". The correct principle was stated by Jacob Viner in his celebrated treatise which was contemporaneous with the adoption of the Antidumping Act, that the allowances must bear a reasonable relation to the sale under consideration.[2] The word "direct" has no place in the Regulations.

The reason for this goes to the very heart of the Antidumping Act. In order to make a fair comparison of sales in the home market with sales for export, it is necessary to make adjustments for those circumstances which are particular to the market under consideration. If some circumstances are arbitrarily excluded, then the comparison is not a fair one. This may sound like a techni-

[2] Viner, *Dumping: A Problem in International Trade,* 1966 Reprint, 282.

cal problem which is best left to the experts, but in all conscience it is not. It has direct importance for the businessmen whose interests are directly affected by the administration of the Antidumping Act, and it also has very serious consequences for the fairness of the administration of the United States law.

Let us consider some actual situations. There are two main methods by which foreign goods are sold to the United States. One is an arm's length sale in the country of origin to a U.S. importer who is not related to the producer or exporter. In this situation the so-called "purchase price" is applied. The other is where the foreign producer maintains an affiliated company in the United States. Here, because of that relationship, the sale in the United States is the basis for comparison. Under the U.S. law, this is called "exporter's sales price."

Let us suppose that for a given article there is a price at the factory, including a reasonable profit, of 100, and that the export price or "purchase price", including transportation to the port, is 105. Let us further suppose, as is often true, that the manufacturer maintains a sales staff and provides advertising in the home market, so that this home market price is 110. If commissions are paid, these are deductible by terms of the U.S. statute, but the salaries and expenses of the sales staff, and the advertising in the home market (unless directly related to the retail sale) are not permitted to be deducted. Let us add one more circumstance which frequently occurs, namely, that in addition to a sales staff at the factory, the manufacturer maintains distribution centers throughout the country of origin, at which point the price is 125. The overhead of these centers is clearly related to the sales in the home market and not to exports, and yet it is not allowed as a price adjustment. In this situation the foreign businessman is confident that he is not dumping, because the price at the factory level is the same for both markets. Yet the U.S. Treasury would decide that there is a less-than-fair-value margin that might well approach 25.

In short, it often happens that the importer buys abroad at the factory cost plus profit, and perhaps the cost of putting the goods aboard ship, and all the overhead costs of wholesale distribution in the United States are borne by the importer. The comparable distribution costs in the country of origin are borne by the producer, and yet, in making the price comparison under the Act, they are included in the home market price and excluded from the export price.

This is the practical consequence of the innocuous-sounding provision of the Treasury Regulations that costs must be "directly related to the sale under consideration".

This unfairness is highlighted by the practice of the U.S. Treasury Department in the case of "exporter's sales price", that is, where the foreign manufacturer sells through an affiliated company in the United States. Here, the Treasury Department is required by the terms of the Act to deduct from the sale price in this country the general expenses which are allocable to the sales under consideration. To avoid a most blatant unfairness, the Treasury Department will in this situation allow deduction of the general expenses in the home market, subject, however, to the limitation of the same dollar and cents amount per unit per category of expenses as were deducted on the American side. This peculiar rule is nowhere to be found in the Regulations. What it amounts to is that, in comparing the wholesale price in the United States with the wholesale price in the home market, Treasury will deduct general expenses from both sides of the equation only if to do so would tend to increase a possible dumping margin.

To apply these simplified calculations to the exporter's sales price situation, if the factory price was 100, then the landed duty paid cost might be 125 and the wholesale price in the United States, after general expenses and profit of the selling company in the United States, 150. Stripping the U.S. sales price down to the factory price plus the profit of both factory and U.S. affiliate would result in a figure of 105. Let us suppose that in examining the expenses in the United States it is found that advertising and salesmen's salaries and general sales overhead total 15.

As we have seen, on the home market side the wholesale price is 125, and the expenses for advertising, salesmen's salaries, and overhead are 25. Only 15 of the 25 would be allowed, leaving a price of 110 and a less-than-fair-value margin of 5.

This would be a far smaller margin than if "purchase price" were applied, but it proves the unfairness in the purchase price situation. Treasury has no

difficulty in deducting general expenses from the sale in the United States, so where is the difficulty in deducting them from the sale in the home market?

We have gone into this situation in some detail because we are not aware of anything in the published literature relating to the enforcement of the U.S. antidumping law that brings out the way in which this provision is actually administered. In 1972, there were lengthy submissions made to the Treasury Department in connection with its proposed changes in the Regulations, but they were ignored. We understand that a study of "circumstances of sale" has been under way in the Treasury Department. We urge the Committee to seek full enlightenment on this subject.

SECTION 331: AMENDMENTS TO THE COUNTERVAILING DUTY LAW

We believe that the House-passed amendments to the Countervailing Duty Law present serious problems for U.S. trade policy that should be considered in some depth. Accordingly, we discuss and analyze below the Law's background and history, the proposed amendments to the Law, their consequences for U.S. trade policy and our recommendations.

Historical Background

The operative language of the Countervailing Duty Law (19 U.S.C. 1303) provides that whenever any country shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any dutiable article or merchandise manufacturered or produced in such country, the Secretary of the Treasury shall levy an additional duty upon that article or merchandise equal to the net amount of such bounty or grant.

The theoretical economic rationale for countervailing duties is that exports encouraged by subsidies are to that extent not based on comparative advantage, and consequently distort the efficient allocation of the world's resources. This rationale is broad and would lead to the condemnation of any governmental action that affects private decisions to manufacture or export. Obviously, with the high degree of governmental involvement in every country's economy today, some limitations on this rationale are necessary, and some lines and distinctions must be drawn.

The first general countervailing duty law was enacted in the United States in 1897, and was intended to neutralize efforts by foreign governments to penetrate the highly protective U.S. tariff barrier by means of export subsidies. The Law contained no provision requiring injury to a U.S. industry because the high tariffs themselves indicated the belief that U.S. industries needed protection; for the same reason, only dutiable articles were made subject to countervailing duties. In short, the 1897 Law was not premised upon the belief that export subsidies misallocated international resources, but upon a desire to maintain the integrity of a protective tariff. That Law has continued in effect, with minor changes, until today.

The Countervailing Duty Law is couched in broad terms. The phrase "bounty or grant" is not defined in the Law, its legislative history, or the Treasury Department's regulations. The Supreme Court dealt with that phrase in two early cases, *Downs v. U.S.*, 187 U.S. 496 (1903), and *Nicholas v. U.S.*, 249 U.S. 34 (1919). Both cases involved rebates of indirect taxes in excess of the amount of taxes actually paid. While holding these practices to be bounties or grants to the extent of the over-rebates, the Court said in *dictum* that the statutory phrase was essentially unlimited in scope. Nevertheless, Treasury has adhered to the specific holding of *Downs* and *Nicholas* and has adopted a more discriminating approach to the meaning of "bounty or grant", realizing that a literal application would create more difficulties than benefits.

The Treasury Department has apparently viewed eight general types of measures as bounties or grants: direct subsidy payments, excessive tax rebates, preferential income tax rates or accelerated depreciation, price support systems, export loss indemnification, subsidies for specific capital, production and distribution costs, currency manipulation plans, and unjustified tax remissions, such as remission of direct taxes.

In addition to exercising some discretion in its view of the scope of the phrase "bounty or grant", the Treasury Department has allowed itself some flexibility in the administration of the law through the expedient of delay: it has simply not taken action on some complaints while seeking to negotiate a solution or, in some cases, equating inaction with negative action.

Importers have long had the right to appeal to the Customs Court and then to the Court of Customs and Patent Appeals from a decision by the Secretary of the Treasury to impose countervailing duties. However, the Court of Customs and Patent Appeals has recently held that a U.S. manufacturer may not appeal from a negative decision. *U.S. v. Hammond Lead Products*, 58 C.C.P.A. 129 (1971). The basis for the decision was the Court's reading of the statute granting U.S. manufacturers a review of certain decisions by the Secretary of the Treasury (19 U.S.C. 1516), and its conclusion that "the determination that a bounty or grant is paid necessarily involves judgments in the political, legislative, or policy spheres." 58 C.C.P.A. at 137.

Current Trade Legislation and the Countervailing Duty Law

The Administration's original trade bill (H.R. 6767) would, in Section 330, have amended the Countervailing Duty Law by requiring the Secretary of the Treasury to decide on the existence of a bounty or grant within twelve months after commencing a formal investigation. This would have removed the alternative of delaying a decision indefinitely. On the other hand, H.R. 6767 introduced a provision giving the Secretary discretion not to impose a countervailing duty if it would result in "significant detriment to the economic interest of the United States", or if the article in question was already subject to effective quantitative restrictions on its exportation to, or importation into, the United States. Finally, the Administration bill would have made duty-free articles subject to countervailing duties, but with an injury test for such articles to be administered by the Tariff Commission.

Unfortunately, the Administration's version was modified by the House of Representatives. As passed by the House (H.R. 10710), Section 331 of the trade bill retained the 12-month limit on decisions but substantially limited the Secretary's discretion. He would be authorized, for four years after enactment of the new law, not to impose a countervailing duty if it "would be likely to seriously jeopardize the satisfactory completion" of the trade negotiations carried out under the Act. With respect to articles produced by facilities owned or controlled by a developed country, the period would be cut to one year. The provision for discretion with respect to articles subject to quantitative restrictions was retained by the House, as were the provisions concerning duty-free articles. The House added a section granting a U.S. manufacturer the right to appeal to the Customs Court from a decision by the Secretary not to assess countervailing duties.

The addition of a U.S. manufacturer's right to appeal reflects a misconception of the Countervailing Duty Law. The Law is an instrument of national policy, not of private rights. As is more fully discussed below, the Law must be applied with discretion in order to be effective and to avoid damaging broader U.S. interests. It would be inconsistent with the provision of discretion for the Secretary of the Treasury's judgment for it to be reviewable in court at the behest of a U.S. manufacturer. The types of judgments necessary in applying the Act do not lend themselves to judicial review. It is no inconsistency that the importer may appeal from the duty actually imposed, since it is fundamental that any tax or import is reviewable. In that situation, however, it is questionable how far the courts would substitute their judgment for that of the Secretary.

The retention of the exception for goods subject to quantitative restriction underlines the desirability of maintaining discretion in the application of the Law. Under the House version, the only means of averting the undesirable consequences of mechanically applying the "bounty or grant" test after the four-year period is over would be to persuade the exporting country to agree to a quota system or to impose them unilaterally. Quotas are generally recognized as the least desirable means of restricting imports; for example, the trade bill's "escape clause", Title II, Chapter 1, places quotas and "orderly marketing agreements", which are also known as "voluntary quotas", behind both duties and tariff-rate quotas as preferred means of providing import relief. In short, the effect of the House bill is to narrow the Executive's discretion in applying the law to negotiating or imposing the least desirable form of import restriction.

The Ways and Means Committee's Report on the bill (No. 93–571) says that the manufacturer's appeal provision is necessitated by the *Hammond Lead* de-

cision, which "might adversely affect the ability of American producers to obtain meaningful relief under the countervailing duty law". With respect to the provisions concerning discretion in applying countervailing duties, the Report emphasizes the temporary nature of that discretion, due to the need to accommodate the negotiations with other countries on the question of what subsidies might be acceptable and unacceptable. However, the Committee Report reveals no awareness of the desirability of discretion in applying the law beyond its potential effect on the negotiations.

In his March 4 testimony before the Senate Finance Committee, Secretary of the Treasury Shultz urged the deletion of th one-year period of discretion for articles produced by developed country-owned facilities, thus maintaining a uniform four-year period for all imports. He expressed the fear that the one-year provision would interfere with multilateral negotiations on the subject of export subsidies. It is the Administration's hope that such negotiations will produce an international consensus on the question of what subsidies are acceptable, and that the U.S. law can then be modified in accordance with that consensus. Secretary Shultz also asked that the injury test for duty-free goods be changed to "material injury", which is the standard specified in the General Agreement on Tariffs and Trade (GATT).

The Need for Discretion

There are several reasons why the Secretary, or perhaps the President, should retain discretion in the application of the Countervailing Duty Law.

First, the Law deals with actions and policies of governments, and should allow room for resolution of specific cases through government-to-government negotiations. Unlike the antidumping situation and other areas where imports affect domestic interests, the Law requires the U.S. Government to retaliate against actions of other governments, not of private exporters. This means that countervailing duty cases are inherently more sensitive than other types of cases in which relief against imports is sought. By not applying the Law, the Government may wish to avoid jeopardizing broader interests. Even from the standpoint of a complainant, a negotiated solution may provide a better prospect for relief than unilateral moves by the United States. Under the House-passed bill, the only possible negotiated solution of a particular complaint would be the highly undesirable one of quantitative restrictions.

Second, there is considerable dispute whether a number of government measures are acceptable means of encouraging exports, or even whether they have that effect. A prime example is the European Economic Community's practice of rebating value-added taxes upon exportation. If the Treasury Department were required to decide now whether that practice is a bounty or grant, it would face the unpalatable alternatives of either triggering a trade war or giving up a major bargaining point in future negotiations over export subsidies. It is unrealistic to expect that an international agreement will be reached within four years covering all the major trading nations and all export incentives, and reliance on the four-year period of discretion now in the bill is therefore unwise. Governmental measures in this area are varied and complex, and can be expected to evolve further as tax systems and patterns of trade continue to change. Executive discretion is necessary as a continuing principle in order to assure that application of the Countervailing Duty Law is consistent with our international position with respect to export subsidies.

Third, it is likely that the United States will choose to treat export subsidies of developing countries differently from those of developed countries. The trade bill itself contains a system of tariff preferences for developing countries, and the United States has encouraged them to stimulate their exports.

At a certain stage of development, many countries need larger markets than the home market in order for new industries to operate with economies of scale. It follows that incentives to export of various types are economically justified for a period. Much the same principle has long been recognized by economists as justifying temporary protective tariffs. In addition, one of the most serious problems of developing countries is financing essential imports, and increased exports are vital for that reason.

It would be unwise, and considered unfriendly by developing countries, for the United States to take sanctions against export incentives without carefully

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verifying the injury against the importance to the country concerned. If a distinction is to be drawn between the subsidies of developing countries and those of developed countries, discretion should be made available to the Secretary of the Treasury in applying the Countervailing Duty Law.

Fourth, the United States itself has undertaken many measures that could be countervailed against under the Law if they were adopted by other countries. Examples are: deferred taxes on export earnings under the DISC legislation; EXIM Bank export credits and loan guarantees; export subsidies under domestic price support systems: preferential rail freight tariffs on export goods; and Government support for various industries through financing of research and development (e.g., the numerous military aircraft that have been great export earners in their civilian versions). To impose countervailing duties against such practices by others would invite retaliation against ourselves, with a probable net loss to our economy. It would also undermine our ability to argue in favor of our own practices as internationally acceptable. These results can only be avoided by allowing for discretion in the application of the Countervailing Duty Law.

Finally, the absence of an injury test in the Countervailing Duty Law (except in the case of duty-free goods) means that the law can be used to the detriment of foreign producers and the U.S. consumer without providing any significant benefit to anyone. A countervailing duty law that can be invoked without any finding of material injury makes little sense. A U.S. governmental sanction against the measures of a foreign government is much too serious an action to take without a careful assessment of all the interests involved. The material injury test should be added to the Countervailing Duty Law in accordance with the GATT because it is in the interest of the United States to required in applying the Law to avoid actions that are against our own self-interest. (The other reasons for discretion discussed above are applicable whether or not there is an injury test in the Law.)

It is useful to examine a few of the types of cases that could arise under the House-passed bill. A U.S. manufacturer might allege that a foreign country bestows a bounty or grant by deferring income tax on export sales. The Secretary of the Treasury would either have to impose countervailing duties and invite every country to retailiate against the exports of DISC corporations, or declare that deferred taxation is not a bounty or grant. Or a country with whom the United States is negotiating an important military base arrangement may be accused by a U.S. producer of subsidizing its exports. The Secretary would be forced to countervail if he found a bounty or grant to exist, thereby putting in jeopardy the military negotiation. Or a country that supplies the U.S. with a scarce but vital commodity is found, upon complaint by a U.S. citizen who does not like that country's foreign policy, to bestow a bounty or grant upon the export of that commodity. The Secretary would be forced to impose a countervailing duty and create the risk that the foreign country will cut off U.S. access to the vital commodity. These examples are not speculative; they are very real possibilities. And in only the first case does the four-year period of discretion clearly offer any possible relief, and then only if the multilateral negotiations produce international consensus on all the possible forms of export subsidy.

There is a sentiment in some quarters that the Executive Branch's discretion should be curtailed rather than expanded. Whatever appeal that argument may have in the abstract, the appropriate degree of discretion cannot be decided apart from a consideration of the purposes of the law in question. The Countervailing Duty Law, as discussed above, directly concerns important areas of public policy and a broad range of interests. It most nearly resembles Section 301 of the House-passed trade bill, which would authorize the President to retaliate against unreasonable or unjustifiable restrictions or practices, including subsidies, of foreign countries or instrumentalities. The exercise of this authority would be discretionary, and there are provisions for presentation of views by the public, but none for review of the President's decisions, except that retaliatory steps could be vetoed by either House of Congress.

Contrasted with Section 301 and the Countervailing Duty Law are the Antidumping Act and Section 337 of the Tariff Act of 1930, both of which involve actions by private interests that injure U.S. producers. The latter provisions involve more carefully delineated procedures and more specifically defined substantive elements.

Recommendations

We urge the Committee to revise Section 331 of H.R. 10710 to conform to the Administration's original proposal. In particular, the Secretary of the Treasury should be authorized not to impose countervailing duties if he det-er mines it would be detrimental to U.S. interests to do so. The Law should also include a material injury test for all cases, not just those involving duty-free imports; there is no reason to prevent a foreign government from benefiting U.S. consumers unless a domestic interest is injured in the process. Finally, the U.S. manufacturer's appeal should be deleted, as inconsistent with the Law's concern with policy questions rather than narrow private interests. These changes would reflect an awareness that the Countervailing Duty Law is an instrument of national policy involving difficult and sensitive judgments, and affecting a broad range of private and public interests.

SECTION 341: AMENDMENTS TO SECTION 337 OF THE TARIFF ACT OF 1930, RELATING TO UNFAIR COMPETITION AND UNFAIR ACTS IN THE IMPORT TRADE

Section 337 is a relatively little known provision of law, yet it is being increasingly invoked and therefore is of considerable potential importance both to domestic interests and to importers. For that reason, the pending amendments to Section 337 are of great interest. We discussed this provision at length last year in our testimony before the Ways and Means Committee; the pertinent portion appears beginning on page 1359 of the Hearings on H.R. 6767, the Trade Reform Act of 1973. Our conclusion then was that Section 337 discriminates against imports while providing little if any relief for domestic interests that cannot be obtained at present under the patent and antitrust laws. We concluded then, as we do now, that Section 337 should be repealed.

The amendments to Section 337 in H.R. 10710 represent a halting effort to patch up a few of the most egregious of the statute's shortcomings. Judicial review of Tariff Commission decisions would be available in cases involving patents, and in such cases the importer would have the opportunity to "present legal defenses" at a hearing. First, we do not believe that the statute's discrimination against the importer will be removed until the law requires the Tariff Commission to consider and rule upon the same legal defenses that are available to defendants in patent infringment suits in federal courts. Second, it is also necessary that the Tariff Commission be required to suspend any Section 337 proceeding concerning a patent that is at the same time involved in federal court litigation, and also that it be required to adopt the court's finding as conclusive. Third, preliminary relief should not be made available in cases where the patent has not previously been adjudicated and found valid; this is the rule in the federal courts and not surprisingly so, in light of the fact that over two-thirds of the patents challenged in recent federal litigation have been held invalid. Finally, bond during a temporary exclusion order should be in the amount of a reasonable royalty, not the full value of the goods. The Administration has proposed an amendment in the spirit of this last proposal. It would fix a specific percentage of the value of the goods; we believe it would be preferable to leave more flexibility.

We want to emphasize that Section 337 is unique in the world. According to our research, no other country has found its patent laws inadequate to deal with the problem of infringing imports. Certainly, it would be unfortunate for U.S. exporters if other countries were to emulate the United States and allow their patentees to obtain enforcement of an embargo of allegedly infringing U.S. goods while depriving the U.S. shipper of his defenses to a patent action, or subjecting him to attack in two forums at the same time. The United States, as the preeminent trading nation in the world, stands to suffer most if other nations follow its example, both by loss of foreign markets and by depriving itself of the flow of many desirable products from other countries.

CONCLUSION: A TRADE LEGISLATION PROPOSAL

If this Committee acts promptly on H.R. 10710, there will certainly not be time to consider a radical restructuring of Titles II and III. We would urge, however, that the Committee recognize that the present law as amended by the bill before you is a hodge podge of remedies and standards that badly need rationalizing. This is especially true since relief through Tariff Commission in-

vestigation will be cut loose from tariff concessions. Since it obviously is not feasible to rewrite H.R. 10710 at this time, we suggest that the Committee request that redrafting be undertaken for future consideration.

Under the present law, if American producers or workers consider that they are being hurt by imports, they can seek relief under one or more of three principal pieces of legislation and at least eight additional remedies that are less common. The principal ones are: (a) Section 351 of the Trade Expansion Act (escape clause), (b) the Antidumping Act, and (c) Section 303 of the Tariff Act (countervailing duty). The less commonly invoked measures are: Section 337 of the Tariff Act (unfair acts); Section 255 of the TEA in conjunction with Section XXVIII of the GATT; Section 204 of the Agricultural Act of 1956 (authorizing international agreements in certain cases); Section 232 of the TEA relating to national security; Section 22 of the Agricultural Adjustment Act; Section 336 of the Tariff Act (equalization of cost of production); the President's inherent power to conduct negotiations with foreign suppliers; and, of course, Congressional legislation.

All of these provisions have different standards (if any) and different procedures. There are historical reasons why this is so, but there are no good reasons in terms of present policy or sound administration. Under all of the provisions of law granting relief except the Antidumping Act and the Countervailing Duty Law, the President has the last word. Under most of them, there is some injury test and the injury test may well be implicit in others.

This situation is unsatisfactory (a) because it is too complicated for anyone who is not a specialist in the subject to understand; (b) because it takes an unduly long time, especially in dumping cases, for the completion of all of the requisite investigations to be conducted; (c) because there is no good reason for the wheels of government to be set in motion or for relief to be granted unless there is injury of some type to a domestic interest; and finally, (d) because it is important for any type of relief against imports that the President have the discretion to work out a solution flexibly in the context of foreign affairs.

The following proposal is therefore made. We believe that this proposal is trade neutral, in the sense that if enacted it would favor neither imports nor domestic producers over the present situation. The proposal would give the President discretion not to impose import restrictions in situations where he does not now have the discretion, but in return would create vastly more likelihood of expeditious relief for domestic interests adversely affected by imports.

1. Every application for relief from imports should be addressed to the Tariff Commission and may, but need not, specify the relief sought. The applicant should be required to furnish all the information available to him relating to any of the present statutory standards, e.g., escape clause, dumping, foreign subsidies, impairment of national security, etc.

2. The Tariff Commission should promptly institute its own investigations, if necessary, and should request a foreign investigation by the appropriate agency of sales in the home market, subsidies or other relevant matters whenever information in its possession indicates that there is a reasonable possibility that such information will be helpful to the President in making his decision. The agency conducting the foreign investigation (normally Treasury) should conduct a preliminary investigation and determine on that basis whether to conduct a full field investigation.

3. The government of the country of source of the imports should promptly be informed. The investigation should be terminated upon the decision of the President at any point when, after receiving the views of the Tariff Commission, he is satisfied that the ground of complaint has been substantially removed.

4. Reports of the Tariff Commission on the effects of imports on the domestic producers, workers, communities and the U.S. economy and the reports of the foreign investigations, if any, should expeditiously be placed before the President or his designee.

5. Investigations could also be instituted upon request of the President, the Ways and Means Committee or the Finance Committee.

6. The President, after receiving the reports, should expeditiously take any action of the types authorized by present law that he finds appropriate. If

there is a report of the Tariff Commission that a domestic interest is being or is likely to be seriously injured by imports and the President does not take action to restrict imports, he should report to the Congress and explain his reasons and may be overruled substantially as now provided in Section 351 of the TEA.

7. The President might delegate any of his authority, and would presumably do so, to one or more officers confirmed by the Senate.

We appreciate the opportunity to present the foregoing views to this Committee.

[Whereupon, at 12:15 p.m., the committee adjourned, to reconvene at 10 a.m. on April 8, 1974.]

TRADE REFORM ACT OF 1973

MONDAY, APRIL 8, 1974

U.S. SENATE,
COMMITTEE ON FINANCE
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 2221, Dirksen Senate Office Building, Senator Clifford P. Hansen presiding.

Present: Senators Hansen, Curtis, Dole, and Packwood.

Senator HANSEN. The hearings will come to order.

We have a long list of witnesses who will be confined to a 10-minute summary of their written statements. The 5-minute rule will remain in effect as it has throughout the hearings for the questioning of the witnesses.

Our first witness will be Stanley J. Goodman, chairman of the board and chief executive officer, May Department Stores Co., who is testifying on behalf of the American Retail Federation and National Retail Merchants Association.

Our distinguished colleague Senator Stuart Symington will introduce Mr. Goodman.

Senator Symington?

STATEMENT OF HON. STUART SYMINGTON, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator SYMINGTON. Thank you, Mr. Chairman.

With Mr. Goodman are Mr. Williams and Mr. Keeney and Mr. Victor; Mr. Goodman will be the witness.

This is an honor for me, because Stanley Goodman is an old and valued friend. He is one of the two or three most prominent citizens in my State. He runs a great retail chain and he has a reputation for integrity and ability that is not exceeded by any number of any constituent in my State, in Missouri.

Therefore, it is with particular pride that I present him on a subject that he knows as least as much about as any friend that I have. His organization represents some $65 billion in sales ——

Senator HANSEN. What was that amount?

Senator SYMINGTON. $65 billion; and 30,000 retail outlets. And he is the chairman of the board and chief executive officer of the great May chain, in addition to his work as vice chairman of this organization. I might add that my daughter-in-law Sylvia, the Congressman's wife is a musician in her right, says he is the finest amateur

violinist in the Nation today. We now have before you a very versatile gentleman who I am sure is totally sincere in the testimony that he is presenting to you this morning.

Senator HANSEN. Thank you very much, Senator Symington.

We are very pleased indeed, Mr. Goodman, to have you here, and look forward to hearing your testimony. You may proceed just as you wish.

I suspect that Senator Symington, I know, has a very busy schedule, and if you do have to leave we will understand the reason for your inability to stay.

Senator SYMINGTON. I would like to stay a bit if I may, Mr. Chairman. Thank you for your courtesy.

STATEMENT OF STANLEY J. GOODMAN, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, MAY DEPARTMENT STORES CO., ON BEHALF OF THE AMERICAN RETAIL FEDERATION AND THE NATIONAL RETAIL MERCHANTS ASSOCIATION, ACCOMPANIED BY MR. KEENEY, PRESIDENT, AMERICAN RETAIL FEDERATION; MR. JAMES R. WILLIAMS, PRESIDENT, NATIONAL RETAIL MERCHANTS ASSOCIATION; AND PAUL VICTOR, COUNSEL

Mr. GOODMAN. Thank you very much, Senator Symington, for your kind introduction. I did not bring my violin today. If I thought it would have helped I might have.

I am very honored to be here. I am in awe of the importance of the job that this committee is doing. From what I understand, it has been 12 years since the last major trade bill was passed, and there was an interval of 28 years before that to the previous one. So what this committee and the Congress will determine will set the framework for this country's international trade well into the eighties and possibly for the balance of this century.

I represent, as the Senator said, the retailing industry, and that is the No. 1 industry in the United States in terms of the number of employees. But also it is the industry that is closest to the public, who comprise constituents.

I represent here officially two organizations, the American Retail Federation, of which Mr. Keeney is the president, which has 31 national associations of retailers, and 50 State councils representing over 1 million retail stores. Then, on my right, the National Retail Merchants Association, of which Mr. Williams is president, is the largest organization of general merchandising retailers with 2,000 corporate members, 30,000 stores, and sales of $65 billion. Also, on my far right is Mr. Paul Victor, our counsel. I, as the Senator said, am the head of the department store group which is the third largest in the industry with sales of about $1.5 billion.

This committee is receiving testimony, as I am aware, from many, many people every day, and everyone that comes here, I am sure, is sincere in addressing themselves to the concerns that they have about the foreign trade bill and its implications. We will address ourselves not only to the concerns that we have as retail merchants,

but to the concerns that we have for the consumer public, the 200 million consumers who are also the voters in this country.

Our traditional watchword in retailing is that the customer is always right. We spend all of our time trying to figure out what it is that people want, what they like, what they hate, and then we put our capital into the merchandise on the premises of that we think will find favor in the eyes of the consumer. Therefore, we have a situation where every day Mr. and Mrs. America are in our retail stores all over the country voting for or against what we do, using the cash register as the economic voting machine. As a result, we as retailers are especially sensitive to what the likes and the dislikes of the American public are and what goes on in their mind. And I am here to say, sir, that the main thing that is concerning the American people today is inflation.

The experience that the average American family is having with the cost of living is beyond the range of their previous experience, and they are worried, they are concerned, and they are scared. They do not know how they are going to manage to raise their families and to live in the American way if a two-digit rate of inflation will stay with us.

Now, my message is a very simple one and I am going to stay within the 10 minutes that you have allotted, and am not going to read my speech. My message is simply this:

How does the customer get the most of what she wants in this country at the lowest possible price?

She gets it through the free play of competition in the marketplace. Let me give you an example. Women today happen to like to wear pants instead of skirts, and that has been a growing trend for the last few years. As a result, there are hundreds of manufacturers in this country making pants suits in thousands of versions, ranging in price from $10 to $500, with new styles coming out all the time. Now, the manufacturer that happens to have the right touch that the customer likes makes money and grows. The one who happens to miss can lose money and sometimes go out of business.

Through this wonderful ferment of competitive probing and risk-taking has come the highest standard of living and the greatest abundance of choice the world has ever seen, which is recognized all over the world as one of the economic wonders of the world.

I say some people lose money, some people get hurt, some people are unemployed. That is still an indispensable part of what gets the customer what she wants at the lowest possible price, because competitive risk-taking is what stimulates efficiency, resourcefulness and vitality in a business. Now, if the legislature were to step in and prevent anybody from getting hurt by competition and impose a tax on one vendor's price as against another, the whole process would start to limp and falter and break down, and the loser would be the total U.S. public instead of the few unlucky or inefficient vendors.

If you want to see how this works check out the situation and the availability of pants suits in Russia, for example. We have had plenty of economic growing pains in our history. There was a time, for example, when the New England area was feeling the pinch be-

cause its textile industry competed with the new textile industry from the South. But the legislators of this country did not step in and set up regional tariffs to protect New England against Southern competition. If they had, it would not have helped in the long run because today you have got a flourishing South and a vital New England. You have the spectacle of new industry coming to New England like the electronics industry, and those areas are better off.

The same applies to the international field. We have all seen that the countries which joined the European Economic Community, the Common Market, were stimulated by this competition and their economies flourished. All over the world competition stimulates and nourishes and invigorates the economy, while protection can be destructive to industry.

I ask you to imagine whether men would ever have achieved a 4-minute mile or a 7-foot-high jump in this world if it had not been for grueling international competition. Therefore, anything that you do to curtail the free interplay of fair international competition, which must be fair and above-board, will hurt the American family by adding to the inflation of his cost of living, and ultimately hurt American industry by causing it to go soft.

We have submitted to the committee my written testimony and the position paper of the organizations that I represent, and I am not reading my testimony, as I say. In these papers we are recommending modifications and revisions in the act, for example, in the escape clause and the balance of payments authority and in the unfair competition provisions, the antidumping, countervailing duty areas, and the broad presidential power to retaliate against foreign import restrictions. All these are aimed at assuring the American public the benefits of fair international competition.

As I say again, you are dealing with difficult and complicated questions in your search for the best way, and you, the Senators represented on this committee, do this every day in many fields. That is your job. I am here to tell you that my whole career as a businessman for many years, and as a concerned citizen, tells me, and God knows that recently American economic history supports this, that where you have a choice between the natural forces of a free market economy and controls by administrative decisionmaking there is no question that the natural free market has it hands down in the benefits that it brings to all the people.

In closing, I would like to give you something. My wife happened to find this in the archives of one of our local newspapers in St. Louis. It is an old cartoon dated 1935 by the famous, now dead, cartoonist, Fitzpatrick. Perhaps it happened in another time when the Senate was considering the trade bill. It illustrates very dramatically the factors that are at work, and that you cannot have a big flow of exports without having imports.

The title of the cartoon is "One of Our Quaint Ideas About Foreign Trade."

Thank you very much.

[The cartoon referred to follows:]

ONE OF OUR QUAINT IDEAS ABOUT FOREIGN TRADE.

July 8, 1935
St. Louis Post-Dispatch

Senator HANSEN. Thank you very much, Mr. Goodman. I am very eager to see the cartoon.

First let me say, Mr. Goodman, I am sure the Finance Committee will be very pleased to add this to their collection. It is nice to get something once in a while that is not derogatory of members of this committee. We can accept this one without any embarrassment.

Mr. GOODMAN. Thank you, Mr. Chairman.

Senator HANSEN. The Senator who had the pleasure of introducing you has been in the forefront in pointing out how serious our balance-of-trade and balance-of-payments deficits are. Senator Sym-

ington often pointed out that the United States was becoming a bankrupt country long before we had our first dollar devaluation.

What steps do you think that we need to take to restore competitiveness to our international trade?

Look at the Germans and Japanese. They had trade surpluses on manufactured items of $26 billion and $22 billion in 1973. We had a deficit in manufactured trade.

How can we support them through troop expenditures, et cetera, if we cannot earn the foreign exchange through a trade surplus?

It would seem to me that we cannot live off foreign investments forever.

Would you care to comment on those observations, Mr. Goodman?

Mr. GOODMAN. Mr. Chairman, I see a parallel between the domestic and international scenes. We are dedicated to a free market economy in the United States, but we also have the Federal Trade Commission, whose objective it is to keep the channels of competition open. And so they take steps to do away with any obstacles, any unfair competition, any monopolistic developments.

In the same way, I think we have to have the right in this country to protect ourselves against unfair competition, against dumping and many of the things that are provided in the act. But in the long run I feel that our economy will do better and will have a better total picture, including the balance of payments, if we have as free as possible an interplay of competition. And we have seen how fast this thing changes. When I testified before the House on this bill—that is the only time I have testified—we then had an unfavorable balance of trade. This has changed.

We have seen industries, for example, where the electronics industry moved almost totally to Japan, and with new technology it has moved to this country. The thing shifts very rapidly. In the long run, I believe, balance of payments and the interests of the total economy will be best served by preserving as much free competition as possible.

Senator HANSEN. In general I find merit in what you say. You spoke about the provisions we have in the law already—the escape clause, the balance of payments, the antidumpting statutes and nontariff trade barriers, and other things.

In addition to all these things, which I think each of us can agree ought to be eliminated to the extent that we can so as to assure that your objective of fair international competition will prevail, there is concern among a number of us about the great differential between labor costs in some countries of the world today and the situation here in America because of the treatment that we have afforded unions. I am not critical of that, except to say that it does seem to me to impose some real burdens on our manufacturer as contracted to his counterpart in other parts of the world.

Do you believe that the cost of labor is an important consideration in the ability of American manufacturers to compete with their counterparts the world over?

Mr. GOODMAN. I believe American labor has to be flexible, has to change to meet changing conditions. And I feel that if you prevented low-priced goods that now come in, from coming in you

would be working a tremendous hardship on the total public. If you go into an average home, a low-income home today, here is what you are going to find. The children's clothes are almost all imported. If you want to buy for $3 an outfit that your little girl can wear, age 4 or 5, it has got to come from Taiwan or Korea. It used to be Japan, but not any more.

If you chop those imports off, you cannot make such goods in this country for that price. We have got no business making that stuff. We should make other things where our American skills are appropriate and productive. We have gone far away from handicraft production in this country. We are highly mechanized producers.

There are parts of the world that are still in hand production, and it is appropriate that they should make that. But if you were to cut those things off you would find that the average income family would have a hardship. You would not have a $5 shirt for a man to buy for himself. The same goes not only for apparel, but for some items of home furnishings. The total amount of imports in American retailing is a small proportion of sales. It is not a big factor in your economy. But it is an essential part because it serves the low price demand that is now being served, and it also introduces on the other end of the scale some creative merchandise that is not available in this country, handmade things and other things that give more variety to American life.

Senator HANSEN. We are going to take turns here, but I do have one more question to ask you. One of the axioms that I think is accepted by those who are advocates of completely free international trade is that you will have free movement of capital, of technology, and of labor. But I do not think that I am able to discern in this country such a willingness on the part of labor in a displaced industry as we spoke of the textile industry in New England. It has pretty well left there. Now Senator Ribicoff tells me some other industries in his State of Connecticut are being hard pushed in spite of the retraining programs that we have, and despite the assistance that is given these groups.

Is it not true in this country that people generally are not willing to pick up lock, stock, and barrel, and move to another part of the United States to become part of another labor force?

Mr. GOODMAN. First, sir; the adjustment assistance that is provided in the act is sound in our opinion. It is going to be necessary from time to time. That is the best way to go. Retraining people is important and has worked to some extent. The fact that today you have an electronics industry flourishing in New England and an unemployment rate that is not particularly worse than anywhere else in the country indicates that it has worked.

The other thing is that unemployment is not caused only or even principally by this kind of competition. It happens all the time. You take the American shoe industry that is often cited as an industry being hurt by imports. It was hurt by pants, women wearing pants suits. The shoe that was worn with a dress was very important, and women were wearing long boots and so on. When pants came out, that wiped out that market. Many manufacturers suffered as a result. So it is not only import competition.

But the underlying point is that this kind of adjustment—we have the most marvelous society on earth—this kind of adjustment is a price that is well worth paying to maintain a high standard of efficiency and a high standard of living in this country for all.

Senator HANSEN. Thank you, Mr. Goodman.

Senator Dole?

Senator DOLE. I only have one question. I apologize for being late, but I have read the summary, although not the 40-page statement. But I note you do not explore title IV to any great extent. You indicate in your longer statement that that gets into an issue of foreign policy and international politics. But it is going to be a very sticky problem to resolve. That is the most-favored-nation treatment for the Soviet Union.

Do you have any other view on that that is not stated?

Mr. GOODMAN. Well Senator, I feel that as retailers, we favor free competition and as much trade as possible. The question of what to do about most-favored-nation status for Russia is more of a political question than an economic question. I think it probably does not belong within the sphere of our competence. I hope that it can be resolved and will be resolved, and wisely. But we do not feel that as retailers this is really in our field, because it is largely a political question.

Senator DOLE. That is all I have, Mr. Chairman.

Senator HANSEN. Senator Packwood?

Senator PACKWOOD. In your statement you refer to unfair import trade. You say that it is used to limit fair import competition. With that I agree. But as our negotiators sit down and start to bargain with underdeveloped nations, with Europe, with Japan, they are going to have a difficult time having a straight trade-off in every sector of the economy. I will be surprised if they can lower nontariff barriers to chemicals here and in Germany in exactly the same fashion.

Do you regard it as fair, therefore, to barter off or to use as leverage one segment of the economy in exchange for the benefit of another?

Specifically, if we were to say to Japan, you will not allow us to sell beef in Japan we are not going to allow you to sell textiles in the United States?

Mr. GOODMAN. I feel, Senator, this kind of thing should be done only as a last resort where, in the judgment of the administration, it is essential to do it. But if we do so much of it that it has a tendency to undermine the free interplay of competition, that is destructive, I think, to our industry, and, I think, to our economies.

Senator PACKWOOD. As a last resort, because they have no beef we want to buy, nor wheat. We are supplying and we have reserves. They have a barrier on beef in Japan, not because we are affecting beef, but it is just that they do not want to spend $5 million for beef that they are not now buying.

You have no objections to that as a last resort. It is going to be a quid pro quo. We want free trade. It is not going to be a one-way street, because textiles and cameras happen to be a significant im-

port. We are going to limit those unless you let us into the market in beef.

Mr. GOODMAN. If, in the opinion of the administration it is essential to do so, yes.

Senator PACKWOOD. I have no questions, Mr. Chairman.

Senator HANSEN. If I may, I would like to ask one further final question.

You spoke about free international trade and I think you have given a great testimonial for free markets, one of the best that I have heard. I agree with you on the importance of a free market. I think that we can agree that our experience with wage and price controls has pretty much been an unmitigated disaster.

Do you think that you can help convert some of your friends in the Senate that we need a free market in oil and steel and other industries as well?

Mr. GOODMAN. So far my job today is to help convert you, but I am willing to do anything constructive.

Senator HANSEN. As you know, there is a strong sentiment for more controls on American business. We cannot have free trade with foreign markets, I do not believe, while we put a stranglehold on American business.

Would you agree generally with that statement?

Mr. GOODMAN. Yes, sir.

Senator HANSEN. Mr. Goodman, your testimony has been very helpful. Thank you so much. As I know you are aware, your full statement will be included in the record, and we certainly will study it with all full consideration.

Mr. GOODMAN. Thank you very much.

[The prepared statement of Mr. Goodman and a position paper of the NRMA and ARF, and a letter of James R. Williams, President, NRMA follows. Hearing continues on p. 1973.]

PREPARED TESTIMONY OF STANLEY J. GOODMAN ON BEHALF OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION AND THE AMERICAN RETAIL FEDERATION

SUMMARY

NRMA is a nonprofit, national trade association with approximately 2,000 corporate members operating more than 30,000 retail outlets with an aggregate volume of approximately $65 billion. ARF, through its 50 state association and 31 national association members, represents over 1 million retail establishments. Retailers are in constant, close contact with all U.S. consumers, and consequently know well the interests of the 200 million U.S. consumers who daily express their purchasing preferences for the highest quality goods at the lowest possible prices from throughout the world.

General Position

NRMA and ARF support the fundamental purposes and many of the specific provisions of the Trade Reform Act. NRMA and ARF are concerned, however, that certain provisions could lead to results which are inconsistent with the purposes of the Act and would be detrimental to U.S. retailers and consumers. A detailed paper has been submitted to the Committee expressing these concerns and suggesting modifications, including (a) broad procedural reforms in the antidumping and countervailing duty areas, (b) more realistic dumping criteria, and (c) modifications in the broad Presidential power to retaliate against unreasonable foreign import restrictions. Because of time limitations,

oral testimony is limited to three areas of concern: revisions in the escape clause, the balance-of-payments authority, and unfair import competition.

Specific Recommendations

(a) *Relief from injury caused by import competition.*—NRMA and ARF oppose reducing the criteria for establishing new tariffs or quotas in order to provide relief from import competition. Thus, we urge that the present principle that import relief be conditioned upon previously negotiated trade concessions, and the present standard requiring increased imports to be the "major cause" of serious injury, should be continued. Above all, since adjustment assistance offers an effective and less restrictive response to import competition, we urge that the Act be amended to require adjustmnt assistance to be utilized before higher tariffs or quotas are imposed.

(b) *Balance-of-payments authority.*—NRMA and ARF recommend that the Act be amended to provide minimum standards for determining when balance-of-payments problems justify import restrictions; that surcharges designed to correct balance-of-payments problems only be imposed on a most favored nations basis; that interested persons be given the opportunity to submit views and comments prior to any balance-of-payments restrictions; and that consideration be given to alternative remedies to balance-of-payments difficulties which are less restrictive.

(c) *Relief from unfair trade practices.*—NRMA and ARF believe that the statutes dealing with unfair import trade should avoid limiting "fair" import competition, and that importers should be accorded procedural and substantive due process.

STATEMENT

Mr. Chairman and Members of this Committee:

My name is Stanley J. Goodman. I serve as Chairman of the Board of The May Department Stores Company with headquarters in St. Louis, Missouri. Our company is the third largest department store company in the U.S., with sales exceeding $1½ billion.

I appear before you today, however, not in my individual corporate capacity but rather on behalf of all of retailing, as spokesman for NRMA, the National Retail Merchants Association and ARF, the American Retail Federation.

So that you may give my remarks their appropriate representational weight, let me tell you very briefly about NRMA and ARF.

NRMA is a non-profit national trade association with approximately 2,000 corporate members operating more than 30,000 retail outlets throughout the United States. These stores account for approximately 65 billions of dollars in sales annually and range in size from large retail department store chains to small specialty shops. We employ more than two million people. We estimate that in the course of a year, NRMA's member stores handle some 6 billion transactions, an average of some 30 transactions for every man, woman and child in the United States. The American Retail Federation through its membership comprised of 50 state retail state associations, 31 national retail associations and sustaining corporate members represents over 1 million retail establishments.

I would like you, Senators, to visualize the function of a retailer so that you may assign the proper weighting to our testimony. Retailing is not only one of the largest industries in the country in terms of the number of people it employs, but it is also the industry closest to the public. The retailer stands or falls by how well he serves his customers; hence the retailer's habit of watching people, studying their reactions, and responding to their preferences and aspirations.

The cash register functions as an economic voting machine, recording the things people decide to buy, and with the new computer technology this body of information on the daily buying decisions of millions of Americans is more specific and comprehensive than ever.

Another thing about retailing is that it is probably the most competitive industry we have, partly because of the ease of entry into the business, and partly because everyone has had experienc with retailing as a customer and then he feels he knows more about it than the professionals. Perhaps they do.

The ancient creed of the retailer is, "The customer is always right," and that is still true because no one can succeed in retailing unless they are good at forecasting what the consumer will want, when he wants it, and from

where he wants it. Just as you gentlemen are sensitive and responsive to the needs and desires of the people in your constituncies, so our survival in a highly-competitive field requires sensitivity and responsiveness to the needs and desires of the U.S. consumer, whose perspective is growing and whose standard of living is the highest in the world, thanks to our free system of competition.

The most fundamental lesson we've learned over the years is that the American consumer, with the mobility of the most motorized population on earth, stimulated by highly developed television and other media, and supplied by the world's most decentralized and competitive retail industry, expects a growing variety and abundance of the best possible merchandise at the lowest possible prices from a worldwide marketplace.

Without the choice and competitive stimulation resulting from imports—if barriers to trade were to grow, not diminish—what would be the likely result?

Most importantly, prices to the American consumer would surely increase, aggravating and accelerating our already considerable problem of inflation. And today, unlike even as recently as last May, when I testified on the Administration's trade bill before the Ways and Means Committee, we're not speaking of inflation as merely a controllable concern, but rather as a debilitating disease—reaching "double-digit" proportions. As you know, inflation grew at the alarming rate of 8.8 in the last quarter of last year, up from 3.3% the previous year, which itself represented a rapid rise. If trade barriers are tightened, if sources of competing products and commodities are impeded, our already overheated economy may well reach the boiling point.

In addition to inflationary pressures, heightened trade barriers would protect inefficient industries, thereby undermining our fundamental ability to compete. And, of course, a clamp down on imports would ultimately stifle our exports, further weakening our international competitiveness and the vitality of an interdependent international economic system.

For these reasons, both NRMA and ARF have urged and will continue to urge Congress to adhere to the competitive principles which have advanced the economic well-being of *all* Americans for so many years. While requests for insulation from foreign competition should, of course, be considered, and constructive relief to U.S. workers and industry made available where warranted, we can see no more justification for creating a wall of protection against fair competition from the world's markets than we can for prohibiitng manufacturers in one section of the country from competing with manufacturers in another section.

This is an important point, I feel. The U.S. economy is a stand-out achievement in modern times, and it is admired and envied all over the world, even by our adversaries. The achievement could not have been attained without the vitality and stimulation of a competitive market system permitting the free interplay of that competition. As our economy evolved, there were many times where industries in one section of the country were being hurt by newer industries in another area. True, these competitive forces caused attrition and unemployment in the industry that was losing part of its market. But the free competitive system stimulated its own adjustment and resulted in a far healthier total economy. Thus, when textiles moved south out of New England, electronics and other industries moved in to take their place.

Had the American government seen fit to set up protective regional barriers to shore-up faltering older industries, the very health of our economy would have been undermined. As a friend of mine who was a conservative British MP put it, "Industries are ruined by protection."

Because of our belief in the soundness of a trade policy favoring the minimum of restrictions on trade consistent with the national interest, NRMA and ARF support the fundamental purposes and many of the provisions of H.R. 10710. We are concerned, however, that certain provisions of the legislation are, or could be used to create results, inconsistent with freer trade principles. Accordingly, we are recommending certain amendments to clarify the circumstances under which government intervention can appropriately disrupt the free flow of international trade.

In the 40 page Technical Paper which we have submitted to the Committee, and which we request be made part of the record, we set forth specific comments with respect to many provisions of the Act. Because of time constraints at this hearing, I would like to touch briefly on only three of those provisions:

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the import relief proposals contained in Title II; the proposed balance-of-payments authority contained in Chapter 2 of Title I; and the provisions of Title III, which deal with unfair methods of competition.

TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Let me first discuss the import relief proposals in Title II.

We must all recognize that world economic conditions are changing rapidly, that factors influencing our balance-of-payments and trade positions are volatile, and that *action* taken by the U.S. results in immediate *reaction* by other countries.

We must also recognize that as the world becomes increasingly interdependent, the economic viability of each country is a matter for our own concern. With the present possibility of grave recession in European and Asian countries, any U.S. action which would further weaken their economies—such as increased import restraints—presents clear danger to the U.S. economy. Any restriction on international trade necessarily hurts us, and any imbalance in the world economic system necessarily creates the danger of plunging each country into economic and social disequilibrium. The recent experiences generated by the energy crisis and shortages of key commodities have graphically reconfirmed this.

Because of these realities, NRMA and ARF are opposed to short term "cures" which ultimately would impede attainment of the long-term goal we support—relaxation of trade barriers. Hence, we urge that those provisions of H.R. 10710 which would relax the standards for imposing import relief in the form of tariffs, quotas, or orderly marketing agreements be rejected, especially in view of the availability of less restrictive solutions to trade problems in the form of adequate adjustment assistance.

The present standards for granting import restrictions ensure a proper balance between the need to protect U.S. industry and workers from serious injury resulting from import competition and the long-term benefits of a freer trade policy. The principle that the need for import relief must arise from previously negotiated trade concessions is long established and internationally recognized. It is necessary to ensure that when increased imports result from other factors, such as changed economic conditions or shifts in consumer demand, the U.S. consumer should not be required to forego the economic benefits of fair international competition. If the current connection between negotiated trade concessions and undue import growth is abandoned, Congress will be facilitating the construction of a protective wall around our market in the name of justifiable relief. But rather than relief, our competitive structure will ultimately be weakened, and our standard of living will begin to crumble from the vibrations generated by construction of such a protective wall.

In addition to the tie to trade concessions, we similarly believe that Congress should retain the present standard requiring increased imports to be the "major cause" of serious injury, or the threat thereof. We are not unmindful or insensitive to the plight of people or firms whose economic well-being is threatened by import competition. But we are steadfast in our belief that if such competition is *fair*, it is not in the best interests of our people to protect small segments of the economy at the ultimate expense of our overall competitive fiber and standard of living. We have faith in the ingenuity and competitiveness of the American businessman, and the underlying strength of the competitive process which has made this nation great. We recoil at efforts to undermine our prime economic asset by making available tools which could chisel away at the more permanent benefits of our competitive system.

Moreover, because the revised adjustment assistance provisions in the Act would offer an effective and, in our view, less restrictive response to import competition, the benefits of the competitive process need not be curtailed by erecting artificial import restrictions. Adjustment assistance directly aids workers and firms affected by import competition to improve efficiency and productivity without creating concomitant restrictions on fair competition, and without inviting retaliatory trade measures from foreign countries.

The Act already implicitly recognizes the advantages of adjustment assistance by facilitating such relief, by requiring the President to evaluate the extent to which adjustment assistance can be made available in lieu of import restrictions, and by authorizing expeditious consideration of adjustment assist-

ance petitions. We strongly urge that the Act be amended explictily to provide that, where some form of relief is necessary, adjustment assistance for workers and firms is to be utilized *before* higher tariffs or quotas since the interests of *all* Americans would be served by requiring adjustment assistance to be the preferred form of relief unless it can be demonstrated that such assistance would be clearly ineffective.

TITLE I.—CHAPTER II, SECTION 122, BALANCE-OF-PAYMENTS AUTHORITY

When I testified before the House Committee last May, our balance-of-payments picture was dim. At that time, we had suffered a negative trade balance of $6.9 billion in the preceding year, and prospects for rapid reversal were poor.

But recently, the government announced a dramatic turnaround. In the fourth quarter of 1973 our trade balance bounced back to a favorable $1.2 billion, totally unexpected and unpredictable.

Fluctuations of this nature underscore our belief that the President's authority under the balance-of-payments provisions should be limited.

In order to safeguard against the unjustified imposition of such restraints, the Act should provide minimum standards to determine when balance-of-payments problems justify import restrictions and, for this purpose, should clearly define such terms as "large and serious balance-of-payments deficits", and "imminent and significant depreciation of the dollar".

Moreover, surcharges designed to correct balance-of-payments problems should only be imposed on a most-favored-nation basis, since adjustment to new economic factors causing balance-of-payments difficulties should be borne by all countries concerned, not simply by those which happen to have a trade surplus at a particular time.

Further, we believe that because of the potentially far-reaching impact of balance-of-payments restrictions, such restrictions should not be imposed unless interested persons have had an opportunity to submit views and to comment on the stated reasons for the President's action.

Above all, it should be recognized that balance-of-payments deficits may be caused by factors other than trade imbalances, such as foreign aid programs or changes in currency values, so that trade restrictions may not always be an antidote for the *underlying* causes of the balance-of-payments problems. Consideration should therefore be given to alternative remedies to balance-of-payments difficulties and, at a minimum, restrictions should be limited to instances in which a finding is made that balance-of-payments problems would continue in the absence of less restrictive corrective measures affecting international trade.

TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

Finally, I want to say a word about the unfair competition provisions found in Title III of the Act.

There is no doubt, of course, that unfair acts in import trade must be dealt with just as forcefully as unfair acts in domestic trade. What concerns NRMA and ARF, however, is that the statutes dealing with "unfair" import trade can be used to limit even "fair" import competition. These statutes seem to reflect a long-standing conception that since importation is a privilege it is not necessary to treat importers (who are generally Americans) with the same substantive and procedural fairness which is normally accorded other persons under the law.

But, imports benefit the entire U.S. consumer population and provide countless thousands of Americans with business and job opportunities. It seems unwarranted to deprive these Americans of the benefits of import trade without the constitutional protections available where other property rights are threatened. But even more important, importation is no longer a privilege; it is a *necessity* in an interdependent world economic system that could collapse if seriously challenged by wholly nationalistic concerns. Sound public policy should recognize this reality and ensure that this *necessity* is not unduly curtailed by the failure to provide safeguards consistent with due process of law. We hope that your Committee will carefully consider the detailed proposals we have made regarding the unfair trade statutes which are designed to provide funda-

mental standards of fairness and ensure that the statutes impede only *unfair*—not *fair*—trade.

Mr. Chairman, because of time limitations, I have dealt with only three areas of our concern. In our Technical Paper we have many more suggestions and comments which we mean to be constructive and helpful to you in shaping a final bill.

NRMA and ARF believe that its concerns are the concerns of most Americans, the several million people we employ, and the 200 million people we serve. With our many opportunities for close contact with consumers, which no other business sector, we believe, can duplicate, retailing would hope to be afforded the opportunity to participate on advisory panels both at the policy and technical levels to advise the Secretary of Commerce and the Special Trade Representative in multilateral negotiations. I note that the Secretary of Commerce and the Special Trade Representative are forming twenty-six Industry Technical Advisory Committees for Multilateral Trade Negotiations, as well as an Industry Policy Advisory Committee, and believe that retailing representation therein is a natural complement to other sectors, and a necessity, if our negotiators are to receive through input on our economy from the private sector. I would hope that the Report of the Senate Finance Committee would reflect this fact.

We appreciate the conflicting demands being made upon this distinguished Committee from various groups in our country. We urge that, in resolving these demands, you resist the short-term temptation to protect industry by shutting off its import competitors and that you open our doors to freer international trade which, in the long run, will mean more jobs for more people than ever before in the history of our country. We have yet to see success from government interference with the underlying competitive process, as evidence most recently by the failure of the Economic Stabilization Program to contain price inflation in this nation.

We have suggested today that the constructive legislation now before you can be further improved by taking temporary steps other than counter-productive tariff or quota barriers, while at the same time authorizing the President to negotiate permanent agreements to make the world a freer and more open marketplace.

In this way you can effectively protect endangered industries and their employees, yet promote the health and growth of our economy as an active participant in international trade.

Prepared Statement of the National Retail Merchants Association's and American Retail Federation's Position Paper on the Trade Reform Act (H.R. 10710)

SUMMARY

The National Retail Merchants Association (NRMA) is a nonprofit, national trade association with approximately 2,000 corporate members that operate more than 30,000 retail outlets and sell more than $65 billion in goods and services annually. The American Retail Federation (ARF) through its membership comprised of 50 retail associations, 31 national retail associations and sustaining corporate members represents over 1 million retail establishments. Following is a summary of NRMA and ARF positions with respect to the Trade Reform Act ("Act").

TITLE I—NEGOTIATING AND OTHER AUTHORITY

Chapter 1—Rates of Duty and Other Trade Barriers.—NRMA and ARF support the provisions of the Act which would authorize the President to negotiate reductions in tariff and nontariff barriers, and encourage such negotiations. However, NRMA and ARF are concerned that the lack of reasonable limits on the President's discretion to increase tariffs could result in unjustified import restraints.

Chapter II—Other Authority.—NRMA and ARF recommend that: (1) the imposition of surcharges to correct balance-of-payments difficulties be authorized only on a most-favored-nation basis; (2) a hearing be required prior to the imposition of any restrictions; (3) the imposition of quantitative restric-

tions be rejected as a method of correcting balance-of-payments problems; and (4) minimum standards be provided for defining when balance-of-payments problems justify import restrictions.

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Chapter 1—Import Relief.—NRMA and ARF believe the strengthened adjustment assistance provisions of the Act are superior to restrictions on imports as a means of adjustment to import competition, and urge that the Act be amended to provide that when relief from import competition is necessary adjustment assistance be the preferred form of relief.

Moreover, because the imposition of import relief distorts trade patterns, reduces economic efficiency, and invites retaliation from foreign countries, NRMA and ARF oppose relaxation of the standards under which import relief is granted. Thus, NRMA and ARF recommend retaining the causal connection between prior trade concessions and increased imports that is presently a precondition for such relief. Further, NRMA and ARF recommend retaining the "major cause" criterion for the determination of the causal connection between increased imports and serious domestic injury.

In addition, NRMA and ARF recommend:

1. that as a condition for granting import relief, the Tariff Commission be required to determine that the domestic industry has made and is making a *bona fide* effort to effectively compete with imports;
2. that import relief be limited to the partial or total suspension of the GATT obligation or tariff concession which gave rise to the need for import relief; and
3. that the power granted to the President to impose an orderly marketing agreement on nations not a party to the agreement be deleted, or, at a minimum, that the unilateral extension of such agreement to other countries be permitted only if a dominant (rather than major) share of U.S. imports are already covered by such an agreement.

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

Chapter 1—Foreign Import Restrictions and Export Subsidies.—In order to protect against the unwarranted use of the power of retaliation, NRMA and ARF recommend:

1. that Congress revoke the President's authority to take all "appropriate and feasible steps within his power" to end foreign trade restrictions;
2. that the authority to retaliate against "unreasonable" foreign acts be deleted;
3. that the President's retaliation authority be restricted to the suspension or withdrawal of trade agreement concessions, or, at a minimum, that the authority to impose additional tariff increases or quotas be limited; and
4. that retaliation only be authorized after a specific finding is made that the alleged foreign conduct is the primary cause of the lack of U.S. experts of the products involved, and that, where feasible, the import restriction be limited to the products with which the foreign act or practice is concerned.

Chapter 2—Antidumping Duties.—Because the anti-dumping procedures can easily be abused, NRMA and ARF recommend that:

1. the procedures outlined in §321(b) of the Act be strengthened by requiring that a dumping determination be made only on the basis of a hearing conducted in accordance with the adjudicatory provisions of the Administrative Procedure Act, and that a single agency be given responsibility for making such determination;
2. withholding of appraisement prior to an LTFV determination should be allowed only if irreparable injury and lack of alternative means of relief have created an emergency situation;
3. if dumping is found, the Customs Service be required to determine within a specified time whether dumping duties should be assessed;
4. provision be made for the exclusion from the proceeding of specific exporters and importers whose products are not being sold at LTFV;
5. immediate, full judicial review of dumping determinations be provided;
6. the proposed amendments which would exclude from the dumping computation foreign bounties or grants against which the U.S. has countervailed be adopted;

7. the substantive criteria under the Act be modified and clarified to:

a. define identically the terms "fair value" and "foreign market value";

b. allow use of the cost justification standard under the Robinson-Patman Act to determine comparative prices, so that all expenses which are reasonably related to the merchandise involved be taken into account in determining relevant prices under the Act;

c. provide for a negative determination if sales of imported merchandise are made in good faith to meet competitive prices;

d. provide for a negative determination if technical price differentials resulted solely from changing conditions affecting the market for, or the marketability of, the merchandise concerned; and

e. provide for the imposition of dumping duties only if LTFV sales cause material injury, or a threat thereof, to the U.S. industry.

Chapter 3—Countervailing Duties.—NRMA and ARF urge clarification of the meaning of the term "bounty or grant" and encourage the negotiation of international standards to define practices which constitute permissible and nonpermissible export subsidies. NRMA and ARF agree that pending the negotiation of such standards, the Secretary of the Treasury should be given discretionary authority to decline to impose countervailing duties, and urge that such authority be permitted whenever the Secretary determines that the economic interests of the U.S. would be adversely affected by such imposition. NRMA and ARF recommend that until the scope of the term "bounty or grant" is clarified, U.S. producers and manufacturers not be given the right to seek judicial review of a negative countervailing duty determination, in order to preserve the Treasury Department's flexibility with respect to establishing meaningful standards for the term "bounty or grant." The term "bounty or grant" should, in addition, be more clearly defined by explicitly incorporating the Treasury Department's decision that countervailing duties are inappropriate when an exported product is exempted from indirect taxes within the meaning of GATT. Finally, NRMA and ARF urge that procedures in countervailing duty proceedings be improved by requiring a hearing on the record in accordance with the adjudicatory provisions of the Administrative Procedure Act.

Chapter 4—Unfair Import Practices.—In order to avoid unnecessary and harmful duplication with other statutes, NRMA and ARF recommend that section 337 be restricted to cases involving alleged patent infringement. If this recommendation is not adopted, NRMA and ARF recommend:

1. that the Tariff Commission be authorized to issue cease and desist orders, and that the exclusion remedy be limited to those situations in which exclusion is the only available adequate remedy; and

2. that the procedures in section 337 proceedings be improved by requiring a hearing on the record, under the Administrative Procedure Act, and that judicial control of administrative action under section 337 be improved by permitting judicial review of the Commission's findings of fact on the basis of a "substantial evidence" test; and

TITLES IV AND V—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT AND GENERALIZED SYSTEM OF PREFERENCES

In accordance with our general position concerning the benefits of freer international trade, NRMA and ARF support the principle of expanding trade on a most-favored-nation basis with all countries insofar as such action is consistent with the national interest. However, we take no position with regard to the specific provisions of Title IV which deal with the right of emigration, since these provisions concern political and foreign policy issues rather than international trade issues.

NRMA and ARF support the general purposes of Title V.

INTRODUCTION

The National Retail Merchants Association (NRMA) is a nonprofit, national trade association, comprised of approximately 2,000 corporate members that operate more than 30,000 retail outlets in the United States and other countries. NRMA members sell about $65 billion in goods annually, employ more than 2 million people, and range in size from small specialty shops to large

retail department stores. The American Retail Federation (ARF) through its membership comprised of 50 state retail state associations, 31 national retail associations and sustaining corporate members represents over 1 million retail establishments.

Because the success of our members depends upon their ability to recognize and supply the needs and desires of U.S. consumers, NRMA and ARF are familiar with the many benefits to the American economy and the U.S. consumer which result from foreign trade. An open and fair world trading system enables the U.S. consumer to receiver the highest possible value for his retail dollar. It provides merchandise which the consumer might not otherwise be able to obtain at a price which might not otherwise prevail in the market. Further, import competition insures that U.S. industries remain productive and efficient, enabling the U.S. consumer to receive the full benefits of a free competition policy. Similarly, an open world trading system ensures that U.S. manufacturers and producers have foreign markets and selling opportunities, thereby increasing the standard of living of all Americans.

Conversely, restrictions on trade inevitably prevent the consumer from getting the best buy for his money by discouraging the importation of goods the consumer would otherwise purchase and by forcing the purchase of goods the consumer might otherwise not find attractive from a price or quality standpoint. Restrictions on trade also reduce initiatives for efficiency and the availability of foreign markets within which to sell U.S. produced merchandise.

For these reasons, NRMA and ARF support the principle of unrestricted international trade to the fullest extent that this principle is consistent with the national interest. Thus, NRMA and ARF agree with the fundamental purposes of H.R. 10710 (the "Act"), which are to promote an open and fair world economic system, and that the Act, with certain clarifications and amendments, and if fairly enforced and administered, should accomplish these purposes.

As for the clarifications and amendments, NRMA and ARF are concerned about some provisions of the Act which create significant exceptions to the free competition principle, and which would increase the possibility of unjustified restrictions on U.S. imports. In particular, NRMA and ARF believe that much of the discretion given the President to increase restrictions on trade could result in permanent damage to U.S. trade relations, and thus to U.S. consumers. While we recognize that some flexibility in handling foreign trade policy questions is necessary, discretion to raise trade barriers is especially susceptible to abuse and should be limited.

NRMA and ARF testified before the House Ways and Means Committee concerning the Trade Reform Act introduced by the Administration (H.R. 6767), and at that time NRMA submitted both a detailed Position Paper and proposed amendments designed to facilitate the purposes of the legislations and insure that the legislation does not become the means of furthering restrictions on international trade. We are gratified that many of NRMA's suggestions were adopted by the House, but believe that several additional modifications are still necessary to avoid undue restrictions to the principle of free competition. In the following title-by-title analysis of the legislation, NRMA AND ARF present specific comments with respect to the major provisions of the Act.

TITLE I. NEGOTIATING AND OTHER AUTHORITY

Chapter 1. Rates of Duty and Other Trade Barriers

NRMA and ARF support the provisions of Chapter 1 of Title I which would authorize the President to negotiate multilateral reductions in tariff and nontraiff barriers. We believe that the effective use of this authority offers the best means of fostering an open trade system. In this connection, we fully support the current GATT negotiations and hope that the U.S. negotiators are successful in their efforts to reduce current trade distortions.

NRMA and ARF also support the Act's recognition that nonatriff barriers to trade are "preventing the development of open and nondiscriminatory trade among nations" (Section 102(a)) and support the Act's authorization for the negotiation of multilateral reductions in such barriers. We hope that many nontariff barriers maintained by the U.S. will be lowered through these negotiations. With respect to such nontariff barriers, we are troubled by the growing imposition of quotas negotiated without formal public analysis, with du-

bious legislative authority and without legislative standards. For example, in December, the United States and twenty other countries concluded the Arrangement Regarding International Trade in Textiles, which would authorize the imposition of quotas on cotton, wool, and man-made textile and apparel items whenever a condition of 'market disruption' is found to exist with respect to such imports, without hearings or factual investigation, and regardless of the propriety of such relief under the present "escape clause" or the preposed import relief provisions of the Trade Reform Act. We believe that the Arrangement, as well as other quotas imposed through bilateral negotiations, are inconsistent with the rational formation of trade policy and extremely detrimental to U.S. consumers and businessmen who are dependent upon imports.

NRMA and ARF are also concerned with the broad discretion to raise tariffs given to the President in Title 1. While we recognize that some discretion to increase tariffs may be desirable from a negotiating standpoint, the authority to increase duties to a rate which is either 50% above the rate existing on July 1, 1934, or 20% ad valorem above the rate existing on July 1, 1973, whichever is higher, is far greater than required to complete meaningful trade negotiations. This authority should therefore be limited.

Chapter 2. Other Authority

NRMA and ARF believe that the authority to correct balance-of-payments problems in section 122 of Title I should be modified as follows:

1. First, NRMA and ARF are pleased that the Administration's bill was modified in the House to make temporary surcharges -rather than quotas—the preferred form of relief for balance-of-payments difficulties. Temporary surcharges are far more flexible and effective in dealing with balance-of-payments problems than are quotas, and are far less likely to create unnecessary administrative burdens or windfall profits. Moreover, because the imposition of quotas often results in restricted supply and increased prices in exporting countries, a quota could aggravate, rather than alleviate, balance-of-payments problems. In fact, it is difficult to see any circumstances in which quotas would be an appropriate response to balance-of-payments problems.

2. However, NRMA and ARF oppose the provisions of section 122 which would allow surcharges to be placed selectively against imports from only one country. Adjustment to economic factors causing balance-of-payments difficulties should be borne by all countries concerned, not simply by those which happen to have a trade surplus at a particular time. The U.S. itself runs a payments surplus with many nations, yet for those nations to impose restrictions solely on the U.S. to protect their own balance-of-payments posture would be unfortunate, particularly if the *overall* U.S. payments position was itself in deficit. Hence, we believe that if any import restriction is required for balance-of-payments reasons at all, it should be invoked only under the most-favored-nation pinciple.

3. Further, because of the potentially far reaching impact of balance-of-payments restrictions on international trade, the U. S. domestic economy, and consumers, NRMA and ARF believe that such restrictions should not normally be imposed without prior opportunity for interested parties to submit views and to comment on the stated reasons for the President's proposed action in a public hearing conducted by the Tariff Commission. In particular, as a prerequisite to such restriction the Tariff Commission should be required to find that the facts supporting the imposition of balance-of-payments restrictions in fact exist, and should assess the impact of any such restriction on the U.S. economy.

4. NRMA and ARF are also concerned that the lack of specific standards concerning the circumstances in which restrictions are appropriate to correct balance-of-payments problems could result in the unnecessary and unjustified imposition of such restrictions. Terms such as fundamental international payments problems"; large and serious deficits; and "imminent and significant depreciation of the dollar" lack the definitional specificity which would ensure against unjustified imposition of import restraints. Although we recognize that these terms cannot be defined with mathematical precision, minimum standards should be defined in order to limit the possibility of the misapplication of these terms.

5. Finally, the Act does not specifically limit import restrictions for balance-of-payments reasons to instances in which balance-of-payments problems would

continue in the absence of less restrictive corrective measures, a limitation which was contained in the Administration's bill and which would ensure against the unnecessary imposition of import restraints. NRMA and ARF urge that this limitation be reinserted in the Act.

TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Chapter 1. Import Relief

NRMA and ARF believe that Section 201 of the Act, which would widen current exceptions to freer trade principles for industries injured by import competition, could result in unwarranted restrictions on trade and undue dependence by U.S. industry on protectionist relief. We recognize the need for a strong system of adjustment assistance to assist firms faced with heavy import competition to increase their competitiveness and shift resources to more productive uses. We also believe that the provisions of the Trade Reform Act which would increase the availability and effectiveness of adjustment assistance for both firms and workers will ordinarily provide an effective antidote to import competition, and should be used as the primary response to such competition.

Import relief measures are inevitably inferior to adjustment assistance as a government response to import competition, since government-imposed decreases in trade reduce the real income of the United States and hurt domestic employees who are dependent upon imports for their livelihood.

Import relief protects relatively inefficient U.S. producers without providing any efficiency incentives. It does not merely provide an "adjustment period" within which domestic firms can increase efficiency or shift resources to more economic production, since it provides neither incentives nor assistance therefor. In essence, import relief seeks only to relieve U.S. industry from the rigors of competition, without acknowledging the importance of imports in stimulating both competition and the efficient use of resources.

Adjustment assistance, on the other hand, does attempt to reconcil the conflicts between an outgoing foreign trade policy and protection of the domestic economy by relieving any dislocations brought about by import competition, while, at the same time, aiding resources to move to more efficient production.

Other factors also favor adjustment assistance rather than import relief as the appropriate response to increased import competition. For example, there are adverse foreign policy implications inherent in any import restrictions which are not present in adjustment assistance. Import relief vitally affects the economic interests of foreign countries, and the reaction of foreign countries to increased duties or quotas under these provisions could take the form of retaliation against competing U.S. exports, or resistance to further trade negotiations. Any such retaliation, of course, would negate any net trade advantages thought to accrue from the imposition of increased duties or quotas.

Further, while import relief is ostensibly designed to alleviate economic dislocation in an entire industry, it does not necessarily aid the individual firms which may most need the assistance. Thus, if import relief is provided without any government technical or financial assistance, marginal firms in the industry might well still have difficulty in attracting capital or developing new technology or markets, and workers employed by such firms would still be faced with loss of jobs or fringe benefits.

For these reasons, NRMA and ARF recommend amending the Act to make it clear that import restrictions will be applied only as a last resort in these few cases in which adjustment assistance is infeasible or is found to be ineffective.

Similarly, because the imposition of import relief distorts trade patterns, reduces economic efficiency, and invites retaliation from foreign countries, NRMA and ARF oppose any relaxation in the standards for granting such relief. In this connection, we commend the House for having deleted from the Act the so-called "market disruption test", which could have led to a totally unrealistic assessment of the impact of imports on U.S. industries. We also oppose other changes in the present requirement that import relief be granted

[1] The possibility of retaliation is made clear by Article XIX, § 3(a), of the General Agreement on Tariffs and Trade (GATT), which provides that a country against which such import relief is taken may withdraw or suspend trade concessions which are "substantially equivalent" to the restrictions imposed.

only when increased imports resulting from trade concessions are the major cause of serious injury to a domestic industry.

(*a*) *Causal Connection Between Increased Imports and Prior Trade Concessions.*—The "escape clause" of the Trade Expansion Act of 1962 was designed to authorize relief for U.S. industries injured as a result of government caused international trade expansion, and is based on the premise that when serious injury to a U.S. industry results from governmental action through reductions in trade restraints a government response to import competition is justified. Conversely, when increased imports result from factors other than government caused reductions in trade restrictions, such as changed economic conditions or shifts in consumer demand, requiring the U.S. consumer to pay increased prices is nothing more than government forced subsidization and protection of possibly inefficient U.S. industry from the benefits of otherwise free market forces. For these reasons, we are opposed to relaxation of the criteria for relief to U.S. industry.

Moreover, this change is completely inconsistent with the present U.S. commitment as a Contracting Party to GATT since Article XIX of GATT explicitly allows adjustment only where, *inter alia* the imports against which reilef is sought result from obligations incurred by a Contracting Party. The failure to comply with an international obligation of the United States that would result from breaking the causal link between prior tariff concessions and increased imports could have a great impact detrimental to the interests of the United States.[2]

For over 25 years, GATT has been a significant catalyst for freer world trade and an important barrier against regression to the protectionist excesses of the 1930's. The United States, with its massive economic influence on the world, is a critical member of GATT. If the United States blithely ignores its obligations under GATT in so important an area as the "escape clause", other parties to GATT will feel free to violate their own obligations that seem temporarily inconvenient. The result could be a catastrophic slide into unlimited retaliation and protectionism, wiping out the immense benefits of increased world trade that GATT has protected and encouraged since 1947.

Moreover, the conflict with GATT is wholly unnecessary because in those cases in which import relief is inapplicable due to the nonexistence of prior trade concessions, the improved adjustment assistance provisions in Title II, Chapter 2 and 3 of the Act will almost assuredly provide sufficient relief.

For these reasons, NRMA and ARF strongly urge that section 201 be amended to restore the existing causal link between prior tariff concessions and increased imports as a prerequisite for restricting imports.

(*b*) *Causal Link Between Increased Imports and Serious Injury.*—NRMA and ARF also oppose the language in section 201 which would allow the imposition of import restrictions whenever increased imports are "a substantial" cause, rather than, as at present, the "major cause" of domestic injury. Because of the complexity of the world economy, any attempt to analyze the extent to which serious injury to a domestic industry is related to increased imports is a difficult and inexact task, one which could easily be abused. Symptoms of injury to U.S. industry could result from many factors other than import competition. For example, the failure of an industry to utilize the latest advances in technology might well reduce sales in that industry as a result of an increase in sales by domestic industries producing competitive substitutes. Factors such as shortages of raw materials or shifts in consumer demand could likewise produce symptoms of injury which are unrelated to increased imports. The recent experiences in the energy crisis amply demonstrate this possibility.

Because of the difficulty of assessing the importance of such factors relative to the importance of increased imports as a cause of injury, a margin of error should be maintained to protect against the unwarranted imposition of import

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[2] Ironically, the conflict would arise with an article in GATT which was adopted at the insistence of the United States. See *Analysis of General Agreement on Tariffs and Trade,* Department of State Publication 2983, Commercial Policy Series, 109 (1947). Any relief granted under Section 203 that was not based on a prior trade concession under GATT would represent an "unreasonable" trade practice within the terms of proposed Title III, Chapter 1 of this Act, since it would be inconsistent with GATT. Thus, if another nation were to enact a statute identical to §301 of the Bill, action by the United States taken under proposed Chapter 1 of Title II would provide that nation with full justification and authority to retaliate against U.S. exports.

restraints. The existing interpretation of section 301 of the Trade Expansion Act—that increased imports must outweigh the aggregate effects of all other factors as a cuase of injury—place reasonable constraints on the potential for abuse.

Aside from modifying the standards in section 201, NRMA and ARF believe that section 201 would be strengthened by requiring a finding that an industry has made and is making an effort to compete more effectively with imports as a condition to granting relief. Paying a subsidy to assist an industry over a period of transition to achieve a more competitive stance may be a defensible procedure; but paying a subsidy to sustain an industry that passively hopes for better times in the future is wholly indefensible.

NRMA and ARF are pleased that the House adopted NRMA's suggestion to make tariff increases, rather than quotas, the preferred form of import relief. However, in keeping with the need to make the legislation consistent with present Article XIX of GATT, we urge that section 203 be amended to ensure that relief is structured around the partial or total suspension of the GATT obligation or a withdrawl or modification of the concession on which the import relief was conditioned.[3] At a minimum, meaningful limitations should be placed upon the President's authority to impose import restrictions. The present "limitation" of duty increases to a rate which is 50% ad valorem above existing rates permits increases which are far greater than necessary for the purposes of adjustment, and would permit punitive and protectionist duty increases. Similarly, the Act's provision "limiting" quota restrictions to the amount of imports in the most "representative" period provides no guidance for the determination of what time period might be "representative" and is therefore not an effective limitation. NRMA and ARF are opposed to the imposition of quotas under any circumstances, but if quotas are imposed they should not, at a minimum, restrict imports to a level below that in existence at the time of the imposition.

Finally, the authority under Section 203(h) to impose restrictions on countries not a party to an orderly marketing agreement should be deleted, or, at a minimum, should be amended to permit such imposition only if the agreement has been entered into with countries that collectively supply a dominant share of U.S. imports of the relevant article. As presently drafted, section 203(h) poses serious hazards to U.S. trade because the President is authorized to apply an agreement made with nations accounting for "a major part" of U.S. imports to the imports of all countries. No language exists to prevent use of an agreement covering a relatively small share of total U.S. imports of an article—which in the undefined terms of the Act may still be a "major part"—to justify an extensive system of unilateral restrictions.

TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

Chapter 1. Foreign Import Restrictions and Export Subsidies

NRMA and ARF support the elimination of all trade barriers, but recognize that when all responsible approaches are either exhausted or infeasible limited trade retaliation may be necessary to reduce foreign barriers. However, trade retaliation is a particularly sensitive remedy against foreign trade distortions since it invites retaliation and punishes innocent importers, and thus U.S. consumers, who have no control over foreign trade practices.

The retaliatory authority which would be given the President under section 301 goes beyond what is reasonably necessary to remedy foreign trade abuses, and could itself substantially impair U.S. trade relations. Therefore, NRMA and ARF recommend the following:

1. NRMA and ARF are concerned that authorizing the President to take "all appropriate and feasible steps within his power" to end foreign trade restrictions could be construed in a manner which would result in an unwarranted and unreviewable delegation of authority. Moreover, this authorization is too vague and totally inconsistent with enabling an orderly development of foreign trade policy. If, as is stated in the Report of the Ways and Means Committee accompanying H.R. 10710, this authorization is "not intended . . . [to] provide

[3] Article XIX, structured as the United States desired around the concept of providing relief for unforeseen developments resulting from freer trade under GATT, limits relief to a partial or total withdrawal of the relevant obligation or concession.

any new power" to the President, then it is unnecessary.[4] This language should, therefore, be deleted.

2. The danger to world trade inherent in permitting the President such unrestrained authority is increased by giving the President authority to invoke sanctions against restrictions that are not illegal (or, in the language of the Act "unjustifiable"), but merely "unreasonable". "Unreasonable" is a wholly undefined, open-ended term under which almost any trade restriction, including many employed by the U.S., could become subject to retaliation. While NRMA and ARF support the elimination of all trade restrictions by all countries, we believe that this goal should be worked out by judicious compromise between nations, not by empowering the President to restrict trade in pursuit of his own view of what restrictions are "unreasonable".

3. For similar reasons, we recommend restricting the President's available retaliation remedies to the suspension or withdrawal of trade agreement concessions. The existing power to withdraw trade concessions is broadly consistent with the philosophy of GATT and would be much less likely to result in a harmful trade war than would the imposition of new import restrictions. At a minimum, the imposition of new tariff increases or quotas should be restricted to instances in which the suspension or withdrawal of prior trade concessions is clearly inadequate to remedy foreign trade practices. Moreover, consistent with other sections of the Act, meaningful limits should be placed on the amount of any tariff increases and quota authorized under this section.

4. NRMA and ARF support the provision of public hearings prior to the imposition of import restrictions. We recommend, however, that the standards for taking retaliatory action be modified to provide that at such hearings the agency concerned be required to find that the alleged unjustifiable or unreasonable conduct is a primary cause of the lack of U.S. exports of the product involved. In view of the adverse effect of import restrictions on many Americans, as consumers, as import-dependent workers or businessmen, and as export-dependent workers or businessmen vulnerable to foreign retaliation, this standard would make it clear that only those foreign trade restrictions which have an appreciable effect on the ability of U.S. concerns to sell in foreign markets could give rise to retaliatory action.

Moreover, if the foreign country against which retaliation is taken exports merchandise to the U.S. which is like or directly competitive with U.S. merchandise whose export is impeded by the foreign trade restriction, the statute should require that retaliation be directed only at such foreign exports, unless such retaliation would be clearly ineffective. This would minimize the extent to which importers of merchandise are penalized because of the actions of foreign governments over which they have no control.

Chapter 2. Antidumping Duties

1. NRMA and ARF are pleased that the Act recognizes that a hearing on the record is essential prior to reaching a determination of whether a class or kind of foreign merchandise is being, or likely to be, sold in the United States at less than fair value (LTFV). Because the Antidumping Act can easily be abused and used improperly as a protectionist device,[5] the requirement of a hearing provides an important safeguard to help ensure that the antidumping provisions are fairly applied.

The potential for abuse and the grave damage that the unjustified imposition of antidumping duties can inflict on U.S. import-dependent workers and businesses requires, however, that the procedures outlined in §321 of the Act be strengthened. Specifically, we believe that adquate safeguards require a public hearing conducted in accordance with the adjudicative procedures of the Administrative Procedure Act prior to any LTFV and injury determination, and reliance only upon evidence adduced at the hearing.

To facilitate such procedures, we believe that a single agency should be responsible for dumping cases. It is unrealistic (as well as inefficient) to expect a meaningful determination regarding injurious price discrimination in bifurcated proceedings segregating the alleged price discrimination from the injury claimed to exist.

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[4] H.R. Rep. No. 93-571, 93d Cong. 1st, Sess. 65 (1973) (hereinafter "Ways and Means Report").

[5] *See, e.g.,* Jackson, *World Trade and the Law of GATT,* p. 407 (1969).

In any antidumping proceeding, information that is legitimately confidential should be made available to the parties or their counsel under long-established and well-recognized *in camera* procedures. Any determination of dumping should be subject to immediate, full judicial review, employing the standard of substantial evidence based upon the record as a whole.

To further ensure that the antidumping procedures are not abused to the detriment of American consumers, workers, and businesses, withholding of appraisement prior to the agency's final determination should be authorized only upon a showing that the existence of irreparable injury and lack of alternative means of relief have created an emergency situation. This condition will lessen the danger described by Professor Jackson in *World Trade and the Law of GATT*, p. 407, to wit: ". . . the mere initiation of a dumping procedure in connection with an import is often so costly to the importer that it, on the threat of such procedure, inhibits imports even if the procedure ultimately establishes that no dumping occurred."

Further, if dumping is found, the Customs Service should be required to determine within a specified time whether dumping duties should be assessed.

Finally, the Antidumping Act should provide for exclusion from any dumping finding of specific exporters and importers whose products are not being sold at LTFV. It is grossly unfair and inequitable to label as a "dumper" any company which is not in fact engaged in injurious price discrimination simply for the ostensible convenience of the Customs Service.

2. NRMA and ARF support the provisions of §§321(c) and (d) that include foreign tax treatment against which the United States has imposed countervailing duties in the computation of purchase price and exporter's sales price. This explicit inclusion clarifies present practice and the underlying purpose of both the Antidumping Act and the Countervailing Duty Act. In addition, it ensures that the Antidumping Act is consistent with Article VI, §5 of GATT, which requires that "[n]o product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization."

However, we oppose the provisions in §§321(c) and (d) which would disallow adjustments for certain tax rebates in making dumping calculations, since the change could result in the unrealistic and unfair comparision of export and home market prices.

3. NRMA and ARF also suggest that certain substantive amendments to the Antidumping Act are necessary to clarify and render more meaningful and equitable the administration of the Act.

One of the principle causes of confusion under the Act stems from the fact that the term "fair value" is not defined, and the resulting question as to whether "fair value" and "foreign market value" have the same meaning. Although in practice the Department attempts to define the two identically in accordance with the thrust of the 1958 amendments to the Antidumping Act, there is still a great deal of uncertainty. Since certainty as to the Act's meaning would facilitate enforcement and compliance, the term "fair value" and "foreign market value" should be defined identically by law, or only one term should be employed. This would in no way interfere with the purpose of the Act.

Even more important, the definition of "fair value" needs simplification and clarification after 50 years of confusion. The criteria employed under the regulations often appear to be arbitrary or without relevance to a realistic determination of comparable prices in each of the markets involved for purposes of ascertaining if real price discrimination exists. For example, concerning differences in "circumstances of sale," there would appear to be no justifiable reason for disallowing particular expenses "unless such costs are attributable to a later sale of merchandise by a purchaser" (19 C.F.R. §153.8(b)); or for making allowances for differences in "commissions," but not for salesman's salaries. *Ibid.* Nor would there seem to be any basis for making allowances for expenses incurred in selling the merchandise in one market only up to the amount of comparable expenses in the other market.

A determination of unjustified price discrimination turns upon a comparative cost analysis in the truest sense. The cost analysis in dumping cases is very much akin to cost justification for different prices under the Robinson-Patman Act. Cost justification recognizes the savings to the producer (and ultimate

consumer) due to unimpeded adoption and use of efficient and economic processes. The criteria for allowing for differences in circumstances of sale in antidumping cases should be closely analogous to Robinson-Patman criteria which allow costs "resulting from the differing methods or quantities of sale or delivery" to justify differences in prices.

In FTC cost justification proceedings, the Commission takes into account direct costs in dealing with customers or groups of customers as regards a product, and then determines a reasonable method for allocating indirect or overhead costs to these customers or group. Only costs which are too general in nature to be reasonably related to a particular product are not acceptable to the Commission (e.g., expenses of the Chairman of the Board of a large diversified company). But the "material" cost of selling and promotion (media advertising, sales promotion brochures, etc.) as well as the "direct labor" (salesmen, promotional people) and overhead (sales management, marketing management, etc.) are proper costs for Robinson-Patman consideration.

Likewise, in order to make the Act more comprehensible and effective, the criteria for LTFV sales should be simplified so that *all expenses and costs which are reasonably related to the merchandise under consideration* should be taken into account in determining relevant prices under the Act. A provable expense, actually incurred and properly allocated to the merchandise involved, should be allowed as a deduction in calculating net-back prices.[6]

Therefore, in order to clear up the existing confusion, it would appear appropriate to incorporate concepts for cost justification of price differentials set forth under the Robinson-Patman Act. This would have the further advantage of incorporating administrative and judicial decisions regarding the meaning of those concepts under the Act. To accomplish this, the Act might be amended to provide that "nothing contained in the Act shall prevent price differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered."

In addition to the foregoing, it should be established that the concept of dumping (i.e., injurious price discrimination) should not embody discriminatory prices which simply meet competitive prices from domestic sources in the United States. Accordingly, if a showing can be made that a discriminatory lower price to any purchaser or purchasers in the U.S. was made in good faith to meet an equally low price of a domestic competitor, then such price discrimination should not be condemned under the Act. Lower import prices under these circumstances can hardly be said to be predatory or threaten the existence of a U.S. industry. Disregard of this defense for discriminatory pricing can only act as an arbitrary barrier to fair competition, and would be clearly inconsistent with the procompetitive scheme fostered under established U.S. antitrust law.[7]

Further assistance in achieving the dual goals of promoting vigorous competition without injurious price discrimination could be obtained by incorporating the Robinson-Patman Act's "changing conditions" proviso into the Act, so that a finding of no dumping would be required if discriminatory low prices resulted from price reductions caused simply by "changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned." Surely legitimate competition should not be disrupted by country-wide dumping findings, which may be based upon short-term discriminatory prices resulting from changing business conditions.

It also seems necessary that the meaning of "injury" be clarified in light of current practice and the intended purview of the Act. Until recently the Tariff Commission held that the term "injury" meant the same as term "material injury", which is the standard used under Article VI of GATT. In other words,

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[6] The price analysis used in practice appropriately seeks to compare prices at the same level of trade (ex-factory prices) in order to ascertain if price discrimination really exists. Perhaps this practice should be enacted into law, in order to eliminate any opportunity for utilizing incomparable prices to determine whether the Act has been violated.

[7] For example, the mere fact that prices in the United States are below "foreign market value" is surely no reason to insist, without further analysis, that imported merchandise alone be forced to be sold at an arbitrarily higher price in the United States.

only price discrimination which caused a material anti-competitive impact was condemnable. This view accorded with the Congressional intent behind the Act, which was to protect nascent and fledgling American industries from the threat of persistent dumping and "slaughtering" of profits by foreign concerns; that is, to protect against destruction of a U.S. industry or prevention of its establishment. Nevertheless, beginning in 1967, the Commission turned almost completely around and has been concluding that essentially any disturbance which is "more than *de minimis*" constitutes "material injury." This approach has perverted the whole meaning, purpose and effect of the Act. Although the Commission could reverse itself again, the present uncertainty prevailing at the Commission thus calls for clarification and guidance from Congress as to what constitutes sufficient injury to result in a dumping finding.

Perhaps the change to the "more than *de minimis*" approach is a reflection of the Commission's inability to develop meaningful facts for determining the existence of injury, in view of the present dichotomy of functions between the Secretary and Commission under the Act. It seems unrealistic to expect a meaningful determination of injury under these circumstances, since it is inconceivable that a determination of injurious price discrimination can be decided without full data, information and understanding of the scope and depth of the price discrimination ostensibly involved.[8]

At all events, clarification by Congress seems necessary so that it can be clearly understood that serious or material injury threatening the U.S. industry's existence and ability to compete due to LTFV sales is an absolute prerequisite to a finding of dumping. Perhaps this can be most easily accomplished by insertion of the word "material" (or the word "substantial," as used in the Robinson-Patman Act) before the term "injury" in the existing law. If this change is not made, the dumping law can be used as a weapon to protect against *legitimate* price competition which could never result in any permanent or serious disruption of the competitive ability of a U.S. industry. This was clearly not the purpose of the Act.

Chapter 3. Countervailing Duties

NRMA and ARF believe it would be appropriate to clarify the meaning of the term "bounty or grant," and we encourage the negotiation of international standards concerning what practices constitute permissible and non-permissible export assistance. At present, all countries, including the United States, have various programs which assist exports, and there is a great deal of confusion concerning which of these programs should be considered unlawful under international trading rules. The House Ways and Means Committee recognized this fact when it stated that: "The Committee has no desire to sanction certain existing export-assist practices conducted by various foreign governments. It also recognizes that the United States itself may well be conducting programs of export assists which foreign governments may find inconsistent with international law and policy." (Ways and Means Report, 75–76).

Similarly, the Treasury Department has recognized that not all export related practices amount to a "bounty or grant." Thus, the Treasury Department "considers rebates or remissions of taxes not directly related to an exported product or its components as being bounties or grants within the meaning of the countervailing duty law", but takes a different view, consistent with GATT, when such taxes are directly related to the exported product.[9] In this connection, we urge that the Countervailing Duty Act be amended to reaffirm Treasury's decision in this regard by providing that countervailing duties would be inappropriate if an exported product is exempt from (or receives a rebate of) a duty or indirect tax within the meaning of GATT. Not only would this make the terms of the U.S. countervailing duty law explicitly consistent with GATT (Article VI, §4), but it would facilitate the U.S. negotiating position at GATT concerning international countervailing duty standards.

NRMA and ARF are encouraged that the establishment of such international standards is apparently contemplated by the Act, and that during the course

[8] There is some question regarding the sufficiency, scope and meaningfulness of the information transmitted by the Secretary to the Commission as to LTFV sales, but this question cannot be commented upon in detail in view of the confidentiality of such transmission.

[9] House Ways and Means Committee, *Material Relating to the Proposal of the Administration Entitled the "Trade Reform Act of 1973"*, 93rd Cong., 1st Sess. 76 (1973).

of negotiations the Secretary of the Treasury would be given authority to decline to impose countervailing duties when such imposition might impair the negotiating process. We agree with the House Ways and Means Committee that the Secretary of the Treasury must be "accorded some degree of latitude in administering [the Countervailing Duty Act] until an international agreement is reached regarding the international practices which would be considered permissible and nonpermissible" [10] We also hope that as these negotiations are concluded and agreements concerning such international standards reached, the standards will be incorporated into the Countervailing Duty Act as definitive interpretations of the term "bounty or grant".

For similar reasons, NRMA and ARF recommend adoption of the provision of the Administration's proposed Trade Reform Act (H.R. 6467, § 330(d)) which would have granted the Secretary of the Treasury discretion to refrain from imposing countervailing duties if he determined that such action would be detrimental to the economic interests of the United States. This discretion is essential in view of the wide variety and complexity of economic incentives existing in both the United States and abroad. A decision whether to impose a countervailing duty includes difficult political and economic judgments involving the domestic economy and foreign policy, judgments which must be made whether or not international negotiations are taking place. To allow the mere technical finding of a foreign "bounty or grant" to force automatic imposition of a countervailing duty could produce a result contrary to the national interest. A rigid system which does not allow for discretion to consider foreign policy implications unduly inhibits U.S. flexibility in responding to trade problems.

Further, until the definition of the term "bounty or grant" is clarified and international standards are adopted, NRMA and ARF recommend that U.S. producers and manufacturers not be given the right to appeal from a negative countervailing duty determination. In view of the lack of clarity concerning the term "bounty or grant" and the numerous foreign policy judgments which arise in administering the Act, it would be unwise to permit decisions extending import restraints to be made by a judicial body which does not have the technical expertise of the Treasury Department to define the term "bounty or grant", or to make difficult foreign policy decisions. If this suggestion is not adopted, the Act, at a minimum, should be amended to make it clear that the discretionary decision of the Secretary of the Treasury to refrain from imposing countervailing duties, which we propose be reincorporated in the Act, should not be subject to judicial review.

NRMA and ARF believe that while the definition of the term "bounty or grant" is being clarified and international standards are being established the interests of U.S. manufacturers and producers can be adequately protected by improving the procedures in countervailing duty proceedings. At present, formal procedures are almost non-existent and a clear risk exists that legitimate concerns of interested parties may not be represented adequately. Accordingly, we urge that procedures consistent with those revised procedures adopted in connection with antidumping proceedings be required under the Countervailing Duty Act.

Finally, NRMA and ARF support the extension of the Countervailing Duty Act to duty free as well as dutiable merchandise, and the requirement that countervailing duties only be imposed on duty free merchandise on the basis of a finding of material injury. We find it anomalous, however, that the material injury standard is not also applied with respect to dutiable merchandise, as is required under Articles VI, § 1 of GATT, and we urge Congress to remove this aberration.

Presently, U.S. law is inconsistent with GATT because it permits countervailing duties to be imposed without any showing of injury. The "grandfather clause" of the Protocol of Provisional Application of GATT has provided the United States with a technical excuse for this inconsistency, but after 25 years of nonconformity it would seem appropriate to conform U.S. law to GATT, and in the process thereby also make the countervailing duty and antidumping law more consistent. As Professor Jackson has noted, ". . . the existence of this situation [of nonconformity between GATT and U.S. countervailing duty law] probably makes it more difficult to obtain multilateral international nego-

[10] Ways and Means Committee Report, p. 76.

tiations and agreement on rules concerning countervailing duties." *World Trade & The Law of GATT*, p. 425. Bringing U.S. law into conformity with GATT would thus facilitate international agreement on countervailing duty standards and insure that trade restrictions are imposed only when necessary to protect other legitimate interests.

Chapter 4. Unfair Import Practices

NRMA and ARF disagree with the House rejection of the Administration's proposal regarding section 337 of the Tariff Act of 1930 (19 U.S.C. §1337), which would have restricted that section to cases of alleged patent infringement. Except in patent infringement cases, section 337 unnecessarily duplicates existing legislation, and provides a great potential for abuse by authorizing import *exclusion* as the exclusive remedy. The FTC already has broad and adequate authority to attack unfair methods of competition and unfair acts affecting U.S. domestic or foreign commerce under section 5 of the FTC Act, as well as under the Sherman Act and Clayton Act. Lewis A. Engman, Chairman of the FTC, has stated as much by testifying that transferring section 337 powers to the FTC would "not appear to extend the range of unfair practices beyond those now embraced by Section 5 of the Federal Trade Commission Act . . ." [11] Moreover, the Antidumping Act of 1921, Countervailing Duty Act, Wilson Tariff Act and Section 526 of the Tariff Act of 1930 adequately deal with other forms of unfair practices regarding imports.

If section 337 is not limited to patent infringement cases, it should be substantially modified to ensure against the unfair application of the standards of section 337.

1. First, the Commission should be authorized to issue cease and desist orders as a remedy against unfair methods of competition and unfair acts, and the exclusion remedy should be limited to those situations in which the unfair acts or practices cannot be remedied except by excluding the product from the U.S. The remedy of exclusion is too drastic to be applied in most instances and results in anticompetitive restraints on even fair trade. Authorization to issue cease and desist orders would increase the flexibility of the Commission in enforcing section 337 and would reduce the possibility that resort to section 337 would unnecessarily restrain even fair competition.

2. The procedures for enforcing section 337 are inconsistent with modern conceptions of due process and procedural fairness. Where factual issues in an adversarial context are important, as they are under section 337, minimum procedural fairness, as well as the importance of correctly ascertaining the facts, require that a hearing on the record be held at which all interested persons have the opportunity to present evidence. The present section 337, by contrast, requires that the Commission hold only such hearing "as it may deem sufficient", a requirement which could easily lend itself to abuse. Importation involves substantial amounts of commerce, American property rights are involved, and these property rights should not be undermined by virtue of a section 337 remedy without the adjudicatory safeguards of the Administrative Procedure Act.

3. Section 337 currently authorizes appeal from the findings of the Commission only upon questions of law and makes such findings conclusive if supported by the evidence. This limited judicial review unjustifiably increases the discretionary authority of the Commission and restricts the ability of interested parties to avoid unjustified exclusion orders. Section 337 should be made consistent with other statutes dealing with court review of agency determinations by authorizing reversal of Tariff Commission determinations unless they are supported by substantial evidence on the record as a whole.

TITLES IV AND V. TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT AND GENERALIZED SYSTEM OF PREFERENCES

In accordance with our general position concerning the benefits of freer international trade, NRMA and ARF support the principle of expanding trade on a most-favored-nation basis with all countries insofar as such action is consistent with the national interest. However, we take no position with regard to the specific provisions of Title IV which deal with the right of emigration,

[11] Statement of Lewis A. Engman, Chairman of the Federal Trade Commission, before the Senate Committee or Commerce on S. 1483 and S. 1774, p. 11 (September 6, 1973).

since these provisions concern political and foreign policy issues which go beyond the scope of international trade issues.

NRMA and ARF support the general purpose of Title V.

CONCLUSION

In sum, NRMA and ARF support the fundamental purposes and major provisions of the Trade Reform Act. However, we believe that the above modifications and amendments are necessary to ensure that American consumers are not deprived of the real economic benefits which derive from freer international trade. In our view, the long-term interests of the U.S. are promoted by facilitating an open and fair world trading system, by reducing rather than increasing U.S. import barriers, and by approaching short-term "cures" for particular problems cautiously.

As we have witnessed in recent years, the world economic system is rapidly changing. New and unforeseeable economic and political factors are constantly emerging which alter trading patterns and cause shifts in economic allocations. Because of these rapid changes, what may seem to be appropriate short-term foreign trade policy at one time soon becomes inappropriate and must be reversed. Import restraints seen as necessary "protection" for U.S. industry soon become the cause of inflation and product shortages. For this reason, NRMA and ARF oppose a foreign trade policy which would devise only *ad hoc* responses to particular problems, since such responses will often turn out to be shortsighted and, indeed, counterproductive. Instead, we strongly endorse strict adherence to freer trade principles, with only limited and well-defined exceptions under particular circumstances.

In accordance with this view, NRMA and ARF have recommended amendments which would limit the scope and clearly define the applicability of the import relief and balance-of-payment provisions of the Act in order to ensure that they cannot be unjustifiably used to restrict trade or upset world trading patterns. Further, we have recommended that the statutes dealing with unfair practices in import trade be modified to ensure that they restrict only unfair—and not fair—import competition, and that persons potentially adversely affected by such proceedings are accorded fundamental rights which ensure both procedural due process and the fair and realistic application of the statutes.

With these modifications, NRMA and ARF fully support the Trade Reform Act and believe that it will promote the economic gains which a free competition policy has provided for so many years.

NATIONAL RETAIL MERCHANTS ASSOCIATION,
Washington, D.C., April 9, 1974.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
Dirksen Office Building
Washington, D. C.

DEAR SENATOR LONG: Yesterday, Mr. Stanley J. Goodman, Chairman of the Board of the May Department Stores Company, represented the National Retail Merchants Association before the Senate Finance Committee in support of H. R. 10170, the Trade Reform Act. We are greatly appreciative of the opportunity to express our views on this legislation which is vital to the retail industry.

The Association is concerned that certain provisions could lead to results which are inconsistent with the purposes of the Act and would be detrimental to U.S. retailers and consumers. We are suggesting (a) modifications in the broad procedural reforms in the antidumping and countervailing duty areas, (b) more realistic dumping criteria, and (c) modifications in the broad Presidential power to retaliate against unreasonable foreign import restrictions. These points are dealt with at length in our position paper filed with the Committee on April 5th.

We hope to have the opportunity to explore these matters in depth with you in the near future for we deem it essential that trade reform be passed in this Congress.

Cordially,

JAMES R. WILLIAMS.

Senator HANSEN. Next will be Mr. E. Keith Thomson, vice chairman, International Affairs Committee, National Constructors Association.

Mr. Thomson, if you do have a prepared statement, as you have heard me say to Mr. Goodman, it will be included in the record.

If you would like to go ahead with a 10-minute oral summary, or from a prepared summary, however you want to proceed, we will be very pleased to have it.

STATEMENT OF E. KEITH THOMSON, VICE CHAIRMAN, INTERNATIONAL AFFAIRS COMMITTEE, NATIONAL CONSTRUCTORS ASSOCIATION

Mr. THOMSON. Mr. Chairman, Senator Dole, Senator Packwood good morning. I differ somewhat from the last witness in that no one accompanies me to the witness table. Also in that he represented the retail industry and I hope to speak for perhaps the other end of the spectrum of industry, the heavy industrial sector, but I think you will find my remarks tend to follow his quite closely about the free enterprise system.

I am Keith Thomson, vice chairman of the National Constructors Association's International Affairs Committee. The National Constructors Association appreciates this opportunity to appear before your committee and to express our views on the proposed Trade Reform Act of 1973.

Some background for you, the National Constructors Association is composed of 41 international engineering-construction companies, primarily engaged in the design and construction of heavy industrial facilities.

Examples of our work include oil refineries, steel mills, petrochemical plants, nuclear and conventional power generating facilities, paper mills and other highly automated manufacturing facilities.

Our combined annual business in 1972 was $14 billion, of which approximately $3½ billion was derived from overseas work. The association is deeply interested in matters involving overseas trade and we consider the Trade Reform Act to be of great importance in this field.

In accordance with the chairman's request, my testimony today will be a short summary of our position regarding the provisions of the act, which is more fully explained in our written statement. And as the chairman said, I would like the written statement to be included in the record of this committee's deliberations.

The National Constructors Association believes that the reduction of both tariff and nontariff barriers to international trade should be the ultimate objective of U.S. trade policy since the vigorous and unimpeded flow of goods and services across natural boundaries contributes to the efficient utilization of resources and the stability of each nation's economy.

The passage of the Trade Reform Act has the potential to be of great benefit to the United States and to the engineering and construction industry, as it specifically deals with many of the problems encountered in this process of liberalizing international trade.

In title I, the bill makes possible the negotiations that are necessary to attain liberalized international trade by extending a broad grant of authority to our trade negotiators.

After full consideration of this concept, and recognizing that there are provisions for congressional veto over agreements that are included, we feel that such a grant of authority is both necessary and desirable.

The transition from relatively restrictive international trade to a more liberalized policy is made less destructive by provisions in title II. Some workers and some firms may be adversely affected by this transition and adjustment assistance as included in the act will aid in orderly transformation of those industries so affected by foreign competition increased imports.

Title III, by improving the flexibility and speed of reaction to unfair practices such as dumping and export subsidies, protect the domestic manufacturers of comparable goods which though sufficiently competitive to avoid serious injury by fair competition for imports, would be injured by unfair practices of our trading partners.

Section 301(a)(3) is particularly valuable in that it provides power to react to unfair competition practices which occur to the detriment of U.S. manufacturers and goods in third countries.

This provision ensures an equal footing in the international market, which the bill seeks to capture.

The entire package of protective mechanisms in title III further facilitates the transition to fair trade.

Title IV, which extends nondiscriminatory tariff agreements to nonmarket economies is favored by the NCA as a means of reducing tensions between those nations and the United States and as a method to increase our overseas market.

However, the provision which makes such tariff treatment contingent on the improvement of such nation's immigration policies is considered irrelevant to the purpose of the bill and is felt to be an unwarranted intervention in the internal affairs of such nations.

While we sympathize with those who want these policies changed, the NCA feels that the Trade Reform Act should be confined to economic policy.

Title V, the provisions of which attempt to assist the economic development of lesser developed nations, is supported by the National Constructors Association. We are very much in favor of giving preferential treatment to such nations so as to foster an increased rate of economic growth and an improvement in their standard of living.

The provisions made in this title as to the restrictions of such treatment on the authority to designate beneficiary nations, help to ensure that such treatment is accorded only when it is justified.

In summary, the National Constructors Association supports the intent of the Trade Reform Act of 1973 which is to lead the United States into an era of free international trade with the resultant benefits flowing to all nations.

It gives the necessary measure of protection and the flexibility of responses that are essential for an effective transition. We recommend to your committee to report favorably on this measure to the whole Senate.

We appreciate this opportunity to testify. We will be happy to answer any questions.

Senator DOLE [presiding]. In absence of Senator Hansen—he will be returning at any moment—I would like to ask a general question. I note in your statement examples of your work, include oil refineries, petrochemical and chemical plants, and so forth, which are much in the news these days with the so-called energy problem, or whatever you want to call it. And that leads to the question of whether or not it is in our national interest in your opinion to be spending millions or billions of dollars to develop Soviet gas and to export drilling equipment for that when we have this rather serious domestic problem?

Do you see any inconsistency there, extending credit to the Soviet Union?

Mr. THOMSON. There are a vast number of resources that have to be developed, Senator. Not only oil and gas, they include domestic supplies of coal that we have in the United States, domestic oil and gas as well. I think that the United States has to pursue a variety of sources of energy and I think that should include overseas sources as well as domestic sources.

Senator DOLE. How much of your total business is overseas business?

Mr. THOMSON. A total of 25 percent in 1972. It was $14 billion, and the overseas portion of that was $3½ billion, roughly 25 percent.

Senator DOLE. Is it expanding on a year-by-year basis?

Mr. THOMSON. In the construction business, it is difficult to gage it. Many of the overseas jobs are large and they come at discrete portions. You might get one large project one year and then none for several years. In the aggregate, it follows that 25 to 30 percent, it is not tending to increase.

Senator DOLE. I note that your view, with reference to title IV, is very clear. You feel that the restriction on immigration—restriction, while it may be a serious problem, deserves serious consideration, and probably should not be in this trade reform bill?

Mr. THOMSON. Very clearly, Senator.

Senator DOLE. That may become a stumbling block?

Mr. THOMSON. We are aware of that.

Senator DOLE. Did you testify on the House side?

Mr. THOMSON. No, I did not, Senator.

Senator DOLE. Did anyone represent your association?

Mr. THOMSON. The NCA did testify before the House on May 12, 1973.

Senator DOLE. I have no further questions.

Senator PACKWOOD. Almost every business group that has appeared, while expressing sympathy for the Soviet Jews wanting to emigrate, has made the same statement that you do, that it is not an appropriate item to put it in this bill, and you make a statement very similar to the others that NCA sympathizes with the plight of those who wish to emigrate, and yet are not permitted to do so, and would certainly support an effort to change such policies in a reasonable manner.

What is a reasonable manner?

Mr. THOMSON. Senator, that is more in your political field than the economic field, since you asked the question. You will note from my voice that I am the beneficiary of free immigration policies. I was not born in this country. Therefore, from a personal point of view, I support very much the free immigration policies.

However, the NCA position is that free trade provisions of the bill are far too valuable to be held hostage to this particular provision and we feel that it can be done through business relationships and having people travelling and working in those countries, rather than the imposition through legislation.

Senator PACKWOOD. You say business relationships, in the Banking Committee, we are now working on extending the authority of the Export-Import Bank. There may be a provision there to limit exports to Russia, unless they let the Jews emigrate and the same argument is made there, it should not be in the bill; it should be someplace else.

For the life of me, frankly, I have failed to have any witness come up to say where it does belong. In effect they just do not want it in this bill. They do not want it in any other specific bill that they are in favor of.

We can pass a Senate resolution and say we are generally opposed to Russia's restrictive immigration policies, but I do not think that is going to be of any help, unless we have a club. I am looking for a handle that is going to be both relevant and effective. I have not found one that is both, and I do not mind using an irrelevant one if that is going to be the only effective way we can go.

Mr. THOMSON. I share your concern, and I do not think we have an answer. I feel it is more in the political side than the economic side, but our concern parallels yours.

That is not a helpful answer. I am sorry, but the problem is difficult.

Senator PACKWOOD. I have asked a number of witnesses. I do not blame you if I do not get a helpful answer. They just do not want it in this bill. Every time you ask where should it be, the testimony would be it is irrelevant to every bill.

I have no further questions, Mr. Chairman.

Senator DOLE. Thank you, Mr. Thomson. Your entire statement will be made a part of the record and we appreciate your appearing today.

[The prepared statement of Mr. Thomson follows:]

PREPARED STATEMENT OF THE NATIONAL CONSTRUCTORS ASSOCIATION BY E. KEITH THOMSON, VICE CHAIRMAN, INTERNATIONAL AFFAIRS COMMITTEE

The National Constructors Association is composed of 41 International Engineering-Construction companies, primarily engaged in the design and construction of heavy industrial facilities. Examples of our work include oil refineries, petrochemical and chemical plants, mining and metallurgical facilities, steel mills, paper mills, nuclear and conventional power generating facilities, and other highly automated manufacturing facilities. Our combined annual business in 1972 was $14 Billion, of which approximately 3½ billion was derived from overseas work. Due to the world-wide nature of our operations, we are

deeply interested in matters involving foreign trade. We consider the Trade Reform Act to be of great importance in that field.

Now is an excellent time to reform our trade policies. Recent developments in the international field point up the need for the United States to formulate a carefully considered program for dealing with the complex area of international trade. World trade over the past decade has been increasing at a rapid pace; however, due to numerous tariff and non-tariff restrictions and barriers to trade, the increase has not been a uniform one. This has, as we have so recently seen, produced numerous difficulties, such as balance of payments problems and international monetary instability. The United States, even in the face of such difficulties, has not had a comprehensive statement of its trade policies since the expiration of the Trade Expansion Act of 1962 in 1967. In order to bring some measure of stability and certainty to the field, it is essential for the United States to have a clearly articulated program which will be sufficiently specific to deal with the problems inherent in this complex area, and yet will be flexible enough to be able to meet any new challenges which inevitably will follow from the continued growth of international trade.

The current negotiations on the General Agreement on Tariffs and Trade demonstrate that there is a significant effort being made to confront and solve these difficulties on a multilateral basis. The United States, as a party to the GATT, has a responsibility to see that it makes a significant contribution to these valuable negotiations. This cannot be done without first, an assessment of the problems which the United States is facing, and second, the formulation of policies to deal with these problems.

The problems we face are serious ones. The United States has failed to attain the access to markets in other nations which those nations have to our own domestic markets. Our products have not been as competitive in the international marketplace as they should be, although recently they have become more so. Our workers and firms which are adversely affected by an influx of imports have no effective remedy. This has lead some to propose a return to a protectionist policy, which would exclude from our domestic markets many goods from overseas, in a well meaning but misdirected effort to insure a continued balance of payments surplus, to insure full employment in the domestic job market, and to prevent domestic companies from exporting the capital and goods which are looked upon by advocates of protectionist policies as essential to the well being of the national economy.

If this protectionist sentiment were implemented, it would be very damaging to the United States. It would invite retaliation, reducing our access to foreign markets even further, and placing our trade balance back in defecit. It would result in higher costs to the consumer, as a result of reduced international competition. To avoid this, the United States must instead spearhead the movement toward freer international trade.

The benefits of such a program would include increased employment in the United States due to the greatly increased production of goods for export resulting from increased access to foreign markets. The balance of payments would remain in its current healthy state, since our American goods can be very competitive if trade restrictions are removed. And, with a reasonable policy toward the particular problems of the Lesser Developed Nations, the transition to freer international trade can help to raise their standard of living by permitting them an opportunity to manufacture and sell goods on a world-wide scale.

The Trade Reform Act of 1973 can help to accomplish these goals, to the benefit not only to the United States generally, but to the Engineering-Construction industry as well. Our members have been hampered in their ability to compete by a great number of restrictions on our international operations. If we are permitted to compete with our foreign design, engineering, and construction counterparts on a full, free, and fair basis, then we can contribute significantly to the income, balance of payments, and employment of the United States.

THE PROVISIONS OF THE ACT

Title I

Title I of the Act grants a broad range of authority to the Executive branch to enable our trade representatives to negotiate reasonably and on parity with

their foreign counterparts. It grants to them the necessary authority and flexibility to be credible during this critical time of major trade negotiations. The only way that any agreement can be concluded is to authorize this grant of authority. Of course, it is not always desireable to authorize such wide discretion, since with the authority goes the potential to abuse it. The Act, however, contains provisions for Congressional veto over the agreements which our negotiators conclude. This method of granting the authority, and then retaining a measure of authority over and above the power granted removes the possibility of abuse while it permits substantive negotiations to proceed. After careful consideration of this concept, the National Constructors Association recommends that the authority be granted.

Section 135 of Title I is a welcome addition to this measure. It is evident that our negotiators cannot be effective without the general authority contained in this title. It is equally evident that they cannot be effective without information on which to base a clear and beneficial position. The procedures contained in Section 135 mandate that the private sector have a voice in recommending policies and giving technical advice and information regarding particular industries and products. With the proper provisions to insure that the advice of the private sector is thoroughly considered, the bill will insure that the trade representatives negotiate in a well informed manner.

Title II

Title II alleviates many of the difficulties which can be anticipated during the transition to a more liberal international trade policy. Some industries may find it difficult to compete with increased imports, and may experience dislocations because of a tariff or non-tariff barrier reduction. Rather than erect quantitative restrictions or tariff walls to insulate these industries from foreign competition, a comprehensive adjustment assistance program will serve to help these industries alter their products and operations so as to become able to compete. This will help to prevent the death of any American industry. However, the program should be such that it is not exclusively financial compensation for injury due to imports, or mere unemployment compensation for workers adversely affected, but should be a program where technical assistance is made available to such firms, and re-training is available to the workers. In this way, our industries remain viable in the face of imports, and dislocated workers swiftly rejoin the workforce. With an adjustment assistance program which accomplishes these goals, the transition to freer international trade will be beneficial for the economy as a whole while at the same time will be detrimental to no single sector of it.

Title III

Title III improves the flexibility and speed of the available reactions to unfair competitive practices engaged in by our trading partners. The President is empowered to take swift and decisive action to prevent injury to domestic industries where a foreign nation maintains import restrictions, unreasonable tariffs, or other policies which impair unfairly the ability of United States' goods to compete. This Title serves to protect those industries which are sufficiently competitive to be able to weather an influx of imports, but would be injured by unfair practices in their distribution.

Section 301(a)(3) is a very important item in these mechanisms of protection. This section provides for a reaction to unfair practices, such as export subsidies or other incentives having the effect of export subsidies, which occur in third country markets, to the detriment of the competitive ability of the United States in that area. This is particularly important as it applies to the Engineering-Construction industry. Our overseas work can be seriously hampered by foreign government supported grants of credit to our competitors or by government sanctioned trading companies. Our industry operates in a highly competitive atmosphere overseas, and our technology is not so far ahead of our competitors so as to guarantee that that will be the determinative factor in the award of a contract. A liberal application of favorable credit terms by a foreign nation can mean the difference between and American company designing and constructing a major industrial facility overseas, with the resultant benefits flowing to the United States economy and industry, and the project being awarded to a foreign competitor. This provision can avoid seri-

ous credit wars on one hand, and a serious handicap for the American industry on the other.

Title IV

Title IV seeks to grant non-discriminatory tariff treatment to non-market economies. The NCA supports this. It will increase the overseas markets available to United States industries, and the transition to free trade will be made more complete. The benefits will not be attained overnight. There will be a need for some long and difficult negotiations in order to reach a full trading relationship with those nations. However, the potential which a non-discriminatory tariff treatment holds for speeding the arrival of such a relationship is great.

In addition to the economic benefits which so obviously would accrue from a substantial increase in trade between the United States and Eastern countries, there will also be the benefit of a reduction in world tensions. This, too, will take time to develop to its fullest potential. However, with the increase in trade, in contact, and in mutuality of interests comes a better understanding between our different systems. This better understanding and communication cannot help but alleviate the tensions which have come from many years of separation in all fields. The NCA feels that the proper mixture of foreign policy initiatives and private cooperation and interplay will bring substantial long term benefits by increasing the possibility of a peaceful world.

However, the NCA feels that the present restrictions included in this section substantially reduce its great potential. The requirement that such nations provide their citizens with the right or opportunity to emigrate without undue fines, fees, restrictions, or penalties as a precondition to the granting of most favored nation status is an unwise mixing of foreign economic policy and humanitarian considerations, however justifiable the considerations may be. The NCA sympathizes with the plight of those who wish to emigrate and yet are not permitted to do so, and would certainly support an effort to change such policies in a reasonable manner. However, the inclusion of theis requirement in this legislation shows no promise of causing these nations to improve their emigration policies. It does show the promise of reducing the benefits to all nations of a general relaxation of both world tensions and tariffs. The bill should be confined to foreign economic policy changes.

Title V

Title V authorizes the President to grant generalized tariff preferences to imports from developing nations in concert with other industrialized nations. The NCA supports this title, since its provisions promise to help speed the growth of the economies of the lesser developed nations, and therefore increase their standard of living. The greater the participation of these nations in the international marketplace, the more stable their economies, and the more diversified the market. The NCA would be less enthusaiastic about this provision, were it not for the provisions for tight control over the Executive's authority to designate beneficiary nations. This insures that such treatment is accorded only when it is justified.

CONCLUSION

The National Constructors Association supports the intent of the Trade Reform Act of 1973. It will serve as a valuable tool in trade negotiations, leading the United States into an era of freer international Trade. This new era, in turn, will bring great benefits to the United States and to the other nations of the world. The Engineering-Construction industry will also benefit. The bill as it is currently proposed recognizes the need for authority in our negotiators to enter trade agreements to this effect, and yet provides the mechanism for the protection of those who can potentially be injured. There are provisions, however, which reduce the effectiveness of this legislation, and they should be eliminated. Therefore, with the reservations as stated above, the National Constructors Association recommends that your report to the full Senate favor passage of the Trade Reform Act.

Senator DOLE. The next witness is Mr. J. E. Rottmann, president, Builders Hardware Manufacturers Association.

First, Mr. Rottmann, if you would like to identify the other members of your group?

STATEMENT OF J. EDWARD ROTTMANN, PRESIDENT, BUILDERS HARDWARE MANUFACTURERS ASSOCIATION; ACCOMPANIED BY CLYDE NISSEN, EXECUTIVE DIRECTOR, BUILDERS HARDWARE MANUFACTURERS ASSOCIATION; AND DANA ACKERLY, WASHINGTON COUNSEL

Mr. ROTTMANN. This is Mr. Clyde Nissen, the executive director of our association, and on my right, Mr. Dana Ackerly our Washington legal counsel.

The reason for our paraphernalia is that when we testified before the House, a few people did not know what we represented.

Senator DOLE. As you probably heard, your entire statement will be made a part of the record. You may proceed in any way you wish.

Mr. ROTTMANN. My name, of course, is J. Edward Rottmann. I am president of the CIPCO Corp., located in St. Louis, Mo.—another St. Louis concern.

I am here today in my capacity, however, as president of the Builders Hardware Manufacturers Association. I want to thank you for this opportunity to comment on the Trade Reform Act; this is greatly appreciated by our association.

By way of introduction, our association, the BHMA, is comprised of companies which account for approximately 85 percent of the total value of builders hardware items produced in the United States.

The term "builders hardware" covers a broad variety of decorative as well as functional products, incorporated in residential, commercial, and institutional buildings. These range from simple coat hooks to the more complex, such as electronic door controls, and include hinges, cabinet hardware and locks of all types, like these items that we have with us.

My written statement, as you mentioned, has been submitted for the record, and as an oral statement I would like simply to emphasize our basic poisition and our major concerns.

Briefly stated, our industry, comprised mainly of small companies like my own, faces an increasingly difficult period with respect to foreign imports. Because of the comparatively low production costs, the relatively small capital investment needed, and our generous U.S. tariffs, our products are relatively easy to copy, produce abroad, and sell competitively in the United States.

To illustrate the good job that our foreign competitors are doing, let us note these representative items and in particular these door lock sets that are typical of lock-type sets that are a major part of the market.

This one is made by a member-company and this—indicating—is a similar product manufactured in Japan. The domestic product sells for a little more than $14, while the Japanese one sells for less than $7.

It can be readily seen that these two are practically indistinguishable and I can assure you the quality of the Japanese internal mechanism which makes up a lock, is comparable to ours.

Senator DOLE. Is that retail price?

Mr. ROTTMANN. That is the retail price. It is not surprising, therefore, that imports of builders hardware products have been steadily increasing in the past several years.

This increase can be illustrated by this chart that Clyde will hold up for us. It shows that the value of builders hardware imports has increased from $2½ million in 1959, to over $46 million in 1973.

Senator DOLE. What percent of that is the total?

Mr. ROTTMANN. At the 1973 level, almost 7 percent.

Senator DOLE. 7 percent?

Mr. ROTTMANN. 6.9 percent of the total volume in this country. A copy of this chart is attached to my written statement and is listed as exhibit A.

This increase in imports is due, at least to a large part, to the low level of U.S. tariffs. As shown in table III, as set forth in my written statement, U.S. tariffs are among the lowest.

At the same time, we do not believe that protectionism is the answer to the problem our industry faces from foreign competitors. Instead, the Association supports the basic policy of free but equal trade embodied in H.R. 10710. But it does believe that several modifications are necessary to make this policy meaningful to small industries such as ours.

In particular, we urge the adoption of sector-by-sector negotiations on tariffs as well as nontariff barriers. We see this general principal of free but equal, as being completely meaningless to our small industries unless the international trade agreements provide each individual industry with the same opportunity to compete abroad as is given foreign producers to compete in the industries' home market.

Senator DOLE. Are any members of your group in the export business?

Mr. ROTTMANN. Are they exporting today? Yes. There are companies exporting, but not enough companies are exporting.

I will carry on, if I may, for just a moment.

We strongly urge, therefore, that negotiators be required by legislation to seek equivalent concessions for each industry as well as the best agreement for the United States, overall.

It will be of little comfort to those companies and their workers when they are forced out of business by foreign competition to know that some other sector of the economy is thriving because of the export opportunities obtained at their expense.

And, to answer your question, the builders hardware industry is aware that an active pursuit of foreign export opportunities is in order to counter inroads made in the domestic market by foreign competitors.

To this end, our members have been investigating various possibilities for expanding our exports. However, these efforts will be of no

avail if the very high tariff and the restrictive nontariff barriers maintained by our trading partners persists after the impending negotiations.

On the contrary, our situation will be measurably worsened if U.S. tariffs are reduced and those of our foreign trading partners are not.

All we are asking for is a fair opportunity to compete.

Senator DOLE. I am wondering. You indicated that imports have increased, and constitute about 6.9 percent?

Mr. ROTTMANN. Yes.

Senator DOLE. How would that be on exports?

Mr. ROTTMANN. How are ours on exports?

Mr. NISSEN. 10 years ago, exports amounted to four times imports. Today, imports are four times exports, about 12 million exports to 46 million imports. It used to be the other way around. Exports have not changed for the last 10 years. They have stayed at a relatively even keel.

Senator DOLE. Is there any one item, or group of items, that constitute that export business?

Mr. ROTTMANN. That constitute the import business?

Senator DOLE. You are exporting locks, what are you importing?

Mr. ROTTMANN. Locks and cabinet hardware, of all the products—incidentally, I might say that one of our economists has projected that under the current rate of increasing imports, by 1982, the share of imports would come up to about 25 almost 26 percent of the U.S. market. We just do not see it doing anything else but going up under this present situation.

As I say, at the moment, the corresponding tariff levels are not equal and unless Congress acts to add safeguards to the present bill, we feel any protection now available to us will be traded away for benefits obtained by other, more politically influential industries.

Accordingly, we strongly urge the committee to add to section 101 language similar to that contained in section 102(c) dealing with equivalent opportunities for each product sector.

In addition, we highly support the provisions that offer protection for smaller industry and smaller companies, either against unfair trade practices, or the possible effects of fair competition, for it is entirely conceivable that some industries may not be able to survive even fair competition.

For them, the bill should make provisions in other ways. We commend for your consideration, the several features of NAM's adjustment assistance proposal, especially the early warning part of it which are not now incorporated in the act.

Our views with respect to the amendments to the escape clause, the Antidumping Act and the countervailing duty law are covered in my written statement.

In closing, I would like to emphasize one point in particular—the BHMA strongly believes that the Clayton Act market concepts of any line of commerce in any section of the country should also be applied in determining the injury from unfair foreign trade practices.

Finally, with respect to the state-controlled economy of countries, we especially support that provision in section 321 of the bill which provides for a determination of fair market value on the same terms of those applicable in non-state controlled economy countries. Stay apples with apples.

This concludes my oral statement. I will be happy to reply to any further questions that the committee might have.

Senator DOLE. I do not have any further questions. I interrupted you during your testimony, but I listened and read portions of your statement. You support the objectives. You have certain requests for modifications and those are all set forth in greater detail in your more lengthy statement which will be made a part of the record.

Mr. ROTTMANN. Yes, sir.

Senator DOLE. Senator Packwood?

Senator PACKWOOD. Assuming that all tariff and non-tariff barriers were to be eliminated, here and overseas, could you compete in a world market?

Mr. ROTTMANN. Our member firms—this exact question was asked in our committee meetings. We feel that we could.

Senator PACKWOOD. The difference in the way it is structured, alone, is not the fact here that causes the problems?

Mr. ROTTMANN. We feel that we have the technical know-how and can compete. Our biggest problem, of course, is to have the opportunity to compete fairly in foreign markets—but if they can do it, we think we can do it.

Senator PACKWOOD. This is an important answer because this is one of the main thrusts that many of the industries are using, that the question is not really tariff or nontariff, they are saying that we cannot compete period unless we have protection.

Mr. ROTTMANN. If we are going to give the other countries a free ride, then we say, give us a free ride out and we will take care of the problems as they arise.

Senator PACKWOOD. Thank you very much. I have no further questions.

Senator DOLE. Thank you very much.

Mr. ROTTMANN. Thank you very much.

[The prepared statement of Mr. Rottmann follows. Hearing continues on p. 1992.]

PREPARED STATEMENT OF MR. J. EDWARD ROTTMANN, PRESIDENT, BUILDERS HARDWARE MANUFACTURERS ASSOCIATION

Mr. Chairman, members of the Committee, my name is J. Edward Rottmann, President of the Builders Hardware Manufacturers Association. I appreciate this opportunity to express the views of the Association on H.R. 10710, the "Trade Reform Act of 1973."

PURPOSE OF STATEMENT

1. It is the purpose of this statement formally to declare the support of the Builders Hardware Manufacturers Association ("BHMA") for the basic purposes of H.R. 10710, the "Trade Reform Act of 1973," and for most of the specific provisions embodied in the bill.

2. It is the further purpose of this statement to present the recommendations of the BHMA concerning certain provisions of the bill in the light of the industry's economic situation, its past experience, and the current preparations for the impending trade negotiations.

INTRODUCTION

The Builders Hardware Manufacturers Association is a trade group of over 60 American companies who manufacture builders hardware items. A roster of BHMA members is attached to this Statement as Exhibit B. The membership of the association accounts for approximately 85% of the total dollar value of the builders hardware items manufactured and shipped in the United States. "Builders hardware" describes a broad variety of decorative as well as functional products incorporated in residential, commercial, and institutional structures. The nature of these products ranges from simple coat hooks to the more complex, such as electronic door controls, and includes door locks and lock trim, key blanks, padlocks, hinges, exit devices, door closers, door pulls, ornamental door trim, window locks, sliding and folding door hardware, mailboxes, cabinet hardware . . . and numerous other related items.

The industry is composed of about 200 firms, most of which are engaged exclusively in the domestic market. The preponderance of these firms employ from 25 to 150 workers, with a few diversified firms employing from 1,000 to 3,000 workers. Geographically, firms are located nation-wide, with concentrations in New England, the Chicago area, and California. In 1973 domestic shipments of the industry amounted to approximately $900 million.

The industry can thus best be described as small in terms of its share of the Gross National Product, in terms of total employment, and in terms of the average size of its members. It is important to note, though, that even some of the smallest firms in the industry are important to the economy of the localities in which they are situated.

SMALL FIRMS PARTICULARLY VULNERABLE TO IMPORT COMPETITION

The industry shares the plight of many small industries as it competes in this increasingly global economy. Most individual firms are too small to attract the capital needed to maintain a competitive posture with respect to overseas firms, which are frequently subsidized or financed by their governments in pursuit of national objectives. Individual firms are, further, too small to afford, by themselves, a rapid development effort to streamline their processes or diversify into other products or markets in response to increased competitive pressures from overseas. And finally, individual firms are too small to afford, by themselves, the startup expenses involved in engaging in the export market where it might exist. Nevertheless, members of the builders hardware industry are actively exploring ways in which to counter the effects of rising imports by marketing their products abroad.

It is, thus, small industries like the builders hardware industry that are most vulnerable to import competition and, under existing legislation, least able to react and adjust. BHMA commends to the Committee consideration of these circumstances as it considers the proposed legislation.

EFFECT OF RECENT TARIFF CONCESSIONS

It is important to recognize that the United States in the past, in its position of encouraging free trade throughout the world, has yielded more than its fair share of trade concessions, resulting in significant disparities in duty rates between the United States and its trading partners. At the time of those negotiations this stance was appropriate; the domestic economy was strong and robust, our trading partners were, on a relative basis, still gaining strength, and the United States was consistently generating a surplus in the balance of trade. While our domestic economy is still among the strongest in the world, the other two conditions are no longer true. Our major trading partners have achieved full development of their economies, and are strong enough to pose major challenges in many domestic markets, including builders hardware.

Tariff reductions have given rise to substantial increases in imports of competing foreign products. In a recent one-year period imports rose at a sharp rate, as shown in Table I. Import growth during the 15-year period 1959–1973 shown in Exhibit A.

TABLE I.—*Increase in dollar value of builders hardware imports: by major category, 1971–72*

	Percent
Padlocks	83
Cabinet locks	18
Other locks	34
Door closers	25
Butt hinges	12
Other hinges	64
Hardware (not elsewhere specified)	47
Total	47

This rate of increase is alarming to the builders hardware industry. Although imports are estimated to have accounted for a relatively modest 6.4% of total domestic consumption of builders hardware in 1972, this figure must be compared with an estimated 1.5% in 1963, representing a 400% increase over this period. The BHMA estimates for 1973, as shown in Exhibit A, indicate that imports rose still higher last year.

The major factor in these increases in imports has been prior concessions, in which the United States rates of duty applicable to foreign imports of builders hardware have been significantly reduced, as shown in the following Table II:

TABLE II.—DUTY RATES OF BUILDERS HARDWARE PRODUCTS

[In percent]

BTN	Product	1930	1967	1972
83.01	Cabinet locks	20.0	10.0	5.0
83.01	Padlock—Nonpin	20.0	10.0	5.0
83.01	Padlock—Pin	20.0	8.0	4.0
83.01	All other locks	20.0	8.0	4.0
83.02	Butt hinges	45.0	19.0	9.5
83.02	Other hinges	45.0	16.0	8.0
83.02	Door closers	27.5	11.5	5.5
83.02	All other products	45.0	17.0	9.5

The rates of duty imposed by the U.S. trading partners have not been similarly reduced, and the domestic builders hardware industry now is subject to disparities between U.S. and foreign tariffs, as illustrated in Table III, which gives the current tariffs imposed by countries in which BHMA member companies have expressed a marketing interest.

TABLE III.—DUTY RATES OF SELECTED U.S. TRADING PARTNERS

[In percent]

	United States	Mexico	Brazil	Canada	EEC (6)	United Kingdom	Japan
BTN 83.01	4-5	20-100	70	17.5	8.5	8.5	8
BTN 83.02	5-9	50-100	70	17.5	7.0	8.2	8

Clearly, these disparities encourage a trade flow into the United States, but not out to the customer countries. It is this kind of situation that inspires protectionists sentiment. If relatively small U.S. industries, such as the builders hardware industry, are not to be seriously injured as a result of international trade negotiations, they must at the least be given the same opportunities to export their products to foreign markets as foreign manufacturers obtain in U.S. markets. The term "fair" and equitable marketing opportunities" requires that each industry receive through multilateral trade agreements new export opportunities as nearly equivalent as possible to the benefits accorded foreign competitors in the domestic market.

Clearly, the process of negotiating an international trade agreement is complex, and "equivalence" is difficult to measure, let alone achieve between each of the signatory countries. Nevertheless, the U.S. negotiators should be required to strive not only for the best possible agreement overall but also to assure that no industry's interests are traded away without an attempt being made to obtain equivalent benefits *for that industry.*

The U.S. builders hardware industry is already feeling the sting of foreign competition. It understands, however, that protectionism is not the answer, and accordingly supports the basic purposes of H.R. 10710, while at the same time making every effort to discover and exploit markets abroad.

In this context the BHMA respectfully submits to the consideration of the Committee the following comments and recommendations.

SPECIFIC COMMENTS AND RECOMMENDATIONS

1. Section 101—Sector-by-Sector Negotiations Should Be Required

The Builders Hardware Manufacturers Association *supports* the objectives of "development of fair and equitable market opportunities" proclaimed in Section 2 of the proposed legislation. It is the Association's position that this development of "fair and equitable" opportunities is necessary to fully achieve the corollary objective—"enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce."

To this end, it is the strong recommendation of the BHMA that language be incorporated in Section 101 of the proposed legislation requiring that reductions of any existing duties (including so-called "low-duty" items): (1) be negotiated *within* manufacturing sectors or BTN classifications, and (2) recognize our past reductions to low levels relative to other nations.

A negotiating stance such as that described will bring duty rates among the trading partners into closer harmony, and reduce the impact of the duty barriers to expansion of United States exports. It will further, and just as importantly, reduce the hazard of a small industry, such as the builders hardware industry, being "horse-traded" away in return for concessions to larger, more politically effective industries.

Specifically, we would suggest for inclusion in Section 101 of the bill language similar to that contained in Section 102(c) with respect to non-tariff barriers. This provision requires that the negotiations be conducted "on the basis of each product sector of manufacturing" . . . "to the maximum extent feasible" and requires the President to include a sector-by-sector analysis in his report to Congress on each trade agreement. In the opinion of the BHMA, this provision strikes the appropriate balance between a firm policy in favor of sector-by-sector negotiations and a recognition that realities may not permit corresponding sector-by-sector concessions in every instance.

2. Section 102—NTB Negotiation Within Sectors Endorsed

BHMA agrees with and endorses the finding of Congress concerning the impact of non-tariff barriers on trade. Association member companies find their own export opportunities significantly reduced by such barriers as local standards, restrictive government procurement practices, arbitrary valuation practices, and restrictive customs formalities. The Association applauds the urging by Congress of an aggressive approach towards negotiating the removal of these barriers in customer countries.

The Association further endorses, and calls special attention to, the mandate in Section 102(c) that negotiation for removal of NTB's be conducted within product sectors. Again, BHMA is acutely sensitive to the hazard of a small industry being "horse-traded" away in return for concessions to larger more politically effective industries.

3. Section 103—More Stringent Staging Recommended

BHMA submits that the staging authority incorporated in the proposed legislation is too rapid when applied to low or intermediate duty rates, and recommends a more restrained rate of reduction. Table IV below illustrates two points:

(1) Historically, the duty rates on the products of BHMA member companies have been subjected to the maximum reductions authorized for prior trade negotiations. You can see the impacts from 1930 through 1972.

(2) The maximum staging (and rounding) authorized under the proposed legislation provides for duty-rate reductions, when viewed in a 10-year time span, too rapid for industry, particularly a small industry such as represented by BHMA, to adjust to in the face of aggressive competition from foreign producers. You can see the reduction which could occur in 1975 and 1976 under the present wording of the bill.

TABLE IV.—DUTY RATES, HISTORY, AND PROJECTIONS OF BUILDERS HARDWARE PRODUCTS

[In Percent]

BTN	Product	1930	1967	1972	1975	1976
83.01	Cabinet locks	20.0	10.0	5.0	2	0
83.01	Padlocks—Nonpin	20.0	10.0	5.0	2	0
83.01	Padlocks—Pin	20.0	8.0	4.0	1	0
83.01	All other locks	20.0	8.0	4.0	1	0
83.02	Butt hinges	45.0	19.0	9.5	6	3
83.02	Other hinges	45.0	16.0	8.0	5	3
83.02	Door closers	27.5	11.5	5.5	2	0
83.02	All Other Products	45.0	17.0	9.5	6	3

As can be seen from Table IV, the staging authority of the proposed legislation, fully applied, could result in the virtual elimination of a 19% duty *over less than a ten-year span,* and the absolute elimination of a 10% duty in the same time period. This is much too fast.

It should be noted that the various lock types above, all to be reduced to zero tariff, represent an estimated 40% of the domestic builders hardware market.

BHMA recommends that the staging requirement be changed at least as applied to low and intermediate duty rates, to authorize maximum annual reductions of 3 percent or one-fifth of the total reduction whichever is *less.*

4. Section 135—Advisory Committees Endorsed

BHMA endorses the statutory establishment of advisory committees as incorporated in the proposed legislation. The Association has applied to the Commerce Department for inclusion in an industry advisory committee, and is actively assembling information for its participation in that committee's activity. It is the Association's attitude that active participation in the work of these committees is essential to assure the maximum opening of export opportunities for member companies, as well as to make known the industry's situation concerning import competition.

5. Section 135—Exemption from Federal Advisory Committee Act Recommended

BHMA recommends that the exemption from the Federal Advisory Committee Act incorporated in Section 135(e)(2) should be extended to the Advisory Committee for Trade Negotiations as well as to the industry, labor, and agricultural technical advisory committees. The language of Section 135(e)(2) provides adequate protection to the public, as well as discretion to the President. It would seem essential that the Advisory Committee for Trade Negotiations, charged with policy advice to the President, be afforded the same privileges of privacy of deliberations; in the absence of this privacy, bargaining positions and strategies are certain to be compromised.

6. Section 135—Antitrust Exemption to Industry Advisory Committees Recommended

As stated previously, BHMA and its member companies are assembling information for participation in an industry technical advisory committee. The Association has found that assembly of certain information essential to identify or document positions and objectives to be taken in an advisory committee may be inconsistent with provisions of the antitrust laws. This infor-

mation deals with domestic and export sales, cost, and pricing experience of industry members, which is essential to the development of industry advice to the trade negotiators.

BHMA has no specific recommendation for legislative language, but commends to the Committee consideration of this problem in developing effective advice to the Special Representative for Trade Negotiations. A limited exemption from the antitrust laws would seem justified for this important undertaking.

7. Section 203—Import Relief Time Too Restricted

BHMA endorses the intent, procedures, and most provisions of Title II, Chapter I—Import Relief. The Association particularly commends removal of the current requirement that a casual link to prior modifications of duty rates be established in order to qualify a product or industry for import relief. The Association further commends the substitution of "substantial" for "major" cause with respect to the relationship between imports and injury, or threat thereof, to a domestic industry.

BHMA member firms would vastly prefer using their own resources and ingenuity, rather than federal adjustment assistance, in adjusting to injury from import competition. While relief under the provisions of Section 203 would enhance the opportunity to accomplish adjustment on their own, five years (with relief phased down in the last two years) and an uncertain additional two years calls for more rapid change than seems feasible. For reasons described in the Introduction, small firms such as those which comprise the largest share of BHMA membership do not have the financial capacity for the rapid product development and re-tooling (and risk) which a five-year relief period would require. Further, if the prospective (and uncertain) two-year extension of relief could be only at the final phased-down level of the fifth year, the full seven-year protection afforded would be insufficient to encourage independent adjustment.

The only alternative in this situation must almost certainly be to seek federal assistance, to merge, or to withdraw from the industry. The latter two alternatives unfortunately have been exercised by a number of firms in the builders hardware manufacturing industry. Listed below is the history of the number of firms in the industry, as reported in the Census of Manufacturers:

Year:	*Number of firms*
1958	325
1963	237
1967	217
1972 (BHMA estimate)	200

Accordingly, BHMA recommends concerning subsection (1) that the time limit for import relief ("not to exceed 5 years") incorporated in the proposed legislation be extended. Specifically, BHMA recommends that the number of extensions be increased to provide a maximum aggregate of ten year relief and that the limitation on the level at which extensions may be made (subsection (i)(3)) be eliminated.

8. Title II, Chapter 3—NAM Adjustment Assistance Proposal Endorsed

BHMA endorses and commends to the Committee the proposal of the National Association of Manufacturers concerning adjustment assistance for workers and firms. This proposal is described in an NAM Staff Report circulated to the members of both Houses of the Congress, and has been cast into legislative language. The proposed Trade Reform Act of 1973 incorporates many of the provisions of the NAM proposal, including technical and financial assistance for firms, and job placement, training, and relocation assistance for workers. These provisions, though, are at the so-called "second tier" of the NAM proposal. Of equal, or perhaps greater, importance are the so-called "first tier" provisions, and the "early warning" provisions, of the NAM proposal.

Adjustment assistance for both workers and firms, as provided in H.R. 10710, becomes available only after severe damage from import competition

has occurred, or is demonstrably imminent by virtue of declines in employment, sales, or production in an industry. By contrast, the "early warning" system suggested by NAM would provide precious time for firms to react to an impending import surge, enhancing the possibility of avoiding disruption and dislocation. Without this extra reaction time, more drastic remedies such as unemployment benefits and financial assistance, are sure to be needed.

Further, the responses to an "early warning" envisioned in the NAM proposal enhance the chance of success of response to the warning. Particularly, important, in the view of BHMA, are the provisions in the NAM proposal for federal assistance for research and development efforts in terms of technical assistance and special tax treatment; and provisions for limited antitrust exemption for affected firms in the areas of mergers and joint ventures (including joint R&D ventures).

Finally, it is clear that the program of adjustment assistance as proposed by NAM will result in significantly less cost. Response to an "early warning" by firms will result in fewer layoffs, and consequently less demand for unemployment compensation. Response will be in terms that improve the health and vigor of the economy, assuring the highest possible levels of employment, productivity, and utilization of resources. BHMA views these factors as important in endorsing the NAM proposal as an alternative to the adjustment assistance provisions of H.R. 10710.

9. Title III—Clayton Act Market Concepts Recommended

BHMA supports the provisions of Title III of the proposed legislation, and particularly applauds those provisions requiring rapid determinations in antidumping and countervailing duty proceedings.

BHMA recommends additions to the proposed legislation, however, to incorporate the Clayton Act market concepts of "any line of commerce in any section of the country" in the determination of injury from unfair trade practices. In particular, the Association recommends the language of the Schweiker bill, S. 323, which would amend Section 201(a) of the Antidumping Act of 1921 and Section 303(b)(1) of the Tariff Act of 1930; and further recommends that Section 301(a)(3) of the proposed legislation be modified to incorporate the same concept.

It is, in the opinion of BHMA, appropriate that the same tests of unfair competition be applied to foreign competitors in the United States as are applied to United States manufacturers.

10. Title III—Section 331—Four-Year Suspension of the Countervailing Duty Law

Section 331 of the bill would amend Section 303 of the Tariff Act of 1930 to add a new Section (e) which would give the Secretary of the Treasury authority to suspend the application of the countervailing duty law for a period of four years upon the determination that the imposition of a countervailing duty "would be likely to seriously jeopardize the satisfactory completion" of the trade negotiations. The Administration has recommended to this Committee that the four-year period be applicable both to privately-owned and government-owned-or-controlled facilities.

The reason for this moratorium stated by the House Ways and Means Committee (Committee report at pages 75-76) is to permit the Secretary latitude: "until an international agreement is reached regarding the international practices which would be considered permissible and nonpermissible. Otherwise the Secretary of the Treasury may conceivably be constrained to take countervailing action . . . which ultimately may be internationally agreed to be a permissible international export assist."

This caution is unnecessary. The imposition of countervailing duties to offset foreign subsidies could in no way embarrass the United States negotiators or impede the conclusion of an international agreement respecting either tariff and non-tariff barriers or the meaning of "subsidies." On the contrary, the negotiations are more likely to be successful if the countervailing duty status is vigorously enforced than if it is suspended for four years. Furthermore, any countervailing duty could be removed at such time as conflicting international obligations become operative.

11. Title IV—Trade Relations With Countries Not Enjoying Non-Discriminatory Treatment

East-West trade has been expanding in the past decade, and it is likely to continue regardless of whether the affected countries are granted non-discriminatory treatment. While the BHMA has not taken a position with respect to Section 402 of the bill, it is critically important that the countries potentially affected by Title IV recognize and honor the generally accepted international rules of trade and conduct. In particular, the BHMA is concerned that these countries adhere to the international patent and trademark laws and that their products be sold in the United States a prices no less than fair value.

Accordingly, he BHMA supports Section 341 of the bill which would amend Section 337 of the Tariff Act as it relates to the exclusion of articles entering the United States in violation of U.S. patents. The legislative history of this provision should indicate a Congressional intent that this section be vigorously enforced.

Equally important is the ability of the United States to determine when a product from a country with a state-controlled-economy is being dumped into the United States. In this respect BHMA strongly supports Section 321 of the bill, which would amend Section 204 of the Antidumping Act permitting a determination of the foreign market value of merchandise from state-controlled-economy countries on the basis of data from a non-state-controlled-economy country.

12. Protectionist Measures Rejected

BHMA rejects as counterproductive of domestic as well as world trade the several extreme protectionist measures that have been proposed, exemplified by the Hartke-Burke bill, S. 151. While concerned that the industry it represents is particularly vulnerable to import competition by reason of the size of firms within the industry, BHMA endorses the objective of fair *and equal* international trade agreements which reduce the obstacles to world trade. It is further confident that, given adequate protection from unfair import practices, early warning of impending surges of imports, and equitable treatment at the negotiating table, it can compete effectively in the domestic market.

Imposition of protectionist measures such as the severe quota restrictions envisioned in Hartke-Burke, however, can only lead to undesirable results, among them:

1. Retaliatory measures by our trading partners, severely restricting U.S. export opportunities and, (with our current need for foreign raw material and energy sources), further jeopardizing the U.S. balance of payments.

2. In effect, the subsidy and protection of marginal U.S. producers, with the removal of the competitive necessity to innovate and improve (aggravating, through the consequent loss of productivity improvement, the persistent problem of inflation). BHMA thus views the continued encouragement of international trade as important to the health of the builders hardware manufacturing industry, as well as to the health of the domestic economy.

CONCLUSION

The Builders Hardware Manufacturers Association supports the objectives and, with suggested modifications, the provisions of the Trade Reform Act of 1973.

BHMA is concerned that the industry's competitive position may be eroded and jeopardized by inequitable concessions granted in the impending trade negotiations. Products of the industry were subjected to greater-than-average duty-rate reductions in the Kennedy Round and, because the industry is small and hence relatively weak politically, it may experience the same inequitable treatment in the negotiations to which the proposed legislation is addressed.

It is this concern for the industry as well as for other industries in similar circumstances, that prompts the proposal of certain modifications to H.R. 10710 which will help the builders hardware industry realize its resolve to be an active participant in world trade.

EXHIBIT A

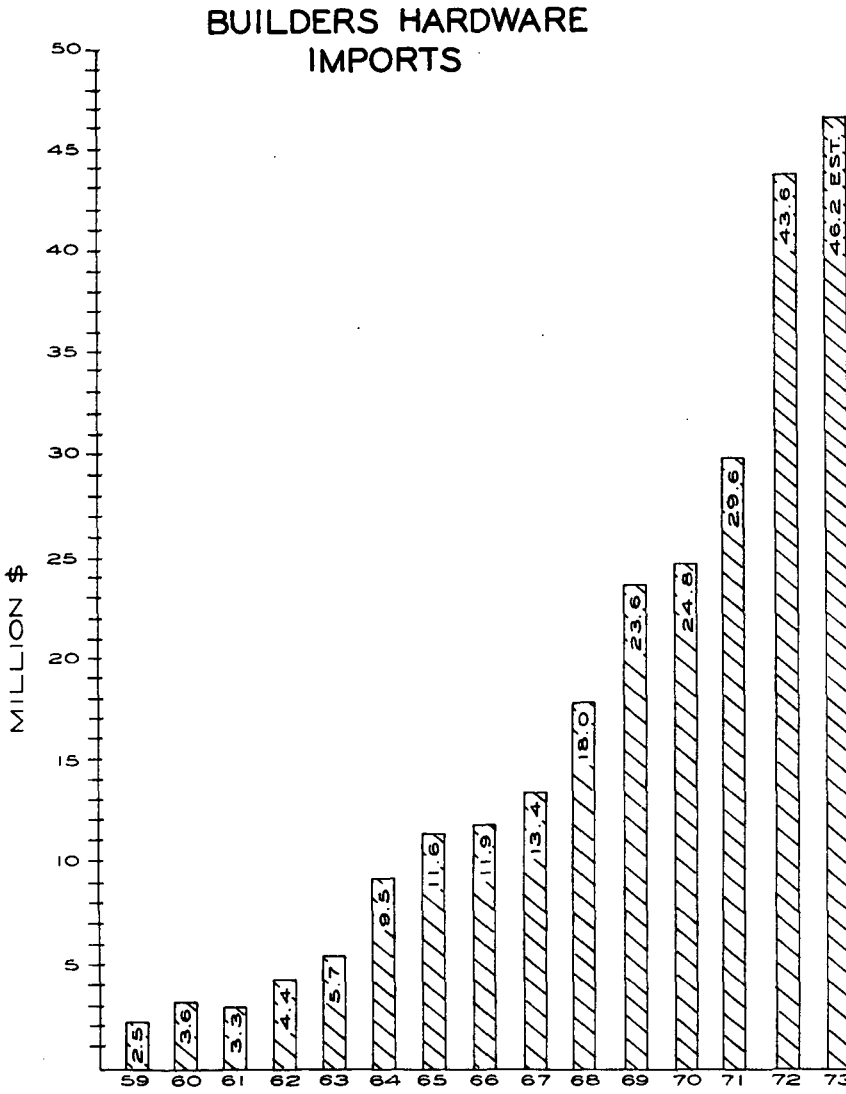

EXHIBIT B.—BUILDERS HARDWARE MANUFACTURERS ASSOCIATION

Air-Lec Industries Inc., Madison, Wis.
Adams Rite Manufacturing Co., Glendale, Calif.
Ajax Hardware Corp., City of Industry, Calif.
American Device Mfg. Co., Steeleville, Ill.
Amerock Corp., Rockford, Ill.
Arrow Lock Corp., Brooklyn, N.Y.
Auth Electric Co., Inc., Deer Park, N.Y.
Auto Moulding & Mfg. Co., Chicago, Ill.

Bommer Spring Hinge Co., Inc., Landrum, S.C.
Braun Manufacturing Co., Inc., Chicago, Ill.
The Homer D. Bronson Co., Beacon Falls, Conn.
Brookline Industries, Inc., Chicago, Ill.
Builders Brass Works Corp., Los Angeles, Calif.
Cardinal of Adrian, Adrian, Mich.
Chicago Spring Hinge Co., Chicago, Ill.
Cipco Corp., St. Louis, Mo.
Continental Instruments Corp., Oceanside, N.Y.
Cutler Mail Chute Co., Honeoye Falls, N.Y.
Detex Corp., Chicago, Ill.
Dexter Lock, Grand Rapids, Mich.
Dor-O-Matic Division, Republic Industries, Chicago, Ill.
Eaton Corp., Lock and Hardware Division, Charlotte, N.C.
Embart Corp., Bloomfield, Conn.
The Engineered Products Co., Flint, Mich.
Falcon Lock, South Gate, Calif.
Florence Manufacturing Co., Inc., Chicago, Ill.
Folger Adam Co., Joliet, Ill.
Glynn-Johnson Corp., Chicago, Ill.
Grant Pulley & Hardware Co., West Nyach, N.Y.
Hager Hinge Co., St. Louis, Mo.
Harloc Products Corp., West Haven, Conn.
Horton Automatics, Dallas, Tex.
Hyer Hardware Mfg. Co., Fullerton, Calif.
Ilco Corp., Fitchburg, Mass.
Ives Division, New Haven, Conn.
Jaybee Mfg. Corp., Los Angeles, Calif.
Knape & Vogt Mfg. Co., Grand Rapids, Mich.
LaDeau Mfg. Co., Los Angeles, Calif.
Lanson Industries, Inc., Greendale, Wis.
Lawrence Brothers, Inc., Sterling, Ill.
John L. Lindstrom & Assoc. Inc., Washington, D.C.
McKinney Manufacturing Co., Scranton, Pa.
National Hardware Co., Inc., Richmond Hill, N.Y.
National Lock Hardware, Rockford, Ill.
National Manufacturing Co., Sterling, Ill.
Precision Hardware, Inc., Detroit, Ill.
Reading Door Closer Corp., Reamstown, Pa.
Reese Enterprises, Inc., Rosemount, Minn.
Richards-Wilcox Mfg. Co., Aurora, Ill.
Rixson-Firemark, Inc., Franklin Park, Ill.
Rockwood Manufacturing Co., Rockwood, Pa.
Ronan & Kunzl, Inc., Marshall, Mich.
F. L. Saino Mfg. Co., Memphis, Tenn.
Sargent & Co., New Haven, Conn.
Schlage Corp., San Francisco, Calif.
Shelby Metal Products Co., Shelby, Ohio
Henry Soss & Co., Los Angeles, Calif.
The Stanley Works, New Britain, Conn.
John Sterling Corp., Richmond, Ill.
The Stocker Hinge Mfg. Co., Brookfield, Ill.
Telkee, Inc., Glen Riddle, Pa.
E. R. Wagner Mfg. Co., Milwaukee, Wis.
Weiser Co., South Gate, Calif.
Welch, Inc., Waukegan, Ill.
Weslock Co., Los Angeles, Calif.

Senator DOLE. The next witness is Mr. Sherman Katz.

STATEMENT OF SHERMAN E. KATZ, ESQ., OF COUDERT BROS.

Mr. KATZ. Mr. Chairman and members of this distinguished committee, may I say at the outset in explanation of my presence before

this committee that I do not represent anyone other than myself as an individual, first as a practicing lawyer and second as a student of tariffs preferences dating back to my law school career. It was as a student that I became interested in tariff preference, mainly because it was a proposal that the developing countries themselves had put forward as a method by which they felt that their development could be accelerated. At that time, and I believe at the present, the methods which the developed countries have devised in order to assist these developing countries have not always been successful. As a result of my study of the question in law school, subsequently I was fortunate enough to have some views on the subject published in the Wall Street Journal and other places. I have retained my interest in the subject, and as I indicated in my written testimony, had the honor of making a statement on the subject before the House Ways and Means Committee last year.

Last year the nature of my presentation was couched primarily in the same terms as my interest in the subject as a student; namely, that the United States could and should do more for the developing countries than they were doing, and that the tariff preference should be looked at very seriously as a method that they have suggested.

Now, to be sure H.R. 6767 contained what is now title V of H.R. 10710; namely, the U.S. Administration's tariff preference proposal. However, at that time, as again this morning, I proposed and will propose that the preference proposal can and should be expanded to provide a significant avenue of access to the developing countries.

Now, the context in which I make this presentation this morning is somewhat changed by virtue of events that have ensued since my previous presentation. As I have indicated, last year the basis of my presentation was simply that the United States could and should do more, althought I also pointed out that preferences were a two-way street, particularly regarding foreign exchange, since the United States would benefit from the increased earning power and therefore increased purchases from the United States of the developing countries.

However, this morning we know now that we are facing what I have called in my testimony a new era in North-South trade relations. As a result of the Arab oil embargo we are more aware than before that we have only a limited quantity of resources, of raw materials, foodstuffs on this spaceship earth. We are finding now, and we are going to find increasingly that the developing countries, those countries we considered poor, are perhaps not as poor as we thought because they control now and will control access to those raw materials.

In particular, tomorrow a special session of the UN General Assembly will begin on the subject of raw materials. This is an assembly which the developing countries themselves have asked be convened, and it will be a 3-week session. In preparation for that session the developing countries have proposed the declaration of a new international economic order. Among other things, that declaration recommends the establishment of cartel-like associations to control the prices of raw materials along the lines of the Organization of Petroleum Exporting Countries.

Moreover, at this session these developing countries have suggested that access to markets and transfer of technology, monetary reform and the role of multinational corporations all be discussed. In other words, the example of the Arab oil embargo is one which the other developing countries of the world have taken very much to heart. Indeed, if any confirmation of this need be provided, we noted last week that six Latin American countries formed the Union of Banana Exporting Nations, and announced a new surcharge of up to 2.5 percent per pound, effective April 15.

I believe a fact that was somewhat less noticed was that from March 1 to March 9 the seven countries producing bauxite, the material from which aluminum is made, who account for about two-thirds of the world's annual production of bauxite, met in Guyana and decided to form an international association of bauxite producers with a secretariat to be set up in Jamaica. One of the two goals of this organization stated in its founding charter is to secure fair and reasonable profits for members in the processing and manufacture of bauxite, bearing in mind the interests of the consumer nations. Another goal is to secure the national ownership of the natural resources.

Well, I have taken your time to sketch these background facts by way of underlining the indications in my written statement that the context in which we face the question of tariff preferences is quite a new one. It is one which I suggest indicates that by expanding the preference system to make it a meaningful avenue of access to the developing countries, we may indeed be serving our own long-run interests.

I have mentioned briefly in my written statement the theoretical basis, that is the protection of infant industries which is the background of the preference theory. It is perhaps noteworthy that it was Alexander Hamilton, our first Treasury Secretary, who himself first instituted a system of protective tariffs in order to provide an opportunity for new American industries to grow and to enjoy the entire size of the U.S. market, to enjoy economies of age and the economies of scale. As I have tried to indicate, the preference proposal by the developing countries is simply their way of saying, "We think that the same opportunity ought to be provided to us in an international context." Their notion is that by having the opportunity to enjoy access to the larger markets of the industrialized countries, they will be able to grow into efficient units, that is producing at the lowest possible cost per unit produced.

I have indicated that rightly or wrongly the developing countries now perceive the United States as being one of the lesser responsive countries to their needs. The tariff preference is one way to indicate to these countries that we are considering their interests very seriously, and indeed we are responsive to their needs.

One of the possible outcomes that I have indicated of continuing perception by them of our lack of responsiveness is their using their leverage, their newly-found leverage—that is, their access to control over raw materials—in a discriminatory fashion against us. Indeed, this has occurred in the past in a triangle which included the Soviet Union, the United States and the developing countries, and now we

may see, as Europe and Japan become our principal competitors in the economic markets of the world, that the developing countries will use this access and control that they have over raw materials in a similar fashion, that is, in a discriminatory fashion against the United States in favor of Europe and/or Japan.

I have also tried to suggest that there are other positive outcomes related to tariff preferences. One of them is that in addition to the increased purchasing by foreign countries that may occur in the United States, the importation of lower priced goods coming in under the preference system may help slow U.S. inflation. And of course we need the cooperation of these countries in upcoming international negotiations, that is in the field of monetary reform and in the GATT negotiations. In whatever forums we have the one-country-one-vote principle, these countries have a significant amount of leverage. They control 97 votes in the United Nations, for example.

I am sure that I need not tell the Members of the Senate of the United States how important nose counting is. At the same time, I am not suggesting that the votes or the support of these countries can be bought. But I am suggesting that in a context of cooperation and of looking at their needs rather than a context of hostility and confrontation, we would have a better opportunity of enjoying support from these nations. In the context of these considerations, these foreign policy considerations, I have suggested several specific changes in the preference proposal which I believe would make it a more meaningful opportunity for the developing countries.

In particular I have suggested that rather than a list of eligible articles——

Senator DOLE. I hate to interrupt you, Mr. Katz, but we have some other witnesses, and it seems that Senators are scarce this morning, and I have another commitment very soon. I do not want to leave the room empty. But I have read that part of your statement.

I was particularly interested in the first suggestion made. Maybe you could reverse the process as I understand it.

Mr. KATZ. That is correct.

Senator DOLE. And the President would only list those that have veto preference?

Mr. KATZ. That is correct.

Senator DOLE. Instead of the other way around?

Mr. KATZ. Exactly right. I believe that would make this act far more simply administered and would also be an expression of our true intent to the developing countries to give them significant access to the American market.

Senator DOLE. As I understand your statement, you would not favor giving preference to those countries that embargo exports to this country, is that correct?

Mr. KATZ. That is correct. I am indicating that this is a foreign policy tool which can and should be used with these countries, and to the extent that we have increased leverage vis-a-vis those countries, by having an instrument capable of calibration such as preferences we have a new way to deal with these kinds of economic situations.

Senator DOLE. Would you favor granting these countries most-favored-nation treatment when they embargo strategic exports to this country?

Mr. KATZ. Well, if you are talking about removing most-favored-nation treatment from them, I am suggesting that by having the preference we would have a way which would be perhaps more important to them than the MFN status. If our level of transactions with a country in question had previously been was rather limited, by virtue of having a preference which is an adjustable mechanism, we have an added kind of carrot and stick, if you will, and it may be more important to them that they enjoy their preference here than enjoying MFN, since it may be the preference that induces them to export to us in the first place.

Senator DOLE. If the tariffs are reduced under the authority of title I of the House bill, it is my understanding that about 80 to 90 percent imports would come into the United States duty-free.

Under those circumstances would the traiff preferences be meaningful?

Mr. KATZ. Yes, sir. I believe they would. Even if you have, let us say, a 5-percent tariff on cocoa beans, you may have a 15-percent tariff on processed chocolate. In that way you would penalize the developing countries for processing those cocoa beans into chocolate. And while the nominal tariff suggests only 5 or 15 percent in fact in that case you would have an effective protection rate of 30 percent, which would be the penalty imposed for adding value by processing that cocoa bean. In other words, it is the effective rate of protection which is important to the developing countries, even after we lower our tariff rates to very low levels.

Senator DOLE. Zero?

Mr. KATZ. At zero then, to be sure, the preference would not be the decisive factor. But this only, I think, points up the fact that by giving preferences and at the same time moving toward zero tariff levels we are only giving a temporary advantage to the exports of the developing countries.

Senator DOLE. I thank you, Mr. Katz. Your statement is a part of the record.

Mr. KATZ. Thank you very much. I appreciate the fact that the committee has given an individual spokesman an opportunity to appear before it.

Senator DOLE. As I understand it you are speaking just for yourself?

Mr. KATZ. That is correct.

[The prepared statement of Mr. Katz follows:]

STATEMENT OF SHERMAN E. KATZ, ATTORNEY, COUDERT BROTHERS

Mr. Chairman and members of this distinguished committee, in May of 1973, I had the honor of making a statement to the Ways and Means Committee of the House of Representatives on the Generalized System of Preferences in the proposed Trade Reform Act. At that time, I urged Congress to expand the narrow preference system proposed by the Administration in order to make it of greater benefit both to the United States and the developing world. The House of Representatives failed to make the specific changes which I recommended to broaden the preference scheme.

Now more than ever it is the enlightened self-interest of the United States that the tariff preference system be made a meaningful avenue of access to the U.S. market for the developing countries.

Almost overnight the focus of concern in the countries of the Northern Hemisphere has shifted from access to markets to access to supplies. The manner in which the Arab oil embargo has brought home to all of us the finite nature of available raw materials and food stuffs on this spaceship earth is now too well known to need repetition here. But, the full implication of this newly recognized fact, particularly for a new era of North-South trade relations, deserves careful consideration, because it affects profoundly the kind of preference system which Congress should enact. This new era is one in which it will become more explicit than ever that in return for access to raw materials in short supply in developed countries, the countries of the South will expect access to the markets of the North, not to mention access to capital, technology and know-how. In effect, we shall have a new transcontinental bargain characterized by far more equality among the parties to the bargain than we have known before. As a result, it has become more important than ever for the United States to respond to the economic initiatives of the developing world.

Tariff preferences, as you know, were initially proposed in 1964 at the first U.N. Conference on Trade and Development by the developing countries themselves as a means to accelerate their industrialization.

Their argument for industrialization through preferences is based on an adaptation of the "infant industry" theory from national practice to international use. Previously, in order to give an infant industry time or "age" to develop the skill and techniques required to compete with older, more experienced foreign industries, the home countries of new industries, including the U.S. have imposed temporary tariffs on foreign-made goods. After five or ten years the industry, if properly chosen, is able to stand on its own feet and the tariff is dropped. Similarly, nationally imposed tariffs have been used to allow new industries to achieve "economies of scale" through expansion of output in the national market to the most efficient level, i.e., lowest cost per unit produced.

If U.S. tariffs on Third World manufactures are removed, it is now argued that the infant industries abroad will have both the time and room to age and expand into efficient units earning vitally needed foreign exchange.

In the view of developing countries, the removal of U.S. tariffs would provide far more assistance than might be expected from tariff rates themselves because of the effects of the "differential tariff" now in force here. Our tariff structure discourages simple processing of raw materials in the country of origin by placing higher tariffs on processed or semiprocessed goods than on raw materials. The U.S. tariff schedules contain a pattern of increased tariffs with increased processing of copper, rubber, leather, cocoa, wool and wood. These "differential tariffs" give the domestic processor or manufacturer more effective protection than nominal tariffs would indicate. And, therefore, the application of duty-free treatment to a significant range of articles looks to the Third World like a considerably larger opportunity than the nominal tariff rates would suggest.

Moreover, trade is preferred to aid as a development mechanism because it brings with it less foreign influence and, in many cases, creates more jobs.

But, at the present time it appears to developing countries, with some justification, that the United States is the least responsive in the industrialized world to the needs of the Third World. The tariff preference is a good example. Although presidential rhetoric has been promising tariff preferences since 1967, in fact the United States has been increasing its trade barriers while Europe and Japan have been lowering theirs. In particular Europe and Japan have been extending tariff preferences to the developing countries since 1971. At the same time, U.S. development aid as a percentage of national GNP has been declining and, it is now next to the last among all industrialized countries. The recent failure of the House of Representatives to approve the U.S. contribution to the soft loan window of the World Bank is the most recent confirmation of this shortsighted declining interest in the Third World. Of course, it is true that the era when the United States could or should take all of the major international initiatives is over. But, in the new era I have been describing, it is essential that the United States take an active role in

responding to the desire of developing countries for economic growth. Enactment of a flexible, but significant preference system is one way to do so.

Let us consider for a moment the political and economic results of continued limited interest in the Third World. In the past, the United States has favored certain developing countries because they adhered to acceptable political or economic policies or because they were considered strategic pawns in the world chess game. Now the leverage which less developed but resource rich countries may have as a result of their control over access to raw materials can be used in a similarly discriminatory fashion. If Europe and Japan are perceived by the Third World as following policies most beneficial to that World, then those countries and not the United States, will have priority access to raw materials.

The developing countries, it should be remembered, have far more to offer us than access to supplies. As we help them increase their earning power through access to the U.S. market, they can and do spend more of their foreign exchange on U.S. goods. Such countries are able to channel a major percentage of their purchases to the United States, if they so desire, because most of their foreign buying is done by large governmental agencies. Other industrialized countries generally are unwilling to accommodate the U.S. balance of payments needs by shifting their own trade position. Equally important, the importation of tariff free, lower priced goods may help slow U.S. inflation.

We should not overlook the importance of the cooperation of countries in the Third World in the current efforts at international monetary reform, and the need for their support in the G.A.T.T. where the one country-one vote principle prevails.

Of course, the positive measure of extending market access carries with it the negative potential of denial or limitation of such access. It is a well-known fact that the U.S. has far more ability to affect the behavior of other countries with which it has a significant level of transactions rather than very few. For this reason the preference system should be flexible—allowing appropriate responses to various countries and economic situations.

It is in the context of these foreign policy considerations that I suggest several changes in the proposed generalized system. They are required to make the preference system a useful instrument in our economic relations with the countries of the Third World.

First, with regard to articles eligible for preferential treatment in the United States, I suggest that instead of the President submitting lists of eligible articles to the Tariff Commission, the President should submit lists of articles which, for supportable domestic economic reasons, he believes should be ineligible for preferential treatment. Such an alteration of Section 503(a) would produce a strong statement of our clear intent to open trade opportunities to the developing countries. It would also simplify the administration of the system, and more importantly, expedite implementation of our much delayed preference scheme.

The limitation of duty-free treatment to articles "imported directly from a beneficiary country" in Section 503(b) appears to conflict with U.S. support for the concept of economic integration, especially in Latin America. When two or more developing states share in various phases of the production of a particular product, even if it passes from one country to another, it should still be considered as "directly imported." Similarly the potential benefit to a developing country could be undermined if a product produced almost entirely in that developing country, but finished in an industrialized country, is prevented from receiving some tariff relief. This difficulty could be cured by changing the word "country" to "countries" throughout this section.

As for the regulation of the percentage of value which must be added by the developing country, determination of the prescribed percentage should be the joint responsibility of both the Secretary of Treasury and the Secretary of State in order to guarantee that important international political and economic considerations are taken into account.

The further provision that the percentage of value added must be applied uniformly to all articles from all beneficiary developing countries seems unnecessarily rigid. The phrase "shall be applied uniformly" in Section 503(b) can be changed to "should apply uniformly" which would produce important flexibility in administration of the act. It is unnecessary to command that the same percentage apply in all cases, and such a restraint reduces the possibility of using the preference scheme as a foreign policy tool.

Section 504(a) would permit the President to "withdraw, suspend or limit the duty-free treatment permitted under this system." But the American consuming public which stands to benefit from the anti-inflationary aspects of preferences should be heard before such preferences are eliminated. The President should be required to hold public hearings in order to determine what economic effect would follow from the retraction of tariff preferences which have been already extended. Such hearings would not only protect domestic producers and consumers but they would provide the President with economic information he otherwise might not have when deciding whether to eliminate any particular tariff preference.

Section 504(a) also limits the flexibility of administration of the preference system, and therefore its usefulness as a foreign policy tool, by specifying that the President may not establish any rate of duty in respect to any eligible article other than the zero rate which applies by virtue of this section. This provision seems unnecessarily to eliminate the possibility of *gradations of preference* to be determined at the President's discretion. Giving the President such discretion would clearly provide him with more leverage regarding developing countries than the present all or nothing formulation.

Section 504(c) allows the President to withdraw preferential treatment when the value of an article from any country exceeds $25 million or 50 percent of the value of total imports of that article in any given year. This "competitive" need formula is designed to allow small exporters to participate in the new trade permitted by the preference system. But, it could constitute a significant limitation on the benefits to be derived by developing countries from the system. By limiting access to the larger U.S. market, it would tend to prevent the achievement of economies of scale which preferences are intended to make possible for new industries. It would also have the effect of discouraging the higher level of investment needed to allow developing countries to make beneficial use of the preference scheme. At present levels of world trade, this restriction would mean that preferences would apply to only about ½ of the articles that would otherwise be considered eligible for duty free entrance to the American market. This $25 million ceiling should be eliminated. Alternatively, if this competitive need section is retained, then the $25 million/50 percent provision should become conjunctive so that a developing country's goods would not be restricted unless its $25 million in exports of an article to the U.S. also constituted 50 percent of total U.S. imports of that article.

When the potential gains of having a meaningful preference system in our array of available means for dealing with developing countries are weighed against the potential damage of having a narrow restricted system, the scales clearly balance in favor of opening our market in a substantial way. Ample safeguard devices are available should imports resulting from preferences cause or threaten injury.

In short, Congress should rewrite the Administration's preference proposal to make it the kind of commitment to a freer regime of world trade which can truly benefit the developing countries of the world and which will be in the long term interest of the United States.

Senator DOLE. The next witness is Harvey Kaye.

STATEMENT OF HARVEY KAYE, ESQ., SPENCER & KAYE, AND PAUL PLAIA, ESQ., PLAIA & LEATH, ACCOMPANIED BY GEORGE H. SPENCER, ESQ., SPENCER & KAYE

Statement of Harvey Kaye

Mr. KAYE. My name is Harvey Kaye. I am an attorney in private practice and a partner in the law firm of Spencer & Kaye of Washington, D.C. My law partner, Mr. Spencer, is to my left. I am a patent attorney and started working in the patent field 17 years ago.

Mr. Plaia, on my right, is also an attorney in private practice, and is a partner in the law firm of Plaia and Leath in Wheaton, Md. He was previously with the Office of General Counsel of the U.S. Tariff Commission.

Our statement is limited to section 341 of H.R. 10710, relating to amendments to section 337 of the Tariff Act of 1930. We have familiarity with section 337 proceedings because we have practiced before the Tariff Commission in connection with such investigations, consulted with clients and other attorneys with respect to such proceedings, have written articles on the subject, and have lectured.

We have prepared this statement together and would request that it be included in the record.

We are testifying today and we have prepared our statement based on our own personal views and not on behalf or at the request of anyone else. We will both present summaries of different parts of our statement.

Our first section relates to our general comments relating to section 341. We agree with the removal of Presidential involvement with orders under section 337, so that, at least in patent-based proceedings the Commission itself can issue exclusion orders. This should save Presidential time and effort in an area where Presidential involvement does not appear to be needed due to the nature of the proceedings.

Furthermore, we believe that the time for final determinations will be shortened because the Commission itself will make the final determinations. Presently, the Commission issues its report, and this report is considered by the President prior to deciding whether or not to issue an exclusion order. This lengthens the time required for disposition of the matter. Under the proposed amendments, the parties will know more quickly whether or not an exclusion order will be issued.

The proposed amendments are particularly desirable insofar as the rights of appeal from Tariff Commission findings are concerned. The present section 337 provides for an appeal to the Court of Customs and Patent Appeals by the importer upon matters of law only, and findings of the Commission, if supported by the evidence, are conclusive.

However, presently the viability of appeal procedures to this court is questionable, particularly in view of a 1962 Supreme Court decision, *Glidden* v. *Zdanok*. This decision held the CCPA to be a constitutional court. As such, under article III of the Constitution, it is limited in its judicial powers to "cases or controversies." Since a present section 337 action is an investigation and does not fit within the definition of "cases or controversies," it does not appear that a right of appeal presently exists.

However, under the amendments, since the Tariff Commission would make a final determination, appeals to the CCPA should lie; moreover, such appeals would provide a more equitable procedure in that any of the parties may appeal. Also, factual questions can be appealed from and not only matters of law.

I would point out, however, that under the presently proposed amendments, if a proceeding is based upon an antitrust violation, it does not appear that an appeal to the CCPA would lie, the language of the present section 337 to the contrary notwithstanding.

A number of defenses are frequently used in present section 337 proceedings, but there are three in particular to which I wish to

address myself at this time. The first is invalidity of the patent. In the past, it has been held by the Court of Customs and Patent Appeals that neither the Tariff Commission nor that court could consider the validity of patents in 337 proceedings. In view of recent decisions of the Supreme Court, we believe that if the Court of Customs and Patent Appeals were to consider this issue today, it would change its opinion. In any event, this appears to be appropriately resolved by section 341, which states that legal defenses can be presented.

However, this still leaves open the question of equitable defenses. Equitable defenses would include misuse of a patent, which itself is an antitrust violation. Presently, when misuse can be proven in the courts, the patents are held to be unenforceable. Another equitable defense would be the charge that the patentee committed fraud on the Patent Office. For example, this would be an allegation that the patent involved in the 337 proceeding was acquired by making fraudulent representations to the Patent Office. Here, too, upon a finding that fraud was committed, the courts follow equitable principles and find such patents to be unenforceable.

It is our impression that the House committee report intended that equitable as well as legal defenses be presented to the Tariff Commission. We believe this is correct, but, in order to assure that this is followed upon passage of the amendments, we would suggest that the word "equitable" be inserted into the statute. That would be at page 128, line 19.

The next section of the presentation will be made by Mr. Plaia.

Statement of Paul Plaia

Mr. PLAIA. We favor retention of the injury standard as provided in the proposed amendments. Because of the extraordinary nature of the remedy, the retention of the standard keeps the provisions within the traditional tariff law approaches. Thus, mere infringement of a U.S. patent which does not injure or tend to injure the domestic industry would not qualify for the use of such a powerful remedy as an exclusion order. The courts provide adequate remedies for mere infringement where there is no tendency to injure the domestic industry.

Further, we believe that administrative fairness is served by the strengthening of the criteria for a temporary order of exclusion. The amendments would bring the criteria more in line with the criteria used for issuance of preliminary injunctions in the Federal courts. This would make the issuance of such orders more sensitive to the important economic consequences which may flow from exclusion orders.

We would suggest the following changes in the proposed amendments: We believe that nonpatent unfair trade practice complaints should be handled in the same manner as that proposed for patent based complaints. We see no reasonable basis for treating nonpatent complaints in a manner which would discourage such complaints. This is because administrative relief may be the only feasible way

for intermediate or small domestic firms to protect themselves from the abuses of large foreign manufacturers.

Secondly, we recommend provisions for flexibility in the use of exclusion orders by the Tariff Commission. This is because present orders lack the flexibility which the Commission needs to equitably use the exclusion power. This is especially important in the case of nonpatent complaints where some of the parties importing the subject goods are not involved in the alleged or determined unfair acts. In these circumstances, the Commission is put into the position of excluding where not all of the importers of the subject goods have violated the statute or not excluding where large numbers of the importers of the subject goods have violated the statute.

Lastly, there are presently approximately 22 unfair trade practice complaints pending at the Commission. We suggest that the amendments specifically provide for the handling of these pending cases after the amendments become effective. We believe that these pending cases should be handled through completion under the provisions of present section 337, since they were filed while this section was in effect.

Further, we believe that the effective date should leave room, timewise, for the Commission to adopt new rules and regulations which would become necessary should the amendments be passed.

Mr. KAYE. There are just two more points we would like to make.

We believe that under the proposed amendments decisions rendered by the Court of Customs and Patent Appeals, when appeals are taken to it from section 337 proceedings, may become binding in a subsequent action in the Federal district courts, for example, in an infringement action. It does not appear that this particular point was addressed in the House committee report, and we, therefore, bring it to your attention. We assume that this result is not desired, and we have, therefore, included in our statement suggested language for the event that this committee does not desire that the Federal courts in a subsequent infringement action be bound by an appeal to the Court of Customs and Patent Appeals.

The only other point that I would like to make is that there appears to be presently a conflict between section 337 and title 28, United States Code 1498, and I would strongly suggest that the committee address itself to that in passing the legislation.

Senator DOLE. Let me say, first of all, of course, your statement will be made a part of the record.

Secondly, let me confess that I appreciate what you said, but I am not certain that I understand it. It is something that you have been dealing with at great length, and it is probably very helpful. I hope the staff or someone who has the expertise on this side can take a serious look at it. It obviously raises some technical questions that you have been dealing with, either as a member of the general counsel's office or in the practice that you are in.

The staff has suggested a question or two which, perhaps, you would like to comment on. First of all, whether or not the Federal Trade Commission or some other agency dealing with unfair trade practices, should be given a role in section 337 actions if we are going to repeal the President's review authority?

Mr. KAYE. We did not specifically address ourselves to it at this time, since it did arise at the time that this was being considered by the House. It is our feeling that the Tariff Commission is itself competent to completely handle 337 proceedings.

We have a great deal of concern, for example, about intermediate and small-size firms who may become involved with larger companies and be a victim of antitrust violations. There presently do not appear to be very many places where these people can seek relief. These are agencies set up in the Government to take care of the matter, but usually if there are small companies involved, they cannot get suitable relief.

Senator DOLE. You do not feel any reason for the Federal Trade Commission to get into the act?

Mr. KAYE. That is correct.

Mr. PLAIA. I want to add something to that. It would be my feeling that the Commission possesses special expertise that probably no other agency has. It has been dealing with international trade, and the types of complaints which are going to come in under this statute are grounded in the special expertise that the Commission possesses. The Tariff Commission is probably the best place.

Senator DOLE. Is section 337 used frequently with respect to unfair trade practices involving imports?

Mr. PLAIA. It has not been in the past. It is being used more frequently now. There is presently pending an unfair practice complaint of a nonpatent nature; it is an unlawful resale price maintenance complaint. There was a complaint several years ago regarding tractor parts where the Commission did make findings which involved a group boycott.

We feel that if it is made more practical and feasible for people to come into the Commission, that there would be a larger number of complaints filed.

Senator DOLE. You think it can be a more effective tool than it has been?

Mr. PLAIA. Yes, actually, it would give some of the smaller domestic firms who deal with very large foreign manufacturers a place to go administratively, rather than very burdensome, expensive litigation in the courts.

Senator DOLE. Mr. Kaye, do you have anything to add to that or any other comments?

Mr. KAYE. The only other comment I was going to make was that, while the antitrust section of the Department of Justice and the Federal Trade Commission presently do have jurisdiction over certain kinds of antitrust violations, we are concerned here about magnitude. It must be a very large-scale violation before these two agencies would become involved. We believe the Tariff Commission in the 337 area may be a very fine place for smaller people to seek relief.

Senator DOLE. Senator Curtis, do you have any questions?

Senator CURTIS. No questions.

Senator DOLE. Thank you, gentlemen.

[The prepared statement of Messrs. Kaye and Plaia follows. Hearing continues on p. 2013.]

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PREPARED STATEMENT BY HARVEY KAYE AND PAUL PLAIA, JR.

This statement is limited to chapter IV, section 341 of the proposed legislation and supports passage with certain proposed changes.

PERSONAL

Harvey Kaye, whose office address is 1920 L Street, N.W., Washington, D.C., 20036, is an attorney and is registered to practice before the U.S. Patent Office. His statement is submitted on his own behalf. This statement is not made on behalf or at the request of any person or organization. However, the law firm of Spencer & Kaye, in which he is a partner, has a number of foreign and domestic clients who, it is believed, may benefit from the changes proposed herein, although this statement is not being made at the request of any client of the firm.

Paul Plaia, Jr., whose office address is 11141 Georgia Avenue, Silver Spring, Maryland, 20902, is a partner in the law firm of Plaia & Leath and is submitting this on his own behalf. It is not made on behalf or at the request of any person or organization. He was formerly with the General Counsel's Office, U.S. Tariff Commission, Washington, D.C.

The opinions expressed herein are those of these writers and not necessarily those of the Tariff Commission or any individual Commissioner.

We have particular interest in this section of the proposed bill because we have written an article concerning present Section 337, "The tariff Commission and Patents: Anatomy of a 337 Action;" *Journal of the Patent Office Society*, Vol. 55, June and July, 1973, pp. 346–362 and pp. 413–435, which appeared in two parts in the June and July, 1973, issues of the *Journal of the Patent Office Society*.

SUMMARY

I. Comments concerning H.R. 10710 Section 341.

A. Agreement with removal of presidential involvement in determinations and orders under the section.

It will be valuable in saving precious presidential time and effort and in shortening the time required for final determinations so the parties will know more quickly whether or not an exclusion order will issue.

B. Rights of appeal from Tariff Commission findings.

The amendments assure the viability of an appeal to the C.C.P.A., which, under present law, is questionable and all parties, rather than just the importer, have a right to appeal. Furthermore, the appeal can be of factual questions as well as questions of law. Present 337 appeals are limited to questions of law.

C. Defenses.

(1) Typical Defenses. List of frequently used defenses under present Section 337 proceedings.

(2) The legal defenses of invalidity of the patent.

(a) Apparent change in C.C.P.A. attitude on this issue.

(b) Tribunals possessing original and/or exclusive jurisdiction act independently.

(c) As to a Section 337 proceeding, validity is a factual matter.

(d) Patent validity and public policy in the post *Lear* era (1969).

(3) Equitable defenses.

(a) These should be specifically provided for.

(b) Suggestion to include "equitable" defenses.

(c) The courts use equitable principles when considering patents.

D. Retention of the injury standard.

E. The standard to be met to qualify for issuance of a temporary order of exclusion is more severe.

II. Suggestions for changes in the proposed amendments to Section 337.

A. All unfair methods of competition and unfair acts including patent violations should be handled in the same manner.

B. Recommending flexibility in use of the exclusion remedy by the Tariff Commission.

C. Effective date and pending cases.

D. Possible collateral estoppel in Federal District Courts as result of C.C.P.A. decisions.

E. Clarification as to whether 28 U.S.C. 1498 prevents Tariff Commission action when the U.S. Government or its contractor is an importer.

TEXT OF STATEMENT

I. Comments concerning H.R. 10710, Chapter IV, Section 341 (Amendments to Section 337 of the Tariff Act of 1930)

A. REMOVAL OF PRESIDENTIAL INVOLVEMENT

We believe that the provisions of the proposed amendments to Section 337 of the Tariff Act of 1930, which would authorize the Tariff Commission to issue exclusion orders rather than merely recommend their issuance to the President, are sound and appropriate. This change should expedite the granting of relief to complaining parties and remove the long period of uncertainty of responding parties by eliminating that period of time presently required for presidential review and action on Commission findings and recommendations, i.e., whether or not to issue an exclusion order after the Tariff Commission has so recommended. It would also relieve the White House of the burden of review and action on matters which, in our opinion, should not require presidential action. The Commission has substantially bolstered its legal staff in recent years and currently possesses the necessary expertise to fully handle Section 337 complaints.

It appears that one of the motivating factors for having the President involved under Section 337 was to assure that in administering the statute, due consideration would be taken of the overall trade picture of the U.S., both domestic and international, in order to permit the President to use a Section 337 proceeding as one of the means by which he could shape and influence trade. However, over the years, the types of investigations conducted under Section 337 have not been of such overall national or international importance to necessitate presidential consideration. Rather, such proceedings have usually been of more limited importance and, in most cases, have failed to involve dollar amounts large enough to have major impacts on U.S. trade. Frequently, use of Section 337 complaints has been made by domestic industries where smaller firms are operating and/or the level of imports is not of sufficient magnitude to alone have any significant impact on U.S. trade. Therefore, the necessity for consuming valuable presidential time and effort does not appear to be appropriate.

B. RIGHTS OF APPEAL

We welcome the provisions which provide to all parties the opportunity to appeal to the Court of Customs and Patent Appeals (C.C.P.A.) from final orders of the Commission. We believe that this is urgently needed, since, under current Section 337, only the importer has a right to appeal. Moreover, at the moment, even the importer's right of appeal is questionable. This is due to the fact that a Section 337 proceeding is probably not a "case or controversy" under Article III of the Constitution. Since a constitutional court is limited in its judicial power to "cases or controversies," the C.C.P.A. probably could not properly review a Section 337 proceeding. That the C.C.P.A. is a constitutional court is clear from *Glidden* v. *Zdanok*, 370 U.S. 530 (1962), in which the Supreme Court held the C.C.P.A. to be a constitutional court. Congress has also confirmed its belief that the C.C.P.A. is a constitutional court by passage of 28 U.S.C. 211 (August 25, 1958, Publ. L. 85–755, Section 1, 72 Stat. 848). In the *Glidden* decision, the Supreme Court stated, "The jurisdictional (statute) in issue, Section 337 of the Tariff Act of 1930 . . . appear(s) to subject the decisions called for from (the court) to an extra-judicial revisory authority incompatible with the limitations upon judicial power this Court has drawn from Article III." (*Glidden*, supra, at 582)

However, the right to C.C.P.A. review changes when, as under the proposed amendments, the Commission makes its findings and itself issues orders. Such a procedure should be considered a "case or controversy" within Article III of the Constitution, since the Commission's involvement would no longer be

advisory but would be legally binding. Thus, the changes which vest authority in the Commission to issue final orders also clarify the right to an appeal.

Whereas appeals under present Section 337 are only permitted as to questions of law, the proposed amendments would presumably allow for appeals as well as factual determinations of the Commission.

C. DEFENSES

1. Typical Defenses

We believe administrative fairness requires that parties have an opportunity to present legal defenses before the Commission. In the past, there have been serious questions as to whether certain defenses could be considered by the Commission. Typical defenses to a present Tariff Commission Section 337 complaint are (1) lack of importation; (2) lack of injury or tendency to injure; (4) lack of efficient and economic operation of the domestic industry; (5) patent judicially held invalid; (6) invalidity of the patent; (7) non-infringement of the patent; (8) misuse of the patent; and (9) fraud on the Patent Office. Defenses (6), (8) and (9) have created the greatest difficulty in terms of respondents' complaints that these proceedings are unfair.[1]

2. The legal defense of invalidity of the patent

(a) Apparent change in C.C.P.A. attitude. We believe it inconsistent to provide the Commission with authority to consider questions of patent infringement but to prohibit it from considering questions of patent validity. The Tariff Commission, in our opinion, already has authority under present Section 337 to *consider* validity, earlier cases of the Court of Customs and Patent Appeals to the contrary notwithstanding.

If the Tariff Commission considered it necessary to examine the validity of a patent in a particular case in the course of its statutory jurisdiction under Section 337, then it should proceed accordingly. The Tariff Commission is not procluded from making a finding on the issue of validity merely because validity is currently the province of courts of general jurisdiction in patent infringement actions. Although 28 U.S.C. 1338 provides that the federal district courts' original jurisdiction over infringement (and validity) actions "shall be exclusive of the courts of the states," the state courts clearly may pass on the validity of a patent if it is necessary to do so in the course of deciding a case over which they do have jurisdiction.[2] A Tariff Commission report of finding on validity should have no more influence in a federal district court on this issue than presently a state court's opinion on validity would have on a federal district court.[3] The Court of Customs and Patent Appeals itself, in *Knickerbocker v. Faultless*, supra, was aware of its prior decision in *Frischer & Co.* v. *Bakelite Corp.*, 17 CCPA 494, 39 F.2d 247 (1930) (having cited it in a footnote), in which it held that the Tariff Commission and that Court could not pass upon the validity of patents.[4]

(b) Tribunals possessing original and/or exclusive jurisdiction act independently. Federal agencies appear to realize when they are bound by decisions of other agencies and when they are not, as do the courts. In *Bacardi & Co. Ltd.* v. *Ron Castillo S.A.*, 178 U.S.P.Q. 242 (1973), the Patent Office Trademark Trial and Appeal Board heard arguments concerning the likelihood of confusion as decided by the Bureau of Customs. This board was told by the opposer (Bacardi) that this Customs decision was binding on the Trademark Trial and Appeal Board because it was in privity with the Bureau of Customs. The board stated:

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[1] *Journal of the Patent Office Society*, Vol. 55, July, 1973, pp. 413–435.

[2] See *Knickerbocker Toy Co.* v. *Faultless Starch Co.*, 467 F.2d 501, 175 U.S.P.Q. 417, (C.C.P.A. 1972). These two sentences with but minor changes are taken directly from this decision of the C.C.P.A. substituting "Tariff Commission" for the Patent Office Trademark Trial and Appeal Board, "infringement (and validity)" for "copyright", and "patent" for "copyright."

[3] See *Pratt* v. *Paris Gas*, 168 U.S. 255 (1897) for authority that a state court may pass on the validity of a patent. However, for an apparently *contra* view see *Flavor Corp.* v. *Kemin Industries*, 358 F.Supp. 1114, 177 U.S.P.Q. 658 (S.D. Iowa 1973) p. 662, paragraph (3).

[4] On this point see Commenteria, The Defense of Patent Invalidity in Tariff Commission Patent Action, Charles L. Gholz, 55 Journal of the Patent Office Society, 791, December 1973.

". . . . It is quite clear that the responsibility for determining registerability of trademarks is conferred by the Trademark Act of 1946 upon the United States Patent Office solely and exclusively. Moreover, a ruling by the Bureau of Customs usually consists of an ex parte administrative determination reached without resort to a hearing or trial on the merits. Thus, a decision by said Bureau that one mark copies and simulates another is entitled to little or no weight on the issue of likelihood of confusion, and furthermore is not binding upon either the Trademark Trial and Appeal Board in particular or the Patent Office in general. (citing cases)."

(c) As to a Section 337 proceeding, patent validity is a factual matter. In a Section 337 proceding, the question of validity is a *factual* matter and the President would presumably desire to have the opinion of the Tariff Commission on this issue. In *Becher* v. *Contoure Laboratories, Inc.*, 279 U.S. 388, 390 (1929), a state court action for breach of trust was brought concerning a patent. The particular holding there appears to have been that the state court could impose a constructive trust because the breach of trust arose *before* the granting of the patent. However, Justice Holmes pointed out that even if that lawsuit had the effect of finding Becher's patent void, that is not the effect of the judgment. "Establishing a fact and giving a specific effect to it by judgment are quite distinct", *Becher* v. *Contourc*, *supra*, at 391. As recently stated by Judge Gurfein in *In re Lefkowitz*, 179 U.S.P.Q. 282 at 284 (S.D.N.Y. 1973

"The *Becher* case sets its approval on a determination by the State Court of patent validity so long as it does not purport to act upon it in rem."

In *Lefkowitz*, another case, *American Well Works* v. *Layne*, 241 U.S. 257 (1916), was quoted:

"A suit arises under the law that creates the cause of action. The fact that the justification may involve validity and infringement of a patent is no more material to the question under what law the suit is brought than it would be in an action of contract."

The *Lefkowitz* case stated

"And the Supreme Court in more recent days has given the coup de grace to the notion that a State Court may never pass on the validity of a patent. See *Lear, Inc.* v. *Adkins*, 295 U.S. 653, (162 U.S.P.Q. 1) (1969). The Court, in reversing on other grounds a decision of the Supreme Court of California stated: 'In this context, we believe that *Lear must be required to address its arguments attacking the validity of the underlying patent to the California courts in the first instance.*'" (emphasis added).

(d) Patent validity and public policy in the post *Lear* era (1969). Of course, since 1969 and the *Lear* case, there is more impetus than ever before for the Commission to be considering the validity of patents. In *Lear*, the Supreme Court stated that there is a "strong federal policy favoring free competition in ideas which do not merit patent protection" and that "federal law requires that all ideas in general circulation be dedicated to the common good unless they are protected by a valid patent," and further that there is an "important public interest in permitting full and free competition in the use of ideas which are in reality a part of the public domain." *Lear* makes it clear that the validity of a patent is not conclusively determined by the fact that a patent has been issued.

3. *Equitable Defenses*

(a) These should be specifically provided for. The present amendments provide that legal defenses are available. This is particularly helpful in clarifying that the legal defenses of patent invalidity can be raised before the Tariff Commission.

However, this still leaves the question of misuse and fraud, both of which are equitable defenses. Misuse of a patent has been held to render it unenforceable.[5] Misuse may be capable of being purged, but until purging takes place, the patents involved would undoubtedly be held to be unenforceable. Furthermore, fraud on the Patent Office has been held to be against public policy so that a patent obtained on this basis has been held not to be enforceable.[6] In the latter instance, presumably no purging is possible.

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[5] *Morton Salt* v. *Suppiger*, 314 U.S. 488; *Mercoid Corp.* v. *Mid-Continent Investment*, 320 U.S. 661, (1944) (60 U.S.P.Q. 21).

[6] *Walker Process, Inc.* v. *Food Machinery Co.*, 382 U.S. 172, (1965) (147 U.S.P.Q. 404).

(b) Suggestion to include "equitable" defenses. We believe that if it is intended that the Tariff Commission also consider such equitable defenses, the word "equitable" should be added to the statute.

The question of fraud arises, e.g., when the patent applicant conceals a particular prior art reference, of which he is aware, from the Patent Office. The question is frequently asked, "If this prior art reference was so good as to invalidate the patent claims, why even bother discussing fraud on the Patent Office and the unenforceability of claims, since they are already invalid?" However, this ignores the substantive issue that a prior art reference may only invalidate certain of the claims of a patent. The fraud committed may so taint the patent that the other and otherwise presumably valid claims become unenforceable. They would not be held to be invalid since there is no statutory authority for doing so. Therefore, under their equity jurisdiction, the federal courts have held patents unenforceable on this basis.[7]

(c) The courts use equitable principles when considering patents. The Supreme Court has made it clear that because of the strong public policy and interest involved in patents, equitable principles may prevent enforcement of a patent when the patent has been acquired or used in derogation of public policy. For example, in *Mercoid Corp.* v. *Mid-Continent Investment*, 320 U.S. 661, (1944) (60 U.S.P.Q. 21), the Court stated:

"Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.' (citation) 'Where an important public interest would be prejudiced,' the reasons for denying injunctive relief 'may be compelling.' (citations) That is the principle which has led this Court in the past to withhold aid from a patentee in suits for either direct or indirect infringement where the patent was being misused. *Morton Salt Co.* v. *G. S. Suppiger Co.* 314 U.S. 488 (52 U.S.P.Q. 30)."

In *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U.S 488,. the Court stated:

"Equity may rightly withhold its assistance from such a use of the patent by declining to entertain a suit for infringement, and should do so at least until it is made to appear that the improper practice has been abandoned and that the consequences of the misuse of the patent have been dissipated, Cf. *B. B. Chemical Co.* v. *Ellis*, (52 U.S.P.Q. 33), decided this day."

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"It is the adverse effect upon the public interest of a successful infringement suit in conjunction with the patentee's course of conduct which disqualifies him to maintain the suit, regardless of whether the particular defendant has suffered from the misuse of the patent."

In *Precision Inst. Mfg. Co.* v. *Automotive Maintenance Mach. Co.*, 324 U.S. 806, (65 U.S.P.Q. 133), the Supreme Court said:

"if an equity court properly uses the maximum to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public."

"At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope. The facts of this case must accordingly be measured by both public and private standards of equity. And when such measurements are made, it becomes clear that the District Court's action in dismissing the complaints and counterclaims 'for want of equity' was more than justified."

In *Walker Process, Inc.* v. *Food Machinery Co.*, 382 U.S. 172 (147 U.S.P.Q. 404), the Court said:

"we have recognized that an injured party may attack the misuse of patent rights. See, i.e., *Mercoid Co.* v. *Mid-Continent Investment Co.*, 320 U.S. 661 (60 U.S.P.Q. 21) (1944). To permit recovery of treble damages for the fraudulent procurement of the patent coupled with violations of Section 2 (of the

[7] See the next section for precedents.

Sherman Act) accords with these long-recognized procedures. It would also promote the purposes so well expressed in *Precision Instruments, supra*, at 816 (65 U.S.P.Q. at 138)."

D. Retention of the injury standard. We believe that retention of the injury standard as provided in present Section 337 is both necessary and appropriate. Section 337 provides relief for extraordinary situations and patent infringement of itself would not be such a situation since infringement can be remedied in the federal courts. However, by continuing with the present injury requirement, the section remains within the traditional limits of the tariff concepts rather than under patent concepts.

The federal district courts provide adequate and suitable remedies for patent infringement. On the other hand, the multiplicity of actions necessary to prosecute an enforcement program against a foreign manufacturer who continually changes importers with whom he deals may create a real need for a tariff type Section 337 action. Further, economic injury to the domestic industry almost always accompanies the foregoing situation. Retention of the present injury standard would thus properly continue to protect the domestic industry.

E. The standard to be met to qualify for issuance of a temporary order of exclusion is more severe than the standard for a permanent order of exclusion.

Fairness favors the strengthening of the requirements for the issuance of a temporary order of exclusion. The provisions of the amendments bring the temporary exclusion order criteria more into line with the requirements for the obtaining of a preliminary injunction in the federal courts. Under the present statute, the Commission need only find a *prima facie* violation and immediate and substantial injury in the absence of an exclusion order. Such criteria were again stated in the Commission's latest report, *Convertible Game Tables* (337-34 T.C. Pub 652, March 1974). Under the proposed amendments, the Commission would have to base its decision upon the evidence which is in its possession and upon its belief that there is a violation of the statute. In present Section 337, the President does not have to base his decision to issue a temporary exclusion order upon evidence in his possession. He may forbid entry if he has reason to believe that the imported article may violate the section, but does not have sufficient information to satisfy him. The Commission has interpreted the language of the section as only requiring a *prima facie* showing to justify the recommendation of a temporary exclusion order.

II. Suggestions for changes in the proposed amendments to Section 337

A. ALL UNFAIR METHODS OF COMPETITION AND UNFAIR ACTS, INCLUDING PATENT VIOLATIONS, SHOULD BE HANDLED IN THE SAME MANNER

There does not appear to be a reasonable basis for treating non-patent complaints before the Tariff Commission in a different manner than patent related complaints. In fact, it would seem more reasonable to treat all unfair trade practice in the same manner as has been the practice of the Commission in the past. Since Commission actions regarding patent complaints under the Proposed Amendments would fall within the Administrative Procedure Act, (Sub-chapter II, Chapter 5, Title 5, of the United States Code) a full hearing on a record with notice and other procedural safeguards would be required. Parties involved in complaints of non-patent unfair practices, would presumably be treated more equitably if the proceedings were based upon a full hearing on a record. While a full hearing on a record is presently providd by the Tariff Commission after its full investigation, during the preliminary inquiry this is not the case. The current procedure has severe consequences inasmuch as upon termination of its preliminary inquiry, the Tariff Commission can recommend to the President that a temporary exclusion order issue and thus this can be effected without a full hearing on a record.

In many recent cases, such as *Dual-In-Line Reed Relays* (Preliminary Inquiry No. 337–L–61), the complaint has contained allegations of patent infringement as well as unfair acts other than patent infringement. Under the currently pending bill, complaints with mixed allegations would either have to be split into two investigations relating to the same parties and the same

goods, or be handled under one investigation with different rights in the parties and different procedures being used according to the type of unfair practice under consideration. This would unnecessarily complicate the proceedings. Findings in connection with one type of allegation would be helpful in connection with the other types under investigation so it would seem to be more meaningful to handle them together. A myriad of questions arise concerning proper procedures and handling of such cases and the Commission will have many and varied problems in administering actions upon such cases.

Certainly the Commission possesses equal competence to determine the existence of non-patent unfair practices as it does to determine the existence of unfair patent practices. Apparently the draftsmen of the present legislation also believe this to be the case since, even under the current bill, the Commission would make findings, upon patent and non-patent complaints; except that in one case they would be advisory to the President and in the other case they would be legally binding. It is not clear why in the one situation the Commission would be given authority to issue exclusion orders directly and in the other situation it would not be given such authority. In the past, the Commission has investigated non-patent unfair practices in several cases as early as the *Manila Rope* case in 1922. In the *Tractor Parts* case, Investigation No. 337–22 T.C. Pub. No. 443, Dec. 1971, the Commission investigated an alleged group boycott. And in the *Watch Parts* case, Investigation No. 337–19 T.C. Pub. No. 177, June 1966, the Commission investigated an alleged combination and conspiracy to restrain and monopolize trade and commerce. In a presently pending case, *Certain Electronic Audio and Related Equipment*, 337–L–65, which is currently in the preliminary inquiry stage, the Commission is investigating allegations of unlawful resale price maintenance concerning certain imported products.

The inclusion of non-patent unfair trade practice complaints within the same provisions of law and under the same procedures as those proposed for patent based complaints would make the filing of complaints more practical to those suffering under abusive practices in import trade. This occurs because elimination of Presidential involvement in the proceedings will make relief much more readily available in appropriate cases, by eliminating delays. Presidential review under the present statute has sometimes caused long delays in final action being taken, such as in the *Plastic Sheets* case, Investigation No. 337–29, T.C. Pub. 444, December 1971, where the Commission made its findings and recommendations on December 21, 1971, and upon which Presidential action was taken on January 26, 1973. With the ever increasing participation of imported goods in the domestic market, the proposed procedures would provide an economically feasible means by which many smaller domestic firms will be able to seek relief from unfair practices arising out of the importation and sale of goods. Consider, for example, that patent and antitrust litigation in the federal courts are among the more expensive types of litigation coming to these courts. The expense factor renders such litigation out of the reach of smaller firms, even though they may be severly injured. A firm is hardly helped by treble damages and the award of attorneys' fees at the end of an action which it cannot afford to institute and prosecute. However, it appears that the proceedings in the Tariff Commission could take place more promptly and would be less expensive than patent and antitrust litigation in the courts. Therefore, we believe it to be beneficial to facilitate the filing of complaints at the Commission in both patent and non-patent matters. This is particularly true in the case of goods emanating from large foreign manufacturers and entering the country in large numbers, and being entered by a large number of importers in different areas of the country. In such instances, the domestic firm is in the position of having to pursue relief against a large number of parties in many different jurisdictions throughout the country. The multiplicity of actions necessary for meaningful relief is again beyond the economic resources of many smaller domestic firms which are suffering under the effects of non-patent unfair import trade practices. Furthermore, in many cases where a foreign manufacturer is involved in the unfair import practice, obtaining federal court jurisdiction over the manufacturer is difficult, if not impossible. In this type of proceeding, however, one can obtain effective action against the foreign manufacturer by obtaining action over its goods, since this is an *in rem* action.

B. RECOMMENDING FLEXIBILITY IN USE OF THE EXCLUSION REMEDY BY THE TARIFF COMMISSION

Under the proposed amendments, the Commission would be given the authority to exclude articles from entry into the United States. Total exclusion is an extremely powerful and inflexible remedy. In some instances it may be extremely useful for the Commission to have a remedy available which is not so inflexible. Concern has been expressed in the past as to this lack of flexibility as, for example, was noted by Commissioner Sutton in his opinion in the *Tractor Parts* case as follows:

"Inasmuch as a violation of Section 337 does not continue to exist in this case, the public interest will not be served by the exclusion of Berco tractor parts from entry into the United States. A different situation might exist if Section 337 provided, as a remedy, the issuance against the conspirators of an order to cease and desist from their illegal acts. Such an order would allow business to continue, while also enjoining the continuation or resumption of the unfair methods or acts; Section 337, however, provides only for an *in rem* action against the imported goods (i.e., exclusion from entry), and such action, if taken, would have the effect of terminating trade in the tractor parts in question." (T.C. Pub. 443, December 1971, at page 9)

The exclusion remedy is necessary, both because in many cases it is appropriate and also because it is needed in order to make effective less severe remedies which the Commission may wish to enforce under the statute. The Commission in many cases may wish to issue a letter or order providing a stipulated time period within which a party may attempt to show cause why an exclusion order should not issue. In cases where violating parties show that they have purged themselves of the unfair practices, the Commission will have assured the termination of the unfair trade practices without eliminating competitors from the domestic market. This type of remedial flexibility by the Commission is particularly suitable in investigations concerning non-patent unfair trade practice complaints, since in these types of cases many of the parties entering goods involved in the investigation may not be involved in the unfair practices. In these circumstances, the Commission would want to issue an exclusion order which is focused only on the goods being entered by those parties found to be violating the statute.

In the Commission's most recent report under Section 337, a temporary exclusion order was recommended in *Convertible Game Tables*, Investigation No. 337-34, T.C. Pub. 652, March 1974. Here the recommended exclusion order provided for entry into the country of ". . . . table top(s) either table top (if imported separately) is for use other than the combination purposes covered by said patent and the importer so certifies." The use of such certifications or assurances regarding post entry involvement of imported goods in future Commission exclusion orders would be even more suitable for non-patent cases. Using this more flexible approach to exclusion orders, the Commission could allow entry of goods by non-violating parties based upon their certification that the goods which they enter will not be involved in the unfair acts found to exist during the Commission's investigation. Should a party fail to honor its assurances, the Commission could alter the exclusion order so that further entries by the violating party will be prohibited, notwithstanding certifications or assurances. Furthermore, the Customs Service of the Department of the Treasury would be administering the exclusion orders and, should certifications or assurances given by importers be found to be false, there are procedures available to the Customs Service for suitable sanctions.

C. EFFECTIVE DATE AND PENDING CASES

There are presently approximately 22 unfair trade practice cases pending at the Commission. These cases are in different stages of investigation by the Commission. The proposed amendments to Section 337 provide for substantial changes in the rights of the parties, that is, concerning notices, hearings, appeals and the like. Thus, the currently pending cases pose a problem for which the proposed amendments make no provision. Under Title 5, Chapter 5, subchapter II, of the United States Code (Administrative Procedures Act), the provisions of which would apply to complaints filed after the effective date of the proposed amendments, the Commission's procedures concerning agency rules, records, adjudications, review, evidence and the like would be signifi-

cantly different from present procedures.[8] The Commission should handle all cases which are pending prior to the effective date of the proposed amendments under the procedures which were in effect at the time that the complaint was filed so that if a complaint is filed prior to the effective date of the proposed amendments, it would be handled under old procedures.

In order to allow the Commission to make an orderly transition into the handling of cases under the proposed amendments the statute should take into account the time required for the promulgation of new rules and regulations and the formulation of revised internal policies and procedures. Thus, the proposed statute should specifically state that all cases filed after a specific future date would be handled according to the procedures set forth in the amended statute.

D. POSSIBLE COLLATERAL ESTOPPEL IN FEDERAL DISTRICT COURTS AS RESULT OF C.C.P.A. DECISIONS

If the same issue involved in a Tariff Commission Section 337 action under the proposed amendments and which is appealed to the C.C.P.A. subsequently is involved in federal district court litigation, the prior C.C.P.A. decision may be considered to be binding on the parties (assuming the same parties are involved) or to act as collateral estoppel as to such issue (again assuming the same parties or those in privity with them are involved).[9]

In *Libbey-Owens* v. *Shatterproof, supra*, the court said that while previous cases[10] held C.C.P.A. decisions to be administrative and not judicial, 28 U.S.C. 1256, enacted in 1948, states that C.C.P.A. decisions may be reviewed by the Supreme Court, since in 1958 Congress considered the C.C.P.A. to be an Article III court when it passed 28 U.S.C. 211. The Court further stated that in 1966, "the Supreme Court has ruled that the *Postum* case no longer has any vitality and that the decision of the C.C.P.A. is judicial in character. (citation omitted). The Supreme Court also ruled that the decision of the C.C.P.A. 'is final and binding in the usual sense.' *Brenner* v. *Manson*, supra." *The Libby-Owens* court then stated that 'issues and questions of fact which were actually litigated and determined by the C.C.P.A. are conclusive in this action:" That action was one for trademark infringement.

In another action also for trademark infringement (*Flavor Corp.* v. *Kemin, supra*) the court discussed certain additional prior cases and then came to the same decision as the *Libby-Owens* court above, and for the same reasons, but pointing out that since a different cause of action was involved the matter would be one of collateral estoppel rather than res judicata.

For a consideration of the possible application of collateral estoppel in determining infringement see *Mastini* v. *Amer. Tel. supra*. The C.C.P.A. was not involved there. This case apparently is a basis for collateral estoppel on the issue of infringement as *Blonder-Tongue* v. *Illinois*, 402 U.S. 13 (1971) is the basis for collateral estoppel on the issue of validity.

If this collateral estoppel or res judicata is not intended then we believe the amendments to Section 337 should contain language comparable to the following:

"To the extent the federal district courts have original jurisdiction over any subject matter involved herein, decisions of the C.C.P.A. shall not be held to be res judicata or collateral estoppel."

E. Clarification as to whether 28 U.S.C. 1498 prevents Tariff Commission action when the United States Government or its contractor is an importer.

In a recent Commission investigation, *Meprobamate*, T.C. Publication No. 389 (1971), the question of the application of exclusion orders to government importations has arisen. During the *Meprobamate* case, it was the position of the Justice Department that Commission exclusion orders would not apply to government importations. The basis for this position is apparently that 28 U.S.C. 1498 is the exclusive remedy against the government.

On the other hand, there is a reasonable basis for the position that exclusion orders would apply to government imports notwithstanding Section 1498.

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[8] For a detailed discussion of present Tariff Commission procedures, see *Journal of the Patent Office Society*, Vol. 55, June and July, 1973, pp. 346–362 and pp. 413–435.

[9] *Libbey-Owens-Ford Glass Co.* v. *Shatterproof Glass Corp.*, 358 F. Supp. 1117, 165 U.S.P.Q. 335 (E. D. Mich. 1970); cf. *Mastini* v. *American Telephone and Telegraph Co.*, 177 U.S.P.Q. 169 (D. Md. 1972); *Flavor Corp. of America* v. *Kemin Industries, Inc.*, 358 F. Supp. 1114, 177 U.S.P.Q. 658 (S. D. Iowa 1973).

[10] *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U.S. 693 (1927); *John Morrell & Co.* v. *Doyle*, 97 F. 2d 232, 37 U.S.P.Q. 565 (7th Cir. 1938).

This position is consistent with the language of Section 337 which states that violation of the Section ". . . shall be dealt with, in addition to any other provisions of law, . . .".

In these circumstances, it is our suggestion that language be added to the Section to clarify whether the Commission exclusion orders would apply to government imports.

Senator DOLE. Our final witness is Mr. Whitney.

STATEMENT OF SCOTT C. WHITNEY, ESQ., BECHHOEFFER, SNAPP, SHARLITT, & TRIPPE

Mr. WHITNEY. Thank you, Mr. Chairman.

I am Scott C. Whitney, professor of law at the college of William and Mary and a partner in the law firm of Bechhoeffer, Snapp, Sharlitt, Lyman & Whitney. Mine is a personal statement about my concern with the impact of environmental costs that are involved in certain of these world trade situations.

I would like to focus attention on four factors rather than go into the detailed statement, which speaks for itself. The first is that Congress is faced in this particular legislative problem with a complex of unprecedented economic forces that have not heretofore existed when Congress considered trade legislation in the past.

Some of these factors are very self-evident, others are not. They are new factors, and the synergistic effects of the new factors upon the bread-and-butter factors we are accustomed to considering creates a unique situation that I think should influence this committee's and the Congress' approach to some of the basic questions involved in the legislation.

We all know about the spiraling inflationary costs that are on a scale never experienced in this country before, at least in this century. In the past, we have lived with the fact that our labor costs have been higher than in any other country, but in the late sixties with the marked decline of worker productivity, the thing that saved the situation, namely, our earlier labor productivity, has diminished substantially. Today, we have the lowest worker productivity of any major industrial nation in the world.

We all know about the continued slippage in the balance of trade payments. The one recent exception in 1973 where we had the positive balance of payments was probably nonrecurring and caused by these abnormal agricultural sales that we all know about.

We are all aware of the continuing budget deficits and are aware of the $300 billion budget. And we are all aware, although they are very complex, of the impacts of these factors on the relative exchange value of our currency. We have been rather dramatically made aware of the fact that we are going to have a major dependence on foreign oil for the foreseeable future. Even the most optimistic assumptions expressed in the Project Independence study indicate that at least through 1985 we are going to have a substantial dependence on foreign oil. And, curiously a forecast from the same agency, the Atomic Energy Commission, whose Chairman is the author of this Project Independence study, forecasts that U.S. oil needs can create as large as $25 billion a year drag on our economy to get this oil, despite the cost optimistic assumptions about bringing on nuclear power and these other energy modes.

The most difficult and perhaps the most important additional factor is going to be the additional environmental costs. There have been a series of studies which I discussed in some detail in my statement, that were made in a primitive kind of way to quantify what those cost factors will be. But, yet, they are unquantified, and there are ongoing studies that this Congress has mandated in which successive studies will be published which may shed more light.

Senator CURTIS. May I ask a question right there?

Do you think environmental costs are costs that will be incurred primarily by the United States, by producers in the United States, and probably not incurred by our competitors?

Is that correct?

Mr. WHITNEY. To a great extent, that is true, Senator Curtis. What the study that the Congress mandated in section 6 of the water quality legislation undertakes to find out is just how far these foreign countries will go. It is making an indepth study of their regulations and attempting to quantify what those regulations would translate into the terms of cost and final market prices. As I indicated, that study is in a very primitive state at the moment. We hope that as they get more refined data we can find out about it. But the preliminary best studies that we have now indicate that, although we cannot quantify it, the handicap to American industry is going to be very substantial, that it is going to have a major implication on our ability to compete in foreign markets and to protect ourselves against foreign competition in our domestic markets.

Now, with that background, I have moved to very specific legislative problems, the first of which relates to this burden of proof in obtaining import relief for an industry. As you know, under the present statute, the "major cause" test exists, and there are some complex showings that must be made to get import relief. Under H.R. 10710, the "major cause" test would be abandoned and a dual standard set up, a substantial cause test for industry to get import relief and a lesser standard for individual firms and labor to obtain adjustment assistance.

It is my view that we have reached the stage, because of this combination of economic factors, where it is doubtful that the American taxpayer can continue to pick up the very large tab for adjustment assistance. Adjustment assistance is really putting wallpaper over a crack that indicates a major structural defect in the building. And if adjustment assistance is, in fact, going to be made in certain specific cases where it is unavoidable, then the burden for import relief for whole industries and the burden of proof for getting adjustment assistance should be identical.

After all, whole industries, individual firms, and labor are inseparable parts of a production complex insofar as foreign competition is concerned.

Senator CURTIS. As it stands now, which one of the three has the greater burden of proof?

Mr. WHITNEY. Whole industries do.

Senator CURTIS. That is in the bill as it is now?

Mr. WHITNEY. That is correct, yes, sir. And to the extent that adjustment assistance and import relief becomes necessary, I can see no reason to have a differing standard. As a matter of fact, if you solve the problem on an industry basis, you probably will not get to the problem of adjustment assistance. If you have adequate mechanisms to give import relief to whole industries where that becomes necessary, you do not even get to the problem of individual firms and labor assistance.

That brings me to the second legislative problem, and that is purely a mechanism of decisionmaking. At the present time and under H.R. 10710, the President, upon a finding by the U.S. Tariff Commission that injury would result, so-called "affirmative findings" by the Commission, the President must grant some kind of adjustment assistance. But as to industries, the statute would provide that he may provide import relief, and if he does, then there is a hierarchy of priorities of the kind of import relief to be accorded.

Senator CURTIS. By import relief, you mean something that would shut off the flow of imports, or reduce it?

Mr. WHITNEY. The four kinds that are built into the statute are enumerated here. They are: duty increases, tariff rate quotas, quantitative restrictions, and orderly marketing agreements, in that order of priority. There is a kind of congressional veto mechanism available as to the latter two.

Now, the factor that I am focusing on is, upon these affirmative findings by the Tariff Commission, after careful adjudicatory and expert proceedings, when they make these findings and they go to the President, the President must come to grips with the adjustment assistance as to labor and individual firms. But under H.R. 10710 he "may" give import relief to whole industries, it is completely the order of priority of these four forms of relief that I just enumerated.

This creates a situation that is almost unique in Government. There are only two places in the entire Federal establishment where you have an independent agency with an expertise to whom this Congress has delegated the power of decisionmaking in this very highly specialized area that goes through an adjudicatory proceeding and reaches a conclusion, and then the President has the right to either veto it through inaction or depart from the action that was recommended by this expert independent agency. The other example apart from the U.S. Tariff Commission is the Civil Aeronautics Board as to international air routes.

This has been much criticized by not only the industry but by students of decisionmaking in the Federal Government as being an improper combination of legislative-executive-judicial relationships. When this expert body has on a record and in an evidentiary proceeding reached a conclusion, it simply does not make sense to have that whole proceeding subject to a discretionary whim of the President. That is not to be critical of any specific President.

In the case of the aviation example, the Senate in 1957 passed a bill to try to change that. It never got enacted in the House. It is not focusing on any given President. It is simply that a President with his personal staff is simply not in the position to second-guess

an expert agency effectively. There are legitimate concerns of the executive branch and this legislation, as my proposed amendment would indicate, should take into account a legitimate interest of the executive, namely, foreign policy considerations and national security.

The situation that I would advocate is that upon affirmative findings by the U.S. Tariff Commission, the President must accord import relief, as he must accord adjustment assistance under the statute upon the same kind of affirmative finding as it relates to individual firms or labor, unless he shows to the Congress that specific supervening foreign policy or national security considerations indicate that another course is warranted.

That brings me to the final recommendation, and that is, this morning before you arrived, Senator Curtis, Mr. Goodman spoke at great length on behalf of the retailers, and he made a point that is generally valid but to which I would like to point out an important exception.

His point was that poor people and low-income people in this country need to have access to $3 dresses and $4 shirts and things of this sort that are made in Taiwan and places like that, and it is an improper use of American productivity to even try to compete there, that we should be manufacturing and doing other things that we can do better and compete effectively.

That is pretty good as a general proposition, but we have learned to our cost that there are certain key strategic industries and certain key strategic resources, such as oil, which are so important to the security and welfare of this country that we cannot abdicate in those areas to lower cost foreign competitors. Typically, those industries meet three kinds of criteria which are strategically significant, such as steel, various specialty steel manufacturers, electronics and others, which are heavily impacted by pricing problems vis-a-vis imports in our domestic markets and the lower price competition in the world markets; and third, which are particularly vulnerable to these environmental costs, the pollution abatement expenses; that these industries should be given special attention and special protection in the form of strategic sector reciprocal trade negotiations, in which many of these nontrade barriers, such as these unequal environmental costs, are taken into consideration, because we have reached the stage where we can on longer afford to have whole sectors fail or move abroad, and become dependent on whole sectors of strategic activities on foreign sources.

That concludes my statement, which I hope will be included in the record.

Senator CURTIS [presiding]. Inasmuch as the dependence on foreign sources, have our environmental laws been responsible, at least in part, for the decision of large oil companies to build refineries abroad rather than in the United States?

Mr. WHITNEY. I think there is very little doubt that that is the case. As you know, Senator, I serve on the Coastal Zone Advisory Committee which is concerned among other things with siting refineries in coastal zone areas. And for at least the last 15 years, there has been no siting of such refineries that encompasses the whole

hydrocarbon chain, that is, an economically viable refinery in any of those areas. The ones that have been done had to be done abroad if they were going to be done at all. Although there are measures under consideration that may ameliorate that, this still remains a very troublesome problem.

Senator CURTIS. Do you subscribe to or take the position that we ought to develop all the energy sources we can in this country?

Mr. WHITNEY. I do.

Senator CURTIS. Including oil shale and coal gasification and increased search for petroleum?

Mr. WHITNEY. I do, indeed. And in each of those, implicit in each of those, because of either existing or pending environmental regulatory programs, it will cost this country per Btu more to bring it on than any other country on the planet, and it derives specifically from environmental regulations.

I am not saying I am against these regulations. I think they are necessary to a point, but I think that the amount of penalty that we are imposing on ourselves, or the amount of additional cost burden is, perhaps, the best way to put it, must at the earliest possible moment be quantified so that we know what numbers we are dealing with when we get into these negotiations with foreign competitors. To the extent that we are willing to pay a higher price to have a clean environment, we should make sure that we are not handicapping ourselves, particularly our strategic key industries and endangering their survival and having an increasing dependence on offshore capability in these key areas, the dangers of which we have recently seen in the dependence on Mideast oil.

Senator CURTIS. I would like to say to you, Mr. Whitney, and to others who have testified here, that your statement and the answers to questions put to you will not only be in our record, but our practice is to have the staff analyze all of it, then digest the resumés and the outlines of other material that are placed before members when they take up those particular points in executive session. So we thank you very much for your contribution.

Mr. WHITNEY. Thank you, sir.

Senator CURTIS. The hearings will be recessed until 10 o'clock tomorrow morning.

[The prepared statement of Mr. Whitney follows:]

PREPARED STATEMENT OF PROFESSOR SCOTT C. WITNEY

SUMMARY

New economic forces affecting both the U.S. economy and international trade conditions necessitate new approaches to U.S. trade policy. These forces include:

(1) Beginning in the latter years of the 1960's the combined effects of declining productivity and increasing inflation have created an unprecedented vulnerability to foreign competition in many U.S. manufacturing sectors.

(2) The cost of environmental reform and pollution abatement has further adversely affected the ability of many significant sectors of U.S. industry to price its products competitively in world markets.

(3) Since the mid-1960's, due in part to declining productivity, inflation and environmental costs, the United States has consistently experienced trade deficits and with the exception of 1973 (an atypical year) the United States has consistently incurred significant balance of payments deficits, all of which

have adversely impacted the value of the U.S. dollar. These trends cannot be allowed to continue indefinitely.

These economic forces make it imperative that Trade Reform legislation contain more effective procedures for import relief (including reforms of our trade policy decision-making) and new and more flexible reciprocal trade negotations with regard to key trade sectors. Specifically, Title II of H.R. 10710 should be amended as follows:

(1) Whenever the U.S. Tariff Commission, after investigation and hearing, concludes that an import would produce serious injury or a threat thereof, the President should be *obliged* to grant import relief for an industry unless the President can demonstrate to Congress that specific supervening national security and/or foreign relations considerations override the need for grant of import relief.

(2) Congress should impose the same standard for grant by the U.S. Tariff Commission of relief to both labor, firms and industry. U.S. industry and labor are, for purposes of protection against foreign competition, a team with identical interests and accordingly the same standard should be applied both as to granting adjustment assistance to labor and firms and import relief to industry.

(3) Congress should structure in Title I, authority to enter into reciprocal agreements on a sector basis (i.e. individual industrial or product categories) in such a fashion that the impact of environmental cost increments and possible other cost variables can be taken into account in tariff levels or trading conditions.

These recommendations, which are explained more fully in the complete text of statement which follows, have as their objective the creation of a more flexible and immediately responsive decision-making apparatus capable of assuring liberal and healthy trade, but also capable of coping with the new economic forces which seriously threaten important sectors of U.S. industry and the overall trade position of the United States.

STATEMENT

My name is Scott C. Whitney. I am Professor of Law at the Marshall-Wythe School of Law, College of William and Mary which is located in Williamsburg, Virginia. I am also engaged in the private practice of law in Washington, D.C. I am partner in the law firm of Bechhoefer, Snapp, Sharlitt, Lyman and Whitney with offices at 1747 Pennsylvania Avenue, N.W., Washington, D.C.

My special interest in the law is in the environmental field with particular reference to the problems of Federal administrative decision-making that arise from the large and increasing volume of environmental statutes and the corresponding body of judicial decisions interpreting, applying and enforceing such laws. As this statement emphasizes, one of the critical impacts of the environmental reform as mandated by Congress and the Courts is economic. The staggering cost to industry (and for that matter to Government) to comply with the already extensive and expanding body of environmental laws and regulations has seriously impacted our national economy and is particularly critical to those industries that depend on trade in foreign markets or experience substantial competition from imports.

This statement will be devoted primarily to recommending Federal decision-making structures and statutory standards that will be calculated to cope most effectively with important new economic forces, especially environmental costs, as they impact this nation's world trade position. My statement is in the nature of a *pro bono publico* activity and is motivated by my personal concern not only about the evident recent decline in the U.S. position in world trade but also the serious impact on specific vulnerable sectors of our industry; and the likelihood of further deterioration unless effective and imaginative innovations are enacted to provide import relief and flexible trade negotiation authority.

ECONOMIC BACKGROUND

I do not intend to undertake an extensive economic analysis of trends in U.S. trade results as the underlying data are well-known and easily accessible to this Committee and the Congress. Rather I will focus on certain key factors which indicate that Congress today, when it considers what provisions should be enacted to produce an adequate Trade Reform Bill, faces a complex of new

economic forces unlike those that confronted the Congress when it last undertook to enact comprehensive trade legislation, the Trade Expansion Act of 1962. These factors necessitate major reconsideration both of past techniques in determining and applying trade policy and the provisions of H.R. 10710 as enacted by the House of Representatives in 1973.

First it must be emphasized that U.S. imports of merchandise have increased exponentially in the past decade—from $18.7 billion in 1964 to $69.1 billion in 1973, or nearly a fourfold increase. During the same period, with the exception of 1969, federal deficits have been both substantial and continuing.

TABLE I.—*Federal budget deficit*

	Billions of dollars
1965	−1,596
1966	−3,796
1967	−8,702
1968	−25,161
1969	+3,236
1970	−2,845
1971	−23,033
1972	−23,227
1973	−14,301
1974 estimate	−4,660
1975 estimate	−9,445

Source: U.S. Office of Management and Budget.

Similarly, beginning in 1966 the United States has incurred annual deficits in both trade and balance of payments except in 1973 when a modest positive balance of payments was achieved primarily by virtue of extraordinarily high and probably non-recurring sales of agricultural products.

This decade also was a period of severe, in fact unprecedented overheating in the U.S. economy which greatly intensified upward pressures on domestic prices and wages. The following chart demonstrates the significantly higher increase in unit labor cost in manufacturing incurred by the United States compared to that of the nine leading industrial trading partners:

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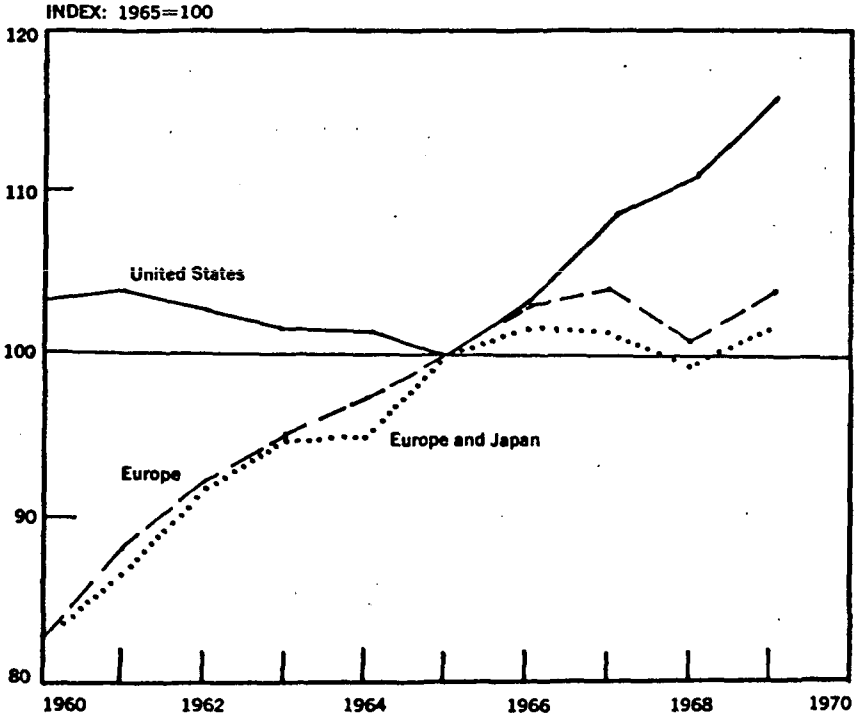
CHART 1.—Unit Labor Cost in Manufacturing, United States and Nine Industrial Trading Partners, 1960–69

[U.S. dollar basis]



NOTE: Data for trading partners are weighted according to U.S. imports from each country in 1965. Data for Europe pertain to Belgium, France, Germany, Italy, Netherlands, Sweden, Switzerland (wage earners only), and the United Kingdom.

Source: U.S. International Economic Policy in an Interdependent World, Part II, page 539.

Moreover, U.S. productivity has declined perceptibly:

TABLE II.—AVERAGE PERCENT CHANGE IN OUTPUT PER MAN-HOUR FOR MANUFACTURING EMPLOYEES

Country	1960–65	1965–69	1969–70
United States	4.3	2.1	1.0
Belgium	5.4	8.6	[1] 11.7
Canada	3.7	4.1	3.0
France	4.8	7.0	9.0
Germany	6.0	5.7	4.0
Italy	7.1	3.7	[1] 1.2
Japan	8.2	15.1	13.0
Netherlands	6.4	8.4	12.0
Sweden	5.9	8.2	6.0
United Kingdom	3.4	4.0	3.0
Switzerland	3.1	7.2	5.0

[1] Not available for 1969–70 (1968–69 data used instead).

Source: U.S. Department of Labor, Bureau of Labor Statistics.

The repercussions of these events have been significant. Although American wages have, in recent decades at least, always been higher than those of other countries, until quite recently this factor has been offset by the higher productivity of the American worker. This is demonstrated as recently as the 1960-64 period during which the United States still exported more than it imported.

The combined effect of increases in domestic prices (a phenomenon that requires no documentation), increased U.S. wages and declining U.S. worker productivity, lend even greater impetus to the present trend towards greater imports. The consequences of prolonged trade and balance of payments deficits on the value of U.S. currency has been adverse. The impact of these conditions on comparative exchange rates relative to the U.S. dollar and the decline in the effective rate of exchange of the U.S. dollar have been severed. These data are shown in Figure 15 of the publication entitled Staff Data and Materials on U.S. Trade and Balance of Payments, February 26, 1974, and will not be repeated herein.

This unprecedented combination of adverse economic events was aggravated by still further new economic forces. One of the most important both in the short and the long term is environmental costs. Despite early recognition that the economic impact of pollution control required serious consideration, it is fair to say that no accurate assessment of the total extent of these costs and their impact on the national economy has as yet been made. The first noteworthy effort to quantify these costs on anything resembling an overall national basis was "The Economic Impact of Pollution Control," a summary of eleven microeconomic studies prepared by private economic consultant firms for the Council on Environmental Quality, the Department of Commerce and the Environmental Protection Agency and published as a joint-agency study in March of 1972. The eleven studies, each focusing on a different specific industry, undertook to assess the cost of then prevailing air and water pollution abatement requirements. In addition, this work contained a macroeconomic study of the impact of air and water pollution control on the general economy and trade and balance of payments. At the threshold this study suffered from the fact that it undertook to quantify only costs arising from air and water pollution control and made no effort to assess costs arising from other environmental legislation and regulations. Moreover, events subsequent to publication of the Study have made it clear that the 1972 forecasts as to air and water related costs were substantially understated. The enactment of the Water Pollution Control Act of 1972 and the extensive promulgation of air and water quality regulations subsequent to March 1972 have already and will continue to produce control costs many times greater than originally forecast. Moreover, extensive environmental regulation has been enacted in a wide variety of other fields.

While various agencies such as Health, Education and Welfare, EPA and the Council on Environmental Quality have published from time to time so-

called categorical estimates (e.g. The Cost of Clean Air, Second Report of HEW, 1970, and EPA's 1972 Water Pollution Control Cost Study), these were largely meaningless at the time they were published and are clearly obsolete today.

It was likewise early recognized that environmental costs wil have substantial impact on our international trade and investment relations. The studies submitted to the Commission on International Trade and Investment Policy (CITIP) contains an analysis entitled "International Economic Implications of Environmental Control and Pollution Abatement Programs" (CITIP Study, Part I. page 777 et seq.). This study was published in July of 1971 and recognized that if the U.S. imposes strict anti-pollution measures on U.S. industry either by direct regulation or by a taxing scheme, U.S. export and import-competing industries will be placed at a further competitive disadvantage in both world and domestic markets. It was squarely recognized that our trade balance and level of national income would thereby be adversely affected unless countervailing or compensatory measures were adopted. One result of a policy of strict environmental regulations would be to encourage the overflow of investment funds to foreign production sites with the likelihood that balance of payments deficits would be worsened and domestic growth rates and employment adversely affected. Another obvious result would be a significant decline in the U.S. share of numerous world markets. We would thus aggravate an already pronounced trend of pricing ourselves out of important world markets and make our domestic markets more vulnerable to competition by imports.

The CITIP Study emphasizes that production pollution is only part of the problem. Consumption pollution and so-called transnational pollution will pose significant additional problems. The magnitude of this problem remains largely unquantified. The CITIP Study forthrightly acknowledged that "there has not yet been any systematic and comprehensive research in estimating these factors. We are not in a position to give reasonable numerical values to the trade and investment consequences, and we strongly urge support for research into this important question." (CITIP Study, Part I, page 785). The study recommended that the Committee on Environment, an organ of the Organization for Economic Cooperation and Development be the structure employed to devise an international agreement under which the industrial nations would adopt "pollution control measures which incorporate costs in price" by which it is apparently meant that nations would agree to quantify environmental costs and seek to trace through to final commodity price that increment representing environmental cost. As we all know, virtually nothing has been done to implement this recommendation.

Even assuming the feasibility of such an agreement, the study acknowledges that specific U.S. export and import-competing industries might nonetheless be seriously affected, in which event the Study concludes that adjustment assistance similar to that provided by the 1962 Trade Expansion Act would be the best available remedy.

Subsequently Congress in Section 6 of the Federal Water Pollution Control Act of 1972 mandated an extensive study by the Department of Commerce to determine among other things:

(1) The short and long term effect of pollution abatement programs on production costs and market prices of domestic manufacturers on an industry by industry basis;

(2) A corresponding analysis with respect to foreign industrial nations;

(3) The advantage a foreign nation will derive if it fails to require its manufacturers to implement comparable programs or somehow reimburses or subsidizes such programs;

(4) Ways to equalize any such advantage that a foreign competitor may derive by failing to require pollution control comparable to that of the United States.

The first report of the Secretary of Commerce prepared under this mandate has now been published. Although the report contains important forward steps in the difficult matter of ascertaining the extent and impact of environmental costs, it falls far short of reaching even tentative conclusions. One bright spot in the Report is its recognition that, "to identify the costs involved, consideration must be given to the combined impact of *all* types of pollution control requirements on firms, and on their suppliers. While the direct cost impact of any particular pollution control requirement might be modest, the

combined impact of all types of pollution controls and the effect of such controls on all suppliers, not just for the end-product industry, could be substantial."

Another refreshing aspect of this Report is its frank acknowledgement that environment requirements "will have significant economic consequences."

It is not my purpose in this statement to undertake to quantify the economic impact of environmental costs. It is an abstruse and voluminous task that will tax the resources of the Federal Government and those private industries that have undertaken aspects of the problem. The point that I want to emphasize to this Committee is that it has now become unmistakably clear that this economic impact is and will be far greater than initially supposed and that most of our foreign competitors are not now incurring any remotely comparable incremental cost burden on their products as that imposed on American manufacturers.

Another aspect of the environmental cost problem is that to the extent environmental restrictions have curtailed American oil and gas production and refinement, we have become correspondingly more dependent on foreign sources. The recent escalation in oil prices is well known to this Committee and I doubt if there is any responsible observer who doubts that high oil prices are here to stay. Under the most optimistic forecast, the Project Independence Study, it is conceded that we will be dependent on foreign oil until at least 1985. Most authorities are less optimistic, and a fair concensus of forecasts would be continued dependence on foreign oil for the remainder of this century. The relevance of this economic fact of life is that our traditional import position will be further weighed down by a fixed requirement upon which our economy depends that could run as high as $25 billion per year.

Thus, Congress is faced with a series of unprecedented economic forces affecting this nation's world trade position:

1. Spiralling inflationary costs on a scale never heretofore experienced in this country in this century;
2. Significantly declining worker productivity;
3. Continued slippage in balance of trade payments;
4. Serious continuing budget deficits;
5. Major impacts on the relative exchange value of our currency;
6. A massive fixed import requirement of oil to assure our power-based economy;
7. As yet uncalculated, but concededly major environmental costs which promise to price American products further out of the market.

This is not the prelude to a generalized protectionist harangue. The world is an increasingly interdependent community and liberal trading is not only a key to peaceful world relations but overall the United States will benefit from the liberal trade approach.

However, we urgently need to re-examine certain assumptions upon which past trade legislation was based. One such assumption is that the U.S. taxpayer should or can be expected to pick up the tab for adjustment assistance made necessary by economic harm resulting from imports. The number of approvals of adjustment assistance has increased significantly since 1969 and the more lenient criteria proposed in H.R. 10710 suggests a further increase, particularly in view of the increasing burden imposed by environmental control costs on American industry. One question stands out as requiring sober consideration—in view of our $300 billion budget, the long record of budget deficits, the deteriorating balance of trade and payments, the decline in worker productivity, the unabated inflationary spiral, the array of new impacts and demands on our economy arising from environmental and energy factors—isn't it now time for the U.S. to adopt more effective import relief measures and responsive decision-making techniques. Can we afford to permit further weakening of key industries such as steel, specialty steels, electronics and others, at a time when we have hopefully learned a dramatic and ominous lesson of what can befall a major industrial nation if it becomes dependent on foreign supplies of critical commodities.

SPECIFIC LEGISTATIVE RECOMMENDATIONS

I. *Burden of Proof to Obtain Import Relief for an Industry*

Under existing law as construed by the U.S. Tariff Commission, there are four prerequisites for an affirmative finding with respect to an industry on the basis of which the President "may proclaim such increase in, or imposition

of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry" (19 U.S.C. §1981(a)(1) 1970) These prerequisites are:

(1) Imports of a like or competitive article produced by the domestic industry must be increasing;

(2) The increased imports must be in major part the result of trade agreement concessions;

(3) The domestic industry producing the like or competitive article must be suffering serious injury; and

(4) The increased imports must be the major factor in causing or threatening to cause serious injury. (See Nonrubber Footwear, Tariff Commission Publication No. 359, at 6, Jan. 1971)

In addition to import relief for an industry, the 1962 Act created two new remedies—firms and groups of workers were authorized to petition for adjustment assistance. To qualify for such individual relief, petitioners must meet the same four prerequisites. (19 U.S.C. §1901(c)(1)-(3), 1970). At the outset, little relief was obtained under these provisions. During the first seven years under the 1962 Act, no relief was granted to anyone. In 1969 two decisions were handed down by the Tariff Commission granting workers' petitions for adjustment assistance (Buttweld Pipe, Tariff Commission Publication No. 297; Transmission Towers and Parts, Tariff Commission Publication No. 298). Thereafter, as of April 1972 relief was granted to 39 workers' petitions and 11 firm petitions. Relief to an industry has been rare.

Under the Trade Reform Act as passed by the House no causal link to trade concessions is required and the criteria as to the extent to which imports must have contributed to the injury to an industry, firms or workers have been relaxed. Under this bill there would be two different criteria:

(1) For industry, a Tariff Commission finding is required that increased imports were a *substantial cause* of serious injury, a phrase deemed to mean a cause that is not less than any other cause;

(2) For workers, the Secretary of Labor must find that a significant number or proportion of workers have become totally or partially separated, that sales or production have decreased and that increased imports *contributed* to the decline in sales or production and to the separation of workers. As to individual firms, the Secretary of Commerce must make the same findings as those that relate to worker injury.

It is respectfully submitted that there is no adequate justification for this distinction. The distinction between an industry, individual firms comprising an industry, and workers employed by firms comprising the industry is artificial and injurious in the context of economic reality. All are partners in a common enterprise and have an identity of interest vis-a-vis the impact of foreign competition. All are parts of a domestic production complex that cannot be rationally severed for purposes of eligibility for import relief. The distinction is probably a hangover from the present system in which escape clause action under GATT was approached with fear and trembling lest retaliation be incurred. As I will note later in this statement, if effective reciprocal negotiations are carried out at least with respect to key trade sectors uniquely affected by environmental and other special costs, many situations otherwise requiring import relief would be forestalled.

Furthermore, grant of adjustment assistance to workers and firms is not a remedy for injury resulting from undue incursions of imports on a domestic production complex and does not contribute to strengthen the competitive position of the production complex. Adjustment assistance tends to be like trying to cover a crack caused by a basic structural defect with wallpaper. As the earlier part of this statement demonstrates, we can no longer afford the luxury of looking to the American taxpayer to compensate those injured by incursions of imports that an effective trade policy should and can preclude. If, however, Congress believes that adjustment assistance should be available, then Congress should authorize industry to petition for import relief and require no more onerous showing than that required of firms and workers to obtain adjustment assistance. This proposition is supported both by common sense and fair play. Moreover, it must be noted that use of an equal standard which would facilitate industry's ability to obtain import relief, would substantially reduce the need for firms and workers to seek adjustment assistance.

II. *The President's Discretion after a Tariff Commission Affirmative Finding*

Upon receiving an affirmative finding by the Tariff Commission, the President must consider the extent to which adjustment assistance has been or could be made available. As to import relief, the President would still retain discretion as to whether to accord any relief. If the President decides to grant import relief then he must do so in the following order of preference—tariff increase, tariff-rate quotas, quotas, and orderly market agreements, the latter two remedies being subject to a Congressional veto procedure. It is respectfully submitted that vesting discretion in the President to withhold import relief after a Tariff Commission decision is unsound and anomalous. There are only two situations in our entire governmental establishment in which the President can circumvent the "of record" findings and decision of an independent administrative agency. One such situation obtains under the existing trade law and would be perpetuated in only slightly modified form by H.R. 10710. The other is the power of the President under Section 801 of the Federal Aviation Act to abrogate a decision of the Civil Aeronautics Board, arrived at after conducting adjudicatory hearings, awarding territorial, overseas and foreign air carrier permits and effectively to substitute his decision for that of the agency. In both instances judicial review is precluded.

The Senate has severely criticized the vesting of the power to overrule adjudicatory, independent agency action,

"The practical result of this total shifting of authority has been to subject the President directly to all the burdens and pressures of air commerce regulation. Thus, he is called upon in every section 801 case to pass final judgment on the fitness, willingness, and ability of air carriers to perform the service in question—these being the fundamental statutory criteria for the issuance of any certificate. In the great majority of instances, including those covered by section 801, the decision called for must be based entirely on economic or technical considerations having no practical bearing whatsoever on national defense policy or the conduct of foreign relations. . . . Matters of an economic or regulatory nature which the Board, acting under the aegis of the Congress, is alone competent to decide and for which it alone is adequately staffed and ordered have somehow unwittingly become delegated to the Executive." (Senate Commerce Committee, Improvement of Procedures for the Development of Foreign Air Commerce, S. Rep. No. 119, 85th Cong., 1st Sess. 2 (1957)).

Senate bill 1423 in the 85th Congress, would have amended section 801, inter alia, "by restricting the President's power to overrule CAB certification actions to foreign air transportation cases involving national defense or foreign policy" and by requiring the President "to submit to Congress a report of any instance in which he overrules a Board order as contrary to the interests of defense or foreign policy." (S. 1423 passed the Senate (104 Cong. Rec. 5137 (1957)) but was not acted upon by the House).

To empower the President to ignore and in effect veto a considered agency decision that import relief is required violates basic principles of sound government decision-making. Moreover, such an apparatus endangers the credibility of government. Presidential use of Section 801 powers in aviation cases has occasioned widespread accusations of improprieties. (See Markham, Two Proposals for Amendment of the Federal Aviation Act of 1958, 35 J. Air L. & Com. 591, 1969; Section 801 of the Federal Aviation Act—The President and the Award of International Air Routes to Domestic Carriers: A Proposal for Change, 45 N.Y.U. L. Rev. 517, 1970; Whitney, Integrity of Agency Judicial Process Under the Federal Aviation Act: The Special Problem Posed by International Airline Route Awards, 14 William & Mary L.R. 787, 1973).

Presidential discretion to award import relief was recently criticized on the basis that "the White House treated the matter 'as a political football'." (81 American Metal Market, No. 63, April 1, 1974 p. 27).

I want to emphasize that I am not being critical of any specific President. These problems of credibility and integrity of decision-making process arise from an unsound executive-legislative-administrative relationship and have occurred in prior Presidential administrations and will predictably continue in future administrations unless rectified by Congress.

Accordingly, I recommend that instead of the language "the President may" in Section 202 and 203, the bill should provide "the President shall, unless specific supervening national security and/or vital foreign relations considerations override the need for grant of import relief." Such an amendment would place a duty to grant import relief to industry once the Tariff Commission has made

its statutory findings, but would leave adequate discretion to the President to protect national security and vital foreign relations values.

III. Negotiation of Reciprocal Agreements governing strategic sectors or industrial categories

Industries which:

(1) are *strategically significant*—such as steel, the various specialty steels, electronics and others—

(2) and which are heavily impacted by pricing problems vis-a-vis imports in domestic markets and lower priced competition in world markets—and which

(3) are further burdened by increments of cost arising from either environmental reform requirements or the higher cost of energy that results in part from environmental considerations—pose critical but difficult problems.

Congress has three basic options in dealing with this problem:

The first is to break out of the traditional modes of thinking in terms of tariffs, non-tariff barriers, quotas and the like where key industries are especially susceptible to adverse impacts arising from such non-tariff distortions as those raised by environmental and energy factors. In such situations in depth "sector" or "industrial category" negotiations should be conducted. This option is especially promising because a high percent of the foreign competitors in these critical sectors involve government owned, operated or subsidized establishments. Indeed, in such situations only government to government in depth sector negotiations offer promise of success.

A second option is mandatory import relief as heretofore discussed, whereunder an industry upon affirmative findings by the Tariff Commission, *must* get some form of import relief unless the President can satisfy Congress that overriding national security or foreign policy factors would suffer.

A final option would be either to adhere to the status quo or adopt the limited changes afforded by H.R. 10710. For all of the foregoing reasons it seems compellingly necessary to adopt both option one and two, the latter being necessary in order to provide import relief during situations when negotiated special sector trade relations are not yet in force.

I want to express my appreciation to the Committee for this opportunity to be heard.

[Whereupon, at 11:50 a.m., the committee was recessed to reconvene at 10 a.m., Tuesday, April 9.]

TRADE REFORM ACT OF 1973

TUESDAY, APRIL 9, 1974

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 2221, Dirksen Senate Office Building, Senator Vance Hartke presiding.

Present: Senators Hartke and Dole.

Senator HARTKE. The committee will come to order to continue the hearings on the Trade Reform Act of 1973. The first witness we have is the distinguished Senator from Maine, the Honorable William D. Hathaway.

STATEMENT OF HON. WILLIAM D. HATHAWAY, A U.S. SENATOR FROM THE STATE OF MAINE

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

I certainly appreciate the opportunity to testify before the committee this morning in regard to the future of this country's foreign trade.

I speak as one familiar with the benefits of expanded trade to our national economy, but also as one all too well acquainted with the local dislocation such expansion can cause.

The State of Maine has been particularly hard hit by the flood of imported shoes and textiles which has swept over us in recent years. I have seen thriving towns reduced to a state of despair. I have seen long lines of the jobless with local unemployment rates in excess of 20 percent. And, worst of all, I have seen our children leave the State in ever increasing numbers.

The people of Maine are a proud and an independent lot. They do not like to ask for outside help. But, in recent years their circumstances have been radically reduced by the events and decisions occurring far from their borders and even further from their control.

It is on behalf of these people and others like them in every section of the country that I speak to you this morning.

I am in favor of the expansion of international trade. I know that it is in the long-term interests of the country and of all our citizens. But, in pursuing this policy, we must not lose sight of the fact that some obligation is owed to those who are inadvertently hurt in this process.

I do not mean we should protect noncompetitive or inefficient industries. Someone is always ready to hide behind tariffs or quotas

and reap the benefits of diminished competition. But we should provide a realistic and effective method whereby communities dependent upon industries suddenly rendered noncompetitive by a change in trade policy can be helped to adjust their local economies to the new conditions.

It is in this regard that I have two specific suggestions which I would like to urge upon the committee. One is the retention of some limited quota protection, to give these communities sufficient time to adjust. And the second is a program of assistance for the adjustment which is broader than that heretofore considered. I shall submit legislative language embodying these proposals at the end of my remarks, but would like to briefly outline them for you now.

I should mention that I first made these proposals last spring, and in fact introduced the language into the Congressional Record in a form consistent with the trade bill as it was originally introduced.

First, I feel that some import relief should be made mandatory after an affirmative finding by the Tariff Commission that imports have threatened or been a substantial cause of serious injury to an industry.

The bill presently makes such relief discretionary and leaves the matter entirely in the President's hands. Experience has taught us that the Tariff Commission is no pushover in these matters. If they make a determination that "substantial cause" and "serious injury" exist, the Congress should be willing to state that in such a situation, relief is in order.

If Congress is to regain powers lost to the Executive, we must stop passing laws which dodge the tough decisions and merely delegate our policy making responsibilities.

I would urge that quantity restrictions are the most effective form of relief and should be preferred over other available alternaitves. Because they should be designed to provide time for adjustment and not permanent crutches for the industry involved, the duration of such restrictions should be strictly limited to 5 years. Furtherance, the terms of the restrictions should phase out as this period progresses.

Finally, in this regard, I would suggest that the individual quotas be related to a more rational basis than the simple counting of imports from a given country in an arbitrarily chosen year.

My proposal would start with an average of imports between 1965 and 1969, but allow the quota to rise or fall as the average manufacturing wage in the country in question—that is, the country that is sending the goods into this country—has risen or fallen relative to wages in this country.

In this way, as a country's standard of living improves and any competitive advantage based upon the exploitation of its workers diminishes, its quota would automatically rise proportionately.

This seems to me to make the quota more defensible as an instrument of policy, and less likely to provide protection to fundamentally noncompetitive industries.

My second suggestion involves an expansion of the adjustment assistance concept to include aid to the communities whose econ-

omies are severely damaged by imports. As presently structured, adjustment assistance means aid to workers and to firms adversely affected by imports.

This is fine as far as it goes, and is probably of considerable help in some areas. But, in a small town, such aid provides little in the way of realistic help in actually "adjusting."

The problem is that in a smaller community whose local economy is dependent on one or two firms, damage to either or both of these firms leaves nothing for the local people to adjust to.

Prolonged unemployment compensation, while helpful, does nothing permanent about the problem. Maine shoe workers refer to such assistance as "burial money." They know it marks an end and not a beginning of anything. Even manpower training is of little use if there are no jobs at the end of the course.

And assistance to the firms will not help if they are, because of extraneous circumstances, basically unable to compete in the new conditions.

One answer, of course, is for the workers involved to recognize their plight and move to an area where jobs are more plentiful. But this is not always so easy. There are several factors involved with the shoe industry in particular and the style of life in small towns which makes it unusually difficult for workers to move.

In the first place, almost two-thirds of the labor force in the shoe industry are women who, even in this age of liberation, are less mobile than men.

Secondly, the average age in this industry is significantly older than that in manufacturing generally and age clearly has an affect on mobility.

Finally, there is the intangible element of connection to a particular place which is still very strong in our smaller cities and towns. So moving is not always a simple answer—and many of our people have chosen to stay, even if it means real hardship.

What, then, is the answer? Well, if I had a magic formula for stimulating the economic development of a town or region, Maine would long ago have bettered its lot. All I can offer is a suggestion arising out of my own first-hand experience with all manner of economic development efforts, a suggestion based on the idea that development can only come through a fusion of technical assistance and the involvement of local people.

What I propose is really quite simple: That specialized economic development assistance be made available directly to communities or groups of communities which are unusually dependent on an industry seriously hurt by imports.

As I mentioned before, the fortunes of a particular firm have little impact in a large metropolitan area—adjustment in this case probably means simply finding another job in a new section of the metropolitan area.

The traditional forms of assistance may well be enough. But in a town or small city, the demise of a single firm can cripple the entire local economy.

My proposal would allow a community or groups of communities comprising a single labor area to be certified for assistance if

the Secretary of Commerce found that a significant proportion of the local manufacturing work force had been separated from their jobs and that the separation was caused by an increase in imports.

Once such certification is made, the Secretary would send a task force to the area to meet with local officials and citizens to acquaint them with the forms of assistance available and to help them establish a local council to run a realistic and aggressive economic development program.

Once the council, which would be made up of representatives of all communities involved, is established, the Secretary is authorized to provide funds to the council to help defray the cost of a small staff.

I think that this provision is critical because the local people, who are fully involved in their own businesses, rarely have time for the tedious and time-consuming job of following up on contracts and pulling together the details of a successful economic development project.

After the council and the full-time staff is in place, then they can develop a plan for their area and apply for grants and loans for public improvements conducive to attracting new industry.

The Secretary would also be authorized to provide whatever technical assistance may be necessary to the local council in preparing and executing an economic development plan.

This proposal is based upon what I consider the best aspects of the Economic Development Act and the program run by the Defense Department to assist communities hit with a major base closing.

It is critical that local people be involved from the outset, that they receive strong technical and staff support, and finally that the assistance necessary to get the project off the ground be available.

Obviously, there are details and limitations in the language of the proposal I have not covered here. I welcome your consideration of the language I will submit, and any questions you might have on it. In the meantime, I hope you will give serious consideration to this concept. I feel some such program is necessarily implied in the true meaning of the word "adjustment assistance."

Perhaps the tide of economic history is moving all of us toward the cities and ever-expanding suburbs. Perhaps nonurban America is doomed to inevitable decline. But I think there is something in our towns worth preserving and I cannot just sit by and accept their demise. I cannot watch quietly as our children leave home.

Mr. Chairman, that completes my formal statement. I would just like to mention, in addition to what I have said here, and especially in regard to the second part of my proposal about sending in a task force from the Department of Commerce to aid these communities, that the experience that we have had in the State of Maine with the closing of the Dow Air Force Base in Bangor, and another Air Force Base in Presque Isle, has indicated quite clearly that this concept is a workable one, and I know the same concept has worked throughout the country.

In both of these areas of Maine, when the bases which were large ones, were closed, there was, of course, a very severe economic im-

pact at first. But now within just a short space of time after having the Defense Department task force come in, and through cooperation of local officials both of these areas are economically much better off than they were when the Air Force bases were there.

I do have the language of the amendments which I think has been submitted and copies of it have been circulated to members of the committee.

Senator HARTKE. Did you want to include that in the record? The copies of your amendment?

Senator HATHAWAY. Yes, Mr. Chairman, I would like to have a copy of the amendment put in the record at this point.

Senator HARTKE. I want to thank you, Senator Hathaway, for an excellent statement, and presenting us with some concepts that I think merit a lot of consideration.

I quite agree with you that quotas are the most effective restrictions. I find that quotas provide at least for a method of organized growth instead of disorganized stagnation.

The idea on adjustment assistance, without any affirmative and planned program of support can become a sordid form of welfare.

This type of welfare is not only disheartening, but degrading as well as being very expensive without any return benefits.

The small communities are certainly worth saving. I am not one who believes the small communities are doomed. I do think that the country is going to have to devote a lot of effort and time to making sure that we give more attention to this continual drain from the countryside.

There is a study coming out of the Center for Democratic Studies, by Harvey Wheeler, which is going to analyse the social difficulties that this Nation will face within the next 25 years unless we make some definite effort to at least retain—and probably not alone retain, but to return—some of our industry to the smaller communities.

The wage equalization concept you recommend is worthy of a lot of consideration. I might point out that in the shoe industry which you referred to, average wage in the United States of $3.22 an hour in 1972; Italy $1.80; and Argentina $0.75; Japan $1.33 an hour; Brazil 42 cents an hour; Spain 52 cents an hour; and Taiwan 21 cents an hour.

So international wage differences are great. The differences do make a lot of people want to take their business overseas.

Thank you again for your testimony, and I am glad you are here with us and I think you have made a valuable contribution to this hearing.

Senator HATHAWAY. Thank you, Mr. Chairman.

[The proposed amendments referred to previously by Senator Hathaway follow:]

PROPOSED AMENDMENTS BY WILLIAM D. HATHAWAY, A U.S. SENATOR FROM THE STATE OF MAINE TO H.R. 10710

SEC. 202. Presidential Action After Investigations.—

(a) After receiving a report from the Tariff Commission containing an affirmative finding that increased imports have been a substantial cause of

serious injury or threat thereof under Section 201 (b) with respect to an industry, the President shall—

(1) provide import relief for such industry in accordance with section 203; and

(2) direct the Secretary of Labor to give expeditious consideration to petitions for adjustment assistance for workers in the industry concerned.

(b) If the Tariff Commission is equally divided as to its finding under section 201 (b), the President shall make his determination whether to provide import relief within sixty days. If the President determines not to provide import relief, he shall immediately submit a report to the House of Representatives and to the Senate stating the considerations on which his decision was based.

(c) The President may, within forty-five days after the date on which he receives an affirmative finding of the Tariff Commission under section 201 (b) with respect to an industry, request additional information from the Tariff Commission. The Tariff Commission shall as soon as practicable but in no event more than sixty days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report. For purposes of subsection (b), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative finding of the Tariff Commission.

SEC. 203. Import Relief.—

(a) Import relief pursuant to section 202 shall include, *inter alia*, limitations for a period of not to exceed five years on the total quantity of such articles produced in any foreign country which may be entered during any calendar year. The quantity of such articles which may be entered from each foreign country shall be determined as follows:

(1) the quantity shall not exceed the average annual quantity of such article produced in such country and entered during the calendar years 1965 to 1969, except that (A) such quantity may be increased to the extent that the average standard of living of workers employed in manufacturing in such country has increased since the end of calendar year 1969 relative to the average standard of living of workers employed in manufacturing in the United States. (B) Average standards of living for the purposes of this chapter shall be established by the United States Tariff Commission on an annual basis in consultations with such other governmental and non-governmental agencies as the Commission determines are necessary to make such determinations.

(b) In addition to quantity limitations, the President may provide other import relief, and shall, to the extent and for such time (not to exceed five years) that he determines necessary to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) provide an increase in, or imposition of any duty or other import restriction on the article causing or threatening to cause serious injury to such industry; or

(2) provide a tariff-rate quota on such article;

(3) negotiate orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(4) take any combination of such actions.

(c) Import relief provided pursuant to subsection (a) or (b) shall become initially effective no later than sixty days after the President's determination under section 202 to provide import relief, except that the applicable period within which import relief such be initially provided shall be one hundred and eighty days if the President announces at the time of his determination to provide import relief his intention to negotiate one or more orderly marketing agreements pursuant to subsection (b) (3) of this section.

(d) In order to carry out an agreement concluded under subsection (b) (3), the President is authorized to issue regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out one or more agreements concluded under sub section (b) (3) among countries accounting for a significant part of United States imports of the article covered by such agreements, the President is also authorized to issue regulations governing the entry or withdrawal from warehouse of the like articles which are the product of countries not parties to such agreements.

(e) (1) Whenever the President has acted pursuant to subsection (b) (1) or (2), he may at any time thereafter while such import relief is in effect, negotiate orderly marketing agreements with foreign countries, and may, upon the entry into force of such agreements, suspend or terminate, in whole or in part, such other actions previously taken.

(2) Any import relief provided pursuant to subsection (b) of this section (including relief provided under any orderly marketing agreement) may be suspended, terminated, or reduced by the President at any time and, unless renewed under subsection (c) (3), shall terminate not later than the close of the date which is five years after the effective date of the initial grant of any relief under this section.

(3) Any import relief provided pursuant to this section (including any orderly marketing agreements) shall be phased out during the period of import relief and, in the case of a five-year term of import relief, the first reduction of relief shall commence no later than the close of the date which is three years after the effective date of the initial grant of relief. The phasing out of an orderly marketing agreement may be accomplished through increases in the amounts of imports which may be entered during a year.

(4) Any import relief provided pursuant to this section (including any orderly marketing agreements) may be renewed in whole or in part by the President for one two-year period if he determines, after taking into account the advice received from the Tariff Commission under subsection (f) (2) and after taking into account the factors described in section 202 (b), that such renewal is in the national interest.

(f) (1) So long as any import relief pursuant to this section (including any orderly marketing agreements) remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned and upon request of the President shall make reports to the President concerning such developments.

(2) Upon petition on behalf of the industry concerned, filed with the Tariff Commission not earlier than the date which is nine months, and not later than the date which is six months, before the date any import relief is to terminate fully by reason of the expiration of the applicable period prescribed pursuant to subsection (e) (2), the Tariff Commission shall report to the President is finding as to the probable Economic effect on such industry of such termination as well as the progress and specific efforts made by the firms in the industry concerned to adjust to import competition during the initial period of import relief.

(3) Advice by the Tariff Commission under subsection (f) (2) shall be given on the basis of an investigation during the course of which the Tariff Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(g) No investigation for the purposes of section 201 shall be made with respect to an industry which has received import relief under this section unless two years have elapsed since the expiration of import relief under subsection (e).

CHAPTER 4—ADJUSTMENT ASSISTANCE FOR COMMUNITIES

SUBCHAPTER A—PETITIONS AND DETERMINATIONS

SEC. 265. Petitions.—(a) A petition for certification of eligibility to apply for adjustment assistance may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as "the Secretary") by a local governmental agency, group of such agencies or the Governor of a State on behalf of such agencies. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than ten days after the Secretary's publication of notice under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard. The Secretary may request the Tariff Commission to hold any hearings required by this section and to submit the transcript thereof and relevant information and documents to him within a specified time.

(c) A local governmental agency or group of such agencies shall be certified as eligible to apply for adjustment assistance under this chapter if the Secretary determines that a significant number or proportion of the workers employed in manufacturing within the "labor area" (as that term is defined by the Secretary of Labor) encompassing such local governmental agency or agencies have become totally or partially separated, or are threatened to become totally or partially separated, that sale or production, or both, of firms or subdivisions of firms located within said labor area have decreased absolutely, and that increases of imports of articles like or directly competitive with articles produced by such firms or subdivisions thereof located within said labor area contributed substantially to such total or partial separation, or threat thereof.

SEC. 266. Determinations by Secretary of Commerce.

(a) As soon as possible after the date on which a petition is filed under Sec. 247, but in any event not later than sixty days after that date, the Secretary shall determine whether the petitioning local governmental agency or agencies meets the requirements of Sec. 247 and issue a certification of eligibility to apply for assistance under this chapter. The certification shall specify the date on which the total or partial worker separtaion began or threatened to begin.

(b) Whenever the Secretary concludes that the Tariff Commission can aid him in reaching a determination under this section, he may request the Tariff Commission to conduct an investigation of fact relevant to such determination and to report the results within a specified time. In his request, the Secretary may state the particular kinds of data which he deems appropriate to the included.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register.

(d) Once a petition or petitions are filed, the responsibility for establishing the existence or non-existence of the qualifying circumstances necessary under this chapter shall rest with the Secretary.

SUBCHAPTER B—PROGRAM BENEFITS

SEC. 267. Adjustment Assistanre Councils.

(a) Within 60 days of the certification of a labor area under Sec. 247, the Secretary shall send representatives to said area to meet with local officials and members of the general public in order to (1) acquaint them with the provisions of this act and potential benefits available thereunder; (2) assist in the formation of an Adjustment Assistance Council under this Section; (3) and provide any other assistance that may be necessary to initiate a successful Adjustment Assistance program.

(b) Each local governmental agency within a single labor area which is found certified under Sec. 247, shall choose representatives to an Adjustment Assistance Council. Each local governmental unit shall be allocated one position on said Council for every 5,000 people or fraction over two thousand, five hundred people residing in said labor area. All local governmental agencies within said labor area shall be entitled to place representatives on such Council within ninety days of notice of the establishment of such Council being published in a newspaper of general circulation in said labor area.

(c) Such Adjustment Assistance Council shall develop and implement a redevelopment plan and coordinate local efforts under this Act intended to bring about the economic rejuvenation of its labor area.

SEC. 268. Council Staff. The Secretary, upon application by a duly constituted exceed 90% of such funds as are necessary to maintain professional and Adjustment Assistance Council, is authorized to make grants to defray not to clerical staff of such council for a period not to exceed two years from the date of the certification of the labor area under Sec. 247. Such professional staff shall be limited in size to one person for every 30,000 people within said labor area. The Secretary is authorized to make grants to defray 50% of the Administrative costs of said council for three years after the expiration of the original 2 year grant under this Section.

SEC. 269. Technical Assistance. The Secretary, upon application by a duly constituted Adjustment Assistance Council, is authorized to provide to said Council such technical assistance as would be helpful in alleviating or preventing conditions of excessive unemployment or under-employment in said

labor area. Such assistance may include project planning and feasibility studies, management and operational assistance, and studies evaluating the needs of, and developing potentialities for, economic growth in the labor area. Such assistance may be provided by the Secretary through members of his staff, through the employment of private individuals, partnerships, firms, corporations or suitable institutions, under contracts entered into for such purposes, or through grants-in-aid to said Adjustment Assistance Council.

SEC. 270. (a) Upon the application of any Adjustment Assistance Council, the Secretary is authorized—

(1) To make direct grants for the acquisition or development of land and improvements for public works, public service, or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion or improvement of such facilities, including related machinery and equipment, within the labor area, if he finds that—

(A) the project for which financial assistance is sought will directly or indirectly (i) tend to improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities, (ii) otherwise assist in the creation of additional long-term employment opportunities for such area, or (iii) primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

(B) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is or will be, located;

(C) the project to be undertaken will provide immediate useful work to unemployed and underemployed persons in that area.

(b) Subject to subsection (c) hereof, the amount of any direct grant under this section for any project shall not exceed 50 per centum of the cost of such project.

(c) The amount of any supplementary grant under this section for any project shall not exceed the applicable percentage established by regulations promulgated by the Secretary, but in no event shall the non-Federal share of the aggregate cost of any such project (including assumptions of debt) be less than 20 per centum of such cost, except that in the case of a grant to an Indian tribe, the Secretary may reduce the non-Federal share below such percentum or may waive the non-Federal share. In the case of any State or political subdivision thereof which the Secretary determines has exhausted its effective taxing and borrowing capacity, the Secretary may reduce the non-Federal share below such percentum or may waive the non-Federal share. Supplementary grants shall be made by the Secretary, in accordance with such regulations as he shall prescribe, by increasing the amounts of direct grants authorized under this section or by the payment of funds appropriated under this Act to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of the applicable Federal programs. Notwithstanding any requirement as to the amount or sources of non-Federal funds that may otherwise be applicable to the Federal program involved, funds provided under the subsections shall be used for the sole purpose of increasing the Federal contribution to specific projects in certified labor areas under such programs above the fixed maximum portion of the cost of such project otherwise authorized by the applicable law. The term "designated Federal grant-in-aid programs," as used in this subsection, means such existing or future Federal grant-in-aid programs assisting in the construction or equipping of facilities as the Secretary may, in furtherance of the purposes of this Act, designate as eligible for allocation of funds under this section. In determining the amount of any supplementary grant available to any project under this section, the Secretary shall take into consideration the relative needs of the area, the nature of the project to be assisted, and the amount of such fair user charges or other revenues as the project may reasonably be expected to generate in excess of those which would amortize the local share of initial costs and provide for its successful operation and maintenance (including depreciation).

(d) The Secretary shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing such rules, regulations, and procedures, the Secretary shall consider among other relevant factors (1) the severity of the rates of unemployment in the eligible areas and the duration of

such unemployment and (2) the income levels of families and the extent of unemployment in eligible areas.

SEC. 271.—Loans and Guarantees.

(a) The Secretary is authorized (1) to purchase evidences of indebtedness and to make loans (which for purposes of this section shall include participations in loans) to aid in financing any project within said labor area for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage, including the construction of new buildings, and rehabilitation or abandoned or unoccupied buildings, and the alteration, conversion or enlargement or existing buildings; and (2) to guarantee loans for working capital made to private borrowers by private lending institutions in connection with projects in redevelopment areas assisted under subsection (a) (1) hereof, upon application of such institution and upon such terms and conditions as the Secretary may prescribe: Provided, however, That no such guarantee shall at any time exceed 90 percentum of the amount of the outstanding unpaid balance of such loan.

(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

(1) Such financial assistance shall not be extended to assist establishments relocating from one area to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them: Provided, however, that such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidy of such entity if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(2) Such assistance shall be extended only to applicants, both private and public (including Indian tribes), which have been approved for such assistance by the Adjustment Assistance Council in the labor area in which the project is to financed is located.

(3) The project for which financial assistance is sought must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the labor area wherein it is or will be located.

(4) No loan or guarantee shall be extended hereunder unless the financial assistance applied for is not otherwise available from private lenders or from other Federal agencies on terms which in the opinion of the Secretary will permit the accomplishment of the project.

(5) The Secretary shall not make any loan without a participation unless he determines that the loan cannot be made on a participation basis.

(6) No evidence of indebtedness shall be purchased and no loans shall be made or guaranteed unless it is determined that there is reasonable assurances of repayment.

(7) No loan, including renewals or extension thereof, may be made hereunder for a period exceeding twenty-five years and no evidence of indebtedness maturing more than twenty-five years from date of purchase may be purchased hereunder: Provided, that the foregoing restrictions on maturities shall not apply to securities or obligations received by the Secretary as a claimant in bankruptcy or equitable reorganization or as a creditor in other proceedings attendant upon insolvency of the obligor.

(8) Loans made and evidences of indebtedness purchased under this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose.

(9) Loan Assistance shall not exceed 65 per centum of the aggregate cost to the applicant (excluding all other Federal aid in connection with the undertaking) of acquiring or developing land in facilities (including machinery and equipment), and of constructing, altering, converting, rehabilitating, or enlarging the building or buildings of the particular project, and shall, among others, be on the condition that—

(A) other funds are available in an amount which, together with the assistance provided hereunder, shall be sufficient to pay such aggregate cost;

(B) not less than 15 per centum of such aggregate cost be supplied as equity capital or as a loan repayable in no shorter period of time and at no faster an amortization rate than the Federal financial assistance extended under this section is being repaid, and if such a loan is secured, its security shall be subordinate and inferior to the lien or liens securing such Federal financial assistance: Provided, however, That, except in projects involving financial participation by Indian tribes, not less than 5 percentum of such aggregate cost shall be supplied by the State or any agency, instrumentality, or political subdivision thereof, or by a community or area organization which is nongovernmental in character, unless the Secretary shall determine in accordance with objective standards promulgated by regulation that all or part of such funds are not reasonably available to the project because of the economic distress of the area or for other good cause, in which case he may waive the requirement of this provision to the extent of such unavailability, and allow the funds required by this subsection to be supplied by the applicant or by such other non-Federal source as may reasonably be available to the project.

(C) to the extent the Secretary finds such action necessary to encourage financial participation in a particular project by other lenders and investors, and except as otherwise provided in subparagraph (B), any Federal financial assistance extended under this section may be repayable only after other loans made in connection with such project have been repaid in full, and the security, if any, for such Federal financial assistance may be subordinate and inferior to the lien or liens securing other loans made in connection with the same project.

SEC. 272. Authorization. There is hereby authorized to be appropriated $200,000,000 annually for the purpose of this Chapter, for the fiscal year ending June 30, 1974, and for each fiscal year thereafter through the fiscal year ending June 30, 1979.

Senator HARTKE. Next we have a panel consisting of Ralph T. Millet, president of Automobile Importers of America, accompanied by John B. Rehm, counsel; Robert M. McElwaine, executive vice president, American Imported Automobile Dealers Association; Richard Hughes, chairman of import car committee; and Malcolm S. Pray, a member of Volkswagen National Dealer Council and chairman, Porsche Audi National Dealer Council.

I might say my understanding is that you have 7 minutes each, that is 28 minutes.

Mr. MILLET. We understand that, also, Mr. Chairman.

Senator HARTKE. Please go right ahead.

STATEMENT OF RALPH T. MILLET, PRESIDENT, AUTOMOBILE IMPORTERS OF AMERICA, ACCOMPANIED BY MR. JOHN B. REHM, COUNSEL

Mr. MILLET. Mr. Chairman, I will lead off this morning, if I may, for the panel.

My name is Ralph Millet. I am president of Automobile Importers of America, which is also known as the AIA. The AIA consists of all the significant foreign automobile manufacturers

selling vehicles in the United States, except Volkswagen and Mercedes Benz.

I have a prepared statement which I would ask to be included in the record of the hearings following my brief remarks.

Senator HARTKE. All of the statements will be placed in the record, gentlemen, as you come this morning, without request.

Mr. MILLET. Thank you, Mr. Chairman.

In my remarks this morning, I would like to focus on one issue, which is, the unjustifiability of a proposal made to this committee by Mr. Leonard Woodcock, president of the Automobile Workers.

As you know, Mr. Woodcock proposed that new import restrictions in the form of quotas, or higher tariffs, be imposed on imports of non-Canadian cars, until September 1975. His rationale for this proposal seems to be as follows: That it will take Detroit about 18 months to complete the conversion of its plants to the production of small cars.

During this period, Mr. Woodcock fears that imports will soar and come to occupy permanently between 25 to 30 percent of the automobile market in the United States. He, therefore, foresees permanent unemployment of many more automobile workers, and the only way to avoid this is to keep imports at the past levels.

It is obvious that Mr. Woodcock's proposal rests fundamentally on one contention, and one only, that import sales will soar in the future.

I would like to submit that there is no evidence whatsoever for this assumption. Indeed, it now appears that the importing car industry will be lucky if it sells as many cars this year as it did last year. This is a tough year for imports.

In our prepared statement, it is estimated that just a little over 2 million cars will be imported in 1974 and this would represent an increase of about 15 percent over the number of imports in 1973. And it is obvious that this figure is far, far short of the almost 100 percent increase which Mr. Woodcock fears would bring imports to a market share of 30 percent.

It is important to realize that in the imported car industry, a 45 to 60 day supply of cars is normally needed in the pipeline. On this basis, 1974 imports of 2 million cars would be equivalent to 1974 sales of about 1.7 million cars, or no more than was sold in 1973, and even this figure is really high, judging by current trends.

The sales of imported cars in the first quarter of 1974 are 27 percent less than they were in the first quarter of 1973. In absolute terms, 463,000 imported cars were sold in the first three months of 1973; whereas, in the same period in 1974, 368,000 cars were sold.

Based on these figures, I would estimate that about 1.6 million cars will be sold this year in the United States, which actually would be down from last year's sales. The fact is that, contrary to what some people believe, this year is not going to be an easy one for imported cars.

First of all, consumer demand for all types of cars is clearly off. This is due, in part, to the decline in value of used cars and probably, in my judgment, to the unsettled state of our economy.

Second, the prices of imported cars have increased substantially due to the devaluation of the dollar that has taken place. For example, a Ford Pinto costs in the Washington area, $2,498, and the Chevrolet Vega about $2,464, while the comparable price for a Volkswagen is $2,675 and the Datsun is $2,595, so you can see, between these popular imported and American cars, there is a difference of $100 to $200.

Third, the cost of building cars overseas is going up every day. Materials are more expensive; labor rates are steadily increasing; and these pressures may well force another round of price increases in imported cars later this year.

Indeed, the rate of inflation is generally greater abroad than here.

And, fourth, it is difficult for foreign manufacturers to increase exports rapidly to the United States by any substantial amount. You must realize that cars destined for the United States are significantly different from the ones they make for other models.

Compliance with our safety and emission control standards require special parts and devices. These have to be ordered well in advance of production and certainly the quantities cannot be suddenly increased. Thus, the fact that a foreign manufacturer may have excess production for the European market, in no way means that he can quickly divert excess cars to be sold in the United States.

Then, fifth, the inherent problems of international trade always confront foreign manufacturers. For example, the Japanese companies, as well as the European companies, now face the prospect of a major Japanese shipping strike. And, for all of these reasons, Mr. Woodcock's prediction of an enormous increase in car imports, certainly does not withstand analysis.

There is no justification whatsoever for his proposal, and others on this panel will discuss some of the other injurious consequences that such a proposal would have.

Mr. Chairman, I would like now to ask Mr. McElwaine and Mr. Pray to make their statements.

STATEMENT OF MALCOLM S. PRAY, MEMBER, VOLKSWAGEN NATIONAL DEALER COUNCIL, AND CHAIRMAN, PORSCHE AUDI NATIONAL DEALER COUNCIL

Mr. PRAY. My name is Malcolm S. Pray. I am chairman of the Porsche Audi Dealer Council, and member and past chairman of Volkswagen Council. I am a Volkswagen and Porsche Audi Dealer in Greenwich, Conn. I am also president of the American Imported Automobile Dealers Association and my prepared statement is submitted jointly with AIADA.

I appreciate this opportunity to present the views of the American imported automobile industry on proposed trade legislation now before this committee.

My purpose is to give this committee some idea of the scope of this American industry, its importance to the national economy, the sensitivity of the industry to changes in the trade policy of this nation, and the dramatic loss of employment to American citizens if restrictive trade legislation is passed.

Mr. Chairman, in the detailed statement by AIA and AIADA, a detailed study by Harbridge House and the impact of quotas on the U.S. imported automobile industry has been submitted which I ask the Committee to insert in the record following my summary remarks.

In terms of size, the imported car business in America deserves the status of a major industry. We employ more than 143,000 Americans in our dealerships, and our salaries and wages exceed those of the petroleum refining industry. As our annual payroll to U.S. workers is over $1.4 billion dollars, we have invested over $1 billion in our businesses and our total assets of our industry now stand at $4 billion.

Mr. Chairman, our comments today will be directed to two general areas: the Trade Reform Act of 1973, which was reported out of the House Ways and Means Committee and is before you today; and changes in that legislation which have been proposed with respect to the trade policies of the United States dealing with imported automobiles.

A major proposal before this committee is that made by Mr. Leonard Woodcock of the United Automobile Workers. He has proposed that quantitative restraints be placed on imported cars. We propose to address the quota question squarely today.

With respect to the Trade Reform Act of 1973, AIADA supports the bill as it is presently written. We feel that it is a sound piece of legislation that can lead to a more open world economy. We have in our written testimony, however, made written suggestions for improvements in the bill.

With respect to Mr. Woodcock's proposals that have been made, to impose quotas on imported cars, our position is simply this. We believe that the problems of the U.S. automobile industry were not created by automobile imports. And imposing quotas on foreign cars will not cure what ails the U.S. automobile industry.

It is interesting to note that he did not call for quotas on vehicles produced in Canada, the country importing the highest number of vehicles into the United States annually.

We feel that the imposition of quotas on foreign automobiles would be counterproductive in terms of employment, fuel consumption, and the competitive benefits to the American economy and would have a disastrous effect on our industry.

Statements made by industry leaders in recent newspaper and magazine articles have made it clear that foreign imports are not the cause of the distress in the American automobile industry. And, limiting foreign imports cannot cure its ailments.

The problems facing this industry were brought about by other factors. For many years, the prevailing philosophy of Detroit has been that of big cars, meaning big profits. For this reason, they did not enter the small car field until forced to do so by imports from Europe and Japan.

Even then, the major thrust, until recently, has been the production and sale of large cars. Henry Ford made it very clear to his

stockholders some time ago, when he said many cars, many profits.

As we point out in our testimony, General Motors can produce a Cadillac for only $300 more than it costs to build a full-sized Chevrolet, and yet it can sell the Cadillac for $3,000 more. The energy crisis, with its frustrating gas lines and rumors of high-priced gasoline, brought a halt to the consumers' acceptance of this philosophy.

You will note that were it not for the great numbers of small cars on the road today, put there because of import leadership, the energy crisis would be far worse. And, without the availability to the public of an alternative, the manufacturers in this country would make little effort to produce inexpensive, economical cars.

In other words, if imports were cut off or curtailed, the incentive for Detroit to get into this small car market would be greatly diminished.

Imported cars have been antiinflationary. They have given the public more for their money. As we point out many engineering and safety features, such as radial tires and disc brakes, have originated on imported automobiles.

Detroit has merely given annual facelifts to the same cars, whereas foreign manufacturers have been forced by extensive competition, to offer the public more. It is a fallacy to believe that automobiles produced abroad are built with cheap foreign labor and therefore able to undersell U.S. makes. There is no such thing as cheap foreign labor anymore for workers producing cars for import into the United States. They are equally as well compensated as their American counterparts.

Wages and benefits of an automobile worker in West Germany are now higher than his U.S. counterpart. Additionally, wages in Japan are rapidly approaching the U.S. wage levels and the world of floating exchange rates, the idea of a cheap foreign labor is irrelevant because of prices on foreign currencies and foreign products tending to be self-correcting.

Imports have been good for America, both in supplying employment for our citizens, greater choice, at lesser price brought forward to consumers.

In closing, I would like to bring the committee's attention to a Wall Street Journal article last Thursday which pointed out that the sale of imported cars during March had fallen 27 percent, whereas the domestic manufacture sales have fallen 29 percent.

Moreover, imports are not as high a percentage of the U.S. market today as they were last fall. This makes it clear that Mr. Woodcock's prediction of import sales domination is unfounded and indicates that the fortunes of the foreign car industry are directly tied to those of the United States' industry.

Thank you.

STATEMENT OF ROBERT M. McELWAINE, EXECUTIVE VICE PRESIDENT, AMERICAN IMPORTED AUTOMOBILE DEALERS ASSOCIATION

Mr. McElwaine. My name is Robert McElwaine. I am executive vice president of the American Imported Automobile Dealers Association. As Mr. Pray has pointed out, we constitute a major Ameri-

can industry, one that is peculiarly dependent on the actions of this committee and the Senate and the Congress of the United States.

Total assets of $4 billion and annual sales of $9 billion can be extinguished almost over night by restrictions on world trade by increases in tariff rates, or by unexpected fluctuation in the world currency markets.

For these reasons, the Trade Reform Act of 1973 is of perhaps more immediate concern to this industry than to any other in our country of similar size.

Basically, we support the aims of the Trade Reform Act, particularly those that are designed to expand world trade. We have suggestions for changes in those parts of the bill whose effects we feel would be to constrain the exchange of goods between nations.

But, basically, we are in favor of those sections of the bill which favor expansion of world trade.

In our lengthy, written testimony——

Senator HARTKE. Mr. McElwaine, let me stop you a moment. Isn't that the sort of statement which anyone would make? I am in favor of prosperity over depression; good health over bad health; more trade instead of less trade.

Who is not in favor of that? Not a member of this committee. I know everybody on this committee is in favor of this statement.

Mr. MCELWAINE. There are certain sections of the bill, Mr. Chairman——

Senator HARTKE. I know there are sections of the bill. You are in favor of those sections of the bill which encourage expansion of trade. I am in favor of any type of legislation which expands fair trade. I do not think that that is very helpful to the committee. I hear all of the other witnesses say the same thing.

Mr. MCELWAINE. Well there are particular sections of the Trade Reform Act which we go into in some detail in our written testimony, Mr. Chairman, which we think might have a tendency to restrict trade.

Senator HARTKE. I grant you that but that is not the point. You are in favor of those things which expand trade.

What I am asking is, who is against that? We are all for it. Let us all join hands on that one and pray. All right?

Senator DOLE. I think some are undecided.

Senator HARTKE. Some are undecided?

Senator DOLE. Yes.

Senator HARTKE. Oh, all right, if you say so.

Mr. MCELWAINE. Because of the immediacy, however, of the threat proposed to the survival of our industry by the proposals made before this committee by Leonard Woodcock, the president of the UAW, I will devote the few minutes of my testimony here to an appraisal of the impact his quota suggestions would have on employment in our industry and the net effect on U.S. employment that such quotas would have.

Now, in support of this testimony, I would like to offer for the record, a new study by Harbridge House which was completed only

last week and which I would like to have in the record as a part of our testimony.[1]

I would like to make it very clear that we sympathize completely with the plight of the United Auto Workers. The massive and belated efforts of the domestic automobile manufacturers to convert to smaller automobiles that the public has been demanding, have resulted in an immense burden of personal suffering and deprivation among these workers and answers are definitely demanded.

We hold, however, and this independent study by Harbridge House supports us, that Mr. Woodcock's proposal for limiting automobile imports would not ease the suffering of his displaced workers, one iota. Rather, it would add more than 20,000 additional American workers to the ranks of the unemployed, without any mitigating benefits for the UAW workers.

Now this Harbridge House study is based on the assumption that the Woodcock formula would reduce automobile imports by 300,000 units in the current year. It also accepts the UAW premise that each imported car barred from this country would result in the sale of an additional domestically produced automobile.

Now we hold that this proposition is on the face of it illogical. The reason the domestic producers cannot sell their big cars is not because of the availability of small imports, but because the American public has finally told Detroit that it is not interested in their big cars under any conditions. Barring imports cannot increase the sale of Detroit's small cars since they are already selling every one of them they can produce and its substantial gross profits as well.

Nevertheless, this report assumes a one-for-one replacement of every import with a domestic car. Even with that assumption, the report shows a net loss of U.S. jobs over a 2-year period of the proposed temporary quotas.

Now, to be sure, under these optimum circumstances we have outlined here, 20,000 of Mr. Woodcock's displaced UAW workers would find employment again, but they would be replaced on the unemployment rolls by 23,000 salesmen, mechanics, bookkeepers and parts men from the imported car dealerships.

Now this might be preferable to Mr. Woodcock, I do not know, but I do not think it should be the object of Government policy.

Now such quotas would also force the closing of more than 420 retail businesses in the first year, and a total of more than 700 dealerships by September 30, 1975, the date when they supposedly would end.

Now Mr. Woodcock says that such quotas are temporary, but there is nothing temporary about a business closed or forced into bankruptcy. There is nothing temporary about a job that no longer exists. It is a very permanent condition.

Now quotas would have additional undesirable side-effects. One, by isolating domestic manufacturers from imported car competition, they would reduce the pressure on Detroit to convert to smaller, fuel-conserving vehicles.

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[1] This document was made a part of the official files of the committee.

Two, by creating an artificial scarcity of small cars, they would create windfall profits for those dealers handling the domestic subcompact and thereby fueling inflation.

Three, quotas would add $63 million to the Nation's gasoline bill every year they were in effect, and place greater demands on our scarce fuel resources.

Finally, discriminatory quotas are a violation of our International Trade Agreement. Exempting Canadian imports from quotas would directly violate the GATT waiver under which the United States-Canadian Automobile Agreement operates.

Now we support Senator Jackson's S. 3267, which would provide energy-related adjustment assistance to displaced workers as a more reasonable and effective solution to the problem of the UAW people.

Meanwhile, we urge this committee to grant the administration the necessary negotiating authority so it can work to create a world trade climate that may finally force Detroit to amend its policies regarding export sales and create a whole new kind of automotive prosperity in this country.

Thank you, Mr. Chairman.

STATEMENT OF RICHARD HUGHES, CHAIRMAN, IMPORT CAR COMMITTEE OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. HUGHES. Mr. Chairman, my name is C. Richard Hughes. I am a Toyota dealer from Ventura, Calif., and I am chairman of the National Automobile Dealers Association Imported Car Committee.

I intend to summarize my statement since you said the text would be put into the record.

NADA represents some 20,000 franchised new car and truck dealers, of which 10,697 handle imported cars, either as a single line or in combination with another make. Thus approximately 53 percent of NADA's entire membership is directly affected by the trade legislation under discussion here today.

Now, let me state at the outset, Mr. Chairman, that NADA supports a trade policy based on multilateral, nondiscriminatory, open world system of trade and payments. This has been the primary principle upon which trade negotiations have been based since our disastrous experience with a protectionist trade policy during the 1930's, and we feel that these basic policies encouraging free trade should be continued in the future. NADA further believes that America's balance of trade problems should concern each and every one of us.

America cannot afford the perpetual luxury of being a debtor nation; and like the individual, must also share the burden of balancing the budget. There are many well-intentioned citizens who think the way to help correct America's balance of payments problem is to buy nothing but American made products. They believe that to do this would be to strengthen the economy by keeping American dollars at home.

This outlook, while full of good intentions, falls far short of reality in today's interdependent world and in many ways would

severely cripple certain segments of the U.S. economy. Needless to say, one such segment which would be hurt would be that portion of the automotive industry dealing with imported cars.

In light of the significant advantages over the long run of a free trade policy, and the need for a sound balance of payments position, any trade legislation enacted should be designed to promote the development of an open, nondiscriminatory, and fair world economic system to stimulate the economic growth of the United States.

Now, under the UAW proposal, I would like NADA formal testimony entered into the record on this important issue. In addition I would like to state that many people, including Mr. Woodcock, are under the false impression that the sale of imported cars would sharply increase or did sharply increase due to the energy crisis. The facts, however, clearly show from the first quarter of 1974 that sales of imported cars dropped approximately 27 percent. The shortage of gasoline decreased sales of all new cars. When people have to wait in gas lines or fear doing so, they are reluctant to buy a new automobile.

The UAW maintains that the expected upsurge will directly result in significant unemployment in the domestic automobile industry. Aside from this highly suspect contention, however, the UAW has totally failed to examine the economic contributions, as well as the substantial economic role played, by the import automobile industry at the retail level in the United States. NADA maintains that if the UAW proposal were seriously considered by this committee and incorporated into H.R. 10710, the total effect upon the American economy would be far more detrimental and adverse than that which is currently being experienced in the domestic automobile industry due to the energy crisis.

In support of this position, NADA's Import Car Committee compiled a rather detailed study of the role played by import car dealers in the total American economy. I would like to take this opportunity to cite some of the economic facts of this study to illustrate this important economic role and how it would be adversely affected by the UAW proposal.

The imported car industry can be classified without question as a nationwide industry, whose dollar volume to a significant extent not only remains in America, but more importantly, right in the community in which the imported car is sold. In 1973 over 1,770,000 imported cars were sold in America, comprising roughly a 15.5 percent of the total new car sales in this country.

This total sales unit figure amounted to over $7 billion, and this figure includes spare parts and labor charges. Most municipalities or States levy a substantial sales tax—sometimes as high as 5 percent. Using an average of 4 percent, over $28 million in tax revenues were derived by these States and municipalities from the sales and servicing of imported cars alone. In addition to the local sales tax levied on imports, the industry paid $280 million in other taxes in 1973.

Apart from substantial revenues derived from the imported automobile industry by means of taxation, the imported car dealer also

contributed substantially to the U.S. economy in the areas of employment, advertising, and community relations. In 1973, the imported car dealer on $7 billion of sales, paid an average of $160,000 in wages in each dealership. In 1973, the average advertising outlay of an import dealer exceeded $22,000, which was distributed among the various media industries, including radio, television, newspapers and magazines. Nationwide this figure exceeded $170 million. The imported car dealer in 1973 also purchased over $72 million worth of domestic accessories which were installed in the import car after having been received by the dealer here in the United States.

The import car dealer, not unlike the dealer handling domestically produced cars, also has a substantial investent in his business. On the average in 1973, this investment amounted to more than $200,000 per dealership.

In 1973 the import car dealer employed over 145,000 people in exclusive import dealerships. Now, there is approximately in excess of 75,000 that would be included into the captive imports such as Colt, Capri, Opel, and Cricket. Now, this significant figure alone shows the economic worth of the imported car dealer in the United States, and the adverse impact which the UAW proposal would have on the continued employment of these American workers.

Now, in conclusion, based on these significant economic facts which relate directly to the American economy, NADA strongly urges that this committee reject the UAW proposal on the grounds of the resulting economic harm and significant unemployment of American workers that would inevitably result from such an unwise course of action.

Faced with new competition from smaller cars, domestic makers reacted to meet this competition. Their entry into the compact and subcompact market has boosted their sales and given the consumer additional choices.

And what has caused it?

The competition offered by the imported car.

The imported car industry was responsible for introducing into this country radial tires, disc brakes, seat and shoulder harnesses, to name just a few safety features.

In addition, the introduction of the gas economy import car was a major factor in preventing more serious consequences of the recent gasoline shortages. Also, the presence of the imported car as a competitor in the late 1960's forced the domestic manufacturers to change over to smaller cars earlier than usual, which now better enables the domestic manufacturers to meet the public demand for gas economy cars.

NADA strongly believes any trade legislation designed to protect American manufacturing by means of increasing tariffs and lowering quotas in an arbitrary fashion would seriously impair the freedom of choice of the consumer—a choice he can now make based on his needs, his pocketbook, and his personality.

This concludes my statement, Mr. Chairman, and NADA would be more than willing to work with your committee staff in providing any additional information that may be of assistance. Thank you.

Senator HARTKE. All right, thank you, gentlemen for joining us.

Mr. Pray, you said that the automobile wage rates in Germany and Japan are the same as those in the United States. Is this true for Brazil, as well?

Mr. PRAY. We do not import cars from Brazil to the United States.

Senator HARTKE. I understand. But there is a world market for cars, isn't there?

And the largest assembly plant in the world is the General Motors plant in Sao Paulo. Excluding the merits or demerits of how this market is being developed, the fact of it is that in Australia and in Brazil and in Argentina, the automobile wage rates are not the equivalent of those in the United States. Isn't that so?

Mr. PRAY. No, they are not the equivalent now. But as I said, these cars are not brought into the country. There was a time when the wage rates in Germany and Japan were not the same.

Senator HARTKE. Would you be in favor of Senator Hathaway's suggestion? Since you say that differing wages rates are no problem. His proposal would start with a base year but allow the quota to rise and fall as the average manufacturing wage in the country had risen or fallen relative to wages in this country.

Would you be willing to go ahead and put such a provision into the trade bill inasmuch as the quota would depend on the similarity or parity of foreign wages to ours?

But, if there was not an equivalent wage rate, then there would be a quota.

Mr. PRAY. Senator, that is the first time I have heard that proposal.

Senator HARTKE. It is the first time I heard it, too. But I am just asking you, on the basis of your intelligence—and I know you are an intelligent man, and I understand you have studied this in depth. You have made the hypothesis that all of the wages are fair and equal.

I am just asking you if it is as you say, then why would you not support such a proposal. It could not do any damage?

Mr. PRAY. Basically because we would oppose quotas.

Senator HARTKE. You know the quotas would not be imposed unless there was a wage difference. In other words, it would be a non sequitor.

Do you mean to say that you are opposed to the word "quota" per se?

I mean, even when it would not be effected?

If you really contend that there is no difference in wages, then it shouldn't matter. But if it is just a camouflage for your ideas, I could understand why you would be opposed to it.

Mr. PRAY. Well, as I said, this is basically a new proposal. On the surface it appears to have merit.

Senator HARTKE. All right, fine.

But you cannot support a meritorious proposition today?

Mr. PRAY. Well, at this stage, Senator, without a little bit more thought, I do not think I could support it.

Senator HARTKE. All right, now——

Mr. MCELWAINE. Could I comment on that, Mr. Chairman?

Senator HARTKE. Yes, Mr. McElwaine.

Mr. MCELWAINE. As Mr. Pray said, we both basically oppose this philosophy and the principle of quotas. In the matter of the wage dissimilarity or similarity between this country and other automotive producing countries, however, I would think this would be a very difficult thing to ascertain on any kind of a permanent basis.

Senator HARTKE. You just ascertained it.

Mr. MCELWAINE. The main reason why the wage rates between Germany and the United States, for example, and Japan and the United States, have equalized in recent years, has been largely because we devalued the dollar. And in the devaluation of the dollar we began to equalize these wage rates. Now, the wage rates did not change so much in Germany as did the purchasing power of the mark and the dollar, and their official government exchange rates.

Senator HARTKE. That is an entirely different conclusion. In other words, it demonstrates the fallacy of having a floating monetary system. Devaluation has hurt us in many ways not the least of which has been the impetus it has given inflation.

But if you are going to hang your star on that type of crippled operation, then you are really in bad shape.

Mr. MCELWAINE. That is why I say that the idea of trying to set quotas according to wage rates is very difficult.

Senator HARTKE. I don't follow your argument there.

Mr. MCELWAINE. Mr. Chairman, even Mr. Woodcock in his testimony pointed out that the benefits and wages in the automobile producing countries that he was talking about were basically the same.

Senator HARTKE. Now, look, I am not arguing whether it is right or wrong. I am taking your basic assumption and carrying it to its logical conclusion.

Assuming that what you say is true, why not accept the Hathaway proposition; i.e. that quotas would only be applied in cases where there is a wage difference?

Mr. MCELWAINE. The point is, it is very difficult to ascertain whether there really is a wage difference or not.

Senator HARTKE. Well then, why did you say they were the same if it is so difficult to ascertain?

You are starting with a conclusion, and now you are telling me that that cannot be concluded.

Mr. MCELWAINE. The wage rates are dependent on the currency exchange rate and on the floating currency rates. They change every day.

Senator HARTKE. The statement is that the wages are the same. If the wages are the same, then there is no question that the quotas proposed by Sen. Hathaway would not make any difference. Now, your answer to that is, but you cannot determine the wage rates. You present a conclusion based on an assumption which cannot be proven. That is a rather remarkable operation.

Senator DOLE. We do it all the time.

Senator HARTKE. Pardon me, Senator Dole?

Senator DOLE. We do it all the time.

Senator HARTKE. I just would hope that we would not do it. If you would like to submit something further for the record on this subject, I would gladly accept it.

[The following was subsequently supplied for the record:]

COMMENTS ON SENATOR HATHAWAY'S PROPOSAL

Senator Hathaway's proposal, as we understand it, is one element of his conception of the escape clause. In his view, upon receiving a complaint from a domestic industry, the Tariff Commission would determine whether increased imports are a substantial cause of serious injury to a domestic industry. If the Tariff Commission made an affirmative determination, the President would be required to impose a quota based upon the average quantity of imports in the years 1965–1969. The quota would be progressively increased over a five-year period and would terminate at the end of that period.

It is within this scheme that Senator Hathaway has proposed that the quota would be more rapidly increased if the average manufacturing wage of the exporting country should increase in relationship to the average manufacturing wage in this country. In other words, if the average manufacturing wage increased by 25% in the exporting country and 10% in the United States, the quota would be increased by an additional 15%. Senator Hathaway does not apparently propose that the quota would decline if the average manufacturing wage in the exporting country should fall.

The comments of AIADA, NADA, and AIA are two-fold. First, we object to the manner in which, under Senator Hathaway's proposal, an escape-clause action would be taken. For example, the increased imports should be not merely "a substantial cause" but "the major cause" of serious injury. Moreover, upon receiving an affirmative determination from the Tariff Commission, the President should have the discretion to decide whether or not to take an escape-clause action. In addition, if he decides to take an escape-clause action, he should be able to use an increased tariff instead of a quota.

Turning to the manner in which an escape-clause action should be implemented, we endorse Senator Hathaway's proposal that an escape-clause quota be progressively increased over five years and terminate at the end of that period. We do not believe, however, that any relative increase in the average manufacturing wage in the exporting country should be the sole criterion for accelerating the increase in the quota. While this might be one factor to take into account, other factors should be considered as well, such as the economic condition of the domestic industry following the establishment of the escape-clause action, the strength of demand in this country, and the need to counter any inflationary trend. In short, the President's ability to accelerate the increase and termination of an escape-clause quota should be based upon a range of economic considerations, much like those that he would take into account under section 202(c) of the House-passed bill in deciding whether to take an escape-clause action in the first instance.

Senator HARTKE. I am in favor of a nondiscriminatory system of world trade. If you can convince those countries from whom you import your cars to go into a Common Market arrangement with us with full nondiscrimination in the field of trade and monetary restrictions, I will be your chief supporter. I am in favor of free trade as long as it is fair trade. And if you can get Germany to go into a Common Market arrangement with us, I will guarantee you I will be for it.

Senator DOLE. You can have a minute of my time.

Senator HARTKE. Would you please supply, for the record the following information. First, the tariff on American automobiles in Japan and all European countries, Canada, Brazil, and Argentina. Second, the commodity taxes, the horsepower taxes, the road taxes in those markets. Third, other nontariff barriers such as the distribution system in Japan which involves a markup on the American Pinto of some $2,000.

[The following was subsequently supplied for the record. Hearing continues on p. 2063.]

Information on Tariff and Nontariff Barriers

In response to Senator Hartke's request for information concerning tariff and nontariff barriers imposed by the governments of certain foreign countries on imports of automobiles, we are attaching such information as it pertains to the following countries:

Argentina.
Austria.
Brazil.
Canada.
Denmark.
European Economic Community:
- Belgium.
- France.
- Germany.
- Italy.
- Luxembourg.
- Netherlands.

Finland.
Greece.
Iceland.
Ireland.
Japan.
Norway.
Portugal.
Spain.
Sweden.
Switzerland.
United Kingdom.
Yugoslavia.

This information was compiled by the Motor Vehicle Manufacturers Association (MVMA), and most of it has already been supplied to the Committee by MVMA.

Abbreviations

ad val cif—ad valorem cost including insurance and freight.
ANCOM—Andean Common Market.
BPT—British Preferential Tariff.
b/u—built-up vehicle.
CDV—current domestic value in country of origin.
CKD—completely knocked-down.
CV—commercial vehicles, including buses less mentioned separately.
CXT—common external tariff.
DTPV—duty and tax paid value.
DPV—duty paid value.
DVV—depends on value of vehicle.
EC—engine capacity.
EEC—Common Market Countries—Benelux, West Germany, France and Italy.
EFTA—European Free Trade Association—U. K., Austria, Denmark, Finland, Norway. Portugal, Sweden and Switzerland.
FH—fiscal horsepower.
GVW—gross vehicle weight.
GT or GTR—general tariff rate.
Kg—kilogram.
KG—kilogram gross weight—includes all trucking.
KL—kilogram legal weight—includes inner wrappings only.
KN—kilogram net weight.
KR—Kennedy Round.
LAFTA—Latin American Free Trade Association.
MFN—Most Favored Nation Tariff treatment.
n.e.s.—not elsewhere specified.
n.s.m.—not specifically mentioned.
n.e.m.—not elsewhere mentioned.
SKD—semi-knocked down.
SPV—special purpose vehicle.
S/W—station wagon (estate car).
T or t—ton.
TPV—tax paid value.
TVA—tax on value added.
u/l w—unladen weight.
w/c—with cab.
w/e—with engine.

ARGENTINA

[In percent]

	Customs duty or tariff rates—GTR (ad val cif)
Vehicle type:	
1. Passenger cars [1] weighing under 1,000 Kg:	
Under U.S. $1,600	140
U.S. $1,601 to U.S. $2,000	140
Weighing 1,001 to 1,500 Kg: under U.S. $1,601 to $2,000	140
2. Passenger cars, n.e.s	140
3. Buses	100
4. Ambulances [1]	90
5. CV's: 2 axles, cab, chassis [2], 3 axles (2 power driven), cab, chassis [2]	90
b/u: Under 1,000 Kg	90
1,001 to 2,000 Kg	90
over 2,000 Kg	90
6. CV's, n.e.s	90
7. SPV's	80
8. SPV's, n.e.s	90
9. Chassis	90–120
10. Bodies:	
Cars, CV's, buses	120
Other	120
11. Parts and accessories	120
12. Engines	80

[1] Chassis are imported at the same rate as the assembled vehicle.
[2] Additional specifications required for these categories.

Note.—Other Taxes, Fees and Special Rates:
Statistical tax, 1.5 percent of the cif.
10 percent tax on ocean freight charges.
Steel fund tax imposed upon metallic product, 8 percent.
Capital goods, financing on all goods above, except passenger cars, must meet requirements set by the Central Bank (unless the value of the shipment is under U.S. $10,000).
Prior deposit, 40 percent of cif value for 180 days, held without interest.
Sales tax, 10–12 percent.
Unassembled vehicles are classified as assembled vehicles. Importation currently prohibited for items 1 through 6, 8, 9, 10, and 12; however, dumpers in 5 are permitted.
Local content requirement, Argentina's local content requirement is 96 percent and is based on weight. Automobile parts imported from Chile are considered having been produced "locally."

AUSTRIA

[Ad val cif or schillings per 100 Kg]

	Customs duty or tariff rates		
	GTR		
	PKR	1974 [1]	EFTA [2]
Vehicle type:			
Passenger cars and S/W's	20.0 percent	20.0 percent	Free.
Over 1,200 Kg [3]	1,470 schillings	1,470 schillings	Do.
800 to 1,200 Kg [3]	1,400 schillings	1,400 schillings	Do.
Under 800 Kg [3]	1,300 schillings	1,330 schillings	Do.
Trucks [4] under 1,550 Kg	20.0 percent	20.0 percent	Do.
1,500 to 7,000 Kg	32.0 percent	32.0 percent	Do.
Over 7,000 Kg	25.0 percent	25.0 percent	Do.
Under 2,200 Kg to 1,500 Kg [3] [4]	1,155 schillings	1,155 schillings	Do.
Trucks with over 14-ton payload if type not made in Austria.	Free	Free	Do.
Buses	29.0 percent	29.0 percent	Do.
or, if u/l.w. is over 1,200 Kg	1,470 schillings	1,470 schillings	Do.
SPV's [4]	25.0 percent	13.0 percent	Do.
Bodies:			
Cars	25.6 percent	20.0 percent	Do.
Buses, and trucks	28.0 percent	25.0 percent	Do.
Chassis w/e:			
Under 1,500 Kg	26.4 percent	20.0 percent	Do.
1,500 to 7,000 Kg [5]	32.0 percent	25.0 percent	Do.
Over 7,000 Kg	25.0 percent	23.0 percent	Do.
Parts	Various rates, free up to 16 percent or 1,680 schillings.		

[1] Imports from EEC (original 6 and Ireland) are subject to listed rates reduced by 40 percent. These rates will be reduce 60 percent on Jan. 1, 1975; 80 percent on Jan. 1, 1976, and will be eliminated July 1, 1977 (duty free) for all EEC imports
[2] Applies also to the United Kingdom and Denmark.
[3] Specific rate per 100 Kg net applies if lower than ad val rate.
[4] Temporarly reduced rate may be available; partial or total exemption from duties may apply to automotives if Government determines sufficient local supply unavailable.
[5] For cars and trucks weighing between 1,500 Kg and 2,200 Kg: 900 schillings per 100 Kg, not to exceed 32 percent ad valorem.

Note.—Other taxes, fees, and special rates:
Import turnover tax (TVA), 16 percent.
GSP, in effect, GTR rates reduced by 70 percent.
CKD vehicles may be granted up to a 30 percent reduction of built-up vehicle rate.

BRAZIL

[In percent]

	Customs duty or tariff rates	
	GTR (ad val cif)	Surtax (DPV)
Vehicle type:		
Passenger cars, S/W's:		
Weighing up to 800 Kg, valued at U.S. $4,000 cif	70	24
Weighing 800 to 1,100 Kg, valued at U.S. $4,800	85	28
Weighing over 1,100 Kg, valued at U.S. $6,300	105	30
Jeeps	70	12
Buses	85	12
CV's	85	10
Engines	45	5
Body and chassis parts	15-85	5-12
Bodies	105	12
Chassis (general)	105	12
SPV's:		
Firefighting, spraying, cleaning	37	12
Ambulances, vans	105	12-16

Note.—Other taxes, fees, and special rates:
Import of passenger vehicles prohibited over U.S. $3,500 or 1600 Kg.
Port Assessment, 2 percent of cif value.
Marine assessment tax, 20 percent of net ocean freight.
Merchandise circulation tax, 13 to 16 percent of DPV, depending on state.
Import license, required.
Industrialized products tax, 4 to 30 percent cif DPV and up to 70 percent for "luxury" goods.
Local content requirement, in 1961 Brazil officially set its local content requirement at 100 percent for cars and 98 percent for commercial vehicles. At present, however, local content in production averages 85 percent for passenger cars (Volkswagen—95 percent; Dodge Dart—65 percent, for example), 80 percent for commercial vehicles, and 82 percent for buses. Local content based on the fob value of the vehicle were it to be imported.

CANADA

[In percent]

	Customs duty or tariff rates (CDV)		
	GTR		
	PKR	1974	BPT
Vehicle type: All vehicles	17.5	15.0	Free.

Note.—Other taxes, fees, and special rates:
Federal sales tax, 12 percent of DPV; provincial sales tax also in effect.
Used cars, prohibited entry of manufactured prior to the year in which importation is sought.
Vehicles and original equipment parts imported free of duty by GATT members for Government-qualified manufacturers under Canadian-U.S. Automotive Products Trade Act of 1965 (same exclusion for SPV's).

DENMARK

[In percent]

	Customs duty or tariff rates (ad val cif)		
	GTR		
	PKR	[1] 1974	EFTA [2]
Vehicle type:			
Cars, buses to 10 persons	15.0	11.0	Free.
Buses, over 10 persons	12.0	6.0	Do.
Trucks and SPV's	4.0	2.0	Do.
Chassis	4.0	2.0	Do.
Bodies	10.0	5.0	Do.
Engines, parts	5.0	2.5	Do.

[1] Imports from EEC (original 6 and Ireland) are subject to listed rates reduced by 40 percent. Rates will be reduced by 60 percent on Jan 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated on July 1, 1977 (duty free). As of Jan. 1, 1974 Denmark began to align her GTR rates to the EEC's Common External Tariff rates. The duty on cars and buses to 10 persons is now the same as the EEC rate—11 percent. The duty on all other categories will be aligned in 4 installments: 40 percent on Jan. 1, 1974, 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and 100 percent on July 1, 1977.
[2] Applies also to the United Kingdom.

Note.—Other taxes, fees, and special rates:
Added value tax 15 percent of DPV.
Special purchase tax, on cif DPV Cars:

5,001 to 10,000 Kr	3,700 Kr on first 5,000 Kr plus 124 percent on remaining value.
10,001 to 15,000 Kr	9,350 Kr on first 10,000 Kr plus 136 percent on remaining value.
Over 15,000 Kr	15,500 Kr on first 15,000 Kr plus 171 percent on remaining value.

Trucks and SPVs 50 percent of car rates.
Buses and taxis 20 percent of registered import value.
GSP: in effect

EUROPEAN ECONOMIC COMMUNITY (EEC)—ORIGINAL 6 (BELGIUM, FRANCE, WEST GERMANY, ITALY, LUXEMBOURG AND NETHERLANDS)

[In percent]

	Customs duty or tariff rates (ad val cif)		
	CXT		
	PKR	1974	EEC 6
Vehicle type:			
Cars and car chassis	22.0	11.0	Free.
Buses:			
(a) With spark-ignition engine, cylinder capacity 2,800 cc or more; or with compression ignition eng. of cylinder capacity 2,500 cc or more		22.0	Dol
(b) Less than above capacities	22.0	11.0	Do.
(c) With other engines	25.0	12.5	Do.
Trucks:			
(a) Same breakdown as under buses for EEC		22.0	Do.
(b) Same breakdown as under buses for EEC	22.0	11.0	Do.
(c) With other engines	20.0	10.0	Do.
Chassis for buses and trucks as under (a) and (b) above.			
SPV's	20.0	10.0	Do.
Bodies: For the industrial assembly of cars and buses, SPV's, and trucks with cylinder capacity as in (a) above	24.0	12.0	Do.
For others	24.0	20.0	Do.
Engines:			
250 cc or less	18.0	9.0	Do.
More than 250 cc:			
For industrial assembly of cars and buses, SPV's, and trucks with engine cylinder capacity less than 2,800 cc	14.0	7.0	Do.
For other	14.0	12.0	Do.
Parts	14.0	7-12.0	Do.

Note.—Imports from new EEC members (United Kingdom, Denmark, and Ireland) and EFTA are subject to the listed rates reduced by 40 percent. These rates will be reduced 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated (duty free) on July 1, 1977, for all EEC imports.

Other taxes, fees, and special rates:

EEC preferential tariff rates. The European Economic Community grants duty free entry to automotives having their origin in the following: the overseas territories and departments; the 18 Associated African States; Morocco, Tunisia, Greece, Turkey, Kenya, Uganda and Tanzania. Automotives originating in Spain are subject to the Common External Tariff (CXT) reduced by 60 percent, those originating in Cyprus and Malta, the CXT rates reduced by 70 percent. CXT rates reduced by 45 percent are charged on automotives of Israeli origin except those falling under tariff No. 87.02 subheading A-I-b and B-II-a-2 for which the reduction is 28 percent.

GSP, in effect, motor vehicle duty free (providing finished product content is at least 60 percent sourced from developing country).

Belgium: Value added tax (TVA), 25 percent for cars; 18 percent for other items.

France: Value added tax (TVA), cars (up to 9 seats), car chassis—33⅓ percent cif DPV; other, including chassis—23 percent cif DPV.

Customs stamp duty, 2 percent of import duty.

Annual vignette tax, levied on cars and based on age and/or fiscal horsepower. Fee varies from 30 to 1,000 francs.

Germany: Value added tax (TVA), 11 percent DPV.

Annual road use tax, cars: 14.40 marks per 100 cc of cyclinder capacity; other vehicles: 22-166 marks per 200 Kg of total weight; tax not to exceed 11,000 marks.

Italy: Sales tax (TVA), private use cars with engine capacity greater than 2,000 cc 18 percent; other vehicles 12 percent.

Stamp tax, 0.2 percent of duties and additional taxes, including road tax.

Annual road tax, levied on cars on basis of fiscal horsepower (FHP)—varies from 5,110 to 241,870 lire per year (if over 45 FHP, tax is 8,680 lire per FHP).

Import duties are levied on cif ad valorem plus 3 percent uplift.

Luxembourg: Turnover tax (TVA), 10 percent of DPV.

Netherlands: Value added tax (TVA), 16 percent cif DPV.

Consumption tax, 16 percent cif DPV plus markup (on retail price excluding TVA) for cars only.

Annual car tax, about 13 Guilders per 100 Kg.

FINLAND

[In percent]

	Customs duty or tariff rates (ad val cif)		
	GTR		
	PKR	1974 [2]	EFTA [1]
Vehicle type:			
Cars (jeeps not specified), buses	14–15	8	Free.
Cars—CKD, for mass assembly	10	6	Do.
CV's:			
b/u—diesel (wt. 10 metric tons or more)		14	Do.
Other		8	Do.
Gas		8	Do.
SPV's, general	10	5	Do.
Car chassis	14–15	7	Do.
Other chassis, trucks		14	Do.
Bodies	14	7	Do.
Engines	12	6	Do.
Parts		(3)	Do.

[1] Applies also for United Kingdom and Denmark.
[2] Imports from EEC (originally 6 and Ireland) are subject to listed rates reduced by 40 percent. Rates will be reduced 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated (duty free) on July 1, 1977 for all EEC members.
[3] Free to 12.5 percent.

Note.—Other taxes, fees, and special rates:
Automobile excise tax, 140 percent of DVP less 2,500 Finmarks (minimum 50 percent of the landed price).
Turnover tax, 12.4 percent cif DPV plus above tax.
GSP, in effect.

GREECE

[In percent]

	Customs duty or tariff rates (Ad val cif)			
	GTR [1]			
	PKR	1974	EEC	Turnover tax
Vehicle type:				
Cars over 800 Kg, valued up to $1,650	26.0	19.64	2.60	A
Cars over 800 Kg, valued over $1,650	40.0	25.24	4.00	A
Jeeps	17.5	15.40	1.75	A
Ambulances and hearses	18.0	16.44	1.80	A
Buses with engine capacity up to 2,800 cc	18.0	17.50	12.60	A
Buses with engine capacity more than 2800 cc	18.0	18.80	13.54	A
Trucks and vans, n.e.s. (excluding refrigerated type)	17.5	17.08–18.40	12.60	B
Chassis	10.5	13.44–17.40	1.05	B
SPV's (cleaning, plows, cranes, etc.)	10.0	12.40	1.00	B
Parts	5–50.0	7.88–27.68	1–5.0	

[1] Duties on cars, jeeps, SPV's, and parts from the EEC to be eliminated Nov. 1, 1974. Duties on buses and trucks to be reduced in stages until elimination on Nov. 1, 1984.

Note.—Other taxes, fees, and special rates:
Turnover Taxes, in right-hand column above as follows—A—8.75 percent on 140 percent DTPV; B—4.50 percent on 130 percent DTPV.
Luxury Tax: 25 percent cif on cars valued over U.S. $1,800.
Special import tax, 0.5 percent cif value.
Export promotion tax, 0.15 percent cif value.
Stamp tax, 4.5 percent cif duty plus tax paid value.
Initial registration fee, Applicable to private passenger cars at varying rates ranging from 20,000 Drachmas to 98,000 Drachmas.
Deposit requirements, apply.
Import License, required.
License (circulation) fees, Payable annually at varying rates ranging from 280 drachmas to 840 drachmas for autos and from 212 drachmas to 700 drachmas for trucks.
Levies are imposed on used cars at the same rate as new cars and are based on value of the vehicle when new.

ICELAND

[In percent]

	Customs duty or tariff rates—GTR (ad val cif)
Vehicle type:	
Cars and taxicabs	90
Trucks up to 3-ton capacity, pickups, jeeps	40
Buses, trucks (over 3-ton capacity)	30
Chassis w/e for cars	90
Chassis, other	30
Engines	25
Parts	35

Note.—Other taxes, fees, and special rates:
Excise tax, buses and trucks of carrying capacity 6 tons and over 15 percent of cif value, others 25 percent of cif value.
Retail sales tax, 14.3 percent of cif DPV.
Deposit, 10 percent on deferred payment vehicles.

IRELAND

[In Percent]

	Customs duty or tariff rates (ad val cif)	
	GTR[1]	BPT[2]
Vehicle type:		
Cars:		
b/u over £1,300	75.0	22.2
b/u under £1,300	75.0	31.0
Trucks	75.0	31.0
SPV's	37.5	23.5
Fire engines, cleaners and dumpers for construction	(3)	(3)
Buses up to 16 passengers	75.0	31.0
Buses with 17 passengers and over	50.0	26.0
CKD—all vehicles	17.5	17.5
Engines	37.5	37.5
Chassis w/e	75.0	31.0

[1] Imports from EEC (original 6 and Denmark) and EFTA are subject to the listed rates reduced by 40 percent. Rates will be reduced by 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated on July 1, 1977 (duty free). As of Jan. 1, 1974, Ireland began to align her GTR rates to the EEC's Common External Tariff rates. Rates will be aligned in four installments: 40 percent on Jan. 1, 1974, 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and 100 percent on July 1, 1977.
[2] BPT—applies to United Kingdom and Northern Ireland; other Commonwealth countries subject to GTR.
[3] Free.

Note.—Other taxes, fees, and special rates:
Quotas, in effect for certain parts imports such as spark plugs and laminated springs. Import of vehicles, bodie chassis prohibited excepted by registered dealers or unless authorized by Ministry of Commerce and Industry
Value added tax (TVA), passenger vehicles 30.26 percent, others 16.37 percent.

JAPAN

	Customs duty or tariff rates (ad val cif)	
	GTR (in percent)	
	PKR	1974
Vehicle type:		
Cars, trucks, buses, SPV's	20-40.0	6.4
Chassis w/e, bodies w/c	30.0	8.0
Engines, parts	30.0	6.0
Other taxes, fees, and special rates:	Private use	Business use
Automotive tax:		
Up to 360 cc displacement	$12.50	$12.50
360 cc to 999 cc	50.00	16.67
1,000 cc to 1,499 cc	58.33	19.44
1,500 cc to 1,999 cc	66.67	22.22
2,000 cc and over:		
wheelbase not over 3.048 meters	150.00	62.50
wheelbase over 3.048 meters	250.00	125.00
Commodity tax on DPV:		
Cars with a wheelbase exceeding 305 cms and an engine capacity exceeding 3,000 cc (percent)	20	
Cars with a wheelbase exceeding 270 cms and not exceeding 305 cms and an engine capacity of 2,000 cc up to 3,000 cc (percent)	20	
4-wheel drive cars, with wheelbase less than 270 cms, and other cars less than 170 cms wide, wheelbase less than 270 cms and engine capacity less than 2,000 cc (percent)	15	

Note.—Purchase tax of 3 percent of the actual purchase price is levied on all vehicles, new and used.

Road taxes. The annual road tax is also related to vehicle size and progresses from $50 for very small cars (not exceeding 61 cubic inch engine displacement), to $58.33 (61 to 91.6 cubic inch) to $66.67 (91.6 to 122.1 cubic inch and not exceeding the following overall dimensions: Length, 185 inch; width, 66.9 inch; height, 78.7 inch), to $150 (exceeding 122.1 cubic inch displacement, but not exceeding 120 inch wheelbase) to a maximum of $250 for very large cars (exceeding 122.1 cubic inch engine displacement and wheelbase over 120 inch).

Supplemental annual road tax, passenger cars $30 to $140 depending on engine cc; CV's $140 to $278.

Commercial vehicles are subject to both national and prefectural (state) annual road taxes. The national tax is $16.67 for vehicles under 1,000 cc; $19.44 for those between 1,000 and 1,500 cc; and $22.22 for those with engines larger than 1,500 cc. The prefectural tax starts at $13.89 for vehicles with a GVW of under 1 ton. Between 1 and 8 tons the fee is $66.68 plus $11.11 for each ton over 8 tons.

GSP, in effect.

Standards, complex inspection and documentation procedures for new model automobiles result in suspension of sales of imports during peak buying periods.

Valuation, Value uplift for customs purposes on all imported goods, particularly parent-subsidiary transactions. These value uplifts are sometimes arbitrary and excessive.

NORWAY

[In percent]

	Customs duty or tariff rates (ad val cif)		
	GTR		
	PKR	1974	[1] EFTA
Vehicle type:			
Cars, CV's, SPV's chassis (jeep and CKD not specified)	10	8	8
Buses	30	30	8
Car bodies	30	15	15
Other bodies	20	[2] 10-15	([3])
Engines	20	10	10

[1] Applies also to United Kingdom and Denmark.

[2] Preferential rates granted to EEC (original 6 and Ireland): Bus bodies 14.2 percent, truck bodies 9.5 percent. Rates on buses and truck bodies to be eliminated by 1980 on imports from EEC.

[3] Free.

Note.—Other taxes, fees, and special rates:

Excise tax, cars and chassis with motors for cars—67 percent of first 5,000 crowns of DPV and 100 percent on excess; buses and chassis—25 percent of DPV; other vehicles—35 percent of DPV.

Sales tax (TVA), 20 percent cif DPV.

Traffic tax, up to 0.02 percent ad val.

GSP, not in effect.

PORTUGAL (SAME RATES APPLY TO AZORES)

	Customs duty or tariff rates	
	GTR [1]	EFTA [2]
Vehicle type:		
Cars (jeeps not specified) minimum duty	15.5 escudos per Kg	10.80
CV's	12.5 escudos per Kg	10.00
Buses	16.0 escudos per Kg	12.80
CKD—see note below		
Chassis for dump trucks and dump trucks for construction use	0.6 escudos per Kg	.48
Other chassis	11.0 escudos per Kg	8.80
SPV's	12.0 percent ad val cif	9.60
Bodies	60.0 escudos per Kg	24.00
Engines	6–25.0 percent ad val cif	–15.0
Fine engines and ambulances	2400.0 escudos each	1920.00
Parts	6–60.0 escudos per Kg	2.40–24.00

[1] Duties on motor vehicle imports from EEC (original 6 and Ireland) to be eliminated on cars by 1985 and on other vehicles and chassis by 1980. 2.2 multiplied by "P" excudos per KN, where "P" equals weight of cars in quintals, i.e. in 100 Kg units.

[2] Applies also to United Kingdom and Denmark.

Note.—Other taxes, fees, and special rates:
EFTA tariff elimination, rates for EFTA countries scheduled for elimination in steps by January 1980.
CKD vehicles, enjoy a discount of vehicle rates from 15 to 100 percent based on percent of Portuguese content.
Quota restrictions, on all vehicles are in effect.
Special tax, on cars and light CV's, calculated by multiplying list price in contos by (1,000 escudos) 0.2 (maximum of 30 percent).
Transaction tax, 7 percent of wholesale price; 20 percent for camping adapted vehicles.
Import license, required.

SPAIN

[In percent]

	Customs duty or tariff rates—GTR [1] (ad val cif)
Vehicle type:	
Cars and S/W's (not more than 9 persons)	68.0
Car chassis	57.5
Trucks up to 2 tons and chassis	50.0
Over 2 tons and chassis	57.5
Chassis w/e, bodies	50–57.5
SPV's, buses	50.0
Engines	27–43.5
Parts	33.0
Parts for touring vehicles	5.0

[1] Imports from the EEC are subject to GTR rates reduced by 10 percent. Rates will be reduced 35 percent on Jan. 1, 1975, 55 percent on Jan. 1, 1976, and 70 percent on Jan. 1, 1977.

Note.—Other taxes, fees, and special rates:
Luxury tax, 20 percent DPV on cars.
Import quotas, affecting automotives in effect.
Compensatory import tax, engines 12 percent, other 13 percent.

SWEDEN

[In percent]

	Customs duty or tariff rate (ad val cif)		
	GTR		
	PKR	1974 [1]	EFTA [2]
Vehicle type:			
Cars, b/u—CKD	15	10	Free.
CV's, b/u and CKD	15	15	Do.
SPV's		10	Do.
Parts and accessories	15	10	Do.
Engines	10	5	Do.
Chassis and bodies for cars	15	10	Do.
For other vehicles		15	Do.

[1] Imports from EEC (original 6 and Ireland) are subject to GTR rates reduced by 40 percent. Rates will be reduced 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated on July 1, 1977.
[2] Applies also to United Kingdom and Denmark. EFTA rates are in the process of being reduced.

Note.—Other taxes, fees, and special rates:
Added value tax (TVA), 17.65 percent of cif DPV.
Transaction tax, 1.90 Kr per Kg of vehicle service weight and an addition of 240 Kr for every full 50 Kg over 1,600 Kg. Tax applied only to vehicles to 1,800 Kg.
GSP, in effect.

SWITZERLAND

	Customs duty or tariff rates (Francs per 100 Kg)			
	GTR			
	PKR	1974	EFTA [1]	EEC [2] (6 and Ireland)
Vehicle type:				
Cars, weighing up to 800 kg	110	82	53	49
801 to 1,200 Kg	130	91	53	55
1,201 to 1,600 Kg	150	108	67	65
Over 1,600 Kg	160	140	81	84
CV's, buses weighing up to 800 Kg	110	82	82	82
801 to 1,200 Kg	130	91	91	91
1,201 to 1,600 Kg	150	108	108	108
1,601 to 2,800 Kg	170	120	(3)	72
Over 2,800 Kg (general)		170	(3)	102
Dumpers, over 2,800 Kg (nonroad)	85	60	(3)	36
SPV's, general	130	90	(3)	64
CKD cars: 60 to 8 Francs per Kg: [4]				
Mobile cranes and snow ploughs weighing over 12 tons	20	10	(3)	6
Bodies for cars, CV's, buses	150	110	(3)	66–110
Dumper bodies	40	30	(3)	18
Engines for cars (gas)	170	110	150	
Parts	150	110	(5)	

[1] Applies also to the United Kingdom and Denmark.
[2] These rates will be reduced by 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and will be eliminated on July 1, 1977.
[3] Free.
[4] Applies where 15 percent of value is represented by Swiss content.
[5] Free to 110.

Note.—Other taxes, fees, and special rates:
Statistical tax, 3 percent of duty.
Sales tax, 6 percent of DPV on wholesale price; 4 percent of retail price to private individuals.
GSP, 30 percent off of GTR for SPV's only.

UNITED KINGDOM

[In percent]

	Customs duty or tariff rates (ad val cif)		
	GTR		
	PKR	1974[1]	CTR[2]
Vehicle type:			
Cars, S/W's (general)	22.0	11.0	7.5
CV's, buses[1]	22-24.0	11-22.0	7.5-15.0
SPV's	24.0	11.0	7.5
Chassis, general[1]	22.0	11-22.0	15.0
Bodies	24.0	11.0	7.5
Engines, over 250 cc	22-24.0	14.0	9.0
Parts	22.0	11.0	7.5

[1] Imports from EEC (original 6) are subject to listed rates reduced by 40 percent. Rates will be reduced by 60 percent on Jan. 1, 1975, 80 percent on Jan 1, 1976, and will be eliminated on July 1, 1977 (duty free). As of Jan. 1, 1974 the United Kingdom began to aline her GTR rates to the EEC's Common External Tariff rates. On those categories for which there was less than a 15 percent difference in the United Kingdom and EEC duty rates, the alinement was achieved in full on Jan. 1, 1974. The duty rates on all other categories will be alined in 4 installments: 40 percent on Jan. 1, 1974, 60 percent on Jan. 1, 1975, 80 percent on Jan. 1, 1976, and 100 percent on July 1, 1977.

[2] Commonwealth tariff rates. These rates will be harmonized with the EEC's Common External Tariff by July 1, 1977. Products from Ireland, Denmark, and the EFTA admitted free.

Note.—Other taxes, fees, and special rates:
Special tax, passenger cars 10 percent of wholesale value in United Kingdom.
Value added tax (TVA), passenger cars 10 percent cif DPV in United Kingdom.
GSP, in effect.

YUGOSLAVIA

[In percent]

	Customs duty or tariff rates—GTR (ad val cif)
Vehicle type:	
Cars	30
CKD[1]	15
Buses	15
Trucks:	
Up to 10-ton payload	22
10- to 20-tons payload	16
Over 20-tons payload, including all reefers and tankers	15
SPV's	18-20
CV chassis	16
Municipal vehicles	10
Engines—rate "relevant" to vehicle.	
Parts—rate "relevant" to vehicle.	

[1] Passenger cars assembled in cooperation with foreign firms 15 percent.

Note.—Other taxes, fees, and Special Rates:
Import tax, 6 percent of dutiable value.
Customs handling charge: 1 percent of dutiable value.
Equalization tax, 3 percent of dutiable value.
Import license, required except for parts.
Sales tax, 12 percent of retail price except in case of cars valued in excess of 23,000 New Dinar which are taxed as noted below: 23,000 to 30,000 Dinar—30 percent; 30,001 to 40,000 Dinar—50 percent; over 40,000 Dinar—100 percent.

American Imported Automobile Dealers Association—Tariffs and Nontariff Trade Barriers on Automobiles in Selected Countries

JAPAN

Japan has a 6.4% *ad valorem* tariff on automobiles. It has the following revenue measures of general application that apply to domestic as well as foreign automobiles.

(1) Automotive Tax	Private use	Business use
Up to 360 cc displacement	$12.50	$12.50
360 cc displacement to 999 cc	50.00	16.67
1,000 cc displacement to 1,499 cc	58.33	19.44
1,500 cc displacement to 1,999 cc	66.67	22.22
2,000 cc displacement and over:		
Wheelbase not over 3.048 meters	150.00	62.50
Wheelbase over 3.048 meters	250.00	125.00

(2) Commodity tax on dutiable value	Rate (percent)
Cars with a wheelbase exceeding 305 cms and an engine capacity exceeding 3,000 cc	20
Cars with a wheelbase exceeding 270 cms and not exceeding 305 cms and an engine capacity of 2,000 cc up to 3,000 cc	15
4-wheel drive cars, with wheelbase less than 270 cms, and other cars less than 170 cms and engine capacity less than 2,000 cc	15

(3) *Purchase Tax.*—A purchase tax of 3% of the actual purchase price is levied on all vehicles, new and used.

(4) *Road Taxes.*—The annual road tax is also related to vehicle size and progresses from $50 for very small cars (not exceeding 61 cu. in. engine displacement), to $58.33 (61 to 91.6 cu. in.) to $66.67 (91.6 to 122.1 cu. in. and not exceeding the following overall dimensions: length, 185 in.; width, 66.9 in.; 78.7 in.) to $150 (exceeding 122.1 cu. in. displacement, but not exceeding 120 in. wheelbase) to a maximum of $250 for very large cars (exceeding 122.1 cu. in. displacement and wheelbase over 120 in.).

A supplemental annual road tax, effective December 1, 1971, is levied on passenger cars to raise additional revenue for highway construction and to assist in the financing of improved urban transportation facilities. It ranges from $30 for minicars (under 360 cc engine displacement) to $140 for large cars.

(5) *Licenses.*—Import licenses are still required, but import deposits are temporarily suspended.

UNITED KINGDOM

The United Kingdom tariff will be 11% *ad valorem* when it is fully harmonized with the tariff of the European Economic Community on July 1, 1977. It also has value added tax of 20% that is levied on all vehicles.

WEST GERMANY

West Germany has an 11.0% *ad valorem* tariff on automobiles. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Value Added Tax (TVA)*—11% of dutiable value; and

(2) *Annual Road Use Tax.*—About $4.00 per 100 cc cylinder displacement or fraction thereof.

ITALY

Italy has an 11.0% *ad valorem* tariff on automobiles. Import duties are levied on the cif *ad valorem* basis, plus 3% uplift. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Administrative and Statistical Tax.*—1% *ad valorem.*

(2) *Stamp Tax.*—0.2% of duties and additional taxes, including road tax.

(3) *Annual Road Tax.*—Levied on cars on basis of fiscal horsepower (FHP)—varies from 5,110 to 241,870 lire per year (if over 45 FHP, tax is 8,660 lire per FHP).

(4) *Value Added Tax (TVA)*—18% of dutiable value.

LUXEMBOURG

Luxembourg has an 11.0% *ad valorem* tariff on automobiles. It also has a turnover tax of 10% of dutiable value that applies to domestic as well as foreign vehicles.

NETHERLANDS

Netherlands has an 11.0% *ad valorem* tariff on automobiles. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Value added tax.*—14% of dutiable value.

(2) *Consumption Tax.*—15.5% of dutiable value plus markup (on retail price excluding the value added tax) for cars only.

(3) *Annual Car Tax.*—About 13 guilders per 100 Kg.

BELGIUM

Belgium has an 11.0% *ad valorem* tariff on automobiles. It also has a value added tax of 25% that is applied to domestic as well as foreign automobiles.

FRANCE

France has an 11.0% *ad valorem* tariff on automobiles. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Value Added Tax.*—33⅓% on dutiable value;

(2) *Customs Stamp Duty.*—2% of import duty; and

(3) *Annual Vignette Tax.*—Levied on cars and based on age and/or fiscal horsepower. Fee varies from 30 to 1,000 francs.

DENMARK

Denmark will have an 11.0% *ad valorem* tariff on automobiles when the Danish tariff fully harmonizes with that of the European Economic Community on July 1, 1977. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Added Value Tax.*—15% of dutiable value;

(2) *Sales Tax.*—12.5% (9% for registered importers); and

(3) *Special Purchase Tax.*—on dutiable value cars:

5,001–10,000 Kr	3,700 Kr on first 5,000 Kr plus 113 percent on remaining value.
10,001–15,000 Kr	9,350 Kr on the first 10,000 Kr plus 124 percent on the remaining value.
over 15,000 Kr	15,500 Kr on first 15,000 Kr plus 156 percent on the remaining value.

IRELAND

Ireland will have an 11.0% *ad valorem* tariff on automobiles when the Irish tariff fully harmonizes with that of the European Economic Community on July 1, 1977. Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Wholesale Tax.*—20% dutiable value; and

(2) *Turnover Tax (TVA).*—5% of retail price.

BRAZIL

Brazil has the following tariff schedules for automobiles:

	Duty	Surtax (IPT)
Passenger cars, S/Ws:		
Weighing up to 800 Kg, valued at U.S. $4,000 cif	70 percent ad val	24 percent of dutiable value.
Weighing 800 Kg to 1,000 Kg, valued at U.S. $4,800	85 percent ad val	28 percent of dutiable value.
Weighing over 1,100 Kg, valued at U.S. $6,300	105 percent ad val	30 percent of dutiable value.

The import of passenger vehicles of over $3,500 or 1600 Kg is prohibited, and an import license is required.

Additional charges on imports include a port assessment of 2% of the dutiable value, and a marine assessment tax of 20% of the net ocean freight.

Additional revenue measures of general application that apply to domestic as well as foreign automobiles are:

(1) *Industrialized Products Tax.*—0–75% of dutiable value; and

(2) *Merchandise Circulation Tax.*—15–17% of dutiable value.

ARGENTINA

Argentina has the following tariff schedules for automobiles:

(1) passenger cars weighing under 1,000 Kg:	
under U.S. $1,600	140 percent ad val cif.
U.S. $1,601–U.S. $2,000	140 percent ad val cif.
weighing 1,001–1,500 Kg: under U.S. $1,601–$2,000	140 percent ad val cif.
(2) passenger cars, nes	140 percent ad val cif.

Importation is currently prohibited for passenger cars.

Additional revenue measures of general application that apply to domestic as well as foreign products are:

(1) *Statistical Tax.*—1.5% of the cif;

(2) *4% Tax* on ocean freight charges;

(3) *Steel Fund Tax* imposed upon metallic products at 20 pesos per Kg.; and

(4) *Prior Deposit.*—40% of cif value for 180 days.

CANADA

Canada has a tariff of 15% *ad valorem* on automobiles not covered by the U.S.-Canadian Automotive Products Trade Act of 1965. Vehicles and original equipment parts are imported free of duty by GATT members for Government-qualified manufacturers under the U.S.-Canadian Automotive Products Trade Act of 1965. In addition, a sales tax of 12% of dutiable value is levied on all vehicles.

Senator HARTKE. Let us be realists in trade matters. These are the facts we are up against. We have a real struggle ahead of us. The most open market in the world is the United States of America. It is the best market and everyone likes to operate in that market if they can.

This market cannot expand if it is flooded with imports. We have become a service economy and a chief exporter of raw materials like so many developing countries. There are 120,000 automobile workers out of work now. It will increase to 420,000 by June. I tell you that our social system is not prepared to meet that kind of a challenge. You may think it is, but I know it is not.

You talk about adjustment assistance——

Mr. MILLET. Mr. Chairman, that certainly is not due to the imported car industry.

Senator HARTKE. It may not be. I am not saying it is or is not.

Mr. MILLET. You certainly also cannot say that the imported car industry has raped the American economy.

Senator HARTKE. I am not saying it is or it is not. But when you come forward and tell me that an Opel sells better in Germany than Volkswagens, that is of small consolation to the American working man.

Mr. PRAY. But Senator——

Senator HARTKE. And your criticism of the big three auto producers here, I would think that they would be interested in replying to your testimony. I have asked the committee staff to direct that portion of your testimony which makes those rather severe and critical charges against General Motors, Chrysler, and Ford, to these firms for their comments. I also intend to ask the committee

staff to direct this testimony to Mr. Woodcock and ask for his comments. The committee should benefit from this type of dialog.

I am fearful that the adjustment assistance provision will exceed at least a billion dollars, if not two billion dollars, as it is presently written. I do have some experience in this area. I have just handled a railroad bill in which some people were rather severely critical of the cost. The cost of adjustment assistance is a quarter of a billion dollars in an industry which has very minor employment imbalances, as contrasted to the automobile industry and to the shoe industry and the textile industry which have been severely damaged by imports.

If you had to have no trade bill at all or the one as it is written by the House, which would you prefer?

Mr. PRAY. We would prefer the House bill, Senator.

Senator HARTKE. The President's trade bill may not be dead, but it is critically ill. The halo of the free trade myth is dimming slowly but surely.

Mr. PRAY. Senator, if I may make one comment, you suggest that we speak to the German Government to suggest that they reduce their tariff. Their tariff is 11 percent in European or imported cars. Frankly, it would not be our position, it would be the position of the people interested in selling automobiles into that market.

General Motors in this country is not interested in selling Vegas and Chevrolets in the German market. They already have a dominant position in that market, so they are not the least bit concerned about having that tariff lowered.

Senator HARTKE. Maybe we could provoke their interest.

Mr. PRAY. I would agree with that intensely.

Senator HARTKE. There are two ways to do it. One is the Burke-Hartke bill. It would really spark their interest. If they got the Burke-Hartke bill they would be trying to maximize their sales in the United States. They will get off of their heels then.

All right, gentlemen. Thank you, and thank you for the time. Senator Dole.

Senator DOLE. Thank you.

I think that bill is about in the same shape as the trade bill.

[General laughter.]

Senator HARTKE. When you have a million dollar attack, like the one thrown up against my legislation by the giant multinationals, it is lucky it is even out here being talked about anymore. But it has been the major reason why the administration's bill has not sailed through. It is rather surprising that Leonard Woodcock, who testified against my measure so strongly in the House of Representatives, comes over here and finds himself in the position of being attacked for taking basically the same position I have been advocating for quite some time. So maybe we are getting converts slowly but surely.

Senator Dole? Thanks again for the time.

Senator DOLE. Well, I think it is very interesting, but if this bill is dead there are not many pallbearers here on this side. You

do indicate it may be in some trouble, and I am not certain what the strategy may be. But we are having a lot of hearings on the bill and if it is in a critical stage, then I think we have a responsibility, of course, which the Senator from Indiana shares, to do something. I think I read most of the large statements while everybody was reading the small statements, and I of course concluded very early that you oppose the suggestion by Mr. Woodcock. That seemed to be the dominant theme of your testimony, though I did miss the first statement.

And I think you did point up statistically that it was not the imports that caused the problem. I think Senator Hartke indicates it is going to get even worse as far as unemployment is concerned with auto workers, and there are a great many of those in my State. But if they had a total freeze on foreign import cars, it probably would not help the auto workers.

Would it?

Mr. McElwaine. Senator Dole, our contention and our position is that freezing imports of automobiles would not help the United Auto Workers one iota, and this contention is statistically supported by the Harbridge House study which we offered as a part of our record.

I would also like to add that we feel that Mr. Woodcock's statements are alarmist in the extreme, first in his contention that imported cars are taking over up to 30 percent of the market, whereas in truth our percentage of the market for the first quarter of 1974 is within a single percentage point of where it has been for the last 4 years. I think he is also alarmist in predicting a worsening of the unemployment situation among his United Auto Workers.

The domestic automobile industry on the basis of the economic forecasts of its most reliable forecasters is looking at a sales year for 1974 of between 9.5 million and 10 million automobiles, which will make it one of the four or five biggest years in the history of the American automobile industry. I do not completely understand why that should be an economic catastrophe.

Senator Dole. Well, I think with the removal of the excise tax in 1971 the industry has had some pretty good years, and I can understand their concern now. I did not hear the testimony of Mr. Woodcock, but I have read of it and about it. He certainly has a right to be concerned for those who are unemployed. So I am not certain myself it would be any relief if his suggestion were adopted.

I think Senator Hartke did raise a question that is difficult to answer, and that is about all of the different nontariff barriers that Japan imposes. What does a Pinto cost, $5,600 in Japan and $2,500 here, and it just does not seem to be fair. I think we are talking about trade reform. There must be something in that bill that would provide some relief in the event it was necessary. And the same thing is true in some European countries, and I think that is an area that concerns a great many people, not just those in the industry, but a great many Americans.

Do you have any comments?

Mr. PRAY. Senator, my comment on the nontariff barriers in Japan—Japan imposes a 15 to 20 percent road tax, consumption tax, whatever it is called, on all cars, their own included. Their import duty is only 6.4 percent as compared to our 3 percent, not a significant factor. The major reason why the Pinto is so high priced in Japan is the dealer markup, the dealer charges for preparation, and other factors that are really not the Government's control but the actual importer. You might compare it with the American imported industry 25 years ago when imported cars in this country were exotic. The price that they sold for in Park Avenue showrooms bore no relationship to the price of the car in the country of origin. So really, it is not the Government imposing a tax against our products. Their tax is imposed on all of their cars, also.

Senator DOLE. How many people are employed in your industry in this country?

Mr. PRAY. 143,000.

Senator DOLE. Now, have you been affected at all by falloff in your business as far as employees are concerned?

Mr. PRAY. Well, in the last few months we have not actually had figures as far as layoffs. But during the period of the surcharge in 1971, when the surcharge was in for 4 months, where 8,000 plus workers in our industry were laid up.

Senator DOLE. There is another area, I think, in the statement, I think with reference to section 301, if I can find it.

Do you agree with the House provision with reference to that section on the threat of injury, or do you believe there should be some changes made?

Mr. MILLET. Mr. Chairman, I might ask——

Senator DOLE. Section 201, I think it is, on the escape clause, not 301.

Mr. MILLET. I think, Mr. Chairman, our counsel Mr. Rehm, might want to comment on that.

Mr. REHM. Yes; I think——

Senator HARTKE. Please identify yourself for the record.

Mr. REHM. I am sorry, Mr. Chairman. John B. Rehm, law firm of Busby Rivkin, Sherman Levy, and Rehm here in Washington, counsel to the Automobile Importers of America.

We do have some problems with the escape clause, as it is called, in the House-passed bill, and in our detailed statement I think we point to four areas where we would suggest improvements. I will not touch on all of them, but I think I would mention perhaps two in particular.

The first one, and I am sure this committee has heard a fair amount of discussion on this, is the question of the causal relationship between the increased imports and serious injury. As I am sure you know, Senator, the test in the House-passed bill is whether the increased imports would be a substantial cause of a serious injury, and the bill provides a definition, or attempts to provide a definition, of the term "substantial." I think we view that as deficient, as too lax, and permissive. We would urge that the notion of major cause be substantiated.

The other comment I would make goes to the concept of the threat of serious injury. I think it is our position that the notion of serious injury as such is adequately and properly defined in the bill as passed by the House. But when you look at the definition or attempted definition of the concept of threat of serious injury, there seems to be a curious inconsistency. Some of the important adjectives that go to describe features of serious injury are omitted when it comes to the definition of threat, and, therefore, we are concerned that as one reads the statute, at least on its face, one could conclude the threat of serious injury is a lesser standard than serious injury itself.

And I would argue that, if anything, it should be the other way around, that one should be able to move in the case of threat of serious injury only when something very serious and imminent is about to occur.

Senator DOLE. Well, I think in the bill itself it indicates a decline in sales, a higher and growing industry, downward trend of production, profits, wages, and employment.

Mr. REHM. Senator, if I may comment on that, because that is exactly the reason for our concern. Those terms that you have just read lack the adjectives, and I think the adjectives play an important role here, that you see immediately up above with respect to the notion of serious injury, where words are used like significant, that is, "significant number of firms," "significant unemployment or underemployment." Whereas when you come to threat of serious injury, you have the nouns "decline in sales," "higher and growing inventory," but without the important adjectives used.

Senator DOLE. Well, I think in that, the energy crisis would probably trigger that way, would it not?

I mean, had this been the law.

You certainly had a decline in sales, a higher and growing inventory, and a downward trend of production and profits and wages, because of the energy crisis. And it may not have had any impact otherwise.

Mr. REHM. Yes; but of course the energy crisis was not directly related to imports.

Senator DOLE. Right.

Mr. REHM. And this is an attempt to establish a formula which tells you when you may legitimately take action against imports.

Senator DOLE. I understand that.

Well, my time is up.

Senator HARTKE. Gentlemen, I want to thank you for your testimony. We certainly thank you for this study made by Harbridge House. I take note of the fact that the study was sponsored by the American Imported Automobile Dealers Association and funded by Volkswagen of America, Mercedes Benz of North America, and the Automobile Importers of America. So we shall consider it in the context in which it is submitted, and the sponsorship of which it is submitted.*

*This study was made a part of the official files of the committee.

All right, gentlemen, thank you.

[The prepared statements of the American Imported Automobile Dealers Association, Automobile Importers of America, National Automobile Dealers Association, and material previously referred to follow. Hearing continues on p. 2095.]

PREPARED STATEMENT OF AMERICAN IMPORTED AUTOMOBILE DEALERS ASSOCIATION

SUMMARY

1. The Finance Committee should reject the proposal of the United Automobile Workers to impose quantitative restraints on the importation of automobiles into the United States. The imposition of quotas on foreign automobiles would be counter-productive in terms of employment, fuel consumption, and competitive benefits for the American economy. In addition, import quotas on automobiles would result in windfall profits for certain car dealers, and violate the international legal obligations of the United States with respect to the General Agreement on Tariffs and Trade (GATT) and the United States-Canadian Automotive Products Agreement of 1965.

2. The American Imported Automobile Dealers Association sympathizes with the problems of unemployment faced by U.S. automobile workers but believes that import quotas are inappropriate because foreign imports are not the cause of the distress of the American automobile industry, and limiting foreign imports cannot cure what ails the American automobile industry. The decline in sales of automobiles in the United States is *not* due to foreign automobile imports, which have themselves declined by 27 percent from their levels of one year ago, but to:

The "energy crisis", which has slowed consumer demand for large automobiles;

Internal cyclical factors within the U.S. automobile industry;

The general slowdown in the U.S. economy;

The pervasive shift in demand away from larger cars in the United States; and

An overemphasis by the U.S. automobile manufacturers on large car production, as opposed to the smaller models desired by many U.S. consumers.

3. The American Imported Automobile Dealers Association supports the Trade Reform Act of 1973 as it is presently written. We believe that it could be improved, however, by revisions in its provisions dealing with tariff authorities in trade negotiations, balance of payments authorities for the President, "safeguards" for relief from fairly-priced foreign imports, adjustment assistance, and counteravailing duties.

4. The high tariff on unitized foreign trucks of 25 percent should be reduced in order to ameliorate the "energy crisis" in the United States, and the next round of trade negotiations should attempt to further liberalize the trading conditions in the world automobile economy.

I. INTRODUCTION

The American Imported Automobile Dealers Association (AIADA), which represents the independent American businessmen who sell and service imported automobiles, appreciates the opportunity to testify before the Senate Finance Committee on trade policies for the United States. The U.S. imported automobile industry consists of more than 13,000 U.S. business enterprises, of which about 4,600 handle only imported models. It employs 175,000 U.S. workers, has an annual payroll of about $1.5 billion, and supports the U.S. economy through its $1.35 billion in investments in plant and equipment. We are the prototype case of an import-dependent industry, and we favor, in general, the free flow of products in international commerce.

The objectives of our testimony today are threefold. First, we believe that the proposal of Mr. Leonard Woodcock, President of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) to place quotas on imports of foreign automobiles should be discussed fully before the Committee. Secondly, we believe that the Trade Reform Act of 1973 should be reviewed carefully from the point of view of an industry that believes that

free trade is of overall benefit to the U.S. economy. And, finally, we propose to look beyond the Trade Reform Act of 1973 to the trade negotiations in the General Agreement on Tariffs and Trade (GATT), and analyze the issues that may arrise in those negotiations affecting the imported automobile industry.

In general, our testimony concludes that:

The imposition of quotas on foreign automobiles would be counter-productive in terms of employment, fuel consumption, and competitive benefits for the American economy;

The Trade Reform Act of 1973 is a sound piece of legislation, but could be improved by revisions in its provisions dealing with tariff authorities in trade negotiations, balance of payments authorities for the President, "safeguards" for relief from fairly-priced foreign imports, adjustment assistance, and countervailing duties; and

The high tariff on unitized foreign trucks of 25 percent should be reduced in order to ameliorate the "energy crisis" in the United States.

The rationale of our proposals is explained in more detail below. Adoption of our proposals, we believe, will result in better trade policies for the United States that will be more likely to bring about a more open economy.

II. THE QUESTION OF QUOTAS FOR FOREIGN AUTOMOBILES: AN ANALYSIS OF THE UNITED AUTOMOBILE WORKERS PROPOSAL

On March 22, 1974, Mr. Leonard Woodcock, President of the United Automobile, Aerospace and Agriculture Implement Workers of America (UAW) proposed before this Committee that quantitative restrictions limiting imports of foreign automobiles to their average percentage share of the U.S. market over the last three years be imposed until September 30, 1975. He argued that quotas are needed to check the "serious threat of a sudden upsurge in the share of foreign imports in the domestic automobile market" and higher unemployment in the automobile industry.

A. The Causes of Unemployment in the U.S. Automobile Industry

We sympathize with Mr. Woodcock and his concern about unemployment in the automobile industry, and we hope that our remarks will *not* be construed as self-serving comments designed to enhance the market share of foreign enterprises in the U.S. economy. We represent *United States citizens*, are a U.S. organization, and, indeed, our fortunes fluctuate with the general condition of the economy. So we are not pleased to see an industry that related directly or indirectly to the employment of one out of every seven Amricans in deep trouble Our argument is simply this—foreign imports are not the cause of the distress of the American automobile industry, and limiting foreign imports cannot cure what ails the American automobile industry. There are five major reasons for the unemployment existing today in the American automobile industry, and none of them are even remotely related to the importation of foreign automobiles. First, the "energy crisis", triggered by the recent Arab oil embargo, raised great fears in the minds of American consumers about the availability and price of gasoline in the United States. Frustrating waits in gasoline lines and predictions of $1-a-gallon gasoline have encouraged many Americans who would otherwise have purchased a big car to buy a small one instead. The result has been an inventory accumulation of large automobiles, and an increase in demand for smaller automobiles. The second reason for the slowdown in the automobile industry is a cyclical one associated with the recent growth of the industry. The industry had increased new-car sales in five out of the last six years, culminating in a record sales year in 1973. Accordingly, new car sales were bound to slow down in any case. A third exogenous factor is the condition of the U.S. economy. Even before the recent Arab oil embargo and the talk of an "energy crisis", consumer demand for automobiles was slowing down due to an end to the recent income boom in the United States and heavy consumer debts. According to a study of the automobile market by Data Resources, Inc., of Boston, Massachusetts, these factors would have severely retarded the market in any case. The fourth factor is difficult to quantify but nonetheless important. It is that the long romance of the American consumer with the large automobiles Detroit has traditionally produced has apparently ended in the last few years. We have now reached the point where the small car owner at a stop light can look over at the big car owner with sympathy.

This pervasive shift in demand for smaller, fuel-economizing models has been a significant aspect of the U.S. automobile market in the last several years.

The fifth reason for the automobile industry's distress has been its inability to convert its plants to small car production rapidly enough to meet the consumer demand for smaller automobiles. The anterior question here is why Detroit emphasized the production of large cars and deemphasized the production of small cars in the first place. The answer is found in the revealing statistic that General Motors can produce a Cadillac for only $300 more than it costs to build a full-size Chevrolet, and yet it can sell a Cadillac for $3,000 more than it can sell a Chevrolet. For two decades, then, the prevailing philosophy of Detroit has been that big cars mean big profits. Viewed in this light, the steady growth in the U.S. market share of foreign imports was a development that could have been totally prevented by U.S. automobile manufacturers had they been willing to meet their foreign competition with a smaller automobile with fewer extras at lower prices. Instead, General Motors, Chrysler, and Ford, to a lesser extent, maximized their profits by playing the role of yielding oligopolists, ceding market shares while maintaining a higher price structure for their larger automobiles. Accordingly, it would seem that the United Automobile Workers would do better to focus on the managers of their enterprises when allocating blame for their present predicament. But, as noted above, it is important to realize that their managers have, for the last decade, pursued a rational profit-maximizing strategy, and were not poor managers, unaware of market trends, as some have suggested. The managers of Detroit were riding a short-run railroad, and have made their workers pay the price. It is incongruous for the workers of the automobile industry to demand that foreign imports should be excluded and windfall profits accrue to their managers, the ones who have placed them in their present situation.

Most importantly, Mr. Woodcock's contention that there is a threat of foreign automobiles taking over a disproportionately large share of the U.S. market in the near future is alarmist, and has already been disproved by events. In March, 1974, when sales of domestic cars declined by 30 percent from the previous year, imported car sales declined by 27 percent, and imports took 16.1 percent of the market in March, 1974, an increase of less than one percentage point over their average for 1973. Import dealers sold 125,000 automobiles in March, 1974, compared with 177,500 a year earlier. The decreasing sales of imported automobiles in March fits the pattern of a steady decline in sales since the beginning of 1974. In January, 1974, sales of imported automobiles were down 9 percent, and in February, 1974, 20 percent. Moreover, the leading import manufacturer, Volkswagen, reported a year-to-year sales decline of 31 percent in March, 1974, only somewhat less than the decline suffered by General Motors (38%) in the same month and greater than the percentage decline suffered by either Ford (24%) or Chrysler (20%). This would hardly indicate that imports are taking over the market, or that they are heading towards 30 percent of the domestic market in 1974, as Mr. Woodcock has alleged.

A survey of the American Imported Automobile Dealers Association of the principal foreign manufacturers reveals that they anticipate no increase in their total sales figures for 1974 over 1973. While this may represent a slight increase in the percentage share of the U.S. market due to the smaller size of the overall market in the United States, it would represent no more sales than are persently taking place in quantitative terms. The reasons for the inability of foreign automobile manufacturers to increase their exports to the United States include the impact of two dollar devaluations by the United States and revaluations by Japan and West Germany, a lack of raw materials and energy supplies, and increasing labor and fabrication costs abroad.

For the long term, the outlook for the U.S. automobile industry is bright. Data Resources, Inc. estimates that automobile sales in the United States will total 9.6 million in 1974, 10.8 million in 1975, and 11.4 million in 1976. By 1975, Data Resources, Inc. estimates, the domestic production of small cars will gain momentum, and cut the share of the market held by foreign automobiles.

B. The Impact of Automobile Quotas on the U.S. Economy

For the short term, AIADA realizes that the U.S. automobile industry may have a difficult transition period. We contend that imposing quotas on foreign cars, however, would not be the proper policy for the United States. This

Committee should be aware of the impact of quotas on imported automobiles on the entire U.S. economy. Quotas would be counter-productive in terms of employment, fuel consumption, competitive benefits, and diversity of choice for the American economy. In addition, import quotas on automobiles would result in windfall profits for certain car dealers, and violate the international legal obligations of the United States with respect to the General Agreement on Tariffs and Trade (GATT), and the United States-Canadian Automotive Products Agreement of 1965.

1. *Employment.*—AIADA agrees with the UAW that the problem of employment for American workers is a matter of justifiable concern for the Finance Committee. The imposition of quantitative restraints on automobile imports, however, would result in more, not less, unemployment in the American economy. The basis of Mr. Leonard Woodcock's demand for temporary quotas on imported cars is that, with fewer imports of smaller cars available to the American consumer, he would then purchase the larger, gas-burning American cars available, factories would cease the transfer of production from large to smaller cars, and the UAW members who have been laid off during this transfer would be reemployed producing large cars once again.

The entire premise is illogical. Domestic manufacturers have committed themselves to increasing the production of small cars as rapidly and to the greatest extent possible. This has been in response to expressed public demand. Limiting the amount of imported cars available will not alter the public position nor the manufacturers' decision.

Employment will increase in domestic automobile manufacture only after the manufacturers have completed their transition to small car production. There is no way the process can be speeded up by restricting imports.

Assuming, *arguendo* however, that U.S. consumers would be willing to purchase large automobiles, and that quotas could generate a greater domestic production of automobiles, what would be the result in terms of overall U.S. employment? AIADA, believing that the Committee would want a solid, statistical answer to this highly unlikely situation, rather than guesswork, asked Harbridge House, an independent research institution in Cambridge, Massachusetts, to undertake a study of the following question: What would be likely to happen to total employment in the United States if unit sales of the imported automobile industry were to decline by a substantial factor—for example, 500,000 vehicles—and if *all* of these sales were to be replaced by an equal number of vehicles manufactured by the U.S. automobile industry in the United States? Harbridge House concluded that there would be a net domestic employment *loss* of 565 jobs in the United States in the first year of such a shift, and that, in the second year of such a shift, the net effect on employment would be much more negative because service-related jobs in imported automobile dealerships would decline by approximately an additional 6,700 units. Harbridge House concluded, in other words, that the imported automobile industry is a net *job-creating industry*, and that quotas would have the result of reducing employment in the United States.

The methodology for the Harbridge House study centered on determining an "incremental passenger car job factor" for the U.S. automobile industry. In order to determine the number of incremental jobs that might be generated by the substitution of 500,000 domestically manufactured automobiles for an equal number of domestic ones, Harbridge House assessed the actual historical experience of the American automobile industry during the past twelve years. During five of those years—1962, 1963, 1965, 1968, and 1971—the number of passenger automobiles manufactured in U.S. factories increased by 500,000 or more units. Accordingly, those years were selected as the basis for the Harbridge House analysis. An analysis of the experiences of those five years revealed that .034 jobs in the U.S. motor vehicle industry were "created" per incremental passenger car manufactured. Based on the assumption that external inputs account for 40 percent of the total inputs of the motor vehicle industry, 28,400 manufacturing-related jobs would be "created"[1] if 500,000 additional units were produced in this country. The reason for this relatively small increase in employment is the high fixed cost structure of the U.S. auto-

[1] This figure is based on the following Harbridge House estimate: Incremental jobs within the automobile industry (manufacturing), 17,000; Incremental jobs in supply industries, 11,400; Total manufacturing-related jobs, 28,400.

mobile industry, and the relatively small variable costs associated with each incremental vehicle.

With respect to the dealerships associated with domestic automobiles, a similarly negligible increase in jobs would result. It would seem that increased vehicle production in this country should result in a correlative gain for domestic dealerships, but the historical experience of the past few years indicates that the gain, if any, would be relatively small. The reason for the small gains that would accrue to domestic dealers is that small labor-intensive dealerships are being eliminated from the domestic dealer industry, as sales of cars per dealer have increased continuously. In other words, the domestic dealer industry has discovered that it can maximize economies of scale by eliminating dealers; accordingly, we would expect a job increase of no more than 3,350 in the domestic dealerships in the United States as a result of an increased production of 500,000 automobiles in the United States.

Counterbalanced against the jobs "created" in the United States described above are the greater number of jobs that would be "lost" in the imported automobile industry in the United States. With respect to the retailing sector of the imported automobile industry, 26,880 jobs would be "lost" in the first year that 500,000 fewer automobiles were imported into the United States. The reason for this substantial decline in the retailing sector is the relatively high degree of labor intensiveness in the imported automobile industry, due primarily to the preponderance of small- to medium-sized dealerships. Additional jobs would be lost in port, importing and distributing, and manufacturing jobs in the United States if quotas were imposed.

Harbridge House summarized the net employment effect in the first year of a 500,000 vehicle total transfer from imports into United States domestic automobile production.

	Domestic Employment	
	Gain	Loss
Manufacturing	28,400	1,360
Importing-Distribution		2,075
Retailing	3,350	26,880
Ports		2,000
Total	31,750	32,315

As noted above, in the second year the impact on domestic employment would be even more negative, due to the loss of an additional 6,700 service-related jobs in imported automobile dealerships.

In summary, Harbridge House concluded that an increase in domestic production of 500,000 units, and a decrease in imports of 500,000 units, "would not appear likely to create a larger number of jobs than those that would be lost."

We wish to emphasize that we have given you a "worst-case" scenario. First, Detroit is converting as rapidly as it can, and decreasing imports cannot accelerate that conversion; and, secondly, domestic demand is for small cars at the moment, which Detroit is unable to produce in sufficient quantities.

Apart from estimating the employment effects of a transfer of production, the possibilities that the U.S. automobile industry would *not* increase production of smaller cars in sufficient quantities without the competitive spur of foreign imports should be considered. Quotas, then, instead of increasing U.S. employment as the UAW has asserted, would decrease U.S. employment, as U.S. consumers would probably continue to resist purchasing larger U.S. automobiles. Competition, and not quotas, will lead to greater employment for U.S. workers in the automobile industry.

2. *Automobile Imports and the Energy Crisis.*—The relationship of quantitative restraints on foreign automobiles to the energy crisis is very important and should not be overlooked. The fuel economy of most imports saves their owners over $200 a year on the average. Cars are driven 10,000 miles a year on the average in the United States. Economy imports are estimated to get between 20 and 30 miles per gallon, at 1970 conditions of fuel performance, while average domestic standards are presently obtaining only 10 to 15 miles per gallon at 1970 conditions of fuel performance. Based on a price of $.50 per

gallon for gasoline, the cost of gasoline for the yearly usage of imports would range from $166.50 to $250.00. The larger engined domestic standards, using roughly twice the amount of fuel (or 666 to 1,000 gallons) would use a range of from $333 to $500 for gasoline. In terms of fuel consumption alone, then, the smaller foreign imports save their purchasers, on the average, $208.25 per year in gasoline costs. Quantitative restraints on foreign cars would deny many putative purchasers the opportunity to obtain such fuel economies. This result would, of course, be an economic absurdity in the middle of an "energy crisis" and ever-increasing prices for gasoline.

Another way of expressing the importance of the smaller foreign automobiles is to note that if all of the small economy imported cars in operation in the United States in 1972 had been standard size domestic automobiles instead, U.S. imports of crude oil would have been approximately 90 million barrels and cost $270 million more (at 1972 price levels). In an era of scarce petroleum supplies it would be short-sighted indeed to raise the fuel bill of the United States still higher.

3. *Competitive Benefits.*—The foreign automobile has brought many competitive benefits to the economy of the United States. Lawrence J. White, in his thorough study, *The Automobile Industry since 1945,*[2] points out what many in the industry have known for years—the domestic manufacturers of automobiles launched small car programs only when imports were en route to surpassing 10 percent of the total of U.S. sales. Without the influence of imported small economy cars, it is unlikely that there would have ever been a domestic compact or subcompact market in the United States. Removal of the spur of foreign competition, as noted above, would again slow the impact of innovation in the domestic automobile industry, and cost American workers needed jobs.

Apart from offering the size of automobiles desired by many Americans, foreign automobile manufacturers have introduced many needed engineering and safety features into the U.S. automobile market. Features pioneered by foreign manufacturers and now offered by domestic manufacturers include: radial tires; disc brakes; three point seat belts; rack and pinion steering; and impact absorbing front and rear compartments.

The question that the Senate Finance Committee must now consider is whether or not it is sound public policy to remove the benefits of competition and innovation from the U.S. automobile sector by imposing quantitative restraints on foreign automobiles. We believe that imported cars have a vital role in the U.S. marketplace as a medium for new ideas, and that they should not be excluded from our economy.

4. *Diversity of Choice.*—The key rationale for foreign trade is that it offers a wider range of choices for U.S. citizens than would otherwise be the case. In no other segment of our import trade is this as true as it is in the automobile industry. The choices that have been offered by imports are numerous. They include the following:

Most imports are powered by four cylinder engines; only one four-cylinder domestic model was available from 1961 to 1970;

Imports offer rear-engine placement, transverse front-engine mounting, and mid-engine placement; after 1969 all domestic models were of front-engine design. (Corvair was rear-engine);

A substantial number of imports offer front-wheel drive; virtually all current domestic models have rear-wheel drive;

With the exception of the Chevrolet Corvette, imports represent all of the sports cars sold in the American market;

Imports offer a choice among gasoline, diesel, and rotary power plants;

Bucket seats, sun roofs, four-speed transmissions, and four-wheel independent suspension were all common items in imports long before they became available as standard or optional items for domestic automobiles;

Van-type station wagons were introduced by Volkswagen but were not duplicated and extensively promoted by domestic manufacturers until the late 1960's; and

Imports offer the only air-cooled engine.

Quantitative restraints on foreign automobiles would remove many of the choices listed above from the U.S. marketplace, and, as a result, place a serious burden on the consumers of the United States.

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[2] Lawrence J. White, *The Automobile Industry since 1945.* (Cambridge, Mass.; Harvard University Press, 1971).

5. *Windfall Profits.*—Economists have long criticized quotas as inefficient. But quotas are obnoxious on moral grounds as well—it is simply unfair to further bolster the income of one segment of the economy through windfall profits while driving another sector out of business through government regulation. The demand for smaller cars is so great today that domestic dealers handling Pintos, Vegas, and other small domestic makes, are realizing gross profit margins on these cars as great or greater than they are able to make on the far more expensive larger cars on their showroom floors. To further reduce the availability of small cars by eliminating many imports would aggravate the situation and make these small cars so scarce that windfall profits would flow to some dealers handling domestic small cars, resulting in inflationary higher prices for the consumer.

6. *The International Legal Obligations of the United States.—a. Quotas on Automobiles and the GATT.* The proposal of the United Automobile Workers to impose quotas on foreign automobiles would violate the international legal obligations of the United States under the GATT. Under the GATT quotas are generally prohibited:

"No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party . . ." (Article XI).

There are four exceptions in the GATT to the general admonition against the use of quotas, but none of them fit the case of automobile imports into the United States.[3] The only arguable exception to the general GATT prohibition against import quotas applicable to the present situation, the balance of payments exception, loses its force when it is realized that the United States last year—after a serious balance of payments deficit year in 1972—ran a $1.677 billion balance of trade *surplus!* It is too early in 1974 to know whether or not the increased prices of oil imports will cancel out the expected U.S. trade surplus this year, but the United States Government has gone on record before this Committee as expecting a rough sort of equilibrium in our trade position this year, because of the benefits of two devaluations and several foreign revaluations within the last two years. The United Automobile Workers have not tried to justify quotas on balance of payments grounds, which is to their credit—they are overtly attacking the fine fabric of international trade law with no pretense of rationalizing their position with any of the exceptions in the GATT. We should recognize the UAW call for quotas, then, for what it is—blatant protectionism that would totally violate the provisions of the GATT.

The second aspect of the UAW demand for quotas that would violate the GATT is that their formula would exempt imports from Canada, and violate the Most-Favored-Nation principle of the GATT. Article XIII of the GATT applies the Most-Favored-Nation principle of Article I of the GATT to the quantitative restraint provisions of the treaty:

"No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries is similarly prohibited or restricted."

We have already bent the GATT in a dangerous fashion by maintaining a discriminatory tariff on automobile imports from all nations except Canada, which is permitted to export automobiles and parts to this country on a duty-free basis.

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[3] The four permissible areas for import quotas in the GATT are as follows: (1) Food and other shortages: In order to qualify under Article XI, paragraph 2(a), the export restrictions must be temporary; applied to "prevent or relieve" critical shortages of "foodstuffs" or "other products essential to the exporting contracting party." (2) Restrictions for Grading and Classification: The second exception is for quantitative restraints "necessary to the application of standards or regulations for the classification, grading marketing of commodities in international trade." (3) Agricultural and fisheries products: Quantitative restraints are allowed under certain conditions on agricultural and fisheries products; and (4) Balance of Payments: Quotas are allowed to safeguard the balance of payments position of a signatory:

(a) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

(b) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

As a direct result of this controversial agreement, Canada is the largest source of imported cars entering this country. Almost one million automobiles per year enter the United States from Canada and are marketed in this country as "domestic" models. Indeed, one manufacturer even advertises his Canadian imports as "made in North America by UAW workers"!

It would be the supreme irony for the United States to enter trade negotiations within the GATT to bolster the treaty of the organization, after having undermined it by imposing quantitative restraints on automobile imports. Our trading neighbors could be excused if they feared that the past might be prologue, and failed to negotiate with us in a serious manner in the GATT. Indeed, the United States would be exposed to retaliation from its trading partners, who would demand "compensation" for the import-limiting policies of the United States.

b. *The United Automobile Workers' Proposal for Quotas and the United States-Canadian Automobile Products Agreement.*—As noted above, a key element of the UAW proposal is its exemption of automobile imports from Canada. The reason for this aspect of the UAW proposal is not difficult to find—the UAW has a large component of its membership in Canada, and wishes to protect its Canadian union members as well as its union members in the United States. The Senate Finance Committee should, however, consider the UAW proposal in light of an earlier international agreement, the United States-Canadian Automotive Products Agreement of 1965. Under this Agreement, the United States removed its duties on specified new and used Canadian motor vehicles and original equipment automotive parts. Canada, for its part, accorded duty-free treatment to specified new motor vehicles and original equipment parts imported by Canadian manufacturers.

At the time the United States-Canadian Automotive Products Agreement was negotiated, it was widely recognized that the Agreement, by providing different tariff treatment for the automobile products of different countries, violated the Most-Favored-Nation principle in Article I of the GATT. Accordingly, the United States sought, and received, a waiver from the Contracting Parties of the GATT under Article XXV (5). The Contracting Parties, after serious misgivings, finally granted the waiver on December 20, 1965. It was granted on the condition that there would be no significant diversion of trade in automobiles away from the historical patterns of the world automobile market. The waiver states:

"In the event the parties to consultation in accordance with paragraph 2 above agree there has been a significant diversion or is an imminent threat of diversion of trade, the waiver shall terminate in accordance with paragraph 5, with respect to the automotive product or products in question. If the parties to consulation fail to reach agreement, either may refer the question whether there has been a significant diversion or is an imminent threat of diversion of trade to the CONTRACTING PARTIES. *If the CONTRACTING PARTIES decide that the requesting country has a substantial interest and that there has been a significant diversion or is an imminent threat of diversion of trade, the waiver shall terminate in accordance with paragraph 5, with respect to the automotive product or products in question.*" (emphasis supplied)

By exempting Canada from quota coverage, the United Automobile Workers would "open up" the Agreement to a revocation of the GATT waiver by other contracting parties such as Japan and West Germany, who would justifiably feel that a "substantial diversion of trade" would result from the U.S. application of quotas in a discriminatory manner. Moreover, the waiver, by its own terms, would be ended whenever there is "a significant diversion or is an imminent threat of diversion of trade" in automobiles and parts.[4]

If the UAW proposal for quotas were adopted exempting Canada, the United States would probably, then, "lose" the GATT waiver in support of the United

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[4] The position of the United States at the time of the negotiation of the waiver with the GATT was that the waiver should be terminated whenever there was substantial diversion away from the historical patterns of the world automobile market:

(The representative of the United States said that) the United States was now willing to condition its waiver on the absence of trade diversion. This type of waiver offered the most effective kind of time-limit—one keyed to the trade facts and not to some arbitrary date. This willingness to assure that the purpose of Article I—the prevention of discrimination detrimental to the economic interests of third countries—was not undermined was the basis of the United States belief that the waiver would permit only a technical violation of the General Agreement.

(Report of the GATT Working Party, Basic Instruments and Selected Documents, Fourteenth Supplement 181–190, GATT/1966–1).

States-Canadian Automotive Products Agreement. We realize that many have criticized the Agreement, and that some would like to see it eliminated in any case. We also believe that the Agreement could be improved, and that its continuation should be given a full-dress review by the Congress. The adoption of the UAW proposal, however, would make the Agreement unlawful under the GATT, and could force a "back-door" revocation of the Agreement. This would deny the United States the opportunity to improve the Agreement by instituting reforms under it.

The ultimate irony, of course, would be if the UAW quota proposal exempting Canada were adopted, and the United States-Canadian Automotive Products Agreement were eliminated, thus putting many UAW workers in Canada out of work. The UAW proposal, in short, is not only a dagger aimed at the heart of the U.S. economy, but a boomerang that could decapitate the UAW itself.

C. Unemployment in the U.S. Automobile Industry: What Is to Be Done?

If quotas on foreign automobiles are not an appropriate remedy for workers in the U.S. automobile industry, what is to be done? AIADA believes that American automobile workers, as well as American imported automobile dealers, should not be penalized for shortsighted management and circumstances beyond their control. Accordingly, we recommend prompt enactment by the Congress of effective energy-related assistance for workers who have exhausted unemployment benefits or who are not normally covered by other assistance programs. This is especially important for workers in the American automobile industry, where it is frequently true that "the last hired is the first fired", and those fired do not qualify for supplemental unemployment benefits (SUB) due to lack of the length of employment required for such benefits.

AIADA endorses the objectives of S. 3267, introduced by Senator Henry Jackson (D.-Wash.), which would authorize such an energy-related assistance program. It would base eligibility for assistance on the individual's loss for specified energy-related reasons. Assistance would be available for persons who have exhausted other unemployment benefits or for those who are not normally covered by any unemployment assistance program. The legislation would expire on June 30, 1975, as would the authorization for the supplemental unemployment assistance program.

AIADA believes that the dislocations in the automobile industry are as serious as those that existed in the railroad industry when Amtrak was established with a substantial adjustment assistance program, or, indeed, as serious as those qualifying for adjustment assistance under the Trade Expansion Act of 1962. The proper solution for the automobile workers of the United States is a well-conceived program of supplemental assistance for their difficult transition period, not quotas on foreign automobiles, which would penalize them and the entire American economy.

III. THE TRADE REFORM ACT OF 1973

The American Imported Automobile Dealers Association supports the Trade Reform Act of 1973 (TRA),[5] as passed by the House of Representatives on December 11, 1973. We endorse the provisions of the trade bill that are trade-expanding, such as the delegation of authority to the President to reduce tariff and nontariff barriers through meaningful trade negotiations, the establishment of adjustment assistance as the preferred form of import relief, and the consideration now required for consumer interests in the decision-making process regarding import restrictions. We believe, however, that the TRA would be improved by revisions in its provisions dealing with tariff authorities in trade negotiations, balance of payments authorities for the President, "safeguards" for relief from fairly-priced foreign imports, adjustment assistance, and countervailing duties. First, we recommend that the President be permitted to increase tariffs to no more than 100 percent of present duty levels, or ten percent *ad valorem* on non-dutiable items. Second, we recommend that the President be directed by the Congress to reduce tariff and nontariff barriers in trade negotiations, to the maximum degree feasible, on products that possess a high fuel-saving potential. Third, we recommend that balance of payments authorities

[5] H.R. 10710.

be eliminated from the TRA. If the balance of payments authorities are not eliminated, we propose that such authorities be:

Based on the Most-Favored-Nation principle;

Assure equality of treatment for products presently being imported in whole or in part under discriminatory trade agreements;

Used to counter payments deficits due in major part to imbalances on the trade account;

Limited in terms of tariff increases to five percent (instead of the fifteen percent presently provided); and

Permit guaranteed access of supplies for the United States.

Fourth, we recommend that the safeguard system contain:

A fair hearings process for complainants and respondents in Tariff Commission proceedings under the adjudicatory provisions of the Administrative Procedure Act;

Revised eligibility criteria that would require that: (a) "national: industries, and not only parts thereof, be harmed by foreign imports prior to the granting of import relief; and (b) the foreign imports be the "primary" cause of the complaining industry's distress; and

A limitation on tariff duty relief to 100 percent of present duty levels if such an increase will not reduce imports to less than the quantity or value of such articles imported into the United States during the most recent representative period.

Fifth, we believe that adjustment assistance should be made available for employees in import-dependent industries harmed by decreases in imports due to Executive actions under the "safeguard" system. Finally, the President should be permitted for at least four years to not impose contervailing duties on any product if it is determined that the imposition of such duties would undermine trade negotiations in progress. The rationale of these revisions is explained in more detail below. Adoption of these revisions, we believe, will improve the Trade Reform Act of 1973 and facilitate trade negotiations pursuant to the legislation.

A. Title I—Negotiating and Other Authority Tariff-Raising Authorities

The President originally requested unlimited authority to raise customs duties pursuant to international trade agreements over a period of five years. The House bill "narrowed" this request somewhat, authorizing an increase in the rate of duty to the higher of the following:

(a) a fifty percent increase above the rate existing on July 1, 1934; or

(b) a rate which is twenty percent *ad valorem* above the current rate.[6] These limitations would not apply in the case of a conversion by the United States of a nontariff trade barrier into a substantially equivalent rate of duty.[7]

AIADA supports the authorities that would permit the President to conclude trade agreements with foreign countries, and remove tariff and nontariff barriers to trade in order to encourage an open world economy. We believe, however, that the TRA's tariff-raising authorities are a *de facto* delegation of authority to raise tariffs without limit. This is because the 1934 tariff levels are those of the infamous Smoot-Hawley tariff, which were the highest tariffs in the nation's history. Moreover, the twenty percent *ad valorem* alternative which is designed to deal with zero-tariff situations is unnecessarily high. AIADA, therefore, recommends that the President be permitted to increase tariffs to no more than 100 percent of present duty levels, or ten percent *ad valorem* on non-dutiable items.

Additional limitations are required on the President's authority to raise tariffs for three reasons. First, the fundamentals of the world supply and demand situation have altered sharply since the TRA was proposed. The problem then was access to foreign markets for U.S. exporters; the overriding trade problem for Americans now is access to foreign supplies. The amendments offered by Senator Mondale (D.-Minn.) that would direct the President to negotiate international rules on assurance of access to foreign supplies are a partial answer to the short-supply problems we presently face. It would seem inconsistent with our need for foreign supplies to delegate to the President the *de facto* authority to eliminate them.

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[6] Trade Reform Act of 1973, Section 101(c)(1).

[7] *Id.*, Section 101(c)(2).

Second, assuming *arguendo* that some tariff-raising authorities may be required, the TRA's formula would permit unacceptably high tariffs to be negotiated pursuant to trade agreements, and should be scaled down. It would permit the President, for example, to increase tariffs on steel sheets, from eight percent, the present duty rate, to forty-five percent. An example from the imported automobile industry demonstrates the import-limiting effect of the TRA's tariff-raising formula. In 1963, in retaliation against higher European Common Market duties on U.S. poultry, the United States raised its duty on imported trucks from eight percent to twenty-five percent.[8] This had the effect of eliminating the importation of unitized foreign trucks into the United States. If tariffs were raised on foreign automobiles from the present three percent level to the twenty-three percent level permitted by the TRA, imports of foreign cars into the United States would virtually cease.

The third argument against the TRA's "non-limitation" is its unpredictable usage for "harmonization" or other purposes without Congressional oversight. The House Report on the TRA is hardly reassuring. It states:

"Your committee understands that the authority to increase tariffs which has always been granted the President, subject to limitation, would not be used to raise tariffs across the board. Rather their authority is necessary for possible use in specific cases; for example, where tariff relationships among countries on particular products or in particular product sectors might warrant the harmonization of duty rates among countries. This process could involve some tariff increases as well as decreases."[9]

The principle of "harmonization" of duty rates is questionable. Why should the United States "harmonize" its tariff rates on, for example, imported automobiles with those of other nations, many of whom have pursued an irrational high-tariff policy of import substitution in order to establish a national automobile industry? To emulate the poor example of other countries would be counter-productive. Moreover, the "problem" of harmonization of trade barriers is already provided for in the TRA, in the grant of authority to the President to convert U.S. nontariff trade barriers into substantially equivalent rates of duty, thus "harmonizing" overall levels of protection.

Mandate to Reduce Tariffs and Nontariff Trade Barriers on Fuel-Conserving Products.—The energy crisis, which is part of the general short-supply problem, could be alleviated by tariff cuts on products that possess a high fuel-saving potential. Foreign trucks, for example, have a lower horsepower, and better fuel utilization (ten miles per gallon or better) than U.S. trucks. Since the average truck is on the road much longer than the average car, the gasoline costs of using high horsepower gas-guzzling trucks are prohibitive. Yet, as noted above, foreign trucks are "embargoed" by twenty-five percent tariff (raised from four percent in 1963). AIADA proposes that the President be directed by the Congress to reduce tariff and nontariff barriers in trade negotiations, to the maximum degree feasible, on products that possess a high fuel-saving potential. Such a mandate would be consistent with the stated objective of the Federal Government to reduce fuel consumption in the United States through measures such as lower speed limits and the closing of filling stations on Sundays.

Balance of Payments Authorities.—The balance of payments authority sought in the House version of the TRA is—despite Administration disclaimers—a striking departure from prior U.S. experience. We believe such balance of payments authorities are unnecessary, and may even have perverse effects. The recent currency realignments have demonstrated that the Executive already possesses adequate tools to counter any balance of payments disequilibria. The recent turnaround on the U.S. trade account would appear to prove this point.[10] Assuming *arguendo* that authority is to be granted to the President to correct U.S. trade problems, its relation to the law of international trade (notably General Agreement on Tariffs and Trade obligations), and international economic efficiency should be closely examined.

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[8] See Proclamation No. 3564, Dec. 4, 1963, 28 Fed. Reg. 13,247 (1963).

[9] Report of the Committee on Ways and Means on the Trade Reform Act of 1973, H.R. 93–571, 93d Cong., 1st sess., October 10, 1973, at p. 20.

[10] The United States ran a balance of trade *surplus* of $1.677 billion in 1973. This surplus was in sharp contrast to the $6.364 billion deficit of 1972, and is particularly remarkable in view of increased oil imports into the United States. The quantum improvement in the U.S. balance of trade was largely due to two devaluations of the dollar by the United States since 1971. The United States devalued the dollar against other currencies by 7.89 percent in December 1971, and by another 10 percent in February 1973.

In general, AIADA recommends that any import restraints under the balance of payments authority be based on the Most-Favored-Nation principle, used to counter payments deficits due in major part to imbalances on the trade account, assure equal treatment for products presently being imported under discriminatory trade agreements ,and contain improvements in remedies provided for balance-of-payments deficits.

The Balance of Payments Authority in the Trade Reform Act of 1973.—The Trade Reform Act of 1973 would authorize the proclamation of an import surcharge not to exceed fifteen percent *ad valorem* or the imposition of import quotas (if the problem can not be dealt with effectively by a surcharge) for a period not to exceed 150 days in order to deal with a "large and serious" balance-of-payments deficit, to prevent an "imminent and significant" depreciation of the dollar abroad, or to cooperate with other countries in correcting an international balance-of-payments disequilibrium.[11]

Several restrictions on this authority are imposed. Actions under the authority must be applied "consistently with the principle of nondiscriminatory treatment" unless the President determines that foreign exchange stability would be furthered by the application of the action against certain specified countries.[12] They must be of broad and uniform application unless the President determines that the needs of the U.S. economy require exempting certain articles.[13] Also, this authority must be employed in conformity with "internationally agreed" balance-of-payments procedures, when such procedures come into effect.[14] Finally, any quota imposed under this section must not reduce the level of imports below the level during the most recent "representative period." [15]

The Committee did not attempt to define specifically either "large and serious United States balance-of-payments deficit" or "large and persistent United States balance-of-payments surplus". It did state in its report, however, that it intended the term to include "substantial" deficits or surpluses, which in the President's judgment, would continue unless "corrective actions" were taken.[16]

Some Revisions for the Balance of Payments Authority in the Trade Reform Act of 1973.

The Most-Favored-National Principle.—The Most-Favored-Nation principle is the cornerstone of the law of international trade. It simply applies whatever tariff treatment is granted to nation A to all other nations. The evolution of the Most-Favored-Nation (MFN) principle was based on a political imperative—the contrary policy encouraged retaliation and foreign trade wars. The MFN principle is expressed in the General Agreement on Tariffs and Trade (GATT) in Article I, and Article XIII (1) expressly provides that balance of payments remedies must be non-discriminatory in nature.

It can be seen that the Trade Reform Act of 1973 deviates from the MFN principle in its balance of payments authorities by permitting the President to impose tariffs and/or quotas on a discriminatory basis. Thus, if there were a serious balance-of-payments deficit, the President could single out one or two countries for quota or tariff restraints. To merely state the authority this bill would give the Executive casts into bold relief the ruinous possibilities for foreign trade wars it would create. Would not Japan, for example, feel unfairly discriminated against if it were only one of ten equally great suppliers of the foreign product in question, and retaliate against U.S. wares entering its markets? The MFN principle insulates the trading community from discriminatory treatment, and tends to facilitate the free flow of goods and international relations. It should be retained as the sole basis for Executive action under any balance of payments authority granted to the Executive.

Standards for the Balance of Payments Authorities

Criteria for the Application of the Balance of Payments Authorities.—Apart from the equity and legality involved in discriminating among nations, the question of economic efficiency must be considered. The core of the problem is that the bill would empower the President to attempt to correct balance of payments disequilibria through the inordinately crude instrument of import

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[11] Trade Reform Act of 1973, Section 122(a).
[12] *Id.*, Section 122(c)(1), (2).
[13] *Id.*, Section 122(d).
[14] *Id.*, Section 122(c)(3).
[15] *Id.*, Section 122(e)(1).
[16] See "Report", *supra* note 4, at p. 28.

restraints. The balance of payments disequilibria—considered on a global or a national basis—may well, however, be due to imbalances on other accounts, such as services (non-military), government (military and foreign aid), and private long term capital. The imposition of an import surcharge may, then, be an inappropriate solution for a payments imbalance situation. It is, therefore, proposed that import restraints for balance of payments purposes be unavailable unless the net trade account is, in major part, the cause of the imbalance of the basic U.S. balance of payments. "In major part" should be interpreted to mean the deficit, if any, in the trade account must be at least fifty percent of the deficit in the U.S. basic balance. An example should help to clarify the point. In 1972 the U.S. deficit in the basic balance was $9.2 billion, and the U.S. deficit on the trade account was 6.8 billion. Since the trade deficit was more than 50 percent of the deficit of the U.S. basic balance, billion, and the U.S. deficit on the trade account was $6.8 billion. Since the an import surcharge would be permissible under our proposal. In 1971, on the other hand, the U.S. deficit in the basic balance was $9.3 billion; the deficit on the trade account was $2.7 billion, or less than fifty percent of the deficit in the basic balance. Accordingly, an import restraint for balance of payments reasons would not have been permissible in 1971. The same criteria would apply to import surcharges and quotas imposed on single countries, if the balance of payments authority is made on a non-MFN basis.

It is true that our proposal would limit the application of the import restraint mechanisms in the balance of payments authorities. But this would be a healthy development, as it is well known that import restraints are a relatively ineffective mechanism for dealing with any possible balance of payments problems. This is because they are a policy tool that impacts only on import of merchandise, and do not deal with exports of merchandise, services, or capital flows. The relative inefficiency of import restraints can be seen when it is realized that a thirty percent surcharge would be required to get the same effect as a ten percent devaluation.[17]

Apart from the relative inefficiency of an import surcharge in aiding the U.S. trade balance, the possibility that import restraints would have a perverse effect on the trade balance should also be considered. Perverse effects from import restraints would be likely to arise from at least three sources. First, import restraints would probably result in a somewhat greater amount of inflation in the U.S. economy. The prices of many domestic goods are constrained fairly closely by the landed cost of comparable foreign products.[18] If the prices of foreign goods are raised considerably there would inevitably be "slack" in which domestic prices would be run up before imports could again come in.[19] The higher U.S. prices could only make U.S. goods less competitive in the world marketplace, and thus diminish the strength of the balance of trade. Secondly, the application of an import surcharge would have the perverse effect of raising production costs (for U.S. manufacturers using foreign materials and parts) and thereby discourage exports, again weakening the U.S. balance of trade. Finally, the possibility that foreigners would retaliate and thereby seal off markets for U.S. exporters around the world should not be ruled out. Import restraints should, then, be used only when the balance-of-payments problems is trade-related, and, even then, in sparing amounts.

Treatment of Products under Discriminatory Trade Agreements.—Any import restraint applied under the balance of payments authorities should also apply in cases where there are discriminatory trade agreements in force for all or a part of the commodities in question. There should be equality of import treatment for products moving into the United States, if all or part of such products enter under discriminatory trading arrangements.

Improvements in Remedies Under the Balance of Payments Authorities.—In the case of a balance-of-payment surplus, or to prevent a significant appreciation of the dollar abroad, the President may reduce customs duties by five percent *ad valorem* or proclaim a temporary relaxation of suspension of quantitative import limitations for a period not to exceed 150 days.[20] AIADA believes

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[17] See statement of Lawrence Krause before the Joint Economic Committee hearings on the 1973 Economic Report, February 22, 1973, at p. 5.

[18] See Bell, "Some Domestic Price Implications of U.S. Protective Measures," in Williams Commission Report (1971).

[19] See Bell, "Analysis of Alternative Protective Measures," in Williams Commission Report (1971).

[20] Trade Reform Act of 1973, Section 122(d).

the authority for a fifteen percent increase in tariff duties to counter a balance-of-payments deficit, and a five percent decrease in tariff duties to counter a balance-of-payments surplus, is illogical and gives the TRA an impact-limiting bias. Accordingly, we recommend that the authority to increase duties under the balance-of-payments authority be limited to five percent as well.

Another flaw in the balance of payments remedies is the mandate to permit the importation of a quantity or value not less than the quantity or value of articles covered by balance-of-payment quotas during the most recent representative period,[21] while no such mandate is given when tariffs—the most frequently-used remedy—are imposed. AIADA proposes that the same restraint be placed on the imposition of tariffs as quotas in order to permit a constant flow of goods into the U.S. marketplace.

B. Title II—Relief from Injury Caused by Import Competition

Two forms of import relief from fairly-priced foreign competition are provided by the TRA-import limitations and adjustment assistance.

Import-limiting Actions.—Industries may be certified as being eligible for import-limiting actions on the basis of an affirmative determination by the Tariff Commission that increased imports are a substantial cause of serious injury, or threat thereof, to producers of like or directly competitive articles.[22] For this purpose, "substantial cause" means a cause which is important and not less than any other cause.[23] If the President decides to provide relief to an industry, the following *import* restraints are available, in descending order of preference: (1) an increase in, or the imposition of duties; (2) tariff rate quotas; (3) quantitative restrictions; and (4) orderly marketing agreements.[24] The term of import relief, including any combination of the foregoing, may not exceed five years, but may be extended for an additional two-year period.[25] Significantly, if tariff relief is granted, tariffs may be increased to a rate which is fifty percent *ad valorem* above the rate existing at the time of Presidential action.[26] Quantitative restrictions must be limited to the quantity or value of the article imported during the "most recent representative period".[27] The President would be required to notify persons adversely affected by the imposition of import relief and hold a public hearing on the proposed action.[28]

We are troubled by the "safeguard" system in the TRA. Unfortunately, it is structured in a way that may be unduly import-limiting. Accordingly, we submit for your consideration improvements in the areas of hearings rights, standards, and remedies for the "safeguard" system.

Safeguards for Complainants and Respondents

The Right to a Fair Hearing in Safeguard Cases.—The TRA gives only minimal hearings rights to complainants and respondents in "safeguard" proceedings in the Tariff Commission. The Commission is obligated only to give reasonable notice of a hearing, hold public hearings, permit evidence to be presented, and permit parties to be heard at hearings.[29] There is no provision for the right to submit rebuttal evidence, to conduct cross-examination as required for the full disclosure of the facts, or to have the hearings at the Commission, coupled with the documents submitted, constitute the full report for the determination of the agency. The net result of the Act's provisions is that millions of dollars' worth of goods can be excluded through a hearings process in which an importer is given five minutes to make an oral or written statement. We submit that this is too rough a form of justice for parties who are moving fairly priced goods into the United States. The proper solution would seem to be that complainants and respondents should be granted the adjudicatory safeguards of the Administrative Procedure Act (APA) in any "safeguard" proceedings. There are several reasons why the Tariff Commission's determination of injury should be considered adjudication. First, an important property right is involved—importers and consumers have a substantial financial interest in the level of customs duties or quotas that should not be decided

[21] *Id.*, Section 122(e).
[22] *Id.*, Section 201(b)(1).
[23] *Id.*, Section 201(b)(4).
[24] *Id.*, Section 203(a).
[25] *Id.*, Section 203(b), and (i)(3).
[26] *Id.*, Section 203(d)(1).
[27] *Id.*, Section 203(d)(2).
[28] *Id.*, Section 203(g).
[29] *Id.*, Section 203(j)(5).

upon without a full adjudicatory hearing.[30] Secondly, the facts involved in "safeguard" proceedings appear to be adjudicative rather than legislative in nature, since they concern parties and their activities, businesses and properties.[31] Finally, the Tariff Commission's actions in "safeguard" cases more nearly conforms to the APA's definition of adjudication than a rule.

As noted above, parties presently have only the following rights under the "safeguard" system: 1. Right to notice of a hearing; 2. public hearings; 3. permit evidence to be presented; 4. permit parties to be heard at hearings.

A move to adjudicative status at the Tariff Commission level would place all "safeguard" proceedings there under the following APA procedures: 1. right to notice of a hearing; 2. separation of functions—i.e., the fact-finder in the case is separate from the decision-maker; 3. no *ex parte* consultations with parties or other persons unless there is an opportunity for all parties to participate; 4. right to appear by counsel or qualified representative; 5. right to a presiding officer who will not be biased; 6. right to: a. present case by oral or documentary evidence; b. submit rebuttal evidence; c. conduct such cross-examination as necessary; and 7. right to have the record, together with all documents submitted, constitute the exclusive record for decision.

Finally, placing "safeguard" cases under the adjudicative provisions of the APA would remove the glaring inconsistency in hearings rights which presently exists under the Act. The House Ways and Means Committee report on the TRA states that hearings under Section 337, which is designed to protect United States industry against unfair foreign competition,[32] must be adjudicative in nature,[33] while no similar protection is given to complainants and respondents in "safeguard" cases. It is incongruous to permit greater hearings rights for parties involved in unfair foreign competition than for parties involved in fair foreign competition, whose only "wrong" is to be too successful in the U.S. marketplace.

Legislative Standards

The core of any "safeguard" system would be the legislative standards that would guide the Tariff Commission and the President in the imposition of corrective mechanisms. We believe that there should be a clearly defined set of legislative standards, with respect to injury, industry, and causation. These legislative criteria are considered below.

Injury

The "serious injury" test for actual harm to a domestic industry—presently in the Trade Expansion Act of 1962 for escape clause actions—is quite properly retained in the proposed TRA.[29] AIADA contends, however, that a domestic industry should have to show serious injury before it can be entitled to protection, and, therefore, recommends that import relief *not* be available when there is only a threat of harm from foreign imports.

Industry

The TRA requires only that there be "serious" injury to a "domestic industry."[34] By later stating that such industry could be considered as eligible for relief if "a significant number of firms" are unable "to operate at a reasonable level of profit"[35] the Act makes clear that such industries need not be national in scope. For example, if the automobile industry in the St. Louis area were in distress, the Act would apparently permit the national industry to obtain "safeguard" relief. We submit that such segmentation has no place in the "safeguard" system for two reasons. First, in practically every industry it would not be difficult to find unprofitable segments; in 1970, for example, the Internal Revenue Service reported that 38.2 percent of all manufacturing corporations reported no profit. Secondly, segmentation permits the penalties to be imposed on those importing goods into the country to be incommensurate with the injury, as quotas and tariffs are applied on a national basis.

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[30] See Reich, "The New Property," 73 *Yale L.J.* 733 (1964).

[31] K. Davis, Administrative Law Text 115, 116 (1959).

[32] Under Section 337 of the Tariff Act of 1930, the Tariff Commission is authorized to investigate allegations that unfair methods of competition or unfair acts are being committed in the importation of articles into the U.S., or in their domestic sale. If unfair acts or methods are found by the Tariff Commission, the President may order that the goods in question be excluded from the United States.

[33] Report, *supra* note 4, at p. 79. [29]TRA, Section 201(b)(1).

[34] *Id.*

[35] *Id.*, Section 201(b)(2)(A).

Causation

The TRA has a confusing causation test that tilts the balance in favor of restraints on imports. Under the Act the question is whether the foreign goods are being imported into the United States in such increased quantities as to be a "substantial cause" of serious injury, or threat thereof.[36] The Act later defines "substantial cause" as a cause which is both "important" and "not less than any other cause."[37] As in the original Administration proposal, the bill would eliminate the requirement in the present law of showing a causal connection between injury and prior trade agreement concessions.

The extent of the change that the TRA would effect in the present "escape clause" cannot be fully appreciated without a look back at the Trade Expansion Act of 1962. That Act provided that for causation it had to be determined that increased imports were due "in major part" to trade agreement concessions, and were the "major factor" in causing or threatening serious injury. A twofold change has been effected by the TRA in the escape clause causation criteria. First, the link to the prior tariff concession of the increased imports has been cut. Secondly, the increased imports formerly had to be the "major factor," which was often interpreted as the cause greater than all the others combined. As noted above, "substantial cause" in the TRA is a cause which is both "important" and "not less than any other cause." It can be seen that the changes tend to bias "safeguard" proceedings in the direction of more injury determinations.

Which of the changes are justified? Cutting the link to prior tariff concessions would appear to be justified, as it is inordinately difficult to separate out the reason for an increase in foreign imports. Also, it was never clear whether it was equitable to cumulate very old tariff concessions, or merely to look at the most recent set of tariff concessions. The degree to which the prior tariff concessions have been a stumbling block under the "escape clause" can be appreciated when it is realized that eighteen of the twenty-five escape clause decisions since the Trade Expansion Act of 1962 have been decided negatively on the basis of this principle. It should, then, be clear that cutting the link to prior tariff concessions should adequately "open up" the "safeguard" system in justified cases, and that additional changes in the causation criteria need not be made. Accordingly, the substitution of "substantial" for "major" cause would appear to be unjustified. There may be a situation, for example, in which there are five approximately even causes of an industry's distress—one of which is foreign imports. Such a cause might be considered as "important" by the Commission and would not be less than any other cause. Would it then be fair to let the President impose quotas or tariffs on the foreign product? Should we not insist that the foreign imports be at least a greater cause than all the other causes combined? In considering whether the latter test is more appropriate, it should be remembered that we are here dealing with fairly priced foreign imports whose only "wrong" is to be too successful in the U.S. marketplace. In this situation, if there is to be normative bias in the "safeguard" system at all, it should be on the side of permitting competitively-priced goods to enter the U.S. market. Such goods not only satisfy the needs of U.S. consumers, but provide a badly-needed stimulus to U.S. industry. Accordingly, the causation test should simply be whether the foreign imports are the cause in major part (i.e., greater than all other causes combined), of the serious injury to a domestic industry.

Remedies

As noted above, if the President decides to provide import relief, he must choose from a list of measures which are stated in order of Congressional preference: (1) increases in, or imposition of, duties; (2) tariff-rate quotas; (3) quantitative restrictions; and (4) orderly marketing agreements. Duties may be increased to a rate of duty which is up to fifty percent *ad valorem* above the rate (if any) existing at the time of the proclamation, and quantitative restrictions are to be limited to the quantity or value of the article imported during the "most recent representative period." For example, if automobile imports were deemed to be a "substantial" cause of the complaining domestic industry's "serious" injury, tariffs under the "safeguard" system could be increased from three percent, the present duty level, to fifty-three percent *ad valorem*. Moreover, there is no requirement that automobile imports are not to be diminished

[36] *Id.*, Section 201(b)(1).
[37] *Id.*, Section 201(b)(4).

to a level lower than was imported during the most recent representative period. Foreign car imports could, therefore, be reduced from a fifteen percent market share to ten percent under the "safeguard" system.

Two improvements are required in the tariff remedy of the "safeguard" system. First, the duty level permitted should be no more than 100 percent of the present duty on the product involved, or ten percent *ad valorem*, if the product is non-dutiable. Secondly, a requirement should be inserted for tariffs, as it is presently for quotas, that there should be permitted the importation of a quantity or value of the article involved which is not less than the quantity or value of such imports into the United States during the most recent representative period.

Duty Level Limitation

The argument advanced by the Nixon Administration is that extraordinarily high tariff levels should be permitted under the "safeguard" system, because tariffs are customarily a less import-limiting measure than quantitative restrictions. While it is generally conceded that, *ceteris paribus*, tariffs are preferable to quotas, it is also true that tariffs may be structured in such a manner as to make them more import-limiting than quotas. This appears to be the case in the TRA—as the average U.S. duty level is 8.7 percent, the average remedy permissible under the "safeguard" system is a duty of 58.7 percent. AIADA believes that the delegation of this vast amount of power to future Presidents whose policies cannot now be foreseen is irresponsible. Congress should instead limit duty increases to 100 percent of present duty levels, or ten percent *ad valorem*, if the product involved is non-dutiable.

Access to Supplies Guarantee

The TRA provides an access to supplies guarantee when quotas are imposed under the "safeguard" system. The TRA states:

"Any quantitative restriction proclaimed pursuant to subsection (b) and any orderly marketing agreement negotiated pursuant to such subsection shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article." [38]

AIADA believes that in an era when access to short supplies is an increasingly important problem, it is imperative to assure that a constant flow of imports be permitted to enter the U.S. market. Accordingly, we recommend that a correlative access to supplies guarantee be added to the TRA to apply when tariffs are imposed under the "safeguard" system.

Adjustment Assistance

AIADA supports the concept of adjustment assistance for employees harmed by increases in foreign imports. We recommend, however, that adjustment assistance also be made available for employees in import-dependent industries harmed by decreases in foreign imports due to Executive actions under the "safeguard" system. Adjustment assistance has generally been seen as a mechanism to recompense "victims" of Governmental trade liberalization by distributing part of the gains from trade to them. There is an equal claim in equity for the 1½ to 2 million workers in import-dependent industries who are the "victims" of Governmental import-limiting actions under the "safeguard" system. The other rationale for adjustment assistance is that it spreads the losses from Governmental actions. That would hold true for those harmed by *decreases* in foreign imports as well as *increases* in foreign imports. Adjustments due to trade dislocations for those in import-dependent industries should, then, be financed through our progressive tax system, as other expenditures considered necessary by the Federal Government are financed.

C. Title III—Relief From Unfair Trade Practices Countervailing Duties

AIADA supports, in general, the revisions in the countervailing duty law of the TRA. We are, however, troubled by the provision denying the Secretary of the Treasury discretion, one year after enactment of the TRA, to refrain from imposing countervailing duties to avert possible serious jeopardization of trade negotiations on all merchandise produced by facilities owned or controlled by

[38] Trade Reform Act of 1973, Section 203(d)(2).

the government of a developed country when the investment in or operation of such facilities is subsidized.[39] (On all other merchandise, the Secretary of the Treasury is given a four-year period of discretion following the date of the TRA's enactment.) We believe that one year is simply too short a period in which to complete an international countervailing duty code. After this year has passed, however, the Secretary of the Treasury would be mandated to impose countervailing duties on government-related operations that are arguably subsidized. Moreover, it can be seen that the application of the porvision may be quite broad—as government ownership or control is nowhere defined. Accordingly, AIADA recommends that the one-year discretionary period be deleted, thereby extending the four-year period to all merchandise.

D. Conclusions

In summary, AIADA supports those provisions of the TRA that are oriented towards expanding the ambit of trade among nations—namely, the authorities that would permit the President to conclude trade agreements with other countries, grant greater amounts of adjustment assistance, and expand U.S. trade with the developing countries. We believe that the Congress, however, should revise those portions of the TRA that may contract commerce among nations—namely, the provisions dealing with unlimited upwards tariff adjustments in trade negotiations, balance of payments authorities for the President, "safeguards" for relief from fairly priced foreign imports, and mandated use of countervailing duties. Above all, AIADA asks the Congress to consider how conditions have changed since the trade bill was first introduced. The United States now faces an energy crisis, stands in need of foreign supplies, and has turned around its balance of payments to a surplus situation. The TRA, accordingly, should be fashioned to maximize the amounts of imports that U.S. citizens will require in the years ahead. AIADA stands ready to assist the Congress in its quest to fashion such a trade bill for the United States.

IV. BEYOND THE TRADE REFORM ACT OF 1973: TRADE NEGOTIATIONS IN THE AUTOMOBILE SECTOR WITHIN THE GATT

A. Trade Negotiations on Automobiles

AIADA recognizes that there is a lack of true competitive equivalence in some segments of the world automobile economy. For example, the U.S. tariff on cars is 3 percent, while the tariff in the European Economic Community is 11 percent. In addition, there is a series of taxes that are levied on all automobiles, domestic and imported, in Japan, France, Great Britain, Sweden, and several other countries. Given the U.S. desire to assure competitive equivalence in the major industrialized markets, and given the desire expressed by many to negotiate within product sectors to the maximum degree feasible, what should be the posture of the U.S. negotiators in Geneva with respect to trade negotiations on automobiles?

AIADA believes that the objective of the United States in the automobile sector negotiations in Geneva should be to attempt to generalize the experience of the United States-Canadian Automotive Products Agreement of 1965 into a worldwide common market in automobiles in the industrialized countries. With respect to the United States, this would mean elimination of its 3 percent duty on automobiles. This would merely continue the policy already begun by the United States when it negotiated its accord in the automobile sector with Canada in 1965. At that time the U.S. delegate to the GATT stated that "the United States would later be willing to consider the further reducion or elimination of United States duties on automotive products and that neither a unilateral nor a multilateral approach could now be ruled out." (Basic Instruments and Selected Documents, Thirteenth Supplement 112–125, GATT/1965–2.) AIADA feels that it is now time for the United States to honor its pledge made to its trading partners in 1965 to further liberalize the automobile sector of the world economy.

AIADA cannot stress too strongly its belief that an attempt to assure competitive equivalence by raising the U.S. tariff on automobiles to match the barriers of other countries would be a serious policy mistake for the United States. A higher tariff on automobiles moving into the United States would

[39] Trade Reform Act of 1973, Section 331.

raise the prices of badly needed small foreign cars to U.S. consumers, be a relatively inefficient technique of obtaining competitive equivalence, and result in a greater amount of inflation in the U.S. economy.

The effect of raising the tariff on imported automobiles is demonstrated by the 10 percent import surcharge of 1971, which cost 8,000 employees of imported car dealerships their jobs. An import-limiting solution for the United States, then, would not only be the wrong policy tool to get the desired results, but would be inequitable as well, since it would discriminate against consumers of foreign goods and import-dependent industries.

B. Trade Negotiations on Trucks

As noted above, the United States, in 1963, in retaliation against higher European Common Market duties on U.S. poultry, raised its duty on imported trucks from eight percent to twenty-five percent. This had the effect of nearly eliminating all imports of unitized foreign trucks into the United States. AIADA believes that in the middle of an energy crisis it is dysfunctional to continue the *de facto* embargo of the United States on fuel-conserving unitized foreign trucks. AIADA recommends, accordingly, that the present "temporary" surcharge on commercial vehicles be repealed, permitting the importation of finished commercial vehicles under the 4 percent *ad valorem* duty currently charged on truck chassis entering the United States.

AIADA believes that the trade negotiations of the United States should relate to the domestic problems faced by our country. Most would agree that current national scarcity of fuels must rank high on the agenda of national problems and priorities. Yet, despite much attention that has been paid to various techniques to ease the energy crisis, there has been practically no discussion of the role of the commercial vehicle in this country as a major fuel consumer. The necessity of ensuring more efficient fuel usage by commercial vehicles is demonstrated by the following facts:

Commercial vehicles use nearly one-third of all the fuel consumed on the nation's highways;

Roughly 20 percent of all vehicles in use in the United States are commercial vehicles;

In 1972, there were 9,834,295 passenger cars sold in the United States and 2,410,530 commercial vehicles;

The average combination truck is driven five times as many miles in a year as the average passenger car; and

The truck population is increasing at a much faster rate, proportionately, than the passenger car population—*at present rates of growth, in another ten years, the truck population could reach 40 million units and use as much as 50 percent of all highway fuel.*

Easing the tariff on imported trucks could assist the United States in solving the energy crisis because such trucks are much more fuel-conserving than their U.S. counterparts. The reason for the superior fuel utilization of foreign trucks is that many foreign manufacturers produce trucks with four-cylinder engines, and some with a horsepower as low as 62 hp. Others are powered by economical, four-cylinder diesel engines. With respect to U.S. trucks, however, the smallest engine available, even among light pick-up trucks, is a 100 hp six cylinder engine. Options in these models range up to 250 hp and the majority of sales are in the higher horsepower ranges.

The efficiency of the low-horsepower, lightweight foreign truck engines is demonstrated by the fact that a Mercedes-Benz diesel-engined truck, of 25,000 pounds gross vehicle weight, is powered by an engine that delivers from nine to eleven miles per gallon of diesel fuel. The equivalent U.S.-manufactured truck of 25,000 pounds gross vehicle weight would deliver only three to five miles per gallon.

AIADA believes that it would be in the national interest of the United States to permit its citizens to import reasonably priced fuel-conserving foreign trucks. This should be a primary goal of the forthcoming round of trade negotiations. It should be noted, however, that the additional tariff imposed on trucks in 1963 was achieved via a suspension of trade concessions, and could be eliminated by a proclamation of the President at any time. AIADA urges the President to act as soon as possible to remove this unnecessary restraint on the flow of goods in international commerce.

V. CONCLUSIONS

In summary, AIADA urges the Senate Finance Committee to reject proposals to impose quantitative restraints on the imports of automobiles. We believe that the eveidence indicates that quotas on automobiles would be counterproductive in terms of employment, fuel economy, and competitive benefits for the U.S. economy.

AIADA supports the Trade Reform Act of 1973, and urges the Committee to promptly report the bill out for action by the full Senate. We believe, however, that the bill can be improved by revisions in its provisions dealing with tariff authorities in trade negotiations, balance of payments authorities for the President, "safeguards" for relief from fairly-priced foreign imports, adjustment assistance, and countervailing duties.

Finally, AIADA recommends that the President immediately remove the high tariff on unitized foreign trucks of 25 percent in order to ease the "energy crisis" in the United States, and attempt in the forthcoming round of trade negotiations to move towards a world-wide common market in automobiles.

PREPARED STATEMENT OF THE AUTOMOBILE IMPORTERS OF AMERICA

Summary

1. The UAW proposal calling for new import restrictions on imports of non-Canadian cars is:

a. Without justification, since such imports are expected to increase only about 15%—from about 1,770,000 cars in 1973 to about 2,040,000 cars in 1974.

b. In violation of Article XIX of the GATT, since it clearly fails to satisfy the injury criteria of that article, and since the exclusion of Canadian imports would violate the most-favored-nation principle embodied in that article.

c. Contrary to all the efforts being made to avoid a return to mercantilism and to encourage a cooperative approach among countries in dealing with trade and monetary issues.

2. The Trade Reform Act of 1973 as passed by the House of Representatives is seriously deficient in three respects:

a. The escape clause (section 201) is too permissive and should require the Tariff Commission to consider whether the actual increase in imports is the major cause of truly serious injury, or the threat of truly serious injury, to all the domestic plants concerned.

b. The retaliatory provision (section 301) lacks needed standards and should impose quantitative limits upon any new import restrictions and should require consistency with our international obligations.

c. The balance-of-payments provision (section 122) is dangerous and should require prior notice to the public and should not permit discriminatory action, which would violate our international obligations.

STATEMENT

This statement sets forth the position of the Automobile Importers of America (AIA) with respect to (1) the proposal made to this Committee by Mr. Leonard Woodcock, President of the United Automobile, Aerospace & Agricultural Implement Workers of America ("UAW"), and (2) three provision of the Trade Reform Act of 1973 as passed by the House of Representatives ("bill")—the escape clause, the retaliatory authority, and the balance-of-payments provision.

AIA is an organization of companies importing cars into the United States. The members of AIA are listed in the attachment to this statement. Setting aside the so-called captive imports made by American subsidiaries abroad, these members represent most of the automobiles imported into the United States.

AIA's primary purpose is to keep its members currently informed with respect to Federal and State laws and regulations dealing with automotive safety, emissions, and other matters affecting the imported car industry. On occasion, AIA also comes before regulatory or legislative bodies in order to ensure that the views of the imported car industry are heard on important issues.

UAW PROPOSAL

In analyzing the UAW proposal, it is important, first, to distinguish what it is *not* saying from what it *is* saying. As AIA understands it, the UAW is not even suggesting that the present unemployment and under-employment of American automobile workers are due to imports. The UAW acknowledges that they have been caused by the energy crisis and the consequent demand for smaller, more economical cars.

On the other hand, the UAW is saying that future unemployment will be caused by imports, for the following reasons. There will continue to be a strong demand for smaller cars. Until September of 1975, that is, the beginning of the 1976 model year, the American manufacturers will not be able to satisfy this demand while they are converting their plants to the manufacture of smaller cars. Accordingly, foreign manufacturers will export greatly increased quantities of cars to the United States and will take over as much as 30 percent of the market. Since their share will remain at that level in subsequent years, many automobile workers who are now employed will be rendered permanently unemployed because of these imports. On this theory, the UAW is calling for a temporary quota that will prevent a great increase in imports and thereby avoid further unemployment in the automobile industry.

It is clear that the UAW's proposal rests upon one fundamental contention—that we will see a dramatic increase in imports over the next eighteen months. Interestingly enough, neither Mr. Woodcock nor any other UAW official has provided any concrete data to support this contention. In his statement before this Committee, for example, he simply makes the prediction and leaves it at that.

The position taken by the Motor Vehicle Manufacturers Association (MVMA) raises serious doubts about the validity of the UAW's contention and the justification for its proposal. In the statement issued on February 14, 1974, MVMA unequivocally rejected the UAW proposal and said the following:

"MVMA is deeply concerned about layoffs in the automobile industry. The unemployment which both manufacturers and the union fear is not caused by imports, however, nor is there any indication that it is aggravated by imports. Regulating imports will not solve the unemployment problem."

The MVMA statement is particularly significant since the unemployment of automobile workers necessarily hurts the manufacturers as well as the union. Each time a plant is closed down, the company and workers both suffer. In other words, this problem is not one of mere academic interest to the manufacturers, and they can be expected to be just as interested as the UAW in identifying its true cause. The fact that the Big Three are multinational companies does not mean, as Mr. Woodcock has suggested, that they can treat this matter with nonchalance. Their economic stake is still primarily in their investment and sales in the U.S. market. The conclusion of MVMA that "Unemployment will *not* be relieved by the imposition of quotas" must therefore be given considerable weight.

In fact, AIA is satisfied that there is no basis for the UAW's fear. On the contrary, all available evidence demonstrates that the number of imports of cars, that is, passenger vehicles, made by foreign manufacturers, excluding those in Canada, will increase only modestly in 1974. AIA has polled all of its members, and their imports, together with those of Volkswagen and Mercedes-Benz, who are not members of AIA, are expected to total about 1,795,000 cars in 1974.

As for the foreign subsidiaries of the American companies, their imports into the United States from all foreign countries, excluding Canada, were about 224,000 in 1973 and, assuming a 10% increase, they would amount to about 245,000 in 1974. In short, in contrast to total non-Canadian imports of about 1,770,000 in 1973, the current best estimate is that the figure for 1974 will be about 2,040,000. This is about 270,000 more than in 1973—an increase of 15%. There is therefore no objective support whatsoever for the UAW's fears.

In his statement, Mr. Woodcock makes much of the fact that Article XIX of the GATT permits the imposition of new import restrictions in certain circumstances. Ironically, however, the UAW proposal would violate Article XIX in two fundamental respects. First, the very language of Article XIX requires a showing that a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers. The data provided above simply does not permit such a showing. Appre-

hensions or fears, however sincere, are no substitute for hard facts, and there are no hard facts pointing to an either present or imminently threatened injury caused by imports of cars.

Moreover, the UAW proposal would exclude all cars imported from Canada. From the time that the GATT entered into force in 1948, Article XIX has been consistently construed and applied in a manner consistent with the most-favored-nation principle. Indeed, by virtue of Article I of the GATT, which establishes that principle, Article XIX would have to contain an express waiver of that principle to be applied on a discriminatory basis. And there is no such waiver. Accordingly, the failure to apply any quota to Canadian cars would compound the violation of Article XIX.

Given the fact that the UAW proposal is totally without economic justification and clearly in violation of Article XIX of the GATT, the enactment of that proposal would be certain to have very unfortunate consequences for the foreign trade policy of the United States. For the many reasons well known to this Committee, the efforts to launch a new multilateral round of trade negotiations are in a precarious condition. The energy crisis has led countries to abandon a cooperative approach to economic problems and go their own way. Indeed, there is a very real risk today of a general return to mercantilism, which could affect both access to important markets and access to needed supplies. The UAW proposal, if enacted, could greatly encourage such a move, and the United States would have thereby hurt its own economic position without any offsetting advantages whatsoever.

In particular, the enactment of the UAW proposal could well lead to retaliation by the countries affected. Such retaliation could be either overt or covert. Overt retaliation would take the form of direct reprisals against U.S. exports. Covert retaliation, on the other hand, could consist of a number of governmental measures that would quietly but effectively make it harder for U.S. companies to export. The proliferation of such non-tariff barriers is again directly contrary to our objectives in the new trade negotiations.

Finally, aside from what could be its very unfortunate international consequences, the UAW proposal would have a number of deleterious domestic effects. These will be described by other witnesses on this panel.

These comments have been directed to the proposal that Mr. Woodcock has formally made in writing before various audiences, including this Committee. In fairness to him and the UAW, however, AIA would like to discuss briefly the points relevant to new import restrictions that Mr. Woodcock made orally to this Committee on March 22, 1974.

AIA is pleased to see that, consistent with the data that are supplied above, Mr. Woodcock now acknowledges that the "problem is not that great". He told this Committee:

"In fact, the imports, with a few exceptions in the minor numbers, have also fallen considerably in this market as against a year ago—the total for all of the imports in January was down 22.5 percent and in February it was down 25.8 percent. So they have increased their share of the smaller market to about 17 to 18 percent. The numbers are down and their penetration is up a bit."

"Obviously, that does not represent any great danger point . . .". (Uncorrected transcript p. 578)

We believe that Mr. Woodcock's statement will prove to characterize not only the first two months but all twelve months of 1974.

Mr. Woodcock nevertheless still holds to the view that imports are likely to take over as much as 25 to 30 percent of the market. Concerned, therefore, with what he calls "potential injury rather than actual injury", Mr. Woodcock urges that the President be given a standby authority to curtail non-Canadian imports at the point where they begin to cause "grave and serious injury". The major difficulty of this proposal lies in its assumption that the President either could or should act virtually overnight to prevent such injury. For this totally disregards the fundamental need for sound criteria to judge whether increased imports are in fact causing or threatening serious injury, for a responsible and professional agency to make the determination before the President can finally decide whether to act, and for interested persons to be given an opportunity to speak to the relevant issues before that agency.

Mr. Woodcock now suggests that any new import restrictions on imported cars take the form of either quotas or higher tariffs. There is a suggestion in his testimony that quotas would violate the GATT but not higher tariffs.

In fact, however, either form of import restriction may be imposed under Article XIX of the GATT. It is not the form that counts, but rather the justification for, and the application of, the import restrictions, and on these two grounds Mr. Woodcock's new suggestion is just as vulnerable as the previous one. In particular, Mr. Woodcock continues to take the position that Canadian cars should be excluded from the new import restrictions, and this would be a flagrant violation of the GATT.

In short, Mr. Woodcock's new proposal has all of the serious deficiencies of the earlier one, and both should be rejected by this Committee.

Three Provisions of Trade Bill

In addition to its strong opposition to the UAW proposal, AIA urges the amendment of three key provisions of the bill—the escape clause (section 201), the retaliatory authority (section 301), and the balance-of-payments provision (section 122). As now written in the bill, these provisions pose unnecessary and unjustifiable threats to importers.

The criteria for escape-clause action contained in the bill are far less demanding than those in the existing law—section 301 of the Trade Expansion Act of 1962. AIA has no objection to the omission of tariff concessions as the cause of increased imports. It believes that the proper focus of the escape clause should be upon two basic questions—have imports increased and, if so, are they causing or threatening serious injury to a domestic industry?

However, this makes it all the more important that five concepts be carefully and properly articulated, i.e., increased imports, causation, serious injury, threat of serious injury, and domestic industry. Otherwise, the escape clause will become a protectionist device, as opposed to a measure affording import relief to those industries that deserve it. How does the bill deal with these five critical concepts?

First, the definition of increased imports is deficient, since it permits an increase to be determined when it is either actual or relative to domestic production. If imports and domestic production are both declining, but domestic production is declining more rapidly, there is no justification for import relief. This concept was deliberately discarded by the Congress when it enacted the Trade Expansion Act of 1962. The fact of a decline in both imports and domestic production clearly indicates that economic forces other than imports are the principal cause of any injury to the domestic industry.

Second, the bill provides that increased imports must be a "substantial cause" of serious injury or the threat thereof, and defines "substantial cause" to mean a cause which is important and not less than any other cause. This is a dangerous definition, indeed. On the one hand, the objective element—"not less than any other cause"—is the most minimal and undemanding test that could possibly be devised. On the other hand, the subjective element—"important"—is so vague as to permit anyone to justify a conclusion that increased imports are injuring a domestic industry. In short, the critical element of causation is dangerously lax and permissive. AIA believes that the proper concept should be one of "major cause", that is, the cause greater than all other causes combined. If increased imports are not the major cause of serious injury, then some relief other than import restrictions should be used.

Third, in considering whether there is "serious injury", the bill requires the Tariff Commission to take into account such factors as the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry. AIA is pleased that the concept of "serious injury" has been retained, and the enumerated factors seem consistent with the concept of serious injury.

Fourth, in puzzling contrast to the treatment of the concept of "serious injury", the bill seems to establish less demanding criteria with respect to the "threat of serious injury". In this regard, the bill simply enumerates such factors as a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment in the domestic industry concerned. But the question remains—how great, rapid, or severe a decline in sales or increase in inventory? The lack of qualifying words suggests a seriously diluted notion of threat, whereas the criteria of the threat of injury should be just as demanding—if not more so—than those of injury.

Fifth, in its treatment of the concept of domestic industry, the bill revives another concept that was properly discarded by the Trade Expansion Act of 1962. That is, if a domestic industry consists of producers with more than one product line, the industry may be defined as the aggregate of just those lines making the product that competes with the imported article. This would permit escape-clause relief in cases where the product lines in question are hurt by imports but the plants as a whole—and their workers—are faring well because other product lines are flourishing. In other words, the definition of domestic industry would allow escape clause relief where it is clearly unnecessary for the producers and workers concerned, and indeed harmful to consumers.

AIA therefore urges that the new escape clause require the Tariff Commission to consider, in substance, whether the *actual* increase in imports is the *major cause* of *truly serious injury*, or the *threat of truly serious injury*, and not a lesser injury, to *all the plants* in the United States producing the product that competes with the imported product.

One of the most potent authorities in the bill is section 301, which would authorize the President to retaliate against foreign import restrictions and export subsidies. AIA has two major criticisms of this provision in the bill. First, it authorizes the President to impose—without any limit—duties or other import restrictions on the products of the offending country. This lack of limitation is without justification, particularly since other authorities like the escape clause are circumscribed. Both the Congress as the delegating authority and all those with a stake in international trade have a right to know the limits of the President's powers under this section. AIA recommends that, as in the case of the escape clause, any increase in duty be no more than 50% above the Smoot-Hawley rate, and any quota be no more restrictive than the average level in the most recent representative period.

Second, AIA strongly objects to the fact that any retaliation under this provision need not be consistent with our international obligations. This simply invites actions by the United States that will be found by our trading partners to violate our undertakings in the GATT and commercial treaties. The consequence might well be retaliation by the affected countries. A system of international trade cannot prosper if countries can flaunt the rules of the games at will. The exercise of this retaliatory authority should therefore be only in accordance with our international obligations.

Finally, AIA is concerned about the new balance-of-payments authority for two reasons. First, there is no provision for notice to importers, consumers, and others who would be affected by an increase in import restrictions under this provision. While there might be cases when such advance notice would be harmful to the national interest, the bill should at least establish a presumption that affected persons would be reasonably forewarned. Otherwise, grave injury could be inflicted upon many Americans without any offsetting advantage to the country as a whole.

Second, the provision permits a discriminatory import surcharge or quota against one or more selected countries having large or persistent balance-of-payments surpluses. This authority is presumably not subject to any requirement that our international obligations be observed. Indeed, the bill makes this clear by providing that the discriminatory authority shall be applied consistently with *new* rules that may be negotiated with other countries. Until that time—if it ever occurs—the President could single out one country under this authority and impose new import restrictions upon its products. This could lead not only to a dangerous confrontation with the country concerned but also to a further erosion in any rational system of international trade. If the United States cannot observe the rules of the game, who else will? AIA therefore urges that this discriminatory authority be deleted from the bill.

Attachment:

AUTOMOBILE IMPORTERS OF AMERICA MEMBERS, ASSOCIATE MEMBERS, AND SUBSCRIBERS

Alfa Romeo, Inc.
Bayerische Motoren Werke A.G.
Bridgestone Tire Company of America, Inc.
British Leyland Motors Inc.
Chambre Syndicale des Constructeurs D'Automobiles (CSCA).
Citroen Cars Corp.

Van Doorne's Automobielfabrieken N.V. (DAF).
FIAT Motor Co., Inc.
American Honda Motor Co., Inc. (Honda).
Japan Automobile Manufacturers Association, Inc. (JAMA).
Jensen Motors Ltd.
Lotus Cars Ltd.
Joseph Lucas North America, Inc.
Mazda Motors of America (N.W.) Inc.
Michelin Tire Corp.
Mitsubishi Motors Corp.
Nisonger Corp.
Nissan Motor Corp. in U.S.A.
Peugeot, Inc.
Pirelli Tire Corp.
Renault, Inc.
Rolls-Royce, Inc.
SAAB-SCANIA of America, Inc.
Satra Corp.
Semperit of America, Inc.
The Society of Motor Manufacturers and Traders Ltd. (SMMT).
Subaur of America, Inc.
Toyo Tire (U.S.A.) Corp.
Toyota Motor Sales, U.S.A., Inc.
Volvo of America, Inc.
The Yokohama Rubber Co., Ltd.

PREPARED STATEMENT OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION, PRESENTED BY C. RICHARD HUGHES, CHAIRMAN OF THE NADA IMPORT CAR COMMITTEE

Mr. Chairman and Members of the Committee, my name is C. Richard Hughes, a Toyota Dealer from Ventura, California, and Chairman of the National Automobile Dealers Association Import Car Committee. NADA represents some 20,000 francished new car and truck dealers of which 10,697 handle imported cars, either as a single line or in combination with another make. Thus approximately 53% of NADA's entire membership is directly affected by the Trade Legislation under discussion here today. Attached to the statement and marked Exhibit A is a statistical analysis of all import franchises in the U.S. as of January 1, 1974.

NADA POLICY REGARDING TRADE LEGISLATION IN GENERAL

Let me state at the outset Mr. Chairman that NADA supports a trade policy based upon a multilateral, nondiscriminatory, open world system of trade and payments. This has been the primary principle upon which trade negotiations have been based since our disastrous experience with a protectionist trade policy during the 1930's, and we feel that these basic policies encouraging free trade should be continued in the future. NADA further believes that America's balance of trade problems should concern each and every one of us. America cannot afford the "perpetual luxury of being a debtor nation;" and like the individual, must also share the burden of "balancing the budget." There are many well-intentioned citizens who think the way to help correct America's balance of payments problem is to buy nothing but American made products. They believe that to do this would be to strengthen the economy by keeping American dollars at home.

This outlook, while full of good intentions, falls far short of reality in today's interdependent world and in many ways would severely cripple certain segments of the U.S. economy. Needless to say, one such segment which would be hurt would be that portion of the automotive industry dealing with imported cars. In light of the significant advantages over the long run of a free trade policy, and the need for a sound balance of payments position, any trade legislation enacted should be designed to promote the development of an open, non-discriminatory, and fair world economic system to stimulate the economic growth of the United States.

UAW PROPOSAL

In hearings before this Committee on March 22, Leonard Woodcock, President of the UAW, suggested to this Committee that the Congress should institute temporary quantitative restrictions limiting imports of automobiles to the average percentage share of the market over the last three years. He went on to suggest that these "temporary" measures would only be needed until the introduction in September 1975 of the Model Year 1976 autos. Mr. Woodcock maintained in his statement that during the next year, when domestic production is shifted to meet the increased demand for small economical cars, the domestic manufacturers would need "protection" in the form of quotas to insure against a "sudden sharp upsurge in the share of foreign imports in the domestic automobile market."

Many people including Mr. Woodcock are under the false impression that the sale of import cars sharply increased due to the energy crisis. The facts, however, clearly show for the first quarter of 1974 that while domestic sales dropped 28%, sales of import cars also dropped 20.3%. The shortage of gasoline decreased sales of all new cars. When people have to wait in gas lines, or fear doing so, they are reluctant to buy any new cars.

The UAW maintains that the expected upsurge will directly result in significant unemployment in the domestic automobile industry. Aside from this highly suspect contention, however, the UAW has totally failed to examine the economic contributions, as well as the substantial economic role played, by the import automobile industry at the retail level in the U.S. NADA maintains that if the UAW proposal were seriously considered by this Committee and incorporated into H.R. 10710, the total effect upon the American economy would be far more detrimental and adverse than that which is currently being experienced in the domestic automobile industry due to the energy crisis.

In support of this position, NADA's Import Car Committee compiled a rather detailed study of the role played by import car dealers in the total American economy. I would like to take this opportunity to cite some of the economic facts of this study to illustrate this important economic role and how it would be adversely affected by the UAW proposal.

The import automobile industry can be classified without question as a nation-wide industry, whose dollar volume to a significant extent not only remains in America, but more importantly, right in the community in which the import car is sold. In 1973 over 1,770,000 import cars were sold in America, comprising roughly 15½% of the total new car sales in this country. This total unit sales figure amounted to over 7 billion dollars (this figure includes spare parts and labor charges.) Most municipalities or states levy a substantial sales tax—sometimes as much as 5%. Using an average of 4%, over $28 million in tax revenues were derived by those states and municipalities from the sales and servicing of import cars alone. In addition to the local sales tax levied on imports, the industry paid $280 million in other taxes in 1973.

Apart from substantial revenues derived from the import auto industry by means of taxation, the import dealer also contributes substantially to the U.S. economy in the areas of employment, advertising, and community relations. In 1973, the import car dealer on $7 billion of sales, paid an average of $160,000 in wages in each dealership. In 1973, the average advertising outlay of an import dealer exceeded $22,000.00, which was distributed among the various media industries including radio, television, newspapers and magazines. Nationwide this figure exceeded $170 million. The import car dealer in 1973 also purchased over $72 million dollars worth of domestic accessories which were installed in the import car after having been received by the dealer in the United States.

The import car dealer, not unlike the dealer handling domestically produced cars, also has a substantial investment in his business. On the average in 1973, this investment amounted to more than $200,000.00 per dealership.

In 1973 the import car dealer employed over 220,000 persons. This significant figure alone shows the economic worth of the import auto dealer to the United States, and the adverse impact which the UAW proposal would have on the continued employment of these American workers.

In conclusion, based upon these significant economic facts which relate directly to the American economy, NADA strongly urges that this Committee reject the UAW proposal on the grounds of the resulting economic harm and significant unemployment of American workers that will inevitably result from such an unwise course of action.

I should also like to mention at this point other nonmonetary contributions by import dealers which can be summed up in the following words—enhancement of competition, design and safety. The import car industry began to flourish in America in 1949. In 1973, over 1,770,000 imports were sold and the market expanded into a total of thirty-two different makes offering more than 121 different models. This wide range of styles, models and prices gave a new dimension to the choice available to the American consumer. With the rapid rise of the imported car, one-car families could afford to become two-car families. The addition of the second car gave new meaning to the suburban life style that boomed in America in the 1960's.

This introduction of a new element of competition from abroad spurred on the American automobile industry as well. Faced with new competition from smaller import cars, domestic makers reacted to meet this competition. Their entry into the compact and sub-compact market has boosted their sales and given the consumer additional choices. And what caused it? The competition offered by the imported car.

The import car industry was responsible for introducing into this country radial tires, disc brakes and seat and harness belts to name a few safety features.

In addition, the introduction of the gas economy import car was a major factor in preventing more serious consequences of the recent gasoline shortages. Also the presence of the import car as a competitor in the late 1960's forced the domestic manufacturers to change over to smaller economy cars earlier than usual, which now better enables the domestic manufacturers to meet the public demand for gas economy cars.

NADA strongly believes any trade legislation designed to protect American manufacturing by means of increasing tariffs and lowering quotas in an arbitrary fashion would seriously impair the freedom of choice of the consumer—a choice he can now make on the basis of his needs, his pocketbook, and his personality.

COMMENTS ON PROPOSED LEGISLATION

For the balance of our testimony we would like to comment specifically on the two legislative proposals being considered by the Congress at present: the Administration's Trade Reform Act of 1973 (H.R. 10710) and the Foreign Trade and Investment Tax Act of 1973 introduced by Congressman Burke and Senator Hartke.

A. Administration Bill (H.R. 10710)

NADA recognizes the necessity of arming the President with adequate authority to negotiate favorable trade agreements on behalf of the United States. In our testimony before the House Ways and Means Committee last Spring, NADA urged that provisions be added to Title I of the Administration's bill which would properly and reasonably restrict the unfettered discretion of the President to increase or decrease existing duties when the President found that such modification was necessary and desirable. We note favorably the limitations added to H.R. 10710, and urge this Committee to retain these limitations upon the President's discretion under Title I.

NADA further urges that proper safeguards to insure adequate notice of full fair public hearings be provided all parties affected by the President's use of this authority under Title I. These Congressional safeguards will insure that the final trade agreements are truly in the national interest.

NADA also recognizes the need to temporarily restrict imports when they are the *major* cause of injury to a domestic industry. We believe, however, that it is important to allow the President to impose such additional import restrictions only when the Tariff Commission finds that increased imports are the major cause of serious injury to the domestic industry involved. Any such import restrictions granted should be temporary in nature so that the domestic industry will be stimulated to become more efficient and competitive by the time the restriction is terminated.

The provisions discussed above would establish a balanced and realistic U.S. foreign trade policy for the 1970's.

B. Foreign Trade and Investment Tax Act of 1973

Title III of the Burke-Hartke bill proposes comprehensive restraints on imports by category and country to roll back imports to the average level of 1965–1969.

According to U.S. Department of Labor statistics, Title III, if enacted in its present form, would reduce the gross dollar amount of imports by 17.1 billion dollars or 37.5 per cent. This computation is figured on the 1971 dollar level of imports which represented 45.6 billion dollars whereas the 1965–1969 base period average amounts to 28.5 billion dollars.

The average number of import cars sold between 1965–1969 was approximately 8.9%. In 1973, 1,770,000 import cars, or 15.5% of the market, were sold in the United States. The implementation of Title III of the Burke-Hartke bill would be devastating because it would reduce the number of imports sold by 43%. This would reduce the import share of the market to 8.9%.

If Title III passed Congress and was enacted into law the overall results on the import car dealer would be a drastically reduced number of import cars resulting in a severe loss in employment in the import car industry, increased prices to the consumer due to a direct decrease in competition, and the loss of real income to many elements of the community.

NADA urges this Committee to reject such an extreme approach to curb the trade deficit presently suffered by the United States. We trust Mr. Chairman that you and your Committee will adopt legislative reform in the trade area—reform that will stabilize the U.S. balance of payments without destroying competitive markets.

This concludes my prepared statement. If the Committee so desires, NADA would be more than willing to work with your Committee staff by providing any appropriate additional information that may assist in implementing our suggestions. If you have any questions, I would be most happy to answer them at this time.

Thank you.

Senator HARTKE. Our next witness is Norman Philion, senior vice president, Government and public affairs, Air Transport Association of America, accompanied by Gabe Phillips, vice president, International Services.

I might take note of the fact that Mr. Tom Boggs is here, the son of the distinguished former Congressman. We are delighted to see you.

Gentlemen, please proceed.

STATEMENT OF NORMAN J. PHILION, SENIOR VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY GABE PHILLIPS, VICE PRESIDENT, INTERNATIONAL SERVICES, AND CHARLES BUTLER, SPECIAL ADVISOR ON GOVERNMENT AND PUBLIC AFFAIRS

Mr. PHILION. Thank you, Mr. Chairman.

My name is Norman Philion. I am with the Air Transport Association of America. I am accompanied this morning by Mr. Gabriel Phillips, our vice president of International Services, and by Mr. Charles Butler, our special adviser on Government and public affairs.

We appear on behalf of the scheduled airlines of the United States. Mr. Chairman, 19 of our member carriers conduct and are engaged in foreign commerce, and last year contributed about $1 billion to our export earnings through the sale of American air transport services abroad. We do have an interest in policy discussions of foreign trade and steps which we believe are necessary to assure fair and equal opportunity in the foreign commerce of the United States. We, therefore, endorse those objectives of H.R. 10710 which would help assure competitive equality for American businesses in the export of American goods and services.

Now, we compete, Mr. Chairman, with some 50 foreign air carriers operating to and from the United States in foreign air commerce. Most of these foreign flag airlines are government owned or controlled. They enter the United States marketplace having free, equal opportunity to complete with U.S. carriers.

The U.S.-flag airline industry, however, faces many discriminatory practices and unfair competitive practices in providing air transport services abroad. These discriminatory practices range, for example, from restrictions on the currency a citizen of a foreign country may take out of the country with him if he flies on an American carrier, for example India. They include special restrictions on the travel of Government-owned or major corporations in foreign countries, Italy, France, Spain, Germany, and others. They include restrictions on ground handling services in foreign countries that American carriers can use, Argentina, Belgium, Brazil, Chile, India, Switzerland, and others. They include discriminatory practices with respect to the payment of landing fees at foreign airports such as Italy. They include currency restrictions and conversion delays with respect to the practices of American-flag carriers abroad, India, Chile, Pakistan, and others. They include prohibitions on the use of local currencies for local sales in foreign countries in connection with the purchase of air transportation on American-flag carriers, Korea, Pakistan, Eastern Europe, and others. They include preferential treatment for foreign carriers with respect to airport facilities and handling procedures, Belgium, Italy, Israel, Greece, and others. They include exorbitant user charges imposed on American-flag carriers abroad for operating into particular airports, charges which are imposed to underwrite the cost of maintaining airports which the American-flag carriers do not use, Australia, Italy, Germany, United Kingdom, and others. And finally, they include such things as discriminatory income taxes, Indonesia, Guatemala, Portugal, Singapore, South Africa, Venezuela, and others.

Mr. Chairman, most of these discriminatory practices and constraints on American-flag carrier operations are summarized very effectively in a survey recently completed by the Civil Aeronautics Board. We understand the committee may have copies of these reports. In any event, we have provided the committee with a summary cataloging these various practices.*

Now, we have noted with interest that the bill before the committee recognizes the importance of export services in our balance of payments, and we have noted that section 163, for example, would require the President to report annually to the Congress on the extent of these practices imposed on both our export products and our export services.

Yet, that section of the bill which authorizes, empowers the President to take action to help remove these discriminatory practices does not extend to export services. We therefore recommend for your consideration a broadening of the power which appears in paragraph (B) of section 301(a) of title III to make clear that action taken to help relieve restrictive practices abroad be extended, be broadened to include export services.

That covers our statement, Mr. Chairman. We will be glad to try to answer any questions.

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*This document was made a part of the official files of the committee.

Senator HARTKE. Is the CAB, with all its authority, unable to deal with this problem effectively?

Is that a fair conclusion?

Mr. PHILION. Well, we do have a regime of bilateral air transport agreements, Mr. Chairman, and to the extent our present laws empower specific action they do a reasonably good job. But we think we need a policy statement by Congress in this connection, and with that clear legislative language we think not only will our negotiators be able to negotiate some of these practices away, but where they cannot be negotiated we think some retaliatory action is called for.

Senator HARTKE. Do we need to modify this law, or should the regulations concerning the CAB that need to be modified?

Should we give the authority or keep it in a separate category?

Mr. PHILION. Well, I think this would be the ideal place to do it, in trade legislation. But the short answer is, it could be done in any legislative action.

Senator HARTKE. I think you raise a very valid point, and it is just a question of how you are going to meet it.

Senator Dole?

Senator DOLE. I agree with Senator Hartke. It would take some additional legislation, as I understand. The authority is not in the trade bill now. It was not in the bill passed by the House, not in the one before us, in other words. So it would take some additional legislative language, is that correct?

Mr. PHILION. With all due respect, Senator Dole, it is recognized in the House bill. In fact, the House report makes clear that when we talk of foreign commerce we are talking about the export of both products and services.

Senator DOLE. I know it is recognized, but——

Mr. PHILION. The shortcoming is, that recognition was not extended to the action category of the bill. And I think it is important when we talk of trade and trade policy that we all focus on the very high degree of importance of export services, of which air transportation is a major part. And I think it would be useful if we could deal with this problem in trade legislation for that reason.

Senator DOLE. Thank you.

Senator HARTKE. The problem that I see in this legislation, and I hope that all members of the committee would recognize it, is whether you have the definition of services in the bill or you do not. If you give complete discretionary authority to the President, you have lost complete control of the whole trade issue. This is the basic problem with this legislation. In effect, you would be better off not to write any legislation. Just delegate the authority which Congress now has to the President. Just say that the President hereby has authority to negotiate any type of trade agreement which is in the best interest of the United States, and is authorized to do whatever is necessary to carry it out. That simplifies the problem.

Mr. PHILION. May I respond, Mr. Chairman?

Senator HARTKE. Paul Douglas in the early 1960's even pointed out how the whole American industrial services and production were slipping away from us. Now, we are faced with tremendous prob-

lems. These problems are so severe that two major carriers are proposing that they receive Federal subsidies.

I am not against subsidies per se. I want to keep them in the business so there is conversation. Pan Am and TWA want to merge to eliminate costs and take advantage of scales of economy. I am certainly not opposed to it on those grounds.

Senator HARTKE. Senator Dole?

Senator DOLE. I have no questions.

Senator HARTKE. Thank you, gentlemen, for being with us.

[The prepared statement of Mr. Philion follows:]

PREPARED STATEMENT OF NORMAN J. PHILON, SENIOR VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, AIR TRANSPORT ASSOCIATION OF AMERICA

My name is Norman J. Philion. I am Senior Vice President—Government and Public Affairs of the Air Transport Association of America which represents virtually all of the scheduled airlines of the United States. Our member airlines are engaged extensively in international commerce and, therefore, are directly affected by trade policies and practices relating to the sale of American goods and services abroad.

The bill now before this Committee, H.R. 10710, is designed to assist American business in gaining competitive equality in the international marketplace. The airline industry of the United States fully supports the achievement of that objective. We believe that American business enterprises, including U.S. flag airlines, should be able to enjoy in foreign markets competitive opportunities and privileges equal to those available to foreign companies in this country. Since our airlines do not now enjoy such reciprocal treatment, we suggest your consideration of a modification to H.R. 10710 in order to assure that the basic objective of the pending legislation is fully met with respect to the important services element of our foreign trade account. To place our interest in perspective, America's scheduled airlines earned $1 billion in the export of air transport services in 1973. They : Provided service to 136 points in 89 foreign countries; transported 19 million passengers on their international services in 1973; carried about 700,000 tons of cargo (excluding mail) on these services in 1973; realized $2.7 billion in total revenues from their international services in 1973.

These data are cited in order to indicate the substantial involvement of America's scheduled airlines in our nation's foreign commerce.

There are 59 foreign scheduled airlines authorized to provide scheduled service to 25 American cities. In 1973, they transported about 14 million passengers to and from this country and carried about 675,000 tons of cargo (excluding mail).

These foreign carriers doing business in the United States are given full competitive equality with U.S. airlines in the American marketplace. Unfortunately, this treatment does not apply to our airlines in many countries throughout the world. National laws, regulations and policies understandably may differ from country to country. America's scheduled airlines, however, frequently are faced with preferential treatment being given to the national carrier of the country concerned. For example, in one country, citizens are allowed to take out only $8.00 in hard currency if they use a foreign (i.e. American) airline, but are allowed $100 in hard currency if they use the national airline. In a number of other countries where a substantial part of industry is government owned, business travel for these corporations is required to be on the national carrier. This would be somewhat like requiring the business travel of the "Fortune 500" to be on U.S. flag services. In some countries, U.S. air carriers are required to use the ground handling services provided by the national air carrier, their competitor, and are not free to independently contract for these services. In one Western European country, the national air carrier is exempt from the payment of landing fees at the country's principal airport—not so for U.S. air carriers.

While there are many other examples too numerous to catalog here, the attention of the Committee is invited to a recent survey published by the Civil Aeronautics Board entitled, "Restrictive Practices Used By Foreign Countries

To Favor Their National Air Carriers." This survey is an in-depth analysis of 53 countries and the policies and practices that confront America's private enterprise airlines in their effort to compete on an equal basis with their foreign counterparts. Problems such as the government ownership of transportation entities, reservation of national corporate travel, currency conversion and remittance, discriminating taxation, discriminatory fees and user charges, and many other such practices are set forth in the survey. A copy of the Board's published report is submitted for the Committee's information.

The bill now before the Committee recognizes, to a certain extent, the necessity of including export *services* as well as export products within the scope of the legislation. The report of the Ways and Means Committee (Page 66) makes clear its intent that the word "commerce" should be construed to include services as well as goods. In addition, the legislation itself, in Section 163 (Page 48) requires the President to submit reports concerning ". . . the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment . . .".

The present language of Title III, however, which empowers the President to take action once he has found discrimination to exist, is less clear, and we would suggest a modification of the language of Section 301(a) to insure consistent interpretation of the intent of Congress. On Page 107, line 5 of the bill, paragraph (B) appears to be limited to "restrictions on products". To so limit the power of the President to take specific actions is inconsistent with the intent expressed elsewhere, particularly the requirement for reports by the President on actions taken to remove restrictions on services.

We respectfully suggest, therefore, that paragraph (B) be revised to read as follows:

"(B)" may impose duties, *fees*, import or other restrictions on the products *or services* of such foreign country or instrumentality for such time as he deems appropriate." (italic indicates added language)

This new authority with respect to services would add significantly to the ability of our government to solve discriminatory practices involving U.S. flag airlines. It is our hope, of course, that retaliation would not be required to solve those problems. We earnestly believe that the improved negotiating posture represented by this new authority would help eliminate many of these unfair and anti-competitive practices.

We believe that many of the restrictive practices now faced by our airlines in their efforts to compete in foreign markets could be overcome or neutralized through the full utilization of this legislation. It is expected that negotiations for the settlement of these problems would be through bilateral channels solely within an aviation context. GATT negotiations would not be affected by initiatives seeking removal of these discriminatory practices. In other words, implementation of this authority through the existing framework of bilateral air transport negotiations would avoid burdening the GATT and related trade negotiation process contemplated by this legislation.

In the event that the bilateral air transport negotiations fail in this connection, the U.S. government would be in a position to take appropriate unilateral action against those foreign airlines whose governments persist in restricting the fair and equal opportunity of U.S. flag air carriers. For example, a special U.S. government charge could be levied on a foreign carrier here in order to compensate for excessive or discriminatory charges levied on airline operators abroad. We would hope such measures would prove to be unnecessary since such retaliatory action would merely equalize an unfair situation. We believe this fact would, in most cases, be recognized by the country involved in the negotiation.

We appreciate this opportunity to express our views on this important legislation and stand prepared to answer any questions the Committee may have.

Senator HARTKE. The next witness is Mr. Nelson A. Stitt, Director, United States-Japan Trade Council, accompanied by Eugene J. Kaplan, Chief Economist, and Allan D. Schlosser, Legislative Director.

Good morning, sir.

STATEMENT OF NELSON A. STITT, DIRECTOR, UNITED STATES-JAPAN TRADE COUNCIL, ACCOMPANIED BY EUGENE J. KAPLAN, CHIEF ECONOMIST, AND ALLAN D. SCHLOSSER, LEGISLATIVE DIRECTOR

Mr. STITT. Chairman Hartke and Senator Dole, I am Nelson Stitt, Director of the United States–Japan Trade Council, and accompanying me are, on my left, Allan Schlosser, our legislative director, and on my right, Eugene Kaplan, our chief economist.

We welcome this opportunity to testify before this distinguished committee and I particularly take some pleasure in having the opportunity to have a dialog with you, Senator Hartke.

Our entire statement clearly is too voluminous to be given here, and I therefore request that it be reproduced in full in the record of these proceedings.

The United States–Japan Trade Council, a nonprofit association incorporated in the District of Columbia, has a present membership of approximately 1,000 firms and individuals, all based in this country and all engaged in doing business with Japan. Because a substantial portion of our financing comes from Japan, we are registered under the provisions of the Foreign Agents Registration Act, and a copy of our most recent activities report to the Department of Justice has been submitted to your chief economist, Mr. Best.

For nearly 20 years now, Mr. Chairman, our council has tried to be a source of authoritative information and analysis on bilateral economic developments, and we therefore welcome this opportunity to testify on such a far-reaching piece of trade legislation. However, before I outline our position on the proposed Trade Reform Act, I would like to make just a few brief observations on the current state of U.S.–Japan trade relations.

First, the U.S. trade deficit with Japan which in 1972 exceeded $4.1 billion was reduced to $1.3 billion last year. We believe that this $3 billion improvement in the U.S. trade account with Japan represents very substantial progress by any definition.

Second, Japan in 1973 firmly established itself as the American farmer's best overseas market. Purchases of food and feedstuffs alone amounted to more than $2.5 billion, and total agricultural exports to Japan reached a record $3 billion, far exceeding even the most optimistic forecast by the Department of Agriculture and other experts.

Senator DOLE. If I could interrupt, I might say that they have been our best customer for years and their trade has been in dollars, not soft currency.

Mr. STITT. That is right, sir; very good point.

Third, while farm products and raw materials figured prominently in the U.S. export performance, American businessmen registered important new gains in sales of consumer goods and manufactures to the steadily expanding Japanese market. Japan has now become a mass market somewhat similar to that of the United States. These two categories accounted for another $2 billion in exports to Japan.

Fourth, Japan continued to make significant progress in the area of trade liberalization. When I participated in the trade hearings

before this committee 3½ years ago, Japan maintained restrictions on some 120 commodities, some of great importance to the United States in terms of potential export sales. But as Ambassador Eberle noted in his testimony before you last month, Japan today has dismantled all but 31 of these restrictions.

Moreover, the Japanese have announced that they will soon fully liberalize the import of two industrial products of special interest to American businessmen. Integrated circuits are now scheduled to be liberalized later this year, and digital computers and parts will be liberalized in 1975. Ambassador Eberle also gave the Japanese credit for easing quotas on certain agricultural commodities, reducing tariffs and virtually eliminating its export incentives.

Fifth, Japan last year all but eliminated its restriction on foreign investments with a few exceptions. Nearly all Japanese industries are today open to 100 percent foreign ownership.

We recognize, Mr. Chairman, that the preoccupation with so-called disruptive imports during the late sixties and early seventies has shifted to concern about an entirely new set of international economic problems, including worldwide inflation, access to oil and other raw materials, and commodities in short supply. The United States' decision last summer to impose export controls on soybeans, as well as similar restraints on the export of logs and lumber and ferrous scrap, demonstrates how central the twin problems of shortages and export controls have become to the U.S.–Japan economic relationship.

In addition to these individual commodity problems, there is a growing possibility that the world's producing nations, encouraged by the Arab oil embargo, may resort to resource diplomacy, affecting a wide range of primary materials. In our judgment, these and other vexing problems underscore the need for this trade legislation and for a new round of international trade talks.

We agree with Senators Mondale and Ribicoff that the House-passed bill should be amended to make supply access a U.S. negotiating objective and to strengthen the GATT to deal with these kinds of issues. We believe that the problems of shortages and supply access must be solved in a multilateral framework, and that in the long run the United States, Japan, and indeed the rest of the world will stand to gain from such internationally agreed upon rules of the road.

The United States-Japan Trade Council believes that on balance the trade bill before you is a constructive and necessary piece of legislation. In general, it is a better bill than the one the administration submitted to the Congress over a year ago, particularly in its provisions for more generous and accessible adjustment assistance, and its carefully written limits on presidential authority.

With respect to the specific provisions of H.R. 10710, the Council supports the tariff and nontariff negotiating authorities in title I, as well as the Mondale-Ribicoff amendment I referred to earlier. We recommend, however, that the sectoral negotiating requirement in section 102 be eliminated on the grounds that such an equivalency approach is unrealistic and unworkable.

While we welcome the expanded adjustment assistance program in title II, we believe the escape clause section is deficient in two re-

spects. First, the test for "threat of serious injury" should be no easier to meet than that for "serious injury". Second, such increased duties as may be imposed under the escape clause should not exceed 150 percent of the Smoot-Hawley rates.

Senator DOLE. If I could interrupt on this threat of injury and serious injury, you said they ought to be the same?

Mr. STITT. They ought to be at least the same, sir, as the bill has come out of the Ways and Means Committee, the tests for threat of serious injury are easier to meet than the tests for serious injury itself. And since the threat is something in the future, a potential, it would seem to me if anything those tests should be more rigorous.

Senator DOLE. Thank you.

Mr. STITT. We propose that section 301 be amended to insure that this authority be applied in accordance with this country's international obligations. Regarding section 321, we feel the Antidumping Act should be amended to allow for differences in circumstances of sale found to exist under accepted accounting principles, when comparing the home market price with the export price. With respect to section 331, we support the administration's original proposal for Treasury Department discretion in countervailing duty cases, and would include a material injury test for dutiable as well as duty-free imports. We favor total repeal of section 337 of the Tariff Act of 1930.

While the Trade Council has no direct interest in title IV, we recognize that unless a satisfactory solution is found to this controversial section, the entire trade bill, and indeed the GATT round itself, will be in jeopardy. We therefore urge adoption of a mutually acceptable compromise, one that promotes trade normalization and fundamental human rights, and hopefully believe that such a compromise can be effected.

The Trade Council supports title V, which would establish a system of tariff preferences for the developing countries. That concludes my summary, Mr. Chairman. We appreciate this opportunity to present our views and we all thank you very much.

Senator HARTKE. Thank you, Mr. Stitt. As you well know, you are one of my good, personal friends, although we disagree on some matters of trade policy. But reasonable men may disagree agreeably.

How do you react to the present foreign policy which declares that this is the year of Europe? Is this a reflection on Japan? 1973 was the year of China and this year is the year of Europe. Do you think Japan will ever get a year for itself?

Mr. STITT. Sir, first let me say that the year of Europe has become a little bit of a disaster, as we are all aware. I think it ought to be a year of the world, without picking out any particular geographic segments.

Senator HARTKE. I wish our Treasury Department would listen to some of the Japanese financial experts. I frankly believe they have quite a progressive financial system.

They have never believed in the doctrine of austerity. They believe in the doctrine of expansion. Sometimes they are extremely aggressive in their expansive moves, for example, when they buy lumber, they buy lumber and when they buy scrap metal, they buy scrap metal, and when they market, they market.

I am not opposed to that type of enterprising operation. What I am saying is maybe we could take some lessons from the Japanese.

Mr. STITT. Well, I hope, Senator Hartke, we do not take lessons from them in the area of inflation, because last year they suffered a 24 percent rate of inflation increase and we did a little better than that.

Senator HARTKE. Yes, I know, but I think Japan has moved right along. I think I won't detain you any longer.

Mr. STITT. Well that is unusual, sir.

Senator HARTKE. I know it, Nelson, I am getting mellow in my old age. Thank you for coming.

Mr. STITT. Thank you, indeed, sir.

[The prepared statement of Mr. Stitt follows. Hearing continues on p. 2114.]

PREPARED STATEMENT OF NELSON A. STITT, DIRECTOR, UNITED STATES-JAPAN TRADE COUNCIL

Chairman Long and Distinguished Members of the Committee:

My name is Nelson A. Stitt, and I am Director of the United States-Japan Trade Council. The Council is a Washington based trade association with about 1000 members, largely American firms, which among them carry on most of the trade between the two countries. Through economic and legislative research and the holding of conferences and seminars throughout the country, the Council attempts to keep our members and the general public informed about significant issues in U.S.-Japan economic relations.

Our testimony today will be divided into two parts. Part I will be devoted to the Council's specific views on the provisions of the Trade Reform Act of 1973. Part II will give a broad overview of current U.S.-Japan trade and economic relations, with some projections into the future. Among the subjects covered in Part II in some depth are the 1973 trade between the United States and Japan, the state of the Japanese economy and the likely future shape of the economic relations between the two countries.

PART I. COMMENTS OF PROVISIONS OF THE TRADE REFORM ACT OF 1973

Title I. Authority for Negotiations

In the year since the Administration originally proposed the Trade Reform Act, events have focused greater attention on problems related to scarcity, particularly the twin questions of export restrictions and access to supplies. The oil embargo of last fall and winter brought this matter vividly to public view, but the U.S. itself has imposed export limitations on certain commodities, notably soybeans, logs and lumber and ferrous scrap, and there has been considerable pressure for such limitations on a broad range of other commodities. In this context, the proposals put forward by Senators Mondale and Ribicoff have provided a very useful and constructive basis for a reasoned analysis of the overall problem of supply access. We believe that the proposals that would make supply access one of the major U.S. goals in trade negotiations (Section 102) and that would seek to strengthen or clarify GATT rules on that subject (Section 121) are particularly important. We would only express the hope that amendments to Section 121, dealing with GATT revision, not be so inflexible as to hamper the President's ability to negotiate.

With respect to the remainder of Title I, *Section 102* urges and authorizes the President to negotiate international agreements providing, on a basis of mutuality, for the reduction or elimination of non-tariff barriers to trade. We wish to emphasize our belief that it is in the interests of the United States to eliminate its own non-tariff barriers, and that it would be preferable in the negotiations to avoid an emphasis on obtaining exact *quid pro quos* from other countries, particularly since non-tariff trade barriers do not lend themselves to quantitative reciprocal treatment. In particular, we urge deletion of Section 102(c), which emphasizes a product sector negotiating approach. That type of approach bears no relationship to either economic or negotiating reality.

Title II. Relief from Fair Import Competition

We endorse the expanded adjustment assistance program contained in Title II. As advocates of more liberal trade, we recognize that adjustment burdens are inevitable as trade patterns change. Since liberal trade benefits the economy as a whole and the average citizen as a consumer, it is only fair that those who suffer from import competition be assisted in their adjustment to a new situation through public expenditures.

There are a few points in the "escape clause" portion of Title II that we would like to bring to your attention. First, we note that the injury test in Section 202, as passed by the House, is drafted so that the standard for "threat of serious injury" in paragraph (b)(2)(B) is easier to meet than that for "serious injury" in paragraph (b)(2)(A). Since a "threat" is something that has not yet taken place, the standards of proof for establishing it should, if anything, be stricter. We urge that the Tariff Commission be directed to consider at least a common set of standards for the two, as under the Trade Expansion Act.

Section 201 of H.R. 10710 deletes the requirements in present law that increased imports result from concessions granted under trade agreements, and substitutes "a substantial cause of serious injury" for "the major factor". This test is further defined; " 'substantial cause' means a cause which is important and not less than any other cause." It is not altogether clear whether this change in wording of the relation between increased imports and injury creates a change in the intent expressed by the Congress under the Trade Expansion Act. If a cause is important and not less than any other, it would seemingly be the most important one, e.g., the "major factor", except only where two or more causes are equally important. We believe that in many cases in recent years, at least one-half of the Tariff Commissioners participating have in fact interpreted the present law to be as broad as Section 201. This is shown, for instance, in the recent case of *Brass Wind Musical Instruments and Parts Thereof*, TEA-I-25 (T.C. Publication 539) where one-half of the Commissioners voting found (under the so-called "but for" test) that increased imports were the major factor threatening serious injury, and the other Commissioners found in the negative.

We urge therefore that the report of this Committee should make clear that the new language does not necessarily call for affirmative findings, so far as the relation between increased imports and injury or threat of serious injury is concerned, in situations where the Tariff Commission was unable to make such findings under present law.

Section 203(d) limits any increased duties imposed under the escape clause to 50 percent ad valorem above the rate then existing. This is a substantial change from the Trade Expansion Act, which permitted increases for dutiable goods to 150 percent of the 1934 rates and for non-dutiable goods of 50 percent ad valorem. For most dutiable goods, there is clearly a great difference between an increase to 150 percent of the 1934 rates and an increase of 50 percentage points. We believe that the limitations in the Trade Expansion Act are more appropriate and should be substituted for those in H.R. 10710.

Title III. Relief from Unfair Trade Practices

Section 301 would grant the President power to respond to certain trade practices that he determines to be unreasonable or unjustifiable. We trust that this authority will be wielded with care and restraint, as its predecessor in the Trade Expansion Act (Section 252) has been.

Nevertheless, there are three amendments that appear to be in order. First, the authority in Section 301(a) should be limited to *unjustifiable* foreign actions, and not also include *unreasonable* actions. As defined in the legislative history (House Report No. 93-571, p. 65), "unjustifiable" refers to "restrictions which are illegal under international law or inconsistent with international commitments," while "unreasonable" includes "restrictions which are not necessarily illegal but which nullify or impair benefits accruing to the United States under trade agreements or otherwise discriminate against or unfairly restrict or burden U.S. commerce." We believe the above definition of "unjustifiable" is broad enough to cover all foreign trade measures that the U.S. would be legitimately entitled to retaliate against, including many that would also fall within the definition of "unreasonable". Inclusion of the latter term adds a degree of indefiniteness that is undesirable in a grant of authority as broad as that in Section 301.

Section 301(b) should provide that the actions of the President shall be *consistent with* the international obligations of the United States. We do not consider it likely that any actual decisions will turn on the difference between the word "consistent" and the word "consider", which is used in the House-passed bill. We are confident that the authority will be exercised in accordance with the international obligations of the United States. It is exactly for this reason that it seems unwise to alarm America's trading partners by granting authority that suggests the President would go further.

Third, we see no basis for including the provision in Section 301(a)(3) with respect to foreign subsidies on exports to the U.S. That subject is already fully dealt with under the Countervailing Duty Law, which contains a remedy specifically designed to deal with export subsidies. Section 301(c), by hedging this authority with several conditions, only throws the subject into further confusion. Actions to counter export subsidies should be left to the Countervailing Duty Law.

We note that the House added to Section 301 a requirement that the President provide an opportunity for the presentation of views, including public hearings if requested, before taking any action under the Section. This requirement is highly desirable because it helps safeguard the interests of American firms and groups that may be affected by the President's actions. We do not agree with the Administration's suggestion that the President be allowed to waive this safeguard if he finds that expenditious action is necessary. We cannot conceive of situations where the need to retaliate immediately is so urgent that it outweighs the desirability of public hearings in advance of such action. Indeed, prior public comment may actually reveal that "expeditious action" is against overall U.S. interests.

Section 321 would amend the Antidumping Act in several respects, most of them technical and, we believe, appropriate. However, we urge that the Antidumping Act also be amended to provide that in comparing the home market price of the exporting country with the export price to the United States *all* differences in circumstances of sale which are found to exist, by applying accepted accounting principles, should be taken into account whether or not such differences are directly related to the sale under consideration. The necessity for this amendment arises from the current Antidumping Regulations and from the practice of the Treasury Department, which we believe are not consistent with the law as written. The basic principle of the Antidumping Act is that the two prices, the home market price and the export price, must be "netted back" to the factory price in order to make a fair comparison, taking out those costs which are peculiar to the market under consideration. Nevertheless, Treasury requires that, to be allowed, the difference must be "directly related to the sales which are under consideration." This requirement, which has no justification in the purposes or in the language of the present law, works to the disadvantage of exporters and importers. The most common situation in which the so-called "purchase price" (that is, the export price) is applied is where the sale is made at the water's edge in the exporting country, and all of the costs of marketing are borne by the importer in the United States. At the same time, it is quite common for the manufacturer to maintain a sales organization in the country of origin, but under the principles which are presently applied by the Treasury Department, the expenses of that selling organization in the home market are not allowable. Thus we think that the Treasury Department has been obviously unfair in its application of the Antidumping Act. The purpose of this proposed amendment is to make sure that this practice is not continued. The same unfairness, to a lesser degree, exists when "exporter's sales price" is used as the proper measure of the export price.

Section 331 would amend the Countervailing Duty Law, Section 303 of the Tariff Act of 1930. As we noted earlier, Japan has eliminated virtually all of its export incentives about which complaint could have been made. Nevertheless, we consider it unfortunate that the House has removed much of the discretion that the Secretary of the Treasury would have had, under the Administration's proposed bill, not to impose countervailing duties in certain circumstances. Under the House version, the Secretary could decide not to countervail against a bounty or grant if the articles in question were subject to effective quantitative restriction. In addition, for four years he could refrain from countervailing in order to avoid serious jeopardy to the multilateral negotiations authorized by Sections 101 and 102 of the bill. There is a curious exception to this four-year period—it is shortened to one year in the case of goods produced by

subsidized facilities owned or controlled by a developed country. In addition, a twelve-month time limit is established for decisions under the Law, and negative determinations on the existence of a bounty or grant are made reviewable in the Customs Court at the behest of a U.S. complainant.

The House version fails to reckon with the fact that the Countervailing Duty Law is concerned with conduct by foreign governments, not private citizens, an area of considerable sensitivity and with great potential significance to U.S. foreign relations, particularly in a world where trade and economics are becoming increasingly politicized. We submit that the House amendments will turn the Countervailing Duty Law into a dangerous weapon which would permit any individual complainant to interfere with U.S. interests. The fact that there is no injury test in the law only increases the possibility of its use for harmful ends with no compensating benefits to U.S. interests.

The U.S. itself subsidizes its exports through several measures, including income tax deferral (the DISC), price support programs, Eximbank activities, preferential freight rates, and subsidized research and development. The U.S. would make itself appear ridiculous and invite damaging retaliation if it were to countervail against any of those types of measures. Yet, under the House version, there is only the four-year period during which that result could be avoided. Unless international agreement is reached within that period on the complete range of export subsidies, it could not be avoided thereafter. Other likely or possible results of the House version would be countervailing against export subsidies that the U.S. has encouraged developing countries to adopt; countervailing against a country with whom we are seeking cooperation in other areas, thereby risking the loss of that cooperation; and countervailing against a country that supplies the U.S. with a vital commodity, thereby risking the cut-off of that commodity. None of these results would be in the interests of the U.S., yet the Secretary of the Treasury would be powerless to avoid them. We urge the Senate to adopt the Administration's original proposal on countervailing duties, together with an injury test for dutiable articles as well as nondutiable articles.

Section 341 of the House bill would amend Section 337 of the Tariff Act of 1930, which concerns unfair import practices, by providing special treatment for cases involving allegations of patent infringement. In our view, Section 337 should be repealed altogether or, if not repealed, more far reaching changes are required.

Under H.R. 10710 patent cases, which have been the great majority of those brought under Section 337, would be decided by the Tariff Commission rather than, as now, by the President. Interested persons would have the opportunity to present legal defenses, presumably including patent invalidity and misuse. We do not believe that Section 337 provides any remedies for which need has been shown beyond those already available under the patent and antitrust laws. The statute is onerous because, as now applied, it precludes consideration of defenses available in patent suits; because it makes preliminary relief against imports possible even though the patent has never been held valid, whereas the courts do not provide relief in such circumstances; and because it subjects importers to legal attack in two forums for the same alleged acts. Further, the resources of the Tariff Commission, a fact-finding body with six Commissioners and a large staff, should be devoted to issues of public importance and not to the resolution of private controversies.

If Section 337 is not repealed, it should be amended to ameliorate its most serious defects. First, it should be made clear that in patent cases the Tariff Commission shall consider and decide all defenses available to a defendant in a patent infringement suit in the federal courts. Second, the relationship between Section 337 and patent suits should be clarified by requiring the Tariff Commission to suspend proceedings under Section 337 when the patent issues raised in such proceedings are before a federal court, and to defer to the decision of the court on those issues. Third, temporary relief should not be made available in situations where it would not be available in a court, i.e., where the patent's validity has never been adjudicated and upheld. Finally, the bond under which goods may be entered during a temporary exclusion order should be in the amount of a reasonable royalty, not in the amount of the goods' value. We are glad to note that the Administration has made a proposal that would fix the amount of the bond at twelve percent of the value of the goods, but we are inclined to think that there should be flexibility rather than a fixed amount.

Title IV. Trade with the Non-Market Economies

Title IV of the proposed Trade Reform Act would grant the Executive authority to extend most favored nation (MFN) tariff treatment to the Soviet Union and other non-market economies. As approved by the House, however, H.R. 10710 would condition MFN status and Eximbank financing upon the right of Soviet citizens to emigrate. While the Trade Council has no direct interest in this section of the bill, we recognize that as a practical matter there can be no trade legislation without a compromise solution to this vexing problem. We therefore share the hope expressed earlier in the hearings by Secretary Kissinger and other witnesses that a viable compromise will be reached, one that both promotes fundamental human rights and moves this country toward the goal of normalized trade relations with the Soviet Union and other centrally planned economies.

Title V. Generalized System of Tariff Preferences for Developing Countries

We support the generalized system of preferences provided in Title V. This idea has been agreed upon among the major non-Communist countries of the world, and has already been put into effect, with variations from country to country, by Japan and the EEC.

Title VI. General Provisions

There has been little public discussion of *Section 606*, which would empower the President to embargo trade and investment with any country whose government he determines has failed to take adequate steps to prevent narcotic drugs and other controlled substances from entering the U.S., directly or indirectly, from that country. This is a remarkably broad and vague grant of authority, with no procedural safeguards. It is surprising to find it in a bill that is otherwise so careful to circumscribe grants of authority and to provide adequate procedural safeguards. While we do not underestimate the gravity of the international drug traffic and its effects in the U.S., we submit that careful consideration should be given to the weapons that should be placed in the President's hands in order to deal with it. Unfortunately, Section 606 does not appear to be the result of such consideration. We hope the Committee will delete it from this bill.

PART II. U.S.-JAPAN TRADE RELATIONS: PRESENT AND FUTURE

U.S.-Japan Trade in Better Balance in 1973

The conventional wisdom still far too often pictures Japan as a difficult and largely closed market for U.S. exports. The facts of America's export trade continue to belie this entirely erroneous impression. This was especially the case in 1973.

Last year, the U.S. trade deficit with Japan was cut by nearly $3 billion. This development helped considerably to turn around the overall U.S. balance of trade into the first surplus in three years. The major reason behind the improvement in the U.S.-Japan bilateral trade balance in 1973 was that the value of American exports to Japan grew over 10 times as fast as U.S. imports of Japanese goods. Thus, shipments to Japan climbed to $8.3 billion while American imports from that country totaled $9.6 billion. The balance of trade between the two countries was therefore $1.3 billion in Japan's favor in 1973, instead of the record deficit of $4.1 billion of the year before.

Japan continued to be the second best customer, after Canada, of the United States and its largest overseas market. The 1973 trade results also showed that:

Japan is, more than ever, the major foreign market for the American farmer. At the beginning of 1973, the U.S. Department of Agriculture was predicting that exports of farm products to Japan would reach a record $2 billion in that year. It turned out, however, that shipments of food and feedstuffs alone earned U.S. agricultural exporters more than $2.6 billion in the Japanese market. Total agricultural exports, including hides, cotton, tobacco and tallow as well as food and feed categories, amounted to nearly $3 billion.

Another major and traditional category of U.S. exports to Japan, industrial raw materials or intermediate goods, yielded $3.5 billion, a sum more than ⅔ greater than the 1972 total. Particularly because of higher prices, logs and lumber and ferrous scrap between them accounted for more than $1 billion of U.S. earnings in this category. Japanese purchases of these two commodities

would have been even greater except for developments in the second half of the year. Controls were initiated on the export of scrap, while buyers of U.S. logs agreed to limit their purchases. A sharp increase was also registered in sales of U.S.-made chemical elements and compounds, and textile yarns and fabrics.

Last year also saw a substantial expansion in the export of U.S. manufactured products to Japan. Sales of machinery were particularly buoyant. The Japanese purchased a wide range of capital goods, such as broadcast and communications equipment, generators, transformers and accessories, business machines (including $209 million of computers and peripheral equipment and parts), measuring and testing equipment, specialized industrial machinery, machine tools and service industry equipment. These purchases earned another $1.6 billion for American exporters.

Another interesting feature of U.S. export trade with Japan last year was the growth in sales of American consumer goods to a total of $465 million, more than 30 percent higher than in 1972. There was only one exception to the general upward trend in shipments of these products to Japan. Sales of toys and sporting goods fell off with the end of the bowling alley boom in Japan, which had created a rapidly expanding market for American-made automatic pinsetters and other bowling equipment. On the other hand, the Japanese bought a considerably higher value of such well-established consumer products as pharmaceuticals. Japanese purchases of American household electrical appliances, many of them new to that market, also expanded rapidly. Japan's increasingly affluent and inflation-ridden society bought a substantially higher value of gem stones, jewelry, antiques, clocks and watches from the United States. American exports of automobiles, some $55 million worth last year, represented an increase of nearly 2.5 times over the value of such shipments to Japan in 1972.

Some brief comments on the highlights of last year's imports from Japan:

The marked slowdown in the rate of growth in U.S. imports from Japan was due mainly to a drop in American purchases of Japanese consumer goods. A number of growth items in previous years were caught up in this trend. For example, fewer motorcycles, television sets, transistor radios, tape players and tape recorders were imported. Where volume dropped, the loss in sales was partially compensated for by a rise in prices. Purchases of clothing from Japan declined significantly, while imports of toys and sporting goods were also off.

Automobiles and steel, in that order, were the two major dollar earners from Japan, yielding $2.3 billion from sales to the U.S. market. The value of steel imports slipped mainly because of the heavy demand for Japanese steel at home and in other world markets. Imports of passenger cars were nearly 10 percent higher in value, but a smaller number were brought in than in 1972 because of supply difficulties in Japan.

Greater imports of machinery accounted for most of the rise in capital goods imports from Japan in 1973, which totaled $3.2 billion. There were stepped-up purchases of such Japanese-made equipment as electronic calculators, electronic tubes and semi-conductor devices, specialized industrial machinery, ball and roller bearings, scientific equipment, mechanical handling equipment and machine tools.

Japanese Government Helped This Better Balance Come About

The phenomenal growth of U.S. exports to Japan in 1973 resulted from a number of factors. It is important to recognize in this regard that the realignment of major world currencies and the commodity price boom were among the most influential of these economic forces.

The currency adjustments made in the first quarter of 1973, together with the realignments negotiated previously, brought about a new yen-dollar exchange rate that further increased the competitive position of American products in the Japanese market. By the same token, successive devaluations of the dollar and the upward float of the yen also discouraged U.S. imports of many Japanese manufactures, which were already higher priced because of rising costs, by making them even more expensive for American buyers.

There was little need, however, to promote the export of most American commodities through the realignment of exchange rates in the face of a worldwide growth in demand for food and raw materials. This demand was fed

by Japan's raging inflation as well as its high rate of real economic growth. Moreover, even as demand soared, the supply of a number of these commodities, especially grains, oil seeds and other rich sources of protein was affected by adverse natural phenomena and, in some cases, man-made bottlenecks as well. The Japanese, who have to import over one half of their food and feed, sought, as did many other nations, increasing amounts of these commodities from their traditionally most important source, the United States.

An unhappy result of this increasing demand pressure on limited supplies was the unexpected imposition at mid-year by the United States of controls on export of soybeans, a staple food for the Japanese. The new yen-dollar rate which helped to produce this "soybean shoku" by providing more dollars for their yen to Japanese buyers thus proved a mixed blessing in this instance. Nevertheless, the more favorable rate was helpful to American exporters of other agricultural products. It did help introduce and expand the market in Japan for certain more expensive American farm products like meats, fruits, vegetables and other processed foods.

Japan's overheated economy also boosted domestic demand last year for the products of Japanese industry. This demand not only left fewer goods for export, but affected the incentive of exporters. Bottlenecks in the production of some Japanese manufactures due to raw material shortages also affected the supply of these items available for export. The U.S. market also became less attractive to Japanese industry as the price freeze here made it difficult for their American distributors and dealers to raise their prices.

In addition to these developments, 1973 saw the Japanese Government take a number of other more direct measures to help bring U.S.-Japan trade into better balance. A substantial reduction of the U.S. trade deficit with Japan has been a major objective of the Japanese as well as the American Government. Accordingly, Japan took the following steps:

As Ambassador Eberle pointed out in his testimony before this Committee, further and significant progress was made last year in the dismantling of Japan's import controls, a process that had been proceeding at an accelerating rate since 1969. These liberalization measures leave only 31 items under restriction. Restriction, I should point out, does not necessarily mean an embargo on the import of the items still subject to control. Quotas, large enough in some instances to enable a substantial penetration of the Japanese market for the item in question, are provided in all cases. Most of the remaining quotas on agricultural products have been increased substantially in recent years. Moreover, the Japanese authorities also undertook in 1973 fully to liberalize in the next two years the import of the two industrial items of principal interest to U.S. exporters which are still subject to import control. Digital computers and parts are now scheduled to be liberalized in 1975, and integrated circuits sometime this year.

Ambassador Eberle also noted in his statement to this Committee that Japan has virtually eliminated its export incentives.

Unilateral reductions were made on a number of Japanese tariff items.

Restrictions were eased on investment in retailing by foreigners in order to permit American firms to establish retail outlets and processing and warehousing facilities which would provide more direct access to the Japanese consumer.

For a period of twelve months ending August 1973, the Japanese Government set global limits on the export of some of Japan's most popular products. This and other government efforts to discourage exports, for the reasons we mentioned previously, appeared to have been most effective with respect to the U.S. market. These measures were in addition to the implementation of various agreements and arrangements, negotiated earlier bilaterally and in the GATT, to limit the export of Japanese textiles, steel and other products to the United States.

JETRO, the quasi-governmental Japanese organization charged with trade promotion, actively promoted U.S. exports to Japan by supplying advice, publications and other information on the Japanese market to American traders through its network of trade centers in the United States.

The Emerging Shape of U.S.-Japan Economic Relations

For many years prior to 1973, much of the discussion between the two governments and between representatives of the business communities of each country was devoted to the liberalization of Japan's trade and investment

restrictions. Although Japan had made considerable progress in this regard by 1969, U.S. requests for further liberalization became more urgent as America's balance of trade and payments deteriorated in the first three years of this decade. The better balance in the bilateral trade account which became evident early last year, and Japan's continued elimination of its trade and investment controls, provided a new setting which not only improved but also helped change the shape of U.S.-Japan economic relations in 1973.

These relations have, in fact, always been close and constructive. There has been increasing recognition on both sides of the growing economic interdependence of the two countries. Some bilateral issues still remain. Both countries still maintain some import controls and other trade barriers. Last summer's export controls on soybeans and the growing demand in some sectors for restraints on such other important exports to Japan as logs, steel scrap, cotton, wheat and coking coal have made the Japanese understandably uneasy about the continued availability of these items from the United States in the volume they require. Should the worldwide commodity pinch become more intense, this issue will certainly occupy center stage in U.S.-Japan economic relations.

However, increasingly the economic dialogue between the two countries relates to problems that can only be dealt with internationally. Access to the world's increasingly inadequate supply of food and raw materials is a worldwide problem. The resort by producing nations to resource diplomacy, of which the current energy situation may be only a forerunner, further complicates this problem. Other multilateral issues which occupy both countries include the reform of the international monetary regime and of the world trading system.

The Japanese have demonstrated their willingness to participate constructively in international efforts to find satisfactory solutions for these multilateral problems. They played a helpful role in the proceedings of the Washington energy conference last February. They hosted the GATT meeting last September which resulted in the Tokyo Declaration, launching the latest round of multilateral tariff negotiations.

Recent Development in the Japanese Economy

Three major economic problems currently confront the Japanese economy: energy, inflation and Japan's terms of trade. They are all interrelated, and do not lend themselves to easy solution.

Energy—The full impact of the drastic changes in crude oil prices and production since last October has yet to be felt in Japan, and may take a long time to surface. The nature of Japan's energy problem has changed. Initially, there was concern that Japan would be unable to obtain adequate supplies of crude oil, virtually all of which must be imported. Although the supply situation remains somewhat clouded, Arab oil exporters appear to have lifted their restrictions on shipments to Japan, even as they and the other members of OPEC doubled their prices at the beginning of 1974. The chilling fear that cuts in their supply of crude oil would reduce the output of the Japanese economy to unacceptably low levels has given way to vexing uncertainties about Japan's ability to maintain its considerable economic momentum and to pay its way in the world in view of what has amounted to a quadrupling of oil prices over the past year.

Because such a large portion of its power plants burn oil, Japan is more dependent on this fuel for its electric power than any other country. Moreover, many of its major industries are energy-intensive or, like petrochemicals and synthetic fibers, depend even more directly on petroleum feedstocks. Japan uses a larger portion of its energy, and oil, in industry and less for transportation and space heating than most other countries. As a result, there is much less leeway in the Japanese economy than in the U.S. and other nations for saving energy and oil through conservation measures.

The painful process of adjustment to these new conditions is already under way in Japan. The Japanese are now more determined than ever to accelerate their search for new methods of maintaining their economic growth, which will also recognize the need to improve the national quality of life. This will involve a restructuring of Japanese industry so that it demands less energy and other imports, the development of alternative sources and substitutes for these imports, and the discovery of ways to conserve available supplies of energy and other resources and to maximize their use.

These adjustments will take time and, in the meanwhile, Japan must deal with the problem of how to assure adequate energy supplies and to meet the larger import bill brought about by steeply rising oil costs. These tremendous boosts in the price of crude oil and petroleum products will make Japanese manufactures more costly and less competitive on world markets, and will add anywhere from $6–8 billion to Japan's import bill this year.

There appear to be two key courses of action in current Japanese strategy for dealing with its balance of payments problem. Steps are being taken to stem the outflow of funds for Japanese investment abroad and for other capital transactions. This outflow contributed heavily to the turnaround of Japan's overall balance of payments in 1973 to a deficit of $10 billion (replacing payments surpluses of $4.7 billion in 1973 and $7.7 billion in 1972), and the consequent rapid running down of its reserves. Efforts are also being made to stimulate the inflow of capital into Japan in order to improve the capital account of the balance of payments. The fight against inflation, which remains Japan's pivotal economic problem, has also been accelerated.

Inflation—Japan was seized by a raging inflation, the worst among the world's industrialized countries, even before the rise in crude oil prices. The wholesale price index in January 1974 jumped 5.5 percent over the previous month. Compared with the price level at the beginning of 1973, wholesale prices in Japan were up 34 percent, and consumer prices 20 percent. In March 1974, the Japanese authorities, under threat of production cuts by oil refiners if such action was not taken, permitted them to pass on to consumers a much larger share of the greatly increased cost of their crude oil imports. To meet the inflationary impact of this move, price controls on certain household necessities and some key industrial materials were introduced at the end of March. These are intended to supplement the monetary and fiscal measures, including a boost in the Bank of Japan's official discount rate to 9 percent, the highest in Japan's financial history, that traditionally have been used to dampen demand. Further price increases are in prospect if Japan's labor unions get the 25–30 percent wage increases they have been negotiating for in this spring's labor offensive, and as the price of electric power and petroleum feedstocks continues to rise, as they will.

Terms of Trade—The energy situation has accentuated Japan's extreme vulnerability and dependence on outside sources of supply for basic raw materials, fuels, and food and feed. OPEC's success has raised the specter of similar actions by producers of other commodities Japan must import. In any case, Japan, like other industrial countries, can no longer count on the availability of cheap raw materials from abroad.

The terms of trade have turned dramatically against Japan in the past three years, and the commodity boom shows every sign of continuing into 1974 and beyond. Commodity prices have risen much more steeply than the prices of Japanese manufactures. As of October 1973, before the oil squeeze began, Japanese export prices were up 12.5 percent from the 1970 base period while import prices rose by 22 percent in the same period. By the end of 1973, export prices were up 20.7 percent and import prices 36.4 percent. In the two-year period from January 1, 1972 to December 31, 1973, the price of Japan's wheat imports increased by 350 percent, meat prices were 2.5 times higher, as were feedgrains, cotton, and logs and lumber, and soybean prices doubled.

Prospects for U.S.-Japan Trade

It has been reported that economic conditions and balance of payments difficulties in Japan are leading to a Japanese export offensive reminiscent of the 1960's that will hit particularly hard at the U.S. market. It is quite likely that there will be a rise in the value of Japan's exports this year, both globally and to the United States. Such an increase, however, would be the result of economic forces at work in Japan and in the world economy rather than of Japanese government action to promote exports.

This important distinction must be made for proper perspective on the development of Japan's export trade. There is little evidence that Japanese authorities have made, or intend to make, any concerted effort to resurrect the export incentives finally dismantled in 1973. In our view, moreover, Japan's import liberalization is irreversible. Aside from political considerations, import restric-

tions have become less effective, as well as less necessary, in today's world of floating exchange rates.

Recent developments in the Japanese economy are forcing businessmen there to focus more of their attention on foreign markets. Many firms are looking to exports to take up the slack in domestic sales, as the government's efforts to dampen demand create a softer market in Japan. The American market has long proven highly receptive to Japanese goods. The quality and design of Japanese products, as well as the effective way in which American techniques have been adapted to market them in the United States, are as responsible as attractive prices for the widespread demand for imports from Japan. This continuing consumer preference, and the existence here of an established distribution system for many Japanese products, provides a base for expansion of Japan's exports to the United States.

Those, however, who predict a "flood" or "deluge," words too often used to describe any kind of an increase in imports from Japan, fail to take into account the changed circumstances acting to moderate the anticipated expansion of exports. The fact is that Japan's traders will find the going in the United States, as in other foreign markets, much tougher than before for the following reasons:

An increasing number of Japanese products are losing their competitive edge as they become more expensive due to continually rising costs of raw materials and labor in Japan. Manufacturing costs will increase even further as the full impact of the crude oil price rise surfaces and the huge wage hikes expected this year take their bite. About 80 percent of Japan's exports to the United States, ranging from machinery to cameras, are price sensitive.

A growing number of Japanese exports, particularly such labor-intensive ones as textiles and consumer electronic products, are losing their established markets in the United States and elsewhere to producers in Korea, Taiwan, Hong Kong, Singapore and other Southeast Asian countries with lower manufacturing costs. Many Japanese exporters will therefore have to develop markets for new lines and a wider range of products over a period of time if their overseas business is to expand.

U.S. industry is fast learning how to beat Japanese competition at its own game. The growth in sales here of American-made electronic hand-held and desk calculators, a market actually created by the Japanese, is one such example. The energy situation, as we know, has greatly increased the U.S. demand for small cars. It would appear that Japanese auto makers should be in good position to supply this market. Thus far, however, Japanese exports have not yet increased their share of U.S. car sales. Rather, purchases of Japanese autos, whose price has risen by 20 percent, appear to be caught in the general slump currently affecting car sales. What does seem likely is that, as American subcompacts are turned out in much greater number and the price of Japanese autos continues to rise, the U.S. motor industry will command an increasing share of the small car market here.

The exchange rate of the yen to the dollar has fluctuated widely since the beginning of this year, dropping as low as 300. The present rate, however, is still considerably below the rate of 360 to the dollar under which Japan recorded its greatest successes in the American market of the 1960's.

Other developments may also limit the expansion of Japanese exports to the United States:

Last year saw some change in the direction of Japan's export trade. The U.S. took only 25.6 percent of total Japanese exports in 1973 as compared with over 30 percent, on average, over the past decade. This diversification of overseas markets has created demand for Japanese goods in Western Europe and Southeast Asia which will put less pressure on exporting to the United States.

Scarcities and bottlenecks caused by raw material shortages and other production difficulties continue to plague Japanese industry. These will shrink the availability of some Japanese products for sale to the United States and elsewhere.

An increasing number of Japanese manufacturers have lately changed their marketing strategy, preferring to establish or initiate production in a modest way in the United States through a subsidiary, joint venture or licensee instead of exporting here.

The state of the U.S. economy will, of course, be a most important determinant of the level of imports from Japan and elsewhere. Japanese exports are

particularly vulnerable in this respect, since they consist of so many items, both consumer and capital goods, the demand for which is likely to fall off in an economic downturn.

These influences, it should again be noted, will act to moderate rather than prevent the expansion of Japanese exports to the United States. Part of their moderating effect, however, is likely to be offset by certain other factors, especially inflation here, which is almost as great and persistent as the Japanese variety. Soaring prices for many American manufactures cancel out an increasingly larger proportion of their competitive advantage over comparable Japanese products gained through international currency realignments and the even greater rate of inflation in Japan.

The value of U.S. imports from Japan, as well as of total imports, is therefore likely to increase in 1974, but much more moderately than has been predicted in some sensational newspaper accounts. The increase in the value of U.S. imports from Japan will, we expect, be attributable mainly to rises in import prices.

As we have previously mentioned, Japan's import bill for some years to come will be swollen by the huge increase in the price of imported crude oil and petroleum products. The Japanese hope to cope with this problem, in part, by holding down domestic demand in Japan, which should also affect the demand for imports. The composition of Japan's imports from the United States, and the prospect of continuing high commodity prices and shortages, assure, however, that the value of American exports to Japan will not decrease in 1974. As long as the current slowdown in Japan continues, there will be some decrease in demand for certain industrial materials and capital goods usually imported from the United States. But Japan's requirements for food and feed from abroad continue to rise, and the demand for American wheat and feed grains will stay high. So will the prices of these and other U.S. commodity exports to Japan for several years to come. As a result, the value of U.S. commodity exports to Japan will remain at a high level.

Demand for many types of capital goods required for industrial expansion may have tapered off during the current slowdown in Japan. Japanese industry, however, remains a prime customer for American equipment incorporating the latest advanced technology. Thus, shipments of such high unit value items as nuclear power generators and enriched uranium, communications satellites, and measuring and testing devices will continue to add to the value of U.S. exports to Japan, despite the present downturn in economic activity there. In addition, the Japanese are expected to take delivery during 1974 of more American jumbo jets, another major U.S. export, and that will also help boost the total. Furthermore, the recent sharp rise of consumer goods imports from the United States is expected to continue, albeit at a modest rate. American refrigerators and other household electrical appliances, processed foods, sporting goods and high fashions, to name a few, are still selling well on the Japanese market.

On balance then, U.S. imports from Japan are expected to increase, while American exports to Japan in 1974 will continue at a record high level. The U.S. bilateral trade deficit with Japan is expected to widen somewhat, but much of the improvement in the trade balance recorded in 1973 will remain. In the meanwhile, the difficulties of projecting the trade balance for 1974 are illustrated by the fact that for the first two months of this year, obviously too brief a period to indicate a trend, the United States ran a surplus in its trade with Japan.

Mr. Chairman, I have concentrated on bilateral trade developments because of the need to place this trade in better perspective. Other witnesses before this Committee have stressed the importance of continuing the progress already made in strengthening and updating the world's monetary and trading system. The present GATT round of multilateral tariff negotiations, which the passage of the Trade Reform Act will make effective, is one important step in this direction. The U.S.-Japan Trade Council favors the passage of this bill for this reason and not because of any special advantages that might accrue to Japan. The Council's members have a stake in both ends of this mutually beneficial two-way trade. Moreover, Japan's interests in the new GATT round are parallel, in many respects, to those of the United States, and for similar reasons.

Senator HARTKE. Now our last witness this morning is Mr. Charles R. Carlisle, chairman of Lead-Zinc Producers Committee.

STATEMENT OF CHARLES R. CARLISLE, CHAIRMAN, LEAD-ZINC PRODUCERS COMMITTEE; ACCOMPANIED BY JOSEPH SEVICH, VICE PRESIDENT, ST. JOE MINERALS CORP.; AND HARVEY APPLEBAUM, ESQ., LEGAL COUNSEL, COVINGTON & BURLING

Mr. CARLISLE. Good morning, Mr. Chairman.

Mr. Chairman, I am Charles Carlisle, chairman of the Lead-Zinc Producers Committee, on whose behalf I speak. With me today on my right is Mr. Joseph Sevick, vice president of the St. Joe Minerals Corp., one of our member corporations, and our legal counsel, Mr. Harvey Applebaum of Covington and Burling.

Our prepared statement, sir, lists our member companies, and I shall proceed to summarize the statement.

First, we recommend the passage of the Trade Reform Act in essentially its present form. We believe that the bill is better now than when it was submitted to the Congress, but we also believe that some amendments are in order.

First, we suggest that the act be amended to require the President, ordinarily, to carry out a Tariff Commission recommendation that import relief be granted in an escape clause proceeding.

We also suggest that the Secretary of the Treasury be required to impose countervailing duties, right from the very beginning, as under current law.

But we also think, Mr. Chairman, that the Trade Reform Act will not really get the job done in the case of our own two industries where substantial new investment in domestic facilities is long overdue.

Why? First of all we think it will take a number of years before the trade reforms contemplated by the act are carried out. And, until then, American companies will not really know where they stand.

Second, the investments which our companies should make in domestic facilities will require hundreds of millions of dollars, a substantial part borrowed. To make investments of that magnitude, they need to know what the rules are, and they need strong assurances that domestic markets will not be subjected to large import surges as they have in the past.

We think that a generalized trade bill is unlikely, whatever its merits, to bring about lead and zinc investment on a sufficient scale or to bring it about soon enough.

I would like to say just a word about our two industries which are basic industries. Zinc is the fourth most important metal in the United States, ranking after steel, aluminum and copper, and lead is fifth.

We have major mines, smelters and refineries in 18 States, which are shown on the map in attachment 1.[1] Fortunately, this country has good reserves of both lead and zinc, yet despite those large reserves, despite large home markets and rising productivity, our two basic industries are confronting some very real difficulties. I would like first to turn to the critical zinc situation.

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[1] See p. 2123.

It is doubtful that in recent years any basic industry has gone through a more severe wringing out than our zinc industry. There is a critical need to encourage substantial new investment in domestic zinc smelting and refining facilities. Seven of our 14 smelters have been closed down in the past 4 years.

Zinc metal production has declined from about 1.1 million tons to less than 600,000 tons last year. Meanwhile, production in the rest of the world has risen. Now, admittedly, we have closed down some obsolete plants. So have foreign producers. But the difference is that they have more than replaced their own smelters with new capacity while our producers have not.

And the decline in U.S. production is the principal cause of the worldwide shortage of zinc metal and the shortage in the United States has been very severe for 2 years.

The U.S. industry has been unable to meet the strong domestic demand for zinc and imports and stockpile releases have only partially filled the gap.

Imports now account for over 50 percent of our market. These imports have risen from a bit over 300,000 tons in 1969, to almost 600,000 tons last year. During the last 5 years, we have sold almost 500,000 tons of stockpiled zinc metal and during this year and next, another close-to-400,000 tons will be sold, to help meet the demand.

But, when that stockpiled zinc is gone or sold, there will be no more. Our strategic stockpile will then be down to about the equivalent of 7 weeks of consumption.

Now two American companies have announced that they are considering the construction of new large smelters, but no firm decisions have been taken. All that we can count on is a 15-percent expansion of one smelter and the modernization of a smaller plant.

Meanwhile, Japan, Western Europe and developing countries are constructing new smelters and the question is why? We say there are several reasons.

First of all, some—not all of these—countries give high tariff protection to their zinc metal producers. Our effective rate here in this country is about 2 percent right now. Australia's general tariff is over 15 percent. Peru's is 42 percent; Mexico's is 22 percent. Even Canada has a rate of duty three times ours.

Also, foreign governments give their producers subsidies and tax breaks not available in the United States. Also, state-owned companies are constructing new facilities abroad.

Second, this is the only industrial country to impose a duty on zinc contained in ores and concentrates. This puts U.S. zinc metal producers, who must compete for part of their raw material supplies abroad, at a competitive disadvantage.

And then, third, we had price controls which were lifted last December and of course the U.S. environmental protection measures are very stringent.

If I may turn to lead, briefly, here we have the case of an industry falling well short of its potential. In fact, we believe that the United States might become self-sufficient in lead considering the abundance of our good-quality reserves.

But, in fact, imports are taking about 20 percent of the market.

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Two out of eight smelters have closed. Old ones, admittedly, but no new smelters are projected to take their place.

We are importing large quantities of lead metal and unfortunately we are exporting substantial quantities of lower-priced ores and concentrates. If we continue down the present path, we are probably going to have a stagnant, or at best, a slowly growing lead industry and a continued erosion of our zinc industry.

We just do not think that that is in our national interest. There is the balance of payments, of course. We have spent over $3 billion in the past 15 years for lead and zinc imports. And, conservatively, we estimate over $7 billion in the next 15 years unless something is done.

There are, of course, lost job opportunities.

And, finally, and perhaps most important, Mr. Chairman, there is a problem of imperiling the national and industrial security. We do not think that the United States can count on imports to meet our needs. We believe that American industry is going to encounter increasing difficulty in getting from foreign sources the metal it requires in the forms that it requires.

Turning to price for just a moment, dealers are now selling imported zinc in this market at approximately twice domestic producers' prices.

Turning to the last section of my statement, there are two tariff bills, lead and zinc tariff bills, now before the Congress, sir, which we believe would give badly needed encouragement to new investment in American lead and zinc production facilities.

One bill would suspend the duty on zinc contained in ores and concentrates and thus it would put American zinc metal producers on a more equal footing with their foreign competitors in obtaining feed for their smelters. This bill has been reported out favorably by the Ways and Means Committee. Similar legislation was introduced last year in the Senate and we urge the Congress to pass or enact this simple but important legislation in the coming weeks.

The second bill is a flexible tariff bill necessarry to offset the advantages conferred on foreign producers by governmental subsidies and other assistance, and by state ownership. Basically, it would allow large quantities of lead ores and lead and zinc metal to enter the U.S. at the present duty rates, but excessive imports would be subjected to higher duties.

I want to make just three quick points about this bill. The bill is not intended to protect something old, but to encourage investment in this country in something new. It would encourage new investment because it would curtail damaging import surges.

And, third, it would increase supplies to American consumers, not reduce them, because it would encourage new investment here.

Now, the Committee on Ways and Means heard testimony on this bill last May. We strongly urge that favorable action be taken on this bill during this session of Congress.

In summary, Mr. Chairman, we support the passage, with some amendments, of the Trade Reform Act, but we think that additional legislation will be needed if the American lead and zinc industries are to be revitalized.

We think that the time to begin on this revitalization is now. Mr. Chairman, we very much appreciate this opportunity to present our views. Thank you very much.

Senator HARTKE. Mr. Carlisle, it is very interesting to have a former State Department official come in here and argue in favor of protecting an American industry.

Mr. CARLISLE. There is nothing like a converted sinner.

Senator HARTKE. When you get out in the real world, it makes a difference, does it not?

Mr. CARLISLE. That is right.

Senator HARTKE. Based on your foreign policy experience, I gather, you do not feel that your proposal would in any way alienate our trading partners? Is that right?

Mr. CARLISLE. They will not like it, Senator. But I think it is a manageable problem.

Senator HARTKE. In fact, they may gain a little more respect for us if we started to stand up for ourselves, is that not right?

Mr. CARLISLE. Well, I think that is quite true. And I would just like to point out, you know, that we are sometimes accused of protectionism, when we advocate measures along these lines, but we find them when we look at the tariff situation abroad.

Senator HARTKE. You are so right. I am glad you are here. The problem as we see it, is continual decline in the American industry.

There has been a steady decline of American investment in the United States in spite of the fact that we still have the 7-percent investment tax credit which is of some benefit. And I might point out that there is only one Member of the Congress who has been consistently for the 7-percent investment credit since 1962 and you are looking at that Member right now.

No one else in the Congress has had that consistent position. I will take a look at these other two bills. I am submitting to the Congress this year a bill which would create a reinvestment depreciation allowance. It would be originally more expensive for the Government, but it would absolutely revitalize much of the American industry.

You do not want to be a protectionist, but you do want to make sure that the industry keeps going.

I thank you for your testimony. We are going to recess these hearings until 9 o'clock tomorrow morning.

Mr. CARLISLE. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Carlisle follows:]

PREPARED STATEMENT BY CHARLES R. CARLISLE, CHAIRMAN, LEAD-ZINC PRODUCERS COMMITTEE

Mr. Chairman and members of the Committee, I am Charles R. Carlisle, Chairman of the Lead-Zinc Producers Committee, on whose behalf I speak. With me today are Mr. Joseph Sevick, Vice President of the St. Joe Minerals Corporation, one of our member companies, and our legal counsel, Mr. Harvey Applebaum of Covington and Burling.

The Lead-Zinc Producers Committee is composed of seven companies: American Metal Climax, Inc., the American Smelting and Refining Company, the Anaconda Company, the Bunker Hill Company, the National Zinc Company, the New Jersey Zinc Company, and the St. Joe Minerals Corporation. Together, these seven companies produce most of the lead and zinc ore mined in the

United States and virtually all of the primary lead and zinc metal, two of the most important basic metals.

THE TRADE REFORM ACT OF 1973

Passage recommended

The Lead-Zinc Producers Committee recommends the passage of H.R. 10710, the Trade Reform Act of 1973, in essentially its present form.

It believes that the bill is considerably better now than when it was submitted to the Congress and that it is now basically balanced. The Trade Reform Act would encourage the expansion of trade, but it also would offer domestic industry somewhat increased protection against damaging import surges and unfair competitive practices.

Foreign governments and industry use many devices to distort trade and investment patterns to their advantage. These devices include subsidies, low-interest loans, special tax write-offs and the operation of government owned or controlled corporations at lower-than-normal profits or at a loss.

It is unlikely that many of these devices can be eliminated but it may be possible to establish international ground rules for their use. Even that will be difficult and may take years of negotiating. The results probably will be modest at best. Nonetheless, a serious attempt should be made. Enactment of the Trade Reform Act would encourage that attempt.

Some amendments suggested

While the Lead-Zinc Committee generally endorses H.R. 10710, it also believes that some amendments are in order. In particular, it urges the Finance Committee to review the import relief and countervailing duty provisions with a view to providing domestic industry more certain relief against occasional imports gluts and unfair trade practices.

Import relief

The Lead-Zinc Committee suggests that H.R. 10710 be amended to require the President ordinarily to carry out a Tariff Commission recommendation that import relief be granted in an "escape-clause" proceeding. It also suggests that the Congress retain the authority it has under present law to override a Presidential determination not to provide import relief in the face of an affirmative recommendation by the Tariff Commission.

Countervailing duties

The Trade Reform Act as passed by the House gives the Secretary of the Treasury discretion for up to four years not to impose countervailing duties in order to avoid jeopardizing the trade negotiations contemplated by the Act. The Lead-Zinc Committee believes that if this discretion is given to the Secretary, countervailing duties will rarely, if ever, be imposed during the four-year period. It suggests, therefore, that the Secretary be required to impose countervailing duties, as under current law.

Trade Reform Act insufficient for U.S. lead and zinc producers

The Lead-Zinc Committee believes that the United States should move in the direction of liberalizing trade where possible. But it also urges that this country move promptly to maintain and strengthen basic industries.

Substantial new investment in *domestic* lead and zinc production facilities is long overdue; the need is urgent in the case of zinc. But passage of the Trade Reform Act probably will not get the job done.

Why?

First, it will take a number of years before the trade reforms contemplated by the Act are carried out. The Kennedy Round took four years. New trade negotiations promise to be thornier than the Kennedy Round; viewed realistically, they probably will not be completed before mid-1978. Until then American companies will not really know where they stand.

Second, the investments which should be made in domestic lead and zinc production facilities will require hundreds of millions of dollars, a substantial part borrowed. To make investments of that magnitude American companies need to know what the rules are, and they need strong assurances that domestic markets will not be subjected to massive import surges, as they have been in the past.

A generalized trade bill is unlikely—whatever its merits—to bring about lead and zinc investment on a sufficient scale, or to bring it about soon enough.

PROBLEMS CONFRONTING THE AMERICAN LEAD AND ZINC INDUSTRIES

The American lead and zinc industries are basic industries. The U.S. economy consumed about 1.8 million tons of zinc last year, about 1.5 million tons of lead. In tonnage terms, zinc is the fourth most important metal, ranking after steel, aluminum and copper. Lead is fifth.

The American lead and zinc industries have major mines, smelters and refineries in 18 states (see Attachment 1). Fortunately, this country has good reserves of both lead and zinc. According to the U.S. Interior Department, the United States has 35% of the world's lead reserves, amounting to 60 years' output at current production rates. U.S. zinc reserves also amount to 60 years' output, and constitute over 20% of acknowledged world reserves. American ore bodies are not as rich as some of those in other countries, but they are well located.

Over 20,000 jobs depend directly, an estimated 60,000 indirectly, on American lead and zinc production. Altogether, perhaps 300,000 Americans rely on lead and zinc production for their livelihood.

Today, despite large home markets, vast reserves, and rising productivity, these two basic industries are confronting difficulties. Imports account for over 50% of primary zinc metal consumption, for about 20% of lead metal consumption. Both figures would be higher except for large-scale stockpile releases.

And unlike other industrial countries, the United States now imports most of its zinc in the form of metal (75% in 1973) rather than as ores and concentrates. In 1969 metal accounted for only 35% of total zinc imports. Had the United States been able to maintain the 1969 percentage, this country would have reduced last year's substantial zinc import bill by over $75 million.

The critical zinc situation

There is a critical and urgent need to encourage substantial new investment in zinc production facilities *in this country*, particularly in zinc smelting and refining facilities.

During the past four years seven out of 14 U.S. zinc smelters have closed; an eighth is scheduled to close in mid-1975. Attachment 2 shows the steady decline in U.S. zinc metal production: from 1.1 million tons in 1969 to 575,000 tons last year if reprocessed stockpile metal is excluded from the production figures.

Meanwhile, production in the rest of the world (excluding the Communist countries) has risen from about 3.4 million tons in 1969 to approximately 4.0 million tons in 1973. American producers have closed obsolescent smelters confronted by environmental protection problems and frequently no longer well located geographically. Foreign producers also have closed obsolescent smelters. But they have more than replaced their old smelters with new capacity while U.S. producers have not.

The decline in U.S. production has been the principal cause of a world-wide shortage of zinc metal. The shortage in the United States has been severe for two years.

The diminished U.S. industry has been unable to meet the strong domestic demand for zinc. Imports and stockpile releases have only partially filled the gap.

U.S. imports of slab zinc (metal) increased from 325,000 tons in 1969 to 590,000 tons last year. Almost 470,000 tons of zinc metal were shipped from Government stockpiles in 1972 and 1973; another 375,000 tons or so will be sold this year and next. But when that stockpile zinc is sold there will no more. Our strategic stockpile will then be down to the equivalent of about seven weeks' consumption.

How serious is the situation? Over the past two years, American consuming industries often have been desperate for zinc. The "American Metal Market" in its issue of March 25, 1974 said this in an article about zinc galvanizers (galvanizing is a principal use of zinc): "Most galvanizers said that they are depending so much on GSA releases that when those releases end in 1976 they, the galvanizers, will be forced to go out of business if they don't get new sources of supply." Further in the article: "The Canadian producers have not been able to fill the gap left by their American counterparts, according to the galvanizers." (Canada is the major supplier of imported zinc metal to this country.)

Foreign producers have more than replaced the smelters which they closed; U.S. producers have not. Foreign producers are constructing and expanding smelters; U.S. producers are not.

Two American companies have announced that they are considering the construction of new, large smelters, but no firm decisions have yet been taken. All that can be counted on is a 15-percent expansion of one smelter and the modernization of a smaller plant. Attachment 3 shows projected smelter and refinery construction in the United States lagging behind that in other countries during the next several years.

Why are Japan, Western Europe and the developing countries less richly endowed with zinc deposits than the United States, constructing new smelters while this country is not? There are several reasons:

A number of countries provide high tariff protection for their zinc metal producers. While the U.S. rate is now about 2%, Australia's general tariff, as noted in Attachment 6, is over 15%, Peru's 42% and Mexico's 22%. Even Canada's duty is three times that of this country.

Foreign governments give their producers subsidies and tax breaks not available in the United States. Also, state-owned companies are constructing new facilities abroad. Attachment 7 summarizes readily available information on foreign government actions and policies.

This country is the only industrial country to impose a duty on zinc contained in ores and concentrates. This puts U.S. zinc metal producers, who must compete for part of their raw material supplies abroad, at a competitive disadvantage.

The U.S. zinc market may attract imports at unprofitable price levels during periods of world oversupply.

From August 1971 until last December U.S. price controls impaired the profitability and financial strength of American producers.

U.S. environmental protection measures are among the most stringent in the world.

Lead production falling short of potential

Considering the abundance of good-quality lead ore reserves in this country, the U.S. lead industry is falling well short of its potential. In fact, the United States might become self-sufficient in lead.

Attachment 4 shows that American mine production has increased modestly in the last five years; metal production has increased very little if reprocessed stockpile metal is excluded. Production increases would have been greater had investment conditions been better, especially for lead smelting.

During the last four years two out of eight U.S. lead smelters have closed. No new lead smelters and refineries are planned for the United States (see Attachment 5). Yet, this country is importing large quantities of lead metal, about 180,000 tons last year. At the same time it is exporting substantial quantities of lead concentrates, an estimated 50,000 tons in 1973. It is not in the national interest for the United States to import large quantities of high-priced lead metal, while it is simultaneously exporting lower-priced concentrates.

THE NATIONAL INTEREST

The United States is unnecessarily dependent, overly dependent on foreign sources for lead and zinc—dangerously so in the case of zinc.

The stockpiles are being sold to meet present shortages. The new stockpile objectives are equivalent to about two weeks' consumption of lead, about seven weeks' consumption of zinc.

This country can continue down the present path. That means a stagnant or, at best, slowly growing lead industry with imports accounting for perhaps 20–25% of consumption. That also means a probable continued, gradual erosion of the domestic zinc producing industry, leaving the United States dependent on imports for over 60% of its zinc.

Continuing down the present path is simply not in the national interest.

The balance of payments

Last year the United States spent over $450 million on lead and zinc imports. Over the past 15 years $3 billion have been spent, and over the next 15 years a conservatively estimated $7 billion will be spent on lead and zinc imports unless something is done to reverse present trends.

Jobs

Opportunities to create new jobs should not be overlooked with unemployment running over 5%. Lead and zinc mining and metals production are not labor intensive, but new mines, smelters and refineries do create jobs, frequently in depressed areas.

National and industrial security

The United States cannot count on imports to meet its needs. During the past two years zinc metal imports have been insufficient. Last year, with American consuming industries neding zinc as badly as they ever needed it, metal shipments from Europe and Latin America were down about 20% from 1972. Mexico temporarily embargoed exports of zinc metal because of shortages in its domestic market. Japanese suppliers cut back zinc metal deliveries to this country for the same reason.

Other developments can be expected. Foreign governments already are discouraging the exportation of ores and concentrates in favor of basic metal. The next logical step—to obtain still more value added—will be to discourage the selling of basic metal in favor of fabricated products. Industries consuming lead and zinc metal are likely to encounter increasing difficulty in getting from foreign sources the metal they need in the forms required.

What about price? During the past two years foreign zinc producers have been selling their metal in the United States at substantially higher prices than those charged by U.S. producers. Today, with price controls removed, zinc from Peru, Finland and Zaïre is being sold for 3–4 cents a pound more than the highest prices being charged by U.S. producers. Dealers are continuing to sell imported zinc at approximately twice domestic producers' prices.

A foreign producers' cartel probably could not charge unrealistically high lead and zinc prices over a long period of time. Lead and zinc ores are widely distributed and new facilities probably would come into production.

But other countries, acting in concert, may be successful in raising prices for at least limited periods of time. A UN resolution passed in late 1973, "Recognizes that one of the most effective ways in which the developing countries can protect their natural resources is to promote or strengthen machinery for cooperation among them having as its main purpose to *concert pricing policies*, to improve conditions of access to markets, to *coordinate production policies* and, thus, to guarantee the full exercise of sovereignty by developing countries over their natural resources." (emphasis added)

It is one thing to pass resolutions, another to carry them out. But it would be unwise to dismiss these aspirations out of hand.

TWO LEAD AND ZINC TARIFF BILLS BADLY NEEDED

The passage of two lead and zinc tariff bills now before the Congress would give badly needed encouragement to new investment in American lead and zinc production facilities. The bills are summarized in the last attachment; a brief description suffices here.

H.R. 6191 (S. 2184), zinc ore duty-suspension bill

This bill would suspend the duty on zinc contained in ores and concentrates. Thus, it would put American zinc metal producers on a more equal footing with their foreign competitors in obtaining feed for their smelters.

No group has opposed this bill, which was reported favorably by the House Ways and Means Committee on March 26. Similar legislation was introduced last year in the Senate by Senator Stevenson. The Lead-Zinc Committee urges the Congress to enact this simple, but important, legislation in the coming weeks.

H.R. 6437, flexible-tariff bill

The second bill is more complex. Basically, it would allow large quantities of lead ores and concentrates and lead and zinc metals to enter the United States at the present low-duty rates. Excessive imports would be subject to higher duties, but the higher duties would be applied only to the excessive amounts. Moreover, the quantities of lead and zinc metals which could be imported at low-duty rates would be increased as consumption of lead and zinc metals increases.

Five brief points about this bill:

1. The bill is not intended to protect something old but to encourage investment—in this country—in something new.

2. It would encourage new investment because it would curtail damaging import surges. It is *not*, however, a quota bill.

3. Because it would encourage new investment it would increase supplies to American consumers, not reduce them.

4. The bill is necessary to offset the advantages conferred on foreign producers by governmental subsidies and other assistance, and by state ownership.

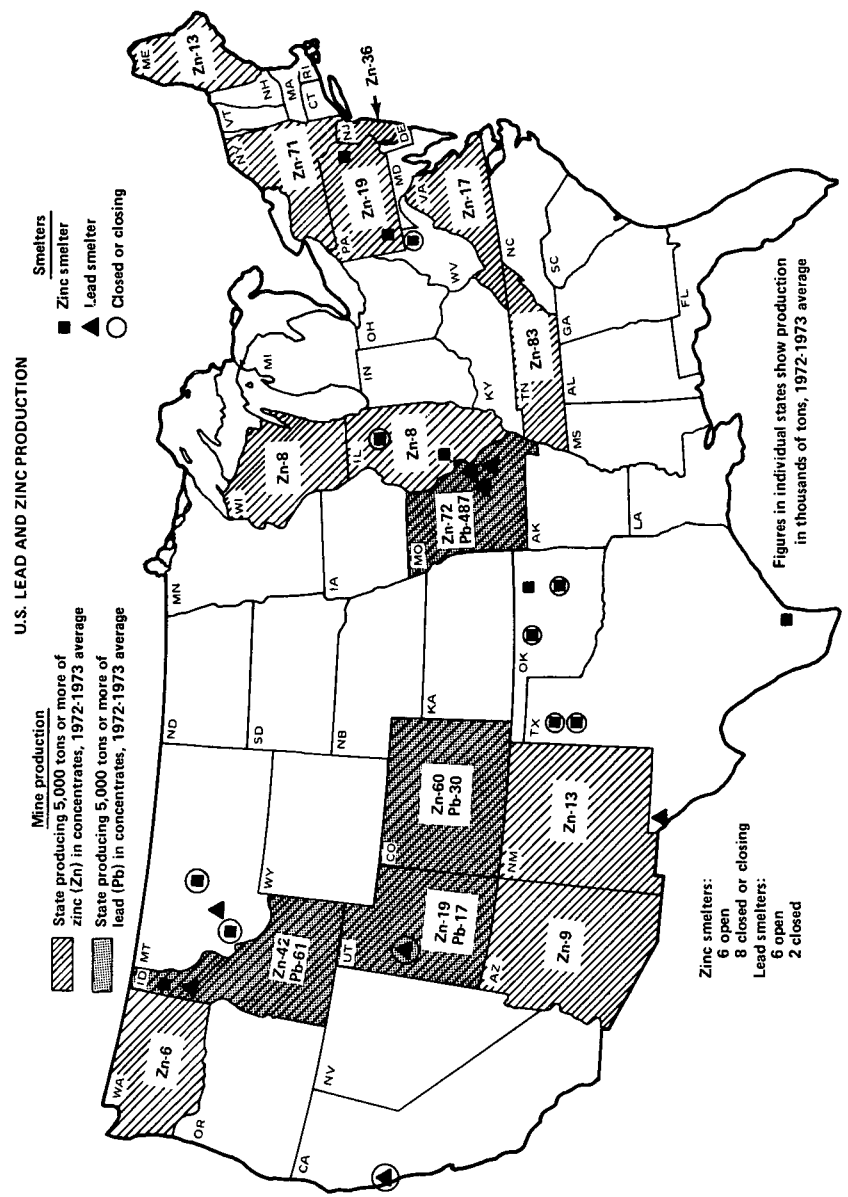
5. The bill's underlying philosophy is that the U.S. economy should have access to the world market for the lead and zinc materials it needs. Unrestricted access should be avoided, however, because it is a damper on investment in domestic facilities.

The Committee on Ways and Means heard testimony on this bill last May. Our member companies strongly urge that favorable action be taken on it during this session of Congress.

In summary, the Lead-Zinc Producers Committee supports passage, with some amendments, of the Trade Reform Act. But additional legislation will be needed if the American lead and zinc industries are to be revitalized. That revitalization becomes more difficult with every day that passes. The time to begin is now.

Mr. Chairman, the Lead-Zinc Producers Committee appreciates this opportunity to present its views. Thank you very much.

ATTACHMENT 1



ATTACHMENT 2.—U.S. ZINC SATTISTICS

[In short tons]

	1969	1970	1971	1972	1973
1. Mine output (zinc content, recoverable)	553,000	534,000	503,000	478,000	476,000
2. Slab zinc (metal) production [1]	1,111,000	955,000	847,000	707,000	688,000
3. Imports of concentrates (zinc content)	602,000	526,000	343,0C0	255,000	199,000
4. Imports of slab zinc (metal)	325,000	270,000	320,000	523,000	589,000
5. Exports of slab zinc (metal)	9,000	negligible	13,000	4,000	15,000
6. GSA stockpile disposals (shipments) [1]	18,000	1,000	24,000	195,000	272,000
7. Estimated slab zinc (metal) (consumption)	1,385,000	1,187,000	1,254,000	1,418,000	1,489,000
8. Estimated cost of zinc imports [2] (millions of dollars)	164	141	149	230	385

[1] Slab zinc production includes some GSA metal which is remelted and refined. In 1972, 81,000 tons of the 195,000 tons of GSA metal released were reprocessed in this manner; during 1973, 113,000 tons of the relaased GSA metal were processed.

[2] Ores, concentrates, and nonfabricated metal.

Sources: U.S. Bureau of Mines, the General Services Administration and the American Bureau of Metal Statistics.

ATTACHMENT 3.—PLANNED EXPANSION AND CONSTRUCTION OF NEW ZINC SMELTERS AND REFINERIES, 1974–77

Country	Replacement of existing plants	Expansions of existing plants	New plants	Totals
Belgium	1			1
Finland		1		1
France	1			1
Italy		1		1
Netherlands	1			1
Spain		2		2
Turkey			1	1
Algeria			1	1
South Africa		1		1
Brazil		1		1
Peru			1	1
India		2	1	3
Japan		2		2
Canada		2		2
United States	1	1		2
Totals	4	13	4	21
Total by state-owned or controlled companies				5

Note.—The total tonnage projected above would be about 1,200,000 tons; of this, U.S. plants will account for only 90,000 tons.

Sources: International Lead and Zinc Study Group; press.

ATTACHMENT 4.—U.S. LEAD STATISTICS

[In short tons]

	1969	1970	1971	1972	1973 (Prelim.)
1. Mine output (lead content, recoverable)	509,000	572,000	579,000	619,000	600,000
2. Refined lead productions [1] (not including scrap)	639,000	667,000	654,000	701,000	746,000
3. Imports of concentrates (lead content)	109,000	112,000	66,000	102,000	102,000
4. Imports of metal pigs and bars	285,000	251,000	199,000	242,000	178,000
5. Exports of lead metal (excluding scrap)	5,000	8,000	6,000	8,000	67,000
6. GSA stockpile disposals [1]	12,000	12,000	13,000	50,000	212,000
7. Metal consumption (primary and scrap)	1,389,000	1,361,000	1,432,000	1,485,000	1,484,000
8.Estimated cost of lead imports [2] (millions of dollars)	96	97	62	84	71

[1] Refined lead production includes some GSA metal which is remelted and refined. In 1972, 15,000 tons of the 50,000 tons of GSA metal released were reprocessed in this manner; during 1973, 61,000 tons of the released GSA metal were reprocessed.

[2] Ores, concentrates, and nonfabricated metal.

Sources: U.S. Bureau of Mines, the General Services Administration and American Bureau of Metal Statistics.

ATTACHMENT 5.—PLANNED EXPANSION AND CONSTRUCTION OF NEW LEAD SMELTERS AND REFINERIES, 1974-77

Country	Replacements of existing plants	Expansions of existing plants	New plants	Totals
Spain		2		2
Japan		1		1
India		2		2
Peru			1	1
Mexico		1		1
Totals		6	1	7
Total by state-owned or controlled companies				

Note.—The total tonnage projected above would be about 200,000 tons; none of this will be accounted for by U.S. plants.

Sources: International Lead and Zinc Study Group; press.

TARIFFS ON METAL IMPORTS IN PRINCIPAL LEAD AND ZINC EXPORTING COUNTRIES

NOTE.—The following information is from official tariff schedules obtained from the U.S. Commerce Department and from the International Lead and Zinc Study Group (with respect to the EEC).

AUSTRALIA

(1 Australian dollar=US$1.49).

(1 Kilogram=2.2 pounds).

Pig iron and cast iron in pigs, blocks, etc.: A$2.955 per ton, plus 7.5% "primage".

Unwrought copper: Free.

Unwrought nickel: 15%, and A$4.98 per ton.

Unwrought aluminum: 5.625%.

Lead metal: Free.

Zinc metal: 15% and A$4.98 per ton.

Tin: 26.25% and 4.8 cents Australian per kilogram.

NOTE.—The duties shown above apply to imports from the United States. In some cases Australia grants lower, preferential duties to imports from Commonwealth countries. These preferential duties have, of course, a discriminatory effect on U.S. exports.

CANADA

(1 Canadian dollar=US$1.03).

Pig iron: 10 cents Canadian per pound.

Unwrought copper: 1.5 cents Canadian per pound.

Nickel alloy containing more than 60% nickel: C$2.50 per short ton.

Unwrought aluminum: 5 cents Canadian per pound.

Lead metal: 1 cent Canadian per pound.

Zinc metal: 2 cents Canadian per pound.

Tin: Free.

NOTE.—The duties shown above apply to imports from the United States. In some cases Canada grants lower, preferential duties to imports from Commonwealth countries. These preferential duties have, of course, a discriminatory effect on U.S. exports.

EUROPEAN ECONOMIC COMMUNITY

(1 Unit of Account (UA)=US$1.21).

(1 Kilogram=2.2 pounds).

Steel: slabs and rolled: 4%.

Unwrought copper: Free.

Unwrought nickel: Free.

Unwrought aluminum: 7%.

Lead metal: EEC common tariff: 4.5% with maximum of 1.32 UA per 100 kilograms.

However: The EEC countries have individual duty-free quotas which are set periodically. The duty-free quotas will be decreased annually until 1978 when the external EEC tariff will apply to all imports.

Apart from the quotas described above, certain EEC countries maintain separate quotas for imports from Eastern European countries.

Zinc metal: As described for lead metal.

Unwrought tin: Free.

JAPAN

(1 US$=275 Yen).

Pig iron: 4%.

Iron and steel slabs: 10%

Unwrought copper: Free.

Unwrought nickel: 13%.

Unwrought aluminum: 10%.

Lead metal: ¥105,000 and up per ton, c.i.f., duty-free; between ¥105,000 and 97,000 per ton, c.i.f., the difference; below ¥97,000 per ton, c.i.f., ¥8,000 per ton.

Zinc metal: ¥115,000 and up per ton, c.i.f., duty-free; between ¥115,000 and 107,000 per ton, c.i.f., the difference; below ¥107,000 per ton, c.i.f., ¥8,000 per ton.

MEXICO

NOTE 1.—Nothing produced on a satisfactory level in Mexico can be imported.

NOTE 2.—A surtax of 3% is applied to nearly all commercial shipments.

NOTE 3.—Mexico levies an ad valorem tariff on the invoice value or Mexican official valuation, *whichever is higher.*

(1 US$=12.5 Mexican pesos).

(1 Kilogram=2.2 pounds).

Steel: Official valuation: 0.6 pesos per gross kilogram, 12%.

Unwrought copper: Official valuation: 16.25 pesos per gross kilogram, 0.1 pesos per gross kilogram, and 13%.

Unwrought nickel: Official valuation: 20.20 pesos per gross kilogram 10%.

Unwrought aluminum: Official valuation: 7.0 pesos per gross kilogram, 0.5 pesos per gross kilogram, and 5%.

Lead metal: Official valuation: 4.75 pesos per gross kilogram, 0.02 pesos per gross kilogram, and 4%.

Zinc metal: Official valuation: 8.40 pesos per gross kilogram, 0.05 pesos per gross kilogram, and 22%.

Tin: Official valuation: 30.0 pesos per gross kilogram, 0.15 pesos per gross kilogram, and 18%.

PERU

(1 US$=42.7 Peruvian soles).

(1 Kilogram=2.2 pounds).

Steel: 0.10 soles per gross kilogram, and 192%.

Refined copper: 1.0 soles per gross kilogram, and 42%.

Unwrought nickel: 4.0 soles per gross kilogram, and 42%.

Unwrought aluminum: 1.0 soles per gross kilogram, and 42%.

Lead metal: 0.6 soles per gross kilogram, and 42%.

Zinc metal: 1.0 soles per gross kilogram, and 42%.

Tin: 2.0 soles per gross kilogram, and 42%.

ZAÏRE

Steel: 10% "fiscal" duty.

Unwrought copper: 5% customs duty, and 10% fiscal duty.

Unwrought nickel: 5% customs duty, and 10% fiscal duty.

Unwrought aluminum: 5% customs duty, and 10% fiscal duty.

Lead metal: 10% fiscal duty.

Zinc metal: 10% customs duty, and 25% fiscal duty.

Tin: 10% customs duty, and 25% fiscal duty.

FOREIGN GOVERNMENT ACTIONS AND POLICIES

AUSTRALIA

There have been two broad developments on the Australian mining scene during the past year.

First, the Government has eliminated a number of tax concessions which the industry previously enjoyed. Second, the Government has taken or is planning actions which will give it a much larger role than previously in exploration, production, processing and exportation. According to the press, these actions include:

The planned establishment of a governmental authority to grant some US$75 million annually for minerals exploration and development.

The planned channeling of Australian capital through a governmental corporation into approved mining ventures. Institutional lenders may be obliged to invest in the corporation.

The planned establishment of another authority to explore for, develop, transport, process and sell Australian petroleum and minerals.

The placing of all minerals, whether in raw or semi-processed form, under export control. Apparently, this control has been little used to date, but the Government has said, "Australia seeks a greater processing of Australia's mineral exports . . ." and "Where shortages exist, Australia will, at all times, give preference in supplies to our longstanding major trading partners, *and will not refuse assistance where practicable.* We will export as much as is possible *after full consideration of Australia's requirements.*" (emphasis added)

Australia is a member of the newly formed International Bauxite Association. Also, Australia attended a recent meeting of iron ore exporting nations as an observer. Another iron ore meeting at ministerial level is scheduled in a few months' time.

CANADA

For over 30 years new Canadian mines were exempted from taxes for the first three years after production began. This exemption, which ended last year, made a major contribution to the strong growth of the Canadian mining industry.

Meanwhile, a regional economic expansion program continues. It provides for grants ranging from 10% of capital cost, plus up to C$2,000 for each job created, to a maximum of 25% of capital cost, plus up to C$5,000 for each job created. The program also provides for loan guarantees. It excludes the production of mineral ores and concentrates, but includes the production of metals and fabricated products.

From 1969 through November, 1973, the Government made incentive grants totaling C$395 million (averaging 20% of eligible capital costs) to Canadian companies. Over C$21 million were given to metals producing companies, including C$8 million for a zinc metal plant.

Two provinces, Quebec and Manitoba, have established official exploration and development organizations to work with private companies. These organizations are capable of large-scale efforts; the Quebec organization is capitalized at C$45 million.

Further, a number of Canadian provinces have enacted laws prohibiting or discouraging the export of ores and concentrates from Canada, thereby encouraging the establishment of smelting and refining facilities in places where they might not otherwise be established.

Canada also attended the meeting of iron ore exporting nations as an observer.

EUROPEAN ECONOMIC COMMUNITY

All of the EEC nations have granted industry various forms of assistance—government loans and guarantees, capital grants and tax concessions—in economically troubled regions.

Italy has a major incentive program. To firms establishing plants in southern Italy the Government gives: grants of up to 30% of capital expenditure, low-interest loans, lower freight rates and special tax concessions. Other, more modest incentives are given to firms establishing elsewhere in Italy.

An Italian state-owned minerals group supplies 35% of Italy's lead and 55% of its zinc. This group plans to spend $640 million within the next five years to increase its mining and metallurgical operations in Italy.

In 1972 the *United Kingdom* began a very large assistance program. The program provides for a one-year write-off on investment in machinery and plant and grants of 20–22% for investments made throughout a large part of Britain.

A Canadian company may build a new zinc smelter and refinery in England. It it does, it may qualify for a grant worth about $13 million.

In addition, the Government has started a $120 million minerals exploration program.

The *Federal Republic of Germany*, the *Netherlands*, *Belgium* and *France* have programs to assist economically depressed areas. During the past six years five new zinc smelters and refineries have been constructed in Germany, the Netherlands, Belgium and Italy; all five located in areas where they could receive governmental assistance. A new zinc plant in the Netherlands, for example, received a subsidy of over $6 million.

In *Ireland* a 1967 act permitted full corporate and income tax exemption for 20 years for production (begun before 1986) of lead, zinc, copper and barite. This act greatly stimulated Irish minerals development.

The Government is ending the tax exemption in April, 1974. According to the press, mine operators will now receive liberalized write-offs for prospecting, exploration and plant expenditures.

Ireland also grants negotiated packages of incentives for large, capital intensive projects, guarantees loans and subsidizes interest payments.

Negotiations on an *EEC regional fund* are still underway. The fund is likely to be at least $1 billion, to be distributed over a three-year period.

INDIA

India has two zinc smelters, one state-owned. Government plans call for doubling the output of these two smelters and for establishing a third state-owned smelter. Consideration also is being given to constructing another government-owned plant which will produce both lead and zinc.

JAPAN

The Japanese Government follows a well-defined policy of assisting its natural resource industries; Japanese companies work closely with each other and with their Government.

Major projects are government approved, qualifying them for low-interest loans through the Government banking system. It also appears that the Government has given significant subsidies to the nonferrous metals industry.

One major result of this close cooperation is that Japanese mining and metals companies carry much heavier debt loads than American companies carry; their debt-equity ratios are about 10 times those of comparable U.S. firms. In effect, the Japanese companies have expansion capital which is denied their U.S. competitors.

Ore supplies are crucial to Japanese companies. The Government has made special funds available to the companies to assist in the importation of ores. Also, a Government agency helps the firms to find and develop overseas ore bodies. Japanese companies have been particularly successful in tying up the production of foreign mines.

PERU

A state organization owns much of Peru's lead and zinc production facilities. This organization plans to construct two new lead and zinc plants.

SPAIN

A state agency controls some Spanish lead and zinc companies and participates in the ownership of others. Another state agency is spending over $50 million on minerals exploration in Spain during the 1972–75 period.

Also, the Spanish Government gives tax concessions and investment grants of up to 20 percent to firms investing in certain underdeveloped areas.

ZAÏRE

Zaïre's principal mining company is state owned. It was announced recently that all mining companies in Zaïre must offer the Government 50% of their equity.

ATTACHMENT 8.—ZINC PRICE DATA

I. U.S. PRIME WESTERN ZINC PRICES, CURRENT AND 1958 DOLLARS

[Cents per pound, all on a delivered basis]

	Current cents	1958 cents		Current cents	1958 cents
1950	14.4	17.3	1963	12.5	12.4
1951	18.5	20.1	1964	14.1	13.9
1952	16.7	18.6	1965	15.0	14.6
1953	11.4	12.6	1966	15.0	14.3
1954	11.2	12.3	1967	14.3	13.4
1955	12.8	13.8	1968	14.0	12.8
1956	14.0	14.4	1969	15.1	13.3
1957	11.9	11.9	1970	15.8	13.4
1958	10.8	10.8	1971	16.1	13.2
1959	11.9	11.7	1972	17.7	14.0
1960	13.4	13.2	1973	20.5	15.1
1961	12.0	11.8	April 1974 (estimate)	35.0	21.9
1962	12.1	11.9			

II. U.S. AND FOREIGN PRICES, MARCH 29–30, 1974

[U.S. cents per pound; U.S. Prime Western or equivalent]

	Cents per pound		Cents per pound
United States	35.0	Japanese price	37.9
European producers' price	35.9	London Metal Exchange	77.3

Note: Prices converted to 1958 cents on the basis of the U.S. Government's industrial commodity price index.

Sources: American Bureau of Metal Statistics Yearbooks; International Lead and Zinc Study Group Statistical Bulletin; "American Metal Market"; "Japan Metal Journal."

ATTACHMENT 9.—LEAD PRICE DATA

I. U.S. LEAD PRICES, CURRENT AND 1958 DOLLARS

[Cents per pound, 1950–71: delivered New York; 1972–73: delivered United States]

	Current cents	1958 cents		Current cents	1958 cents
1950	13.3	16.0	1963	11.1	11.0
1951	17.5	19.0	1964	13.6	13.4
1952	16.5	18.4	1965	16.0	15.5
1953	13.5	14.9	1966	15.1	14.4
1954	14.1	15.5	1967	14.0	13.1
1955	15.1	16.3	1968	13.2	12.1
1956	16.0	16.5	1969	14.9	13.2
1957	14.7	14.7	1970	15.6	13.3
1958	12.1	12.1	1971	13.8	11.3
1959	12.2	12.0	1972	15.4	12.2
1960	11.9	11.7	1973	16.3	12.0
1961	10.9	10.8	April 1974 (estimate)	21.5	13.5
1962	9.6	9.5			

II. U.S. AND FOREIGN PRICES, MARCH 29–30, 1974

[U.S. cents per pound]

	Cents per pound
United States	21.5
Japanese price	35.1
London Metal Exchange	32.8

Note: Prices converted to 1958 cents on the basis of the U.S. Government's industrial commodity price index.

Sources: American Bureau of Metal Statistics Yearbook; International Lead and Zinc Study Group Statistical Bulletin, "American Metal Market"; "Japan Metal Journal."

ATTACHMENT 10.—SUMMARY OF PROPOSED LEGISLATION

The two bills are complementary, one long-term and designed to address fundamental problems, the second short-term and intended to meet an immediate situation.

THE FLEXIBLE TARIFF BILL (H.R. 6437)

The flexible-tariff bill would establish no limits on imports of the items covered. Instead, the bill provides that, with the exception of zinc ore, present rates of duty would apply to imports up to specified quantitative levels each calendar quarter; beyond the quarterly quantitative levels higher rates of duty would apply. The Act makes no reference to individual exporting countries.

Duties on the principal items would be set as follows (for countries receiving most-favored-nation treatment):

Item	Present duty	Approximate ad valorem equivalent (percent)	Quarterly quantitative level	Higher duty rate
Lead ore	0.75 per pound, contained lead.	5.0	24,000 tons, lead content.	19 percent ad valorem.
Lead metal	1.0625 cent per pound	3.5	40,000 tons	Do.
Zinc metal	0.7 cent per pound	(2)	125,000 tons	Do.
Zinc ore	0.67 cent per pound, contained zinc.	(4)	120,000 tons, zinc content.	See next paragraph.

The bill makes an exception for zinc ore. It further provides that zinc ore, up to 120,000 tons each calendar quarter, would enter free of duty. Beyond the quantitative limitation the present rate of duty, 0.67 cents per pound, would apply. If, however, the price of zinc metal was less than 15 cents per pound, the duty would be 0.67 cents per pound, regardless of the quantity being imported.

As now drafted, the bill requires the Secretary of Interior to adjust the lead metal and zinc metal quantitative levels upward or downward for the two years beginning in the second calendar quarter of 1975 and continuing through the first calendar quarter of 1977. This would be done in accordance with changes in the consumption of lead metal and slab zinc, but only if the consumption of either lead metal or slab zinc had changed upward or downward by more than 4 percent compared with a three-year base period of 1970–72.

The Secretary would make similar adjustments in the first quarter of 1977 on the basis of consumption in the calendar years 1975 and 1976. New adjustments would take effect in the second calendar quarter of 1977 and continue through the first calendar quarter of 1979. Similar adjustments would be made every two years thereafter as long as the Act was in effect.

Before enactment, the bill probably should be amended to require the first adjustment in the lead and zinc metal quantitative levels in 1976 (instead of 1975), on the basis of a 1971–73 base period (instead of 1970–72). The quantitative level for zinc metal also might be increased to reflect the current level of zinc metal imports. Finally, the flexible-tariff bill also might be amended to allow lead and zinc metals, when in short supply, to enter the United States duty-free, regardless of any other provisions of the bill. Thus, there would be no duties on the metals when they were in short supply, penalty duties when they were in oversupply, and normal duties at other times.

Certain manufactured items also are covered by the bill. It provides that up to certain quarterly quantitative levels present rates of duty would apply on these items; beyond those levels higher duties would come into effect.

The rates of duty and other tariff treatment provided for in the flexible-tariff bill would remain in effect until Congress by Concurrent Resolution restored the prior treatment.

THE ZINC ORE DUTY-SUSPENSION BILL (H.R. 6191 AND S. 2184)

The second bill is directly related to the exception for zinc ore in the flexible-tariff bill. This duty-suspension bill, as amended by the House Committee on Ways and Means, would suspend the duty on zinc contained in ores and concentrates until July 1, 1977. Similar legislation has been introduced in the Senate, but the Senate has not yet taken any action on the legislation.

The Lead-Zinc Producers Committee recognizes that the legislative process could cause further delays in the enactment of the flexible-tariff bill. The Producers Committee urges that the duty-suspension bill, which has not been opposed by any group, be enacted in the very near future to give some relief to the hard-pressed domestic zinc smelting industry.

[Whereupon, at 11:55 a.m., the committee recessed to reconvene at 9 a.m., Wednesday, April 10, 1974.]

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TRADE REFORM ACT OF 1973

WEDNESDAY, APRIL 10, 1974

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to recess, at 9 a.m., in room 2221, Dirksen Senate Office Building, Senator Paul J. Fannin, presiding.

Present: Senators Hartke, Ribicoff, Bentsen, Fannin, and Packwood.

Senator FANNIN. The hearing will come to order.

We have a very long list of witnesses today, which is why we are beginning our hearings at this hour. Each witness has been instructed to confine his remarks to a ten-minute summary of his written statement. The five-minute rule will remain in effect as it has throughout the hearings for the questioning of the witnesses.

Our first witnesses will consist of a panel, with Mr. John Van Horn and Mr. Frank B. Snodgrass. We welcome you, gentlemen. It certainly is nice to have you with us this morning.

Now, let us see, you are Mr. Van Horn?

Mr. VAN HORN. Yes.

Senator FANNIN. And, Mr. Snodgrass?

We welcome you this morning. We are pleased to have you with us and we want you to proceed. Do you have statements?

Mr. VAN HORN. Yes, I do.

Senator FANNIN. The complete statements will be made a part of the record, and you may proceed as you desire.

STATEMENT OF JOHN M. VAN HORN, VICE PRESIDENT, SUNKIST GROWERS, INC., ON BEHALF OF THE CALIFORNIA-ARIZONA CITRUS LEAGUE

Mr. VAN HORN. Thank you. My name is John M. Van Horn. I appear today as past president of the California-Arizona Citrus League, which represents the citrus industry in California and Arizona and, as vice president of Sunkist Growers, a marketing cooperative.

It is a pleasure to be here this morning to discuss this bill presently pending before the committee. As you know, the citrus industry in California and Arizona accounts for approximately 90 percent of all of the fresh citrus exported from the United States.

The citrus industry in California and Arizona currently exports slightly over 30 percent of all of its own citrus, sold fresh. This exceeds $138 million annually. Our citrus is exported to countries

such as Canada, Japan, France, Mexico, the Soviet Union, New Zealand, and Sweden, just to name a few.

Our growers continue to attempt to produce the highest quality citrus in the world and share it with consumers throughout the world. In order to market citrus, it is necessary to have access to the market place within each country.

In many countries of the world today there is a strong demand for our citrus. However, in many of these countries, there are also artificially imposed barriers of various types and forms which obstruct the flow of citrus from the producers in California and Arizona, to the consumers in those countries.

It is for this reason that the growers support titles I through III of H.R. 10710. It is their hope that the multilateral trade negotiations will be successful in opening markets not only for citrus but for all U.S. products for which there is an export market.

Your attention is invited to two sections of title I on which a specific comment is made. The citrus industry in California and Arizona supports the position of the U.S. National Fruit Export Council which we understand has testified earlier, and the tobacco industry which is testifying here today, that section 102(c) be deleted from title I.

It is our belief that forcing the negotiations to follow artifically defined sectors would not be in the best interests of the United States and would prevent any negotiator from reaching maximum effectiveness.

In the event that section 102(c) is retained in the bill, then it is recommended that section 102(c)(1) be changed by deleting the word "developed" in line 5, and substituting in its place "all GATT members".

The purpose of the proposed multilateral trade negotiations should be to gain market access to all members of GATT. As section 102(c) is currently written, it implies that the United States should only attempt to obtain market access to developed countries. Many less developed countries provide excellent markets for U.S. goods, and we should try to open those markets further.

The second section to which your attention is invited in title I, is section 127. This section provides for nondiscriminatory treatment by the United States. The California-Arizona Citrus League has long supported the principle of nondiscrimination in international trade. It supports the most favored nations rules set forth in article I of GATT, and I will come to that, more specifically, in a minute.

The citrus industry recommends the following language be added to section 127. "However, this section does not apply to those countries which do not apply nondiscriminatory treatment to exports from the United States and those countries may not receive nondiscriminatory treatment from the United States. Neither shall any country which does not have a trade agreement with the U.S. benefit from this section."

We have experienced, as have others, the fact that when a GATT member does not observe the most favored nations rule of GATT, it is very difficult to remedy that violation.

As you gentlemen know, the U.S. generally is not willing to take issue with GATT and insist upon a vote since the U.S. feels that

even on issues where it is clearly right, it will be outvoted generally by the EEC and its associated members.

At the same time, those countries discriminate against the United States. The United States, pursuant to the provisions of section 127, would be providing them most favored nation treatment. Our suggestion simply would mean that no country would receive most favored nation treatment at the same time it does not extend most favored nation treatment to the United States.

This seems to be fair. The second sentence proposed for that section simply prevents any country of the free world, which is not a member of GATT, or which does not have some other trade agreement with the United States, from receiving most favored nation treatment automatically, while not extending similar treatment to the United States.

The principal country involved here is Mexico, which has never had a trade agreement with the United States and is not a GATT member. Nevertheless, Mexico benefits from all duty concessions granted by the United States on a most-favored-nation basis.

Let us return now to the most-favored-nation provision of GATT. As you gentlemen know, the EEC discriminates against the United States' citrus exports in favor of Tunisia, Morocco, Egypt, Israel, Lebanon, Cyprus, and Spain.

Tunisia and Morocco receive 80 percent tariff reductions and the other countries receive 40 percent reductions. However, it is reliably reported that all countries will be brought to the 80 percent level shortly.

These tariff preferences clearly violate the most favored nation provision of GATT and the U.S. has consistently indicated that both the violation and the damage being sustained by our industry, are clear-cut.

Citrus growers in California and Arizona have sustained losses of exports since the preferences were put into effect in the fall of 1969 of over $20 million. The citrus industry appreciates very much Senate Resolution No. 89, which this committee unanimously passed in 1971 and which the Senate and House passed on April 19, 1971.

As will be recalled, that Resolution called upon the President to obtain equal treatment for citrus exported to the EEC. As of this date, the EEC continues its discrimination against the United States.

The discrimination has now increased with England, Ireland, and Denmark joining the EEC. Previously, we were able to compete in these markets on an equal basis with our Mediterranean competitors. Now, those Mediterranean countries will enjoy the same preference in these three countries as they did in the original six members of the EEC.

This is particularly damaging since both Denmark and Ireland allow oranges to enter free, and England had only a 5 percent duty. The EEC duty is 20 percent during the winter and 15 percent during the summer. Thus, one can readily understand the damage inflicted by 80 percent tariff reductions in which the United States does not share.

As you know, the United States had been engaged in negotiations with the EEC, as a result of the entry of England, Ireland, and Den-

mark into the EEC. These negotiations began in March of 1973 and were originally scheduled to end by June of 1973. That deadline has continued to be moved backwards. As of today, there is still no settlement of the XXIV:6 negotiations.

Growers in California and Arizona believe that the U.S. should not enter into multilateral trade negotiations at a time when the Europeans evidence no willingness to negotiate with us on an equitable basis. The XXIV:6 negotiations provide a measure as to the willingness of the EEC to negotiate with the United States.

If the United States' request is not accepted by the EEC, then it is recommended that the United States not enter into multilateral trade negotiations. If the United States and the EEC cannot come to an agreement which results in a settlement of the XXIV:6 negotiations, then it would be proper for the United States to withdraw concessions on EEC exports to the United States in such an amount as to equal the damage suffered by the United States as a result of the three new countries joining the EEC.

After this has taken place, the United States may wish to enter into the multilateral negotiations. The only way that this committee can be certain that the EEC accepts the U.S. demands, or if that is not successful, that the U.S. withdraw its concessions, is to withhold passage of the trade bill until one of these two events occur.

It is unfortunate that the United States is encountering so much difficulty in resolving the XXIV:6 negotiations. However, as indicated previously, it does provide this committee with the opportunity to determine precisely whether or not the United States has the necessary resolve to enter into a multilateral negotiation.

It also provides an opportunity to determine whether or not the European Economic Community is ready to negotiate. There cannot be a negotiation unless both sides are willing to negotiate.

It is hoped that this committee will closely follow the current negotiations and base its decision on whether or not to approve a trade bill upon the outcome of the negotiations. As you know, both the tobacco industry, with whom we are testifying today, and the citrus industry are hopeful that concessions will be obtained for tobacco and citrus in the current negotiations.

The growers from California and Arizona believe that the United States has the ability to obtain the requested concessions.

Another major problem derives from the Japanese prohibition against imports of fresh oranges except within a small quota. Under GATT, such quotas are permissible only for balance of payments reasons, a problem which has not plagued Japan for years.

Japanese orange growers are adequately protected with the high seasonal duties—some 40 percent. The additional quota provision not only is GATT-illegal, but it is not needed. I thank you for your careful attention. It is hoped that this testimony will help sharpen both the need for the trade bill and the need to determine the outcome of the XXIV: 6 negotiations before proceeding with the multilateral trade negotiations.

I trust that our prepared statement will be inserted in the record following these remarks. I will be happy to answer any questions.

Senator FANNIN. Thank you, Mr. Van Horn. Your complete statement will be made a part of the record. I commend you for an excellent presentation and of course I am very much in agreement with you.

I have been working with you on this subject for quite some years. We have great difficulties and it is very unfair to this country and I hope that we can accomplish some of the objectives that you have.

I will have some questions for you after we have heard from Mr. Snodgrass. We will hear from Mr. Snodgrass first.

Mr. Snodgrass, we welcome you here this morning. You furnished a statement and your complete statement will be made a part of the record.

You may present it as you see fit.

STATEMENT OF FRANK B. SNODGRASS, VICE PRESIDENT AND MANAGING DIRECTOR, BURLEY & DARK LEAF TOBACCO EXPORT ASSOCIATION, AND ALSO ON BEHALF OF TOBACCO ASSOCIATES, INC., AND LEAF TOBACCO EXPORTERS ASSOCIATION, INC., ACCOMPANIED BY JOSEPH R. WILLIAMS, PRESIDENT, TOBACCO ASSOCIATES, INC.

Mr. SNODGRASS. Thank you, Mr. Chairman.

My name is Frank B. Snodgrass. I am vice president and managing director of the Burley and Dark Leaf Tobacco Export Association, Inc., and executive director of the National Cigar Leaf Tobacco Association, Inc., with offices at 1100 Seventeenth Street, N.W., in Washington, D.C.

This statement is also presented on behalf of Tobacco Associates, Inc., here in Washington, D.C. Their president, Mr. Joseph R. Williams, is in the audience and I would like for him to join me at this time, Mr. Chairman.

Senator FANNIN. We welcome him, Mr. Snodgrass.

Mr. SNODGRASS. This statement is also presented on behalf of the Leaf Tobacco Exporters Association, Inc., in Raleigh, N.C.

This joint presentation is being offered by the aforementioned associations representing the producers and exporters of the major portion of U.S. leaf tobacco sold in international trade.

Tobacco is produced in a 22 State area by more than 700,000 growers. Both our producers and exporters have long been the strongest advocates of free international trade. However, in recent years, through the introduction of tariff and nontariff barriers by some of our trading partners, we have fared badly in maintaining and expanding our world markets for U.S. produced tobacco.

Tobacco is the original U.S. export. Since Colonial days, the United States has been the world's largest producer and exporter of tobacco. In these times, when we are faced with trade deficits, it is more important than ever that we maintain free access to our export market.

In calendar year 1973, U.S. foreign trade in tobacco and tobacco products resulted in a net favorable balance of approximately $777

million. Notwithstanding this outstanding record, the U.S. share of tobacco in the international trade has consistently dropped since the end of World War II.

The European community is the largest export market for U.S. produced leaf, accounting for about 60 percent of our total exports. The restrictive and discriminatory policies of the expanded EC, which has recently extended generalized special preferences to certain Commonwealth countries and other less-developed countries, will greatly impair the possibility of maintaining this traditional market for U.S. tobacco exports.

We recommend acceptance of the broad objectives of the Trade Reform Act and our major emphasis will be placed on the following sections of the proposed legislation.

Title I: It is imperative that our negotiators enter the forthcoming round of trade negotiations with broad authority to alter both tariff and nontariff barriers. Currently, the President does not have such authority and our entry into trade negotiations with countries having delegated authority would make our participation virtually meaningless.

The restrictive tobacco policies of the expanded European Community are a matter of record. We feel that our tobacco sales to the three new members will be curtailed unless needed changes are made in the EC tobacco policies.

In Denmark and Ireland, the duties are now zero. However, Ireland levies a fiscal charge, but no duty or preference. The United Kingdom levies a revenue duty and we understand the U.K. and the EC consider the Commonwealth preference of about 20 cents per pound as the protective element of the revenue duty. The common external tariff of the EC will be phased in by these three countries by July 1, 1977.

In addition to discriminatory tariffs, the EC is now moving toward an excise tax harmonization, which will work to the disadvantage of U.S. produced leaf. By 1980, tobacco excise taxes levied by member states must be uniformly based on a formula consisting of two elements: a specific and an ad valorem tax in proportions still to be determined.

To the extent the ad valorem component outweighs the specific component, the excise tax will work to encourage the use of lower priced tobaccos produced in France, Italy and countries enjoying preferences in the European Community, and to discourage the use of quality, higher priced tobacco produced in the United States.

Our immediate concern is the EC cigar wrapper tariff provision levying an ad valorem tax of 15 percent duty on all tobacco valued above $1.27 per pound. This provision was written into the EC Tariff Schedule in 1962 for the specific purpose of protecting the Italian Cigar Wrapper producer and was never intended to apply to cigarette and pipe tobacco leaf imports.

However, due to the increased cost of the U.S. leaf and revolutionary processing technological changes, we now find that practically all U.S. leaf tobacco is being assessed the straight 15 percent duty.

Therefore, 60 percent of our market, by virtue of a single, discriminatory levy, penalizes our processing progress and there is little hope of retaining our share of the EC market as long as this discriminatory levy is applied.

U.S. producers of cigar wrapper tobacco are also vitally interested in the elimination of the cigar wrapper tariff, since our exports of wrapper to the expanded EC has traditionally accounted for over one-half of U.S. exports of this kind of tobacco.

Other countries in the world have also established similar tariff and nontariff barriers to the use of our tobacco and it is hoped that the new authority for negotiations will permit the elimination of these barriers.

Some of the more commonly used nontariff barriers in world tobacco trade are licensing requirements, restricted products lists, exchange controls, prior deposits, mixing regulations, monopolies and state trading companies and quota restrictions.

Moving now to the bill, title I, we are greatly concerned regarding the language contained in section 102(c), the so-called "Karth Amendment".

We agree that the individual sectors of our Nation's economy should be treated fairly and that special problems peculiar to individual commodities or products, whether they be agricultural or industrial, will have to be resolved on their merits.

We feel that to segment our export products during the international trade negotiations on the basis of each product sector of manufacturing and on the basis of the agricultural sector, would greatly diminish the possible success of any meaningful or productive negotiations.

Such an approach as contained in this section is contradictory to the long-standing principle which has been adhered to internationally for many years.

Some of the largest traditional markets for our tobacco exports are the European Community, Japan, Switzerland, Sweden, the Republic of China and South Vietnam, where little or no local production of tobacco is exported into international trade.

Most of these countries are heavily industrialized and do not have the productive capability to compete in this sector. Therefore, it would be practically impossible for our negotiators to secure any relief from the foreign trade barriers facing our exports of U.S. tobacco without authority to offer a reciprocal concession in another area.

We believe that section 102(c) would greatly reduce negotiating opportunities and flexibilities and would be counterproductive to our best interests in international trade negotiations. Therefore, we recommend that section 102(c) be deleted or greatly modified to permit negotiating techniques linked to the broader purpose of the act.

Title III: As previously mentioned, and as recorded in the article I offered in evidence, a number of countries throughout the world have established unfair trade practices that are discriminating against U.S. tobacco.

In order to correct these discriminatory practices, the President must have authority to withhold benefits of trade agreement concessions and impose duties or other restrictions on the products of such foreign country or instrumentality on a most-favored-nation basis, or otherwise, and for such time as he deems appropriate.

Title IV: We respectfully urge that the President, with the approval of Congress, be granted authority to grant most-favored-nation treatment to Russia and most countries of Eastern Europe and Asia.

If we are realistic, we will quickly follow the lead of Western Europe in resuming full economic ties with this vast trading area to the mutual benefit of all trading partners.

The total consumption of tobacco products in Eastern Europe is practically equal to that of Western Europe, and at the present time, we are exporting virtually nothing to that vast potential market.

We are entering into a period when tariff and nontariff walls between the imaginary lines of East, West, North and South should start tumbling down.

Senator FANNIN. Mr. Snodgrass, how much time will it take you to finish your statement?

Mr. SNODGRASS. I will take about 1 minute.

Senator FANNIN. All right, thank you, because we are limited to 10 minutes.

Mr. SNODGRASS. All right.

Although we are sympathetic, we feel that the restrictions on emigration of the citizens of the U.S.S.R. and other countries are not germane to the act and efforts to tie our trade opportunities to emigration restrictions may prove to be counterproductive.

On title V, as previously stated, we support the extension of nondiscriminatory treatment on tariff and trade relations with additional countries; however, we feel that all nations should be treated equally, including the developing nations, in any transactions in international trade.

Preferential agreements are economically unsound and discriminatory and make for unfair competition in the world market. We are therefore opposed to granting special tariff concessions to developing nations.

I thank you, Mr. Chairman.

Senator FANNIN. Thank you, Mr. Snodgrass.

Mr. Van Horn, Mr. Snodgrass, we are very pleased to have you all with us this morning. You have certainly made some excellent statements. You have furnished some valuable data.

Let me ask you a few questions. Several years ago, this committee reported out a resolution which was approved by the full Senate. That resolution called for a retaliation by the United States unless we receive equal treatment for citrus.

Now going back to something I have been working on for a long time. As you indicated, Mr. Van Horn, the discrimination has increased, not decreased.

Now my question to you, would you favor that we enter new negotiations until we settle the outstanding disputes now being discussed in GATT?

Mr. VAN HORN. No, Mr. Chairman, I would not. The purpose of this current trade bill, as you are well aware, is to permit or authorize the United States to enter into multilateral trade negotiations.

However, as a condition precedent to those negotiations, we believe that the outcome of the so-called XXIV:6 negotiations will provide

or demonstrate two results. One, either that the EEC is serious in its willingness to negotiate in accordance with the international rules of trade; or two, it will demonstrate whether or not our own negotiators have sufficient resolve to see that the negotiations do, in fact, conform with the international rules of trade.

Now if either of these two outcomes prove fruitless, then it seems that that would be a portent of failure in any expanded negotiations. So, depending on what happens in the XXIV:6, it would give some indication of whether or not to proceed further.

Senator FANNIN. Well, we have a very serious situation over the years. We have been outvoted so many times, as brought up by Mr. Snodgrass and by you, it is something that we have not been able to readily find an answer for.

It is of vital concern as to just what we will do in the future. Mr. Van Horn, you suggest withholding passage of a trade bill until current trade negotiations with the EEC are concluded.

Can you elaborate on the connection that exists in this respect?

Mr. VAN HORN. These negotations are currently progressing, as you know, and as I stated before——

Senator FANNIN. I am speaking of withholding passage of the trade bill now. You suggest that?

Mr. VAN HORN. We think it would be fruitless to enter negotiations if, in fact, the people we are going to negotiate with have demonstrated in the current XXIV:6 negotiations that they do not intend to negotiate.

Why engage in any expanded negotiations if they have demonstrated that they are unwilling to do so in the current ones? That is the thrust of my testimony.

Senator FANNIN. I realize that, but now getting back to the passage of the trade bill, now is that your position then as far as——

Mr. VAN HORN. We favor the passage of the trade bill, titles I through III, at least.

Senator FANNIN. I understand. But you do not favor withholding passage, necessarily, until all of these negotiations are——

Mr. VAN HORN. Well, until some indication is given that XXIV:6 is, that they are serious about it, we would certainly counsel the committee to defer affirmative action.

Senator FANNIN. I realize how serious the negotiations with the EEC have been and how intent they are and how intent they have been in the past and what is involved. I mean the magnitude of trade involved. But why do you place such significance on the nine-member EEC in the multilateral negotiations?

Mr. VAN HORN. Well, it would seem that nine countries is a very small segment of the free world countries, but in fact these nine countries embraced in the EEC have preferential trade arrangements with some 56 other countries.

Now there are 126 free world countries that have been identified by the State Department in one of its publications. When you add the 56, plus the 9 in the Common Market, you have 65 countries, which would be, in effect, negotiating as one with the Common Market, because of the preferential trade arrangements. 65 represents 52 percent of the total free world countries, and in that 52 percent reside

some 27 percent of the total free world population, so it is a significant setcor we would be negotiating with.

Senator FANNIN. And you feel we are almost left out in the cold in these negotiations?

Mr. VAN HORN. Absolutely.

Senator FANNIN. These problems of tariff preferences are not new, as we all know. As I remember, your organization testified in public hearings in 1970, pursuant to section 252 of the Trade Expansion Act of 1962.

Did anything result from these hearings?

Mr. VAN HORN. Nothing. In fact, the discrimination has been compounded since the first preferential treatment giving 80 percent discounts to Tunisia and Morocco, and 40 percent to Israel and Spain. These 40 percent preferences have been extended to Lebanon, Cyprus and Egypt and now, with the acceptance of the three new member countries into the Common Market, to which XXIV:6 negotiations are subject, it appears we will be even hurt worse.

In other words, the preferential discounts are being expanded in favor of other countries.

Senator FANNIN. Now you have expressed a concern this morning over this voting strength, and certainly we have all been concerned over the one-man-one-vote rule of GATT. It seems we cannot get the votes, nor can we successfully negotiate if we have a valid case because it is so one-sided.

You have made several suggestions this morning. Do you have anything further to suggest as to what we might do?

Mr. VAN HORN. Not really. I would strongly urge that we do not engage—we, being the United States—in any retaliatory nontariff barriers. We have consistently taken a stand opposing the quotas and the various other nontariff artificial barriers, and if we were to engage in the same thing, our words would be hollow platitudes, really.

Senator FANNIN. Thank you very much, Mr. Van Horn.

Mr. Snodgrass, in your testimony, you say, in addition to discriminatory tariffs, the EC has set up duty-free preferences for a number of countries, and they are moving toward an excise tax harmonization which will work to the disadvantage of U.S. produced leaf.

Would you want to expand on that? The countries that are involved, do you have a list or could you furnish a list of the countries that are involved?

Mr. SNODGRASS. Yes. It appears in the article that was put into evidence, but it is primarily the Commonwealth countries: Greece, Turkey, and other African countries, that have been given preferential treatment by the Common Market, 21 countries.

Senator FANNIN. You mention that you find that 60 percent of the market, by virtue of a single discriminatory levy, bucking the modern industry trend of strip packing and thereby being denied the savings permitted by strip processing direct from the warehouse floor.

What would be the answer in handling that particular problem?

Mr. SNODGRASS. That is in regard to the so-called Italian Cigar Wrapper Tariff, which was placed on tobacco entering the Common Market, to protect the Italian cigar producer. It was not intended to go on cigarette or pipe tobacco.

Nevertheless, as our tobacco got in the higher category, anything over $1.27 per pound entering the Common Market, takes a straight 15 percent ad valorem duty, which means that it is detrimental to higher-priced, higher-quality U.S. leaf.

Senator FANNIN. Well, thank you, Mr. Snodgrass. You did summarize your statement very adequately and we appreciate that you have placed your testimony in the record in such fine form.

We appreciate, Mr. Van Horn, your being here this morning, and Mr. Williams. It has added to the knowledge that we now have regarding some of these problems that exist that are very detrimental to the United States. Thank you very much.

Before we go further, Senator Hartke does have a statement that he would like to make, and it would just take a short time.

Senator HARTKE. Thank you, Senator Fannin.

I would like to insert in the record at this time some summaries of the findings of the Roper organization that was issued the first of April 1974, in which they start out:

The first of three striking findings emerged from this current survey. No. 1, a deep distrust of multinational companies in general, and of oil companies, in particular. The loyalty of multinational firms is challenged by 66 percent of those questioned. Sixty-six percent of those asked stated that the U.S. companies operating abroad put their own interests above the United States. They also approve repealing tax credits for U.S. companies operating abroad. Sixty-seven percent think that U.S. multinationals should not be allowed to deduct foreign tax from their U.S. taxes.

At the same time, I would also like to read a part of the commentaries.

Probably the most dramatic findings of this study is the deep distrust of American companies operating abroad. The oil industry, in particular, the public is suspicious, angry and perhaps even punitative. In the atmosphere of general distrust and skepticism which prevails today, this is no insignificant or isolated finding.

Attitudes toward oil companies as well as toward multinationals generally may even be coloring public attitudes toward foreign trade. The fabric of social trust has been stretched very thin in America today. Small tears can easily become larger rents.

I would also like to go back to the text of this same operation—in answer to question No. 20:

If more foreign companies did have operations in this country, do you think it would mean more jobs for Americans than there are now, or fewer jobs?

Sixty percent questioned thought more.

I would also like to point out that in their commentary on the general situation of multinationals and in their comment about overseas companies paying full U.S. taxes, is in full accord with the major provisions of the Burke-Hartke bill. This is very gratifying to me.

Thank you very much.

Senator FANNIN. Thank you, Senator Hartke.

Senator HARTKE. I would like to have that part of the statement appear after the questions of the two gentlemen here this morning.

Senator FANNIN. Thank you very much, Senator Hartke.

[The Roper Report referred to by Senator Hartke and the prepared statements of Messrs. Van Horn and Snodgrass follow. Hearing continues on p. 2229.]

ROPER REPORTS

Summary of 74-3, Issued First of April 1974

Three striking findings emerge from this current survey: 1. A deep distrust of multinational companies in general and of oil companies in particular, 2. A new appreciation of the blue collar life, considered more productive by many and lacking the tensions of white collar jobs, and 3. A strange indifference to privacy, expressed in a willingness on the part of the average citizen to give much personal information to governmental data banks.

Loyalties Of Multinationals Challenged.—66%, in damning indictment, say U.S. companies operating abroad put own interests above those of U.S. (See Page I for analysis, Pages 38, 39 for tables)

No Tax Credits For U.S. Companies Abroad.—67% think U.S. multinationals should not be allowed to deduct foreign taxes from U.S. taxes owed. Full U.S. taxes should be paid. (See Page H, 36, 37)

Oil Shortage Not Believed.—73% now say oil shortage is "not real," that big companies are holding back supplies—up from 56% in Dec. Skepticism higher now than before Arab oil shut-off. (G, 27-29)

But Oil Companies Should Stay Private.—Despite widespread distrust of oil companies, only 31% think they should be federally chartered. 53% want them to stay private. (D, 10, 11)

No Government Members On Oil Boards.—Only 11% want gov't. members on oil boards, but 38% want consumer representatives. 37% want oil companies to meet federal price, profit standards. 28% favor federal approval of foreign oil deals. (D, 12, 13)

No Government-Owned Oil Company.—⅔ of the public also reject a gov't.-owned oil company to compete with private oil companies. (D, 14, 15)

Public Unconcerned Over Privacy, Data Banks.—Most Americans think it appropriate for the FBI to have considerable data on people like themselves. In an act of trust—or naivete—over ¾ would give fingerprints, birth date, court convictions, prison records, race. ½ would give FBI psychiatric history. (J, 44-59)

Other Organizations Should Get Data Too.—Even more data would be yielded to a gov't. agency about a high security job applicant than to the FBI. Most would give key information to local police; even potential private employers would be given considerable personal data. (K, 60-69)

Blue Collar Life As Good As White.—Public evenly divided on whether white collar or blue collar jobs offer the best life. 37% say blue; 36% say white; 21% see no difference. (S, 107, 108)

Blue Is Beautiful To Many Today.—Merits of blue: contributes most to society; freer of tension, responsibility; interferes less with personal life. Merits of white: better pay, working hours, advancement. More white collars envy blue collar lives than vice versa. (S. 109-166)

Electricians Have The Most Spark.—Most popular blue collar job for one's son is electrician; forest ranger is second, probably escapist, choice. (T, 117, 118)

But Some Blue Collar Jobs Turned Down.—⅕ say son should not become a cop (more among poor, least educated, non-whites). 17% rejected hairdresser, 12% taxi driver, 11% sanitation worker, 9% waiter, 9% production line. (T, 119, 120)

Most Had Trouble Getting Gas.—By end of Feb., ¾ had had problems getting gas. Nearly ½ had had to wait on line, faced buying limits, and/or found a station out of gas. Midwest got off easiest. (E, 18-20)

40 Million Hours In Gas Lines.—Median wait before the pump was 41 minutes in previous 2 weeks. Many more urbanites than rural dwellers had had to cool their wheels. (F, 21, 22)

24 Million Gallons To Get Gas.—⅖ of drivers cruised for gas 6 miles on average in final Feb. fortnight. (F, 23, 24)

Simon Sez No Rationing: Public Agrees.—Polled when gas lines were still long, 64% rejected gas rationing as the way to shorten them—probably because they think the oil shortage a phony. (F, 25, 26)

Too Dark At Dawn.—At the end of two of the darkest months, only 30% favored year-round daylight saving. A 9-months version seems best compromise. (G, 30, 31)

Changing Lifestyles?—Up: staying home (48%), TV (38%), quantity buying (31%), big center shopping (25%), reading (25%). Down: eating out (42%), take-out foods (36%), "on the town" (33%), distant visits (31%). (N, 83-86)

Consumer Caution Up.—Twice as many thought late Feb. a good time to delay purchases as called it a good time to buy. Reason for putting off purchases was "state of economy" over personal finances by 3-1. (B, 1-3)

Spending Begins At Home.—Apart from vacation trips, planned by 31%, most plan "practical" spending in next 6 months. Home repairs, furnishings dominate. (U, 121, 122)

More Favor Impeachment.—43% now favor impeachment of the President, up from 38% in Dec. 23% think he should resign; 29% want him to stay. (C, 7-9)

Impeachment Understanding Up Slightly.—57% now pick right definition, up from 52% in Nov. Level of understanding is still not far above a guess. (C, 4-6)

More Government Regulation Desired.—Public wants more gov't. regulation in two key areas: barbiturates (63%) and ad claims (60%). In other areas, too, demand for more regulation outweighs demand for less. (M, 79-82)

National Health Insurance Gaining Favor.—45% now favor a national health plan; up from 40% in Oct. Private plans now 43%, down from 50%. (L, 72-74)

Advantages Of Public Vs. Private Plans.—Gov't. health plan preferred for wider, better coverage, lower cost, no transfer problems. Private plans preferred because gov't. is "into too many things now," for more variety of coverage, better medical care, faster payment. (L, 75-78)

Public Coolish Toward Foreign Trade.—Only ⅕ want more foreign trade, 3 in 10 want less. Greatest resistance to more trade among union members. (H, 32, 33)

Most Want Export-Import Balance.—65% want exports to equal imports. (H. 34, 35)

Foreign Companies Here?—By modest margin, public favors foreign companies operating in U.S. 50% think gov't. should encourage them, 39% would discourage them. (I, 40, 41)

More Jobs For Americans.—60% say foreign firms here would mean more jobs. (I, 42, 43)

Good Riddance To The Draft.—69% welcome switch to volunteer army; only 22% regret passing of the draft. (L, 70, 71)

Drugs Major Social Problem.—90% call drug addiction major social problem; 78% name alcoholism. Other substantial concerns: pep pills, tranquilizers (70%), marijuana (67%). Cigarettes lower (51%). Prostitution, gambling, social drinking lowest. (Q, 89-94)

Marijuana Vs. Alcohol Among Teens.—49% think marijuana is more widespread among teenagers than drinking; 36% see drinking more common. More say marijuana is dangerous for teenagers (38%) than drinking (27%). (Q, 95-98)

Advertising—Good News, Bad News.—Good news: Makes TV, magazines possible; gives useful product info; fun to read, watch, hear; bars government control of news. Bad news: Encourages use of unnecessary, harmful products; adds to prices. (R, 99-106)

Product Performance Good.—Over ¾ find their washing machines, refrigerators "very satisfactory": 70% say so about TV sets; 59% on cars. Discontent low. (V, 123-134)

Repair Satisfaction High.—Public may gripe about repairmen, but most rate their own high. Best satisfied with promptness, least pleased with cost. (W, 135-142)

What Are You "Anti"?—"Hippies" most disliked (39%). "Welfare" No. 2 target (26%). One in 10 are anti-government, anti-establishment, and/or anti-press. (O, P, 87, 88)

As an experimental extension of the foregoing two page Summary, a Commentary follows.

A COMMENTARY

Probably the most *dramatic finding of this study is the deep distrust of American companies operating abroad and the oil industry in particular.* The public is suspicious, angry, perhaps even punitive. In the atmosphere of general distrust and skepticism which prevails today, *this is no insignificant or isolated finding.* Attitudes toward oil companies as well as towards multinationals generally, may even be coloring public attitudes toward foreign trade. [The fabric of social trust has been stretched very thin in America today; small tears can easily become larger rents.]

That business troubles go deeper than disbelief on a single issue is shown by attitudes on a very basic question of values: blue collar vs. white collar work. White collar work, once sought as the symbolic entrance into the middle class, has lost its edge over blue collar occupations. While it still may offer certain advantages and advancements, *many prefer the lower tensions and lesser responsibilities of blue collar life.* It is hard for many to see just what all that pencil pushing produces: *blue collar workers are considered today to make a greater contribution to society.*

This reassessment of blue collar living, along with other findings of this and previous studies—the number of people who would like their sons to be forest rangers (see Page T), *the choice of those who would emigrate to Canada and Australia* (73–10), the best job benefit being a three month sabbatical (74–1), even the recent finding that many think they would be better living a more austere life (74–1), as well as past published surveys showing a longing of city people to move to the country, *all this makes clear an erosion of traditional, business-oriented ambitions.* [The day when for an alert, ambitious young person, the pressure, excitement and possibility of money and success in business was a natural magnet seems to be on the wane.] Ambition itself may be on the skids. All this has implications of business recruitment and personal policies—ready for the whole future functioning of business as an institution, in a world Horatio Alger never made.

Public disillusionment with business, however, does not mean the public has found something better to take its place. Disillusionment with government is also at record levels, and there is no widespread desire for basic changes in the relationship of the two giant institutions. However, unhappy the public is with the oil industry, they don't want the government to take it over. Attitudes towards government are profoundly ambivalent. [There is a feeling that government is into too many things already and not handling them all that well, yet at the same time a feeling that in protecting and advancing the public interest, government is necessary as a regulatory and sometimes active agent.] Where possible, the public would like to look out for its own interests; government representatives are not wanted on oil boards but consumer representatives are by many.

And despite the sophisticated cynicism about institutions which pervades this country today, the public approaches at least one function of government with something approaching blind faith. In a strange insensitivity to issues of privacy, most people would hand over handfuls of personal information, from fingerprints to psychiatric history, to the FBI and other government agencies, perhaps believing that innocence is its own protection, and that data banks can do no harm.

PREPARED JOINT STATEMENT OF TOBACCO ASSOCIATES, INC., LEAF TOBACCO EXPORTERS ASSOCIATION, INC., BURLEY AND DARK LEAF TOBACCO EXPORT ASSOCIATION, INC. AND NATIONAL CIGAR LEAF TOBACCO ASSOCIATION, INC., BY FRANK B. SNODGRASS, VICE PRESIDENT AND MANAGING DIRECTOR, BURLEY AND DARK LEAF TOBACCO EXPORT ASSOCIATION, INC.

My name is Frank B. Snodgrass. I am Vice President and Managing Director of the Burley and Dark Leaf Tobacco Export Association, Inc. and Executive Director of the National Cigar Leaf Tobacco Association, Inc., with offices at 1100 Seventeenth Street, N.W., Washington, D.C.

This statement is also presented on behalf of Tobacco Associates, Inc., 1101 Seventeenth Street, N.W., Washington, D.C. and the Leaf Tobacco Exporters Association, Inc., P.O. Box 1288, Raleigh, N.C.

This joint presentation is being offered by the aforementioned Associations representing the producers and exporters of the major portion of U.S. leaf tobacco sold in international trade. Tobacco is produced in a twenty two state area by more than 700,000 growers. Both our producers and exporters have long been the strongest advocates of free international trade; however, in recent years through the introduction of tariff and non-tariff barriers by some of our trading partners we have fared badly in maintaining and expanding our world markets for U.S. produced tobacco.

Tobacco is the original U.S. export. Since Colonial days, the United States has been the world's largest producer and exporter of tobacco. In fiscal year 1973, tobacco contributed $708 million net to the U.S. balance of payments. Notwithstanding this outstanding record, the U.S. share of tobacco in international trade has consistently dropped since the end of World War II.

Tobacco is unique among the agricultural commodities produced in the United States. Unlike other commodities, the producers maintain a strict quantitative control of their production to justify mandatory price supports under law. Price supports are established on a fixed formula based essentially on the cost of production which has been increased at a rapid rate in recent years.

The economic welfare of the tobacco-producing states is absolutely dependent upon a minimum of 600 million pounds of tobacco being exported annually. In the absence of compensatory or diversionary payments, the increased cost of U.S. production must be passed on to our foreign customers. Although American tobacco is recognized worldwide as the Hallmark of quality, it is becoming increasingly difficult to compete pricewise in the world market.

In these times when we are faced with trade deficits, it is more important than ever that we maintain free access to our export markets for tobacco. During calendar year 1973, U.S. foreign trade in tobacco (and products) resulted in a net favorable balance of approximately $777 million. Continued access for foreign markets is essential, if we are to maintain this net favorable balance.

The European Community (EC) is the largest export market for U.S. produced leaf. The restrictive and discriminatory policies of the expanded EC, which has recently extended generalized special preferences to certain Commonwealth countries and other less developed countries, will greatly impair the possibility of maintaining this traditional market for U.S. tobacco exports.

The expanded Community normally accounts for 60 percent of total U.S. exports, as evidenced by unmanufactured tobacco exports to the enlarged Community in calendar year 1973, totaling 342 million pounds for $370.9 million. In calendar year 1973, the United Kingdom was the number one importer of U.S. tobacco, taking 119.7 million pounds; Denmark 36.9 million; and Ireland 18.9 million pounds. The combined imports of the three new members totaled 165.5 million pounds for $191.5 million, or 48.3 percent of the total to the expanded European Community and 27 percent of total U.S. world exports.

The European Community tobacco market is an integral part of the total marketing opportunity available to U.S. tobacco exporters and the loss, or significant curtailment of the export market opportunities would be a serious blow to this industry.

Although our statement will recommend acceptance of the broad objectives of the Trade Reform Act, our major emphasis will be on the following sections of the proposed legislation.

TITLE I. NEGOTIATING AND OTHER AUTHORITY

It is urgent that our negotiators enter the forthcoming round of trade negotiations with broad authority to alter both tariff and non-tariff barriers. Currently, the President does not have such authority and our entry into trade negotiations with countries having delegated authority and instructions would greatly handicap our representatives and make our participation virtually meaningless.

The restrictive tobacco policies of the European Community are a matter of record. We feel that our tobacco sales to the three new members will be curtailed unless needed changes are made in the EC tobacco policies.

In Denmark and Ireland the duties are now zero; however, Ireland levies a fiscal charge but no duty or preference. The United Kingdom levies a revenue duty and we understand that the U.K. and EC consider the Commonwealth preference of about 20 cents per pound as the protective element of the revenue duty. The Common External Tariff (CXT) of the EC will be phased in by these three countries by July 1, 1977.

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In addition to discriminatory tariffs the EC has set up duty free preferences for a number of countries and they are moving toward an excise tax harmonization, which will work to the disadvantage of U.S. produced leaf. Other tobacco policies of the EC which concern us are the continuation of monopolies in Italy and France and the raw tobacco common agricultural policy which provides for high price supports, a buyer's premium and no effective production controls. These policies insure that EC produced leaf will be sold in preference to U.S. leaf either in the Community or on world markets.

Tax harmonization is by far the most complex feature of the EC tobacco policy and poses a great threat to our future exports. By 1980, taxes levied by member states must be uniformly based on a formula consisting of two elements: a specific and an ad valorem tax in proportions still to be determined.

To the extent the ad valorem component outweighs the specific component, the excise tax will work to encourage the use of lower priced tobaccos produced in France, Italy and countries enjoying preferences in the European Community, and to discourage the use of quality, higher priced tobacco produced in the United States. This is because of the multiplier effect of ad valorem taxation. Apart from other pricing elements, a purely specific excise tax would leave the spread of ex-factory prices unchanged on the retail level. On the other hand, an ad valorem tax calculated on the basis of the retail price will multiply the spread of ex-factory prices.

West Germany, a producer of quality cigarettes containing a high percentage of U.S. tobacco, is levying, during the first state of implementation, a tax based on 75 percent specific and 25 percent ad valorem. We have urged our negotiators to strongly support the German position and insist that the 75 percent specific ratio be maintained at the conclusion of harmonization.

Our immediate concern is the EC Cigar Wrapper Tariff (Special Customs Category 24.01A) provision levying an ad valorem tax of 15 percent duty on all tobacco valued above $1.27 per pound. The practical application of this provision is as follows:

U.S. tobacco valued at $1.27 per pound would be assessed a duty of 15 cents per pound, while on tobacco selling for a rate of $1.28 there would be a duty of 19.2 cents. This provision was written into the EC tariff schedule in 1962, for the specific purpose of protecting the Italian cigar wrapper producer. It was never intended that this tariff category would apply to cigarette and pipe tobacco leaf imports and no one foresaw in 1962 such an application. However, due to the increased cost of U.S. leaf and revolutionary technological changes resulting from threshing and packing in strips instead of leaf and bundles, we now find that all U.S. strips and some of the higher grades of leaf are being assessed the straight 15 percent duty.

Therefore, we find 60 percent of our market, by virtue of a single discriminatory levy, bucking the modern industry trend of strip packing and thus being denied the savings permitted by strip processing direct from the warehouse floor. The United States has no hope of retaining our share of the EC market, as long as this discriminatory levy is applied. This tariff will greatly affect the United States during the current 1974 marketing season.

Many of the European tobacco importers, particularly the Germans, are severely handicapped by the existence of the special cigar wrapper tariff. This tariff category is discriminatory and will restrict the exports of U.S. tobacco to the EC.

U.S. producers of cigar wrapper tobacco are also vitally interested in the elimination of the cigar wrapper tariff, since our exports of wrapper to the expanded EC has traditionally accounted for over one half of U.S. exports of this kind of tobacco.

Similar tariff and non-tariff barriers to the use of our tobacco exist in other areas of the world and it is hoped that new authority for negotiations will permit the elimination of these barriers.

Some of the more commonly used non-tariff barriers in world tobacco trade are licensing requirements, restricted products lists, exchange controls, prior deposits, mixing regulations, monopolies and state trading companies and quota restrictions.

We are greatly concerned regarding the language contained in section 102 (c) the so-called "Karth Amendment." We agree that the individual sectors of our nation's economy should be treated fairly and that special problems peculiar to individual commodities or products, whether they be agricultural or industrial, will have to be resolved on their merits. We feel that to segment our

export products during international trade negotiations on the basis of each product sector of manufacturing and on the basis of the agricultural sector would greatly diminish the possible success of any meaningful or productive negotiations. Such an approach as contained in this section is contradictory to the long-standing principle which has been adhered to internationally for many years.

Some of the largest traditional markets for our tobacco exports are the EC (European Community), Japan, Switzerland, Sweden, the Republic of China and South Vietnam, where little or no local production of tobacco is exported in international trade. Most of these countries are heavily industralized and do not have the productive capability to compete in this sector. Therefore, it would be pracitcally impossible for our negotiators to secure any relief from the foreign trade barriers facing our exports of U.S. tobacco without authority to offer a reciprocal concession in another area.

We believe that section 102 (c) would greatly reduce negotiating opportunities and flexibilities and would be counter productive to our best interest in international trade negotiations. Therefore, we recommend that section 102 (c) be deleted, or greatly modified to permit negotiating techniques linked to the broader purpose of the Act.

TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

The President must have broad authority to deal with the unfair trade practices against U.S. tobacco currently being administered by the European Community through their tobacco policies and their Common Agricultural Policy for raw tobacco. In addition, the whole of Central and South America maintains a virtual embargo on U.S. leaf tobacco and tobacco products. The Philippines and Australia, through mixing regulations and other import devices, exchange controls or quotas, are discriminating against U.S. tobacco. Many other countries either through import quotas, import licenses, or excessive tariffs are impeding U.S. exports.

In order to correct these discriminatory practices, the President must have authority to withhold benefits of trade agreement concessions and impose duties or other restrictions on the products of such foreign country or instrumentality, on a Most Favored Nation basis or otherwise, and for such time as he deems appropriate.

TITLE IV. TRADE RELATIONS WITH COUNTRIES NOT ENJOYING NONDISCRIMINATORY TREATMENT

We respectfully urge that the President, with the approval of Congress, be granted authority to grant Most Favored Nation treatment to Russia and most countries of Eastern Europe and Asia. If we are realistic, we will quickly follow the lead of Western Europe in resuming full economic ties with this vast trading area to the mutual benefit of all trading partners. The total consumption of tobacco products in Eastern Europe is practically equal to that of Western Europe and at the present time we are exporting virtually nothing to that vast potential market.

We are entering a period when tariff and non-tariff walls between the imaginary lines of East, West, North and South should start tumbling down. The United States should move to re-establish full economic and political relationships in these areas of the world.

Although we are sympathetic, we feel that the restrictions on immigration of the citizens of the USSR and other countries are not germane to the Act and efforts to tie our trade opportunities to immigration restrictions may prove to be counter productive.

TITLE V. GENERALIZED SYSTEM OF PREFERENCES

As previously stated, we support the extension of nondiscriminatory treatment on tariff and trade relations with additional countries; however, we feel that all nations should be treated equal, including the developing nations in any transactions in international trade. Preferential agreements are economically unsound and discriminatory and make for unfair competition in the world market. We are therefore opposed to granting special tariff concessions to developing nations.

We greatly appreciate the opportunity to present our views to this committee.

Prepared Statement of the California-Arizona Citrus League and Sunkist Growers, Inc.

SUMMARY

Identification of CACL as representing citrus industry in California and Arizona.
CACL supports Titles I–III of HR 10710.
Suggested Changes in Title I, Section 102c and Section 127.
Explanation of damage caused by EEC illegal preferential agreements.
Necessity to conclude 24:6 negotiations prior to entering multilateral negotiations.
Adverse effect of nontariff barriers on agricultural trade, illustrated by illegal Japanese quota on oranges.
EEC's levy system.
Conclusion.

STATEMENT

This statement is made on behalf of the California-Arizona citrus industry by the California-Arizona Citrus League whose membership represents handlers and growers of more than 90 percent of the California-Arizona citrus fruit produced and marketed in fresh and processed form. Exhibit A. This statement is also made on behalf of Sunkist Growers, Inc. On behalf of this industry, the League has requested the opportunity to testify in support of the first three titles of H.R. 10710.

The California-Arizona Citrus League joins with the U.S. National Fruit Export Council in its support of the principle of reciprocal trade as the cornerstone of U.S. foreign trade policy and, therefore, supports the Council's statement on file with this Committee. It is recognized that in order to export its industries' products, a nation must be prepared to purchase from its trading partners.

The California-Arizona citrus industry over a long period of years has developed a substantial export market for both fresh and processed citrus products. The maintenance of this export market is absolutely essential to a healthy

economic situation within this industry. For the 8-year period ending 1971-72, exports represented 29.1 percent of total shipments of fresh citrus from California and Arizona. During the subject period this proportion varied from a low of 28.0 percent to a high of 32.4 percent. Exhibit B. Currently the dollar value of citrus and citrus products exported by the California-Arizona citrus industry exceeds $138 million annually. The importance of the maintenance and continued expansion of this level of exports cannot be over emphasized.

The California-Arizona citrus industry has long supported the reciprocal tariff policy pursued by the United States since the Trade Agreement Act of 1934. H.R. 10710 is a logical continuation of that program and provides proper balance for the consideration of industries unduly subjected to competition from imports as well as providing legislative authority for a continuation of the basic reciprocal trade agreement program. If access to new markets for citrus is to be obtained, then the President must have negotiating authority such as that contained in the bill now under consideration.

This industry is opposed to the continued imposition by trading partners of the United States of import quotas, the variable levy system and other nontariff barriers as well as unreasonably high tariffs. For that reason, this

industry urges any solutions that are warranted in instances of severe competition between imports and domestically produced commodities be found other than through the imposition of quotas and other nontariff barriers by specific legislation. Citrus producers in California and Arizona support Titles I through III of H.R. 10710 now pending before this Committee. The sections supported provide for:

1. Negotiating and Other Authority (Title I)
2. Relief From Injury Covered By Import Competition (Title II); and
3. Relief from Unfair Trade Practices (Title III).

However, it is recommended that two modifications be made in Title I. The California-Arizona Citrus League supports the position of the U.S. National Fruit Export Council and the tobacco industry that Section 102(c) be deleted from H.R. 10710 entirely. If Section 102(c) is retained in the bill, then it is recommended that Section 102(c)(1) be changed by deleting the word "developed" in line 5 and substituting in its place "all GATT member". The proposed multilateral negotiations should not be limited to obtaining access to markets in developed countries. Many less developed countries provide excellent markets for U.S. goods. The objective of the multilateral negotiations should be to obtain market access in all countries that are members of GATT.

Title I, Section 127 provides for nondiscriminatory treatment by the United States. To that section should be added the following:

> "However, this section does not apply to those countries which do not apply nondiscriminatory treatment to exports from the United States and those countries may not receive nondiscriminatory treatment from the United States. Neither shall any country which does not have a trade agreement with the United States benefit from this section."

DISCRIMINATORY TRADE AGREEMENTS

Prior to the inception of the Common Market, the United States and Italy competed in the principal markets of Western Europe on the same basis except for those advantages related to geographic location, varietal differences of fruit and other similar economic factors. The California-Arizona citrus industry pointed out the disadvantage at which it was placed by reason of the formation of the Common Market in a "Statement of Position on GATT Negotiations" submitted before the Committee on Reciprocity Information in September of 1964. Since that time Greece, another Mediterranean citrus producer, has become an associate member of the Common Market; and an association agreement has been entered into with Turkey.

More recently the Common Market has negotiated with Tunisia and Morocco for a reduction in the common external tariff on citrus of 80 percent, and with Spain and

Israel for a reduction of 40 percent. The United States, joined by other citrus-exporting countries of the world (not including the Mediterranean Basin countries), in the fall of 1969 protested before the GATT these discriminatory reductions in duties, for which the EEC had requested a waiver of the GATT rule against such discriminatory reductions. Because of the strong protest of the United States and other countries, the EEC withdrew its request for a waiver. It, however, instituted 40 percent tariff reductions for Spain and Israel in 1970 anyway and have continued them to the present. To add insult to injury, the EEC, in spite of its open violation of the Most Favored Nation provision of the General Agreement on Tariffs and Trade, instead of eliminating the discriminatory treatment, increased it by making the 40 percent tariff reduction applicable to the three countries of Egypt, Lebanon and Cyprus. Exhibit C is the brief presented to the Trade Information Committee during a hearing held pursuant to Section 252 of the Trade Expansion Act of 1962. In addition to this, the EEC made the discriminatory and damaging tariff reductions applicable to imports from those seven preferred countries, not only to the original six members of the EEC, but also to the three new members of the EEC. As if this were not enough, it is now reliably reported that the five countries enjoying a 40 percent tariff reduction will have that tariff recuction increased to an 80 percent reduction

to match the preference currently enjoyed by Tunisia and Morocco. All of this is being done without any regard for the EEC's members contractual agreement expressed in GATT to treat the United States and other countries equally. In view of this, one must wonder whether or not the EEC has any intention of responding to U.S. requests at any negotiation.

CURRENT NEGOTIATIONS RESULTING FROM THE ENLARGEMENT OF THE EUROPEAN ECONOMIC COMMUNITY

At the present moment, negotiations have been underway in Geneva, Switzerland, since the 12th of March, 1973, resulting from the enlargement of the EEC to include the United Kingdom, Denmark and Ireland. The United States has certain rights in these negotiations expressed in Article 24 of GATT. Simply, in the agricultural sector, the United States is entitled to receive concessions from the EEC as a result of the import duties in the United Kingdom, Ireland and Denmark increasing. For example, the duty in the United Kingdom for fresh oranges is an ad valorem equivalent of 5 percent. The duty in Ireland is zero and in Denmark the duty is zero. The duty in the EEC is 15 percent for the period April 1 through October 15 and 20 percent for the remainder of the year. Thus the duty for United States citrus exported to the United Kingdom, Ireland and Denmark will increase unless progress is made during the 24:6 negotiations in Geneva. To this point in time, the EEC has

not shown any inclination to respond in a meaningful way to the negotiations. The EEC apparently is going to try to delay these negotiations so as to frustrate the legitimate interests and goals of the United States.

The Congress will undoubtedly wish to watch the progress, or lack of it, resulting in Geneva to determine whether or not to grant additional negotiating authority. If the European Economic Community is not willing to negotiate, then whether or not the United States has negotiating authority is only academic. The same principle applies to Japan which has seemed up to this point to be unwilling to make any move to do away with its illegal quotas.

NONTARIFF BARRIERS

Since 1962, the United States has experienced increasing problems, particularly in the agricultural export field, with nontariff barriers maintained by its trading partners. Its protest of these nontariff barriers would become a hollow platitude if the United States were to yield to the temptation to enact similar proposals which provide for increased quota protection for U. S. industries.

Agricultural trade is particularly vulnerable to this type of retaliation and certainly the current efforts of the United States to secure the removal or reduction of nontariff barriers in those countries which can provide

significant market opportunities for products of U. S. agriculture will be seriously jeopardized.

An example from the California-Arizona citrus industry will serve to illustrate the opportunities for U.S. agricultural exports and increased dollar exchange earnings which can result from the removal of nontariff barriers by our trading partners. The following data were presented in March of 1968 with respect to U. S. exports of fresh lemons to Japan through 1966-67, and updated in this presentation through 1971-72:

U.S. Exports of Fresh Lemons to Japan

[Thousands of 76-lb. boxes]

1958-62 average	97
1962-63	127
1963-64 (liberalized, May 1964)	430
1964-65	506
1965-66	712
1966-67	832
1967-68	1,067
1968-69	1,149
1969-70	1,547
1970-71	1,748
1971-72	2,343
1972-73	2,674

Source: Foreign Agricultural Service and Bureau of Census, Department of Commerce

These data indicate that in the third full year of liberalization U.S. exports of fresh lemons to Japan had increased by almost nine times the average of the 5-year period 1958-62. Total exports of fresh lemons to Japan for

1971-72, the most recent completed export year, reached a total of 2,343,000 76-pound box equivalents, over four times the level of the first full year of liberalization and over twenty-four times that of the 1958-62 preliberalization average.

More recently, Japan has liberalized the importation of fresh grapefruit. Following liberalization in July 1971, substantial increases in the level of U. S. exports of grapefruit to Japan have occurred. However, Japan unjustifiably continues to maintain quotas on fresh oranges and concentrated citrus juices in violation of the rules of the General Agreement on Tariffs and Trade. The United States has been negotiating for the removal of these restrictions, but there has been no success to date.

THE EEC AND THE LEVY SYSTEM

The European Economic Community presents a special and very serious problem of nontariff barriers. The United States attempted in the GATT negotiations conducted pursuant to authority of the Trade Expansion Act of 1962 to secure modification of the community's reference price -- levy system of protection for its agriculture. Reference prices, levies, and export subsides are a combination of devices which can be used to totally exclude imports from outside countries and to protect price levels within the domestic market by dumping on the world markets supplies in excess of

that which can be consumed by the home market. The logical end of the imposition of such devices, by the EEC or by other countries, is a virtual strangling of foreign trade and the creation and/or perpetuation of inefficient producing industries with the courtry using such devices. The EEC presently applies customs duties, intervention prices, export refunds, basic price, buying-in price, reference price and quality standards to citrus.

CONCLUSION

We would like to explain the reason this Committee should give added weight to the California-Arizona Citrus League's testimony. As you know, the California-Arizona growers have worked hard to increase and expand exports of fresh citrus to the present $125 million level. This level of exports has been reached through hard work, sound business planning, and vigorous promotional and sales efforts. The California-Arizona industry does not receive any type of direct government subsidy as do many of the growers in nations competing for the same markets. In spite of the subsidies provided growers of foreign nations, our industry has been able to compete successfully to the present time. The future is uncertain for reasons such as the EEC preferences on citrus and the Japanese quota on oranges. That is the

reason we are here today testifying in support of the first three sections of HR 10710. We urge your swift enactment of that legislation.

Respectfully submitted,

California-Arizona Citrus League

EXHIBIT A

Membership List of the California-Arizona Citrus League

Sunkist Growers, Inc.
Van Nuys, California

Pure Gold
Redlands, California

Heggblade-Morguleas-Tenneco, Inc.
Bakersfield, California

E. T. Wall
Riverside, California

LoBue Brothers, Inc.
Lindsay, California

Paramount Citrus Association, Inc.
San Frondo, California

Schell Ranch & Packing Co.
Inde, California

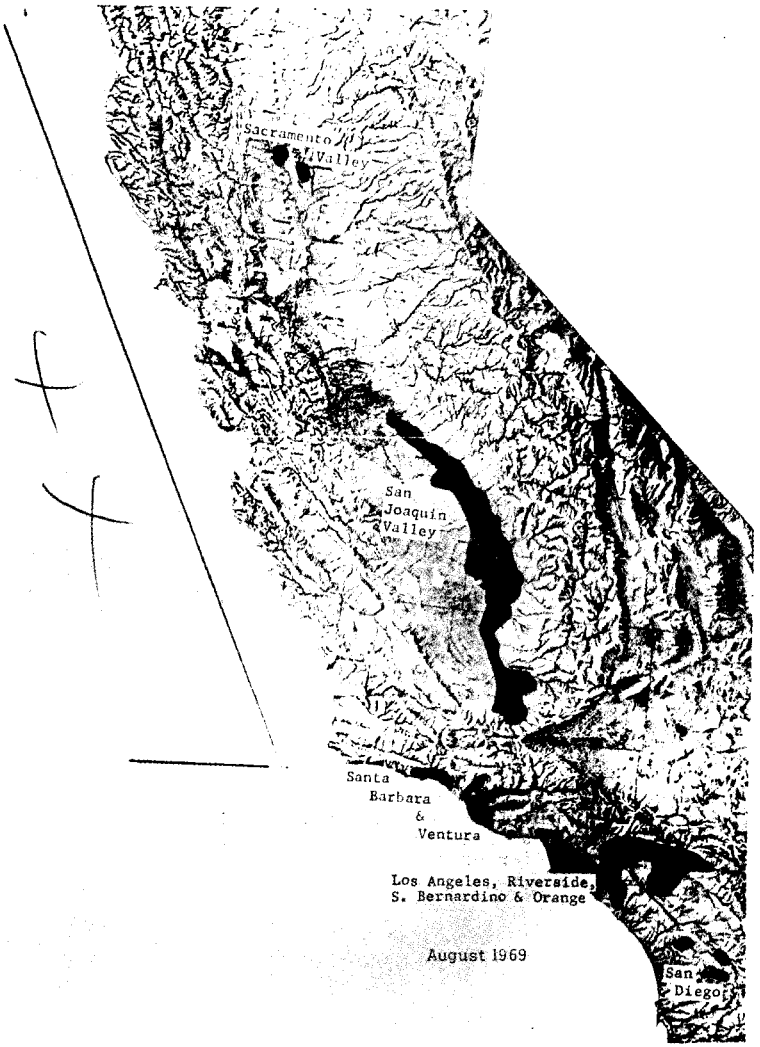
EXHIBIT B

PERCENTAGE OF FRESH CALIFORNIA-ARIZONA
CITRUS SHIPMENTS DIRECTED TO EXPORT 1965-1973

Year	Total Fresh Shipments	Fresh Export Shipments	Percent
	--- Metric Tons ---		
1965-66	1,377,340	385,730	28.0
1966-67	1,415,590	407,320	28.8
1967-68*	955,825	258,145	27.0
1968-69	1,427,830	385,390	27.0
1969-70	1,440,835	423,895	29.4
1970-71	1,349,715	377,230	27.9
1971-72	1,480,615	479,570	32.4
1972-73	1,408,076	440,251	31.3
8 Year Average	1,356,978	394,691	29.1

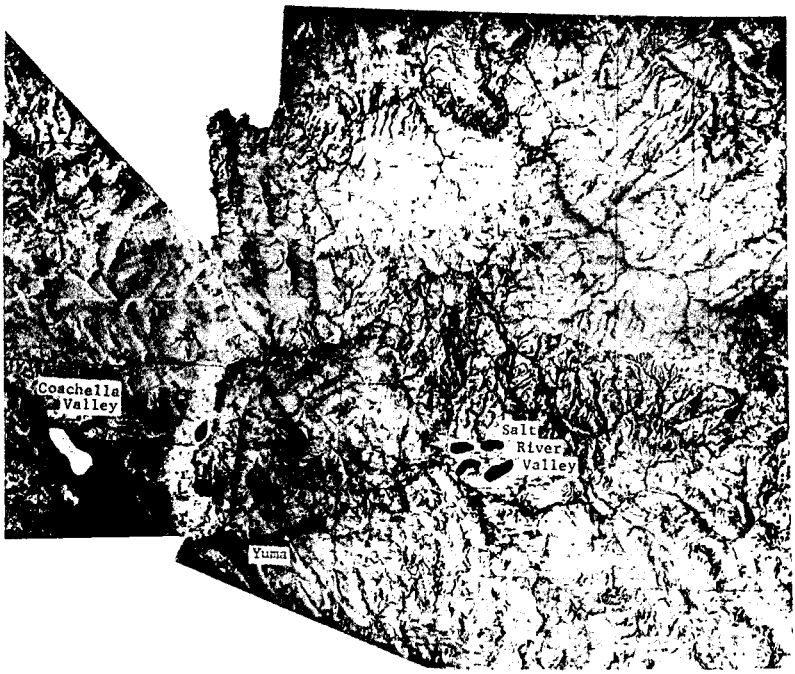
* Frost and Flood Destroyed Production

Sources: Orange, Lemon and Desert Grapefruit Administrative Committees and California Crop & Livestock Reporting Service. Canadian exports were estimated.


Sacramento
Valley
San
Joaquin
Valley
Santa
Barbara
&
Ventura
Los Angeles, Riverside,
S. Bernardino & Orange
August 1969
San
Diego

CALIFORNIA–ARIZONA

CITRUS GROWING AREAS



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BEFORE THE

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE INFORMATION COMMITTEE

DOCKET NO. 73-1

BRIEF OF

CALIFORNIA-ARIZONA CITRUS LEAGUE

I. The Applicant

This brief is filed by the California-Arizona Citrus League (hereinafter referred to as the "League"). The League is a voluntary non-profit trade association composed of marketers of California-Arizona citrus, largely cooperatives, which represent approximately 90% of the 12,500 citrus growers in California and Arizona. These growers produce oranges, lemons, grapefruit, and tangerines. The League speaks on behalf of the industry on matters of general concern such as legislative, foreign trade, and other similar topics. Representatives of the League have devoted substantial time and effort to the promotion of exports, and through the League and other organizations, the California-Arizona

citrus industry has concerned itself with matters relating to international trade since the early 1920's.

On the basis of this background and current developments relating to international trade in citrus, the League determined to request a public hearing pursuant to Section 252 (d) of the Trade Expansion Act of 1962 to provide the President with its views concerning foreign import restrictions affecting citrus. (See Appendix A).

II. Request for Hearing

In accordance with Section 252 (d) of the Trade Expansion Act of 1962, the League requested that a hearing be held to receive its views concerning the discriminatory acts of the European Economic Community (hereinafter sometimes referred to as "EEC") which unjustly and in a discriminatory fashion restrict United States commerce in fresh citrus fruit. The particular trade arrangement involved is the agreement signed on December 18, 1972, by the EEC and the United Arab Republic (hereinafter sometimes referred to as "Egypt"). Additionally, the EEC signed preferential agreements with Lebanon on December 17, 1972, and with Cyprus on December 18, 1972. All three new agreements grant 40% tariff reductions on fresh oranges, lemons and grapefruit. (See Appendix B.) In connection with negotiating these and other agreements, the EEC is in the process of renegotiating its previous discriminatory

agreements with Spain, Israel, Tunisia and Morocco. It is anticipated that the renegotiation of these latter four agreements may result in increased preferences to Spain and Israel on fresh citrus. If this occurs, then Egypt, Cyprus, and Lebanon would also receive an increased preference. Information concerning the seven citrus producing countries mentioned is included in this brief, since any consideration of international trade in citrus would be incomplete without a discussion including these seven citrus exporting Mediterranean countries.

On January 1, 1973, the United Kingdom, Ireland and Denmark become part of the European Economic Community. The resulting effect on international trade in citrus will also be discussed in this brief. It is necessary to consider this since the discriminatory preferences will apply to the three new EEC importing countries which currently have either a zero duty or very low duty on fresh citrus.1/ (See Appendix C)

III. Introduction

The citrus products involved herein are fresh oranges, lemons, and grapefruit. Trade in United States produced fresh

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1/ Ireland and Denmark have a zero duty on fresh citrus. The United Kingdom's tariff on fresh oranges is 5% ad valorum from December 1 - March 31 and £ 0.175 per 112 pounds net weight from April 1 - November 30. The specific duty has had an ad valorum equivalent of 4% to 5.3% over a period of time.

citrus will be additionally restricted by the new discriminatory agreements particularly during that period of the year in which supplies of citrus are available from both the United States and Mediterranean producing countries.2/

Imports of oranges represent approximately 99 percent of total consumption with the EEC exclusive of Italy.3/ The EEC is the largest citrus importing area in the world. Lebanon, Cyprus, Egypt, Morocco, Tunisia, Spain and Israel have the production capabilities to supply, during their marketing seasons, more than the total import needs of the enlarged EEC. Because of this fact and because of their geographical proximity, these countries must be considered collectively as a competing source of supply for the important EEC market.4/ Included as Appendix D is a map showing the EEC relative to the seven Mediterranean supplying countries.

This brief documents the conditions which require the President to take necessary remedial action pursuant to the provisions of Section 252 of the Trade Expansion Act of 1962.

2/ The period during which fresh oranges are available from both the United States and Mediterranean producers extends from February through July.

3/ Italy is the only EEC member that produces citrus. FAO, CCP:CI 72/5, p. 3 April 7, 1972. Italian oranges and lemon production satisfies domestic consumption. Italy imports grapefruit.

4/ The Citrus Economy & Feasibility of International Market Arrangements. Jurgen Wolf, FAO Vol. 14, No. 9 September 1965.

U.S. fresh citrus trade is unjustifiably restricted, by the EEC's violation of Article I, which is the Most Favored Nation Provision (hereinafter sometimes referred to as "MFN"), of the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"). This violation exists as a result of the four previous agreements between the EEC and Tunisia, Morocco, Spain and Israel and the new agreements with Egypt, Cyprus and Lebanon.5/

The illegal agreements with Tunisia and Morocco date back to August 1969. The current signed preferential agreements with Spain and Israel became effective in October 1970.6/ The new agreement with Egypt began January 1, 1973.

The League submits that the preferential duties granted are not only violations of the Most Favored Nation Provision of GATT, but are also discriminatory, preventing expansion of trade on a mutually advantageous basis, and are policies unjustifiably restricting United States commerce.

The significance of these agreements transcends fresh citrus fruit which was the basic reason for their creation. If the agreements covering fresh citrus fruit are allowed to continue, they will establish a dangerous trade precedent that

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5/ The agreements between the EEC, Israel, Spain, Tunisia and Morocco were the subject of a previous 252 hearing in August of 1970. See Trade Information Committee Docket No. 70-1.

6/ Spain and Israel received a 40% preference during the 1969-70 season before signing the current agreement in October 1970.

will give the EEC a license to deal arbitrarily in the Mediterranean basin. Certainly, the United States has not participated in GATT with any understanding that international trade in fresh citrus could be regulated in a manner that resembles a Mediterranean cartel. Until 1969, United States fresh citrus was permitted to enter the EEC on the same basis as its major competitors.7/

The preferential agreements have a disruptive effect on the international supply of fresh citrus. The preferred market position of Mediterranean basin citrus producers has already encouraged the citrus industries in Israel, Spain, Egypt, Cyprus, Lebanon, Tunisia and Morocco to expand their production. This enables increased export sales to the EEC.8/ Countries, such as the United States, Brazil and South Africa, which the EEC does not favor have sustained damage in the form of reduced sales to the EEC since the discriminatory preferences bagan in 1969.

Since the United States has already stated publicly that the four agreements with Tunisia, Morocco, Spain and Israel are illegal and have damaged U.S. citrus exports, the documented

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7/ From 1964 to 1969, Israel enjoyed a 40% preference on grapefruit exported to the EEC. However, until 1969 that preference was extended on an MFN basis to all grapefruit exporting nations.

8/ Rotterdam Auction daily sales catalogs, 1970-1972.

illegality of those agreements will not be further discussed.9/ The discussion of those four agreements will be limited to the adverse economic impact on the domestic citrus industry.

IV. World Citrus Production and Trade

World trade in fresh citrus represents a substantial portion of the flow of international trade in agricultural commodities and has been the subject of detailed analysis by the Food and Agriculture Oreganization (hereinafter referred to as "FAO"), of the United Nations. Total annual exports of fresh oranges (including tangerines), for the three year average from 1964-1966, were 4,159,000 metric tons with the United States, South Africa, Brazil and Mediterranean basin nations contributing the major portion of the supply. International trade in fresh citrus is highly competitive and is projected by FAO to become even more competitive in the years ahead. FAO's estimate of orange supplies available for export by 1980 is 9,373,000 metric tons in contrast with its estimate of demand at constant prices on the part of importing countries at 8,651,000 metric tons. Particularly significant is FAO's estimate of the supplies available from the United States for export of 388,000 metric

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9/ FAO, CCP:CI 72/5, p. 12, April 7, 1972; Hearing before Senate Subcommittee on Agricultural Exports on "Problems Incurred in Exporting Fresh Citrus Fruits to European Economic Countries," pages 124, 125-127.

tons in 1980, as compared with an average of only 149,000 metric tons from 1964 to 1966.

The EEC Member States as IMPORTERS and producing countries receiving the benefits of the EEC tariff preference schemes as EXPORTERS dominate world trade in fresh oranges. (See Table I).

TABLE I

Significance of EEC Preference Scheme in World Trade in Oranges (including Tangerines)

	1964-66 Average		Projected 1980	
	Production	Net Trade (Imports)	Production	Net Trade (Imports)
	--- per cent of world total ---			
EEC:				
Six 1/	5.4	(47.2)	5.9	(42.3)
Three 2/	0.0	(15.3)	0.0	(11.9)
Total	5.4	(62.5)	5.9	(54.2)
MED.:				
Assoc. 3/	3.3	2.7	3.2	3.6
Pref. 4/	18.3	59.9	16.5	56.9
Other 5/	1.9	5.2	1.2	2.5
Total	23.5	67.8	20.9	63.0

1/ France, Germany, Italy, Netherlands, Belgium and Luxembourg
2/ Denmark, Ireland, United Kingdom
3/ Greece, Turkey
4/ Cyprus, Egypt, Israel, Lebanon, Morocco, Spain, Tunisia
5/ Algeria

Source: FAO-CCP:CI 72/4, March 13, 1972

Appendix E is a map of the world showing the principal citrus exporting nations and Appendix F identifies the principal citrus importing nations. It will be noted that the EEC member countries constitute the largest single market in the world for fresh oranges, accounting for 62.5% of imports during the period 1964 to 1966. Aside from Hong Kong, Japan, and Canada, countries in Western Europe are the only significant market available to the United States for the export of its citrus and accounted for 35% of the exports of fresh citrus from the United States during the period 1963-64 to 1966-67.

Comparisons herein are made based upon the period 1964-66 as used by FAO in its most recent study. This period will hereinafter be referred to as the "base period" in the review of the seven countries benefiting from the said preferences. The same period will also be applied to the United States.

Tunisia, located on the southern shore of the Mediterranean and east of Morocco, has been producing citrus since before World War I. However, only recently has the commercial production of citrus in Tunisia increased significantly. With its hand-cultivated garden plantings, tree population is high with many groves having 150 trees per acre.10/ These close plantings result

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10/ The Citrus Industry, Vol. 1, Revised Edition, Division of Agricultural Science, University of California, Berkeley, 1967. The average planting in the U.S. is approximately 85 trees per acre.

in higher yields per acre, particularly in the early years of the bearing life of the tree. The majority of Tunisian citrus is exported in fresh form. France, Tunisia's traditional market place, accounted for 98% of all Tunisian exports of fresh citrus in 1956. Since that time, Tunisia has widened the distribution of its fresh citrus exports somewhat, as reflected by the fact that in 1970 through 1972, 90% of its exports were to France, with the remainder going primarily to Eastern Europe.11/ Based upon FAO projections for 1980, it is estimated that Tunisian orange production will have increased to 120,000 metric tons or 35% over the base period with supplies available for export increasing from 35,000 metric tons to 60,000 metric tons in 1980. (See Table II)

11/ Les Exportation D'Agrumes Du Bassin Mediterranean, Situation 1968-1969, Commission des Etudes Economiques du C.L.A.M., Nice, October 13, 1969; and Les Exportations D'Agrumes Du Bassin Mediterranean, Situation 1971-1972, Commission des Etudes Economiques du C.L.A.M., Nice, 9-10-72.

TABLE II

Actual and Projected Production and Consumption of Oranges (including Tangerines)

Area	1964-66 Average Production	Consumption	Net Trade (imports)	Projected 1980 Production	Consumption	Net Trade (imports)
	--- thousand metric tons ---					
EEC:						
"Six" 1/	1,444	3,108	(1,965)	2,401	5,441	(3,040)
"Three" 2/	0	637	(637)	0	854	(854)
Total	1,444	33,745	(2,602)	2,401	6,295	(3,894)
MED:						
Assoc. 3/	698	584	114	1,300	1,042	258
Pref. 4/	3,835	1,343	2,492	6,690	2,606	4,084
Other 5/	406	189	217	500	324	176
	4,939	2,116	2,823	8,490	3,972	4,518

1/ France, Germany, Italy, Netherlands, Belgium and Luxembourg
2/ Denmark, Ireland, United Kingdom
3/ Greece, Turkey
4/ Cyprus, Egypt, Israel, Lebanon, Morocco, Spain, Tunisia
5/ Algeria

Source: FAO; CCP:CI 72/4, March 13, 1972.

Moroccan citrus production has increased dramatically during the past 25 years, jumping from 28,500 metric tons in the

late 1930's to 588,000 metric tons in the base period. During the base period about 80% of Moroccan orange production was exported in fresh form. A large portion of Moroccan exports of fresh citrus have been to France. Also Morocco has been expanding its exports to outher countries, especially to the Netherlands, West Germany and the USSR.12/ The estimated increase of Moroccan production by 1980 from the base period is 121% and, according to FAO estimates, 80% of that production is expected to be exported.

Israel is the major citrus exporter of the Middle East. Israel's groves are modern and mechanically tilled and the industry is in a position to utilize the benefits of scientific experimentation.13/ Fresh citrus exports are not only the principal market for Israeli citrus production, but also represent Israel's largest source of foreign exchange. Exports of citrus from Israel are under the control of a quasi-governmental agency known as the Citrus Marketing Board of Israel. During the base period, exports accounted for over 80% of Israel's total fresh orange marketing. It is estimated that orange production will increase by 62% between the base period and 1980 and that exports will utilize at least three-fourths of production.

12/ Citrus Exports, C.L.A.M., 1970-1972 Annual Reports

13/ Supra, Footnote 10.

Spain is the largest citrus producing country in the Mediterranean area and is the world's largest exporter of fresh citrus. Because of its location, adjoining France on the south, it has easiest access to the EEC, from a transportation point of view, with the principal markets of Paris, Antwerp, Rotterdam, and Hamburg being from only 48 to 72 hours away by truck or rail.

Spain's largest market within the EEC is West Germany, followed by France, and the Benelux nations. More than three-fourths of all Spanish orange exports are to countries within the expanded EEC. It was predicted as early as 1960 that Spain would make every effort to maintain and increase its position within these markets and seek special trading arrangements.14/

During the base period Spain exported approximately 68% of its total orange production. It is anticipated that Spain's production will increase by 48% from this same period to 1980 and while the percentage available for export will drop slightly, the total volume of orange exports will increase significantly.

Egypt has been rapidly expanding both production and export marketing.15/ Citrus production in Egypt is located along the Nile delta, which is located between Cairo and Alexandria.

14/ Ibid.

15/ "Big Developments on the Egyptian Citrus Front", Fruit Trade Journal, April 3, 1971.

While citrus has been grown in Egypt for centuries, it has only been since 1952 that a serious industry-wide effort has been made to become competitive in the world market. For example, in the last six years, over seven new packing houses have been constructed and it is predicted that there will be 20 by 1976. A quick glance at exports of Egyptian oranges will rapidly show the progress being made. See Table III.

TABLE III

EXPORT OF ORANGES FROM EGYPT

Avg.	1962-63/1966-67	22,000 tons
	1967-68	38,000 tons
	1968-69	76,000 tons
	1969-70	86,000 tons
	1970-71	90,000 tons
	1971-72	100,000 tons
	1972-73	130,000 tons projected

Source: Supra, Footnote 11

Egypt uses modern packing house equipment and chemicals such as TBZ and diphenyl to assist in getting its fruit to export markets. Currently most of Egypt's fresh orange exports go to Eastern Europe, especially Russia. Of those that go to Western Europe, the exports are directed primarily to England, Germany, Holland, Scandinavia, and France. Egypt also is beginning to

export lemons to the EEC. Egyptian citrus exports are sold through a Government monopoly known as El Wadi Agricultural Export Company. Exports consist of both navels and Valencia Late.

The citrus production of Cyprus has increased five fold from the late 1930's to the base period of 1964-66, increasing from a level of approximately 20,000 metric tons to 99,000 metric tons. During the base period over 70% of the orange production of Cyprus was exported in fresh form and almost 60% of this production has been directed to the members of the expanded EEC. According to the FAO estimates, by 1980 the citrus production of Cyprus is expected to increase 268% and 82% of the total production will be directed to exports.

Exports of oranges from Lebanon have ranged from 80,000 to 93,000 tons from 1962 through 1970. In 1971, they increased dramatically to 132,000 tons and in 1972 were 109,000 tons. It is expected that 125,000 tons will be available for export in 1973. Nearly all of Lebanon's orange exports have gone to nearby markets in Jordan, Syria and Near East non-producing countries. About half of Lebanon's production is consumed in its domestic market. During the base period, production of oranges was 148,000 tons, and is expected to increase by 60% to 240,000 tons by 1980.

As previously noted, the principal citrus producing areas of the world are the United States and the Mediterranean region,

30-229 O - 74 - 29

including the countries of Tunisia, Morocco, Spain and Israel, Egypt, Cyprus, and Lebanon, which have just been reviewed. While citrus production has been increasing in virtually all producing areas, the increases in the Mediterranean in particular have been greater than those in the United States, with the result that the United States' share of world production has fallen from 40% to 25% during the past 30 years.16/ During this same period, the Mediterranean's share of world production has been steadily rising from 25%. Although production is fairly evenly divided between the two major producing areas, the Mediterranean and the United States, the majority of fresh citrus exports originate in the Mediterranean area--with over 50% of this area's production being exported. This represents approximately 75% of total citrus shipments throughout the world to importing countries, with the bulk of the remainder of the shipments being divided between the United States, South Africa, and Brazil.

The EEC is the most important market area for Mediterranean basin citrus producing countries; and it is also the single most important overseas market for U.S. citrus. The California-Arizona citrus industry has been vigorous in its efforts to increase fresh citrus exports to the EEC. The trend of exports of fresh

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16/ Supra, Footnote 4. In addition to footnote four, it must be kept in mind that fresh oranges are available from both the United States and Mediterranean producers from February through July.

citrus from California-Arizona from 1925 to the present is shown below in Table IV.

Table IV

Exports of California-Arizona Fresh Citrus

Year	Metric Tons	Year	Metric Tons
1924-25	55,700	1949-50	192,020
1929-30	62,450	1954-55	349,500
1934-35	165-830	1959-60	300,600
1939-40	127,750	1964-65	336,000
1944-45	228,400	1969-70	423,900

Source: Sunkist records projected to California-Arizona citrus industry total.

During the development of its citrus export markets, the United States was able to compete in the principal markets of Western Europe, now incorporated in the EEC, on generally the same basis as other suppliers insofar as tariffs and other governmentally imposed trade restrictions were concerned. The California-Arizona citrus industry pointed out as early as 1962 that the creation of the EEC itself placed the United States and California-Arizona citrus growers at a competitive disadvantage with Italy for example, one of the original "six".17/ This disadvantage was extended

17/ University of California Conference in Foreign Trade, D. F. McMillen, 1962.

subsequently as Greece and Turkey entered into association agreements with the EEC and more recently with the extension of preferences to Tunisia, Morocco, Israel, Spain, Cyprus, Egypt and Lebanon.18/ It is not necessary to review the possibility that EEC itself may not have been organized pursuant to GATT criteria, in order to examine the EEC's agricultural policy. The protectionist attitude of the EEC toward its agriculture is a well documented fact, and the agreements under consideration herein constitute an extension of that agricultural policy to non-EEC member countries now being brought in under the EEC umbrella. It is clear that the EEC intends not only to protect its own agriculture, but also the agriculture of major third country suppliers of products not grown in sufficient quantity within the EEC to achieve self-sufficiency. It is accomplishing this objective in a manner which discriminates against other third country fresh citrus suppliers such as the United States, Brazil, and South Africa. Additionally, the EEC has announced its intention to extend these preferences to other Mediterranean producers.19/ This protectionism of agriculture and its extension to selected third countries is in sharp contrast with the intent of the Treaty of Rome, pursuant to which the EEC was formed, which in referring to trade

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18/ In total, the EEC has extended agreements of one kind or another to 43 countries. It is expected that soon the number of countries will increase as areements are developed with commonwealth

19/ European Community, No. 134, May 1970; No. 133, April 1970; No. 131, February 1970; No. 127, Sept. 1969; No. 123, May 1969.

between the EEC and third country suppliers states as follows:

> "Article 18 -- Member States hereby declare their willingness to contribute to the development of international commerce and the reduction of barriers to trade by entering into reciprocal and mutually advantageous arrangements directed to the reduction of customs duties below the general level which they could claim as a result of the establishment of a customs union between themselves.
>
> "Article 110 -- By estalishing a customs union between themselves the Member States intend to contribute, in conformity with the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international exchanges and the lowering of customs barriers.
>
> The common commercial policy shall take into account the favourable incidence which the abolition of customs duties as between Member States may have on the increase of the competitive strength of the enterprises in those States."

V. The California-Arizona Citrus Industry

The citrus industry within the United States has experienced substantial growth in acreage and production and this growth is projected to continue in the future. According to FAO estimates, United States production of all citrus will reach 13,500,000 metric tons by 1980, as compared with an average of 6,689,000 metric tons for the period 1964-1966. During the base period, Florida accounted for 68% of total U.S. citrus production with California-Arizona accounting for 30% and the remainder of 2% being in Texas with minor production in Louisiana.

However, California-Arizona is the principal source of fresh citrus exports from the United States, accounting for an estimated 80% - 85% of total overseas exports in recent years.

The development of the export market has been an integral part of the growth and expansion of the California-Arizona citrus industry. The earliest exports of fresh citrus date back to 1892 with significant volume being first attained in the 1920's.20/

Exports were further expanded after World War II to the present level of 479,600 metric tons in 1971-72. It is significant that these established export markets were regained after World War II with assistance from the Federal Government.

In addition, since 1960, the California-Arizona Citrus League has had the cooperation of this Government in the continued expansion of the League's citrus export markets through the FAS-California-Arizona Citrus League market development project, pursuant to which P.L. 480 funds in the amount of $2,145,000 have been spent in assisting the industry in its trade expansion programs from 1960 to December 31, 1972. These funds were matched by industry expenditures of approximately $7,980,000 during the same period. As a result of these and other efforts, exports of fresh citrus from California and Arizona have represented 28% of its total fresh fruit shipments

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20/ California State Board of Horticulture, 1892, P. 330-331.

during the eight years 1964-65 to 1971-72 with individual years ranging from a low of 25.3% to a high of 32.4%. (See Appendix G) Of these exports, 67% were to overseas markets. During the period 1964-65 to 1968-69, 50% of the overseas exports went to the EEC. Now that the discriminatory preferences have been in effect since 1969, shipments to the original EEC member countries constituted only 30% of overseas exports during 1971/72. When the three new EEC members are included, overseas exports to the EEC amount to 35%.

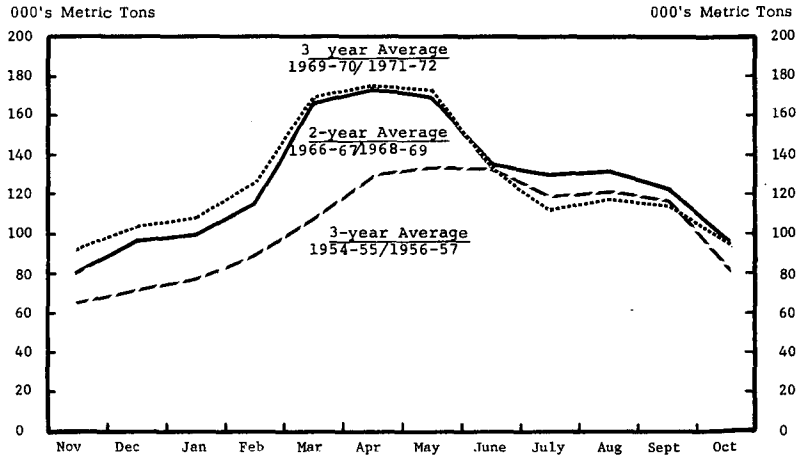
The California-Arizona citrus industry is experiencing a resurgence of plantings and production. Significant acreage reductions were made in the 1950's, principally due to pressure of low returns, loss from quick decline (Tristezza), and opportunities for subdivision in established producing areas. The California-Arizona citrus industry currently has approximately 361,000 acres of citrus under cultivation with employment in the growing, harvesting, packing and marketing functions totaling approximately 37,000 individuals.

The new plantings that have been made since the mid-1950's are concentrated largely in the Central California and Desert Valley producing areas, the harvesting seasons for which are somewhat earlier than in the older established producing areas of Southern California. These plantings have been made possible by the

availability and extension of water supplies developed through Federal and State reclamation and irrigation projects. In many instances citrus fruit is the only crop which has the production and income potential to utilize effectively these sources of irrigation water. The shift of producing areas referred to above will result in the need to initiate shipments into export markets earlier in the marketing season than in the past. Chart I below illustrates the changing volume and seasonal pattern of orange harvests between 1954 and 1972.

CHART I

VOLUME OF CALIFORNIA-ARIZONA ORANGE CROP HARVESTED EACH MONTH



*1967-68 was a severe frost year resulting in crop loss.

Source: Orange Administrative Committees

The California-Arizona industry has developed on the basis of an expectation of continuing demand in both domestic and export markets. Projecting the growth of this industry to 1977-78, the production of oranges is expected to total 2,067,200 metric tons. If the California-Arizona industry is to maintain the same percentage of utilization in export channels as has prevailed in the immediate past, total exports of fresh citrus from California-Arizona will have to increase from the level of 479,600 metric tons for 1971-72 to a level of 600,000 metric tons in 1977-78.

Examining the current economic status of the industry, it is clear that with the existing levels of production the industry would suffer severe economic consequences, were it to lose any significant part of its fresh citrus exports.

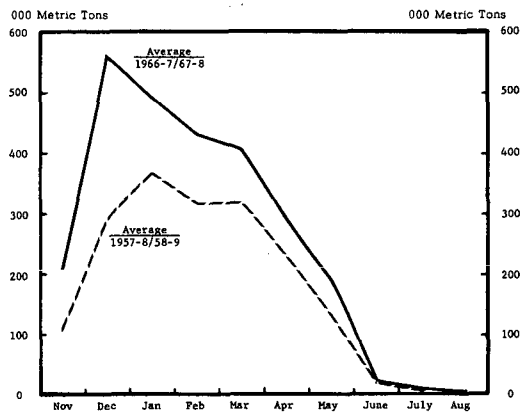
VI. World Marketing Seasons

As described earlier, production in the Mediterranean area has increased faster than it has in the United States and has resulted in increased volume being exported in all months of their marketing season. During the months of March through June, volumes shipped by Mediterranean suppliers have increased by 58% from 700,000 metric tons to 1,100,000 metric tons between 1957-58 and 1971-72.21/ Chart II below illustrates this rapid growth.

21/ Monthly data was not available for this time period for Greece, Turkey, Lebanon and Egypt. Therefore, this section does not include information on those countries.

CHART II

FRESH ORANGES (Including Tangerines, etc.)
EXPORTS FROM MEDITERRANEAN COUNTRIES TO WORLD MARKETS



See: Appendix H

Source: Food & Agriculture of the United Nations, Bulletin of Economic Statistics

In recent years a growing share of these increased shipments have been kept in storage in the European markets and have been sold later in the season than was normal. It is expected that, as production further increases in Mediterranean countries, their marketing season will be further extended in the EEC through use of storage facilities and extension of the harvesting period.

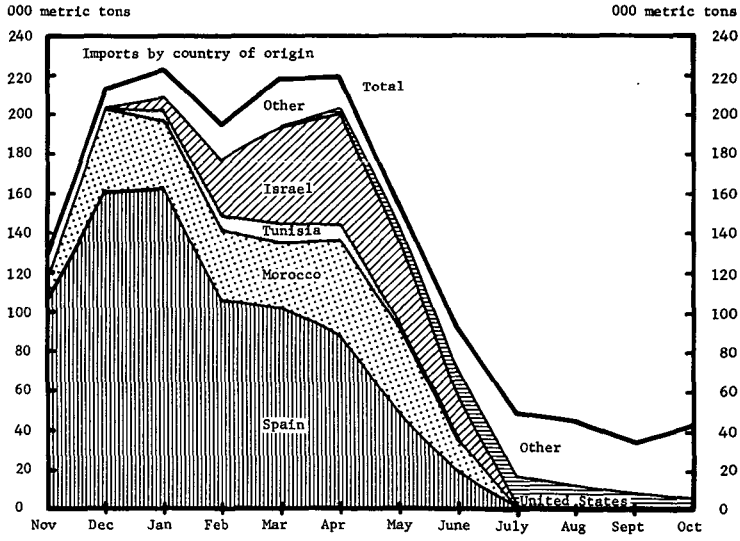
Chart III on page 25 illustrates the monthly imports of both California-Arizona and Mediterranean oranges into the EEC.

It is readily seen that even though the EEC markets are of great importance to the California-Arizona industry, the overwhelming competition from Mediterranean sources of supply will make it extremely difficult, if not impossible, to

maintain a market position under conditions of preferential tariff reductions to Mediterranean competitors. Combined with an earlier availability of supplies from California-Arizona, the extension of the Mediterranean season has and will continue to intensify competition in the critical months of April through July. Extending preferential tariffs to the Mediterranean countries constitutes a serious discrimination against the California-Arizona industry within the EEC market, particularly from the beginning of the California-Arizona export season in late February until approximately late July or early August.

Charts IV through VII clearly illustrate the difficulty suppliers from California-Arizona are having in maintaining a market position under conditions of preferential tariff reductions to Mediterranean suppliers.

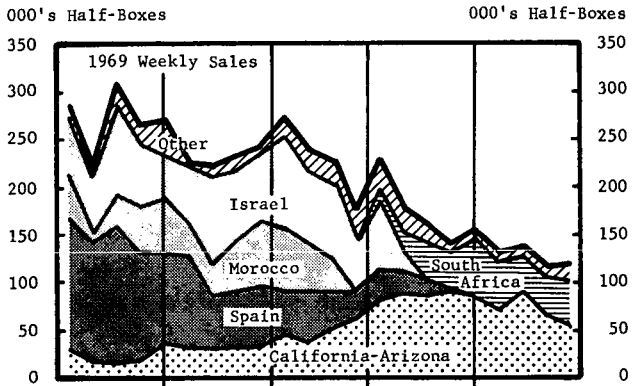
CHART III
MONTHLY EEC IMPORTS OF FRESH ORANGES
1966-67



Source: GATT Spec (69) 129 (EEC provided figures)
See: Appendix I

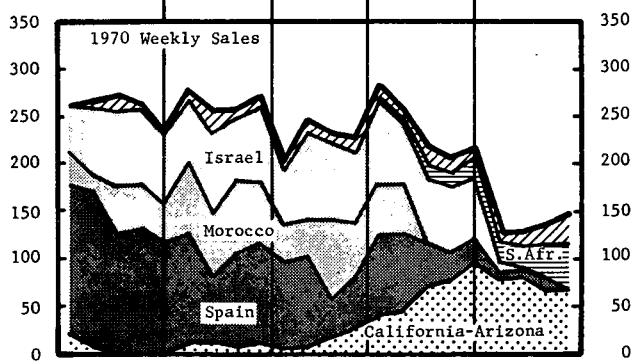
AUCTION: ROTTERDAM, HOLLAND
QUANTITIES OF ORANGES SOLD

CHART IV



MARCH APRIL MAY JUNE JULY

CHART V



Source: Rotterdam Auction Catalogs

AUCTION: ROTTERDAM, HOLLAND
QUANTITIES OF ORANGES SOLD

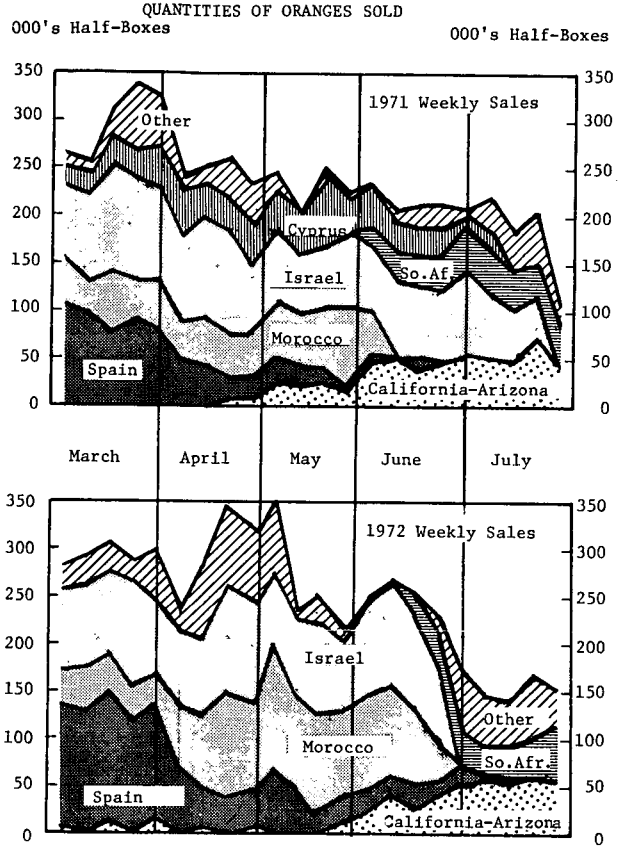


CHART VI

CHART VII

*Freeze in Spain 1971

Source: Rotterdam Auction Catalogs

VII Effects of the Tariff Preference

The association agreements provide that when oranges originating in Tunisia and Morocco are imported into the EEC, they shall be subject to only 20% of the common external tariff applicable to like products. These citrus items are included in EEC tariff heading 08.02A. The preferential agreements with Cyprus, Egypt, Lebanon, Morocco and Tunisia provide for the payment of only 60% of the common external tariff on like products. FAO comments on EEC preferential arrangements for citrus fruit imports are given in Appendix J.

Table VIII below relates the two degrees of preference 80% (Morocco and Tunisia) and 40% (Cyprus, Egypt, Lebanon, Spain and Israel) to the CXT of 20% during the period October 16 to March 31, the CXT of 15% during the period April 1 to May 31, the CXT of 5% during the period June 1 to September 30 and the CXT of 15% during the period October 1 to October 15 to a carton of oranges with an average C.I.F. value of $5.00 per carton.22/ On the basis of this average value, the application of these preferential rates result in duties of only 4% ad. valorum or 20¢ per carton on imports from Tunisia and Morocco, and a duty of 12% ad. valorum or 60¢ per carton on imports from Cyprus,

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22/ The preferences are understated because the average price per carton of U.S. competitors is less than the U.S. average price per carton of $5.00

Egypt, Lebanon, Morocco and Tunisia. Compare those duties with the duty on imports from non-preferred third countries of 20% ad. valorum or $1.00 per carton at that value. The preferences are 80¢ and 40¢ respectively per carton.

TABLE VIII

Computation of Tariff Preferences

	U.S.	Morocco & Tunisia	Cyprus, Egypt, Lebanon Spain and Israel
16 October to 31 March			
Tariff	20%	4%	12%
Dollars*	$1.00	20¢	60¢
Preference per carton	-0-	80¢	40¢
1 April to 31 May			
Tariff	15%	3%	9%
Dollars*	75¢	15¢	45¢
Preference per carton	-0-	60¢	30¢
1 June to 30 September			
Tariff	5%	1%	3%
Dollars*	25¢	5¢	15¢
Preference per carton	-0-	20¢	10¢
1 October to 15 October			
Tariff	15%	3%	9%
Dollars*	75¢	15¢	45¢
Preference per carton	-0-	60¢	30¢

* Average C.I.F. price of $5.00 per carton is used.

The extension of the tariff preferences to the Mediterranean suppliers by the new member countries will make exporting to the United Kingdom, Ireland and Denmark more difficult as the new member countries introduce the common agricultural policy for fruits and move toward alignment with the CXT. Tariffs will rise substantially in the three new member countries from their present low levels to the complex and significantly higher CXT of the Community.23/ Only those suppliers which have not been extended preferential reductions - the United States, South Africa and Brazil - will pay the full duty.

The tariff levels for the United States, South Africa and Brazil will increase by as much as 300% in the United Kingdom from 5% to 15%. In Ireland and Denmark the increase will be from 0 to 20% in the winter. This will result in increased cost of up to $1.00 per carton for countries without preferential arrangements.24/ The application of the significantly higher rates will force the import traffic to be directed to those suppliers now enjoying a tariff advantage by virtue of the EEC preferences.

It is crystal clear that these unjustified agreements granting preferential duties to selected countries on oranges and lemons not only constitute rank discrimination against the

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23/ Supra, Footnote 1

24/ Average C.I.F. price of $5.00 per carton is used.

United States and other non-preferred third country suppliers, principally South Africa and Brazil, but also will restrict future U.S. commerce with the EEC. Further, this is precisely the situation contemplated by Congress when it enacted Section 252 of the Trade Expansion Act of 1962.

These tariff reductions are accompanied by a so-called price maintenance scheme, but this does not remove the competitive disadvantage which accrues from the reduction in duties. In fact, the price maintenance scheme has already caused damage to the U.S. overseas markets in several ways. If the price maintenance scheme is successful with the result that prices received by preferred producers are higher than they otherwise would have been, this scheme and the lower duty will have served to further increase their net return. This added return will result in additional plantings and expansion of production, which will further increase the competitive disadvantage which California-Arizona exports must face. On the other hand, if the reduction in duty is not passed back to the ultimate producer, the discriminatory margin will serve as an inducement for traders to seek out sources of supply in the favored countries at the expense of third countries not so favored. As preferential treatment stimulates increases of supplies in the Mediterranean area, their marketing period will be further extended, as much as possible, to take advantage of this special treatment accorded their product moving into the EEC.

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As a consequence of all of the factors influencing the competitive ability of the Mediterranean area suppliers, heavy supplies from these four countries originally receiving the illegal preferences have been found in the EEC during the past three years for almost six weeks longer than their historical marketing period. It should be repeated that the degree of preference involved is significant. The tariff assessed on U.S. citrus is 5 times that assessed on the citrus of Tunisia and Morocco, and 1.7 times that of Cyprus, Egypt, Israel, Lebanon and Spain.

However, the damage caused by the price/maintenance scheme has not been limited to the EEC market. In order to avoid falling below the applicable minimum (the reference price), and thus having their preference suspended until the situation is corrected (see Appendix K), the Mediterranean suppliers have been able to divert shipments to the United Kingdom whenever supplies within the EEC approached a level which would cause a temporary loss of their EEC preference.

Now that the United Kingdom has joined the Common Market and the "safety valve" has been removed, several damaging alternatives may result. The preferential suppliers can market without any restraints when the minimum prices are not in effect. Therefore, there may be a tendency for the preferential suppliers to withhold some supplies from the market until after the applicable

reference prices expire on April 30. Their marketing season may extend even further into the summer months.

In addition, there may now be a tendency for the Mediterranean suppliers to divert those supplies which previously were directed to the United Kingdom to other markets in order to continue to lessen the possibility of compensatory levies with the EEC. These supplies could be diverted to important U.S. markets such as Canada or several in the Far East (e.g. Hong Kong or Japan) and even to the United States.

The last and most probable alternative is that the Mediterranean suppliers will extend their marketing season in the Community and will also divert supplies to important U.S. markets.

VIII The Applicable International Agreement

Having documented the damage being sustained by the California-Arizona citrus industry, the United States will wish to determine what method is available to remove the existing discrimination. This involves examining both the General Agreement on Tariffs and Trade which is international and the Trade Expansion Act of 1962 which is domestic. GATT is only as effective as its members desire it to be, whereas the domestic law can be applied unilaterally.

The applicable international agreement governing trade is GATT. The preferential agreements between the EEC, Egypt,

Cyprus and Lebanon violate the Most Favored Nation provision of that agreement which is the foundation of international trading rules.

A. Most Favored Nation Treatment

Article I of GATT provides, with certain exceptions not applicable to the agreement discussed herein, that when a preference is given to one country by a contracting party, that preference automatically is extended to all other GATT contracting parties. If the preference is not extended, then a violation of the Most Favored Nation provision occurs. Because of the importance of the MFN principle, the applicable portion of Article I is set forth and is as follows:

> "1. With respect to customs duties and charges of any kind imposed on or in connection with importation or payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

The principle of MFN has been the backbone of U.S. trade policy. In fact, the Special Representative for Trade Negotiations in his report to the President dated January 14, 1969, said:

> "A basic tenet of U.S. policy since the early 1920's has been to follow, and to insist that other countries follow, a policy of unconditional most-favored-nation (MFN) treatment--that is, nondiscrimination in international trade.
>
> "There have been sound reasons for this policy. In the first place, as the world's greatest trading nation, the United States has much to gain from the assurance that its own exports will be permitted to compete in foreign markets on equal terms with those of any third country. To be assured of this treatment, it must guarantee MFN treatment to others."

More recently, the Honorable Peter G. Peterson stated in "A Foreign Economic Perspective" dated December 27, 1971, at page 20:

> "The United States has long supported the multilateral, non-discriminatory approach to the management of international economic relations, as opposed to bilateralism and discrimination. The United States has global economic interests: it thrives best in a world of nondiscrimination. The American interest is not solely economic, however. Nationalism is politically divisive, whether practiced militarily or economically. The United States has tried to encourage the development of an international system which would contain divisive economic nationalism and exclusive regionalism, so that political as well as economic relations might operate to the general benefit of all countries."

There are four items which must be considered in determining if there has been an MFN violation. The first three are items contained within the MFN provision and are (1) contracting parties, (2) advantage, favor, privilege or immunity, and

(3) product. The fourth item is whether any other provision of GATT grants an exception to and immunity from the MFN. These items will be considered in the order listed.

1. Contracting Parties

A contracting party is a nation who has agreed to the terms of the GATT and become a participating country. Of the countries involved in this brief only Belgium, France, Luxembourg, Netherlands, United Kingdom and the United States were original contracting parties. Denmark, The Federated Republic of Germany, Ireland, Israel, Italy and Spain have beome GATT contracting parties by accession under Article XXXIII. Cyprus became a contracting party by accession pursuant to Article XXVI. Tunisia and the United Arab Republic have acceeded provisionally and are not yet contracting parties. Morocco is not a GATT member although it does have observer status. Lebanon at one time was a contracting party, but then withdrew. It now has observer status.

2. Advantage, Favor, Privilege, or Immunity

The EEC has given an advantage, favor, and privilege to Egypt, Cyprus and Lebanon by granting them on fresh oranges, lemons and grapefruit, a 40% reduction in the common external tariff. This enables those countries to export citrus to the EEC at

advantageous prices resulting in discrimination against citrus from nonpreferred areas. This discrimination against some GATT contracting parties is unjustified.

The EEC previously admitted that MFN applies. In the beginning, the EEC granted a preference to Israel on grapefruit in July, 1964. The duty rate resulting from that preference was extended by the EEC to all GATT contracting parties pursuant to the MFN clause. This has not been done in the present case and indicates the EEC's willful disregard of Article I of GATT.

3. Product

The products involved are oranges, lemons and grapefruit as previously discussed hereinbefore. For the purposes of GATT the oranges, lemons and grapefruit exported from the United States, Morocco, Tunisia, Spain, Israel, Egypt, Cyprus and Lebanon are identical. There can be no question that the items concerned in the preferential and discriminatory agreements between the EEC and the seven countries involve like and directly competitive products to those exported by the United States.

The MFN of GATT would thus apply to EEC orange, lemon and grapefruit imports unless affirmative exemptions have been obtained under the provisions of GATT. This means that the United States and all other citrus producing countries are entitled to the benefits of the preferences extended. Even Spain

Israel, Cyprus, Lebanon and Egypt are entitled to the same preference received by Tunisia and Morocco.

B. Article XXIV is not Applicable to the Discriminatory Agreements

Article XXIV of the GATT is entitled "Territorial Application-Frontier Traffic-Customs Union and Free-Trade Areas." The EEC, acting in accordance with the terms of this article, could establish a free-trade area or a customs union which would be exempt from the application of the MFN. The present agreements do not and do not attempt to establish a customs union or free-trade area in accordance with Article XXIV. Article XXIV, paragraph 4, of GATT states principles of customs union and free trade areas in the following terms:

> "4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."

1. Customs Union

Before determining whether or not the EEC is trying to establish a customs union with any of the three countries concerned,

it is necessary to determine what a customs union is. A customs union has three basic characteristics. First, trade restrictions between the union members must be substantially eliminated. Second, uniform duties and other regulations of commerce with non-union members must be established. A third criteria is that the duties and other restrictions on trade on the non-union GATT parties to and from the customs union must not be on the whole higher or more restrictive than the general incident of the duties and regulations prior to the formation of the customs union.

If the criteria described above are met and the countries involved are GATT contracting parties, then the exclusion from the MFN is automatic. In this case, Egypt and Lebanon are not contracting parties to GATT and there can be no automatic exemption.

The agreements signed between the EEC and Egypt, Cyprus and Lebanon contain no provision or schedule for the formation of uniform duties and other regulations of commerce with non-union members or in other words a common external tariff. This, of course, is one of the very basic items to any actual customs union.

The agreements with Cyprus, Lebanon and Egypt do not resemble a customs union and a customs union potential is made impossible by those countries existing relations with other countries.

2. Free Trade Area

To establish a free trade area the countries within the area must eliminate the duties and restrictions on substantially all the trade between the member countries. There is no requirement that a uniform external tariff be established in connection with the trade between the members of the free trade area and non-members. The EEC announcement concerning these agreements indicates that a free trade area was formed.25/ The possibility that the agreements between the EEC and Cyprus, Egypt and Lebanon could be considered to have established a free trade area is prevented by the fact that customs duties and regulations are still in effect. There is no provision or schedule for the elimination of existing tariffs. The duty charged by the EEC on citrus from these three countries is an illustration that a free trade area does not exist.

3. Interim Agreements

There is one other section of Article XXIV which needs to be mentioned although it has no application to the instant agreements. Article XXIV of the GATT provides for interim agreements which lead to the formation of either a customs union

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25/ Joint Press Releases, 2166 e/72 (Preise 109); 2158 e/72 (Preise 104); 2157 e/72 (Preise 103)

or free trade area. In the present case, the EEC could not seriously assert that the agreements were qualifying interim agreements. Neither of the agreements have any formalized plan to form either a customs union or a free trade area. The 5-year agreements do provide that further negotiations should take place beginning 18 months before the agreements terminate. However, there is no requirement that the negotiations must be concluded in a reasonable time or that a free trade area or customs union must be established.

Since the preferential agreements do not fall within an exception to the MFN and do not comply with the MFN, they are violations of it. The EEC is openly violating MFN as to the rest of the GATT contracting parties. At the same time the EEC was careful in Article 4 of the agreements to specifically preserve for itself MFN treatment from Lebanon, Cyprus and Egypt as to any preference either of those countries might extend. (See Appendix K).

United States Law Requires Presidential Action

The Trade Expansion Act of 1962 states that the purpose of the Act is, among other things:

> "...to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture...[and] to strengthen economic relations with foreign countries through the

> development of open and non-discriminatory trading in the free world..." 19 U.S.C. § 1801.

The Trade Expansion Act of 1962 (hereinafter referred to as "TEA") gave authority to the President to take certain actions when the purpose of the TEA was frustrated by the actions of foreign nations.

The President is directed by the TEA to take certain action when the conditions discussed in this brief exist. The President is directed by 19 U.S. C. § 1882(a) whenever unjustifiable foreign import restrictions oppress the commerce of the United States or prevent the expansion of trade on a mutually advantageous basis to:

(1) take all appropriate and feasible steps within his power to eliminate such restrictions,

(2) refrain from negotiating the reduction or elimination of any United States import restriction under 19 U.S.C. § 1821(a) in order to obtain the reduction or elimination of any such restrictions, and

(3) notwithstanding any provisions of any trade agreement under the Trade Expansion Act and to the extent the President deems necessary and appropriate, impose duties or other import restrictions on products of any foreign country or instrumentality establishing or maintaining such foreign import restrictions against United States agricultural products, when he deems such duties and other import restrictions necessary and appropriate to prevent the establishment

or obtain the removal of such foreign import restrictions and to provide access for United States agricultural products to the markets of such country or instrumentality on an equitable basis.

The President is also directed by 19 U.S.C. §1882(b) whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, engages in discriminatory or other acts or policies unjustifiably restricting United States commerce, the President shall, to the extent that such action is consistent with the purposes of 19 U.S.C. §1801 suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

The President is also directed by 19 U.S. C. §1882(c) whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, maintains unreasonable import restrictions which either directly or indirectly substantially burden United States commerce, to the extent that such action is consistent with the purposes of 19 U.S.C. §1801 and having due regard for the international obligations of the United States, to suspend, withdraw, or prevent the application of benefits of trade agreement concessions to

products of such country or instrumentality or refrain from proclaiming benefits of trade agreements concessions to carry out a trade agreement with such country or instrumentality.

As can readily be seen, the Congress intended that when U.S. commerce is unfairly burdened the President is to take certain definite steps. For that reason, the conditions which must exist and the steps to be taken were clearly outlined in the TEA. While a GATT violation is not a necessary prerequisite for the President to invoke 19 U.S.C. § 1882, a violation of GATT does illustrate the lengths to which some countries will go to unfairly restrict U.S. commerce and discriminate against it.

CONCLUSION

It is submitted that the foregoing facts concerning the California-Arizona citrus industry's trade with the EEC will substantiate the finding that the duty preferences extended by the EEC will reduce the demand for California-Arizona citrus as the EEC citrus requirements are increasingly supplied by Tunisia, Morocco, Israel, Spain, United Arab Republic, Algeria and Cyprus. Damage will also accrue to South Africa and Brazil. While in the U.S. the citrus industry alone may feel the immediate impact of this discriminatory policy, other U.S. commerce will no doubt be seriously affected. If the challenge to these agreements is not successful, then the EEC and other GATT members will have carte blanche to violate, at will, the Most Favored Nation provision of

GATT. Therefore, it is respectully requested that the President exercise the authority of his Office on behalf of United States commerce and the League to persuade the EEC to rescind the discriminatory agreements. It is fair and reasonable to request that the EEC extend the preferences granted to all citrus producing GATT members as required by GATT or rescind the agreements.

In following this path, the United States will have the support of all non-Mediterranean citrus producing countries as well as all other nations interested in preserving the Most Favored Nation principle in GATT. The only other alternative is for the United States to retaliate under the provisions of 19 U.S.C. §1821.

Respectfully submitted,

D. F. McMillan

California-Arizona Citrus League
Van Nuys, California

VERIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF LOS ANGELES)

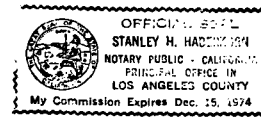
D. F. McMillen, being first duly sworn, deposes and says that he is the President of the California-Arizona Citrus League and, as such, is authorized to verify this brief on behalf of CACL, that he has read the foregoing brief and exhibits attached hereto and that the same are true to the best of his belief, information and knowledge.

D. F. McMillen
President

Subscribed and sworn to before me this 25th day of January, 1973.

Stanley H. Haberkorn Notary Public

My commission expires
Dec. 15, 1974



APPENDICES

Appendix A - Section 252 of the Trade Expansion Act of 1962

Appendix B - Portion of EEC-Egypt preference Agreement granting tariff reductions on fresh citrus

Appendix C - Article 108 of the Treaty of Accession, January 22, 1972

Appendix D - Map of EEC and Mediterranean countries receiving preferences

Appendix E - Principal Export Citrus Producing Nations

Appendix F - Principal Citrus Importing Nations

Appendix G - Percentage of fresh Califonia-Arizona citrus shipments directed to export

Appendix H - Fresh orange exports from Mediterranean countries to world markets

Appendix I - Monthly orange imports into EEC

Appendix J - Developments in National and International Citrus Policies

Appendix K - Suspension of preferential tariffs in the EEC

Appendix L - Portion of EEC-Egypt agreement where EEC obtains Most Favored Nation treatment from Egypt

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CHAPTER 6 -- GENERAL PROVISIONS

Sec. 251. MOST FAVORED NATION PRINCIPLE.

Except as otherwise provided in this title, in section 350 (b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

Sec. 252. FOREIGN IMPORT RESTRICTIONS.

(a) Whenever unjustifiable foreign import restrictions impair the value of tariff commitments made to the United States, oppress the commerce of the United States, or prevent the expansion of trade on a mutually advantageous basis, the President shall--

(1) take all appropriate and feasible steps within his power to eliminate such restrictions.

(2) refrain from negotiating the reduction or elimination of any United States import restriction under section 201(a) in order to obtain the reduction or elimination of any such restrictions, and

(3) notwithstanding any provision of any trade agreement under this Act and to the extent he deems necessary and appropriate, impose duties or other import restrictions on the products of any foreign country or instrumentality establishing or maintaining such foreign import restrictions against United States agricultural products, when he deems such duties and other import restrictions necessary and appropriate to prevent the establishment or obtain the removal of such foreign import restrictions and to provide access for United States agricultural products to the markets of such country or instrumentality on an equitable basis.

(b) Whenever a foreign country or instrumentality the products of which receive benefits of trade agreement concessions made by the United States--

(1) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(2) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,
the President shall, to the extent that such action is consisten with the purposes of section 102--

(A) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or
(B) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

(c) Whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, maintains unreasonable import restrictions which either directly or indirectly substantially burden United States commerce, the President may, to the extent that such action is consistent with the purposes of section 102, and having due regard for the international obligations of the United States--

(1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or
(2) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

(d) The President shall provide an opportunity for the presentation of views concerning foreign import restrictions which are referred to in subsections (a), (b), and (c) and are maintained against United States commerce. Upon request by any interested person, the President shall, through the organization established pursuant to section 242(a), provide for appropriate public hearings with respect to such restrictions after reasonable notice and provide for the issuance of regulations concerning the conduct of such hearings.

Appendix B

Article 6

1. Les produits suivants, originaires de la RAE, sont soumis, à l'importation dans la Communauté, à des droits de douane égaux à 60% des droits du tarif douanier commun:

No du Tarif douanier commun	Désignation des marchandises
ex 08.02 A	Oranges fraîches
ex 08.02 B	Mandarines et satsumas, frais; clémentines tangerines et autres hybrides similaires d'agrumes, frais
ex 08.02 C	Citrons frais

2. Pendant la période d'application des prix de référence, les dispositions du paragraphe 1 sont applicables à condition que, sur le marché intérieur de la Communauté, les prix des agrumes importés de la RAE soient, après dédouanement, compte tenu des coefficients d'adaptation, valables pour les différentes catégories d'agrumes et après déduction des frais de transport et des taxes à l'importation autres que les droits de douane, supérieurs ou égaux aux prix de référence de la période concernée, majorés de l'incidence du tarif douanier commun sur ces prix de référence et d'une somme forfaitaire de 1,20 unité de compte par 100 kilogrammes.

3. Les frais de transport et les taxes à l'importation autres que les droits de douane, visés au paragraphe 2, sont ceux prévus pour les calculs des prix d'entrée visés au règlement n° 23 portant établissement graduel d'une organisation commune des marchés dans le secteur des fruits et légumes.

Toutefois, pour la déduction des taxes à l'importation autres que les droits de douane, visées au paragraphe 2, la Communauté se réserve la possibilité de calculer le montant à déduire, de façon à éviter les inconvénients résultant éventuellement de l'incidence de ces taxes sur les prix d'entrée, suivant les origines.

Article 7

1. Les produits suivants, originaires de la RAE, sont soumis, à l'importation dans la Communauté, aux droits de douane du tarif douanier commun réduits dans les proportions indiquées en regard de chacun d'eux:

N° du Tarif douanier commun	Désignation des marchandises	Taux de reduction %
08.02	Agrumes frais ou secs:	
	D. Pamplemousses et pomelos	40
	ex E. Autres:	
	Limes et limettes	40

2. En cas de perturbation ou de difficultés dans la commercialisation des produits des sous-positions du tarif douanier commun ex 08.01 G (mangues), 08.02 D (pamplemousses et pomélos) et ex 07.01 H (oignons frais ou réfrigéres), notamment en ce qui concerne la qualité de ces derniers produits, des consultations ont lieu au sein de la Commission mixte afin de trouver des solutions aptes à y remédier.

Appendix C

Accession Treaty

TITLE III. EXTERNAL RELATIONS

Chapter 1. Agreements of the Communities with Certain Third Countries

Article 108. [Application by New Members of Treaties with Third Countries]

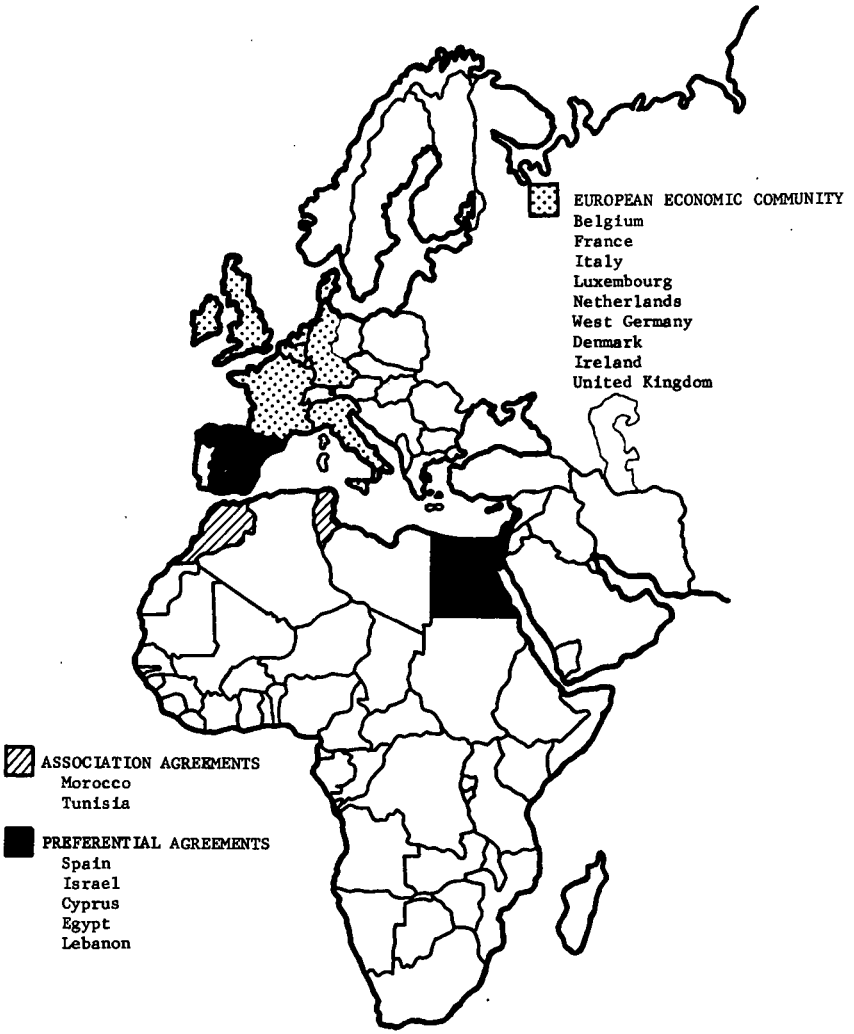
1. From the date of accession, the new Member States shall apply the provisions of the agreements referred to in paragraph 3, taking into account the transitional measures and adjustments which may appear necessary and which will be the subject of protocols to be concluded with the co-contracting third countries and annexed to those agreements.

2. These transitional measures, which will take into account the corresponding measures adopted within the Community and which may not extend beyond the period of validity thereof, shall be designed to ensure the progressive application by the Community of a single system for its relations with the co-contracting third countries as well as the identity of the rights and obligations of the Member States.

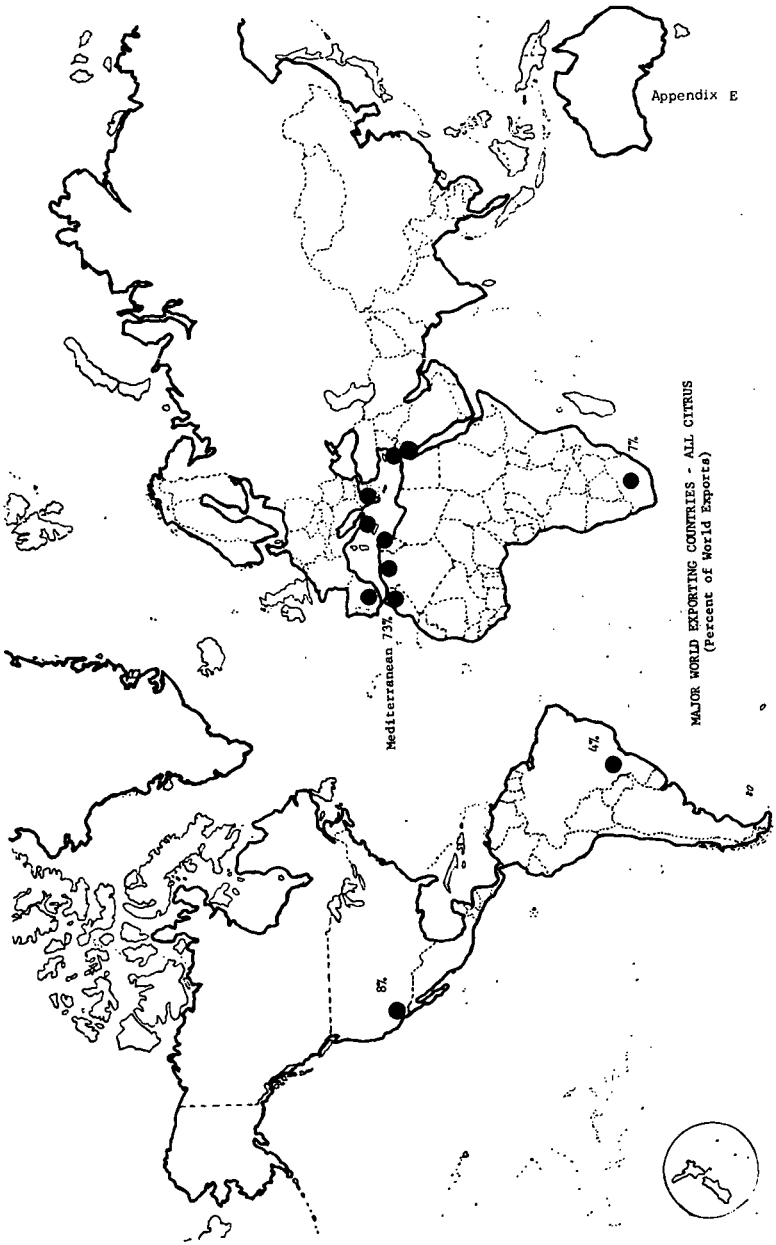
3. Paragraphs 1 and 2 shall apply to the agreements concluded with Greece, Turkey, Tunisia, Morocco, Israel, Spain and Malta.

Paragraphs 1 and 2 shall also apply to agreements which the Community concludes with other third countries in the Mediterranean region before the entry into force of this Act.

Appendix D

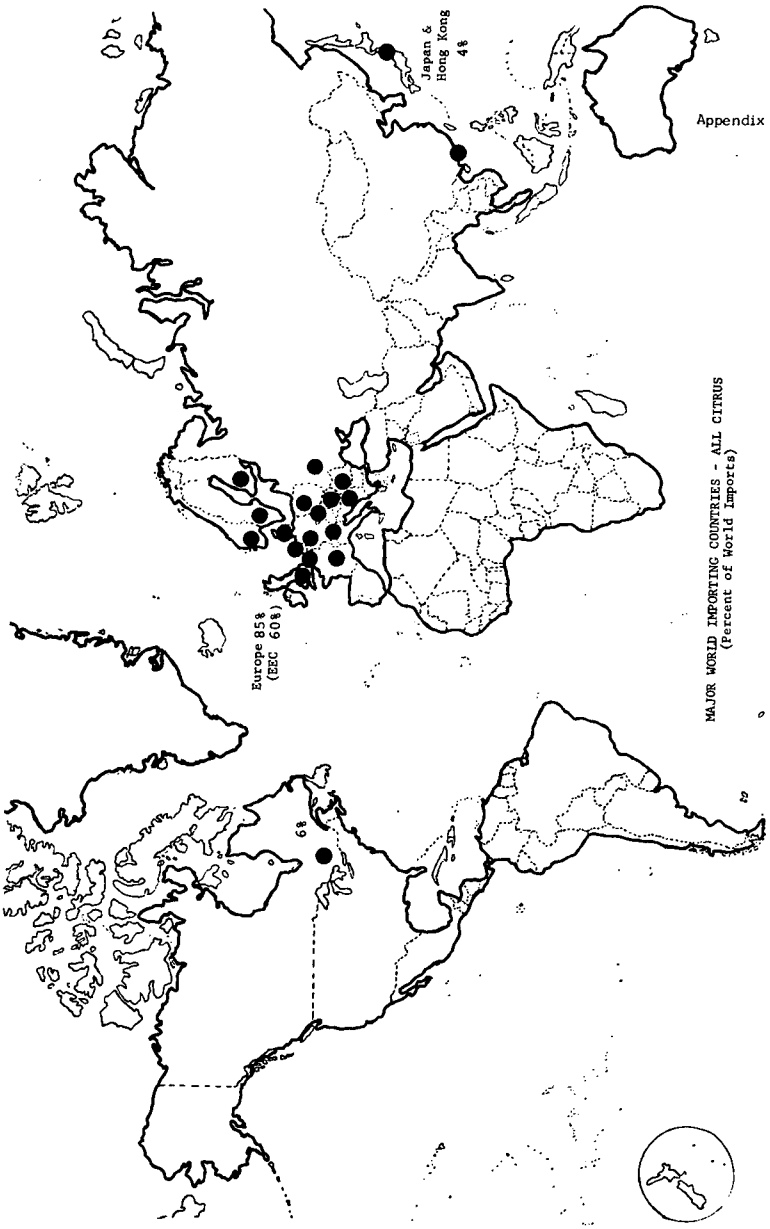

EUROPEAN ECONOMIC COMMUNITY
Belgium
France
Italy
Luxembourg
Netherlands
West Germany
Denmark
Ireland
United Kingdom
ASSOCIATION AGREEMENTS
Morocco
Tunisia
PREFERENTIAL AGREEMENTS
Spain
Israel
Cyprus
Egypt
Lebanon

Appendix E



MAJOR WORLD EXPORTING COUNTRIES - ALL CITRUS
(Percent of World Exports)

Appendix F



MAJOR WORLD IMPORTING COUNTRIES - ALL CITRUS
(Percent of World Imports)

Appendix G

PERCENTAGE OF FRESH CALIFORNIA-ARIZONA
CITRUS SHIPMENTS DIRECTED TO EXPORT 1964-1972

Year	Total Fresh Shipments	Fresh Export Shipments	Percent
	----- Metric Tons -----		
1964-65	1,327,360	336,005	25.3
1965-66	1,377,340	385,730	28.0
1966-67	1,415,590	407,320	28.8
1967-68*	955,825	258,145	27.0
1968-69	1,427,830	385,390	27.0
1969-70	1,440,835	423,895	29.4
1970-71	1,349,715	377,230	27.9
1971-72	1,480,615	479,570	32.4
8 Yr. Average	1,346,889	381,661	28.3

*Frost and Flood Destroyed Production

Sources: Orange, Lemon and Desert Grapefruit Administrative Committees and California Crop & Livestock Reporting Service. Canadian exports were estimated.

FRESH ORANGES (Including Tangarines, etc.)

EXPORTS FROM MEDITERRANEAN COUNTRIES TO WORLD MARKETS

	1957-8	1958-9	Average	1966-7	1967-8	Average	1970-1	1971-2	Average
				000's of Metric Tons					
October	8.6	8.0	8.3	38	10	24.0	46	1	23.5
November	115.2	102.7	109.0	358	254	306.0	385	341	363.0
December	324.2	282.7	303.4	511	524	517.5	477	576	526.5
January	384.9	368.8	376.9	483	480	481.5	567	523	545.0
February	338.3	320.5	329.4	398	491	444.5	449	488	468.5
March	335.3	318.2	326.8	425	422	423.5	391	458	424.5
April	214.0	257.4	235.7	333	251	292.0	357	336	346.5
May	133.2	140.3	136.7	153	176	164.5	167	259	213.0
June	23.1	17.1	20.1	25	28	26.5	19	63	41.0
Total Oct.-June*	1,876.8	1,815.7	1,846.3	2,724	2,636	2,680.0	2,858	3,045	2,951.5
Greece, Turkey Lebanon and Egypt	81.2	58.3	69.7	227	227	227.0	346	351	348.5
Total CLAM Countries	1,958.0	1,874.0	1,916.0	2,951	2,863	2,907.0	3,204	3,396	3,300

* Includes: Spain, Morocco, Algeria, Tunisia, Italy, Israel (incl. Gaza) and Cyprus.

Sources: 1957-58/1958-59 Derived from C.L.A.M. Annual Totals and FAO, UN percentage distribution by month. Commiddion des Etudes Economiques du C.L.A.M., "Les Exportations D'Agrumes Du Bassin Mediterranien" Annual 1971-72 and 1967-68.

Appendix I

1966-67

MONTHLY EEC IMPORTS OF FRESH ORANGES

	Country of Origin				
	Spain	Morocco	Tunisia	Israel	United States
	Metric Tons				
November	107,436	8,154	33	44	271
December	160,548	42,005	--	744	34
January	163,058	33,591	5,391	7,376	19
February	106,886	33,751	8,555	28,510	30
March	102,464	33,523	8,402	49,612	139
April	88,948	47,305	7,800	56,261	2,409
May	48,402	44,265	2,646	41,439	7,644
June	19,134	15,704	438	22,280	13,229
July	2,790	367	198	772	13,858
August	120	14	--	4	12,990
September	--	15	--	3	8,787
October	562	35	--	1	5,602

Source: GATT (69) 129 (EEC provided figures)

Appendix I

1966-67

MONTHLY EEC IMPORTS OF FRESH ORANGES

Month	Total
November	128,648
December	213,709
January	223,057
February	194,205
March	218,435
April	219,146
May	154,071
June	92,217
July	49,008
August	45,414
September	34,830
October	42,853

Source: GATT (69) 129 (EEC provided figures)

Appendix J

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE
ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

CCP: GI 72/5
7 April 1972

COMMITTEE ON COMMODITY PROBLEMS

INTERGOVERNMENTAL GROUP ON CITRUS FRUIT

Fifth Session
Catania, Sicily, 3-8 June 1972

DEVELOPMENTS IN NATIONAL AND INTERNATIONAL CITRUS POLICIES

B. Preferential arrangements

27. Preferential arrangements continue to concern mainly the Commonwealth area and the EEC. With the entry of the United Kingdom into the European Economic Community contemplated for January 1, 1973, however, the country would terminate its membership of the Ottawa Agreement effective 31 December 1977, i.e. at the end of the five years' transitional period. At present fresh citrus fruit and citrus products grown and manufactured in and consigned from Commonwealth countries and the Republic of South Africa to the United Kingdom, Canada and New Zealand are admitted free of duty or at preferential rates.

28. The EEC grants exemption from the common external tariff for fresh citrus fruit at present as follows:

(a) Produce from the 18 states of Africa and Madagascar associated under the Yaounde Agreement enjoy the same preferences which the Six grant each other;
(b) Intra-community treatment is granted to shipments from overseas departments and dependent territories including Surinam and the Netherlands Antilles;
(c) Citrus exports from Greece, excluding grapefruit, benefit from duty free access to the Community. The formerly granted exemption from possible countervailing charges, however, was terminated on 30 June 1969;
(d) Produce from Turkey enjoys a reduction of the external tariff of 40 percent for oranges and 50 percent for lemons, mandarins, satsumas, clementines and similar;
(e) Imports from Libya and Somalia have free entry into Italy;
(f) Citrus imports from Morocco and Tunisia, excluding grapefruit, enuoy an 80 percent reduction from the common external tariff;
(g) Produce from Israel is imported at a duty 40 percent below the full rate;

(h) Spanish oranges, lemons, mandarins, satsumas, clementines etc. enjoy a 40 percent tariff reduction;
(i) Most Algerian goods are treated in France as if they were imports from other member states, while Italy treats Algerian products as imports from any third country. In the Benelux countries and the Federal Republic of Germany Algeria enjoys some preferences.

29. The tariff preferences granted to the various Mediterranean countries are based on a decision taken in October 1967 according to which the Community wished to maintain the equilibrium between the suppliers of citrus fruit in this area. Thus, following the conclusion of the agreements with Tunisia and Morocco, tariffs for Israel, Spain and Turkey were also cut by 40 and 50 percent respectively. The preferences came into force simultaneously on 1 September 1969. At the same time the Community requested the contracting parties of GATT to grant a waiver under article XXV of the agreement which, however, was opposed by a number of other citrus exporting countries, particularly the United States. They felt that granting of preferential tariffs in particular to Israel and Spain without the conclusion of an agreement to form a customs union constituted a violation of the most favored nation clause of article I of the agreement. The EEC, therefore, withdrew its application for a waiver with regard to the preferences granted to Israel and Spain and effective 20 April 1970 reintroduced the full common external tariff rates for these two countries. However, on 1 October 1970 the preferences were granted again under new agreements which had been concluded in the meantime.

Appendix K

SUSPENSION OF PREFERENTIAL TARIFFS IN THE EEC*

	Season	Country of origin	Period of application
Oranges	1969/70	Israel	9-11 Feb 1970
		Spain	9 Feb - 15 March 1970
		Morocco	25 Feb - 2 March 1970
	1970/71	none	
	1971/72	Spain	12 Jan - 2 Feb 1972
		Israel	13 Feb - 18 Feb 1972
		Spain	13 Feb -
Mandarins, clementines, etc.	1969/70	none	
	1970/71	Spain	24 Nov - 4 Dec 1970
		Tunisia	4 Feb - 1 March 1971
		Spain	5-10 Feb 1971
		Spain	27 Nov - 7 Dec 1971
		Spain	12-27 Jan 1972

Source: Food and Agricultural Organization of the United Nations CCP:CI 72/5

* This illustrates periods of time when the specified countries failed to receive preferential benefits because of failure of their citrus exports to comply with adjusted reference prices.

Appendix L

Article premier

Le présent accord a pour objet de promouvoir l'accroissement des échanges entre la Communauté Economique Européenne et la RAE et de contribuer ainsi au développement du commerce international.

TITRE I

LES ECHANGES COMMERCIAUX

Article 2

1. Les produits originaires de la RAE bénéficient à l'importation dans la Communauté des dispositions figurant à l'Annexe I.

2. Les produits originaires de la Communauté bénéficient à l'importation en RAE des dispositions figurant à l'Annexe II.

3. Les Parties Contractantes prennent toutes les mesures générales ou particulières propres à assurer l'exécution des obligations découlant de l'accord.

Elles s'abstiennent de toutes mesures susceptibles de mettre en peril la réalisation des buts de l'accord.

Article 3

Sous réserve des dispositions particulières propres au commerce frontalier, le régime appliqué par la RAE aux produits originaires de la Communauté no peut, on aucun cas, être moins f favorable que celui appliqué aux produits originaires de l'Etat tiers le plus favorisé.

30-229 O - 74 - 32

Article 4

Dans la mesure où sont perçus des droits à l'exportation sur les produits d'une Partie Contractante à destination de l'autre Partie Contractante, ces droits ne peuvent être supérieurs a ceux appliques aux produits destinés à à l'Etat tiers le plus favorisé.

Article 5

Les dispositions des articles 3 et 4 ne font pas obstacle au maintien ou à l'établissement par la RAE d'unions douanières ou de zones de libre-échange, ainsi que d'accords ayant pour but l'intégration économique régionale, pourvu que ceci n'ait pas pour effet de modifier le régime des échanges prévu par l'Accord et notamment les dispositions concernant les règles d'origine.

Article 6

Est interdite toute mesure ou pratique de nature fiscale interne établissant directement ou indirectement une discrimination entre les produits d'une Partie Contractante et les produits similaires originaires de l'autre Partie Contractante.

Article 7

Le régime des échanges appliqué par la RAE aux produits originaires de la Communauté ou à destination de la Communauté, ne peut donner lieu à aucune discrimination entre les Etats membres, leurs ressortissants ou leurs sociétés.

Senator RIBICOFF [presiding]. Thank you, Senator Fannin.
Senator Percy?

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Well, I almost testified before a Republican chairman.

Senator RIBICOFF. Well, I will be delighted to walk out.

Senator PERCY. I might say it is good to see a Republican in the chair.

Mr. Chairman, Senator Fannin, I want to thank you very much for this opportunity to express my views on the Trade Reform Act of 1973. I might say that this makes my 20th year of testimony before this committee on the subject of foreign trade policy. I began in 1954 as an industrialist at the time, and in a highly protected industry with a very high wall of tariff protection around us in the photographic business. Nonetheless, I consistently came here to testify against the trade association that represented our industry, feeling that there was nothing that I knew of in business that would not cause any of the companies in our industry to adjust our policies as companies to a policy that was in the national interest. It was more important that this country follow a policy that would build the economic strength of the Nation and make us an integral part of the world market, much more so than if we just simply protected the producers such as Bell & Howell and other companies in our industry.

I recall, at the time, when my first testimony was given before this committee, that the investment bankers which handled Bell & Howell investment banking evidenced great concern about the company and its future, if we followed the policy of encouraging free trade. They wondered if that was inconsistent with our corporate responsibilities.

I maintained that I never wanted a crutch for the company that was based on politics. That a political rug could be pulled out from under you by politicians at any time, and if we were economically strong, that we would be fundamentally sound.

I think the progress of this indirect company, which, at that time, was doing about $13 million a year and is doing well over $400 million a year today, with growth in employment from 1,300 people to some 13,000, is evidence that you can struggle along, reducing tariffs, constantly exposing yourself to greater world competition. Yet you can also open your eyes and your business to the kinds of markets that are available to a company that feels the world ought to be its market.

The balance of trade and balance of payments that the company and industry has earned through the years, has been, I think, testimony to the ingenuity of the industry. I have not noticed that Eastman Kodak has suffered badly, or that little companies like Polaroid and Xerox have been put out of business by the Germans and the Japanese, though our trade association kept asking how we could possibly compete with all of that foreign cheap labor, and that

intensive competition? It just has not, in two decades now, held a shred of truth, and I do believe that I, therefore, come before you as an unabashed and longstanding open trader, believing that it is the right policy for this country, and therefore the right policy for our industries and our companies to adjust to.

Periods of prosperity in the United States and the world have always been marked by expansions in trade. Conversely, periods of economic adversity have always seen world trade contract.

But time has shown that maximizing the efficient use and free flow of capital, technology, and management of American and world resources can only benefit this Nation. World trade and world investment allow us to accelerate our own economic growth by sharing in the more rapid expansion of the economies of other nations.

The bill before the committee will, in general, result in promoting world trade and investment. There are, however, several aspects of the bill that I would like to address myself to. The entire concept of open trade is premised on the assumption that this Nation as a whole would benefit through job-generating exports and through imports which will lower prices, thus bringing more competition to our markets, and thus providing a wider variety of goods for the American consumer.

While this premise is true in the aggregate, we must recognize that there will be specific economic sectors, including industries, firms, communities, and individuals, who will be forced to make adjustments.

The benefits of trade fall to all. The cost of trade should not be borne by a few. No policy of open trade can be complete without an adequate program of adjustment assistance whose cost is shouldered by the Government, on behalf of the people as a whole.

The adjustment that is called for is no different than the adjustment that any company, any industry, or any community has to make in the normal day-by-day confrontation with competitive forces in a free market. Technological adjustments and changes in buying habits all cause constant adjustment.

We are saying that, when foreign trade policy is right for the Nation, sometimes a policy should be adopted which will cause those factors beyond the control of the company, or industry, to have some moderating influences upon them through the kind of trade adjustment programs that have been discussed.

In 1973, Senator Taft and I introduced a trade adjustment assistance act, S. 1156. Many of the provisions of that act are now contained in the present bill. However, I believe that the compensation provided to firms, communities and workers, may be considered inadequate in the present bill.

For instance, the present bill provides that a worker be compensated for 70 percent of his average weekly wage. While this is adequate for short-term readjustment, I believe that this figure should be increased to 75 or 80 percent, and perhaps even to a higher level, as high as 90 percent, if—and here is the big if—if the worker indicates his intention to exercise his individual ingenuity in enrolling in a training or a retraining program.

Special benefits would provide an incentive for a worker to begin a training program. They could gradually be phased downward to 75 percent in stages through the duration of the training period.

The Government should also pay the employer's portion of such fringe benefits as health insurance. Special compensation programs should be developed for the older members of our work force, those 60 and older, who find it especially difficult to retrain at the end of their careers.

Full benefits should accrue to these people until they are eligible for Social Security. An adequate adjustment assistance program should also provide for assistance to communities as well. We should consider expanded credit and technological help for small businesses, and specific credits to communities whose economic base is severely affected by imports.

As contained in the present bill, I think that it is an eminently sound idea to have a trust fund for this purpose, with the income resulting from import duties for adjustment assistance for individuals, for workers, for companies and for communities.

To a great degree, the stimulus for this bill is the evolution of our continuing relationship with other free world industrial nations.

Congress should emphasize its fundamental belief in the principle of nondiscriminatory trade practices. On the other hand, we should establish that we will not allow predatory commercial practices such as dumping or subsidizing of exports for the purpose of penetrating our domestic markets.

Obviously, we must, I think, crack down very hard on those who do attempt to dump or subsidize exports, because one cannot compete effectively against such practices. Certainly such self-protection provisions are well understood and employed by all countries.

While the concept of protection from unfair trade practices has long been present in trade bills, protection for the consumer has been lacking. There is a great need to work out among trading nations, and specifically the industrialized nations, common international standards for safety, labeling, sizes, et cetera, so that these provisions do not become nontariff barriers that inhibit trade, protect inefficient domestic production, and thereby harm rather than help, the consumer. This same holds true for environmental legislation affecting products that enter international trade.

Furthermore, I suggest that the Tariff Commission provide Congress, on an annual basis, a report estimating the cost to the American consumer of specific tariff and nontariff barriers by product group. The American people have a right to know how much they are paying and who is benefiting from tariff and nontariff subsidies.

S. 1156 provides that when the Tariff Commission recommends an increase of tariffs, or a quota, on an imported product, that the Commission include in its report an analysis of the effect of the additional protection on the price and availability of the product to the American consumer.

Now I think this is very important, as this committee has been so helpful in finding ways to report to us the cost of tax subsidies and loopholes. So, too, we ought to know how much the American consumer is being charged when a barrier of some sort is set up for the special protection of some domestic producer.

Lastly, I would like to comment on trade with the developing nations. The entire concept of our trade with the developing nations is shortsighted. We set up elaborate aid programs and credit schemes to promote capital goods exports of these countries, demand hard currency repayment of these credits, and then often close off our markets to important manufactured exports, such as textiles.

By inhibiting the development of manufacturing sectors in less developed countries, we force them to rely for foreign exchange on raw material exports, thereby making it attractive for them to group together into producer cartels in order to raise their prices. We want a diversified economy, and so do they.

It no longer makes sense for us to impose unnecessary restrictions on a developing nation which wants to diversify. We are willing to give them aid, but we are not willing really to trade. It is exactly the same as a welfare recipient. You are willing to give them welfare, but not willing to give them the incentive to go out and get a job, and that is what we have to do with developing nations.

It is not in our interest to keep less developed countries less developed. We want them to have higher per capital incomes because that means more world growth and more markets for our industrial and agricultural products. The more sophisticated they become, the more ready and able they are to accept some of our more sophisticated products in which we certainly do have a preeminent lead.

The present bill is in many respects a desirable improvement over the bill requested by the administration, because it more clearly defines the congressional role in the implementation of foreign trade policy. It adds improved adjustment assistance programs which should, I believe, be further improved in the ways I have suggested.

With the addition of further consumer safeguards, I think the bill is an important, constructive new link in the progression of U.S. reciprocal trade acts which have resulted in a continued expansion of world trade.

In closing, Mr. Chairman, I have read some of the dissenting opinions in the House report. I have read very carefully the concern evidenced by some Members of the House, who believe that far too much authority is being delegated to the President.

I think there has been a balance achieved here, since a certain amount of flexibility and latitude has to be provided to the executive branch within guidelines. In bargaining, you have to commit yourself in these bargaining sessions, but I do feel that the original administration bill, went too far on some points in assuming responsibility and authority in the Executive while taking too much away from the Congress. I trust that a proper balance, as has been achieved in the House bill, perhaps can even be further refined in the bill reported out by the Senate Finance Committee.

Thank you very much.

Senator RIBICOFF. Thank you very much. I would just like you to comment on this particular situation, because of your own experience.

For 60 years, in Hartford, Conn., we had the Royal Typewriter Manufacturing Co. It was quite successful, but about 6 years ago it was taken over by Litton Industries.

Litton Industries also owned a typewriter company in Hull, England. The average hourly wage in Hartford was $3.60 an hour and in Hull, England, $1.20 an hour. To make a typewriter, 55 percent of the cost is direct labor, so you can see the dilemma that Litton Industries faced.

So they moved their entire typewriter facilities, outside of some service repairs, to Hull, England, and about 1,600 people lost their jobs.

What responsibility do you believe a company like Litton Industries has to the Hartford community and to its employees when they make such a move?

Senator PERCY. I do not know—all corporate policy is different, of course. We just simply had a policy, as long as I headed our own company, which was some 20 years, that we would never discharge any employee, in any case, without providing him an opportunity for a job.

On one occasion in 1949, during the recession of that year, the first year I was chief executive officer, we turned our whole employment department over to find a job for every single employee. And, as soon as we could, we hired them back.

Now we held a very deep conscious feeling toward our corporate responsibility. Other companies are different, of course. Yet what we are saying here in this bill is that if those jobs and that community is injured as a result of reductions in tariffs or imports coming in, there must be a clear showing of that harm.

We have loosened the language in this bill from what it has previously been, but if there is a clear case of impact by imports, these trust funds would be available for the training or the retraining of those employees, as well as the attempts to find them other jobs. But I would hope, for the most part, that most of our American companies would be far-sighted enough to look ahead.

If, economically, they cannot make it in a community, then they should make that transition in such a way that the economic impact on the community is not too adverse. They should resort as little as possible to whatever assistance is available locally, State or Federal.

Senator RIBICOFF. But should there not be some responsibility on the part of the company that causes these dislocations, aside from the general taxpayer?

Senator PERCY. Oh, we go from one extreme to the other. We have no legal responsibility in this country, but the terms of whatever labor agreement they have. They can give notice and that is it.

Japan has gone exactly the other way. I have operated in Japan, with some 1,500 employees, and their system is so rigid that a company cannot fire anybody, almost no matter what the reason.

As the end result, they are extraordinarily cautious in expanding and they will do anything to avoid going overboard in hiring people. There is a rigidity in the hiring policies because they do not want to get stuck with a lot of fixed costs if there is a downturn.

Probably there is someplace between the two extremes for good corporate policy. Among a great many American companies that I know of, an extraordinarily good example right now is Motorola in Chicago. They are going out of the color television business, as they

just cannot make it. They have been losing millions of dollars. I know that that management has spent over three years trying to find a way to guarantee and assure the employees of that company they would not be unemployed, that those 7,000 people would not be put out of work. They have gone through four attempts to sell the company, and the fourth one appears to be successful now. I think Senator Fannin knows the chief executive officer, Bob Galvin of that company, and I know his attitude is deep concern for his people, and his colleagues and associates.

That attitude is not shared by some other companies, I know that.

Senator RIBICOFF. Well, IBM testified when we had our hearings on multinationals, that if it finds it has to move a plant, for economic reasons, it would always make a job available—from the man who sweeps a floor to the highest paid technician, at another one of their plants and pay for their moving expenses.

So here you have corporate responsibility.

Senator PERCY. Again, it is a reflection of management. I think that has been Tom Watson's policy for the two decades that I have known him.

Senator RIBICOFF. Well, there is a deeper problem if you have a company that is a conglomerate like Litton Industries. I can understand that a business cannot produce at $3.60 an hour what they can manufacture at $1.20 an hour and make it competitive in the American or world markets. But if you have a conglomerate which makes many products, I am sure they must have some line, or some item that could absorb a $3.60 an hour wage base. I think we have the larger problem here of corporate responsibility.

What should be done in those circumstances? I do not expect any definitive answers from you on this today—it is very complex. But I throw out this question and note the problem.

Also, there is the great problem that the multinationals have as to their responsibility for the social and economic life of not only their workers, but the communities they often shatter when they move without taking into account what is left behind.

Senator PERCY. Senator Ribicoff, I would like to point out that management can respond in many ways to wage differentials; $1.20 against $3.50 seems pretty hard to overcome, but it is not impossible.

IBM manufactures probably at a higher per-hour cost than that, yet it has a dominant position in the electric typewriter market simply because of the ingenuity and creativity that they have put into that typewriter.

It does not matter whether they pay $5 an hour. People are going to buy those typewriters because they offer a unique capacity and capability. If you are just making an off-the-line typewriter that is no better than anything else, or perhaps a little worse, the hourly differential does not make that much difference.

Now there is another way you can approach it. If you have got higher-priced labor, it is for a reason. This is the best educated and the highest skilled labor market in the world. If you are going to use an American workman who has had a high school education in the exact same way that you use someone else that has had a third or fourth-grade education, a virtual illiterate, then you are not using him very properly.

You can tool behind an employee. Your average American worker has probably $10,000 to $15,000. Some industries I know of have an average of $70,000 to $80,000 in capital equipment behind every employee. With that employee, it does not matter whether you pay him $3 or $4 an hour. He is using a $50,000 machine tool, as another way to overcome it. A conglomerate ought to be able to find work in some other area of its business. If one is declining, the other is moving up, and the conglomerate must move people and give them the opportunity. But to just close the door and say we cannot employ people hurts all businesses. Frankly, I think it is a matter of concern.

I am not familiar with the particular case, though, in Litton that you referred to.

Senator RIBICOFF. Senator Fannin?

Senator FANNIN. Thank you, Mr. Chairman.

Senator Percy, I want to commend you for an excellent statement. I agree with you that we do want to open trade, but I also know that with your long experience in this field, you realize we have some very difficult problems.

One item I would like to have you comment about, which we helped establish, years ago in GATT, was special tariffs and special policies, because we were desirous of helping many of the nations come forward in their industrial involvement.

And now we have some serious problems in that regard. I would just mention the 3 percent tariff on motor vehicles coming into this country as compared with what it takes for us to get a car in another country. As a result of this, we apparently have stopped exporting and we have, in many cases, built factories in many other countries of the world.

But do you not think that there is some way that we could alleviate this, to some extent, and have a more equitable tariff schedule so that our workers in this country would have a better chance of holding their jobs and competing with the other countries of the world?

Senator PERCY. I think it would be the worst possible way to do it through a tariff, other than through a quota—a quota is even worse, of course, because it is absolute.

A tariff, at least, can be overcome. But I would like to point out that in 1955 or 1956, the Detroit chamber of commerce was one of the first chamber of commerces in the United States to come out for a reciprocal trade agreements act.

They were in the forefront, led by the automobile companies, who were shipping all over the world. The American car was the most desired product in the world. They had a very open attitude toward trade.

We should have looked at those foreign markets, and we should have recognized that when we could not overcome the restrictive taxes which were based on size and horsepower and body length abroad, that instead of just complaining about it, we should have listened to why they were doing it. Maybe they were doing it to protect home industry, which, to me, is totally unfair. Yet perhaps they were doing it to cut down pollution, to cut down the use of fuel,

and to reduce the size of cars so you would not have one long traffic jam from one end of the country to the other. Maybe if Detroit had listened a little more closely to those markets, we would not be in the jam we are in now with a crash program. Every automobile company is now trying to convert to smaller cars, which they cannot produce enough of to get out of these gas-guzzling dinosaurs that they cannot give away.

So that here was a technological adjustment we should have made long ago.

Senator FANNIN. Well, of course some of our companies did try. American Motors did try that.

Senator PERCY. And they are doing very well.

Senator FANNIN. Yes, but they did not have a chance to get into those other markets.

I say I have to go to another meeting. I am the first witness at 10 o'clock. I am sorry I do not have time to ask additional questions. I did have some—I will discuss those with you later.

Senator PERCY. I would agree with you that there have been some very, very unfair practices in other countries that have been highly discriminatory against American products.

We should be very tough in our bargaining on those and we should also be tough now. For 25 years we have been subsidizing foreign production by overvaluing the dollar, and at last we have got the dollar down to a realistic level. That is why our balance of trade is going up so favorably now.

For the first time we are being fair with ourselves and not subsidizing all of these foreign producers with an overvalued dollar.

Senator FANNIN. Just one question, in regard to the trust fund. Your proposal to create a trust fund for the benefit of workers would be funded from import duties.

Would you increase duties for this purpose? Or would you earmark a percentage of the existing duties?

Senator PERCY. Oh, no, I would not increase duties for it, although we do give the President the power to increase duties, no more than 20 percent at a time. But we do give him the power to do it if that is the only weapon we can use, just as we did on August 15, 1971, when we had a very powerful weapon with that 10 percent border tax.

With that weapon we were able to bargain more effectively. I think it is all right to place in the hands of the President this power to punish others if they simply will not be fair in dealing with our own exporters, but I would not do it for the purpsoe of raising revenue.

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

Senator RIBICOFF. Thank you, Senator Percy.

Senator PERCY. Thank you.

Senator RIBICOFF. Our next panel will consist of Stanley Lowell, Professor Seymour Lipset and Sister Margaret Traxler.

Do you want to determine between you how you will be seated?

Mr. LOWELL. We have done that.

Senator RIBICOFF. All right, you may proceed.

STATEMENTS OF STANLEY LOWELL, CHAIRMAN, NATIONAL CONFERENCE OF SOVIET JEWRY; PROF. SEYMOUR MARTIN LIPSET, MEMBER, EXECUTIVE COMMITTEE OF THE ACADEMIC COMMITTEE ON SOVIET JEWRY; AND SISTER MARGARET ELLEN TRAXLER, CHAIRMAN, NATIONAL INTERRELIGIOUS TASK FORCE ON SOVIET JEWRY, ACCOMPANIED BY JERRY GOODMAN, EXECUTIVE DIRECTOR, NCSJ

Statement of Stanley Lowell

Mr. LOWELL. Senator Ribicoff, members of the Finance Committee, my name is Stanley H. Lowell, and I am chairman of the National Conference on Soviet Jewry. The Conference on Soviet Jewry is an assembly of 38 national Jewish organizations, all of them banded together here in the United States with respect to the problems of Soviet Jewry.

Attached to my testimony which is submitted to the members of the committee——

Senator RIBICOFF. Without objection, the entire written testimony will go in the record as if read from all of you.

Mr. LOWELL. Thank you, Senator.

Attached to it as an exhibit A is a list of all the organizations that make up the national conference. I have a certain pride in being able to speak here this morning, in that in speaking as chairman of the national conference I am speaking for the totality of American Jewry, and I think that places great responsibility on me and on the testimony that I am going to give before this committee.

In addition to speaking for the national conference, I am also speaking in behalf of the Union of Councils for Soviet Jews, which is a federation of community groups, and the Committee of Concerned Scientists. Some of those organizations which I represent this morning will have additional testimony which we will be happy to hand up, but which will not be presented orally.

Accompanying me as part of this panel are Sister Margaret Traxler, cochairman of the National Interreligious Task Force on Soviet Jewry, which represents leaders of all the major religious bodies in our country, Protestant, Catholic, and Jewish. In addition to that I am accompanied by Prof. Seymour Martin Lipset of Harvard University, who is substituting for Prof. Hans Morgenthau, who unfortunately is ill. And also, I am accompanied by Mr. Jerry Goodman, who is the executive director of the National Conference on Soviet Jewry, the agency I described briefly a moment ago.

Senator, it is our position that the Senate of the United States should pass section 402, which is known popularly as the Jackson amendment. We believe that enactment of this amendment will add substance to America's traditionally outspoken position on behalf of human rights. We are convinced that with the support that has been received in companion legislation in the House of Representatives, passed by a vote of 319 to 80, and by the majority of Senators, 78 in number, who have joined in cosponsoring the Jackson amendment, that the amendment is reflective of the views of the American people in general.

We think that the Jackson amendment contains a realistic formula to employ America's economic capability and economic power to secure fundamental human rights—specifically, the right to emigrate—and to link that human right to something which the Soviet Union wants from American society. The right and opportunity to emigrate is not a domestic or national concern, but rather a transnational one, a concern of all mankind. And it has been reaffirmed in the Universal Declaration of Human Rights and was recognized throughout the international community. By the enactment of the Jackson amendment we believe that the United States will give tangible meaning to human rights, which sometimes we only talk about but here pragmatically we would be putting into effect.

Attached to my testimony also is a historical document done by Bill Korey of the B'nai Brith, an outstanding Sovietologist and also an outstanding and aware member of the American Jewish community who has provided a summary of where the Congress and the Executive in the past have enacted legislation or acted in behalf of human rights by using America's economic power and America's strength, which is appropriate in this situation.

Now, why do we need this legislation?

We need this legislation because at this particular point in time a miracle has occurred within the Soviet Union. People who have been subjected to the Soviet system for 50 years, putting it mildly a nonreligious or irreligious country, are identifying themselves with their fellow coreligionists, their fellows who are of the Jewish faith and have Jewish background, and out of the Soviet Union comes an outpouring of sentiment, feeling, and ultimately a desire to join their fellows in Israel and other parts of the world.

And within the Soviet Union there is deliberate and intensive effort to prevent this emigration from taking place. Without—because it is in my testimony—going into great detail, I can tell the Senate Finance Committee that the harassment of Jews in order to prevent them from emigrating from the Soviet Union continues unabated. Not only is the methodology used by the Soviets contrary to everything that we in America would understand as proper, but it goes far beyond harassment in the sense by which we may use the word in the English language.

There is a backlog of more than 120,000 Jews who have applied to leave the Soviet Union who still have not been granted permission to do so. There are 1,600 hardcore cases—that is, applicants repeatedly denied exit visas—a list of which the Secretary of State just carried with him once again in his recent visit to the Soviet Union, and a report on which we anticipate from him in the very near future. There are examples of people like Valery Panov and Dr. Benjamin Levich—people with outstanding reputations in the world community—who are kept within the Soviet "prison," if I could use that word. And then there are those who are actually in prison, still incarcerated, what we call the "prisoners of conscience" such as Alexander Feldman, whose case I could talk about for 15 or 20 minutes in itself, put in prison on trumped up charges, but whose only "crime" was seeking to leave and emigrate to Israel.

We feel that the continued harassment, the methods that are used, the denial of exit permits, the refusal to implement the internation-

ally recognized right to emigrate—which the Jackson amendment would in some way bring into focus—are all reasons why the Jackson amendment should be passed. Soviet officials have been in contact, more or less directly, with the Congress of the United States, both the Senate and the House, and have made statements on occasions that would indicate a Soviet-Jewish emigration problem does not exist. Their position has been alternately that the Jews do not want to leave or that all the Jews who really want to leave are being allowed to leave.

We deny categorically that this is true. My previously mentioned figure of 120,000 applicants still in the U.S.S.R. awaiting permission to leave is in itself a minimal number, because we do not know what the numbers would be in the Jewish community in the Soviet Union who would be willing to and want to leave to go to Israel or other parts of the world if the harassment, the imprisonment and all the other techniques which are being used were eliminated.

And the claim has been made by Mr. Brezhnev before a gathering of Senators, that 95 percent of those who wish to leave are permitted to do so, and this is contrary to fact. Nowhere near 95 percent are permitted to leave. Moreover, as of the first 3 months of this year, the number of people who are getting exit permits has now reduced in number. So that we estimate that close to 20 to 25 percent less are leaving the Soviet Union in the first 3 months of 1974 than left in the same 3-month period in the year 1973. And as I indicated before, the harassment and the methodology which I have spelled out in my written testimony continues.

I will skip over the details of what I say in my testimony with respect to the education tax. The Soviets put it into effect, charged sums up to $45,000 for educated Jews to leave, and then in effect said, "we will not enforce it," thus giving the unfortunate impression in the United States and other parts of the world that some progress was being made because of this nonenforcement. Actually, the only result of the nonenforcement was to bring us back to where we were before August of 1972, which is when they put the education tax in effect.

Now, people say to us, why do you need this legislation in view of the fact that there has been some emigration continuing in some numbers. And we take the position that this legislation is essential and important because we believe that we have a wonderful opportunity in the hands of the Congress of the United States to in effect make a trade. It may be particularly appropriate that the trade is being made through a provision in a trade bill.

The Soviets want something from this country. They want credits—credits, let us say, at 7 percent when American businessmen are being charged 10 percent under the prime rate as it presently exists. They want most-favored-nation status, and it seems to me a rather simplistic way of looking at it to say that we should not be in the position of asking the Soviets to trade with us in return for American benefits of tremendous economic value to them, some measure of human rights, some measure of civil liberties, namely the right to emigrate.

And we are, therefore, saying to the Congress and to the Senate Finance Committee and to the Senate that we urge the enactment of the Jackson amendment because it is the appropriate time to make that trade.

Recently the Secretary of State testified before this body. He made several statements which we think were inappropriate, to put it mildly. He said that it was important to detente that the Jackson amendment be eliminated from this legislation. We say that it is important to detente that the Jackson amendment be continued in this legislation. It is not necessary for the United States first to show its good faith when the opportunity exists on the part of the Soviet Union, not by a change in its own internal laws, but by a simple change in internal policy, to show its good faith—namely, to allow freedom of emigration which the Jackson amendment provides.

And as Senator Jackson said recently:

> Any serious effort to resolve the differences between Congress and the administration on this issue must begin with the Soviet Union. That is where the problem, and the potential for solution both lie.

It is simple enough for them to make the changes which would be appropriate in their policy and then put us in the position where we could respond to those changes by making them eligible for the trade benefits which they are seeking.

One thing that troubled us tremendously in the testimony of the Secretary of State was his statement that if the Jackson amendment were passed it is conceivable that the Soviets would cut off all Jewish emigration. We think that was the wrong thing for America's chief foreign policy spokesman to say. For Dr. Kissinger to make that statement creates the possibility of a self-fulfilling prophecy, and we think that the use of such a potentially dangerous statement before this body is inappropriate in responding to whether or not the Jackson amendment should be passed.

We also reject the efforts that have been made by some to tie Soviet Jewry and its problems to what happens in the Middle East and to Israel. We believe that this linkage is a scare tactic and should be rejected by the Senate. The problem fo Soviet Jewry and free migration from the Soviet Union stands on its own apart from the Middle East situation, and the decision with respect to what the Senate of the United States and the Congress of the United States should do with respect to it should be made in the context of what is happening within the Soviet Union.

Finally, let me say that the impression was given before this committee that there were people from within the Jewish community who were not supportive of the Jackson amendment. And I categorically state to this committee, and I speak here today in behalf of the Jewish community of America and Jewish leadership, that the American Jewish community stands solidly behind section 402 and the Jackson amendment. To the extent that conversations took place at the State Department with "other Jewish leaders," I submit to the Senate that they were not representative of the broad gamut of American Jewish community thinking, and that this community, the American Jewish community, speaking as Americans and speaking

as believers both in freedom in general and freedom of emigration in particular, supports section 402 and urges the Congress of the United States and the Senate to pass the Jackson amendment.

Thank you, Senator.

I would now like to call on Prof. Seymour Martin Lipset, professor at Harvard University. He will speak on behalf of the academic community.

STATEMENT OF SEYMOUR MARTIN LIPSET

Mr. LIPSET. Thank you.

As Mr. Lowell said, Professor Morgenthau, who is the chairman of the Academic Committee on Soviet Jewry, is unfortunately in the hospital. His statement has been submitted to the committee, and I am in basic agreement with it, and I am prepared to answer any questions.[1]

I am prepared to speak to Dr. Morgenthau's statement. I would like to reiterate, Senator, and expand on some of the points Mr. Lowell made.

First, regarding whether we are trying to ask the American Government to interfere with domestic policy in the Soviet Union, particularly as it pertains to repression of Soviet dissidents, to problems of freedom in the Soviet Union, I think all of us obviously, or not so obviously, want a lot more freedom for the Soviet people. We are talking here about an issue which is part of international law, which the Soviet Union itself is committed to legally. So that what we are asking for in the Jackson amendment is really that the Soviet Union adhere to what it has already agreed to in terms of law.

And as has been indicated, Mr. Brezhnev claims that they are in basic fulfillment of the requirements of this amendment because, by his assertion, the Soviet Union allows the emigration of 95 percent or more of those who want to go. If this is true that the Soviet Union is obeying the law—that is, the international treaty obligations—there should be no problem from their point of view with the Jackson amendment whose enactment the Soviets so fervently oppose.

I should note, too—though I think Sister Margaret Traxler will expand on this—that while we are here concerned with Jews since they seem to comprise the bulk of people who seek to leave the Soviet Union, this bill is clearly not only or predominantly a Jewish bill. It is like any bill that is a universalistic one.

There are other people in the Soviet Union and other nonmarket countries who would also like to leave. We believe the right to leave is a basic human right which applies to all groups of people. And consequently, while the pressure on Soviet Jewry presently is greater than on anyone else, given the fact that anti-Semitism, repression of Jewish religious rights and national rights is greater than it is for any other minority in the Soviet Union, denial of the right to emigrate from the U.S.S.R. should not be viewed as solely or even as primarily a Jewish problem in the long run.

Regarding the general question which Professor Morgenthau addresses in his statement as to whether detente will be affected by this

[1] See p. 2257.

bill, obviously one cannot say categorically that it will not. However, if one looks at Soviet foreign policy historically and contemporaneously, it is clear that the Soviet Union conducts its foreign policy by pressing as all nations do, in its own interest, regardless of how an aggressive posture or a conciliatory posture may affect the domestic policies of other countries. In this context we see how while pursuing a policy of detente the Soviet Union has not been unwilling to act extremely aggressively to undermine the fundamental nature of detente, without actually breaking it.

This is presumably based on their assumption that the United States views it in its interest to go on with detente, even though there are often basic conflict of interest positions leading almost to the point of confrontation between the two countries as, for example, during the Middle East war. And from everything that one can read and understand about the Soviet Union, it would seem in its interests, particularly its economic interests, to obtain most-favored-nation status, and, more importantly, U.S. credits at what are very low rates of interest compared to world market standards. These U.S. economic benefits are so much in their interest that passage of the Jackson amendment should not affect their detente posture.

In this context, it is also important to note that this amendment, the Jackson amendment, has been discussed for nearly 2 years, that most Senators have endorsed it, and that hence, in a certain sense even though it has not yet been passed, it is a bill which the Soviet Union understands has had this enormous American public support. If the Senate should now turn down the amendment, this action would be nearly the equivalent of repealing an act under Soviet pressure and pressure of other groups.

And hence I would feel that if a bill that was endorsed by over 70 Senators should not go through, or the amendment should not go through, it would be clear to the Soviets that we are giving in to them on an issue of great significance to us. Hence, I would suggest that the Senate has already set up the standard for U.S. policy in this area, and it is important for it not to backtrack.

One last point, and I will finish, and that is the question of whether, as Mr. Lowell talked about in relation to the Secretary of State's statement, whether the passage of this amendment will lead to a curtailment of emigration. It is important to note that the scale of emigration had significantly risen at least 2 years before the Jackson amendment was introduced, so that clearly the Soviets did not start it because of anticipation or fear or seeking to stop the Jackson amendment, but in response to what they considered more important domestic reasons. In this connection, the Jackson amendment provides an important external incentive.

Thank you very much.

Mr. LOWELL. Thank you.

The other speaker for us, Senator, is Sister Margaret Traxler, who is cochairman of the National Interreligious Task Force on Soviet Jewry.

Statement of Sister Margret Traxler

Sister TRAXLER. Thank you, Senator.

I speak in favor of the Jackson amendment as a moral mandate.

We come as Easter and Passover people to speak about the real meaning of love. Love brings to an end the separation of the isolated and the alien. Love breaks through the barriers of war and the griefs of history. And love is founded on one principal, a cardinal moral virtue, and that virtue is justice. There is no charity without justice, and there can be no abiding freedom without both charity and justice.

These days of Passover and Paschaltide we remember with tenderness the fidelity of a saving God who saw the affliction of his people and found it in his heart to set them free. And asking for your support of the Jackson amendment, I honestly believe that there is a choice between right and wrong, all economic innuendoes and diplomacy aside. And I say parenthetically, I am not naive. I have taught political science for 17 years.

I believe this choice is between life and death for Soviet Jews. Genocide is a phenomenon of our century. It is an evil so monstrous as to defy Orwellian imagination, yet this is a continuing threat that we in our day have seen our Jews suffer. The Soviet Union deliberately denies a Jew his right to Jewishness. The holocaust offered at the table of World War II claimed 6 million Jews.

The U.S.S.R. would now continue this cultural and religious sacrifice by adding 3 million more. That is one-fourth of the population of the Jews on this planet.

Thus I invite you to share in the saving and redeeming work of that loving God, who found it in His heart to set His people free. When Abraham was about to slay his beloved son an angel came to stay his hand, and I ask you to stay the hand of Russia by supporting the Jackson amendment. There has been no contravening force in history to stay the destroying hands raised against Soviet Jews. The waves of the pogroms have drenched the centuries with Jewish blood, and no one stayed the hand of the destroyer.

If we do not do all we can now, history will not forgive us; above all, our children will not forgive us what we forgave in our day, and they would be justified. Supporting the Jackson amendment is a nonviolent action without arrogance, it peacefully stays death's hand. With strength it affirms the right to life of Russian Jews. By giving this amendment your support, each of you will say, like good Pope John, behold, I am your brother, Joseph.

You could teach U.S. citizens that church-going and believing people can also learn moral actions from congressional decisionmakers who refuse to stand idly by while their brothers' blood cries out from the ground.

Do you really realize the historic decision which is to be yours?

At this holy season of Passover and Paschaltide, I appeal to you for your support of the Jackson amendment. I appeal to you not to sell your brothers and sisters for a few pieces of silver. This could be our needed act of redemption for this hour in our own national trauma when we have such grave need for righteousness of conscience.

Do you recall that city of old which needed just one just man?

For one just man God would spare the people.

Here in this city, in this white marble, and graciously selected city, I ask you to be one just man, two just men, three, 100 just men, to redeem our Nation. Thus will your act of love and justice mark our domestic doorposts, and perhaps spare our household when the Passover messengers come to redeem or destroy.

Thank you.

Senator RIBICOFF. Thank you very much.

I just have a few questions. The State Department argues for quiet diplomacy as the most effective technique to ameliorate the situation of the would-be migrants from the Soviet Union.

I would like your comments on what you consider the results are of quiet diplomacy.

Mr. LOWELL. We are not opposed to quiet diplomacy, if it wants to take place alongside the road of the Jackson amendment, and the National Conference on Soviet Jewry indicated to the Secretary of State that we certainly urge him to make any effort that he can in Moscow with those with whom he may speak. But we have found that quiet diplomacy is not a sufficient answer. Quiet diplomacy—incidentally and interestingly as I learned from Professor Korey's article, which we have attached to our testimony—back in 1910 and 1911 was the then-Secretary of State's answer to another outcry with respect to what was happening to the minority Jewish group within Russia. And the United States in that year nearly 65 years ago rejected that Secretary of State's view on it and adopted the policy which was affirmative with respect to what could be done.

And we say that quiet diplomacy historically over the last several years has not solved the problem. It makes slight inroads. The Soviet position with respect to whether some individuals are permitted to leave or not is curiously illogical, and it would appear that the Secretary of State cannot make it logical.

Soviet leaders assert that exit visas are denied only to those applicants who possess state secrets and whose emigration might thus pose a threat to Soviet national security. There are scientists who have nothing to do with security who are not permitted to leave. A ballet dancer, Valery Panov, inconceivably having anything to do with security, is given a visa, but told he has to leave behind in the U.S.S.R. his wife whom he loves. People who are laborers are sent to prison when they apply, as I indicated before, and not permitted to leave. And the reason for it has no logic that we are able to understand.

If quiet diplomacy is to be the answer, we are left in a position whereby we are completely dependent upon the Soviet Union and its own subjective method or response to determine how it will expand or contract the numbers of individuals allowed to leave the Soviet Union. So that we feel that quiet diplomacy is not the answer, that the issue is not detente in the terms expressed by the Secretary of State, but perhaps—because we are not opposed to a genuine detente—a detente which is a mutuality, and where there is an expression from the Soviet Union which matches what we are giving as Americans. And we believe that quiet diplomacy flat out is not going to solve the emigration problem that lies before the Senate.

Senator RIBICOFF. In other words, diplomacy alone cannot open up the doors of emigration.

Mr. LOWELL. We do not think so.

Senator RIBICOFF. The best instrument is the Jackson amendment.

Mr. LOWELL. Yes.

Mr. LIPSET. Well, I would say, Senator, the two together, as Mr. Lowell said. The Secretary of State has obviously been engaged in quiet diplomacy and he has had as additional support in talking to the Soviets the possibility of enactment of the Jackson amendment. And in this context, while the situation now is better than it was 3 and 4 years ago when there was no Jackson amendment, the Soviets still have not made the major kinds of changes in their policy that we are concerned about.

Hence, I would think that if the amendment does not pass, particularly as I previously noted after 70 Senators had initially endorsed it, this would deprive Dr. Kissinger of any leverage he would gain if the bill were passed.

I would like to reiterate also the fact that the terms of trade which we are proposing to offer to the Soviet Union, are very similar to the kinds of aid we have given to underdeveloped countries. While we do not use the term "aid" presumably because it would be offensive to the international power status of the Soviet Union, this is really American support for a country whose economy is in deep trouble. And in this context they are not bargaining, so to speak, from strength, so that this gives us some basis for leverage in dealing with them, both privately and publicly, and I think if we back down publicly by not enacting the Jackson amendment, the Secretary will not be in a very strong position to negotiate privately.

Senator RIBICOFF. Let me ask you another question. It has been suggested by others that Congress adopt a sense of Congress resolution on the Soviet emigration issue. Another proposal is to provide trade and credit benefits to the Soviet Union subject to review at a later date, maybe a year.

What do you think of these formulas and their ability to achieve the objective?

Mr. LOWELL. We think that these are wrong, and that the language of the Jackson amendment should be followed, either in the terms that are before you as introduced by the Senator or has been passed in the Mills-Vanik version that it was passed by the House of Representatives.

If there were no Jackson amendment, the subject would not be on the agenda for discussion by the Secretary of State, and it is only because there is such an amendment pending in the Congress of the United States that the Secretary of State has the ability to even discuss this issue with the Soviets. I have discussed it with Soviet officials when they have come to this country. I am not allowed to go into the Soviet Union. And when we had these discussions they used to say that there was no such problem within that country.

Now, they have changed their minds. Not only do they admit the problem, but they are prepared to discuss it with the Secretary of State. But this, I believe, is a facade and we should not permit them to fool us. We think that the methodology proposed by the pending

legislation is the method that the Congress of the United States should follow, and that if we are going to have detente, if we are going to have trade, all of which we are not opposed to, then it is simple for the Soviet Union first to show its willingness to engage in that kind of relationship with us, which we think is important as expressed through the Jackson amendment. And then we would then be in a position to proceed from that point on.

Actually, the Jackson amendment is not flatly prohibitive. It does not deny trade. It does not say that there cannot be trade in the future. And conceivably, Soviet emigration practices in the future would be altered after the passage of the Jackson amendment such that the restrictions on credits and MFN would not become operative, and the President of the United States could report to the Congress of the United States that the U.S.S.R. is in compliance with the provisions of the amendment. In such a case, credits would continue to exist for the Soviet Union and MFN could be extended to that country. It would be as simple as that.

Mr. LIPSET. If I may, Senator, on this point I would like to note that in a certain sense the two proposals that you mentioned exist, because right now the House has passed the Mills-Vanik bill, and a large majority of the Senators have endorsed the Jackson amendment. So that in a certain way the sense of the Congress on the issue has been made known publicly for some time and the Soviets are aware of it.

Second, in this context even though there is no bill, by one house having passed it and the other house taking it up, the Congress is in a position to evaluate what the Soviets have been doing for the last year or two. The Soviets have been, from their point of view, exactly in the kind of position they would be in were they facing a sense of the Congress resolution or facing the possibility that the Congress would reevaluate the emigration situation following the extension of some U.S. economic benefits.

And one can therefore look at what they have done in the last year or two since the Jackson amendment and the Mills-Vanik bill have come up, to see how they would react to a sense of the Congress resolution along this line. And I would say they have not responded significantly.

Senator RIBICOFF. Senator Packwood?

Senator PACKWOOD. I am delighted with your testimony. We have had nothing but trade association after trade association, all sympathizing with the Soviet Jews, but saying that it is irrelevant to this bill. And the question I would pose would be what is it relevant to, the Export-Import Bank?

To the SALT talks?

It is not relevant to anything. And if we take section 402 out of this we take the only ounce of righteousness out of this bill, and it becomes a crass economic bill, a pretty good crass economic bill, but a crass economic bill. And I hope we do not give in on this or back off for the sake of what appears to be a temporary expediency. I appreciate your coming.

Mr. LOWELL. Thank you, sir.

Senator PACKWOOD. Let me ask you one question. The International Convention on the Elimination of All Forms of Racial Discrimination is a convention I was unfamiliar with.

Was this initially promulgated by the U.N. for signature?

Where did it start?

Mr. LOWELL. It is a United Nations international convention that the Soviets ratified.

Senator PACKWOOD. Have we signed it?

Mr. LOWELL. I do not think the United States has signed it.

Senator PACKWOOD. Kind of like the genocide treaty?

Mr. LOWELL. We have a tendency to drag our feet on these things. We say we do those things anyway, so we do not have to start. But that is another separate——

Senator PACKWOOD. Could you give me a particular clause in that convention that relates to emigration?

Mr. LOWELL. Yes, there is a particular clause that is with respect to that.

Senator PACKWOOD. If you could just send me a copy of that clause, we will do that.

Mr. LOWELL. We will do that.

Thank you very much.

Senator PACKWOOD. Thank you very much for coming.

Mr. LOWELL. Thank you, sir.

Senator RIBICOFF. We do appreciate the three of you coming here to give us your position. I do believe that Packwood's comment expresses the overwhelming sentiment of the U.S. Senate, and I commend him for his statement.

Thank you, gentlemen.

Mr. LOWELL. When Sister Margaret referred to that one man before in her testimony, it occurred to me that there were 80 of them in the Senate of the United States.

Thank you.

[The prepared statements of Mr. Lowell with attachments and Sister Margaret Traxler and material submitted for the record follow. Hearing continues on p. 2262.]

PREPARED STATEMENT OF STANLEY LOWELL, CHAIRMAN, NATIONAL CONFERENCE ON SOVIET JEWRY ON TITLE IV OF THE TRADE REFORM ACT

Mr. Chairman and Members of the Finance Committee: I appear before you as spokesman for a group of organizations who support Section 402 of HR 10710. I am Chairman of the National Conference on Soviet Jewry, (NCSJ), an assembly of 38 national organizations listed in Appendix A of this statement, and hundreds of local community councils and welfare federations. The NCSJ represents the organized American Jewish community comprising a nationwide constituency of 4 million members, in matters associated with the well-being of Jews in the Soviet Union. In addition, I am speaking here on behalf of the Union of Councils for Soviet Jews, a federation of 19 community groups and the Committee of Concerned Scientists. Some of those I represent have written statements, which I hereby submit for the record.

I am accompanied by Jerry Goodman, Executive Director NCSJ; Sister Margaret Traxler, Co-Chairman of the National Interreligious Task Force on Soviet Jewry, which represents leaders of all the major religious bodies in the United States; and by Professor Seymour Lipset of Harvard University, who is a member of the executive committee of the Academic Committee on Soviet Jewry.

1. VALUE AND APPROPRIATENESS OF FREEDOM OF EMIGRATION LEGISLATION SECTION 402

Section 402, popularly known as the Jackson amendment, both symbolizes and gives substance to America's continuing commitment to human rights. This commitment has been asserted here in the Senate by 78 Senators, who have joined in co-sponsoring the Jackson amendment. In December, the House of Representatives adopted in full the provisions of Jackson/Mills-Vanik by a vote of 319 to 80.

In our view, Section 402 envisions a realistic formula to employ American economic resources and capabilities to secure the fundamental human right to emigrate, and to assert this linkage in situations where rights and opportunities to emigrate are suppressed or effectively denied. The right and opportunity to emigrate is not exclusively a domestic or national concern, but rather a concern of all mankind. This transnational concept is expressed in the Universal Declaration of Human Rights and is recognized throughout the international community. The Soviet Union has, for example, ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which specifies the right to leave one's country.

As it has in the past, the Congress of the United States is prepared to give tangible meaning to human rights that too often are merely expressed and enshrined in noble sentiments. This willingness is a profoundly American characteristic of which we can be justly proud.

As Dr. William Korey, a widely recognized specialist on Russian history and author of the recently published volume, "The Soviet Cage", points out:

"The Jackson/Mills-Vanik East-West Trade and Freedom of Emigration legislation is deeply rooted in the American tradition, which has displayed a continuing concern for oppressed minorities abroad. All too often Jackson/Mills-Vanik is treated as if it is *de novo* and *sui generis*, that it has suddenly appeared on the scene, that it is somehow alien to American tradition and American policy."

Dr. Korey has provided a summary of the extensive examples of initiatives by the U.S. Congress and various Administrations on behalf of Soviet Jews—initiatives which date as far back as over a century ago. (see Appendix B)

Thus, there is not only an internationally accepted norm in the form of the Universal Declaration of Human Rights and other international conventions that encourage a transnational concern for human rights, but also a long American tradition of tangible action on behalf of human rights through the exercise of American diplomatic and economic influence.

In flagrant violation of international conventions upholding the right of an individual to leave his country and in defiance of international concern and protest, the Soviet Union has mobilized its awesome government apparatus to suppress the right and opportunity of its citizens to emigrate.

2. HARASSMENT OF JEWS APPLYING TO EMIGRATE

I wish that time permitted a full disclosure here today of the human background to the statistical record on emigration. Behind the impersonal data in the waiting list of more than 120,000 applicants and the "hardcore" list of approximately 1,600 cases repeatedly denied visas, are poignant examples of indivdual courage to which statistical analysis could never do justice. There is Valery Panov's resistance to the cruel maneuver that would separate him from his wife Galina by offering him an exit visa while denying her the same opportunity. Both were principal dancers at the Kirov Ballet in Leningrad. And despite official attempts to silence him by endangering his disabled son's life in an unnecessarily rigorous form of military service, Dr. Benjamin Levich, the world reknowned electrochemist, continues to assert his determination to leave the Soviet Union for Israel. There are Prisoners of Conscience, such as Alexander Feldman sentenced, on trumped-up charges, to 3½ years quarrying stone in a labor camp for the real crime of attempting to emigrate to Israel. There is another category of prisoners such as Jan Krylsky who had been incarcerated in a mental institution for attempting to apply to emigrate.

These few examples symbolize the commitment to freedom and dignity, expressed by the tens of thousands who seek nothing more than to claim a huma ing their Right to Leave, the present reality is grim indeed. The application

process to obtain a visa is designed by the authorities to terrorize and discredit the applicant and to intimidate others from applying.

During the application process, applicants are subjected to obstacles designed to discourage them from completing the process. The applicant is required to: obtain clearance from the manager or fellow tenants of his place of residence; obtain a character reference from his place of work often involving an appearance before a group of his colleagues, (or school, if he is a student); repair his dwelling; in many cases obtain written permission from his parents to emigrate regardless of his age; and finally pay 940 rubles ($1,300), the required exit fee.

Those individuals the applicant has to deal with to get through the above steps are encouraged to embarrass, malign, and belittle him. He is likely to be fired from his job (or lose his pension, if retired), picked up arbitrarily by the police for questioning, have his apartment searched periodically, and be subjected to other forms of harassment. As a result, some applicants change their mind and withdraw their application; others who might have applied are intimidated into not beginning the application process.

An individual fired from his job for having applied to emigrate is placed in double jeopardy. He cannot find another job, since all employment is controlled by the State and it is the Soviet authorities who have brought about his dismissal. The authorities recently issued a decision that anyone who has not worked for four months can be subjected to the charge of "parasitism", since he cannot earn money and thus is to be seen as a "parasite" on the State. "Parasitism" is a criminal offense and can result in a prison sentence of a number of years.

Ostracism of applicants from their professions is accompanied by the additional torment of being made outcasts and "traitors" to Soviet society. The psychological impact upon them, in consequence, has a devastating character. Particularly aggravating as a form of mental torture is the rupturing of families by, for example, permitting parents to obtain exit visas but not their children; or allowing a husband to leave, but not his wife. Such cases are, by no means, unique.

Despite the stigmatization and the intimidation—and with no certainty on the part of the applicant as to when or if he will receive his visa—applications for exit visas appear to continue at an undiminished rate.

The number of Jews who have received an "affidavit" from a relative in Israel, (the "affidavit" is the initial requirement in the process of applying for exit), but whose applications have not been acted upon, is now at the 120,000 level. This figure is especially impressive given the circumstances which the applicant can be expected to encounter.

3. FALSE CLAIMS BY SOVIET OFFICIALS ABOUT EMIGRATION PRACTICES

Soviet officials through their Embassy in Washington are again issuing statements to congressmen claiming that 95% of all Soviet citizens who apply to emigrate to Israel or the U.S. are permitted to do so, and that furthermore, permission to depart is denied only to "those persons who possess state secrets; recently served in the armed forces having a speciality connected with military secrets; and to those who serve prison sentences."

As you may remember, this was the same claim Mr. Brezhnev made when he met with senators in June, 1973 to lobby against the Jackson/Mills-Vanik amendment.

But, as Setator Jackson has often observed: "What is so curious about this intensive lobbying effort is that if Mr. Brezhnev is right—if virtually all those Soviet citizens wishing to emigrate are in fact free to go—then he need not fear, he need not even object to the Jackson amendment."

As indicated from my previous comments, the rate of Soviet Jewish applicants who are permitted to leave in no way approaches the 95% of those who apply. The more than 120,000 Jews still in the USSR who have placed themselves in jeopardy by securing from abroad the documents necessary to begin their visa application process make a mockery of Soviet assertions that 95% of those wishing to emigrate are free to do so.

One need only look at any list of Jews denied visas to expose the "Soviet security" excuse for visa refusal. Those refused include dancers, physicians, laborers, as well as sensitive fields. I would be happy to provide, if the Committee so desires, a list of such "refused cases" with details of their situation.

Soviet propaganda also obscures the extensive campaign by Soviet authorities to reduce the number of applicants. One can only imagine how many more would apply if they could do so freely.

Contrary to the impression which Brezhnev tried to give in Washington in June, 1973, and to the statements still emanating from Soviet officials, there has been no *fundamental* change in the emigration situation.

4. SUSPENSION OF THE "EDUCATION TAX"

The one new development in the emigration situation was the suspension last April of the so-called "education tax". This onerous tax had been imposed in August 1972 and affected individuals with higher education, so as to significantly curtail the ability of better educated Jews to leave the country.

It must be noted the tax was only one of a number of formidable obstacles to emigration. Those remaining barriers have already been described here. In fact the more educated Jews who would have been affected by the education tax continue to be the group most frequently denied the right and opportunity to emigrate, even with the tax not enforced. Moreover, since the tax suspension the Soviet authorities have, at times, increased other forms of harassment and instituted new ones.

It is equally important to note, however, that the elimination of this one barrier was clearly in response to the solidifying of support in the Congress around the proposed freedom of emigration legislation. In fact, the official notification of the Soviet decision to suspend the tax came within a week after Senator Jackson formally introduced the amendment to the Trade Reform Act, exactly one year ago today.

5. CHARACTERISTICS OF THE CURRENT STATUS OF SOVIET JEWISH EMIGRATION

Some of the harsh aspects of the present emigration situation in addition to those already discussed are summarized below:

1. Substantial diminution in the number of exit permits granted in the first quarter of 1974. Emigration figures will be 30% below those of the corresponding months in 1973. The number of Soviet Jews permitted to emigrate in the first three months is about 1000 less a month than the monthly average permitted to leave in 1973.

2. Continued harassment of prominent Soviet Jews whose applications have been rejected over and over again. It is not uncommon for this group to suffer spot arrests and be detained for periods of one day to several weeks on vague or artificial charges.

3. Consistent denial of permits to Jews from the heartland of the USSR, including the major population centers of Moscow, Leningrad, Kiev, Odessa and Kharkov, where the bulk (75%) of the Jewish citizens reside. Soviet policy seems to be that of discouraging further applications from these cities by denying a large proportion of those made, and by increasing severe as well as petty harassment of those who apply. Only 14% of those Jews permitted to emigrate come from these areas but, significantly, one-third of the national total of rejections are from applicants in these areas.

4. A consistent reduction in the number of exit permits granted to Jews holding university degrees or possessing technical skills.

5. Approximately forty Jewish "Prisoners of Conscience", whose only real crime has been their efforts to emigrate to Israel. Recently, three new trials were held of Jews who were apparently selected as object lessons to other would-be applicants; they were sentenced to stiff prison terms.

6. IMPORTANCE OF ENACTMENT OF THE FREEDOM OF EMIGRATION LEGISLATION

We believe that the economic and political benefits that would accrue to the Soviet Union from access to U.S. markets, credits, and technologies on favorable terms exceed any economic and political liabilities that might result were they to provide the right and opportunity to emigrate to those seeking to leave the Soviet Union. We believe the USSR would choose the economic benefits over continuing restrictive emigration practices.

It would be illusory to assume that Soviet leaders would weigh the alternatives if we do not make it necessary to do so. Thus, the provision of U.S. trade

and aid benefits without a corresponding requirement for Soviet performance on the emigration issue as a *quid pro quo* would not likely influence Soviet behavior on emigration. Neither would an advance of trade and aid benefits, based on good faith, and subject to later review, be likely to influence Soviet behavior. Indeed, until now, nearly $300 million in U.S. credits have been freely granted, without significant changes in behavior patterns. Judging from Soviet performance over the past year in exacerbating Middle East hostilities, encouraging continuation of the oil embargo, and in other international relationships, it would be naive to expect to influence Soviet emigration policies without the inclusion of Section 402 in the Trade Bill.

Emigration figures can be imposed and suspended at will. The arbitrary and capricious nature of Soviet practices requires a legislative check and a requirement for continuing compliance, as provided in Section 402.

At the same time, the *quid pro quo* envisioned by Section 402, would entail no changes in the Soviet law, as there is no Soviet law prohibiting freedom of emigration. If they choose to do so, the Soviets could humanize their position on emigration—and thus bring their practice into line with their own official pronouncements—by policy decision and administrative implementation.

7. DR. KISSINGER'S STATEMENT ON EFFECTS OF ENACTMENT OF JACKSON AMENDMENT

I would like to address myself to an unfortunate and dangerously provocative statement which Dr. Kissinger made before this Committee on March 7, to the effect that enactment of the Jackson/Mills-Vanik legislation would most likely result in the termination of Soviet Jewish emigration.

In our view, such an assertion by the Secretary of State could prove to be a self-fulfilling prophecy. Indeed, it can well be viewed by the Kremlin as an open invitation to make his prediction a reality. Dr. Kissinger's remarks might well endanger the welfare of would-be emigrants in the USSR in whom the Secretary and the President have pledged personal interest and commitment.

With respect to the argument that passage of the Jackson amendment would not only impede detente, but also hinder the people it is intended to help, I would like to quote from an open letter by Dr. Andrei Sakharov to the U.S. Congress written September 14, 1973, urging enactment of the amendment:

"Those who believe that the Jackson Amendment is likely to undermine anyone's personal or governmental prestige are wrong. Its provisions are minimal and not demeaning.

"It should be no surprise that the democratic process can add its corrective to the actions of public figures who negotiate without admitting the possibility of such an amendment. The amendment does not represent interference in the internal affairs of socialist countries, but simply a defense of international law, without which there can be no mutual trust.

"Adoption of the amendment therefore cannot be a threat to Soviet-American relations. All the more, it would not imperil international detente.

"There is a particular silliness in objections to the amendment that are founded on the alleged fear that its adoption would lead to outbursts of anti-semitism in the USSR and hinder the emigration of Jews.

"Here you have total confusion, either deliberate or based on ignorance about the USSR. It is as if the emigration issue affected only Jews. As if the situation of those Jews who have vainly sought to emigrate to Israel was not already tragic enough and would become even more hopeless if it were to depend on the democratic attitudes and the humanity of OVIR (the Soviet visa agency). As if the techniques of "quiet diplomacy" could help anyone, beyond a few individuals in Moscow and some other cities."

I have attached the full text of Dr. Sakharov's letter to our testimony (Appendix C).

We share the hopes of men of good will all over the world for a system of relationships among nations that assures world peace and expanding opportunities for better lives for the people within their borders. In our opinion, detente results from the process of constructing such a system. Accordingly, a genuine detente requires something more than a brittle stability or *status quo* in relationships between nations and conditions within them. Certainly detente is not achieved by unilateral concessions on the part of one nation to another, without reciprocal undertakings by the second that would genuinely advance

bilateral and international harmony. One of the requirements for more harmonious bilateral and international relationships is the right and opportunity for people and ideas to move with relative ease among countries, whatever the differences in their political systems. The Freedom of Emigration bill is a crucial step in the evolving US–USSR detente. The Soviets want billions in foreign trade; we ask only that their citizens be given a civil liberty allowed them under Soviet law. That is not such an uneven trade.

We are proud that the Congress is this leadership role in upholding the longstanding American commitment to human rights by insisting on respect for the fundamental right to emigrate in return for the extension of U.S. economic benefits. We ae pleased that the majority of members of the Finance Committee are among the 78 co-sponsors of the Jackson amendment. We urge the Committee's favorable action on this vital legislation.

Thank you.

APPENDIX A.—CONSTITUENT ORGANIZATIONS OF THE NATIONAL CONFERENCE ON SOVIET JEWRY

American Federation of Jewish Fighters, Camp Inmates and Nazi Victims, Inc.
American Israel Public Affairs Committee
American Jewish Committee
American Jewish Congress/AJ Congress Women's Division
American Trade Union Council for Histadrut
American Zionist Federation
Americans for Progressive Israel/Hashomer Hatzair
Anti-Defamation League of B'nai Brith
B'nai Brith/B'nai B'rith Women
Bnai Zion
Brith Sholom
Central Conference of American Rabbis
Conference of Presidents of Major American Jewish Organizations
Council of Jewish Federations and Welfare Funds
Free Sons of Israel
Hadassah, Women's Zionist Organization of America
Jewish Labor Committee/Workmen's Circle
Jewish War Veterans of the U.S.A.
Labor Zionist Alliance
Mizrachi Women's Organization
National Jewish Comunity Relations Advisory Council
National Council of Jewish Women
National Jewish Welfare Board
National Council of Young Israel
North American Jewish Youth Council
Pioneer Women
Rabbinical Assembly
Rabbinical Council of America
Religious Zionists of America—Mizrachi, Hapoel Hamizrachi, Women's Organization of Hapoel Hamizrachi
Student Struggle for Soviet Jewry
Synagogue Council of America
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations of America
United Synagogue of America
Women's American ORT
The World Zionist Organization, American Section
Zionist Organization of America

APPENDIX B.—A CENTURY OLD TRADITION OF AMERICAN INITIATIVES ON BEHALF OF OPPRESSED MINORITIES

(Excerpted from remarks by Dr. William Korey, Director, B'nai Brith United Nations Office, to the American Israel Public Affairs Committee, May 7, 1973)

The Jackson/Mills-Vanik East-West Trade and Freedom of Emigration legislation is deeply rooted in the American tradition, which has displayed a continuing concern for oppressed minorities abroad. All too often Jackson/

Mills-Vanik is treated as if it is *de novo* and *sui generis*, that it has suddenly appeared on the scene, that it is somehow alien to American tradition and American policy.

As early as 1869, President Ulysses S. Grant, upon hearing from American Jewish petitioners of a contemplated expulsion of 20,000 Jews from an area of southwestern Russian, intervened with czarist authorities. If that expulsion was halted, one chronicler of the episode notes, it was a consequence of American concern.

At least ten American Presidents, from Grant to Richard M. Nixon, have intervened directly or indirectly on behalf of Russian Jewry in the past 100 years. A prominent Secretary of State, James Blaine, formally justified diplomatic intervention in the internal concerns of a foreign country on grounds that "the domestic policy of a state toward its own subjects may be at variance with the larger principles of humanity".

Humanitarian intervention on behalf of persecuted Irish and Armenians as well as Jews remained a distinctive feature of the American diplomatic landscape during the nineteenth and early twentieth centuries.

Frequently the Congress has acted as a spur to Administration action. In 1879, for example, the House of Representatives adopted a resolution which criticized a czarist policy that refused the Jews the right to own real estate. The measure was introduced by Samuel Cox—who, like Charles Vanik, was a congressman from Ohio.

The following year Cox inserted into the Congressional Record a letter from a Russian Jew—the first, but not the last to appear in the Record—which opened as follows: "In this hour of all but hopeless misery, groaning under the yoke of a cruel and heartless despotism, we turn to the West."

In 1883 a House resolution called upon the Administration to exercise its influence with the government of Russia to stay the spirit of discrimination and persecution as directed against the Jews.

A decade later, in 1892, the House of Representatives refused to allocate funds for food transport to Russia on grounds, in the words of Tennessee Congressman Josiah Patterson, that the czarist regime, by its treatment of Jews, has shocked the moral sensibilities of the Christian world.

Especially significant was the legislative effort in 1911 to abrogate an 80-year-old Russian-American commercial treaty. This drive constituted almost the dress rehearsal for the Jackson/Mills-Vanik congressional drive of today. Behind the 1911 effort was a determination to relieve the desperate plight of Russian Jews, although the battle was technically fought over the more narrow issue of passport discrimination against American Jews seeking to visit Russia.

A proclamation by President William Howard Taft in March 1910 extending to Russia minimum tariff rates despite reluctance by the U.S. Tariff Board prompted the public campaign. Towards the end of that year, New York Congressman Herbert Parsons cautioned the Administration that the House might demand the termination of the 1832 commercial treaty. The implied threat was rebuffed. Secretary of State Philander Knox argued in a note to the President that "quiet and persistent endeavor" (quiet diplomacy, in modern parlance), would be more effective than treaty abrogation in changing czarist policy.

A series of State Department memoranda in early 1911 buttressed the Philander Knox note with arguments that find a remarkable echo today: America's commercial and industrial interests would allegedly be harmed; antisemitism would fall upon Russian Jews. There were other statements made at the time: We have no right to intervene in the internal affairs of foreign countries; there were even warnings that antisemitism would take place in the United States as a consequence of these efforts.

Much of the American public saw the issue differently. A massive number of petitions and resolutions bombarded Congress. Public rallies were held in various cities, culminating in a mass meeting in New York on December 6, 1911, under the auspices of the National Citizens Committee and addressed by Woodrow Wilson, William Randolph Hearst and Champ Clark. One week later, speaker after speaker arose in the House of Representatives to express sympathy for Jews and to condemn the barbaric practices of czarist Russia. The vote for abrogation was overwhelming—301 to 1.

With the Senate certain to have a similar lopsided vote, the Secretary of State hastened to soften the impact on the angry czarist regime. In language which

stressed friendship between the two countries, he advised the Russian Foreign Office that the United States was terminating the commercial agreement as of January 1, 1913.

Russian officials reacted with astonishment. They failed to comprehend, as a historian of the event observed, "how a moralistic crusade could dictate political action."

That failing should no longer obtain. Senator Henry Jackson has repeatedly emphasized, both publically and privately, that the United States, as a nation of immigrants, has a vital stake in the right to emigrate freely.

The amendment addresses itself not to trade *per se*; indeed, its sponsors are vigorous advocates of a greater degree of trade. The matter of the legislation focuses upon trade *concessions* which the USSR desires and seeks: most-favored-nation treatment, credits, and credit guarantees.

The price asked for such concessions can hardly be described as extravagant. On the contrary, the price is but minimal: adherence to international standards of conduct that are appropriate for any civilized society.

International morality and law concerning the precious right to emigrate must be upheld, and America, in championing this right, pursues a course which had been integral to its purpose since the very founding of the republic.

Appendix C.—Open Letter to the Congress of the United States From Andrei Sakharov, Moscow, September 14, 1973

At a time when the Congress is debating fundamental issues of foreign policy, I consider it my duty to express my view on one such issue—protection of the right to freedom of residence within the country of one's choice. That right was proclaimed by the United Nations in 1948 in the Universal Declaration of Human Rights.

If every nation is entitled to choose the political system under which it wishes to live, this is true all the more of every individual person. A country whose citizens are deprived of this minimal right is not free even if there were not a single citizen who would want to exercise that right.

But, as you know, there are tens of thousands of citizens in the Soviet Union—Jews, Germans, Russians, Ukranians, Lithuanians, Armenians, Estonians, Latvians, Turks and members of other ethnic groups—who want to leave the country and who have been seeking to exercise that right for years and for decades at the cost of endless difficulty and humiliation.

You know that prisons, labor camps and mental hospitals are full of people who have sought to exercise this legitimate right.

You surely know the name of the Lithuanian, Simas A. Kudiuka, who was handed over to the Soviet authorities by an American vessel, as well as the names of the defendants in the tragic 1970 hijacking trial in Leningrad. You know about the victims of the Berlin Wall.

There are many more lesser known victims. Remember them, too!

For decades the Soviet Union has been developing under conditions of an intolerable isolation, bringing with it the ugliest consequences. Even a partial preservation of those conditions would be highly perilous for all mankind, for international confidence and detente.

In view of the foregoing, I am appealing to the Congress of the United States to give its support to the Jackson Amendment, which represents in my view and in the view of its sponsors an attempt to protect the right of emigration of citizens in countries that are entering into new and friendlier relations with the United States.

The Jackson Amendment is made even more significant by the fact that the world is only just entering on a new course of detente and it is therefore essential that the proper direction be followed the outset. This is a fundamental issue, extending far beyond the question of emigration.

Those who believe that the Jackson Amendment is likely to undermine anyone's personal or governmental prestige are wrong. Its provisions are minimal and not demeaning.

It should be no surprise that the democratic process can add its corrective to the actions of public figures who negotiate without admitting the possibility of such an amendment. The amendment does not represent interference in the

internal affairs of socialist countries, but simply a defense of international law, without which there can be no mutual trust.

Adoption of the amendment therefore cannot be a threat to Soviet-American relations. All the more, it would not imperil international detente.

There is a particular silliness in objections to the amendment that are founded on the alleged fear that its adoption would lead to outbursts of anti-semitism in the U.S.S.R. and hinder the emigration of Jews.

Here you have total confusion, either deliberate or based on ignorance about the U.S.S.R. It is as if the emigration issue affected only Jews. As if the situation of those Jews who have vainly sought to emigrate to Israel was not already tragic enough and would become even more hopeless if it were to depend on the democratic attitudes and on the humanity of OVIR [the Soviet visa agency]. As if the techniques of "quiet diplomacy" could help anyone, beyond a few individuals in Moscow and some other cities.

The abandonment of a policy of principle would be a betrayal of the thousands of Jews and non-Jews who want to emigrate, of the hundreds in camp and mental hospitals, of the victims of the Berlin Wall.

Such a denial would lead to stronger repressions on ideological grounds. It would be tantamount to total capitulation of democratic principles in face of blackmail, deceit international confidence, detente and the entire future of mankind are difficult to predict.

I express the hope that the Congress of the United States, reflecting the will and the traditional love of freedom of the American people, will realize its historical responsibility before mankind and will find the strength to rise above temporary partisan considerations of commercialism and prestige.

I hope that the Congress will support the Jackson Amendment.

A. SAKHAROV.

September 14, 1973.

APPENDIX D.—MESSAGE TO U.S. SENATORS FROM MOSCOW JEWS ON HUNGER STRIKE

We know that soon you are to discuss and solve a question in which we are vitally interested. We are referring to the Jackson amendment. It makes certain aspects of Soviet-American relations dependent on free emigration from the USSR and that means—dependent on morality, international law and human rights. Occasionally, voices are raised in the West that emphasize that in Soviet Jewish emigration a certain degree of progress has been reached which permits this moral factor to be glossed over in inter-governmental relations. The impression is created that only a small "1,000" Soviet Jews who were denied visas cannot leave. Is it really that way?

And what about the tens of thousands in such towns as Sverdlovsk, Kuibyshev, Novosibirsk, Irkutsk and many others which are, practically speaking, closed to emigration. People in these towns almost never submit emigration documents, not because they do not want to, but because they know, in advance, that local authorities will not issue emigration visas and can use repressive measures against them at any moment. Can't these people be counted among those "refuseniks" who are known today in many countries? Furthermore, there are the papers required of potential applicants which are unlawful, even according to Soviet law. How many thousands, and maybe tens of thousands, of parents refuse to give permission to their children, even those with overage children themselves, simply out of fear for their own fate? Isn't it possible to include these people in the group of ill-fated thousands who received *formal* refusals?!! And what kind of Jewish emigration progress can we talk about when, in the USSR, to this day there is no emigration law, nor any published instructions regarding emigration visas? The recent statement Deputy Minister of the Interior Alkhimov made while in the USA can be used as evidence of this "progress." He stated that Jews are detained in the USSR on grounds of state security and other reasons.

What kind of other reasons? As a rule, it is the absence of any kind of grounds; it is the arbitrariness of the state; it is simply the whim of the government to permit, or not permit, a particular family to leave. The fate of our families and of many others represents a perfect illustration of this statement. In our view, those who, in the name of global and til now vague

goals, are prepared to absolve the Soviet government and consider that human rights regarding emigration are being fulfilled, are committing a tragic mistake. The battle is only beginning and its first results can only encourage, but not set one at rest. That is why we are turning to you at a time when we are staging a hunger strike as an extreme way of making the Soviet government respect our human and civil rights. Because of this, the Soviet authorities removed our links to the world, disconnected our telephones interrupting our very contact with overseas, with correspondents, friends and relatives in Israel and in Moscow itself.

But, even in times long past, when the means of communication were not yet perfected, people found each other and understood each other's needs. We believe we will not remain alone in our struggle for human rights.

Prof. DAVID AZBEL, *Chemist.*
Prof. VITALY RUBIN, *Sinologist.*
VLADIMIR GALATSKY, *Artist*

APPENDIX E.—TEXT OF LETTER SIGNED BY 180 SOVIET JEWS

To the People and the Congress of the U.S.A.:

In October 1973, during the Middle East War, a record number of Jews left the USSR for Israel. Some Western observers believed that at this fateful time the Soviet Union was exhibiting good will, at least in this matter.

We, too, welcomed this record flow of emigration, regardless of under what circumstances it was set up. But at the same time there were events which forced us to consider that the situation of Jewish emigration from the USSR, in fact, worsened. In this period when the attention of the world was diverted by the conflict in the Middle East, in the Soviet Union a wave of persecution was initiated against those seeking exit visas to Israel. In October, at least 16 persons were arrested and imprisoned for 10 to 15 days. Many times this number were detained for 1–2 days, especially at the time of the World Conference of Peace Forces which took place in Moscow. A large number of Jews were shadowed day and night. In Moscow there were several instances of cruel beatings instigated by and with the participation of police and the KGB (i.e. Soviet secret police). Many others were threatened with long imprisonment if they continued to seek visas for Israel. These were not empty words.

On October 23rd, Leonid Zabelishensky, a former teacher at the Ural Polytechnic Institute, was arrested in Sverdlovsk. He had been dismissed from his job just after applying for an exit visa to Israel. Subsequently he was charged with "parasitism" (i.e. refusal to work) and is in danger of imprisonment. (Ed: After a four day trial, on December 20th Zabelishensky received a sentence of six months).

On October 18th, Alexander Feldman was arrested in Kiev. The accusation of "hooliganism" which was brought against him was false from the beginning to the end. Following his trial, which was marked throughout by irregularities and violations of Soviet law on the part of the court, Feldman was sentenced to three and a half years.

Since the beginning of October the Moscow KGB has been making intensive preparations for a political show trial. Based on the KGB inquiry to date it appears that the planned show trial will center on the allegation that many Jews who leave for Israel transmit to the Western powers anti-Soviet and espionage type documents. Experience shows that this kind of trial helps to spread fear among those who are considering applying for exit visas. A similar discouraging effect is achieved with a prominent display group: the *Otkazniki* (i.e. Jews who have been refused exit visas repeatedly for many years).

The fact that Feldman's case (as well as others) was created out of nothing shows that anyone striving for permission to leave can be arbitrarily imprisoned. The fact that among people being detained in the USSR "in the interest of state security" are students, musicians, and athletes shows that the authorities can arbitrarily condemn anyone to wait for an exit visa for an indefinite time. Thus, these overtly repressive strikes (from the groundless refusal of visas to long imprisonment) against comparatively few people produces frightening pressure and acts as a brake on the tens (or even hundreds) of thousands of people who might apply to emigrate. Precisely because there has been a

heightening of repression during the last two months, we consider that the situation emigration to Israel has worsened.

We often hear opinions expressed by naive individuals that attention from the West and the demand by the West for free emigration put the Soviet Jews in danger. Events in the last two months show convincingly once more that the absence of just such attention is dangerous for us and is pregnant with serious consequences.

Freedom of emigration is not an internal affair of a state. Emigration policy is subject to international control. The Soviet Union admitted to this, having ratified the International Convenant of Civil and Political Rights and the International Covenant on Social and Cultural Rights. A state striving for acceptance by the international community of democratic nations can no longer be excused for maintaining attitudes towards civil rights which were formed in the dark years of the Stalin period. It is wise and prudent to demand of the Soviet Union that it discharge its international obligations on this point.

December 10, 1973.

PREPARED STATEMENT BY HANS J. MORGENTHAU, LEONARD DAVIS DISTINGUISHED PROFESSOR OF POLITICAL SCIENCE, CITY COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, CHAIRMAN, ACADEMIC COMMITTEE ON SOVIET JEWRY

A rational consideration of trade between the United States and the Soviet Union must start from the premise that from the very beginning of its history the Soviet Union has regarded foreign trade as being inseparable from foreign policy. It has regarded foreign trade as a weapon of Soviet foreign policy. As Lenin put it in 1921:

"The capitalists of the entire world, and their governments, in the rush of conquering Soviet markets, will *close* their eyes to the above mentioned realities, and will thus become blind deaf mutes. They will open credits which will serve as a support for the Commnuist Party in their countries and will provide us with essential materials and technology thus restoring our military industries, essential for our future victorious attacks on our suppliers. Speaking otherwise, they will be working to prepare their own suicides."

In 1952, Stalin voiced his confidence in the profit motive of Western businessmen as an instrument through which the Soviet Union would be made strong enough for its final triumph. Khrushchev was equally explicit in 1957. What I said in my testimony before the Senate Foreign Relations Committee in February, 1965, applies today:

"The leaders of the Soviet Union have consistently laid the greatest stress upon the expansion of foreign trade. They have not tried to emphasize what foreign trade can do for private profits and international peace. They have consistently shown a particular interest in whole industrial plants rather than manufactured goods. But the Russian leaders are not Manchester liberals. They have wanted foreign trade not for the commercial purposes our businessmen want it for, but in order to gain the political strength necessary to achieve the universal triumph of Communism. . . . I am not arguing here against Western trade with Communist nations per se. I am only arguing in favor of the proposition that foreign trade has a different meaning for Communist nations than it has for us. Trade with Communist nations is a political act which has political consequences. It is folly to trade, or for that matter to refuse to trade, with Communist nations without concern for these political consequences."

There is, therefore, nothing extraordinary in making benefits in foreign trade dependent upon political concessions on the part of nations whose foreign trade policies serve political processes altogether. Such a linkage is dictated by common sense unless we want to make sure that Lenin's, Stalin's, and Khrushchev's expectations come true. The only legitimate question to be asked concerns the expediency of the political conditions proposed in the so-called Jackson Amendment.

The expediency of the Jackson Admendment has been attacked before this ommittee on three major grounds; that it increases the risk of nuclear war, that it may cause the complete cessation of Jewish emigration from the Soviet Union, and that it tries to interfere with the domestic affairs of the Soviet Union. These arguments are astonishing both in themselves and in view of their eminent source.

It can be taken as common knowledge that nuclear war between the two superpowers has been avoided not by virtue of what a particular diplomatic maneuver accomplished or avoided but because of the nuclear balance of power between the United States and the Soviet Union and because of the remarkable self-restraint with which both superpowers have managed conflicts between them

The second argument assumes that the emigration policy of the Soviet Union a mere reflection of United States foreign policy. There is no evidence for such an assumption. It is of course true that the Soviet government is most sensitive to foreign and particularly American, opinion and that it will therefore try to avoid antagonizing that opinion unless it feels it must heed overriding interests to the contrary. Based upon that argument, a case could indeed be made in support of the Jackson Amendment, whose message of disapproval is unmistakable. However, determining the Soviet emigration policy are of course considerations of domestic policy, the most important of which is that the Soviet Union does not mind getting rid of certain categories of troublemakers and unreliable elements and supposedly unreliable elements regardless of what the United States does or does not do.

The Jackson Amendment does not seek a change in the domestic regime of the Soviet Union. It does not try to introduce, for instance, parliamentary democracy or freedom of speech into the Soviet system. Rather it attempts to give the Soviet Union an incentive to comply with certain fundamental requirements recognized by the Soviet Union itself as legally binding and which have become one of the tests of civilized government.

International peace and order are a function of the balance of power—that is, of an approximately equal distribution of power among several nations or a combination of nations, preventing any one of them from gaining the upper hand over the others. It is this approximate, tenuous equilibrium that provides whatever peace and order exists in the world of nation-states

But, the equilibrium does not operate mechanically, as the "balance" metaphor would seem to indicate. Rather, it requires a consensus among the nations involved in favor of the maintenance—or, if it should be disturbed, of the restoration—of the balance of power. In other words, the dynamics of the arrangement are embedded in a moral framework without which, in the long run, it cannot operate. The participants must give their moral approval, in theory and more importantly in practice, to the principles of the balance of power itself in order to make it work.

What makes certain domestic policies of the Soviet government a matter of vital concern to the outside world is its refusal to become part of a moral consensus that is the lifeblood for the balance of power, and which would make genuine detente not only possible but well-nigh inevitable. Were the Soviet Union part of such a system, one would indeed not need to care on political grounds about how autocratic and despotic its government might be. But as long as the Soviet Union remains outside such a system, at best indifferent and at worst hostile to it, the rest of the world has a vital interest in certain of its domestic policies. If the Kremlin abated its present totalitarian practices by allowing its people a modicum of freedom of movement, it would be taking the first step toward joining and in a sense re-creating a system that would itself be a manifesation of detente and provide the moral framework for the balance of power.

Thus our interest in the totalitarian excesses of the Soviet government is not unwarranted meddling in the affairs of another sovereign nation in a misguided spirit of liberal reform. Nor does it solely express a humanitarian concern or serve to placate public opinion at home. Foremost, it is at the service of that basic interest which the United States and the Soviet Union have in common: survival in the nuclear age through a viable balance of power and genuine detente.

PREPARED TESTIMONY OF SISTER MARGARET ELLEN TRAXLER, CHAIRMAN, NATIONAL INTERRELIGIOUS TASK FORCE ON SOVIET JEWRY

My name is Sister Margaret Ellen Traxler. I reside at 1340 East 72nd Street, Chicago, Illinois. I am the chairman and one of the founders of the National Interreligious Task Force on Soviet Jewry. I have also served as the president of the National Coalition of American Nuns and as the executive director of the National Catholic Conference on Interracial Justice.

The National Interreligious Task Force on Soviet Jewry is a coalition of men and women representing all of the religious communities in the United States who are determined to extend every possible effort to ameliorate the plight of Soviet Jewry. We are totally committed to the proposition that Soviet Jews should be given the basic human right to live with dignity within the Soviet Union or to be able to leave that nation in an atmosphere of freedom for the nation of their choice. The executive committee of the National Interreligious Task Force firmly supports the Jackson Amendment and believes that this amendment can be a vital factor in aiding the basic aspirations of Soviet Jewry.

In the light of the Task Force's commitment to Soviet Jews, I should like to read to you the Statement of Conscience of the National Interreligious Task Force on Soviet Jewry which was adopted in Chicago on March 20, 1972 at our initial plenary session attended by representatives of every major religious denomination in the United States. This Statement of Conscience is the foundational statement of purpose for the Interreligious Task Force and remains the seminal declaration which brings our constituency together around this great an crucial human rights question.

Statement of Conscience of the National Interreligious Consultation on Soviet Jewry, March 20, 1972, Chicago, Illinois.

"Thou shalt not stand idly by while the blood of my brother cries out to thee from the earth."

"Let justice roll down as the waters, and righteousness as a mighty stream."

The National Interreligious Consultation on Soviet Jewry, meeting in unprecedented deliberation on March 19 and 20 in Chicago, Illinois, calls upon the conscience of mankind to make known its profound concern about the continued denial of the free exercise of religion, the violation of the right to emigrate, and other human rights of the 3 million Jewish people of the Soviet Union and of other deprived groups and nationalities.

For believing Christians and Jews, the denial of the spiritual nature of man and his right to nurture and to perpetuate the spiritual life is to deny the creative power of God in whose image He made man. The discrimination against the Jews by the Soviet Union gives us all reason to believe that, under the pretext of being anti-Zionist, it is the very contribution of the Jews to humanity which is under attack. It is precisely the Jewish testimony in the world that man's identity and freedom are not granted primarily by any state or constitution but are found in the nature of man himself. That is why each human being is threatened in his fundamental right to freedom of conscience when the Jews are persecuted.

Realizing our own failures in racism and in other areas of human rights, we nevertheless cannot remain silent as long as the Soviet Union continues to hamper or strangle the spiritual and cultural life of the Jewish people through extreme and special acts of discrimination. We appeal to the Soviet authorities to grant religious rights to Russian Jewry—the establishment of religious, educational, and cultural institutions for the perpetuation of Judaism and Jewish culture; the lifting of the prohibitions against publishing Hebrew Bibles and prayerbooks and the production of religious articles; the permission to train rabbis and Jewish teachers both in Russia and in seminaries abroad; the creation of a representative body of Soviet Jewry with freedom to communicate and associate with their co-religionists abroad.

We appeal to the Soviet authorities—let them live as Jews or let them leave to be Jews. This consultation is gratified to know that the Soviet government has heard the pleas of millions in many lands and has permitted several thousands of Jews to leave the country for Israel and elsewhere. We urge the Soviet authorities to relent, and to continue to allow the thousands of others who have sought exit visas to emigrate to the countries of their choice—which is their right under the United Nations Declaration.

This consultation is deeply disturbed by the reports of growing acts of harassment, intimidation, arbitrary arrests, and confinement of Jews and dissenters to mental institutions. We appeal to the Soviet government to end this policy of wanton oppression and fear.

This consultation protests against the continued imprisonment under ruthless conditions of prisoners of conscience—Jewish and non-Jewish—and we urge that they be released and be shown clemency.

This consultation protests against the government sponsored campaign of anti-Semitic and anti-Zionist propaganda which constitutes an incitement to hatred

and violence in contravention of the United Nations Declaration on Human Rights.

This consultation resolves to commit itself to a program of continuous watchfulness and unrelenting efforts in demanding and in championing freedom for all of Soviet Jewry, of Christians, and of intellectuals—of all who suffer for their courage and their struggle for human dignity.

This National Interreligious Consultation on Soviet Jewry consisting of Protestants, Roman Catholics, Eastern Orthodox, and Jews, authorizes a direct appeal to President Nixon, as the representative of the American people, to convey in clear and forthright terms to the Soviet authorities during their forthcoming conversations in Moscow the expectation of the American people—Christians and Jews, black and white, liberal and conservative—that these discriminations and denials of Soviet Jewry and others be stopped now, and that fundamental human rights be granted—now. We seek the relaxation of international tensions and conflicts between the United States and the Soviet Union, and the surest test of the genuineness of the commitment of Soviet authorities to the cause of universal peace and justice is the granting of justice and freedom to the Jews and other deprived religious groups and nationalities.

I speak for the executive committee of the Interreligious Task Force and for thousands of Christians in the United States in stating to you in the most emphatic terms that in the age after Auschwitz, we as Christians are not going to stand by and allow Jews to be persecuted, intimidated or deprived of their rights in any country. It is on this fundamental principle that the National Interreligious Task Force on Soviet Jewry today voices support for the amendment offered by the distinguished Senator from Washington, Henry M. Jackson.

TESTIMONY OF DRS. FRED POLLAK AND MELVIN POMERANTZ, ON BEHALF OF THE COMMITTEE OF CONCERNED SCIENTISTS, INC.

Mr. Chairman; the Committee of Concerned Scientists is an organization of scientists and academicians who believe in the inviolability of intellectual freedom and human rights as the foundation of science and scientific progress. Therefore, it is incumbent upon this Committee, by virtue of its purpose, function, and representation, to respectfully submit to the Senate Finance Committee a statement documenting the position of a substantial segment of the American scientific and academic communities on The Trade Reform Act (HR10710).

The American scientific community welcomes detente and improved relations between the United States and the Soviet Union, and fully supports heightened U.S./U.S.S.R. collaboration in scientific research programs that will best serve the advancement of science and civilization. In fact, because of the international scope and nature of science, the American scientific community has been actively engaged in such scientific collaboration and exchange for many years.

Unfortunately, however, the Soviet Union's present policy of repression and denial of scientific and human rights to many Jewish and other scientists violates both the spirit and substance of technological and scientific cooperation, and threatens the very essence and purpose of detente. These repressive policies have had a profound detrimental effect upon the attitude of American scientists, diminishing their willingness to cooperate in a variety of joint scientific and technological undertakings, including those for which the Trade Reform Act would guarantee American tax-supported credits. Reacting to the persecution of their Soviet colleagues, a significant number of American scientists and technologists have come to believe that it is neither morally possible nor scientifically desirable to participate in improved scientific contacts and collaborative efforts if the Soviet Union continues to abuse the cardinal tenets of science and humanity—the freedom to emigrate, to inquire, to associate, and to travel.

Dr. Philip Handler, President of the National Academy of Sciences, underlined this serious development in a declaration of September 8, 1973, to Dr. M. V. Keldysh, President of the Soviet Academy of Sciences: "The implementation of American pledges of bi-national scientific cooperation is entirely dependent upon the voluntary effort and good will of our scientists and scientific institutions. . . .American scientists cannot, in good conscience, participate in joint

scientific endeavors unless they are carried out in a free scientific atmosphere embracing international principles inherent to science, including the right of scientists to live and work where they choose."

These "international principles inherent to science" are subverted by the Soviet Union's widespread persecution of scientists as "punishment" for their assertion of basic human rights. Most seriously affected by these repressive practices are those Soviet Jewish scientists who have sought to exercise their right to emigrate by applying for visas to Israel; many have been waiting unsuccessfully for up to five years for visa approval. Almost without exception, upon application for exit visas these scientists have immediately been dismissed from their universities or scientific institutions, have been expelled and ostracized from scientific circles, and have been excluded from all scientific meetings, including international conferences held in the Soviet Union.

Among the hundreds of documented cases of individual persecution of scientists and technicians who have applied for visas, we cite only a few representative examples: Leonid Zabelishensky, radio electronics and computer specialist, Sverdlovsk, who was sentenced to six months in prison on the charge of "parasitism"; Mark Azbel, eminent physicist, Alexander Voronel, eminent physicist, Victor Fiermark, chemist, Victor Brailovsky, mathematician and cyberneticist, Alexander Lunts, mathematician and computer scientist, all from Moscow, all of whom have been threatened with prosecution on the charge of "parasitism after having been dismissed from their scientific positions; Alexander Feldman, engineer, Kiev, who was sentenced to 3½ years imprisonment in a labor camp on the "manufactured" charge of "malicious hooliganism"; Ida Nudel, economist, Moscow, who has been threatened with prosecution on the similarly devised charge of "alchoholism"; Boris Gurevich, geo-physicist, Moscow, who has been threatened with revocation of his Ph.D. degree; Benjamin Levich, world-renowned theoretical physicist and electro-chemist, Moscow, whose son, Yevgeny, an astro-physicist, was forcibly inducted into military service in a Siberian labor camp despite exteemely ill health as a "hostage" for the family, and whose citations have been deleted from scientific journals in an attempt to make him a "non-person". The noted Soviet physicist, Andrei Sakharov, was demoted from his eminent institutional position and subjected to a well-orchestrated official campaign of vilification for his efforts to advance human rights in the Soviet Union.

The growing objection of American scientists to participation in cooperative scientific and technological efforts with the Soviet Union while that government continues to persecute outspoken scientists is attested to by the intensity of official resolutions, public statements, and petitions of protest from large numbers of United States learned societies, including the American Association for the Advancement of Science, the American Physical Society, the American Mathematical Society, the American Chemical Society, the High-Energy Astrophysics Division of the American Astronomy Society, the Institute of Electrical and Electronics Engineers, and the National Academy of Sciences.

For example, the Council of the American Association for the Advancement of Science, representing a constituency of over 125,000 scientists in 284 affiliated societies and academies, echoed this position in a statement adopted on March 1, 1974: "The integrity of scientific collaboration and exchange is damaged by these repressive policies (in the U.S.S.R.) because scientific cooperation depends upon the trust and good will of individual scientists and there is increasing concern among scientists in the United States about the treatment of Soviet scientists singled out for punishment and denied the right to emigrate." This statement further enunciates: "American scientists believe profoundly that the advance of science rests on freedom for individual scientists: freedom to exchange ideas and data with others; to publish research results; to move from place to place and from country to country; to choose research problems; and to find collaborators who have complementary interests and skiill be eager to work with scientists in other countries who share these ideals, but they will be hesitant to enter cooperative programs in which scientific freedoms are stultified. . . . Intergovernmental agreements for scientific cooperation will result in little substance unless the scientists of both sides can confidently exercise the freedoms that experience has shown are essential in finding the truth."

In a similar vein, the president of the 27,000 member American Physical Society, Dr. Joseph E. Meyer, in a letter to Academician M. V. Keldysh dated

1/23/74, underscored the inescapable negative consequences of the Soviet Union's present policy of harrassment against its scientists who have sought to emigrate: "Cooperation between scientists of our two countries will necessarily depend on the willingness and enthusiasm of individual members in this effort. The dismay is becoming so marked and so general among American scientists that we cannot help but fear that there will be a decrease in their efforts to aid the promising atmosphere of detente between our two countries. . . . May I beg you on behalf of the American Physical Society to use your influence to avoid actions in the U.S.S.R. which cannot help but increase the disinclination of individual Americans to cooperate fully and wholeheartedly in exchanges between our two countries."

In another expression of concern, the Board of Directors of the Institute of Electrical and Electronics Engineers, which represents about 160,000 electrical engineers all over the world, stated in a resolution directed to President Siforov of the Popov Society and to President Keldysh, and Vice President V. A. Kotelnikov of the Soviet Academy of Sciences, "This Board regrets that many (Soviet) engineers and scientists and their families have been denied their right to emigrate in violation of recognized international practices, often solely because of their professional qualifications in Science and Engineering . . . These practices seriously endanger the spirit of transnational friendship and cooperation on which the operation of this institute is based. The Board of Directors of the Institute of Electrical and Electronics Engineers appeals to its sister organizations, and to the National Academies of Science and Engineering in every country, to join in support of equal human rights for engineers and scientists."

We believe that the Freedom of Emigration Act incorporated in Section 402, Title 4, of The Trade Reform Act has already proved to be an effective instrument for furthering human rights in the Soviet Union, by convincing that government that it is in its own best interests, from both a general and a scientific point of view, to allow greater freedom to its citizens, especially scientists wishing to leave. We further believe that the Freedom of Emigration Act accurately expresses the position of both the American people and the American scientific community on this issue.

Therefore, in keeping with our commitment to the principles of scientific freedom, and our concern for the preservation of detente and the advancement of scientific cooperation, and in response to the growing alienation of the American scientific community as a result of the Soviet Union's abusive treatment of many of its scientists, especially those Jewish scientists seeking to emigrate, we urge the Senate Finance Committee to pass the Freedom of Emigration Act.

Senator RIBICOFF. Our next panel consists of William R. Hewlett and Dr. C. Lester Hogan.

Mr. Hewlett, Mr. Hogan, you may proceed.

STATEMENTS OF WILLIAM R. HEWLETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF HEWLETT-PACKARD CO., PALO ALTO, CALIF., AND DR. C. LESTER HOGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FAIRCHILD CAMERA & INSTRUMENT CORP., ON BEHALF OF WESTERN ELECTRONIC MANUFACTURERS ASSOCIATION, ACCOMPANIED BY ROBERT HERZSTEIN, ESQ.

Statement of William R. Hewlett

Mr. HEWLETT. Thank you, Senator.

My name is William Hewlett. I am president and chief executive of the Hewlett-Packard Co. in Palo Alto, Calif. Our major business is designing and manufacturing electronic test equipment.

I am testifying on behalf of the WEMA, the Western Electronic Manufacturers Association. With me is Dr. Hogan, who is also testifying for WEMA. Dr. Hogan has some very specific points to raise with reference to this bill.

I might say just a word about WEMA. WEMA is a trade association of some 715 companies primarily located in the western United States and primarily engaged in electronic manufacturing. In particular, WEMA companies specialize in high technology operations.

In preparation for this testimony a poll was taken of these 715 members. 189 responded, representing so far as sales are concerned, about 5 percent of WEMA's membership. Last year the sales of these companies were slightly over $4 billion. The respondents reported that 27 percent of their sales in 1973 was exported from the United States. This compares with somewhere between 10 and 15 percent several years ago. These companies have certainly been actively engaged in the export fild.

The Hewlett-Packard Co., for example, has averaged about a 30 percent annual growth in international business since 1955. Last year this international business was in the neighborhood of $300 million, and represented 42 percent of our total sales. Seventy-five percent of this international business was in exports from the United States, either of finished products or partially fabricated material which was then included in products made abroad.

WEMA appreciates this opportunity to comment on H.R. 10710, primarily because its member companies have such great dependence upon international trade. WEMA favors almost all of the provisions of the bill. It is important to be able to negotiate reductions in tariffs and nontariff barriers, to be in a position to take strong action against inequitable foreign trade restrictions, to provide adjustment assistance in response to increased imports, and to expand in available markets. H.R. 10710 grants considerable authority to the U.S. negotiators, but we feel that this is justified. It is important that the people who are involved in trade negotiations have a considerable degree of latitude.

Let me comment briefly on some of the various titles of this bill. Title I represents a considerable improvement over the earlier House bill, H.R. 6767, because it now represents a better balance between the responsibility of the Executive Office of the President and Congress. It has important provisions dealing with nontariff barriers. Nontariff barriers are becoming increasingly important in highly technical fields.

Dr. Hogan will touch on some of these nontariff barriers in his testimony. But I assure you that many of the countries to whom we export show great skill in devising nontariff barriers to keep out our products.

I think that the provision calling for consultation with industry, labor and agriculture is a most important addition to the bill. I call your attention, however, to a technical point on page seven if my written statement. I do not think it is necessary to go into this point at this time but I feel it should be included in the bill.

As far as title II is concerned, WEMA is opposed to any suspension of tariff items 806 and 807. It is our feeling that suspension would have an adverse effect by increasing the purchase of foreign parts and even increasing manufacturing abroad. I refer you to the comments of the Tariff Commission reproduced in my prepared statement. The Tariff Commission basically came to the same conclu-

sion. Title II also provides important help, not only in adjustment assistance and retraining of individuals, but for smaller firms adversely affected by imports.

Title III deals primarily with unfair trade practices, an increasingly important element. As things now stand, dumping and countervailing duties provide some protection for items that are imported into the United States. There is no basic protection, however, for U.S. products competing in third markets. Title III would provide considerable protection.

I also refer, on page 10 of my written statement, to a rather minor suggested revision to these provisions.

WEMA is concerned about the most-favored-nation and credit restrictions presently contained in title IV of the bill. I am afraid, Senator Packwood, you are going to hear one more trade association commenting along these lines. In my written statement I have listed four reasons why we believe that it is desirable not to include these restrictive provisions in the bill. You will find these reasons on page 11. If you wish, I can go into them later. But it is our specific recommendation that the President be granted authority to extend most-favored-nation treatment and credits when he feels it is in the best interests of the United States. I also believe there should be provisions for a review by Congress on a periodic basis, say every 2 years.

There are a couple of other matters that I think should be mentioned that are not specifically covered in the bill. One of them is the problem of raw materials that we are importing from abroad. Although this is partially covered, I think this needs bolstering.

The amendment cosponsored by Senators Mondale and Ribicoff that we make an effort to work through the GATT goes a long way. I think, however, that we need a bigger stick. The U.S. should have the right to act unilaterally if it fails to get action through GATT. I think the mere fact that we have this big stick will make the GATT discussions more effective.

Now, this is not an academic point, nor is it only related to the petroleum industry. Other supplier nations are now following the lead of the oil producing countries and are attempting to restrict exports and artifically increase prices. I refer specifically to the situation with reference to bauxite and to the banana producing countries of Central America. Both seem to be trying to set up restrictions on exports in order to increase prices.

I think there is also great concern among the high technology companies, who are very dependent upon their international markets, that there may be some tax changes written into this bill. I think—rather I can say categorically—that the WEMA member companies would be greatly concerned about any tax provisions written into this bill. I assure you that it is not easy for U.S. high technology companies to do business in West Germany, France, Japan, and the other developed countries of the world. In most of these countries the old legacy of the mercantilistic system survives and the governments clearly try to help their industries, and in many covert ways.

Nontariff barriers are a good example. But there are many other ways in which the host countries help their own companies. I think that American companies have a difficult time abroad when they run up against that type of competition.

Rather than talk in general terms, let me be more specific. I think it is sometimes a bit easier to visualize a specific example, and if you will permit me I would like to say something about my company's experience in the international market area.

Last year 42 percent of our orders came from outside the United States. I have already mentioned that this represented some $311 million. In going back over the record—and mind you, we are a relatively small company—since 1954 we have contributed almost $1 billion to the balance of trade of the United States. In my prepared statement you will see a chart showing our international orders and below that, in the shaded area, is the value added by manufacture abroad. The difference between these two is approximately $1 billion to which I am referring.

I can assure you that although this may be a somewhat dramatic example, there are many other companies in WEMA who, in terms of percentages, could provide almost exactly the same record.

Senator BENTSEN (presiding). Mr. Hewlett, if I may interrupt here. You are a high technology company and, of course, many of us have a great concern about the export of high technology that has been developed within the United States and then comes back and competes with us. And yet, it is a very difficult task to try to find ways to control the export of that kind of technology. For example, expert technicians can go abroad and in effect carry it with them.

Can you propose any kind of limitations that can be helpful to us in that regard?

Mr. HEWLETT. Let me comment on this. I think this is something that perhaps is greatly overplayed. In the case of our own company, we feel that the most important thing is not what we have in production, but what we are thinking about. As proof of this, we are constantly taking our competitors through our plants and showing them what we are doing. We firmly believe that if they are simply going to copy us, they will always be at a disadvantage. If American industry, high technology industry, continues to run hard, you need have no worry about what gets transferred abroad, because that will always tend to be the technology of 3 or 4 years past.

Senator BENTSEN. You were referring earlier to some of the limitations that are put on trade in some of these countries. In Japan, for example, where you had a deficit in the past not only in low technology items but also in high technology items—and that was the only major country in the world where we ran into that situation—one of the reasons for this was because of some of the barriers that they place on trade with us. On large computers, for example, they have a substantial tariff; then they use that money for research and development that they plow back into industry to develop large computers to compete with us.

Is that correct?

Mr. HEWLETT. Well, Japan is a very troublesome country to deal with. I do not care which way you look at it. We have a joint endeavor there, so I can speak from firsthand experience. But I would like to answer you by saying that it was not more than 4 years ago that this country was flooded with small Japanese pocket calculators. I would like to hold up a high technology unit which we make.

Senator BENTSEN. You have one of the more expensive ones, as I recall.

Mr. HEWLETT. But look at what is happening. Even in the low cost areas, American calculator manufacturers have virtually put the Japanese out of business. And I can say that I am very glad that we are not in the low cost calculator business. But here is a classic example of what I was saying: the Japanese have basically followed an obsolete technology. They did not have the technological wherewithal. Thanks to people like Les Hogan, the American semi-conductor industry has moved ahead rapidly and left the Japanese far behind.

Senator BENTSEN. Well, this example of Japan's using the money they collect from a tariff on large computers to give R.&D. to their industry—is that what you referred to earlier when you were talking about government help to their industry?

Mr. HEWLETT. That is one example. There are many other cases, however. All through Europe there are cases where support is supplied in various forms, indirect and direct.

Senator BENTSEN. And now, on your high technology items, would not labor be a relatively small percentage of the cost as compared to other products?

Mr. HEWLETT. That is correct.

Senator BENTSEN. Now, are you not assembling circuits in the Far East?

Mr. HEWLETT. Yes, sir. We are.

Senator BENTSEN. Now, would you tell me why you would do that, then?

Mr. HEWLETT. You know, Senator, you must have read my mind, because I happen to be prepared for that question. I thought you might ask it.

Senator BENTSEN. Good.

Mr. HEWLETT. There are certain products—core stringing and semi-conductor assembly, for example—that are very labor-intensive and what needs to be done very exacting. We originally started our Singapore operation by assembling core memories for computers. Now, we all hear a lot of talk about core memories, but most people have never seen one. A core memory is a very remarkable device. It consists of a great number of very small, round beads, smaller in diameter than the cross-section of the lead in a pencil. Each bead, or core as it is called, has a hole in it, and three wires have to be put through each hole.

In one core plane for a modest computer there are about 140,000 of these beads. I thought that you might be interested in seeing firsthand what something like this looks like. I have here, and will pass up to you, an actual sample of a core and the wires that have to go

through it. To prove that there is a hole, and there are three wires strung through it, here's an enlarged photograph of a strung core. Here's a magnified photograph of what a core stack looks like, and here is a typical core stack. I think you might be interested in looking at these.

Now, you might ask why core-stringing cannot be done in the United States. This is extremely exacting work. I hate to say this but what Dr. Hogan will talk about in regard to semi-conductor assembly is fairly simple compared to the task of stringing cores like these. Now, when we first started our computer activities we were buying all of our core planes from outside the United States. But we wanted to learn the technique ourselves, so we started a group stringing cores in Palo Alto, and we found it was very difficult to get American labor to do that kind of work. I asked one of our people in the project about some of his experiences, and he cited the case of a girl who had spent 3 weeks, 120 hours, stringing one of these core planes and, at the last minute, she dropped her pliers through it. She saw her whole work go down the drain. She burst into tears and had to be given the rest of the day off.

Now, you simply do not get this kind of problem abroad. What I am saying is, in that kind of an operation what you really——

Senator BENTSEN. You know, down in south Texas we have a lot of people who are unempoyed. I think they have great manual dexterity; I understand that a number of tests have proven this in addition to their mental agility. I would commend this area to you.

Mr. HEWLETT. Yes, sir.

Senator PACKWOOD. Are you saying that generally, physiologically or psychologically, the average American worker cannot do this and the average Asian worker can?

Mr. HEWLETT. I think that is right.

In the first place, most of the people in the Orient have been trained since childhood to use their hands. They all sew. They have to make their own clothes. And it is amazing to watch the amount of concentration they have. I simply cite from our own experience that we had great difficulty in getting our people to string cores on even a modest, experimental basis, let alone do it day after day.

You might be interested, we string about 140 million of those cores a month. So it is a major activity.

Now, I might observe that we also do some other things in Singapore. We manufacture this calculator, or rather its counterpart, in Singapore. But we do not export these calculators to the United States. Instead we sell them abroad, in Europe for example, for there is a tariff agreement between the Common Market and Singapore that allows us to import calculators into Europe duty free. This permits us to increase our calculator sales in Europe. So here is another case where duties are very important.

Senator BENTSEN. Well, you have expressed your concern in working with the European Common Market. Let me ask you whether the leadership is trying to work with some of these countries that are talking about developing cartels, be it bauxite or whatever raw materials they would sell to us, where they might hold the price at a very high level.

Do you not think we should be working very closely with the European community of nations in that regard?

Mr. HEWLETT. Yes, sir. I think we should. But I have been involved in this area and I do not think that many people have because it is a recent event—of almost the last 12 months. I think that we are certainly going to have to find methods of dealing with these, let me call them national cartels, for example, that which is developing in the current bauxite situation. I think the banana industry may be somewhat different. Bauxite or oil can be kept in the ground forever, but bananas cannot be kept on a tree.

Senator BENTSEN. Senator Packwood, since we are limited in the number of members, why do we not just interrupt any time that you feel that you have a question?

Senator PACKWOOD. I was trying to find something in the last of his statement, but I do not see it. So I will ask Mr. Hewlett now, absent any tariff or nontariff barriers in the world, are you hopeful so far as using free trade, could you compete anywhere in the world from an American manufacturing base?

Mr. HEWLETT. There are two answers to that question. If you mean on the basis of costs, I think yes. But there is something far more subtle, and that is your presence in a country. I was just going to come to this, because we have looked very carefully at what the effect has been of setting up manufacturing plants abroad, especially in Europe where we have three factories, two of which have been in operation for some time.

Our experience has been that suddenly you become a European company and you have a much better acceptance from your customers. Even now, with rising costs, there are cases where certain products cost slightly more to produce in Europe, but in our opinion it pays to do so because this represents us in the market and thus increases the sale of our U.S. products. This is a very subtle situation, but very real.

Senator PACKWOOD. Now, your cost answer is very important, because it is the nub of at least half of the problem we are talking about. We have had a number of trade association representatives, including nonrubber footwear. They cannot compete in this country without tariff reduction, period. You are saying from a cost standpoint not only can you compete here against foreign competition, but if that were the only factor you could compete any place in the world.

Mr. HEWLETT. I think so.

Mr. Hogan, wouldn't you agree with me?

Mr. HOGAN. Yes. I will comment on that.

Senator PACKWOOD. Thank you.

Mr. HEWLETT. In my prepared testimony there are charts that bear directly on this question. They show the growth of our total sales and in value added in our three principal manufacturing locations abroad: one in West Germany, one in the U.K., and the last in Japan.

If you look at Japan it is very evident that our sales were going along at a rather flat rate until we began manufacturing. After that point a very sharp increase occurred in the rate of our sales.

Senator BENTSEN. Mr. Hewlett, I know we have used up some of your time on questions, but because of the number of witnesses we have, could you summarize, please.

Mr. HEWLETT. Yes, sir.

I would like to make one additional comment, sir. This has to do with tax incentives. WEMA is greatly concerned that there may be some tax provisions written into this bill. We feel this would be a very serious situation. I mentioned earlier the great difficulty that we have competing because of the very excellent working relationships that foreign firms have with their Governments.

I would like to draw your attention to one item which I think shows graphically the increase in exports which can occur through the use of a tax incentive. This happens to be our use of a Western Hemisphere Trade Corporation, shown in my written statement. In 1963 we set up a Western Hemisphere Trade Corporation with the specific objective of using the tax savings to increase our exports to Latin America. Since that time our tax savings have been about $1 million, and we have invested slightly more than $1 million in developing the market.

Senator PACKWOOD. That is your tax deferred income that you kept there?

Mr. HEWLETT. It is not tax deferred; it is tax not paid by Western Hemisphere trade corporations, sir. We spent the money and you can see, looking at the chart, the very sharp rise in sales that we have experienced since 1963.

I suggest that much the same argument can be made with reference to the DISC provisions of the tax law. I would hope that the DISC provisions could be expanded, primarily for the small companies. I think that many large companies have already benefited, but I do not think this is the case with the smaller companies. I feel it would be very helpful if it were possible to increase the DISC benefits for small companies to 100 percent.

Senator BENTSEN. Can you quantify a small company for me?

Mr. HEWLETT. I would say one with annual exports of between $1 and $2 million, sir.

Senator BENTSEN. Could it be a large company that has smaller exports?

Mr. HEWLETT. Yes, that is what I was saying. I would limit the increase in DISC defferrals to exports of not more than $1 to $2 million. It would not cost the Government much and I think it might encourage a lot of firms to get into the export business.

Senator PACKWOOD. Let me ask a question here?

You do not want American companies to be penalized, taxwise, by going overseas?

Mr. HEWLETT. Yes.

Senator PACKWOOD. With tax credits and tax deferrals, it seems to me the argument to keep tax credits is valid. If you are not going to allow an offset, dollar for dollar for taxes paid overseas, there is going to be an absolute disincentive to gó overseas.

What about on the tax deferral? If you get a lower tax rate overseas, and you were taxed at let us say 30 percent, and as long as you do not bring the profits back to the United States, that is all you

are taxed, you can use the rest of it for investment and increase sales there?

Mr. HEWLETT. No, sir, not in all cases. I think you have to gross up in some selling operations—your average tax abroad has to be 90 percent of your domestic tax.

Senator PACKWOOD. Say that again?

Mr. HEWLETT. The tax that is paid abroad plus that paid in the United States must be 90 percent of your domestic tax.

Senator PACKWOOD. Bob, is that right?

Mr. BEST. I am not sure.

Senator BENTSEN. It looks like you are going to send us to the books on that one.

Senator PACKWOOD. The point I want to make is if you could defer the tax credit by simply keeping your income overseas and not bringing it back, and if the overseas taxes were less than the U.S. taxes, would that not give you an advantage in your manufacturing overseas as opposed to an American company having to pay taxes on their income year-by-year, they cannot defer their income?

Mr. HEWLETT. That is correct.

On the other hand, offsetting this are the many additional expenses and dangers that exist abroad to an extent we do not have here: Inflation, reevaluation, sometimes very adverse governmental regulations and so on.

Senator PACKWOOD. Those are all things we have had here in the last 3 years. Inflation, reevaluation and adverse regulation by Government.

Mr. HEWLETT. I'm afraid we haven't seen anything yet.

You asked me to sum up. Basically, WEMA strongly supports the passage of this bill, subject to the specific comments that I made.

We feel that you should strengthen those portions of the law which provide protection against countries who do not practice fair trade practices. We also believe that there should be no tax changes in this bill and, finally, in our view there is great urgency that this bill be passed. Time is running out and trade negotiations are urgently needed particularly with some of the new developments which have followed the oil crisis.

Thank you very much.

Senator BENTSEN. Thank you very much for your testimony.

Would you proceed, sir?

Statement of C. Lester Hogan

Mr. HOGAN. Mr. Chairman, and I guess it is "member" of the Finance Committee, I am C. Lester Hogan, president and chief executive officer of Fairchild Camera and Instrument Corp.

First I want to say, I honestly greatly appreciate the opportunity of being here today and would like to thank you for allowing me the chance to comment on the foreign trade legislation which is before the Senate at this time.

I have with me on my left, Mr. Robert Hurzstein of the law firm of Arnold & Porter, who is a counsel to our corporation.

I would like to preface my remarks by saying that Fairchild Camera and Instrument Corp. basically agrees with the observations of Mr. Hewlett, and we also agree with the observations that were made here a little earlier by Senator Percy.

I think most of you know our industry has always taken a very strong and almost completely unanimous position in favor of free and reciprocal trade policies in the world marketplace.

We firmly believe that this is in the best interest not only of our high-technology industries, but the United States as a whole. And I would like today to somehow give you a reason to understand our belief in this matter.

Now in 1970, I had the opportunity of appearing before the U.S. Tariff Commission to explain the position of the U.S. semiconductor industry and last year I was permitted to testify, along with Mr. Hewlett's colleague, David Packard before the House Ways and Means Committee. During those testimonies, we made projections of our industry and it seems that in every case, the projections which we made, were extremely conservative, so I have updated some of the data for today and I am happy to say that in almost every case, we have beaten projections which we had made.

It is true that in an environment of free and equitable trade competition, whenever and wherever American semiconductor firms have participated, they invariably have succeeded in gaining a position of strength.

The three largest semiconductor manufacturers in the entire world are American. Texas Instruments is No. 1; Motorola is No. 2; and Fairchild Camera and Instrument, No. 3. We represent not only the three largest in the United States, but the three largest semiconductor manufacturers in the entire world.

Senator BENTSEN. Let me interrupt you for just a minute, Mr. Hogan, because I am going to have to go chair another committee right now they tell me. But I do want to say how strongly I agree with you on both of those comments—free trade, but with the caveat of reciprocal trade.

Mr. HOGAN. I kept saying equitable and reciprocal. And I agree with Mr. Hewlett, there are some countries that it is very difficult to do business with and the two that I would point out are Japan and France.

Senator BENTSEN. And when we get to that kind of situation, we have to have a quid pro quo, do we not, in our bargaining?

Mr. HOGAN. We have to be tough. There is no other way. You must be tough.

Senator BENTSEN. Do you agree with the idea, as advocated by the House, that we ought to have a sectoral division in our negotiations? Should this be on an industry-by-industry basis? How does that affect your type of industry?

Mr. HOGAN. I think the trade negotiators must be advised by men from industry because it is only those of us deeply involved in the industry that know what would be a fair trade. We might be trading apples for oranges and our trade negotiators—well, I do not think industry people should sit at the table, but I think we ought to be out in the hallway when negotiations are going on.

If a proposal is made that we could explain it to our negotiators, what that might mean to American trade——

Senator BENTSEN. Well, do you think we ought to tie agriculture and industry together? In the last round in the Kennedy talks, we had France abstaining for almost a year because they did not want to tie agriculture and industry together. This, therefore, made it very difficult to carry on the negotiations.

Mr. HOGAN. I think it is perfectly proper to tie them together. I would hate to see the trade talks come to no avail because France again refuses to tie them together, but as everyone knows, in farm products, we are the most productive, lowest-cost producer in the world. We have a big stick there and I think we ought to use every big stick that we have.

Senator BENTSEN. Well, in effect, it means that so long as they maintain the artificially high barriers on agricultural products in the European Common Market, their consumers are having to pay substantially more for their food than we are.

Mr. HOGAN. Yes, yes, they are.

I would like to point out one other thing about the semiconductor industry, because I have some statistics in here about our industry, but I would like to point out that the effect that we have is much more profound and goes far beyond our own industry. It is the semiconductor industry that has made it possible for the United States to dominate the computer field.

Computers are made out of these silicone chips which we process in our industry and if it were not for the silicone chips we are making, the United States would not be dominant in the computer industry.

Senator BENTSEN. Mr. Hogan, if you would accept my apologies, I do have to chair that other committee. Senator Packwood will preside. I would like very much to hear what you say and I look forward to reading your testimony.

Mr. HOGAN. That is all right. I understand it. I certainly understand.

And, as Mr. Hewlett pointed out, he held up one of the Hewlett Packard calculators—3 years ago, 75 percent of all of the calculators, shirt-pocket calculators sold in the United States, were built in Japan.

Today, only 3 years later, we have completely reversed that statistic. Seventy-five percent of all of the shirt-pocket calculators are being built in the United States. They are being built in the United States because we have learned in our industry to put all of the guts of that calculator on one chip of silicone and I have a wafer here—these are wafers which we process. My attorney has some which he can pass out to you.

This, actually, is a 3-inch wafer of silicone in which there are 85 individual squares. Each square performs all of the functions of a printing calculator.

It not only does all of the memory, all of the logic, adds, subtracts, multiplies, and divides, but it decodes and drives the printer. There are no other elements that are needed, so the assembly cost of putting the calculator together, becomes relatively small.

All one must do now is to take this wafer, chop it up into 85 little calculators, solder it down in a package—and of course there is a very difficult problem that is akin to the one of threading the wires through the core, where we have to now connect wires, and in this case there are about 42 wires that have to be connected from this one chip to the outside world, and that is done in this package.

Now, our business neatly divides into these two areas. The process of actually making the chip. The high technology part is done in the United States. We can do it at much lower cost, much more profitably and much more capably, in the United States and we are the absolute leaders in the technology of doing this.

The job of connecting those 42 wires to the chip is a slow, tedious, laborious job. But I think I would take issue with Mr. Hewlett on the fact that he thinks that Americans cannot do it.

We know Americans can do it. We have a factory in Shiprock, N. Mex., where we hire 1,000 Navajo Indians, and they do a very excellent job of hooking these wires on.

However, it costs us a lot of money. We pay a lot of money for that and we could not be competitive in world markets if we transferred all of this wire bonding back to the United States.

Senator PACKWOOD [presiding]. Let me ask you a question there that Mr. Hewlett just answered affirmatively.

Absent these tariff and nontariff barriers, you could compete in the world from American-based manufacture? Do you agree with that?

Mr. HOGAN. We can compete in the world by the technique that we now use of doing the high technology part——

Senator PACKWOOD. I am talking about stringing the beads also. I realize that is not what you——

Mr. HOGAN. No, no.

Senator PACKWOOD. You could not?

Mr. HOGAN. No, I do not agree. We could not compete in the world. We need the provisions of items 806 and 807 of the tariff law that permit us to take American components overseas for the attachment of the wires in order that we can then bring back chips that make it possible for Mr. Hewlett to build a calculator that is competitive.

And, because we have made use of that, we have brought the calculator business back to the United States, which was, you remember, a Japanese market. It is now an American market.

I happen to be wearing an electronic wrist watch. There is not a single moving part inside this wrist watch. You just push a button to read the time. The light-emitting diodes that tell me the time on it. It is a "gee-whiz" gimmick, but it will not be 10 years from today. There will be no other kinds of watches made except electronic watches, and because the American semiconductor industry dominates the world, the watch industry will be an American industry. It will not be a Swiss industry, nor a Japanese industry as long as we can continue to dominate the world with our techniques of selling conductors.

This will go into many other areas.

Senator PACKWOOD. The only trouble with that watch is when you are driving you have got to use both hands to look at it.

Mr. HOGAN. We can take care of that at a slight additional cost. We can put a stepping motor on this purely electronic watch and give you a conventional kind of display.

Senator PACKWOOD. Can you?

Mr. HOGAN. Yes, that can be done. That is why I say, give me 10 years. It is a "gee-whiz" thing now, but it will not be—in 10 years, we will give you any kind of display you want on your watch, but it will be purely electronic and the watch business will be American.

So I wanted to get the point across that as a result of our ability to operate under the provisions of 806 and 807, we still have a strong, positive trade impact by ourselves.

But, in addition to that, we are bringing businesses back to the United States.

Senator PACKWOOD. Let me get back to this point again about the assembly of these beads overseas. You are saying you cannot do it on an equivalent wage basis in the United States?

Mr. HOGAN. We cannot do it unless we mechanize, and so far it has not paid us to mechanize because of a very high rate of change of our technology.

Senator PACKWOOD. Well, that is exactly the argument that many protectionists are arguing. You cannot afford to do it here unless you could mechanize, so it is exported overseas and done by Asians who have sewn clothes all their lives, and string these beads, and those people would say this is the kind of technology we must keep in this country.

So if that means a protective tariff, in order to do it, then that is what we ought to do.

Mr. HOGAN. But that is not technology, stringing the beads. The technology is in making the wafer. That is what we keep in the United States and we will keep it in the United States. But just connecting the wire is not really high technology.

Senator PACKWOOD. So your argument there is the same as the nonrubber footwear people. We cannot afford to do it in this country anymore; even more, we cannot compete in this country without protection on that kind of a low-technology situation.

Mr. HOGAN. Well, we do not want protection, because even if you—we could not bring back that business. Even if there were a high tariff, we cannot afford it. The difference is much too great and the reason is, we are competing on a worldwide basis.

Remember, these packages are very small. A package this size now represents all the guts of a desk-top printing calculator. There is nothing else. No gams, cams, gears, wheels, electric motors, that we used to be used to on these big complicated calculators, so this can be shipped air express around the world very cheaply so every factory in the world is a competitor of mine, whether it is Phillips in Holland; whether it is Hitachi in Japan; whether it is Sequeseim in France or Ferranti in England, you name it, they are competitors of mine as long as they can make this and make it cheaper than I can.

They can come over here and sell in the United States, so I must be competitive to survive. I must be competitive on a worldwide basis.

Senator PACKWOOD. Doctor, let me ask you this. I am going to have to draw your testimony to a close. We are about 40 minues behind.

Let me assure you that people from Tektronics in Oregon have talked to me extensively about the exact problems you are talking about so I am very aware of both the manufacturing overseas and the tax credit and the tax deferrals, go ahead and summarize.

Mr. HOGAN. All right, just let me run you quickly through some of the graphs. We show the U.S. semiconductor industry balance of trade and even though we do ship these wafers overseas and do the wire bonding overseas, our net exports from the United States have climbed dramatically and we are predicting for 1974 net exports of the semiconductor industry alone, just our industry, of nearly $600 million, which is about one-eighth of the total net balance of trade of the United States of $4 billion. So they are not insignificant, even by itself.

We find exactly the same thing and we have disclosed here for the first time, some relatively—well, it is information that up until now we have kept proprietary, of our own corporation, but it is public from here on, and we have shown that we have a very strong and very rapidly growing balance of trade.

If we go on to the number of employees, semiconductor industry employment in the United States, that has grown except for the recession years of 1970 and 1971, which hit our industry very hard. Our employment has been growing very steadily over the past decade from about 60,000 to 100,000 employees in the United States, and we estimate it will go up to 120,000 employees this year.

So that in addition to that, our export business, and we agree with Mr. Hewlett that we need some presence in the country in order to do business in France, we need some presence there but we call these plants market penetration, and it is not economical for us to do most of our manufacturing there.

We can do it cheaper by doing the high technology part in the United States and to assemble at our offshore facilities and then sell in France, but once we are there, our sales in France skyrocket and you will notice we have gone through this country-by-country and shown what Fairchild's sales have been in the United Kingdom and in Germany and what have you, as a result of that.

But about one out of every four domestic employees, we have more than 11,000 employees in the United States now and about one-fourth of those are employed only to service our export business, so that this balance of trade does bring jobs to the United States, as any positive balance of trade——

Senator PACKWOOD. Doctor, I am going to have to stop you. Your entire statement will be in the record and I have read your entire statement this morning. I am basically in agreement with both what you and Mr. Hewlett say. I appreciate very much your taking your time to come.

Mr. HOGAN. Thank you very much. I appreciate the opportunity.

Senator PACKWOOD. Thank you.

[The prepared statements of Messrs. Hewlett and Hogan follow. Hearing continues on p. 2311.]

PREPARED TESTIMONY OF WILLIAM R. HEWLETT, IN BEHALF OF WEMA

Mr. Chairman and members of the committee; I am William R. Hewlett, President and Chief Executive Officer of the Hewlett-Packard Company of Palo Alto, California. Our major business is designing and manufacturing electronic

test equipment. We also design and manufacture medical and analytical instrumentation, computers, computer peripherals, calculators and related high-technology products.

The Hewlett-Packard Company is a founding member of WEMA and it is on behalf of WEMA and its member firms that I am appearing today in support of H.R. 10710, "The Trade Reform Act of 1973."

WEMA is a trade association of 715 companies, located primarily in the Western United States. WEMA member firms share a common interest in that they are all high-technology companies engaged in electronics and information technology. A preponderance of WEMA member companies are small-to-medium in size, designing and manufacturing sophisticated components and equipment for a number of end markets. Some of the types of products WEMA member companies manufacture are: semiconductor devices, such as transistors, diodes and integrated circuits; computers and computer peripheral equipment; test equipment such as oscilloscopes, signal generators, counters and voltmeters; calculators, telecommunications equipment, such as radio transmitters and receivers and, finally, components such as tubes, resistors, capacitors and similar items.

INTRODUCTION

The sale of high-technology products abroad—such as those manufactured by WEMA member companies—has been one of the prime areas in which the U.S. has continued to hold its own in the world marketplace. According to U.S. Department of Commerce statistics, the favorable balance of technology intensive exports over imports ranged from $7.5 billion to over $10 billion in the past sixteen years. Last year, the favorable balance in these product areas was $10.7 billion.

Despite strong competition abroad, most WEMA companies have been successful in maintaining a technological lead over their foreign competitors. In a survey concluded last month, 189 responding WEMA companies—whose sales volume last year amounted to slightly over $4 billion or approximately 54% of the total sales of our entire membership—indicated that 27% of their 1973 sales came from the export of U.S. manufactured products. This is a substantial increase over several years ago when a majority of the respondents to a similar survey indicated that their international sales accounted for between 5% and 15% of their total sales.

My own company offers an interesting example. Since 1955, Hewlett-Packard has experienced a 30% average annual growth rate in international sales. Last year, we received $311 million in international orders, 42% of our total volume. U.S. exports represented approximately 75% of this international volume.

Similar growth has been achieved by a number of WEMA companies who see international business as not only a way of increasing their profits, but as a way of providing jobs for U.S. employees. Of the 189 WEMA companies responding to our questionnaire, 26% of their total U.S. employment—slightly more than one out of every four jobs—exists to support the export of U.S.-made products. At Hewlett-Packard, one out of every three U.S. manufacturing jobs exists to support exports. I would also note that a healthy involvement in international business has promoted the job security of U.S. workers. This is because in the past, cyclical trends in U.S. and international business have tended to counteract each other—when one was up, the other was likely to be down and vice-versa.

The involvement of WEMA companies in international trade has made them acutely aware of the need for a cohesive national trade policy which will improve their ability to compete abroad with U.S. exports and, when required, by local production. To accomplish this, we believe that legislation should be enacted which would permit the United States to: (1) negotiate reductions in tariffs and non-tariff trade barriers; (2) take strong action against inequitable foreign trade practices; (3) respond to serious difficulties caused by imports, and (4) increase trade with the developing countries and with those areas of the world which presently lack Most-Favored Nation Status.

It is in this context that WEMA welcomes this opportunity to appear and present its views on H.R. 10710, "The Trade Reform Act of 1973."

I am especially pleased to have with me today Dr. C. Lester Hogan, President and Chief Executive Officer of Fairchild Camera and Instrument Corporation in

Mountain View, California. Dr. Hogan will present later a statement which amplifies both Fairchild's and WEMA's views on H.R. 10710. Because of Fairchild's experience, I believe that Dr. Hogan's comments, particularly on Tariff Items 806.30 and 807 and the new European Rules of Origin will be valuable to the Committee.

H.R. 10710—"THE TRADE REFORM ACT OF 1973"

WEMA strongly supports the concept and most of the specific provisions of H.R. 10710, "The Trade Reform Act of 1973," as passed by the House on December 11, 1973. We believe prompt enactment of this legislation is needed if the U.S. negotiators are to have credibility with their foreign counterparts and if the United States is to achieve the stated purpose of the act ". . . to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining and commerce; and . . . to strengthen economic relations with foreign countries through the development of fair and equitable market opportunities and through open and non-discriminatory world trade."

H.R. 10710 is a far different—and we believe a much improved—bill than the proposal which the Administration submitted to the Congress a year ago. Last May David Packard, Chairman of the Board of the Hewlett-Packard Company, appeared before the House Ways and Means Committee to offer WEMA's comments on H.R. 6767 and other related Administration proposals. In the course of his presentation, Mr. Packard made twelve specific recommendations as to how that legislation could be improved. Most of these recommendations were subsequently accepted by the House Ways and Means Committee and approved by the House.

There is no question that H.R. 10710 grants the U.S. negotiators substantial authority over the management of U.S. trade. Some people fear that this authority might be misapplied, and, thus undermine U.S. efforts which, for several decades, have been directed towards a multilateral expansion of international trade through the GATT. WEMA believes that likelihood of such misapplication is remote. In fact, we believe a firmer, more realistic U.S. attitude would help convince our international trading partners of our seriousness in seeking equity in international trade. This would strengthen GATT and help make it into a more viable, problem-solving organization.

Let me now offer WEMA's specific comments on H.R. 10710.

Title I—Negotiating Authority

WEMA believes that H.R. 10710 provides the Executive Office of the Presidency with the necessary legislative authority and flexibility to negotiate meaningful reductions in tariffs and non-tariff impediments to trade. At the same time, we approve of the careful limitations developed by the House of Representatives, including those provisions which require reports to the Congress and the accreditation of 10 members of the Congress as official advisers to the U.S. trade negotiators. We believe that the Congress must play an active role in the formulation and implementation of U.S. trade policy.

We are pleased that the House, in approving H.R. 10710, recognized the importance of non-tariff trade barriers to increased international trade. Non-tariff trade barriers are of particular concern to WEMA member companies who, operating in the areas of high-technology, frequently have products with sufficient technical qualities to overcome tariff barriers, but which are excluded or limited by more covert non-tariff trade barriers.

Title I—Consultation With Industry

In WEMA's view, one of the major deficiencies of H.R. 6767 was its failure to recognize the need to secure timely and adequate advice from industry, labor, agriculture and/or business groups before and during multilateral trade negotiations. These are the parties who are likely to be most knowledgeable, especially with regard to non-tariff trade barriers. WEMA was therefore, especially pleased, that the House Ways and Means Committee developed the Advisory Committee mechanism presently embodied in H.R. 10710. This will put the U.S. negotiators on more of a par with their European counterparts who, WEMA believes, were generally more effective during the Kennedy Round because of their closer relationship with the private sector.

In this connection, WEMA believes that the Senate Finance Committee should amend Section 135(e)(2). This Section presently, and we believe properly, provides that the meetings of policy and technical advisory committees may be exempted from the requirements of the Federal Advisory Committee Act relating to open meetings, public notice, public participation and public availability of documents. Unfortunately, Section 135(e)(2) does not exempt these advisory groups from the provisions of Section 11 of the Federal Advisory Committee Act which requires that "any person" may be furnished minutes of the meetings. This omission would largely negate the intent of the present language of the bill. We therefore hope that the Senate Finance Committee will broaden the present reference to Section 10 of the Federal Advisory Committee Act in Section 135(e)(2) to include Section 11 as well.

Title II—Relief From Injury Caused By Import Competition

WEMA generally supports the sequence for extending import relief set forth in Section 203 of H.R. 10710. In particular, we believe that the Ways and Means Committee substantially improved the Administration's original proposals relating to Items 806.30 and 807 of the Tariff Schedules of the United States.

These Tariff Items stimulate the purchase of U.S. origin parts and components by permitting their duty-free re-entry into the United States when contained in products manufactured or further processed abroad. WEMA believes that the potential unilateral suspension of Tariff Items 806.30 and 807 as proposed in H.R. 6767 would have increased the sale of foreign made parts and components and thus adversely affect U.S. exports and U.S. labor.

Dr. Hogan, in his testimony, will discuss the importance of Items 806.30 and 807. Meanwhile, it is worth noting that the U.S. Tariff Commission, after extensive hearings in 1970, concluded that the net effect of repeal would be a $150—$200 million deterioration in the U.S. balance of trade and a net loss of U.S. jobs. As it relates to the likely impact of repeal on the electronics industry, the Tariff Commission found that:

1. ". . . repeal of Items 807.00 and 806.30 of the Tariff Schedules of the United States would not markedly reduce the volume of imports of the articles that now enter the United States under these provisions. Rather, the products would continue to be supplied from abroad by the same concerns, but in many cases with fewer or no U.S. components, or by other concerns producing like articles without the use of U.S. materials."

2. ". . . repeal (of Tariff Items 807.00 and 806.30) would probably result in only a modest number of jobs returned to the U.S., which likely would be more than offset by the loss of jobs among workers now producing components for export and those who further process the imported products."

3. ". . . elimination of . . . Items (807.00) would significantly affect the cost of imported semiconductors. In the short run, the added costs would probably be absorbed by the producers of these articles. In the long run, because of price competition, its elimination would provide a significant impetus to increase the amount of manufacturing that would be performed abroad."

Title II—Adjustment Assistance

WEMA supports the expanded and liberalized adjustment assistance provisions for employees—support payments, retraining, and job search allowance—specified in Chapter 2 of Title II. International trade is subject to continual change, and as the record shows, the existing adjustment assistance program has been inadequate and disappointing.

WEMA also supports Chapter 3 of Title II, relating to adjustment assistance for firms. We believe that a temporary slowdown of imports, by means of the import relief provisions of H.R. 10710, may be insufficient to restore many impacted firms to economic health. Many of these companies, particularly the smaller ones, will require outside assistance. We believe it is vitally important to try to restore ailing firms to economic health. There is no substitute for a sound and viable local business offering secure job opportunities.

Title III—Relief From Unfair Trade Practices

WEMA generally supports the provisions of Title III. In particular, we are pleased that the problem of subsidies in international trade has been recognized and that Section 301 would permit retaliation against such subsidies.

WEMA does have one recommendation with respect to the countervailing duty provisions. As written, H.R. 10710 permits the Secretary of the Treasury to waive application of countervailing duties for a period up to four years in cases where such an application would threaten completion of trade negotiations. However, the bill further stipulates that such a waiver be limited to only one year whenever the products are produced in foreign government-owned or controlled facilities. We believe the one-year period may be much too short to permit negotiation of a satisfactory agreement on subsidies and thus we recommend deletion of this arbitrary one-year limitation.

Title IV—Trade Relations with Countries Not Enjoying Non-Discriminatory Treatment

None of the Communist countries recognize the right of emigration. Therefore, Title IV, as passed by the House of Representatives, would prohibit the extension of Most-Favored Nation (MFN) tariff treatment and U.S. Government credits and credit and investment guarantees to all Communist countries except Yugoslavia and Poland which have already been accorded MFN status.

WEMA believes there are four major reasons why Title IV should be modified to permit the extension of MFN treatment and the granting of credits to the Communist countries when such actions are in the best interests of the United States. Failing modification.

Title IV should be deleted from H.R. 10710:

1. The humanitarian intent behind the tying of the extension of non-discrimitory tariff treatment, credits and credit and investment guarantees to the freedom to emigrate is commendable. However, we believe that the most effective way to solve problems of this type is through a broad range of diplomatic efforts instead of the inflexible provisions of Title IV which are only likely to increase Soviet resentment. Instead of changing the nature of their society for the sake of increased trade, the Soviets might even revert to the more repressive policies of a couple of years ago.

2. Private persuasion and quiet diplomacy have brought about much of the recent improvement in U.S.-Soviet relations. This slowly developed and fragile detente, possible in large part because of the Soviet desire for increased trade, is needed more than ever today. The passage of Title IV into law is likely to force the U.S. and the USSR back into a policy of confrontation.

3. Continued denial of Most-Favored Nation tariff treatment has a negative effect on U.S. exports since it severely limits the ability of the Communist countries to sell their products in the United States and, thus, earn sufficient funds to increase their purchases of U.S. products. In addition, the Communist countries see the denial of non-discriminatory tariff treatment as placing them in a "second class" status. This has a powerful symbolic, almost emotional, impact. So long as the United States is unwilling to extend MFN tariff treatment, long-term prospects are not too bright for increased two-way trade and the settling of long-standing differences such as lend/lease with the USSR.

4. The elimination of Export-Import Bank credits and credit guarantees would encourage Communist purchasers to seek an increased number of products from our West European and Japanese competitors who do not restrict themselves on matters of export credits. This would reduce the substantial growth which has occurred in recent years in U.S. exports of peaceful, non-strategic goods to the USSR, the Socialist countries of Eastern Europe and the Peoples' Republic of China. Some figures may help illustrate the growing importance of these markets. In 1970, only $350 million, less than 1% of the $43 billion in U.S. exports, went into the USSR and Eastern Europe. In 1973 U.S. exports to these countries were well over $2½ billion. Although close to 80% were agricultural products, principally wheat, corn and soybeans, U.S. exports of industrial commodities played a prominent role, increasing some 7–½ times to almost $200 million in the period 1965 to 1972.

A good measure of this growth has been due to the recent more realistic attitude of the U.S. Government towards East-West trade. This demonstration of interest, including the elimination of many unnecessary export controls and the ability to extend credits in certain well-warranted cases, has encouraged the Communist countries to consider United States firms as reliable suppliers. It has also encouraged U.S. businessmen to make major long-term commitments in funds and personnel which are required to develop these complex and difficult

markets. A reversal of present U.S. policy would negate these gains and relinquish this important market to our West European and Japanese competitors, all of whom are in business for the long haul and none of whom restrict themselves on matters of credit.

RELATED MATTERS

Access to Raw Materials

The Ways and Means Committee, in considering the Trade Reform Act of 1973, concentrated on the need to: (1) achieve greater access for American products in foreign markets; (2) develop reasonable and equitable restraints against imports severely affecting U.S. workers and U.S. firms, and (3) provide effective adjustment assistance to U.S. workers and firms impacted by abnormal increases in imports. Since the Ways and Means Committee finished its work, another problem area has arisen which calls for immediate attention. This is the problem of access to scarce raw materials needed to support the economy of the U.S. and promote the welfare of its citizens.

The export controls placed by the Arab countries on oil shipments provide the most dramatic illustration of the difficulties we and other countries face in obtaining raw materials. Similar export controls could, however, be imposed by other countries on other raw materials presently or potentially in short supply. The United States is already more than 50% dependent on imports for six of the thirteen major raw materials required by our industries. Estimates show that by 1983 we will be dependent on imports for nine of these materials.

Early in December, 1973, Senators Mondale and Ribicoff called attention to this problem and recommended modification of H.R. 10710 so that one of the major objectives of the United States would be to enlarge the scope and powers of the GATT to deal with the critical issue of scarce raw materials. Senators Mondale and Ribicoff also suggested language which would permit retaliation against unjustified foreign export controls over raw materials and supplies essential to the well-being of the United States.

WEMA agrees that the only way to deal effectively with the problem of unjustified restrictions on raw materials is through increased multilateral cooperation, preferably within the GATT. We prefer this approach to that, recommended by some, of merely modifying the Export Administration Act of 1969 to permit the United States to unilaterally impose counter-embargoes. The United States is no longer the only or even a major supplier of commodities to which counter-embargoes could be applied. Other countries could, and probably would, supply these commodities. For this reason, we believe U.S. counter-embargo measures under an extension of U.S. export control authority would be largely ineffective.

WEMA is concerned, however, that some of the provisions suggested by Senators Mondale and Ribicoff, particularly those dealing with retaliation, stem directly from the recent, largely politically inspired oil embargoes. As a result, these measures may be too extreme when it comes to future situations in regard to other commodities in short supply. For this reason, we urge the Finance Committee to thoroughly consider the problem of raw material shortages and to make appropriate changes in H.R. 10710. These changes might be more along the more moderate lines recently proposed by the Administration, perhaps in connection with the proposals of Senator Chiles and others to modify the Export Administration Act of 1969. Action along these lines would enable the U.S. to more easily impose counter-embargoes in the event a multilateral solution proved impossible.

International Tax Considerations

Although H.R. 10710 does not include any international tax changes, from time to time various proposals have been advanced including those of the Treasury Department which the President transmitted to the Congress on April 10, 1973. Additional international tax measures were suggested to the Ways and Means Committee preceding and during their consideration of the Trade Bill. I also understand that the Finance Committee has received several international tax proposals and may even be inclined to write some of them into H.R. 10710.

In view of this interest, I would like to spend a little time describing how WEMA's high-technology companies operate abroad. In doing so, I hope the importance of fair and equitable tax provisions will become obvious. WEMA

urges the Congress *not* to enact tax rules and regulations which would permit our foreign competitors to seize market opportunities to the ultimate detriment of U.S. industry and labor. We believe that any changes in our international tax laws should be made with the objectives of: (1) increasing U.S. exports and the concomitant number of U.S. jobs and, (2) permitting U.S. companies to operate abroad on the same basis as their foreign competitors.

To understand our reasoning, it is important to consider our high-technology industries and their international activities in the following context:

1. Most WEMA companies do not manufacture abroad. Those that do, like the Hewlett-Packard Company, find that manufacturing abroad enables them to meet foreign competition much more effectively with *U.S. manufactured products* as well as with foreign manufactured products.

2. In many cases, if manufacturing abroad was not undertaken, a substantial part of the local foreign market or even a regional trading block could be lost. The importance of this to U.S. high-technology firms should not be underestimated. Foreign markets are prime growth areas and many U.S. companies, particularly those in electronics, have a considerable advantage in technology.

3. The loss of foreign markets would have an adverse effect on U.S. employment and U.S. prices. Employment would be affected because, as I have already indicated, many U.S. jobs exist to support U.S. exports of finished products and also, because U.S. manufacturing subsidiaries abroad are among the major purchasers of U.S. origin parts, components and raw material. A loss of exports would raise prices because reduced U.S. production volumes would lower efficiencies and increase costs, and

4. The loss of foreign markets would reduce U.S. exports and curtail dividends and other payments from overseas operations. This would have a severe adverse effect on the U.S. balance of payments and the U.S. balance of trade.

Let me use my own company to illustrate some of these points. As I mentioned earlier, last year Hewlett-Packard received $311 million in orders from outside the United States. This represented 42% of our total orders and is a substantial increase from the average 10 to 12% in international business we received during the 1950's, before we began to make investments in marketing and manufacturing facilities abroad. Thus far in 1974, our international markets have been especially active; international orders at $108 million for the first three months are up 59% over the comparable period of fiscal 1973. We look forward to continuing growth though perhaps not so great, for the balance of the year. Over the years, the Hewlett-Packard Company has strongly supported the U.S. balance of trade. From 1954 to 1973, for example, we made a positive contribution of almost $1 billion to the U.S. balance of trade.

It is interesting to examine the composition of our international orders in terms of U.S. exports and products manufactured abroad. You will note from Exhibit I that the value added abroad was almost $80 million, or 11 percent of total corporate orders in 1973. The difference between the two curves represents our U.S. exports—in 1973 about $235 million, or 32 percent of the corporation's business, and some 75 percent of our international volume.

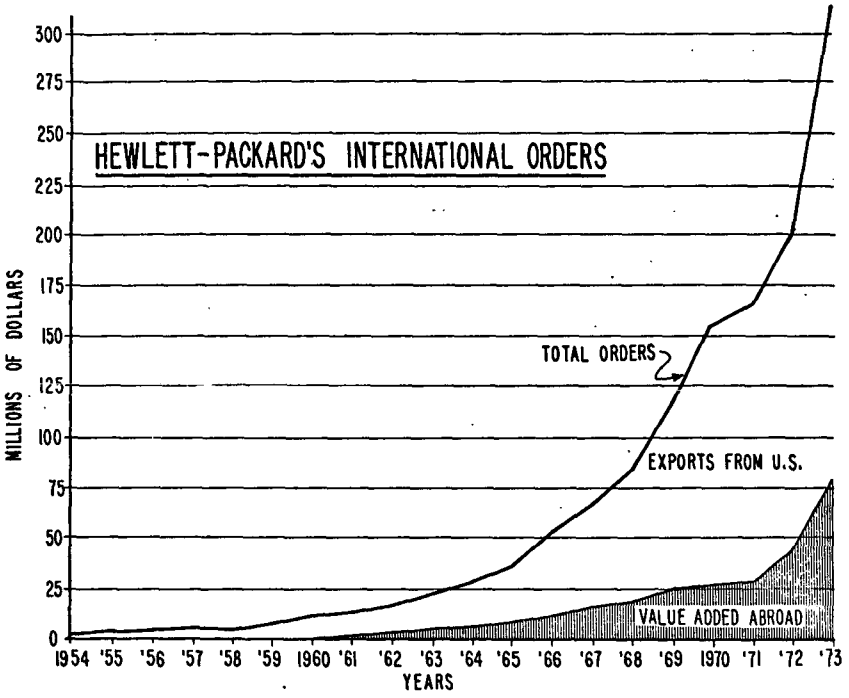


EXHIBIT I

Clearly, this export activity requires a proportionate amount of our total employment—development and production engineers, manufacturing people, clerks, accountants, etc. So far as manufacturing is concerned, over 5,600 jobs, 35 percent of our total U.S. manufacturing employment, exists to support our international activities—which in turn have grown so fast only because of the investments in marketing and manufacturing facilities we have made abroad—3,600 of these jobs are in California, 1,300 are in Colorado and the balance is distributed among the states of Massachusetts (325), Pennsylvania (160), and New Jersey (220).

Let's look at these growth figures. They show that Hewlett-Packard has grown much faster than the growth of the U.S. economy. In the years 1960 to 1970, for example, the average annual increase of U.S. gross national product was a little less than 7 percent. For Hewlett-Packard's sales as a whole, it was slightly over 16 percent, but for our exports the annual average increase amounted to almost 28 percent!

Similarly, while total employment in the U.S. grew less than 2 percent per year from 1960 to 1970, Hewlett-Packard's manufacturing employment in the U.S. rose at an average annual rate of about 15 percent, while our U.S. manufacturing employment dependent on exports averaged a *24 percent annual increase.*

In every case where we have established facilities abroad to manufacture finished goods, the principal motive has been to protect and expand our markets outside the United States. Manufacturing at these locations largely eliminates transportation charges and local tariffs. This makes our products competitive with those of local manufacturers.

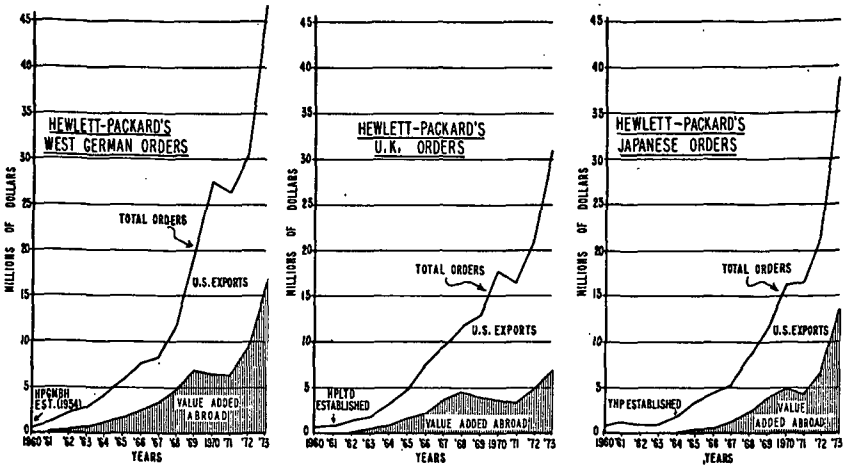


EXHIBIT II

In our experience, manufacturing abroad also has a strong positive effect on our U.S. exports. The three charts in Exhibit II show the increase in orders for our U.S. products which occurred after we had established manufacturing plants in West Germany, the United Kingdom and Japan. We find that manufacturing even a relatively limited variety of standard, higher volume products overseas identifies us as a local supplier and thus benefits all of our product lines and services. As a result, U.S. exports to these areas have grown at a rapid rate. I am certain that if we had not begun manufacturing in West Germany, the United Kingdom and Japan, we would not have secured anywhere near as large a portion of these markets.

As a matter of fact, manufacturing abroad is not a simple affair, and today with increased inflation, currency instabilities, complex foreign laws and regulations, etc., it is sometimes more costly than comparable operations in the United States. At Hewlett-Packard, we have found that the once substantially lower manufacturing labor rates abroad have steadily increased. In addition, our overseas plants have to pay the added cost of importing many of their parts and components, and also do not enjoy the higher efficiency and lower unit costs of long production runs. When you add these up, some products may actually cost slightly more to produce abroad and thus partially or completely offset the local tariff advantages. Yet, even in these cases, we consider local manufacturing a strong plus because it maintains our presence in the country, forms a strong basis for product support and keeps us closely attuned to local needs.

Hewlett-Packard's experience is matched by the experience of a number of other WEMA member companies. These companies have found that manufacturing abroad to penetrate growing foreign markets has increased their U.S. exports and provided greater and more stable employment opportunities for their U.S. employees.

In addition, almost every WEMA company finds that marketing abroad is an expensive matter particularly in the developing countries. Qualified sales

engineers are difficult to find and to retain. Customers tend to be scattered more widely, need greater assistance and pay their bills more slowly than their U.S. counterparts. Adequate after-the-sale-service is also costly. Skilled service personnel and sizeable parts stocks are necessary but frequently under-utilized compared to similar situations in the United States.

Let me take a moment to describe how my company uses U.S. tax incentives to overcome some of these problems and thus increase U.S. exports.

The Hewlett-Packard Company has always recognized the need for an aggressive international marketing program carried out, wherever possible, by technically oriented, locally based sales and service organizations. Unfortunately, in many areas abroad the market is so slim or growing so slowly that it is not economically feasible, at least for the first few years of operation, to expend the funds and effort necessary to establish and maintain effective sales and service organizations.

This was the situation in regard to Latin America in the early 1960's—a potentially good market but one whose proper development seemed beyond our means. After reviewing the matter, we decided to establish a Western Hemisphere Trade Corporation (WHTC) and use the tax benefits to expand our Latin American marketing efforts.

Hewlett-Packard Inter-Americas was established in early 1964. A program of sales visits to the principal countries was immediately begun. In addition, participation in local technical exhibitions was increased, and our existing network of independent sales representatives in the various countries was extensively revamped and strengthened. As signs of market growth became unmistakable, further efforts were undertaken. This included the establishment in 1966 and 1967 of wholly-owned or controlled sales and service organizations in Argentina, Brazil, Mexico and Venezuela. These organizations, in turn, hired technically trained, local sales engineers and service technicians and began an extensive cultivation of their local markets. We also leased space on a U.S. flag freighter for a small exhibition of our products to which we invited local electronic engineers and doctors as the ship visited various Latin American ports.

Ten years has elapsed since Hewlett-Packard Inter-Americans started to function. In this time the cumulative WHTC tax benefits have amounted to a little over $1 million, and virtually all of this amount has been spent to increase our penetration of the Latin American market. Exhibit III shows how well this effort has paid off. Our Latin American sales, which had been going along at a steady level for many years, began to rise almost immediately upon the establishment of our Western Hemisphere Trade Corporation. An even greater amount of growth occurred after the four sales organizations were established in 1966–67. Taking the ten-year period as a whole, the average annual compound growth rate of our business in Latin America has been 31%. This compares to an overall growth rate of 27% for international sales in the same period (Exhibit I) and 27%, 26% and 36% respectively for the strong major markets of West Germany, United Kingdom and Japan (Exhibit II).

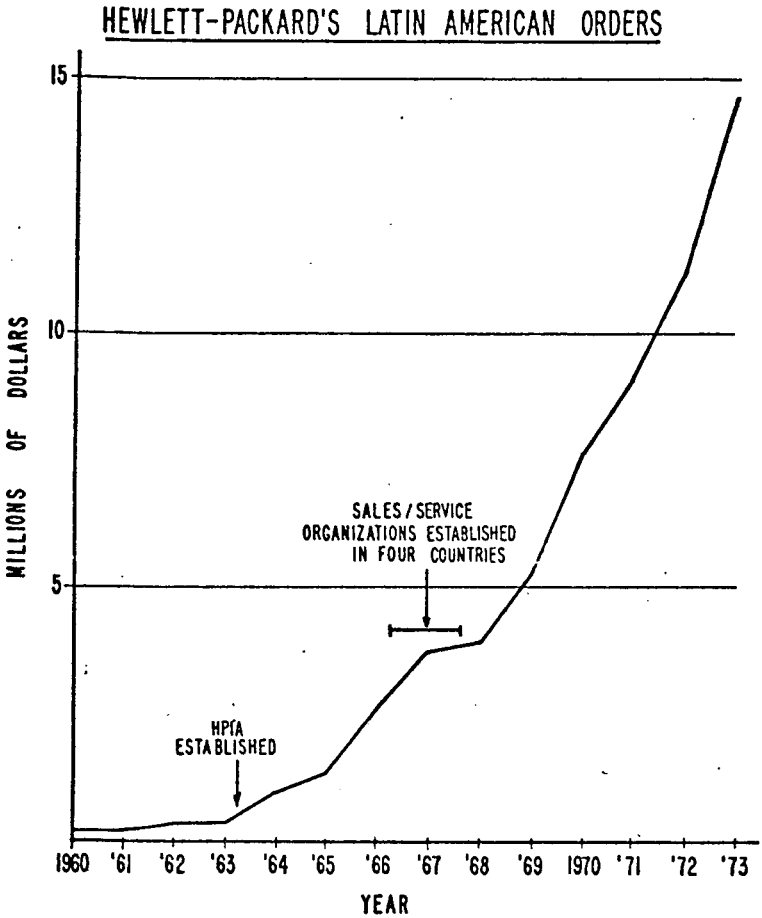

HEWLETT-PACKARD'S LATIN AMERICAN ORDERS
MILLIONS OF DOLLARS
15
10
5
SALES / SERVICE
ORGANIZATIONS ESTABLISHED
IN FOUR COUNTRIES
HPIA
ESTABLISHED
1960
'61
'62
'63
'64
'65
'66
'67
'68
'69
1970
'71
'72
'73
YEAR

EXHIBIT III

Quite frankly, we believe our use of the Western Hemisphere Trade Corporation has produced many benefits. For example, many of our Latin American customers have access to improved assistance and service. Perhaps more important, some 600 U.S. manufacturing workers owe their livelihood to our Latin American business, and the entire effort has been a benefit to the U.S. balances of trade and payments. I feel perfectly confident that, had we not undertaken this ten-year effort, our business in Latin America today would be perhaps ½ to ⅔ lower.

The Domestic International Sales Corporation (DISC) legislation passed by the Congress and signed into law at the end of 1971 provided some tax incentives which would permit U.S. exporters to compete on more nearly the same basis as their foreign competitors. WEMA welcomed the DISC concept as an extremely useful one particularly to encourage and support smaller exporters. In fact, we believe the Congress should seriously consider stimulating further export efforts by increasing DISC benefits to those firms new to export and to smaller exporters. Such stimulation might take the form of 100% deferral on annual exports up to perhaps $2 million.

With all this as background, let me say that WEMA thoroughly agrees with the President's comments on April 10, 1973, "that investment abroad, on balance, means more and better jobs for American workers." We also believe to be successful abroad, many U.S. firms have to make a greater investment and take greater risks than they would in the United States. Under these circumstances, measures that call for limits on international investment and special taxes on profits earned abroad blunt incentives and severely limit competitive ability. U.S. controlled business abroad should be permitted to operate, so far as possible, under the same tax burdens which apply to their foreign competitors and taxes paid abroad should continue to be directly creditable against U.S. taxes. Only in this way can U.S. subsidiaries abroad compete with their foreign competitors on a fair and equitable basis. Finally, we believe that the Congress should enact only those changes in the U.S. tax laws which would remedy specific situations. The Congress should *not* enact a comprehensive series of new tax rules and regulations which would handicap U.S. firms operating abroad, permit foreign competitors to seize market opportunities, and ultimately, result in a loss of jobs here in the United States.

CONCLUSION

In conclusion, Mr. Chairman, I would simply say that WEMA supports the concept and, with the exception of Title IV, most of the provisions contained in H.R. 10710. We believe that prompt enactment of this legislation is necessary to enable the U.S. negotiators to deal effectively with our trading partners in the present round of trade negotiations.

We believe that the provisions presently embodied in Title IV would adversely effect the interests and welfare of the United States. We, therefore, hope that this committee will modify Title IV to permit the extension of MFN treatment and the granting of credits when such actions are in the best interests of the United States. If modification is not possible, WEMA recommends that Title IV be deleted.

WEMA believes a pressing need exists to ensure equitable access to scarce raw materials needed to support the economy of the United States and promote the welfare of its citizens. We, therefore, recommend adoption of language which would seek enlargement of the scope and powers of the GATT to deal with this critical issue, and permit retaliation, if required, against unjustified foreign export restrictions on scarce materials essential to the wellbeing of the United States.

WEMA believes that any changes in our tax laws affecting U.S. trade and U.S. firms operating abroad should be made with the objectives of increasing U.S. exports and permitting U.S. companies to operate abroad on the same basis as their foreign competitors. In this light WEMA urges the Congress *not* to enact tax rules and regulations which would handicap the international operations of U.S. firms and permit foreign competitors to seize market opportunities to the ultimate detriment of U.S. industry and labor.

This concludes my formal presentation; I will be pleased to respond to any questions the committee may have either now or after Dr. Hogan finishes his testimony.

PREPARED STATEMENT OF DR. C. LESTER HOGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FAIRCHILD CAMERA & INSTRUMENT CORP.

Mr. Chairman and members of the Finance Committee . . . I greatly appreciate the opportunity to be here today and would like to thank you for allowing me to comment on foreign trade legislation which is before the Senate at this time.

I'd like to preface my remarks by saying that Fairchild Camera and Instrument Corporation -- as a long-standing member of WEMA and the electronics community in general -- basically agrees with the observations Mr. Hewlett just made regarding the Trade Reform Act of 1973.

As you know, our industry has always taken a strong position in favor of free and equitable trade policies in the world marketplace. We firmly believe this is in the best interests not only of high technology companies such as ours, but also of the entire United States.

Because of Fairchild's experience in internationally integrated manufacturing operations, I intend to point out some of our convictions regarding any trade legislation that might be passed this year.

For instance, you undoubtedly are aware that we have steadfastly opposed those who claim that American semiconductor manufacturers should be denied the use of Tariff Items 806.30 and 807.00. The House Ways and Means Committee recognized the unique characteristics of the semiconductor -- or solid-state electronics -- business, and the importance of these tariff items to our industry and the United States.

I'd like to clarify some of the major reasons for our belief that open trade policies are beneficial to the U.S. and at the same time give you an appreciation for the environment of international competition which is typical of most high technology industries.

As U.S. semiconductor technologies continue to permeate the world marketplace, the importance of maintaining America's dominance in international markets, many of which are just emerging, is clear.

In 1970, I had the pleasure of appearing before the U.S. Tariff Commission to explain the position of the American semiconductor industry. Last year I testified along with Mr. Hewlett's colleague -- David Packard, who I know is familiar to all of you -- before the Ways and Means Committee on the Trade Reform Act you're now considering.

On each of those occasions we described what we considered to be some rather impressive accomplishments for America's high technology industries and, in retrospect, it seems that these industries continually outstrip the most optimistic forecasts.

In an environment of free and equitable trade competition, whenever and wherever American semiconductor firms have participated, they invariably have succeeded in gaining a position of strength. U. S. companies must be provided every opportunity to do business on foreign shores without unnecessary constraints. The rewards are not only limited to our industry and its beneficial effects on such important national concerns as balance of trade and domestic employment and payrolls. The semiconductor industry also has a direct impact on many large U. S. industries that utilize solid-state devices in their products.

U. S. Semiconductor Industry Impact on Other U. S. Industries

The U. S. computer industry, for one, would not be what it is today without semiconductor technologies. The incorporation of semiconductor devices into data processing systems of all sizes has been primarily responsible for the proliferation of higher performing and less expensive computers throughout the world.

The electronic calculator industry is another fitting example. That industry would have been totally lost to Japan if it had not been for American semiconductor firms and their technological developments. Just three years ago the Japanese had almost complete control of this marketplace -- more than 75 percent. Today, primarily because of U. S. semiconductor techniques which allow us to put literally all of the electronic functions on one tiny chip of silicon, Japan owns only about a fourth of the electronic calculator market, which essentially has returned to U. S. firms. The high-labor assembly requirements for the electronic calculator are simply no longer the factor they once were.

But computers and calculators are only two areas where American business has profited because of the semiconductor industry.

The U. S. lost the radio and black-and-white television markets during the 1950s because we did not have the capability to cost-effectively compete with the Japanese. Today American firms are retaining the color TV marketplace because of solid-state electronics.

Just as important are the areas of potential. Semiconductors and other electronics are only beginning to penetrate such fields as automobiles, cameras, household appliances, timepieces, industrial processing equipment and communications systems. These giant markets could, and probably would, go to foreign business if the U. S. semiconductor industry does not remain viable.

Tariff Items 806.30 and 807.00

Let me now address Tariff Items 806.30 and 807.00, which basically, as you know, allow American manufacturers to produce parts domestically . . . ship them abroad for assembly or processing . . . and then reimport finished products with duty only upon the value of the assembly abroad.

For the semiconductor industry, these provisions are critical. Only about five years ago we were putting the equivalent of several hundred electronic components on a single chip of silicon smaller than the size of your fingernail. Today we can put many thousands, sometimes tens of thousands, of components on these tiny chips, and this capability will continue to grow.

International competition in our business is fierce, however, and our overseas operations are the most effective means for U. S. companies to remain competitive.

Essentially there are two basic functions in producing our products. The diffusing, etching and building of these complex devices are accomplished right here in the United States. But the problem of connecting the wires so that this mass of electronic circuitry can be connected to the outside world is definitely a low-technology, high-labor part of our business. Therefore U. S. semiconductor companies since the early and mid-1960s have concentrated their assembly operations offshore.

This is where Tariff Items 806.30 and 807.00 are so important . . . they allow U. S. firms to operate cost-effectively, and thereby lead the world in the international marketplace. As I will explain, the economics of the U. S. semiconductor industry, as well as my own company, support this.

Economic Factors

In 1973, the semiconductor industry produced and sold $4.5 billion worth of semiconductor devices worldwide. We estimate that in 1980, the industry will produce and sell something in excess of $11 billion worth of these devices. And for the remainder of the decade we anticipate a cumulative semiconductor marketplace of more than $60 billion.

If U. S. companies are going to compete in this environment, they must be allowed to build products in the most cost-effective manner.

In 1974, for instance, the United States marketplace is expected to consume some 48 percent of the world's semiconductor devices. However, American companies will produce approximately 62 percent of the world market, thanks to the overseas operations and policies which allow us to remain competitive (see Figure 1).

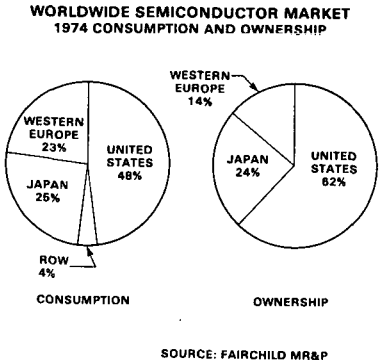


Figure 1

International semiconductor consumption is now growing at a faster pace than United States consumption. In 1980, for instance, the U. S. will be consuming some 42 percent of the world semiconductor market. Nonetheless, if allowed to compete fairly on the international scene, we expect that U. S. companies can still produce 64 percent of the world's semiconductor devices (see Figure 2).

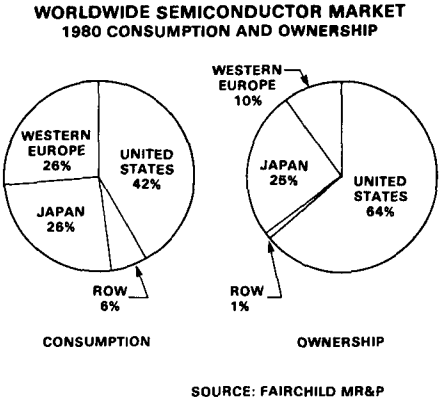


Figure 2

Industry statistics from 1958, running through 1980 projections (see Figure 3), definitely show this trend toward international markets.

The United States market will continue to grow dramatically in dollar volume, but will decrease each year as a percentage of the total.

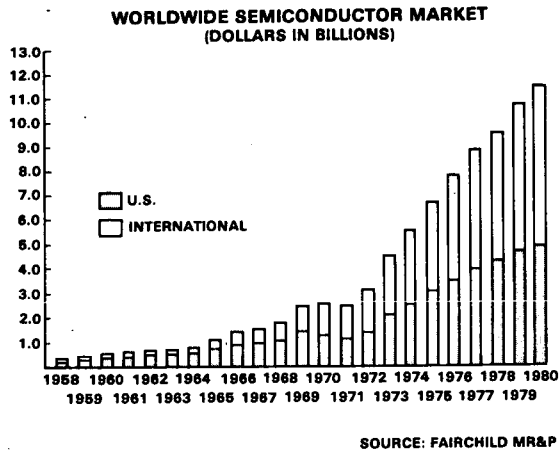


Figure 3

The 1980 semiconductor market is expected to be more than $11.4 billion, with Japan's and Western Europe's combined potential exceeding that of the U. S. This is another strong sign that the United States should retain and safeguard its competitive position everywhere.

When we consider all of this potential, I think an impressive fact is that the U. S. semiconductor industry's balance of trade has been consistently positive for more than a decade and, except for the 1970-71 recession, has shown steady progress (see Figure 4). This is considerably different from the erratic overall balance of trade of the U. S. (see Figure 5). In 1973, the U. S. semiconductor industry's positive balance was $490 million, and is expected to approach $600 million in 1974.

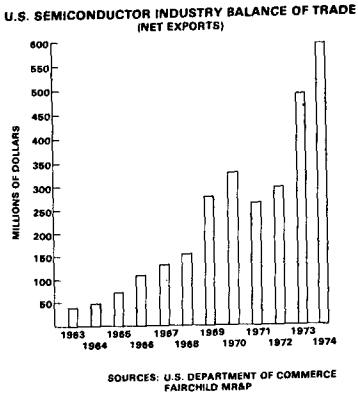


Figure 4

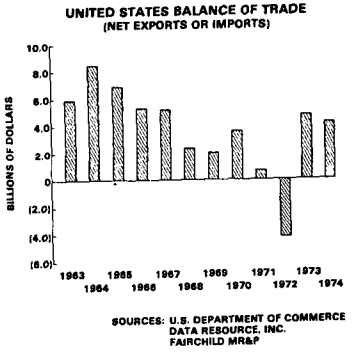


Figure 5

Looking specifically at Fairchild Camera and Instrument Corporation, our semiconductor trade balance also has been consistently positive (see Figure 6). Last year we accounted for $44 million, or 9 percent, of the industry's favorable balance of trade. In 1974, we expect a positive trade balance of $75 million, or 13 percent, of the industry's total.

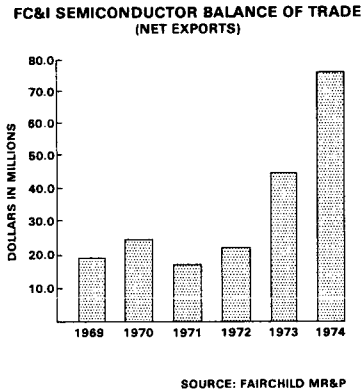


Figure 6

The industry has enjoyed a positive balance of trade in all of what are currently the major semiconductor markets outside the U. S. -- West Germany, the United Kingdom, France and Japan (see Figure 7, 8, 9, 10).

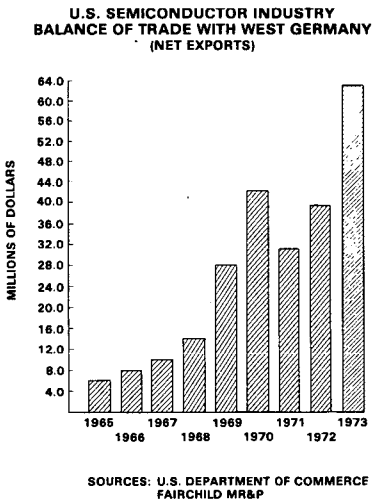


Figure 7

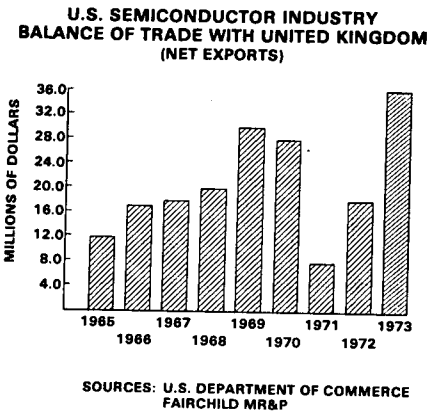


Figure 8

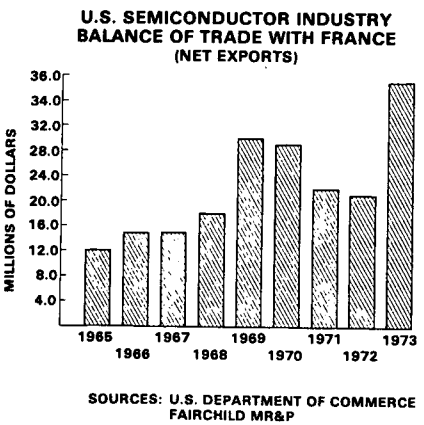


Figure 9

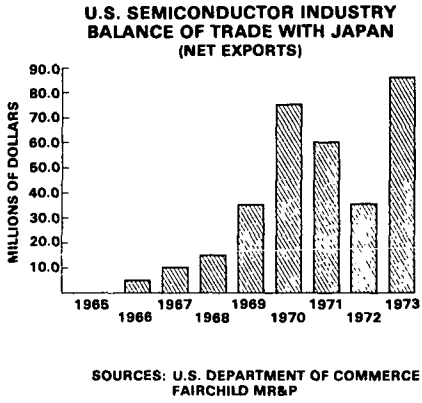
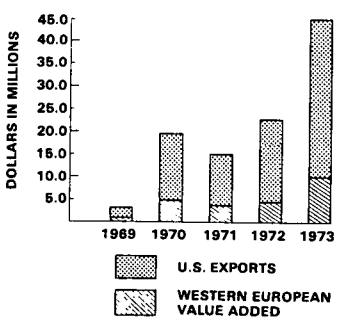


Figure 10

In Japan, the U. S. industry's balance of trade has usually been highly positive, but capital investment restrictions have prevented American companies from establishing a strong internal manufacturing position.

We at Fairchild recently improved our performance in Japan through a joint venture. The Japanese have eased their trade barriers to a minor extent recently but they still remain strong and the concessions that were made came only after hard negotiations. I think this further bears out the need for the U. S. government to be equipped to engage in trade negotiations. Tariff and non-tariff trade barriers also currently exist in Europe -- a topic I'll discuss in my closing comments.

Despite certain restrictive policies in these areas, Fairchild and other American firms have been able to increase their sales, thanks to the current U. S. tariff rules which permit us to keep ourselves cost competitive. My company's sales in Western Europe, for instance, have increased 200 percent in the past two years (see Figure 11). We've also seen comparable increases in the Far East (see Figure 12). And in Japan, we have actually more than tripled our business in the same period. Our ability to have internationally integrated assembly operations -- facilitated by Tariff Items 806.30 and 807.00 -- was key to this success.



SOURCE: FAIRCHILD MR&P

Figure 11

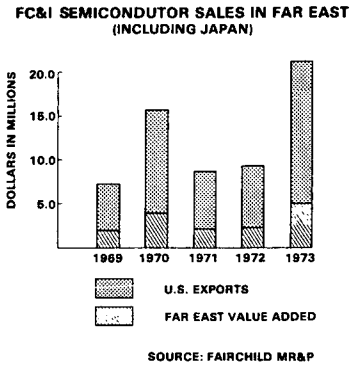


Figure 12

Domestic Employment

Of equal significance is the fact that increases in both domestic employment and payrolls have been realized because internationally integrated manufacturing facilities have allowed U. S. semiconductor companies to achieve worldwide industry leadership.

Contrary to views advanced by some, international operations by innovative and technologically sophisticated companies do not export jobs at the expense of American workers.

The growth of jobs in the semiconductor industry actually corresponds with the establishment of offshore facilities, which essentially began in 1962 (see Figure 13). Because offshore operations allowed the U. S. semiconductor industry to be competitive and to grow, they favorably influenced domestic employment, which has nearly doubled in the last decade.

The employment decline in 1970-71 was caused by the recession. However, the U.S. semiconductor industry achieved peak employment levels in excess of 100,000 last year and this is expected to increase by about 20 percent in 1974.

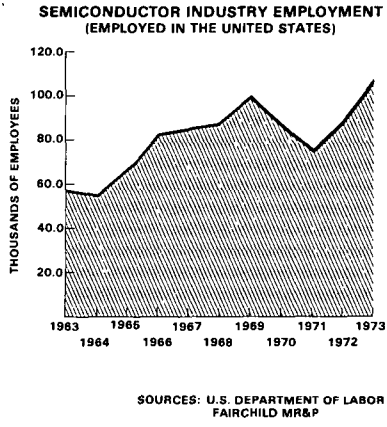


Figure 13

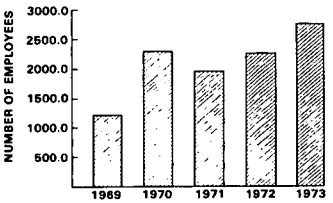
Some argue that denial of Items 806.30 and 807.00 would bring foreign assembly jobs "back" to the United States. Whatever the case in other industries, that is simply untrue in the semiconductor business. The overwhelming majority of semiconductors can only be sold very cheaply -- first, because their inexpensiveness is a prerequisite for their large-scale use in electronic end-equipment; and second, because foreign competition will always be present.

As a result, most semiconductor products cannot be marketed anywhere if they are assembled with domestic labor at U. S. wage rates. Increased labor costs for our company alone would be an estimated $70 million per year. The cost of our products therefore would increase substantially and would undoubtedly price them out of the market. The undeniable fact is that semiconductors are one of those product types that cannot be totally produced in the U. S. and sold competitively.

Should Tariff Items 806.30 and 807.00 be repealed without alternate policies instituted, U. S. semiconductor manufacturers who want to remain competitive could well be forced to take the only alternative available to them -- shifting more operations abroad. Thus, the unalterable economics of semiconductor production dictates that the elimination of these Tariff Items would substantially reduce U. S. employment.

Semiconductor operations in the Far East and the U. S. are not by any means independent of one another. We estimate that nearly one out of every four of our domestic employes directly support or interface with offshore facilities (see Figure 14).

FC&I SEMICONDUCTOR FOREIGN SALES IMPACT ON DOMESTIC EMPLOYMENT
(NUMBER OF EMPLOYEES SUPPORTING FOREIGN SALES AT YEAR END)

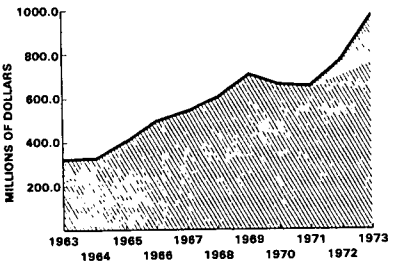


SOURCE: FAIRCHILD MR&P

Figure 14

At the same time, over the past decade, U. S. payrolls in the semiconductor industry show significant growth patterns (see Figure 15). Following a slight downturn during the recession, industry payrolls have now surpassed the peak levels of 1969, standing at the $950 million mark and more than doubling during the last decade.

SEMICONDUCTOR INDUSTRY PAYROLL
(PAID TO U.S. EMPLOYEES)



SOURCES: U.S. DEPARTMENT OF LABOR
FAIRCHILD MR&P

Figure 15

It also is worth noting that the semiconductor industry is an anti-inflationary business in an inflation-plagued world. The average selling prices for semiconductor products continually go down as volumes increase and manufacturing cost reductions are realized (see Figure 16).

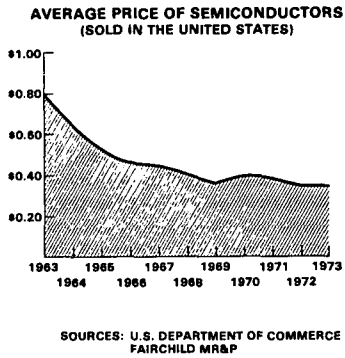


Figure 16

This non-inflationary characteristic is contrary to most industries, but it has allowed the semiconductor business to help improve the quality of other U.S. products as well.

For one thing, it makes these other products price competitive in both U.S. and international markets. Repeal of the current tariff (806.30 and 807.00) provisions, and the institution of protective polices, would therefore diminish the competitiveness of other U.S. companies.

Correspondingly, semiconductor industry price declines as the result of cost-effective manufacturing, have resulted in consistently increasing unit sales and production (see Figure 17).

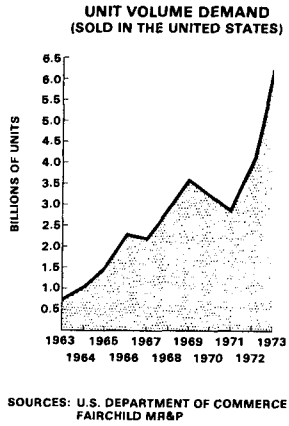


Figure 17

The competitiveness of the U.S. semiconductor industry strictly depends upon continuing low prices for products and the increase in demand which results. As I've said, this is only made possible by internationally integrated manufacturing operations.

We have found that most persons advocating discontinuance of Tariff Items 806.30 and 807.00 do not offer realistic solutions for the semiconductor industry, or for the United States.

Some have suggested automation of the assembly process in the U. S. I'd like to answer that suggestion by explaining that each semiconductor or line of semiconductors requires custom-made automated assembly equipment. When the market for a particular semiconductor product is relatively stable, the investment in the complex and expensive machinery for automated assembly makes sense. In those cases where it is economically possible we do automate to bring foreign assembly and production back to the U. S.

However, in the case of many semiconductor products, innovation is so rapid that by the time the custom-made assembly machines are ready for production, the particular semiconductor is nearly obsolete. And even if the product is still selling, it is rare that one semiconductor product is sold long enough to return the enormous cost of buying automated assembly equipment.

Finally, because of intense competition, many semiconductors must be designed and produced before there is any certainty that a sizeable market exists. No company can repeatedly risk capital on automated assembly operations under these circumstances, nor can a company afford the time lag between innovation and production that automation entails in areas of rapid product development. Hand assembly provides the flexibility of rapid production and low capital investment required to keep pace with competition.

I've already addressed the employment question but I would like to emphasize that Fairchild Camera and Instrument Corporation is very sympathetic to labor's concern over any unfair competition from abroad which causes unemployment.

We believe that the present level of unemployment in the U. S. is entirely unacceptable and we've always conducted our company's operations with this in mind, expanding in areas of chronic unemployment such as New England (Maine).

National Security and Potential Eastern Trade

A marketplace that I did not allude to earlier but which is only now emerging and becoming available to Western world semiconductor firms is in the Eastern Bloc nations. We estimate that this rather controversial area offers a potential commercial semiconductor market in excess of $5 billion for the remainder of this decade.

Recognizing the sensitivity of doing business in this sector of the world, however, I do not advocate totally opening the technological doors to these nations. But, whenever and wherever national security is not jeopardized in any way, I am convinced it is in the best interests of our nation to trade in the Eastern Bloc. Mr. Hewlett cited a number of the substantial benefits that are, and can be, realized.

Of course, adequate national security safeguards must be provided. Aside from closely scrutinizing the types of technologies to be transferred, on-site monitoring and other precautions should be built into any trade agreements. We also should make every effort to guarantee a share of market for American firms.

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If we do not sell to this area, our Western European and Japanese competitors most certainly will, and in some instances are already doing so. The East can provide an important customer base for U. S. semiconductor firms and sales to the East would certainly help insure our position of leadership in world markets by supplying additional resources for us to recycle into future research and development.

Therefore, with national security always a primary consideration, we believe the U. S. should enter the Eastern marketplace. One thing is definite: if we do not, our competition in Europe and Japan will.

Foreign Trade Barriers

The final point I'd like to touch on today relates to the European Economic Community and certain trade barriers some of our allies have placed on non-European products, and thus on the U. S. semiconductor industry.

One of the most disturbing developments in international trade is the European Rules of Origin which unfairly penalize products produced in Europe using American-made devices. Potentially, these rules could drastically reduce the volume of American exports of electronic components in the European Economic Community (EEC) and European Free Trade Association (EFTA) countries.

Denial of the European market to the American semiconductor industry would have one of two effects: 1) it would force American companies to develop European manufacturing facilities sufficient to meet the requirements of the European Rules of Origin, regardless of the costs and inefficiencies involved, or 2) it would deny to American companies a vital market for semiconductor devices.

The latter alternative would also seriously reduce our cost competitiveness and would not only have an impact on the number of people employed by our industry in the U. S. but also in numerous lesser-developed countries.

As we understand the European Rules of Origin, for an electronic or other manufactured product to be classified as originating in an EEC or EFTA country, the value of the non-originating material and parts used in the product must not exceed 40 percent of the value of the finished product.

The Rules also state that the value of non-originating semiconductors used in electronic equipment classified in certain specified classes of the Brussels Tariff Nomenclature, must not exceed 3 percent of the value of the finished equipment.

An additional hurdle is placed in the way of American semiconductor products in that non-originating parts and materials classified in the same tariff heading as the finished product (chapters 84 to 92) of the Brussels Tariff Nomenclature, must be no more than 5 percent of the value of the finished product.

Thus semiconductor devices produced in Europe from wafers fabricated in the United States would not qualify as an originating product under this provision. A European manufacturer who uses American semiconductor devices in end products such as computers, television sets and other electronic equipment would be forced to purchase his semiconductors from a European manufacturer.

The only alternative to meeting these requirements for the semiconductor industry seems to be the establishment of European manufacturing facilities. However, such facilities are not as economically sound as our present manufacturing capabilities. The result would be the loss of our cost competitive position in these markets.

Today, nearly all semiconductor devices produced by American firms in Europe do not qualify as originating products under the guidelines set forth by the European Rules of Origin. Under present plans, we understand these rules will be in full effect by 1977.

An important part of the GATT negotiations therefore must be the elimination of the Rules of Origin provided for by the Agreements between the European Economic Community and the European Free Trade Association.•

Senator PACKWOOD. Let me apologize for Senator Byrd's absence. He still plans to get here if he can this morning. He is tied up in an Armed Services Committee meeting on some critical votes and amendments and he asked me to express his apologies.

For the rest of the witnesses, let me say that it is my intention, as long as I am presiding, to go right through this morning and finish up whatever the time, if that is 12:30 or 12:45, why we will just keep going until we finish.

Senator Taft?

STATEMENT OF HON. ROBERT TAFT, JR., A U.S. SENATOR FROM THE STATE OF OHIO

Senator TAFT. Thank you very much, Senator. I appreciate very much the opportunity to be here to discuss what is certainly one of the most important bills before the Congress at this time.

I understand that my colleague, Senator Percy of Illinois, a cosponsor of the Adjustment Act that we introduced last year, has already testified and I do not anticipate trying to repeat the general approach that Senator Percy, I know, has already set forth very ably.

I have a prepared statement in some detail as to our views on the committee bill that has been developing and I would just like to submit that for the record.

Senator TAFT. I would like, at this time, to point out some of the specific differences in the adjustment assistance provisions that are covered, generally, in my statement, but I would like to be very specific about the differences between the bill which we have introduced (S. 1156) and the House bill.

They are as follows: The House bill would cut off the worker's benefits after 1½ years of job retraining. The Percy-Taft bill would maintain assistance throughout the retraining period.

The committee may want to consider whether this approach ought to be changed.

Second, the bill as we understand it, the bill as it presently stands provides no program for assistance to the communities affected. The Taft-Percy bill does provide specific assistance to the communities affected, and I feel that this is something we should consider very carefully. It is true that while some industries are affected by any change in the import pattern, the secondary impact on a community can in many instances I believe be as serious as the impact upon the individuals in the industry themselves. The individuals may find jobs in some other area, or in an aligned industry in some other branch of business not affected by the imports.

At the same time, this may result in a large change in the income coming into the particular community. An analogy of that came to my attention yesterday in a meeting with Environmental Protection Agency officials, about the possible effect of the 1977 Water Pollution deadlines upon an entire community.

We were talking in terms of not hundreds of jobs, but perhaps as many as 12,000 jobs in a particular area, with several studies having been done that indicate the deadlines will affect 8,000 jobs not in-

volved in the industry to which the prohibitions on water pollution would apply directly.

This situation may well be analogous to the situation of some import impacted communities. Thus, I think some consideration of broad community impact—and admittedly it is hard to try to draw such standards and criteria—would be appropriate.

Third, the House bill does not provide assistance to workers over the age of 60 or older until they reach the social security age. Our bill does specifically address itself to this particular problem and I would think it might be appropriate to address ourselves to this problem, particularly in a period of somewhat rising unemployment.

I think that we ought to recognize that those over the age of 60 have a particular problem in securing either retraining or employment to last until the time that they do reach a social security age.

Fourth, the bill's benefit level for workers are considerably lower than that of the Taft-Percy bill and they do not include fringe benefits in the calculation of previous wages as our bill does.

More and more of the actual percentage of total compensation that workers in this country are receiving in many industries is going into fringe benefits and this seems likely to be a trend that will continue. To be realistic, I would think that an adjustment program ought to address itself to this particular problem.

Next, the bill provides considerably less generous job relocation allowances than our bill does in many circumstances. The provision of adequate relocation help must be a crucial part of a well-structured adjustment assistance program.

I have called in my testimony for an early warning data and analysis function so that government will help to take care of these import related problems, or begin to take care of them, ahead of time. This would provide more notice and I do not think the present bill has such provisions available in it.

Those are what we think are the most important differences between our two measures with respect to adjustment assistance. I would like to mention one particular area that I think deserves a good deal more attention. That is the whole question of import relief through a more efficient domestic economy.

My testimony, as submitted, mostly concerns the bill's proposed defensive actions to restrain imports, or in the case of short supply situations to obtain them. I do not think we should ever forget, however, that our best defense against excessive imports is a good offense.

In terms of lower domestic relative to foreign pricing, of course, our success depends on factors varying from farm crops to executive pay. In large quantity, it relates to the efficiency or productivity of American industry.

For this reason, our last-place position in productivity increases among major free-world nations between 1965 and 1970, 2.1 percent annually as compared to Japan's 14.2 percent annually, has been a major cause of concern.

Even though we recognize the situation improved and hopefully will continue to improve, in 1972 Japan's rate of increase was still about three times the rate of ours.

Nevertheless, the relative importance of improvements in productivity to an improved trade picture for various industries, as well as the importance of various measures needed to improve productivity, have not been assessed definitively. Nor has the government served as a catalyst to improve productivity.

Senator Percy, Senator Javits and I introduced S. 1752, which would revitalize the Productivity Commission and redefine its function so that it would determine that the importance of various productivity changes to the trade situation. It would then concentrate its efforts as a catalyst upon obtainable changes likely to make the most difference in our international competitive position.

That bill passed the Senate unanimously, but apparently is bogged down in the House at the present time over an allegedly excessive price tag. The price tag, I should mention, is only $5 million.

Improvement in our trade laws depend, I think, not only upon favorably reporting of this bill with amendments, but also upon continued congressional assessment of other relevant legislation before us, such as the Productivity Commission bill, with a "trade-conscious" view.

I thank the committee for this opportunity to appear and I will be glad to try to answer questions.

Senator PACKWOOD. Senator, thank you very much. I will not ask you any questions. You and I have to go for a vote right now. I think I agree with every word of your statement.

[The prepared statement and news release of Senator Taft follow:]

PREPARED STATEMENT OF ROBERT TAFT, JR. A U.S. SENATOR FROM THE STATE OF OHIO

Mr. Chairman and members of the committee, I am pleased to have the opportunity to discuss what is certainly one of the most important bills before the Congress at this time. In the interest of time I will confine my remarks to what might be called the import relief provisions.

Congress has not acted on major trade legislation in twelve year, which follows the historical pattern of long intervals between action upon major trade bills. Assuming that the pattern will continue, the decisions made on this bill will affect the operation of the American economy in a fundamental manner for years to come.

The committee and Congress face the task of legislating at a time when the "Freer Trade" cornerstone of our international economic philosophy is under serious attack. While the benefits of international trade are not overly visible to many Americans, the costs have been painfully evident. The real inroads made by imports since the mid sixties and the continuing import threat perceived by workers; the food price explosion, leading consumers to question the old adage that international trade is good for them by definition; and the oil embargo's $15 billion "tax" as a reminder in a painful way that the world is not a textbook free market economy; have clearly fostered a desire among many of my constituents for policies designed to achieve a much greater degree of economic isolationism.

These concerns indicate the necessity to pay greater attention in international economic policies to the needs of our own people, but to do so effectively it is essential to determine whether the benefits which have led this Nation to support freer trade-oriented policies in the past remain today. These benefits are still immense. Just in terms of domestic prices, present import barriers have been estimated to cost us about $10 billion annually. Prof. Stephen Magee of the University of Chicago estimates that enactment of the Burke-Hartke bill would ultimately double the cost.

Those who advocate much more restrictive international trade policies are asking American consumers to pay a multibillion dollar tax. It is their burden

to prove that benefits are at least commensurate. Of course, any such analysis must also take into account the enormous possible foreign policy and international relations costs of a further retreat from international economic cooperation led by the United States, possibly leading in turn to trade retaliation which could jeopardize America's 3 million export-related jobs.

TRADE ADJUSTMENT ASSISTANCE

If the tremendous costs of protectionism I have mentioned are to be avoided, an alternative means of addressing the legitimate concerns of those injured by international trade must be provided. To fulfill this need, Senator Percy and I introduced S.1156, The Trade Adjustment Assistance Act. The Philosophy of the bill is expressed clearly in its preamble, which states that while additional import restrictions should be avoided wherever possible, the workers, firms, industries and communities aggrieved by imports "should not bear unaided the burden for a trade policy which is in the Nation's interest."

The present trade adjustment assistance program, which was enacted at the suggestion and with the support of organized labor, is universally viewed as a major failure of the 1962 Trade Expansion Act. Those few benefits which have been made available have been "too little, too late." While the legislation before you would make some needed improvements, it falls far short of the total overhaul necessary to make adjustment assistance work.

The comments of George Meany and the National Association of Manufacturers on the working of the trade adjustment assistnace program are quite similar and the committee should heed them. Meany has called adjustment assistance "at best burial insurance" and expressed the desire on behalf of the AFL–CIO members for "jobs, not jobless pay." Similarly the NAM has proposed replacement of the present "retroactive compensation" program with a "job retentionœ job creation" program. Rather than accepting unemployment checks, workers generally want to keep their jobs and if this is impossible, move on to better jobs. An adjustment assistance program for workers must be responsive to these concerns or it will constitute little more than a continued, unsuccessful attempt to buy off labor support for international trade.

H.R. 10710 does contain important provisions, along the lines of provisions we had suggested, to make the delivery of benefits more timely. The most important would liberalize greatly the criteria for granting assistance, and place time deadlines in the Government's consideration of adjustment assistance applications. Other provisions of our bill which address this problem would provide increased and more flexible amounts of worker relocation assistance in the form of low-interest loans and grants for those who cannot find adequate help through public employment services, allow workers the opportunity for technical, professional and academic retraining as an alternative to narrowly defined vocational retraining, provide assistance throughout the retraining period, extend eligibility for assistance to workers who voluntarily separate from their jobs, and provide more favorable loan participation terms for firms who have made substantial efforts to adjust to import competition on their own. While I certainly realize the budget constraints, adequate job search, relocation and training arrangements are essential. In addition, a vastly increased Government-industry effort is called for to provide the data and analysis necessary for a more effective "early warning" system, so that preventative measures can be taken early to deal with probable future import competition.

While increased benefits alone will not salvage the adjustment assistance program, they are necessary. Leonard Woodcock illustrated the total inadequacy of present benefit levels when he indicated to your committee that the trade adjustment allowance maximum under H.R. 10710 comprises only 47 percent of an auto worker's wages and a much lower percentage of his total benefit level. This situation must be changed. Our bill would raise that 47% to 80%, and allow fringe benefits to be included for calculation purposes. Furthermore, we recommend that assistance be broadened for older workers specifically in recognition of their difficulties in the job market, by providing assistance for workers age 60 or over, until they are satisfactorily relocated in a new job or they are eligible for social security. We have also recommended that communities as well as workers and firms be aided under the program, with assistance perhaps patterned after the Defense Department's program for communities

impacted by cutbacks in defense and aerospace. While the NAM has raised some thoughtful questions about this approach, I believe it would be valuable to some of Ohio's communities such as Massillon and East Liverpool and I urge the committee to evaluate carefully its potential nationwide.

Unquestionably, these changes in the Adjustment Assistance program would cost millions of dollars. To the extent an expanded program could replace more protectionist responses to our trade-related problems, however, its net effect will be to save multiples of that figure.

FURTHER IMPORT RELIEF AND CONSUMER PROTECTION

In recognition that despite their costs, tariffs and import quotas can provide valuable time for domestic industries to adjust to import competition, H.R. 10710 wisely provides increased authority for those measures, conditioned upon a presidential explanation of the reasons why adjustment assistance would not be a sufficient remedy. The bill's ordering of priorities for import relief from the least harmful (adjustment assistance) to the most harmful (quotas and orderly marketing agreements) is a major step forward. Nevertheless, I am concerned that the bill goes too far by allowing relief when imports are the "substantial" rather than the "primary" cause or threat of serious economic injury, as we had recommended.

The bill must continue to treat import relief solely as a means of buying time so that our industries can become more competitive. Americans can benefit by incurring increased costs for a few years in the interest of promoting a major permanent expansion of job opportunities, but clearly our consumers should have to keep bills out of line with the progress being made by protected industries.

BALANCE OF PAYMENTS AUTHORTY AND RELIEF FROM UNFAIR PRATICES

I fully support the provisions of this bill which provide the tools the President needs to work for elimination of unfair import competition and a fair deal for American industries and their workers.

Authority along the lines of title III of the bill would be helpful in this regard by allowing the President to retaliate against unfair import restrictions or export subsidies used by our competitors. While arrangements creating a one-way trade, superhighway to the American consumer were justifiable during the postwar recovery world of a devastated Europe and Japan, there is no excuse now for allowing our industries and their workers to be placed at a disadvantage by unfair trade practices. The bill should contain provisions, however, that facilitate negotiations aimed at defining acceptable practices and thus minimizing conflicts.

Under title I of the bill the President is empowered to impose unilaterally a 15% import surcharge against one particular country for up to 150 days if "fundamental international payments problems" require it. While some form of this provision is desirable, it illustrates a concern I have with respect to several aspects of this bill—whether they maintain a proper relationship between congress and the President. Application of this provision to one country would almost certainly be seen as economic warfare by the country subjected to it and thus the power to impose such a surcharge is a huge grant of authority to the President. While the Ways and Means Committee has improved the bill tremendously in this respect and has kept in mind that the President will need considerable discretionary negotiating authority, I urge the committee strongly to scrutinize the bill's role for congress and to make any necessary changes so that its role is more constructive.

IMPORT OF MATERIALS IN SHORT SUPPLY

Skyrocketing oil import prices and oil embargo have caused Americans to strive for a new type of import "relief"—assurance that it will be possible to import materials in short supply.

Of course, the extent of the oil import bill depends largely upon the success of our efforts to conserve and to increase production of petroleum domestically. It is too early as yet to endorse or reject the AFL–CIO's suggestion that non-essential imports may have to be curbed so that we can afford the necessary

petroleum. In view of the costs of import restriction I have mentioned, we all hope that this possibility can be avoided.

As a means of assuring continued flow of materials in short supply, I would certainly support a directive to the President to seek international rules—with the caution that we not expect too much and that agreements be entered into after an assessment of their possible impact in terms of forcing us to export our own scarce resources.

However, there are too many crucial cases where the United States allows export of its scarce materials while others restrict exports—ferrous scrap, hides and wheat have been painful examples in the past two years—for us to settle for the status quo.

Although export retaliation may become necessary in some situations after due warning to subject countries, I would not support amendments giving the President *Carte Blanche* authority to undertake it. Congress should retain significant authority in this crucial area, perhaps with reorganization act procedures to speed up any needed ratification or some other compromise arrangement for shared congressional executive responsibilities.

IMPORT RELIEF THROUGH A MORE EFFICIENT DOMESTIC ECONOMY

While my testimony has concerned the bills proposed defensive actions to restrain imports (or in the case of short supply situations, to obtain them), we should not forget that our best defense is a good offense in terms of lower domestic relative to foreign prices. Of course, our success depends on factors varying from farm crops to executive pay, but in large part it relates to the efficiency—or productivity—of American industry. For this reason, our last place position in productivity increases among major free-world nations between 1965 and 1970—2.1% annually compared to Japan's 14.2% annually—has been a major source of concern. Even when the situation had improved in 1972, Japan's rate of increase was about three times ours.

The relative importance of improvements, in productivity to an improved trade picture for various industries, as well as the importance of various measures needed to improve productivity, have not been assessed definitively. Earlier in this Congress, Senator Percy, Senator Javits and I introduced S.1752, which would redefine the productivity Commission's function so that it would determine the importance of productivity changes to the trade situation and concentrate its catalyst efforts upon attainable changes likely to make the most difference in our international competitive position. That bill passed the Senate unanimously but has been bogged down in the House over its allegedly excessive price tag of $5 million. Improvement in our trade laws, depends not only upon favorable reporting of this bill with amendments, but also upon continued congressional assessment of other such relevant legislation before us with a "trade-conscious" view.

TAFT WARNS FINANCE COMMITTEE OF DANGERS OF PROTECTIONIST TRADE LEGISLATION

WASHINGTON, D.C. (April 10)—Senator Robert Taft, Jr. today told the Senate Finance Committee that import restrictions already cost American consumers $10 billion dollars per year and urged the Committee not to enact international trade legislation leading to massive new protectionist measures.

Testifying on the pending Trade Reform Act of 1974, which provides the power for new trade negotiations with our Allies, Taft argued that much more help is needed for workers firms and communities hurt by imports so that they do not bear the full cost of a liberal trade policy. However, he suggested that the government protect them by enacting an expanded program of adjustment assistance rather than imposing much more detrimental import restrictions.

"The present trade adjustment assistance program of grants, loans and tax credits to help affected workers and businesses is a dismal failure," Taft said, "because it provides retroactive compensation rather than preserving jobs. Although benefit levels are obviously important, workers do not simply want burial benefits followed by unemployment; they want to keep their jobs, and if this is impossible, to move painlessly to new and hopefully better jobs. Any adjustment assistance program which fails to address these concerns will be

simply an unsuccessful attempt to buy off labor support for international trade, resulting largely in a waste of taxpayer's money."

To revamp the present trade adjustment assistance program in this manner, Taft suggested changes proposed months ago by himself and Senator Percy. In addition to the provision of more generous benefit levels for workers, based on former fringe benefits as well as wages, he recommended that the Trade Neform Act be amended to provide liberalized allowances for job relocation assistance, an extension of eligibility for benefits throughout job retaining periods, eligibility for benefits of workers who quit to look for other jobs before they are actually laid off and benefits for workers over 60 until they find new jobs or become eligible for social security. In addition to much more timely delivery of present benefits for affected businesses, Taft recommended institution of government and industry "early warning" efforts to provide the data and analysis necessary to detect problems related to import competition in their early stages. He also recommended adjustment assistance to help whole communities, such as Massillon, and East Liverpool in Ohio, industries in response to import competition.

Speaking on the other sections of the bill, Taft urged the Committee to scrutinize the role of Congress in this legislation.

Taft also:

Supported the bill's expanded authority for retaliation against unfair trade practices, stating that government should continue to help obtain a fair deal for American industry in the world economy;

Called for negotiations to assure better access to materials such as petroleum, in short supply, but said that Congress should retain a role in any decision to retaliate against embargoes rather than delegating this power totally to the President;

Reminded the committee of the importance of increased industrial productivity for international trade purposes and called for enactment of his bill to revitalize the U.S. Productivity Commission.

Senator PACKWOOD. As there is no one else here to preside, I will run over and vote, and come back about a quarter of 12.

We will then continue with the witnesses, taking Mr. Henriques, Mr. Skornia, and Mr. Peyser in that order.

[A brief recess was taken.]

Senator PACKWOOD. Mr. Henriques.

STATEMENT OF VICO E. HENRIQUES, VICE PRESIDENT, COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION, ACCOMPANIED BY OLIVER SMOOT, DIRECTOR OF INDUSTRY PROGRAMS INDUSTRIAL ACTIVITY

Mr. HENRIQUES. Mr. Chairman, for the record, I am Vico Henriques, vice president of the Computer and Business Equipment Manufacturers Association.

Mr. McCloskey, who had intended to testify, had a death in his family and is unable to be here today, and Mr. Klages, who originally would have accompanied me has been called to Tehran, so I am accompanied today by Mr. Oliver Smoot, who is the director for industry programs of our association.

We have submitted Mr. McCloskey's formal statement, and a list of our member companies is attached to that statement.

Recent conversations of our association members having been held with members of Congress indicate that so much has changed since H.R. 10710 was passed by the House in December that the bill is irrelevant. This is exactly contrary to the views of business leaders in our industry. We believe that the bill is a good one but that it should

be amended to include authority for negotiations and rules for access to supply and that the Senate should pass such an amended bill as soon as possible. We recognize that the bill presents difficult issues, but we believe that overriding all of them is the need to prevent further deterioration in the international trading environment which environment has proven so beneficial over the past 25 years.

Our industry has long been cited as a model of the concept of a growth industry. Computers and business equipment have been applied most extensively by far in the United States. Whatever happens to the market in the United States in the future—and I believe this industry will continue to grow to become one of our Nation's largest—our products are just beginning to be intensively applied throughout the world.

Nevertheless, figures for the years 1963 and 1973 illustrate the growth of foreign trade as a factor for our industry. In 1963 exports for our industry were $371 million and imports were $109 million. In 1973 exports were $2.32 billion and imports $918 million. During the period, there has been a steady growth in trade for most items in our industry and an overall growth in our positive trade balance. The growth possibilities of our industry have not gone unnoticed abroad, and we face vigorous competition assisted in many countries by governmental restraints.

The rapid pace of technological development alluded to earlier by both Mr. Hewlett and Mr. Hogan exposes all of us to increased competition from products embodying new ideas. In the 1960s, the Japanese realized the value of semiconductor technology and created the electronic calculator market. That market exists primarily in the United States. At the present time, U.S. manufacturers, as you heard earlier, through the application of technology have won back the lead in this product.

However, competing at individual consumer price levels has imposed new pressures on all manufacturers. We think the U.S. industry can meet this challenge without artificial support, and now American calculator firms are vigorous international competitors.

The members of our industry believe wholeheartedly that the country's international economic future is tied to a world trading system open to freer and fairer international competition with reduced tariff and nontariff barriers, and concentration on our economic strengths, which include: highly skilled, paid and productive workers; innovative and aggressive management; vigorous development of technology; and rational application of our resources of capital.

There is a tendency, here and abroad, to believe the U.S. computer and business equipment industry is unstoppable. In the near future, this idea may have to be revised. In recent years other countries have built nontariff barriers consisting of complex inportation requirements, government and quasi-governmental buying policies and direct financial support to their domestic computer industries, and have raised traditional tariff barriers against other products.

At the present time, the EEC and Japan are encouraging massive reorganization through merger of their domestic business equipment manufacturers. In some countries control over access to the national telecommunications network is being used to control development of terminal based computer systems.

As you are aware, U.S. firms must act in strict accordance with U.S. antitrust laws at home and abroad. Additionally, it is not in the American tradition for the Federal Government to plan and coordinate the actions of industry, nor does the U.S. industry desire such arrangements. However, it is clear that no industry can long match the concentrated action of governments which act to favor their own industry or to discriminate systematically against foreign corporations.

We believe, therefore, that our negotiators must have the power, and our Government must have the dedication, to establish and maintain freer and fairer rules of international trade. As we see it, we must not cling by artificial restraints to industries in which we clearly have no comparative advantage, nor can we long countenance other countries to cling to similar barriers of their own. For this reason, we strongly support the effective adjustment assistance provisions in H.R. 10710.

It is because the trade negotiations can address the traditional problems of tariffs; because they have been set up to address the proliferation of nontariff barriers; and because they can be expanded to address the problem of equitable access to supplies that we believe this bill should go forward as rapidly as possible.

There is one additional matter that I will address, title IV on the most favored nation status and financial credits. The U.S.S.R. and Eastern Europe are currently the largest undeveloped markets for our industry's products. Since the passage of the Export Administration Act of 1969, and under the regulation of the Department of Commerce, our member companies have moved to compete in this area. There is a definite preference in these markets to purchase American goods, as they are the best available.

However, as in other markets, we have experienced increased competition from European and Japanese competitors. All of the competing companies face fairly equal restrictions on a national security basis through the International Coordinating Committee. The other nations have, however, long since extended the equivalent of both MFN status and credits to Eastern Europe and to the U.S.S.R.

We urge the Congress and the administration to work as rapidly as possible for a solution acceptable to all parties. In our view, the most appropriate action would be for the committee to address this important issue separately so as not to delay the initiation of the trade negotiations. It must be realized that continuation of the current impasse will serve ultimately not to deny trade to the centralized market countries, but rather either to divert that trade to other competing countries or to force internal development to meet the need. If this occurs, neither the individuals desiring to emigrate nor U.S. business will benefit.

We believe that H.R. 10710 is a good bill. We believe, in summary, that it should be amended to include negotiations on access to supplies, and we urge that the Congress act rapidly to handle the MFN issue and pass this bill so that the trade negotiations which are vital to preserving and expanding fair and equitable international trade can begin.

Thank you, Mr. Chairman.

Senator PACKWOOD. How would we address ourselves, assuming we take it out of this bill, to the problem of trying to encourage Russia to allow emigration of Soviet Jews?

Mr. HENRIQUES. I am afraid, Mr. Chairman, that is somewhat outside our area of competence. We think the issue should be addressed, and we think it should be addressed humanly, but we think it is an issue that is not completely in consonance with the remainder of the bill in its purposes and intent.

Senator PACKWOOD. The thing is, each business group comes here and says, well, it is not in the area of our competence. That does not give us much help, and we may end up trying to do something, however unwisely.

We will do it and have no advice from businesses as to how we should go about it, and that quite often is the way things end up in bills adverse to business, because they simply default on any position at all. But I will leave it at that.

So far I have gotten no advice from any of the trade associations that have testified, except, take it out and to approach it some other way.

Mr. HENRIQUES. Well, sir, that is basically the position we find ourselves in in our industry.

Senator PACKWOOD. Thank you.

I have no other questions.

Mr. HENRIQUES. Thank you.

[The statement of Mr. McCloskey previously referred to follows:]

PREPARED STATEMENT OF PETER F. MCCLOSKEY, PRESIDENT OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. Chairman and Members of the Committee. For the record, I am Peter F. McCloskey, President of the Komputer and Business Equipment Manufacturers Association. A list of our member companies is attached to my statement.

Recent conversations members of our Association and I have had with Members of Congress and Senators, in particular, indicate that so much has changed since H.R. 10710 was passed by the House on December 11, 1973, that the Bill is irrelevant. This is exactly contrary to the views of business leaders in our Industry.

We believe H.R. 10710 is a good bill; that it should be amended to include authority for negotiations and rules for access to supplies; and that the Senate should pass the resulting bill as soon as possible. We recognize that the bill presents difficult issues but believe that over-riding all of them is the need to prevent further deterioration in the international trading environment which has proven so beneficial over the past twenty-five years.

Our Industry has long been cited as a model of the concept of a "growth" industry. Computers and business equipment have been applied most extensively by far in the United States. Whatever happens to the market in the U.S. in the future—and I believe this Industry will continue to grow to become one of our Nation's largest—our products are just beginning to be intensively applied throughout the world. Nevertheless, figures for the years 1963 and 1973 illustrate the growth of foreign trade as a factor for us. In 1963 exports for our Industry were 371 million dollars and imports were 109 million. In 1973 exports were 2.32 billion and imports 918 million. During the period there has been a steady growth in trade for most items in our Industry and an overall growth in our positive trade balance. The growth possibilities of our Industry have not gone unnoticed abroad. We face vigorous competition assisted in many countries by Governmental restraints.

The rapid pace of technological development in the Industry exposes all of us to increased competition from products embodying new ideas. In the sixties, the

Japanese realized the value of semi-conductor technology and created the electronic calculator market. That market exists primarily in the U.S. At the present time, U.S. Manufacturers, through the application of even more advanced technology have won back the lead in this product. However, competing at the price levels attractive to the individual consumer is imposing new pressures on all manufacturers. We think U.S. Industry can meet this challenge without artificial support. Now American calculator firms are vigorous international competitors.

The members of our Industry believe wholeheartedly that the country's international economic future is tied to a world trading environment open to freer and fairer international competition with reduced tariff and non-tariff barriers, *and* concentration on our economic strengths, which include: Highly-skilled, paid and productive workers; innovative and aggressive management; vigorous development of technology; and rational application of our resources of capital.

There is a tendency, here and abroad, to believe the U.S. computer and business equipment industry is unstoppable. In the near future this idea may be as quaint as the ideas expressed so recently in the book, "The American Challenge." In recent years other countries have built non-tariff barriers consisting of complex importation requirements, Government and quasi-Governmental buying policies, and direct financial support to their domestic computer industries and have raised traditional tariff barriers against other products.

At the present time the EEC and Japan are encouraging massive reorganization through merger of their domestic business equipment manufacturers. In some countries control over access to the national communications network is being used to control development of terminal based computer systems.

As you are aware, U.S. firms must act in strict accordance with U.S. antitrust laws at home and abroad. Additionally, it is not in the American tradition for the Federal Government to plan and coordinate the actions of Industry, nor does U.S. Industry desire such arrangements. However, it is clear that no Industry can long match the concentrated action of Governments which act to favor their own Industry or to discriminate systematically against foreign corporations.

We believe, therefore, that our negotiators must have the power, and our Government must have the dedication to establish and maintain freer and fairer rules of international trade. As we see it we must not cling by artificial restraints to industries in which we clearly have no comparative advantage, nor can we long countenance other countries to cling to similar barriers of their own. For this reason we strongly support the effective Adjustment Assistance provisions in H.R. 10710.

It is because the trade negotiations can address the traditional problems of tariffs; because they have been set up to address the proliferation of non-tariff barriers and because they can be expanded to address the problem of equitable access to supplies that we believe this bill should go forward as rapidly as possible.

There is one additional matter I will address—Title IV on Most-Favored Nation Status and Financial Credits. The U.S.S.R. and East Europe are currently the largest undeveloped markets for our Industry's products. Since the passage of the Export Administration Act of 1969, and under the regulation of the Department of Commerce, our member companies have moved to compete in this market. There is a definite preference in these marbets to purchase American goods as they are the best available. However, as in other markets we have experienced increased competition from European and Japanese competitors. All of the competing companies face fairly equal restrictions on a National Security basis through the international Coordinating Committee. The other trading nations have, however, long since extended the equivalent of both Most-Favored Nation Status and credits to East Europe and the U.S.S.R.

We urge the Congress and Administration to work as rapidly as possible for a compromise acceptable to all parties. In our view the most appropriate action would be for the Committee to delete Title IV so that the Congress can address this important issue appropriately, but not delay initiation of the trade negotiations. It must be realized that continuation of the current impasse will serve ultimately not to deny trade to the Centralized Market countries but rather, either to divert that trade to other competing countries or to force internal development to meet the need. If this occurs, neither the individuals desiring to emigrate nor U.S. business will benefit.

Mr. Chairman, we believe H.R. 10710 is a good bill. We believe it should be amended to include negotiations on access to supplies. We urge that the Congress act rapidily to compromise the MFN issue and pass this bill so that the trade negotiations which are vital to preserving and expanding fair and equitable international trade can begin.

Thank you.

CBEMA MEMBER COMPANIES

A.B. Dick Co.
Acme Visible Records, Inc.
Action Communication Systems.
Addmaster Corp.
Addressograph Multigraph Corp.
AMP, Inc.
Bell & Howell Co., Business Equipment Group.
Burroughs Corp.
Control Data Corp.
Dennison Manufacturing Co.
Dictaphone Corp.
Digital Equipment Corp.
Eastman Kodak Co., Business Systems Markets Division.
General Binding Corp.
General Electric Co., Communication Systems Division.
GF Business Equipment, Inc.
Honeywell Information Systems, Inc.
IBM Corp.
Itek Business Products.
K-Tronic, Inc.
Lanier Business Products, Inc.
Litton Industries, Inc.
3M Co.
Micro Switch Division, Honeywell, Inc.
Moore Business Forms, Inc.
The National Cash Register Co.
Olivetti Corp. of America.
Pitney Bowes.
The Singer Co., Business Machines Division.
Sperry Remington.
Sperry UNIVAC.
The Standard Register Co.
TRW Data Systems.
UARCO, Inc.
Unicom Systems, Inc.
Victor Comptometer Corp.
Xerox Corp.

Senator PACKWOOD. Mr. Skornia.

STATEMENT OF THOMAS A. SKORNIA, COORDINATOR OF THE COMMITTEE OF CALIFORNIA SEMICONDUCTORS MANUFACTURERS

Mr. SKORNIA. Mr. Chairman, my name is Thomas Skornia, and I am the coordinator of the Committee of California Semiconductor Manufacturers, a group of relatively small but rapidly growing semiconductor manufacturers and the industries which supply the semiconductor industry. The committee for which I speak is composed of eight semiconductor manufacturers with annual sales in 1973 of more than $300 million and which employ in excess of 15,000 people, all of those in Santa Clara County, Calif. The committee is also authorized to speak for 29 suppliers in some six Western States, and I shall be brief.

The semiconductor industry, as I am sure you know from your experience with Tektronics, is a special part of the electronics indus-

try which has just been represented by Mr. Hewlett and Dr. Hogan from Fairchild. The semiconductor manufacturers and suppliers for whom I speak fully endorse and support the positions of both WEMA and Fairchild with respect to TSUS items 806.30 and 807.00.

My purpose in testifying before you today is to emphasize the importance of the preservation of those tariff schedule items to the vast array of small businesses in the semiconductor industry.

Now, having heard from Mr. Hewlett and Dr. Hogan, you have heard from representatives from two large multinationals, "Fortune 500 companies" which are listed on the New YOrk Stock Exchange. I represent a dozen small multinationals, none doing as much as $100 million in sales in their most recent complete fiscal year, and all but one of which are either privately owned or traded over the counter.

I can declare unequivocally that anything that might be done to harm the large companies in our industry in their ability to utilize Tariff Schedule Items 806.30 and 807.00 will harm us even more because of our more limited resources. So the point that I wish to make with that is that this is not a matter that the enormous multinationals like I. T. & T., Hewlett Packard, Fairchild, are exclusively interested in, but something that very greatly affects the small businesses in the electronics industries who also assemble and process part of their product overseas.

Now, we are small businesses, but we are high technology and multinational, and we are crucial also to America's balance of payments, to more than 15,000 of her jobs, and to her continuing world technological leadership. The statements which Mr. Hewlett and Dr. Hogan have made today respecting Items 806.30 and 807.00 are not for the protection exclusively of big business. They are for the preservation of American technological leadership, large and small, and we support them without reservation.

Now, I will spare you a description of how we operate because I think, as you have said, Senator Packwood, in your discussions with Tektronics, you are fully aware of that, so I will go outside of that, and I will simply second what Dr. Hogan said, that we feel, too, as smaller manufacturers that we could not compete satisfactorily if we had to move all of our assembling operations back in the United States. And I should not say "back" because they were basically never here, except when the companies were very small and in the formative stages. We feel that on cost basis alone, because we have to compete with Japanese and German manufacturers who process and assemble overseas and who bring their products back under schedules similar to 806.30 and 807.00, we would be in a very substantial disadvantage in the world.

Senator PACKWOOD. Is this similar with German and French manufacturers? They do their assembly of this particular kind of gadget in Asian countries?

Mr. SKORNIA. That is my understanding. The Japanese are in Taiwan and some other places which we are also, including—Hong Kong, Korea, and Malaysia.

It is interesting that 30 years ago we had a war over the East Asian coprosperity sphere, and it turns out now that the Japanese appropriated that area economically in a very peaceful way, but in a very substantial way, and they are direct competitors.

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Senator PACKWOOD. You agree with Mr. Hewlett that there is something in the physiological and psychological makeup of American workers that they simply cannot do this kind of work?

Mr. SKORNIA. No, I do not. I would not use Dr. Hogan's example, because I think there are anthropologists who say that the American Indians came across the Bering Straits, and maybe that supports Mr. Hewlett, that they are Asians in origin, too. But I do not think that has anything to do with their dexterity. I would rather think that the jobs in question are so repetitive, involve so much drudgery, that it is very hard to get anyone to do them, even at the regular American wage rates. And I think because they are so repetitive and so undesirable from the standpoint of the American worker it would cost us far more than it would be worth to get the jobs done. And that would make it even more uncompetitive.

So the consequences, I think, would be that we would be in a substantial competitive disadvantage. Now, every industrial nation I know about has provisions like 806.30 and 807.00 in their tariff schedules, and hence make it possible for their technology companies to do the same things overseas that we do, in competition with us.

Now, I would like to, because I think that my committee will authorize a divergent view on section 402 of the bill, express that to you, and perhaps be the one representative of a trade organization who has divergent views. We are very interested in the bill as it stands, specifically section 203 that has to do with these tariff schedule items. But we want the bill with or without section 402. I would disagree with the many trade organizations that have said that the matter of Soviet emigration policy is irrelevant to the bill, because if that is true there are a lot of other things that are irrelevant to the bill, like adjustment assistance. Both can be and are related to trade policy, and I do not find it irrelevant. It may be on other policy grounds desirable to some other trade organizations to exclude it, and the dispute, from the bill. But I do think, as you asked the last witness, that there is a problem if industry is unable to give you any help in how you get that policy changed other than in the trade bill.

Now, for myself, and just extemporizing for a moment, it seems to me that the next time we are asked to sell wheat or some other basic commodity to the Soviet Union, we ought to condition that on a change in Soviet emigration policy. I think, in short, everything that we do, or this Government does, which is potentially of benefit to the Soviet Union can be conditioned upon a change, and a permanent change, in their emigration policy. Certainly, most-favored-nation treatment is one of those items. I do not want to get in the middle of that dispute, but I do want to state to you that we want the bill, and we will take it with title IV or without title IV.

Senator PACKWOOD. The companies you represent manufacture just semiconductors?

Mr. SKORNIA. No. As a matter of fact, that is one other point I wanted to touch on, Senator. One of our companies can give you a watch that you can read while driving with both hands on the wheel. This is a liquid crystal display which you may be familiar with. You do not have to push a button or anything; the LCD display can be readable in daylight. Unfortunately, this one cannot be read in the

dark, and there is no way to be able to read it in the dark without shining a flashlight on it, and I suppose if you are driving at night that is a problem. But this now, this watch is made by a subsidiary of Intel Corp., which is one of the eight that I represent.

One of its main technological ingredients is a large scale integrated circuit which is basically made in the United States, is assembled and further processed overseas under the provisions that I have been discussing. This watch, and the one like Dr. Hogan showed you will, in our belief, bring back to the United States the watch industry which has been dominated by Swiss and Japanese interests for 60 or 70 years. And I think that development alone indicates where we have come from and where we are going technologically, and that it is in the interests of the United States to be sure that the trade policies encourage this kind of continuing technological development, and make it economically possible.

Senator PACKWOOD. Would your companies, the ones you represent, be involved in supplying companies like Fairchild or Hewlett Packard?

Would they buy semiconductors?

Mr. SKORNIA. Yes, they might. In fact there is some traffic back and forth. I think, in fact, some of the smaller companies will even occasionally buy devices by Fairchild, Motorola or TI, the big three in the business. There is some of that back and forth, but probably less of it today, because our industry, the semiconductor industry, has been booming now for the last 12 months. And some companies are backordered almost 52 weeks. It is really unbelievable.

Senator PACKWOOD. I want to understand the industry. There is nothing in and of itself which you would use the semiconductor for? It has got to go into something?

Mr. SKORNIA. That is right.

Senator PACKWOOD. And your companies are not involved in making the something that it goes into?

Mr. SKORNIA. With the exception of watches, in this case—there is another company in our group that makes calculators, handheld calculators, and that same company, as a matter of fact, now makes point of sales equipment. So they do in fact use their own circuits and chips for purposes like that. By and large, that is an exception. Intel makes the watches, National makes the point of sale equipment and handheld calculators, and I think that is about it.

Senator PACKWOOD. Thank you very much.

Mr. SKORNIA. Thank you for your attention.

[The prepared statement of Mr. Skornia follows:]

PREPARED TESTIMONY OF THOMAS A. SKORNIA ON BEHALF OF THE COMMITTEE OF CALIFORNIA SEMICONDUCTOR MANUFACTURERS

Mr. Chairman and members of the Committee, I am Thomas A. Skornia, Coordinator of the Committee of California Semiconductor Manufacturers, a group of relatively small, but rapidly growing, semiconductor manufacturers and the industries which supply the semiconductor industry. The Committee is composed of eight semiconductor companies with annual sales in 1973 of more than $300 million, and which employ in excess of 15,000 people. The Committee is also authorized to speak for 29 suppliers in six states.

The semiconductor industry is a special part of the electronics industries which have just been represented before you by William R. Hewlett, President

and Chief Executive Officer of Hewlett-Packard Company, speaking on behalf of WEMA, and Dr. C. Lester Hogan, President of Fairchild Camera & Instrument Corporation. I would particularly call their testimony to your attention and state that those semiconductor manufacturers and the suppliers whom I represent fully endorse and support the positions of both WEMA and Fairchild with respect to TSUS Items 806.30 and 807.00.

My purpose in testifying before you today is to emphasize the importance of the preservation of Items 806.30 and 807.00 of the TSUS to the vast array of small businesses in the semiconductor industry.

You have just heard from representatives of two large multi-nationals, "Fortune Five Hundred" companies, which are listed on the New York Stock Exchange. I represent a dozen *small* multi-nationals, none doing as much as one hundred million dollars in sales in their most recent complete fiscal year, and all but one of which are either privately owned or traded over-the-counter. I can declare unequivocally that anything that might be done to harm the large companies in our industry in their ability to utilize Tariff Schedule Items 806.30 and 807.00 will harm us even more because of our more limited resources.

We are small businesses, but we are high technology and multi-national, and we are crucial to America's balance of payments, to more than 15,000 of her jobs, and to her continuing world technological leadership. The statements which Mr. Hewlett and Dr. Hogan have made before you today respecting Items 806.30 and 807.00 are not for the protection of "big business," they are for the preservation of American technological leadership, large and small. We support them without reservation.

Let me now describe briefly a typical situation among our small companies with respect to the use of Items 806.30 and 807.00. Most of our companies do all of their R & D and engineering work at U.S. facilities. They manufacture the basic element of the product (the silicon wafer which contains several hundred integrated circuits) in the U.S. Their total employment in the U.S. at this time is in excess of 15,000 people. They purchase the other parts of their product from U.S. manufacturers, and send these parts (including the wafers) to assembly plants in Mexico, Hong Kong, the Philippines and Malaysia where the various U.S. parts are assembled into a finished product. The product is then returned to the U.S. under Tariff Item 806.30 or 807.00 at which time duty is paid on the value added. Back in the U.S. the product is put through final quality assurance testing and shipped to customers throughout the world.

Without 806.30 and 807.00 it would be reasonable to expect one or more of the following to happen even to the smallest businesses in the semiconductor industry:

1. The assembly work done off-shore would continue to be done overseas in which case few if any jobs would return to the United States and the added duties would increase product cost significantly, which means we would be less competitive in world markets. This would have two effects, one would be that foreign producers would become more competitive, so that the U.S. would import more and export fewer semiconductor devices with the consequent deteriorative effect on balance of trade and decreased employment by the industry. For example, the largest foreign competitor of one of the bigger companies in our Committee is a Canadian company which also has an assembly plant in Malaysia. Product returned to Canada from Malaysia carries no duty. Already the Canadian manufacturer has an important cost advantage in world markets.

2. Product destined for foreign market would *not* be returned to U.S. for final testing but would be tested overseas and shipped direct to the overseas customers from the assembly plant. If some testing is done overseas, it might be more economical to do all testing overseas resulting in the exporting of additional jobs.

3. Parts for assembly abroad would be purchased from foreign suppliers instead of U.S. suppliers at lower cost to reduce the value of materials on which duty is paid.

4. The entire manufacturing operation (including the manufacture of the silicon wafers) would be put overseas to supply foreign customers.

5. Eventually all semiconductor manufacturing facilities would be located overseas, and U.S. users would be forced to purchase all of their semiconductor devices abroad.

The one thing that would not be economically possible would be to continue to operate as the industry presently operates. Whatever adaptations the industry

made would result in a deterioration of the balance of trade and the loss of U.S. jobs. Because the semiconductor device is basic to the electronics industry (e.g., computers, calculators, process controls) the repercussions could have a serious effect on the whole economy if the U.S. electronics industry was unable to maintain its worldwide competitive position. Other U.S. industries dependent on electronics would also be adversely affected.

Let me show you an example of what our industry is able to do. This is a wrist watch, but it is no ordinary watch. It is made by a subsidiary of one of the companies in our Committee at a plant in Cupertino, California. This watch does not have hands, you read the time directly by a digital liquid crystal display. The time will remain accurate to within five seconds per month because time intervals are established from the natural vibrations of a piece of quartz crystal. There are no moving parts and the watch operates for one year on the power from one tiny battery. It is an electronic watch using U.S. manufactured parts, some of which are assembled off-shore. The watch itself is assembled in Cupertino, California.

If you go into any jewelry store in this country you will find that most of the watches available to you there are made either in Japan or Switzerland. The manufacturer of this watch has just negotiated contracts to sell substantial quantities in both Japan and Switzerland. The company now employs well over 100 people in its manufacturing plant. We have the beginning of a new industry and it is starting here in the U.S. in a field which has traditionally been dominated by foreign manufacturers. This means more jobs for American workers and a positive balance of trade.

In summary, let me emphasize that the semiconductor companies in our Committee are infants but are growing rapidly. We employ increasing numbers of persons here in the U.S. and our balance of trade contribution is positive, sizeable and growing. If we are to continue to grow we need and ask Congress to provide freedom to complete fairy in the world. We do not want protection. We are willing to stand on our own feet and if we are permitted to do so we will continue to create new jobs and more exports.

Gentlemen, thank you for inviting me to appear before you and for your attention. I would be happy to answer questions.

Thank you.

Senator PACKWOOD. Mr. Peyser.

STATEMENT OF JEFFERSON E. PEYSER, GENERAL COUNSEL, THE WINE INSTITUTE, ACCOMPANIED BY: ARTHUR H. SILVERMAN, WASHINGTON COUNSEL, THE WINE INSTITUTE

Mr. PEYSER. Mr. Chairman, my name is Jefferson E. Peyser, general counsel for Wine Institute, and accompanying me is Mr. Arthur Silverman, Washington counsel.

May I say, I wish to take this opportunity to thank you, Mr. Chairman and the committee, for the opportunity of presenting our views. We realize you are running late. We will try to be as brief as we can.

We are aware, of course, of the provisions of section 301 and the remedies they are providing therein. However, we believe the inequities which are facing our industry and from which our industry suffers, indicate the need for additional safeguards. We also believe that there should be positive and affirmative directions to our negotiators at the time of the discussions.

If it is agreeable to you, Mr. Chairman, I will try to eliminate some of the figures and ask that the entire statement be made a part of the record.

Senator PACKWOOD. All right. Your entire statement will go in the record.

Mr. PEYSER. The Wine Institute, of course, is the California Winegrowers Association. Its members produce approximately 90 percent of all the wine grown in California, and 83 percent of all the wine made in the United States is produced in the State of California.

I am authorized to speak for other wine-producing districts, particularly Ohio and New York.

There is one thing about the alcoholic beverage industry, and that is that it is the most regulated industry of any in America. It has stringent government controls. The Federal laws control production, transportation, labeling, advertising, licensing, and taxation.

In addition to that, each of the States has its own set of laws governing the distribution and sale of wine, and no two States have identical provisions regulating the marketing of wine. The wine industry is subject to many and varied domestic trade barriers, and these are the result of the Supreme Court decisions known as the Brandeis decisions, interpreting the 21st amendment whereby there has been withdrawn from the alcoholic beverage industry the protection of the commerce clause and other constitutional guarantees.

I will not burden you, but these barriers take many forms, such as discriminatory excise taxes, discriminatory license fees, and the like.

In addition to the inhibiting influence of barriers erected by various states, the California and American wine industries have been unable to develop fully the American market because of the views of a small but vocal dry minority who constantly seek to propose measures at the Federal or State level which would prohibit or seriously curtail the sales of our product.

The California and American wine industries compete in the American marketplace with foreign wines from all over the world, particularly with those from the European Economic Community and from Spain and Portugal. All foreign wines move freely in the American market and are only subject to the same laws and regulations which apply to the United States. The same taxes are levied upon them as are levied upon us, plus a very modest import duty.

In spite of this the American winegrower seeking to market his products is faced with a nightmare of restrictive and prohibitive laws. The United States wine export figures bear great testimony to the barriers that foreign countries have erected against our wines. Of the 292,888,191 gallons of American wine sold in 1973, a mere 742,957 gallons were exported to other countries, and I might say a substantial proportion of that went to Canada.

Conversely, in 1973, the United States imported 55,171,747 gallons of foreign wine. These figures clearly indicate that reciprocity is not a reality for the American wine industry. The total f.o.b. value of American wine exported in 1973 was $2,624,000, opposed to a value for imported wines, as determined by the market value in the shipping country, of $282,253,000.

World wine exports in 1972 were valued at over $1.5 billion, and totalled over a billion gallons. Although the United States is the sixth largest wine producer in the world, its share of the exports is practically nil. The world market for wine is growing as the standard of living improves and consumer taste preferences change.

The traditional wine producing countries have high and stable per capita consumption. For example, Italy and France, with almost 30 gallons; Argentina and Portugal, close to 20 gallons; Argentina and Portugal, 20 gallons; and Spain, nearly 15 gallons. These markets are growing fast in per capita consumption in addition to others. I will eliminate the statistics and ask that it be incorporated into the record, the detailed table that is contained here.

The U.S. wine exporters feel it is both proper and reasonable that they be given the opportunity to compete in all markets under the same conditions as foreign lands compete in the United States market. Open and free treatment is accorded to foreign wines in the United States, as evidenced by their spectacular rate of growth.

In 1973, imports of French table wines increased 54.6 percent over 1971, Italian wines by 98.4 percent, Spanish table wines by a phenomenal 139.8 percent, and Argentinian and South African wines by an almost unbelievable 1,063.7 percent and 1,842.7 percent respectively.

I will again omit the table on the detailed countries here and ask that it be made a part of the record.

The flood of foreign wines into the United States may be just beginning. According to recent FAO publication, the production of French wines with an appelation of origin increased by 100 percent in 1973 when compared with the 1972 figure. This figure is particularly significant when one considers the fact that on a value basis the United States was the leading importer of French wines in 1972.

Unfortunately, American wines are not accorded similar treatment in foreign countries. The failure of American wineries to export wine is not due to a lack of desire, but by a lack of significant ability which is attributable directly to protectionist barriers erected by foreign countries.

Senator PACKWOOD. Let me ask you a quick question.

When you go into Japan, is their high tariff to protect the domestic industry?

Mr. PEYSER. Yes.

Senator PACKWOOD. Do they apply the same restrictions to French wind and German wines, or any other wines trying to get into Japan?

Mr. PEYSER. I believe so. The European Common Market, of course, has their own protective barriers which I was going to allude to. As far as Mexico they have an ad valorem tax that makes it prohibitive. And Japan has two things. It has a high duty and it has a, in addition to that it has a high excise tax.

Senator PACKWOOD. The question I am asking is this: does Japan have a significant indigenous wine industry that they are trying to protect against American wines, French wines, or other wines?

Or what is the reason for the high tariff?

Mr. PEYSER. Japan?

SENATOR PACKWOOD. Yes.

Mr. PEYSER. Japan is a greatly developing country. It does not presently have a great wine industry at the moment. And I may say, it is desirous, it has indicated a desire to purchase American wines.

The problem is that the price, by virtue of the excise and ad valorem taxes, is such that it is almost impossible to sell wine in Japan.

Senator PACKWOOD. But the same applies to every wine producing country as far as penetrating the Japanese market is concerned. They do not want to spend their money for wine. I mean, the government is going to make sure they do not.

Is that correct?

Mr. PEYSER. Yes.

Senator PACKWOOD. Thank you.

Mr. PEYSER. Well, here I was just about to say, Japan levies a duty of 320 yen per liter on still wines, or approximately $4.34 per gallon. Still wines, which include table wines, constitute a major share of wine sold throughout the world. Needless to say, a duty of four dollars plus per gallon is extremely high, especially when compared to a duty of 37.5 cents assessed by the United States on imported foreign table wines.

In addition to the high duty rate, Japan imposes very high excise taxes based on the wine's value. An excise tax of 35 cents per gallon is assessed on still wines containing 12 percent or less alcohol by volume, which have a landed cost, insurance, and freight value of not over $10.07 per gallon. However, if the cost, insurance, and freight value of the wine landed in Japan after the imposition of the $4.60 per gallon duty exceeds $10.07 per gallon, the excise tax is 50 percent of the cost, insurance, and freight value of the wine. This 50 percent excise tax rate, coupled with a four dollar plus per gallon duty, causes the price of our wine to Japanese consumers to rise to an astronomical level.

We estimate that a case of California wine at $5 a case free alongside ship, San Francisco will cost the Japanese consumer $28, and a $7 case $31.

Mexico is another country where the United States faces unreasonably high duties. An ad valorem tariff of 75 percent of the invoice value and a barter surcharge of 17 percent of the invoice value are levied on table wines. Naturally, the official valuation is extremely high. A $5 and $7 per case f.o.b. winery would cost the Mexican consumer about $37 and $40 per case respectively.

Many other countries impose high tariffs. Portugal levies a duty rate of four dollars per gallon for still wines. Yet, in 1973, Portugal shipped 8,197,000 gallons of wine to the United States, while in 1959 it shipped only 324,000 gallons. Portugal experienced a growth in the U.S. wine market of over 2,430 percent over a 15 year period. And yet, the U.S. wine exports to Portugal during this period remained negligible.

The European Economic Community has erected what is perhaps the most pervasive scheme of barriers against other wines. The Community regulations are designed to protect their own local industry while at the same time fostering exports of their wines.

One device utilized by the Community to safeguard their domestic wine market is the reference price system. Annually, the EEC sets a reference price for wines imported into the Community. Should the landed cost of the wine be less than this reference price, a countervailing duty is levied equal to the difference between the landed cost of the wine and the reference price.

This device allows the Community to control the minimum price at which imported wine can be sold within the member countries. Price is an extremely important factor in the marketing of wine, and the ability to set minimum prices allows the community to regulate competition from foreign wines.

Senator PACKWOOD. Let me ask you, if I could, to summarize the rest of your statement.

Mr. PEYSER. I just wish to point out that the community likewise, also have enological requirements. For example, they do not recognize what is called the lubrusca grape wine which is the eastern grape. There are some in Oregon, there are some in Washington. They do not even recognize that as wine. They will not permit it to come in.

They have created certain regions in France and they make our regions compare to theirs.

Senator PACKWOOD. Let me interrupt for some questions.

What is the difference between a still wine and a table wine?

Mr. PEYSER. A still wine is—there are two still wines. A table wine is 14 percent or under by alcohol. A dessert is a still wine, but it is 14 percent or over.

Senator PACKWOOD. That is the only difference?

Mr. PEYSER. That is the only difference.

Also, there are figures here that I ask to be incorporated, to show for example 55 million gallons of wine were imported into this country, and we were able to export about 700,000 gallons.

Senator PACKWOOD. Let me ask you another question. It seems to be a solecism in your testimony, you say:

> In order to increase the volume of our exports, we urge that the United States, at the forthcoming meeting of the General Agreement on Tariffs and Trade, seek to negotiate elimination of all foreign tariff and nontariff barriers which impede the free flow of American wines.

And yet, the conclusion of your testimony, you want barriers erected against the import of foreign wines, or you do not want them lowered from what they are on the tariffs.

Mr. PEYSER. Well, we are talking about the barriers which impede—and for all practical purposes, preclude sales in those countries. We are asking frankly, we are not concerned with competitition in the marketplace on an equal basis, what we are talking about is where in effect the barriers completely eliminate the possibility of getting in to those markets.

Senator PACKWOOD. I understand that, and you want those eliminated.

Mr. PEYSER. Eliminated.

Senator PACKWOOD. But you want to continue to keep present duties on imported wine?

Mr. PEYSER. Well, cerainly. Well, if they will eliminate all of their barriers and all of their duties, we will eliminate——

Senator PACKWOOD. That is what I wanted to know.

Mr. PEYSER. That is right.

Senator PACKWOOD. If you can have access to their markets on an equal basis, they can have access here on an equal basis?

Mr. PEYSER. Absolutely.

Senator PACKWOOD. Okay.

Mr. PEYSER. Now, the reason we are asking that this bill be amended for no further reductions is because in the last GATT round we did get hurt, and our sherry tariff was reduced. But we received nothing in exchange therefore. We also recognize very well the position that the common agricultural policy of Europe and the trading off. Agriculture pretty much gets hurt and wine gets hurt worse.

So we believe that the Trade bill should be amended, the Trade Bill should be amended to provide that where a country, either by law such as Argentina or Chile preclude American wines, or where they effectively by a device of reference prices and so forth exclude us from their market, that their percentage of the American market should be frozen—not the quantity, but the percentage of the market.

We have lost almost 25 percent of the American market to imports, and it will continue so unless something is done in that regard.

Thank you.

As I say, I realize the time element, and I would ask that the balance of our——

Senator PACKWOOD. All of your statement will be in the record.

I am sorry, but we are going to have to conclude today. I apologize for keeping you waiting so long.

Mr. PEYSER. Not at all.

Thank you very much.

Senator PACKWOOD. This does conclude the hearings on the trade bill. All of the statements will be printed in full in the record, and they will be summarized for members and staff.

Thank you very much.

Mr. PEYSER. Thank you.

[The prepared statement of Mr. Peyser follows:]

PREPARED STATEMENT ON BEHALF OF WINE INSTITUTE BY JEFFERSON E. PEYSER, GENERAL COUNSEL—WINE INSTITUTE

Wine Institute is the trade association of the California winegrowers. The members of Wine Institute produce approximately 90% of all wine grown in California. Approximately 83% of all wine made in the United States is produced in California. While this statement is made on behalf of Wine Institute, I am also speaking for the entire American wine industry. The other wine producing areas of the United States join in the requests and proposals advanced herein.

The alcoholic beverage industry, of which the California wine industry is a part, is unique. Wine and other alcoholic beverages are subject to more stringent governmental controls than perhaps any other lawful product. Federal laws control production, transportation, labeling, advertising, licensing and taxation. Each of the states has its own set of laws governing the distribution and sale of wine and no two states have identical provisions regulating the marketing of wine.

The wine industry is subject to many and varied domestic barriers to trade. These barriers are a direct result of four United States Supreme Court decisions written by Mr. Justice Brandeis in the middle and late 1930's, known as the Brandeis Decisions, which interpret Section Two of the Twenty-first Amendment to the Constitution as withdrawing from alcoholic beverages the protection of the Commerce Clause and of other Constitutional guarantees such as equal protection and due process of the law. Because of the Brandeis Decisions, various states have erected discriminatory barriers against wines

imported from other states. These barriers take many forms. For example, a number of states levy higher excise taxes on wine produced outside the taxing state than on wine produced within it.

In addition to the inhibiting influence of barriers erected by various states, the California and American wine industries have been unable to develop fully the American market because of the views of a small but vocal "dry" minority of our citizens who constantly seek to propose measures at the Federal, state and local levels which would prohibit or seriously curtail sales of our product.

I. PROPOSALS RELATIVE TO THE ABOLITION OF FOREIGN TRADE BARRIERS

The California and American wine industries compete in the American marketplace with foreign wines from all over the world, particularly with those from the European Economic Community, and from Spain and Portugal. Foreign wines move freely in the American market and are subject to the same laws and regulations which apply to United States wine. The same excise taxes levied on American wines are imposed on imported wines which, in addition, are assessed a very modest import duty.

Although foreign wines are freely distributed in the United States, the American winegrower seeking to market his products overseas is faced with a nightmare of restrictive and prohibitive laws and regulations. The United States wine export figures bear testimony to the barriers that foreign countries have erected against our wines. Of the 292,888,191 gallons of American wine sold in 1973, a mere 742,957 gallons were exported to other countries. Conversely, in 1973, the United States imported 55,171,747 gallons of foreign wine. As the figures indicate, reciprocity is not a reality for the American wine industry. The total f.o.b. value of American wine exported in 1973 was $2,624,647 opposed to a value for imported wines, determined by the market value in the shipping country, of $282,253,666.

World wine exports in 1972 were valued at over $1.4 billion and totaled over a billion gallons. Although the United States is the sixth largest wine producer in the world, its share of the exports is practically nil. The world market for wine is growing as the standard of living improves and consumer taste preferences change. The traditional wine producing countries have high and stable per capita consumption. In 1972, for example, per capita consumption in Italy and France totaled close to 30 gallons, in Argentina and Portugal close to 20 gallons, and in Spain nearly 15 gallons. However, many new markets are opening up where per capita consumption is low, but growing fast. The United Kingdom, Scandinavia, many countries in continental Europe, Canada, Japan and Australia are all extremely promising wine markets.

PER CAPITA CONSUMPTION IN SELECTED NATIONS[1]

Country	Population (millions)	Quantity (gallons)	Increase over 1960 (percent)
United Kingdom	56.1	1.06	43
Sweden	8.2	1.68	127
Netherlands	13.4	1.69	128
West Germany	59.2	5.30	64
Canada	22.1	.74	21
Japan	107.1	.02	79
Australia	13.0	2.30	58

[1] The per capita consumption figure for Sweden is for the year 1970. The figures for Canada and Australia are for 1971 All other per capita consumption figures and the population figures are for 1972.

United States wine exporters feel that it is both proper and reasonable that they be given the opportunity to compete in all markets under the same conditions as foreign wines compete in the United States market.

Open and free treatment is accorded to foreign wines in the United States, as evidenced by their spectacular rate of growth. In 1973, imports of French table wines increased by 54.6% over 1971, Italian table wines by 98.4%, Spanish table wines by a phenomenal 139.8%, and Argentinian and South African table wines by an almost unbelievable 1,063.7% and 1,842.7%, respectively.

U.S. IMPORTS OF TABLE WINES FROM SELECTED COUNTRIES

Country	Gallons		Increase 1973 over 1971 (percent)
	Imports-1971	Imports-1973	
France	7,397,154	11,442,680	54.6
Italy	4,763,999	9,453,400	98.4
Spain	3,286,496	7,881,448	139.8
Portugal	5,250,671	7,930,279	51.0
Chile	78,986	157,693	99.5
Argentina	11,864	138,062	1,063.7
Mexico	11,347	55,928	392.8
South Africa	299	55,395	1,842.7

The flood of foreign wines into the United States may be just beginning. According to recent FAO publication, the production of French wines with an appellation of origin increased by 100 percent in 1973 when compared with the 1972 figure. This figure is particularly significant when one considers the fact that on a value basis the United States was the leading importer of French wines in 1972, and of these imports, 76 percent on a value basis were wines with an appellation of origin.

Unfortunately, American wines are not accorded similar treatment in foreign countries. The failure of American wineries to export wine in significant quantities is not due to a lack of desire on the part of our winegrowers. The lack of significant export trade in United States wine can be directly attributed to protectionist barriers erected by foreign countries.

Some examples illustrate the difficulties facing the American winegrower seeking to establish an export market. Barriers against wines take various forms; some are completely prohibitive in nature. For example, Argentina, whose wines, as we have shown, have enjoyed such astonishing growth here, as well as Chile and Peru totally prohibit the importation of American wines. Yet, wines produced in those countries can be, and have been freely sold in the United States.

Other barriers take the form of extremely high duty rates which effectively preclude the distribution of United States wine. For example, Japan levies a duty of 320 yen per liter on still wines, or approximately $4.336[1] per gallon. Still wines, which include table wines, constitute a major share of wine sold throughout the world. Needless to say, a duty rate of $4.336 per gallon is extremely high, especially when compared to the duty rate of $0.375 assessed by the United States on imported foreign table wines.

In addition to the high duty rate, Japan imposes very high excise taxes on wine, based upon the wine's value. An excise tax of $.35 per gallon is assessed on still wines containing 12% or less alcohol by volume which have a landed c.i.f. value of not over $10.07 per gallon. However, if the c.i.f. value of the wine landed in Japan, after the imposition of the $4.60 per gallon duty, exceeds $10.07 per gallon, the excise tax is 50% of the c.i.f. value of the wine. This 50% excise tax rate, coupled with a $4.336 per gallon duty, causes the price of our wine to the Japanese consumer to rise to an astronomical level.

We estimate that a case of California wine costing $5.00 per case f.a.s. San Francisco, will cost the Japanese consumer approximately $28.00. A $7.00 per case wine would cost about $31.00. Obviously, the salability of American wine in Japan is severely limited by Japan's tariff and excise tax structure.

Mexico is another country where U.S. wine faces unreasonably high duties. An ad valorem tariff of 75% of the invoice value and a "barter" surcharge of 17% of the invoice value are levied on a typical table wine. However, if the invoice value is less than the official valuation—about $18.60 per case of 12 bottles—the rates apply to the official valuation. Naturally, the official valuation is in practice extremely high. A $5.00 and $7.00 per case wine (f.o.b. winery) would cost the Mexican consumer about $37.00 and $40.00 per case respectively.

Many other countries impose high tariff barriers. For example, Portugal levies a duty rate of $4.00 per gallon for still wines. Yet, in 1973, Portugal shipped

[1] An exchange rate of 1 yen = $0.00358 (Bank of America quotation of March 15, 1974) is used throughout this statement.

8,197,000 gallons of wine to the United States while in 1959, it shipped only 324,000 gallons. Portugal experienced a growth in the U.S. wine market of over 2430% over a 15 year period. U.S. wine exports to Portugal during this period remained negligible.

The European Economic Community has erected what is perhaps the most pervasive scheme of barriers against other wines. The Community regulations are designed to protect their own local wine industry while at the same time fostering exports of their wines.

One device utilized by the Community to safeguard their domestic wine market is the "Reference Price" system. Annually, the E.E.C. sets a reference price for wines imported into the Community. Should the landed cost of the wine be less than this reference price, a countervailing duty is levied equal to the difference between the landed cost of the wine and the reference price. This device allows the Community to control the minimum price at which imported wine can be sold within the member nations. Price is an extremely important factor in the marketing of wine, and the ability to set minimum prices allows the Community to regulate competition from foreign wines. The reference price can be raised at any time.

Further, in order to ship wine into the Community, the importer must obtain an import license. By the terms of its own regulation, should the Community feel that its market is threatened by imports, it may limit or totally cease issuing import permits. Any particular wine from a country can be precluded entry, or all wines from all third countries may be embargoed.

This same embargo power is possessed by individual countries within the E.E.C. Should a member nation feel its domestic wine market is threatened, it can suspend imports until the next meeting of the Council.

The reference price system along with the embargo power are obviously restrictive influences against establishing a worthwhile market within the E.E.C. A great deal of time, money and effort is needed to create consumer demand for one's product. American wineries cannot afford to expend the capital necessary to sell in the E.E.C. as long as there is a threat that their exports can be in view of the possible uncertain consequences.

Additionally, many technical rules and regulations inhibit the exportation of wine to the E.E.C. Wines sold in the Community must meet the enological standards prescribed by E.E.C. regulations. For example, table wines to which wine spirits have been added may not be sold in, or shipped into the Community. On the other hand, table wines produced within the Community to which wine spirits have been added may be exported therefrom.

Further, the E.E.C. does not recognize certain grape types as being wine grapes. The labrusca grape which is grown in the Eastern United States and used there in winemaking is not recognized as a wine grape by the E.E.C. Therefore, United States wines made from this entire family of grapes may not be sold in the E.E.C. In view of this, it is only reasonable that imported wines be required to meet U.S. production and labeling standards.

While the E.E.C. regulations protect the Community wine industry against competition from imports, they also foster exports. The regulations provide for export subsidies when conditions in the receiving country warrant. Additionally, storage and distilling subsidies are provided for Community wines when their prices fall below a certain prescribed minimum.

Numerous other barriers against United States wine exist. Further examples could fill volumes. However, the laws and regulations cited above give an ndication of the very severe obstacles faced by the American vintner who wishes to export.

In order to increase the volume of our exports, we urge that the United States, at the forthcoming meeting of the General Agreement on Tariffs and Trade, seek to negotiate elimination of all foreign tariff and non-tariff barriers which impede the free flow of American wines in international commerce.

II. MEASURES DIRECTED AT PRESERVING THE AMERICAN WINE INDUSTRY'S SHARE OF THE DOMESTIC MARKET.

Because of the liberal trade policy practiced by the United States toward foreign wines, such wines have increased their share of the United States wine market from 5.6% in 1957 to 15.3% in 1973. During the past sixteen years, sales

of foreign wines in the United States have increased more than six times from 8,500,000 gallons in 1957 to 55,171,747 gallons in 1973.

In the past few years, sales of imported table wines containing not over 14% alcohol by volume have soared at an alarming rate. In 1970, sales increased over the previous year by 34.7%; in 1971, by 25.8%; in 1972 import sales increased a record 43.9%; and in 1973, by 21%. From 1967 to 1973, imported table wine sales in the United States grew from 11,265,000 gallons to 45,374,657 gallons, a dramatic gain of 303%. During this six year period, we estimate that the market share of foreign *grape* table wines increased from 13.4% to 23.7%. Unless this trend is halted immediately the domestic wine industry will face economic ruin.

There is convincing evidence that the European countries intend to continue to expand their grape table wine exports to the United States. In September of 1972, at a meeting in Hungary, a document was presented to the Intergovernmental Study Group on Wine and Vine Products of the Food and Agricultural Organization of the United Nations which contended that by 1980, United States wine production would not be sufficient to meet the U.S. consumer's demand. The document stated that by 1980, 217,200,000 gallons of foreign wines would be sold in the United States—an increase of 524% over the 1970 import figure. The U.S. delegates to the meeting vehemently disputed these contentions.

During the past three years, 1971, 1972 and 1973, 143,317 acres of grapes were planted in California, the chief grape producing state in the nation. In January, 1974, the California grape growers intended to plant 40,000 additional acres in the coming year. Almost all of these plantings will be used for wine production. The 1971 plantings will begin bearing in 1974. By 1977, all of the plantings between 1971 and 1974 will be bearing. After allowances are made for the small portion of these plantings that will be used for non-wine purpose, and for a normal rate of vine removal, the 1971 through 1973 plantings will cause a net increase in bearing acreage for wine production of about 138,400 acres. Assuming the 1974 plans materialize, by 1977 the total increase will be about 170,200 acres. A reasonable estimate of annual grape production from the increased acreage is 1,021,200 tons by 1977. A reasonable estimate of annual wine production would be 182 million gallons. That is, normal production in 1977 can be expected to exceed what would have been a normal crop in 1973 by 182 million gallons.

Even if there is a decrease of 260,000 tons in the utilization of table and raisin variety grapes for crush, the net increase will still be over 750,000 tons (133,000,000 gallons) by 1977.[2]

The average annual increase in total consumption for 1972 and 1973 was approximately 20,915,000 gallons. In 1973, the increase was only 10,332,000 gallons. Of this increase, 8,129,000 gallons was attributable to imports while only 2,203,000 gallons was from domestic production. That is, consumption of imported wines increased almost four times as much as did domestically produced wine. Yet, California's additional production alone is estimated to 182 million gallons annually by 1977. If foreign wine sales continue to erode the American share of the domestic market, an industry depression is inevitable.

Despite the protectionist posture taken by many foreign nations against wines produced outside the country, the California wine industry has never advocated retaliation. On the contrary, we have for many years pressed for a free and equitable world trade policy. However, an orderly domestic market is essential to the maintenance of a healthy grape and wine industry. If foreign wines continue to flood the domestic market, the American wine industry will sustain grievous damage. And, while certain segments of government readily point to the salutary effects which allegedly result from catering to the economic needs of our allies and trading partners, concrete results are often impossible to pinpoint. In fact, quite the reverse may be true, especially as our balance of payments status, which for a time seemed to be improving, has suffered as serious setback as a result of increased prices of foreign oil and other goods. Nor can one seriously contend that whatever indirect benefit this country may accrue by permitting or encouraging increased sales of imported wine can in

[2] The figure of 260,000 tons presented here is considered a reasonable estimate of the net diversion of table and raisin variety grapes from crush resulting from the increased supply of wine varieties.

any meaningful way offset the inevitable damage such a policy will have on our own wine industry.

Thus, in order to maintain the health of our American wine industry, we urge the United States to make no further tariff concessions on imported wine. The present duty structure, which is already very low, is as follows:

	Per gallon
Champagne and sparkling wines	$1.17
Grape table wine	.375
Grape dessert wine	1.00

Should these modest tariffs be lowered any further, foreign wines will continue to inundate the American market in ever greater volume.

Further, in order to preserve the American wine industry's historical share of the market, foreign wine imports must be limited in a reasonable manner which will provide for an orderly market for all wines, regardless of origin. We propose that each country shipping grape table wine (wine containing not over 14% alcohol by volume and made from a grape base) into the United States which, by reason of tariff or non-tariff barriers effectively prevents the fair and competitive marketing in said countries of United States wines, be alloted a quota according to that country's share of the American grape table wine market during a base period. As a base period, we suggest the calendar year ending December 31, 1971.

We believe that this proposal is fair and equitable. It is not our goal to prohibit imports, but in our view, our proposal is a reasonable and practical approach to solving the problems of the American wine industry.

III. CONCLUSION

The American wine industry has historically been a depressed industry beset with numerous and substantial surpluses. The industry receives no governmental aid or subsidy and must compete with foreign wine industries that often receive subsidies from their governments.

Once again, the U.S. wine industry finds itself faced with the imminence of enormous surpluses. While the industry continues to lose its share of the market to foreign wines, it is denied access to markets abroad.

The situation is critical and corrective measures are needed immediately. To recapitulate the measures which are necessary to remedy our critical situation, we ask:

1. That the Trade Reform of 1973 be amended to provide that there be no further reduction in United States wine tariffs at the GATT negotiations;
2. That the United States strenuously support placing the elimination of tariff and non-tariff trade barriers against U.S. produced wine high on the agenda; and
3. That the Trade Reform Act of 1973 be amended to impose quotas upon grape table wine produced in countries with trade barriers which effectively prevent the fair and competitive marketing of United States wines. Quotas should be based on that exporting country's respective market shares for the calendar year ending December 31, 1971. Such quotas would impose no volume restriction, but would merely freeze the market percentage in order to prevent further erosion of the American wine industry's share of its own market.

We strongly urge your favorable consideration of our requests.

[Whereupon, at 12:25 p.m., the hearing adjourned.]

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