MULTILATERAL TRADE NEGOTIATIONS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

LEGISLATION NECESSARY TO IMPLEMENT THE MULTILATERAL TRADE AGREEMENT CONCLUDED IN GENEVA, SWITZERLAND

APRIL 23, 24, 25, 26, AND 27, 1979

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CONTENTS

Page

Press release of Friday, April 6, 1979, announcing hearings on the multilateral trade negotiations 2

WITNESSES

Office of the Special Representative for Trade Negotiations, Ambassador Robert S. Strauss, Special Representative for Trade Negotiations, and Ambassador Alonzo McDonald, Deputy Special Representative 482

Ad Hoc Committee of U.S. Distilling Companies, Leo Vernon 283
Ad Hoc Subsidies Coalition, Charles R. Carlisle, Stanley Nehmer, and Donald deKieffer 21
Aerospace Industries Association of America, George C. Prill 577
Agricultural Technical Advisory Committee on Livestock and Livestock Products, Peter E. Marble 175
AMF, Inc., Charles Owen Verrill, Jr 106
American Color & Chemical Corp., Julius Goldman 74
American Dinnerware Emergency Committee, David S. King and William K. Ince 347
American Federation of Labor and Congress of Industrial Organizations, Rudolph Oswald 409
American Imported Automobile Dealers Association, Robert M. McElwaine, Fred O. LaFevers, and Bart S. Fisher 508
American Importers Association, Richard A. Maxwell, Gerald O'Brien, David P. Houlihan, and Donald B. Cameron, Jr 212
American Iron & Steel Institute, Robert B. Peabody and Dominic B. King 233
American Paper Institute, J. Stanford Smith and Irene W. Meister 363
American Restaurant China Council, Inc., John C. Heebner, Samuel D. Magavern, and Irving J. Mills 350
Archie, Peter B., Semiconductor Industry Association 586
Automobile Importers of America, Inc., Ralph T. Millet and John B. Rehm 82
Barlow, Wallace D., Share the Work Coalition 397
Bauman, Morton, National Outerwear & Sportswear Association 305
Buchanan, Hon. John H., Jr., a Representative in Congress from the State of Alabama, on behalf of the Congressional Steel Caucus 331
Buffalo Broadcasting Co., Sheldon Cohen and Bart S. Fisher 573
California Almond Growers Exchange, Steven W. Easter 167
California-Arizona Citrus League, William K. Quarles, Jr 562
California Cling Peach Advisory Board, Willis R. Hoard and Charles Herrington 453
Cameron, Donald B., Jr., American Importers Association 212
Carlisle, Charles R., Ad Hoc Subsidies Coalition 21
Carriuolo, Christopher W., Distilled Spirits Council of the United States, Inc., and Heublein, Inc 249
Chamber of Commerce of the United States:
William D. Eberle 11
Ronald K. Shelp, Gordon J. Cloney, and Elizabeth Perkins 458
Cloney, Gordon J., Chamber of Commerce of the United States 458
Coelho, Hon. Tony, a Representative in Congress from the State of California 166, 452
Cohen, Sheldon, Wometco Enterprises, Inc., and Buffalo Broadcasting Co 573

Page

Congressional Steel Caucus:
Hon. Joseph M. Gaydos, a Representative in Congress from the State of Pennsylvania, chairman ... 322
Hon. John P. Murtha, a Representative in Congress from the State of Pennsylvania ... 325
Hon. Barbara A. Mikulski, a Representative in Congress from the State of Maryland ... 328
Hon. John H. Buchanan, Jr., a Representative in Congress from the State of Alabama ... 331
Consumers Union, Mark A. Cymrot ... 403
Cooper, Mitchell, Footwear Division, Rubber Manufacturers Association ... 399
Cooper, Morton, National Outerwear & Sportswear Association ... 305
Cunningham, Richard O., Washington, D.C. ... 93
Cymrot, Mark A., Consumers Union ... 403
Davis, Jane P., Electronic Industries Association ... 391
deKieffer, Donald, Ad Hoc Subsidies Coalition ... 21
DeRose, Joseph, Joint Industry Working Group ... 200
Distilled Spirits Committee for International Trade, William Jay Schieffelin III and James H. Lundquist ... 300
Distilled Spirits Council of the United States, Inc.:
John F. McCarren ... 246
Christopher W. Carriuolo ... 249
Easter, Steven W., California Almond Growers Exchange ... 167
Eberle, William D., Chamber of Commerce of the United States ... 11
Edwards, Ralph L., Ralph Edwards Sportswear, Inc ... 315
Electronic Industries Association, Jane P. Davis, Peter F. McCloskey, and Jonathan H. Lasley ... 391
Elliott, David J., Joint Industry Working Group ... 200
Emergency Committee for American Trade, Lawrence D. McQuade and Robert McNeill ... 4
Esserman, Susan, Syracuse China Corp ... 352
Evans, Hon. Melvin H., a Delegate to Congress from the Virgin Islands ... 68
Ferroalloys Association, George A. Watson and Thomas M. Lamberg ... 581
Fisher, Bart S.:
American Imported Automobile Dealers Association ... 508
Wometco Enterprises, Inc., and Buffalo Broadcasting Co ... 573
Rice Millers' Association ... 185
Francis, Amadeo, Government of the Virgin Islands ... 68
Frederick, Robert, the National Grange ... 124
Gabbert, J. Stephen, Rice Millers' Association ... 185
Gaydos, Hon. Joseph M., a Representative in Congress from the State of Pennsylvania, and chairman, Congressional Steel Caucus ... 322
General Aircraft Association, George C. Prill ... 577
Goldman, Julius, American Color & Chemical Corp ... 74
Goldwater, Hon. Barry M., Jr., a Representative in Congress from the State of California ... 117
Goodman, Charles S., Syracuse China Corp. ... 352
Gorson, James R., Joint Industry Working Group ... 200
Hahn, Bruce N., National Tool, Die & Precision Machining Association ... 519
Hampton, Robert N., National Council of Farmer Cooperatives ... 119
Hauck, Sheldon J., National Soybean Processors Association ... 130
Healy, Patrick B., National Milk Producers Federation ... 134
Heebner, John C., American Restaurant China Council, Inc. ... 350
Herrington, Charles, California Cling Peach Advisory Board ... 453
Heublein, Inc., Christopher W. Carriuolo ... 249
Hoard, Willis R., California Cling Peach Advisory Board ... 453
Hobbs, Claude, Westinghouse Electric Corp. ... 377
Houlihan, David P., American Importers Association ... 212
Hummel, Fred H., Passaic Color & Chemical Co. ... 342
Hurlbert, Gordon C., Westinghouse Power Systems Co. ... 377
Imperial Arts Corp., Tom Kossel on behalf of Irwin Schneider ... 597
Ince, William K., American Dinnerware Emergency Committee ... 347
Independent American Whiskey Association, Leo Vernon ... 283
International Association of Machinists & Aerospace Workers, George Poulin, Helen Kramer, and Jerry Thompson, on behalf of William W. Winpisinger ... 441
International Economic Policy Association, Samuel M. Rosenblatt ... 467
Joint Industry Working Group, Richard D. Langer, Saul L. Sherman, Joseph DeRose, James R. Gorson, and David J. Elliott ... 200

	Page
Kentucky Distillers Association, John F. McCarren	246
King, David S., American Dinnerware Emergency Committee	347
King, Dominic B., American Iron & Steel Institute	233
Kossel, Tom, on behalf of Irwin Schneider, Imperial Arts Corp.	597
Kramer, Helen, International Association of Machinists & Aerospace Workers	441
LaFevers, Fred O., American Imported Automobile Dealers Association	508
Lagomarsino, Hon. Robert, a Representative in Congress from the State of California	129
Langer, Richard D., Joint Industry Working Group	200
Lasley, Jonathan H., Electronic Industries Association	391
League of Women Voters of the United States, Ruth Robbins	187
Lemberg, Thomas M., Ferroalloys Association	581
Lubenson, Herbert, Small Business Legislative Council	519
Lundquist, James H., Distilled Spirits Committee for International Trade	300
Macrory, Patrick F. J., West Mexico Vegetable Distributors Association, and Union Nacional de Productores de Hortalizas	542
Magavern, Samuel D., American Restaurant China Council, Inc	350
Marble, Peter E., Agricultural Technical Advisory Committee on Livestock and Livestock Products	175
Maxwell, Richard A., American Importers Association	212
McCarren, John F., Distilled Spirits Council of the United States, Inc., and Kentucky Distillers Association	246
McCloskey, Peter F., Electronic Industries Association	391
McElwaine, Robert M., American Imported Automobile Dealers Association	508
McNeill, Robert, Emergency Committee for American Trade	4
McQuade, Lawrence C., Emergency Committee for American Trade	4
Medley Distilling Co., Leo Vernon	283
Meister, Irene W., American Paper Institute	363
Mikulski, Hon. Barbara A., a Representative in Congress from the State of Maryland, on behalf of the Congressional Steel Caucus	328
Millers' National Federation, Wayne Swegle	569
Millet, Ralph T., Automobile Importers of America, Inc	82
Mills, Irving J., American Restaurant China Council, Inc	350
Murtha, Hon. John P., a Representative in Congress from the State of Pennsylvania, on behalf of the Congressional Steel Caucus	325
National Cattlemen's Association, Samuel H. Washburn	171
National Council of Farmer Cooperatives, Robert N. Hampton	119
National Customs Brokers & Forwarders Association, Morris V. Rosenbloom and M. Sigmund Shapiro	594
National Forest Products Association, J. Stanford Smith and John Ward	363
National Grange, Robert Frederick	124
National Milk Producers Federation, Patrick B. Healy	134
National Outerwear & Sportswear Association, Morton Cooper, Morton Bauman, and Stanley Nehmer	305
National Soybean Processors Association, Sheldon J. Hauck	130
National Tool, Die & Precision Machining Association, Frank Wikstrom, and Bruce N. Hahn	519
Nehmer, Stanley:	
National Outerwear & Sportswear Association	305
Ad Hoc Subsidies Coalition	21
Semiconductor Industry Association	586
O'Brien, Gerald, American Importers Association	212
Oil, Chemical & Atomic Workers International Union, AFL-CIO, Local 8-406 (New Jersey), Eugene Wyatt	345
Oswald, Rudolph, American Federation of Labor and Congress of Industrial Organizations	409
Passaic Color & Chemical Co., Fred H. Hummel	342
Peabody, Robert B., American Iron & Steel Institute	233
Perkins, Elizabeth, Chamber of Commerce of the United States	458
Poulin, George, on behalf of William W. Winpisinger, International Association of Machinists & Aerospace Workers	441
Prill, George C., Aerospace Industries Association of America, and General Aircraft Association	577
Publicker Industries, Leo Vernon	283
Puerto Rico, Commonwealth of, Hon. Carlos Romero-Barcelo, Governor	55
Quarles, William K., Jr., California-Arizona Citrus League	562
Rehm, John B., Automobile Importers of America, Inc	82

Page
Rice Millers' Association, J. Stephen Gabbert and Bart S. Fisher 185
Robbins, Ruth, League of Women Voters of the United States 187
Romero-Barcelo, Hon. Carlos, Governor, Commonwealth of Puerto Rico 55
Rosenblatt, Samuel M., International Economic Policy Association 467
Rosenbloom, Morris V., National Customs Brokers & Forwarders Association . 594
Rubber Manufacturers Association, Footwear Division, Mitchell Cooper 399
Scalise, George M., Semiconductor Industry Association 586
Schieffelin, William Jay, III, Distilled Spirits Committee for International Trade 300
Schneider, Irwin. (*See* Imperial Arts Corp.)
Semiconductor Industry Association, George M. Scalise, Stanley Nehmer, and Peter B. Archie 586
Shapiro, M. Sigmund, National Customs Brokers & Forwarders Association 594
Share the Work Coalition, Wallace D. Barlow 397
Shelp, Ronald K., Chamber of Commerce of the United States 458
Sherman, Saul L., Joint Industry Working Group 200
Small Business Legislative Council, Frank Wikstrom and Herbert Lubenson ... 519
Smith, J. Stanford, American Paper Institute and the National Forest Products Association 363
Steinberg, David J., U.S. Council for an Open World Economy, Inc 78
Swegle, Wayne, Millers' National Federation 569
Syracuse China Corp., Charles S. Goodman and Susan Esserman 352
Thompson, Jerry, International Association of Machinists & Aerospace Workers 441
Udall, Hon. Morris K., a Representative in Congress from the State of Arizona .. 293
Union Nacional de Productores de Hortalizas, Patrick F. J. Macrory 542
U.S. Council for an Open World Economy, Inc., David J. Steinberg 78
Vernon, Leo, Independent American Whiskey Association, Ad Hoc Committee of U.S. Distilling Companies, Publicker Industries, and Medley Distilling Co.. 283
Verrill, Charles Owen, Jr., AMF, Inc 106
Virgin Islands, Government of, Amadeo Francis 68
Ward, John, National Forest Products Association 363
Washburn, Samuel H., National Cattlemen's Association 171
Watson, George A., Ferroalloys Association 581
West Mexico Vegetable Distributors Association, Patrick F. J. Macrory 542
Westinghouse Electric Corp., Claude Hobbs 377
Westinghouse Power Systems Co., Gordon C. Hurlbert 377
Wikstrom, Frank, National Tool, Die & Precision Machining Association, and Small Business Legislative Council 519
Winpisinger, William W. (*See* International Association of Machinists & Aerospace Workers.)
Wometco Enterprises, Inc., Sheldon Cohen and Bart S. Fisher 573
Wyatt, Eugene, Oil, Chemical & Atomic Workers International Union, AFL-CIO, Local 8-406 (New Jersey) 345

MATERIAL SUBMITTED FOR THE RECORD

Amalgamated Clothing & Textile Workers Union, and Retail Clerks International Union, joint statement 614
American Farm Bureau Federation, John C. Datt, letter 617
American Fine Wire Corp., Daniel Younkins II, statement forwarded by Congressman Shelby 619
American Textile Manufacturers Institute, Inc., statement 620
Arter Hadden & Hemmendinger, William H. Barringer, statement 228
Barringer, William H., Arter Hadden & Hemmendinger, statement 228
Benjamin, Hon. Adam, Jr., a Representative in Congress from the State of Indiana, statement 623
Burley and Dark Leaf Tobacco Export Association, Frank B. Snodgrass; and Tobacco Associates, Inc., Kirk Wayne, joint statement 624
California Avocado Commission, statement 625
Casale, Frank, International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO, statement 649
Casey, Joseph, Valve Manufacturers Association, statement 758
CITC Industries, Inc., statement 626
Consumers for World Trade, statement 627
Cook, O. E., NCR Corp., letter forwarded by Congressman McCloskey 733
Corning Glass Works, Henry F. Frailey, letter 630

Page
Corn Refiners Association, Inc., Robert C. Liebenow, statement 629
Council of United States Feed Ingredient Processors and Exporters, statement 632
Cumins, Gail T., Sharretts, Paley, Carter & Blauvelt, letter 744
Datt, John C., American Farm Bureau Federation, letter 617
Diamond/Sunsweet, Inc., statement 638
Frailey, Henry F., Corning Glass Works, letter 630
Fraser, Douglas A., International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America, letter 655
Great Plains Wheat, Inc., Michael L. Hall, statement 642
GTE Products Corp., statement 646
Hall, Michael L., Great Plains Wheat, Inc., statement 642
Hayenga, M. K., National Corn Growers Association, statement 736
Hehir, Rev. J. Bryan, United States Catholic Conference, letter 758
Hernandez Agosto, Senator Miguel A., Puerto Rico Popular Democratic Party Minority Leader, statement 741
Hiram Walker & Sons, Inc., statement 302
International Leather Goods, Plastics & Novelty Workers' Union, AFL–CIO, Frank Casale, statement 649
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Douglas A. Fraser, letter 655
Jimenez Juarbe, Hector, Puerto Rico Manufacturers Association, statement 743
Joint Retail Committee on Free Trade, statement enclosing study by William R. Cline 658
Jones, Charlie W., Man-Made Fiber Producers Association, Inc., Letter and attachment 730
Kiger, Hugh C., Leaf Tobacco Exporters Association; and Tobacco Association of United States, joint statement 724
King, Frank L., Writing Instrument Manufacturers Association, Inc., statement 722
K Mart Corp., James C. Tuttle, letter 722
Leaf Tobacco Exporters Association; and Tobacco Association of United States, Hugh C. Kiger, joint statement 724
Liebenow, Robert C., Corn Refiners Association, Inc., statement 629
Luke, Hugh D., Reliance Electric Co., letter 744
Man-Made Fiber Producers Association, Inc., Charlie W. Jones, letter and attachment 730
Melex USA, Inc., Carl W. Schwarz, letter 734
Mirro Aluminum Co., C. W. Ziemer, letter 736
National Cotton Council of America, statement 737
National Corn Growers Association, M. K. Hayenga, statement 736
NCR Corp., O. E. Cook, letter forwarded by Congressman McCloskey 733
New York State Grange, Chester Smith, statement 739
Puerto Rico Manufacturers Association, Hector Jimenez Juarbe, statement 743
Puerto Rico Popular Democratic Party, Senator Miguel A. Hernandez Agosto, minority leader, statement 741
Reliance Electric Co., Hugh D. Luke, letter 744
Retail Clerks International Union, and Amalgamated Clothing & Textile Workers Union, joint statement 614
Sharretts, Paley, Carter & Blauvelt, Peter O. Suchman and Gail T. Cumins, letter 744
Schwartz, Norman C., Siegel, Mandell & Davidson, statement 751
Schwarz, Carl W., Melex USA, Inc., letter 734
Siegel, Mandell & Davidson, Norman C. Schwartz, statement 751
Smith, Chester, New York State Grange 739
Snodgrass, Frank B., Dark Leaf Tobacco Export Association, joint statement with Tobacco Associates, Inc 624
Society of the Plastics Industry, Inc., David S. Weil, letter 752
Special Committee for U.S. Exports, statement 754
Suchman, Peter O., Sharretts, Paley, Carter & Blauvelt, letter 744
Texas Citrus Mutual and Texas Citrus Exchange, statement 755
Tobacco Associates, Inc., Kirk Wayne; and Burley and Dark Leaf Tobacco Export Association, Frank B. Snodgrass, joint statement 624
Tobacco Association of United States; and Leaf Tobacco Exporters Association, Hugh C. Kiger, joint statement 724
Tunick, Abraham, Wine & Spirits Wholesalers of America, Inc., statement 760
Tuttle, James C., K Mart Corp., letter 722

	Page
United States Catholic Conference, Rev. J. Bryan Hehir, letter	758
Valve Manufacturers Association, Joseph Casey, statement	758
Wayne, Kirk, Tobacco Associates, Inc., joint statement with Dark Leaf Tobacco Export Association	624
Weil, David S., Society of the Plastics Industry, Inc., letter	752
Wine & Spirits Wholesalers of America, Inc., Abraham Tunick, statement	760
Writing Instrument Manufacturers Association, Inc., Frank L. King, statement	722
Younkins, Daniel, II, American Fine Wire Corp., statement forwarded by Congressman Shelby	619
Ziemer, C. W., Mirro Aluminum Co., letter	736

MULTILATERAL TRADE NEGOTIATIONS

MONDAY, APRIL 23, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. VANIK. The subcommittee will come to order.

First, I would like to thank the witnesses who have requested to testify at this hearing. Formal public views on the results of the multilateral trade negotiations concluded on April 12 are important to the Subcommittee on Trade in its responsibility for consulting with the executive branch on the agreement reached, and on the nature and content of the legislation necessary and appropriate to implement these agreements. This is the first public hearing since the text of the international codes were signed in Geneva and released to the public.

This subcommittee, on behalf of the Committee on Ways and Means, in cooperation with the members of other interested House committees, has been meeting in executive session, examining these codes, and reaching tentative decisions on the provisions of legislation which will both approve and give domestic effect to the agreements.

These procedures are set forth in section 102 and 151 of the Trade Act of 1974. They present unique challenges to cooperation among the executive branch, the public, and the Congress.

I would like to make one or two observations about where we are in these unusual procedures.

First, although we have received texts of the international codes and have been informed of the nature of other nontariff agreements reached in the negotiations, we have not yet been informed of the final tariff reduction agreed to in the negotiations. Thus, any final assessment of how our major sectors fared in sectorial equivalence of competitive opportunities remains to be seen, and I hope this hearing will throw some light on that subject.

Second, while we have reviewed most of the codes and the broad outlines of the administration proposals for implementing legislation, our decisions are tentative and the subcommittee and other members of the interested subcommittees must still review the areas of government procurement, antidumping, commercial aircraft, and other elements of the agreements and implementing legislation, including future negotiating authority. Thus, I would like to reiterate that the testimony the subcommittee will be hear-

ing this week is important, and we expect to give it great significance.

I would like to note, there have been no questions that the tentative decisions by the subcommittee are consistent with the provisions of the agreement reached with our trading partners in negotiating these new and significant codes of conduct in international trade. Nor should there be any question that our decisions must provide an effective base for sound and balanced administration of trade law domestically and active pursuit of a U.S. economic and commercial interest internationally.

I ask unanimous consent that the press release announcing these hearings be placed in the record at this point.

[The press release follows:]

[Press Release of Friday, Apr. 6, 1979]

CHAIRMAN CHARLES A. VANIK (D. OHIO) SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS ANNOUNCES MAJOR HEARINGS ON THE MULTILATERAL TRADE NEGOTIATIONS

Chairman Charles A. Vanik of the Subcommittee on Trade, Committee on Ways and Means, today announced that the Subcommittee on Trade will hold major hearings on the Multilateral Trade Negotiations beginning Monday, April 23, 1979, in room 1100 Longworth House Office Building, at 10 a.m.

As previously announced by Chairman Vanik, the Subcommittee is inviting public testimony on all aspects of the agreements that the President notified to the Congress in his message of January 4, 1979, and on the domestic implementation of those agreements under sections 102 and 151 of the Trade Act of 1974. It is anticipated that the final texts of the agreements soon to be completed in Geneva will be made public prior to the hearings. Attention of witnesses is also called to the press releases of the Subcommittee on Trade announcing tentative decisions taken on implementing legislation on March 13, 19, and 20 and April 5.

Specifically, to the extent possible, witnesses are requested to address themselves to the following:

1. The advantages and disadvantages, overall and by agreement of U.S. acceptance of the international codes, and of the other agreements contemplated, which obtain benefits for the United States and grant U.S. concessions (tariff and nontariff).

2. The treatment the agreements will accord developing countries as signatories and nonsignatories to the codes, the significance of special and differential treatment for developing countries, and the implications of *conditional*, non-discriminatory (MFN) treatment for the trading system.

3. The legal implications of Congressional approval of the agreements for future national, state and local legislative action.

4. The necessary and appropriate statutory criteria which should be included in domestic law relating to United States rights and obligations under the international codes and other agreements.

5. The necessary and appropriate statutory procedures for implementing the multilateral trade negotiations, in terms of agency responsibility, timing requirements, burden of proof, judicial review, etc.

6. The need for further statutory guidance respecting international dispute settlement procedures under the General Agreement on Tariffs and Trade and the international codes to assure effective pursuit of U.S. rights and to strengthen such international procedures.

7. The extent to which the results of the negotiations respond to the Congressional directives in the Trade Act of 1974, including those specified in: Section 103—overall negotiating objectives; section 104—sector negotiating objectives; section 121—steps to be taken toward GATT revision.

As previously announced, Chairman Vanik is inviting the participation in the hearing of members of other committees which have direct jurisdictional interest or which have indicated an interest in the results of the multilateral trade negotiations and the implementing legislation.

For those who wish to appear and testify, the requests to do so must be received by the close of business April 18, 1979. The requests to be heard should be submitted to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, Room 1102

Longworth House Office Building, Washington, D.C. 20515, (202) 225-3625 Notification to those scheduled to appear will be made as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentations will be strictly limited, with the understanding that a more detailed statement can be submitted for the Subcommittee's review and for inclusion in the printed record of the hearings. This will afford more time for interrogation of the witnesses by the members of the Subcommittee. If it becomes necessary, the staff will group the witnesses into panels to expedite the hearings and will establish strict time limitations for each panelist.

There follows an outline of the procedure to be followed by organizations and individuals who may either want to appear and testify during this hearing or file a written statement for the printed record of the proceedings.

All requests to be heard should contain the following information:

1. The name of the witness, his title, address, firm affiliation and/or organization he will represent.
2. If appearing in an individual capacity, a list of any clients at whose request or in whose employ the witness appears.
3. Which proposal or proposals will be discussed.
4. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record of the hearings.

Witnesses will be required to submit 50 copies of their prepared statement to the full Committee office, Room 1102 Longworth House Office Building, 24 hours in advance of the appearance. For those who wish to file a written statement for the record of the hearings, five copies are required for this purpose and will be accepted until close of business April 25, 1979. An additional supply of at least 70 copies of either type of statement (for a personal appearance or for the printed record) may be furnished for distribution to the press and public.

Mr. VANIK. Before we proceed with the first witness, I would like to stress we have a very full schedule. The witnesses must summarize his or her statement and not read it in its entirety, with the assurance that the statement will be placed in the full record. I would like to engage in as much of a colloquy as is possible in connection with the witnesses that are appearing before this committee.

As you know, the record of this proceeding will be carefully studied and reviewed by each and every member of the Ways and Means Committee, and if there are very sharp issues of inquiry that are brought up during this public hearing, we will endeavor to try to get them cleared up.

I am hopeful that the climate that seems to be evident today indicates that there is broad support for the MTN.

In this complex and very difficult agreement that has been concluded, I believe our American bargaining team has done an exemplary job. Most of the Europeans that I have met have told me they thought they were done in. Others may feel they were done in. I do not know. Some sectors of our American economy may feel that they are going to suffer adverse impacts as a result of this. As is customary with such a large and complex agreement, there is reason for practically everyone to have some objection to it. That is in the nature of things.

My hope is that in the overall consideration of it that my members will come down on the side that there is more good than there is harm and that the decisions will weigh in favor of supporting it. I expect in my own area there are going to be some problems, and they may be very difficult. I think there probably are going to be some inflictions of hurt on some parts of the American economy

and perhaps some American workmen. We cannot legislate a perfect agreement in which everybody comes out ahead.

I think most agreements in this world involve everybody giving something. In the final analysis, the whole object of a trade agreement is to establish a free flow of commerce between the nations with the thought that this free flow of commerce is going to stimulate other constructive agreements between the nations and firm our relationships among all of the nations of the world.

I firmly believe that, in the final analysis, trade is the currency of peace. There may be some other agreements, talk about limiting armaments, doing other things, but I think when we come down to the final issue, I think we will probably have to conclude that trade is the currency of peace and we ought to stimulate it, we ought to make that currency work for the world in providing the goods of mankind freely and openly, so that the people of the world can have the benefit of the best of every nation offered in the marketplace.

So our first witness this morning will be the Emergency Committee for American Trade, Mr. Lawrence C. McQuade, senior vice president, W. R. Grace and Co.

Mr. McQuade, if you are ready to proceed.

Mr. McQuade is accompanied by Mr. Robert McNeill, who is frequently before this subcommittee.

STATEMENT OF LAWRENCE C. McQUADE, ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE; ACCOMPANIED BY ROBERT McNEILL

Mr. McQUADE. Ready to go?

Mr. Chairman, I appreciate this opportunity to appear before your subcommittee in support of the trade agreements negotiated in Geneva.

As you know, I am here representing the Emergency Committee for American Trade, whose members are 64 U.S. business leaders. Their companies had sales in 1977 of $325 billion and employed 5 million people worldwide.

ECAT companies have extensive international operations. We support the ideas which you have outlined of international economic cooperation and an open system of trade and investment. For our part, we are very pleased with the outcome of the Geneva negotiations. We think such a move is badly needed and that it will increase the volume of world trade, and that it will lead to greater openness, and fairness in the world economic community.

Having said that about the totality of the negotiation, we will say that the greatest achievement of the negotiation is the subsidies code, which is badly needed. The trade effects of subsidies are a growing concern for those of us in the international trading community. They could undermine the international trading system unless they are brought under surveillance and control.

The primary benefit of the new code on subsidies is recognition that competitive advantage in international trade should not be derived from domestic subsidies, that is, subsidies on production. If the code comes into being, such subsidies can be legally offset by countervailing duties, and that will be for the United States a step forward.

In return for that and the other benefits of the code, the United States has agreed to accept an injury test for countervailing duties. We really have three recommendations for this subcommittee on the subject of the subsidies code.

We understand that a tentative decision has been made by this subcommittee to accept most of the language of the code defining injury for the implementing legislation. The code itself, however, in a footnote on page 4 of the GATT text, notes that the term "injury" is taken to mean material injury in accordance with article 6 of the GATT.

It is our understanding that the subcommittee has tentatively made a decision on the definition of injury which does not specify the "material" test. We strongly recommend that this particular decision be reconsidered and that you either add the word "material" or consider a formulation which will make it clear that injury determinations pursuant to the code should demonstrate that the injury must be found to be important and consequential.

If the United States makes its injury test too easy to meet, then the injury test of our trading partners will also be too easy—since they likely will emulate our test—and that could potentially harm U.S. exports. This is doubly important since the injury test in the international dumping agreement will be the same as that for the subsidies code. That is our first point.

Our second point on the subsidies code is that ECAT understands that a tentative decision has been made to set time limits for factfinding and decisionmaking.

Mr. VANIK. On that one point you state that your understanding of the subcommittee's decision on injury does not specify material injury. While the drafting is not complete, we did adopt the language of the code with respect to injury. Your reading of the committee decision is not quite in——

Mr. MCQUADE. I am delighted to hear that.

Mr. VANIK. You might check that with staff after you finish.

Mr. MCQUADE. I am getting good news before I have gotten started.

Mr. VANIK. That is the purpose of this interchange, so that we clear up our understandings.

Mr. MCQUADE. As to time limits for countervailing and dumping investigations, we fear that if you set too rigid a time limit that you may get in the position where you cannot really get the facts, especially in this awkward international situation where you have to go to another country and very often their ability to bring facts together is poor. We would like to be sure there is enough time so that all the data can be before Treasury or the International Trade Commission before decisions are made. We think that is a subject which deserves some additional exploration.

Our third point is really a suggestion dealing with the international antidumping code, which presently requires that remedial action be taken in dumping cases only after the dumped goods have been found to be a "principal" cause of injury, with quotations around principal.

As they conform the international dumping code to the just-negotiated subsidies code, that test of principality will be dropped, making it easier for other governments to apply dumping duties to

U.S. exports. While I do not think you can do it this time around, we do hope that you will urge that a future effort be made by U.S. negotiators to seek to renegotiate the subsidies code for the purpose of adding a test such as "substantial" or "principal" to that causal link between the dumping and injury.

On the procurement code, we are strongly in favor of that. It offers great opportunities for U.S. exports. It should open about $20 billion of foreign government purchases to U.S. bidders, and I believe that we will be able to get a substantial share of that. We certainly will pursue it with vigor.

The standards code again is of great importance——

Mr. VANIK. Do you have any comment on the story that was reported in today's newspapers on the Japanese utility industry?

Mr. MCQUADE. I can only say that it strikes me as good news that the Japanese seem to be coming to the United States on May 2, with $7.2 billion of potential government procurement which they seem prepared to open to U.S. bidders.

I always have a little fear, however, that the Japanese will be able to frustrate the apparent opportunities, but I think it is a step forward.

Mr. VANIK. How do you feel about the problem that has been raised by some of the producers of heavy electronic equipment, that since the American public utilities industry is 85 percent privately owned, that this creates some special problems since there is more public ownership there?

Mr. MCQUADE. I would hope that these things can be brought within the code in the future, but my short-run feeling is that we should take this step forward while we can. I think we will continue to have to work with the Japanese, and that is one of the more frustrating experiences for American business and the American Government.

I strike a note of hope without a high note of confidence.

On the subject of standards, we do see this as of great importance to exporters and investors, because it can help stop the practice of using standards to inhibit or prevent imports. In the case of standards, the United States shares with other countries the fact that we will have some conflicts with some standards and regulations of our own which have been adopted for domestic policy reasons.

For example, we have a regulation requiring foreign chemical companies to disclose proprietary information before marketing their products here. We can urge that such U.S. laws and regulations in conflict with the code be reviewed, giving due weight to considerations of cooperation with our international trading partners so that we can abide by this code and not use these regulations in a discriminatory way internationally. It is one of those cases where we give and we get.

The final point I will note is on safeguards. We regret that this code has not yet become final because it is one of the more desirable of the potential pieces of the total package. It would prevent import restrictions from being imposed without first conducting public investigations and determinations of serious injury to domestic producers. It would be desirable to have the code cover both offical and the unofficial import restraints.

The subcommittee had made a tentative decision shortening the period of time for escape clause investigations and when the safeguards code comes into being, I hope you will bear in mind the issue we discussed a few minutes ago, that is, not to impose unrealistic time constraints.

Mr. VANIK. On that point, the time limits decision is reflective of how the antidumping and countervailing duty provisions have been administrated. If we can be assured of better administration, we shall be glad to consider timing requirements.

Mr. MCQUADE. I would like to see that happen. And I hope that the Treasury and others will make that commitment.

Mr. VANIK. You might urge the Treasury to expedite that.

Mr. MCQUADE. We will urge them, too.

Mr. VANIK. All right.

Mr. MCQUADE. To bring my summary to a conclusion, the Emergency Committee for American Trade very strongly supports the Geneva trade agreements. We are very grateful to this subcommittee for the constructive work it is doing on this. The value of the agreements ultimately will have to be determined upon how they work in practice.

U.S. traders simply will have to push our rights under the codes once they come into effect. We will need U.S. Government support to do that. I hope that the Government will consider having advisory groups for each of the codes from U.S. business. I think that might be a helpful combination.

Basically, as you said, Mr. Chairman, trade can be the currency of peace and I think this is a step in the right direction which ECAT strongly supports.

[The prepared statement follows:]

STATEMENT OF LAWRENCE C. MCQUADE, ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Summary

1. Mr. McQuade expresses the strong support of ECAT for the multilateral trade agreements recently concluded in Geneva, and notes that the agreements are necessary to ensure greater fairness and openness in the International trading system.

2. ECAT believes the subsidies code to be the centerpiece of the MTN, and recommends that the implementing legislation define injury under provisions of the code be "material" or to be "important and consequential". Other governments are likely to emulate U.S injury and other tests. If too loose, U.S. exports could be considerably damaged.

3. Particularly for antidumping investigations, ECAT recommends that the trade subcommittee reconsider its tentative decision concerning the time-period for investigations to ensure that adequate time is provided for sound decision-making.

4. ECAT recommends that the link between foreign government subsidies and resultant injury to U.S. producers be strengthened through future renegotiaton of the subsidies code.

5. ECAT supports the government procurement valuation, and licensing codes but opposes proposals to change the FOB basis of U.S. Import valuation to a CIF basis since this would raise the effective level of U.S. import protection and require a renegotiation of the whole U.S. tariff schedule.

6. ECAT supports the standards code and recommends a review of U.S. laws and regulations to ensure that they conform to the new international code.

7. ECAT regrets that a code on safeguards has not been concluded and suggests that Congress defer legislative action on the U.S. "escape clause" until a safeguards code is submitted for any necessary congressional action.

8. ECAT suggests that Congress might want to provide for advisory groups to help monitor the codes.

Statement

Mr. Chairman and members of the Ways and Means Trade Subcommittee, I am Lawrence C. McQuade, Senior Vice President, W. R. Grace & Co., and I am pleased to be here to testify for the Emergency Committee for American Trade in support of the international trade agreements recently initialed in Geneva. ECAT is made up of 64 U.S. business leaders whose companies in 1977 had total sales of about $324 billion. These companies employed nearly 5 million workers in that year. The economic vitality of ECAT companies is fundamentally dependent on international economic cooperation. All have very extensive international business operations and ECAT members are committed to policies that will protect and encourage international trade and investment.

We are pleased with the outcome of the Geneva trade negotiations. Ambassador Strauss and his colleagues can be proud of a difficult job very well done. We also believe this subcommittee deserves credit for its surveillance of the negotiations and for its many positive contributions to sound U.S. trade policies.

The recently-concluded trade package is very much needed. The tariff reductions should increase the volume of world trade and the international trade codes can help ensure that trade will be conducted on the basis of greater fairness and openness. This aspect of fairness is critically important. The Congress wisely included in the Trade Act of 1974 directives to seek improvements in the international trading rules in order to place American producers on an equal footing with their international competitors. While all the improvements in the General Agreement on Tariffs and Trade (GATT) contemplated in section 121 of the 1974 Trade Act were not secured, many were. Perhaps the most important is the code on subsidies and countervailing duties.

SUBSIDIES CODE

American business has been increasingly concerned with foreign government subsidies and their international trade effects. Production costs over the years have become more alike internationally. This phenomenon is attributable in large part to the burgeoning of international trade. But, as a result, governments have interjected themselves more and more into the marketplace to provide competitive advantages to their producers through various forms of subsidies. In many cases governments have become direct or indirect owners of industries. These industries may be subsidized for social and political reasons. However, one result can be unfair advantage in international trade. Subsidies cause producers in other countries to call on their governments either to protect the home market from subsidized imports or to provide offsetting subsidies for themselves, or both. There is thus a risk that unless brought under international surveillance and a measure of control, subsidies could undermine the foundations of the international trade system.

ECAT welcomes subsidies code. We believe it to be the centerpiece of the MTN package and believe that the obligations and disciplines it sets forth can bring order in the use of subsidies by governments. We see as the primary benefit of the subsidies code the recognition by signatory governments that competitive advantage in international trade should not be derived from domestic subsidies—subsidies on production. If this happens, as it easily can, the advantage can be offset by the application of countervailing duties or by other trade-protective measures by importing countries. With very few exceptions, over the years, the U.S. countervailing duty statute has been used against foreign export subsidies and not against foreign domestic subsidies. There has been legal argument as to whether the U.S. statute was intended to be applicable to domestic subsidies. If the MTN package is approved by the U.S. Congress, any such legal questions will be moot.

In return for this and other benefits afforded by the code on subsidies, the United States has agreed to accept an injury test as a condition for applying countervailing duties. As members of this subcommittee well know, we have had no such test and its absence has been a major irritant in our international commercial relations. Use of our countervailing duty statute was practically nil throughout most of this century. But beginning in about the mid-1960's, application of the statute became most frequent. As this happened, the concerns of our trading partners grew. The acceptance by the United States of an injury test—which is required by the GATT—became a primary objective of our trading partners in the Geneva negotiations.

We find the formulation of the injury test in the subsidies code a loose but reasonable one. We understand that a tentative decision has been made by this subcommittee to accept most of the language of the code defining injury for the implementing legislation. The code itself, however, in a footnote on page 4 of the GATT text, notes that the term "injury" is taken to mean material injury in accordance with Article 6 of the GATT. It is our understanding that the subcommit-

tee's tentative decision on the definition of injury does not specify the "material" test for injury. We recommend that in reconsidering this tentative decision the subcommittee either add the word "material" or consider a formulation that will make clear that injury determinations pursuant to the code should demonstrate that injury must be found to be important and consequential.

We do not make this recommendation for theological GATT reasons or for reasons of arguing definitional legalisms. Rather it is our firm judgment that other countries will emulate whatever is done here in formulating their own injury tests and their administration of the subsidies code. If the U.S. injury tests under this code are to be overly easy to meet, then so will be those of our trading partners. This potentially could be most harmful to U.S. exports, a consideration that cannot be overlooked.

Our recommendation here is doubly important since the injury test for the international dumping agreement will be the same as that for the subsidies code. Because the European Communities are now beginning to rely more heavily on their antidumping statute, the injury question becomes all the more crucial.

Another concern that ECAT has regarding the subcommittee's tentative decisions on the subsidies code is with the time limits for fact-finding and decision-making. Most of us are frustrated with the time it takes our government to do things. It is all the more frustrating if one's business is being adversely affected while the government is making up its mind. We thus are most sympathetic with this subcommittee's desire to be helpful through shortening the time in which countervailing duty investigations and decisions are to be completed. Our caution is that shortening the period could well mean that the quality of the investigatory product will be worsened, that due process might be denied simply because of the lack of time and that unwise decisions could be made. Much of the information required for countervailing and antidumping duty decisions has to be acquired from abroad, in many instances from countries whose information-gathering facilities are poor. We, therefore, suggest that the subcommittee reconsider its tentative decisions in order to allow more time for investigations, particularly for antidumping cases. These cases generally involve several different foreign and domestic firms. Gathering necessary information from them is usually difficult and is always time-consuming.

Our final comment on the subsidies code has to do with the terminology describing the relationship between foreign subsidies and injury to domestic producers. The code itself only calls for "a casual link".

Our concern with this wording also has to do with the international dumping code, which is to be brought into harmony in this and in other respects with the subsidies code. The international dumping code presently requires that for remedial action to be taken dumping must be found to be a "principal" cause of injury. In conforming the international dumping code to the just-negotiated subsidies code, the "principal" test will be dropped, meaning that it will be easier for governments to apply dumping duties. And, as noted earlier, the Europeans are placing heavier reliance on their antidumping regulations.

What we recommend is a future effort by U.S. negotiators to seek to renegotiate the subsidies code for the purpose of adding "substantial" to the causal link. This would apply both to countervailing and to dumping cases. If this could be accomplished, then the implementing legislation could be subsequently amended to include the "substantial" link of causality. We do not recommend that the Congress add "substantial" at this point since to do so would bind only the U.S. Government. As I said, the international subsidies code itself only call for "a causal link".

PROCUREMENT CODE

American producers for years have thought it unfair that their foreign competitors were able to bid for U.S. government procurement contracts whereas they were precluded from bidding for the purchases by foreign governments. The governments. The government procurement code removes this unfairness on the part of signatory foreign governments by enabling U.S. firms for the first time to bid for certain of their purchases.

We in ECAT support this achievement and recommend that Congress pass the necessary implementing legislation. It appears to us that all necessary reservations have been made in the code to deal with policies concerning national security purchases and purchases from small business and minority enterprises.

We note with regret that Japan and the United States were unable to agree on a reciprocal procurement agreement. A bad agreement, however, would have been far worse than none. Because the purchases of the Japanese government agencies offer a significant potential for U.S. exports, we hope that the United States and Japan will soon be able to conclude an agreement.

We believe that the procurement code offers great possibilities for enhancing U.S. exports. By initially opening about $20 billion of foreign government purchases to U.S. bidders, the agreement should enable those of us in the U.S. business community to gain considerable new business. The opportunities are there and, if the procurement code is approved, we shall actively pursue them.

VALUATION AND LICENSING CODES

ECAT supports these codes as well. The manner in which imports are valued for customs purposes affects the level of import protection. The current array of import valuation and licensing systems used by governments is, in many instances, sufficiently bewildering to discourage or impede international trade. The United States, for example, has nine different bases for determining customs value. By establishing five agreed methods of determining customs value, the valuation code provides the international trading community a welcome service.

We understand that thought is being given to changing the FOB basis of import valuation used by the United States to a CIF basis. We oppose this since by so raising the effective level of U.S. import protection a major renegotiation of the U.S. tariff schedule with all of our trading partners would be required.

STANDARDS CODE

While it may sound uninteresting, the standards code is of vital importance to exporters and investors. Stories are legion of how standards, testing and certification system are used to discriminate against foreign products. This code is particularly welcome in that it is intended to help ensure that the setting of standards will not be used to keep foreign products out of signatory countries' markets.

Undoubtedly, the provisions of the standards code will conflict with some U.S. regulations adopted for public policy reasons. One case, for example, involves U.S. laws and regulations that would require foreign chemical producers to disclose valuable proprietary information in order to market their products here. We recommend that U.S. laws and regulations in conflict with the code be reviewed and that considerations of the importance of international trade cooperation be given due weight.

Signatories of the standards code agree not to allow standards, testing and certification sytems to be adopted in a way that would create unnecessary obstacles to international trade. While the obligation applies only to national governments, it is hoped that local units of government and also private bodies that set standards would comply with the purposes of the code. As with the government procurement code, all standards and rules of certification systems would be published and thus open to public scrutiny. We in ECAT welcome this code and recommend approval by the Congress.

SAFEGUARDS

We very much regret that a code of safeguards has not been completed. From our knowledge of what the proposed code offered, it seemed one of the most desirable parts of the multilateral trade negotiations. It offered the promise of GATT signatory nations returning to the safeguard provisions of Article 19, which requires openness in safeguard actions. Its obligations would have prevented nations from restricting imports from other signatories without first going through the steps of public investigations and determinations of serious injury to domestic producers. Many of our trading partners restrict imports without such investigations and determinations. The result often has been that the nation whose trade has thus been curtailed has sought alternative markets for its exports. This has usually been the U.S. market.

ECAT hopes that a safeguard code can yet be completed. We believe that it would be particularly desirable to include in it a stipulation that governments report not only official restraints on trade but unofficial ones as well. Under present GATT provisions, so-called voluntary agreements made by governments or worked out among industry groups are not subject to reporting requirements. They should be.

We note that the trade subcommittee has made a tentative decision to shorten the time period for "escape-clause" investigations. We suggest that the subcommittee defer this decision until such time as a safeguard code has been concluded and submitted to the Congress for whatever action might be necessary.

In concluding I would like to emphasize the great importance that ECAT attaches to the Geneva trade agreements and to the vital and constructive work that this subcommittee is doing in fashioning the legislation that will give these agreements the necessary legal basis in the United States. How good the codes are will only be determined through experience. It will be incumbent on American producers to seek

enforcement of their rights under the codes with the necessary help of the U.S. government. In this regard, the Congress might want to provide for advisory groups to help monitor the codes and provide necessary assistance to government officials.

Thank you, Mr. Chairman.

Mr. VANIK. On the principal cause of establishing injury from subsidized imports, are you certain that either the subsidies code or the amended antidumping code requires that subsidized imports be the principal cause of injury?

Mr. MCQUADE. I think the antidumping code presently does, but that will be knocked out by the subsidies code, as I understand it.

Mr. VANIK. Thank you.

Should a similar change be made in the antidumping code?

Mr. MCQUADE. That is right. We would like that not to happen because we feel it is important not to have trivial relationships give cause for having——

Mr. VANIK. Well, my objective, as one member of this committee, is that what we have to establish is some rules that are going to be recognized th , everybody understands.

Mr. MCQUADE. Yes.

Mr. VANIK. I think uncertainty adversely affects trade more than any other element. Even if something is painful with certainty, it is better sometimes than uncertainty.

Mr. MCQUADE. I agree with that. That is why we are asking for a standard. I think it would be helpful to have such a standard.

Mr. VANIK. Mr. Jenkins.

Mr. JENKINS. No questions, Mr. Chairman, thank you.

Mr. VANIK. Thank you very much.

Mr. MCQUADE. Thank you very much.

Mr. VANIK. We would like to hear the summary reactions from every witness when we get the tariff schedules. We would like to have some communication with the subcommittee to give us some reaction if there is any problem in that aspect.

The next witness is Chamber of Commerce of the United States, Mr. W. D. Eberle, Chairman of EBCO, Inc., and former Special Representative for Trade Negotiations.

We are happy to have you here, Mr. Eberle. You are an old friend of the committee.

STATEMENT OF WILLIAM D. EBERLE, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. EBERLE. Mr. Chairman, we thank you for this opportunity to appear today. I will submit the statement for the record and merely cover the highlights, as you suggested.

Mr. VANIK. Without objection, your entire statement will be inserted in the record.

Mr. EBERLE. In addition to the U.S. Chamber of Commerce, the U.S. Council of International Chamber endorses the testimony today.

Mr. Chairman, the National Chamber has followed these negotiations since the very beginning, and I would like to start by saying that we approve, and recommend approval by Congress, of the entire nontariff barrier agreement package—that is all the codes that have been completed.

However, we have not yet seen the tariff package and we do reserve the right to comment on that at a later time. Let me first try to put in perspective the fact that these codes are very important and will be very helpful for the American business community, as well as labor and the public. However, if they are to work, the key issues are: One, how will they be implemented domestically; and two, how will they be enforced internationally? I think those are the two key issues your subcommittee and Congress will be facing.

We have several recommendations we would like to make. If the codes are to be effective, there must be a well-enforced set of domestic laws to combat unfair trade practices. One of the major achievements of the Tokyo Round has been the development of these codes. How they will be implemented will be critical to their enforcement.

First of all, there must be a strong coordinating force within the U.S. Government for trade policy, supported by adequate analytical staff. Unless there is a staff to support a coordinated effort within this administration and any future administration, the benefits of these codes simply will not be realized. Although we do not suggest that this should be part of the bill today, as soon as possible after the implementing legislation is passed, we must face how there will be a coordinated effort within the administration to carry out these codes.

Second, Mr. Chairman, international enforcement of these agreements will be very important. We would urge that there be close consultations with interested private parties throughout any international dispute settlement process. The dispute process must have not only the oversight of Congress and the administration, but also the private parties who are affected must be involved in that dispute process. We urge that the administration take an active stance to develop strong procedures, as well as international case law, to see that these codes are in fact carried out and implemented.

Our third recommendation is that the private sector advisory committees which were established in the Trade Act of 1976, which have proven to be an effective mechanism in helping carry out these negotiations, be continued in order to monitor and assist in carrying out the codes.

We hope that the administration will continue to give great weight to the private sector advisors, and that the committees be essentially sectoral. While we oppose substantial reduction in sector representation on the private sector advisory groups, we recognize there needs to be some consolidating and streamlining.

The objective would be to maintain the sectoral groups about the same as they are today, but if there needs to be functional advisory committees on particular codes, they could be set up on an ad hoc basis. But the primary support should come from the sectoral committees.

Our fourth general recommendation, Mr. Chairman, relates to the prompt judicial review which must be provided for all participants in any of the proceedings under this legislation. Particularly, in countervailing and dumping cases, we would hope to see that the private trade associations, labor unions, other participants who

are now excluded, be included in this process. It is important if they are to maintain an open trading system that the participants to any proceedings all have the same right of appeal.

Mr. Chairman, I would now like to turn to the subsidy countervailing duty code and antidumping code implementation.

We have a number of specific recommendations. Prior testimony has focused on the first issue, but let me go back first to some general comments.

It is very clear that the Treasury Department has not carried out it's responsibilities under the current laws. Our first recommendation is that sufficient staff and other resources be reallocated to insure the effective administration of these statutes. The legislative history should make it very clear that Congress intends that these deadlines be met.

Second, we favor the timely enforcement of the countervailing duty and antidumping legislation. We strongly urge that the maximum time limits not be shortened to the point where meeting the timetables becomes impossible. If you insist that the statutory time limits are met, the present 12 months for countervailing cases and 13 to 16 months for antidumping cases are adequate.

The problem is that if you do not have time to gather the information necessary to make decisions, you will get bad decisions. Although we understood that there were some preliminary recommendations by this committee on the countervailing duty time limits, we hope you will reconsider the issue.

Next, as far as the suspension of liquidation is concerned, we believe that after a preliminary determination the posting of bonds should provide sufficient assurance of an effective remedy.

A major advantage of the new subsidy code is the provision of a second track to pursue code violations through GATT machinery in lieu of, or in addition to, domestic countervailing duty proceedings. If this procedure is to work, the implementing legislation should designate a maximum time period—we are suggesting 90 days—for a decision on whether the Government will initiate the international dispute settlement procedures. Only if there is this kind of a time limit can we be sure that the international procedures will in fact be carried out. International dispute settlement should be handled in a timely process parallel to the domestic procedures.

Let me move on to the question of the definitions in these codes.

As the prior witness has discussed, we believe the term "material injury" should be included in the implementing legislation's injury definition, as it is in the subsidy and dumping codes.

As I understood the colloquy between you and the prior witness, this seems to be the general direction that you are proceeding, so I will not go into it any further.

The other area of concern is the definition of "bounty" or "grant," and a list of examples of subsidies. I would only point out that in developing a list of bounties and grants, you should take into consideration that our trading partners will also make a list. If we are unreasonable in what we include in that list, they may be reacting by adopting similar laws. We must have a balanced definition here, one that is consistent with the code.

The third point in the area of definitions relates to causation. While we recognize that a requirement that the subsidy be a

"major" cause would be too stringent, we do not want to adopt the lowest possible test of causation. Therefore, we feel the implementing legislation should establish a "substantial" cause test before dumping and countervailing duties are imposed.

Mr. VANIK. I was going to ask you whether, in your opinion, the subsidies code or the amended antidumping code required subsidized or dumped imports to be a substantial cause of injury? Are you not familiar with the major cause criteria that made our escape clause ineffective from 1962 to 1975?

Mr. EBERLE. Mr. Chairman, I am. I think this walks that line and that substantial cause, which will give us an effective code. This is the kind of test that would be consistent for both codes.

Mr. Chairman, if I could move to the agricultural subsidy side.

Mr. VANIK. I had one other question on your second paragraph on page 8. Are you of the opinion that under existing law the injury test under antidumping is a minimal standard, different from the injury standard agreed to in the subsidies code and the amended antidumping code?

Mr. EBERLE. What we are trying to do is to have some middle ground between the two extremes. The injury test should be greater than a minimal test. We think that was the intent of the code, and we think it should be clarified here.

In the agricultural area there are two points that we believe were intended by the negotiators when they developed the code. Therefore, we recommend two clarifications in the legislative history. At a minimum, the provision that subsidies should not be used to gain more than an adequate share of the world trade should not imply the freezing of market shares to a base period.

Second, Congress should make clear that trade growth derived from natural advantages and efficiency is legitimate. It is our understanding that this was what the negotiators intended at the time, and we feel it is important to include it in the legislative history.

Mr. Chairman, on the customs valuation code, I would simply say that you will be hearing from an ad hoc joint industry group on certain clarifications that are needed.

The National Chamber has been represented on the joint industry working group on customs valuation. They will be making specific recommendations to you and we support their testimony in this area.

We also understand that consideration is being given to switching the U.S. customs valuation system in the implementing legislation from f.o.b. to c.i.f. While we recognize that either method is satisfactory under the code, we believe it would be a mistake at this time to make this change as part of the implementing legislation. The negotiations have been carried out on the basis of f.o.b. It would require a complete recalculation and probably some major adjustments by negotiation to make the change now. At a later date it could certainly be considered.

We have several important recommendations for carrying out the Government procurement and standards codes, Mr. Chairman.

First of all, the key feature of both codes is transparency. For the transparency requirements to be effective, it will be necessary for our Government to publish all of the various opportunities to bid

on procurement contracts, country-by-country. American producers need to know what contracts are available so they can in fact bid.

The second point is that this code is different from all the others. In the past, our policy has been based on the most-favored-nation principle. This code was negotiated not on a most-favored-nation basis, but on a reciprocal basis, and it must be clear we only grant the code benefits to countries that grant open procurement to us.

Mr. Chairman, we recognize the safeguard code is not before you. We certainly hope that you would urge our negotiators to continue their efforts to bring back a safeguards clause. In the meantime, we urge you to make no change in the U.S. law sections 201, 202, and 203. It is important for our negotiators to have your support in continuing these negotiations, and we hope they can bring back a safeguards code as a second package sometime this summer.

There is one area, though, in which both the administration and the congressional committees seem to be considering changes in domestic import relief procedures—that is, to reduce the time limit from 6 months to something less. We feel that 6 months is an adequate and necessary time limit for many of the complicated cases. However, that time limit should not in any way preclude earlier decisions whenever possible.

Once the information is available, there is no reason why the time cannot be shorter, and we certainly would urge that the legislative history show that Congress expects that where that information is available, earlier decisions will be made. Where adequate information is not available, an expedited investigation could provide an industry with needed relief sooner in critical cases. Any legislation creating a fast track provision should spell out limited criteria for its use.

So we would make two points. One, the 6-month limit is sound, but there should be earlier decisions where possible. Second, if you have a fast track, be sure it is limited. We have tried to spell out the criteria that should be met in a fast track case.

As far as the continued negotiations are concerned, Mr. Chairman, we would urge that continued negotiating authority not be granted at this time until we have a chance to thoroughly test the congressional approval procedures. When the implementing legislation is finished, consideration should be given to continued negotiating authority.

Mr. Chairman, this completes our testimony. Again let me emphasize that we do support the codes fully. We are only focusing on two issues: One, the domestic implementation and, two, how to get international implementation so the codes will be effective.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF WILLIAM D. EBERLE, CHAMBER OF COMMERCE OF THE UNITED STATES

I am William D. Eberle, Chairman of EBCO, Inc. and former Special Representative for Trade Negotiations. I am testifying today for the Chamber of Commerce of the United States. We appreciate this opportunity to comment on legislation to implement the far-reaching Multilateral Trade Negotiation (MTN) agreements.

The National Chamber's membership consists of more than 79,000 large, medium and small businesses, 2,600 local and state chambers, 1,200 trade and professional associations and 42 American Chambers of Commerce abroad. Because the results of the MTN agreements will have a significant impact on our members, the U.S.

economy and the world trading system over the next decade, the National Chamber has monitored the negotiations since their inception in 1973 and has supported a successful conclusion of the Tokyo Round.

The National Chamber has concluded that the nontariff agreements that have been negotiated offer potentially significant benefits to the entire U.S. economy. While we reserve judgement on the tariff cuts until we have had time to examine the final results, we urge Congress to look closely at the advantages the nontariff agreements offer and then to approve the nontariff package. The question we must now address is how to ensure that we reap the potential benefits that our negotiators have labored so long to provide?

The National Chamber has a number of specific recommendations for what should be included in the implementing legislation. Under the unique procedures for Congressional approval of the MTN agreements, the relevant committees have already been working on the legislation with the Administration. This Subcommittee is to be commended for providing this opportunity for public input into the legislation which cannot be amended once it is introduced. However, we are concerned that many of the key decisions have already been made. Some of your preliminary recommendations differ significantly from what the National Chamber would recommend. We encourage the Subcommittee to reconsider several issues in light of the information presented in these hearings and we urge that our suggestions receive serious consideration when the legislation is written.

GENERAL RECOMMENDATIONS FOR IMPLEMENTING LEGISLATION

The National Chamber is convinced that an effective, well-enforced set of domestic laws to combat unfair trade practices is essential. As we continue to negotiate lower barriers to trade in all countries and work to achieve a progressively more open world trading system, we must ensure that others do not take advantage of our reduced barriers by violating internationally agreed upon rules and engage in unfair trade practices that injure U.S. producers. Nevertheless, we urge that MTN implementing legislation be carefully drafted to ensure that agreements which were designed to expand world trade do not have an anticompetitive effect.

One of the major achievements of the Tokyo Round is the development of codes governing issues which have never before been subject to international regulation. The impact these agreements will ultimately have on the United States will depend on how they are interpreted by others and whether they are effectively enforced internationally. Therefore, we urge the U.S. government to vigorously promote compliance with the agreements by all signatories. U.S. implementing legislation must provide mechanisms to carry out the agreements within this country and to facilitate full acceptance of code obligations internationally. To this end, it will be necessary to more effectively coordinate trade policy within the U.S. government.

At the very least there should be a strong coordinating focus for all trade policy decisions, supported by adequate analytical staff. This staff must be prepared to gather the facts and comprehend developments in international trade, by product and by sector, in order to develop sound international and domestic policy. Congress must provide oversight to ensure that the job gets done and should encourage the reallocation of adequate resources.

Because international enforcement of the agreements is such a major determinant of the impact of the MTN package, the U.S. implementing legislation must provide a mechanism that enables private interests to bring complaints of foreign code violations to the U.S. Government for pursuit through the international dispute settlement procedutes and that allows private participation in the defense of U.S. practices against foreign complaints. There should be close consultation with interested private parties throughout the international dispute settlement process.

The system of private sector advisory committees established under the Trade Act of 1974 has proven to be an effective mechanism for public input into the development of trade policy and has provided our negotiators with essential information to evaluate how various sectors of the economy would be affected by different negotiation proposals. The private sector advisory process should be continued to assist in monitoring the implementation of the MTN agreements and to advise in future trade negotiations. We urge the Administration to give even greater weight to the advice of its private advisors. The implementing legislation should establish advisory committees which are essentially sectoral, and which are broadly representative of the entire economy as possible, including wholesaler, retailers, the service industry and consumers, as well as industrial producers, labor and agricultural interests.

While we oppose any reduction in the number or size of the current advisory structure that would eliminate the representation of any major interest, we recognize that some consolidating and streamlining may be necessary. The burden of

administering the advisory system can be further reduced by convening the committees only as needed. Functional advisory committees should be established on an ad hoc basis, drawing from the membership of the sectoral committees, as well as outside experts, again ensuring that all relevant interests are represented.

It is important that the right of prompt judicial review be provided to any participant in proceedings brought under the implementing legislation. In the case of countervailing duties and dumping allegations the implementing legislation should broaden the right of judicial review to allow trade associations and labor unions to appeal decisions immediately following a final determination. If U.S. exporters are accorded the same rights, representatives of foreign exporters should also be allowed to appeal. Procedures for judicial review of other issues such as customs classifications and valuation should be handled separately in Customs Court legislation.

RECOMMENDATIONS FOR SUBSIDIES/COUNTERVAILING DUTY AND ANTIDUMPING CODE IMPLEMENTATION

The subsidies/countervailing duty code is a potentially valuable tool to limit foreign subsidies that adversely affect the ability of U.S producers to compete in subsidizing countries, and in third country markets as well as at home. The antidumping code has been amended to conform to the new subsidy code. It is essential that U.S. countervailing and antidumping laws be administered effectively. All parties benefit by the timely resolution of disputes, and decisions that are based on legal criteria and factual economic analysis, rather than on domestic political or foreign policy considerations. In the past, there has been widespread criticism of the way the Treasury Department has administered the dumping and countervailing duty statutes. Delays have at times been unwarranted, the effect of which has been to impair the rights of some parties.

Administration and time limits

In light of the additional responsibilities created by the new codes, it is essential that sufficient staff and other resources be reallocated to ensure effective administration of the statutes regardless of the identity of the administering agency. The implementing legislation or legislative history should establish that, as a matter of public policy, the government intends to meet all statutory deadlines for dumping and countervailing duty cases. There must be active Congressional oversight of the administration of the new laws.

However, while we favor timely enforcement of countervailing duty and dumping legislation, we strongly urge that the maximum time limits not be shortened to the point where the chance of meeting the statutory timetable is reduced and/or due process is denied in an effort to comply with unrealistic deadlines. The current designation of 13 to 16 months for antidumping cases and the subsidy codes limit of 12 months for countervailing duty cases are reasonable maximum time periods as long as the statutory time limits are scrupulously met. In many cases shorter investigative periods would significantly reduce the quality of deliberations necessary to make often complex determinations of dumping, subsidies, injury and causation. This is especially true when verification is necessary. Shortened time limits will prevent effective verification of submissions. Although the countervailing duty limits recommended by this Subcommittee are preferable to those of the Senate Finance Committee, we respectfully urge you to reconsider and recommend the subsidy code's 12 month limit, as well as no change in dumping limits.[1]

The time allotted for preliminary determinations becomes particularly crucial if provisional dumping and countervailing duties are to be assessed after a preliminary positive determination. Although we favor suspension of liquidation at that point, provided there has been enough time to make a reasoned determination, the posting of a bond should provide sufficient assurance of an effective remedy. The amount of the duties can only be a rough estimate after the preliminary investigation, and a requirement that full estimated duties be paid in cash could seriously disrupt trade.[2]

A major advantage of the new subsidies code is the provision of a second track to pursue code violations through GATT machinery in lieu of, or in addition to, domestic countervailing duty proceedings.

The U.S. government should actively promote the development of international case law governing all the new codes, and particularly the subsidies code, by bringing apparent violations into the international arena on the basis of its own

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[1] Three of the 23 members of the National Chamber's MTN Task Force believe the time limits for both antidumping and countervailing duties should be shortened.

[2] Two Task Force members did not agree with posting of a bond and recommended instead posting cash deposits.

information or complaints by private citizens. The implementing legislation should designate a maximum time period—perhaps 90 days—for a decision on whether to initiate the international dispute settlement procedures.

Definitions

Any definitions or illustrations of what constitutes a subsidy should be carefully drawn considering the possibility that other countries will emulate our definition to exclude U.S. exports. "Bounty or grant" should be defined so as to authorize imposition of a countervailing duty only when the foreign government program has an adverse effect on the trading interests of other countries.

The implementing legislation should clearly define both material injury and causation in order to provide greater certainty in the administration of the countervailing duty and antidumping laws. Such definitions should conform to the language of the codes and should not turn procedures designed to combat unfair trade practices into tools which encourage anticompetitive behavior.

The term "material injury" is the internationally agreed-upon language that we have accepted in the subsidy and dumping codes. It is only appropriate that it be included in the U.S. implementing legislation, along with the code's list of factors to take into account in determining injury. Material injury should be further defined as less than the "serious injury" required for escape clause actions, but greater than the minimal standard under current U.S. antidumping interpretations.

In order to provide some guidance to the administering authorities in determining whether dumped or subsidized imports have actually caused injury to U.S. producers, the necessary level of causation should be further clarified. While a requirement that the subsidy is a "major cause" of injury would be too stringent, the national interest is not served by the lowest possible test of causation. Therefore, the implementing legislation should establish that the dumped or subsidized imports must be a "substantial" cause of injury before dumping or countervailing duties are imposed.[3]

Agricultural subsidies

The National Chamber has consistently argued that agricultural export subsidies should be prohibited in the same way that nonagricultural subsidies are. We are disappointed that the subsidiy code fails to achieve this goal. Nevertheless we recommend clarification of two code provisions on agriculture. At a minimum, the code's provision that subsidies should not be used to gain more than an equitable share of world trade should not imply the freezing of market shares to a base period. Congress should make it clear that trade growth derived from natural advantages and efficiency is legitimate. Shares acquired in the "representative period" as the result of export subsidies should not be considered "equitable shares."

Secondly, in order to clarify what is meant by "prices materially below those of their suppliers to the same market," the phrase should be defined in the implementing legislation as "prices which cause sales diversion or price disruption."

It is also important to recognize that in certain instances the practices of international lending institutions, which are supported in part by U.S. contributions, may have the effect of subsidizing products of other countries which compete with U.S. agricultural commodities and with U.S. industrial products.

Certain tax practices

It is unfortunate that the subsidy code proved unable to deal with a variety of direct and indirect tax matters. Congress should direct the Administration to continue active international negotiations on these issues. Furthermore, the implementing legislation should make it clear that pending the successful conclusion of such future negotiations, it is the understanding of the United States that the subsidy code will not prejudge certain direct tax practices of the United States or of other countries, particularly the U.S. Domestic International Sales Corporation (DISC) provisions, which are the subject of pending action under GATT.

RECOMMENDATIONS ON CUSTOM VALUATION

If fully implemented, the new customs valuation code will provide significant benefits to U.S. exporters who now face arbitrary uplifts under many counties' valuation systems. U.S. implementing legislation should further clarify certain interpretitive notes to the code. The Joint Industry Working Group on Customer

[3] Four Task Force members did not agree with the recommended definitions of material injury and causation. They believe the creation of a higher threshold of injury than at present under U.S. antidumping law and the requirement that the dumping or subsidy be a "substantial cause" of injury are unwarranted.

valuation, on which this Chamber is represented, has made specific recommendations on implementing legislation.

Apparently, some consideration are being given to switching the basis of U.S. customs valuation from F.O.B. to C.I.F. While either method is allowed under the code, we believe it would be a mistake to attempt to make such a change at this time. Aside from any questions of port, exporting country or mode of transport discrimination, adopting C.I.F. would require reopening the complex tariff rate negotiations which have just been completed. U.S. tariff levels would have to be adjusted to compensate for the different valuation method.

RECOMMENDATIONS ON GOVERNMENT PROCUREMENT AND STANDARDS

The government procurement and standards codes offer U.S. producers the potential for major benefits by the opening up foreign government purchasing to competitive bidding and reducing technical barriers to trade. A key feature in both codes is increased transparency—the requirement that announcements of bids and standards development are made public and that procedures are open to participation by foreign as well as domestic interests. In order to make these provisions meaningful for U.S. producers, it will be necessary for the U.S. government to play an active role in collecting published announcements and making the information on foreign government contracts and standards available to interested parties. The implementing legislation should clarify the responsibility of appropriate U.S. agencies is fulfilling these functions

Application of the government procurement code should be truly reciprocal so that we treat other countries as they treat us, except for certain special treatment for less developed countries (LDCs) as authorized by the code. The ultimate goal should be to expand the entities covered by the code and increase the number of signatories. To this end, it may be necessary to maintain domestic preferences for contracts under noncovered entities and, after a grace period, to allow no bids from suppliers in countries that do not adhere to the code.

RECOMMENDATIONS ON LICENSING

The National Chamber opposes granting the President authority to auction import licenses, except perhaps for oil import licenses and those required under section 22 of the Agricultural Adjustment Act. While this proposal may have merits, we believe that it should be the subject of separate legislation to permit consideration of the impact of an import license system on various programs.

We oppose the adoption of an "automatic licensing system," now or in the future, because it would place an additional burden on business, require the establishment of a new bureaucracy and increased government expenditures, without any perceivable benefits.

RECOMMENDATIONS ON SAFEGUARDS

Until the safeguards code is completed and it is possible to design U.S. legislation that conforms to its requirements, we recommend that no changes be made in U.S. law (Sections 201, 202, and 203 of the Trade Act of 1974). Meanwhile, we encourage Congress to support the U.S. negotiators in their efforts to conclude successfully the safeguards negotiations as soon as possible.

One area where both the Administration and Congressional committees are considering changes in U.S. import relief procedures is in reducing the six month time allowed for injury investigations made by the U.S. International Trade Commission. While we oppose any such changes at present, it is important that all import relief investigations be completed as rapidly as the availability of information and the excercise of prudent judgement by the ITC (concerning both the existence of injury and the fashioning of a remedy) allows. The statutory six month deadline is only a maximum limit; in many cases, especially those concerning products with which the Commission is familiar as a result of previous investigations, sound decisions should be possible in a shorter time frame.

If however, the Congress does decide to change the six month time limit, now or at a later date, the Senate Finance Committee recommendation for a shortened "fast track" procedure in unusually critical cases is preferable to the initial proposal of this Subcommittee and the Administration that all cases be decided in four months. Again, the key ingredient is availability of information. Four months will be inadequate in complex cases where data is not readily available. A hasty determination would impair the quality of the decision and would be to the advantage of neither the importer nor the domestic producer.

Where adequate information is available, an expedited investigation could provide an injured industry with needed relief sooner. Legislation creating a fast track

provision should spell out the criteria for its use. We propose that a decision to conduct an expedited investigation should be granted only when the International Trade Commission has concluded that the evidence presented clearly leads to the conclusion that such an expedited investigation is necessary to avoid irreparable damage to the industry. Among the indicators (others may be appropriate) of irreparable damage would be the convergence of:

(1) a rapid, substantial increase in imports both absolute and relative to domestic production;

(2) a serious, rapid decline in profits or increase in losses; and

(3) plant closings which result in layoffs of a significant proportion of an industry's employees with poor chances of reemployment in the industry.

Having embarked upon a fast track investigation, the Commission must be free to decide to revert to a normal investigation if the information necessary to its decisionmaking is unavailable or if the Commission decides that the petitioning industry does not, after all, qualify for an expedited investigation.

CONTINUED NEGOTIATING AUTHORITY

It has been proposed that the President's authority to negotiate additional tariff reductions and nontariff barrier agreements subject to congressional approval under the procedures of the Trade Act of 1974 be continued. While it may be necessary for there to be further negotiations, we would recommend considering the necessary authority in separate legislation after the current unique approval procedures have been tried and can be evaluated.

MULTILATERAL TRADE NEGOTIATION TASK FORCE, 1979—W. D. EBERLE, CHAIRMAN, CHAIRMAN, EBCO, INC.

Donald G. Brotzman, Vice President, Government Relations and Economic Affairs, Rubber Manufacturers Association.

Thomas A. Christiansen, Manager, International Trade Relations, Hewlett-Packard Co.

Paul H. DeLaney, Jr., DeLaney and Patrick.

Charles Derecskey, Program Manager, Governmental Programs, IBM Corp.

David J. Elliott, Manager, Customs and International Trade Affairs, Procter and Gamble Co.

Edward Florkoski, Vice President, International Trade and Economics, American Iron and Steel Institute.

Myron Foveaux, Legislative Representative for Trade and Economic Policy, Manfacturing Chemists Association, Inc.

Theodore R. Gates, Consulting Economist.

Allan Grant, President, American Farm Bureau Federation.

Richard Goodman, Vice President, Continental Grain Co.

Harry W. Jones, Vice President and Director, Overseas Affairs, Westinghouse Electric Corp.

Dr. William Kling, Washington Representative, American Soybean Association.

Will E. Leonard, Busby, Rehm & Leonard.

Richard Lyng, President, American Meat Institute.

Irene Meister, Vice President, International American Paper Institute.

John V. Moller, Assistant Director, Government Affairs Division, Motor Vehicle Manufacturers Association.

Stanley Nehmer, Director, Economic Consulting Services, Inc.

Waring Partridge, McKinsey & Co.

John Pellegrini, Senior Attorney, J. C. Penney, Inc.

Alan B. Spurney, Director, International Business Council, Electronic Industries Association.

T. D. Taubeneck, President, Rockwell International Trading Co.

C. William Verity, Jr., Chaiman of the Board and Chief Executive Officer, Armco Steel Corp.

Dr. Elizabeth V. Perkins, Executive Secretary MTN Task Force, International Division, U.S. Chamber of Commerce.

Mr. VANIK. Mr. Ambassador, there is a question that occurs to me on another subject. The Chamber has a cross-section of membership, both large and small corporations. Are the smaller corporations satisfied with what we have worked out and what has been done on the set-aside question?

Mr. EBERLE. I am not sure I can give you an answer that says everybody is satisfied. Obviously, when there are over 80,000 members, you have to look at majority opinions. I think one can say that there has been very little opposition to what has been done. Therefore I assume that they are basically in favor of it.

Mr. VANIK. Yes. I felt that that decision was imperative in order to get the MTN adopted and approved. I just wanted to know whether there is settlement on that issue or whether you hear some rumblings in your organization that might indicate that we may have troubles.

Mr. EBERLE. There is no question, as you indicated when you started, that you are not going to satisfy everybody but I think on balance it was a reasonable settlement.

Mr. VANIK. Thank you very much.

Mr. EBERLE. Thank you.

Mr. VANIK. Are there any questions?

Mr. JENKINS. No.

Mr. HOLLAND. No.

Mr. VANIK. Thank you very much.

We will be pleased to hear from Charles R. Carlisle, vice president, St. Joe Minerals Corp.; Stanley Nehmer, president, Economic Consulting Services, Inc.; and Donald deKieffer, Collier, Shannon, Rill, Edwards & Scott.

We would be pleased to hear from you. Your entire statements will be entered into the record as submitted.

We would be pleased to have you excerpt from them or speak from them in any way that can get the issues before the subcommittee in the most expedient manner.

Who will proceed first? Mr. Carlisle?

STATEMENT OF CHARLES R. CARLISLE, ON BEHALF OF THE AD HOC SUBSIDIES COALITION, ACCOMPANIED BY STANLEY NEHMER, AND DONALD deKIEFFER

Mr. CARLISLE. Yes, sir, I will.

I am Charles Carlisle. On my right is Mr. Stanley Nehmer, President of Economic Consulting Services here in the city; on my left Mr. Donald deKieffer, Collier, Shannon, Rill, Edwards & Scott. Both of these gentlemen have had extensive experience with the trade statutes.

As you suggested, sir, I would like to request that my entire statement be submitted for the record and I will try and summarize it in my own words.

Mr. VANIK. Without objection, it is so ordered.

Mr. CARLISLE. Mr. Chairman, our testimony this morning makes six principal points:

First, we think that our negotiators, Ambassador Strauss and his colleagues, Mr. Rivers and Mr. Greenwald, have done a good job of negotiating the subsidies code in Geneva under trying circumstances. The important thing, however, sir, is the implementing legislation which will give practical effect to the code under American law.

The second point is that amendments to the countervailing duty statute are necessary regardless of what happens to the trade

package, because in our judgment the present statute and Treasury's administration of it are seriously inadequate.

Third, we believe that this subcommittee as well as the Senate Finance Committee, has made good progress on a number of key amendments.

Fourth, however, we are concerned about certain tentative decisions which this subcommittee has taken and we would like to address those a little bit later on.

We also wish to focus briefly on two other major issues. One is the issue of the amendments to the antidumping statute as a result of amendments made in the GATT antidumping code, and also, our sixth point is that we are concerned about the Senate Finance Committee decision to give the executive branch new authority to cut tariffs and negotiate on nontariff barriers.

I would like to turn now, Mr. Chairman, to the subsidies question and the amendments to the countervailing duty statute. Let me explain why, first of all, we think that the implementing legislation is of paramount importance.

First, there can be little doubt that subsidies are pervasive, that they affect many important American industries and that they probably are increasing. Attachments 2 and 3 to our prepared statements come from two highly respected publications, Fortune magazine, and the Harvard Business Review. They outline this problem much better than I could.

Second, as I have said earlier, we believe that the current law and Treasury's administration of it are seriously inadequate: they have missed statutory deadlines; they have calculated the net amount of the subsidy in very questionable ways—that is why we would like to return to this issue in a few minutes; they have conducted ex parte meetings with foreign representatives and they have not verified the information which has been supplied to them; and they have changed rulings without adequate opportunity for interested parties to comment. Attachment 4 to our testimony lists a number of specific instances.

Now in order to correct this kind of abuse and to deal in a really effective way with the widespread subsidy problem, Mr. Schulze of this subcommittee has introduced H.R. 3307, Senators Heinz and Moynihan have introduced identical legislation in the Senate.

We strongly support this legislation which conforms, and I think this is an important point, to the Geneva subsidies code in all important respects.

As I noted in my introductory remarks, this subcommittee has already done, we think, much useful work. Because of its great importance I would like to mention just briefly one of the key issues which has been mentioned by other witnesses this morning and which the subcommittee has already addressed satisfactorily in our judgment; that is the question of the determination of injury.

Of course, under current law, a domestic complainant does not have to demonstrate injury except in the case of duty-free merchandise. Many of us believe that the law should not be changed on this point because subsidization constitutes a per se violation of fair trade concepts and injury should be presumed.

I might mention parenthetically that export subsidies are essentially illegal under the newly negotiated code.

In return, however, for international recognition of the fact that internal subsidies can adversely affect industries in other countries, and recognizing that countervailing measures may be employed against those internal subsidies, American negotiators, and this has been a key compromise, have agreed to accept an injury test.

A number of organizations in our coalition are prepared to accept, reluctantly, an injury test in the code and in the implementing legislation, provided that the matter is handled in the way that this subcommittee has agreed that it should be handled. And that is that the statutory language should require that the injury test applied in countervailing duty investigations be no different than that applied under the Antidumping Act since January 3, 1975.

Let me say, Mr. Chairman, speaking as one who has had personal experience, that it is not an easy injury test.

Now some persons have argued that the injury test should be as rigorous as that required in escape clause proceedings under section 201 of the 1974 Trade Act. In our view there simply is no justification for making the determination of injury in unfair trade cases more stringent than that applied now under the Antidumping Act.

We would like to be very frank with you on this key point. To require an escape clause type injury test under the countervailing duty statute would in our judgment make the statute virtually unworkable as far as domestic petitioners are concerned.

Now I would like to turn to three other points which this subcommittee has addressed and to two which it has not.

First, one of the three points which the subcommittee has addressed. That is the question of offsets as they are sometimes called or, as the subcommittee called it, the definition of net subsidy. Our general view is that these offsets should be very few and defined precisely in order to prevent abuse. We believe that the subcommittee has handled the matter well except that included in the definition is the phrase "direct and verifiable costs actually assumed" to qualify for the subsidy.

Bearing in mind what you said earlier, Mr. Chairman, about the desirability of avoiding uncertainty, I would like to say we do not know what that phrase means. We are most concerned, however, that it would allow the administering authority to deduct from duties directed against regional development subsidies many of the costs incurred in establishing facilities in depressed regions. Regional subsidies to compensate for the comparative disadvantages of locating in such regions are extremely common and often equal a substantial fraction of the total cost of a facility.

Leaving this phrase in the definition of net subsidy would, we believe, leave a potentially very large loophole in the definition. We therefore urge that that phrase be stricken from the definition.

Second, on the question of price or other assurances to terminate countervailing duty cases, as you know the subsidies code permits such assurances but does not require them. Nor has Treasury permitted such assurances in the past. We believe that they are inappropriate now because it is very difficult to link these assurances to the subsidy itself.

Now the subcommittee has dealt with the question by, in effect, saying the assurance should be sufficient to remove the injury and, by providing for appeal to the International Trade Commission, to determine whether the assurance would have that effect. It seems to me this presents two problems.

First, it could present, I am sure inadvertently, a double injury test, and I spell out on the top of page 8 what I mean by that.

Second, it raises the question of what tests, what benchmarks would the ITC employ to determine whether the injury would be removed. We believe, really, that price and other assurances should not be used. But if the subcommittee believes there are compelling reasons to provide for price assurances, then we recommend that certain safeguards be established: First of all, that only price assurances be accepted; second, that the price assurance equal the subsidy in its total amount; third, that the price assurance be accepted only if the foreign government is a party to the assurance; and finally, that the price assurance be monitored very closely on an entry-by-entry basis.

I would like to turn briefly to the question of filing fees or cash or bonds or deposits of $1,000. We do believe, sir, it is wrong in principle to require the posting of any bond or fee to have the law enforced. Now the $1,000 may seem very small.

Mr. VANIK. On that issue of price assurance, I addressed a letter to Ambassador Strauss on that point, which I will have available here in a few moments if you have not had it. I have personally taken a position on that which you have urged. So I want to give you notice that I have made an effort to take care of that problem.

Mr. CARLISLE. Thank you, Mr. Chairman. I am delighted to hear that. I have not seen the letter, but I would certainly welcome seeing it.

On the $1,000 fee I mentioned that we do think it is wrong in principle. Also, it could prove burdensome to some small firms and unions. We would again recommend that the question of frivolous petitions be handled in other ways and we think it can be easily done.

Now two issues, Mr. Chairman, which your subcommittee has not addressed as yet. That is, first of all, which agency should administer the countervailing and antidumping statutes. We know this does raise very knotty problems and there is sentiment to put the matter over to another time. But we urge, nonetheless, that the subcommittee take up this admittedly vexing problem now; we are in the concluding stages of a major revision of the international trading system.

Mr. VANIK. You know my problem on this point. My problem on that point is I did not know where the function ought to be because my experience is that no matter where you move a function, you end up with the same bureaucrats doing it. I just do not want to shuffle them into a job grade increase in recognition of what they have failed to do in the past.

Now under our system, as you know, wherever we place this function you are pretty much going to end up with the same people handling it. They are the very people that have done such a miserable job in the past, about which I have complained. So I see no

solution, I see no ready solution to the problem. I am very troubled about this point. I know it is important.

It does not complete the resolution of our business, but I sure have to have a better handle or some assurance that whatever we do does not end up with simply a movement of desks from one building to another with the same inherent problems of ineptitude and indifference manifested in the new shift.

Mr. CARLISLE. Let me say a word or two on that, Mr. Chairman.

First of all, it might be worth taking a look at the proposal to establish a new trade department as certain Senators have urged.

Second——

Mr. VANIK. How do they get around my problem of having the same bureaucrats, another supergrade bunch of people up there drawing salaries and crowding the highways, taking up parking spaces? I am getting very sensitive about this.

Someone said when are you going to leave Washington? I said when they charge me for my parking space.

Mr. CARLISLE. All points well taken.

Mr. VANIK. He is going with me. There might be an exodus.

Mr. CARLISLE. We hope not.

Mr. VANIK. We have problems because public transportation does not serve the long extended hours that we work here.

Mr. CARLISLE. I think your points are perfectly well taken. I think it is probably a matter though of the leadership at the top, too. I do think that even if certain bureaucrats as you described them, are shifted, if they come under the right kind of leadership, we can have better administration of our fair trade statutes.

Mr. Nehmer wants to add a comment.

Mr. NEHMER. There are today, I understand, only four professional members of the staff of the Treasury Department's Office of Tariffs and Trade. In order to do an effective job under the new countervailing duty statute, it cannot be done with four professional people. You can transfer the bodies to a new office. I would like to think that the new agency would be able to infuse a larger amount of resources to do an effective job so that there will in fact have to be new people brought into the picture other than those who have been administering this task.

I should also say that the burden and responsibility for the poor job that Treasury is charged with really cannot rest on the shoulders of these four professional people. It is the leadership in the Treasury Department, from the Secretary to the Under Secretary, the General Counsel, the Deputy Assistant Secretary of Treasury, who have not provided it with the kind of effective leadership necessary and those people would not move with the function.

Mr. VANIK. I just want to point out that after we created the Department of Energy, I think it is going to be difficult for this Congress to ever again, within any reasonable period of time, establish any new departments. I think that was the department to end all departments. I think there is rather broad-scale opinion about that. So you have a political problem about that kind of a solution.

Go ahead.

Mr. CARLISLE. We do not differ at all with you, Mr. Chairman, about the difficulty of it; we just hope that some time can be spent on this admittedly difficult question.

Let me mention one other issue which I do not believe the committee has addressed on the subsidies issue to date. That is, as you know, section 301 of the Trade Act provides for relief when subsidies cause trade diversion in the U.S. market or result in the loss of U.S. export sales. We would like to see this section amended so that there would be time limits and a requirement to take retaliatory action.

Senators Heinz and Dole have made some suggestions over in the other House which involve the ITC in the procedure and put a time limit on the procedure. It seems to me this is a good way, perhaps, of handling the matter. We would like to commend it to your attention.

I would like to make one other point, Mr. Chairman, before I turn away from the subsidies issue. It is a short point, but I think a fundamental one, and that is this: That to urge strict measures against subsidies is the very antithesis of protectionism. The concept of free trade rests on allowing market forces to determine investment decisions and trade flows. Subsidies, no less than tariffs and quotas, and perhaps more, distort free trade, and I was pleased to hear what Mr. McQuade, of the Emergency Committee, had to say on this point.

In the interest of saving time, I am not going to try to summarize the points that we make about implementing legislation and antidumping. We have four points to make addressed briefly on pages 10, 11, and 12 of our testimony, and I would like to go to the final point, which is the extension of the authority to negotiate tariff cuts and agreements on nontariff barriers.

It is the last point I have to make.

We agree with Ambassador Eberle on this point. As you know, the Senate Finance Committee has recommended, as part of the trade package of agreements and implementing legislation, extending the President's authority for 5 years and making permanent the authority to negotiate on all nontariff barriers. Further, the committee has recommended that future trade agreements and implementing legislation become effective in the way that this trade package will become effective, that is, an up-or-down vote on the floor with no amendments permitted.

In our view, Mr. Chairman, this implementing legislation should have nothing to do with the granting of future authority. Whether such authority is necessary is debatable, but if it should be considered. it should be handled, we think, in the customary legislative fashion after full hearings are held.

We do urge very strongly that the Congress not grant new trade negotiating authority at this time.

Mr. Chairman, my concluding remarks are these: Congress has engaged, or is now engaged, in one of the most far-reaching revisions of American trade statutes in modern times, and we heard what you said in your opening remarks. We want to support this trade package. We really do. We always have We have been working with the administration and with the Congress for well over a year on the issues which we have been discussing this morning.

We are now coming to the end of a very long process, and we do hope that the key issues will be addressed in such a way that the

organizations represented in our coalition can give full support to the trade package.

Thank you very much, sir.

Mr. VANIK. We are glad to have your analysis, and I think we will prove to be responsive to what you have recommended. The letter that I referred to is a letter of April 11, 1979, which I will place in the record at this point. The gist of my letter to Ambassador Strauss concerns the position of the subcommittee, specifically:

It is our view that foreign price assurances should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

That is the thrust of the letter. If you have any comment on that, I would be pleased to have it, but we will make it part of the record.

Mr. CARLISLE. We are quite delighted with that letter.

Mr. VANIK. Without objection, the letter will be entered in the record at this point.

[The letter follows:]

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C., April 11, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Executive Office of the President, Washington, D.C.

DEAR MR. AMBASSADOR: We wish to call to your urgent attention a potential loophole in the procedures being developed to obtain more effective countervailing duty and antidumping procedures. This issue was not fully addressed in our review of the subsidies-countervail code, but will certainly arise when we consider the antidumping code. Our concern relates to the question of discontinuance of countervail and antidumping procedues on the basis of foreign price assurances.

Specifically, it is our view that foreign price assurances should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

In order that there be a basis for determining the margin of dumping or the net subsidy, price assurances should not be accepted until a preliminary determination has been made. Compliance with price assurances should be monitored on the same basis as a final determination. Breach of an assurance should result in imposition of regular duties.

Failure to condition price assurances along the lines indicated above will result in the type of unbridled Administration discretion which has plagued the enforcement of these statutes and which, as a result, has given justifiable cause to complaints that trade policy is being poorly administered.

There is currently no provision in these existing laws to require less than the full amount of dumping margin or net subsidy. To open to subjective determination the acceptance of a lesser amount on the theory that it would be adequate to remove future injury would result in settlements at less than the full amount of the margin which could actually foster rather than deter dumping or subsidization settlements at lesser amounts and would incur a loophole in these statutes which would impair them to a point of little or no utility.

As you can recognize this assurance is of primary concern to industry in general and to labor and the resolution of this issue is absolutely essential to successful Floor action of the entire MTN package.

We would very much appreciate your early response.

Sincerely,

CHARLES A. VANIK,
Chairman.

GUY VANDER JAGT,
Ranking Minority Member.

Mr. VANIK. Yes, Mr. Jenkins.

Mr. JENKINS. Mr. Chairman, I might have missed part of the testimony. With regard to the problem of dumping by socialist

government countries, what is your recommendation in that field—that we go back to the prior law?

Mr. CARLISLE. Yes, sir, Mr. Jenkins. Well, the prior regulations. As I understand it—and, incidentally, we didn't intend to gloss over this important point; it was just to save time—as I understand it, prior to August of 1978, in order to construct the cost of industry in a socialist country, say, Poland, for example, the Treasury would examine a like industry in another country, in a so-called free market economy country.

Since August of 1978, under a new regulation, they have been comparing economies, say, going from Poland to Spain, and even if Spain doesn't have an industry comparable to the Polish industry under question, they construct hypothetically the industry and the cost. It seems to us that the Treasury should be required by law to go back to the old method, a method that was used for over 20 years.

Mr. JENKINS. Based upon prices of the commodity, itself.

Mr. CARLISLE. Yes, sir.

Mr. JENKINS. One other thing: You do oppose the granting of the additional 5-year authority to the President to negotiate further?

Mr. CARLISLE. Yes, sir, very strongly.

Mr. JENKINS. Thank you, Mr. Chairman.

Mr. VANIK. Mr. Fisher?

Mr. FISHER. No questions.

Mr. VANIK. On the nonmarket economy countries, last week I was in the Soviet Union, and I urged the Soviets to become a part of GATT, to become signatories to the proposals, particularly these codes which were so vitally important to the flow of trade, and I also pointed out that their participation was essential so we can develop a rather substantial policy of dealing with the problems of cost and production in the nonmarketing economy.

Have we had any reactions that you know of from the nonmarket economy countries?

Mr. CARLISLE. I don't know of any, sir.

Mr. VANIK. Who is agreeing to the codes? Is Hungary the only country that is agreeing to the codes?

Mr. CARLISLE. We can find out. I just don't know.

[The following was subsequently received:]

Subject: Signatories to the MTN Proces-Verbal and Attachments

1. As of COB April 17, GATT Secretariat records show that the Proces-Verbal has been initialled by 24 countries, including the U.S., EC (counted as 9), Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, Czechoslovakia, and Bulgaria.

2. The attachments have been initialled by the countries indicated below:

(A) Standards: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, Czechoslovakia, Bulgaria.

(B) Government procurement: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Argentina (with reservation).

(C) Subsidies/CVD: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina (with reservation), Spain (with reservation), Hungary and Bulgaria.

(D) Meat: U.S., FC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Hungary, and Bulgaria.

(E) Dairy: DC version was initialled by U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain (with

reservation), and Bulgaria. Hungary initialled dairy with no designation whether it was DC or LDC version. There were no known signatories to the LDC version.

(F) Customs valuation: DC version was initialled by U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Bulgaria. Argentina and Spain initialled the LDC version. Hungary and Czechoslovakia initialled the valuation attachment with no indication whether it was DC or LDC version.

(G) Licensing: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain (with reservation), Hungary, and Bulgaria.

(H) Agriculture framework: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, Czechoslovakia.

(I) Group framework: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Spain, Hungary, and Czechoslovakia.

(J) Tariff negotiations: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, Argentina, Hungary, Czechoslovakia, and Bulgaria.

(K) Civil aircraft: U.S., EC-9, Japan, Canada, Australia, New Zealand, Sweden, and Switzerland.

(L) Antidumping: DC version was initialled by U.S. EC-9, Japan, Canada, Australia, New Zealand, Sweden, Switzerland, Austria, Finland, Norway, and Spain. Hungary and Czechoslovakia initialled the antidumping attachment without designating DC or LDC version. There were no known signatories to the LDC version.

Mr. VANIK. I would appreciate any help I could have on this point, because I think it is something we have to deal with more and more because there is a serious possibility we will be increasing our volume of business with the nonmarket economies, and I think we should have a policy. I think if we adopt a policy, it will probably apply to all of them, because they are all interrelated, and I think that policy should include some of the other things they do that we don't. They provide housing at very nominal cost to their employees, and they provide health services, so I think all those things should be somehow calculated into the true cost of production so we have a common denominator and common method.

In the MTN we have the problem, of course, of the less-developed countries, and I think we have to deal separately with the issue of nonmarket economies. I hope we could arrive at a consensus on this point that would give us some assurance of a more reasonable understanding and a greater international involvement.

I told them every agreement signed and made with the rest of the world was a constructive step toward peace, which is their principal concern, and I thought these codes should be easy for them, something they should be able to adjust to and understand.

So I would appreciate any help that your group can give on this critical issue, because so many of your members are faced with the special problems in this category of commerce.

Mr. CARLISLE. We shall try to provide help and also try to supply some information for the record, Mr. Chairman, within a few days.

[The following was subsequently received:]

CONTROLLED ECONOMIES

The Ad Hoc Subsides Coalition recognizes that it is very difficult to apply the Countervailing Duty Law to exports from non-market controlled economies. Such countries such countries do subsidize their domestic and export production, often on a pervasive scale. However, calculation of the amount of such subsidization is extraordinarily difficult, if not impossible, because records are not kept in generally accepted accounting format and the general disinclination to divulge such data. For

these reasons, there must be effective recourse to the Antidumping Act to counter unfairly priced imports from the controlled economies, particularly in the event MFN treatment is extended to Russia and China.

Treasury has, however, effectively emasculated the Antidumping Act in the case of imports from non-market economies by adopting 19 C.F.R. § 153.7, which in most cases will require a hypothetical cost of production analysis of the "fair value" of such imports. This regulation vests virtually complete discretion in Treasury, with a consequent expansion of the role of diplomatic and political considerations to the almost certain detriment of domestic industries that are being injured by non-market imports.

To restore efficacy to the Antidumping Act in non-market economy cases, the Ad Hoc Coalition strongly supports a legislatively mandated return to the practice that preceded the revision of § 153.7 last August. Specifically, the Coalition endorses the amendment proposed by AMF during testimony before this Committee on April 23, 1979. This amendment would require the use of market economy prices of comparable industries, including those in the United States, as the primary determinant of fair value and is more fully explained in the attached memorandum.

The Ad Hoc Coalition is also of the view that the legislative history of the implementing legislation should contain guides to the selection of surrogate industries in market economies. For example, subsidized prices of a market economy industry should not be utilized. Such guidelines would be useful in limiting the discretion of Treasury in administration of the Act.

In summary, since the Countervailing Duty Law is probably functionally incapable of dealing with non-market economy imports, it is vital that the Antidumping Act be so amended that it will be administratively possible to deal with such imports in a fair, nondiscretionary fashion. The Ad Hoc Coalition believes that the proposed amendment to § 205(c) would be an important step in this direction.

Mr. VANIK. Thank you very much. We appreciate your useful testimony.

[The prepared statement follows:]

STATEMENT OF THE AD HOC SUBSIDIES COALITION

Mr. Chairman, my name is Charles R. Carlisle. I am a Vice President of St. Joe Minerals Corporation which has its headquarters in New York City. Today I am appearing on behalf of an ad hoc coalition of 33 industrial and labor organizations (Attachment 1) that are working for amendments to make the countervailing duty statute more effective against foreign subsidies. Our coalition began its work over a year ago.

With me are Mr. Stanley Nehmer, President of Economic Consulting Services, based in this city, and Mr. Donald deKieffer of the Washington law firm of Collier, Shannon, Rill, Edwards and Scott. Both Messrs. Nehmer and deKieffer have had extensive experience with the trade statutes and both have represented a number of clients who have filed cases under the 1974 Trade Act and other statutes.

PRINCIPAL POINTS

Our testimony makes the following principal points:

1. Our negotiators, working in a difficult situation, have done a good job of negotiating a Subsidies Code at Geneva. The important thing, however, from the standpoint of American labor and industry is the implementing legislation, i.e., the amendments to the countervailing duty statute, which will give practical effect to the Code under American law.

2. Amendments to the countervailing duty statute are necessary, regardless of what happens to the trade package of Geneva agreements and implementing legislation, because the present statute and Treasury's administration of it are seriously inadequate.

3. We believe that this Subcommittee, as well as the Senate Finance Committee, has made good progress on certain key amendments, for example; the determination of injury (although many organizations in our coalition continue to believe that there should be no injury test under the countervailing statute), the definition of subsidy, confidentiality, verification of submissions, time period for investigations, and judicial review.

4. We are concerned, however, about certain tentative decisions which this Subcommittee has taken on: first, the critically important subject of "offsets," i.e., the amount by which countervailing duties can be reduced; second, the equally important matter of accepting certain assurances from foreign interests in order to

terminate a countervailing case; and, third, requirements for filing. We also believe that this Subcommittee, and the Congress, should address the question of administering the nation's trade laws, and we strongly urge that the authority to administer both the countervailing duty and antidumping statutes be removed from the Treasury Department.

5. Although our testimony will be focussed mainly on subsidies, we also wish to address briefly two other major issues. One is the amendments to the antidumping statute as a result of amendments made in the GATT Antidumping Code. Here, the important points are, again, the determination of injury, time limits, price assurances to end a proceeding, and the treatment of dumped goods from socialist countries.

6. Finally, we are most concerned about a Senate Finance Committee decision to give the Executive Branch new authority to cut tariffs and negotiate on non-tariff barriers. This grant of authority, which comes as a surprise and on which the Finance Committee held no hearings, would be given as part of the trade package, which itself is non-amendable and subject only to an up-or-down vote. Whether such new authority is needed is debatable. And if there is a grant of new authority, it should come about through the regular legislative process with hearings, mark-up sessions and amendments in committee and on the floor.

SUBSIDIES

I have noted our belief that the implementing legislation is of paramount importance and that the countervailing duty statute would require a number of important amendments even if there were no Subsidies Code. Let me explain why.

First, while no one really knows the extent of foreign subsidy practices because they are constantly changing and many are hidden, there can be little doubt that they are pervasive, that they affect many important American industries and labor organizations, and that they probably are increasing. As partial evidence, we have attached to our testimoney (Attachments 2 and 3) copies of recent articles from two highly respected publications: "U.S. Companies in Unequal Combat," from *Fortune*, April 9, 1979; and "State-owned Businesses Abroad," from *Harvard Business Review*, March-April 1979 issue.

Second, we believe, as I said earlier, that the current law and Treasury's administration of it are seriously inadequate. Let me give you a few examples.

Treasury frequently has—

Missed statutory deadlines, not by just a few days but often by many months, in at least two cases extending to almost a year;

Reduced the calculated amount of a subsidy, and hence the countervailing duties in questionable ways not specifically authorized by the statute, and regulations have never been promulgated under this statute;

Conducted ex parte meetings with foreign representatives at which allegedly confidential information has been submitted to the Treasury Department. The difficulties which domestic petitioners have in rebutting such information is obvious, nor does Treasury verify such information;

Changed rulings without adequate opportunity for interested parties to comment.

Attachment 4 to our testimony lists a number of specific instances in which the Treasury has not administered the countervailing duty statute in the manner required by law. This information also was submitted in March for the record to the International Trade Subcommittee of the Senate Finance Committee.

In order to correct this kind of abuse and to deal really effectively with the widespread subsidy problem Representative Schulze of this Subcommittee has introduced H.R. 3307. Senators Heinz and Moynihan have introduced identical legislation (S. 538) in the Senate. We strongly support this legislation which conforms to the Geneva Subsidies Code in all important respects, and commend it to the attention of the Subcommittee.

As I noted in my introductory remarks, we believe that in its consideration of the implementing legislation, this Subcommittee already has done much useful work. Because of its great importance, I would like to discuss briefly one of the key issues which the Subcommittee already has addressed, satisfactorily in our judgment. That is the issue of the determination of injury.

Of course, under current law a domestic complainant does not have to demonstrate injury except in the case of duty-free merchandise. Many of us believe that the law should not be changed on this point because subsidization constitutes a per se violation of fair-trade concepts and injury should be presumed.

In return, however, for international recognition of the fact that "internal" subsidies (such as regional development grants and the underwriting of losses by state-

owned enterprises), as well as export subsidies, can adversely affect industries in other countries—and recognition that countervailing measures may be employed against those internal subsidies—the American negotiators agreed to accept an "injury test."

A number of organizations in our coalition are prepared to accept, reluctantly, an injury test in the Code and implementing legislation provided that the matter is handled in the way this Subcommittee has agreed it should be handled: that is, the statutory language should require that the injury test applied in countervailing duty investigations be no different than that applied under the Antidumping Act since January 3, 1975.

Some persons have argued that the injury test should be as rigorous as that required in "escape-clause" proceedings under Section 201 of the 1974 Trade Act. This argument ignores the fact that neither the international obligations of the United States in the new Code nor the need to deal effectively with unfair trade practices, warrant the creation of a higher threshold of injury than under the present antidumping law. There simply is no justification for making the definition of injury in unfair trade cases more stringent than that applied under the antidumping act.

We wish to be very clear and frank on this point. To require an "escape-clause" injury test under the countervailing duty statute would make the statute virtually unworkable as far as domestic petitioners are concerned.

I now would like to turn to three other points which the Subcommittee has addressed and to two which it has not. First, the question of "offsets," amounts by which the administering authority can reduce countervailing duties, or, as the Subcommittee called it, the "definition of net subsidy."

Our general view is that these offsets should be very few and defined precisely in order to prevent abuse of the types practiced by the Treasury Department. We believe that the Subcommittee has handled this matter well, except that included in the definition is the phrase, "direct and verifiable costs actually assumed" to qualify for the subsidy.

We do not know what that phrase means. We are most concerned, however, that it would allow the administering authority to deduct from duties directed against regional development subsidies many of the costs incurred in establishing facilities in depressed regions. Regional development subsidies to compensate for the comparative disadvantages of locating in such regions are extremely common and often equal a substantial fraction of the total cost of a facility.

Leaving this phrase in the definition of net subsidy would, we believe, leave a potentially very large loophole in the definition. We urge that the phrase be stricken from the definition.

Second, the issue of price or other assurances to terminate countervailing duty cases. The new Subsidies Code permits such assurances but does not require them.

Treasury has not permitted such assurances in the past, and we believe that they are inappropriate now because it would be very difficult conceptually to link such assurances to the subsidy itself.

This Subcommittee has dealt with the question by, in effect, saying that the assurance should be sufficient to remove the injury and by providing for an appeal to the International Trade Commission to determine whether the assurance would have that effect. It seems to us that this would present two problems.

First, it could present, inadvertently, a double injury test. The petitioner would have to demonstrate injury caused by subsidized imports. Then there would be a determination as to the degree of injury caused by the subsidy—note that the causal agent would have been shifted from subsidized imports to the subsidy itself. Second, what tests, what benchmarks should the ITC employ to determine whether the injury would be removed?

We believe that price and other assurances should not be used. They would present all sorts of problems and provide the Executive Branch with discretion that would be easy to abuse.

If this Subcommittee believes, however, that there are compelling reasons to provide for price assurances, then we recommend that the following safeguards be established—

Only price assurances should be accepted because they are more relatable to a subsidy than a quantitive restriction;

The price increase should be equal to the subsidy in toto, thus finessing the degree of injury question;

The price assurance should be accepted only if the foreign government (or private organization) providing the subsidy is a party to the assurance; and

The price assurance should be monitored by U.S. Customs on an entry-by-entry basis as price assurances are monitored in antidumping cases.

Third, I would like to turn filing bonds or fees. This Subcommittee has agreed that petitioners should be required to post bonds or deposits of $1,000 at the time of filing.

We believe that it is wrong in principle to require the posting of any bond or fee to have the law enforced. Moreover, although the $1,000 bond may seem small, and certainly would not deter major corporations, it could prove burdensome to some small firms and unions. We recommend that this requirement be deleted altogether since frivolous petitions can be dealt with easily in other ways.

There are two matters which the Subcommittee has not yet addressed on which we wish to comment. First, there is the question: which agency should administer the countervailing and antidumping statutes?

We realize that this can raise knotty questions of Executive Branch reorganization and that there is sentiment within the Ways and Means Committee to put the matter over to another time.

We strongly urge, however, that the Subcommittee take up this admittedly vexing problem now. We are in the concluding stages of a major revision in the international trading system. The proper administration of the countervailing and antidumping statutes, and perhaps other statutes, is at stake. Not to address this problem now would, it seems to us, leave the job undone.

Certain Senators have proposed that a new Trade Department be created. We support that proposal. In any case, we urge that the administration of the fair trade statutes be removed from the Treasury Department and given to another agency, if only temporarily, until Congress can determine which agency should have the administering authority permanently.

Also, Section 301 of the Trade Act should be amended so that there would be a time limit on the processing of 301 cases and a requirement to take retaliatory action in those cases when foreign subsidies cause trade diversion in the U.S. market or in foreign markets or when those subsidies cause the loss of U.S. export sales.

We understand that Senators Heinz and Dole have proposed that the International Trade Commission become involved at the same time that a petition is filed with the Special Trade Representative. Their investigations would be concurrent and there would be a time limit of up to 10½ months. the ITC would be required to prepare a report for STR on (a) findings of fact and (b) application of the Code to those facts. It seems to us that this is a very good way to handle the matter, and we commend it to the Subcommittee's consideration.

I would like to make just one more point—but a fundamental point—before turning away from subsidies.

To urge strict measures against subsidies is the very antithesis of protectionism. The concept of free trade rests on allowing market forces to determine investment decisions and trade flows. Subsidies, no less than tariffs and quotas and perhaps more, distort free trade.

ANTIDUMPING

This Subcommittee has not yet taken up the implementing legislation resulting from change in the GATT Antidumping Code. We wish to make suggestions on four points for the Subcommittee's consideration when it gets to this matter.

First, the determination of injury. Much of what we said about this matter in discussing the countervailing duty statute is relevant here. There should be no change in the test that has been applied since January 3, 1975.

Second, time limits. We believe that the time limits should be shortened somewhat, although unrealistically tight time limits could be damaging to everyone concerned. Much of the administration of the fair trade statutes centers on good management practices and devoting sufficient resources to the job. We urge that the Congress see to it that the agency administering the fair trade statutes has sufficient resources—and uses them—to do the job properly.

Third, price assurances, which are appropriate under the antidumping statute because it is a price-discrimination statute. They can be abused, however.

To guard against abuse, we urge that:

1. An assurance should be accepted only after a preliminary determination of dumping, and it should eliminate the dumping margin by increasing the price of the imported product (not by lowering the home market price). It should not be less than the foreign market value during the term of the assurance.

2. Imports following a price assurance should be monitored in the same way that imports subject to a dumping finding are monitored (by means of master lists, entry-by-entry examination, and semi-annual reporting by exporters).

3. If there is default in the performance of a price assurance:

(*a*) The default should be treated as an infraction of the Customs laws to which civil penalties apply under 19 U.S.C. 1592. Since the importer would be liable for the penalty, just as he would be liable for dumping duties, the price assurance should include a commitment by the exporters to notify their importers of this liability.

(*b*) A dumping finding should immediately be published and duties collected.

4. The price assurance should last not less than three years. At the end of that time, the case should be reviewed to determine whether the assurance should be continued, modified or ended.

Fourth, dumping by socialist countries. The obvious problems arising from different accounting concepts in determining the amount of a dumping margin on imports from socialist economies have been exacerbated recently by a new Treasury Department regulation which compares economies rather than industries. Unfortunately, Article 15 of the recently-initialled Subsidies Code does nothing to alleviate the situation.

Prior to August 1978, Treasury established a foreign market value (for purposes of finding a dumping margin) by examining an industry in a free-market country. That made sense because a centrally planned, controlled economy can develop industries comparable in scale and efficiency to those in more advanced market economies.

The new Treasury regulation rests on a fallacious principle which states that if two countries have the same GNP, then it follows that they will have comparable costs. Rather than examining comparable industries, the new regulation compares supposedly comparable economies (e.g., Spain-Poland). Rather than calculating the margin of dumping by comparing export prices of comparable industries, Treasury is now comparing export prices with a constructed value in a comparable economy, whether or not the comparable economy has a like industry.

This is contrary to the law's stated preference for comparing prices rather than using a constructed-value calculation. We urge the Subcommittee to rectify this situation in the implementing legislation by requiring Treasury to abolish the new regulation and return to that used for 20 years prior to August 1978.

EXTENSION OF TARIFF AND NON-TARIFF BARRIER NEGOTIATING AUTHORITY

The Senate Finance Committee has recommended, as part of the trade package of agreements and implementing legislation, extending the President's current tariff cutting authority for five years and making permanent the authority to negotiate on all non-tariff barriers. Further, the Committee recommended that future trade agreements and implementing legislation become effective in the way that this trade package will become effective, i.e., an up-or-down vote on the floor with no amendments permitted.

ENDORSING ORGANIZATIONS

Amalgamated Clothing & Textile Workers Union, AFL-CIO.
American Apparel Manufacturers Association.
American Footwear Industries Association.
American Pipe Fittings Association.
American Textile Manufacturers Institute.
American Yarn Spinners Association.
Bicycle Manufacturers Association.
Cast Iron Soil Pipe Institute.
Clothing Manufacturers Association.
Copper and Brass Fabricators Council, Inc.
Industrial Union Department, AFL-CIO.
International Ladies Garment Workers Union, AFL-CIO
International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO.
Lead-Zinc Producers Committee.
Luggage & Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association.
Metal Cookware Manufacturers Association.
National Association of Chain Manufacturers.
National Association of Hosiery Manufacturers.
National Cotton Council.
National Federation of Fishermen.
National Handbag Association.

National Knitted Outerwear Association.
National Knitwear Association.
National Outerwear & Sportswear Association.
Northern Textile Association.
Retail Clerks International Union, AFL-CIO-CLC.
Scale Manufacturers Association, Inc.
Synthetic Organic Chemical Manufacturers Association.
Tanners Council of America, Inc.
Textile Distributors Association.
Valve Manufacturers Association.
Work Glove Manufacturers Association.

[From Fortune, Apr. 9, 1979]

U.S. Companies in Unequal Combat

(By Hugh D. Menzies)

American businessmen who have to contend with foreign competitors often feel that, like the fellow on the left, they are engaged in an unequal struggle. They lack the extra armament that many foreign companies have, in the form of government aid and cooperation far beyond what Washington provides for U.S. companies.

Accordingly, many American executives strongly favor the subsidies code that is being hammered out as part of the international trade talks now winding to a close in Geneva. The code would reduce the prevalence of export subsidies in world trade, banning their use by developed countries and restricting their use by developing countries.

The task of drafting the code is nearly done, but that is not the final chapter. The code is an integral part of a trade package that must pass the U.S. Congress. That package calls for a considerable reduction in tariffs and is expected to receive intense congressional scrutiny because of the mounting clamor of American businessmen and labor leaders demanding protection from foreign imports.

Even if it gets past that obstacle, as is likely, the code will not be a panacea. As U.S. trade negotiators point out, it is relatively easy to spot direct export subsidies, such as tax exemptions or outright cash grants for exporters. It is far harder to draw a clear, enforceable distinction between a legitimate government investment in industry and a subsidy aimed at enabling a company to undersell its competitors in world markets. British Steel, for example, lost $824 million last year and received more than $1 billion to keep it going. Subsidy or legitimate investment? At any rate, with such lavish help, British Steel occasionally undersold even the efficient Japanese in U.S. markets.

THE KEY ISSUE OF THE NEXT DECADE

With competition in international markets becoming more intense, a new set of rules is required if the world is to avoid a destructive round of protectionist measures reminiscent of the 1930's. One American businessman who gives a lot of thought to these matters is William Sneath, chairman of Union Carbide Corp. and the chemical industry's representative to the U.S. negotiating team at Geneva.

"The trade area will be the key issue of the next decade," he predicts. "And the subsidies code will be the heart of that issue."

The major industrial nations will go along with the code. But they will also continue to pour money into their fledgling or failing industries to help them compete in world markets. Foreign governments often give aid to private businesses, but the favored beneficiaries of government largess are their own state-controlled enterprises. Governments endow them with guaranteed markets, tax breaks, and interest-free loans. In return, state-controlled companies are expected to perform such unprofitable activities as continuing to operate inefficient plants in order to protect jobs and selling abroad at a loss in order to earn foreign exchange. It is often said, with some justice, that many U.S. companies complain about government aid to foreign businesses as an excuse to hide their own competitive shortcomings. But even a doughty competitor is likely to have trouble if it's up against a company that can afford to operate at a loss.

State companies are not exactly new and neither is this type of support for them. The British Treasury has propped up British Steel for a good many years. Italy eternally bails out its giant industrial holding company IRI, and even the Germans keep the government-owned Salzgitter steelworks going at a loss. What is new is the enormous growth in the number of state companies in recent years. Most of the newcomers are in the developing world—often formed from foreign companies,

many of them American, that were nationalized in the late 1960's and early 1970's. Says John B. Rhodes, president of Booz-Allen & Hamilton International: "I can't think of a major company that has emerged in the developing world in the last five years that has not been state-controlled."

TO KEEP THE PREMIUMS AT HOME

State-controlled companies, whether or not the government owns a majority of the shares, have become a powerful presence on the international business scene. They produce 85 percent of the non-Communist world's oil, 40 percent of its copper, and 33 percent of its iron ore and bauxite. In manufacturing, they turn out 54 percent of the steel, 35 percent of the polyethylene, and 20 percent of the autos. Aside from autos, state companies remain relatively insignificant in the consumer-goods area. Governments leave food processing or furniture production to the private sector because they do not regard such activities as strategically important from either a political or an economic point of view.

Governments do, however, consider the high-technology sectors important. So state-controlled companies are battling the private sector, if only with mixed success, in computers, semiconductors, and aircraft. State companies are becoming more evident in the service industries too. State banks flourish, and country after country is establishing its own state insurance company to "keep the premiums at home." notes V. Lee Barnes, an executive vice president of Continental Corp.

Even all this does not convey the entire story. Figures for state production do not include Japanese companies, which work closely with the government even though nearly all of them are privately owned. Says Conference Board economist David Bauer, who recently completed a survey of the state challenge to U.S. companies: "Most American businessmen consider the Japanese to be state-controlled competitors, particulary in the international sphere."

Then there are the Communist state agencies that are moving steadily into world trade. Soviet shipping, for example, carries $2 billion worth of American cargo, up from $38 million in 1971. Soviet ships also transport most of that country's growing trade with Japan, West Germany, and Britain. East-bloc chemicals, autos, and even golf carts are moving into Western markets at an increasing clip. Soon wares will be flowing from China too.

Communist state agencies do not have to live by profit-and-loss statements, so they can set prices to gain market share. The Soviet merchant marine wins business by pricing at up to 40 percent below the competition. Nor are Communist countries alone in this strategy. A state company that has a mandate to provide jobs or earn foreign exchange at any cost will not worry very much about profitability.

American copper companies know that only too well. Those with overseas mines thought they had it rough when various nations nationalized those lucrative holdings a decade ago. But then came 1974 and the recession that sent demand for copper plummeting. The Americans cut back domestic production, but the new state copper companies in Chile, Peru, Zambia, and Zaire did no such thing. Needing foreign exchange, they kept pushing the metal out into the marketplace, and the price sank from 85 cents a pound in 1974 to 60 cents in 1977. At that price, few U.S. companies could break even.

For the four years that prices remained near rock bottom (they have rebounded dramatically in recent months), the Americans had to keep producing or lose market share to imports. That necessity came at a time when the companies had to spend heavily to meet new U.S. environmental regulations. So they were forced to borrow large sums. Even so efficient a producer as Phelps Dodge, which was virtually debt-free in 1968, today owes $665 million. Last year it took $53 million to service that debt.

Copper-company executives are not the only Americans muttering about competition from state-controlled companies. Every new nation wants its own steel industry as a first step toward industralization, and the state is normally the only institution capable of financing so costly a project. Often it builds excess capacity to take care of future demand. So a slew of new state steel industries ae looking for export markets. Coincidentally, many European state companies, also with excess capacity, continue to produce more than the home market will bear, because it is cheaper to produce at a loss than to lay off workers. These companies want to step up exports too.

The U.S. offers the largest and most accessible export market, and last year foreign steelmakers grabbed off a record 18 percent of it, despite quota restraints. American steel executives are most perturbed about losing market share to state companies that lose millions of dollars every year but still price competitively.

Indeed, Lukens Steel has brought antidumping charges against several European companies, most of them state/owned.

While U.S. companies in basic industries bear the brunt of the new state challenge, their brethren in high-technology businesses are not entirely immune. The British government leans on its own agencies and their suppliers to buy computers produced by Britain's ICL, Ltd., rather than an American manufacturer. The state has a 25 percent stake in ICL.

Even that American stronghold, the semiconductor business, is far from unassailable. The French government is forming a consortium to develop products in the microtechnology field. Much to the disgust of Texas Instruments President J. Fred Bucy, Britain's National Enterprise Board has set up a state company in the United States to purchase American technology and hire away expert personnel. "This is something new," complains Bucy. "A foreign government has set up a company specifically to drain off our technology. I think there is something unfair about that."

THE AIRBUS FLIES HIGH

Especially dramatic is the state-enterprise push into civil aircraft. American manufacturers have ruled the commerical skies since World War II, and they still dominate, but a dogfight is in the making. Observes George Prill, former president of Lockneed International and now aircraft-industry representative to the U.S. team at Geneva: "All of the U.S.'s competition in the civil-aviation field is government-owned or -controlled." By far the most formidable challenge so far comes from the A-300 Airbus. Airbus Industrie, the state-controlled international consortium that makes the A-300, has sold 132 of the planes, and potential customers hold options for an additional fifty-seven.

American competitors admit the A-300 is a fine plane, but point out that state ownership gives Airbus several advantages. Right off, it got a $1-billion interest-free loan from the sponsoring governments. Then, there were a number of guaranteed customers waiting, including Air France and Lufthansa. State financial support, moreover, allows the company to offer customers attractive purchasing arrangements. Eastern Air Lines got to test four planes free for six months. When Eastern President Frank Borman decided to buy twenty-three A-300's, very low-cost financing was available.

Brazil, too, has a state-controlled aircraft company, Embraer by name. To protect Embraer, the government has slammed the door on competitive imports. "The U.S. aircraft industry sold 628 planes in Brazil in 1974," recalls an executive of the General Aviation Manufacturers Association. "And we could see a market for 1,000." But then the door shut, and last year U.S. exports came to a dismal sixty-two. Now Embraer is taking on American manufacturers such as Swearingen and Beech in the own skies. It just sold a dozen of its eighteen-seat Bandeirantes to Aero Industries, a West Coast operator of commuter airlines, on more favorable financial terms than any U.S. competitor could match.

American supremacy in commercial aircraft is hardly in jeopardy. But the U.S. share of new orders has dropped from 90 percent to 80 percent since the early Seventies, notes George Prill, and is likely to slip some more. "The state companies in Europe, Russia, and Japan will prove formidable competitors, he says. "The produce good planes, and they can set prices at what it will take to win a share of the market and then work back to their cost."

BUT WILL PRIVATE HANDS WANT IT BACK?

There are crosscurrents, to be sure. Several European governments, even some that are socialistically inclined, are backing away from nationalization as an ideological cause, and have begun to wonder about the economic wisdom of bailing out every failing company. The British are particularly worried about the cost. Last year, the Treasury had to lay out $1.8 billion just to help two troubled companies—British Steel and Leyland.

Across the Channel, French Prime Minister Raymond Barre recently proclaimed and end to large-scale government bailouts. (See "Giscard's New French Revolution: Capitalism," page 66.) The bold statement was somewhat undermined when the government turned around and took control of the ailing steel industry in order to rationalize it. Barre vows that the industry will be returned to private hands once that has been done—assuming private hands want it back.

But whether any European government is willing to let a major industry or company go under—especially if a lot of jobs are at stake—remains open to question. The matter will be tested if European economies move into a period of slower growth, as expected. Certainly, few state companies are likely to be returned to the

private sector. Even the British Conservatives, who are given a good chance of regaining power at the next elections, admit that they would do little denationalizing, however. The Brazilian regime, for example, is talking of selling off a few of its holdings—forty-five of the hundred largest companies are state-owned. The suggestion has met opposition from Brazilian businessmen, who fear that only foreign multinationals will be able to meet the asking prices.

American multinationals are not waiting around to see which way the trend goes. They are far too busy joining forces with state companies. Even the oil and mining companies that were rudely stripped of their foriegn properties just a decade ago are jumping into ventures with state enterprises. Now that tempers have cooled, each realizes that it needs the other The state companies want the managerial skills and technology of the Americans and are willing to pay handsomely for them. The Americans realize that a venture with the state will give them access to raw materials or the local marketplance, or both.

Boeing Aircraft, for one, has done very well out of a marketing venture with Rolls-Royce, Ltd., the aircraft-engine maker, all the stock of which is held by the British government. British Airways, the state airline, just awarded Boeing a $600-million contract for nineteen 757's that will be equipped with Rolls-Royce engines. One competitor was Airbus Industrie, in which the British government now has a stake.

The American companies facing the toughest competition from State enterprisers are those that operate in basic industrial sectors, where the technology if mature, and are heavily dependent upon the U.S. market. For despite their moves into high-technology areas in the industially advanced countries, state-controlled companies will be most prevalent in the basic sectors for quite some time. There they have access to the same technology as the Americans while variously enjoying such advantages as cheaper labor or raw materials, new plants, and large-scale government financing.

State companies will continue to be heavily export-oriented. Renato Mazzolini, professor at Columbia University's School of Business and author of the soon-to-be-published book, Government-controlled Enterprises, notes that most state companies follow the export route even when it would make more sense to go multinaitonal and build plants overseas. He notes that politicians can make points with the voters by adding to the number of jobs and helping to keep the balance of payments in good shape. But they are open to the charge of exporting jobs and damaging the currency if they let state companies the currency if they let state companies shift major operations abroad.

HEAVIER COMPETITION AHEAD

The huge U.S. market is an obvious target, and the next major industry likely to come under attack is basic chemicals. American companies enjoy a $6.3-billion trade surplus with the rest of the world, but imports are growing faster than exports, and developments abroad make it likely that this trend will continue.

Several state chemical companies in Europe are adding capacity to do their part in government anti-recession programs. This, despite excess capacity in may sectors of the European industry and the rising stream of East-bloc chemicals into that market. Then, there are the plans of oil-producing countries, notably Saudi Arabia, to build big petrochemical complexes that will be almost totally export-oriented. Chemical executives expect that the Saudis will want their oil customers to take substantial amounts of what the oil companies refer to as "product."

The prospect of increasingly heavy state competition has helped to change the watchcry of American businessmen—and union leaders who see their members losing jobs—from "free trade" to "fair trade." This represents a potentially dangerous retreat, but an understandable one. Unless there is fair, or at least fairer, trade, more American industry leaders will be following the steelmen, textile producers, and shoe manufacturers to Washington to ask for protection or subsidies of their own.

State-Owned Business Abroad: New Competitive Threat

As many other governments expand their nationalized sectors, U.S. business suffers

(By Kenneth D. Walters and R. Joseph Monsen)

U.S. companies face many forms of international competition, but a growing competitive threat comes from state-owned companies abroad. These companies are heavily subsidized by their governments and are not required to earn profits compa-

rable to those of their privately owned competitors. More and more U.S. companies now face such competition, and the size and international scope of state-owned companies abroad increase each year. These authors point out that, with the U.S. balance of trade suffering, our official trade policy needs to address explicitly the problem of subsidized, state-owned enterprises abroad. Executives in private companies that compete with such enterprises have a special responsibility now to inform public officials of this new threat to fair competition.

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Why should private American companies observe the rules of free trade when a growing number of state-owned competitors are increasingly protected from the rigors of competition by government subsidies and preferential treatment? Executives of more and more U.S. corporations are asking this question as government ownership of business expands in Europe and through the world. U.S. companies find it increasing difficult to compete against state-owned companies that are not required to earn profits and that receive numberous direct and indirect subsidies from their governments.

Although foreign state-owned companies have not in the past posed a serious competitive challenge to U.S. business, the spread of state ownership during the 1970s is rapidly changing the rules of the game of international competition. William Sneath, chairman of Union Carbide, recently predicted that by the mid-1980's companies owned or controlled by governments would account for nearly 50 percent of the U.S. chemical industry's competition in export markets in such important sections as petrochemicals, fertilizers, and plastics. He concluded that this spread of government ownership is contributing to the further erosion of America's share of chemical export markets.[1]

William T. Seawell, chairman of Pan Am, notes that many foreign flag airlines are government owned and virtually all are government financed or otherwide aided.[2] In congressional hearings on world steel trade, William H. Knoell, chief executive officer of Cyclops Corporation, states that 55 percent of the non-communist world steel production is owned outright by government and that the trend is toward more government ownership.[3]

Although European Economic Community officials have a strong mandate to enforce fair competition, the EEC is fighting a rearguard action against most European nations' policies of nationalization and subsidization. The EEC has been especially reluctant to take effective action against uncompetitive practices of state enterprises, knowing that such action would receive a hostile reception in member states. It is one thing for the EEC to charge private companies with anticompetitive behavior; it is quite another to bring action against governments themselves, charging that the policies of companies they own are anticompetitive. The *Financial Times* of London declared: "The European Commission's attempt to tackle state aids to publicly owned industry has foundered almost totally upon the rocks of political, technical, and legal difficulties." [4]

SPREAD OF STATE OWNERSHIP

In a wide variety of industries, state ownership is a pervasive feature of Western Europe's economic landscape (see *Exhibit I*). The state has an ownership take in 19 or Europe's 50 largest industrial companies.[5] Investment in government-owned enterprises accounts for more than 25 percent of all investment in Sweden, 50 percent in Austria, and 35 percent in Italy. The basic industries of coal, steel, and petroleum are partly or wholly nationalized in most countries. Government companies also produce automobiles, airplanes, chemicals, paper, textiles, ships, aluminum, electrical and nonelectrical machinery, and electronics goods. The largest industrial com-

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[1] Bureau of National affairs, *International Trade Reporter's U.S. Export Weekly*, March 7, 1978 p. C-2.

[2] William T. Seawell, "Airline Economic Influence." *Aviation Week and Space Technology*, July 4, 1977. p. 9.

[3] *World Steel Trade: Current Trends and Structural Problems*, hearings before the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, Ninety-fifth Congress, September 20, 1977, p. 142.

[4] "Subsidies and Trade," *Financial Times* [London], November 23, 1977.

[5] *The Economist*, December 30, 1978, p. 51.

pany in their respective countries is owned by the governments of France, Italy, Great Britain, Austria, Mexico, Brazil, and India. *Exhibit II* gives a listing of the major European state-owned industrial companies.

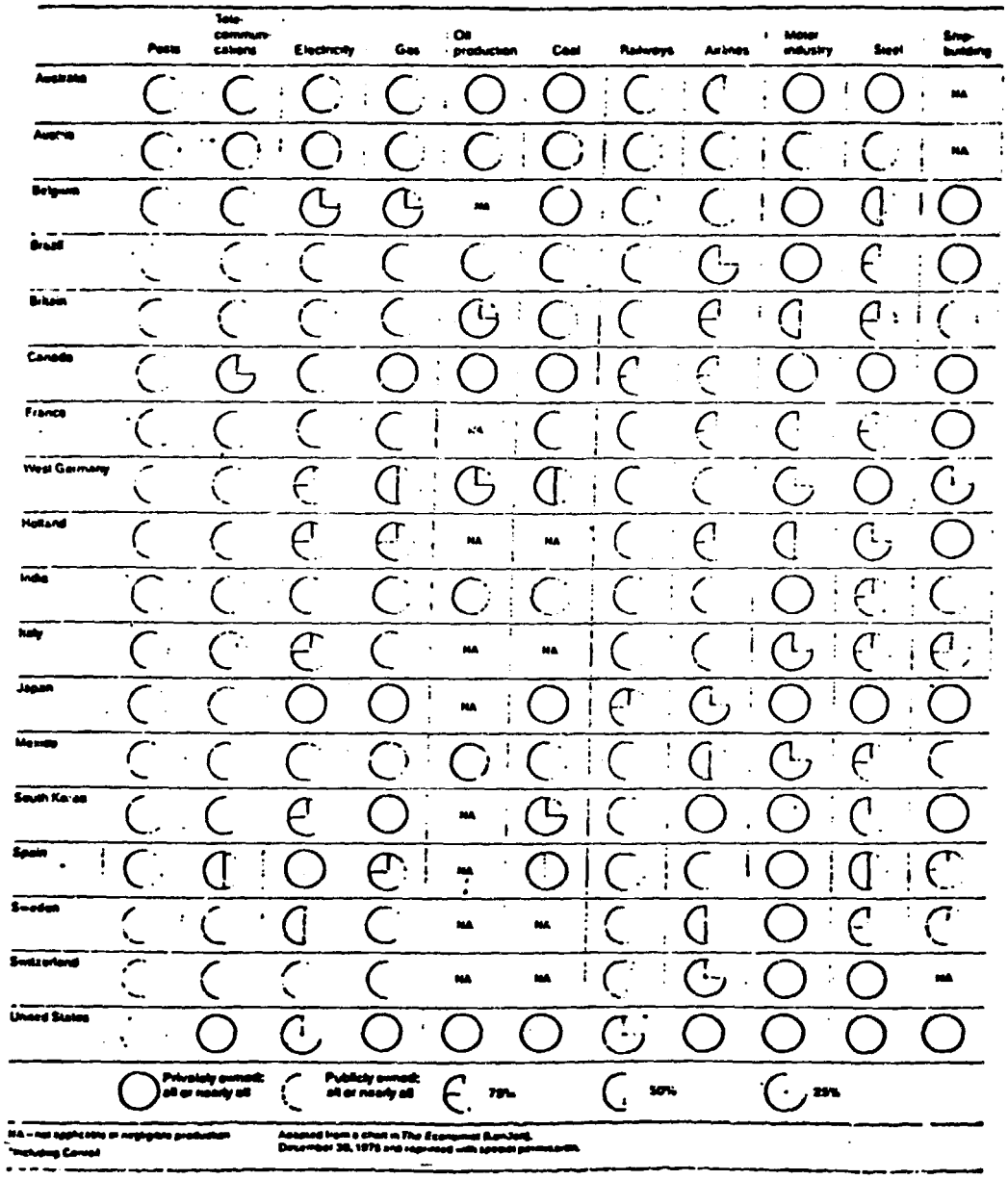
Although much nationalization occurred in Western Europe in the 1930's and 1940's, and 1970's have seen a new wave of government ownership sweep through European industry. The new government-owned enterprises fall into three patterns: rescues, diversifications, and high-risk ventures.

Rescue takeovers

Governments have seen nationalization as a politically popular way to fight unemployment in ailing or declining industries, such as steel, shipbuilding, and textiles. Even where an industry was growing (as the automobile industry), individual companies faced financial problems—such as British Leyland (now called BL Ltd.), Alfa Romeo, and most recently Volvo did. Each turned to increased government ownership as a solution to its financial problems.

The traditional free market response to slower growth and new competition is the old-fashioned shakeout, where capital flows out of relatively unprofitable activities into newer and more profitable ones. The economist Joseph Schumpeter called this capitalism's process of "creative destruction," where removing the deadwood of industry was necessary to facilitate the recovery and establishment of healthy producers.

Exhibit I
Scope of state ownership



NA – not applicable or negligible production
*Including Consol

Adapted from a chart in *The Economist* (London), December 30, 1978 and reprinted with special permission.

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Exhibit II

Major state-owned industrial companies in Western Europe

Aerospace	Aluminum	Automobiles	Chemicals	Computers and electronics	Mining (coal and metals)	Paper and wood products	Petroleum	Steel
Aerospatiale *France*	Ardal og Sunndal Verk *Norway*[a]	Alfa Romeo *Italy*	ANIC *Italy*	CII-Honeywell Bull *France*[m]	Charbonnages de France *France*	Enso-Gutzeit *Finland*	British National Oil Corporation *Britain*	British Steel *Britain*
Alitalia *Italy*	VIAG *Germany*	BL Ltd *Britain*	BP Chemicals *Britain*[j]	Inmos Limited *Britain*[n]	Enterprise Minière et Chimique *France*	Statsforetag *Sweden*	British Petroleum *Britain*[o]	Cockerill *Belgium*[w]
British Aerospace *Britain*	Vereinigte Metallwerke *Austria*	Renault *France*	Charbonnages de France-Chimie *France*[k]	International Computers Ltd. *Britain*[n]	National Coal Board *Britain*		CFP-Total *France*[p]	Italsider *Italy*
Dassault *France*[c]		Volkswagen *Germany*[g]	DSM *Netherlands*		Saarbergwerke *Germany*		ELF Aquitaine *France*	Norsk Jernverk *Norway*
Messerschmitt-Boelkow-Blohm (MBB) *Germany*[d]		Volvo *Sweden-Norway*[h]	ELF Aquitaine *France*[l]		Statsforetag *Sweden*		ENI *Italy*	NJA *Sweden*
VFW-Fokker *Germany*[e]			Enterprise Minière et Chimique *France*				Neste *Finland*	Swedish Steel *Sweden*[x]
Rolls Royce *Britain*			Montedison *Italy*[q]				OMV *Austria*	Saarbergwerke *Germany*
SNECMA *France*			Neste *Finland*				Saarbergwerke *Germany*	Salzgitter *Germany*
			Norsk Hydro *Norway*[r]				Statoil *Norway*	VOEST Alpine *Austria*
			OMV *Austria*				Swedish Petroleum *Sweden*[s]	
			Saarbergwerke *Germany*				VEBA *Germany*	
			VEBA *Germany*[t]					

[a] French government to have a 21% stake in capital and double voting rights.
[b] 43% owned by German states of Bavaria and Hamburg.
[c] 26.4% owned by German state of Bremen.
[d] 75% state-owned.
[e] 40% state-owned.
[f] Proposed reorganization giving Norwegian government up to 40% stake was recently rejected by stockholders. Volvo's Dutch subsidiary, Volvo Car, 45% owned by Dutch government since January 1978.
[g] Subsidiary of British Petroleum.
[h] Subsidiary of Charbonnages de France.
[i] 70% state-owned.
[j] State has 30% interest in company's controlling syndicate.
[k] 51% state-owned.
[l] 43.7% state-owned.
[m] Honeywell owns 47%, and Machines Bull (in which CGE and French state are shareholders) 53%.
[n] Proposed microprocessor to be controlled by National Enterprise Board.
[o] National Enterprise Board owns 24%.
[p] 51% state-owned.
[q] 40% state-owned.
[r] 50% state-owned.
[s] State has announced an intention to take a 60% stake in Pkbl, the largest of Belgium steel producers, and a lower share of other steel companies.
[t] 50% state-owned.

But in Europe today the tendency is not to let companies languish or die but to resuscitate them by means of state takeovers and by massive injections of state funds. In nearly all European industries—including steel, aluminum, shipbuilding, aerospace, chemicals, automobiles, pulp and paper, and heavy engineering—one government or more has nationalized ailing companies and is keeping them afloat.

Although public opinion polls in Europe now suggest that most people oppose new nationalization, when a particular company faces bankruptcy, political instincts tell even right-wing politicians to nationalize to save jobs. When Conservative Party leader Margaret Thatcher criticizes British Prime Minister James Callaghan and the Labor Party for favoring nationalization of what the British call "lame ducks," Callaghan reminds the public that it was Edward Heath's Conservative government that set the precedent for such policies when he nationalized faltering Rolls-Royce in 1972. A nonsocialist government in Sweden came to power in 1976, committed to turn the tide of socialism, but it was forced to bring into public ownership the steel industry, the shipyards, several textile and clothing companies, and a computer company.

Rescue nationalizations of the 1970's are in theory temporary measures, induced by the recession that followed the 1973 oil crisis. But no one suggests that denationalization would occur if growth rates were to rise. The rescue nationalizations represent a permanent extension of government ownership into industry. If present trends continue, each new major company or industry that has financial problems will become a prime candidate for nationalization, posing new competition to those companies that remain in the private sector.

Expansion by diversification

State-owned companies are committed to expansion, and internal growth and diversification are less controversial ways of expanding state ownership than forced nationalization. M. Edouard Bonnefous, president of the French senate's finance commission, has traced the process of what he calls the "creeping nationalization" of French industy via the diversification of state-owned companies. He points out

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that, while the number of French state-owned companies has declined from 170 to 130 in the past 20 years, their subsidiaries have multiplied from 266 to 650.[6]

Renault, the French state-owned automobile giant, has diversified into numerous industries throughtout the world, such as agricultural machinery, machine tools, trucks, and most recently, agricultural products. Renault's subsidiaries are rapidly expanding into Austria, Mexico, Portugal, Rumania—and Renault is just beginning to make its move into the U.S. market.

Three large state-owned companies in Europe have recently announced independent plans to diversify into developing and producing car components—Ardal og Sunndal Verk, Norway's largest aluminum producer, Salzgitter, the German steel and construction company; and Vereinigte Metallwerke, the Austrian aluminum company.

Britain's National Coal Board is aggressively moving into new businesses all around the world. British Shipbuilders, nationalized just in 1977, recently announced a major diversification program into offshore engineering, undersea assemblies for oil-related work on the ocean floor, and nonmarine engineering. British Petroleum continues to expand aggressively, recently acquiring stakes in coal mining, chemicals, and bleach and detergents. Many state-owned airlines are diversified into air freight shipping, travel agencies, restaurants, and hotels.

These are just a few examples of the silent but relentless expansion of state ownership through diversification. The competitive effects of this trend are not widely appreciated but are still significant.

High-risk ventures

Nationalization also occurs through government establishment or takeover of companies that carry high risks in the marketplace or that require heavy research and development expenditures. In the past few years, Britain's Nationial Enterprise Board purchased stock in 40 different enterprises, including 15 companies that are now direct subsidiaries, employing 276,000 workers. Recently, the National Enterprise Board announced that it will make an initial investment of $47.8 million to set up a new state-owned company to manufacture integrated circuits and compete with major Japanese and U.S. companies.[7]

The British government decided in December 1978 to quadruple the amount of money that can be borrowed by the state holding company, National Enterprise Board, and its regional counterparts, to an unexpectedly high total of $12 billion. Following the government's instructions to help expand exports, the National Enterprise Board's new corporate plan envisages an expanding role in product development in key strategic areas of industry.

The German and French governments both provide equity capital to assist small and medium-sized companies that wish to launch new products and techologies.

The proposed DeLorean Motor Company, brain-child of John Z. DeLorean, the former General Motors executive, is to rely heavily on a mixture of loans, equity, and cash grants from government sources in Northern Ireland. The British government is willing to invest more than $104 million in the company, or about $53,000 for each job to be created.[8] Since the amount of total support includes $13.2 million in loans, $34.9 million in equity, and $57 billion in outright grants, it is no wonder that DeLorean chose Northern Ireland over Puerto Rico, whose offer largely promised loans.

UNFAIR COMPETITION?

Today no industry is immune to competition from state enterprises. All three types of expansion of state ownership—rescues, diversifications, and high-risk ventures—bring government companies into more active competition with private corporations. The question that needs to be asked is how to meet this new form of competiton.

In comparison with their privately owned competitors, state-owned companies have a number of distinct advantages, which we shall now discuss.

No need to earn profits

The biggest advantage of state-owned companies is their ability to succeed and even thrive without earning profits. Although political goals can deter the state-

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[6] "The State Sector: Purge Gets Under Way," *Financial Times* [London], June 11, 1978.

[7] "Britian Plans to Invest $47.8 Million to Spur Advanced Electronics," *Wall Street Journal* [Western edition], July 24, 1978; "NEB Confirms Go-Ahead for Microprocessor Plan," *Financial Times* [London], July 27, 1978.

[8] "DeLorean Car Plant to Get $103 Million of Aid from Britain," *Wall Street Journal*, November 17, 1978; "Government to Put [illegible] into [illegible] Car Plant," *Financial Times* [London], November 26, 1978.

owned company from operating efficiently, even an inefficient company can pose formidable competition when it is subsidized and when its deficits are covered by the government.

U.S. Treasury Department data show that, in 1977, the British Steel Corporation, whose production facilities are widely recognized to be old, overstaffed, and inefficient, was underselling the efficient Japanese steel companies on the U.S. West Coast.* Since British Steel's losses last year were over $800 million, the decision to sell steel at such low prices was interpreted as being a political decision to maintain employment rather than a commercial decision.

In July 1978, the British government requested new aid of $930 million for British Steel.

The laws of capitalism dictate that a company unable to operate profitably is eventually forced out of business. Profitability is necessary to attract new capital and maintain support of investors and creditors. Private companies must rely on the capital markets for funds, and lending depends on past financial strength and potential profit performance.

But state-owned enterprises in Europe operate on totally different principles. Although governments and managers there talk bravely of making their operations profitable, the financial records show that most state-owned companies incur substantial losses or just break even. Occasional profits are indeed modest.

For example, in the past three years the British government has spent well over a billion dollars making up for British Steel's losses. Private companies would find it difficult to survive under such circumstances and would feel that British Steel—despite its poor financial performance—poses a competitive threat. *Exhibit III* shows net income for some of the largest state-owned manufacturers.

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* *Oversight of the Antidumping Act of 1921*, hearings before the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, Ninety-fifth Congress, November 8, 1977. p. 36.

Exhibit III
Net income or loss of the 14 largest state-owned manufacturers in Western Europe, 1973-1977*

Company	Country	Industry	In thousands of dollars 1973	1974	1975	1976	1977
Aerospatiale	France	Aircraft, missiles	$ (98,942)	$ (76,568)	$(113,816)	$(129,902)	$ (91,045)
Alfa Romeo	Italy	Automobiles	(1,544)	(89,423)	(178,632)	102,632	(169,839)
British Leyland†	Britain	Automobiles				61,208	(90,562)
British Steel	Britain	Iron, steel	120,831	170,455	171,867	(541,209)	(184,727)
Charbonnages de France	France	Coal mining, chemicals	(8,789)	(2,573)	(138,769)	(158,132)	(48,907)
DSM	Netherlands	Chemicals, fertilizers, plastics	50,838	192,995	56,935	49,080	44,961
Italsider	Italy	Steel	34,038	50,413	(110,854)	(157,609)	(446,619)
Renault	France	Automobiles, tractors, machine tools	12,902	7,261	(178,702)	122,870	4,070
Rolls Royce	Britain	Aircraft engines	2,323	28,650	65,970	16,538	25,503
Saarbergwerke	Germany	Coal mining, rubber products	(36,734)	(10,157)	(2,555)	5,058	12,100
Salzgitter	Germany	Steel, shipbuilding machinery	11,000	20,503	(,567	(18,517)	(40,119)
Statsforetag Group	Sweden	Mining, paper products, steel	31,561	16,869	(25,555)	44,682	(145,827)
VIAG	Germany	Aluminum, chemicals	8,971	23,864	(17,170)	16,096	14,071
VÖEST Alpine	Austria	Steel	19	9,901	86	1,100	NA††

*Compiled from *Fortune's Annual Directory of Largest Industrial Corporations Outside the United States* (August, 1974-1978) and from other sources, primarily company annual reports and Jane's *Major Companies of Europe*
†Nationalized in 1975
††Not available

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No fear of loss or bankruptcy

Just as state-owned companies need not earn profits to prosper, neither do their losses lead to bankruptcy. Judging by all the evidence, state ownership confers immortality on an enterprise. Governments rarely allow their companies to go bankrupt, regardless of how staggering their losses may be. In fact, large losses are as likely to be followed by massive new injections of investment funds as by cutbacks in production, as the Italian state-owned enterprises have shown. Despite large losses, Italian state-owned steel companies have continued to add to capacity, in violation of EEC directives, and Italian state-owned textile companies that have been reporting losses for ten years or more still live to compete another day.

No need to pay dividends

While dividends are almost considered to be a cost of doing business in many large privately owned corporations, state-owned companies rarely pay dividends to the government, even when they do have profits. The flow of funds is usually in the opposite direction—from the state to the company.

Renault, known as the superstar of European state/owned enterprises because of it high growth rate and entrepreneurial vigor, has never been very profitable. In fact, Renault's major competitor, Peugeot, has *paid* as much in taxes to the government in the past five years (1.8 billion French francs) as Renault has *been paid* in subsidies by the government (1.7 billion French francs).[10]

Preferential access to state financing

State-owned companies enjoy ready access to the state purse. Their top executives meet regularly with the finance minister to discuss cash and investment needs. Although private banks sometimes provide loans to state companies, the government usually guarantees repayment, which ensures a low interest rate on the loans.

The annual state budget in Great Britain provides for major financial assistance to state-owned companies. sometimes the aid is for immediate cash needs (as in the case of much recent assistance to British Leyland, British Steel, and some other state-owned companies), but more often funds are earmarked for investment projects. Employment, not profitability, is the dominant concern in deciding where new investment funds are to go. Governments also are eager to finance exports of the companies they own. Indeed, competition in export financing has become a preoccupation of most countries.

Boeing recently lost a Pam Am order to Lockheed, partly because Lockheed's TriStar was fitted with Rolls-Royce engines, and the British government agreed to finance both Pan Am's purchase of the engines *and* the planes. Thus government-financed investment is based more on such political factors as maintaining employment and exports than on economic considerations of profitability. State companies can readily adopt such "political" investment criteria without risking their futures, whereas private corporations that ignore profitability will not survive—at least as private companies. Hence the willingness to follow the government's investment criteria gives the state-owned enterprise special access to the government's purse.

Monopoly power

Governments have often chosen to nationalize entire industries by placing competing businesses under single state ownership. Great Britain is particularly known for this strategy, such companies as British Steel, British Aerospace, National Coal Board, and British Shipbuilding having a dominant position in their respective industries. Even though this policy has encouraged monopoly power, these companies have still had difficulty achieving financial health. In addition to a status of domestic monopoly, subsidies and grants from the state have been necessary to protect these companies from foreign competition.

Built-in markets

Governments encourage state/owned companies to give preference in their purchasing to domestic sources. Although this practice is a direct violation of EEC rules on competition, examples of direct government influence in procurement decisions of state-owned enterprises abound. And as more companies come under state ownership, governments acquire power to influence or control purchasing decisions of large sectors of the economy—a power not even imagined a few decades ago.

For example, when managers of two major European state/owned airlines—Air France and British Airways—announced their preference for U.S.-manufactured airplanes, political repercussions were instantaneous. The French government persuaded the management of Air France to agree to a compromise by which the company would purchase most of its planes from the French state-owned aerospace

[10] Oliver Giscard d'Estaing, *Le Social-*[*illegible*]

firm Aérospatiale.[11] The announced preference of the British Airways deputy chairman for a U.S.-made plane was followed by calls in Parliament for his immediate dismissal, and a British aerospace union adopted a resolution demanding that the publicly owned aerospace industry be given preference on all future contracts.[12]

Private companies can be expected to join the unions in vociferously opposing foreign purchases by state-owned companies. For example, private paper companies in Britain recently called on the government to instruct all the nationalized companies to purchase domestic paper products.

Governments themselves are the largest purchasers of good and services in every major country today. Representing a growing share of world trade, they are involved in purchasing practically every kind of good and service, ranging from computers, automobiles, and office machines to every type of military equipment. Bids for this vast amount of business are in many cases not open to foreign competitors, and in other cases there may not even be a bidding process. Many U.S. companies are complaining that the huge Japanese state/owned company, Nippon Telegraph and Telephone Corp., has not considered buying from U.S. manufacturers.

Public opinion runs strongly against having governments purchase from foreign companies. Employees in domestic companies feel that government purchases from a foreign competitor are almost acts of treason—and to pass-over a state-owned producer in favor of a foreign producer is to compound the offense. Government ownership of a company virtually ensures that government will be a customer.

When the French and British governments became major owners of computer companies in their respective countries, they assured these businesses of a healthy number of orders from state bodies. Government campaigns to encourage the public to purchase domestic products (such as the British government's current "Buy British" campaign) require a government to buy domestic products itself—and the pressure is doubly compelling when a state-owned enterprise makes the product.

Hidden subsidies

Subsidies to corporations are more easily disguised than are tariffs or quotas. Though subsidies are hard to detect or trace in any case, it is nearly impossible to try to unravel the tangled financial relations between governments and state enterprises. Although Japanese institutions are unique, Japan has many types of state-owned "public corporations," many of which are used to subsidize national economic endeavors. A new study notes that most areas of technological expertise in which Japan is preeminent—shipbuilding, railroads, steel, electronics, cameras—were developed by mixed public and private enterprises or under official auspices.[13] A lack of consistent accounting standards has made it especially easy for governments to hide subsidies to state-owned businesses.

A controversy rages now in Great Britain over the exotic accounting standards used in auditing state-owned companies' accounts.[14] Not only do different companies adopt widely differing accounting practices, but these practices often change from year to year. Thus it is next to impossible to know how performance is being measured or what the company's true goals are. This chaotic situation moved *The Economist* to proclaim: "Shoot the nationalized auditors—no one would notice."[15]

The EEC has been struggling to correct the problem it calls "transparency"—government money and policies that benefit a state-owned enterprise yet are difficult to trace and measure. For example, is a government cash grant really going for new plant and equipment, or will it subsidize the price of a product in foreign markets? The EEC treaty states that the same rules of competition apply to state as to private companies, but by the EEC's own admission attempts to attack state aid to state-owned companies have met with little success.

The problem is not that governments are unaware of the anticompetitive impact of such subsidies but that they zealously guard their right to set national economic policy. State-owned concerns are extremely convenient political tools to influence the economy for short-run political purposes, especially when a government is in some political difficulty or when an election is imminent.

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[11] "Air France Near Solving Problems with State." *Financial Times* (London), January 6, 1978, "Air France: For 24 Pieces of Silver," *The Economist*, January 21, 1978, p. 85, "Air France's Re-equipment Programme," *Financial Times* (London), January 20, 1978; "Air France Cancels an Option to Lease to Boeing Co. 717," *Wall Street Journal* (Western Edition) April 18, 1978.

[12] "Buy British Aircraft Call by Engineers," *Financial Times* (London), May 12, 1978.

[13] Chalmers Johnson, *Japan's Public Policy Companies* [Washington, D.C., and Stanford, Calif.: American Enterprise Institute and Hoover Institution on War Revolution and Peace [illegible], p. 16.

[14] "The State Industry Accounts Muddle," *Financial Times* [London], August 2, 1978. Ku Piza, "The Nationalised Industries' Accounts Say Enough?" Account, September 1976, p. 72.

[15] The [illegible], July 24, 1972, p. 73.

Support for domestic industry

State-owned companies help subsidize other domestic companies. Governments often use state-owned companies to assist domestic corporations by, for example, selling goods or services at lower than cost. The price of state-supplied coal has been subsidized for many years in France (as shown by the consistent losses of Charbonnages de France), benefiting coal users.

State-owned banks are called on to give special support to exporting companies. M. Maurice Laure, chairman of state-owned Societé Générale (one of the large French banks, 80 percent of which are state-owned), said that the banks "are absolutely in the front rank" in their aid and support of French exports.[16] Two state-owned banks have lent the loss-ridden French steel industry the bulk of some 56 billion it has received in loans.

The Swedish government has directly increased purchases of state-owned companies to avoid layoffs in the private sector. When the large Swedish telecommunications business, L. M. Ericsson Co., threatened to close down some of its operations, the government gave its telephone company an extra $70 million to place additional orders for new equipment from Ericsson.[17]

Revenues from state-owned natural resources can go directly to subsidize domestic industry. In the debate on what to do with the revenues of the state-owned British National Oil Corporation (which controls North Sea oil operations), current British political sentiment seems to be to use the oil monies to "revitalize" British industry. No one appears to be objecting to such a subsidy on the grounds that it would be anticompetitive.

The competitive threat of state-owned enterprises is widespread, since many of them are major exporters. State-owned giants such as Renault, British Steel, DSM, BL Ltd., Alfa Romeo, and British Petroleum are among the largest exporters in Europe, and some of them export over half their output. Thus private competitors must vie with them not only in their home markets but throughout the world. Furthermore, the fact that more and more export-oriented state enterprises are diversifying abroad will mean that new industries must contend with this new form of state-owned and state-assisted competition.

State-owned companies distort the free market and competition in many ways. They have advantages in their home markets. They are arms of the state, with special preferences in dealing with their owner, the government. They are used to support and subsidize local enterprises. And, most important of all, they operate at home and abroad without the need to earn profits, which governs the private sector. Losses and new investment needs are financed from a seemingly bottomless cornucopia of government grants, subsidies, and loans (sometimes at favorable low interest rates).

The fear, of course, is that the number of state enterprises will continue to expand, that the special treatment they receive will continue, that nationalization to solve economic crises or save jobs will continue, and that natural competitive forces will not be allowed to respond and adapt in the face of new pressures to nationalize.

Regardless of whether the spread of state ownership is a consciously planned development or a series of ad hoc decisions, the unmistakable trend in Western Europe and in many developing countries is toward a large and growing number of government-owned enterprises whose policies and export pricing behavior cannot possibly be characterized as commercially motivated. When increasing trade with the Comecon (Council for Mutual Economic Assistance) world is added to this, the forces of state ownership promise to be even more formidable in the future.

Role of the EEC

The European Economic Community is keenly aware of the competitive threat of the rising tide of state ownership and has undertaken several investigations into subsidies to such companies. Article 90 of the EEC treaty says that state-owned companies may not distort competition by their policies, but EEC officials readily admit that no major cases have arisen under Article 90. The commission's 1977 *Report on Competition Policy* notes that the Court of Justice "has as yet had very little opportunity to elaborate" on Article 90.

The numerous advantages and subsidies of state-owned companies have continued to be allowed, and the EEC has been perplexed about how to put teeth into Article 90 in view of the strong political opposition from member states, nearly all of whom now have large state-owned sectors.

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[16] "Banking: The Seats of Empire." *Financial Times* [London], June 13, 1978.

[17] "Government Allocations Helps Ericsson," *Financial Times* [London], *April 14, 1977.*

There are, of course, pressures to enforce Article 90 from private corporations within the EEC that must compete with subsidized, state-owned companies. Yet on the basis of past performance, the EEC is unlikely to have the power or the inclination to take the drastic steps that would be necessary to effectively enforce Article 90. All the evidence suggests that Article 90 will merely remain a declaration of principle, having no significant role in fundamentally changing government policies toward state-owned companies.

Possible solutions

What can the United States do to ensure that state-owned enterprises will not unfairly undermine the competitive position of private industry? The U.S. government should recognize and explicitly resist the protectionist policies of foreign state-owned companies much more firmly than it has in the past. State ownership itself may cause companies to require subsidies, since the normal pattern for European state-owned companies has been never-ending government intervention and subsidization.

Although every nation subsidizes some industries, the United States is still a remarkably open economy compared with our major trading partners. An open economy indeed has advantages, but openness can make an economy vulnerable to unfair competition when trading partners do not observe the same policies of fairness and openness.

The advantages of free trade are spread thinly and widely, but the benefits of protectionism are politically highly visible. Politicians can point to jobs saved in an industry kept alive by subsidies, but, in the end, no one can win an international game of competing to nationalize and subsidize more and more industries. Competition for trade, not for subsidies, is a vastly more efficient goal to strive for. But to promote free trade, trade negotiations and legislation must deal specifically with the special problem of state enterprises that pose unique considerations of subsidization and trade restrictions.

However, given recent history, we are not optimistic that American business will be adequately protected by our government's policies toward foreign state-owned companies. In the post-World War II era, American foreign policy has usually subordinated American economic interests (particularly those that would foster American exports and competitiveness abroad) to political objectives—such as building up the economies of Japan and Western Europe. This policy is sometimes referred to as a continuation of "Marshall Plan mentality." Given the current foreign trade imbalance and the relative value of the dollar, the policy has worked very well.

The question that remains is, "How long will the United States continue its policy of 'beggar thyself'—and not thy neighbor?" The U.S. government appears to be still operating under the illusion that to compete internationally all that American companies must do is produce goods that people want to buy. But, in an age of proliferating government subsidies to foreign state-owned and private corporations, that is not enough.

Unless U.S. policymakers recognize that trading practices of our chief competitors often grossly violate standards of fair competition, and that bold and unequivocal actions are necessary to counter these anticompetitive practices, one can expect still further erosion of U.S. markets at home and abroad.

Especially discouraging for American companies has been the repeated indifference and even outright hostility that so many U.S. government policymakers and bureaucrats show toward our own corporations.[18] Even when the existence of many direct and indirect subsidies to state-owned companies has been known, U.S. policymakers have not moved aggressively to levy duties against imports from these companies. Past enforcement has been so timid that it has mainly served to encourage the Europeans and Japanese not to take our laws seriously. The discretionary powers that might help American business compete against foreign state-owned competitors are seldom used to foster American sales and protect American jobs.

Current proposals for a "material injury test" to determine whether U.S. companies are truly injured by foreign subsidies are a new and additional obstacle that American trade negotiators have reportedly agreed to. This suggests that the administration is not as concerned as it has professed to be about protecting American manufacturing companies from unfair foreign competition. American companies in the past have already had little chance of seeing countervailing duties imposed on subsidized imports. But, if the material injury test does indeed become law, American business and labor will see yet another encouragement to foreign state-owned companies to become more aggressive.

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[18] John J. Nevin, "Can U.S. Business Survive Our Japanese Trade Policy?" HER September-October 1978, p. 165.

Regardless of precisely what trade treaties are finally agreed to, can American business realistically hope that our government will act against imports from subsidized state companies? For instance, despite Japan's suggestions that it may permit American companies to compete internally for business of its 115 state-controlled companies (whose budgets are estimated to total about one-half of Japan's official national budget), do we actually think such sales on any but a token basis will ever occur?

Likewise, who can be so optimistic—or naive—as to expect that European state-owned companies will become major customers of American companies where domestic suppliers exist? To avoid embarrassment it is best not to put such questions directly to our trade negotiators and government officials.

Public awareness

If American companies can expect little protection in the future from their recent round of trade negotiations and from their own government officials, what, indeed, can business do? Since American awareness of the growing anticompetitive impact of state ownership around the world is still virtually nonexistent, American business must mount a campaign to educate all levels of American society—beginning with the president, Congress, those responsible for enforcing our trade laws, government bureaucrats and extending to the public at large.

The message must be that the American "beggar thyself" policies dating back to the Marshall Plan era have long ceased to be in the best interests of business and labor, and increasingly will be detrimental for consumers as well, as more of our domestic producers are forced out of business by subsidized foreign competitors.

It is time we recognize that while other nations bravely talk of free trade, they have in fact moved further from market forces in favor of subsidized state ownership of business as a form of veiled but active protectionism. American business has been forced increasingly to compete against highly subsidized companies that are not effectively required even to make profits—let alone show a rate of return required by the market of American companies.

A special office

The U.S. government can take a further step to counter the anticompetitive impact of foreign state ownership. A special office is urgently needed to have exclusive responsibility for studying and monitoring the changing scope, behavior, and competitive impact of state-owned companies abroad. If U.S. businesses are to be protected from the increasing unfair competition of these companies, those responsible for the enforcement of U.S. trade laws must possess what they have lacked in the past—appropriate data for determining the scope and magnitude of government subsidies to state enterprises.

Disclosure policies

An admitted obstacle to the systematic collection of data on foreign state enterprises is the present unwillingness of many governments to disclose their intimate financial dealings with state-owned companies. In Japan, for example, the financial dealings of the state-controlled companies are often cloaked in secrecy. In Great Britain, a current political debate rages over whether Parliament itself has the right to examine the records of the National Enterprise Board, the holding company of many of the state enterprises.

Accountants in Europe continually complain about the muddled state of accounts of nationalized companies and the lack of consistent accounting standards for measuring the companies' performance. Until greater transparency exists, the total extent of subsidies is hard to measure indeed.

U.S. trade officials and those charged with enforcing our trade laws, however, have every right to insist on full disclosure of the financial statements of state-owned companies and of government policies and financial dealings toward the companies—insofar as they may affect competition. U.S. trade law should explicitly state that state-owned companies whose financial records and government dealings are kept secret are presumed to be subsidized and anticompetitive in purpose or impact.

State-controlled economies

U.S. policymakers should consider treating imports from state-owned companies on the same basis as we have those from centrally controlled economies. Trade with any state-owned enterprise does pose essentially the same problems in policy as does trade with the communist nations. The policies of state-owned companies outside the Iron Curtain are remarkably similar to those of most socialist countries, which specifically disavow profit as a legitimate goal for companies, and which not even

explicitly put prices on their factors of production. State-owned enterprises everywhere are so regularly used as instruments of national economic and political policy that they appear to be a significantly different species from the private, profit-maximizing company.

Thus, since we now have to estimate what the real costs of Iron Curtain country goods are, and adjust duties accordingly, a strong case can be made that goods from state-owned companies throughout the world should be analyzed accordingly. In short, our experience with setting tariffs for Eastern European imports should be considered as a model in developing new laws to protect private business from the unfair competition of state-owned companies. Indeed, U.S. law and policy should explicitly recognize, at a minimum, that state-owned companies which are not making the same level of return on investment as their private counterparts are in fact being subsidized.

After all, companies that enjoy so many special benefits of state ownership—the direct financial backing of the government, the low-interest loans which are often not repaid, the explicit subsidies to cover losses, the periodic injections of equity capital that demand no dividends, and the assurance of the government as a major customer—and yet still fail to achieve profits comparable to the private sector—are scarcely playing by normal competitive rules. As the nationalized companies grow in number, size, and diversity around the world, and U.S. trade policy continues to ignore their heavily subsidized character, American business will increasingly face this most insidious form of unfair competition.

Administration of the Countervailing Duty Statute by the Treasury Department

The Treasury Department has:

1. missed statutory deadlines;
2. reduced the calculated amount of a subsidy, and hence the countervailing duty, in questionable ways;
3. accepted unverified information from foreign representatives as a basis for its determinations;
4. changed rulings without adequate opportunity for interested parties to comment;
5. stretched the authority of the Trade Act of 1974 with regard to the granting of waivers.

These charges are detailed in the following sections.

1. Treasury has missed statutory deadlines

One of the important changes intended to strengthen the countervailing duty statute as incorporated in the Trade Act of 1974 was the 12-month time limit established for the Treasury Department's consideration of countervailing duty petitions. This time limit was established as part of the legislative "deal" which gave the Secretary of the Treasury authority to waive countervailing duties under certain circumstances. Under the amendment, the Treasury Department has six months from the time of receipt of a valid petition to make a preliminary determination with respect to the existence of foreign countervailable practices and then it has an additional six months in which to make a final determination. Notwithstanding the statutory time limits, Treasury has missed deadlines, particularly for preliminary determinations which deadlines are consistently missed as in the case of Swedish rayon staple where the preliminary determination came three months after the six-month deadline.

Two cases in particular come to mind, one involving Argentine leather apparel where the statutory deadline for a final determination was January 21, 1978 and the other involving Argentine footwear, where the deadline was February 11, 1978. The decisions on both products were finally issued January 17, 1979; that for leather apparel was negative and the decision on Argentine footwear was affirmative. Thus, Treasury took twelve months and eleven months longer, respectively, than mandated in the statute to make its determinations in these two cases.

The effect of failing to make determinations within the statutory deadline is to deny petitioners due process, particularly where considerable time has elapsed since the deadline. Thus, when an affirmative decision is finally made, petitioners have suffered from Treasury's failure to institute countervailing duties earlier. When a negative determination is finally made, a petitioner has been denied the opportunity to challenge such determinations at an earlier date, in accordance with Section 516 of the Tariff Act of 1930, as amended.

Even a simple publication in the Federal Register of a notice of appeal of Treasury's countervailing duty determinations encounters unnecessary delay despite the provision in Section 516(d) of the Tariff Act of 1930 that such publication be made upon receipt. On December 15, 1978 the Amalgamated Clothing & Textile Workers Union filed with Treasury notice of its intent to appeal six such determinations. Treasury did not publish notice to this effect in the Federal Register until February 27, 1979. The appeal process cannot move forward without such notice. Once again due process has been delayed by Treasury.

2. Treasury has reduced the calculated amount of a subsidy, and hence the countervailing duty, in questionable ways.

Treasury has pursued a policy which they justify as provided for in the countervailing duty statute of reducing the gross amount of subsidy by various offsets. Although in most cases the reductions are in the form of indirect taxes related to the product which receives the subsidy, Treasury has found some rather exotic items with which to reduce the subsidy. These include, in the case of the waiver on handbags from Colombia, the effects of the devaluation of the foreign currency on the grounds that the Colombian Government allows as much as nine months to elapse before subsidies are paid. In this case Treasury even reduced the subsidy by the cost of the interest on the money not received by Colombian handbag producers and exporters during this nine-month period. Treasury describes this offset in the *Federal Register* of May 2, 1978 as "the present value effect of the (exporter's tax certificates) resulting from the inflationary impact on . . . delayed payment." Furthermore, since these exporter's tax certificates are sold in the Bogota Stock Exchange, Treasury also allowed a "discount paid by holders of (exporter's tax certificates) in the stock exchange, thus effectively not providing full value of the (exporter's tax certificates) once sold." It is interesting to note that several of these offsets were disallowed in a more recent case involving Colombian textiles and apparel, but Treasury has not bothered to go back to its earlier decision to recompute the countervailing duties on Colombian handbags. The Colombian handbag case is not untypical.

It is so important to recognize that the reductions which Treasury makes in the subsidy through subtracting the indirect taxes related to the products ignore completely the fact that in virtually all of the foreign countries concerned these indirect taxes would have been borne by the manufacturer even in the absence of the subsidy program, and that the subsidy program clearly is intended to give the foreign manufacturers an edge in selling to the U.S. This is exactly what the countervailing duty statute is aimed at offsetting, but Treasury nevertheless goes on deducting these indirect taxes to the point where many negative or *de minimis* determinations result or the countervailing duty is significantly smaller than it should be.

3. Treasury has accepted unverified information from foreign representatives as a basis for its determinations.

Treasury makes most of its determinations with regard to the size of a countervailing duty or a waiver of a countervailing duty on the basis of data submitted by foreign governments and by foreign firms or associations of firms. In neither case are the data verified by Treasury. Admittedly, it is difficult for Treasury to verify data submitted by foreign interests, but at least an effort should be made to assure the American petitioner that, indeed, the data on which a determination is made by Treasury are reliable. Treasury says that it must take the word of a foreign government. Yet in a case involving Argentine footwear, the word of a foreign government was not good enough. It reneged on a commitment which had been made to Treasury. In that particular case, Treasury said "but they had a change of governments in Argentina." Unfortunately the new government in power did not bother to advise Treasury that it had reversed the commitment made by its predecessors, and Treasury did not reopen this case for a considerable period of time after the subsidies were reinstated. When Treasury finally acted five and a half years after the initial petition was filed, it imposed a countervailing duty of less than 1 percent.

As the result of a request through the Freedom of Information Act, it has been learned that although Treasury waived countervailing duties on Uruguayan handbags and footwear at the end of January 1978 based on certain assurances from the Uruguayan Government, the factual information on which to base the waiver was not available to Treasury at the time of the waiver action. On May 15, 1978 the Minister of the Uruguayan Embassy in Washington was told by Treasury that in October 1977 Treasury had requested of the Uruguayan Government "a detailed description . . . of the laws providing for the various offsets accepted by Treasury

. . . as well as a detailed itemization of how the offsets were calculated for each of the product sectors." That had not yet been furnished by the Uruguyana Government as of mid-May 1978.

Treasury pointed out that the Uruguayan Government had promised in December 1977 to furnish by the following month "a detailed enumeration of the program to eliminate the entire 'reintegro' system by 1983. . . ." That, too, had not been furnished by the Uruguayan Government by mid-May 1978.

Apparently a copy of the December 28, 1977 decree of the Uruguayan Government reducing the "reintegro" was also not submitted in January 1978 before Treasury waived the countervailing duties. At least Treasury was still inquiring about it from the Uruguayan Government in mid-May 1978.

4. Treasury has changed rulings without adequate opportunity for interested parties to comment.

Even when Treasury once announces a net subsidy, taking into account the reduction for indirect taxes, it continues to amend those calculations mostly on the downside based upon new information which it receives from the foreign government. For instance, in the case of Spain, Treasury announced a 4 percent countervailing duty on unwrought zinc in April 1977. In June 1978, Treasury reduced the existing countervailing duty on zinc and on several other Spanish products subject to U.S. countervailing duties by revising its method for calculating indirect tax subsidy offsets. This action was taken after consultation with Spanish authorities but without consultation with U.S. industries involved. Despite the controversy Treasury aroused over the basis for this reduction, Treasury reduced the countervailing duty but without suspending the liquidation of entries until all views could be heard.

Treasury later realized the views of the U.S. industries had merit and that it had made a mistake on its revised method for calculating the countervailing duties. Six months later Treasury reverted to the basis of calculations it used prior to June 1978 with the effect that the countervailing duty was now raised again, although not quite to the original levels.

In the interim, between June 15, 1978 and January 17, 1979, because Treasury had not suspended the liquidation of entries on Spanish zinc, nonrubber footwear, and bottled olives, importers benefitted from a lower rate of countervailing duty which gave them a windfall they certainly did not merit.

It is of interest to note that the American Footwear Industries Association had requested Treasury to reconsider and revise upward the 3 percent countervailing duty on Spanish footwear some four years ago. It has never received a reply to its request.

While Treasury acted speedily, without consultation with domestic industry, to reduce duties in the Spanish cases, and without suspension of liquidation, it took Treasury almost five months to revoke a waiver and institute a countervailing duty in a case involving Uruguayan leather apparel and almost eleven months to revoke waivers on Uruguayan footwear and handbags. (The waiver action on leather apparel is discussed more fully below.) But in these cases where Treasury was acting to impose duties, it suspended liquidation of entries to give the Uruguayan Government more time to protest Treasury's action.

Thus, on the downside, Treasury appears to act with haste, but on the upside, Treasury clearly takes its time.

5. Treasury has stretched the authority of the Trade Act of 1974 with regard to the granting of waivers.

The Trade Act and the temporary four-year waiver authority which expired January 3, 1979, provided the Secretary of the Treasury with authority to waive the imposition of countervailing duties when he determines that:

1. adequate steps have been taken to reduce substantially or eliminate the adverse effect of the bounty or grant on domestic producers;

2. that there is a reasonable prospect that trade agreements to reduce or eliminate non-tariff barriers will be entered into; and

3. the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Treasury Department officials have consistently interpreted these three criteria—all of which must exist before a waiver can be issued—so loosely as to permit them to justify any action administratively decided upon.

In one case, involving the imposition on January 12, 1976 of a 14 percent countervailing duty on Brazilian handbags, the Secretary of the Treasury undertook subsequently to waive this duty as part of a "package agreement" on trade issues which he personally negotiated during a visit to Brazil in May 1976. That waiver on

Brazilian handbags was made effective July 1, 1976. Can it be said that at that time there was a "reasonable prospect" that successful trade agreements were to be entered into? Could it have been said in May 1976 that the imposition of the additional duty was "likely to seriously jeopardize the satisfactory completion of such negotiations?" Hardly, on both counts.

A recent glaring example of a new horror story is that related to Treasury's finding that Uruguayan subsidies on leather wearing apparel were equivalent to 12 percent of the f.o.b. price for export to the United States.

In its final determination issued January 30, 1978, Treasury noted as intent to waive the imposition of countervailing duties on the basis that it had received assurances from Uruguay of a phase-down of only one subsidy—the "reintegro" program of cash rebates which alone amounted to 20 percent or more of the value of the goods exported. However, because leather wearing apparel from Uruguay entered the United States free of duty under the Generalized System of Preferences, the International Trade Commission was called upon (as required by Section 303(b) of the Trade Act) to determine whether Uruguayan subsidies on leather wearing apparel injured the United States industry. Following a comprehensive investigation, the ITC in April 1978, announced an unanimous injury finding. Nonetheless, even in the face of such a unanimous decision by the Commission with respect to the subsidized Uruguayan leather apparel, the Treasury Department carried out its planned waiver, which was duly announced in the *Federal Register* of June 30, 1978.

Treasury justified its waiver on the basis of Uruguayan assurances that it would phase out its major "reintegro" subsidy program by January 1, 1979. In agreeing to waive the countervailing duty on this basis, Treasury did not require the Government of Uruguay to reduce or eliminate other countervailable trade practices which the Treasury had determined to exist in Uruguay. Treasury's justification for permitting a waiver while the Uruguayans would leave these subsidies intact, was that they were very small, perhaps in the order of 2 percent, whereas the major subsidy program, which provided a subsidy of at least 20 percent was netted down to around 12 percent.

The domestic industry argued with Treasury officials that they were ignoring an additional subsidy benefitting Uruguayan tanners equal to 8 percent of the value of the leather content in various products exported. Treasury decided differently. However, more recently, Treasury discovered that, indeed, it has made a mistake and that the 8 percent subsidy on the leather content of products exported to the United States was a countervailable duty. Thus, instead of a residual of 2 percent after the scaling down of the major subsidy, Treasury found that the remaining subsidy on Uruguayan leather apparel added up to a total of 13.3 percent. It decided to impose this subisdy effective November 13, 1978 and revoked its former waiver.

Even after Congress failed to extend the countervailing duty waiver authority last October, Treasury went ahead and waived the countervailing duty of almost 38 percent on Brazilian textiles and apparel on assurances that subsidies would be reduced by half by January 1, 1979 and by the remaining half by January 1, 1980. In the interim of one year, Brazil is being allowed to continue subsidies of a substantial amount without having countervailing duties applied, to the detriment of American firms and workers.

Conclusion

The foregoing documents what our group considers to have been a mismanagement of the countervailing duty program by the Treasury Department. This record does not support the assertion of the Secretary of the Treasury to the Joint Economic Committee on January 31, 1979 that Treasury does its "best to administer the statute fairly and efficiently." It is for these reasons that our group of 33 organizations believes that the administration of the countervailing duty statute should be removed from the Treasury department.

Mr. Vanik. The next witness is the Commonwealth of Puerto Rico. I understand Governor Barcelo is here.

Governor, we are pleased to have you here. First I want to tell you many of us are special friends of Puerto Rico. Many of us, when we can't be found in Washington, are enjoying some of the better advantages of life in the winter that are available in the Commonwealth, and we have always been very, very much concerned of what impact the actions that we take here have on the business and commerce of the Commonwealth. We are very sensi-

tive to this. We want to be sure that whatever we do is not disruptive to the very warm and fine and effective working relationship we have developed over the years.

I would be pleased to hear your testimony.

STATEMENT OF HON. CARLOS ROMERO-BARCELO, GOVERNOR, COMMONWEALTH OF PUERTO RICO

Governor ROMERO-BARCELO. Thank you, Mr. Chairman. I appreciate the opportunity to testify before the committee.

I would like to first mention the fact that the Trade Act of 1974 is but the latest extension of the Reciprocal Trade Agreements Act, originally enacted in 1934. As with all previous negotiations, the current trade negotiations are based on the principle of reciprocity.

The administration, in general, and the Special Trade Representative, in particular, have been highlighting the regional benefits which will be gained from these agreements. This is not the case with Puerto Rico. Not a single instance of specific regional benefit to Puerto Rico can be pointed out.

In fact, the complete opposite is true. The elimination of the wine gallon method of assessment and the proposed 20–30 percent reduction of the foreign rum tariff may seriously threaten the fiscal health of the Government of Puerto Rico and the people it represents and services.

The manufacture of rum is very important to the island's economy. It provides jobs for more than 5,600 U.S. citizens residing in Puerto Rico at a time when the official unemployment rate is about 16 percent. When we started our administration, the employment was as high as 22 percent in 1977. Although we have had a considerable reduction to 16 percent, still 16 percent is extremely high unemployment.

The Puerto Rican Government has spent more than $70 million to advertise, promote and help develop the domestic rum industry, over 90 percent of which is located in Puerto Rico. The purpose of this investment is primarily to help develop our own economy, thereby lessening our dependence on the Federal Government.

Puerto Rico's situation warrants special attention. In order to maintain the principle of "no taxation without representation," since Puerto Rico has no vote in national elections, nor are we allowed to elect voting representation to Congress, the Federal excise taxes and tariffs collected on the sale of Puerto Rican rum in the United States, by law, are rebated back to Puerto Rico. In 1978, the revenue from these taxes amounted to $200 million and accounted for 13 percent of the entire local government's revenues. In addition, a second source of government revenue is derived from the covering over into the Puerto Rico Treasury of customs duties collected on goods imported into the island. Over the last two years, these revenues were in excess of $110 million. This source of funding for the local government could be materially impaired by the proposed elimination of the wine gallon method and the rum duty reduction. You can see how important these revenues are to us. As a matter of fact, I would like to point out here, right now, that the concessions supposedly made by the Federal Government in this multilateral trade negotiation are not being made by the Federal Government. The concessions are being made by Puerto

Rico. The costs are to Puerto Rico. They come from the resources of Puerto Rico, and we are not even participating in the negotiations, and these concessions have been made against our desire, against our interest, and with our funds.

Today, in Puerto Rico, we are striving to take action, economic and otherwise, to help ourselves. This wisdom and the necessity of this course of action is the main focus of a report on the economy of Puerto Rico, which, at my request, was commissioned directly by the President and coordinated through Secretary of Commerce Juanita Kreps. We want to reduce as much as possible our dependence on Federal transfer payments. However, the inclusion of the rum duty reduction and the elimination of the wine gallon method of assessment in the trade package will have serious, adverse consequences for the fiscal integrity of our local economy, and could set back much of the progress we have made.

The rum market is a highly competitive one. Companies are constantly seeking an edge which will allow them a greater share of what has been recently an expanding market. In spite of Puerto Rico's current large share, over 90 percent, we are concerned that the elimination of the wine gallon method, coupled with the rum duty reduction, will provide an economic incentive for distillers to shift their domestic operation to ancillary foreign facilities where they could take advantage of lower tariffs, cheaper labor, raw materials and lower environmental regulatory costs. We are fearful that domestic producers may take advantage of these lower offshore costs to relocate production outside of Puerto Rico, or in the worst case, close down their Puerto Rican distilleries and leave the island. The measure of risk of dislocating the Puerto Rican rum industry cannot be overemphasized, as well as the substantial damage to our public fiscal revenues which could result.

It is important to note that in the Clean Water Act, Congress directed the President to take necessary actions, if need be, through multilateral treaties, to ensure that water pollution regulation by foreign countries is equivalent to that of the United States. To my knowledge, little or no action has taken place to bring this about. In spite of this lack of action, I am firmly convinced that the United States should use its trade negotiating leverage to ensure the application of equivalent water pollution standards to the foreign rum industry. We agree with the fact that we have to have clean water acts and clean air acts, and we must protect our environment—and we support those efforts, and the Environmental Control Board in Puerto Rico is very progressive and has been very forceful in its control of the damage to the environment. However, we have to bear those costs, and industry in Puerto Rico has to bear those costs, whereas the rum industry in other Caribbean islands or countries which pollute the same ocean, the Caribbean Sea, are not subject to those restrictions. I think free trade is a wonderful thing, but it must also mean fair trade, and where there is unfairness in the competition, I think it should be removed, and in this case there will be unfair competition from those islands and countries that don't have to meet the clean air or clean water standards.

Mr. VANIK. Those competitors, Governor, are principally the other island countries, are they?

Governor ROMERO-BARCELO. Yes, at this moment, as I said, the Puerto Rican industry has 90 percent of the market. The Virgin Islands rum industry has about 6 percent of the market, and the rest is foreign rums. We now have an advantage of, I think, $9.74 per case because of the tariff and the excise tax.

Mr. VANIK. Do you think you have that advantage because of the tax or because of the better quality of your product.

Governor ROMERO-BARCELO. We do think definitely——

Mr. VANIK. When I go out, I usually ask for some Puerto Rican rums, by choice. I found them all over Europe, too, very widely used, and preferred, and there were some other discoveries I made in this industry, and that is there was tremendous affection for American bourbon in some other countries. Particularly in Russia, bourbon was a very popular product, challenging the popularity of Scotch.

As I understand your testimony, the risk of harm is two-fold; the first hits at the rum industry, itself, while the second is aimed at the ability of the local government to pursue a sound fiscal policy. Is that correct?

Governor ROMERO-BARCELO. That is correct, Mr. Chairman.

Mr. VANIK. Do you have any more information you can give us on that point with respect to how it affects your local economy's ability to pursue a sound fiscal policy?

Governor ROMERO-BARCELO. Yes, I can. The revenues that we receive, giving back to Puerto Rico the excise tax——

Mr. VANIK. You will suffer a loss in the rebate of the tax, won't you?

Governor ROMERO-BARCELO. That is correct.

Mr. VANIK. No way out of that. That is going to be a loss of revenue. Have you estimated what that is?

Governor ROMERO-BARCELO. We estimate within the next 6 years it will mean an average of about $53 million a year.

Mr. VANIK. This country, itself, our Treasury, will be losing, I guess, $135 million. That was the principal objection that I had to the wine gallon issue.

To your knowledge, assuming injury to the rum industry and Puerto Rico's revenues, are there native industries which will stand to benefit?

Governor ROMERO-BARCELO. At this moment, we don't know of a single one.

Mr. VANIK. You don't see any chance for benefit?

Governor ROMERO-BARCELO. We haven't heard Mr. Strauss' office indicate any of those.

Mr. VANIK. We better ask him.

Governor ROMERO-BARCELO. There was an article in the newspaper recently where they pointed out region-by-region what would be the industries that would receive the benefits in the multilateral trade negotiations, and none included Puerto Rico.

Mr. VANIK. I think I am going to ask my staff to run down that point and address the trade negotiator to try to point out specifically what benefits for other industries there are with the adoption of the MTN as far as Puerto Rico is concerned, and you may as well include the Virgin Islands, because they have the same problem, and the Commissioner of the Commerce of the Virgin Islands is

44-398 - 79 - 3

going to follow you, so we may as well check with respect to both. I think we should explore that and try to find out how the loss is counterbalanced by gains, and I think at present we should know what they are.

We understand that, Governor. I didn't mean to interrupt your testimony, but I did want to get to the bottom of that issue. Are you finished?

Governor ROMERO-BARCELO. I have some more.

Mr. VANIK. Go ahead. I am sorry. I didn't mean to interrupt.

Governor ROMERO-BARCELO. The disruption of a major industry would affect Puerto Rico as it would affect any State; namely, loss of jobs, higher unemployment, loss of payroll taxes, and others. But the crucial difference is that, unlike the States, the Government of Puerto Rico would have to bear the additional burden of loss of excise tax revenues which are collected by the Federal Government and covered over into our treasury. Since there is a direct relationship between the rebate of the Federal excise tax and local expenditures, the Puerto Rican Government will be a clear loser if the rum duty reduction and the proof gallon method of assessment provisions are implemented.

I am here before you today, not only to alert you to the unique danger we face, but to suggest a series of alternatives for your consideration.

First, we would like to see the existing law, as it applies to distilled spirits, remain unchanged. It is our understanding that the negotiations with foreign rum-producing countries are not yet finalized and until that time the opportunity for changes remains open. No reduction in the rum duty should be conceded, and there should be no change in the method of tax assessment. We don't know whether rum can be considered exclusively from other distilled spirits, but we would like to point out that, again, the concessions here, the financial concessions here, are being made by Puerto Rico and by the Virgin Islands, exclusively.

Second, we do recognize the complexities of international negotiations and, therefore, should these concessions be implemented, we would like to see some sort of "hold harmless" provision be included which would take into account the uniqueness of Puerto Rico's economic situation. If, as a result of increased imports, a market share disruption, or a loss of revenues for the Government of Puerto Rico, the territories or the possessions occurs, I believe that appropriate Federal actions, including but not limited to quantitative restraints, increased duties, or any combination thereof, should be provided.

Third, we would also like to suggest that the full tariff cut phase-in period for possessions be delayed beyond the suggested limit of 8 years, perhaps even beyond the 10-year limit enumerated in the Trade Act of 1974.

As I mentioned earlier, the rum excise tax revenues flowing to Puerto Rico comprise 13 percent of the entire local government's budget. The necessity of insuring the fiscal health of the local government was clearly recognized by the Senate Finance Committee in its report on the Trade Act of 1974, where it states that preferences should not be granted "if the granting of such preferences would have a detrimental effect on the economies of Puerto

Rico or the territories." (Sen. Rept. 93-1298, p. 224.) Although these comments were made in the context of a discussion on the generalized system of preferences for developing countries, the committee's logic can undeniably be applied to other tariff and nontariff concessions which adversely impact on the economy of Puerto Rico.

While we share our Federal Government's interest in assisting the developing countries, it must be remembered that Puerto Rico, the territories, and the possessions constitute developing economies within our own Nation. The subcommittee should be aware that the concessions that would be granted by the trade agreements may in the future favorably affect the importation of Cuban rum into the United States. Are we to favor other countries, and in the future, Cuba, to the detriment of our own developing economies? This reality means that special and differential treatment must sometimes be accorded to Puerto Rico, the territories and the possessions. The committee was already cognizant of this when it enacted special tax legislation to help ease Puerto Rico, the territories and the possessions' difficult economic situation. Since a tariff is a tax on goods, it is my judgment that the factors which compelled the enactment of the past legislation are equally applicable to the current situation.

In closing, I should like to offer to this subcommittee the full assistance of our Government in devising all appropriate measures to safeguard the rum excise tax revenues which are so critical to our economic well-being.

I would like to add one more thing before I close. We talked to Mr. Strauss and to his aides some time ago, and we explained the situation. They were very sympathetic and told us they would get back to us before anything final was done. In the meantime, we got word from them that the change that was going to be made was only the 30-percent reduction on the import tariffs, and that would be on a long-term basis. We had no indication at all about the wine gallon being changed to the proof gallon, and when we did find out was when informed markup was already underway in the Senate. So we didn't have an opportunity for input, and here is where we feel the unfairness lies, because we are the ones who are really making the economic concessions, and Puerto Rico has not been consulted. Those economic concessions are at this moment being forced upon us.

Thank you very much.

[Attachment to the prepared statement follows:]

THE IMPACT OF A 30-PERCENT TARIFF REDUCTION ON PUERTO RICAN RUM

RECOMMENDATIONS

1. The Commonwealth of Puerto Rico should try to have the proposed 30 percent tariff reduction on rum either reduced and/or its term of implementation lengthened.

2. Aggressive action should be taken to prevent the proposed switch from wine gallons to proof gallons in levying import duties and federal excise taxes on foreign bottled distilled spirits.

SUMMARY

1. The proposed 30 percent reduction in the current tariff over a six-year period will place Puerto Rico's dominant position as a supplier to the bulk rum market in jeopardy with the distinct possibility of losing 20 percent-30 percent (1-1.3 million proof gallons) of this price sensitive market to foreign suppliers.

2. The proposed tariff reduction will reduce the duty per case of fifths of foreign bottled rum from $4.20 currently to $3.00 a case in year 6. The "savings" are not likely to be passed on to the consumer, but rather used by the importer as a marketing promotional supplement.

3. A proposal to alter the method of levying both import duty and federal excise taxes collected on foreign bottled imports is a greater concern than the proposed tariff reduction. By switching from the current wine gallon assessments to a proof gallon levy, the reduction in tariff duty and excise taxes collected on a case of foreign bottled 80° rum will decline by $6.04, thus increasing the price competitiveness of foreign bottled brands and probably augmenting the marketing funds available to promote foreign brands.

4. The combination of summarial points (1, 2 and 3) plus the added costs of producing in Puerto Rico and the uncertainties of the EPA and molasses discharge could result in the second tier distillers curtailing or abandoning Puerto Rican rum production in favour of an alternative source.

THE IMPACT OF A 30 PERCENT TARIFF REDUCTION

A six year reduction of the current import duty on rum from $1.75 per gallon to $1.25 per gallon (8.3 cents per year for 6 years) will result in an exceptionally competitive situation for bulk rum. Over 40 percent of the 17.5 million gallons of rum entering the mainland was shipped in bulk in 1977.

Puerto Rican bulk rum has an insurance dollar value of $2.63 a gallon and enters the U.S. at 100 to 110 proof gallons—a level which research has proven ensures the qualities of taste and aroma of Puerto Rican rum. The foreign bulk rum arrives in the U.S. at approximately 150 to 180 proof degrees. The additional 50 to 70 proof degrees provide the importer with an opportunity of attaining more fluid gallons for bottling purposes as well as a greater tax savings. For example, as the following table shows, one gallon of 150 proof rum produces 1.87 fluid gallons at 80 proof for bottling purposes, thus increases the yield by 87 percent and lowers the effective cost of importing, e.g., fluid cost of Jamaican rum becomes $1.13 a gallon versus $2.11 in bulk proof gallon. In contrast, the lower proof bulk Puerto Rican rum increases its fluid yield by about 30 percent.

BULK RUM—JAMAICAN VS. PUERTO RICAN

[Per gallon]

	Jamaican	Puerto Rican
Proof content	150	150
Cost	$2.11	$2.63
Import duty	$2.63	
	$4.74	$2.63
Proof content	80	80
Yield in fluid gallons	1.87	1.30
Cost per fluid gallon:		
Ex. duty	$1.13	$2.02
Inc. duty	$2.54	$2.02
Excise tax savings in bottling in U.S.A.:		
Per fluid gallon	$1.86	$1.86
Per proof gallon	$3.48	$2.42

An excise tax savings occurs because the bulk product, when bottled, is reduced to 80 proof and incurs a federal excise tax of $8.64 a fluid gallon (at 80 proof) versus $10.50 per gallon if it had been imported in glass. This $1.86 a fluid gallon savings magnifies itself to $3.48 on a proof gallon equivalence for Jamaican rum. Due to the lower yield of Puerto Rican rum, its tax savings amounts to only $2.42 per gallon.

With the 30 percent tariff reduction spread out over 6 years, the cost per fluid gallon of Jamaican rum begins to approach the current cost of Puerto Rican rum.

NEW TARIFF IMPACT ON BULK RUM

	Jamaican			
	Current	Year 1	Year 6	Puerto Rican
Proof content	150	150	150	105
Cost	$2.11	$2.11	$2.11	$2.63
Import duty	$2.63	$2.50	$1.88	.....
	$4.74	$4.61	$3.99	$2.63
Proof content	80	80	80	80
Yield in fluid gallons	$1.87	$1.87	$1.87	$1.30
Cost per fluid gallon	$2.54	$2.46	$2.13	$2.02

When one combines this very competitive fluid price for Jamaican rum with the greater excise tax savings mentioned above, the Puerto Rican run industry finds itself in a very difficult situation as bulk rum could be lost.

The extend of this loss is difficult to quantify. The Liquor Handbook estimates that 14.5 percent of rum sales occurred at a price below $5.14 in 1977. This price sensitive sector represents 2.5 million gallons and is virtually entirely serviced by the producers of Puerto Rican and Virgin Island rum. In six years' time this market is expected to be 4.9 million proof gallons. By year 6 of the tariff reduction program, it is not unlikely that 20 percent-30 percent of this market could be lost to foreign producers.

The bulk rum situation becomes more alarming if we consider the strong possibility of Cuban run being available in the U.S. market in the not-too-distant future. We have the strong conviction that as soon as Cuban run gains access to the U.S. market, it will be offered at lower prices than Puerto Rican rum, even with the prevailing import duty on rum. This conclusion is based on observations in other markets where both Puerto Rican and Cuban rums are subject to the same import duties or where there are no duties at all. In such places, Cuban rum is sold at a lower price than Puerto Rican rum.

As production costs in Puerto Rico and the Virgin Islands continue to rise in the 1980s due to EPA requirements, minimum wage hikes, etc., to which the foreign producers are not subject, it is possible this entire 4.9 million proof gallon price sensitive market will be totally supplied by foreign producers with the aid of the tariff reductions.

BOTTLED SHIPMENTS

The proposed tariff reduction will result in $0.20 per case savings per year for importers of foreign bottled rum. It is unlikely that this saving will be passed on to the consumer, but rather one should expect the money to be used either to augment the importers' profit margins or more likely to be used as a supplement to the advertising and promotional budgets for these foreign produced brands.

Import duty per case of bottled rum

Current tariff	$4.20
New tariff:	
Year 1	4.00
Year 6	3.00

A greater concern is the possibility of assessing the duty on the basis of proof gallon, i.e., tariff rate times proof content, as opposed to the current method of wine (fluid) gallons times the tariff rate.

By switching from a wine to proof gallonage approach to duty collection, the proposed $0.50 per gallon reduction in duty over 6 years is really $0.75 for foreign bottled 80° rum, or a 43 percent reduction of the tariff.

The duty savings for the importer by using the proof content method jumps to $1.00 a case in year 1 and swells to $1.80 by the end of year 6. It is likely that the importer will be able to postpone price increases at the wholesale and retail levels and/or use the additional duty savings for marketing programs.

IMPORT DUTIES—WINE VERSUS PROOF GALLON

[1 case of fifths at 80°]

Unit	Current tariff	New tariff	
		Year 1	Year 6
Wine gallon	$4.20	$4.00	$3.00
Proof gallon	3.36	3.20	2.40

The short term price sensitivity concern is for Puerto Rican rum brands other than Bacardi. These brands, such as Seagram's Ron Rico and Schenley's Carioca, have not created the brand loyalty that Bacardi enjoys and are price sensitive. Preliminary industry research has indicated that a 1 percent change in the existing price differential between these brands and other rum results in a 3 percent volume change; therefore, if the change in import duty results in a 1 percent decrease in the price of foreign rums (approximately $0.05 per fifth) the loss in sales of these two brands could be 3 percent of existng volume or 25,000-30,000 cases.

THE IMPLICATIONS OF PROOF GALLONAGE APPLICATION TO EXCISE TAXES

A proposal being supported by many importers to alter the method of levying the federal excise tax on foreign botttled imports from a wine gallon standard to proof gallons has serious marketing implications for Puerto Rican rum. Under the current method of assessing the federal excise tax of $10.50 per gallon, all foreign bottled imports below 100 proof are assumed to be equal in alcohol content and are taxed at the same rate of $10.50 per gallon. Under the proposed method, the alcohol content (proof) will be used. For example, the federal excise tax levied on Appleton's 80° rum from Jamaica would fall from the current $10.50 per gallon to $10.50 x 80 proof or $8.40 per gallon.

The following table presents the possible permutations and combinations if proof content is used for excise taxes only, tariff duties or for both.

PROOF CONTENT CHANGES ON A CASE OF FIFTHS OF FOREIGN BOTTLED IMPORTS AT 80°

Current situation:		
Wine gallon standard		
Import duty ($1.75 gallon)	$4.20	
Excise Taxes ($10.50 gallon)	25.20	
	29.40	
	Year 1	Year 6
Tariff reduced $0.50 per gallon over 6 years:		
(a) Wine gallon standard:		
Import duty	$4.00	3.00
Excise taxes	25.20	25.20
Total	29.20	28.20
(b) Proof gallon standard on duty only:		
Import duty	3.20	2.40
Excise taxes	25.20	25.20
Total	28.40	27.60
(c) Proof gallon standard on excise taxes only:		
Import duty	4.00	3.00
Excise taxes	20.16	20.16
Total	24.16	23.16
(d) Proof gallon on both duty and taxes:		
Import duty	3.20	2.40
Excise taxes	20.16	20.16
Total	23.36	22.56

If proof content is applied to both the new duty and the excise tax, situation (d) in the table, the total tax and duty collected on a foreign bottled case of 80° rum, will fall from today's $29.40 to $23.36 (*$6.04 a case*) in the first year of implementation. Assuming that this reduction is totally applied to the wholesale price, price reductions of 8%-16% will occur.

Brand and origin	Current price [1] per case	Possible new price per case	Percent decrease
Lemon Hart—Jamaica	$69.17	$63.11	9.1
Meyers—Jamaica	70.94	64.90	8.5
Appleton—Jamaica	61.86	55.82	9.8
Ron Bermudez—Dominican Republic	52.40	46.36	11.5
Tai—India	57.69	51.65	10.4
Ron Ricardi—West Indies	37.72	31.68	16.0

[1] New York State prices for 1 case of fifths, Beverage Media, November 1978

A case of Bacardi Silver 80° wholesales for $52.49 in New York State. Thus, the switch to proof content assessments will result in many foreign bottled brands becoming quite price competitive with the leading Puerto Rican produced rum.

A greater concern for the government of Puerto Rico is the possible departure from the island by a second tier producer such as The Seagram Corporation or Schenley Distillers who have production facilities in other Caribbean islands. The switch to proof assessing for duties and excise taxes creates a marketing opportunity for the distiller who wishes to differentiate his product from the leader, Bacardi. That marketing opportunity is the word "Imported". With lower tariffs and excise taxes being applied to foreign bottled products, a major distiller could possibly seize upon this opportunity to either introduce a new foreign rum or re-emphasize a foreign brand already owned and imported into the U.S.A.

For example, while Seagram produces and markets Ron Rico, a Puerto Rican rum, it also owns, produces, imports and markets Meyers from Jamaica. Industry statistics indicate that Seagram has not had success in reducing the gap between Ron Rico and Bacardi; however, modest success is currently being enjoyed by their efforts with Meyers. This proposed switch to proof gallonage levies could accelerate this drive by Seagram (and others) at the expense of Puerto Rican rum. Possible opportunity case sale losses could reach into the 100,000s by the mid-1980s.

COST AND PROFIT CONSIDERATIONS

When one considers that currently the cost of producing rum in other Caribbean islands is significantly lower than in Puerto Rican due to lower molasses costs and labour rates, a declining tariff rate on foreign rums could very well economically justify a move by a distiller from Puerto Rico to another island. In addition to the prospects of lower operating costs on other islands, the distillers would no longer have to conform to all federal regulations for EPA, OSHA, etc., as Puerto Rican distillers eliminate 94% of Biochemical Oxygen Demand in molasses discharge. Bacardi estimates that the additional capital expenditures to construct evaporation and storage facilities will amount to almost $5 million with annual operating costs in excess of $500,000.

It is apparent that the current tariff of $1.74 per gallon has prevented the distillers located in the Puerto Rico and Virigin Islands from importing or producing rum from lower cost alternative sources. At some future point as the tariff is reduced and the cost of doing business in Puerto Rico and the Virgin Islands continues to escalate, the distillers will have no alternative but to abandon Puerto Rico (and the Virgin Islands) and produce or procure rum elsewhere.

The second tier distiller (such as Don Q, Schenley and Seagram) who account for about 38% of Puerto Rico rum production, are likely to be the first to do so. Either production curtailment or plant closures would have a severe impact on the fragile Puerto Rico economy as jobs would be lost, unemployment increased, and U.S. excise tax revenues returned to Puerto Rico lost.

In the next few years, Bacardi is less likely to consider obtaining its rum from any of its other production facilities in Latin America since it is still in the early years of a 15 year income tax free status in Puerto Rico. However, at some time in the next decade the combination of:

(1) added costs associated with complying with EPA standards for molasses discharge.

(2) rising operating costs in Puerto Rico, and

(3) a reduction in the tariff on rum

will likely offset the tax concessions that Puerto Rico is currently providing to Bacardi and enhance the profitability of one or more of Bacardi's world scale rum plants in other Caribbean and Latin American locales as the sources of rum in the American market.

Mr. JENKINS [presiding]. Thank you, Governor.

Let me ask you, which of the issues is the most detrimental to your industry, to your government?

Governor ROMERO-BARCELO. Changing wine gallon to the proof.

Mr. JENKINS. On the excise tax, itself, let me see if I understand that. Excise tax of what percentage, how much?

Governor ROMERO-BARCELO. The excise tax returns to Puerto Rico represented $200 million last year, out of a total revenue to the government of $1,562,000,000, about 13 percent.

Mr. JENKINS. That is a tax collected here?

Governor ROMERO-BARCELO. That is correct.

Mr. JENKINS. And that tax is paid by the consumers here?

Governor ROMERO-BARCELO. Right.

Mr. JENKINS. And then rebated to Puerto Rico?

Governor ROMERO-BARCELO. Right, in order to comply with the principle of no taxation without representation.

Mr. JENKINS. In effect, of course, what is happening is that our consumers here are paying the tax, and it is being rebated to Puerto Rico, so by eliminating that or reducing that, how does that compare with other imports in this country, as far as rum is concerned? Is there exicse tax on that, also?

Governor ROMERO-BARCELO. On other imports?

Mr. JENKINS. Yes.

Governor ROMERO-BARCELO. The distilled spirits have excise taxes.

Mr. JENKINS. Is there any difference between the taxation on rum made in Puerto Rico, and any other country?

Governor ROMERO-BARCELO. Rum made in a foreign country pays the import duty and the excise tax. We don't pay import duty we pay the excise taxes.

Mr. JENKINS. So, as far as a price consideration, Puerto Rico would still be in a better position than importers from other nations?

Governor ROMERO-BARCELO. Yes, but the advantage would be reduced from $9.74, or $9.24, a case, to about $2.24 a case, meaning a $7 loss. We don't feel there will be an advantage to the consumer at all, that the additional benefit of that accrued to the foreign importers, or producers, plus part of that additional money would be used for advertising to promote their products, but I don't think it would be reflected in the cost of rum to the consumer eventually.

Mr. JENKINS. With the exception of the Virgin Islands and Puerto Rico, what other country is involved as far as rum?

Governor ROMERO-BARCELO. At this moment, basically Jamaica and some from Barbados, maybe some from the Bahamas. In the

future, however, if normalization of trade is established with Cuba, that will be the real threat. I suppose, also, the possibility of rum being produced in Brazil in large quantities cannot be overlooked.

Mr. JENKINS. Thank you very much, Governor. I think your testimony is excellent. I understand the importance of rum to your country now, and I appreciate your testimony.

Mr. VANIK. Mr. Fisher?

Mr. FISHER. No questions.

Mr. VANIK. Mr. Guarini?

Mr. GUARINI. Thank you, Mr. Chairman.

Governor, in view of the fact that 13 percent of your economy depends on this $200 million that is derived from the excise taxes, were you ever consulted by the negotiating team for your input into these negotiations?

Governor ROMERO-BARCELO. That is what we were asking all the time, to have input, and we never got the opportunity. We were received cordially and very well, and they told us they would keep us abreast, and the last thing we heard before the private markup sessions in the Senate were being held was when we were told there is going to be a reduction in the import tariff down to 30 percent, and it would be made in a matter of 5, 6, or 8 years.

We said when you get around to having something more definite, let us know so we can have input, but that didn't happen.

Mr. GUARINI. In a sense, the uniqueness of your position was never present at the negotiating table, in your opinion?

Governor ROMERO-BARCELO. As far as I am concerned, I don't think it was.

Mr. GUARINI. How can you make up for this loss of revenues, if you have a loss of revenues as a result of this type of trade concession?

Governor ROMERO-BARCELO. I really don't know how we could make up for that loss. In the import tariffs aspect, which would be about $17 million, we could make that up by local excise taxes on liquor, but on the Federal excise duty returning to Puerto Rico, we couldn't make that up, other than by increasing taxes, which at this point we are in the process of reducing our income taxes because they have gone up as high as levels of 83 percent.

Mr. GUARINI. Do you think this would be an additional strain that the economy could not afford?

Governor ROMERO-BARCELO. I think it definitely would be.

Mr. VANIK. I might also suggest that you try to provide some development for people who want to go to Puerto Rico and enjoy the weather, not the gambling, but a place where they might go and pay $35 a night instead of what is generally charged there. I think you set your economy for the high-priced people. You miss a lot of wonderful business. People are in traffic jams in the southern coast of Florida. They would be very happy to come and just have a modest accommodation without a lot of elaborate things, just a simple place where they might get the warm sunshine and maybe get near the ocean. They will walk to it, if you give them that.

There is a great market that I think is underdeveloped in the Commonwealth, and I think it would serve you well to consider that. There are a lot of people of middle and lower income groups in America who have never been to Puerto Rico, and I think if

they became acquainted with it, it would provide for a tremendous source of inflow. You haven't touched the tremendous market in tourist revenues, I think, that would be available. The high cost factors apply to all the islands. My friend from the Virgin Islands will deal with that, too.

You have so much to offer and so much unutilized resource that I would just urge you to look into, because I know the Commonwealth very well. I have been over it many times, and I know all the roads that lead to the beautiful places. I think you have a very fine resource that we are very happy to be able to utilize, and I would commend to your attention doing some mass planning to reach this tremendous market of middle income America and lower income America, which now includes the Members of Congress.

Go ahead.

Mr. GUARINI. Following that thought, Governor, tourism is one of your major industries there, and I imagine your tourism is going to be further hurt by the excursion of Atlantic City into the gambling field.

Mr. VANIK. You won't lose anything by that.

Mr. GUARINI. What is your opinion on that?

Governor ROMERO-BARCELO. I feel that we should change our tourism attraction in Puerto Rico to make more use of the beauty of the island, of our climate, and we have changed all our propaganda and publicity in the Nation, as I know Mr. Vanik was not aware of that, but it is precisely what he has suggested, that we are doing. We are gearing our tourism efforts to attracting middle income and lower income groups to come to Puerto Rico.

We are no longer offering special incentives for luxury hotels being built, only the small type hotels out of San Juan, out of the metropolitan areas, and we feel a great area there has been untapped.

As a matter of fact, I was a hard critic of the slot machines when they were brought into Puerto Rico, but now part of the hotel financing depends on the slot machines, and we would be hard put to get rid of them.

Mr. VANIK. If the gentleman will yield, I hope you get some outer island direct transport. You have that field at Ramey. The Canadians are using that area a great deal more than Americans and providing more stimulation for your tourism. That is the sort of thing——

Governor ROMERO-BARCELO. Southeast Airlines is flying in there.

Mr. VANIK. I think that is an essential step. One of the terribly difficult things to do is to circumvent San Juan traffic. It takes 2 hours to get through the city, and if you have a half hour beyond that, you begin reaching the basic beauty of your Commonwealth.

I didn't mean to interrupt, but I wanted to get a plug in for that idea.

Mr. GUARINI. I see you have some travel agent experience.

Mr. VANIK. I have some personal experience. I never use travel agencies.

Governor ROMERO-BARCELO. Southeast Airlines is flying in there now.

Mr. VANIK. Where from?

Governor ROMERO-BARCELO. From Miami.

Mr. VANIK. I think you need the major carriers to use that wonderful air strip at the northwest part of your island.

Mr. GUARINI. Governor, because of the loss of income, can you make any statement as to whether or not this would create a greater reliance on Federal assistance in order for you to help your economy further?

Governor ROMERO-BARCELO. It would have to. Out of the $200 million we get rebate from the excise tax, a little less than $10 million is used for publicity for the rum industry. The rest is used for the payment of the bonds for capital improvements, for education, for the general government expenditures, so with a reduction of the resources, we would either have to cut back on services or cut back on what we can do for the people, and the only way we can get the money that is needed would probably be a greater dependence on transfer payments.

Mr. GUARINI. Do you think the rest of the trade bill, the tariff schedule will help in any way? Have you had an opportunity of reviewing what impact the multilateral trade agreement would have on Puerto Rico, particularly in view of products that may have high export potential for you?

Governor ROMERO-BARCELO. Congressman, most of our trade is with the rest of the Nation. The big bulk of our exports, so-called, from Puerto Rico, are to the mainland. We have very little export trade with foreign countries.

Mr. GUARINI. So, therefore, you don't see much potential as far as trade would be concerned with foreign countries that would help the economy under this lowering of the tariff barriers?

Governor ROMERO-BARCELO. Precisely the products that we would be increasing the production of in the near future would be products that would be wanted by other countries, but probably would not have barriers, such as pharmaceuticals and medical and professional instruments and electronics. These are products that most of the other countries are eager to receive.

Mr. GUARINI. Would this have any particular effect on your bottling industry in Puerto Rico? Do the plants that manufacture the rum do their own bottling, or are there outside industries and employment?

Governor ROMERO-BARCELO. There is a bottle industry in Puerto Rico, and they provide the bottles for the rum, and it would have an impact.

Mr. GUARINI. Thank you, sir.

Mr. VANIK. Mr. Shannon?

Mr. SHANNON. I have no questions.

Mr. VANIK. Governor, we want to thank you very much for your very fine testimony.

Governor ROMERO-BARCELO. Thank you very much.

Mr. VANIK. The next witness will be Mr. Amadeo Francis, Commissioner of Commerce for the Virgin Islands. We will be happy to have your statement.

Mr. JENKINS [presiding]. We are pleased to have you and also Mr. Evans. We appreciate his being with you, and I believe he is going to introduce you.

Mr. Evans?

STATEMENT OF HON. MELVIN H. EVANS, A DELEGATE TO CONGRESS FROM THE VIRGIN ISLANDS

Mr. EVANS. Good morning, Mr. Chairman. My duty this morning is to have the privilege of presenting our new Commissioner of Commerce, Commissioner Amadeo Francis, who has spent many years in Puerto Rico and is familiar with the situation from the bottom up.

STATEMENT OF AMADEO FRANCIS, COMMISSIONER OF COMMERCE, THE VIRGIN ISLANDS

Mr. FRANCIS. Thank you very much.

Mr. Chairman, I have been asked to appear before you at the specific request of Governor Juan Luis, who, unfortunately, could not be present at short notice, but I want to express his appreciation. He also thought it was most appropriate I appear on this subject, because I did direct the rum-of-Puerto-Rico problem for 4 years, and I was also the Commonwealth of Puerto Rico's representative in Geneva during the final stages of the trade negotiations in 1967.

Our situation is quite similar to that of Puerto Rico and in this current fiscal year we will receive $26.8 million in returned excise taxes. This will represent 17 percent of the net government revenues. These revenues are important to us because we have made several bond issues over recent years and others have been authorized on which the debt service is guaranteed by the income to be derived from the returned excise tax duties on rum shipments to the U.S. In addition, due to the fiscal situation, fiscal crisis facing the Government of the Virgin Islands for a number of years, the return taxes currently constitute approximately 7 percent of the government's operating revenues for the current fiscal year, since we have found it necessary to unfortunately transfer funds from what have been our capital budget into our operating budget in order to meet our obligations to our citizens.

The area of greatest concern to us, as is the case of Puerto Rico, is the change in the method of tax assessments, and on this I would like to reiterate the experience in 1967, when the Commonwealth of Puerto Rico was allowed to have a representative right up to the last stage of the negotiations—in other words, in Geneva, itself, where I was sent for 2 months. In this instance, the numerous communications and telegrams from the Governor of the Virgin Islands and Delegate Evans, himself, have not resulted in what we feel would have been the appropriate consultation consideration of our interest.

My statement includes a calculation of the impact of change from wine gallon to proof gallon measures and for foreign producers who are largely our neighbors in the Caribbean, the change of assessment alone will result in the reduction of $5.88, which we are afraid will be used in one of two ways, either to lower the cost of the competing liquids in the national market or alternatively to markedly increase the advertisement and promotional budgets of these producers.

This is an area where, unfortunately, we are not fiscally in a position to compete. As a matter of fact, the fiscal crunch that the

Virgin Islands faces has resulted in our having to cut back on the resources that were used for rum promotion. For instance, in 1976, we allocated $475,000, but, frankly, in fiscal 1978 we had no alternative but to cut that to $210,000, less than half the amount that had previously been allocated.

The Organization of American States, on behalf of the Caribbean states interested in this issue, had a study done by American University for them in 1976, which was entitled "Caribbean Rum in the U.S. Market." I excerpted from that report, and I would like to particularly draw your attention to the last sentence, which says, "The rum shipments to the U.S. are vital to Puerto Rico and the Virgin Islands, but are many times less significant to Trinidad or any other rum exporting country. With the national interests this desperate, the development of a 'quid pro quo' is highly unlikely if tariff reductions result in sales decline."

In fact, gentlemen, there is no quid pro quo for the Virgin Islands or Puerto Rico in these trade negotiations and specifically in the administration proposal to modify the tax assessment and reduce the existing tariff. Our economy, as you are undoubtedly aware, is an even more fragile economy than that of Puerto Rico, being basically dependent on tourism, being basically dependent on being able to offer goods to visitors at what are called duty-free prices. The trade negotiations, as a matter of fact, will adversely impact our competitive posture in this particular area, where I fear that many of the goods that are now being purchased by visitors to the Virgin Islands in our gift shops, and so forth, will now be available to them in stores within the U.S. at prices which will not make shopping in the Virgin Islands as interesting a feature as in the past.

In addition, gentlemen, I would like to note that industry in the Virgin Islands, as with Puerto Rico, is required to meet the environmental, occupational, and labor standards which are imposed by the Federal Government on all U.S. manufacturers. These are conditions that our competitors do not face. Our foreign competitors in the Caribbean are not required to meet any of these environmental standards which can be very costly. To further increase the comparative advantage enjoyed by our Caribbean competitors by markedly reducing the costs of their products' entry into the U.S. marketplace, through the proposed changes in the duties and manner of their assessment, and that of assessing the related excise, will be a serious setback to the efforts of the U.S. Virgin Islands to satisfy its residents' legitimate demand for improved public services, as well as the prospects for sustained economic growth, and thus for an enhanced level of socioeconomic well-being for the well over 100,000 fellow Americans who inhabit this territory.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS

This statement is being presented by Amadeo I. D. Francis, Commissioner of Commerce of the U.S. Virgin Islands. I appear before you today at the specific request of Governor Juan Luis who unfortunately, could not, at short notice, be present. He has requested, however, that I convey to the subcommittee his sincere appreciation for your willingness to accommodate us and schedule our appearance

before you at such relatively short notice. In appearing before you this morning I wish to stress to you, ladies and gentlemen, the exteme damage to the Virgin Islands' economy and prospects for its future development and growth that could result from the administration's proposal to markedly reduce the taxes imposed on foreign rums entering the U.S. marketplace, through a change in the method of assessing the applicable duties and excises coupled with a reduction in the prevailing duty.

THE IMPORTANCE OF RUM TO THE V.I. ECONOMY

The rum industry has historically played a very important role in the Virgin Islands economy. In recent years, its importance, particularly in terms of fiscal revenues to the territorial government has grown to a level of immense significance. Under section 28(b) of the revised Organic Act, the excise taxes imposed, and collected, by the federal government on Virgin Islands' rums sold in the U.S. market, are returned to the Virgin Islands treasury. In fiscal 1979, it is anticipated that the territorial treasury will receive $26.8 million in returned excise taxes on rums shipped to the U.S. mainland. This will represent approximately 17% of net government revenues. A major component of the capital budget of the Virgin Islands, these funds have enabled the government to construct such essential public facilities as hospitals and schools.

In 1976, federal legislation was passed which authorized the Virgin Islands government to float a $61 million federally guaranteed bond issue in order to finance critically needed capital project. The legislation stipulated that the returned excise taxes must be used to fund the debt service on these bonds. Any serious reduction, or termination of revenues from the excise taxes collected on the rum manufactured in the Virgin Islands, and sold in the U.S., could result in the Government of the Virgin Islands defaulting on its obligation to meet the mandatory debt service requirements imposed by the aforementioned statute.

The need for adequate capital funds cannot be overemphasized. The territory's infrastructure is woefully inadequate to meet the current demands that are placed upon it. Schools are overcrowded and on double sessions because of lack of adequate space. Water, for St. Thomas' basic needs, is now being barged in from Puerto Rico because of the decrepitude of present desalination facilities. Electrical power is unreliable and the current generators are in desperate need of extensive repair. The capital needs of the territory far outstrip the government's financial capabilities, even with the most optimistic projection on the growth of U.S. bound shipments of locally produced rum.

In addition to capital projects which are funded through rum excises the returned taxes constitute approximately seven percent of the government's operating revenues for fiscal 1979. In recent years the government has been forced to transfer capital funds to the operating budget in order to close the gap between revenues and expenditures in its General Fund. Since the mid/seventies, the Government of the Virgin Islands has had an increasingly difficult time in balancing its budget. With falling revenues, an expanding population, the erosion caused by unabated inflation and an increasing demand for public services, the excise tax returns have played a pivotal role in enabling the territorial government to meet its commitments. If the excise taxes being received by the government were to be reduced as a consequence of increased foreign competition, the level of public services would be adversely affected. Particularly hard hit would be the areas of health care, education, public safety and social services. A major drop in government revenue would also result in a significant loss of employment in the territory, further impacting the already fragile insular economy.

There are two aspects of the recently concluded multilateral negotiations that are of particular importance to us, as regards this primary source of territorial revenues. These are (1) the proposed change in the manner of assessing customs duties and excise taxes on foreign alcoholic beverages, including rum, and (2) the reduction in the customs duties on rum imports. These will each be dealt with separately.

But, first, a quick examination of the rum market is in order. In 1968, the U.S. Virgin Islands shipped 1,492,400 proof gallons of rum to the U.S., while Puerto Rico shipped 5.2 million gallons. In that year, entries of foreign rum into the U.S. amounted to 284,229 (of which Jamaica provided 195,448) gallons. Ten years later, in 1978, shipments of Puerto Rican rums had increased to 18,143,531 gallons (up 349 percent), while Virgin Islands rum shipments rose to 3,503,201 proof gallons, an increase of 235 percent. Meanwhile, foreign rums entering the U.S. increased to 873,561 gallons (up 307 percent), of which Jamaica supplied 644m359 (a 330 percent increase).

The significance of these increased shipments to the Government of the Virgin Islands is evidenced by the fact that excise tax revenues returned to the Virgin Islands rose from just under $13 million in 1968 to $24.5 million in 1978 and, as noted earlier, are forecasted at $26.8 million in fiscal 1979.

PROPOSED CHANGES IN THE METHOD OF TAX ASSESSMENT

The proposed modification in the method of assessing excise taxes and import duties on imported distilled spirits (from wine gallon to proof gallon) will have the largest single negative impact of any of the proposals which are being considered here today, on the competitive position of Virgin Islands rums in the U.S. marketplace, and thus maximization of the revenue potential of this feature of our relationship. Foreign rum producers who ship one case of 80 proof rum in ⅘ quart bottles to the U.S., today pay a total of $29.40 in excise taxes and customs duties. Even without implementation of the 20 percent reduction in the duty (to be discussed below), such a shipper would pay $5.88 less per case of bottled goods, or $23.52 (vis-a-vis $29.40 today) if taxes were assessed on the basis of the proof of the bottled contents rather than the volume.

Whereas most Virgin Islands rum is currently shipped to the United States in bulk at over 100 proof and subsequently bottled in the United States, efforts have been pursued over the past several years to increase the shipments of branded case goods which not only add more value to the territorial product and create desperately needed jobs, but also permit our rum to maintain a separate and distinct identity within the market place, which is ever more critical to survival in the exceedingly competitive liquor market today.

The proposed change in the method of tax assessment would markedly reduce a price advantage which our product currently enjoys in the U.S. marketplace, resulting in a decrease in Virgin Islands cased goods sales from the level they would otherwise have reached. This, in turn, will reduce the revenues from an extremely important source of funding for the Virgin Islands government.

We must reiterate that such a development will run directly counter to the efforts being pursued by the territorial government aimed at increasing the case sales of Virgin Islands rum in the United States. Under the Virgin Islands Industrial Development Program, Schenley Industries, Inc., the largest rum producer in the Virgin Islands, has been granted certain fiscal benefits from the Virgin Islands government, in the form of tax rebates, which it is required to spend on advertising its Cruzan rum brand in the United States. Approximately $400,000 was spent by the government and Schenley for this purpose in 1977 and nearly $600,000 in 1978. As a result, case sales of Cruzan rum have increased by approximately 120% between 1976 and 1978. Increased case sales competition from foreign rums, made possible by the change to the proof gallon method of tax assessment may well result in a major downturn in Schenley's case sales, despite the Government's support through tax concessions.

Foreign rums, faced with this windfall benefit that will be derived from the drastic modification in the method of tax assessment, may choose to either lower their prices or invest the windfall in additional advertising of their product. Alternatively, they may choose to pocket part of their windfall benefits, and reinvest the other part in advertising. This would enable the foreign producers interested in expanding the U.S. mainland sales of their products, to expand their current advertising and promotional budgets by as much as $4 million. The current budget for the promotion of Virgin Islands rums pales besides this bonanza of potential advertising revenues. The Virgin Islands is not in a position to dedicate the sizeable resources that our neighbor, Puerto Rico has to this effort at improving the competitive stance of their product, with such outstanding success. In fact, the fiscal constraints facing the Government of the Virgin Islands forced drastic declines in the budgetary allocations for rum promotion over the past few critical years, from $475,000 in fiscal 1976 to $210,000 in fiscal 1978.

THE IMPACT OF A 20 PERCENT REDUCTION IN IMPORT DUTIES

The Virgin Islands duty-free access to the U.S. market has been a key factor in establishing the product as the most competitively priced rum dominating the lower price range (under $5.14/bottle). The domestic market for rum has expanded greatly in the last several years. According to a recent market survey by Clark-Gavin Associates, sales of rum in 1978 increased by 26.8 percent over 1977. The Virgin Islands share of that market is currently 11.7 percent.

The current duty on foreign rums entering the United States is $1.75. As demonstrated in the annex, a 20 percent reduction in this duty, coupled with the administration's proposed change in the manner of imposing the duty on bottled goods,

would result in a tax savings per case of $1.51. While this reduction would not be realized immediately (as would the change to the proof gallon method of assessment), but rather over a period of eight years commencing in 1981, it would nevertheless serve to seriously compound the readily anticipated erosion of the posture of Virgin Islands rums in the U.S. marketplace, and represent a gross tax savings of $6.55 per case of bottled goods for the foreign producer by 1989.

A 1976 study commissioned by the Organization of American States, entitled *Caribbean Rum in the United States Market,* observed that "while Puerto Rico and the Virgin Islands are in an apparent position of strength in the rum industry, these countries are actually in relatively *vulnerable* and *sensitive* positions" [1] (emphasis added). The study recognized that a loss of sales for Puerto Rico and the Virgin Islands resulting in diminished revenue from excise taxes would have a profound impact on their economies. The study concluded:

"It is highly unlikely that a concession to Puerto Rico could be developed that would compensate them for a reduction of Puerto Rican rum shipments, since this would mean, in effect, a reduction in government revenue because of decreased rebate of the excise tax. Since there is no other source for this amount of revenue, it is understandable why the United States is reluctant to jeopardize the situation. This concern also holds true for the Virgin Islands. . . . The rum shipments to the United States are vital to Puerto Rico and the Virgin Islands but are many times less significant to Trinidad or any other rum exporting country. With the national interests this desparate, *the development of a "quid pro quo" is highly unlikely if tariff reductions result in sales decline."* [2]

It has been suggested that a reduction in the import duty would have little impact on the predominant market share now enjoyed by rums from Puerto Rico and the Virgin Islands. Sales of foreign rums, it is alleged, have historically been low because the foreign producers have not had the resources or the distribution to effectively market their products. This represents a naive view. Industry experts have predicted that as a consequence of the tremendous growth in U.S. rum sales, non-American producers will be stepping up their efforts to grab a share of that market, which has been so carefully developed over the past two decades by the U.S. Carribean governments and producers. This effort will be facilitated by the substantial windfall benefits which will accrue to the current foreign producers, as a result of the proposed changes, enabling them to markedly increase their advertising and promotion budgets without affecting their current returns.

It is the position of the Virgin Islands government that the net impact of lowering tariffs on foreign rums shall be detrimental to the economic development of the U.S. Caribbean region. It would be a concession which would harm the economies of Puerto Rico and the Virgin Islands without contributing *significantly* to the GNP of the non-U.S. Caribbean countries. As noted in the O.A.S. sponsored report, there is no quid pro quo for the U.S. Caribbean rum producers, so dependent on this revenue, in the administration's proposal to modify the manner of tax assessment, and reduce the existing tariff. These concessions will increase the trade of the non-U.S. Caribbean countries by a few million dollars. The impact on the socio-economic well-being and the prospects for the continued (hopefully accelerated) development of these two areas will be hurt many, many fold, more than the economies of the beneficiary countries will be enhanced.

CONCLUSION

To summarize, the Virgin Islands economy is heavily dependent on the rum excise taxes, of $10.50 per gallon, which are returned to the Virgin Islands government pursuant to section 28(b) of the Revised Organic Act. Continued revenues from this source depend on maintaining or increasing current Virgin Islands rum sales in the United States.

The combination of changes in the manner of assessing these levies coupled with a reduction in the tariff will result in a total per case tax advantage to our foreign competitors of $6.55 by 1989, or a 22 percent savings of the taxes which are presently paid. The great majority of this decrease, or $5.88, will result from the change from a wine gallon to a proof gallon method of tax assessment, which will occur, presumably, at the beginning of the phase-in period for the tariff reductions. This windfall decrease in the cost of entry into the U.S. marketplace will enable the foreign producers to markedly improve their current share of U.S. consumption by reducing prices or increasing advertising and promotional budgets or a combination

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[1] Glazer, Sood, Striner, *Caribbean Rum in the United States Market,* November 1976, American University, Washington, D.C., p. 13.

[2] *Ibid,* p. 12.

of both, in a measure that cannot conceivably be countered by the insular producers and governments.

Industry in the Virgin Islands is required to meet the environmental, occupational and labor standards imposed by the federal government on all U.S. manufacturers. These are conditions that our competitors do not face. In fact, Schenley is presently engaged in a prolonged adjudication procedure with the Environmental Protection Agency, with regards to the disposal of the effluent from their distillery, the resolution of which may well require extremely expensive new installations. Our foreign competitors are not required to meet any of these standards. To further increase their competitive advantage by markedly reducing the costs of their products entry into the U.S. marketplace, through the proposed changes in the duties and the manner of their assessment, and that of the related excises, will be a serious setback to the efforts of the United States Virgin Islands to satisfy its residents' legitimate demands for improved public services, as well as the prospects for sustained economic growth (so dependent on improving the community's basic infrastructure) and, thus, an enhanced level of socio-economic well being for the well over 100,000 fellow Americans who inhabit this territory.

IMPACT OF CHANGE FROM WINE GALLON TO PROOF GALLON MEASURES FOR CALCULATION OF DUTY AND EXCISE TAX ON IMPORTED BOTTLED RUM (PER CASE)

1 case of 12—⅘-quart bottled of 80 proof rum contains 2.4 wine gallons or 1.92 proof gallons.

Excise tax on imported rum

Present method—$10.50/gal. times 2.4 wine gallons equals $25.20.
Proposed method—$10.50/gal. times 1.92 proof gallons equals $20.16.
Reduction under proposed method or 20 percent equals $5.04.

Customs duty on imported rum (without 20 percent reduction in duty)

Present method—$1.75/gal. times 2.4 wine gallons equals $4.20.
Proposed method—$1.75/gal. times 1.92 proof gallons equals $3.36.
Reduction under proposed method or 20 percent equals $0.84.

Customs duty on imported rum (with 20 percent reduction in duty)

Present method—$1.75/gal. times 2.4 wine gallons equals $4.20.
Proposed method—$1.40/gal. times 1.92 proof gallons equals $2.69.
Reduction under proposed method or 36 percent equals $1.51.

Total of excise tax and customs duty (without 20 percent reduction in duty)

Present method—$10.50 plus $1.75/gal. times 2.4 wine gallons equals $29.40.
Proposed method—$10.50 plus $1.75/gal. times 1.92 wine gallons equals $23.52; or 20 percent equals $5.88.

Total of excise tax and customs duty (with 20 percent reduction in duty)

Present method—$10.50 plus $1.75/gal. times 2.4 wine gallons equals $29.40.
Proposed method—$10.50 plus $1.40/gal. times 1.92 proof gallons equals $22.85; or 22 percent equals $6.55.
Note: The proposed 20 percent decrease in duty is to be phased in over an 8 year period beginning in 1981.

Mr. VANIK. I want to thank you very much for your testimony. You have heard my colloquy with the Governor of Puerto Rico, so what I have instructed my staff to do is we are going to get a communication off to Ambassador Strauss today, immediately, so we can have some response to the so-called advantages for the Commonwealth of Puerto Rico and for the Virgin Islands, so we can have some response to that very issue.

You were one of the important people during the negotiations in the Kennedy Round, so you are familiar with all of this, so I hope that our request will be helpful and that you can be watching carefully to see what kind of response we get.

Mr. FRANCIS. Thank you very much.

Mr. VANIK. Are there questions?

Mr. Jenkins?

Mr. Guarini?

Mr. GUARINI. What percentage of your economy, sir, is dependent upon rum for excise revenues?

Mr. FRANCIS. I can't tell you what proportion of our economy, but I can tell you of our revenues, and that is where the impact is. In this current fiscal year it is 17 percent. In other words, we expect to be collecting revenues during the current fiscal year of $153 million, of which $26 million will come from returned excise duties.

Mr. GUARINI. Did you give your input to the negotiating team, or were you consulted at any time by the team that negotiated for us, so that your position would be present?

Mr. FRANCIS. In the Kennedy Round, yes, sir. In the Tokyo Round, no. We have sent several communications to the President and to the Special Trade Representative, but we frankly feel that our representation seems to have fallen on deaf ears.

Mr. GUARINI. And you have no other potential export that you could replace this loss of revenue with?

Mr. FRANCIS. Not in the Virgin Islands. As a matter of fact, our economy really is dependent on tourism and free-port shopping, and that is another area where I fear our position is going to be adversely affected; so we are going to get a double whammy on this one.

Mr. GUARINI. That is understandable. Thank you.

Mr. VANIK. Mr. Shannon?

Mr. SHANNON. No questions.

Mr. VANIK. Thank you very much for your helpful testimony.

Mr. FRANCIS. Thank you.

Mr. VANIK. I am going to ask that the testimony of the Automobile Importers of America be deferred for a few moments. I have to personally leave for the floor to make a speech about the subject we are discussing, so I would hope that Mr. Jenkins, you could proceed with the rest of the witnesses, and if you gentlemen don't mind, I would like to have the order changed a little bit. So I wonder if we might hear at this time from Julius Goldman, industrial sales manager, the American Color & Chemical Corp.

It is my intention that we will proceed with this testimony until it is concluded this morning.

Mr. Jenkins?

Mr. MARTIN. Mr. Chairman, if I may, I would like to present to the committee and welcome my constituent, Mr. Julius Goldman. He is with us today to address and discuss the American selling price. We are pleased to have you today.

Mr. JENKINS. Thank you.

Mr. Goldman, we are delighted to have you. We will have your entire statement submitted for the record and would be pleased to hear from you at this time.

STATEMENT OF JULIUS GOLDMAN, INDUSTRIAL SALES MANAGER, AMERICAN COLOR & CHEMICAL CORP., CHARLOTTE, N.C.

Mr. GOLDMAN. Thank you very much, Mr. Martin and Mr. Jenkins. I am Julius Goldman, industrial sales manager for American Color & Chemical Corp., Charlotte, N.C.

American Color & Chemical Corp., is jointly owned by North American Philips Corp., who has 52 percent ownership, and by Koppers Co., who has 48 percent ownership.

Our company manufactures synthetic organic dyes, dye intermediates and chemical auxiliaries. We have four manufacturing plants located in each of the following locations: Lock Haven and Reading, Pa.; Beaufort, S.C.; and Charlotte, N.C. Our total employment at these plants is 600 people. Approxiamtely 80 percent of our business involves synthetic organic dyes.

I appear today relative to the item which appeared in the Federal Register, dated January 8, 1979, Part VIII, Volume 44, No. 5, inserted by the President of the United States under the heading "International Trade Agreement."

We are specifically interested in the changes being made by the Office of the Special Trade Representative relative to customs valuation shown on pages 1942-43.

As stated above, we are manufacturers of synthetic organic dyes. Our products are listed under TSUS No. 406.10 and 406.50. New TSUS numbers will run from 409.50 to 410.20. We also produce organic intermediates shown under TSUS No. 403.48-403.50 and 403.60 with new numbers ranging from 402.36 to 406.61.

We are most concerned that in the area of organic dyes, this agreement, we feel, will not yield substantially equivalent competitive opportunities stipulated as one of the purposes in the Trade Act of 1974.

We are particularly interested and very much concerned in the section of the agreement dealing with the issue of the American Selling Price.

We have received a copy of converted rates from the International Trade Commission which will go into effect if ASP is eliminated. The exchange of these rates in place of ASP, we feel, will not be reciprocal, for the following reasons:

(A) These rates were computed based on imports of dyes for the year 1976. If you will refer to USITC publication 828, dated August, 1977, showing imports of benzenoid chemicals and products for 1976, you will notice it only includes approximately 85 percent of all imports. Considering the number of import entries not fully finalized at the time of computation of converted rates, it certainly could not be considered completely accurate.

(B) The number of competitive dyes—that is the area that we are specifically interested in, competitive dyes, and these dyes are based on the "American Selling Price," and accounted for less than 50 percent of the total quantity and less than 30 percent of the total invoice value of all imported dyes for 1976. We ask how could the ITC compute these rates which would yield equivalent protection on these dyes?

And, last, we have tried to verify whether any of these rates would yield equivalent protection as we presently obtain with ASP. In order to do so—and only on certain cases were we able to get some, but in most cases they were not possible since, as we all know, price lists do not exist in the major foreign countries that manufacture dyes, specifically countries in Europe, Japan, and India.

And this was also verified by our embassies in these countries.

Mr. Chairman, we are aware that the chemical industry does show a trade surplus. However, the only specific category in the list of chemicals that do not show a trade surplus is synthetic organic dyes. We have constantly shown an import deficit, and I have shown statistics for the last 3 years where imports of dyes exceeded exports, and please bear in mind that this existed while ASP was in operation.

[The table follows:]

TRADE STATISTICS ON SYNTHETIC ORGANIC DYESTUFFS

[In thousands]

	1976	1977	1978
Imports	$100,176	$115,705	$134,353
Exports	76,629	76,817	80,382

(Imports, #146, Commerce) (Exports, FTC-410, 1976-77, and FTC-546 for 1978).

Mr. GOLDMAN. I would now like to discuss what actually is the American selling price. Under ASP valuation, the duty paid is based on the wholesale price of the comparable domestic product rather than the price of imported goods. If there is no comparable product, ASP valuation does not apply. The main difference between ASP and the other methods mentioned under changes in customs valuation shown on pages 1942-43 is that the duty is tied to the prices and the costs in this country rather than those abroad.

I would like to emphasize this. It eliminates the possibility of price manipulation that could exist using foreign export values and it doesn't discriminate in providing low wage countries with a tariff advantage in addition to a cost advantage.

If ASP is going to be traded away, shouldn't the dyestuff industry receive something in return?

I would now like to refer to an issue which arose during the Kennedy round of negotiations. In 1967, an agreement was signed by the United States negotiators agreeing that the duties of the chemical section be reduced by 50 percent; while, Europeans reduced their tariffs by only 20 percent.

The negotiators then entered into a second agreement, the so-called "Separate Package," whereby the Europeans would further reduce their tariffs by 30 percent upon the elimination of ASP. This "Separate Package" was rejected by the 90th and 91st Congress and as a result this special agreement expired. This 30 percent should be available to the United States negotiators if they agree to the elimination of the American selling price. We feel that the 96th Congress should make this item an issue in order for all these negotiations to be reciprocal in all respects.

We must support a strong United States dyestuff industry whose products go mainly to the textile mills (approximately 70 percent) with the balance of 30 percent to the paper, leather tanning, plastics and other industries.

We manufacture dyes for the armed forces for such important uses as markers and dye sea markers as well as dyes used by textile mills doing work for the armed forces in the dyeing of uniforms and blankets.

Dyes are highly competitive and, as we have shown, sensitive to import growth even under present duty regulations. Any further reductions in duty can result in our having to close some of our plants due to our inability to produce products on a competitive basis. Most of our plant employees have been in this industry for many years. To try to incorproate them in a retraining program would be difficult.

We at ACCP believe that international trade should be free and fair. All laws governing trade should be equitable.

In line with this, we would like to refer to the country of Japan who we all know possess a very strong dyestuff industry. Their Fair Trade Commission, whose objective is to administer Japan's antitrust laws, has allowed their two largest industrial chemical producers—Mitsubishi and Sumitomo—and three other dyestuff producers to operate as a dyestuff cartel, from August 1978 until March 1, 1979. This cartel could start up at any time in the future.

Japan, as we well know, is a large exporter of goods into the United States. How can we at American Color and other dyestuff manufacturers in this country compete when similar conditions in the United States are considered illegal?

In conclusion, since synthetic organic dyes are sensitive to imports, as the trade statistics prove, we would like to recommend that no further system of customs valuation be instituted on dyes until such time as a proper substitute can be formulated which would yield similar protection as American selling price.

I do appreciate the time allotted me in presenting our views on this very important subject.

I would be very happy to answer any questions that anyone would like to propose.

Mr. JENKINS. Thank you very much, Mr. Goldman.

How large is this industry, the organic dye industry, domestically?

Mr. GOLDMAN. The latest figures will show approximately $700 million worth of dyes sold in the United States.

Mr. JENKINS. As far as the domestic industry, itself, does your company have a rather sizable portion of that domestic business?

Mr. GOLDMAN. We have less than 10 percent.

Mr. JENKINS. Of the domestic production?

Mr. GOLDMAN. Yes.

Mr. JENKINS. Thank you very much, Mr. Goldman.

Mr. Martin?

Mr. MARTIN. Yes.

Dr. Goldman, I am told that——

Mr. GOLDMAN. Excuse me—Mr. Goldman. I think there was an error in the witness list.

Mr. MARTIN. I have promoted you in any case. You might as well keep it. I have had the same problem sometimes myself.

I wanted to ask you further about the point that you made regarding the trade off that is inherent in what the administration is proposing in abandoning the American selling price but adopting other features.

You have indicated that you don't believe that that would adequately hold your industry harmless. I am told by staff that there

is provision in there to have an offsetting tariff adjustment that would be to your benefit.

If you could explain further your thoughts as to why this is inadequate, I would appreciate it greatly.

Mr. GOLDMAN. Thank you.

Mr. Martin and Mr. Chairman, as we all know, the final package has not been submitted, and we certainly have no idea what is going to be available to us. We do know one thing, that whatever comes out of these negotiations is something we are going to have to live with for at least the next 10 years.

The only basis that we have, which shows that the new system that would take its place, is a list of converted rates which was submitted to the industry during the latter part of 1978 by the International Trade Commission. We don't know whether these are the final rates, but we can only go by these rates.

These rates were computed based on history of imports for 1 year of 1976. And in reviewing the imports for 1976, we found, No. 1, the import bulletin for that year only showed approximately 85 percent of the history of imports on dyes; No. 2, there was a fair number of dyes that weren't finalized as far as the importation of these dyes; and third, less than 50 percent of the imports are competitive products which we are most concerned with. And we tried to verify most of the converted rates that were issued by the International Trade Commission, and we could not obtain any foreign prices on the majority of these rates since these countries that are presently exporting and will, more so, export dyes, do not publish price lists in order for us to determine if rates are equivalent or will yield equivalent protection as ASP.

Mr. MARTIN. I want to thank you for that elaboration on that point because I would want to see that your testimony is brought to the attention of the Special Trade Representative, Ambassador Strauss, and to see that as quickly as possible we can get that cleared up from his point of view.

Mr. JENKINS. Mr. Fisher?

Mr. FISHER. No questions.

Mr. JENKINS. Thank you very much for your testimony, Mr. Goldman.

Our next witness is Mr. Steinberg of the U.S. Council for an Open World Economy.

We are happy to have you before the committee.

Your entire written statement will be made a part of the record.

STATEMENT OF DAVID J. STEINBERG, PRESIDENT, U.S. COUNCIL FOR AN OPEN WORLD ECONOMY, INC.

Mr. STEINBERG. Thank you, Mr. Chairman.

I am David J. Steinberg, president of the U.S. Council for an Open World Economy.

Our council speaks for no special commercial interest involved in these hearings. Our sole concern is what the board sees as the total national interest.

Although we feel that the multilateral trade negotiations have not gone as far as we would have liked, just as the Trade Act of 1974 did not go as far as we would have liked, nevertheless, on balance, the multilateral trade negotiations in our view deserve

congressional support and legislation that fairly implements the provisions and purpose of those negotiations.

I would very briefly, Mr. Chairman, like to point out just a few areas which we regard as shortcomings in the MTN.

We feel that the tariff cuts will not be adequate, consistent with the authorizations of the Trade Act of 1974. We believe that there have been too many exemptions, and we believe that the special deals that have been made to accommodate the problems and the special interests of certain industries constitute subsidies without coherent Government strategies addressing the real problems and the real needs of these industries. Such subsidies are hence objectionable.

We also believe that the problems and needs of the developing countries of the world have not been adequately addressed in these negotiations. This is not just a matter of the responsibilities of the rich to the poor; this is not just a matter of compassion for the poor, less developed parts of the world; this is also a matter of export expansion of the United States. The less developed countries are a major market today for American exports. They are a major dimension of U.S. potential in export expansion. We regret to see that the earning capacity of those countries of the world has not been adequately addressed in these negotiations.

I recall vividly the attention that was given in 1973–74, when the Trade Act was before the Congress, to the need for adequate access to the raw materials of the world. The need to work out a special arrangement to insure equitable access to raw materials was, I recall, a major dimension of the trade bill dialog of those years. Yet, Mr. Chairman, I have heard nothing about that issue in the course of these negotiations. The matter apparently has been relegated to benign neglect.

I would like to conclude, Mr. Chairman, by saying that a major shortcoming in the negotiations will be the inadequacy, as we see it, of what may come out in the so-called safeguard code. The safeguard policy of the United States and the safeguard provisions of the General Agreement on Tariffs and Trade today include a major flaw, a flaw which we see no indication of being corrected, if indeed there is a safeguard code later added to the MTN. That flaw takes the form of the omission of a requirement that no import restrictions may be imposed for the benefit of any industry except in the framework of a coherent government strategy addressing constructively the real problems and the real needs of that industry.

Today, under our escape clause policy, where an industry proves serious injury from import competition, import restriction or some form of trade restriction is provided if serious injury has indeed been confirmed, not as part of any government strategy pulling out all the stops of suitable government attention to the real problems of the industry but, rather, in the vague hope that the industry will make a successful adjustment to import competition with the assistance of whatever trade restrictions have been provided. This is akin to a pig-in-a-poke policy.

The time has come for government assistance to an ailing industry to take the form of a coherent adjustment strategy. I do not see that this need will be stipulated in the multilateral trade agree-

ment. Failure to proceed in this fashion will be a major failing in U.S. trade policy and in world trade policies for many years to come.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF THE U.S. COUNCIL FOR AN OPEN WORLD ECONOMY, INC.

(Summary: This testimony urges approval of the new multilateral trade agreement in the total national interest, notwithstanding the Council's concern over certain shortcomings including omission of a suitably reformed "safeguard" code.)

The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of achieving an open international economic system in the overall public interest. The Council speaks for no private, commercial interest, only for what its Board of Trustees regards as the total national interest in this policy area. The Council believes that freer and fairer international trade advances the national interest. The Council advocates attainment, with deliberate speed, of the most open and most equitable world trading system. It also advocates effective adjustment strategies to backstop such a policy.

OVERALL VIEW OF THE TRADE AGREEMENT

The multilateral trade agreement, just negotiated, merits Congressional approval including the enactment of implementing legislation that fosters the freest and fairest international trade consistent with the new codes which are a major feature of the agreement. To the extent that domestic industries are deemed likely to suffer dislocation from freer import access to the U.S. market, such concern should be expressed, not through procedural and other strictures aimed at curtailing or discouraging imports, but rather through coherent government attention to the real problems and needs of these industries.

The statutory and other product exemptions from further trade liberalization under this agreement are regrettable features of these negotiations. Together with the specal import-restrictive arrangements on other products (including the greatly reduced tariff cuts on some items), these exemptions (a) constitute subsidies outside the framework of coherent adjustment strategies of balanced, cost-effective government assistance to these industries, and (b) lessen U.S. leverage in negotiating freer U.S. access to foreign markets.

Inadequate attention to the needs of the less-developed countries is another disappointment, as is the failure to reform the "safeguard" provision of the General Agreement on Tariffs and Trade in the manner this Council considers essential. The "safeguard" issue is discussed in some detail below.

On balance, however, the new trade agreement will foster a more equitable international trading system and achieve many significant reductions in world trade barriers. The agreement will bring important benefits for U.S. export expansion, a major national priority, and for more effective international cooperation across the board. Failure to approve this agreement, and to enact implementing legislation consistent with its provisions and purpose, would be a serious setback for avowed U.S. trade objectives and for other U.S. policy goals both foreign and domestic.

The agreement, like the 1974 trade legislation that provided the U.S. negotiating authority, is not all we had hoped for and all that the national interest requires. It nevertheless merits equitable and expenditious implementation.

THE "SAFEGUARD" ISSUE

A basic flaw in import-relief or "safeguard" standards, both in U.S. policy and in the General Agreement on Tariffs and Trade, remains uncorrected and will encumber world trade for many years to come. There is no indication that the safeguard code which may possibly be added to the new agreement at a later date will incorporate the reform we consider essential.

The flaw is the absence of a requirement that no trade restrictions of any kind may be imposed to assist an industry seriously injured by legitimate imports *except* as part of (and if found indispensable to) a coherent, balanced, industry-adjustment strategy addressing the real problems and needs of that industry. Such a strategy

should be developed by the industry, approved by the government (if government aid is indeed to be provided), and monitored by the government to ensure that aids provided at public expense fully advance the public interest and effectively serve the adjustment objective for which they are intended. The adjustment strategy should include reassessment of all government policies materially affecting the industry to make sure that none of these policies unfairly impedes effective adjustment and to determine the possible need for special assistance in these policy areas.

Industry adjustment should not, as now, be just a vague hope, a result that is passively expected from the beneficiary of the import restrictions which are the only industry-wide remedy provided under the safeguard provisions of existing trade legislation. This approach is something akin to a "pig in a poke." What the industry does with the adjustment time provided by trade restrictions should be the subject of a publicly delineated commitment. The government does not permit a pig-in-a-poke approach in adjustment assistance to firms, workers and communities: it should not do so in import relief—in essence a form of adjustment assistance—to import-impacted industries. Thus, there should be no textile import restrictions without a coherent textile policy, no steel import restrictions without a coherent steel policy, and so forth.

Failure to move along these lines would be an error of omission. There also appears to be an error of commission in the proposed safeguard provisions—namely, permitting selective, discriminatory action against imports from particular countries when these imports are deemed the cause of the serious injury that is found to have occurred. To permit selective action against imports from some countries (but not all as now required) in cases where the issue is not unfairness of trade but rather injury to a domestic injury from legitimate imports would penalize exporters legitimately making the most of their opportunities in the importing country. Moreover, it could open the way for import controls not totally related to the industry situation for which relief was found necessary—that is, for ulterior motives involving the exporting country's trade or other policies. Permitting discriminatory import controls would be a Pandora's box.

Requirement of an industry-adjustment strategy as the framework for import controls should also extend to "buy national" policies in government procurement (except where "buy national" policies may be necessary to deal with national emergencies such as a serious economic depression). It should also extend to the use of import controls for national-security purposes. The U.S. could have prevented or at least alleviated the present energy problem if a quarter century ago the national-security clause written into the trade legislation had required a coherent industry-development strategy as the framework for any import controls considered essential for national-security purposes. Twenty years ago the government imposed oil import controls but without a coherent oil policy aimed at strengthening this sector of the mobilization base. This flaw in the national-security clause still exists—making the national-security clause a threat to national security in the sense that simplistic recourse to import control tends to divert attention from the search for real solutions to real security needs.

Although special efforts to assist the developing countries are urgently needed, it is not clear how import restrictions against developing countries in import-injury cases can be avoided or ameliorated where imports from such sources are substantial without impairing the adjustment effort of the domestic industry found to require import restraint to provide adjustment time. Help for the developing countries would best be achieved through the adjustment-strategy reform proposed in this testimony, inasmuch as this reform would aim at the earliest removal of whatever trade restrictions are necessary.

Mr. JENKINS. Mr. Martin?

Mr. MARTIN. I have no questions, Mr. Chairman.

Mr. JENKINS. I have no questions.

Thank you very much for your testimony, Mr. Steinberg.

Mr. STEINBERG. Thank you.

Mr. VANIK. Mr. Millet, we would be very glad to have your testimony now. We will be very happy to hear from you.

Mr. MILLET. Thank you, Mr Chairman.

Mr. VANIK. Your entire statement will be put in the record as submitted. You may read from it or excerpt from it, in whatever way you wish.

STATEMENT OF RALPH T. MILLET, CHAIRMAN OF THE BOARD, AUTOMOBILE IMPORTERS OF AMERICA, INC., ACCOMPANIED BY JOHN B. REHM, SPECIAL COUNSEL

Mr. MILLET. My name is Ralph T. Millet, chairman of the board of Automobile Importers of America. I am also associated with the Swedish manufacturer, SAAB.

With me is our special counsel, Mr. John Rehm.

AIA consists of 17 automobile importers, including representatives of all major manufacturers of imported cars, except Volkswagen and Mercedes-Benz. A list of these companies is attached to this statement. The members of AIA account for over $5 billion of imported automotive products each year, and their stake in the continuation of a liberal trade policy is therefore substantial.

Before I ask John Rehm to take up the specific issues related to the International Antidumping Code and the Antidumping Act, I should like to make several general points.

First, we certainly applaud this country's liberal trade policy, which has fostered healthy and vigorous competition among both domestic and imported cars in the U.S. automobile market.

Second, we believe that the multilateral trade negotiations (MTN) represent a major step forward in establishing "rules of the game" for international trade. In particular, the MTN should promote the objective of having all major automobile-producing countries import as freely as they export.

Third, we believe that the MTN will provide the foundation of world trade for the next generation. Over the past 30 years, imports of automobiles have never taken an annual share of more than about 18 percent of the U.S. market. Moreover, they have never disrupted the domestic industry, which is currently making record profits. We hope to continue to benefit the American consumer for at least another 30 years.

Fourth, we are concerned lest the bill to implement the MTN codes contain provisions that are injurious to the continuation of a liberal trade policy or inconsistent with our international obligations under those codes. Both this subcommittee and the Senate Finance Committee have taken up the countervailing duty statute and the escape clause, and the Senate Finance Committee has already dealt with the Antidumping Act.

The decisions to date are distinctly troublesome. The time allowed for proceedings under these three statutes is quite inadequate. Moreover, the substantive criteria of injury in the case of countervailing and dumping duties are in our opinion, far too lax. Finally, the timing and amount of these duties would render the countervailing and antidumping statutes no longer remedial but clearly punitive.

In light of AIA's concerns, John Rehm will now discuss AIA's proposed amendments to the Antidumping Act.

Mr. John Rehm.

Mr. REHM. Thank you.

Mr. VANIK. We will be pleased to hear from you.

Mr. REHM. Mr. Chairman, let me summarize what we regard as the key amendments we would like to propose to the Antidumping Act, and let me start off with the issue of timing.

I recognize that your subcommittee has not yet dealt with the question of timing under the Antidumping Act, but the Senate Finance Committee has. Under present law, in a typical case, a total of 11 months is allowed for an antidumping proceeding: 7 months for a preliminary determination, 3 more months for a final determination by the Treasury Department, and then another 3 months with respect to the question of injury on the part of the International Trade Commission.

The Senate Finance Committee has cut that back to a total of 8 months including, most disturbingly to us, only 4 months allowed to make a preliminary determination with respect to the question of sales at less than fair value. Four months in our view and in our experience—and as you know the imported automobile industry has had experience with the Antidumping Act—4 months is clearly in our judgment inadequate and insufficient.

We would agree with your comment earlier this morning, Mr. Chairman, that perhaps some reduction in the time now allowed is appropriate. We would like to propose a reduction in the overall time from 11 months to 10, allowing 6 months for the preliminary determination, and then just 2 months for the Treasury Department to make a final determination with respect to the issue of sales at less than fair value, and then another 2 months for the International Trade Commission, recognizing of course that the ITC would have had at least from the time of the preliminary determination to begin meaningfully to address the question of injury.

But 8 months, we do want to repeat, Mr. Chairman, is in our judgment clearly inadequate, and something like 10 months along the lines we propose we think is the minimum required to assure that the facts are properly identified, discovered and analyzed. Perhaps we all, or many of us, do believe that these proceedings can be expedited to a degree, but surely not at the cost of virtually requiring that the decisions be arbitrary one way or the other.

Mr. VANIK. I think we would want to avoid that. I think we will take a good look at that recommendation.

Proceed.

Mr. REHM. Thank you.

Timing is an important issue because it goes to the heart, it seems to me, as to how responsibly these statutes will be administered.

Let me now turn to two issues that have been particularly discussed this morning, namely, what we call the quantum of injury

that should be required in an antidumping proceeding as well as the issue of the degree of causality. While we are in our testimony addressing the Antidumping Act, what we have to say would apply equally in our judgment to the new countervailing duty statute.

We were delighted to hear, Mr. Chairman, that you told us earlier this morning that the subcommittee had agreed, if we understood you correctly, to putting the words, all very important words, "material injury," into the bill. That is not the position of the Senate Finance Committee as we understand it today.

Mr. VANIK. The drafting has not been completed but we have agreed to the definition.

Mr. REHM. We appreciate that. But we have been arguing long and hard for several weeks now, both downtown and on the Hill, that if the international agreement provides for material injury as article 6 of the GATT does, as the international antidumping code does, and now as the new countervailing duty code does, then surely it is not only appropriate but required for the United States, if it takes its international obligations seriously, to include that term in the statute.

However, in all candor, Mr. Chairman, if the Ways and Means Committee in its version of the bill—I am using conventional parlance although I realize this is not a conventional process we are going through—includes the term "material injury," it is my feeling very frankly that there will be an effort on the Senate side to define those words in a way which would leave us just where we are. And where we are, I submit, is not adequate.

Now your subcommittee several weeks ago agreed, as I recall, from its press release, that the test of injury to be applied under the new countervailing duty statute would be the same as is now applied by the ITC under the Antidumping Act. That definition, that minimal threshold of injury now applied by the ITC is not, I repeat, not consistent with what I think is a fair and reasonable interpretation of the word "material."

If you turn to the dictionary, Webster's dictionary will tell you that material means "important, of consequence." The ITC now, and I am not criticizing the Commission, since it is wholly consistent with the legislative history established by the Senate Finance Committee in 1974, the ITC presently applies a definition of anything more, however slightly more than de minimis. That is to say, a trifle more than a trifle of injury is sufficient as they now interpret the Antidumping Act in the light of the legislative history of that act.

That in my view is in no way consonant with the notion of "material" or "important" or "consequential." In short, Mr. Chairman, if you are to include this term in the bill we would urge you to be terribly attentive to the manner in which either the bill or the legislative history defines the term "material injury."

We think material injury should be defined either statutorily or in the reports as something important, of consequence. That is not, I repeat, not the standard now being applied by the ITC.

On the issue of causality, here we face a somewhat different situation, admittedly. The chairman asked earlier this morning whether the concept of "a substantial cause," which you heard ECAT and the U.S. Chamber urge earlier, is required by the codes. In all candor I cannot say it is required. The test of causality in the codes, as under our domestic legislation presently, is left unresolved. It simply provides for some degree of causality.

However, our analysis of the decisions of the International Trade Commission, particularly since January of 1975, clearly reveals that they have applied—again I am not criticizing, since it is consistent with the legislative history of the 1974 act—a concept of "identifiable cause." As long as the dumped imports are an identifiable cause, that should suffice, even though, and I can cite them for you if you wish, in a number of cases both the majority and dissenting opinions clearly acknowledge there were other causes, one or more, clearly more important than the dumped imports.

Now I fail to see how it is consistent with the national interest to have dumping duties imposed where the dumped import are not at least as important a cause as any other cause determined by the ITC.

Therefore, we are proposing that the concept of "a substantial cause" be written into the bill or, if not in the bill, the legislative history. We are drawing, as I am sure you know, upon the precedent established in the escape clause, which defines "a substantial cause" to mean an important cause, no less important than any other cause.

If, as Mr. McQuade said earlier this morning, dumped imports are only a slight or trivial cause contributing to the injury, and there are clearly more important causes at work, then I would suggest, to use a medical analogy if you will, it is like applying the wrong medicine for the wrong illness. If there are other more important causes of the problem, then surely dumping duties should not be resorted to, which are inflationary and anticompetitive; rather, the real problem should be addressed.

I am not going to deal with all the proposals we have made in our testimony, Mr. Chairman. I just want to highlight the most important ones, and that takes me to price assurances. We would agree, Mr. Chairman, with the substance of the letter you addressed to Ambassador Strauss, as we understood the letter. We have not seen the text, but you did read what you felt to be the key passage.

We think that foreign exporters in an antidumping proceeding should have the opportunity to provide price assurances to the Treasury Department as a way of closing out the proceeding. We fully agree that the price assurances should be subject to monitoring. We are not asking that the Treasury Department accept the price assurances on blind faith. Past experience, I think, would probably also be relevant. If prior experience indicated that the foreign producer had not complied with earlier price assurances, I don't think it would be fair for us to say that the Treasury Department would have to accept them in the new situation.

But what we are really pleading for is ample discretion on the part of, if not the Treasury Department, whatever agency turns out to administer this part of the Antidumping Act, to accept price assurances, whatever the margin of dumping, and that is key here. As you know, presently under the antidumping regulations, the Treasury Department will entertain price assurances only if the margin of dumping is 1 percent or less. That is a rule of thumb they apply.

We don't understand that at all. If the object of an antidumping proceeding is to do away with the margin of dumping, it seems there are two effective alternative ways of doing so: First, the imposition of antidumping duties; second, price assurances. Whether the price drops in the home market or the price increases in the United States, the margin of dumping is eliminated, and, therefore, the injury to the domestic industry.

I also want to make it clear that, with respect to price assurances, we are prepared to accept the notion that the price assurances must cover the full margin of the dumping. It has been suggested, and there is some logic to it, frankly, that the price assurances cover only that part of the margin of dumping which is found to be injurious. That is a worthwhile idea to which I want to come later, but for the purpose of price assurances we are prepared to accept the notion that the price assurances cover the full margin of dumping.

As to the amount of the dumping duty, we see both the antidumping and countervailing duty codes as establishing a very fair and logical and sound principle. I don't want to mislead you. It is not a requirement; it is a hortatory provision in both codes, and they both indicate it is desirable that the amount of dumping duty or countervailing duty be only that amount found required to avoid injury. That is a function, as you know, that the ITC presently carries out under the escape clause. Under the escape clause, if it makes an affirmative finding, it must recommend to the President that amount of import relief needed to avoid injury. If injury is the game, and it seems that now, reluctantly or otherwise, all parties are agreeing that both the antidumping and countervailing duty statute should include the criterion of injury, doesn't it flow logically and inexorably that the amount should be only that amount required to avoid the injury? If the margin of dumping in a hypothetical case is a dollar, and the ITC should find 75 cents is sufficient to avoid the injury, I don't know how to label the 25 cents except protectionist, unnecessary, harmful added import restrictions. So we would hope—and I am realistic; I don't think we would find this as a mandatory provision in the new legislation—that the concept that the dumping or countervailing duties be only in the amount needed to avoid injury, might be accepted.

Finally, and this is quixotic on our part, but it seems to us that it goes to the heart of what we like to call a balanced trade policy, and that is the element of Presidential discretion. I know that is an anathema today in the Congress. You feel, and there is reason for your feeling that there has been abuse of discretion downtown in some of the statutes. Nevertheless, if we are trying to fashion, as I

hope we still are, a balanced trade policy, then surely there can be cases, and might be cases, where all the statutory criteria have been satisfied and an imposition of dumping or countervailing duties would simply not be in the national interest. If the President should so conclude with his advisers, surely it seems to us that a balanced trade policy would suggest that he have the authority not to impose those duties.

Now, in proposing this at all, and I know this is not a popular idea, we would certainly emphasize that the authority would not be a blank check. It would have to be carefully circumscribed. We have in mind a Presidential determination dealing only with domestic, not international, adverse economic effects I think Congress would probably fear that, considering international effects would take the President too far away from the issues at hand.

It seems to us that such a limited narrow authority does make sense if you are trying to fashion a balanced trade policy. And in conclusion, Mr. Chairman, that is our theme. Free trade is not in fashion; I am not sure liberal trade is in fashion any more. Unfair trade is very much in fashion as a symbol of what we all ought to be fighting. Yes, we agree unfair trade should be fought, but only, it seems to us, if the conditions for imposing these additional import duties are fair and reasonable and don't so tilt the whole statutory framework that domestic industries can obtain relief and in the way of dumping or countervailing duties when it doesn't make sense for them to obtain that relief when it does not respond to the national interest.

[The summary of proposed amendments to Antidumping Act and Mr. Rehm's statement follow:]

SUMMARY OF PROPOSED AMENDMENTS TO ANTIDUMPING ACT

The Automobile Importers of America, Inc. (AIA), urges that the Antidumping Act, 1921, as amended, be further amended in the following respects in order to assure that the Act complies with the International Antidumping Code and also constitutes a fair and reasonable measure for dealing with dumped imports.

1. A typical antidumping proceeding should last 10 months, with 6 months for the preliminary determination of sales at less than fair value, another 2 months for the final determination, and another 2 months for the injury determination.
2. The injury suffered by the domestic industry should be "material".
3. Dumped imports should be "a substantial cause" of the material injury.
4. The domestic industy should constitute those firms that make those products that are "like and directly competitive with" the imported product.
5. The threat of material injury should be "clearly imminent".
6. The Treasury Department should be authorized to accept *bona fide* price assurances regardless of the extent of the margin of dumping.
7. Following a finding of dumping, an importer should be required to post only a bond—until such time as his own goods may be found to be dumped.
8. Dumping duties should be imposed only in the amount required to avoid material injury.
9. The President should be authorized to waive dumping duties if he determines that they would have serious domestic economic consequences.

STATEMENT OF JOHN B. REHM

AIA's proposed amendments to the Antidumping Act, 1921, as amended, are all consistent with the letter and spirit of the International Antidumping Code (IAC). That is, they are either required by the provisions of the IAC, or they are wholly appropriate, given the purpose of the IAC. Moreover, AIA believes that these proposed amendments will ensure that the Antidumping Act constitutes a balanced response to the problem of dumped imports and will avoid its becoming a protectionist measure. For it is simply not in the national interest to impose dumping duties

when a domestic industry is not significantly injured or, if it is, when factors other than imports are more important causes of such injury.

TIME FOR ANTIDUMPING PROCEEDING

The IAC does not prescribe the amount of time an antidumping proceeding shall take. Its provisions make it quite clear, however, that the governmental authorities concerned shall make a full and thorough investigation of the facts and that the parties to a proceeding shall have a full opportunity to present their views. The Act now allows 13 months for a typical antidumping proceeding—7 months for the preliminary determination with respect to sales at less than fair value (LTFV), 3 months for the final determination, and 3 months for the injury determination.

The Senate Finance Committee has decided to recommend a total time period of 8 months—4, 2½, and 1½. This is seriously inadequate, both in terms of the total time allowed and in terms of the time provided for each of the three stages. 6 months from the date of the filing of the complaint is the absolute minimum time in which to make a preliminary determination with respect to sales at LTFV. Within this time, the complaint must be found to warrant an investigation, responses to questionnaires must be received from abroad, the responses must be verified abroad and then analyzed, supplemental information must be obtained, and factual and legal issues must be resolved. If 6 months are allowed for the preliminary determination, AIA believes that 2 months is sufficient for the final determination, but at least 2 months must be allowed for the injury determination following the final determination of sales at LTFV. Only after the final determination concerning sales at LTFV, can an informed determination be made whether the imports sold at LTFV are the cause of whatever injury the domestic industry may have suffered. Two months is needed for this purpose, particularly in order to give the parties to the proceeding a reasonable opportunity to address the issue of causality.

QUANTUM OF INJURY

Both the IAC (I3(a)) and the Subsidies Code (I21 footnote 1), like Article VI of the GATT itself, provide that the requisite quantum of injury be "material". But the Act only asks whether a domestic industry "is being or is likely to be injured".

The Act should therefore be amended to require that the domestic industry is experiencing at least "material injury". Moreover, the legislative history should make clear that "material injury" means injury that is important and consequential, consistent with the dictionary definition of "material".

At present, the International Trade Commission (ITC) generally interprets the Act to require a quantum of injury that is only slightly more than *de minimis*—or a trifle more than a trifle of injury. This is not only legally wrong, in that it contravenes our international obligation under the IAC, but it is also economically unsound, since the Government should intervene in the marketplace only when a domestic industry is injured to a significant or important degree. Governmental intervention should be and remain exceptional, if we believe in the benefits of competition. It therefore follows that such intervention should be limited to those cases where significant or important injury is afflicting the domestic industry in question.

DEGREE OF CAUSALITY

The IAC (I3(a)) provides that dumped imports, that is, those sold at less than fair value, should be "the principal cause" of material injury. The Subsidies Code does not specify the degree of causality and simply requires that the subsidized imports "are causing" material injury (I64). The Act is in substance identical to the Subsidies Code.

AIA believes that the test of the IAC is perhaps too demanding, but that the test of the Subsidies Code and the Act is clearly too lax. If dumped imports are only slight cause of material injury, and other factors are more important causes of such injury, governmental intervention is not justified.

We therefore urge that both Codes and the Act adopt the test of "a substantial cause" now embodied in the escape clause. As you will recall, section 201(b)(4) of the Trade Act of 1974 defines "a substantial cause" as "a cause which is important and not less than any other cause". This, we believe, is a modest and fair standard.

At present, the ITC generally interprets the Act to require that the dumped imports be only an identifiable cause of injury, even though they are clearly a lesser cause than one or more other factors. From January of 1975 through March 1979, the ITC made 18 affirmative injury determinations under the Act. In at least 13, in our judgment, the ITC made such affirmative determinations even though the

industry did not suffer material injury, or, if it did, the dumped imports were a less important cause than one or more other factors. Our conclusion is based upon a review of uncontroverted facts set forth in the majority and dissenting opinions.

DEFINITION OF DOMESTIC INDUSTRY

The IAC (I4(a)) defines the domestic industry to refer "to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". The Subsidies Code (I65) contains a substantially identical definition. Moreover, both the IAC (I2(b)) and the Subsidies Code (I61 footnote 2) define a "like product" to mean a product which is identical to, or has characteristics closely resembling those of, the product under consideration. The Act, on the other hand, provides no definition whatsoever of the domestic industry.

We believe that the domestic industry should consist of those companies that make products that are like the imported product, the companies that make products that are directly competitive with the imported product, and the companies that make both the like and directly competitive products. We further believe that this definition is consistent with the definition of "like product" in the Codes. We therefore urge that the Act be amended to incorporate the concept of "like and directly competitive" for purposes of defining the domestic industry.

THREAT OF MATERIAL INJURY

The IAC (I3(e)) provides that the threat of material injury shall be based on facts and not merely allegation, conjecture, or remote possibility, and must therefore be clearly foreseen and imminent. The definition of injury in the Subsidies Code (I21 footnote 1), on the other hand, includes "threat of material injury", but it does not define "threat". Similarly, the Act refers to the likelihood of injury, but without any definition of likelihood.

The Subsidies Code and the Act should therefore both be amended to incorporate the definition of threat in the IAC. A threat that is not clearly foreseen and imminent should not call for the imposition of extraordinary duties.

PRICE ASSURANCES

The IAC (I7(a)) provides that antidumping proceedings may be terminated without imposition of antidumping duties upon receipt of a voluntary undertaking by the exporters to revise their prices to eliminate the margin of dumping or to cease to export to the area in question. The Subsidies Code (I45) provides for a similar procedure. The Act is silent on this question, and the practice of the Treasury Department under the existing antidumping regulations is to accept price assurances only if the margin of dumping is less than one percent.

We urge that the Act be amended, consistent with the two codes. The purpose of the Act is to eliminate the dumping margin. If it can be eliminated by voluntary action on the part of the exporter, instead of by the imposition of dumping duties, then the purpose of the Act is equally served.

IMPOSITION OF DUMPING DUTIES

The IAC (I8(a)) makes it clear that a dumping duty may be imposed only "where all requirements for the imposition have been fulfilled." The Subsidies Code (I41) contains identical language. The Act is consistent with this principle.

However, the Treasury Department is of the view that the Act confers upon it the authority, following a finding of dumping, to impose provisional dumping duties upon entries that come within that findig but *prior* to a determination that those entries have, in fact, been dumped. This violates basic principles of fairness and due process and may well be unconstitutional. An importer should have to pay dumping duties only when his own goods are, in fact, found to have been dumped. The Act should therefore be amended to authorize the Treasury Department only to require the posting of bonds following a finding of dumping and prior to an entry-by-entry determination of a dumping margin.

AMOUNT OF DUMPING DUTIES

Both the IAC (I8(a)) and the Subsidies Code (I41) provide that "it is desirable . . . that the [dumping or countervailing] duty be less than the margin [or total amount of the subsidy] if such lesser duty would be adequate to remove the injury to the domestic industry."

We believe that this principle is sound, since the imposition of a dumping or countervailing duty is justified not because an unfair trade practice exists but because that practice is a cause of injury to the domestic industry. Therefore, for

example, if the margin of dumping is one dollar, but a dumping duty of 50 cents will prevent further injury, it obviously makes no sense to impose a dumping duty of one dollar. We therefore urge that the Act be amended to incorporate this principle.

PRESIDENTIAL WAIVER OF DUMPING DUTIES

Both the IAC (I8(a)) and the Subsidies Code (I41) provide that "it is desirable that the imposition [of dumping or countervailing duties] be permissive . . .". Contrary to this provision, the Act requires that dumping duties be imposed following a finding of dumping, with no exceptions allowed.

We urge that the Act be amended to give the President limited discretion to waive the imposition of dumping duties if he determines, and so reports to the congress, that such imposition would have specific adverse domestic economic consequences. It is simply unwise, in our judgment, to require that each and every finding of dumping be implemented regardless of the severity of its impact upon the domestic economy. For example, the President should be able to waive dumping duties if their imposition would have serious anti-competitive effects that clearly outweigh the benefits of such duties.

This concludes AIA's prepared statement. We will be happy to answer any questions you may have.

Attachment.

MEMBERS OF AUTOMOBILE IMPORTERS OF AMERICA, INC.

Alfa Romeo	Lotus	Rolls-Royce
BMW	Mazda	Saab-Scania
British Leyland	Mitsubishi	Subaru
Fiat	Nissan	Toyota
Honda	Peugeot	Volvo
Isuzu	Renault	

Mr. VANIK. You have indicated neither that the subsidies code nor anti-dumping require imports to be a substantial cause. You are familiar with the major cost criteria in the escape clause. What you are asking is that the domestic industry, having unfair trade practice, prove that injury from imports be more important than any other cause?

Mr. REHM. No, Mr. Chairman, I am glad you have asked for that clarification. If I seemed to say that, I didn't mean to do so. The present test under the escape clause is not "major cause" but a "substantial cause," and that is defined in the statute as—I think I am quoting accurately—an important cause, no less important than any other cause.

We are not asking that the dumped imports be a cause greater than any other cause—only that they be no less important than any other cause, and, as I said earlier in my testimony, we can cite at least seven or eight decisions of the International Trade Commission since 1975, when both sides, majority and dissenting commissioners, found other causes more important than the dumped imports. But if they are at least as important as any other cause, we think that warrants the imposition of dumping duties.

Mr. VANIK. On page 10, you advocate we provide the President the authority to waive the collection of dumping duties. How can we protect U.S. industry from the consequences of unfair trade if we allow a political consideration to enter in each decision on imposed dumping duties?

Mr. REHM. Fair question, but, as I was trying to say in my testimony —mind you, I have not drafted language, but we might try to do so—I would have in mind that the statute avoid, to the greatest extent possible, and I think it is possible as a matter of

statutory drafting, taking into account political factors. I would agree with that. It seems to me that, if the authority is to be given at all, it should be limited to situations where the President can cite adverse domestic economic consequences, and I would have in mind that he report his determination to Congress and identify with real specificity the specific domestic adverse economic consequences. I would agree that the proposal would certainly not fly, but also not be justified, if it turned on political factors.

Mr. VANIK. You note that the President should be able to waive dumping duties if their imposition has a serious anticompetitive effect, but under your theory, dumping duties would never be assessed.

Mr. REHM. No, I really have in mind what I think would be a fairly rare situation, where the President's advisers would find that there was such, I would tend to use a word like overwhelming or clearly predominant contrary economic consequences flowing from the imposition of dumping duties that they could not be justified. I would see this as a rare situation.

Mr. VANIK. The final point I want to make is that I have no problem with the sales in the U.S. of some of the cars and automobile products that have prestigious labels that people buy for elevating their egos in a society that sometimes has a lot of depression about it, but I am concerned about something else. After the Iranian crisis, Americans began to come to some sense of reality that they have to limit their consumption of gasoline. My feeling is that it is time for the administration and all of us to take a strong position and deal with the problems, because our imports are going up, and OPEC pricing has no restraint whatever. We will be totally owned in a few years if we just let this go on.

So, just before the Iranian problem, I know that the Japanese had almost a half a million cars on the docks—and unsold. I don't know what the Europeans had, or other producers had, but there was quite a supply of automobiles, and then after the Iranian crisis, suddenly this great supply disappeared, went into the market, and sales are so brisk you folks are not even advertising any more. You are letting people come in and buy them.

Mr. MILLET. I wouldn't say that.

Mr. VANIK. There is very little. I watch this carefully. I don't care whether you advertise or not, whether they have advertising or not isn't my concern, but what I get the feel of is a tremendous surge in the purchase of gasoline-efficient cars. I have no criticism of the import industry. It has served very well to push the American industry out of the age of indifference to some sense of reality about the energy crisis and the need to get gasoline-efficient automobiles, but my point is that we are going to have serious problems later this year.

Our deficit with Japan currently runs at three-quarters of a billion dollars a month rate. While it has gone down a little, I look for the year-end to be a terrible picture, when the record reflects the sale of the highly-gasoline-efficient automobiles that are now being recognized by the American consumer as something they should have been buying for the last several years. While in the import field you have 40 or 50 choices in these automobiles, you have some beautiful designs, and attractive ones, in the American

scene you have very little competition in that critical area of business.

The result of that will be that we are going to have a tremendous push on the trade deficit when these figures are computerized into the total effect of our import/export imbalance.

So what I suggest is that you should be very mindful of this, because if there is an automobile industry worker retaliation or awakening, with the levels of these sales, I think you could be getting into a situation in America where there might be serious reactions by the American people through their Congress and through this problem which has arisen, not entirely without the fault of the American industry, as I said at the outset. But it seems to me it is time to realize what effect this is going to have on the trade balance issue, and I think that even the wise and prudent importer or wise and prudent foreign producer should realize the sociopolitical consequences of this imbalance. I don't know what you can do about it, but I think you should be aware of the effect this has on the American economy.

Mr. MILLET. I certainly shall take that message to the member companies, Mr. Chairman, and let them know of your concern.

Mr. VANIK. You can sell all of the Rolls Royces you want to; that isn't going to bother us. And the Alfa Romeos. If possession of those cars helps strengthen a weak ego in America, maybe we will make it up by the added productivity of that ego. But I am concerned about the mass market and the effect of those half-million cars, for example, I was talking about. If the trend continues without some concern on the part of your industry, then you may be back here facing up to a very serious barrage of real trouble which could develop when the domestic industries end their product year next week and things begin getting a little rough in automobile employment.

Mr. MILLET. At least we have the introduction this past week of some exciting cars from General Motors.

Mr. VANIK. I don't know what the cost is. They are almost in the Rolls Royce range. They are not competing with other things. They are competing with the Rolls Royce. There is always a galaxy of American automobile purchasers who like the new and unusual thing until they find out what the cost is, but when you divide up the original cost into the cost efficiency of how much they are going to save over a long period of time with the new automobile, that may just wear off. I am concerned about the mass market, the people who are driving every day, and driving themselves, and who probably have no other way to get to their place of employment. We have a very difficult problem in the U.S. on that. So I just hope you are mindful of that, because it could very, very quickly change the climate in which the membership of your organization does business in the U.S. There is always a possibility if the situation is sufficiently aggravated you might end up with a very instant tax or some other kind of device that may put you out of business, and deal directly and probably passionately with the problem instead of more reasonably. Thank you very much.

The next witness is Mr. Richard O. Cunningham of Steptoe & Johnson.

STATEMENT OF RICHARD O. CUNNINGHAM, ATTORNEY, WASHINGTON, D.C.

Mr. CUNNINGHAM. Good afternoon, Mr. Chairman, and members of the committee. My name is Richard Cunningham. I am a member of the law firm of Steptoe & Johnson. I want to emphasize at the outset that I am not appearing today as a representative of my firm, nor should my testimony be taken as representing views of any of the clients, whether foreign or domestic firms, which my law firm has represented in trade cases over the years. Rather, I am appearing here today as an individual practitioner who has spent the last 10 years working with the Antidumping Act and countervailing duty law, and the reason I am here today is I am very concerned at what is happening with these laws now and what may happen to them if certain proposals now being advanced are adopted by the Congress.

Mr. Chairman, early today, you focused on a crucial issue which runs throughout the somewhat lengthy statement which I have submitted to the subcommittee, which I will not read in full, but which I will summarize.

Mr. VANIK. The statement will be entered in the record as though you read it, so you may proceed.

Mr. CUNNINGHAM. In an interchange with the first witness you said that uncertainty affects international trade more adversely than anything else. Nowhere is that more true than in dumping and countervailing duty cases. Here I want to say I disagree emphatically with Mr. Rehm on this subject. These are laws, Mr. Chairman, which deal with unfair trade practices, laws which should be objectively and fairly and predictably enforced against those unfair trade practices. These are not laws which should be resolved through negotiated solutions or through administrative discretion.

The statement which I have submitted for the subcommittee focuses specifically on the Antidumping Act. It urges the Congress to take decisive action to eliminate uncertainty in the enforcement of that law by clarifying the price comparison rules used by the Treasury Department in such critical areas as selling expenses, cost adjustments, use of allocations, and the rules applicable to dumping from state-controlled-economy countries.

In that latter regard, state-controlled-economy country dumping, I note that Congressman Jenkins asked another witness what his proposal was on this subject. I have attached to the back of my statement a proposed amendment to section 205(c) of the act, which would, in effect, put back in the law what Congress tried to do in the 1974 amendments.

My statement also urges that the resources of Customs and Treasury be substantially increased, that new and effective verification procedures be adopted, and that investigative time periods not be shortened.

Let me add one thing about the investigative time periods. If the Treasury time for determining whether sales occurred at less than fair value is substantially shortened, this committee should realize that the losers will be U.S. complainants. Most dumping cases are complex cases, and, moreover, the information upon which the decision is based is information prepared and submitted to the

Treasury by the foreign producer. Whether a dumping case is won or lost frequently depends upon whether the U.S. complainant and its counsel have adequate time to review the information submitted by the foreign producers, to advise Treasury of defects, shortcomings or omissions in that information, and then have sufficient time left for Treasury to go and get new information or additional information needed for a successful resolution of the case.

If there is not sufficient time for that to be done, and there would not be sufficient time if the Treasury time periods are significantly shortened, then many cases which are now won by U.S. complainants would, I fear, be lost.

In view of the time pressures under which this committee is operating, I won't go into detail here as to those aspects of my statement which I have just mentioned, although I would be happy to answer any questions which the committee might have. What I want to focus on primarily today is the proposal for expanded use of a new type of price assurance settlement procedure, a proposal which I regard as the single most undesirable element of the entire MTN negotiations.

Time permitting, I would like also to say a word or two about the material injury issue which was raised this morning.

Mr. Chairman, I was delighted to hear today about your letter to Mr. Strauss on this issue of price assurances. The position which you and the committee took in that letter is precisely the right position, and I hope you will hold firm to it no matter how vehemently Treasury or other voices in the administration seek this change to a new procedure.

Mr. VANIK. Would your objection to the use of price undertakings be partially met if such undertakings could not be accepted prior to a preliminary determination of the dumping margins?

Mr. CUNNINGHAM. I certainly think that should be the rule. The reason I say that is because I agree with the committee that a price assurance should serve the function of fully eliminating the dumping margin or the amount of subsidy, and you can't do that, obviously, until you have determined what the dumping margin is or what the amount of subsidy is.

Mr. VANIK. In your opinion, how difficult would it be to determine the precise increase in price necessary to offset not the total dumping margin but only that part of the margin which is injuring the domestic industry? Is such a calculation possible?

Mr. CUNNINGHAM. I think it is possible, but only in theory. In practice, I think that is a very difficult determination to make. It is one which certainly Treasury is not in the business of making, one which I doubt even the International Trade Commission could do on a basis sufficiently precise to provide relief to a U.S. industry. Beyond this, there is another problem with the practicality of an elimination of injury price assurance as opposed to an elimination of the dumping margin price assurance, and that is that we live in inflationary times.

Mr. VANIK. That is the understatement of the whole year.

Mr. CUNNINGHAM. Quite so. The costs and prices of most producers are on rising trends. What is contemplated here in this new proposal for a no-injury-type price assurance is that the foreign producer would be asked to sell hereafter at a certain price, deter-

mined to be a noninjurious price. But as time passes, U.S. producers' costs will increase, U.S. producers' prices will increase, and what will happen then? The price which was originally perhaps noninjurious, if it is possible to determine what a noninjurious price becomes now, is much more substantially below the prices of U.S. producers.

The question should be posed, then, is Treasury going to ask foreign producers to continue to increase their prices as U.S. producers' prices and costs increase through inflation? That would seem to be a necessary corollary of any noninjury price procedure, but I think the committee knows the answer to the question. I don't think the Treasury contemplates any progressive increase in foreign producers' prices. Yet what you would have, then, would be a price assurance which the foreign producer could freely sell at, yet which would soon become an injurious price. That is a problem unique to this type of new proposal and one which seems to me to be a fatal and unavoidable flaw in it.

I think this committee, in considering that proposal, should question Treasury, STR, or whoever in the administration proposes it, as to precisely how they plan to determine what sort of price increase is necessary to eliminate injury. I have had some conversations with Treasury people on that, and I must say I haven't heard any explanation of it. I think the reason is that there isn't any way they are planning to do it. I think what they are contemplating is negotiated deals, and I don't think that is the way we want to enforce a law against unfair trade practices.

Mr. VANIK. I agree with you. I think that is exactly right. I am afraid of it.

Mr. CUNNINGHAM. Let me turn for just a moment to that question of material injury, which we have been discussing. I want to make just one brief comment on it. Several witnesses have taken positions on whether or not the code's word "material" should be inserted in the U.S. dumping and countervailing duty laws, but I submit this committee should be aware that there is another and more fundamental issue, namely, what does "material" mean? I would suggest to the committee that to a certain extent you are stuck with the word "material" whether you like it or not. It is in both of the codes, dumping and countervailing duties. Both codes are going to be approved by the Congress, if the MTN package is legislated, which will give them the force of U.S. law, so unless Congress specifically rejects the word "material," which I do not recommend, the standard used by the International Trade Commission is going to be "material" injury.

But the real question remains: What is "material"? And I submit that unless Congress acts to define the amount of injury represented by "material" or by any other word that is in the statute, then we will have just the sort of uncertainty we all view as undesirable in this area. Earlier today, I think I heard the chairman refer to the material injury standard contained in the codes as a minimal standard. On the other hand, when Congress last considered inserting the word "material" in the Antidumping Act, which took place in 1951, this committee specifically rejected the use of a "material injury" standard on the ground that it was an undesirably high

standard, and I would refer you to this legislative history at pages 24 and 25 of my written statement.

My point here is not that Congress should lower the injury standard or it should raise the injury standard. My point is that a new word, "material," is going to work its way into these two laws whether directly by insertion in the statute or indirectly by adoption of the codes. Moreover, that word is nowhere defined, and no one really knows what it means.

I strongly urge that Congress give a very specific definition of the injury standard. If Congress wants to continue in effect the standard which it enunciated in 1974, then something like the following sentence should be incorporated in the legislative history:

For purposes of this law, "material injury" is any injury which is more than frivolous, inconsequential, insignificant, or immaterial.

I take those words from the Senate finance report, last time around. If Congress wants to adopt some other standard, higher or lower, it should do so by equally specific language, but, above all, please don't leave us in confusion or uncertainty on this very important issue.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF RICHARD O. CUNNINGHAM

This statement represents my own views as a practitioner of international trade law, and should not be taken as representing the views of my law firm or of any of the foreign or domestic clients which my firm now represents or has represented.

SUMMARY OF RECOMMENDATIONS

1. Congress should take this opportunity to clarify, and perhaps overhaul, the Treasury Department's rules for the making of price comparisons, especially in the areas of a. selling expenses, b. adjustments for differences in the characteristics of the merchandise, c. use of allocations, and d. dumping from Communist countries.

2. Customs' investigative procedures should be totally revised. An investigative team should be sent to the exporting country in each case.

3. The manpower and funding devoted to Treasury's investigation of dumping and countervailing duty cases should be raised to at least 4 times the present level.

4. There should be no shortening of the time periods for Treasury's dumping investigations. Any such shortening will work to the disadvantage of U.S. complainants.

5. Congress should firmly *reject* the new price assurance procedure which is being proposed by the Administration.

6. If Congress accepts the new International Antidumping Code, which requires a showing of "material" injury, Congress should issue a clear statement defining what "material" means.

STATEMENT

This is a personal statement, intended solely to set forth the views of an attorney who has spent most of the last ten years representing both U.S. complainants and foreign respondents in Antidumping Act and other trade law proceedings. The views expressed herein do not necessarily represent those of any client or clients on whose behalf I have appeared in those proceedings, nor do they necessarily represent the views of my law firm, Steptoe & Johnson.

My statement today will focus on the Antidumping Act of 1921. In my view, that Act in its present form leaves much to be desired as a vehicle for relief from unfair import pricing. Moreover, there is a very real danger that acceptance of the newly-negotiated International Antidumping Code will weaken the Act still further, unless Congress acts decisively to maintain an effective law. I want to suggest some of the areas in which the Act is in jeopardy of being weakened by new proposals, and also to urge changes in some other areas in which a strengthening of the Act is needed.

For convenience, the analysis below is divided into two parts. The first will deal with the Treasury Department's investigation of LTFV pricing. The second will focus on the International Trade Commission's injury investigation.

I. THE TREASURY LTFV INVESTIGATION

The various proposals now being advanced in Congress for amendment of the Antidumping Act focus almost exclusively upon procedural changes in the Treasury investigation—earlier withholding of appraisement, shortened time periods, expanded use of price assurances to "settle" cases, use of protective orders to permit participating counsel to obtain access to confidential data submissions, more effective verification, and the like. These procedural changes (with the exception of the shortened investigative time periods and the new price assurance proposals, both of which will be discussed below) are generally constructive. However, they fail to reach two major problem areas which should be central to any revision of this Act:

First, The Treasury Department's rules for the making of price comparisons should at least be clarified, and perhaps greatly overhauled.

Second, the Customs Service's investigative methods need to be radically changed, both by altering the method of investigation and by vastly increasing the Service's budget and resources.

The issues which I feel should be considered in these two areas are discussed below, along with some suggestions for amendment of the Act.

A. Treasury's rules for making price comparisons

At present, the rules used by the Treasury Department for the making of Antidumping Act price comparisons are so imprecise and uncertain that it is awfully difficult (in all but the most extreme cases) for a U.S. industry aggrieved by low-priced imports to know whether or not it can obtain relief under the Act. By the same token, it is often very difficult for a foreign exporter to know whether or not its sales to the United States are at LTFV prices—despite the fact that the exporter has within its possession complete data concerning its home market and export prices and all expenses incurred in connection with its sales in the two markets.

The difficulty, obviously, does not lie in the prices themselves. Rather, the problem is that no one can know, until a given investigation has run its full course, precisely what "adjustments" Treasury will make to the prices which the foreign firm charges to its U.S. customers and to its customers in the home market. The imprecision in Treasury's rules centers on three principal areas: selling expenses, adjustments for differences between the U.S. merchandise and the home market merchandise, and the use of allocations in making adjustments.

1. Selling expenses

The selling expense issue is perhaps the thorniest of all problems in the administration of the Antidumping Act. In almost every investigation—certainly in all investigations involving consumer products—the foreign exporter argues that any apparent difference between its U.S. prices and its home market prices is attributable to the fact that it incurs much greater selling expenses in its home market sales. These claimed expenses in the home market include the maintenance of a much more elaborate distribution system, higher warranty costs, larger expenses for servicing the merchandise, etc. In principle, it seems logical that an adjustment should be made if home market selling expenses are in fact greater than the selling expenses incurred in the U.S. market. However, the issue is nowhere near that simple. Consider, for example, the following questions:

Should an adjustment be allowed for a more elaborate home market distribution system, if a major reason for having such an elaborate distribution system is not to increase sales, but rather to provide a retirement for the firm's elderly employees, as is often the case in Japan?

If the exporter engages heavily in home market advertising which is not designed to promote specific products, but rather to promote the company's "image" (for example, "Imperial Chemical Industries leads the world in chemical technology"), should the cost of such "image advertising" be deducted from home market prices?

If the foreign company provides day care facilities for children of women who work in its sales department, is that a deductible "selling expense"?

The current Antidumping Regulations, as well as the questionnaire which the Customs Service sends to foreign exporters in dumping cases, require that a selling expense must be shown to be "directly related" to sales of the merchandise under

investigation, in order for that expense to be deductible from the price of the sale.[1] In the last several years, however, the Treasury Department has been increasingly willing to classify as "directly related"—and thus deductible—more and more types of expense. A vivid example of how far Treasury has gone in this direction occurred last year in the investigation of *Motorcycles from Japan*, where the cost of "mobile medical units" was allowed to be deducted as a "directly related" home market selling expense. In the same case, "image advertising" was also placed in the deductible "directly related" category.

Treasury's adoption of this more expensive allowance of selling expense deductions represents a major change in the meaning of the Antidumping Act. Cases which would have been won by the complainant three years ago are now lost or result in a finding of minimal dumping margins. Yet that change has not been accomplished through an amendment of the Act by the Congress. Rather, it has been accomplished administratively.

It may well be that the Congress concurs in the new meaning which Treasury has given to the Act. After all, foreign respondents have for years argued that all costs—not merely those which are "directly related" to sales of the merchandise under investigation—should be taken into consideration in making the price comparisons. But it is also quite possible that Congress does not agree with Treasury's present approach. Complaining U.S. industries take the position that expenses which are not a part of the actual selling function and/or are not related specifically to the product under investigation should be regarded as general overhead items, and spread evenly over all of a company's sales—home market and export—thus resulting in no pricing adjustment in LTFV comparisons. The resolution of this issue involves questions which are both complex from an accounting standpoint and fundamental to the philosophy of the Antidumping Act.

But if the proper resolution of the selling expense issue is not clear, it *is* clear that the issue is of such importance that it should be decided by the Congress and not by the administrative agency. It is no exaggeration whatsoever to say that most cases today are won or lost on the selling expense issue. The price adjustments in this category can easily result in a swing of 20 percent or even 30 percent in the comparisons, which is generally enough to change a determination from affirmative to negative, or vice versa. If there is to be any meaningful revision of the Antidumping Act, I strongly urge that the Congress closely examine the selling expense issue, hold hearings on it, study its impact on decisions over the past several years, and make the policy judgments necessary to lay out clear and precise rules as to what expenses are deductible and what expenses are not deductible.

2. Adjustments for Differences in the Characteristics of the Merchandise

In almost all dumping cases involving manufactured products, the foreign exporter will argue that the merchandise which it sells in its home market differs in characteristics from the merchandise sold in the United States, and that an adjustment should be made for the cost differences attributable to these differences in characteristics. This proposition is unexceptionable in principle, but the application of that principle in dumping cases has proven horrendously difficult.

What happens in practice is that the foreign manufacturer presents to Customs two computer printouts purporting to show the costs at producing the export version of the merchandise and the version sold in the home market. The Customs representative can do little more than compare the cost of the bottom of one printout with the cost at the bottom of the other, and make the pricing adjustment on this basis. In only a few cases—the duty assessment phase of the color television case being a prominent example—has Customs gone into real detail in analyzing the relative costs of the home market merchandise as compared to the costs of the U.S. merchandise.

Since there is usually no really meaningful investigation of this cost adjustment issue, there is no way of knowing with certainty whether the adjustments have or have not been accurately made. However, many U.S. complainants feel that errors in making these adjustments have resulted in—or at least contributed to—the loss of cases which should have been won.

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[1] Where the foreign seller maintains a U.S. distribution subsidiary—in which case the so-called "exporter's sale price" method of computation is used—Treasury applies a somewhat different rule. "Directly related" selling expenses are fully deductible from both home market and U.S. prices. However, all other selling expenses (no matter how remote) are also deducted from the U.S. price. Then an offsetting deduction from home market prices is allowed for "indirect" selling expenses, but only up to the point where the per-unit amount of home market "indirect" expenses equals the per-unit amount of such expenses incurred on the U.S. sale. This type of computation gives rise to another cluster of problems which also merit detailed examination, but which are beyond the limited scope of this statement.

This problem is a particularly difficult one to solve, because the analysis of costs is always more difficult than the analysis of prices. However, the cost adjustment process could be greatly improved by three changes, two relating to the criteria for the making of adjustments and the third relating to Customs' analytical procedure:

First, adjustments for cost differences should be predicated only on cost differences which are directly related to differences in the characteristics of the merchandise. Where a difference in cost of production arises from the fact that one article is produced in a different plant than the other, or from the fact that more overtime is used in the production of one of the articles, or for some other cost variant unrelated to a difference in the specifications of the two articles, then there is no logical basis for making any cost adjustment. It should therefore be incumbent upon the exporter claiming a cost adjustment to demonstrate that that adjustment is directly related to a difference in the characteristics of the U.S. article and the home market article.

Second, adjustment should be made only for differences in direct costs of materials and labor, and not for overhead expenses. This is a derivative of the first proposal. Overhead costs are inherently general in nature, and not related to differences in specifications of the merchandise. Moreover, analysis of overhead expenses is exceedingly difficult and is dependent upon the uncertainties of allocation principles.

3. Use of Allocations in Computing Adjustment

Many dumping cases now involve foreign exporters which are multi-product companies. In such cases, analysis of discounts, selling expenses, and the like in home market sales is often complicated by the foreign producer's contention that it does not break its financial statements down into the categories required for this investigation. Assume, for example, that the foreign producer sells products A, B, C, D, E and F in its home market, but that the dumping case involves only product C. The foreign producer states that it keeps no separate expense records for product C, but rather groups the product C expenses in the same category as products A, B, D and E. In such circumstances, the foreign producer generally proposes that it be permitted to allocate to product C a percentage of the total expenses for products A, B, C, D and E equal to the percentage of sales of those five products represented by sales of product C. This seems reasonable at first glance, but consider the following examples:

Home market sales of product C represent 20 percent of the foreign producer's total home market sales. The foreign producer proposes to allocate 20 percent of its home market television advertising expense to sales of product C. However, the U.S. complainant states that its investigation has revealed that the foreign producer does substantially no home market television advertising of product C. Should the allocation be allowed? What, if any, further documentation should be required?

The foreign producer gives an annual bonus to each of its home market dealers who attain a certain volume of sales. However, the producer's home market sales of the product covered by the dumping investigation represent only 5 percent of its total home market sales. Accordingly, the dealers invariably obtain their bonus primarily by making sales of products other than the product covered by the investigation, and some dealers will be receiving bonuses despite the fact that they have made no sales whatsoever of the product under investigation. Should the foreign producer be allowed to allocate 5 percent of its bonuses to sales of the product under investigation? What, if any, further documentation should be required?

In recent years, Treasury has been increasingly willing to accept allocations as the basis for computing price adjustments. American complainants have vigorously protested this trend, arguing that the foreign producer should be required to substantiate fully any claim for an adjustment which would eliminate (or tend to eliminate) apparent dumping margins. The foreign producer, on the other hand, argues that it cannot be expected to maintain its records in precisely the categories covered by the dumping investigation, and hence an allocation of some sort is essential.

There are at least three possible resolutions of this problem:

First, the U.S. complainants' position could be adopted, requiring the foreign respondent to demonstrate the actual amount of any expense, discount, etc. actually paid or incurred with respect to sales of the merchandise under investigation.

Second, Treasury's current policy could be retained, allowing the foreign producer to use any reasonable method of allocation of expenses, discounts, bonuses, etc.

Third, an approach could be adopted similar to that used in exporter's sales price cases. If the foreign producer is able to demonstrate the actual amount of expense incurred, discount paid, etc. on sales of the item under investigation, then that

amount would be fully deductible. If an allocation were required, however, the per-unit amount deductible from home market prices could not exceed the per-unit amount deducted for the same category of expense (or discount, bonus, etc.) in the U.S. market.

Whatever resolution is finally reached, the issue is one of major importance, and thus should be resolved by the Congress, rather than by the administrative agency.

4. Dumping from Communist Countries

In recent years, imports from state-controlled-economy countries have become an increasingly significant factor in U.S. trade. This trend is undoubtedly going to continue and accelerate, not only because of natural economic forces, but also because this Administration is determined to expand trade with Eastern Europe, Communist China and other socialist countries. To date, affected U.S. industries have included the producers of clothes pins, light bulbs and golf cars. In the future, U.S. watch producers face competition from Russian watches and it is understood that the Lada—a Russian automobile—will soon be introduced in substantial volume into the U.S. market.

Competition from Communist country exporters poses unique difficulties for American industries, because of the involvement of the foreign government in the activities of the exporting firm. If past experience is repeated, the problem is likely to be one of low prices—prices which the American producer cannot meet on any profitable basis—rather than simply a volume situation. Logically, such problems should be handled under the Antidumping Act.[2]

After the enactment of Section 205(c) by Congress in 1974, it seemed that the methodology for applying the Antidumping Act to Communist country imports had been settled. Since then, however, the Administration has determined in its own mind that Section 205(c) as enacted by Congress is overly restrictive and cannot fairly be applied to Communist country imports. There are two issues here:

First, what should be the basis for determining foreign market value when the product in question is not produced anywhere except in the United States and in the exporting Communist country? The legislative history of the Trade Act of 1974 states rather explicitly that the basis of comparison in such circumstances is to be the price at which such merchandise is sold in the United States by U.S. producers. However, Treasury regards this as unfair, and has instead promulgated an incredibly complex regulation requiring a hypothetical cost of production analysis.

Second, where the same type of merchandise is produced in several countries besides the U.S. and the exporting Communist country, which of those third countries should be chosen as the basis for determining foreign market value? Again, the legislative history of the Trade Act states explicitly that Section 205(c) is intended to codify previous administrative practice, and the Customs Service in past cases has invariably looked to that country in which it found a *producer* of size, complexity and technology comparable to the producer in the Communist country. Here again, Treasury has changed the law, by promulgating a new regulation which requires that foreign market value be determined on the basis of prices in a country "comparable in terms of economic development" to the exporting Communist country. Once, again, the effect of Treasury's change is to slant the price comparisons in favor of the Communist exporters.

The reason that Treasury's new approach has a built-in bias in favor of the Communist exporter requires a bit of explanation. The nubbin of it is that the country in which you will find an exporter comparable in size and sophistication to the Communist exporter is likely to be a country which is more advanced—and therefore in which prices are higher—than in a country "comparable in terms of economic development" to the Communist country. The reason is that the Communist country government often creates an exporter which is larger and more sophisticated than one would normally expect to find in that country. The goal is to earn hard currency by increasing exports, and therefore the government wants as large and as sophisticated a producer as possible. In s free-market economy comparable in economic development to the Communist country, on the other hand, producers would tend to be smaller and less sophisticated, both because the size of the

[2] Some observers feel that, because of the difficulty in ascertaining prices and costs in a state-controlled economy, the Antidumpting Act should not be a remedy for Communist country imports. I disagree strongly. The only alternative remedy is an escape clause-type proceeding based upon the disruption of the U.S. market by these imports, without regard to whether they are fairly priced or not. Such a remedy is not particularly well suited to price (as opposed to volume) problems. Moreover, escape clause-type remedies are discretionary on the part of the Executive Branch, and it is not realistic to expect that an Administration which is intent on expanding trade with the Eastern Bloc will be much inclined to restrict imports in cases where it has discretion not to do so.

domestic market would not justify a large-scale producer and because low labor rates would make a high degree of automation unncecessary.

In effect, then, the new Treasury regulation has precisely the result which Congress sought to avoid in enacting Section 205(c). What Treasury will rely upon under the new regulation is not the normal prices and costs which would exist if the exporter were located in a non-Communist country. Instead, Treasury will use the significantly lower prices which prevail in a country in which the exporter in question would not normally be located. The not effect of this is to produce a price comparison which is more beneficial for the exporter—more beneficial precisely because of the involvement of the Communist government.

I urge this Committee to correct this perversion of Section 205(c). That can be accomplished by amending the Section to make it clear that enforcement of the Act against imports from state-controlled-economy countries will be predicated on the prices charged by a free market producer whose size and degree of sophistication are comparable to that of the state-controlled-economy producer. A proposal for such an amendment is appended to this Statement.

Beyond this, the Committee should make it absolutely clear to the Treasury Department that the Antidumping Act is to be enforced fairly and objectively, letting the chips fall where they may. Perhaps the most disturbing aspect of the new Communist country regulation is that it is so clearly a response to diplomatic pressures and an implementation of a diplomatic policy of cultivating political and economic relations between the United States and certain Communist countries. Such policies are undoubtedly well-intentioned, and I have no quarrel with them whatsoever. I believe very strongly, however, that such diplomatic and political goals must not be allowed to interfere with vigorous enforcement of the Antidumping Act.

B. Customs Service investigative procedures and the necessity for commitment of greater resources

By this time, it should be apparent to all observers that an effective Antidumping Act is essential to protect U.S. industries from unfair import pricing. It is no exaggeration whatsoever to say that the prosperity of hundreds of industries and the security of literally millions of American workers' jobs depend on vigorous enforcement of this law. Yet I am constantly amazed that our government has been unwilling to commit the resources which are absolutely essential to effective Antidumping Act enforcement.

My testimony before this Committee last Fall dealt at length with the utter inadequacy of the Customs Service's present procedures for "verifying" information submitted by foreign producers. If the United States is serious about enforcing this Act, it should totally revise the verification process, along the lines which I suggested to the committee. In each case, a team should be dispatched to the foreign country for purposes of checking the information submitted by foreign producer. That team should consist of the Customs case handler, at least one accountant, a technical advisor who is familiar with the product in question, and—in those cases where the response is computerized—a data processing expert. Instead of a one day visit to the facilities of the foreign company, this team should be prepared to spend as much as a week, in order to conduct a thorough examination for purposes of verifying the data.

Obviously, such an investigative procedure will require a major increase in both the manpower and the funding of the administering agency. Adequate procedures for assessing dumping duties after a finding has meen entered—another area in which all observers agree that present procedures are woefully lacking—will also require a much greater commitment of resources. In all, I submit that we are not talking about a 50 percent increase in funding, or even a doubling of funds. If we want effective enforcement of this law, we need an administering agency with something like *four to five times* the manpower and funding now allocated to the offices in Treasury and Customs which deal with this Act. I think that this law is worth that investment.

C. Shortening the Treasury investigation—A serious mistake

Most of the proposals advanced for reform of the Antidumping Act—including the STR proposal for implementation of the new Antidumping Code—feature substantial reductions in the period of time allotted for the Treasury investigation of LTFV pricing. I want to make it clear to this Committee that any such change will work to the *disadvantage* of complaining U.S. industries.

Ironically, these proposals are said to be advanced on behalf of potential U.S. complainants, in the interest of "expediting" the obtaining of relief under the Act. Although the desire for quicker relief is certainly understandable, these investigation-shortening proposals are misguided for reasons which I will discuss in a moment. If quicker relief is deemed desirable, I suggest that it could best be obtained by overlapping the International Trade Commission investigation with the second phase of the Treasury Department investigation. Under such an overlapping procedure, the ITC would begin its investigation at the date of Treasury's tentative determination (assuming that that determination is affirmative) and would continue its investigation for four months, until one month after Treasury's final determination. The extra month after Treasury's final determination is necessary in order to permit the ITC to consider the final dumping margins. Such an overlap procedure would shorten the total investigative period by two months. If this is not deemed sufficient, consideration could be given to withholding appraisement at some earlier point in the Treasury investigation, perhaps at the three month date, conditioned upon Treasury determining that there is substantial evidence of LTFV selling.

The difficulty with shortening Treasury's investigation is that such shortening will prevent complainants from winning many dumping cases. In any but the most clear and egregious case, whether a complainant wins or loses is primarily dependent upon the ability of its counsel to persuade Treasury to reject the initial contentions made by the foreign producers and gather new (and more detailed and more accurate) price and cost data. Consider the following typical time schedule in a dumping investigation:

The Customs questionnaire is served upon the foreign producer a few days after the commencement of the investigation.

The foreign producer submits its response to the U.S embassy located in the country of exportation about nine or ten weeks after receipt of the questionnaire, so that now about two and a half months have passed in the investigation.

That questionnaire response is subjected to preliminary review at the embassy and in Washington, and the verification of the response usually does not take place until after the three month point in the investigative period.

After verification, the Verifying Officer prepares his report, which is generally submitted to Customs in Washington a week or so before the four month point of the investigation.

There is then a two or three week delay (at least) before the verification report is "sanitized" (*i.e.*, confidential data is removed) and placed in the public files so as to be available for inspection by counsel for the complainant.

At this point, almost five months of the initial six month investigative period have elapsed, and only now does the counsel for complainant have access to all of the data necessary to analyze the foreign producer's questionnaire response.

As the foregoing scenario demonstrates, it is not until 4-½ to 5 months into the investigation that the issue is really joined. Only at that time can complainant's counsel analyze the questionnaire response, question various portions of it, and urge Customs to seek additional information where necessary. Even today, with a six month period until the tentative determination, it is often not possible for Customs to obtain needed additional data in time for use in that first decision. It is small wonder that Treasury misses so many of its deadlines for both tentative and final determinations, and small wonder that there are so many changes in LTFV margins between tentative determination and final determination.

Conceivably, the use of additional resources at Customs could expedite the above scenario by two weeks or perhaps even a month—*but not more.* Even then, the original six month investigative period should be kept in effect, to allow Treasury time to obtain additional data at the urging of complainant's counsel, where such data is necessary for the decision.

Who will be the loser if time periods are shortened to the point where Customs is not able to obtain additional data at the urging of complainant's counsel? Obviously, the losers will be U.S. complainants. Treasury decisions will be based, not on full and accurate data, but rather upon the foreign producer's initial and sometimes faulty submissions. In other words, cases will be lost where they should be won.

D. Expanded use of price assurances—An even more serious mistake

The most disastrous weakening of the Antidumping Act now being proposed is the effort by the Treasury Department to gain authority to negotiate settlements on a basis which would deprive U.S. industries of full relief. This proposal is masquerading under the name of "price assurances," but in reality it is something very different and highly pernicious.

At the outset, the Committee should recognize that this new proposal bears little resemblance to the price assurance procedure which Treasury now uses in dumping cases. The existing procedure, in keeping with the purpose of the Act, aims at eliminating dumping. It is employed at the end of Treasury's investigation, where dumping has been found but the LTFV margins are minimal.[3] The "assurance" given by the foreign exporter is that no future sales will be made at prices below fair value. Treasury then monitors imports from that exporter for at least two years, to ensure adherence to the price assurance.

The new proposal, in contrast, has nothing whatsoever to do with the elimination of dumping. No longer will the foreign exporter promise to refrain from dumping. Rather, it will agree to "adjust its prices so as to eliminate any injurious effects." Indeed, this settlement procedure will be utilized early in the Treasury investigation, at a point where there has been no determination of the size of the dumping margins. If you don't know what the dumping margin is, you can't very well eliminate it.

What, then, is the purpose of this proposal? You are going to be told that Treasury needs a way of settling cases early, without full investigation, in order to conserve its resources and "enforce" the Act more effectively. I suggest to you that that is not the motive at all, and that if Congress were to provide Treasury with all the funding and manpower in the world, this Administration would still seek authority for this new price assurance procedure.

The people who are proposing this radical departure don't really believe that dumping is something unfair, something that should be eliminated. They are leery of the Antidumping Act because it is—in their way of thinking—something which restricts their flexibility to manage international trade. They fear that cases will come along from time to time in which a strict enforcement of the Act would result in very large dumping duties being assessed against imports which are important in trade relations with one or more other countries—something like television sets from Japan or automobiles from any of a number of countries. In such a case, this Administration wants to have a means of *not* enforcing the law fully, of negotiating a deal which will mollify—perhaps not satisfy or even fully protect, but mollify—the U.S. industry while at the same time avoiding undue offense to the government of the exporting country.

In evaluating this new concept, there are a few things this Committee should understand:

First, these assurances are specifically designed to provide *less relief* than would be obtained if the case were prosecuted to conclusion. The new Code specifically provides that: "Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping."

Second, the new procedure would be wholly unworkable as a means of providing meaningful protection to U.S. industries. One reason is that there will be no realistic determination of what price increase is necessary to eliminate injury to the U.S. industry. Rather, a deal will be struck between Treasury and the foreign producer. In this connection, I urge the Committee to question Treasury and STR closely as to precisely how they plan to determine what price increase is necessary to eliminate injury. If they can provide you with some formula, then you will have something tangible on which you can base your evaluation of this bizarre scheme. But if they tell you instead that there is no single method or formula, that each case will have to be evaluated on its own merits, then I submit that you should conclude that this is in fact nothing more than a means for the government to administer prices in international trade.

But even if one were to assume that a price could be and would be set which would genuinely eliminate injury, consider what happens as time passes in this inflationary world. As U.S. producers' costs and prices rise, imports will again become injurious unless their prices rise along with the prices of the U.S. firms. Will Treasury require the foreign companies to keep raising their prices as U.S. prices rise? I think you know the answer to that question.

I urge the Committee to look long and hard at this new price assurance idea. Find out exactly how it's going to be used before you adopt it. But if you do adopt this idea, I suggest that we change the name of the law, because it won't be an Antidumping Act any more.

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[3] There is a legitimate question whether this type of price assurance procedure should be used where larger LTFV margins are found. My view is that the effectiveness of the current procedure depends on how closely Treasury monitors the price assurance—and at present that monitoring is not thorough, although it is improving. Until really thorough monitoring can be relied upon, price assurances should be accepted only where margins are minimal.

II. DETERMINATION OF INJURY BY THE INTERNATIONAL TRADE COMMISSION

I am extremely concerned at what is going on today with respect to the injury portion of the MTN legislative package. What concerns me is that the Congress is being urged *not* to take a clear position on the most important injury issue raised by the agreements which have just been signed. That issue, of course, is the question of *how much injury* must be found to justify imposition of dumping duties.

This issue is particularly important because the ITC has *already* significantly increased the requisite level of injury beyond that prescribed by Congress in 1974. Adoption of the new Antidumping Code—with its requirement that injury be "material"—will accelerate this trend, unless Congress issues a clear statement as to the necessary quantum of injury.

Yet this is just what the Administration does *not* want Congress to do. In the Geneva negotiations, they have accepted Codes on both dumping and countervailing duties which require showings of "material" injury. While those Codes do not contain any definition of what "material" means, there is no doubt that the European and Japanese negotiators regard "material" injury as a *higher* standard than now exists in the U.S. Antidumping Act. Indeed, our trading partners have long criticized the U.S. precisely because our dumping injury standard was lower than the "material" injury requirement of the International Antidumping Code (which the U.S. has never, until now, unqualifiedly adopted).

The situation, therefore, is as follows. The Codes require "material" injury. They don't define "material," but other countries interpret it as an increase in our Antidumping Act standard. And those other countries have achieved a situation where they are going to hold off their ratification of the Codes until after they see what Congress does with this and other issues in the implementation process. The Administration fears that if Congress defines "material," it will define it as being no change from the standard which the Congress enunicated in 1974—*i.e.*, any injury "which is more than frivolous, inconsequential, insignificant, or immaterial." [4] That interpretation, they fear, might offend the European and Japanese negotiators.

So the Administration is urging that Congress say nothing about the required quantum of injury, leaving this issue to the administrative interpretation of the International Trade Commission. But what I want to be sure this Committee understands is that the consequences of that abdication of decision-making will be:

First, to give tacit approval to an increase in the quantum of injury which has already been adopted by the Commission; and

Second, to ensure that the trend toward an even higher standard will continue as "material" injury becomes the criterion.

The inevitability of these two consequences is apparent from an analysis of the history of this issue:

The administrative intepretation which Congress approved in 1974 had its origin in the analysis of the law by Commissioner Clubb in the 1967 decision of the Commission on *Cast Iron Soil Pipe from Poland.*[5] After analyzing the legislative history of the 1921 Act and concluding that Congress intended only the most minimal of injury tests, Commissioner Clubb went on to demonstrate *that Congress in 1951 had specifically determined that "material" injury was too restrictive a test:*

The subsequent history of the Act tends to confirm that dumping duties are to be applied in response to anything more than trifling injury. In 1951 the Administration sponsored a bill (H.R. 5505) which, if enacted, would have required a finding that a domestic industry was being "materially injured," rather than merely "injured." This provision was stricken by the House Ways and Means Committee which noted in its report that: "The Antidumping Act now provides for impostion of antidumping duties when American industries are being "injured" by certain imports, section 2 as introduced in H.R. 1535 [H.R. 5505 was introduced as a clean bill] would have changed "injured" to "materially injured." The Committee decided not to include this change in the pending bill in order to avoid the possibility that the addition of the word "materially" might be interpreted to require proof of a greater

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[4] Report of the Committee on Finance to Accompany H.R. 10947, Senate Report No. 93-1298, 93d Cong., 2d Sess., at 180. Curiously, the Finance Committee's Press Release No. 112 of April 5, 1979 characterizes this 1974 Report language as "suggesting" that injury "must be 'more than inconsequential or insignificant,' but does not indicate how much more." That characterization not only ignores the clear meaning of the words themselves, but ignores the fact that the 1974 Report was specifically approving the way in which "the term 'injury,' which is unqualified by adjectives such as 'material' or 'serious,' has been consistently interpreted by the Commission." (Report No. 1298, at 180) As discussed below, the Commission in 1974 was consistently interpreting the law as requiring only a harm which is "more than *de minimis.*" It was this interpretation which Congress approved in 1974, and which the Administration fears Congress would again approve today.

[5] Investigation No. AA1921-50, TC Publication 214 (September, 1967).

degree of injury than is required under existing law for imposition of antidumping duties. The committee decision is not intended to require imposition of antidumping duties upon a showing of frivolous, inconsequential, or immaterial injury." [H.R. Rep. No. 1089, 82nd Cong., 1st Sess. 7 (1951).][6]

The Commissioner went on to state specifically the quantum of injury required under this Act: ". . . frivolous, inconsequential, or immaterial injury would not call for application of dumping duties, but anything greater would."[7]

These, of course, are the same terms which the Committee on Finance adopted with approval in 1974. In so doing, therefore, the Committee was specifying an injury test which is *less* than "material" injury, just as Commissioner Clubb had done seven years before. If Congress now approves a Code containing a "material" injury standard, that can only be interpreted as a raising of the injury requirement—*unless* Congress states clearly that it does not desire such an interpretation.

It is certainly clear that the Commission is strongly inclined toward an increase in the injury requirement. Since 1974, in fact, the Commission has not been following the Congressional standard of "more than insubstantial," but has instead been requiring an increasingly higher quantum of injury. Even in those cases where lip service is given to the "more than insubstantial" or "more than *de minimus*" standard, it has been evident to most observers that the standard has in fact been significantly higher. As a consequence, a higher percentage of cases are resulting in "no injury" determinations.

One particularly clear manifestation of this new approach to the injury issue is the Commission's requirement today that the affected U.S. industry show performance trends which are actually declining. As everyone knows, the last two years have been strong years for the U.S. economy. In such an economic climate, most U.S. industries can normally be expected to be enjoying rising sales, profits, employment, etc. In some industries, however, domestic producers argue that dumped imports have deprived them of much of the benefit which they had every right to expect from these rising trends in the economy. Although the U.S. producers' profits, sales and other indicators may well have been stable or even rising slightly, they point out to the Commission that LTFV imports have captured an increasing share of their markets and have deprived them of the substantially larger gains in sales, profits, etc. which they otherwise would have enjoyed. In the late 1960's and early 1970's, such an argument—if properly substantiated—would have resulted in an affirmative injury determination. Today, that is not the case. Rather, the Commission is likely to find that the U.S. industry in not "injured" unless its performance indicators have actually declined.

My point here is not that Congress should reduce the injury standard, or that Congress should raise the standard. My point is that Congress should make the decision and not abdicate its authority. And I want you to realize that if you say nothing, the result will be a much stiffer injury test. Indeed, that will also be the result if Congress adopts the approach taken by this Subcommittee in its Press Release No. 14 (issued March 19) with respect to the "material" injury test in the Subsidy/Countervail Code:

The Subcommittee agreed that statutory language should express the Congressional intent that the injury test applied in countervailing duty investigations be no different than that applied under the Antidumping Law since January 3, 1975.

If the Subcommittee meant by this language to reiterate the injury test which Congress enunciated in 1974, the language is not adequate. The problem arises from the use of the word "applied," which would have the effect of writing into the law the higher injury standard which the ITC has been "applying" in the last few years.

If Congress wishes the injury standard to be "any injury which is greater than frivolous, insubstantial, immaterial or *de minimis*" then it should say exactly that. If it wants a higher standard, then it should define what that new standard will be. To do otherwise would be to relinquish the lawmaking authority on this crucial issue to the trade negotiators or to the ITC.

PROPOSED ANTIDUMPING ACT AMENDMENT RE IMPORTS FROM STATE-CONTROLLED-ECONOMY COUNTRIES

To ensure that the enforcement of the Act against imports from state-controlled-economy countries (a) will be predicated upon analysis of prices rather than costs whenever possible, and (b) will be predicated on the prices charged by the producer whose size and degree of sophistication are more nearly comparable to the state-controlled-economy country producer but without the distortion or subsidization inherent in government control of the economy, it is proposed that Section 205(c) of

[6] TC Publication 214, at 17.
[7] TC Publication 214, at 17-18.

the Antidumping Act (19 U.S.C. § 164(c)) be amended to read as follows (revised portions in italic):

If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses and profits *of the producer which is most nearly comparable in size, sophistication and technology to the state-controlled-economy producer, but which is located in a non-state-controlled-economy country, including the United States. Such normal costs, expenses, and profits shall be determined on the basis of*

(1) the prices, determined in accordance with subsection (a) of this section and section 161 of this title, at which such or similar merchandise is sold *by a person, firm or corporation which is located in a non-state-controlled-economy country including the United States, and which is most nearly comparable in size, sophistication and technology to the state-controlled-economy exporter* either (a) for consumption in the home market of that *non-state-controlled-economy* country, or (b) to other countries, including the United States; or, *if no such prices exist.*

(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, *including the United States,* as determined under Section 165 of this title.

Mr. VANIK. Well, I want to thank you for your very fine testimony. It is very helpful, and I am very glad to have you.

Do you have any questions, Mr. Jenkins?

Mr. JENKINS. No questions.

Mr. VANIK. Mr. Martin, do you have any questions?

Mr. MARTIN. No, Mr. Chairman. I was just observing that "material" is anything which is not "immaterial."

Mr. VANIK. Would you come back?

Mr. CUNNINGHAM. I wish it was that clear, Mr. Martin.

Mr. VANIK. Mr. Verrill, we would be very happy to have your testimony. Your entire statement will be admitted into the record as submitted. You may comment on it or from it in any way you see fit within the time frame that we have allocated.

STATEMENT OF CHARLES OWEN VERRILL, JR., ON BEHALF OF AMF, INC., WHITE PLAINS, N.Y.

Mr. VERRILL. Thank you.

Mr. VANIK. I just want to say with respect to the previous witness, directed to the question of timing, we are going to address ourselves to that problem. I want to point out that old adage that justice delayed is justice denied. That is one of our concerns.

I am sorry to have interjected in your testimony. We would be happy to hear from you.

Mr. VERRILL. Thank you.

I am here this morning on behalf of AMF, Incorporated. My testimony has been submitted in written form. I will attempt to summarize it for you.

Before reaching the main point of my testimony, I would like to express my support as a practitioner for certain tentative decisions that have been reached by the Senate Finance Committee and this subcommittee relative to access to confidential materials, ex parte meetings, and verification of submissions.

As a practitioner I believe that these measures will contribute substantially to an effective administration of the antidumping law.

I also agree with Mr. Cunningham on the need for certainty and clearly articulated rules to govern antidumping proceedings. Nothing is more frustrating to a practitioner than rules that are not clear, that are not concise and that allow significant discretion on the part of the administering agency.

The main concern of my testimony is a topic not covered by the codes negotiated in the multilateral trade negotiations, that is, dumping from nonmarket, controlled economies.

AMF supports the position stated this morning by Mr. Carlisle on behalf of the Ad Hoc Subsidies Coalition, namely, that the Treasury practice of over 20 years of determining fair value in nonmarket, controlled economy cases, which was rejected by Treasury last summer by regulation, be restored as the principal methodology for determining fair value in such cases.

There are two reasons for my opposition to the current Treasury practice of, in most cases, utilizing a constructed value as the fair value of products imported from controlled economies.

First, section 153.7 now provides that in virtually every case the fair value of the imported product will be determined by Treasury by constructing a value based upon its assessment of the cost of producing that product in what is known as a comparable country.

I think that this procedure is prone to enormous discretion. Value often is like beauty, in the eye of a beholder. I suppose that the test could work both to the advantage or to the disadvantage of the domestic producer who is confronted with import competition from controlled economies. But the chance of receiving a very good result is more than outweighed by the risk of receiving a very bad result.

Second, and I think more important, the entire foundation of Treasury's controlled economy regulation is an assumption; an assumption that I submit has absolutely no basis in economic theory or in fact. The assumptive basis for the regulation is this: If a controlled economy has a per capita GNP that is comparable to the GNP in the market economy country, then Treasury assumes that the costs of production in both economies will be approximately the same. Now this formulation has a superficial logic.

If Spain, for example, is regarded as roughly comparable to Poland in terms of GNP per capita, then perhaps there is some basis to the theory that costs would be the same in both countries. I submit, however, that this superficial appeal vanishes once you examine both the underlying basis for world trade, which is that of comparative advantage, and some specific fact situations.

For example, Canada and Belgium have roughly the same GNP per capita. Canada has abundant natural gas and iron ore whereas Belgium has neither. If the Treasury theory were correct, it would cost the same in both Canada and Belgium to process iron ore into pellets suitable for use in electric furnaces, a process that requires great amounts of natural gas. It does not make sense to assume it would cost the same to undertake that processing in Belgium, which has neither natural gas nor iron ore, as it does in Canada. I submit that logic simply will not support that assumption. In fact, the reason Canada has a place in world trade is because it can take advantage of its comparative advantages: This is what provokes trade and not the theory that underlies the Treasury's regulation.

Knowing the time constraints of this subcommittee I will conclude my statement there and be happy to answer any questions.

[The prepared statement follows:]

STATEMENT OF CHARLES OWEN VERRILL, Jr., ON BEHALF OF AMF, INC.

This statement is made on behalf of AMF Incorporated, 777 Westchester Avenue, White Plains, New York 10604, by Charles Owen Verrill, Jr., Patton, Boggs & Blow, 2550 M Street, N.W., Washington, D.C. 20037. AMF, through its wholly owned subsidiary, Harley Davidson, manufactures golf cars which are the subject of one of the most interesting—and recently, frustrating—antidumping proceedings that I have ever been associated with. Based on that experience I recommend that this Committee insist that the legislation to implement the recently approved Trade Agreements include amendments to the Antidumping Act of 1921, as amended, that (i) will require a return to the long standing Treasury practice of determining fair value in non-market controlled economies, (ii) will establish procedures for access to confidential material pursuant to protective orders, and (iii) will curb ex parte meetings.

Before addressing these points, I would like to comment on the subject of time limits. While I can appreciate the impatience that many have with the delays and apparent dilatoriness that is not uncommon in antidumping cases, I am concerned as a practitioner that the time limits may be so shortened that it will not be possible to be an effective advocate for either side. This is particularly so in constructed value determinations where the issues are often complex and require detailed study and analysis. Moreover, if the confidentiality provisions that have been tentatively agreed to are approved, adequate time will be required to evaluate the data, to obtain opinion and comment from experts, and to prepare appropriate rebuttals. These considerations distinguish antidumping cases from countervailing duty investigations where a shorter time frame is appropriate.

1. SECTION 205(c) SHOULD BE AMENDED

Last August, Treasury announced a new regulation [1] which contemplates, in the case of most non-market controlled economy imports, the determination of foreign market value by a new, highly complicated and discretionary method which is premised on a hypothetical cost of production analysis. This regulation specifically overruled the Treasury practice which had been in effect for over twenty years and which had been successfully utilized to curb unfair price competition from such non-market controlled economies as Poland, Czechoslovakia, the U.S.S.R. and others. The new regulation, however, will have the likely effect of precluding any effective utilization of the Antidumping Act to prevent such unfair price competition. This is particularly disturbing now that there is a serious posibility that the People's Republic of China and Russia will be granted most favored nation status and the resulting lower tariff rates.

Under the new procedure, Treasury plans to utilize the prices of a similar product in a market economy country as the foreign market value of the non-market, controlled economy product *only* if the market economy country is "comparable" in stage of economic development to the controlled economy. If prices in a comparable market economy are not available, then Treasury will establish a constructed value by determining the cost to produce the same product in a comparable market economy country using the factors of production (*e.g.*, hours of labor) in the controlled economy. Only if the input factors in the controlled economy cannot be adequately verified will Treasury utilize the U.S. selling price of the domestic product.

AMF believes that this regulation is inconsistent with § 205(c) of the Act and is not a rational basis for determining foreign market value for the following reasons:

(i) The Antidumping Act does not permit Treasury to disregard prices if the market economy is not comparable in stage of economic development to the controlled economy. The price test is preferred under the Act and constructed value has always been employed only if prices are unavailable or less than cost of production.

(ii) There is no adequate basis for determining comparability between controlled and market economies because the economic reporting systems of the controlled economies rely on a different data base than those in market economies. This lack of comparability is apparent from the attached memorandum (Annex A) by Professor Stanislaw Wasowski of Georgetown University.

(iii) The regulation is based solely on the unsupported presumption that comparably developed economies have comparable costs and comparative advantages. This

[1] 19 C.F.R. § 153.7.

presumption is without any foundation in economic theory or fact, a point made (but ignored) in our presentations to Treasury. The lack of any logical basis for the Treasury assumption can be readily illustrated: Belgium and Canada have reasonably comparable per capita GNP and, according to the Treasury assumption, should have comparable costs. This theory has superficial appeal until specific examples are considered. Among the comparative advantages of Canada are abundant iron ore and natural gas which are both necessary to produce iron pellets suitable for electric furnaces. Surely it cannot be argued that it will cost about the same to produce pellets in Belgium which has neither iron ore nor natural gas. In fact, the very foundation of world trade is that comparative advantages, even in comparably developed countries, will yield cost advantages and provoke trade.

(iv) Treasury practice in the past has always been to find as a surrogate for the non-market controlled economy producer an industry in a market economy which is comparable to the industry in the non-market controlled economy and to utilize the prices of the market economy producer as fair value. This is a realistic test since a centrally planned, controlled economy can develop industries which are comparable in terms of scale and efficiency to those in more advanced market economies. Moreover, it relies on prices charged in the market place which is the best litmus of value. Under the new regulation, however, the test will rarely be used.

(v) By narrowly circumscribing those cases in which the price test can be utilized, Treasury has effectively established constructed value as the principal determinant of foreign market value in non-market controlled economy cases despite the obvious difficulty of cost calculations for a hypothetical producer. This methodology is prone to error and places an unrealistic burden on the Customs Service. In fact, the General Counsel of the Treasury recently complained to Congress about the "difficulty of determining an integrated manufacturer's cost of producing [a] specific product. . . ." [2] This difficulty will be compounded by the controlled economy regulation where the inquiry is not into an actual producer's costs, but rather involves hypothetical production costs. Constructed cost calculations are also subject to manipulation to achieve a result that is consistent with considerations unrelated to unfair price competition with considerations unrelated to unfair price competition such as sensitivity to diplomatic pressures.

(vi) Finally, Treasury ignored the admonition in the Senate Finance Committee Report on the 1974 Trade Act [3] that if prices are not available in a third market economy country, then prices in the United States should be utilized in controlled economy cases. Treasury rejected this argument on the ground that it would be necessary to add the cost of importation and transportation to the U.S. price which would exclude the controlled economy producer from the market. This is not a credible argument since Treasury could, under the circumstances of sale adjustment provision of the Act, make allowance for those costs and, as a result, the product produced in the controlled economy could be sold in the United States at a price equivalent to that charged by the domestic producers. Indeed if the product is produced only in the United States and a controlled economy, it would seem that this is precisely the result that Congress intended.

Based on these arguments, we believe that legislative action should be taken to amend § 205(c) of the Act so as to restore the primacy of the price test in fair value determinations and to ensure that the intentions of the Senate Finance Committee as expressed in the Report on the 1974 Trade Act are fulfilled.

For example, § 205(c) could be amended as follows (new matter italic):

"(c) If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

" (1) the prices, determined in accordance with subsection (a) and section 202, at which such or similar merchandise of a non-state-controlled-economy country or countries *including the United States* is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or *if prices including those in the United States do not provide an adequate basis of comparison, then*

"(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries as determined under section 206."

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[2] Hearing before the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, September 21, 1978, Serial 95-114, p. 5.

[3] Sen. Rep. No. 93-1298, November 26, 1974, p. 174.

Adoption of this proposal would require that fair value be based on prices, including these in the United States, unless the administering authority determines that prices are not an adequate basis for comparison.

There are good reasons to establish price as the primary determinant of fair value, even where it is necessary to locate a surrogate as is the case in controlled economy cases. First, prices in the marketplace may not always reflect total costs. Small or inefficient producers cannot price their product in actual transactions above the general price level and expect to make sales except in monopoly markets. Thus, prices, even of small producers, reflect "normal costs" since abnormal costs resulting from inefficiencies are borne by the seller who cannot pass them on to the buyer in the form of higher prices. Second, constructed value involves arbitrary minimum levels for general expenses and profits without regard to whether competitive marketplace pricing would allow such elements as a component of price. Finally, transaction prices are less subject to manipulation than are cost calculations with all the variables and allocations that are possible.

Where the product is produced only in the United States and the exporting controlled economy, the use of domestic prices as the surrogate is readily justified. The controlled economy product would be required to reach domestic price levels only if a lower price would (or has been found to) injure an industry in the United States. Since it is likely, where these unique circumstances exist, that the product was designed and produced specifically for the domestic market, an injury producing price should be remedied under the Act. Otherwise, domestic industries serving uniquely domestic markets would be prime targets of controlled economy producers that can disregard costs particularly where foreign exchange objectives are important (as they usually are).

2. NEW PROCEDURES SHOULD BE STATUTORILY IMPOSED TO ENSURE AGAINST ABUSE OF THE CONFIDENTIALITY REGULATIONS

A critical deficiency in the administration of the Antidumping Act has been the abuse of the confidential submission regulations. Under present practice, Treasury uniformly accords confidential treatment to information submitted as such. While a summary of the confidential information is technically required, parties frequently resort to the contention that summarization is impractical or provide summaries that are meaningless. In any case, confidential treatment of information relevant to an investigation deprives Treasury of the benefits of advocacy and removes an important check on the submission—under the veil of secrecy—of false or misleading data. On the other hand, failure to accord confidential treatment could impede investigations because of a reluctance to publicly reveal sensitive information.

While AMF recognizes—and supports—the principle of confidentiality of private information, there is also a need for access to confidential information by independent counsel and experts for opposing parties pursuant to protective orders that prohibit further disclosure of such information. Such access would inhibit submission of false or misleading information without compromising its confidentiality. In this connection, we propose the following amendment to the Antidumping Act:

§ *Confidentiality:* (1) During any investigation, information provided on a confidential basis shall be regarded as confidential within the meaning of 5 U.S.C. § 442(b)(4) if so designated by the administering authority. In the event information is designated as confidential by the administering authority, and therefore any party to the proceeding is denied access to the confidential information, then such a party may file a petition for a protective order with the United States District Court for the District of Columbia or the district in which the petitioner is located or has its principal offices. Before issuing such an order, the district court shall find that—

(A) the administering authority has denied access to the confidential information based upon a claim of confidentiality or upon its own motion;

(B) the petitioner is a legitimate party to the proceeding before the administering authority in which the issue of confidentiality was raised; and

(C) proper notification of the petition has been served on all parties to the proceeding before the administering authority.

(2) Where the findings required by subsection (1) of this section have been made, the district court shall issue a protective order requiring disclosure of the confidential information to designates of the petitioner. Such order shall—

(A) forbid disclosure of the confidential information by the designates except as authorized by the party submitting the information;

(B) require endorsement by the designate of a conforming confidentiality agreement prior to receiving the confidential information; and

(C) provide for return of the confidential information and all copies thereof to the administering authority immediately after the investigation is finally determined.

(3) For purposes of this section—

(A) "designate" means independently retained attorneys, accountants and experts but shall not include any stockholder or employee of a party to the investigation;

(B) "District court" means a United States district court established under Chapter 5, 28 U.S.C.

This amendment would give experts, lawyers, and accountants for the petitioners an opportunity to evaluate confidential material and to submit comments theron to the administering authority pursuant to court order and thus not jeopardize the basic confidentiality of the information. Since the court has both civil and contempt powers in the case of a violation of a confidentiality agreement, there is little likelihood of an abuse of the system. While this procedure imposes ministerial responsibilities on the courts, it is analagous to the immunity procedures of 18 U.S.C. §§ 6001-6005 which were upheld in *Application of U.S. Senate Select Committee on Presidential Campaign Activities*, Misc. No. 70-73, 361 F. Supp. 1270 (D.D.C. 1973).

It should also be noted that the House Ways and Means Committee and the Senate Finance Committee have approved a similar procedure in connection with their deliberations on implementing amendments to the countervailing duty statute (19 U.S.C. § 1303):

"The Subcommittee agreed that submissions may be given on a confidential basis, but nonconfidential summaries, available on request to any party, would be required. The counsel for interested parties could seek access to confidential information under an administrative court or protective order. Parties must be kept informed of the progress of the investigation. Summary records of ex parte meetings with the administering agencies must be available to interested parties."[4]

A similar amendment to the Antidumping Act would enhance the credibility of dumping determinations.

3. PROCEDURES SHOULD BE ADOPTED BY TREASURY TO INSURE FULL PARTICIPATION BY COUNSEL FOR THE DOMESTIC INDUSTRY IN ALL PHASES OF THE LIQUIDATION PROCESS

During the six or nine month fair value investigation by Treasury, counsel for the domestic industry and foreign producers have an opportunity to participate in the factual and legal determinations, although the procedures could be improved substantially to ensure a greater degree of administrative due process. However, the determination of foreign market value during the investigative phase of an antidumping proceeding does not automatically become the foreign market value for purpose of liquidating duties against imports after withholding of appraisment is ordered. Treasury rarely, if ever, imposes dumping duties on the imports that were at less than fair value during the investigation; it is only imports after that phase is completed that are subject to duty. As a result, the determination of foreign market value for liquidation purposes can be made on wholly different assumptions and factual inputs than those that led to the less than fair value decision and the actual dumping duty which is ultimately assessed can be significantly different than anticipated by the dometic industry.

In order to cure this absence of administrative due process, we recommend legislation that would require the Treasury to notify counsel for the domestic petitioners within a short period, say three months, after a formal finding of dumping of the proposed basis for determining foreign market value, including all adjustments for purposes of computing dumping duties. Treasury should be required to provide domestic counsel with copies of all correspondence and information submitted by the foreign producer in connection with its deliberations and there should be an effective opportunity to rebut or otherwise challenge any of the calculations made. Thereafter, Treasury should be required to follow the same procedures in the case of a change in foreign market value.

We believe that such a procedure would enable the domestic industry to effectively participate in the liquidation of duties and to insure that the relief provided by the Act is, in fact, granted. Finally, the establishment of time limits would have the beneficial effect of providing the domestic industry with a vehicle for, if necessary, seeking a writ of mandamus from the federal courts to provoke Treasury action.

4. STRINGENT EX ARTE RULES SHOULD BE APPLICABLE IN ALL PHASES OF A DUMPING PROCEEDING

In the Polish Golf Car case, AMF has, through Freedom of Information Act requests, uncovered a variety of correspondence and memoranda of meetings between Treasury Department officials and representatives of the Polish government and the manufacturer of Melex golf cars. These documents suggest that part of the

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[4] Committee on Ways and Means, Subcommittee on Trade, P.R. No. 11, March 13, 1979, p. 3.

reason for delay in liquidations in that case has been the extraordinary amount of dialogue about the proper resolution of the duty amount in which the domestic industry had no opportunity to participate. While we can appreciate the sensitivity of foreign governments, particularly where state owned enterprises are concerned, to the imposition of duties following a dumping finding, the actual determination of dumping duties should not be negotiated in private without the participation of the domestic industry.

Accordingly, we urge that Treasury be required to adopt rules, common to virtually all administrative proceedings, that would provide that no communication from a person interested in the dumping proceeding or a dumping duty would be accepted by Treasury unless a copy was simultaneously served on counsel for the domestic petitioners. In attition, we urge that Treasury be required to advise domestic petitioners in advance of any meeting relative to the duty liquidation (other than internal meetings) and allow them an opportunity to participate or, at a minimum, be provided with a summary of the matters discussed by the meeting participants.

5. VERIFICATION PROCEDURES SHOULD BE IMPROVED

While verification by Customs of information submitted by parties to an investigation is routinely undertaken, the procedures utilized are, by virtually all accounts, utterly inadequate. The following description of the "verification" actually undertaken in proceedings was furnished to the Trade Subcommittee of the House Ways and Means Committee during hearings last September:

"In walked the verification officer and all he looked at was a two page cost summary which we had prepared.

"He didn't even want to see all the supporting materials. He explained he was not an accountant and he was not qualified to do an audit.

"My client played it strainght in that case. We presented a valid constructed value computation with full supporting data; but I must say that if we had presented a totally imaginery thing, the Customs Service never would have known the difference.

"Another example. Last year I encountered a fellow who had previously been an officer of a foreign company during a dumping investigation.

"I was not involved in the case.

"The story he told would curl the hair of anyone who wants to see the antidumping law enforced effectively.

"What the company did was instruct their computer programer to eliminate most of the higher priced home market sales from the computer printout that they gave to Treasury.

"When the verification officer arrived, he did a spotcheck and he concluded that the entries on the computer printouts were accurate. What he didn't do and couldn't do was check whether the printout included all of the home market sales, including the high-priced ones as well as the low-priced ones."[5]

Experience has shown that these are not isolated or aberrant examples; instead, these episodes reflect the norm and unfairly prejudice the domestic petitioner.

The solution, unfortunately, is not as clear as the problem. Higher budgets, more qualified personnel and better training would clearly help. Another way to improve the verification process would be to require full disclosure of the methods utilized by the verifying officer(s), including information inspected, sampling techniques, hours devoted to the inspection, and so forth. This disclosure would enable the other parties to challenge the verification if it appeared inadequate and would encourage the verifying officer(s) to more thoroughly approach the task.

Respectfully submitted.

Comparing Stages of Development

(By Prof. Stanislaw Wasowski*)

For many reasons Polish domestic prices have no direct equivalents in world market prices and vice versa. Because of the specific use of prices for the purposes of the planned economy and the general use of taxes and subsidies of various types, Polish prices have become indices without any direct significance for considerations having to do with international trade.

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[5] Testimony of Richard O. Cunningham, September 21, 1978, Serial 95-114. at 139.

*Professor of Economics, School of Foreign Service, Georgetown University, Washington, D.C. This paper was prepared at the request of counsel for Harley Davidson.

If the available Polish price and cost data are not readily translatable into American categories, an alternative approach may be adopted that would avoid comparisons between prices and concentrate on comparing the levels of development. The theory behind this approach would be that countries on a similar level of development should have, roughly speaking, similar costs of production patterns, and therefore, the prices of their products should be comparable. In order to apply this theory to the problem at hand, we would have to define and measure similar stages of development and to argue that at a similar stage of development costs and production patterns are similar.

DEFINITION AND MEASURE OF THE STAGE OF DEVELOPMENT

The most readily available and the most easily understood definition of the level of development identifies it with the level of income per head. In a more advanced or developed economy, people are generally better off. This is a simplistic view, however. Since 1973 the gross national product, in such countries as Saudi Arabia or Kuwait has increased to a level 5–7 times that achieved in the United States. Have the two Arab countries become several times more advanced than the United States? On the other hand, heavy importers of oil suddenly became poorer but not less developed than they were before 1973. The difficulty can be easily resolved by saying that some countries may enjoy a very high level of income, or for that matter a very low one, because of the demand conditions whether they are contrived by a cartel or not.

In spite of possible freak demand conditions that can vitiate the determination of development levels by means of income data, one can still recognize that a significant correlation between development and well-being cannot be denied. As the comparison between the level of development achieved in Poland and the level reached in selected industrial countries is attempted, the first hurdle is found in the existence of different systems of national accounting. The concept of the gross national product (GNP), used by the United Nations includes the sum of private consumption, gross business investment, government purchases of goods and services, and net exports. On the other hand, the category of the net material product produced (NMP for short), used in planned economies of the Soviet type, includes final consumption of goods, net capital formation, and net exports. The difference between the two concepts, roughly speaking, amounts to depreciation and collective and individual consumption of the so-called non-productive services. These two categories must be added to the NMP to obtain something approaching the GNP. The conceptual difficulty can be overcome but one still has to price the value of services, especially those subject to collective consumption (for instance use of health services), and amortization, i.e. the use of capital goods in the process of production. Because the cost of capital goods is determined arbitrarily in Poland, therefore, an allowance must be made for this.

Should even these difficulties be overcome, there still remains the need to convert the Polish national accounting data, expressed in zlotys, into dollars. The choice of one of the many exchange rates and shadow prices would bring back the difficulties that were encountered in the first section of the paper.

Instead of calculating exchange rates, researchers studying planned economies have developed ingenious methods of comparing costs in various sectors of the market and planned economies. The following example, taken from an unclassified study done by the CIA,[1] provides the following ruble to dollar ratios in Soviet and American construction industries. These ratios show how many cents would have to be spent in the United States to do a construction job that could be done in the Soviet Union for one ruble:

Hospitals	$0.31	Industry	$0.60
Housing	.55	Roads	.79
Office buildings	.48	Airfields	.70
Schools	.54	Aggregate (weighted)	.58

It is worth noting that the highest ruble to dollar ratio, 0.84 for railroad construction, is almost three times higher than the lowest one, 0.31 for hospital construction. The example was taken from a study of Soviet costs simply because studies of Soviet conditions are more abundant and because its aim was to illustrate the disparity of conversion ratios between planned and free market economies. This disparity requires that very thorough and detailed studies be made of the various sectors and subsectors of the Polish economy and that an appropriate system of weights be adopted to construct an appropriate and meaningful index of price ratios.

[1] CIA, *Ruble Dollar Ratios for Construction*, February 1976. p. 14.

Here an important logical difficulty is encountered. To construct a system of weights one would have to state that a certain percentage of the national product is spent on constructing hospitals, another on school construction, still another on electric typewriters, and still another on porcelain washbasins and so on. The construction of such weights implicitly defines, therefore, the level of development which we were seeking with the help of the index of national expenditures. To determine the level of development we would have to assume that the level of development is known. Logicians call such error *petitio principi*, and more commonly it can be referred to as the chicken and egg proposition.

Still, some researchers whose aim is not to determine the level of development, end up estimating the national product of Poland in terms of dollars. Thad Alton has estimated the gross domestic product distributed in 1975 as reaching 1,781.6bn zlotys and its nearest Western equivalent, the GNP, to be equal to $82.9bn. The implicit dollar to zloty ratio is 21.49. More importantly this calculation yields the GNP per head in Poland in 1975 to be $2,440. Should the GNP per head be adopted as the measure of the level of development, Poland proves to be developed about as much as Greece ($2,525), a little less than Spain ($2,851), half as much as Austria ($5,051), 79% as much as Italy ($3,074), 55% as much as Japan ($4,425) and only 34% as much as the American level of development ($7,099).[2]

Many observers are of the opinion that it is not income per head that is crucial for determining the level of development, but rather the degree of industrialization. Using this criterion we find that industrial production provides the following percentage of the gross domestic product:

	Percent
United States	28
Spain	30
Austria	34
Portugal	35
Japan	37
West Germany	43
Poland	*59

*Thad P. Alton and others, *Expenditure on Gross Domestic Product in East European Countries*, 1975, Economic Studies, L. W. International Financial Research, Inc., New York, 1977, p. 29.

According to this criterion Poland is way ahead of the even the United States which enjoys a level of development near to Spain and lower than Austria and Portugal. The apparent paradox can be resolved by suggesting that in modern economics it is not industry (secondary production) but services (tertiary production) that determine the level of development. If the contribution of the service sector to the gross domestic product were taken into account, Poland would find itself at the bottom of the list with 8 percent, Portugal way up with 30 percent, Spain with 41 percent, and West Germany with 43 percent. The United States would then be in its rightful place with 57 percent.[3] Seen from this point of view, Poland is very little developed and not comparable at all to any of the listed industrialized countries.

Thus we have obtained three strikingly different results. Depending on the criterion chosen, Poland found itself at the top, the bottom, and in the middle, respectively, of the same array of states. As nobody has yet proposed an index in which weights would be given to industrialization, the role of services in the economy, and GNP per head, the only conclusion that remains is: almost any relative level of development can be ascribed to Poland or any other country, depending on the criterion chosen.

The failure to satisfactorily define the levels of development is not a major loss, for there is no assurance that given equal levels of development, factors of production would be used in the same proportion and that they would be paid similar amounts of money. Therefore, there would be no assurance that similar goods would be produced with the use of similar techniques and that their costs would be comparable. To illustrate this statement, one could think of two countries with strongly developed agriculture, one being a European country with little land, say, the Netherlands or Denmark, the other a temperate country with large expanses of land, say, Australia or New Zealand. Assuming that their levels of development, as measured by the level of GNP per head, are about equal, it would not follow at all that the number of workers per acre of arable land could be the same in Denmark and Australia, that their wages would be about equal, or that the price of an acre of arable land in the two countries would be comparable. The cost structure and the

[2] Thad P. Alton, "Comparative Structure and Growth of Economic Activity in Eastern Europe," in *East European Economies Post-Helsinki*, op. cit., p. 224.
[3] United Nations, *Statistical Yearbook 1976*, p. 661 and ff.

level of costs cannot be directly deduced from the fact that, according to some measure, the levels of development are about equal.

The above criticism of the mistaken reliance on levels of development has brought to the fore an issue that requires further consideration. The proportion of the available factors of production undoubtedly has some influence on the costs of products and the use of resources. This fact is recognized by many nonspecialists when they compare economic performance in two different countries and stress the amount of horsepower each worker has at his disposal.

A rough comparison of this sort can be provided in the case of the United States and Poland. It is based on the total industrial assets being compared with the total labor force as measured by the total wage paid to it. In each country, local currency is used and thus the exchange rate problems can be avoided. The following figures have been calculated for both countries for year 1975.[4]

[In billions of local currency]

	United States	Poland
Total industrial wages	235	586
Value of capital assets	612	1,527
Ratio of line 2 to line 1	2.60	2.60

According to this unexpected result the capital to labor ratio in the United States and Poland is exactly equal. This is contrary to what is known from such disparate sources as direct observation of Polish industry or a good look at the level of technology and the number and size of industrial plants in each country. The confusion can be explained rather easily. If the social wage were added to the pay packet of the Polish worker, his income would increase by 30% lowering the Polish capital labor ratio to 2.00. Moreover, if one were to consider that Polish capital equipment is older than equipment in the United States and that a proper allowance should be made by reducing the figure representing industrial assets in Poland, the ratio in Poland would fall still further. Thirdly, one would have to allow for Polish wages being depressed by the lack of labor market and the existence of unilateral determination of wages by the monopsonist government. An upward revaluation of wages would be in order thus further decreasing the ratio. This example, which I developed at some length, shoud serve to illustrate the difficulty of dealing with non-adjusted figures and to point to a possibility of a positive solution of the dilemma of valuing imports from Poland.

WHAT ARE WE LEFT WITH?

Data collected in Soviet-type planned economics, whether they refer to costs, prices, or national accounts, are not directly comparable with their Western counterparts. Many seemingly simple and straightforward methods of comparison are insufficient for they pay attention to single aspects of economic phenomena, or, if generalized, use index numbers of doubtful validity.

Mr. JENKINS. Thank you very much, Mr. Verrill.

Mr. Martin.

Mr. MARTIN. I have no questions, Mr. Chairman.

Mr. JENKINS. Your entire statement will be made a part of the record and we appreciate your testimony.

Mr. VERRILL. Thank you.

Mr. JENKINS. This being the final witness, the subcommittee will be adjourned until 10 o'clock on Tuesday in room 2172.

The subcommittee stands adjourned.

[Whereupon, at 1:05 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, April 24, 1979.]

[4] Polish Main Statistical Office, *Statistical Yearbook 1976*, various tables, Department of Commerce, *Statistical Abstract of the United States 1976*, various tables.

MULTILATERAL TRADE NEGOTIATIONS

TUESDAY, APRIL 24, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2172, Rayburn House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. VANIK. The subcommittee will be in order.

At this time we are going to continue our hearings on the multilateral trade negotiations. Our first witness this morning is our distinguished colleague, Barry Goldwater, of California and we are pleased to have your testimony Mr. Goldwater. I know you have some special problems in the industries of your district, and we will be happy to hear from you at this time.

STATEMENT OF HON. BARRY M. GOLDWATER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. GOLDWATER. Thank you. Mr. Chairman and members of the subcommittee, I have asked to testify this morning on behalf of the citrus and the avocado industries of California. Both are extremely important to my congressional district and to California agriculture.

The negotiations, we are told, are almost completed. As a whole, Ambassador Bob Strauss has kept his pledge, namely, that he would bring home no trade package unless it included meaningful gains for U.S. agriculture. For the citrus industry, this will mean significant concessions from Japan and increased market access through 1983. I am counting on this being a giant first step toward total elimination of Japanese quotas on fresh oranges.

The picture is far less bright with regard to the European Economic Community (EEC), however. In a recent speech on the floor of the House, I praised Ambassador Strauss for his abilities as a tough and able negotiator. At the same time, I expressed my disappointment with reports that the prospects of a concession from the EEC regarding its preferential tariff on citrus were extremely dim. I urged Ambassador Strauss to deliver to the citrus industry the fair shake it deserves.

Nearly two more months of intense negotiations have passed and the urgency increases. The EEC still has not budged. I would ask my colleagues on this committee to convey to Ambassador Strauss that a successful conclusion to the negotiations must necessarily include a concession from the EEC for the citrus industry.

I would further urge this committee in its report accompanying the trade package to emphasize the need for a quick resolution of the pending section 301 case filed by the citrus industry on January 18, 1977. This is particularly important in light of the present status of the negotiations with regard to the EEC. Section 301 provides that the President must use the full power of his office to cause foreign governments to eliminate such discriminatory and unreasonable trade impediments as the EEC's preferential tariff on fresh oranges. The citrus industry's case should not be adversely affected by any amendments to section 301 which might be adopted as a part of the trade package. Moreover, the matter should be resolved within 1 year of passage of the trade legislation.

The EEC's preferential tariff is also in violation of article I of the General Agreement on Tariffs and Trade (GATT), It has had the effect of reducing our share of exports to Europe by about half of what they were a few years ago. This becomes extremely crucial when one realizes that the EEC is the world's largest importer of fresh oranges. If relief cannot be acquired pursuant to section 301 proceedings, or under GATT, then, Mr. Chairman, the United States should retaliate.

Second, Mr. Chairman and members of this committee, I want to lend my support to inclusion of implementing legislation which will provide the President with domestic authority to take emergency unilateral action to prevent potentially serious injury to domestic producers of perishable crops. The Trade Act of 1974 does not provide for such fast track handling. Such legislation is important to both the citrus and the avocado industries in California. These perishable commodities have a short market life or are harvested in only a short time period each year. Market disruption from imports for such commodities, if not quickly corrected, could nullify a producer's performance with that commodity for an entire year. This disruption is not ameliorated by corrective action effected after completion of harvest or marketing. It is my understanding that the U.S. Department of Agriculture has outlined proposed statutory language providing for prompt surveillance, investigation, injury determination, report and Presidential action with regard to perishable commodities. The committee should urge inclusion of such legislation in the trade package.

Finally, Mr. Chairman, I appreciate the opportunity to appear before you this morning on behalf of the California citrus and avocado industries. Our negotiators should not leave the negotiating table until an offer has been received from the EEC on fresh citrus. I am confident that Ambassador Strauss' tenacity will prevail. Thank you, Mr. Chairman.

Mr. VANIK. Mr. Goldwater, you certainly address yourself to a point we have been deeply concerned about and I would quite agree that there is a valid case that can be made for the inclusion of legislative lanuage which is going to implement the agreement.

We have been very much concerned about the problem of the citrus industry in general and I am certainly going to try to follow up your recommendation.

We have the suggested language. We have it with us and in our markup I expect we are going to address ourselves to that and in the meanwhile I want you to know I am going to try to get a letter

off to Ambassador Strauss to outline the extent to which he feels that the MTN has addressed itself to this problem and get some reaction to the advisability of stronger language than we have now under consideration.

I think you make a very valid point. We are very much aware of the discriminatory nature of practices of foreign countries with respect to our citrus industry and we certainly want to address ourselves to it.

I certainly appreciate your taking the initiative on this important issue. Are there any questions. Mr. Fisher? Mr. Vander Jagt?

Mr. VANDER JAGT. I would like to apologize to my colleague and friend that I was not here for his oral testimony. I do have a copy of it and I am sure it was very worthwhile testimony and I look forward to having a chance to study it. I appreciate the chairman's comments.

Mr. VANIK. Thank you, Barry. We will take Mr. Lagomarsino's testimony later.

We now have Mr. Robert N. Hampton, vice president, Marketing and International Trade, National Council of Farmer Cooperatives and Mr. Robert M. Frederick, legislative director, National Grange.

Gentlemen, we will be happy to have your testimony. Your entire statement will be incorporated in the record as submitted. You may read from it or excerpt from it, whatever you desire, within the time frame. We will hear first from Mr. Hampton.

STATEMENT OF ROBERT N. HAMPTON, VICE PRESIDENT, MARKETING AND INTERNATIONAL TRADE, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HAMPTON. Thank you Mr. Chairman, and members of the subcommittee. I am Robert N. Hampton, vice president, Marketing and International Trade of the National Council of Farmer Cooperatives.

I would like to preface my statement by indicating that we strongly support the appeal of Congressman Goldwater on behalf of the citrus producers and the citrus exporting interest of the United States against the unfairly discriminatory restrictions of the European community.

Representing the off-farm business interests owned and controlled by more than 2 million American farmers, the National Council must reconcile the views of the many farm commodity groups affected in different ways by various details of the MTN agreements recently initialed in Geneva. In addition, we have also consistently reflected the prevailing overall view of U.S. agriculture for many decades; namely, that fairer international trading rules along with world-wide reduction of trade-distorting measures such as subsidies and discriminatory standards would benefit our farmers, our nation, and the world.

I have included—and I will not read the statement—our policy statement reflecting our position on expansion for foreign trade as approved in January 1979.

[The policy statement follows:]

EXPANSION OF FOREIGN TRADE IN FARM PRODUCTS

The National Council of Farmer Cooperatives endorses the objectives of expanded world trade and encouragement of market opportunities abroad for American agricultural products. We recognize the special importance of expanded farm markets for our balance of payments and consequent benefit to the national economy.

We encourage multilateral and balanced trade negotiations to reduce world trade barriers. However we recognize that the lowering of barriers which now limit world trade may create serious economic dislocations and that adjustments to trade patterns must normally come about through careful and gradual reduction of trade barriers.

Under GATT (General Agreement on Tariffs and Trade) or other international trade negotiations, expanded trade to benefit all countries is possible only if offers on trade and other issues by all trading partners represent comparable concessions. Maximum trade benefits should be based on encouragement of production and trading patterns which are consistent with the principle of comparative advantages of all countries. This principle of equal treatment must continue to be the keystone of the U.S. trade agreement policy.

We also strongly encourage the U.S. and all major trading nations to agree on the principle that the nations shall not export the costs of their internal policies, as an important prerequisite to meaningful negotiations toward trade expansion. National farm policies to protect and improve farm income should be designed in such ways as to further promote international trade.

The National Council recommends continuation of Presidential authority to enter into further trade agreements based on reciprocity. Many forms of non-tariff barriers, such as quotas, embargoes, unrealistic inspection procedures, and lack of uniformity of grade regulations and tolerances, hamper efforts to achieve such reciprocity and severely limit U.S. export opportunities. Negotiations toward trade agreements should be focused on reduction of such non-tariff barriers, particularly the variable levy system widely used by the European Community (EEC) and various quotas and other trade barriers such as those of Japan.

We are opposed to the minimum import price and unfair export subsidies of the EEC and request that U.S. negotiators press vigorously for the removal of their trade-restrictive effects. Such undue protectionism on the part of the EEC reduces opportunities for worldwide relaxing of trade barriers, and limits growth of world markets with the accompanying economic benefits of specialized production.

The National Council is concerned over increasing use of international marketing subsidies which are disruptive of long-established United States markets. Such practives lead to chaotic marketing patterns which tend to allocate resources on a political rather than an economic basis. We recommend that United States agencies or negotiators involved in such matters view such practices wherever they exist as a serious disruption of attempts to increase world trade on a fair and equitable competitive basis.

We also deplore those unilateral increases in tariffs or introduction of other trade barriers which have been made since the termination of the Kennedy Round negotiations. We urge that prompt and positive action be taken by the U.S. to offset trade losses and damaging effects to our balance of trade through such unfair practices.

We recognize the need for sharper definition of our national goals for food and fiber requirements. We encourage the development of plans to insure a fair and appropriate balance of agricultural products for domestic and export use. Such plans should include a strong monitoring system for worldwide products and, as a last resort, export licensing arrangements could be used in times of threatened world shortages. These arrangements should not involve abrogation of contracts which are the vital links holding our world trading system together. We oppose export controls for political purposes that are disruptive to agricultural markets.

Trade agreement bargaining which is limited to farm products alone would be ineffective. All commodities, farm or otherwise, must be considered an integral part of the broad spectrum of international trade and related issues. If we are to grant import concessions on industrial goods, or make concessions on other monetary, economic or political issues, farm products must be part and parcel of the total package for which we, in turn, must secure concessions.

Mr. HAMPTON. Following the completion of the Kennedy round of trade negotiations, we worked continuously with congressional and administration leaders and with many agricultural and other groups to gain passage of the Trade Act of 1974 which made possible these sweeping world trade negotiations. Our primary goal

has been to gain more open and fairer access to markets abroad, and we believe that orderly and expanding trade in world markets would be seriously jeopardized by a failure of the Tokyo round.

While the short-term gains for U.S. agriculture in the Geneva agreements have been quite limited, there are important potential long-term benefits in the more significant nontariff barrier negotiations. Our negotiators led by Ambassador Strauss have worked hard and conscientiously to bring these talks to a successful conclusion in the face of extremely difficult economic and political circumstances. Like any negotiation, the Tokyo round involves costs along with benefits, and all U.S. sectors would like less costs and far more benefits. In the world of hard reality, however, the Tokyo round should not be judged in terms of "wishes" or sometimes inflated expectations. Instead, we should ask how good the results from Geneva are in these terms: (1) How near have we come to the maximum possible net benefits from this round? And (2) What would be the alternative, or the consequences to United States and world trade and to our long-term national welfare, if no broad agreements are reached at this time?

In our view, our trade negotiators have done a remarkable job in concluding these talks with substantial potential benefits to the United States, especially so in view of reluctant attitudes and difficult political pressures on the part of some of our most important world trading partners. Ambassador Strauss and his team deserve high marks for accomplishing a step which we believe can be viewed in the future as a historic breakthrough in progress toward a more open world trading system, and indeed a landmark in developing the worldwide cooperative framework which is so vital to dealing with the tremendous economic and political problems facing us today.

We appreciate and applaud, too, the important consultative and advisory role which members of the subcommittee and other key congressional leaders have played throughout the talks. The keen and continuous interest and the congressional recognition of the urgent national importance of the Tokyo round have been a source of strong reassurance to those of us in the private sector who are constantly aware of the threats as well as the potential benefits of these talks. Congressional interest has encouraged the open and responsive attitude which the trade negotiator's office has shown to the various and sometimes conflicting sector concerns. We are pleased to see the Congress attaches great significance to the importance of this round, as evidenced by these hearings and the vast amount of effort which this committee and other groups are now devoting to trade issues and the Geneva agreements.

Our strong support for the Geneva trade agreement package, based on the assumption that no details yet unknown will change its essential thrust, is not primarily because of the very modest net agricultural benefits from tariff cuts and other short-term gains. These so-called bottom line short term benefits are not the most important aspect of the Tokyo round, though they are often misperceived as such.

The major results of the MTN will be in the potential for improvement of GATT trading codes, including improved institutional arrangements and procedures for consultations and dispute settle-

ment. Furthermore, there are alarming risks of trade deterioration or world economic disruption in the event of failure in the Tokyo round. Such failure could lead, directly and indirectly, to serious damage to our farm and agricultural sector, and to the United States and world economy.

Our support for the Geneva package is also predicated on our understanding that U.S. trade negotiators continue to press for improvements, through implementing language and legislative history, and through follow-up negotiations with our trading partners, which would deal with these key needs: (1) Provision for establishment of injury test criteria and strong administrative procedures with the subsidy/countervailing duty code which would fully assure U.S. dairy interests of prompt countervailing duty relief against unfair subsidy competition; (2) a formula which would further minimize any detrimental effects of additional cheese imports on U.S. dairy farmers; (3) improved access abroad for U.S. agricultural exports which face discriminatory tariffs or other unfair trade barriers; and (4) avoidance of any possible MTN-related grain agreements not in conformance with the recommendations of the Grain Agricultural Technical Advisory Committee (ATAC).

In summary, the National Council of Farmer Cooperatives is strongly favorable to continuing world trade negotiations toward more open markets with fairer access abroad for U.S. farm and other products. We view the MTN Geneva agreements package as a useful step in that direction. However, a modest but very commendable success in the Tokyo round would be only a major building block, not the capstone, of an improved international trading system.

Further bilateral and multilateral negotiations must be sought to further improve access for American products abroad and to deal with inequities and abuses which will continue to persist, such as the use of unfair subsidies and other such trade-distorting measures. The codes of the Toyko round offer us an important means of continuing to work for this fairer and more open world trading system.

We should emphasize, however, that the benefits of the various codes can be no greater than the major trading countries' intent to adhere to the spirit as well as the specifics of the codes. Furthermore, it is important that the United States continue to exercise leadership and initiative in protecting our interests under these codes, through consulting and dispute-settling procedures. We urge this committee and other congressional trade leaders to emphasize not only in implementing language but in the legislative history the need for strong administration of these provisions which promote our agricultural and our national interests.

We appreciate the opportunity to present our views on this urgent matter.

Mr. VANIK. On page 5 of your statement you talk about a formula which would minimize any detrimental effects of additional cheese imports on the U.S. dairy farmers. Could you elaborate on it?

Mr. HAMPTON. That is a complex issue, Mr. Chairman, and I think perhaps in the legislative history of this act the Congress can contribute most constructively to that by firm instructions to the

Department of Agriculture or to any other agencies involved in administering the Cheese Import Provision to issue and administer regulations that would give maximum assurance that we do not lose some of our U.S. dairy farmers because of unfairly subsidized import competition.

Mr. VANIK. If we have that kind of a legislative history, we don't know what might come out. I was hoping you might give me some better handle on what kind of language we should have in legislative history.

We will keep the record open, so if you can develop more specific language that we might use in developing legislative history, we might be able to look at it and see how it would fit.

If you have that prepared for the record we would certainly appreciate that, within the time period during which we have the record open.

Mr. HAMPTON. I appreciate the opportunity. You will have a spokesman here for the dairy producers specifically later this morning who might address himself to that point.

Mr. VANIK. Mr. Fisher.

Mr. FISHER [presiding]. Thank you Mr. Chairman. I would like to pick up on another point you make on page 5, at the bottom, where you suggest that we need to do further work in providing for establishing an injury test criteria and so forth. Would you care to expand or that. What kind of criteria do have in mind?

Mr. HAMPTON. Again, Mr. Fisher this has been very difficult to deal with, the specific language of this. I think you are aware that the dairy industry has felt that their ability to countervail promptly against unfair and unfairly subsidized imports of dairy products has been hampered by inclusion of any injury test.

I think some progress has been made in that direction by having a separate approach considered for cheese imports which would be based on a price undercutting criteria. This would go a long way, I believe, toward meeting the problem of the injury test which is so objectionable to our U.S. dairy industry.

Mr. FISHER. Again, you would like the test to be stated explicitly, perhaps in a future agreement or in negotiation?

Mr. HAMPTON. I think it would be preferable for the price undercutting prohibition to be spelled out in some detail.

Mr. FISHER. You take a position here—I am glad to see it—of favoring the agreements that have been now initialed and are before us and you point out there is some net advantage to the industry you represent, though you say there are other reasons why you are in favor of the agreements that outweigh your own particular gain.

Are there other industries that relate to yours that are drawn along into the same position you have, perhaps supplying or related industries?

Mr. HAMPTON. I am not sure if I know what you have reference to but in response to your earlier comments——

Mr. FISHER. Does any supplying industry that furnishes your industry with fuels, equipment, or finance tend to take the position you do?

Mr. HAMPTON. Not directly except that the cooperative system we represent, deals not only with the interest of farmers in their

off-farm businesses in the sale of farm products, but in a broad range of supplies including petroleum, feed, chemicals, so we have a considerable off-farm industry there within our own membership, which is owned and controlled by farmers.

Mr. FISHER. That is what I am getting at. Do they join you in support of these agreements?

Mr. HAMPTON. Our supply cooperatives are part of my organization, and are in agreement with this position of the National Council.

Mr. FISHER. The point I am driving toward here is that if you think of agriculture in a broad sense, including the supplying industries and firms and cooperatives and other related activities, you get quite an aggregation of organizations and it becomes an appreciable percent of the total U.S. economy. I think this is an important point to bring out, that one would expect agriculture, particularly those in exports, to favor these agreements.

What is not so often thought of is that along with the farmers, so to speak, are quite a range of other economic organizations and activities that have a similar interest.

Thank you.

Mr. HAMPTON. May I make one clarifying comment?

Mr. FISHER. Please do.

Mr. HAMPTON. Mr. Fisher, this is related to your earlier comment about our support for the Tokyo Round Agreements. The point I meant to emphasize is that benefits are very modest in the short term. However, the greater potential benefits should result from the codes and longer term possibilities which are admittedly more difficult to estimate. We believe those long-term net benefits to be potentially very substantial.

Consideration of the longer term benefits has received less attention in agriculture as well as in other sectors than the immediate impact of this trade round. Yet we think it deserves great consideration.

Mr. FISHER. I think your point is well taken.

Thank you, Mr. Hampton, for your testimony. We will turn now to Mr. Frederick of the National Grange.

STATEMENT OF ROBERT FREDERICK, LEGISLATIVE DIRECTOR, THE NATIONAL GRANGE

Mr. FREDERICK. I am Robert Frederick. I have two pages of testimony to restate the Grange's policy on international trade which was developed in 1973. That policy guided my organization through the passage of the Trade Act in 1974 and the multilateral trade negotiations which started in Tokyo some 5 years ago.

The Grange played an active part in securing the enactment of the Trade Act of 1974 and has been involved in the advisory committees that were created by that act.

The National Grange believes that the final trade package that was initialed in Geneva on April 12 falls within the policy adopted by the Grange and therefore is worthy of our support.

In January, the Grange releases a statement in support of the final trade package with a provision that we would withhold final judgment pending language in the implementing legislation.

In general, we felt that the long-term gains for agriculture outweighed any short-term losses, and while not getting everything U.S. agriculture sought, and giving up a little in some highly sensitive areas, it was the best agriculture package that could be obtained under present world circumstances.

One must remember that the negotiations started 5 years ago, at a time when world economic conditions were such that there was solid support for changing the rules so as to improve and expand world trade. This was especially true in the agriculture sector.

Since that time a lot has happened to change the industrialized world that is responsible for the largest percentage of products exchanged in world trade, which eroded that support. The talks were stymied for 2 years while the major trading partners jockeyed for an advantageous position.

Much of this stalling was brought about by a lack of sincere dedication on the part of our trading partners to bring the negotiations to a successful conclusion. If it were not for the insistence of the United States that the trade talks continue and placing the discussions on a timetable, there would not have been a trade package to initial on April 12.

In judging the final trade package, one must keep in mind the history of the past 5 years and the fact that at the end only the United States, among the major trading blocs, wanted the trade negotiations to be continued to their conclusion.

In the history of trade negotiations there never has been a clearly defined winner or loser. Each country or bloc of countries must give and take, and the Tokyo round was no different. As we judge the Tokyo round against the Dillon and Kennedy rounds, U.S. agriculture came out a winner—not as big a winner as we would have liked to see, but nevertheless a winner.

For the first time since the creation of the common agricultural policy of the European Common Market we were able to apply some discipline to their use of export subsidies, not only in our domestic market, but also in third markets.

But let me make it clear to our friends in the EC: the fact that we accepted disciplines on export subsidies rather than total prohibition of such subsidies should not be interpreted by them or anyone else as acceptance by U.S. agriculture of their trade-distorting common agricultural policy. We still find it highly protective and disruptive to world trade expansion.

The failure to gain additional market access through relaxing of the variable levy system of the common agricultrual policy is one major disappointment of the Tokyo round. The other would be our failure to gain sufficient access for agricultural products into Japan.

Progress has been made on both fronts, but much more needs to be done and we look forward to ongoing trade discussions with these two trading blocs to obtain further access to these markets.

The Grange supports the ongoing discussions and negotiations that will be continued later this year on a multilateral agriculture framework, the so-called Cathedral. We feel that within this framework barriers to world trade in agricultural commodities can be successfully addressed and greater access to world markets for U.S. agricultural commodities can be achieved. In this regard, we fully

endorse the recommendation that our trade negotiators continue to have the advice from private sector representatives through the advisory committee procedure.

The private sector advisory committee process, while not being perfect, has been a tremendous assist to the negotiators as well as to the representative organizations.

The National Grange, while endorsing the trade package, still has some strong reservations about the section of that package that affects the American dairy industry. The implementing legislation has, to some extent, alleviated some of our fears, but that section continues to trouble our dairy members to the extent that they may oppose the entire trade package.

Our dairy members' concerns are real and the National Grange would be doing them a disservice if we did not bring those concerns to the committee's attention. Their primary concerns are that even though a cap is in place on all cheese imports with the exception of some specialty cheeses, history has proven that each new quota level has simply been a higher plateau from which to work. Thus, the new level of import quotas will only be the cap until a new evasion product is developed or higher quotas have been negotiated. That has been the history of dairy imports.

The other major concern deals with the subsidy and countervailing duty codes. Our dairy members do not have faith in the fast track for determining injury from quota cheeses nor do they accept the injury test or the investigative time before countervailing duties on other nonquota dairy imports.

These are important questions for dairy farmers, questions that need answers if the trade package and implementing legislation are to secure the support of the dairy industry.

We believe that the best way to deal with the fear among dairy farmers is seeing that our trade negotiators continue to press for improvements in the process of congressional review and legislative history in the key problem areas:

The establishment of injury test criteria and strong administrative procedures within the subsidy CVD code which would fully assure U.S. dairy interests of prompt countervailing duty relief against unfair subsidy competition.

Legislative history should be developed to assure carrying out the intent of the legislative language regarding the reduction of any detrimental effects of additional cheese imports on U.S. dairy farmers. This should include that any attempt by importers to circumvent the section 22 quotas on new products would be dealt with in a swift and judicious manner.

Further assurance should be given the dairy industry that the cheese quota under section 22 would not be increased without detailed consultation with the representatives of the industry.

We would particularly suggest that the implementing legislative language regarding the subsidy and countervailing duty code or injury test now being considered by the subcommittee not be changed.

The National Grange is very much aware of the importance of final acceptance of the trade package to our total national economy and will not give it our strong support. As we have stated before, this is not the end of the negotiations, it's only the beginning.

Negotiations in trade expansion will only end if this Congress fails to pass the trade package, with its implementing legislative language.

We appreciate the dedicated efforts of the Special Trade Representative Robert Strauss, and his fine staff, as well as the Secretary of Agriculture Bob Bergland, and his staff. As I said earlier, I believe they have done a commendable job as have the committees of Congress. It has been a team effort and we sincerely hope that this dedication to the task of trade expansion continues because we believe it is in the national interest.

Thank you, Mr. Chairman, for providing the Grange this opportunity to express our views.

[Portions of the prepared statement not read follow:]

STATEMENT OF ROBERT M. FREDERICK, LEGISLATION DIRECTOR, THE NATIONAL GRANGE

SUMMARY

1. The Grange expresses its long history of support for trade expansion and believes that the Tokyo Round trade package meets its objectives in this area.

2. Reviews the changes in world conditions since the start of the Tokyo Round five year ago and makes reference to the gains for agriculture as compared to previous trade negotiations.

3. Points out that U.S. agriculture's process approval of subsidy "disciplines" on the Common Agricultural Policy of the European Community should not be interpreted as U.S. acceptance of export subsidies or the CAP.

4. Recommends ongoing discussions and negotiations with trading partners to gain increased access to foreign markets, and the continuation of the trade advisory committees.

5. The Grange, while endorsing the trade package, has some strong reservations about the section dealing with dairy imports. We point out that increased cheese imports and countervailing duties and injury test are problem areas.

6. The Grange recommends that the best way to deal with the dairy farmers' fears is in continued negotiations and strong enforcement of the codes and legislative language. We suggest that the legislative history should be used to spell out that it is the intent of Congress that the subsidy and countervailing codes and implementing language should be administered to relieve the dairy industry from unfair competition.

STATEMENT

Mr. Chairman and members of the committee, I am Robert M. Frederick, Legislative Director of the National Grange. My officers are in the Grange Building at 1616 H Street, N.W., Washington, D.C.

The National Grange is the nation's oldest farm organization, being organized in 1867. The 500,000 members of the Grange are located in 41 states and represent a cross-section of farmers and rural and suburban residents; therefore, our policy is not dictated by agricultural interest alone.

The National Grange reaffirmed its policy on foreign trade in November of 1973, about the same time the Trade Act of 1974 was being considered by Congress. That policy remains in effect today and has guided the Grange through the Tokyo Round of multilateral trade negotiations.

Foreign trade

"In the field of foreign trade policy, the National Grange reaffirms its support of the principle of expanding international trade through trade agreements under which tariff and non-tariff barriers to trade can be progressively reduced and eliminated on a reciprocal and mutually-benefitting basis. We stand firm in our belief that a prosperous and expanding would economy is vital to the economic progress of the United States and the attainment of peace.

"In adopting measures to expand trade we recommend that the U.S. continue to adhere to the principles of the General Agreement on Tariffs and Trade (GATT) under which our nation has taken the lead in working toward a reduction in the obstacles to trade and in expanding trade on the basis of sound economic principles.

"Although encouraging progress has been made under the GATT in promoting less restrictive trade between the nations of the world, we are concerned by the obstacles to trade in agricultural products through the use of non-tariff barriers. These measures oppress our commerce and deny our agricultural commodities market a cess on terms which are consistent with the terms of access which goods from foreign producers enjoy in the United States.

"Because of the importance of exports to the well being of our economy and to our balance of payments problem, the National Grange recommends that far more vigourous action and hard bargaining needs to be undertaken on the part of our government to bring about the elimination of non-tariff trade restrictions being maintained against U.S. agricultural products.

"The support of Foreign Trade policies essential to the expansion of trade for our agricultural products does not require the exposure of any segment of our domestic economy to unfair competition or to economic aggression. The National Grange has consistently supported Section 22 of the Agricultural Adjustment Act of 1933, as amended, and other measures designed to protect against unfair competition or imports of a magnitude which will inflict serious injury to domestic producers.

"Extreme care must be taken to protect the tax and fiscal policies of the U.S. whenever our government becomes involved by offering credit or interest concessions to foreign buyers or insurance against losses to exporters in negotiations for foreign sales.

"The use of export controls can stimulate uneconomic production abroad and must be avoided. It is important that our policies assure other nations that they can depend on U.S. production, unless, of course, we experience some unforeseen disaster.

"It is essential in all trade negotiations that nations agree not to adopt measures which will transfer the costs of needed domestic ajustments to farmers of other nations.

"They should also provide some assurance of continued access to traditional markets and limit the use or export subsidies."

Likewise, at that same Annual Meeting, the Grange adopted a resolution in support of the Trade Act of 1974:

Trade legislation

"*Be it resolved,* that the National Grange endorse the objectives of the Trade Reform Act of 1973, which would give the President sufficient authority to negotiate effectively for a reduction of international trade barriers, both tariff and non-tariff, in the interest of trade expansion. It is essential that trade-distorting measures such as high export subsidies used to unload unwanted surpluses be prevented or reduced."

Mr. FISHER. Thank you very much. Like the previous speaker, you approve in general of these codes and agreements and raise some questions in particular about cheese. This seems to be the heart of all this, where you have a few problems.

Mr. FREDERICK. If you had dairy farmers in your constituency you would too, sir.

Mr. FISHER. I do have a few. I am very pleased to note at least farmers in my district have become the internationalists of the country in recent years, not surprisingly, but it is a turnabout from what farmers used to think awhile back and it is a welcome one so far as I am concerned.

I am going to raise a question here that has been suggested by staff. It pertains particularly to the latter part of your testimony. Wouldn't the system we have proposed of 30-day investigations of price undercutting by subsidized cheeses by better than relying on countervailing duties and some kind of subsidies code? Why do you still want to be involved in countervailing?

Mr. FREDERICK. Countervailing would come in on dairy products other than section 22 quota cheeses. Section 22 cheeses would be on fast track, or 30 or 55 days and then dairy products other than nonquota products would be subject to regular countervailing duty code. Am I correct in that?

Mr. FISHER. Yes, I think so. Mr. Vander Jagt.

Mr. VANDER JAGT. No questions.

Mr. FISHER. We do not have any more questions. We appreciate your testimony. We have it here to study.

Our colleague Mr. Lagomarsino has come in and we would be very pleased to hear from him at this point.

STATEMENT OF HON. ROBERT LAGOMARSINO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LAGOMARSINO. Thank you. I am pleased to appear before you this morning to express my support for the trade package and to make some recommendations on behalf of the citrus and avocado industries of California.

I have carefully followed the long and tedious course of the trade negotiations from their inception. I have been satisfied that Bob Strauss has kept the needs of agriculture in the forefront of the negotiations for the first time in history. A major liberalization in agricultural trade barriers has been the result.

Yet, Mr. Chairman, certain areas of the negotiations in the agricultural sector have not thus far been as successful as I had hoped. I am speaking in particular about negotiations with the EEC on fresh citrus. A concession from the EEC on this commodity is of the highest priority to the citrus industry. Bob Strauss has done a masterful job of obtaining valuable concessions from the Japanese for citrus. I have no doubt that he is meeting with fierce opposition from the EEC. Mr. Chairman, our negotiators must keep working for a concession from the EEC on citrus.

The failure of the EEC to make an offer on citrus underscores the need for this committee to urge the Office of the Special Trade Representative to resolve the citrus industry's pending section 301 case. This matter was filed over 2 years ago. Under this law, the President is required to take vigorous steps toward dismantling the EEC's discriminatory and unreasonable preferences on fresh oranges. Any amendments to section 301 of the Trade Act of 1974 which may be incorporated in the trade package should have no adverse effects on pending cases. Moreover, STR should prosecute them within a reasonable time, and in no event later than 1 year following passage of this legislation.

The EEC's preferential tariff on citrus violates Article I of General Agreement on Tariffs and Trade (GATT). This is the most-favored-nation (MFN) provision. The United States should insist on obtaining the MFN treatment it deserves. Failing elimination of the EEC's preferences via GATT or section 301, the United States has no choice but to retaliate.

Finally, Mr. Chairman, both citrus and avocados are considered perishable agricultural products. As such, they require accelerated corrective action to temporarily restrict imports of like or competitive products when the volume of such imports threatens serious injury to domestic producers. Current domestic trade legislation contains no provision for the needed prompt surveillance, investigation, injury determination, reporting and Presidential action. It is my understanding that the Department of Agriculture has drafted the necessary provisions. On behalf of my constituents in the

citrus and avocado industries, I urge inclusion of the needed legislation in the package presented for passage.

I appreciate the opportunity to appear before my colleagues on this committee. The need for a concession on fresh citrus from the EEC is imperative. Ambassador Strauss has my support and my appreciation for a job well done. A successful conclusion to the negotiations on citrus will place me in the front of the congressional ranks fighting for passage of the trade package.

Mr. FISHER. Thank you very much for this valuable testimony.

As I understand it, the committee has been concerned about the 301 feature you raise and has it under active consideration.

Questions, Mr. Vander Jagt?

Mr. VANDER JAGT. I would like to commend my colleague for a constructive presentation in forcefully calling the committee's attention to some of the problems facing the citrus industry. It is my hope the committee will continue to be responsive to the good suggestions which my friend has made.

Mr. FISHER. Mr. Jones?

Mr. JONES. I have no questions.

Mr. SCHULZE. I have no questions but I would like to commend our colleague for a very cogent presentation.

Mr. FISHER. Thank you very much. We appreciate your coming to give us this testimony.

Next we will hear from Sheldon J. Hauck, President, National Soybean Processors Association. Mr. Hauck, we have copies of your testimony and invite you to highlight it.

STATEMENT OF SHELDON J. HAUCK, PRESIDENT, NATIONAL SOYBEAN PROCESSORS ASSOCIATION

Mr. HAUCK. I will highlight my brief statement.

The members of our organization will process over 1 billion bushels of U.S. soybeans this marketing year. Of that over 25 percent of our production of meal and 20 percent of our production of oil as well as roughly 40 percent of the production of all U.S. soybeans moves into international export markets.

The trade negotiations therefore have been of more than passing interest to our association.

Our organization supports congressional approval of the trade package and its enabling legislation in its entirety.

As some of the prior witnesses have testified this is not a perfect world and there are some parts of the package that we would have liked to have seen come out otherwise. But, overall we believe it is in the best interests, of our industry, American agriculture, and the Nation to approve the package as initialed.

We would like to make two points however that are of particular concern to us. We understand on good authority that negotiations have been concluded with Brazil whereby they have agreed to phase out their export subsidy programs on industrial products and agricultural commodities over a period of time. The time we are not certain of.

But we would like to note that Brazil's export subsidy policy has been the most damaging practice engaged in recently by a foreign competitor of the U.S. soybean industry and exporters of soybean oil and meal. No world trade policy has had a more deleterious

effect or influence on the more rapid expansion of our U.S. markets in the world for soybean oil and meal.

We hope Congress and the administration will take every measure to insure that Brazil honors that commitment, once finalized, and that it be fulfilled by the deadline negotiated.

We also understand that the Government has negotiated a zero duty binding on imports of soybeans by Japan. We advised Ambassador Strauss that if the opportunity arose in subsequent negotiations with Japan that attempts be made to try and have soybean meal as well as oil duty-bound at zero for imports into Japan.

The full text of that letter and the background details is enclosed as an appendix to our written testimony. I might add, the American Soybean Association, the grower organization, has endorsed that appeal to Ambassador Strauss.

Finally we would just add a footnote. We would hope the committee and others would guarantee that the office of STR be continued with its full complement of competent and knowledgeable staff members in the extended period following conclusion of the negotiations.

Some of the senior members of our organization seem to recall that at the conclusion of the Kennedy and Dillon rounds, some of the Trade negotiators office was dismantled and staff and experts moved with the winds, if you will. Some of the final bolts and loose ends were never put together the way it was intended.

We would hope in view of the considerable accomplishments by what we feel is a very competent staff, Ambassador Strauss, McDonald, Wolff, Starkey, and others, that the staff and that office be continued, to insure that not only the law but the spirit and intent of the negotiations are enforced.

That summarizes the comments and views of the National Soybean Processors Association.

[The prepared statement follows:]

STATEMENT OF SHELDON J. HAUCK, PRESIDENT, NATIONAL SOYBEAN PROCESSORS ASSOCIATION

Mr. Chairman and members of the committee—I am pleased to be present here today to share with you the view of the members of the National Soybean Processors Association.

Our membership is comprised of 29 firms in the United States which this marketing year will process approximately one billion bushels of U.S. soybeans. Our interest in the progress of the trade negotiations and their results has been intense during the past four year, since over 40 percent of the U.S. crop and over 25 percent of our annual production of soybean meal and approximately 20 percent of our annual production of soybean oil enters world markets. International trade is therefore a subject of more than casual interest to the members of our association.

We would like to briefly outline what we see as the advantages and disadvantages of U.S. acceptance of the international codes and other agreements negotiated which confer benefits on both the United States and out trading partners.

Most importantly we support congressional approval of the trade package and its enabling legislation. We believe that, in general, acceptance of the package entails sufficient progress toward stabilization of world trade in our industry's products and the prospect of continued and expanded access of U.S. soybeans and products to world markets.

In that regard, two specific points should be stressed:

First, while the details of final agreement have not been spelled out in their entirety, we are under the impression, from press reports and other sources, that the Government of Brazil appears ready to agree to phase out over a relatively short period of time all of its various export subsidy programs— especially those involving agricultural products. The Brazilian export subsidy schemes, particularly

since they have spurred subsidized exports of soybean meal and soybean oil into traditional U.S. markets, have been a source of extreme concern to this industry.

This export subsidy policy has been the most damaging practice engaged in by a foreign competitor. No world trade policy has had a more deleterious influence on the more rapid expansion of U.S. world markets for soybean meal and oil.

We commend the U.S. negotiators for having attained this concession from the Government of Brazil, and we urge the Administration and the Congress of the United States to take every measure to ensure that Brazil honors this commitment, once finalized, and that it be fulfilled by the deadline negotiated.

Second, we understand that the United States has negotiated a zero-duty binding on the imports of soybeans by Japan. We have advised Ambassador Strauss that, as subsequent negotiations with the Japanese develop, "every effort by made to obtain a zero-duty binding on soybean meal. It is believed this potentially would be very important and beneficial to both the United States processors and the producers. It would ensure that the United States had continued access to the Japanese market and result in a flow of significant foreign exchange earnings to the U.S. A second priority would be to obtain a similar zero-duty binding on soybean oil".

The full text of the letter of March 13, 1979, addressed to Ambassador Strauss is attached as an appendix to this testimony.

The American Soybean Association has also endorsed this appeal to the Office of the Sepcial Representative for Trade Negotiations.

Finally, we would hope that this committee and others would guarantee that the Office of the Special Representative for Trade Negotiations be continued with its full complement of competent and knowledgeable staff members in the extended period following conclusions of the negotiations, to ensure that not only the law, but the spirit and intent of the new GATT agreement and its provisions are enforced, for the growth of American industry and agriculture.

Mr. Chairman, we appreciate the opportunity of presenting our views to the committee this morning, and I would be happy to respond to any questions you or the members of your committee would care to pose.

Thank you.

APPENDIX I

NATIONAL SOYBEAN PROCESSORS ASSOCIATION,
Washington, D.C., March 13, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Washington, D.C.

DEAR MR. AMBASSADOR: The National Soybean Processors Association appreciates the zero duty binding on soybeans obtained during the course of the negotiations with Japan. A zero duty binding obtained from the European Economic Community on soybeans and meal during the Dillon round of negotiations has proved to be invaluable to the United States in protecting our access to those markets for soybeans and soybean meal. It is hoped that problems with continued access to the Japanese market will not be encountered, but if that situation should occur, this binding should also be valuable.

It is because of our experience with continuing European attempts to impair the bindings with the EEC that this letter is written. We understand that there is a possibility that the Japanese negotiations may be reopened. Additional comments from various legislators on Capitol Hill suggest that there may be a need to re-examine the Japanese negotiations.

If the negotiations with the Japanese are reopened, the National Soybean Processors Association urges that every effort by made to obtain a zero duty binding on soybean meal. It is believed that this potentially would be very important and beneficial to both the United States' processors and the producers. It would ensure that the United States had continued access to the Japanese market and result in a flow of significant foreign exchange earnings to the U.S. A second priority would be to obtain a similar zero duty binding on soybean oil.

Anything you might negotiate with regard to either soybean meal or soybean oil would be very much appreciated.

Very truly yours.

SHELDON J. HAUCK, *President.*

Mr. FISHER. Thank you, Mr. Hauck. Are there questions?

Mr. JONES. Let me ask the witness, on soybean sales to Japan. I assume you had a good deal of recent conversations with the Japa-

nese. What is their attitude about substantially expanding exports of soybean products from the United States in light of the shock they received in 1973 from the Nixon administration? What are they doing right now?

Mr. HAUCK. The shock waves from the 1973 embargo I think, in all honesty, continue to vex those that are active in that export market. We not only hear it from Japan but from some of our friends in Europe. It had serious negative effects on some of our traditional customers. There is no question that some of them looked to other sources of supply in the period since 1973.

We as an industry and the administration and the American Soybean Association have taken every opportunity that has been presented to us to urge that, really under no circumstances, should an embargo, at least of soybeans or its products, be considered in the future.

We have a very serious competitor in Brazil. All they need is additional encouragement to expand their production even further by being able to acquire customers in world market that were formerly ours.

I think the attitude of the Japanese and others has softened in recent years. The foreign agricultural service and American Soybean Association, the grower organization, have extensive market development activities around the world, in Japan and the community. They played a very important role in ameliorating the fears of some of those customers, and those market development activities will continue and expand

Japan is principally a market for U.S. exports of soybeans. They do import some soybean meal but not as much as the European Community.

However when soybean meal and oil were duty bound during the Dillon and Kennedy rounds for access to the community they were a small portion of European imports. Today though they form the major market for U.S. soybean meal. That situation could obtain in Japan in the future as its economy and competition for its land resources would suggest. So we see it as potentially a major market for exports of U.S. soybean meal and oil as well.

Mr. JONES. Brazil soybean production is represented by what percent of Japanese investment?

Mr. HAUCK. I have not seen any figures. I would question whether there are any accurate figures that any of us could rely on. There are of course strong feelings in the trade that the Japanese have made substantial capital investment in lands and facilities in Brazil as joint ventures, directly or otherwise.

Mr. JONES. Isn't that where they went immediately after the 1973 cutoff?

Mr. HAUCK. My understanding is the process had started before then but that undoubtedly helped to accelerate the process.

Mr. JONES. Thank you, Mr. Chairman.

Mr. FISHER. Any further questions?

Thank you very much, Mr. Hauck.

The next witness is Patrick B. Healy, secretary, National Milk Producers Federation. Mr. Healy.

STATEMENT OF PATRICK B. HEALY, SECRETARY, NATIONAL MILK PRODUCERS FEDERATION

Mr. HEALY. Mr. Chairman, I have a statement.

Mr. FISHER. We have a copy of your testimony and we would be pleased to have you highlight it in such a way as you see fit.

Mr. HEALY. I would like the full statement inserted in the record if that is agreeable.

Mr. FISHER. That is and it will be done.

Mr. HEALY. The National Milk Producers Federation is a national organization of dairy farmers' marketing cooperatives. It comprises virtually every such cooperative in the country and therefore represents virtually all of the dairy farmers and the milk which they produce.

In recognition of the central role of dairying, both on the farm and as an essential element of nutrition, several basic programs have been established to assure adequate supplies of milk and milk products from domestic production. While the federation and its membership is concerned with a wide range of policy issues, there are five primary areas which are deemed basic to the dairy industry. These include the dairy cooperative marketing association, the dairy price support program, the Federal milk market order program, the system of import restraints, and the maintenance of the integrity of milk and dairy products.

Each of these policy elements is an essential part of the fabric that has permitted the American dairy industry to develop as a highly efficient, modern operation capable of meeting the demands of a highly complex and changing market.

Mr. Chairman, this system is working today. Today farmers are making money. Consumers are buying milk and dairy products are at the lowest absolute cost that has ever been available in this country or any place in the world in history.

Mr. FISHER. Do you mean by that a quart of milk costs less?

Mr. HEALY. In absolute terms, measured in terms of average industrial wage.

Mr. FISHER. Frequently absolute terms mean dollars, but you did not mean that?

Mr. HEALY. No. I, like everyone else, would like to have my income go up and everything else stay the same but it does not work that way. But the fact is that people are spending less of their money for milk today than they ever spent here or any place else in the world at any time in history.

The individual elements of this policy are interdependent. Disruption or misapplication of any one element can and does have serious implications in other areas.

It has long been recognized that the ability of the United States to develop and maintain domestic agricultural programs such as a price support program would be seriously undermined if this market could be used as a dumping ground for surplus production of other nations.

As a result, section 22 of the Agricultural Adjustment Act was approved in 1935 to provide the basis for increased tariffs or import quotas on agricultural imports which interfere with or threaten to interfere with effective operation of some price support or similar programs.

Even before this, however, Congress had enacted the countervailing duty statute which was designed to prevent injury to domestic industry by the export subsidy programs of other nations. Simply put, this law requires the Secretary of the Treasury to collect an additional duty, equal to any bounty, grant, or subsidy, on any product which enters the United States with the assistance of such bounty, grant, or subsidy. This statute is simple and straightforward in its expression. It is mandatory in its application.

A point which cannot be emphasized too strongly is that section 22 and the import restraints imposed under its authority are basic elements of domestic food policy. The sole basis for action under section 22 is the impact imports have on the operation of a domestic price support or similar program. In the absence of such impact there is no authority to limit imports. On the other hand, in the absence of the authority of section 22, price support programs of the United States could quickly become support programs for the world market. Such a situation would greatly increase Government costs of the programs and, inevitably raise cries for their termination due to these costs.

Congress will soon be faced with the task of judging the result of these negotiations and approving or disapproving a massive package of implementing legislation that will amount to approval of the agreements themselves. These agreements will have profound effects on American industry and agriculture. Much has been said of the value of these agreements.

On the other hand, the dairy industry is becoming fully aware of the price being exacted from it for the U.S. presence at the negotiating table.

The dairy industry will be affected by three specific actions taken as part of these talks: (1) An expansion of cheese and other imports; (2) the nullification of the countervailing duty statute by the specific recognition of the right of exporting nations to employ export subsidies and the addition of an injury test to the U.S. countervailing duty statute; and (3) an international dairy agreement.

Based on information presently available, the trade talks will mean an expansion of cheese imports of 67 million pounds over 1977 levels. This represents an increase of one-third, with most of the additional products entering this market with the assistance of substantial export subsidies.

Mr. VANIK. How much will that be over 1978 levels? You talk about 67 million.

Mr. HEALY. There is a strange thing with the 1978 import levels. Imports in 1978 were running at about the same level as they ran in 1977 until the exporting nations became aware that the Congress was not going to extend the countervailing duty waiver authority statute in September or October as had been planned. Whereupon they increased their imports dramatically during the last quarter of last year to get the stuff in here before these restraints were put on, on January 3.

Since that time, since the restraints went on the imports have lessened to about the degree that they were expanding in the last quarter of 1978. 1977 is the last real year for comparison we have because of this aberration in the last quarter of last year.

Mr. VANIK. I still don't have your answer. What do you anticipate for 1979?

Mr. HEALY. I can give you those right now. Imports in 1978 for quota type cheeses were 110 million pounds. For nonquota types, 131 million pounds.

Mr. VANIK. That is what the quota level will be in 1980.

Mr. HEALY. The quota level will be 243 million pounds against imports of quota cheese of 110 million pounds in 1978.

Mr. VANIK. I would like to have you provide for the record——

Mr. HEALY. I will give you a table on that. I would like, Mr. Vanik, to make the data by quarters so as to show this great surge at the end of 1978.

Mr. VANIK. You would like to show the surge based on the uncertainty of the countervail and I understand that, but you see while the quota levels have trended up over the years hasn't the percentage of imports been about the same? Wouldn't that be true under the new figure?

Mr. HEALY. No; the percentage of imports would not be the same. We are importing currently about 1.6 billion pounds of milk equipment.

Mr. VANIK. Reduce it to percentages.

Mr. HEALY. When the quotas were first established they were about 190 million pounds, milk equivalent, so they have increased about tenfold.

Mr. VANIK. On our source data we show imports as a percent of production—1975, 6.4; 1976, 6.2; 1977, 6.2; 1978 unofficial, 6.4; 1979, 6.2; 1980, 6.3.

Mr. HEALY. Yes, sir. But when this quota system was first put into effect it was about one-half percent of domestic milk production. This is the situation.

Mr. VANIK. When was that?

Mr. HEALY. In 1953. We imported 189 million pounds of milk equivalent.

Mr. VANIK. You are talking with a fellow who deals with industries suffering horrendously from import competition. Let us relate it to automobiles. Let us relate it to steel. Let us relate it to other things that are deeply affected in the American economy. I am rather troubled that we should tolerate so many higher levels in other products yet be complaining so about cheese. The percentage here looks like it is from 1975. It looks like it is projected as a flat level.

Mr. HEALY. Since 1975 it has been pretty flat.

Mr. VANIK. The other question I raise is, we are dealing with a special phenomenon in the American marketplace today. The price of meat is going to go out through the window and we are probably just going to use meat for flavoring, so I anticipate there should be a big increase in the demand for cheese as a protein substitute.

It would seem to me that that condition is indicative of good years for the dairy industry, if I am any observer. I am going to have to give up my little bit of steak or hamburger for a piece of cheese.

Mr. HEALY. You might be well off, Mr. Vanik.

Mr. VANIK. I am prepared to do it, but what I suggest is every indication is that the prospect for market expansion is very, very

good, that we ought to be able to use production at a tremendous relationship to its present level and I think it is a good omen to your industry, and I want to be sure that that is taken into consideration.

Mr. HEALY. I wanted to say, Mr. Vanik, the negotiated agreement, as we understand it, provides for an increase of 90 percent in cheese quotas. It also provides for an expansion of 4½ million pounds in the chocolate crumb quota. We have watched this thing for many many years and our experience has shown us that each new quota level has simply been a new and higher plateau from which these people work. The quotas always rise.

For example today we are gracing with a quota a so-called price break arrangement that was put into effect in 1968. Since that time quotas have advanced 378 percent on Swiss cheese.

Mr. VANIK. Now quotas cover 50 percent of imports. That is what we cover, and the new program will cover 85 percent.

Mr. HEALY. Until, Mr. Chairman, a way is found to circumvent the quotas. They have done so many things.

Mr. VANIK. Mr. Strauss told us when we went into this issue that a good part of this increase for the impoorts would probably dwell on those specialty cheeses that are part of our market.

Now I want to tell you if I had not tasted French wines I probably would not have realized they were made in California. You stimulate an appetite when you have a variety of choice and sometimes if I have to eat that hard rock cheddar, I will never eat cheese unless I get some other kind of variety.

In other words, in our eating habits isn't there some advantage in stimulating a market by introducing people to varieties of cheese, and in that kind of process make them cheese consumers instead of meat consumers?

Mr. HEALY. We have agreed with that. We have conducted our affairs in such a fashion. For instance when I negotiated the 1974 countervailing duty application we excluded these specialty type cheeses but I think Mr. Strauss may have misrepresented what is involved in these quotas.

The biggest jump in quotas today is in the tariff category "Not Specifically Provided For." It jumps from 18,000 tons to 39,000 tons, over double. That category includes the so-called industrial block which is merely a carrier for fats and solids that come in here for use in producing processed cheese. It comes in at the price making level which makes it an even more insidious thing. So we are not talking about Roquefort cheese and Brie and these things. We are talking about cheese coming in here to displace American production in the cheese processing plant and to this we take violent and continuing objection. If it were all Brie and Roquefort I would not be sitting here before you.

Mr. Chairman, there have been arguments that the industry can absorb these additional imports, that they do not amount to a great part of our demand for cheese, but these arguments fail to take into consideration the question back to its basic point of impact, the dairy farm. Cheese consumption has expanded sharply in recent years. This expansion has generally been met by shifting milk from other products where consumption has declined.

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The fact of the matter, regardless of how it is addressed, is that less milk will be needed of U.S. farms in order to make room in this market for the additional products of less efficient European dairy farms. The additional imports will displace domestic production of milk that would otherwise be made into cheese.

This displacement in the short run will be accommodated by additional Commodity Credit Corporation purchases of dairy products into the price support program.

In the longer term, the accommodation must be made on the farm through shrinkage of milk production. The equivalent of 682 million pounds of milk represents the output of some 60,500 average dairy cows at 1978 production levels. This would be the same as putting more than 1,200 dairy farms with 50 cow herds out of business.

The pressure for expanded imports comes from two sources. First, nations whose dairy production results in products surplus to their needs seek to find a place to dump the excess. Second, there are those who have been able to make substantial profits from these products, in great measure due to the export subsidies provided on them to assist their entry into the United States.

A comparison of the declared value plus duty on some of these cheeses for 1 week in November 1978 with the wholesale prices for which they were selling in the New York market is revealing.

Imported Blue cheese had an average margin of 29 cents per pound. Edam and Gouda margins were 42 cents. Provolone margins were at a 60-cent rate. Parmesan margins were $1.63 per pound.

These are the returns that are offered on these products merely because a man holds a license and is able to move it over the threshold before it ever moves into the market in this United States and we are setting up a system to just continue and augment that.

An integral part of the trade negotiations has been the development of a subsidies code which will occasion major changes in the prevailing United State countervailing duty statute. This code seeks to ban the use of export subsidies on nonprimary goods and primary minerals. In the area of agriculture, however, subsidies would be permitted. The United States has, in fact, sanctioned the use of the export subsidy as a legitimate tool in international trade in agricultural commodities—quite a different result than the directive set forth in the Trade Act of 1974.

Mr. VANIK. While on that point, if I could raise this question: Whether or not the system that we have proposed of a 30-day investigation of price undercutting of a subsidized cheese would be better than relying on the countervailing duty and subsidies code. We have attempted to carve out extra fast relief for the cheese industry. Why do you want us to be involved in the CVD code? I would think that you would want to be exempted from the code and rely on this special mechanism that we have designed for your industry now.

We have labored on this and we thought we were giving you something that would work more effectively. Now, if that is not what you want, maybe we will take it out and do something else, but we thought we were helping you—we realized we had to make

some special effort to meet the problem of the dairy industry. We are very sensitive to that.

There are members on this committee that were very insistent on that, and we carved out this fast procedure which we thought would be better. You don't think it is better. Is that your position? You want us to abandon that approach?

In trade there is a give and take. We have to look at the total picture, and I want to tell you I don't expect my community is going to gain much by this trade bill.

Mr. HEALY. The dairy community is going to lose.

Mr. VANIK. I look at trade as the currency of peace. There is an extra dividend we get when we trade with people instead of shooting bullets at them or have them shoot at us. I think this is very important. It is one of the parts of what we get out of our relationship.

Do I take it you don't like what we have done?

Mr. HEALY. Mr. Vanik, it is true that the procedures as we understand them will hasten the process but when the answer to the process is, "No, what difference does it make whether we get it quicker or later."

Mr. VANIK. Let me say a, "No" sooner is better than a, "Yes" 10 times too late. What we all worry about is uncertainty in commerce, in production; and I think there is some advantage to getting a decision in time to be able to either live with it or complain about it.

I have been through this business and I have some concerns about the system that takes care of things after the damage is done. We have gone through the television industry and electronics industry and CB's and we found ourselves just out of the ballpark before we knew what was happening. That is why we tried to write this special section and take care of the sensitive situation of the dairy industry.

You are very important to us.

Mr. HEALY. Mr. Vanik, in 1973 and 1974 imports of cheese were allowed to about the same extent that they are being increased by this action in the trade negotiation. During that year dairy income went down $2.5 billion as a result of that. So dairy farmers are acutely aware of the effect of imports on their market. We worked, through application to the courts, to force the application of countervailing duties. Dairy farm income went right back up that $2.5 billion so we know whereof we speak.

Today, if this thing becomes law we must prove injury to the dairy industry before we can apply countervailing duties. It is going to be impossible to prove injury because each year the Secretary of Agriculture announces the support program and says, "So as to prevent injury I will support prices at 80 percent of parity."

We have no case for injury, therefore, we know what the answer is going to be. There will be no uncertainty; the answer to any investigation will be no. We like the situation as it is now where we can eventually get a yes answer even if it takes a little longer.

Mr. Chairman, that is about what I have come here to say. We, like you, have not been able to fully assess the overall impact of the talks. It has not been possible to do so because specific information regarding gains and losses has not been made available. There

has been much talk, in general terms, of the great good that will flow from the agreements, however, the lack of specifics that would make it possible to assess the facts of the matter lead us to wonder.

Surely, after 5 years of negotiating effort and after the agreements have been initialed, this information can be provided.

If not, its very absence should be a signal to the Congress that all is not well and that the Congress would go slow in reviewing any particulars related to these trade agreements.

The dairy industry is fully aware of the importance of international trade to the U.S. economy in general and to major segments of agriculture specifically. We do not feel, however, that a case can be or has been made for the sacrifice of a significant segment of the dairy industry in exchange for some hoped for gain in other areas. We just do not like it.

Mr. VANIK. We are chagrined to hear your position because we were hopeful that your industry would have made a decision that we did make some efforts to take care of your problem.

[The prepared statement follows:]

STATEMENT OF PATRICK B. HEALY, SECRETARY, NATIONAL MILK PRODUCERS FEDERATION

The National Milk Producers Federation is a national farm commodity organization representing dairy farmers and the cooperative dairy marketing associations they own and operate throughout the United States. Since its founding in 1916, the Federation has worked toward the development of legislation and government programs which will provide the basis for a national food policy. This includes the assurances needed by producers to make the commitment necessary to bring forth the product demanded by the consumer and the stability of market essential to a strong agriculture.

Among the major issues the Federation has concerned itself with is the maintenance of effective limitations on the import of dairy products into this market. In the absence of such limitations, this market would quickly become the dumping ground for world dairy surplus. Such a situation would render totally ineffective the marketing programs farmers have developed through their investment in and commitment to their cooperative marketing associations. It would negate the effectiveness of the dairy price support program which the Congress has enacted as a means of assuring the domestic production of adequate milk and milk products to meet present and anticipated future demand. It would, ultimately, result in consumer reliance on more costly imported products for a basic element of the national food supply.

Since the earliest discussions of the Nixon Round of multilateral trade negotiations, the dairy farmers of this nation have been gravely concerned that the outcome would mean significant damage to their industry. Other major dairy producing nations have long argued that the import limitations maintained by the United States are a trade barrier of the most noxious type. There are those in this country—in our own government—who are all too willing to accept this argument either on the basis of misplaced philosophic attitudes or simply for the purpose of making a "deal."

The so-called Flanigan Report which emerged in 1972 set forth a negotiating strategy which would use the U.S. dairy industry as the bargaining chip to gain concessions in other areas. While that report has been repudiated as the basis of policy by this and previous administrations and it has been shown to be totally devoid of any legitimacy on an ecomonic or any other basis, what we have been able to learn of the results of the negotiations indicates that the Flanigan philosophy has, indeed, been implemented.

The dairy industry is a major element of the nation's agriculture. In 1978, the sale of milk and cream yielded $12.7 billion in farm income, making it the second leading source of cash income on the nation's farms. When one considers the value of livestock sold off dairy farms either as beef or veal or as a breeding stock, the total assumes even greater proportions.

In recognition of the central role of dairying, both on the farm and as an essential element of nutrition, several basic programs have been established to assure ade-

quate supplies of milk and milk products from domestic production. While the Federation and its membership is concerned with a wide range of policy issues, there are five primary areas which are deemed basic to the dairy industry. These include:

(1) The dairy cooperative marketing association and the laws providing authority for farmers to join together for the joint marketing of their production;

(2) The dairy price support program which provides a minimum degree of price assurance to the dairy farmer so as to bring about the milk production demanded in this market;

(3) The Federal milk market order program authorized by the Agricultural Marketing Agreement Act which provides structure to the major milk markets of the nation;

(4) The system of import restraints which permits the basic government programs and the marketing efforts of farmers to function effectively; and

(5) The combination of local, state and Federal regulations which assure the integrity, safety and wholesomeness of the milk and dairy products offered in our markets.

Each of these policy elements is an essential part of the fabric that has permitted the American dairy industry to develop as a highly efficient, modern operation capable of meeting the demands of a highly complex and changing market. The individual elements of this policy are interdependent. Disruption or misapplication of one element can and does have serious implications in other areas. While the basis of the comments presented in our statement will be toward the effect of imported dairy products on this market, we will make numerous references to the effect of such actions on other policy areas.

The central factor in the marketing of milk in the United States is the cooperative marketing association owned and operated by the dairy farmer. Most of the nation's dairy farmers market their milk through one of the 500 dairy cooperative associations farmers have organized and developed under the authority of the Capper-Volstead Act of 1922.

Cooperative marketing represents the effort of the individual farmer to exert some control over his product after it leaves the farm. It is a self-help effort aimed at assuring him a market and providing him the best possible return for his product. The development of this marketing system has not been easy. It has not been automatic. It represents the commitment on the part of hundreds of thousands of individual businessmen and women—dairy farmers—to a joint effort. Their investment in time and money has been toward the development of marketing organizations that can and do meet the demands of the most complex agricultural marketing task this nation faces.

Consider the problem of marketing a bulky, highly perishable product that is produced by 200,000 or more farmers in every part of the nation every day. This requires the assembly, on a daily average, of more than 330 million pounds of product. It means transporting the product to processing plants. The product must be processed quickly to preserve its quality. And the processing must result in the wide variety of products ranging from fluid milk to butter and nonfat dry milk demanded by the consumers.

Cooperatives operations participate in this process in varying degrees. Some assemble bulk fluid milk from their members' farms and sell it to bottling plants and other processors. Some maintain a full range of processing capacity of their own. The bulk of the butter and nonfat dry milk produced in the United States is through cooperatively owned plants. A high percentage of United States' natural cheese production flows from cooperative plants.

Because of their basic position in the marketing of milk, any actions which have substantial effect on the domestic market for milk and diary products are felt most acutely by the dairy cooperative marketing association. The ultimate impact, of course, is on the dairy farmer himself, but the impact in such a case becomes a double burden for the cooperative member as he is called on to carry the load both as a producer and as a member of the cooperative which has the basic responsibility in our marketing system for maintenance of market balance and stability.

The dairy price support program authorized by the Agricultural Act of 1949 provides a minimum degree of price assurance so as to induce the domestic production of adequate supplies of milk to meet the needs of this market. This is accomplished through a system under which the Commodity Credit Corporation stands ready to purchase any butter, nonfat dry milk, and Cheddar cheese of stated qualities offered to it at previously announced prices. These purchase prices are intended to be sufficient to permit the processing plant to meet its costs and return at least the announced price support level to the farmer.

It has long been recognized that the ability of the United States to develop and maintain domestic agricultural programs such as the dairy price support program would be seriously undermined if this market could be used as a dumping ground for surplus production of other nations. As a result, Section 22 of the Agricultural Adjustment Act was approved in 1935 to provide the basis for increased tariffs or import on agricultural imports which interfere with or threaten to interfere with the effective operation of a domestic price support or similar program.

Even before this, however, Congress had enacted the Countervailing Duty Statute which was designed to prevent injury to domestic industry by the export subsidy programs of other nations. Simply put, this law requires the Secretary of the Treasury to collect an additional duty, equal to any bounty, grant, or subsidy, on any product which enters the United States with the assistance of such bounty, grant or subsidy. This statute is simple and straightforward in its expression. It is mandatory in its application.

The first dairy product import restraints under Section 22 were established in 1953. Prior to that, limitations had been maintained under other authorities, including the War Powers Act. Since 1953, a fairly comprehensive system of import restraints have been developed, not because of the growing degree of protectionism, sought by the industry, but because of the ingenuity of exporting nations in exploiting loopholes in established quotas or in developing products which would successfully evade those limitations.

The present quota system covers the so-called fat products such as butter and butter-oil, dried milk products and cheeses. In the case of cheese, there are quotas on Blue Mold, Cheddar, Other American, Edam and Gouda, and Italian cheeses. In addition, a "pricebreak" quota system has been established for Swiss and Gruyere-Process cheeses and two basket categories of cheese. Under the "pricebreak", imports are subject to quota if valued at less than the Commodity Credit Corporation purchase price for Cheddar cheese plus seven cents (currently $1.23 per pound). Imports of cheese in these tariff classifications valued over this level are nonquota. Current quota levels are shown in the attached table expressed in both metric tons and thousands of pounds. (Exhibit A).

A point which cannot be emphasized too strongly is that Section 22 and the import restraints imposed under its authority are basic elements of domestic food policy. The sole basis for action under Section 22 is the impact imports have on the operation of a domestic price support or similar program. In the absence of such impact, there is no authority to limit imports. On the other hand, in the absence of the authority of Section 22, price support programs of the United States could quickly become support programs for the world market. Such a situation would greatly increase government costs of the program and, inevitably raise cries for their termination due to these costs.

On January 4, 1979, President Carter informed the Congress of his intent to enter into a number of trade agreements resulting from the five years of talks under the Nixon Round of multilateral trade negotiations. The information concerning the agreements which accompanied this notification was sketchy at best. In many cases, the negotiations were still in progress. Even now, after the U.S. has initialed these agreements, some discussions continue and we have not had the opportunity to review the completed negotiation results.

Nevertheless, Congress will soon be faced with the task of judging the result of these negotiations and approving or disapproving a massive package of implementing legislation that will amount to approval of the agreements themselves. These agreements will have profound effects on American industry and agriculture. Much has been said of the value of these agreements. It should be noted, however, that all of this has been in general, nonspecific terms. In the case of agriculture, it is said that gains in terms of $3 billion worth of agricultural exports are involved. But one must be extremely cautious and searching in accepting such claims. The $3 billion represents the 1977 export value of farm commodities on which concessions of some sort have been granted by the various nations. We do not know the value of the concessions gained. We do not even know the full extent of their nature. There is, in fact, no way in which an informed judgment can be made on these concessions at this time.

On the other hand, the dairy industry is becoming fully aware of the price being exacted from it for the United States' presence at the negotiating table.

The dairy industry will be affected by three specific actions taken as part of these talks: (1) An expansion of cheese and other imports; (2) The nullification of the countervailing duty statute by the sepcific recognition of the right of exporting nations to employ export subsidies and the addition of an injury test to the U.S. countervailing duty statute; and (3) An International Dairy Arrangement.

As the U.S. approached these talks, the key phrase in addressing congress and industry was "free trade." Great things were promised in terms of export expansion, market access, resolution of the balance of payments problems and other gains by embarking on a new era of "free trade" which would result as other nations reduced the barriers erected against U.S. products.

Today, the key phrase is "fair trade." A subtle difference perhaps, but seemingly one that admits the negotiations have fallen far short of announced goals. While the same claims in terms of trade expansion, market access and other gains may be made, the very unwillingness to discuss specifics on the part of those responsible for the trade talks should be signal enough that they have failed to achieve announced objectives.

Based on information presently available, the trade talks will mean an expansion of cheese imports of 67 million pounds over 1977 levels. This represents an increase of one-third, with most of the traditional product entering this market with the assistance of substantial export subsidies. At the present time, cheese import quotas total 127,789,600 pounds. These imports, plus shipments of nonquotas varieties resulted in total imports in 1977 of 209.4 million pounds.

The negotiated agreement will result in U.S. cheese quotas increasing to about 243,240,000 pounds. Including the probable level of imports of nonquota cheese, total cheese imports on implementation of the agreement would be 275 million pounds. In addition to the expansion of cheese quotas, a 4.4 million pound quota on chocolate crumb has been approved for Australia.

It is proposed that the expansion of imports be accompanied by an expansion of coverage of the Section 22 quotas to include all cheeses other than sheep and goat's milk varieties and the soft cured cheeses such as Camembert and Brie.

In support of this package, three basic arguments are advanced:

(1) The expansion of coverage places a cap on cheese imports so that a known level is being dealt with;

(2) Under the present structure, imports of nonquota cheese above the "price-break" have been expanding and total imports by the mid-1980's would be as high or higher than if the proposed package is put in place; and

(3) Cheese consumption and production in the United States has been expanding and the increased level of imports can easily be absorbed without serious disruption to the industry.

Each of these arguments has basic flaws.

Experience has shown that each new quota level has simply been a new, higher plateau from which to work. In other words, the quotas always rise, they never go down. Illustrative of this is the situation with the pricebreak quotas which were originally established in 1968. In 1972, the pricebreak system was reworked and the quotas "adjusted." These "adjustments" resulted in a 378 percent increase in Swiss cheese quotas, a 242 percent increase for Gruyer-process cheese, and a 62 percent increase in the Other, NSPF category.

In the case of Cheddar cheese, the original quota was set in 1953. In 1966, the quota was raised by 33 percent and in 1967 it was increased again by 261 percent.

In addition to these specific increases, new quota categories have been created to award the ability of exporters to evade established quotas with a share of this market. The quota on Italian cheese not in original loaves resulted when exporters found they could evade the established quota on hard Italian cheese varieties by the simple expedient of cutting the loaves. The great expansion of Swiss imports in the mid-1960's came when the low grade "grinders" Swiss was imported for use in processed cheese products.

The entire system of import restraints on dairy product exhibits such actions. Thus, there is an abundance of historical evidence to support the concern that the new level of imports will be the "cap" only until a new evasion product is developed. Technology and imagination are the only limiting factors in this area and experience has proven there is an abundance of both available.

Our questioning of the real nature of this "cap" takes on greater significance since we understand that the Office of Special Trade Representative has steadfastly refused to make a commitment as part of the implementing legislation that this expansion does indeed represent a "cap" or ceiling on the imports of cheese.

To argue that the proposed system will actually mean a lower level of imports in the future than under the present structure, one must assume there is an unlimited market for the cheese varieties presently admitted outside of quota. The fact is that these cheeses could come in now if the market would bear the additional quantities. Actually, the level of these imports is more directly related to the strength of the U.S. cheese market than the fact that they can enter without limitation. These

imports rise during periods of strong cheese prices in the United States and tend to be stable or even decline on a low market.

This partially explains the expansion of these imports during 1978 when U.S. cheese prices were rising as demand expanded. If one were to apply the same logic to the 1977 import levels, the conclusion would be that this market was shrinking as the level of nonquota imports declined relative to 1976.

Imports on nonquota price break cheese, 1972-78

[In thousands of pounds]

Year:		Year:	
1978	107,875	1974	96,151
1977	83,315	1973	55,750
1976	89,645	1972	72,068
1975	78,234		

As the above table indicates, the level of imports of pricebreak cheese has fluctuated substantially in recent years. Prior to last year, the 1974 imports had been the highest achieved. To argue that last year's expansion is an indication of an expansion trend is to ignore what has taken place.

Further, the expansions of 1978 featured another aspect that totally eliminates the year as the basis for any valid comparison. By mid-October, it had become clear that Congress would not act to extend the countervailing duty waiver before it expired on January 3, 1979. This meant that the Department of Treasury would have to take some action to collect the countervailing duties that would be due on imports entering the country after that date. There began a rush to get as much product as could be managed into the country (with the aid of the export subsidies) before the authority expired. Imports of the nonquota pricebreak cheeses in November and December, 1978 were 157 percent of the level of imports for these products during the same months of 1977.

To further prove this was not mere coincidence of a further exhibition of the expanding demand and market for these products, one need only look to what has happend in the first few months of 1979. On January 3, the Department of Treasury did, indeed, announce that it would require importers to post bond or make cash deposits equal to the estimated countervailing duty liability on imported cheeses. Depending on the variety of cheese and the country of origin, this liability ranged from 20 cents to over $1.50 per pound. For January and February combined, the total imports of the nonquota pricebreak products were almost 50 percent below the same months of 1978. In other words, much of the increase in imports that has been described as natural growth was merely the scramble by importers and by exporting nations to assure themselves the benefit of the export subsidy without exposure to the risk of countervail.

Arguing that the U.S. industry can easily absorb the additional imports fails to take consideration of the question back to its basic point of impact—the farm. While cheese consumption has expanded sharply in recent years, this expansion has generally been met by shifting milk from other products where consumption has declined. The fact of the matter, regardless of how it is addressed, is that less milk will be needed off U.S. farms in order to make room in this market for the additional products of less efficient European dairy farmers.

Some data has been circulated by the administration arguing that this additional import level would result in minimal price reductions at the farm—an estimated 3.5 cents per hundredweight of milk even if the entire increase were put in effect in one action. This is based on a doctoral thesis done at Michigan State University late last year. We have not had an opportunity to assess the thesis, but it apparently is based entirely on an examination of the cheese market. In 1974, a USDA study of the same type examined the effect of imports on U.S. milk prices, but approached the question from the broader standpoint of the market for all manufactured products and the resulting impact on farm milk prices. Since the milk used to produce cheese is equally usable in the production of other products, this is the only valid approach to such a measurement. An updating of the USDA study results in a price impact on the farm of 21 cents per hundredweight for each 500 million pounds of milk equivalent (fat basis) of imports.

1977 imports totaled 1,968 million pounds of milk equivalent (fat basis). The proposed import expansion would add 682 million pounds milk equivalent to that. Measuring the impact on farm income on the basis of the USDA rsearch, yields a $349 million negative impact for the expansion alone and an impact of over $1.35 billion for total imports under the level proposed as the result of the trade talks.

The additional imports will displace domestic milk production that would otherwise be made into cheese. This displacement, in the short run, will be accommodated by additional Commodity Credit Corporation purchases of dairy products under the price support program. To accommodate the full extent of the increased imports would add $75 million to CCC costs.

In the longer term, the accommodation must be made on the farm through shrinkage of milk production. The equivalent of 682 million pounds of milk represents the output of some 60,500 average dairy cows at 1978 production levels. This would be the same as putting more than 1,200 dairy farms with 50 cow herds out of business.

The pressure for expanded imports comes from two sources. First, nations whose dairy production results in products surplus to their needs seek to find a place to dump that excess. Second, there are those who have been able to make substantial profits from these products, in great measure due to the export subsidies provided on them to assist their entry into the United States.

At the time the countervailing duty waiver agreement was entered between the United States and the European Community, the Department of Treasury agreed to monitor cheese entries from EC nations on a weekly basis and to report that information by cheese type, including the declared value of the product. A comparison of the declared value plus duty on some of these cheeses for one week in last November, 1978 with wholesale prices for which they were selling in the New York market is revealing.

Imported Blue cheese had an average margin of 29 cents per pound. Edam and Gouda margins were 42 cents. Provolone margins were at a 60 cent rate. Parmesan margins were $1.63 per pound.

These are the returns that are offered on these products simply because an importer holds a license. In some cases, the return exceeds the value of the milk that would go into the product if it were made in the United States. This is the situation which prevails today and the American dairy farmer is being told that more of this is good for his industry and for American agriculture.

An integral part of the trade negotiations has been the development of a subsidies code which will occassion major changes in the U.S. countervailing duty statute. This code seeks to ban the use of export subsidies on non-primary goods and primary minerals. In the area of agriculture, however, subsidies would be permitted. The U.S. has, in fact, sanctioned the use of the export subsidy as a legitimate tool in international trade in agricultural commodities—quite a different result than the directive set forth in the Trade Act of 1974

In exchange for this "concession", the United States has agreed to amend its countervailing duty statute to require proof of injury before acting:

The addition of an injury test to the statute reverses the longstanding intent of Congress. This law has always been a means of preventing injury to deomestic industry due to the export subsidy programs of other nations. With an injury test, it becomes a statute which permits, even requires, injury.

It has been argued that the injury test to be employed under countervail would be "soft" and that injury could easily be proven. Such assurances are counter to the experience the dairy industry has had in obtaining enforcement of the present, mandatory law. They fly in the face of the experience of other industries that have sought relief under the Antidumping Statute or in obtaining relief under other laws from unfair trade practices or import competition generally. The U.S. has, frankly, been extremely reluctant to provide domestic industry of any type with the full protection of these laws.

Adding an injury test to the countervailing duty statute creates a situation under which a subjective judgment must be made regarding the occurrence of injury. It would be a simple matter for that judgment to be in the negative, at which point the domestic industry is without recourse irrespective of damage.

Arguments that changes in procedures involved in adminstering the statute will make it more effective and speed action are unconvincing. First, none of the changes—expedited handling, provisional relief—are precluded under present law. The law does not require Treasury to take 12 months to reach a decision; it requires that one be reach in a 12 month period. The law does not bar the suspension of liquidation of the duties in a case under investigation. It just has not been done.

These changes could be made now, in all probability without further action by Congress. They do not constitute sound arguments for negating the effect of the statute. A countervailing duty statute with an injury requirement will, with the speed-up procedures suggested, simly be a faster means of saying "no" in situations that require the imposition of countervailing duties at present.

For the dairy industry, the presence of the dairy price support program virtually precludes the possibility of proving injury, as CCC will make product purchases sufficient to maintain a price level determined by the Secretary of Agriculture to be sufficient to produce an adequate supply of milk. Earlier, in support discussions with U.S. trade negotiators, it was suggested that "interference with a domestic price or similar program" would be one of the bases for proving injury. It is our understanding that such a provision was objected to by other nations and has not been included in the subsidies code. Even if it were, the problem of proving interference would be just slightly less that establishing injury itself.

The procedures recommended by the Subcommittee to prevent price undercutting due to export subsidization of dairy products covered by Section 22 quotas would appear to be an improvement over the countervailing duty statute with the addition of an injury test. This does not, however, remove the basic objection of the dairy farmer.

The fact remains that the use of the export subsidy has been specifically sanctioned and the U.S. government has officially accepted the position that it is all right to require domestic producers of a product to compete with the treasuries of other nations. A very high percentage of the dairy products entering this market—and this will apply to the increases granted through the negotiations—can do so only with the assistance of substantial export subsidies. The simplest way to explain the results of these trade talks as they apply to the dairy industry is that the United States has agreed to give away a segment of this market and then further agreed to permit other nations to use whatever means necessary to make their products competitive in the market.

There is no economic basis for such action. It is something dairy farmers simply do not accept as right or necessary.

A final feature of the trade package concerning the dairy industry is an International Dairy Arrangement. This takes the form of a commodity agreement that essentially provides for the exchange of information on production, consumption, prices, stocks, and trade in dairy products by signatory nations. It also requires consultation between signatories to review the world dairy situation and to identify remedies for market imbalances for consideration by member countries.

Both USDA and STR have consistently denied that the agreement, in any way, would impinge on the U.S. ability to determine its own dairy policy—including price support levels, Section 22 quota actions or other moves.

As protocols to the arrangement, minimum pricing agreements are provided for certain basic milk products. these establish a minimum price for nonfat dry milk at 19.3 cents per pound, butter at 42 cents per pound, and cheese at 36.3 cents per pound.

In each instance, the minimum price level is substantially below any realistic commercial price for the product. In the U.S., for instance, the CCC purchase prices for product under the dairy price support program are as follows: nonfat dry milk, 79 cents; butter (New York), $1.24 and cheese, $1.16 per pound. Since U.S. price levels are at least competitive with nations other than New Zealand, the minimum prices in the agreement represent nothing more than an expression of intent not to subsidize exports below that level.

As indicated, the full results of this negotiation are now known even though the President has already entered into the agreements.

Based on what we have been able to learn of the agreements, however, the National Milk Producers Federation has made a careful analysis of the impact this would have on the domestic dairy industry—specifically on the dairy farmer and his cooperative marketing association. The impact is negative. Because of this, the voting delegates at the Federation's annual convention late last year unanimously expressed opposition to any trade agreement which would expand dairy product imports, relegate the countervailing duty statute to a dead letter through the addition of an injury test, and expressed opposition to any package of trade agreements or legislation of which these items were a part. More recently, the Executive Committee of the Federation again reviewed these questions and again unanimously expressed their opposition to these moves.

We are fully aware that other nations have long argued that the import limitations maintained on dairy products by the U.S. are most objectionable. The fact is that the U.S. has the most open market of any major dairy producing country in the world. Other nations, particularly those most anxious for a larger share of this market allow imports on a much more limited basis or ban them completely.

Even while we are granting expanded access to this market, the U.S. government is ignoring the expanding problem of casein and caseinate imports and the effect this is having on the dairy price support program.

Historically, casein—essentially, milk protein—has been used for a variety of industrial applications including paint, plastics, adhesives and paper coatings. As technologies have changed and price relationships shifted, that market has been lost to a variety of synthetic products. However, this loss has been more than made up for in the use of casein and caseinates in a growing variety of food and feed products, generally as a replacement for nonfat milk solids.

There is attached to this statement a copy of a petition the Federation addressed to Secretary of Agriculture Bergland a year ago requesting the establishment of a Section 22 quota on these products when imported for food and feed use. to date, the only response of the Department of Agriculture has been that there is no problem or if there is, it is not due to casein imports.

We have renewed this request because it is essential as part of the effort to maintain the dairy price support program. It is impossible for dairy farmers to understand how their government can so lightly treat such basic issues. On the one hand we are confronted with the justified concerns over government costs and, on the other, we witness the refusal to take actions which will not only reduce government costs, but improve farm income as well.

We commend the Subcommittee for its move to direct an International Trade Commission investigation of the end use of imported casein and caseinates and an examination of the impact on domestic price support programs. As you will note from the petition to Secretary Bergland, there can be no question that the adverse impact is present. While detailed knowledge of the shift in use patterns is lacking, there is general agreement that such changes have taken place. An investigation by the Commission will provide the information needed to document this.

We have not been able to fully assess the overall impact of the trade talks. It has not been possible to do this because specific information regarding gains and losses has not been made available. There has been much talk, in general terms, of the great good that will flow from the agreements, however, the lack of specifics that would make it possible to assess the facts of the matter lead us to wonder.

Surely, after five years of negotiating effort and after the agreements have been initialed, this information can be provided. If not, its very absence should be a signal to the Congress that all is not well and that the Congress would go slow in reviewing any particulars related to these trade agreements.

Much has been made of the broad nature of the consultations that went on between industry and government in the preparation for and in the conduct of these trade talks. Congress did, in fact, intend that such consultations take place and that they be serious in nature. We cannot comment on other commodities or other sectors, but in the case of dairy, little, if any, serious consideration was given to the advice received from the advisory committees. Further, it is our understanding that those expert in the dairy area have been precluded from commenting on the major provisions of the negotiations as they affect the dairy industry as their views do not coincide with those of the trade negotiators.

The dairy industry is fully aware of the importance of international trade to the U.S. economy in general and to major segments of agriculture specifically. We do not feel, however, that a case can be or has been made for the sacrifice of a significant segment of the dairy industry in exchange for some hoped for gain in other areas.

It is understood that the following is the expansion of cheese import quotas offered by the United States. The data are presented in both metric tons and thousands of pounds.

EXHIBIT A

Type of cheese	Current quota		1977 imports		Offered by U.S.	
	Metric ton	1,000 lbs	Metric ton	1,000 lbs	Metric ton	1,000 lbs
Blue Mold	2,276	5,017.0	1,569	3,354	2.500	5,511.5
Cheddar	4,552	10,037.5	4,203	9,337	5,595	12,334.7
Other American	2,766	6,096.6	2,701	6,407	3,480	7,672.0
Edam and Gouda Natural	4,174	9,200.4	3,293	8,251	5,680	12,522.1
Edam and Gouda Processed	1,429	3,151.0	477	1,064	1,429	3,150.4
Italian, original loaves	5,216	11,500.1	4,310	9,803	5,966	13,152.6
Italian, not original loaves	677	1,494.0	595	1,343	777	1,713.0
Swiss [2]	9,260	20,420.0	[1] 27,150,	59,627	30,871	68,058.2
Gruyere process [2]	5,099	11,242.0	[1] 7,492	15,280	8,052	17,751.4

Footnotes at end of table.

EXHIBIT A—Continued

Type of cheese	Current quota		1977 imports		Offered by U.S.	
	Metric ton	1,000 lbs	Metric ton	1,000 lbs	Metric ton	1,000 lbs
Other, NSPF [2]	18,474	40,730.0	[1] 25,109,	55,355	39,776	87,690.1
Other, lowfat [2]	4,037	8,901.0	3,014	6,645	6,207	13,684.0
Total	57,960	127,789.6	79,913	176,466	110,333	243,240.0

[1] 1977 import levels include nonquota imports at above price break levels.
[2] Pricebreak categories.

In addition to the above, there would be imports of sheep and goat's milk cheese which in 1977 totalled 11,275 metric tons or 24,856,865 pounds. Also, soft cured cheeses such as Brie and Camembert will not be covered under quota. Imports of these in 1977 totalled 3,100 metric tons or 6,834,260 pounds. Inclusion of these items would bring total cheese imports at the new level to 274,931,255 pounds.

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D.C., May 10, 1978.

Hon. BOB BERGLAND,
Secretary, U.S. Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: The National Milk Producers Federation, on behalf of its member dairy cooperative marketing associations and their dairy farmer members, urges immediate action by the U.S. Department of Agriculture toward establishment of a zero level quota under the authority of Section 22 of the Agricultural Adjustment Act on imports of casein and mixtures of casein, classified as Items 493.15 and 493.16 respectively, under the Tariff Schedules of the United States (TSUS) when such products are imported for use in human food or animal feed.

Except for a limited class of mixtures of casein provided for under TSUS 950.19, these products are not presently subject to any import limitation. This omission of a major category of imports from coverage under Section 22 has stemmed from the historical use pattern of the product. This use pattern has changed substantially in recent years however. There is presently no question that these articles are being imported into the United States under such conditions and in such quantities as to render or tend to render ineffective or materially interfere with the operation of the dairy price support program.

Casein utilization

Information on the use of casein in the United States is limited. In the past, it has had broad application in a variety of industrial uses including paper coatings, adhesives, plastics, paints and synthetic fiber production. With the development of synthetic materials and the increased cost of casein, many of these uses have been lost or substantially reduced. As these have declined, use in human food and animal feed has increased.

The major use in animal feed is in milk replacer products for calf and pig feeding. In this instance, casein has largely replaced domestically produced nonfat milk solids.

The greatest expansion has taken place in food uses. A 1977 study by USDA's Economic Research Service estimated that 36 percent of the casein imported into the United States in 1976 entered food use. Major food uses of casein and its products include coffee whiteners, whipped toppings, whipping powders, imitation milk and cheese, instant breakfasts, cereals and baby foods. They are also found as binders in sausages, weiners, and luncheon meats and as protein supplements in bakery products, frozen desserts, soups and dietary foods.

Table 1 provides a tabulation of estimates of casein and caseinate use in the United States for selected years from 1940 to 1976. This clearly indicates the dramatic shift that has taken place from 1940, when food and feed uses were of such insignificance that they could be categorized under "Other," to 1976 when they presented 71 percent of the total.

Level of imports

Casein imports in recent years had been relatively stable in the range of 100 to 135 million pounds. An exception was 1975, when imports fell to 58.4 million

pounds. Shipments rebounded to 112.1 million pounds in 1976, however, and reached a record 144.2 million in 1977. Table 2 details U.S. production and imports of casein.

Many sources indicated that the increased imports in 1977 were due to trade anticipation of final action by the Food and Drug Administration on amendments to the standards of identity for frozen desserts which would have allowed the use of caseinates as a substitute for whole milk solids-not-fat in ice cream. This proposal was withdrawn late in the year, and FDA has announced that existing standards will continue in effect pending a decision on a public hearing. While anticipation of the FDA changes might have had some influence, current import levels clearly indicate other factors are involved. For the first three months of 1978, imports are 125 percent of the level of January, February and March, 1977 and 175 percent of the comparable period for 1976.

It has been suggested that a major reason for the increase in imports is the current resurgence in the U.S. economy, particularly homebuilding and the increased use of casein in adhesives. There is little evidence to support such an hypotheses. This would be a reversal of a 20 year trend that began with the development of synthetic materials. Further, the advancing price of casein in the last year would only serve to make substitute materials more attracitve.

Weekly market reports issued by USDA indicate a continuing strong demand for casein and caseinates in the world market. Over the past four months, repeated references are made to tight supplies, current production being devoted to meeting contractual obligations and further anticipated price increases. This does not indicate a lessening of the rate of imports in the months ahead.

Displacement of domestic product

The primary food and feed uses for these imports result in the displacement of domestic agricultural products, notably nonfat dry milk. This displacement results in increased purchases of nonfat dry milk by the Commodity Credit Corporation in order to effectuate the dairy price support program. A review of nonfat dry milk production, utilization, CCC purchases and estimated displacement is presented in Table 3.

Presently, the Commodity Credit Corporation is making substantial purchases of nonfat dry milk under the dairy price support program despite the fact that domestic production of the commodity is only about one-half what it was 15 years ago.

The consumption decline has been almost continuous over the last ten years. The apparent increase in 1973 must be discounted due to the accounting of imports which places such products in domestic commerical consumption as soon as they are landed. There were substantial import expansions during 1973. However, a survey by the International Trade Commission in September of that year indicated that a substantial portion of the imported product had not been moved into consumption channels (TC Publication 616, October 1973, page 10).

The consumption decline for nonfat dry milk is due, at least in part, to the expanded food use of caseinates in a wide variety of products. As reported by the Economic Research Service of USDA in its Staff Report on Casein (April 20, 1977). "Much of the increase in the use of casein in food and feed products is due to the fact that it is a low cost protein substitute for nonfat dry milk."

This substitution leads directly to added purchases of nonfat dry milk by the Commodity Credit Corporation. The product displaced by imported casein, lacking an alternative market, is directed to CCC under the dairy price support program. This increases the cost of the price support program. More importantly, it interferes with the achievement of the purposes of the price support program.

Added cost under price support program

One hundred pounds of liquid skim milk yields 9.2 pounds of nonfat dry milk or about three pounds of dried casein. If the bulk of the displacement is on the basis of achieving a similar protein content, one pound of casein will replace 2.9 pounds of nonfat dry milk or its equivalent in milk solids-not-fat. Thus, for 1976 when USDA estimates that 79.6 million pounds of casein and caseineates went into food and feed uses, the displacement would have totaled 230.8 million pounds.

As indicated, these imports expanded significantly in 1977. The record levels reached during the year continue to be exceeded as monthly data for 1978 become available. One can assume the industrial use during 1977 was no higher than the 32.5 million pounds for 1976. The sustained decline in these uses in past years alone would support this view.

The increased import levels during 1977, with 32.5 million pounds going to industrial uses and the 111.7 million pound balance being used for food and feed, would mean displacement of 323.9 million pounds of nonfat dry milk or its equivalent. The cost of displacement on the 1977 scale, using the current 71 cent per pound CCC

purchase price for nonfat dry milk is $230 million in purchase costs alone. Table 4 presents a review of the costs added to the price support program in recent years due to these imports.

Applicability of section 22

It has been argued that the application of Section 22 to these products may not be appropriate since there is little, if any, commercial casein production in the United States. The statute makes no requirement regarding domestic production of the specific commodity. It directs itself to "* * * any article or articles are being imported or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this chapter * * *".

The test that must be met is the existing or potential impact of the imports on a domestic price support or similar program. Section 22 was approved by the Congress in order to provide a means of assuring the effective operation of domestic price support programs. In this sense, it is a shield behind which these programs can operate. Without it, the United States would be faced with the prospect of attempting to stabilize argicultural prices for the world as this market became a dumping ground. Recent studies by the U.S. Department of Agriculture have recognized the essential nature of this with regard to the dairy price support program by pointing out that the price support program could not be maintained in the absence of effective import limitations under Section 22.

In this regard, Section 22 is a basic element of domestic agricultural policy. Its aim or intent is to permit the development and operation of effective domestic price stablization program. It does provide means of recognizing legitimate markets for imported products in this country. At the same time, however, it is the simplest and most straightforward means of effectuating necessary import limitations. Its effective use cannot be ignored in the continuing effort to maintain a sound dairy price support program.

A further point raised against application of Section 22 in this instance is that these products are classified as chemicals under the Tariff Schedules of the United States. Again, the statute imposes no requirement as to tariff classification or description of the product.

An argument has been made that enforcement of limitations under Section 22 would be difficult since casein for industrial uses is basically indistinguishable from that entering food and feed uses. Since industrial use imports would continue to enter outside of quota, we recognize the need to establish some basis of enforcement. The industrial use provision would be in the nature of an exemption. A system of certification should be adopted whereby importers and users would certify that the end use was indeed an industrial application. Another possible means would be to require imported casein to be denatured in some manner so as to render it unfit for human or animal consumption.

Industrial versus food and feed uses

Recognition of the differing impact of casein imported for industrial uses and that entering for other applications is accorded in the legislative history of several laws passed by Congress during the period of 1957 to 1962. Public Law 87-606 permanently transferred casein to the duty free list of the Tariff Schedules of the United States. In doing this, however, the duty on mixtures of casein, TSUS Item No. 493.16, was retained. This same action had been taken on a temporary basis in Public Laws 85-257, 86-405 and 86-562. The major point of support for the duty free status for casein was that the product's major use was in industrial production.

On the other hand, the duty on mixtures of casein, primarily caseinates, was retained because these products were imported largely for food uses. Concern was expressed that duty free casein might be converted for food use after entering this country. In that regard, the Senate Finance Committee, in its report on H.R. 9862 (Senate Report 1270, April 14, 1960) stated: "The members of the committee, however, will maintain a continuing interest in this matter, and anticipate that the Department of Agriculture and other interested agencies will watch developments and ascertain to the extent feasible the amounts of imported casein being used for, or converted to, edible uses in competition with domestic agricultural products. Should such large scale uses develop, the committee will want to be made aware of them."

Representative period

The assignment of a zero level quota in this instance is appropriate as the historical use of imported casein has been for industrial purposes and quotas are not

being sought in this area. As indicated, available data suggest that substantial food and feed use of imported product did not begin until the late 1950's or early 1960's, well after the initiation of the dairy price support program. Selection of a "representative period" after this substantial conversion of use was well underway would, at least indirectly, support a subversion of the dairy price support program.

Summary

At a time when concerns are being expressed regarding the cost of the dairy price support program and the nonfat dry milk inventory which has accumulated, the casein and caseinate imports for food and feed use represent an increasing interference with the operation of the price support program. This interference is represented both in the increased government costs and in continued depression of nonfat dry milk prices which reduces the price of milk to farmers, interfering with achievement of the basic goals of the price support program.

Section 22 was provided for the express purpose of permitting domestic programs to achieve the intended goals. It is a central element of domestic agricultural policy. Its application in the current situation is not only warranted, but required.

In view of the expanding imports of casein and mixtures of casein and the rapidly changing nature of the use of these imports, we urge immediate action by the Department of Agriculture to recommend to the President that he act under the authority of Section 22 to establish a zero level quota on Casein and casein mixtures entering this country for food and feed use.

Sincerely,

PATRICK B. HEALY, *Secretary.*

Attachments.

TABLE 1.—CASEIN UTILIZATION, UNITED STATES, SELECTED YEARS

Use	1940 [1]		1955 [1]		1967 [1]		1970 [1]		1976 [2]	
	Mil No.	Percent	Mil No.	Percent	Mil No.	Percent	Mil No.	Percent	Mil No.	Percent
Food and feed	([3])		1.0	1.3	36.1	36	60	50	40.4	36, food.
							70		39.2	35, feed.
Industrial use			([4])				60–70	50	32.5	29.
Paper	42.1	70			34.0	34				
Paints	5.4	9			([3])					
Glues	6.8	11			10.0	10				
Gypsum	([3])				([3])					
Plastics	2.1	4			1.5	2				
Other	3.8	6			18.1	18				
Total	60.2	100	77.5		99.7	100	131.6	100	112.1	100.

[1] USDA, "Dairy Situation", DS–334, March 1971.
[2] USDA, "Staff Report on Casein", April 20, 1977.
[3] Included in "Other".
[4] Not enumerated.

TABLE 2.—PRODUCTION AND IMPORTS OF CASEIN, UNITED STATES, 1935–77

[Millions of pounds]

	Production	Imports
Calendar year:		
1935 to 1939 average	48.1	8.2
1947	35.8	20.9
1948	14.4	40.6
1949	18.3	33.1
1950	18.5	54.6
1951	21.6	43.4
1952	7.5	56.8
1953	5.5	74.2
1954	5.2	59.8
1955	3.1	74.5
1956	2.5	70.7
1957	1.7	74.6
1958	.6	91.3
1959	.1	94.5
1960	.9	92.2
1961	.6	101.8
1962	1.2	95.6
1963	1.7	87.9
1964	2.1	108.5
1965	3.0	91.8
1966	2.7	107.9
1967	1.4	99.7
1968	.8	115.1
1969	.....	116.1
1970	.....	135.3
1971	.....	105.9
1972	.....	105.4
1973	.....	112.8
1974	.....	113.3
1975	.....	58.4
1976	.....	112.1
1977	.....	144.2

Source: Various USDA publications.

TABLE 3

[In millions of pounds]

	Nonfat dry milk production	Domestic commercial consumption	Net CCC purchases	Casein imports for food, feed	Nonfat equivalent	Adjusted CCC purchases
Calendar year:						
1967	1,679	982	687	[1] 35.9	104	583
1968	1,594	1,058	558	[1] 46.0	133	425
1969	1,452	1,042	407	[1] 52.2	151	256
1970	1,444	960	452	[2] 67.7	196	256
1971	1,418	958	456	[2] 57.2	166	290
1972	1,223	853	335	[2] 61.1	177	158
1973	917	1,056	37	[2] 69.9	203	(166)
1974	1,020	839	265	[2] 73.6	213	52
1975	1,002	668	395	[2] 39.7	115	280
1976	926	743	157	[2] 79.6	231	(74)
1977	1,105	697	464	111.7	324	140

[1] 36 percent of imports for 1967; 40 percent, 1968; 45 percent, 1969.

[2] 50 percent of imports for 1970; 54 percent, 1971; 58 percent, 1972; 62 percent, 1973; 65 percent, 1974; 68 percent, 1975; 71 percent, 1976.

TABLE 4.—INCREASE IN DAIRY PRICE SUPPORT PROGRAM COSTS DUE TO CASEIN IMPORTS, 1967–77

	CCC purchases (million pounds)	CCC NFDM purchase price (weighted) (per pound)	Program costs (millions)
Calendar year:			
1967	104	$0.1960	$20.4
1968	133	.2242	29.7
1969	151	.2335	35.3
1970	196	.2648	51.9
1971	166	.3087	51.3
1972	177	.3170	56.1
1973	203	.3875	78.7
1974	213	.5601	119.2
1975	115	.6070	69.8
1976	231	.6240	144.0
1977	324	.6715	217.5

Mr. VANIK. Getting to page 14 you say the simplest way to explain the results of these trade talks as they apply to the dairy industry is the United States has agreed to give away a segment of the market and further agreed to permit other nations to use whatever means necessary to make their products competitive in the market.

Would you be in favor of blocking all subsidied cheeses but letting in free unsubsidized New Zealand and Australian cheeses? They would murder you, wouldn't they?

Mr. HEALY. Your base price for milk in this country is $10.51. And in the European Community today the base price is about $12.51.

Mr. VANIK. What is our prices?

Mr. HEALY. $10.51. The support level. In Europe they are paying their farmers substantially more.

Mr. VANIK. What is it in New Zealand?

Mr. HEALY. In New Zealand it is whatever the market brings.

Mr. VANIK. What is it?

Mr. HEALY. Somewhere between $8 and $9. New Zealand, however, only produces 16 or 17 billion pounds of milk, less than we produce in the State of Wisconsin. New Zealand would not do this thing to us by itself. Every place else subsidizes their exports. They pay too much for it. Therefore, they get too much and now they want us to take their problem off their hands. We have been very moderate in our approach to pricing in this country and have attempted to keep prices which call out just exactly the right amount of milk.

As a matter of fact, last year we made a hole-in-one. We marketed off farms 119.2 billion pounds of milk. There was commercial demand for 119.2 billion pounds of milk—an exact balance between supply and demand. We have done this by being moderate and restrained in our demands for price.

Other nations who have given way to the politics of agriculture have not been so moderate. They have made serious problems for

themselves. Now they are in the process of dumping that problem on the American dairy farmer.

Mr. VANIK. On page 16 you talk about the casein imports. I want to tell you we are asking for an ITC 332 study of this issue for you. We understand that problem and so we are going to try to get some handles on it so that ought to be of some little bit of help.

Mr. HEALY. It will be of great help.

Mr. VANIK. What we are hoping for, Mr. Healy, if we are going to get this through Congress, we have to have a wide base of support. We thought we would get a more favorable reaction from the dairy industry.

I have heard some upsetting positions here. We would appreciate an update of the figures you offer us.

Mr. HEALY. I will provide those this afternoon for the committee.

Mr. VANIK. I have read a brief analysis that was prepared by Jim Houck. I think you had that submitted. What do you have to say about that? Jim Houck, Department of Agriculture Economics, University of Minnesota.

He said if the new quota system had been put into effect last year approximately 15,000 metric tons of additional cheese could have been imported into the United States on an annual basis. Since the implementation of new quota system is proposed for 1980 this 15,000 ton figure is likely to be an upper estimate. This is because cheese imports, especially price break imports, have been increasing recently, and will continue to do so.

Moreover, increased quota levels may not necessarily be filled with increased imports. In fact, in 1977 and 1978 actual cheese imports were below quota levels: 83 percent in 1977 and 87 percent in 1978.

[The analysis referred to follows:]

A BRIEF ANALYSIS OF THE MTN AGREEMENT ON DAIRY IMPORT QUOTAS

(By James P. Houck*)

The proposed MTN agreement on dairy imports enlarges the quotas on foreign cheese, eliminates the current "price break" system, and brings all "price break" cheeses under the new quota. If the new quota system had been put into effect last year, approximately 15 thousand metric tons of additional cheese could have been imported into the United States on an annual basis.[1]

Since the implementation of the new quota system is proposed for 1980, this 15 thousand ton figure is likely to be an upper estimate. This is because cheese imports, especially "price break" imports, have been increasing recently and probably will continue to do so. Moreover, the increased quota levels may not necessarily be filled with increased imports. In fact, in 1977 and 1978, actual cheese imports were below quota levels (83 percent in 1977 and 87 percent in 1978).

However, for the purpose of this discussion, assume that all of the potential 15 thousand metric tons enters in a single year. This is the equivalent of 275 million additional pounds of milk on the domestic market. To be generous with this estimate, allow it to be 300 million additional pounds of milk equivalent. This is approximately one quarter of one percent (0.25 percent) of the total annual U.S. milk production. It also represents slightly less than one percent (0.9 percent) of total U.S. cheese production on an annual basis.

Taking the same price response estimates used recently by a spokesman for dairy interests, this potential increase in imports could depress milk prices by 5.4 cents

*Professor, Department of Agricultural Economics, University of Minnesota.

[1] The new quota level is 124,000 metric tons. Cheese imports totaled 109,000 tons in 1978. The difference is 15,000 metric tons. This is the equivalent of about 275 million pounds of milk. All data in this paper are drawn from official USDA publications and sources, including the "Dairy Situation," ESCS, USDA (various issues) and "Agricultural Statistics," USDA, 1978.

per hundredweight at the farm level.[2] This particular downward movement in prices would occur only if nothing else changed and if cheese prices were sufficiently above support levels so that a downward adjustment of this magnitude actually could occur. Cheddar cheese prices in the market would need to be one or two cents per pound above supports for this to happen. If not, government cheese purchases would prevent the price from falling. Based on the 1978 average farm price of all manufacturing milk, $9.68 per hundredweight, this downward price pressure of 5.4 cents due to increased imports is equal to a little over half of one percent (0.56 percent) of the 1978 price. Compare this to average increases in farm milk prices of about 8.1 percent per year since 1970.

Taking the 1978 level of milk output as a basis, the cost of this trade concession to U.S. dairy farmers is $66 million (5.4 cents per hundredweight times 1,219 million hundredweight). This represents about one half of one percent (0.5 percent) of the farm value of milk production in 1978.

Some observers like to think of imports and changes in imports in terms of the dairy farms and dairy herds that they represent. Recall that the proposed quota increase would add 300 million pounds of milk equivalent to U.S. markets. At 1978 production levels, this is equivalent to 27 thousand average milk cows. This may seem like a lot of cows, but it is only about one quarter of one percent of the U.S. dairy herd in 1978. Furthermore, each year since 1955, the U.S. dairy herd has dropped in size by an average of 440 thousand cows per year. So in perspective, the maximum impact of the quota increase is on the order of 6 percent of the annual dairy herd shrinkage that has been underway for many years. This phenomenon has had almost nothing to do with imports or trade policy.

Look at this from another viewpoint. The 27 thousand cows replaced by new imports also could be taken to represent about one thousand average-sized dairy herds (farms) in the United States. Between 1955 and 1978, about 16 thousand of these 27-cow herds went out of production each year. Moreover, the rate at which all milk-cow farms disappeared between 1965 and 1974 was 70 thousand farms per year (see attached table). This may be a deplorable situation to dairy interests, but it has very little to do with imports.

No one could argue that increased import quotas bestow direct economic benefits on U.S. dairy farmers. But, on the other hand, the negative impact of the proposed quota increases under the MTN agreement is almost negligible in any realistic perspective.

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[2] Graf, Truman F. "Statement on International Trade Negotiations and the U.S. Dairy Industry," March 5, 1979. The author used analyses reported in "The Impact of Dairy Imports on the U.S. Dairy Industry," Agricultural Economic Report No. 278, ERS, USDA, January 1975.

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NUMBER OF MILK COW FARMS

The top ten ranking States in number of milk cow farms in 1974 were as follows: Wisconsin, 54,000; Minnesota, 36,000; Kentucky, 26,000; Pennsylvania, 25,500; North Carolina, 25,500; Missouri, 23,000; New York, 22,000; Iowa, 20,000; Tennessee, 18,000; Ohio, 16,500. This number includes farms with milk cows even where all milk was consumed on the farm where produced. Please refer to the chapter on Minnesota's Rank in the Dairy Industry for historic aspects of change in rank.

TABLE 61: NUMBER OF MILK COW FARMS, BY STATES, 1965-74

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Alabama	33,000	28,000	24,000	20,000	16,000	13,000	11,000	9,000	8,000	7,000
Alaska	110	90	90	90	90	90	90	80	70	70
Arizona	1,500	1,300	1,200	1,100	1,000	800	800	780	750	800
Arkansas	25,500	22,000	19,000	17,000	14,000	12,000	10,000	9,000	8,000	8,000
California	11,300	10,000	9,300	8,700	8,000	7,200	6,500	6,300	6,100	5,900
Colorado	9,800	9,000	8,000	7,600	6,600	6,000	5,400	5,200	5,000	5,000
Conn.	2,600	2,300	2,100	1,900	1,800	1,600	1,500	1,400	1,300	1,200
Delaware	850	750	700	650	600	550	500	450	450	450
Florida	4,700	4,200	3,800	3,600	3,300	3,000	3,400	3,500	3,500	3,100
Georgia	22,000	20,000	16,000	13,000	11,000	9,000	8,000	7,000	6,000	5,000
Hawaii	200	190	170	150	130	110	100	100	100	100
Idaho	14,000	13,000	11,500	10,500	9,500	8,500	7,600	7,000	6,200	6,200
Illinois	27,000	23,000	20,000	18,000	19,000	16,000	15,000	14,000	12,000	12,000
Indiana	23,000	20,000	17,000	15,000	15,000	14,000	13,000	12,000	11,000	11,000
Iowa	57,000	50,000	44,000	39,000	36,000	32,000	28,000	24,000	22,000	20,000
Kansas	24,500	21,500	19,500	17,000	15,500	13,500	12,000	10,500	9,000	8,000
Kentucky	57,000	53,000	47,000	42,000	37,000	33,000	30,000	27,000	26,000	26,000
Louisiana	24,000	21,500	18,000	16,000	14,000	12,000	11,000	10,000	9,000	9,000
Maine	4,400	3,800	3,400	3,100	2,900	2,500	2,400	2,300	2,200	2,200
Maryland	6,700	6,400	6,000	5,600	5,400	5,000	4,800	4,600	4,400	4,200
Mass.	2,800	2,600	2,300	2,100	1,900	1,700	1,600	1,500	1,400	1,400
Michigan	31,000	28,000	24,000	22,000	20,000	18,500	17,500	16,000	14,700	14,000

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TABLE 61: NUMBER OF MILK COW FARMS, BY STATES, 1965-74

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Minnesota	72,000	69,000	62,000	56,000	51,000	46,000	44,000	41,000	38,000	36,000
Mississippi	35,000	31,000	26,000	23,000	19,000	16,000	14,000	12,000	9,000	9,000
Missouri	56,000	51,000	46,000	40,000	36,000	31,000	27,000	26,000	25,000	23,000
Montana	10,400	9,400	8,600	7,800	7,200	6,500	5,800	5,300	4,500	4,500
Nebraska	27,000	24,000	21,000	18,000	16,000	14,000	12,000	11,000	10,000	9,500
Nevada	900	900	800	800	700	600	600	550	550	550
N. H.	2,500	2,100	1,900	1,700	1,500	1,300	1,100	1,000	900	900
N. J.	2,500	2,300	2,100	1,900	1,700	1,600	1,500	1,400	1,300	1,000
N. Mex.	3,700	3,500	3,100	2,800	2,500	2,200	2,000	1,900	1,500	1,500
New York	39,000	37,000	35,000	32,000	30,000	28,000	26,000	24,500	22,500	22,000
N. C.	43,000	40,000	34,000	35,000	24,000	30,000	27,000	27,000	13,000	15,500
N. Dak.	20,000	18,000	16,000	14,000	13,000	12,000	11,000	10,000	9,000	8,500
Ohio	40,000	36,000	32,000	29,000	26,500	23,500	21,500	19,800	18,300	16,500
Oklahoma	22,000	20,000	17,000	16,000	14,000	13,000	11,500	10,500	9,000	9,000
Oregon	12,500	11,000	9,800	8,500	7,400	6,500	5,600	5,200	4,800	4,800
Pa.	42,000	40,000	38,000	35,000	32,000	30,000	29,000	27,000	26,000	25,500
R. I.	350	320	290	260	230	210	180	170	170	170
S. C.	11,000	9,000	8,000	7,000	6,000	5,000	4,500	4,300	4,000	3,800
S. Dak.	20,500	19,000	17,500	15,500	14,000	13,000	12,000	11,000	10,000	9,000
Tennessee	51,000	46,000	42,000	37,000	33,000	30,000	27,000	23,000	18,000	18,000
Texas	40,000	37,000	34,000	31,000	28,000	26,000	22,000	18,000	16,000	16,000
Utah	6,200	5,700	5,300	4,700	4,200	3,800	3,500	2,700	2,400	2,600
Vermont	7,300	6,800	6,400	5,900	5,500	5,100	4,800	4,700	4,600	4,500
Virginia	37,000	34,000	30,000	26,000	23,000	20,000	18,000	16,000	14,000	13,500
Wash.	14,000	12,500	11,000	9,500	8,200	7,000	6,200	6,000	5,700	5,000
W. Va.	19,000	17,000	14,000	12,000	10,000	8,500	7,500	6,500	6,000	6,100
Wisconsin	86,000	82,000	76,000	71,000	68,000	64,000	62,000	59,000	56,000	54,000
Wyoming	3,900	3,600	3,400	3,100	2,800	2,600	2,400	2,300	2,100	2,100
UNITED STATES	1,107,710	1,008,750	898,250	808,550	724,150	657,460	599,870	549,530	489,490	473,140

Mr. VANIK. Now what comments do you have to make on that?

Mr. HEALY. First, since 1974 the price break cheeses, nonquota price break cheeses, were imported at a fairly stable level. It was just in 1978 that we saw the big bulge in the last quarter to escape the bond that was required to cover potential countervailing duty liability. Upon until January 4 that nonquota cheese did come in at a greater level. In 1977 we had 83 million pounds of these cheeses. About 25 million pounds extra came in in 1978.

Mr. VANIK. In order to expedite the time of the committee, this last statement he makes:

No one could argue increased quotas bestow direct economic benefit on American dairy farmers but, on the other hand, negative impact of proposed quota increases under the MTN agreement is almost negligible in any realistic perspective.

Now I would suggest that you review this and provide a commentary on what Professor Houck has prepared here, so that we have both his statement and your analysis of what he has said before us, and we will have that in the record at this point because we want to make a proper judgment.

[The response follows:]

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D.C., April 26, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington. D.C.

DEAR MR. CHAIRMAN: During my testimony before the Subcommittee on Trade with regard to the multilateral trade negotiations and the impact the recently completed trade agreements would have on the U.S. dairy industry, Members of the Subcommittee requested information on several points which we are pleased to provide.

The National Milk Producers Federation appreciates the opportunity to present the views of the dairy cooperative marketing associations and their dairy farmer members with regard to the trade talks. We have followed the progress of the negotiations closely and, it is fair to say, with no little apprehension. We have been fully aware of the pressures from other nations for expanded access to this market. At the same time there have been repeated demonstrations of willingness on the part of officials of the U.S. government to accede to these requests.

During the hearing, you requested that information be provided comparing the 1978 level of cheese imports with the expansion agreed upon in the trade negotiations. This information is provided by quarter for calendar years 1976, 1977 and 1978 in Table 1. (attached)

1978 cheese imports were 32.8 million pounds over 1977 levels. Of this amount, 21.7 million pounds (66 percent of the increase) entered in the fourth quarter after extension of the countervailing duty waiver failed to pass the Congress. This surge in imports came as exporting nations and importers sought to avoid action by the Department of Treasury on January 3, 1979 to collect countervailing duties when the countervailing duty waiver authority expired.

If projections of import levels based on 1978 imports are valid, it would be equally valid to make projections based on the levels of the early months of 1979. The January and February data are displayed below with comparisons of 1977 and 1978.

CHEESE IMPORTS, UNITED STATES

[Millions of pounds]

	1977	1978	1979
January:			
Quota	7.9	5.2	7.1
Nonquota	10.0	9.3	5.9
Total	17.9	14.5	13.0

CHEESE IMPORTS, UNITED STATES—Continued

(Millions of pounds)

	1977	1978	1979
February:			
Quota	3.5	3.3	2.8
Nonquota	7.2	10.8	3.7
Total	10.7	14.1	6.5
Two month total:			
Quota	11 4	8.5	9.9
Nonquota	17.2	20.1	9.6
Total	28.6	28.6	19.5

Source: USDA reports on Imports, Dairy Porducts.

As the data demonstrate, there has been a sharp decline (more than 50 percent) in the level of non-quota imports of cheese during the two months of 1979 for which information is available. This is the result of the surge in late 1978 when importers sought to avoid the cash deposit or bond requirements imposed by Department of Treasury under the interim contervailing duty procedures. Treasury required a cash deposit or bond equal to the estimated export subsidy. Depending on the cheese type and the country of origin, these ranged from 20 cents to $1.50 per pound.

Some have speculated that the level of non-quota cheese imports (above price break level) would rise at a pace rapid enough to make the 1980 level of imports under the present system at lease as high as the expansion agreed upon in the multilateral trade negotiations. It is difficult to discern a specific trend in the level of these imports since the current system was put in place on June 6, 1972. The following shows the level of imports of non-quota price break cheese for the years 1972 through 1978.

Price break cheese imports, nonquota, 1972 through 1978

[In millions of pounds]

Year:		Year:	
1972	72.1	1976	89.6
1973	55.7	1977	83.3
1974	96.2	1978	107.9
1975	78.2		

Source: USDA reports on Imports, Dairy Products.

Prior to 1978, the highest level was achieved in 1974. The fourth quarter 1978 increase in imports in these categories, over the fourth quarter 1977, was 11.9 million pounds. As already indicated, this surge was the attempt to avoid the countervailing duty action required on January 3, 1979. If 1978 nonquota price break import levels are reduced by the amount of the fourth quarter surge, the total for the year would have been 96 million pounds, still below the 1974 level.

It has been suggested that the current relatively strong market for cheese will permit the absorption of expanded imports with little or no impact on the domestic market. Most of this assessment is based on the current high level of beef prices and the expansion in cheese consumption as a replacement protein. One must also be aware of the substantial increase taking place in both pork and poultry production which will add to animal protein supplies in the next few months. It is also necessary to look at the production balance within the U.S. dairy industry.

In 1978, U.S. dairy farmers marketed 119.2 billion pounds of milk. Commercial market demand during the year called for exactly 119.2 billion pounds of milk. This means, simply that purchases by the Commodity Credit Corporation under the dairy price support program during the year represented the dairy products imported and the resultant displacement of domestic milk production.

It has been necessary for dairy farmers to expand output slightly in recent months to meet market requirements. This has been and is being done in a sound, orderly fashion. The import expansion contained in the multilaterial trade negotiations means the effective U.S. milk supply will be expanded by the equivalent of 682 million pounds of milk. Given the current close balance between supply and demand

and the expanding output of other animal protein sources, there is no way this supply increase can avoid negatively impacting the farm price for milk. As indicated in our prepared statement, updated data from USDA research on the impact of dairy product imports on U.S. farm milk prices places this loss to dairy farmers at 21 cents per hundredweight of milk for each 500 million pounds, milk equivalent, of imports. Based on estimated farmer marketings of 120 billion pounds of milk annually, this yields a farm income loss in excess of $343 billion.

A number of estimates have been made by the Office of Special Trade Representative and others, including the academic community, which tend to show that imports as a percentage of domestic cheese production will be stable in the range of 6.2 to 6.4 percent even with the expanded imports. At the heart of such estimates is the assumption that consumption will continue to expand at a rapid rate.

This may well take place. American dairy farmers have made substantial investments both on their farms and in their cooperative marketing associations which produce a major portion of the U.S. cheese output to make this possible.

These estimates do not, however, take into consideration the growing impact of ersatz products on cheese consumption. In some areas of food processing these products now claim a major market share. Some cheese industry marketing experts foresee them claiming 20 to 40 percent of the cheese market in the next twenty years. These are not factors which can be quantified with precision, however, they are real and must be dealt with.

Even if the market expansion should take place as projected, it is difficult to rationalize the granting of this market expansion to those who are noncompetitive on an economic basis. At present, 70 percent of U.S. cheese imports come from nations that must use extensive export subsidization to gain entry into the United States. Although we have not been given information as to the allocation of the expanded imports, it is our understanding that the bulk of the additional product will also be from these sources. While U.S. dairy farmers and their cooperatives are constantly urged to improve their efficiency to remain competitive, they are faced with actions of this nature which are impossible to explain on any economic basis.

What must be recognized is that the U.S. acceded to EEC demands for greater access to the U.S. dairy market plus recognition of the use of export subsidies coupled with a weakening or removal of the ability to counteract them. While doing this, the U.S. recognized the EEC position that the Common Agricultural Policy with its high internal pricing system, its variable levies and its export subsidies was non-negotiable.

Despite repeated references to the "protectionism" of the U.S. dairy industry, it must be recognized that the United States maintains the most open market for dairy products of any major dairy producing nation. Other nations use variable levies, licensing techniques or outright bans on imports to exclude products that can be supplied by domestic production.

Ambassador Robert Strauss has indicated that most of the expansion in imports will be in the form of specialty cheese items, most of which are not competitive with U.S. production. Information made available to the National Milk Producers Federation by the Office of Special Trade Representative indicates the following cheese expansions compared with the 1977 level of imports.

1977 AND PROPOSED CHEESE IMPORT LEVELS

[In millions of pounds]

Item	1977 imports	New quota level	Percent increase
Blue Mold	3.4	5.5	65
Cheddar	9.3	12.3	32
Other American	6.4	7.7	20
Edam and Gouda, natural	8.3	12.5	52
Edam and Gouda, processed	1.1	1.4	(1)
Italian, original loaves	9.8	13.2	34
Italian, not original loaves	1.3	1.7	28
Swiss	59.6	68.1	14
Gruyere-Process	15.3	17.8	16
Other, NSPF	55.4	87.7	2 58
Other, lowfat	6.6	13.7	106
Total	176.5	243.2	38

1 No increase in quota offered by U.S. in this category.

2 Office of Special Trade Representative has informed us that all of the increase in this category is lowfat (less than 2 percent) cheese—essentially products that are used in this country for the production of processed cheese.

Source: 1977 import levels from USDA reports, Imports, Dairy Products New Quota Level data from information supplied by Office of Special Trade Representative.

The above data excludes imports of sheep and goat's milk cheese and the soft cured cheese. 1977 imports of these products have been estimated at 31.7 million pounds.

Imports of Cheddar, Other American, Edam and Gouda, Swiss and the lowfat industrial block cheese such as proposed under the "Other, NSPF" category are directly competitive with U.S. production and have the greatest impact at the point of determination of the farm price for milk. 74 percent (49.3 million pounds) of the increase would be concentrated in these items.

In the countervailing duty statute, the United States has a law specifically intended to prevent injury due to the export subsidy programs of other nations. It is specific and direct. Given adequate enforcement, which we have been able to obtain through court action, the law can effectively prevent injury due to subsidized imports.

The agreement by the United States to amend the countervailing duty statute to require domestic industry to prove injury before relief being granted reverses the intent of the statute.

On the one hand, the U.S. has specifically sanctioned the use of the export subsidy as a legitimate tool in international trade in agricultural commodities. On the other hand, the addition of an injury test to countervail negates the one tool available to offset these practices and, in the case of the dairy industry, renders that law a dead letter.

Some improvement may be provided by the procedures recommended by the Committee under which dairy products covered by Section 22 import quotas would be dealt with by the Department of Agriculture using faster procedures and a more restricted basis for final decision than would be the case under the countervailing duty statute with a proof of injury requirement. It cannot be said, however, that this procedure or the amended countervailing duty statute represent an improvement either over the present law. Both provide reduced assurances to domestic industry.

We hope that this information will be helpful to the Subcommittee in their deliberations. We must admit that our understanding of the results of the multilateral trade negotiations is not complete as we await full disclousure of the results of the multilateral trade negotiations. All of the data presented in this and in our statement before the Subcommittee is information provided by the Office of Special Trade Representative.

Sincerely,

PATRICK B. HEALY, *Secretary.*

Enclosure.

TABLE 1.—CHEESE IMPORTS, UNITED STATES, 1976, 1977, 1978, AND PROPOSED UNDER MULTILATERAL TRADE NEGOTIATIONS AGREEMENTS

[In millions of pounds]

	1976	1977	1978	Negotiated
First quarter:				
Quota	14.0	14.5	12.7	.....
Nonquota	24.0	26.6	32.6	.....
Total	38.0	41.1	45.3	
Second quarter:				
Quota	15.2	15.4	14.0	
Nonquota	22.8	24.3	26.4	.....
Total	38.0	39.7	40.4	
Third quarter:				
Quota	18.3	25.5	27.6	
Nonquota	30.1	26.7	30.7	.....
Total	48.4	52.2	58.3	

TABLE 1.—CHEESE IMPORTS, UNITED STATES, 1976, 1977, 1978, AND PROPOSED UNDER MULTILATERAL TRADE NEGOTIATIONS AGREEMENTS—Continued

[In millions of pounds]

	1976	1977	1978	Negotiated
Fourth quarter:				
Quota	49.6	50.9	56.5	
Nonquota	33.1	25.5	41.6	.....
Total	82.7	76.4	98.1	
Annual				
Quota	97.1	106.4	110.8	243.2
Nonquota	110.0	103.0	131.4	31.7
Total	207.1	209.4	242.2	274.9

Source: Data for 1976, 1977, and 1978 from USDA reports on Imports, Dairy Products. Data on negotiated levels from information supplied by Office of Special Trade Representative.

Mr. HEALY. I have some information in my statement relative to that very point. The fact is that the Department of Agriculture—I am sure they have studied it quite deeply—puts a dairy farm price of about 0.21 cents a hundred for all the milk produced for each 500,000 pounds of milk imported. I have also put a price 1,500 dairy farmers on this thing. Somehow we have to shake them out of business because we won't need their milk any more. That is the price to be exacted.

Mr. VANIK. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman. Thank you, Mr. Healy.

It seems to me that what we have here is a dispute on the facts, so I will await the supplementary figures that you will be providing very eagerly and also for your analysis of Mr. Hawk's statements. I think the heart of the dispute on the fact occurs on page 7 of your statement.

Based on information presently available the trade talks will mean expansion of cheese imports of so much.

This represents an increase of one-third with most of the additional product entering this market with the assistance of substantial export subsidies.

I would be most interested in the substantiation of that. I think if accurate that is very significant. My understanding is at most it would be an increase of around 10 percent and as a percentage of the market it would go from 6.2 to 6.3 percent.

Now I will be interested in whether my understanding, or this statement, is correct, and that certainly would have a bearing on my thinking on the problem, so I will await that information.

Mr. HEALY. Mr. Vander Jagt, I don't believe there is any dispute on this fact. The numbers which I have used I got from Mr. Strauss. He tells me this: The current quota on cheese is 57,000 tons. The 1977 imports were 79,000 metric tons, and the new quotas are 110,000 tons. I don't think there is any dispute on the fact we are going to take more cheese into this country. It is going to cut dairy farm income and eventually it is going to cut out dairy farmers. I think that is too high a price to exact from the dairy

farmers of this country for some nebulous good that has never been specified for us.

Mr. VANDER JAGT. I have no argument with your interpetation of the impact, and the disastrous effect it would have if we put that many dairy farmers out of business. The question in my mind is, is this agreement going to result in an increase of one-third cheese imports as the chairman was reading the figures to us, and that as a result of this it will go up to 6.3 percent.

You at that moment were not able to address yourself to that and said you would supply it for the record, which is very understandable. I wanted you to know I will be awaiting that factual data with great interest and great receptivity.

Mr. HEALY. Thank you, Mr. Vander Jagt.

Mr. VANIK. Mr. Fisher.

Mr. FISHER. No questions.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I have some trouble trying to work out variations between the figures provided, some of which are in metric tons and some of which are in hundredweight, but it looks to me from the figures provided by STR that by 1980 under the new quota system there will be about exactly what would have been allowed in under the old quota system if you include the price break cheese and the miscellaneous nonquota.

It looks to me like it comes out almost even. Yet I think in your analysis you have not included the price break cheeses.

Mr. HEALY. Yes. If you look at exhibit A at the end of my statement I have six columns, one each in metric tons and in thousands of pounds of cheese. Current quota is listed at 57,000 tons, 1977 imports 79,000 tons. This includes the price break.

The new quotas at 110,000 tons. There is nothing to indicate that we have bettered our position by gracing these nonquota items with quotas. The price break cheese is an anomaly, anyway. How can you tell how Fisher cheese, Denmark prices cheese that it sells to Fisher cheese, Wisconsin, or how Kraft London, prices cheese to what it sells Kraft Chicago.

They merely put a number on it so as to escape the quota. We screamed when they came up with this price break thing, to no avail. Now we are in the process of gracing that arrangement with a quota so they don't have to fool with numbers any more.

Mr. FRENZEL. That is what I was trying to get you to say. The price break will come out to the new quota but you don't like the price break so you want to eliminate that from the whole quota. That is understandable but it does not I think help us.

Mr. HEALY. This whole quota thing, Mr. Frenzel, right from the start provides a lesson in evasion and subterfuge. The most interesting example has to do with fat.

When we first put the quotas into effect, in 1953, there had been a traditional market in Hawaii for 707,000 pounds of batter from New Zealand. So we gave New Zealand a 707,000 pound quota on butter. Immediately that was satisfied they started sending butter oil, which was not excluded. We finally had a hearing, went through the process and got that capped off.

Then they started sending what they called Exylone, which was merely butter oil with vanilla in it. We got that capped. Then they

started sending Junex, which is a lower fat product for the same purpose, and each time we raised quotas to accommodate a subversion of quotas, they are used as a new springboard for higher quotas, and that is just what has happened in this price break cheese. It should never have been put into existence.

Now we are saying it is right and we will put a quota on it. There will be something new tomorrow. Immediately we do this there will be something new which will represent another round of evasion and subsequent quota expansion.

Mr. FRENZEL. On your figure on exhibit A the 79,000 metric tons, that does not represent the full quota. It represents a portion of it. Would it not have been legtimate then to increase the second to the last column by 15 percent, as well? 110,000 metric tons ought to be reduced because apparently the quotas are never reached.

Mr. HEALY. The quotas were 57,000 tons. Total imports were 22,000 tons, in excess of that, for 1978. That included quota cheese and nonquota and now we are saying let's raise that whole thing to 110,000 tons of quota cheeses.

Mr. FRENZEL. What I am saying is the quotas are never reached. Yet you are assuming they are going to be reached in the figures you are giving us.

Mr. HEALY. They are almost reached.

Mr. FRENZEL. What you are trying to do is have us make apples and oranges equivalent or one and two hump camels, and I don't think that is a fair representation. Were you ever represented on industry advisory——

Mr. HEALY. Yes, sir. These same representations were made there.

Mr. FRENZEL. And you objected strenuously in all stages of the——

Mr. HEALY. Yes, we had five people on the three appropriate committees and they made these same representations right from the start. I have met on many occasions with Ambassador Strauss and made the same representations to him, yes, sir.

Mr. FRENZEL. And all of the other representatives of the industry object as strongly as you do to this?

Mr. HEALY. Yes, the dairy producing industry, the farmers.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. VANIK. Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

I am going to withhold questions until I get more information also, but I want to underscore what the chairman said. I am very disappointed and chagrined by this testimony. I am not at all satisfied with it. It seems to me the impression is of an industry that is all take and no give, and therefore, Mr. Chairman, I am going to withhold with a great deal of disappointment as to what has come across today.

Mr. VANIK. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

I would like to ask briefly is the position you are giving today one of all the dairy co-ops or the majority that voted, or what?

Mr. HEALY. All of them.

Mr. MOORE. That is contrary to what they told me——

Mr. HEALY. I have reviewed this thing with my board on which all the co-ops are represented last August, and again last November. They voted unanimously in favor of this position. I reviewed it with my executive committee again in February which these people are members of, and it was sustained unanimously again. Yes, sir.

Mr. MOORE. As recently as a month ago that information was the unanimous position of dairy co-ops? I am wondering what the situation is. When did you last review it?

Mr. HEALY. We last reviewed it in February, and it was unanimously agreed to at that time by my executive committee, yes, sir.

Mr. MOORE. Thank you.

Mr. VANIK. Thank you very much, Mr. Healy. We appreciate your testimony.

At this point I am going out of order and I will call on my colleague, Mr. Coelho, to introduce Steven Easter.

I want to point out it is the intention at the present that these proceedings will finish at 12 o'clock and resume at 2, so you can make your plans accordingly.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman. I appreciate your courtesy.

Mr. Chairman, members of the subcommittee, it is my pleasure to introduce to you this morning Mr. Steven W. Easter, secretary of the California Almond Growers Exchange. The exchange has 4,700 member-growers who produce approximately 60 percent of the almonds grown in California. All of the almonds produced commercially in the United States are produced in California.

I am proud to say that over 90,000 acres of almond trees grow in my district. The exchange is heavily committed to the export of almonds and sells the almonds of its members throughout the United States and in nearly every country of the world.

In recent years it has exported approximately 50 percent to 60 percent of the almonds it handles. In 1974 almonds were fifth among the ten leading U.S. agricultural exports as a percentage of farm income. In 1976 almonds were first.

In view of the importance of exports to the almond industry, the member-growers of the California Almond Growers Exchange have watched the progress of the negotiations with great interest.

Mr. Easter is here on behalf of the member-growers of the exchange to express appreciation to Ambassador Strauss, and the other members of the U.S. negotiating team for their hard work on behalf of U.S. agriculture.

Mr. VANIK. We are happy to have that reaction and we are happy to have whatever encouragement we can get in this proceeding. I want to tell you almonds are important to the American diet. They are almost disappearing from my chocolate bars. I once made $10, I bet someone there would be four almonds in every bar. They went through a case of them and I won. I don't know whether they still put them in chocolate bars at all any more, but it was a wonderful treat to get a few more almonds mixed in with the chocolate.

I am among those who still have memories of how wonderful that used to be.

We will be happy to hear from you.

STATEMENT OF STEVEN W. EASTER, SECRETARY, CALIFORNIA ALMOND GROWERS EXCHANGE

Mr. EASTER. Thank you. We are doing our best to maintain that market.

Good morning, Mr. Chairman and members of the committee. It certainly is a pleasure for me to be here and provide you with a few comments we have from the almond industry. We have submitted a written statement to you and I am certain that you will read and consider it. We ask that it be placed in the record.

I am going, however, to depart from the written statement due to some recent experiences I have had. I thank you for putting me on this program early, as I have just flown in from Europe, and appreciate getting this opportunity to testify before I fall on my nose.

The reason for that trip was to meet with some of the EEC government officials including officials of the member states to discuss some recent developments over there. These proposals had to do with the projection made by the French, or suggestions made by the French, to provide for licenses and surety deposits on almonds and walnuts. What this would provide is that the licensing arrangement would be required for the importation of these commodities.

Now, as we have commented, all the almonds in the United States are grown in California. We have about 50 percent of the world trade. It amounts to some $125 million in the European Economic Community and we do business over there on the basis of yearly contracts.

We feel that any disruption in this type of an operation as suggested by the licensing type arrangement would be very detrimental to trade and therefore we are discussing that measures with the EEC community.

The suggestions were made for some types of licensing and the licensing would be short term and, as I say, would be extremely disruptive to trade.

It was interesting to note on the trip home that at the same time these suggestions were being made the trade agreement was being initialed in Geneva so it gave us some concern as to the type of activities that might be undertaken by the Community.

Also it was interesting to note in the international edition of the Herald Tribune that the EEC was disturbed by language in the package that would have to do with the injury test for countervailing duty waiver and this would leave out the work material. It seemed to me perhaps if the French are going to propose these kinds of activities in almonds and walnuts, maybe they have no basis for the insertion of wording like that.

Particularly disturbing was the working committee on agriculture and special agriculture committee considering this action. Actually we met yesterday at the very time this committee was meeting to discuss and consider the passage of the trade bill.

However, we are pleased to learn that some of the individual European governments were favorably inclined toward our position and opposed to the imposition of licensing. We are also interested to learn that most of the European governments we talked to are keenly interested in the progress of these hearings and of the progress of the trade bill, and are vitally interested in seeing it concluded.

I would like to go on to say, as we comment in our statement, we certainly support the efforts of these trade negotiations that have taken place under the Tokyo round, and we have worked with them from the beginning, starting with our efforts in the passage of the Trade Act of 1974.

We do not know exactly what is in the trade package yet and therefore we can't comment in detail. We have heard there are some concessions in a number of countries on almonds, but we don't know which countries or the exact nature of the concessions involved.

However, from trade sources we have been able to learn of two concessions, one in India which has allowed imports of almonds in the last 2 years, and provided for some 3 million dollars' worth of trade each year, and we hope that this trade may get up as high as $5 million per year.

In addition the trade has told us of a suspension of duties in Switzerland and that market accounts for some $5 million of trade. This is compared to some $125 million in the European Economic Community.

Our continued support of this measure is based on the belief that we will obtain a concession in the European Economic Community. From the beginning we said that the major portion of the time that was available to be spent on almonds in this negotiation should be spent on the elimination of the EEC duty.

Again in some of my reading on this trip I was interested to note the report that Ambassador Strauss had recently received or negotiated, I should say, another concession from Japan on telephones, even at this late date, which makes us even more confident that Ambassador Strauss and Ambassador McDonald will be successful in obtaining the concession on almonds from the European Economic Community, particularly in light of their assurance that they are continuing to work on this measure.

We understand that this concession has not yet been achieved but we continue to hear expressions of the work that is being done in this regard and we do fully expect success, and with this success certainly will be wholehearted endorsement of the package on the part of the almond growers of this country.

This will certainly result in a substantial expansion of this largest export market in the world market of some $125 million.

[The prepared statement follows:]

STATEMENT OF STEVEN W. EASTER, SECRETARY, CALIFORNIA ALMOND GROWERS EXCHANGE

Introduction

This statement is made by the California Almond Growers Exchange, an agricultural cooperative located in Sacramento, California. The Exchange has 4,700 member-producers who produce approximately 60 percent of the almonds grown in California. All of the almonds produced commercially in the United States are

produced in California. The Exchange receives, processes, packs and markets almonds for its members. The Exchange's almond supply is obtained exclusively from its members. The Exchange sells the almonds of its members throughout the United States and in nearly every country of the world.

The Exchange is heavily committed to the export of almonds. In recent years it has exported approximately 50 percent to 60 percent of the almonds it handles. In 1974 almonds were fifth among the ten leading U.S. agricultural exports as a percentage of farm production. In 1976 almonds were first.

The California Almond Growers Exchange believes that the proposed trade package represents distinct gains for U.S. agriculture. It commends Ambassador Strauss and his negotiating team for their commitment to keeping the objectives of U.S. agriculture high on their list of priorities in the negotiations. The California Almond Growers Exchange strongly supports the dual purposes achieved by the proposed new agreements if adopted: (1) The establishment of new international rules to assure that trade will be conducted more fairly and equitably between nations, and (2) the further reduction of specific barriers, both tariff and non-tariff, for individual products.

Tariff concessions

The California Almond Growers Exchange has heard unofficial reports that duty concessions of benefit to the almond industry have been obtained from several developed and less developed countries. If these duty reductions are finalized, we are confident that this increased market access will lead to increased trade with several of these countries.

Although the almond growers are pleased with the prospect of these concessions, we cannot hide our disappointment in the current status of the negotiations on almonds with the European Economic Community (EEC). It is our understanding that to date, U.S. negotiators have failed to achieve a reduction in the 7 percent duty imposed by the EEC on all almonds imported into its member countries and a proportionate reduction on the duty on canned almonds. The EEC represents the largest single market for the export of almonds from the U.S.

The California Almond Growers Exchange had recommended from the beginning that a major thrust of the negotiations in the agricultural sector should be to assure equitable and reasonable access to foreign markets for U.S. almonds and almond products. Due to the importance of the EEC as a foreign market for U.S. almonds, the achievement of equitability necessarily calls for a reduction in the duty currently imposed by the EEC. We do not intend to imply that this lack of progress with the EEC was a result of a less than complete effort by our negotiators. In fact, we believe that the agricultural community, for the first time, has received the priority and effort which it deserves. For this, we congratulate our negotiating team and also the Department of Agriculture for its support. At the same time, the California Almond Growers Exchange urges this Committee to impress upon STR the need to continue efforts aimed at achieving concessions of benefit to our industry from the EEC before it finally concludes the negotiations.

Nontariff barriers

The efforts of our negotiators to ameliorate nontariff trade barriers represents a new dimension in multilateral trade negotiations and involves important changes from the existing General Agreement on Tariffs and Trade (GATT). Non-tariff barrier amelioration is represented primarily by the creation of new trade codes. We are, of course, disappointed that the "safeguards" code has apparently failed to receive approval, but we believe the remainder of the codes can be helpful in sustaining world trade.

Our only reservation with respect to the trade codes lies in their probable restricted acceptance. We note that these codes contain provisions relating: (1) To "accession" which is strictly voluntary although open both to GATT members and nonmembers; (2) to "withdrawal" which permits withdrawal from accession within ninety days; and (3) "non-application", which permits a signatory to the code to declare that it shall not apply to that signatory.

At some point, we believe collateral legislation will be necessary to achieve reciprocal compliance with codes, regardless of whether the particular trading partner has accepted the codes. This could involve granting full MFN rights only to countries which accept the codes or comparable trade rules.

At present, 21 years after the institution of GATT, only 74 percent of the approximately 151 countries with which the United States conducts its major trade are affiliated with GATT. Only 65 percent of these have participated in the Tokyo Round trade negotiations. Published reports indicate that many of the negotiating countries are displeased with the trade codes and are unlikely to accept them. The

prospect that any substantial part of United States trade will be governed by the new trade codes is, therefore, dim.

Statutory procedures: need for judicial review

The California Almond Growers Exchange recommends to this Committee that the implementing legislation for the trade package provide for a right of appeal from adverse decisions in cases brought by domestic producers seeking relief from alleged violations of the trade laws. This right of judicial review should arise from cases brought under any provision of the law, including Section 301 of the Trade Act of 1974 as well as the proposed new codes. It should not be limited to cases filed pursuant to the contervailing duty law.

Second, the right of judicial review should lie in the federal courts, not the Customs Court. The types of matters routinely handled by the Customs Court are limited primarily to cases involving classification and valuation of entries. The types of issues which might be the subject of cases brought pursuant to various provisions of the proposed trade package cover a much broader spectrum. Additionally, the Customs Court is not empowered to grant equitable relief, which includes the issuance of injunctions. In the opinion of the California Almond Growers exchange, the right to judicial review of adverse decisions is a necessary extension of our negotiators' efforts to enchance the ability of U.S. producers to seek remedial relief under the trade laws.

Conclusion

The California Almond Growers Exchange is appreciative of the consistent pressure applied by our negotiators to achieve greater market access for agricultural products of interest to California. We believe that the agreements, if adopted, represent a real step forward for U.S. agriculture as a whole, and we urge passage of the proposed trade package.

Ambassador Strauss has frequently stated that he would be happy to receive a C+ or a B− grade upon completion of the negotiations. The negotiations with the EEC are not yet entirely completed. The member-growers of the California Almond Growers Exchange would raise Ambassador Strauss' final grade considerably if he were to come home with a reduction in the EEC's 7 percent duty on fresh almonds.

Mr. JONES. Thank you, Mr. Easter, and our colleague Tony Coelho.

Based on what you just said, would you care to comment on the Senate committee report that has been distributed that would indicate your industry would have about $5 million in new trade as a result of this agreement?

Mr. EASTER. Based on what we know of the Indian market, we would have to agree that this, in a matter of say 4 or 5 years, could well be possible. That is the only part we are truly aware of, but it would sort of match that report, yes.

Mr. JONES. Do you have any concerns about enlargement of EEC to include Spain and Greece?

Mr. EASTER. Very much so. This is the major reason why this target is so important to us, because of the fact that Spain is the other one of the major producers of almonds in the world, and by becoming members of the Community would have tariff protection, which they do not now enjoy.

We have been working with the Special Trade Representative Ambassador Strauss, and his staff, to insure that there be continued equal access to markets. So this is very important to us.

Mr. JONES. Thank you.

Mr. Vander Jagt?

Mr. VANDER JAGT. No, thank you.

Mr. JONES. Mr. Guarini?

Mr. GUARINI. No questions.

Mr. JONES. We are to adjourn at noon because there is a function over in the Capitol.

Our next witnesses scheduled are the cattlemen. Rather than break up that testimony, let's adjourn until 1 o'clock, when we will meet in room 2154, the Rayburn Building.

[Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene at 1 p.m.]

AFTERNOON SESSION

Mr. VANIK. Our next witness is Samuel H. Washburn of the National Cattlemen's Association.

STATEMENT OF SAMUEL H. WASHBURN, CHAIRMAN, FOREIGN TRADE COMMITTEE, NATIONAL CATTLEMEN'S ASSOCIATION

Mr. WASHBURN. Thank you Mr. Chairman.

I am Sam Washburn, a full time cattle farmer from Farmer, Indiana. I would like to make a few introductory statements.

We have a favorable impression. We are pleased at the efforts of the special trade representative and we are pleased with the emphasis that he placed on beef in the negotiations. We are finding some access in areas in markets that we have not had access or as much access in the past. As we understand this hearing process we think that we would like to point out a couple items and a couple ideas that we had that might be wrapped up in the package with committee's consideration and that is the reason that the statement presented today but not to be confused with our overall positive look at the package.

The National Cattlemen's Association (NCA) appreciates the opportunity to be here today to discuss various aspects of the multilateral trade negotiations and their effect of the beef cattle industry. Our industry has much to gain or lose depending on how the MTN is implemented.

Nearly half of U.S. agriculture production relates to the sale of animal products with about half of that figure made up of beef and beef products.

Cattle producers in the United States sell their product almost exclusively on the basis of an individual enterpriser who is oriented to the private marketplace with no governmental subsidization. There are approximately 1.5 million producers of beef cattle in the United States. The sizes of these individual operations range from as few as three to five head up to some herds numbering into the thousands.

Most importantly is the fact that every producer makes his or her own decision when it comes to the marketing of their product. His decisions are bases on several influences. Most significant is that of price followed by other factors such as weather, government, and others.

The NCA has followed the progress of the MTN closely for the past several years. Several of our members, including myself, have participated in various of the private sector advisory committees. The ATAC on livestock and livestock products which I am a member of has been very active in expressing viewpoints on many aspects of the MTN, particularly on access and several of the codes.

The MTN is very complex. I will address only those areas which are of particular concern to us in the cattle industry. They are:

access agreements, subsidies code, safeguard code, and private sector involvement.

ACCESS

The NCA recognizes that a great deal of effort way expended by the special trade representative to secure additional access for high quality U.S. beef into foreign markets, primarily Japan and the European Community.

On the surface, especially when compared to previous trade, the access agreements as reported to us represent a small step in the right direction. However, when looking into the limiting conditions attached to the offerings, they are clearly inadequate.

In Japan, we are told the high quality quota will be 30,800 metric tons by 1983. This compares to about 16,800 metric tons now.

Mr. VANIK. What size quota was that? When you compare that to the quota before the Strauss-Ushiba communique, how does that compare?

Mr. WASHBURN. It was 16,800 tons and there was a 10,000 metric ton additionality last year.

Mr. VANIK. All right.

Mr. WASHBURN. So 10,000 is already included prior or since the Strauss-Ushiba communique.

This is not very much beef and falls disappointedly short of the real potential for that market. The STR informs us that if we can create or exploit demand above the 30,800 metric ton level, the Japanese will allow us more access.

The problem is that because of a quasi-government organization named the Livestock Industry Promotion Corporation (LIPC) in Japan we will never know the real demand for our high quality beef. The LIPC controls over 90 percent of the beef imported into Japan. Through a variety of surtaxes, tariffs, levies and other charges it sets price, quotas and by so doing arbitrarily and unfairly limits access. A pound of beef purchased for $3.50 in the United States sells for up to $35 in Japan. Obviously LIPC manipulation can seriously restrict domestic demand and effective access.

EUROPEAN COMMUNITY ACCESS

Arrangements on access into the EC are even more vague and arbitrary. We are told access will be provided for high quality beef. Access would theoretically be under a unilateral condition imposed somewhat similarly to that of the high-quality quota for Japan.

Access into the EC has been suggested on the basis of up to 10,000 metric tons. As in Japan, it has been implied that if we can create demand above the 10,000 metric ton level, the EC would grant additional access. The beef would be subject to a 20-percent ad valorem duty.

The United States in return for this 10,000 metric tons would have to agree to accept 5,000 metric tons of subsidized EC beef.

Mr. VANIK. That would be within quota?

Mr. WASHBURN. Yes.

Access to the EC of a net increment of 5,000 metric tons isn't very much beef. However, welcome any additionality is, the NCA

believes that any accommodation that legitimizes subsidization of exports is just fundamentally wrong and unacceptable.

Our response to the offers and requests of the MTN package are compatible with those of the ATAC on livestock an livestock products. The chairman of that committee will be testifying following me in these hearings and will submit the ATAC report at that time.

SAFEGUARDS CODE

It does not look like a safeguards code will be included in the final MTN package submitted by the President at this time so I will not dwell on the subject for long. The NCA believes that the principles of the meat import law and voluntary restraint program which has operated successfully should be excluded from any safeguards code.

The STR has concurred that any proposed safeguard code should not and would not involve the U.S. domestic meat import program. We think that if such is not spelled out either in the code or domestic implementing legislation, U.S. producers and the Import Act are in serious jepoardy.

SUBSIDES CODE AND COUNTERVAILING DUTIES

The subsidies codes, of all the codes in the package, is of the most serious concern to the Nation's cattle industry. Quite simply we object to the importation of a product, in this case beef, that is granted an export subsidy which competes with a like product in this country that is not subsidized.

We object to the requirement of the injury test procedures proposed in the subsidies code for the following reasons:

One products that are produced or marketed under a governmental subsidy and are exported in competition with domestic products which are produced without subsidies or governmental regulations—except those for standardization, health and sanitation—constitute a prima facie case of injury to domestic producers and the United States should immediately impose countervailing duties to the extent of that subsidy.

Two countervailing duties on subsidized products should be imposed unless and until the major producing and consuming nations grant access to their markets for U. S. products that is reciprocal and is at least equivalent to access that is allowed or guaranteed to the market in the United States.

Mr. VANIK. Why should you care? You are protected by a quota.

Mr. WASHBURN. We feel this is not a fair aspect—you know, what is being fair in our approach to that—and the protection by the quota can be somewhat arbitrary.

Mr. VANIK. Well, I don't quite follow you on that. I thought that with the quota you would have all the best manifestations of the protections you seek.

Mr. WASHBURN. The subsidies issue is more of a philosophical point with us than an actual point because of the limited tonnage.

Mr. VANIK. Yes. All right.

Mr. WASHBURN. If an injury clause is included in the final version of a subsidies code, due consideration must be given to the peculiarity and differences within agriculture and the livestock/

meat business in particular as distinct from industry. The cyclical inventory fluctuations make it virtually impossible for the cattle industry to be able to attribute losses or prove injury as proposed in the code. There are many different segments of the cattle industry. Not all segments are affected the same way at the same time.

Following are some of the economic factors and indices mentioned in article 6 which affect the cattle industry differently than they do conventional business and industry.

Decline in output: The opposite is true in the cattle industry. Low prices stimulate liquidation of the cowherd which in turn means more output and production for at least 2 or 3 years.

Lower sales: During the liquidation phase of the cycle, sales actually increase. We always consume essentially everything we produce plus what we import at a price. The price is determined by supply and demand. Essentially, we sell everything produced.

Reduced market: The U. S. share of domestic beef sales stays relatively the same from 1 year to the next. As domestic production increases, so do imports, and vice versa. As a result, when domestic supplies are high and prices are low, more imports are allowed, compounding oversupply.

Productivity: Productivity is actually high in some respects during the liquidation phase of the cycle as more cattle are produced in some operations with basically the same number of workers. Also, productivity may improve in the meatpacking industry because of large beef output per plant. However, financial losses to producers lower productivity in some ways. That is because producers may not make full use of available technology—because of out-of-pocket costs—and longer term trends to improved productivity may lag.

Additional considerations for determining the impact on the domestic cattle industry should include: stage of the cattle cycle, that is liquidation versus herd buildup, rate of cow slaughter, consumption, weather, effects on allied industries, and rural business communities, health.

PRIVATE SECTOR PARTICIPATION

The NCA favors more direct involvement and input from the private sector in the negotiation of trade arrangements. Congress recognized the value of the advisory role from the private sector when it wrote the Trade Act of 1974.

Mr. VANIK. We are going to cover that on the bill we have on Monday.

Mr. WASHBURN. Right.

Mr. VANIK. So we are going to deal with that.

Mr. WASHBURN. We would like it in the record to show the compatibility of the testimony.

Mr. VANIK. Between. the two actions.

Mr. WASHBURN. Yes.

Mr. VANIK. All right. There is not going to be that much of a controversy on that bill, is there?

Mr. WASHBURN. I hope not.

Mr. VANIK. I am not aware of it.

Go ahead and finish your statement.

Mr. WASHBURN. During the past several years the ATAC on livestock and livestock products met regularly to review the ongoing negotiations and to make recommendations.

It is disappointing to us who served on the various private sector groups that while we were listened to, all too often our recommendations were not put on the negotiating table nor did the STR respond to them.

The NCA would like to see the continuation of the private sector advisory committees. However, to function properly they must be given more staff support, latitude and automomy.

The NCA believes that in the formation of any panels, councils, or governing bodies to any of the codes or arrangements such as the proposed meats arrangements in the MTN package there must be provisions for private sector input and participation.

Mr. Chairman, these are our points that we wanted to enumerate but not to be confused with our overall support and encouragement that you lock favorably on the MTN package.

Mr. VANIK. Thank you very much.

You are going to have an opportunity when the Prime Minister of Japan comes in in a few days to probably direct some of the special problems that occur between us.

Mr. WASHBURN. We look forward to that.

Mr. VANIK. The trade imbalance had been going down, but I am worried about the effect of automobile sales in the last 3 months which have been very heavy. Because of the Iranian crisis they have been selling a tremendous amount of automobiles which is going to be reflected in the figures later on this year rather adversely.

Mr. WASHBURN. We are encouraged by the enthusiastic acceptance of United States beef in Japan.

Mr. VANIK. All right.

Mr. Marble.

STATEMENT OF PETER E. MARBLE, CHAIRMAN, AGRICULTURAL TECHNICAL ADVISORY COMMITTEE ON LIVESTOCK AND LIVESTOCK PRODUCTS

Mr. MARBLE. Thank you, Mr. Chairman.

I am Peter E. Marble, a rancher from northern Nevada.

Mr. Chairman, I have prepared a statement. I appear here today on behalf of the Livestock Trade Policy Advisory Committee—ATAC—for the private sector interests that are involved in livestock, meats and byproducts. I prepared a statement that reflects the viewpoint of ATAC and attached to it is a summary of various policy recommendation that ATAC has issued in the past. In view of the remarks that Mr. Washburn has made and the completeness of these statements, I would submit them only for the record and would not belabor the point.

I would like to make several summary observations beginning firstly with the appreciation of the Livestock Trade Policy Committee for the continued monitoring of our activities by the staff of this committee, and again it is because of that consistent monitoring of our deliberations over the last several years by your staff that it seems unnecessary to again belabor some of these points or repeat ourselves.

I would say this, that I think it is important as the committee considers certain of the points that have been raised by the livestock ATAC and certain of points that have been raised by Mr. Washburn that the value of the products represented by the livestock ATAC probably represent something like one-third of the total agricultural dollar value of production in this country. I think, as is well known, the combined value of all meats, including poultry which was not a commodity under the jurisdiction of our livestock ATAC, the gross value of all meat products and byproducts of livestock represents about a half of the total annually produced dollar value of agricultural items in this country. So we are talking about a very, very significant element of agriculture when we are talking about meat and livestock and for that reason we certainly hope that these points, again as I say that Mr. Washburn has referred to and that I will refer to in a moment, are considerded in that light.

Second, let me rather make the point that the U.S. meat and livestock industry has adopted and continues to maintain the most liberal trade policy attitudes of any meat and livestock industry any place in the country and we continue to believe those interests that were represented on the livestock ATAC truly support the objectives of the multilateral trade negotiations, the effort to liberalize trade. The reservations of the committee have extended to the implementation of those objectives in the particular contractual language in the codes and the particular contractual language in the codes and the particular arrangements within certain of the agreements that have provided for access of product into the European community and the Japanese community so these differences go to the matter of the specific provisions as to how we accomplish the overall objective.

Third, let me say this. I think I would just emphasize, as Mr. Washburn has, that there are four principal elements that we feel need shoring. I think the livestock ATAC in the meat industry need clarification in the implementing domestic legislation that is attached to the trade package and these four areas relate to the private sector involvement and participation in the meats arrangement. We feel that there is a role that should be played directly by the representative of the private sector in this proposed arrangement and so far there is no provision for such participation except in a very ancillary way.

Mr. VANIK. We are trying to help on that point as you are aware.

Mr. MARBLE. We appreciate that.

The second point, of course, is the one of access. While indeed we appreciate the opportunity to export high quality beef to the European community and to the Japanese community, is fair to say that the opportunities that have been created are far, far short of the principles that we have encouraged and far, far less than the capacity of U.S. agriculture in the meat and livestock industry.

Third, the question of subsidies that Mr. Washburn has referred to is again we think uniquely—not uniquely but especially of importance to our commodity interests and in any other of the agricultural commodity interests which fundamentally operate without benefit of any domestic U.S. subsidy or assistance and it is for that

reason that we feel particularly that it is unsuitable to permit subsidized meats into the United States market to compete against the products that are produced by farmers who have no such assistance from a Government program.

Fourth and last, of course, is the question of safeguards and the committee does feel indeed that it is appropriate to write into the domestic legislation, if not into codes, recognition that the U.S. Meat Import Act and the voluntary restraint agreements which we feel have operated beneficially and fairly and with liberality are maintained and safeguarded at least until such time as those of us who produce livestock and meat have truly reciprocal opportunities in foreign markets.

I think without further comment, Mr. Chairman, I would just simply draw your attention to my concluding remarks in my statement offered today which goes to the matter of the reconstitution of the private sector advisory committees if in the best judgment of the Congress it seems desirable to continue this.

Mr. VANIK. We have already decided to do that. That is one of our actions. I think it has been made public.

Mr. MARBLE. Fine. I appreciate the opportunity to make these summary comments, Mr. Chairman, and I have nothing further to offer at this time.

Mr. VANIK. Well, thank you very much.

The committee will stand in recess for about 10 minutes so we can get a vote in.

[Whereupon, the subcommittee recessed.]

[The prepared statement and additional material follow:]

STATEMENT OF PETER E. MARBLE, CHAIRMAN, AGRICULTURAL TECHNICAL ADVISORY COMMITTEE ON LIVESTOCK AND LIVESTOCK PRODUCTS

Mr. Chairman and members of the committee, my name is Peter E. Marble, Chairman of the Government's Livestock Trade Policy Advisory Committee (ATAC). My sole lifetime occupation has been that of a range cattle producer from Northern Nevada. My earnings, employment and investments are limited exclusively to ranch ownership and management both there and to a limited extent in Monterey County, California.

Herewith is submitted various trade policy recommendations adopted by the Livestock ATAC during the past several years. They are presented for your information and the record without reading.

I should like to note, however, that the gross dollar value of the products related to our Committee's advisory reporting responsibility relates to over 30 percent of the total value of U.S. agricultural production. Over 1,000 tariff items fall within the ATAC's advisory jurisdiction including such diverse items as pharmaceuticals, fur skins and frog legs.

Mainly our Committee has been preoccupied with situations relating to beef, pork, wool, hides/leather, tallow and lard. The current level of trade in these items is balanced at about $2 billion. Imports consist mainly of beef, pork and lamb and wool. Exports are primarily tallow, lard, hides and a variety of animal byproducts.

The U.S. Agricultural approach to the MTN has been badly flawed in three major respects:

(1) First, the terms of U.S. agricultural access into foreign markets was not pressed on a basis that is in any way reciprocal to that extended to either agricultural or industrial imports in the U.S.

(2) Second, from the outset, foreign schemes of governmental subsidy, supply and market management have been conceded terms of unilateral protectionism against which U.S. private enterprise, market oriented agriculture has been stripped of reasonable and necessary defense.

(3) Third, direct, primary U.S. private sector representation and involvement in the international processes of international trade problem solving has been totally neglected in preference to a continuum of international bureaucracies (i.e. FOA,

OECD, UNCTAS, GATT, etc.). Now a Meats Arrangement is proposed. Governments, and in this case the STR are forever adopting unsuccessful governmental solutions that are managed by the bureaucracy in place of those oriented to the market, private and individual enterprise.

So what should the Congress do at this point? By all means adopt this wordy, obscure exercise in bureaucratic manipulation and protectionism and get on to matters of greater national importance.

However, in accepting the MTN proposals, I urge the Congress to carefully, clearly and loudly proclaim the inviability of a U.S. agriculture that is oriented to the marketplace and private individual farmer enterprise. Do so by insisting upon clarifying domestic legislation.

Make it abundantly clear that no U.S. farmer who labors and produces perishable commodities without governmental financial support shall have to prove injury against or withstand the wrongful competition of unregulated foreign goods which are produced and/or exported by reason of foreign subsidization.

Write into U.S. law that no unsubsidized U.S. Agricultural perishable Commodity sector shall be subject to a level of foreign imports that exceeds the reciprocal opportunities available and guaranteed to U.S. farmers for their exports.

Spell out boldly and unmistakably that the principal U.S. representatives to international commodity agreements (conventions, arrangements, meeting, etc.) shall be U.S. farmers or their elected representatives.

Finally, a word about the operation of private sector Advisory Committees in the future. Within Agriculture there should be but one Committee. It should be: (1) directly responsible to Congress; (2) advisory to the Administration; (3) subject to its own rules, chairmanship with access to a limited privately directed staff; (4) granted a modest budget for committe member and staff expense for at least two meetings a year. Finally, (5) Representation should reflect that of the presently constituted ATAC's in proportion to agricultural production and sales.

SUMMARY POSITION OF ATAC FOR LIVESTOCK AND LIVESTOCK PRODUCTS

Background

The product interests of the Committee cover over 1,000 tariff items including tallow, mink skins, leather, wool, meats, frogs, horses and pharmaceuticals.

General negotiating objectives

(1) Parity of access among raw, processed or prepared (finished) U.S. agricultural products. An orientation to market prices that is unrestricted by arbitrary protectionism.

(2) International access for commodities of animal origin equal to not less than 5 percent of any domestic market (based on production and/or consumption figures). This includes beef, lamb, pork, poultry and offal. In the case of U.S. high quality beef, the U.S. access request is for one pound per capita to be implemented over a five-year period at the rate of one-fifth pound per year.

(3) Elimination of export subsidies, government price and supply management, dumping or any other practice which disrupts the private market place.

(4) Consumer access to world food and by-product supplies at market prices. Utilization of bilateral supply arrangements, and development of "nonmarket" country as well as LDC relationships.

(5) The U.S. should restrict imports to the extent that is necessary to protect against (a) dumping, (b) the destruction of cost-price competitive domestic enterprise and (c) the nonreciprocal realities of international trade practice.

(6) Utilization of surplus feedstuffs, the development of international food reserves and food producing potential should be encouraged by increasing market opportunities for meat products. Livestock and/or meat represent the most efficient means of maximizing nutritional resources and food reserves.

Negotiating objectives for livestock, meats and animal byproducts

(1) The specific E.C./Japanese global (open to all suppliers) access objective for beef meat should be the greater of 5 percent of foreign national production or 5 pounds per capita—implemented over a 5-year period at world market prices. Access for other meats should be secured in proportion. The minimum U.S. E.C./Japanese access objective should be one pound per capita of choice/restaurant quality beef meat.

(2) Access for leather, mink skins, processed animal fats or any finished or manufactured animal product—as well as breeding and dairy animals—should be equal to that accorded live, raw or unprocessed agricultural products.

(3) The U.S. should limit participation in G.A.T.T. or bilateral agreements to those which provide for reciprocal access at market prices and establish procedures for resolution of collateral agricultural issues.

(4) The U.S. should take the lead in calling for world access that: (a) is global versus bilateral—premised on principles incorporated within the U.S. Meat Import Act and Voluntary Restraint Agreements; (b) is oriented to trade equality between processed or finished products and feedstuffs or live animals; (c) is free from governmental supply/price market regulation as differentiated from farmer income supplementation schemes; and (d) rejects the present GATT/MTN negotiating protacol and Secretariat management both of which favor the old unworkable solutions of the past, the status quo and national protectionism.

(5) The denial of access to agricultural raw materials by a country should be considered a subsidy on the export of processed agricultural products derived from that raw material and subject to countervailing measures.

U.S. offers and requests

In certain instances U.S. offers that have been tabled do not agree with the recommendations of the Committee: The tariff reduction on the fresh, chilled and frozen beef items 106.10 and 106.20 did not include the conditions stipulated. Our recommendation on offers on these items was that no offers were to be made unless they were conditioned on concomitant granting of access for these items by the E.C. and Japan. The Committee unanimously urges that unless our conditions are reinstated, the offer be withdrawn. Similarly, our recommendation that tariffs on finer wool, tariff items 306.31 through 306.33, not be negotiated has been ignored. The Committee requests that offers on these wool items be withdrawn.

Following the review of the U.S. offers to other countries and their responses to us, as presented, we believe that in view of the totally inadequate responses from other countries to U.S. requests as compared to the generous U.S. offers, and the evidence that other countries are not taking the negotiations seriously with respect to offering meaningful concessions, we wish to reemphasize the previous recommendations of this Committee which have been submitted to you. We also wish to recognize and express agreement with the statement by you, that if the United States does not obtain reciprocity and something meaningful for agriculture you will withdraw U.S. concessional offers. We wish to restate to you our support for your publicly stated position. The above was agreed upon unanimously.

Safeguards code

While favoring measures to insure against arbitrary market protectionism and while supportive of safeguard obligations that guarantee reasonable minimum levels of market access, the Livestock Technical Advisory Committee recommends against acceptance of any modification of safeguards that would prevent application of the U.S. Meat Import Act, implementation of V.R.'s or the flexibility of reasonable response against dumping export subsidization as provided under Section 204 of the Agricultural Act of 1956.

The LTAC specifically requests that developing countries not be granted special treatment under a proposed safeguard code.

Standards code

The LTAC supports in general the government objectives outlined in its presentation paper. However, the Committee reserves the right to further define the technical implementation as more information is received.

Subsidies code

The LTAC finds that in principle the use of subsidies for any purpose, particularly in the export of agricultural products, is wrongful and injurious to the best interest and stability of private enterprise, and to least cost advantage in production and marketing. No arrangements which limit the right to countervail against or prevent the export subsidization in the meat/livestock/animal or by-products sectors should be permitted. The LTAC does not oppose some accommodation to trade in agricultural subsidized products which are the subject of international agreements in which there is specific provision for export subsidization.

Government procurement code

The LTAC opposes U.S. participation in the government procurement code. Among the reasons for the Committee's objection are:

(1) The dangers implicit in the implementation of the code far outweigh the possible benefits to members of the industries represented by this TAC.

(2) The size of the possible benefits is one-sided to the detriment of U.S. industries.

(3) The difficulties of achieving open procedures in most countries seem insurmountable in their practical applications.

(4) The threshold values contemplated offer no protection to U.S. suppliers but could practically eliminate U.S. access to many foreign government procurements.

(5) Specifically, woolen clothing and leather products made from the commodities produced by some of the members of this TAC would be placed in severe jeopardy by the code obligation.

Customs valuation code

The proposed changes under this code can have severe implications for the woolen products manufactured from the wool supplied by members of this TAC. Special provisions should be included in the code to address the needs of this industry.

Arrangement on bovine meat

The TAC has been following the developments regarding the proposed meat agreements. So far, however, insufficient information is available on which to base recommendations.

RESOLUTION FROM AGRICULTURAL TECHNICAL ADVISORY COMMITTEE ON LIVESTOCK AND LIVESTOCK PRODUCTS

Whereas, reciprocal trade access is the cornerstone of U.S. Agricultural policy; and

Whereas, the U.S. meat and livestock industry consistently supports reasonable guarantees of international market access and the elimination of arbitrary tariff and non-tariff barriers; and

Whereas, particularly in consideration of large U.S. feedstuff surpluses, world food shortages and malnutrition and the capacity, interest, and ability of the U.S. meat and livestock industry to profitably supply important quantities of product at prices significantly less than those prevailing in the major meat importing and consuming countries: Therefore be it

Resolved, That the Agricultural Technical Advisory Committee on Livestock and Livestock Products recommends strongly and without equivocation to the office of Special Trade Representative and all other U.S. agencies and departments that share responsibility for development of trade policy and improvement in trade conditions that every effort be continuously applied throughout the GATT multilateral trade negotiations (Also known as the Toyko Round) to:

(A) Secure world-wide (all countries) access for all meat, by-products, and livestock in amounts that are not less than those reasonably equivalent to the access currently assured into U.S. markets.

(B) Eliminate variable levies and other arbitrary restrictions on a reciprocal basis.

(C) In the case of beef meat, to secure country-to-country access equivalent to not less than five percent of domestic production or five pounds per capita whichever is greater, and

(D) Stage the guarantee of such access proportionately over a five-year or such other period as may seem reasonable.

(E) Make it very clear that on account of world production, surplus, nutritional, reserve price, and other such factors it is of paramount importance to the U.S. that international questions relating to trade access for meat, by-products, and livestock be resolved within the time frame of the current M.T.N. and not some indeterminate period in the future.

The foregoing is in no way intended to limit or abridge previously trade policy recommendation from the ATAC on livestock, nor does the foregoing in any way prevent future and continuing policy statements on any commodities represented by the committee.

In the opinion both of the members of the Livestock Trade Advisory Committee and USDA analyst's, the proposed Safeguards Code would invalidate provisions of the U.S. Meat Export Act of 1964 and the use of the Voluntary Restraint Agreements.

The Committee recognizes that almost every meat producing country of the world with the lone exception of the U.S. has periodically embargoed trade in meats. Restraint in beef and meat trade has been wrongly and arbitrarily employed under the guise of "safeguard action" and the present provisions of GATT Chapter 19. These unfair and damaging actions have been particularly true of Japanese and European trade policy.

The LTAC agrees that the Safeguards Code should be strengthened to prevent unilateral avoidance of reciprocal trade responsibility in matters such as guaranteed access and elimination of tariffs.

However, until such time as the Western European, Japanese and other major beef production and consuming countries agree to a procedure for continuous access, tariff/levy/licensing elimination and an orientiation to "market prices" that is in harmony with the U.S. Meat Import Act, the Voluntary Restraints and reciprocal policies of free-er trade: "The U.S. beef, meat and livestock industry should not become bound by the provisions of the proposed safeguards coded or any commitment which would have the effect of invalidating the intent of the Meat Import Act or the ability of the U.S. to respond to the realities of the international meat trade in a reciprocal manner."

The Livestock T.A.C. will be most appreciative of an acknowledgement and response from both the U.S.D.A. and S.T.R. as to the acceptability and implementation of the foregoing recommendations.

MARCH 27, 1979.

To: APAC.
From: ATAC on Livestock and Livestock Products.
Subject: MTN—Requests and Offers.

S.T.R. representations to date with respect to the results of the M.T.N. are confusing and misleading.

Basically the S.T.R. has portrayed the M.T.N. performance by calculating the "so-called" "trade benefit ratio" on the basis of approximately $4 billion of U.S. agriculture commodities exported (based upon 1976 trade figures) and $3 billion imported. By so doing, the S.T.R. has created several wrong impressions. Among them is that U.S. agriculture is in prospect of gaining $4 billion in additional export opportunities.

For instance in the case of beef the figures seem to indicate that the U.S. has offered concessions on $1.3 billion of livestock related imports from foreign sources. In exchange, foreigners have offered concessions on $0.9 billion leaving a U.S. shortfall of $0.4 billion in the bargaining. While the U.S. livestock and meat industry has been inadequately represented on a number of issues, the foregoing arithmetic in no way properly characterizes what has been going on. For a moment, let's back up and start from the beginning.

Very simply, the U.S. dollar value of all agricultural/farm production has exceeded $120 billion. Of that, cattle, beef and byproducts account for over 20 percent of the gross. And all red meats, dairy and poultry (the combined meat/byproducts sector) account for about one-half of over $60 billion in annual gross value.

Now, 25 percent of the total dollar value of all U.S. farm production is exported to foreign markets—about $30 billion worth. In the livestock/red meat sector, very little meat has been exported and such would equal less than one-half of 1 percent of domestic production. On the other hand, byproducts mainly lard, tallow, grease and hides have approximated over 40 percent and 80 percent respectively of domestic production. Export of these items are important and have about balanced the dollar value of foreign meat imported into the U.S.

So, now going back to the net effect of the M.T.N. on U.S. agriculture, the following can be said:

(1) The dollar value of the commodities "bargained" over represents less than 5 percent of annual U.S. farm production.

(2) In the case of livestock, meat and byproducts, the current annual dollar value ($1.3 billion) of the products on which concessions were exchanged equaled about one-third of the total farm products ($4 billion) which were subject to concessions.

(3) The concessions offered by the U.S. relate mainly to a one cent reduction in tariff (from 3 cents down to 2 cents) and would have a theoretical benefit to foreign exporters of perhaps $20 million.

(4) The concessions offered by foreigners to the U.S. were a mixture of quantitative and tariff concessions. The main economic benefit to U.S. farmers would be from the E.C. verbal offer to accept 10,000 metric tons of high quality beef with a 20 percent tariff, and a 50 percent reduction in variety meat tariffs (10 percent down to 5 percent). The high quality beef offer would have a probable value of $100 million. The variety meat ad valorem reduction might be worth up to $5 million.

(5) The concessions offered by Japan relate to 15,000 metric tons of beef additionally by 1983 which could have an incremental trade value of $150 million. They have recently also offered access for U.S. leather which could be worth $40 million. (The access on leather, however, is subject to a 20 percent duty and other conditions which could prevent effective implementation. The U.S. tariff rate on leather is 5 percent.)

(6) Otherwise in general, most of the foreign concessions on lard, tallow and hides represent a binding (or stabilization) of current tariffs and levels of trade. At the

outside, the total dollar value of additional trade or dollar profit accruing to the U.S. from concessions offered on livestock-related products would probably not exceed $50 million.

(7) No material opportunities to export additional quantities of pork were obtained.

So, on balance, to guestimate a ball park figure, the U.S. livestock sector may have gained long run concessions worth $300 million. The dollar value of concessions that we have granted—in the livestock animal/meat/byproduct sector might vary between $50 and $100 million.

Therefore, a strictly pencil and paper evaluation could show the U.S. to have gained as much as $250 million in net trade benefits over that which it has given up.

However, the foregoing fails to consider:

(1) The quality of the foreign offers as related to quantitative and tariff conditions (i.e. unilateral rights to withdraw concessions and the failure to provide for guaranteed market shares or growth factors).

(2) The companion obligations (costs) the U.S. farm sector is required to accept to get the access (i.e. acceptance of E.C. subsidized meat or Japanese L.I.P.C. management).

(3) The relationship of these concessions offered by foreigners to the access already (previously) extended by the U.S. (guarantees provided by U.S. Meat Import Act).

(4) The relationship of these offers to either U.S. productive capacity, international food requirements and related humanitarian considerations.

Measuring the "quality" of the concessions that are proposed, the following facts should be understood:

(1) The E.C. reserves that right to unilaterally determine the implementation of their offer on high quality beef and it is conditioned upon U.S. acceptance of 5,000 tons of subsidized E.C. beef products. There has not been any agreement offered or discussed relating to a host of non-tariff barriers (health and sanitary procedures) which to date have been as effective in preventing beef entry as the quantitative and tariff restrictions.

(2) The Japanese have retained exclusive right to buy and resell beef products through their highly restrictive governmental agencies under the same old system of prohibitive tariffs and surcharges. And as with the E.C. there are not guarantees or assurances as to future market growth factors or the circumstance during periods of cyclical surplus etc. (No assurance after 1983.)

(3) The S.T.R. proposed that the U.S. meat sector bind themselves under the proposed subsidy and Safeguard Codes in several ways which could be enormously detrimental to the long run maintenance of market oriented, free enterprise U.S. agriculture. They are:

(*a*) acceptance of foreign subsidized meat in competition with U.S. production that is unsubsidized;

(*b*) agreement that a country can prohibit imports if in its unilateral judgment such are interfering with domestic programs (the old E.C./Japanese shell game.);

(*c*) a requirement that places U.S. livestock producers under procedures for determining injury that are more restrictive, more difficult than those required outside the U.S.;

(*d*) terms that could validate the U.S. Meat Import Act or subject the U.S. to industrial or monetary reparations.

In conclusion, it is with regret that this Committee advises that the benefits obtained are relatively insignificant in relation to:

(1) The trade policy objectives heretofore recommended by this Committee.

(2) The export capability of U.S. Agriculture.

(3) The tariff and access conditions guaranteed foreign governments by the U.S.

(4) The trade and payments objectives that are possible under more reciprocal, market oriented relationships.

(5) Maximizing economical food production for both U.S. and foreign consumers.

What the S.T.R. and USDA have neglected to do and failed to report is their consistent unwillingness to negotiate the longer term practical implementation of global (multilateral) access for beef, pork and poultry that is reciprocal to long standing U.S. trade accommodation. This Committee recommended that the M.T.N. initially accept the minimal objective of at least one pound per capita of freely traded meat products oriented to a one on one trade in the private marketplace. These reasonable requests (proposals) if implemented would have an incremental export potential of 10 billion dollars. In contrast the proposed concessions are insignificant to say the least.

TANNER'S COUNCIL OF AMERICA, INC.
New York, N.Y., March 23, 1979.

Memorandum to ATAC on Livestock and Livestock Products.
Re the leather industry's current position with respect to the effect of the proposed agreement on the industry.

The outcome of the multilateral trade negotiations is of extreme significance to the leather industry. Taken as a whole, leather and leather products accounted for a net trade deficit of about $2½ billion during 1978. This deficit is, to a large measure, the result of inequitable trading conditions existing between the U.S. and its major trading partners. Bluntly, the U.S. has been abiding by a set of free trade standards that are not the concern of other major trading nations in this sector. Japan, the Eastern Bloc countries, the countries of South America, India, Mexico and Spain are all major factors in this trade. None of these countries accept even a modicum of free trade practice in this area.

Enclosed is a chart depicting the balance of trade picture for this sector.

The leather industry had great hopes that the results from the multilateral trade negotiations would make progress toward equating conditions of trade for this industry. The results have been disappointing. Therefore, the leather industry makes the following specific comments on the Codes and the tariff cuts as so far announced.

Framework code

This Code is generally disappointing to the leather industry. It seems to be a license for LDC's to take restrictive measures.

Government procurement code

The Code makes the labor intensive customers for the leather industry—manufacturers of gloves, footwear, handbags, etc.—vulnerable to import competition without providing any realistic access to foreign government procurement.

The assurances given that the the Berry Amendment provision to the Defense Procurement Act will be retained is comforting. However, we are concerned that the section detailing enforcement of obligation jeopardizes the ability of the U.S. to maintain the protection now granted under the Berry Amendment and that the agreement opens the way for challenges to U.S. policy, particularly from developing country signatories.

Safeguards code

The leather industry believes that no special and differential treatment should be afforded to developing countries in safeguard actions regarding leather products. We also oppose the use of consultations which would delay the implementation of safeguard measures.

Subsidies code

Many of the leather products imported into the U.S. are subsidized. As a result, leather products have been the subject of many countervailing duty petitions. Our experience with regard to these petitions has been disappointing. A great deal depends upon the final structure of the implementing legislation on this Code.

The leather industry recommends that "restrictions on exports of raw material when it acts to keep artificially low the prices of exports manufactured therefrom" be added to the list of possible forms of domestic subsidies.

Tariffs

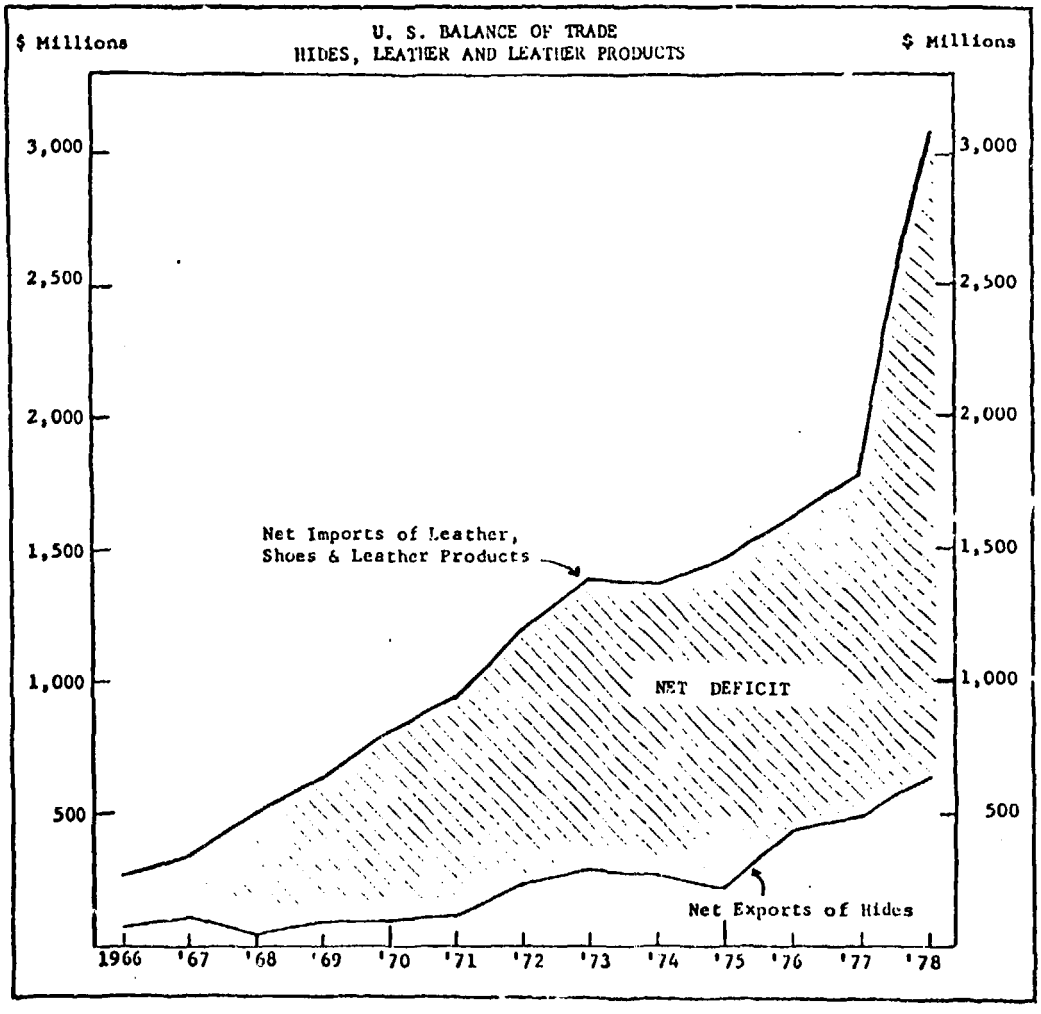
Tariff rates on leather entering the U.S. are 5 percent. The U.S. has offered a formula cut on this tariff (to about 3½ percent). As of this date it is our understanding that the Japanese, who maintain a tariff rate of 20 percent on cattlehide leather, have offered no reduction; Canada, whose current duty rate is 17 percent, has offered a formula cut (to about 11 percent). The EC offers only a 1 percent reduction from the 8 percent prevailing at present.

Until the final results of the tariff negotiations are known, it is difficult for the leather industry to give a final statement as to whether or not it is better off with or without passage of the trade package. At present, however, it seems as if the negatives outweigh the positives.

Whatever our final evaluation is, it is a fact that little or nothing has been done to deal with the fundamental causes of a sector trade imbalance that in 1978 amounted to about 9 percent of the U.S. trade deficit.

TANNERS' COUNCIL OF AMERICA
411 FIFTH AVENUE, NEW YORK, NEW YORK 1001(

March 2, 1979



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Mr. BALDUS. We will resume the hearing.

I understand that the Rice Millers' Association is represented by J. Stephen Gabbert, executive vice president.

STATEMENT OF J. STEPHEN GABBERT, EXECUTIVE VICE PRESIDENT, RICE MILLERS' ASSOCIATION, ACCOMPANIED BY BART S. FISHER OF THE LAW FIRM OF PATTON, BOGGS & BLOW, WASHINGTON, D.C.

Mr. GABBERT. Mr. Chairman and members of the subcommittee, my name is Stephen Gabbert. I am executive vice president of the Rice Millers' Association. Our headquarters office is located here in the Washington, D.C., area. Accompanying me is Mr. Bart Fisher from the law firm of Patton, Boggs & Blow in Washington, D.C. The Rice Millers' Association was founded in 1899. It is one of the Nation's oldest agricultrual trade associations. We represent both individual rice milling companies and farmer-owned cooperative mills in Arkansas, California, Louisana, Mississippi, Tennessee, and Texas. Our members process virtually all the rice produced in the United States.

Exports are the lifeblood of the rice industry. Over 60 percent of our rice must be exported. Today the United States is the world's largest rice exporter; consequently, we are committed to maximizing export opportunities and minimizing trade restrictions.

The Rice Millers' Association congratulates Ambassador Strauss and his staff for a job superbly done in Geneva. We are gratified that a major barrier to the sale of American rice in Europe has been reduced.

The rice trade of the nine countries of the European Economic Community (EEC) is regulated as part of the Community's common agricultrual policy otherwise known as the CAP. For years variable levy calculations for rice under the CAP have been carried out in a way that generated artificial protection for EEC produced rice and established major obstacles for U.S. rice.

The rice CAP, until the success of Ambassador Strauss' recent efforts, allowed the import levies on American long grain rice to be raised by 20 units of account per metric ton, about $32, purportedly to reflect the higher value of American long grain rice. In addition, it raised the levy of another 30 to 50 u.a. ($48 to $80) supposedly to account for differences in quality between domestic and imported varieties.

We understand that a three part concession was obtained from the EEC on rice in the context of the MTN. First, the entirely arbitrary 20 u.a. internal corrective amount was dropped. Second, the Europeans agreed to retain the external corrective account at its current level.

In addition, the Community agreed not to reclassify parboiled rice into an entirely different—and higher—tariff category.

The concessions represent the end of EEC discrimination against American rice exports. They amount to a saving of some $16 million per year in duties and will generate $8 million annually in additional trade.

The Rice Millers' Association also strongly supports the draft Subsidies and Countervailing Measures Code. The ease of access that the code affords to private parties who are injured by subsi-

dized imports will greatly improve the position of American traders in many commodities. Further, the code's accelerated procedure will eliminate the hight costs and continual uncertainty that currently attend efforts to compete with imported goods receiving bounties or grants. Of particular importance to U.S. rice exporters are the limitations placed by the code on subsidies that displace U.S. agricultural products in third country markets.

Mr. Chairman, the U.S. rice industry did not obtain all of the concessions it sought in the MTN. The Rice Millers' Association contends, however, that the EEC rice concessions and the draft codes agreed to in Geneva will work in the best interests of our industry and of our country. We strongly urge that all the codes negotiated in the MTN be adopted and implemented by the Congress. We believe that what we have seen and what we are seeing—in the conclusion of these uniquely complex multilateral trade pacts, and the submission of these agreements to the Congress—has been the result of close cooperation between the Congress, the executive branch, and the private sector. This spirit of cooperation, for which we are grateful above all to Ambassador Strauss and his staff, bodes well for our country's future.

Thank you, Mr. Chairman and members of the subcommittee, for providing us the opportunity to testify.

Mr. VANIK. Are there any questions, Mr. Vander Jagt?

Mr. Baldus?

Mr. BALDUS. No questions.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. No, sir.

Mr. VANIK. Mr. Moore.

Mr. MOORE. No questions.

Mr. VANIK. Now the Senate Finance Committee has estimated the value of the concession as $5 million. How do you get to $8 million?

Mr. GABBERT. We arrived at the $8 million by factoring. You basically are using a unit price in factoring it against a total quantity of tonnage and it may be that we used a different unit price.

Mr. VANIK. What will the expansion of the Common Market mean for your exports to Europe?

Mr. GABBERT. Given the conclusions that we have achieved here, Mr. Chairman, there should be continued expansion.

Mr. VANIK. If there are no further questions, I express my thanks to the witnesses. Please excuse me for being late; I was trying to get a little bit of nutrition with rice.

Mr. GABBERT. Thank you, Mr. Chairman.

Mr. FISHER. Thank you.

Mr. VANIK. The next witness will be Ruth Robbins, first vice president of the League of Women Voters.

We are very happy to hear from you, Ms. Robbins. We always appreciate the position of your organization in support of trade and it is a very helpful thing in connection with our legislative business. I want to tell you that we are very grateful for your objective analysis of what we do.

STATEMENT OF RUTH ROBBINS, FIRST VICE PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Ms. ROBBINS. Thank you, Mr. Chairman. Those are very, very kind, pleasant words.

Mr. Chairman, I will summarize my remarks but request that my full statement be submitted into the hearing record.

In addition, we have provided the committee with a copy of the newest League of Women Voters publication called MTN: Breaking the nontariff barrier. This was written specifically to help lay people understand the MTN and we would appreciate if this could be submitted into the record as well.

Mr. VANIK. Without objection.

Ms. ROBBINS. Thank you.

Mr. Chairman, members of the committee, I am Ruth Robbins, first vice president of the League of Women Voters of the United States. The league welcomes this opportunity to comment on the results of the multilateral trade negotiations and the formulation of the U.S. legislation to implement the agreements recently concluded in Geneva. And, we congratulate the House Ways and Means Committee for scheduling public hearings before the administration submits an MTN implementing bill to Congress. As we are all aware by now, the approval procedure adopted by Congress in the 1974 Trade Act does not permit amendments to this legislation. Thus, what has been and is being decided as necessary and appropriate to implement the MTN codes should be and is a public concern.

The League of Women Voters believes that the potential, long-term impact of these new trade liberalization agreements on the U.S. economy and world trade require us all to give them careful consideration. Public hearings such as these serve to facilitate this consideration and, the league hopes, will contribute to the formulation of legislation that will translate the standards set by the international agreements into a fair and open U.S. trade policy.

The League of Women Voters is a volunteer political action organization with 1,400 leagues in 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Our members are not experts on customs valuation, government procurement, subsidies, standards, licensing or particular products, all of which are included in the MTN agreements. We are, instead, workers, merchants, professionals, officials, farmers, wives and mothers, husbands and fathers and—like everyone else—consumers. As consumers, we are concerned about the dollar crunch evidenced by the increase in domestic prices of very basic goods and services and by the decline in the value of the dollar abroad.

This is not the first time these concerns have been expressed by league members. It was, in fact, during a consumer study of inflation in the late 1920's that the League of Women Voters first became interested in the subject of trade. League members were impressed by the extent to which customs duties and other trade restrictions caused higher prices for the consumer. That was just the beginning of our involvement in trade issues.

Since that time, the league has periodically reexamined the relationship between U.S. trade policies and changing patterns of international commerce, most recently in a study concluded in 1976

Bolstered by these periodic reevaluations and other studies which yielded positions favoring East-West trade, nonreciprocal trade concessions for developing nations and an improved trade adjustment assistance program, the league has been at the forefront of every debate on every major piece of trade legislation, always coming out strongly for measures that are trade expansive rather than trade restrictive. Such a policy, league members believe, serves the political and economic interests of this country and of its citizens, collectively and individually, because it paves the way for political harmony among nations, promotes economic development at home and abroad, and expands consumer choice.

By providing a positive alternative to the spectre of trade warfare and international economic chaos; by encouraging the shift of resources to the most dynamic sectors of the economy; by formalizing special concessions to developing countries which are and must be increasingly significant trading partners; and by permitting the import competition that is badly needed as an escape valve to the pressures of inflation that afflict us all, the MTN agreement will, in the league's view, be solidly in the public interest.

Multilateral reductions in tariffs will allow many U.S. producers to compete more effectively in foreign markets and will reduce the prices U.S. consumers pay for foreign products imported into the United States. In addition to agreements reached on tariff reductions, the Geneva package offers us, for the first time, an opportunity to contain and control the nontariff barriers that present the most significant restraints to international trade today.

Moreover, the codes promise benefits for all nations by establishing a modern and streamlined framework within a strengthened General Agreement of Tariffs and Trade. The new procedures for information sharing, dispute settlement and consultation will serve to foster improved international cooperation and provide a measure of continuity to international trade relations. Thus, the MTN will have laid the groundwork for dealing not only with present problems but those of the future as well.

The League shares the concerns of many of you on this committee and in the Congress that these agreements will not solve all of our trading problems and may in fact entail hardships for some Americans. It is not enough to say that in the the long run everyone benefits from ttrade liberalization. A worker without a job or a firm without a contract because of import competition are often difficult realities which follow trade liberalization but the overall gains, not particular losses, should determine U.S. policy.

Nevertheless, because League members are fair trade realists, not free trade idealists, we recognize that temporary safeguards may be necessary to allow industries severely injured by a rapid influx of imports the time to adjust. Moreover, the League believes that no single group of workers or sector of our economy should be made to pay the costs of trade policies which benefit the nation as a whole. We believe that a more effective trade adjustment assistance program is the keystone of a policy that promotes trade expansion. We believe, too, that a good program should and could provide prompt and effective assistance without damage to our foreign relations and at a lower cost to the economy than import restrictions. For these reasons the League of Women Voters sup-

ports and applauds this committee's efforts at reform of the Trade Adjustment Assistance Program as contained in H.R. 1543.

Many of us are well aware of those in the United States who do not share in the benefits of liberalized trade. Few are aware, however, that the benefits of trade liberalization accrue largely to the United States and other industrialized countries rather than to developing nations. Certainly economic and social disparities between developed and developing nations are not new. However, industralized and developing nations are increasingly linked together in trade. For example, developing nations now buy over 40 percent of U.S. exports of manufactured goods. Their purchases not only bring profits and employment to Americans but provide their countries with the products, machinery and equipment essential to further economic development.

It is a significant fact that over one-half of the nations taking part in the Geneva negotiations represent developing nations. Though not all the developing countries will be signatories to the agreement, the overall benefits acquired from the easing of trade restrictions worldwide will be particularly important to developing nation economies. Moreover, as a result of the negotiations, support for the principle of special and differential treatment has been established. This serves as recognition of the gross disparities between unequal trading partners and we believe is an important contribution to the development of a strengthened international economy.

The willingness and perseverance of industrialized and developing nations to negotiate and conclude these agreements against the backdrop of increasingly protectionist pressures highlights the level of commitment to liberalized trade that exists today. Conclusion of the agreements ws significant in and of itself, and it did, no doubt, prevent a deterioration in trade relations. But it was only the first stage of the Tokyo round. The second stage—the present stage—is to draft and approve implementing legislation. This translation of the agreements is a measure of the national commitment to a fair and open trade policy, but the real test of the effectiveness of the MTN will be the willingness of the signatory nations to live up to the obligations they have assumed.

In recent weeks this committee and its counterpart in the Senate have held closed door sessions to consider what changes are appropriate to bring U.S. law into compliance with the international codes. These statutory changes, along with other arrangements already granted to select sectoral interest groups, will be the real indicators of the impact the new MTN codes will have on U.S. trade policy. An inadequate translation into domestic law could reverse the intent of the codes. Too many concessions made to get political support could negate the progress made in the negotiations. It is up to this committee and the entire House of Representatives to see that the same spirit of fair and open trade embodied in the Geneva agreements is implemented into U.S. law.

The League believes that in determining what is necessary and appropriate to implement these codes, your overall objective should be to meet the standards established in the codes themselves. These alone are numerous and we would not presume to draw up an exhaustive list of these obligations.

There are several items which do concern the league, particularly in the subsidies/countervailing duty measures code. We highlight this code because, far and above the rest, this one goes to the heart of the Tokyo round. As a result of these negotiations, nations have accepted stricter controls on export subsidies and in return the United States has agreed to accept an injury test as part of the countervailing duty law. By accepting an injury test, the United States has finally agreed that it is the effect, not the fact, of a subsiby that is the relevant factor in levying countervailing duties. The League applauds this action and urges Congress to uphold the express terms of the code.

In particular, the code specifies that, "injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry * * *" U.S. countervailing duty law should therefore state clearly that it is material injury, meaning, "important and consequential," not merely de minimis injury that is being tested.

Another aspect of the subsidy code we consider significant is the time period to be permitted for domestic countervailing duty investigations. The agreement specifies that parties be given a reasonable opportunity to make their cases but that investigations be concluded within 1 year after their initiation, except in special circumstances. No doubt an argument can be made for shorter time periods for investigations in order to bring speed and effectiveness to the law. But, so too, a case can be made for taking more time in order that due process can be accorded both the domestic industry and importing agencies. Recommendations made so far range from 75 days to 6 months for a preliminary investigation and equally varying time periods for a final determination and injury proceeding.

It would seem that a reasonable opportunity is best afforded everyone by a longer, not shorter, time period for an investigation. What we want is a good deicision, not just a decision. Of course, the investigating agency should proceed as rapidly as possible but the League of Women Voters urges that the committee thoroughly consider the benefits of allowing up to 6 months for a preliminary investigation with a final subsidy determination to come within 60 days of that and a finding on the question of material injury within 120 days of the preliminary subsidy finding. Based on other experiences with similar investigative proceedings, this would seem a fair time period and still within the one year limit established by the code itself.

Once the existence of a subsidy and a positive finding of injury has been determined, the administering agency must decide whether the amount of the countervailing duty is to be the full amount of the subsidy or less than the amount of subsidy. On this the code leaves room for discretion but advises that "the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry." Thus, it would seem the intention is that when possible a less than total duty be imposed. U.S. law should not therefore require an amount in excess of what is "adequate to remove the unjury to a domestic industry."

The League of Women Voters urges that this committee, Congress and the administration undertake to implement the stand-

ards established in the trade agreements. If we are unwilling to adopt into practice that which has been accepted by our Government, then we call into question our credibility and reliability in future negotiations. Certainly U.S. trade law has been well in advance of any other nation. That does not mean that we can make exceptions for ourselves. It means that we have a tradition to uphold and must prove that in the face of adverse pressures we, too, can hold up our part of the bargain.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF RUTH ROBBINS, FIRST VICE PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mr. Chairman, members of the committee, I am Ruth Robbins, first vice-president of the League of Women Voters of the United States. The League welcomes this opportunity to comment on the result of the multilateral trade negotiations and the formulation of the U.S. legislation to implement the agreements recently concluded in Geneva. And, we congratulate the House Ways and Means Committee for scheduling public hearings before the Administration submits an MTN implementing bill to Congress. As we are all aware by now, the approval procedure adopted by Congress in the 1974 Trade Act does not permit amendments to this legislation. Thus, what has been and is being decided as "necessary and appropriate" to implement the MTN codes should be and is a public concern.

The League of Women Voters believes that the potential, long term impact of these new trade liberalization agreements on the U.S. economy and world trade require us all to give them careful consideration. Public hearings such as these serve to facilitate this consideration and, the League hopes, will contribute to the formulation of legislation that will translate the standards set by the international agreements into a fair and open U.S. trade policy.

The LWVUS is a volunteer political action organization with 1400 Leagues in 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Our members are not experts on customs valuation, government procurement, subsidies, standards, licensing, or particular products, all of which are included in the MTN agreements. We are, instead, workers, merchants, professionals, officials, farmers, wives and mothers, husbands and fathers and—like everyone else—consumers. As consumers, we are concerned about the dollar crunch evidenced by the increase in domestic prices of very basic goods and services and by the decline in the value of the dollar abroad.

This is not the first time these concerns have been expressed by League members. It was, in fact, during a consumer study of inflation in the late 1920's that the LWV first became interested in the subject of trade. League members were impressed by the extent to which customs duties and other trade restrictions caused higher prices for the consumer. That was just the beginning of our involvement in trade issues. Events following the passage of the Smoot-Hawley Act in 1930 convinced League members that trade is closely linked with domestic and international politics. Smoot-Hawley's "beggar-thy-neighbor" policies led other nations to retaliate with similar restrictions; U.S. and world trade shrank to a fraction of what it had been, and deteriorating political relations exacerbated the still unheaded wounds of World War I.

Since that time, the League has periodically reexamined the relationship between U.S. trade policies and changing patterns of international commerce, most recently in a study concluded in 1976. Bolstered by these periodic reevaluations and other studies which yielded positions favoring East-West trade, nonreciprocal trade concessions for developing nations, and an improved trade adjustment assistance program, the League has been at the forefront of every debate on every major piece of trade legislation, always coming out strongly for measures that are trade expansive rather than trade restrictive. Such a policy, League members believe, serves the political and economic interests of this country and of its citizens, collectively and individually, because it paves the way for political harmony among nations, promotes economic development at home and abroad, and expands consumer choice.

By providing a positive alternative to the spectre of trade warfare and international economic chaos; by encouraging the shift of resources to the most dynamic sectors of the economy; by formalizing special concessions to developing countries which are and must be increasingly significant trading partners; and by permitting

the import competition that is badly needed as an escape valve to the pressures of inflation that afflict us all, the MTN agreement will, in the League's view, be solidly in the public interest.

Multilateral reductions in tariffs will allow many U.S. producers to compete more effectively in foreign markets and will reduce the prices U.S. consumers pay for foreign products imported in the United States. In addition to agreements reached on tariff reductions, the Geneva package offers us, for the first time, an opportunity to contain and control the nontariff barriers that present the most significant restraints to international trade today. Customs valuation procedures and licensing requirements will be made more uniform, standard setting and government procurement procedures will be opened up, and trade distorting subsidy practices will be restrained. By increasing export opportunities for agricultural and other products, billions of dollars of U.S. goods and services will gain entry to foreign markets. By making possible a greater choice of lower priced goods, U.S. consumers, particularly low income consumers, will benefit.

Moreover, the codes promise benefits for all nations by establishing a modern and streamlined framework within a strengthened General Agreement of Tariffs and Trade. The new procedures for information sharing, dispute settlement and consultation will serve to foster improved international cooperation and provide a measure of continuity to international trade relations. Thus, the MTN will have laid the groundwork for dealing not only with present problems, but those of the future as well.

The League shares the concerns of many of you on this committee and in the Congress that these agreements will not solve all of our trading problems and may in fact entail hardships for some Americans. It is not enough to say that in the long run everyone benefits from trade liberalization. A worker without a job or a firm without a contract because of import competition are often difficult realities which follow trade liberalization. But the overall gains, not particular losses, should determine U.S. policy.

Nevertheless, because League members are fair trade realists, not free trade idealists, we recognize that selective temporary safeguards may be necessary to allow industries severely injured by a rapid influx of imports the time to adjust. We sincerely hope that the negotiating nations will come to terms with the safeguard agreement in time to consider it along with the other codes. And, in this regard, we urge that U.S. negotiators seek to secure an agreement that includes a reporting system of all safeguards action: government as well as so called voluntary and interindustry agreements and other nongovernmental restraints. Until such decisions are taken in Geneva, US Escape Clause laws should not be changed.

Moreover, the League believes that no single group of workers or sector of our economy should be made to pay the costs of trade policies which benefit the nation as a whole. We believe that a more effective trade adjustment assistance program is the keystone of a policy that promotes trade expansion. We believe, too, that a good program should and could provide prompt and effective assistance without damage to our foreign relations and at a lower cost to the economy than import restrictions. For these reasons the LWV supports this committee's efforts at reform of the Trade Adjustment Assistance Program as contained in H.R. 1543.

Many of us are well aware of those in the United States who do not share in the benefits of trade liberalization. Few are aware however that the benefits of trade liberalization accrue largely to the U.S. and other industrialized countries rather than to developing nations. Certainly economic and social disparities between developed and developing nations are not new. However, industrialized and developing nations are increasingly linked together in trade. For example, developing nations now buy over 40 percent of U.S. exports of manufactured goods. Their purchases not only bring profits and employment to Americans, but provide their countries with the products, machinery and equipment essential to further economic development. It is a significant fact that over one half of the nations taking part in the Geneva negotiations represent developing nations. Though not all the developing countries will be signatories to the agreement, the overall benefits acquired from the easing of trade restrictions worldwide will be particulary important to developing nation economies. Moreover, as a result of the negotiations, support for the principle of special and differential treatment has been established. This serves as recognition of the gross disparities between unequal trading partners and we believe is an important contribution to the development of a strengthened international economy.

The willingness and perseverance of industrialized and developing nations to negotiate and conclude these agreements against the backdrop of increasingly protectionist pressures highlights the level of commitment to liberalized trade that exists today. Many observers agree that the mere completion of these agreements is

a significant achievement. Similarly, some speculate about "what could have happened" had the negotiations not been underway. Imposition of trade restrictions might have launched international trading partners into an all out trade war. Those same people now conclude that these codes can block the protectionist tide that has been swelling these last five years.

Conclusion of the agreements was significant in and of itself, and it did, no doubt, prevent a deterioration in trade relations. But it was only the first stage of the Tokyo Round. The second stage—the present stage—is to draft and approve implementing legislation. This translation of the agreements is a measure of the national commitment to a fair and open trade policy. But the real test of the effectiveness of the MTN will be the willingness of the signatory nations to live up to the obligations they have assumed.

In recent weeks this Committee and its counterpart in the Senate have held closed door sessions to consider what changes are appropriate to bring US law into compliance with the international codes. These statutory changes, along with other arrangements already granted to select sectoral interest groups, will be the real indicators of the impact of the new MTN codes will have on U S. trade policy. An inadequate translation into domestic law could reverse the intent of the codes. Too many concessions made to get political support could negate the progress made in the negotiations. It is up to this committee and the entire House of Representatives to see that the same spirit of fair and open trade embodied in the Geneva agreements is implemented into US law.

The League believes that in determining what is necessary and appropriate to implement these codes, your overall objective should be to meet the standards established in the codes themselves. These alone are numerous and we would not presume to draw up an exhaustive list of these obligations. Many other witnesses representing various sectoral interests will speak to these and other issues which the Committee may find advisable to consider during its deliberations of the implementing legislation.

There are several items which do concern the League, particularly in the subsidies/countervailing duty measures code. We highlight this code because, far and above the rest, this one goes to the heart of the Tokyo Round. As a result of these negotiations, nations have accepted stricter controls on tax export subsidies and in return the U.S. has agreed to accept an injury test as part of the CVD law. By accepting an injury test, the U.S. has finally agreed that it is the effect, not the fact of a subsidy that is the relevant factor in levying countervailing duties. The League applauds this action and urges Congress to uphold the express terms of the code.

In particular, the code specifies that "injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry * * * ." U.S. countervailing duty law should therefore state clearly that it is material injury, meaning "important and consequential," not merely de minimis injury that is being tested.

Another aspect of the subsidy code we consider significant is the time period to be permitted for domestic countervailing duty investigations. The agreement specifies that parties be given a "reasonable opportunity" to make their cases, but that investigations be concluded within one year after their initiation, except in special circumstances. No doubt an argument can be made for shorter time periods for investigations in order to bring speed and effectiveness to the law. But, so too, a case can be made for taking more time in order that due process can be accorded both the domestic and importing agencies. Recommendations made so far range from 75 days to six months for a preliminary investigation and equally varying time periods for a final determination and injury proceeding. It would seem that "a reasonable opportunity" is best afforded everyone by a longer not shorter time period and, thus, the LWV would prefer that the legislation not establish a minimum investigation period that might only serve to encourage determinations based on inadequate information simply to meet statutory deadlines. What we want is good decision, not just a decision. Of course, the investigating agency should proceed as rapidly as possible, but the LWV urges that the committee throughly consider the benefits of allowing up to six months for a preliminary investigation with a final subsidy determination to come within 60 days of that and a finding on the question of material injury within 120 days of the preliminary subsidy finding. Based on other experiences with similar investigative proceedings, this would seem a fair time period and still well within the one year limit established by the code itself.

Once the existence of a subsidy and a positive finding of injury has been determined, the administering agency must decide whether the amount of the countervailing duty is to be the full amount of the subsidy or less than the amount of subsidy. On this, the code leaves room for discretion but advises that "the duty be

less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry." Thus, it would seem the intention is that when possible a less than total duty be imposed. US law should not therefore require an amount in excess of what is "adequate to remove the injury to a domestic industry."

These issues are our primary concerns in the subsidy/countervailing measures code. But due process is also an important consideration in the proposed amendments to the antidumping law. We would urge that consideration of time limits in dumping cases also take into account the importance of due process so that decisions are not only speedy, but also founded on as thorough an understanding of the evidence as possible.

The League of Women Voters urges that this Committee, the Administration and Congress undertake to implement the standards established in the trade agreements. If we are unwilling to adopt into practice that which has been accepted by our government, then we call into question our credibility and reliability in future negotiations. Certainly U.S. trade law has been well in advance of any other nation. That does not mean that we can make exceptions for ourselves. It means that we have a tradition to uphold and must prove that in the face of adverse pressures, we too can hold up our part of the bargain.

CURRENT FOCUS

MTN: BREAKING THE NONTARIFF BARRIER

The new multilateral trade agreements are the subject of newspaper headlines, TV talk shows and congressional hearings. And for good reason. They touch the lives of all of us—manufacturers, retailers, farmers, workers and consumers. Now, from years of talk and inches-thick documents, real breakthroughs in international cooperation are emerging. It's worth some effort to master the jargon of the trade world and the veiled language of diplomacy to get at the meat of the agreements, which are the product of nearly six years of multilateral trade negotiations (MTN). Most of what remains to be done in finalizing the agreements is dotting the i's and crossing the t's—and getting each nation to endorse what the negotiators have wrought. In the United States, that means persuading Congress to enact changes in existing laws, to bring them into alignment with the international agreements that Administration officials have agreed to.

The Tokyo Round, as it is called, began in 1973 as an outgrowth of an economic summit meeting convened in Tokyo by the major trading nations (though Geneva has been the site of the negotiations themselves). It is the seventh such round since 1947, when the multilateral (many-nation) approach to trading was first established through the General Agreement on Tariffs and Trade (GATT). GATT is not only the first of the sequence of MTN agreements but also the institutional arrangement that monitors and facilitates trade relations among nations.

Participants in the Tokyo Round (98 nations in all) had a double mandate. The first was **to continue working toward eliminating tariffs** (taxes on imports). Earlier negotiations have brought tariffs down to an average of only 8 to 10 percent, and the new agreements will reduce them by about another third. The second mandate—**to devise codes of conduct** (shortened, usually, to *codes*) **governing the use of nontariff measures** that affect trade—was a new task. And though the successive reductions in tariffs have never been easy, negotiations on nontariff barriers (usually called NTBs) have proven to be even more difficult.

Whereas a tariff is indisputably a barrier to trade, the protectionist intent of many NTBs is often much more difficult to pinpoint, because they often stem from domestic policies whose primary purposes are not trade-related. For example, if a health standard has the effect of excluding another nation's food products, is that standard an NTB? When do subsidies, which all nations use to achieve domestic goals, constitute an artificial advantage in another country's market place? The answer partially depends on whose ox is gored.

And because NTBs often arise from domestic policy, they present an extremely delicate international negotiating situation. Governments don't like other countries to tell them what is and what is not an acceptable domestic policy. It is something of a political miracle that so many governments agreed to sit down and bargain on the use of nontariff measures, and even more astonishing that they reached agreement on these politically sensitive issues.

The agreements in brief

Though the MTN agreement is commonly spoken of in the singular, it is really a package of trade agreements including:

- **Tariff reductions** (as noted above);
- **Concessions on product quotas** (a quota is one form of an NTB that is expressly trade-restrictive);
- **Agricultural agreements** (which are only consultative);
- **Codes of conduct** (which will govern the use of NTBs).

It is the series of codes of conduct that is the distinctive feature of the Tokyo Round. While provisions vary from code to code, overall themes and goals do emerge. One of the most important is that trade decision making is made more open and accessible—made more "transparent," as the negotiators like to say. The codes generally allow greater scrutiny and input—both by governments and by the private sector—than ever before. They set stricter guidelines for information sharing and consultations, establish open procedures (such as public hearings and comment periods on proposed rules) and strengthen dispute-settlement mechanisms. The net effect should be greater predictability for those engaged in international trade.

The codes

Of the six new codes of conduct governing NTBs—subsidies, safeguards, government procurement, standards, customs valuation and licensing—the first five, which are expected to receive greatest attention, are described below.

Subsidies and countervailing duties

Existing GATT rules governing the uses of subsidies have been weak and ineffective. The new subsidies code imposes greater discipline on this most politically sensitive and most complicated of all the NTBs. Many governments give a fiscal incentive to firms producing for export (an export subsidy) or prop up an "infirm" industry with loans, grants or other fiscal incentives (a domestic subsidy). When these subsidized products

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are traded internationally, they have an unfair competitive advantage, because their selling price does not reflect true costs of production and marketing.

All nations use some form of subsidy, but some use this NTB more extensively than others. The European Community uses both export and domestic subsidies vigorously. Developing countries, too, employ a wide range of subsidy practices.

The United States, which does not use subsidies extensively, has countered the unfair competitive advantage of subsidized imports by levying a countervailing duty (CVD) on them. This duty, or tax, brings the price of the import to the level it would have been without the subsidy, thus raising it closer to its market value. U.S. officials recognize that levying a CVD does not address the real problem: the use of subsidies. Therefore, in the 1974 Trade Act, Congress authorized the President to negotiate in order to limit the ways subsidies are used. That is what the subsidies code is all about.

The code flatly prohibits the use of *export* subsidies for industrial products and nonprimary mineral products. Furthermore, although export subsidies for agricultural products are not prohibited (the European Community uses export subsidies for farm products extensively as part of its agricultural policy), the rules governing their use are tightened.

The code also establishes, for the first time, international rules governing *domestic* subsidies. Nations signing the code (signatories) agree to try not to use domestic subsidies in ways that could adversely affect other countries' trade interests; even more important, when subsidies *do* affect trade adversely, businesses may seek redress under the code.

These curbs on subsidies will be implemented through agreed-upon definitions of what constitutes a subsidy; agreements on how and for what reasons redress can be sought; and mechanisms for dispute settlement.

Definition

In order to clarify what is and what is not an export subsidy, the code appends an illustrative list of export subsidy practices. It includes outright rebates to producers on products for export and more subtle practices, such as granting more favorable terms for internal shipping on products for export than on products for domestic consumption. The illustrative list cites the *remitting* of indirect taxes at a higher level than that *levied* on products for domestic consumption. The European Community's value added tax has been the classic example. The VAT (similar to states' sales taxes) is levied on products for domestic consumption, but not on products for export sales; just as states do not levy sales taxes on sales to another state. The Community could not rebate this internal tax on products for export at a higher level than that charged on products consumed domestically.

Many countries, including the United States, have complicated tax-incentive systems that may or may not constitute export subsidy practices. These systems have not been addressed substantively in the MTN. An international tax conference may be convened after the MTN to try to grapple with the issue.

Redress/dispute settlement

The code establishes two avenues through which to complain about violations. One track is unilateral, when the domestic market is involved: a business can complain to its own government, which investigates the complaint and determines whether countervailing duties are warranted. This recourse already exists.

The second, multilateral, track created by the code enables businesses to seek redress if subsidized products are displacing their products in *third-country* markets. Under this approach, a government can complain to the international subsidies committee created by the code. If the committee finds for the complainant, it authorizes the complaining country to take countermeasures, that is, to withdraw a GATT benefit from the offending country (the complaining country obviously could not take *direct* action—such as levying a CVD—against the subsidized product going into the third-country market).

A country can seek redress even against subsidized agricultural products, even though these export subsidies are allowed; a country may not use export subsidies to gain more than its "equitable" share of world agricultural trade, defined in part by its share of trade over a previous three-year representative period. The code also stipulates that a country may not use export subsidies to significantly depress world prices.

If a country is not satisfied with an investigation or a finding, it can activate the dispute-settlement mechanism established by the code. Considered the most stringent of the dispute-settlement provisions in any of the codes, it guarantees a review by a panel of experts and a determination within 150 days.

Injury: a new factor for the United States

In exchange for these concessions on subsidies, the United States had to agree to the principle that it is the *effect* of a subsidy and not its *existence* that determines an unfair trade practice. In other words, the U.S. negotiators had to agree that the United States will *not* levy countervailing duties unless the subsidized import causes or threatens to cause injury to domestic producers. This means that the United States, which is the only major trading nation that does not require an injury test, must amend its CVD law to include one.

Some people in the United States consider this concession unacceptable. They argue that the present CVD law was designed to *prevent* injury and that the new code would eliminate that protection. In response, U.S. negotiators point to specific code provisions, especially the injury test, which is actually less stringent than that in the U.S. 1974 Trade Act (see Safeguards below). The latter requires that increased imports be shown to be "important and not less important" than any other factor that could be contributing to a domestic producer's injury (such as domestic environmental protection laws or changes in demand), whereas the new code does not attempt to weight the importance of the subsidy against any other factor that could be causing injury. Moreover, proof of injury is not always required. If a country uses prohibited export subsidies, it has violated the agreement and countermeasures would be authorized through the multilateral track described above.

Safeguards

Much foreign competition is not unfair competition, but it can be disruptive to domestic industry. Recognizing that a rapid influx of imports can cause injury to domestic firms, current GATT rules (spelled out in Article XIX) authorize countries to take *safeguard action*, that is, impose a tariff or quota temporarily to protect an industry and give it time to adjust. (In the United States, taking safeguard action is called "invoking the escape clause," and the methods and procedures a business must follow to seek relief under the escape clause are governed by the U.S. Trade Act of 1974.)

The General Agreement on Tariffs and Trade limits the kind of safeguard action that can be taken and stipulates that a safeguard action must be applied equally against all countries from which a product is being imported. This principle of nondiscrimination, known as the *most-favored-nation* (MFN) principle, governs trade expansion as well as trade restrictions.

Article XIX has not been widely used by nations. This does not mean, however, that nations have not taken action to exclude imports. Industry-to-industry arrangements have been made, outside the GATT, whereby one country's industry "voluntarily" agrees to limit its exports to another's home market (the recent European Community-Japan steel arrangement is an example). Since these arrangements are taken outside the GATT, there is no set of guidelines that nations must follow.

The new safeguards code revises the existing GATT code to allow a nation to take "selective" safeguard action against the specific country (or countries) whose product is causing the injury, without applying the action across-the-board. Some people criticize this change as undermining the MFN principle. Others defend it, arguing that selectivity is the necessary price for bringing under GATT governance actions that are already in practice and will remain in practice. When the new code is in effect, GATT can set conditions for use of safeguard action, including transparency (i.e., notification and consultations) when such action is contemplated and limits on when

and how a selective safeguard can be applied.

As the negotiations come to their conclusion in Geneva, it becomes increasingly uncertain whether or not negotiators will be able to reach agreement on a safeguards code. Developing countries, who fear that they will bear the brunt of selectivity, are pushing hard for strict standards for the application of selective safeguards. Among their demands are prior approval of selective safeguard action by the international safeguards committee established by the code; prohibition of the use of the safeguard if the committee disapproves it; requiring that a selective safeguard be applied against all major suppliers of a product, thereby limiting its selectivity; and allowing retaliation even if all code provisions are adhered to. The European Community, which is particularly interested in having selective safeguards, is unwilling to accept these strict guidelines, and thus it may be impossible to conclude this code.

Government procurement

Government purchase of goods is big business. It has been a subject of discussion in the Tokyo Round because countries have adopted methods of procurement that discriminate against other countries. The U.S. "Buy America" law, for instance, stipulates that a contracting federal agency must give the contract to an American bidder even if the bid is 6-12 percent higher than that of a foreign bidder (for purchases that are deemed national defense procurements, the percentage preference is 50 percent).

Other countries, too, have procurement practices that give their businesses preferential treatment. Some maintain lists of "eligible bidders" that do not include foreign firms. Some give out such meager information that foreign bidders know too little to place an intelligent bid. And sometimes contracts are "advertised" in such obscure places that in fact there is no notification to those who are not in the know.

This code establishes rules, where now they are nonexistent, that give each bidder "treatment no less favorable" than any other bidder, through the use of open procedures and time limits for notification, submission of bids, specifications of the contract and qualification of suppliers, and the award of contracts. In addition, firms that do not win a contract will be able to find out, through their governments, why they did not win it. National security procurements, services, and government purchases under agricultural support programs are exempted.

The minimum amount (threshold) of contracts that would be covered is about $180,000. U.S. administration officials estimate that this will open some $25 billion of government purchases in foreign markets and $10-12 billion in the U.S. market to international bidding. The code prohibits a country from dividing a contract into separate contracts in order to reduce the amount below the threshold and thus avoid complying with the code. Only procurements by national governments are covered, but these central governments are to "encourage" subsidiary government entities to adhere to the code.

Lastly, only those nations that sign the code are eligible to receive its benefits. Governments may continue to discriminate against nonsignatories.

Customs valuation

Because governments use a wide variety of methods to calculate the value of an import, customs valuation is often an impediment to trade. It causes problems for importers and exporters alike, mainly because frequently neither can predict with certainty the value of an item until a customs officer actually assigns it one.

One U.S. valuation method worth mentioning because it has historically created controversy is the American Selling Price (ASP). ASP assigns an import value equal to its American-made equivalent, rather than on its actual value. Once widely used, ASP is now used only for some chemical and some footwear imports.

Under the code, ASP and a host of valuation methods will be replaced by a simplified, streamlined system of five methods. The preferred one will be "transaction value," the actual amount the importer pays to the exporter. Trade experts estimate that 90 to 95 percent of U.S. imports will be valued by this method.

As do the other codes, this one provides consultation and dispute-settlement mechanisms. Significantly, it also provides for full administrative and judicial reviews when disagreements between business executives and customs officials arise, a benefit now available only in the United States.

Many trade experts consider this code a "sleeper," that will have an immediate, positive impact. They praise the code for its simplicity and the predictability it will bring to importing and exporting.

Standards

Just as customs valuation methods vary widely among nations, so do product standards. Since imports must conform to those standards to gain access to a country's market, many countries manipulate them to protect a domestic industry. Some countries literally use a double standard, requiring that an import meet more stringent requirements than its domestic counterpart. A Catch-22 certification procedure is another in a long list of NTBs raised via the standard-setting process. Some countries require their own officials to certify compliance with standards during successive stages of a product's manufacture—yet refuse to send those officials to another country that is turning out the product for export.

It would be impossible to harmonize product standards throughout the world. Instead, this code brings openness and scrutiny to standard-setting and certification procedures and ensures that certification is applied evenhandedly. Signatories are encouraged to accept certification in the producing country when they are satisfied that the certification is being performed by a technically competent entity. Existing standards and certification procedures will not be subject to the terms of the code, but new and revised ones will be.

The code encourages the use of existing international standards "where appropriate." Also, where appropriate, nations are to specify standards in terms of performance (i.e., what the product must do) rather than design (i.e., what it looks like) in an attempt to reduce artificial product standards. As with the government procurement code, the standards code will apply only to national governments, but these are to encourage subsidiary governments and nongovernmental standard-setters to adhere to the terms of the code.

GATT framework

In addition to the various codes and other agreements, negotiating nations agreed to changes in the overall GATT framework, which "houses" the set of principles to which trade actions must conform and through which they achieve their legal basis. The framework agreement addresses four issues.

- The new agreement legitimates the practice of granting "*special and differential treatment*" to developing countries (see Developing Countries).
- Nations affirmed the principle that trade restrictions are an inappropriate response to balance-of-payment (BOP) problems and agreed that any such restrictions taken for BOP reasons should be measures that minimize trade distortion. Currently, only quotas, a most distortionary form of import curbs, are allowed under the GATT; the change would legitimate surcharges, which are less distortionary.
- Nations recommitted themselves to effective procedures for the settlement of trade disputes, including expeditious review and access to impartial and expert review panels.
- Nations agreed that differences over the use of export restrictions (*such as export quotas and embargoes*) will be subject to dispute settlement and that a full review of existing GATT rules will receive priority attention following the implementation of the MTN.

Agricultural trade

In previous rounds, trade negotiators had attempted to grapple with agricultural trade problems, but their efforts fell short. In fact, some U.S. farm groups describe their efforts as "selling farmers down the river."

This time, U.S. farmers started early to make sure they got some of the benefits of a trade agreement. Their thinking is easy to understand: in no other sector does the United States have such a clear and overwhelming competitive advantage. And, in fact, trade in agricultural products has been increasing dramatically. Last year alone, over half the total U.S. wheat and soybean production was exported. As Agriculture Secretary Bob Bergland has noted, these gains were made in an atmosphere of protectionist sentiment and pressures. U.S. agriculture interests wanted to make sure that provisions in the agreement reduced these pressures.

In the estimation of U.S. trade officials and some farmers' groups, U.S. agriculture *will* gain from the MTN agreement. As Administration representatives put it, the MTN protects U.S. farmers' existing export markets through the limit on use of export subsidies, and it cracks open new doors that have been closed to us. The most publicized of these new markets are Japan and the European Community, which have agreed to accept more high-quality meat. In addition, Japan, the European Community and other developed countries are now prepared to import such secondary farm products as canned peaches, pears and fruit cocktail. These concessions give U.S. producers the opportunity to move away from their traditional role as suppliers of generally low-cost grains to serve a more affluent foreign market with higher-cost food items.

Agricultural information-sharing agreements were also negotiated, including the Bovine Meat Arrangement, which creates an International Meat Council, and the International Dairy Arrangement, which creates a similar Dairy Products Council. The latter also sets prices below which commercial trade in dairy products is prohibited.

Developing countries

For the first time, many developing countries participated in the MTN, and it is hoped that some 20 to 25 of them will sign. This is a significant development in the world's trading network, for it recognizes what is already fact: that developing nations play an increasingly important role in world trade.

Most of the codes in the trade agreement contain special provisions for developing countries; for instance, they will be allowed to use subsidies more extensively than will developed countries. In order to have these special provisions in the codes, nations had to agree to changes in the GATT framework—the set of general rules and principles to which specific trade actions must conform.

Currently under GATT, trade actions are governed by the principles of nondiscrimination—the most-favored-nation concept mentioned earlier—and reciprocity, meaning that concessions granted must be reciprocated in kind. However, these principles work better among economic equals than they do between developed and developing countries, a fact previously recognized when developed countries were permitted to waive the MFN and reciprocity principles and allow some developing-country products to enter their markets duty-free.

Since this waiver will expire in 1980, one objective of the Tokyo Round was to build the option of "special and differential treatment" into the GATT framework itself.

Granting special and differential treatment to developing countries brings them in from the periphery of the world trading system and requires them to assume obligations and responsibilities under the GATT. These obligations will be strengthened by the principle of "graduation," under which developing nations agree to relinquish special treatment—sector by sector—as their development continues. Developed countries, moreover, are authorized to retract special concessions, if in their judgment, they are no longer required.

The road ahead

On January 4, 1979, when President Carter sent to Congress his notification of intent to enter a new trade agreement, he set in motion the procedures established in the 1974 Trade Act. In that act, Congress gave itself a larger role than in the past in approving trade agreements: while the President is authorized to raise or lower tariffs, the other elements of the trade package are subject to its approval.

During the consultation process that began on January 4, Congress and the Administration are to discuss the ramifications of the package for U.S. law and the U.S. trading posture. This period is a minimum of 90 calendar days and could be longer. At the end of it (April 4 or sometime thereafter) the Administration will send to the Hill an omnibus bill to implement the agreement. This bill will have a number of elements, because several U.S. laws must be brought into conformity with the international trade agreement. The Administration may also submit other legislative proposals (such as export promotion proposals) as a part of the bill implementing the trade agreement.

Congress will then have about 90 *legislative* days to act on it. The House Ways and Means and the Senate Finance Committees will have primary jurisdiction. Other committees, such as the Agriculture Committees, will be deeply involved. After it is reported from committee, both houses will vote on it. Unlike most bills, it will be nonamendable: if either House rejects one part of it, the entire package will be disapproved. The three-month consultation period, therefore, is the critical time for congressional input.

It is impossible to predict with certainty just when Congress will complete action on the trade bill. First of all, the actual negotiations are not complete in all respects, and slippages in the negotiations mean time lags in Congress. Legislative days can be extended by not officially ending the day, and recesses will also extend the time period. As one Senate Finance Committee aide puts it, "It is easy to imagine a scenario in which congressional consideration extends into 1980."

Trade among nations does mean more than the exchange of goods and services across national borders. Trade is the main way that nations relate to one another. Good trading relations can help pave the way for better cooperation in all international and national endeavors in which an action by one nation affects the interests and the security of other nations. Conversely, a breakdown of cooperation in trade can signal the deterioration of relations in many areas. Viewed in this context, the MTN is much more than the technical package of agreements. It is a blueprint that nations pledge to follow in an effort to avoid disharmony and misunderstanding. It is, finally, in this context that all of us, both as individuals and as nations, must judge the agreement.

Researched and written by Joan E. Twiggs, department head, LWVEF International Relations Department.

Order from League of Women Voters of the United States, 1730 M Street, NW, Washington, DC 20036. Pub. No. 546. 30¢.

Mr. VANIK. Well, thank you very much. I appreciate your statement.

I want to urge you to do two things. One is, as you know, we have an adjustment assistance bill that is up before the Rules Committee and we are waiting to get it cleared for floor action, but we don't have administrative support for the money that we need for that program. I would appreciate the League getting some kind of communication to the money watchers over at OMB and suggest to them that if we don't get a piece of the trade adjustment program we are not going to be very likely to give them the MTN that they want. I think they are very much related.

I think our promise to people is we are going to put into place a meaningful adjustment assistance program. I think there is about a $150 million difference. They don't plan anything more than they appropriated last year and we feel that is totally inadequate. Some members of the committee don't feel that we should go as far as we did but in any event we need considerably more than the administration suggested.

The other thing is that this business of the MTN is very little understood by the people throughout America and those that are hurt by it and many will be very quick and prompt to put political pressure on their representative, so I think it is very important for you to try to get as much influence as you can and try to be sure that all sections of America in which you have so many fine, active groups at least have a discussion with your representative in an effort to let him know what the legislative position is and try to find out what his position is, because otherwise he would only be inclined to hear from those who might oppose him.

Ms. ROBBINS. Mr. Chairman, we are doing not only that but we have gone a step further. We have just embarked on a trade project and we had our first conference in Racine, Wis., a few weeks ago to which 45 states in this country sent representatives. As a result of this conference and this meeting, 45 women will be going back to 45 States putting on trade projects that will explain to their communities the state of the State's economy in trade.

Mr. VANIK. That should be very helpful.

Mr. Vander Jagt.

Mr. VANDER JAGT. No questions.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I want to thank the witness for her excellent testimony, too, and inquire as to what kind of a position this is of the league. Obviously the treaty has just been inititaled and some of the code is in there or not in there. How does the league take this position? Is this its executive board?

Ms. ROBBINS. Oh, no, no, no. The League of Women Voters has a position in support of liberalizing trade as a benefit not only to the U.S. economy but to the economy of the world and when a piece of legislation or a treaty comes up that would impinge on this position, either further it or contract it, then the national board would make the decision on what was appropriate but we would no more take action on anything without knowing that we had the members' support behind us because we could not accomplish much or we could not be effective if we did that.

Mr. FRENZEL. I see. So you took a standing resolution.

Ms. ROBBINS. That is right. Our last reevaluation of our trade position was done in 1976 and it was overwhelmingly reaffirmed by league members all over the country.

Mr. FRENZEL. Thank you very much. Your position is excellent and I only wish that was our position on campaign financing.

Ms. ROBBINS. We will work on it. [Laughter.]

Mr. VANIK. Mr. Fisher.

Mr. FISHER. Thank you.

I simply want to compliment you on your testimony and thank you for it. I, for one, look to the League of Women Voters for a broad-based and objective analysis on matters of this kind and I have not been disappointed to date.

Ms. ROBBINS. Thank you.

Mr. VANIK. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. VANIK. Thank you very much.

Ms. ROBBINS. Thank you, Mr. Chairman.

Mr. VANIK. Next is the Joint Industry Working Group composed of Richard D. Langer, vice president, Control Data Corp.; Saul Sherman of Rivkin, Sherman & Levy; Irving Levine, director, international tariffs and trade, NCR Corp.; and James R. Gorson, director, Facilitation, Air Transportation Association of America.

Mr. Langer.

STATEMENT ON BEHALF OF THE JOINT INDUSTRY WORKING GROUP, BY RICHARD D. LANGER, VICE PRESIDENT, CONTROL DATA CORP.; SAUL L. SHERMAN, ESQ., PARTNER IN THE FIRM OF RIVKIN, SHERMAN & LEVY, NEW YORK CITY; JOSEPH DeROSE, DIRECTOR OF CUSTOMS, IBM CORP.; AND JAMES R. GORSON, DIRECTOR-FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA, WASHINGTON, D.C., ACCOMPANIED BY DAVID J. ELLIOTT, MANAGER, INTERNATIONAL TRADE AFFAIRS, PROCTER & GAMBLE CO.

Mr. LANGER. I am Richard Langer, vice president of Control Data Corp. With me are a number of other gentlemen here who will complete this panel.

On my right is Mr. Joseph DeRose from IBM who will replace Mr. Irving Levine who, because of the delay in getting on the agenda, had to catch an aircraft so Mr. DeRose will take his place.

Mr. VANIK. Mr. Frenzel reminds me that you are constituents of his so we have to be especially nice to you.

Mr. LANGER. Thank you, Mr. Frenzel.

On my far right is Mr. James Gorson. On my near left is Mr. Saul Sherman. On my far left is Mr. David Elliott who will not be giving testimony but is here as an expert in the event of questions on this subject.

We will follow your suggestion and file our detailed statement and in the interest of time proceed only to highlight its main points for you.

We are here on behalf of the Joint Industry Working Group, a coalition of 15 trade associations broadly representative of those segments of American business involved in international trade including exporters, importers, carriers, customs brokers, and others. Mr. Chairman, forming a coalition of this many trade associations

is in itself a minor miracle and perhaps second only to the negotiation of the MTN agreement itself.

This coalition has a particular interest in the customs valuation agreement negotiated in Geneva which we believe is probably among the most important of the MTN agreements since it will affect the majority of the international trade transactions.

Over 50 years ago the writer of an excellent book called "Through the Customs Maze," noted, "If you but let me write the administrative act, I care not who sets the rates of duty." Those of us who are involved in international trade on a daily basis have learned well how true those words are as they relate to the various customs valuation systems now used throughout the world. Other countries have used uplifts or fair market valuation systems to significantly increase their effective rates of duty. We in the United States have used the American selling price system to do the same on a relatively narrow range of goods but have established administrative complexities that have become intolerable for the Customs Service and the importer alike.

We think it is a remarkable achievement to have negotiated this valuation agreement among the major trading nations of the world. It will eliminate many problems and will establish a uniform trade neutral system with effective dispute settlement procedures. We point out that the essence of the agreement will be its reciprocal character among the nations that have agreed to sign it. Clearly if we are to achieve the benefits from this agreement that we seek for our exports, we must effectively implement the agreement ourselves. Without question the agreement is the product of negotiations and as Ambassador Strauss has noted "You get nothin' for nothin' ."

We are aware of the difficulties experienced in persuading Canada to participate in the agreement and we are deeply appreciative of the suport that this committee gave to Ambassador Strauss in his successful effort to secure this participation. We understand that many less developed countries are also somewhat reluctant to participate. We hope that the members of this committee will support Ambassador Strauss' efforts in this direction as well.

Before turning this discussion over to our technical experts I would like to make two further observations. First, the United States went into the negotiations on the valuation agreement as virtually a minority of one, confronting a world which by and large had adopted the Brussels Definition of Value. Our negotiators came out with a system incorporating the best of both existing U.S. law and the Brussels Definition of Value. We believe the results are a major success for the United States and will help facilitate U.S. exports.

Second, the valuation systems of other countries concerned us because of the latitude and discretion their customs authorities have been endowed with to impose duties arbitrarily by assigning valuations based on national concepts. The key feature secured in the Geneva negotiations was to minimize such administrative discretion and to keep the valuations subject to relatively factual and subjective criteria. Although our own current law on customs valuation must be repealed as a result of this agreement, the new law

which will replace it will not be substantially different from the main stream of our existing valuation practices.

We also point out that other countries will probably imitate the way we implement this law ourselves, and as a result we are likely to find these countries treating our exports in a manner similar to our treatment of their imports. Therefore, great care is required in developing the implementing legislation for this agreement.

At this time I would like to present Saul Sherman, partner in Rivkin, Sherman & Levy of New York who will discuss specifics relative to the implementation.

Mr. SHERMAN. Thank you.

Mr. Chairman, gentlemen, this subject of customs valuation until now has been a matter for individual regulation by each of the nations, including of course our own. Now if the Geneva agreement resulting from the MTN is adopted, as we hope it will be, it is clearly understood, I think, that our existing valuations statutes in this country will have to be replaced and brought into line with the agreement, which at the same time does not represent a major departure though it will require a great deal of change in detail.

We do not yet have a text of a proposed statute that is being considered for introduction in the Congress and so we have no paper before us on which we can offer detailed comments. We hope that we soon will have an opportunity to look at a draft, especially in view of the fact that amendment will be impossible after this legislation is introduced; and we are in touch with the staff about that.

Mr. VANIK. The staff will carefully review your recommendations. We hope that they are going to be part of what you suggested.

Mr. SHERMAN. Thank you very much, sir.

I would like to offer a few general and very brief comments if I may based on what we have understood of what is being considered and what is not, even that we don't have a text. As Mr. Langer indicated, one of the key objectives of the agreement is to reduce administrative discretion, and for that reason we hope that to the extent possible the statute emanating from the Congress will itself lay down the guidelines for valuation in accordance with the Geneva agreement and that it will not be left in our country to administrative regulation or discretion. And we hope that will set a pattern whereby the same kind of discretion will be denied to the administrative authorities in other countries to which we are exporting.

There is one section, section 500, in our code which today permits, or speaks of, conferring authority on our administrators to use all reasonable ways and means to arrive at customs valuation, a phrase dear to the heart of this committee but which we feel is quite inappropriate for conferring of powers on the Customs Service; and we would hope that that phrase at least can be eliminated.

There are a great many details and in particular three subjects of major importance that received rather short shrift at the end of the Geneva negotiations on which we feel that a good deal of clarification—more than implementation—will be required, but I think that can be handled with the staff. I will stop now unless the committee has questions.

Mr. VANIK. Yes. Now you now our schedule. We are going to finish up the public hearings this week and then we are going to try to get 4 days next week for consultations. We are not sure. We have Monday for beef and the countercyclical program, so I am hopeful that we will be assigned the rest of next week. That is when we expect to conclude our work under our present objective.

Thank you.

Mr. SHERMAN. Thank you, sir.

Mr. LANGER. Next is Mr. Joseph DeRose of IBM who will address the statement of administrative action.

Mr. DEROSE. Mr. Chairman, gentlemen, recognizing that the statement of the administrative action will become a major part of the legislative history indicating how the valuation law will be applied and in many cases disclose the true meaning behind the statutory provisions, our written statement comments on those aspects of the administrative action upon which we are most concerned. I would like to briefly highlight four of the most important matters.

The first is the use of generally accepted accounting principles in developing dutiable values. We believe this is a cardinal rule to the valuation agreement and should be specifically identified as having general application.

Second, the computed value article of the code is not intended to be accompanied by an indication of current U.S. constructed value law. In fact, the code and interpretive notes indicate that the accounting principles applicable in a country of exportation apply when developing computed value. It appears inconsistent and improper to have the administration's statement test the elements of constructed value as the method for computing value under article 6.

Third, the administration is contemplating requiring an importer to request a written explanation of valuation and make his election between deductive or computed value at the time of entry. It is clearly premature to require this action before an importer is told that the transaction value which is supposed to be used as often as possible will not be used for valuation purposes. It is, in our opinion, more appropriate for the Customs Service, when notifying an importer under article 1, paragraph 2(a), that the transaction value will not be used, to then request election of deductive or computed valued and advise the importer of his right to a detailed statement of appraisement if formally requested.

Fourth and last, a current customs practice results often in the payment of duties more than once on the value of an assist. If an importer provides a mold to a foreign manufacturer, customs requires amortization of the total mold value over the manufacturer's production. If the importer then switches foreign suppliers and the mold is transferred, its current value is again amortized over the second manufacturer's production. This results in the payments of duties more than once on the value of what in many cases is a U.S. produced mold. For any further points I refer you to our written statement, the recommendations.

Thank you.

Mr. VANIK. Thank you.

Mr. LANGER. Mr. James Gorson, Director-Facilitation, Air Transport Association of America, will now address the issue of collecting duties on an f.o.b. service.

Mr. GORSON. Thank you.

I would like to spend merely one minute on the subject of CIF cost and insurance and freight value. As you probably know, Mr. Chairman, for over 150 years since well before the United States developed into a continental economy, our country has not included international freight and insurance in customs dutiable value. The advantage of our present system has been that it does not discriminate in the amount of duty between ports of entry or between transportation modes. If we were to move to collecting duties on a cost insurance and freight basis, duties would be higher for example at Great Lakes ports than east coast ports. They would also be higher in cases where airfreight is used rather than ocean freight or where U.S.-flag marine carriers are used rather than unconferenced flag and convenience ships. As noted, users of airfreight transportation at ports of entry would be discriminated against. Not only would the dutiable commodity vary according to the mode of freight transport but you would also vary on the U.S. customs port of entry where duties were actually assessed.

For example, Mr. Chairman, imports from Tokyo destined to Cleveland on a flight stopping at Seattle would have one set of duties if assessed at Seattle and another if assessed at Cleveland. Now while most of the United States trading partners do use the CIF approach, our reciprocal negotiations almost over the last half century have been conducted with these systems in mind. If we were to now change, our interrelationships with other countries would be adversely affected. This would seriously complicate the task of negotiating adjustments to our duty rates to compensate for the change to a cost, insurance, and freight basis. It is difficult to see any advantage that would result from making such a unilateral change. There is no problem, for example, with respect to U.S. statistics since they are already collected on a CIF basis, but two disadvantages of CIF as noted are clear.

That concludes my brief remarks, sir.

[The prepared statement follows:]

STATEMENT OF THE JOINT INDUSTRY WORKING GROUP

Good morning. My name is Richard D. Langer, Vice President of Control Data Corporation of Minneapolis, Minnesota. I am appearing here on behalf of the Joint Industry Working Group, an ad hoc coalition interested in the subject of Customs valuation, from the exporting and importing points of view. Together with me on the panel are Irving Levine, Esq., Director, International Tariffs & Trade for the NCR Corporation, Dayton, Ohio, Saul L. Sherman, Esq., partner in the firm of Rivkin, Sherman & Levy, New York City and James R. Gorson, Director—Facilitation, Air Transport Association of America, Washington, D.C. Also accompanying me are Joseph DeRose, Director of Customs, IBM Corporation and David J. Elliott, Manager, International Trade Affairs, Proctor & Gamble Company. Our testimony is directed toward the Customs Valuation Agreement which has emerged from the Geneva Multilateral Trade Negotiations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF TESTIMONY

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

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

II. Experiences with current U.S. law—significant parts of which remain inadequately defined 20 years after enactment—show that our legislative implementation should be comprehensive and specific. Only the necessary minimum should be left to administrative discretion, to regulations, and to judicial clarification. Likewise, the overly broad valuation mandate of Section 500 ("all reasonable ways and means") must be amended.

Certain complex technical issues, particularly royalties and "assists" (production aids contributed by the importer), need clarification in the legislation.

On the vital subject of dispute prevention and resolution, legislation is needed to assist American exporters by affording United States government assistance in training foreign customs officials and in invoking the international dispute resolution machinery provided for in the Agreement.

III. The way in which the Agreement will be administered is also most important. Therefore, it is appropriate that the Statement of Administrative Action adequately reflect those parts of the Agreement and its Notes not amenable to codification. It is also necessary that it select carefully between those parts of current administrative practice that are consistent with the Agreement and those that are not. In particular, it is desirable to avoid the need for special accounting for customs purposes.

IV. It is necessary for the U.S. to maintain its traditional practice of excluding international freight and insurance from valuations for customs purposes.

STATEMENT

I. Overview

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

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

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

The essence of the Agreement is reciprocity, at least among the developed nations. To get the valuation benefits we seek for our exports, we must agree to apply the Agreement ourselves. Indeed, the basic premise of the Geneva negotiations on valuation was that each signatory would have the same rules applied to its exports as to its imports. The awareness that each major signatory would have this balanced interest was largely responsible for the success of the negotiations. In this connection, a word should be said about the great importance of Canada's accession to the Valuation Agreement.

In view of the large volume of our trade with it, the American business community was concerned about Canada's initial reluctance to participate. The Group wishes to express its deep appreciation for the support that this Committee gave to Ambassador Strauss in his successful effort to secure Canadian participation. We understand that the Ambassador is similarly striving to secure participation by the Lesser Developed Countries. We hope that the members of this Committee will support these endeavors just as they did with the Canadian situation.

We have two further observations about the course of the negotiations in Geneva: The first is that we went into the negotiations as virtually a minority of one, confronting a world which had by and large adopted the Brussels Definition of Value (BDV). We came out with a system very close to the best of existing United States law. The result may properly be considered a major success for the United States delegation. Second, the thing we objected to the most in other valuation systems was the discretion extended to customs authorities to raise duties arbitrarily by raising duty valuations arbitrarily. One of the key features of the system we espoused and secured in the Geneva negotiations was to minimize administrative discretion and keep valuation subject to relatively tight control. Thus, in terms of implementation, while our old law on customs valuation must be repealed, the new law which will replace it will not be drastically different from the mainstream of our existing valuation law. Our new provision must take the form of Congressional legislation, with less rather than more left to administrative regulation or discretion.

II. Legislative implementation

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

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

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

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

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

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

6. One of the most difficult and sensitive areas dealt with in the Agreement is assists and royalties. Assists are contributions by the importer to the process of manufacture abroad—for example, furnishing tools and dies. Royalties are payments for rights involved in the manufacture and/or marketing of the products. Typically, neither assists nor royalties are included in the invoice price. Just which assists and royalties should be added to the invoice price to arrive at a fair duty value has been a vexing problem particularly under United States law. The Agreement draws lines to indicate which are to be included and which excluded. The complexities are such, and the speed with which these subjects are dealt with in the closing days of the Geneva negotiations was such, that these areas of the Agreement are in need of clarification in the process of implementation.

Turning finally to some of the mechanics of the implementing legislation, the Agreement itself is very close to a statute in its precision and should be closely followed in legislative drafting.

The Joint Group has enjoyed a good working relationship with the Administration as it has developed its legislative implementation strategy. While not all of our suggestions have been accepted, all have been given due consideration. We have been unable to review specific proposed legislative language and at this time cannot comment or suggest any changes that may appear to be desirable or appropriate. We urge that draft legislation be made public for appropriate review as soon as possible. However, certain key points are worth mentioning:

1. The General Note on Generally Accepted Accounting Principles should be reflected in the legislative language.

2. The following elements of the Interpretive Note should be reflected in the legislative language:

Note to Article 1—all.

Note to Article 1.2—Paragraph No. 1, with succeeding paragraphs re-phrased in legislative language.

Notes to Articles 2 and 3—Paragraph No. 2.

Note to Article 5—Paragraphs Nos. 5, 6 (with "relevant" in the last sentence being supplemented by "objective and quantified"), 7, 8, and 9.

Note to Article 6—Paragraphs Nos. 2, 3, 4, 5 (with "relevant" in the final sentence being supplemented by "objective and quantified"), 6 (as an addition to our later noted necessity for the inclusion of Article 16 in the statute), 7 and 8.

Note to Article 8—Paragraphs Nos. 1, 2, 3, 4 (with the addition that "Customs may not require that more than the cost or value of that portion of the estimated useful life of the tools, dies, molds, and similar items consumed in the production of the goods being valued be added to the price paid or payable to determine their customs value."), 5, 6, 11, 12, 13, and 14 (first sentence).

The extent to which the above parts of the Interpretive Notes should be set forth in the sections providing for the valuation systems or in a definitions section should be determined as the legislation is developed.

3. It appears preferable that Article 7 be treated as a separate value approach in the hierarchy, rather than an as amendment to Section 500. Section 500 provides Customs with the authority to appraise merchandise, and is not and should not be a basis of appraisement. Accordingly, we emphasize the need for also rewriting Section 500. The current law is overly broad and tends to mislead customs field offices with its apparent mandate to use "all reasonable ways and means" to appraise goods, rather than the valuation statute. The field has too often used Section 500 as the basis for appraisement, resulting in the need for corrective action by Customs Headquarters and the Courts.

4. Article 8 and its Interpretive Notes dealing with royalties and assists require clarification. We suggest adding the following wording to the text permitting additions for royalties and license fees: "Royalties and license fees related to the production of the goods being valued which the buyer is required to discharge directly or indirectly as a condition of the sale of goods for export to the United States and to the extent that such royalties and fees are not included in the price acutally paid or payable."

In order to eliminate serious administrative problems arising under Article 8.1 (b)(iv) clarification is needed. We recommend the following language in the paragraph succedding that providing for adjustments under Article 8.1 (b)(iv): "The phrase 'undertaken elsewhere than in the country of importation' does not include assistance provided outside the country of importation incidental to work undertaken within the country of importation."

5. Price adjustments anticipated at the time of importation should be reflected in the Transaction Value, even though only ascertained later. Adjustments to Transaction Value should be permitted where the price's based in whole or in part upon the proceeds of resale in the U.S. even though resale price is not known at the time of importation.

6. The right provided by Article 16 should be guaranteed by law. Existing United States law affords importers the domestic remedies—both administrative and judicial review—called for by the Valuation Agreement. (These remedies are not now generally available abroad, but will become available as a result of this Agreement.)

Appropriate provision will be required regarding United States participation in the international mechinery called for in the Agreement for resolving valuation disputes. Of special important is provision for assistance to American exporters in obtaining the treatment to which they will be entitled under the Agreement. This assistance will involve the dispute resolution machinery as a last resort, but the first resort, and one we hope will also receive strong support from the Congress, will be assistance to other countries which seek help in training their customs officials to understand and apply the Agreement as its authors intended it to be applied.

Because of our extensive resources (both manpower and machinery) and the comparative lack thereof in any other countries, some of our trading partners are likely to follow the U.S. lead in implementing the Agreement. Consequently, the manner in which we implement the Agreement, to apply to imports into the U.S. is likely to be reflected in corresponding treatment for exports when they arrive abroad.

III. Statement of administrative action

The Joint Group has had an opportunity to review an early draft of the Statement of Administrative Action. Overall it relects our understanding of the proper administration of the Agreement. However some clarifications are needed:

A. Transaction value

Changes in price subsequent to arrival determined in accordance with procedures specified before importation should be taken into account in determining transaction value. For example, contracts with Italian machinery manufacturers often require price adjustments based upon costs incurred prior to shipment that are not known until after shipment. The basis for making these adjustments is usually spelled out in the contract.

We suggest that the example of indirect payment be replaced by one which refers to the situation where an importer negotiates a price reduction as a means of amortizing a debt owed him by the seller, e.g., because of prior shipments of defective merchandise. This is not an infrequent occurrence, particularly where the exporting country maintains currency control regulations and, therefore, the seller finds it difficult to obtain authority to make refunds for such purposes on a timely basis. In these circumstances importers frequently negotiate price reductions as a means of collecting the debt. This suggestion is made not because the example in the draft is incorrect, but because the suggested example is more concrete and is one with which importers and customs officials are familar.

B. Adjustments

1. *Buying commissions.*—We are concerned that the description of a buying commission is unnecessarily narrow. We believe that attempts to re-define buying commissions should be avoided. We suggest that the term buying commissions be described as having the same meaning it has under current law as interpreted by the customs courts.

2. *Royalties.*—We believe that the intent of the Agreement is to assess duties on royalties consistent with current U.S. law. To accomplish this, we suggest the following language:

"Adjustments must also be made for royalties and license fees related to the production of the goods being valued, that the buyer must pay, either directly or indirectly, as a condition of sale for export to the United States to the extent that such royalties and fees are not included in the price actually paid or payable.

"The royalties and license fees include, among other things, payments in respect to patents covering processes required to produce the goods, but not to royalties paid for the use of trademarks and copyrights, which enhance sales rather than the product and are selling expenses rather than part of the cost of production. However, the charges for the right to reproduce the imported goods in the United States or for the right to manufacture in the United States with the use of imported goods shall not be added to the price actually paid or payable for the imported goods in determining the customs value. The right to reproduce imported goods is understood to cover the following classes of merchandise: original or copies of artistic or scientific works, original or copies of models and industrial drawings, prototypes and biological species.

"Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods.

3. *Inland charges.*—We suggest that language be added making it clear that whether merchandise is to be appraised on an ex-factory or F.O.B. basis depends upon the terms of the transaction. This point is implicit in the Statement but we believe that it should be explicit. We suggest that "containerization" be added to the list of charges not included as part of value. This is consistent with current Customs practice. finally, we suggest that language be added specifically excluding import brokerage fees from value.

C. Generally accepted accounting principles

We recommend that the discussion of Generally Accepted Accounting Principles ("GAAP") be covered in a separate heading. The use of GAAP is a cardinal principle of the Agreement and we believe it is of sufficient importance to warrant separate treatment.

D. Assists

The treatment of assists should include a statement that assists are to be valued in accordance with their "useful life." It should also be made clear that multiple dutying of assists is not permitted. We understand that some believe that this latter point is included in the concept of "useful life." We suggest that the connection is not a necessary one and recommend that the prohibition against multiple dutying of assists be covered separately.

E. Transaction value of identical and similar goods

We believe that the discussion of "identical goods" and "similar goods" is vague. We suggest the following language: Goods shall not be regarded as "identical goods" or "similar goods" where on the one hand goods incorporate or reflect engineering, development, art work, design work, plans and sketches for which no adjustment has been made because such elements were undertaken in the United States, and on the other hand, adjustments reflecting similar intangible assists were made because such elements were undertaken outside of the United States.

F. Sequential order and importers options

1. *Options.*—We object to the requirement that an importer make an election between deductive and computed value at the time an entry package is presented. Such a requirement presupposes that in many situations transaction value will be inappropriate, and will predispose Customs officials to disregard transaction value.

A primary goal of the Agreement is to require the use of transaction value wherever possible and to discourage arbitrary use of other valuation methods. It is our belief that the proposed wording encourages disregard of transaction value. Accordingly, we believe that in the few instances where transaction value will be inappropriate, the importer should be allowed to choose between deductive and computed value at the time he is informed by the appropriate Customs official that transaction value will not be used as the basis of Customs valuation. This could be accomplished through the use of existing mechanisms, specifically Customs Form C.F. 29, Notice of Advice.

2. *Statement of validation.*—We believe it unwise to require that importers desiring a written explanation of the basis of valuation from the Customs Service make that request at the time of entry or as part of the entry package. We believe that many if not all importers will, as a matter of course, make the request, placing an unnecessary burden on the Customs Service. It would be far more efficient to permit an importer to make a request at a time prior to liquidation becoming final, thereby limiting requests to situations where the information is necessary.

G. Computed value

The Group firmly believes that the treatment of the calculation of computed value should be reexamined. It is our clear understanding that in calculating computed value appraising officials will be required to rely upon GAAP in the country of exportation. Indeed, this point is explicitly made earlier in the Statement. The Statement as now drafted sets forth virtually verbatim the current method of computing Constructed Value. We believe that this is inconsistent with both the spirit and letter of Article 6 of the Agreement and suggest strongly that this entire section be redrafted. Principles established by the Customs Service in calculating Constructed Value under different law, and often requiring duplication and unnecessary additional accounting and record keeping should be avoided. Elimination of such burdens has been basic to the spirit of the negotiations leading to the Agreement.

H. Nominal value

Several years ago, Customs of necessity established the concept of "nominal value" for business records (which are generally duty free) and a limited number of other items. The Agreement does not change the necessity for this concept and it seems appropriate to confirm it in the Statement. The relevant Treasury Decision should also be expanded very slightly to facilitate the importation of such records for production for export, because curent limitations create difficulties in this regard.

IV. The C.I.F. option

For over 150 years—since well before the U.S. developed a continental economy—we have not included international freight and insurance in dutiable value. The advantage of this system has been that it does not discriminate in amount of duty between ports of entry or between transportation mode. If we were to move to collecting duties on a cost, insurance and freight (C.I.F.) basis, duties would be higher, for example, at Great Lakes ports than at East Coast ports. They would also be higher where air freight were used rather than ocean freight, or where U.S. flag-marine carriers were used rather than non-conference flag of convenience carriers.

While most of our trading partners do use the C.I.F. approach, our reciprocal duty rate negotiations over the past 45 years have been conducted with these systems in mind. If we were to change, our interrelationships with other countries could be adversely affected. This would seriously complicate the task of negotiating adjustments of our duty rates to compensate for the change to a C.I.F. basis. It is difficult

to see any advantage that could result from our making a unilateral change (statistics are already collected on a C.I.F. basis). The disadvantages are clear.

Mr. VANIK. Thank you very much.

Are there any questions?

Mr. Fisher?

Mr. Vander Jagt?

Mr. Frenzel?

Mr. FRENZEL. No questions.

Mr. VANIK. Mr. Moore?

Mr. MOORE. No questions.

Mr. VANIK. Well, I think this idea that you offered was suggested by Senator Long and I was opposing it. I think there is a lot to be said for it but I am just afraid that we are so far along in this business that I don't know that we can really reopen it in this kind of a consideration. I know businessmen tell me about the problems they have in this evaluation problem.

Well, I am going to bring that up to the committee. I think you make a good case and I am going to try to get the committee's reaction on it next week and see if we can give it another look. We discussed it during our initial round and I think we will just check on the basis of your testimony and see if we should not reopen it.

I would appreciate it if you might get a letter addressed to every member of the Trade Committee just to be sure that they get the issue because it is very difficult for me to try to do that by the time we get to a markup, so I would appreciate your trying that procedure to see if we can't have a meaningful consideration of the proposition.

I want to thank you very much for your splendid contribution. We appreciate it very much.

[The following was subsequently received:]

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., April 26, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You requested additional information on our concern of a possible change from an f.o.b. valuation to a c.i.f. valuation for imported goods during my testimony before the Subcommittee on Trade on 24 April 1979. I testified as one member of a panel of the Joint Industry Working Group, an ad hoc coalition interested in the general subject of Customs valuation, in connection with the U.S. legislative implementation of the Tokyo Round of Multilateral Trade Negotiations.

United States Customs duties on imported merchandise are collected on an f.o.b. basis—that is, the value of goods excluding international transportation (freight), insurance and other related costs. However, we understand that consideration is being given to a change in the current U.S. dutiable value of commodities imported into the United States—that is, from essentially a free on board (f.o.b.) valuation, to one of cost, insurance and freight (c.i.f.).

As noted in my testimony, for over 150 years—since well before the United States developed into a continental economy, our country has used the f.o.b. basis and has not included international freight and insurance costs in Customs dutiable value. Use of the c.i.f. valuation would mean that a different import duty would be charged on two identical articles of the same cost merely because they arrived via two different modes of transportation. Not only would the dutiable value of the same commodity vary according to the mode of freight transport, but it would also vary within the same mode depending upon the U.S. Customs port-of-entry where duties were actually assessed.

I cited the example where imports from Tokyo destined to Cleveland on a flight stopping at Seattle would have one set of duties if assessed at Seattle and another

set if assessed at Cleveland. Another example of discrimination—duties would also be higher at Great Lakes ports than at East Coast ports.

If we were now to change to a c.i.f. valuation, our interrelationships with other countries could be adversely affected; this would seriously complicate the task of negotiating adjustments to our duty rates to compensate for such a change in valuation.

It is difficult to see any advantage that would result from making such a unilateral change. However, the disadvantages of a c.i.f. valuation as outlined above are clear.

Sincerely,

JAMES R. GORSON,
Director, Facilitation.

Mr. VANIK. The final witness is Richard A. Maxwell, first vice president of American Importers Association.

We are very happy to hear from you at this point, Mr. Maxwell. Do you want to identify the gentlemen who are with you?

STATEMENT OF RICHARD A. MAXWELL, FIRST VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION, ACCOMPANIED BY GERALD O'BRIEN, EXECUTIVE VICE PRESIDENT, AND DAVID P. HOULIHAN AND DONALD B. CAMERON, JR., COUNSEL

Mr. MAXWELL. Thank you, Mr. Chairman.

My name is Richard Maxwell. I am vice president of Associated Dry Goods Corp. with headquarters in New York City. My company operates 16 quality department store divisions throughout the country, as well as the Sycamore Specialty Stores in the Midwest. Included in the associated family of stores are the nationally known Lord & Taylor, Goldwater's Arizona, H. & G. Poague in Cincinnati, and Pavilion Dry Goods in Minneapolis, just to name a few. However, I appear here today in my capacity as first vice president of the American Importers Association.

With me today is Gerald O'Brien on my left. On my right is our counsel, Mr. David Houlihan and Mr. Donald Cameron of Daniels, Houlihan & Palmeter. We do welcome this opportunity to present our views on issues related to——

Mr. VANIK. I was going to suggest your entire statement will be admitted in the record as submitted and you can excerpt from it.

Mr. MAXWELL. I will be as brief as I can.

Mr. VANIK. Give us the key points.

Mr. MAXWELL. Yes.

In the Trade Act of 1974, the Congress gave the President an unprecedented mandate to go forward and negotiate with our trading partners for the "development of an open, nondiscriminatory and fair world economic system." The results of these negotiations as they may be implemented into U.S. law are now before us and we are told that the goals established by Congress have been achieved, but we are not so sure.

It is clear from many of the actions taken by the Administration that the price being paid for this reportedly trade liberalizing package is escalating. Products ranging from steel to textiles, from dinnerware to dairy products, actually may be subject to even more restrictive import regimes than apply now. Because these matters are outside of the scope of implementing legislation, we will not devote our testimony to a discussion of them. Suffice it to say, however, that as a consequence of these actions we wonder wheth-

er the overall results of the Multilateral Trade Negotiations will in fact be trade liberalizing. We wonder further what other prices will be paid in order to obtain the support—or the absence of opposition—of protectionist elements in the United States. We do suggest to this Committee and to the Congress that the price the import community and consumers will be asked to pay to obtain approval of the MTN package may be too high.

Before addressing specific proposals that Congress is recommending for the implementing legislation, we would like to make two general comments.

First, the American Importers Association strongly urges that Congress and the administration include in the implementing legislation package only—and I do repeat only—such changes in the existing laws as are necessary to give effect to the new trade agreements. Any other changes in existing law should be required to go through the normal legislative process, not the yes or no system prescribed in the Trade Act of 1974.

Second, our proposals address a number of specific issues regarding the Countervailing Duty Law and the Antidumping Act. We urge this committee to consider not only our specific objections and recommendations but also the cumulative impact of the proposed amendments to these laws. In our opinion, that cumulative impact is such as to transform these laws from fair trade laws into "legal" barriers to trade in which it is impossible, because of unreasonable time limits and other features, to obtain fair and probative investigations and determinations.

To comply with the time limits today, I will very briefly summarize AIA's major areas of concern together with some of our recommendations.

COUNTERVAILING DUTIES

This subcommittee has recommended that the time limits for conducting a countervailing duty investigation be reduced significantly. In our opinion, the proposed time limits are inadequate to permit a complete and fair resolution of the case.

We do recommend the following time limits: (1) Preliminary determination within 6 months; (2) Final determination within 60 days after the preliminary; (3) Withholding of appraisement upon a preliminary affirmative determination; and (4) Following a preliminary determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

The proposed shortened time limits would make it impossible for information from foreign governments or foreign exporters to be collected and analyzed fully by Treasury prior to a preliminary determination.

Under our recommendation, domestic industries would be able to get relief within 6 months of the filing of a petition because withholding of appraisement would go into effect immediately upon a preliminary affirmative determination.

We also support this committee's apparent intention of using the term "material injury" in the implementing legislation and urge that it be defined in a meaningful way.

Since our counsel is here with us and they have technical knowledge in answering any of these specific questions that you may

have on our written testimony, I would like to just particularly review a few of the items that remain on our recommendations under countervailing duties.

We feel that legislation should not limit the criteria to calculate the net benefit derived from certain subsidies. We feel there should be confidentiality at the administration level. We feel that importers must be allowed to apply a general term bond to cover provisional countervailing and antidumping duties. We also feel the injury provision should extend to all countries that have acceded to the code and not be restricted though that would only implement the code on antidumping.

The Senate Finance Committee has proposed that the time period for an antidumping investigation be shortened significantly. We recommend, based on the nature of the antidumping process and recent GAO study, that there be no reduction in the time permitted to conduct an antidumping investigation. Specifically, by reducing the time allowed for a preliminary determination, it would not be possible in the ordinary cases for information to be received and analyzed fully prior to a preliminary determination. As with countervailing duties, the absence of adequate time will force decisionmakers to rely increasingly on personal bias and this benefits no one.

The Senate Finance Committee has tentatively decided that estimated dumping duties be paid upon entry for products under a dumping finding. This proposal adds a punitive feature to the antidumping law—not only would an exporter have to raise his price in order to avoid dumping duties on current entries but the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for the past practices of the foreign exporters. Now this double penalty could have the very real consequence of forcing a number of small American importers out of business. In the overwhelming majority of cases, dumping ceases after the imposition of the dumping finding because the choice is a simple one between eliminating the margin by, for instance, raising the price—thereby putting the money in the exporter's pocket—or not eliminating the dumping margins—thereby putting the money into Treasury's pocket.

The proper solution to the problem is to strengthen the resources and procedures used by the Customs Service so that Master Lists can be properly administered while continuing the current practice of requiring bond until such time as goods have been determined actually to be dumped.

While not addressed by Congress, we recommend, based upon inconsistency with the Antidumping Code and the recent GAO study, that section 205(b) referring to cost of production and section 206(a) which mandates arbitrary addition of 10 percent for general expenses and 8 percent for profit be eliminated from the Antidumping Act.

The Senate Finance Committee tentatively has decided that assessment of dumping duties be carried out with the use of sampling techniques and averaging to compare United States and foreign market value and that insignificant adjustments could be ignored at the agency's discretion. We suggest that, as difficult as the duty

assessment process is, every importer have the right to have its duties assessed on the individual merits of that entry.

ESCAPE CLAUSE INVESTIGATIONS

This committee and the Finance Committee have recommended various alternatives which would shorten the time limits necessary for an escape clause investigation. We recommend that no changes be made in the time limits for the escape clause because there is no demonstrated need for either of these proposals. Moreover, while 90 days may be sufficient time to conduct an injury investigation in antidumping cases, parties to those investigations and the ITC are aware of those investigations ahead of time. There is no such advance warning in the case of escape clause investigations.

With respect to customs valuation, the American Importers Association has been directly involved in the development of the new valuation code. Since we are a member of the Joint Industry Group and we support their testimony which provides you with extensive analysis and recommendations on the code and implementing legislation, we will not duplicate these facts now. However, since a Senate Finance Committee proposal calls for a change in the U.S. method of customs valuation from f.o.b. to c.i.f., we recommend that the f.o.b. basis of customs valuation be retained. Imposition of c.i.f. values would discriminate between U.S. ports and increase costs to the consumer. In addition, any such change would require compensation to our trading partners which could only be achieved through a whole new round of tariff cutting negotiations.

Last, with respect to import licensing, this subcommittee is considering a limited grant of discretionary authority to the President to auction import licenses. Any such scheme would place small importing companies at an enormous disadvantage and significantly reduce competition in those products under license. It would increase the wholesale and retail costs of those products. We recommend that such a program not be initiated by the Congress.

The subcommittee is also considering an automatic licensing system to monitor imports prior to customs entry. Such a system would be expensive, difficult to administer, and trade inhibiting. Initiation of automatic licensing at this time would contravene the intent of the import licensing code which seeks to diminish the application of licensing policies.

In conclusion, the AIA does wish to reiterate its concern over the price Americans are being asked to pay in the form of one protectionist concession after another. AIA urges this committee to enact only the legislation necessary to implement the package, not the widely rumored appropriate sweetners.

Moreover, we urge the committee to seriously consider our proposals not in terms of free trade versus protectionism but in terms of what is necessary to provide for fair and competent administration of these laws.

I thank you very much. We are here to answer any questions if there are any.

[The prepared statement follows:]

STATEMENT OF RICHARD MAXWELL, VICE PRESIDENT, ASSOCIATED DRY GOODS CORP., AND FIRST VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION

Mr. Chairman and members of the committee, my name is Richard Maxwell. I am Vice President of Associated Dry Goods Corporation of New York City. My company operates 16 quailty department store divisions throughout the country, as well as the Sycamore Specialty Stores in the Midwest. Included in the Associated family of stores are the nationally known Lord & Taylor, Robinson's in California, and Goldwater's in Phoenix. I appear here in my capacity as First Vice President of the American Importers Association (AIA), 420 Lexington Avenue, New York. I am accompanied by Gerald O'Brien, Executive Vice President of AIA.

The American Importers Association is a nonprofit organization formed in 1921 to foster and protect the importing business in the United States. As the only association of national scope representing American companies engaged in the import trade, AIA is the recognized spokesman for importers throughout the nation.

We welcome this opportunity to present our views on issues relating to implementation of the Multilateral Trade Negotiations (MTN). Our remarks here today should not be construed as necessarily endorsing or opposing the overall package that we understand enentually will be presented to the Congress by the President. AIA's position on that simple yes or no vote will be determined by its Board of Directors after we have examined the final result of this ongoing process in which we are pleased to be able to participate.

INTRODUCTION

In the Trade Act of 1974, the Congress gave the President an unprecedented mandate to go forward and negotiate with our trading partners for the "development of an open, nondiscriminatory and fair world ecnomic system." Congress expressed its concern that barriers to international trade were "preventing the development of open and nondiscriminatory trade among nations." Accordingly, Congress authorized the President to enter into trade agreements providing for the harmonization, reduction, or elimination of these barriers and distortions.

The results of these negotiations as they may be implemented into U.S. law are now before us, and we are told that the goals established by Congress have been achieved.

We are not so sure.

It is clear from many of the actions taken by the Administration that the price being paid for this reportedly trade liberalizing package is escalating. Products ranging from steel to textiles, from dinnerware to dairy products, actually may be subject to even more restrictive import regimes than apply now. Because these matters are outside of the scope of implementing legislation, we will not devote our testimony to a discussion of them. Suffice it to say that as a consequence of these actions, we wonder whether the overall results of the Multilateral Trade Negotiations (MTN) will in fact be trade liberalizing. We wonder further what other prices will be paid in order to obtain the support—or the absence of opposition—of the protectionist elements in the United States. We suggest to this Committee and to the Congress that the price importers and consumers will be asked to pay to obtain approval of the MTN package may be too high.

While we are dealing here with extremely technical considerations we believe it important not to lose sight of the broad effects of changing American trade laws. American consumers, particularly the poor, the American pensioners and the would-be retirees are concerned with action by the Congress and the Administration which contributes to inflation. The protectionist tribute exacted by special interests is clearly inflationary. It lowers the American standard of living and reduces our purchasing power to the detriment of other Americans and potentially could harm manufacturers, workers and farmers in the export sector.

Before addressing specific proposals that Congress is recommending for the implementing legislation, we would like to make two general comments.

First, the American Importers Association strongly urges that Congress and the Administration include in the implementing legislation package only, repeat only, such changes in the existing laws as are necessary to give effect to the new trade agreements. Any other changes in existing law should be required to go through the normal legislative process, not the yes or no system prescribed in the Trade Act of 1974.

Second, our proposals address a number of specific issues regarding the Countervailing Duty Law and the Antidumping Act. We urge this Committee to consider not only our specific objections and recommendations, but also the cumulative impact of the proposed amendments to these laws. In our opinion, that cumulative

impact is such as to transform these laws from fair trade laws into "legal" barriers to trade in which it is impossible, because of unreasonable time limits and other features to obtain fair and probative investigations and determinations.

To comply with your time limits, I will summarize AIA's major areas of concern together with our recommendations. A fuller explanation is provided in the attached memorandum which we are submitting for the record.

A. Countervailing duties

1. *Shortened time limits.*—This Subcommittee has recommended that the time limits for conducting a countervailing duty investigation be reduced significantly. In a simple case, this proposal calls for a preliminary determination within 95 days, a final determination of a subsidy within 170 days, and a final determination on the matter of injury within 45 days of the final subsidy determination. The Senate Finance Committee recommends even shorter time limits. In our opinion, the proposed time limits are inadequate to permit a complete and fair resolution of the case.

We recommend the following time limits: (1) Preliminary determination within six months; (2) Final determination within 60 days after the preliminary; (3) Withholding of appraisement upon a preliminary affirmative determination; (4) Following a preliminary determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

The shortened time limits tentatively recommended by Congress would make it impossible for information from foreign governments or foreign exporters to be collected and analyzed fully by Treasury prior to a preliminary determination. In the absence of adequate time to gather and analyze the facts, decision-makers will rely increasingly on their own personal bias. Such a result benefits neither the domestic industry concerned nor the importing community.

Under our recommendation, domestic industries would be able to get relief within six months of the filing of a petition because withholding of appraisement would go into effect immediately upon a preliminary affirmative determination. Under current practice, relief is not possible until after a final determination, which generally is not made until one year after the petition has been filed. Because relief will now be imposed at the preliminary stage, however, it makes it doubly important that adequate time be permitted for a full investigation to be made prior to the preliminary determination.

2. *Material Injury.*—Both this Subcommittee and the Senate Finance Committee have deleted reference to the concept of "material" injury. We recommend that the implementing legislation use the term "material" injury, which should be defined as "important and consequential." Omission of the term "material" injury would violate the international obligations so recently undertaken in the Subsidies/Countervailing Duty Code.

3. *Net subsidy.*—This Subcommittee and the Senate Finance Committee would impose limitations on the ability of Treasury to calculate the net benefit derived from certain subsidies. This would result in an overstatement of the actual subsidy received in some cases. These limitations would unfairly discriminate against developing countries which do not rebate indirect taxes upon exportation as permitted internationally, as well as against countries which give regional aid to offset proven cost disclocations. We recommend that the implementing legislation not limit the criteria for calculating the net subsidy.

4. *Protective order.*—Both this Subcommittee and the Senate Finance Committee have recommended that confidential information be made available to counsel for interested parties under an administrative protective order. There is a real risk that, despite this protective order, highly confidential proprietary business information could be revealed to competitors. In order to insure that these proceedings are not used by petitioners as a discovery process, and to insure full responses to inquiries by foreign respondents, confidentiality of information should be totally preserved at the administrative level.

5. *Provisional bonding or cash deposits.*—This Subcommittee has recommended that provisional measures can be applied at the time of a preliminary determination in the form of a special entry bond for each entry or a cash deposit. These provisions would unnecessarily penalize importers prior to a final determination of these matters. Moreover, such measures are unnecessary to protect the revenue, which can be protected adequately by merely extending the general term bond coverage to cover such provisional duties.

6. *Discretionary application of the injury provision.*—The Senate Finance Committee tentatively has decided that any new law would apply only to those countries that, in the opinion of the President, have fully acceded to and are implementing the Code. We recommend that the injury provisions should extend to all countries

that have acceded to the Code. The Code contains sufficient remedies to insure compliance with its provisions. Particularly, this section could operate to deny the injury provisions to developing countries. Those who have acceded to the Code have committed themselves to endeavor to reduce or eliminate export subsidies. This will be a painful transition process involving difficult judgements as to the proper pace. These judgements should be made in an international forum—not through elimination of the application of the injury provision which would controvene the Code. If there is disagreement over the pace of these phase-outs, the United States still retains the right to apply countervailing duties if those subsidies are causing injury. If those subsidies are not causing injury, the application of countervailing duties to countries that have signed the Code would explicitly violate the provisions of the Code.

B. Antidumping

1. *Shortening of time limits.*—The Senate Finance Committee has proposed that the time period for an antidumping investigation be shortened significantly Under its proposal, the time for reaching a preliminary determination of sales at less than fair value (LTFV)—when withholding of an appraisement occurs—would be reduced to 120 days from the date of receipt of petition. This compares to the present statute which allows approximately 7 months. The Committee has proposed an additional 75 days for the final fair value decision—extendable by 60 days upon request of petitioners or respondents—with an additional 45 days for an injury determination by the ITC. We recommand based on the nature of the antidumping process and recent GAO study, that there be no reduction in the time permitted to conduct an antidumping investigation. Specifically, by reducing the time allowed for a preliminary determination, it would not be possible in the ordinary cases for information to be received and analyzed fully prior to a preliminary determination. As with countervailing duties, the absence of adequate time will force decision-makers to rely increasingly on personal bias. This benefits no one.

2. *Payment of estimates dumping duties upon entry.*—The Senate Finance Committee tentatively has decided that estimated dumping duties be paid upon entry for products under a dumping finding. This proposal adds a punitive feature to the antidumping law—not only would an exporter have to raise his price in order to avoid present dumping duties on the entry, the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for the past practices of the foreign exporters. This double penalty could have the very real consequence of forcing a number of small importers out of business. Moreover, the payment of estimated dumping duties does nothing to solve the real problem with the assessment process, which lies in the failure of the Customs Service to administer the Master Lists. We recommend a continuation of the current practice of requiring bond until such time as goods have been determined actually to be dumped. Congress should legislate time limits on the assessment process. To the extent that delays in the preparation of Master Lists are incurred because of exporters, Customs can remedy the problem by using the best information available if that information is not forthcoming in a reasonable amount of time. To require a payment of estimated dumping duties would penalize importers in cases where dumping actually has been eliminated, thereby erecting a totally unjustified non-tariff barrier.

3. *Deletion of cost of production and minimum percentage markups.*—While not addressed by Congress, we recommend, based upon inconsistency with the Antidumping Code and the recent GAO study, that Section 205(b) referring to cost of production and Section 206(a) which mandates arbitrary addition of 10 percent for general expenses and 8 percent for profit, be eliminated from the Antidumping Act.

4. *Use of averaging in the assessment process.*—The Senate Finance Committee tentatively has decided that assessment of dumping duties be carried out with the use of sampling techniques and averaging to compare U.S. and foreign market value, and that "insignificant adjustments" could be ignored at the agency's discretion. We recommend that, as difficult as the duty assessment process is, every importer has a right to have its duties assessed on the individual merits of that entry Any solution seeking to accelerate the process by disregarding the rights of importers should be rejected as fundamentally inconsistent with our system of law.

C. Section 201 of the Trade Act of 1974

Expedited procedure and proposed shortened time limits.—The Trade Subcommittee and the Finance Committee have recommended various alternatives which would shorten the time limits necessary for an Escape Clause. We recommend that no changes be made in the time limits for the Escape Clause because there is no demonstrated need for either of these proposals. Moreover, while 90 days may be sufficient time to conduct an injury investigation in antidumping cases, parties to

those investigations and the ITC are aware of those investigations ahead of time. There is no such advance warning in the case of Escape Clause investigations, with the result that a mere 90-day or 120-day investigation with a hearing scheduled at the approximate mid-point (six weeks after initiation of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case or for the ITC to conduct an adequate investigation.

D. Customs valuation

1. *Valuation code.*—AIA has worked closely with our negotiators in Geneva in order to develop a new violation system. U.S. law should be amended to give full effect to the new Valuation Code which is based on "transaction value" and rigidly prescribes the manner and extent to which Customs authorities may deviate from this standard.

2. *F.O.B. v. C.I.F.*—It has been proposed that the United States change its method of Customs valuation from F.O.B. to C.I.F We recommend that the F.O.B. basis of Customs valuation be retained because imposition of C.I.F. would discriminate between U.S. ports, and increase costs to the consumer. In addition, any such change would require compensation to our trading partners which could be achieved only through a whole new round of tariff-cutting negotiations.

E. Import licensing

This Subcommittee is considering a limited grant of discretionary authority to the President to auction import licenses. Any such scheme would place small importing companies at an enormous disadvantage and significantly reduce competition in those products under license. It would increase the wholesale and retail costs of these products. We recommend that such a program not be initiated by the Congress.

The Subcommittee is also considering an automatic licensing system to monitor imports prior to Customs entry. Such a system would be expensive, difficult to administer, and trade inhibiting. Initiation of automatic licensing at this time would contravene the intent of the Import Licensing Code which seeks to diminish the application of licensing policies.

CONCLUSION

In conclusion, Mr. Chairman, AIA wishes to reiterate its concern over the price consumers and importers apparently are being asked to pay, in the form of one protectionist concession after another, to secure implementation of the reportedly liberalizing MTN package. To this end, we urge the Committee to enact only the legislation necessary to implement the package, not the widely-rumored "appropriate sweeteners."

Moreover, we urge the Committee to consider our other proposals, such as those regarding time limits, not in terms of free trade versus protectionism, but in terms of what is necessary to provide for fair and competent administration of these laws. The use of unreasonable time limits can create both unwarranted barriers to trade and incompetent administration of the laws. Again, we feel this serves no one—surely not the interest of the American public.

We appreciate this opportunity to express our views. We look forward to working with you and your staff in the coming weeks in what we hope will be an effective dialogue "to promote the development of an open, nondiscriminatory, and fair world economic system."

MEMORANDUM OF RECOMMENDATION

A. COUNTERVAILING DUTIES

1. Problem: Time Periods for Countervailing Duty Investigation

It tentatively has been decided by the Trade Subcommittee that time periods for countervailing duty investigations be shortened to the following: (i) Preliminary determination of a bounty or grant within 95 days from the date the petition is received—165 days in a complex case—(present law is six months); (ii) final determination of a bounty or grant within an additional 75 days (present law is an additional six months); (iii) immediately following a preliminary affirmative determination, there would be a withholding of appraisement (no withholding under current law); and (iv) upon preliminary affirmative determination, immediate referral to the International Trade Commission for a concurrent injury proceeding with the injury determination due 45 days after the final determination of subsidy

(presently, in the case of duty-free products, the ITC injury determination is due three months after the final determination of a bounty or grant by Treasury).

The Finance Committee differs only in that it recommends that the deadlines for a preliminary determination by 75 days—150 days in the case of a complex case. The other time limits are the same.

Recommendation

(i) Preliminary determination within six months;
(ii) Final determination within 60 days after the preliminary;
(iii) Withholding of appraisement upon a preliminary affirmative determination;
(iv) Following a preliminary affirmative determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

Reasons

1. The shortened time periods tentatively decided by Congress would make it impossible for information from foreign governments or exporters to be collected and analyzed by Treasury prior to a preliminary determination and would make withholding of appraisement inevitable. In most countervailing duty investigations, the issue of a bounty or grant depends on the extent to which a number of producers actually utilize the government programs at issue. In these cases, foreign governments must ask the companies involved for a full accounting of the benefits received, which can be a very involved accounting process. Prior to a preliminary determination, a questionnaire must be prepared based upon the petition; it must be presented in the foreign capital by our embassy; a response must be prepared by the foreign exporters or governments which usually entails a detailed accounting and analysis; the response must be delivered to Treasury; the response must be verified by Treasury officials visiting the foreign country; and last, but not least, Treasury must analyze the response, which often involves follow-up questions requiring additional answers from a foreign government. It simply is not possible for this process to be accomplished in less than six months. Moreover, shorter time limits would result in excluding the petitioners from this stage of the investigation because the lack of time would not permit Treasury to consult with them at this stage. As a result, the proposed time limits would make the investigatory process meaningless.

2. Time limits need not be shortened in order for domestic industries to get quicker relief. Under our recommendation, relief would be imposed within six months by means of a withholding of appraisement at the time of the preliminary determination. This means that all goods entering after the withholding will be subject to any countervailing duty eventually declared. Under current practice, relief is not possible until after a final determination, which generally is not made until one year after the petition has been filed.

3. Under the Senate and House time limits, providing for immediate referral to the ITC after a 75-day or 95-day preliminary determination and a final determination within 45 days of the final Treasury determination, the amount of the final subsidy determined by Treasury will not be known by the ITC until very late in its investigation—probably after the hearing. This will not allow an adequate finding to be made on the essential element of causation. The level of the subsidy is crucial to any examination of the causal relationship between the subsidy and material injury—whether material injury is "by reason of" the subsidy.

Our recommendation provides the same amount of time for the ITC determination as the Senate and House—120 days. However, we would shorten the time between Treasury's preliminary and final determination from 75 to 60 days. This is possible if adequate time is given for the preliminary stage. Under this proposal the ITC would know the final subsidy level prior to hearings, enabling the ITC to explore the causation issue fully.

This proposal would lengthen the entire process by only 105 days (Senate version) or 85 days (House). The truncated Congressional limits simply would not allow for probative investigations and fair analysis. In the absence of adequate time to gather and analyze the facts, decision-makers will rely increasingly on their personal bias. Such a result benefits neither the domestic industry concerned nor the importing community.

2. Problem: Material Injury

The Trade Subcommittee and the Finance Committee tentatively has decided to delete the word "material" as a modifier of the word "injury". This explicitly conflicts with the Subsidies/Countervailing Duty Code just negotiated and with Article VI of the GATT.

Recommendation

The implementing legislation should specifically use the term "material" injury, which should be defined as "important and consequential".

Reasons

1. "Material" injury is a higher standard than mere "injury" as pointed out by the Senate Finance Committee in its Report on the Trade Act of 1974—which provided the negotiating authority for these negotiations: "The term 'injury', which is unqualified by adjectives such as 'material' or 'serious' has been consistently interpreted by the Commission [in antidumping investigations] as being that degree of injury which the law will recognize and take into account. Obviously, the law will not recognize trifling, immaterial, insignificant, or inconsequential injury. Immaterial injury connotes spiritual injury, which may exist inside of persons not industries. Injury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial." (Emphasis added).

2. Omission of the term "material" injury would violate the international obligations so recently undertaken in the Subsidies/Countervailing Duty Code.

3. Problem: Calculation of "Net Subsidy"

The Trade Subcommittee and the Senate Finance Committee would impose limitations on the ability of Treasury to calculate the net benefit derived from certain subsidies. This would result in an overstatement of the amount of subsidy received in some cases.

Recommendation

The statute should not limit calculation of "net subsidy".

Reasons

1. In administering the Countervailing Duty Law, Treasury traditionally has sought to determine the level of "unfair advantage", not merely the amount of the gross payment. The Subsidies/Countervailing Duty Code speaks of subsidies "granted with the aim ... giving an advantage to certain enterprises." Because of the variety of different programs worldwide, it is necessary for Treasury to have the flexibility to measure this "net advantage" in keeping with the facts of each case.

2. In the case of regional development programs, for instance, payments given in return for proven cost dislocations incurred by the recipients are not considered a bounty or grant—a payment given merely to offset proven cost dislocations does not give an advantage but merely equalizes conditions of competition. In the case of developing countries with indirect tax systems similar to the Value Added Tax, the indirect tax often is not rebated on export. Instead, these countries make direct export payments. Because rebates of indirect taxes directly related to the product are internationally recognized and approved (such as the U.S. rebate of excise taxes upon exportation), Treasury does not consider that portion of the export payments which take the place of non-rebated indirect taxes to be a subsidy. In other words, Treasury considers the Substance of the program, not its form.

3. The case of proven cost dislocations and non-rebated indirect taxes are the same, conceptually, as the offsets considered by the Trade Subcommittee and the Finance Committee. Rather than attempting to delineate and forecast all circumstances in which offsets are legitimate, this determination should be left to Treasury based on the facts of each case with judicial review being the safeguard against abuse of this discretion.

4. Problem: Protective Order

The Trade Subcommittee and the Senate Finance Committee have recommended that confidential information be made available to counsel for interested parties under administrative protective order.

Recommendation

The confidentiality of information should be totally preserved at the administrative level.

Reasons

1. There is a real risk that, despited a protective order, highly confidential proprietary business information could be revealed to competitiors. Fear of this risk, even if unfounded in a particular case, could inhibit full cooperation by foreign interests unfamiliar with our procedures.

2. The nature of these proceedings under both the Countervailing Duty Law and the Antidumping Act are investigatory, not adversary. Parties have a right to

assure themselves that the Treasury Department is conducting an investigation properly. Parties do not have a right to the information Treasury collects in the course of that investigation. Otherwise, parties will be encouraged to use these proceedings as a discovery process.

3. To the extent that parties are dissatisfied with Treasury's determinations, they have a right to judicial review under which the factual basis for Treasury's determination can be obtained under a protective order. The difference is that this would be an adjudicative proceeding and the court possesses the necessary procedural safeguards to protect the process. Treasury does not.

5. Problem: Provisional Coutervailing Duty Measures

This Subcommittee has tentatively decided that provisional measures can be applied at the time of a preliminary determination in the form of a special entry bond or a cash deposit.

Recommendation

Importers should be allowed to apply their general term bond coverage to cover provisional countervailing duties and to cover antidumping duties.

Reasons

1. These provisions unnecessarily would penalize importers prior to a final determination of the cases. The purpose of provisional measures is solely to protect the revenue—this should be done in the least punitive way possible.

2. The general term bond adequately protects the revenue. Customs has consistently required adequate bond coverage for both its own routine entry purposes and for special duties. At the same time, it has encouraged the use of a general term bonds to ease its own administrative burden and to enable the importer to avoid extra costs and paperwork. Particularly under Customs' new computerized bond record system, there is no reason not to allow Customs and importers to continue to take advantage of the benefits of the general term bond.

6. Problem: Discretionary Application of the Injury Provision

The Senate Finance Committee tentatively has decided that the existing Countervailing Duty Law, which does not require an injury determination, remain in effect. The new injury provisions would apply only to countries that have both fully acceded to the Code and, in the opinion of the President, are fully implementing the Code.

Recommendation

The new law should extend to all countries that have fully acceded to the Code.

Reasons

1. The Code contains sufficient remedies to insure compliance with its provisions—that is its purpose. The Code also provides that countervailing duties cannot be applied in the absence of material injury. Therefore, the United States should uphold strictly the integrity of the Code by applying the injury standard to signatories if it expects others to adhere to the Code.

2. Particularly, this section could operate to deny the injury provisions to developing countries. Those who have acceded to the Code have committed themselves to endeavor to reduce or eliminate export subsidies. This will be a painful transition process involving difficult judgments as to the proper pace. These judgements should be made in an international forum—not through elimination of the application of the injury provision which would contravene the Code. If there is disagreement over the pace of these phase-outs, the United States still retains the right to apply countervailing duties if those subsidies are causing injury. If those subsidies are not causing injury, the application of countervailing duties to countries that have signed the Code would explicitly violate its provisions.

B. ANTIDUMPING

1. Problem: Time Periods for Antidumping Investigations

The Senate Finance Committee tentatively had decided that the time periods for an antidumping investigation be shortened to the following:

(i) Initiation within 20 days after filing of a petition (current law is 30 days);

(ii) ITC determination within 45 days after a petition is filed on question of whether there is a "reasonable" indication that injury to a domestic industry by

reason of dumped imports exists (current laws gives the ITC 30 days from the time Treasury refers the case to the ITC);

(iii) Preliminary determination of sales at Less Than Fair Value within 120 days, 165 days if it is a complicated case. (Current law gives Treasury six months from the date of initiation, nine months if it is determined to be a complicated case);

(iv) Final determination within 75 days, or 135 days upon request (present law provides for a final determination within three months after a preliminary determination);

(v) Final determination of injury by the ITC within 120 days of the preliminary determination of sales at Less Than Fair Value or 45 days after the final determination of Less Than Fair Value sales if that determination was extended (present law provides for an injury determination within three months of a final determination of sales at Less Than Fair Value).

Recommendation

There should be no reduction in the time permitted to conduct an antidumping investigation.

Reasons

1. The present time limits are necessary because of the extremely involved nature of an antidumping investigation. This conclusion is supported fully by the evaluation of the current administration of the Antidumping Act by the General Accounting Office. If anything, the conclusion to be drawn from the GAO study is that time limits should be extended in order to permit Treasury and ITC officials time to adequately perform their tasks A shortening of the existing time limits will have only one result—a denial of due process to exporters and importers because of the procedural inability of the agencies to obtain and analyze the data. These shortened deadlines also will operate to deny petitioning parties meaningful participation in the investigation prior to a preliminary determination.

2. As is the case with the proposed Countervailing Duty time limits, it would be impossible for information from foreign producers to be received and analyzed properly prior to a preliminary determination. It would thus make witholding of appraisement inevitable, thereby raising a non-tariff barrier to trade. Prior to a preliminary determination, a questionaire must be presented by the embassy to the foreign exporters; a response must be prepared, generally by a number of foreign exports, which involves a complete accounting of their business for a six-month period; the responses must be delivered to Treasury; the responses must be verified by Treasury officials visiting each of the reponding exporters; finally, Treasury must analyze the responses. This process takes a minimum of six months to complete in the most ordinary of cases.

3. Under current procedures, effective relief is obtained by domestic industries within six months if the preliminary determination is affirmative—there is a withholding of appraisement which immediately subjects all entries as of that date to potential dumping liability. Thus, if a dumping duties be paid upon entry for products under a dumping finding ultimately is made, these entries will be subject to dumping duties if they, in fact, have been dumped. The 60 days by which the process is shortened makes an adequate investigation impossible and the additional protection to the domestic industry is marginal. It would also increase reliance on the personal bias of the decision-makers.

2. Problem: Payment of Estimated Dumping Duties Upon Entry

The Senate Finance Committee tentatively decided that estimated dumping duties be paid upon entry for products under a dumping finding. This would place an extreme burden on importers because the duty would be required regardless of whether the goods had, in fact, been dumped or not.

Recommendation

Following a finding of dumping, an importer should be required to post only a bond until such time as his goods may be found to have been dumped.

Reasons

1. In the overwhelming majority of cases, dumping ceases after the imposition of the dumping finding because the choice is a simple one between eliminating the margin by, for instance, raising the price (thereby putting the money in the exporter's pocket) or not eliminating the dumping margins (thereby putting the money into Treasury's pocket). The purpose of the Antidumping Act is remedial, not punitive. The statutory and administrative scheme has been designed, up to now, to encourage an exporter to adjust prices to eliminate any margins. If this is done,

dumping duties can be avoided because the statutory purpose has been accomplished—dumping has been eliminated.

2. The proposal to require the payment of estimated dumping duties would have a real punitive feature—not only would an exporter have to raise its price in order to avoid present dumping duties on the entry, the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for past practices of the exporters. The importer would therefore have to pay a double penalty. The cash flow result of such a requirement, particularly in these times of inflation, could force many small importers into bankruptcy—in spite of the fact that steps had been taken to eliminate the dumping complained of. The reimbursement of estimated dumping duties three or four years after the fact would be cold comfort to importers who have gone bankrupt because of these requirements.

3. The underlying problem which this proposal is meant to address is the lax assessment of dumping duties after a finding has been made. This proposal, however, will do nothing to speed up the processing of Master Lists by the Customs Service, which is the cause of the assessment problem. Delays in administration are caused not by failure of exporters or importers to respond, but by the difficulties in administration of Master Lists by the Customs Service. To the extent that delays are incurred because of exporters, Customs can use the best information available if that information is not forthcoming in a reasonable period of time.

4. The proper solution to the problem is to strengthen the resources and procedures used by the Customs Service so that Master Lists can be properly administered. Time limits should be placed on the periodic assessment of dumping duties which would force the proper administration of Master Lists both at headquarters and at the ports. Once this occurs, there will be no further need to seek out a scapegoat—in this case, the "nonpayment of estimated dumping duties at the time of importation"—in order for the law to accomplish its purpose of a protection against dumping.

3. Problem: Deletion of the Cost of Production and Minimum Percentage Markups

While not proposed by Congress, this recommendation is based on inconsistency with the antidumping Code and the recent GAO study.

Section 205 (b) of the Antidumping Act provides that if sales in the home market have been made at prices below the cost of production, these sales shall be disregarded. If there are then insufficient home market or third country sales to serve as the basis for establishing "fair value", then the constructed value provisions of the Act—Section 206 (a) requiring the arbitrary addition of at least ten percent for general expenses and eight percent for profit—must be used. Originally designed as an exception to the general rule, these two provisions have become the rule with disastrous results.

Recommendations

These provisions should be deleted from the Antidumping Act.

Reasons

1. The Comptroller General has recommended to Congress that these sections be deleted.

2. As noted by the Comptroller General, these provisions are responsible for many of the burdensome delays occasioned by Treasury in its administration of the Antidumping Act. Furthermore, the GAO study points out that it is not possible to do an adequate cost of production analysis under the time constraints of the Antidumping Act. By the simple exclusion of these two provisions, a whole host of recent problems which have surrounded the administration of the Antidumping Act—including the necessity of the Trigger Price Mechanism (TPM)—would not exist.

3. The provision does not make economic sense in that it speaks of home market sales below cost, not U.S. sales which are the concern of the Antidumping Act.

4. The minimum markup requirements of eight percent profit and ten percent for general expenses do not, in the case of a great many industries, jibe with reality. The result is an artificially inflated fair value in which dumping margins are all but automatic.

5. The cost of production provision and the minimum requirement of an eight percent profit and ten percent for general expenses violate the Antidumping Code.

4. Problem: Use of Averaging in Assessment Process

The Senate Finance Committee tentatively has decided, in connection with assessment of dumping duties, that: "The administering agency would use sampling

techniques or averaging to compare U.S. and foreign market values when a significant number of adjustments to prices are required. Adjustments related to operations of exporters of insignificant quantities of dumped products would not delay appraisement, and insignificant adjustments could be ignored in the agency's discretion."

Recommendation

Duty assessment under dumping findings should be administered on an entry by entry basis without the use of sampling or averaging with each adjustment taken into consideration.

Reasons

1. Each taxpayer has a right to have his taxes assessed on the merits of his individual case. The IRS cannot disregard adjustments merely because it feels they are "insignificant". Similarly, American Importers have the same rights with regard to the amount of duties—i.e., taxes—which they must pay.
2. The impetus behind this proposal—a speeding up of the assessment process—would better be served by requiring the Customs Service to effectively administer Master Lists, rather than seeking to accelerate the process by disregarding the rights of importers.

C. SECTION 201 OF THE TRADE ACT OF 1974

1. Problem: Reduced Time Limits

The Trade Subcommittee of the Ways and Means Committee has proposed that the time limits for Escape Clause investigations be shortened to the following:
(i) Four months for the ITC investigation—six months in exceptional cases (present law gives the ITC six months to conduct its investigation);
(ii) 45 days for a Presidential determination on whether and in what form to provide relief (present law provides 60 days);
(iii) Ten days for a Presidential request for a supplemental report from the ITC with a 20-day limit on the ITC response (current limits are 15 days and 30 days respectively).
The Finance Committee has tentatively decided on an expedited procedure for an escape clause investigation under "exceptional circumstances". These new provisions would provide for an ITC investigation to be completed within three months and a Presidential determination within 30 days.

Recommendation

There should be no reduction in the time permitted to conduct an escape clause investigation.

Reasons

1. There is no demonstrated need for these provisions. To our knowledge there have been no prior cases in which the present time limits were inadequate for an industry. No industry went bankrupt or was threatened with bankruptcy, or any serious difficulty, because of the six-month escape clause investigation. The only result of such an expedited procedure, then, would be to deprive the ITC and the President of the time necessary to complete an adequate investigation.
2. The shortening of the time limits to 90 days or 120 days for the ITC investigation would be particularly unfair to importers and exporters. In contrast to the 90 day injury investigation under the Antidumping Act, where importers and exporters are already represented by counsel and aware of the pendency of the proceedings, importers and exporters have no notice prior to the filing and initiation of an escape clause investigation—although the complainant, of course, has all the time in the world to prepare his side of the case. Considerable time is needed in these cases merely to get organized and obtain information. A 90 day investigation with a hearing scheduled at the approximate mid-point (6 weeks after initiating of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case.

D. CUSTOMS VALUATION

1. Valuation Code

AIA, in the last several years, has been directly involved in the development of this Code in Geneva. In late 1972 and early 1973 the then Tariff Commission held hearings on a proposal by its staff for a possible new valuation system which could be adopted as a uniform international standard. This Tariff Commission staff pro-

posal would have put the United States on a slightly modified version of the Brussels Definition of Value.

The American Importers Association responded with a paper which in many ways was the father of the MTN Valuation Code. Its basic premise was that both the U.S. and the Brussels valuation system should be discarded and replaced by a new system based on "transaction value." That is just what has now emerged from the Geneva negotiations.

U.S. law should be amended to give full effect to the new Valuation Code which is based on transaction value, and rigidly prescribes the manner and extent which Customs authorities may deviate from this standard.

In order to avoid unnecessary repetition, AIA will not, in this statement, offer specific comments on the Code or necessary implementing legislation. Rather, we endorse and adopt the testimony of the Joint Industry Group panel which deals extensively with this subject. AIA is a member of the Joint Industry Group.

2. Problem: F.O.B. v. C.I.F.

It has been proposed that the United States change its method of Customs valuation from F.O.B. to C.I.F.

Recommendation

The present F.O.B. basis of Customs valuation should be retained.

Reasons

1. F.O.B. excludes the costs involved for insurance and freight for duty purposes. The United States, Canada and Austrialia have used F.O.B. for many years because all three countries are continental economies and none wanted to discriminate against ports which happened to be further from the point of exportation.

2. If levied on an actual C.I.F. basis, such a system will automatically translate into higher wholesale and retail prices on the same item and wide variations over the United States, dependent upon distance from port of export. In New York, for instance, on goods moving all-water from the Orient, it will mean higher prices than in other areas of the country, because of increased ocean freight costs. On the other hand, if these goods are unloaded by rail or truck ("minibridge"), using C.I.F. would seriously affect stevedoring firms and dock labor in the New York Port area because of loss of business. It would also be particularly harmful to Buffalo because of much higher costs of moving goods from Europe and the Orient into the Great Lakes. If levied to include "minibridge" charges, C.I.F. would distort trade and traffic patterns with serious economic and distributional effects.

3. It is questionable whether such a method is constitutional, as the amount of duty would vary from port to port on the same merchandise. Whether constitutional or not, such a practice would be discriminatory.

4. The U.S. would have to compensate its trading partners because of the increase in duties. If the U.S. tried to use compensation formulas to avoid discriminatory and inflationary effects already mentioned, such calculations would have to be done on a trade-weighted averaging basis for each of the 18,000 tariff schedule items; these would then have to be recalculated, based upon changes in shipping patterns and ordering procedures which would result from imposition of the new system. This effort alone would impose a costly and burdensome obligation on the government in both installation and administration.

5. If compensation is not given to negatively affected exporting countries, and if not averaged to produce a single C.I.F. value in all ports, it will be inflationary. All prices on imports will be increased because of higher duties resulting from the higher base (C.I.F. vs. F.O.B.) on which they will be levied, or as a result of higher duties in ports more distant from the point of export.

E. IMPORT LICENSING

1. Problem: Authority to Auction Import Licenses

Subcommittee Release PR No. 14 states that the Subcommittee decided to grant the President authority to auction import licenses as applicable to certain statutory provisions.

Recommendation

The President should not be authorized to auction import licenses.

Reasons

1. While new revenue would accrue to the government under a licensing auction scheme, foreign experience has shown that any such program would be enormously burdensome to administer, thus decreasing the financial benefits.

2. License auctioning places the small importer at an extraordinary disadvantage. The effect of such a scheme would be further concentration of an industry once dominated by small companies and reduced competition in those products under license. Retail and wholesale costs of licensed products would increase further as parties enter the import transaction chain to broker quota licenses.

2. Problem: Automatic Import Licensing

The Subcommittee has proposed an automatic import licensing system as an "early warning" device to monitor imports prior to Customs entry.

Recommendation

An automatic import licensing system should not be adopted.

Reasons

1. There is nothing in the Import Licensing Code under which U.S. adoption of an automatic licensing scheme is either necessary or appropriate. Such a system would be expensive, difficult to administer, and trade-inhibiting. There is no demonstration that it could provide accurate and timely warning of import "surges" given the wide variations in the import industry for the time elapsed between placing an order and making customs entry.

2. Licensing is a recognized barrier to trade whether on exports or imports. The new code seeks elimination of this barrier, and urges its use only under stringent circumstances. Our exporters are urging reduction of U.S. licensing barriers to trade. For Congress to add new ones, on the import side, is to use the occasion of approval of the codes to deny their intent.

Mr. FISHER [presiding]. Thank you very much.

Mr. Frenzel, are you going to go vote now?

Mr. FRENZEL. I think I might.

Mr. FISHER. I think I should, also. The chairman is coming back right away so I will recess these proceedings for a few minutes and if he does not show right away I will return directly after I vote.

Mr. MAXWELL. OK, sir.

[Whereupon, the subcommittee recessed.]

Mr. VANIK. Are you finished with your statement?

Mr. MAXWELL. Yes, sir, we are. We are ready for questions.

Mr. VANIK. What about your colleagues?

Mr. MAXWELL. I only made the statement, sir.

Mr. VANIK. I want to point out you made some good suggestions on countervailing and the other issues involved. As you know, we are planning the markup and we plan to finish that up in the next weeks so I hope you keep in close touch with the staff, because we want to have an input that will give us the best approach to the many, many issues that are fielded. I want you to know there are political problems that are looming up all over on this trade bill.

I discovered a few minutes ago that we have to deal with the New England caucus. So as we get certain sections of America that are going to be appraising this we are going to make an effort to deal with them on an area-wide basis. I just want you to know that our task is very complex and there is a time factor, because we do have a time limitation. I hope everybody that is involved in this realizes that we are going to do our very best within the time frame to arrive at a bill sufficient to get us through both the House and the Senate.

I want to thank you very much for your time. I am sorry we had the interruptions but that is the nature of our operations.

Mr. MAXWELL. Thank you, sir.

Mr. VANIK. Mr. William H. Barringer of Arter Hadden & Hemmendinger is not here, so without objection his statement will be entered into the record.

[The statement follows:]

STATEMENT OF WILLIAM H. BARRINGER, ON BEHALF OF ARTER HADDEN & HEMMENDINGER

SUMMARY

1. The time periods suggested by the Subcommittee for Countervailing Duty Investigations in its March 13, 1979, press release are unrealistically short; a minimum of 120 days is needed for an adequate preliminary investigation.

2. Access by counsel for all interested parties to confidential information through protective orders will further complicate and lengthen investigations under both laws; the non-confidential summaries required in antidumping investigations are sufficient.

3. In both dumping and countervailing duty investigations, a "material" injury standard should be adopted.

4. Provisional measures in both countervailing and antidumping investigations, particularly cash deposits, are unnecessary and punitive in nature.

5. Treasury should be allowed broad discretion in countervailing duty investigations to apply offsets in determining net subsidies.

6. The time periods for antidumping investigations should remain unchanged; shorter investigatory periods will harm both the interests of complainants and respondents.

7. Treasury's discontinuance policy in antidumping investigations should be continued and expanded.

STATEMENT

I am a partner in the Washington, D.C. law firm of Arter Hadden & Hemmendinger and am appearing here today in place of Noel Hemmendinger. Our law firm, formerly Stitt Hemmendinger & Kennedy, is presently associated with firms in Cleveland and Columbus, Ohio.

The purpose of my testimony today is to offer the Subcommittee the views of members of our firm based on our many years of experience in representing U.S. importers and foreign exporters in proceedings under the escape clause, the antidumping act, and the countervailing duty law. During the past year, we have represented importers and exporters in connection with: countervailing duty cases involving textiles and men's and boys' apparel from Brazil, Colombia, the Phillipines, Thailand, and Malaysia; the TPM system as it concerns steel from Japan; dumping cases involving nails and cement from Canada; and escape clause matters involving specialty steel from Japan, footwear from various sources, and ferrochromium from Yugoslavia.

This testimony is given on behalf of the law firm, and not on behalf of its clients. I would draw your attention, however, to the fact that the law firm is registered under the Foreign Agents' Registration Act for the Japan Iron and Steel Exporters' Association and related Japanese steel export associations, the Banco do Brazil, and the Japanese Government acting through the U.S.-Japan Trade Council.

GENERAL OBSERVATIONS

As a general matter, I wish to indicate that we support the presentation made on behalf of the American Importers Association. We are a member of the AIA and participate in the work of a number of it's committees.

My testimony today is devoted principally to consideration of legislative changes in the antidumping and countervailing duty laws. While I will review and comment on a number of the proposed changes in the substantive standards of the statutes, I wish to emphasize proposed changes in the procedures for investigation which, from the perspective of a practitioner representing foreign export interests and U.S. import interests, I believe will operate as substantial barriers to full and fair investigations. I will focus here on proposals to alter the timetables for investigations. Second, I wish to call the Subcommittee's attention to the increasingly adjudicative nature of investigations under the statutes and the adverse impact this has on meeting current or proposed time limits. In this connection I would suggest that increasing access by counsel for interested parties beyond that currently available

in antidumping proceedings, that is access through a non-confidential summary, will result in a further increase in the adjudicative nature of these proceedings. Third, I wish to briefly call the Subcommittee's attention to such substantive issues as the proposed standard of injury in the countervailing duty law, the calculation of net subsidies, the requirements of bonding or payment of estimated duties in either countervailing duty or antidumping investigations, and the "settlement" of investigations.

COUNTERVAILING DUTY LAW

1. *Time period for countervailing duty investigations.*—In its press release of March 13, 1979 the Subcommittee tentatively agreed to reduce the time period for investigations from 1 year in the present law to a total period of 215 to 335 days. While in my opinion it may be feasable to conduct a countervailing duty investigation within a period of 215 days, I believe it will prove to be extremely difficult in all but the most simple cases. The Subcommittee's suggested time period would, for example, require a preliminary determination by the Treasury Department within 90 days of the receipt of a petition and only 75 days after Treasury's determination to initiate an investigation. Such a time period would, without question, make it impossible for foreign governments or foreign industries to receive a decision on the merits at the preliminary determination stage of the investigation. It is not possible between day 20 when Treasury initiates the investigation and day 90 to prepare an adequate questionnaire, distribute that questionnaire to the interested foreign parties, for the foreign parties to collect data in order to respond to the questionnaire, for the Treasury Department to analyze data received, for a non-confidential summary to be analyzed and commented on by the complaining party, and for the Treasury review and approval process to take place. If, as indicated in your press release of March 13, there is to be verification of information submitted, even more time is required. In effect, the shorter time periods suggested by the Subcommittee would virtually guarantee that the preliminary determination in countervailing duty cases would be based on the information received from the complaining party as "best evidence" available. This fact, if accompanied by suspension of liquidation after the preliminary determination, literally guarantees that a complainant can, at least temporarily, completely disrupt trade in the products being investigated. The risk of trade in the product being investigated would be too great.

It is suggested that if any shortening of time periods in countervailing duty investigations in contemplated, that the period to be shortened is the period between the preliminary and final Treasury determination. In my view, and based on substantial experience, the preliminary determinations should not take place until 180 days after initiation. Final determination could as a practical matter be accomplished within 60 days of that time, unless the investigation were a more complicated one. The ITC could receive the case after the preliminary determination and be given 120 days from that date to make it's final decision.

A formulation of the time period for investigations such as given above will allow the Treasury Department sufficient time to undertake an adequate investigation, while simultaneously protecting the interest of domestic industries in obtaining adequate relief. Furthermore, it will have the added advantage of allowing the domestic petitioners to consult with Treasury during the preliminary stages of the investigation, which consultations could not take place under the time limits proposed in the Subcommittee's March 13 release.

2. *Confidentiality.*—The suggestion in the Subcommittee's release of March 13 that non-confidential summaries of submissions be available on request to any party and that counsel for interested parties could seek access to confidential information under an administrative court or protective order is disturbing. Putting aside the difficulty which will arise in making public confidential government to government communications, implementation of the proposals in the press release will make the pursuit of investigations extremely difficult. As I am sure any Custom's or Treasury official will testify, current requirements of non-confidential summaries in antidumping cases have geometrically increased the complexity of these cases.

Dumping investigations are no longer impartial and objective proceedings carried out by the Department of Treasury, but quasi-adjudicative proceedings with all parties analyzing and commenting on other parties submissions, submitting volumes of data and counter data, preparing legal and factual arguments whether frivolous or serious, and with an abundance of lawyers submitting procedural and substantive protests. Increased access through the availability of a protective order would further and substantially complicate these cases.

Furthermore, to insert an essential adjudicative procedure, the protective order, into a proceeding which is not governed by the Administrative Procedures Act and

which, therefore, provides few if any procedural safeguards to parties submitting information, operates as a substantial deterrrent to full cooperation with the investigative procedures and compromises the rights of parties seeking to import into the United States.

In my opinion, and that of the lawyers working for our firm, the purpose of non-confidential summaries and disclosure by the Treasury Department to complaining parties has been to allow them to monitor the adequacy and legality of the Treasury Department's investigation. This has reached extremes, but nevertheless the process is still functioning. To allow opposing counsel access to confidential information will allow that counsel to function in the role prosecutor or plaintiff's counsel and will make these investigations into adjudicative proceedings without procedural safeguards. It is suggested that conducting countervailing duty investigations, or anti-dumping investigations, in an adjudicative manner is inappropriate.

Countervailing duty investigations are essentially Government to Government proceedings which call into question practices which a foreign government believes to be appropriate in light of its own economy. This is not a problem which lends itself to an adjudicative resolution. With respect to both countevailing duty and dumping investigations, increasingly adjudicatives procedures act as a barrier to the interests of the domestic industry in a prompt decision and are contrary to the public interest in assuring full and fair decisions with a minimum of unnecessary disruption. Finally, the astronomical costs which adjudicative procedures impose on exporting industries is equivalent to a non-tariff barrier. It would indeed be ironic if the MTN which has focused on the elimination of non-tariff barriers to trade resulted in implementing legislation which increased rather than decreased such barriers.

3. *Injury.*—We strongly urge that the committee take into the U.S. law the expression "material" injury which has long been the standard of the GATT and which is now contained in the international codes. To decline to do so invites quite unnecessary discord with our trading partners who have long objected that the absence of the word "material" created an undue difference in the U.S. practice from that provided in the GATT and followed by other countries. We recognize that the United States has long maintained that it's actual practice is consistent with the expression "material" and we concede that there are many cases which permit this proposition to be defended. However, there are also cases of recent date in which it is not easy to defend this practice as meeting the standard of "material" injury.

The basic reason of course, for giving significant value to the expression "material" injury is the same as the reason that no doubt caused it to be originally used in the General Agreement. Namely, that it does not make economic sense to put a penalty upon importations into the United States at low prices, to the benefit of the American consumer, unless there is really a significant degree of prejudice to some producing sector of the United States economy.

In the last analysis, the application of this test implies a weighing of interests on the part of the International Trade Commission, and the public should not be denied the benefits of low priced imports unless there is a clear prejudice to a U.S. competitor. This applies equally to dumping or countervailing duty investigations.

4. *Provisional measures.*—Our comments on provisional measures in connection with dumping amendments—that there is no justification except a punitive attitude—also apply to such measures in connection with countervailing duties.

5. *Definition of net subsidy.*—We submit that the definition of a net subsidy which is found in press release 14 (paragraph 5) is deficient and that regardless of provisions placed in the law, the discretion of the administering authority to determine the net subsidies should not be limited. It is difficult to conceive of all of the circumstances which may be applicable and which may cause the values of governmentally furnished aid to be affected. We are aware from our experience as practitioners of at least two situations in which Treasury Department discretion would be required. One is in the case where a nominal credit representing a percentage of the export value is given to the exporter and is usable only for the payment of certain taxes. In practice it has been demonstrated that many exporters are not able to utilize such credits and the real value to them of the subsidy is a small percent of the nominal value. Countries should have the opportunity to demonstrate such circumstances. We would suggest, therefore, that point 2 of paragraph 4 of the Subcommittees press release number 14 should include loss in the value of the benefit resulting from the inability to fully utilize the benefit.

The other situation, one which the Committee may have intended to disallow, is offsets from indirect taxes levied directly on the product in the country of exportation which are allowable as rebates upon export under the GATT, but which are not

organically related in the legislation of the exporting country to any credit which is granted. In this connection, we earnestly submit that to disallow these offsets is to create unnecessary discord with friendly trading nations who believe that they have been acting in complete accordance with internationally accepted principles. They should not be required to change their domestic legislation in order to obtain recognition that their credits given upon exportation are properly regarded as offsets of the indirect taxes. Such examples call for discretionary authority being given to the Administering Agency.

6. *Suspension of investigations.*—The provision for suspension outlined in press release number 11 is one of the potentially most valuable in the law. It is entirely appropriate that countervailing duty investigations should be regarded as economic issues arising between the United States and friendly foreign governments to be adjusted where possible by agreement between them. An opportunity should be provided in the law and in practice for resolutions which are consistent with the interests and needs of the exporting country and which avoid serious prejudice to the American producer. Such agreements may be quantitative limitations or other non-price undertakings which eliminate the possibility of injury. We would suggest that the Committee in terms of the law or the legislative history should also indicate that where we in fact already have quantitative limitations by reason of escape clause actions or special arrangements such as those that prevail so widely in textiles, there may well be no need for special measures under the countervailing duty law. It is very difficult for supplying countries to understand that, having been required as a condition of continuing to sell their goods to the United States to agree to quantitative limitations in the interest of avoiding injury to the domestic industry, they should also be subjected to countervailing duties. One form of protection should be sufficient.

ANTIDUMPING ACT

1. *Time period for investigations.*—My comments in regard to proposed time limits in countervailing duty investigations apply to antidumping investigations with few exceptions. An antidumping investigation is a complex proceeding involving an extensive analysis of prices, selling costs, differences in merchandise, differences in circumstances of sale and, in most cases some elements of production costs. Preparing a response to an extensive Treasury questionnaire alone requires 30 to 45 days. If one adds to this two weeks for preparation of an appropriate questionnaire by Treasury, a week for verification and the preparation of a verification report, adequate time for Customs to analyze the data and decide major issues, and time for the Treasury review process, it is clear that six months is required for a tentative determination.

It is perhaps difficult to expect individuals not directly involved in the process to realize the complexity of these investigations. Let me attempt to explain by drawing on a concrete example, the investigation of motorcycles from Japan. In this case alone, the submissions by all parties, including responses to questionnaires, correspondence with Treasury, and briefing of issues during the Treasury phase would, if piled one on top of the other, be taller than a normal man. On one issue alone, adjustments to reflect differences in the merchandise sold in the U.S. and Japan, a technical expert nad to compare virtually each and every one of more than 100 motorcycle models sold in the United States with the most similar models sold abroad to determine the basis for appropriate adjustment. The Customs Service had to examine the prices and adjustments for literally hundreds of thousands of sales.

The Treasury Department had to evaluate and decide numerous legal and factual issues such as the existence of a model year in the motorcycle industry, the treatment of various selling costs, and the application of regulations to novel adjustments. The proceeding as a whole could not have been more thorough and could not have been completed in less than one year without seriously compromising the interests of both the domestic industry and the importers. To be sure, all investigations are not so complex. However, complex investigations are the rule today, rather than the exception. To legislate unrealistic time limits serves no interest, but only results in arbitrary decisions which are as damaging to the interests of the U.S. industry as they are to importers.

In summary, any change in the time limits for the Treasury phase of an antidumping investigation would seriously undermine the functioning of the statute.

2. *Remedies.*—As attorneys who have frequently represented exporter's and importer's involved in dumping cases, we believe the conception of tightening up the provisions for provisional remedies is based upon a fundamental misunderstanding. Suspension of liquidation and the necessity to file bond on products entered into the United States while there is still substantial uncertainty with respect to the final

duties to be due is a very heavy and serious sanction at present. We have no great familiarity with the experience in the television cases, but we believe that those cases have their own peculiar history and are not typical of what happens when there is a suspension of appraisement or a final dumping determination.

The fact is that in the large majority of cases, the mere filing of a dumping complaint is a deterrent to trade because many parties will not wish to take the risks. That deterrent effect increases as a dumping case proceeds through the tentative determination to the final dumping finding, if there is one. A requirement that bonds be posted earlier than now provided or that estimated duties be deposited after a finding, is punitive in it's nature and unjustified.

We are not aware of any situations under current practice in which the government's ability to collect the duties has been inadequate. We think it is not sufficiently well understood that differential pricing is normal business practice and is highly apropriate in many circumstances. Only when it injures are counter measures justified and they should not be regarded as penalties. It is also insufficiently understood that the dumping calculations are usually complex, and that whether there has been dumping at all is frequently not known to the parties until the investigation has proceeded through it's preliminary stages. As soon as he can discern what the direction of the Treasury's finding is likely to be, a prudent exporter modifies his prices to be sure that there will be no further dumping. Thus, in the normal situation, earlier bonding requirements or a requirement of cash deposits would be punitive.

Finally, the idea of basing estimated duties on the margins found during the initial period of investigation is particularly unfair and unsound. Any duties that are collected must in fairness be based upon the latest information which is supplied by the parties. Thus, in most cases there never will be a dumping duty collected. This should not in the least be regarded as poor enforcement of the law, but rather as success in accomplishing the purposes of the law.

3. *Discontinuance of investigations.*—We believe that there are situations in which the interest of all parties are best served by settlement through a discontinuance procedure. We hope this committee will encourage the Administering Agency to terminate as many cases as possible before a dumping finding, particularly in two situations. The first is where the exporter was not a deliberate dumper, so far as can be judged, has shown a zeal to eliminate margins, and is willing to give the desired assurances, although the margins as found were more than 2% or so allowed in current Treasury practice. I assure you as a practitioner who has helped clients go through the complex calculations, that because of the peculiarities of the Treasury fair value calculations margins well over 2 percent are quite possible without intentional dumping and in some cases without any dumping at all in a business sense. Discontinuance's in this situation should be permitted regardless of the petitioner's consent. In order to protect the public interest against price undertakings given in the absence of injury, the ITC should review the effect of the discontinuance on the injury question.

Second, it should be possible to settle any case before a dumping finding with the consent of the petitioner upon a type of consent order. Such an order would have, of course, to be scrutinized carefully to be sure it is not simply a vehicle for a collusive agreement in restraint of trade. There should be no direct contact between petitioner and exporter or their representatives. A settlement should originate in a proposal by the exporter to the Administering Agency, which should examine to determine if there are fair grounds, and then sound out the petitioner. The Administering Authority should not be just a post office, but should actively explore the possibilities for an agreed solution consistent with the public interest. The ITC should be asked to determine injury preliminarily and, the proposed consent undertaking should be published and submitted to an interdepartmental committee for approval.

The philosophy behind these proposals is that there is a public interest in the expeditions settlement of a dumping controversy like any other, whether you regard it as a dispute in the public or the private arena. There is an antitrust problem, but the greatest threat to competition comes from the antidumping act itself and it would be quite out of proportion to refuse to countenance settlements on this ground.

We note that the countervailing duty law amendments contemplated by this subcommittee do recognize the possibility of consent settlements, and we think this idea should also be applied in antidumping cases.

Thank you for the opportunity to appear.

Mr. VANIK. The subcommittee will adjourn now and meet at 10 o'clock tomorrow morning to resume hearings on the scheduled witnesses. We will meet tomorrow in room 1100, Longworth Building.

[Whereupon, at 4 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, April 25, 1979.]

MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, APRIL 25, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. VANIK. The subcommittee will come to order.

The first witnesses today will be the American Iron & Steel Institute, Robert B. Peabody, president.

Is anyone appearing with you, Mr. Peabody?

STATEMENT OF ROBERT B. PEABODY, PRESIDENT, AMERICAN IRON & STEEL INSTITUTE, ACCOMPANIED BY DOMINIC B. KING, ASSISTANT GENERAL COUNSEL, UNITED STATES STEEL CORP.

Mr. PEABODY. Yes, sir, Mr. Chairman. Dom King, assistant general counsel, United States Steel Corp., is here with me today.

Mr. VANIK. Thank you very much.

Your entire statement will be entered in the record and you can either read from it or excerpt from it, whichever suits your convenience and whichever brings the issues to the attention of the subcommittee.

Mr. PEABODY. Thank you, Mr. Chairman.

As you said, I am Robert B. Peabody, president of the American Iron & Steel Institute.

Accompanying me is Dominic B. King, assistant general counsel of United States Steel Corp.

GENERAL POSITION

From the inception of the Trade Act of 1974 the domestic steel industry has supported the objectives underlying the multilateral trade negotiations. We recognized, as did others, that international trade rules were being ignored to the point where the trade balance of the United States was being seriously eroded and important segments of American industry, specifically the domestic steel industry, were being injured by unfair trade practices.

The steel trade deficit in 1978 was $5.6 billion. This was exceeded only by oil imports and over 3 million cars—each of which contains about a ton of foreign steel. That is precisely why our industry has been so intensely concerned with the MTN, its codes, and now the U.S. implementing legislation.

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Mr. VANIK. On that particular point I think you have heard me discuss several times the fear that I had that the steel coming in fabricated or in automobiles would be substantially increased. You will recall at the beginning of this year we had about a half billion cars from one country in inventory. After the Iranian cirsis, they were all sold off, and the importers or the dealers are not even advertising any more, because they are making about all the sales they need to make by people just walking in and picking up an automobile that competitively is very attractive. I am not upset about this, because if it had not been for the imported cars, it might be 1999 before the American automobile industry might have realized that they were going out of business. They are not going to have the kind of time to adopt.

I have always been distressed about their failure to respond to the energy crisis by producing gasoline efficient automobiles at a price that the average person could reach. In the meanwhile, we waste millions and millions of barrels of gasoline and fuel oil, because of the failure to have this kind of design. So I am very much afraid that the "effective" steel import figures for this year are going to be high, because of this circumstance which is pretty much the fault of our own auto industry. We will have to very carefully study that.

We hope that the reliance on the more gasoline efficient imported car will subside as the American industry wakes up in the remaining hours that it has to address itself to this problem. Competition here has forced and is forcing a very reluctant huge American industry into a slow awakening of what the problem is. The imported automobile field provides a wide spectrum of choice and on the American side we have little practically to offer to the American consumer. Frankly, it is not your problem, excepting that every ton of steel that comes in in this other form is a ton less that you are making in the American industry.

Mr. PEABODY. The domestic automobile industry is very important to the domestic United States steel industry.

Mr. VANIK. I just hope that you can advise the automobile industry in some way about the way the hourglass is running. It is not an hourglass now, the sand is just rushing out and the time is running short for them to come to recognize the very desperate situation America is going to be in as we are tightened by higher gasoline prices or less oil. When I was in the Soviet Union last week, we talked about human rights, and I told them every American believes that he has a human right to drive an automobile aimlessly and endlessly, with unlimited supplies of gasoline, and I said they would have to reckon with that problem pretty soon.

Thank you very much. I didn't mean to interrupt your trend of thought.

Mr. PEABODY. No, sir.

Mr. VANIK. I just happen to listen better when I talk a little in between.

Mr. PEABODY. Our interest is to give you the benefit of our thoughts and to receive the benefit of yours.

Clearly, a better means of remedying unfair trade practices and making more transparent the procurement practices of national

governments has been needed. The Congress is now involved in accomplishing that.

But the question is, will the international codes and other agreements signed in Geneva on April 12 in fact be responsive to the needs of the United States and the world trading system in the decade ahead?

The answer is: we don't know. And we won't know until the President's implementing bill is actually introduced in Congress.

Until the language of the implementing bill is available for review, our reaction and comments must necessarily be directed to the public announcements that have been issued by this committee and the Senate Finance Committee.

It is clear to us that if the implementing bill introduced by the Administration adequately expresses in statutory language the recommendations contained in those public announcements, there will have been substantial improvements made to our trade laws. Nonetheless, we are concerned about a number of key issues that are of considerable importance to us.

Mr. Chairman, I would like to comment on several of them.

The first one is I expect the definition of injury. The injury provision in both the antidumping and countervailing statutes should be any injury which is more than immaterial or inconsequential. This is the test used by the ITC under the current antidumping statute.

The second item of importance to us is the causation standard. The addition of an injury test to the countervailing duty law should not result in a causation standard more stringent than the current antidumping statute test.

Another element of importance to us is the discontinuance of a proceeding. We agree with the concept that the U.S. Government should have the discretion to discontinue, when appropriate, pending antidumping or countervailing duty proceedings. However, to avoid an abuse of this discretion, proper safeguards must be structed in the statutes in order to condition the exercise of this discretion. It is our recommendation that the discontinuance, based on price assurances, of a pending dumping or countervailing duty proceeding should only be permitted when the price assurance eliminates the full amount of the net subsidy or the dumping margin. In addition there should be a published notice that a discontinuance is contemplated, thereby giving interested parties an opportunity to challenge the discontinuance. Further, once a discontinuance is granted on the basis of an assurance given by a foreign producer, Treasury or other administrating agencies must monitor in order to insure compliance. Penalties must be provided if a foreign producer defaults on the assurance.

Finally, with respect to the definition of subsidy, the implementing legislation should broadly define both export and internal subsidies.

In calculating the amount of a net subsidy, the allowable offsets should be limited and should relate directly to the subsidy benefit. The legislation should state that the burden of proving an offset rests with the party alleging the offset.

The implementing legislation should stipulate the manner in which internal subsidies should be apportioned over units of production.

Mr. Chairman, that is the extent of our statement at this time. We thank you very much for the opportunity to present our views. We would be more than pleased to answer any questions that you may have of us.

Mr. VANIK. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

I want to ask a related question about which you may or may not be able to provide me the details. The domestic steel industry imports a great deal of iron pellets for the production of steel, is that correct?

Mr. PEABODY. I don't know the quantity, Mr. Jenkins, but I know there are substantial quantities that come in principally, I believe, from Canada.

Mr. JENKINS. Do you know what percentage of foreign imports of iron pellets are used in the domestic steel industry?

Mr. PEABODY. I don't know offhand, sir. We can find that out, I expect. It is not going to be a high number.

Mr. JENKINS. I would like to know the percentage. An iron pellet industry which employs a number of citizens in my district is closing primarily because of imports of iron pellets by the domestic steel industry. While we complain about the import of steel, sometimes the domestic steel industry itself may complicate our problems in some industries by importing iron pellets.

Mr. PEABODY. Yes, sir. There is no question imported pellets occur. I am not expertised on the iron ore companies but I expect that their basic interest is to the extent that it is practicable to do so to take it from the iron ore country here, principally Minnesota and Michigan, the Mesabi.

Mr. JENKINS. Well, like all other industries I imagine it is where it can be obtained the cheapest.

Mr. PEABODY. Well, I don't know that it is necessarily in the case of iron ore where you can get it the cheapest, it is where you can get it.

Mr. JENKINS. Not necessarily. We have it in my district but I think the steel industry found they could buy it cheaper from a foreign source. Now 300 people are out of work in my district because Brazil, I believe, is the source of the iron pellets. I would like to have those figures if you might provide them to me.

Mr. PEABODY. Yes, sir.

[The information follows:]

Total domestic consumption of iron ore—please note these figures are not just pellets but all iron ore—in 1978 was 129,876,000 net tons. Of that amount, 83,482,000 net tons or 64.3 percent were supplied from domestic sources. (The Southern region—Florida, Alabama, Georgia, Missouri, New Mexico, Tennessee, Texas, and Virginia supplied 2,021,000 net tons or 1.6 percent.) Canada supplied 19 percent or 24,744,000 net tons and all other countries supplied 21,650,000 net tons or 16.7 percent.

Mr. JENKINS. Thank you, Mr. Peabody.

Thank you, Mr. Chairman.

Mr. VANIK. Mr. Cotter.

Mr. COTTER. No questions, Mr. Chairman.

Mr. VANIK. I would like to inquire whether or not the implementing language as you know it meets substantially most of the objectives or the goals or the desires of your organization.

Mr. PEABODY. I will respond to it this way if I may, Mr. Chairman, and I am not trying to fence with you in the slightest. What has come out has been in the form of the releases through your committee and the releases through the other committee. We and you are well aware of the problem of converting concepts into statutory language. On the basis of what we have seen in the press releases conceptually we are very clear that substantial improvements are going to take place and occur in the trade laws of this country if the administration in its implementing bill that it sends up to Congress follows the guidance that this committee here and the other committee have given it.

There are some things that the committee has announced that we would like to see upon reflection, upon further thought, the committee to do something about. I guess my basic hedge is that these conceptual provisions can be drafted in numbers of different ways but assuming that the drafted statutory languages comes down in a way that reflects, I expect, full intent of the committee we are very well satisfied that a very substantial improvement in our trade laws is going to occur. We have concern about this injury problem, we have concern about the subsidy problem and the discontinuance, and as I understand it the committee is still not signed off in that area. Assuming they are satisfactorily resolved, a great improvement in our laws is going to take place.

Mr. VANIK. Well, you know, we have not made any decisions on antidumping.

Mr. PEABODY. Yes, sir.

Mr. VANIK. That is one of my prime concerns. I was hoping you would tell me that the climate was good for supporting that.

Mr. PEABODY. We would love to lead the parade, Mr. Chairman.

Mr. VANIK. Well, I sure need some leaders. Everybody has been telling me over the last couple of days what is wrong with it.

Mr. PEABODY. No, sir. We think you are going down the right path. There are a couple of jogs in it we would like to see smoothed out.

Mr. VANIK. The record will be open for a few days. If you have recommendations that will strengthen and fortify your positions, let us have those so that we can have the direction or at least have some guidance as to the things that remain unresolved that give you deep concern.

Mr. PEABODY. Yes, sir.

[The following was subsequently received:]

POSITION OF AMERICAN IRON & STEEL INSTITUTE REGARDING CERTAIN PROVISIONS OF MTN IMPLEMENTING LEGISLATION

Definition of injury

The definition of injury in the amended antidumping and countervailing duty laws should cover any injury more than immaterial or inconsequential. This is true whether the term used is "injury" or "material injury". If the term "material injury" is used, it should be stated that prior definitions or interpretations of the word material are to be disregarded. The definition should contain a list of criteria, the presence of which would be indicative of injury; but it should be clearly stated that the presence or absence of any of such criteria would not be conclusive as to the presence or absence of injury.

Definition of Subsidy

There should be a broad definition of subsidy in the countervailing duty law. This definition should cover both export and internal subsidies. Offsets to be deducted from gross subsidies in calculating net subsidies should be permitted only in certain clearly specified situations directly related to the subsidy. The definition should contain a provision specifying the manner in which a net subsidy is to be deemed applicable to particular units of production.

Discontinuance of Proceedings

Antidumping and countervailing duty proceedings, once instituted, should normally proceed to a final decision. However, it is in the national interest that there be a manner in which proceedings can be discontinued prior to final determination on the basis of clearly defined undertakings on the part of the foreign manufacturers or the foreign government in question.

In antidumping proceedings, discontinuance should be permitted only after foreign manufacturers agree to terminate exports to the United States or to raise their prices by the full amount of the dumping margin.

In countervailing duty proceedings relating to export subsidies, discontinuance should be available if there is an undertaking to terminate exports to the United States, terminate the subsidy, impose an export tax equal to the amount of the next subsidy or raise prices on exports to the United States in the amount equal to the net subsidy.

In countervailing duty cases relating to internal subsidies, discontinuance should be available on the basis of undertakings to terminate exports to the United States, to increase prices on exports to the United States in an amount equal to the net subsidy or to restrict exports to the United States to a level such that the injury to the domestic industry is fully removed.

All discontinuances should be permitted only after a preliminary determination of the margin of dumping or the margin of subsidization in the proceeding, only after there has been notice of the proposed discontinuance and opportunity for interested parties to comment and appeal and only if the undertakings are monitored in the same manner in which a final antidumping or countervailing duty determination would be monitored. Default in the performance and undertaking should result in the imposition of regular antidumping or countervailing duties.

Time Limits in Proceedings

The government agencies involved in making determinations as to the existence of dumping and subsidization and injury caused thereby should have adequate time to carry out their tasks, but the various statutory deadlines should be as short as possible in view of the possibility of continuing injury to domestic industry and workers during the pendency of investigations. Rather than unnecessarily extend permitted investigatory periods, additional staff and resources should be made available to the agencies responsible for the investigations, particularly in complex cases. It is clear that present resources are grossly inadequate. It is also clear that there has in the past been a disinclination on the part of government agencies to vigorously administer the trade laws in the manner contemplated by Congress.

DEFINITION OF INJURY—ANTIDUMPING

SUMMARY

In order to prove that a foreign manufacturer engaged in dumping, it is necessary to establish that (1) the foreign producer sold goods in the U. S. market at less than foreign market value and (2) that such goods injured the U. S. industry. The attached definition of injury reflects basically the current test used by the United States International Trade Commission. This language avoids placing on the domestic industry a greater burden in establishing injury than the burden which currently exists.

The language also includes a definition for determining the domestic industry in question for the purpose of proving that sales at less than foreign market value have injured the "domestic industry". It is for this reason that a statutory definition of "domestic industry" is necessary in order to avoid ambiguities. The attached definition defines "domestic industry" as those entities or portions thereof which produce merchandise "of the same class or kind" as the imported merchandise under investigation for dumping. In addition, the definition adopts a regional market test if it is established that the U. S. producers located within a region supply that region.

PROPOSED STATUTORY PROVISIONS

Injury shall mean (a) material injury to a domestic industry, (b) the threat of such injury, or (c) the prevention of the establishment of a domestic industry, by reason of less than foreign market value imports. Material injury notwithstanding any prior law or construction of "material" thereunder to the contrary, shall mean any injury which is more than immaterial or inconsequential.

In making a determination of injury, the Commission shall take into account all economic factors which it considers relevant and significant under the circumstances, including without limitation the following: the volume of less than foreign market value imports, either in absolute terms or relative to production or consumption in the United States; the effect of less than foreign market value imports on prices in the domestic market for like products; the impact of less than foreign market value imports on the domestic industry in respect of actual of potential decline in output, sales, market share, profit, return on investment, and utilization of capacity; actual and potential negative effect on cash flow, inventories, employment, wages, ability to raise capital, or investment; and past, present, or potential loss of business to less than foreign market value imports. No one or more factors shall be essential to a finding of injury.

In determining whether injury has been caused by less than foreign market value imports, the Commission shall not weigh against the effects of the less than foreign market value imports other factors which may, at the same time also be injuring the domestic industry. In reaching its decision of whether an industry in the United States is being, or is threatened to be injured by reason of less than foreign market value imports, the Commission finding shall be in the affirmative if the less than foreign market value imports contribute toward causing more than immaterial or inconsiquential injury to a domestic industry or toward preventing the estabsishment of such an industry. Less than foreign market value imports need not be a principal cause, a major cause or a substantial cause of injury to an industry when other factors may also be contributing to injury to an industry.

If, prior to the determination by the Commission of injury in any antidumping proceeding, there shall for products of the same class or kind be a final determination of sale at less than foreign market value in any other antidumping proceeding or a preliminary determination of sale at less than foreign market value in the same or any other antidumping proceeding which shall have been suspended on the basis of assurances by the manufacturers, the Commission shall cumulate the imports from such proceeding with the imports involved in the injury determination before the Commission for the purpose of determining injury in such proceeding.

The term "domestic industry" or "industry in the United States" means any subdivision or portion of the commercial organization in the United States manufacturing, assembling, processing, extracting, growing, selling or otherwise producing, marketing or handling articles or merchandise of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported from the operations of such organizations involving othe articles or merchandise. A "domestic industry" or "industry in the United States" shall include a regional industry if the U. S. producers located within a regional market sell in that regional

market all or almost all of the articles or merchandise of the same class or kind as the merchandise or articles imported.

Definition of Injury—Contervailing Duty

SUMMARY

Under the new contervailing duty code, it will be necessary to prove in all cases that the importation of goods benefiting from the bestowal of a bounty or grant has injured a U.S. industry. The attached definition reflects the new requirements under the Code and is parallel to the injury test proposed for the antidumping statute.

PROPOSED STATUTORY PROVISIONS

Injury shall mean (a) material injury to a domestic industry; (b) the threat of such injury; or (c) the prevention of the establishment of a domestic industry, by reason of the importation of articles or merchandise on which a bounty or grant has been bestowed. Material injury, notwithstanding any prior provision of law or the prior construction of material thereunder to the contrary, shall mean any injury which is more than immaterial or inconsequential. In making a determination of injury, the Commission shall take into account all economic factors which it considers relevant and significant under the circumstances, including without limitation the following: the volume of subsidized imports, either in absolute terms or relative to production or consumption in the United States; the effect of subsidized imports on prices in the domestic market for like products; the impact of subsidized imports on the domestic industry in respect of actual or potential decline in output, sales, market share, profit, return on investment, and utilization of capacity; actual and potential negative effect on cash flow, inventories, employment, wages, growth, ability to raise capital or investment; any past, present, or potential loss of business to subsidized imports, potential increase in the level of inventories of such products in the United States. No one or more factors shall be essential to a finding of injury.

In determining injury caused by subsidized imports, the Commission shall not weigh against the effects of the subsidized imports other factors which may, at the same time, also be injuring the domestic industry.

Subsidized imports need not be a principal cause, a major cause or a substantial cause of injury to an industry when other factors may also be contributing to injury to an industry.

If, prior to the determination by the Commission of injury in any countervailing proceeding, there shall for the same or like products be a final determination of the existence of a bounty or grant in any other countervailing proceeding or a preliminary determination of the existence of a bounty or grant in the same or any other countervailing duty proceeding which shall have been suspended on the basis of assurances by the foreign government or the foreign manufacturers, the Commission shall cumulate the imports from such proceeding with the imports involved in the injury determination before the Commission for the purpose of determining injury in such proceeding.

The term "domestic industry" or "industry in the United States" means any subdivision or portion of the commercial organization in the United States manufacturing, assembling, processing, extracting, growing, selling or otherwise producing, marketing or handling articles or merchandise of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles of the same class or kind as the merchandise or articles imported from the operations of such organizations involving other articles or merchandise. A "domestic industry" or "industry in the United States" shall be considered regional in character if the U.S. producers located within such regional market sell in that regional market all or almost all of the articles or merchandise of the same class or kind as the merchandise or articles imported.

Definition of Bounty or Grant

SUMMARY

To aid in the determination of what kinds of aids are to be considered a bounty or grant under the Countervailing Duty Statute, the attached language provides an illustrative list of many export and domestic subsidies which are considered to be

covered by the Countervailing Duty Statute. The list is adopted from Annex A of the Subsidies/Countervailing Duty Code. It is not intended that the responsible authority be limited to the listed subsidies in making its determination.

STATUTORY LANGUAGE

(1) Whenever in this chapter the terms "bounty or grant" are used, they shall be construed to include but not be limited to the following export subsidies:

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance;

(b) Currency retention schemes or any similar practices which involve a bonus on exports;

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments;

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption;

(e) The full or partial exemption, remission, or deferral specifically related to exports, direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged;

(g)[1] The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption;

(h)[2] The exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes of goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product;

(i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years;

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programs, of insurance or guarantee programs against increases in the costs of exported products or of exchange risk programs, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programs;

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms; provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least 12 original signatories to the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade are parties as of January 1, 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of other relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Statute; and

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[1][Editorial Note: Footnote 1 to Annex A of the Subsidies/Countervailing Duty Code includes definition of direct taxes, import charges, indirect taxes, prior stage indirect taxes, and cumulative indirect taxes.]

[2][Editorial Note: Footnote 3 to Annex A of the Subsidies/Countervailing Duty Code states: "Paragraph (h) does not apply to value added tax systems, and border tax adjustment in lieu thereof and the problem of the excessive remission of value added taxes is exclusively covered by paragraph (g)."]

(1) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement on Tariffs and Trade and the following domestic subsidies when provided or mandated by government action to a specific enterprises or industry or group of enterprises or industries, and whether paid or bestowed directly or indirectly on the manufacture, production or export of any class or kind of merchandise;

(i) The provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations;

(ii) The provision of goods and services at preferential rates;

(iii) The grant of funds or forgiveness of debt to cover operating losses; and

(iv) The assumption of any costs or expenses of manufacture, production or distribution.

Whenever any subsidy is provided for the acquisition of capital assets which are, in the normal course of business, subject to depreciation or amortization (whether such assets are related to start-up, replacement, expansion, relocation or any other purpose), the amount of such subsidy, together with an amount equal to interest on the remaining balance thereof at a rate equal to what would be an appropriate commercial lending rate under the circumstances, shall be deemed applicable to the units of production during * * *.

Discontinuance of Countervailing Duty

SUMMARY

Present law does not explicitly permit the government to discontinue an investigation before it has been completed. However, the government has assumed this power. The attached language gives the government the right to discontinue an investigation under clearly stated conditions. In general, a discontinuance would be permitted if the subsidy or the effect of the subsidy is eliminated. The discontinuance could only be granted after public notice and opportunity for a public hearing.

PROPOSED STATUTORY PROVISIONS

(A) (1) Any investigation under this section into the existence of an export of domestic subsidy may be discontinued at any time if the government or entity which is the source of the bounty or grant agrees to eliminate the bounty or grant completely on all goods entering or being withdrawn from consumption within 60 days from the time an agreement to discontinue the investigation is reached provided that the level of exports of the subject merchandise to the United States does not increase during the period or the government or the entity which is the source of the bounty or grant or the exporter of the merchandise subject to the investigation (i) agree to stop the export of the merchandise benefiting from the bounty or grant within 60 days of the time an agreement to discontinue the investigation is reached provided that the level of exports of the subject merchandise to the United States may not increase during that 60-day period or (ii) agrees to price adjustments which reflect the full amount of the net bounty or grant effective 60 days after the time an agreement to discontinue an investigation is reached, or (iii) agrees to the imposition of an export tax equal to the full amount of the net bounty or grant effective 60 days after the time an agreement or discontinue an investigation is reached.

(2) Any investigation under this section into the existence of a domestic bounty or grant may be terminated at any time if the government or entity which is the source of the bounty or grant or the exporter of the merchandise subject to the investigation agree to restrict the quantity of such merchandise exported to the United States within 60 days of the time an agreement to discontinue an investigation is reached so as to insure that there will not be injury to a domestic industry or the threat of such injury or that a domestic industry will be prevented from being established by reason of the importation of such merchandise provided that the President makes public a determination that such an agreement is necessary to prevent prejudice and severe damage to our national security and foreign policy and the Committee on Ways and Means of the U.S. House of Representatives at least 60 days before the effective date of the agreement to discontinue the investigation and at the same time publishes the terms of such agreement in the Federal Register. Any petitioner shall have the right to appeal such discontinuance to the International Trade Commission within 30 days of the publication of the notice of the discontinuance. The Commission shall determine whether the restrictions are sufficient to insure that there will not be injury to a domestic industry or the threat of such injury or that a domestic industry will be prevented from being established by reason of the importation of such merchandise.

(B) (1) Compliance with the terms of such discontinuance shall be monitored for a period of at least three years after the effective date of an agreement on the same basis as a Countervailing Duty Order is monitored. The Authority may require of a party to a discontinuance such pertinent information as is needed to monitor compliance with the agreement. If a violation of an agreement is found, the Authority shall immediately suspend liquidation on the merchandise covered by the agreement, retoroactive to 90 days before the date of the violation, and enter a final determination of the existence of a bounty or grant and begin collecting countervailing duties with respect to all entries subject to the suspension of liquidation.

(2) The Authority shall publish notice of a proposed discontinuance at least 30 days before its effective date and shall hold hearing as required under subsection (10). The Authority shall publish notice of the discontinuance of an investigation as required under subsection (9) and shall include in such notice the terms of the the discontinuance and the means which will be used to monitor compliance with the agreement.

(3) At the same time a discontinuance under this section is granted, the Authority shall publish its preliminary determination if such a preliminary determination has not theretofore been published.

Discontinuance of Antidumping Proceedings

SUMMARY

Presently, the Treasury Department has taken upon itself broad discretion to discontinue a pending antidumping investigation. Discontinuance of an antidumping proceeding is, with proper safeguards, appropriate. These safeguards do not presently exist. For this reason, the attached statutory language permits discontinuances of pending antidumping proceedings by Treasury but establishes certain conditions which must be met before a discontinuance could be granted. For instance, there must be a published notice that a discontinuance is contemplated thereby giving interested parties the opportunity to challenge the contemplated discontinuance. Further, once a discontinuance is granted on the basis of an assurance given by a foreign producer, Treasury is obligated to monitor in order to be satisfied that the foreign producer is complying with the assurance. Penalties are provided for default.

PROPOSED STATUTORY PROVISIONS

An antidumping duty proceeding shall be discontinued only if:

(a) a preliminary determination of sale at less than foreign market value has been made;

(b) 30 days has elapsed following notice in the Federal Register of intention to discontinue such proceeding, which notice, in the event the proposed discontinuance is to be on the basis of an undertaking with respect to the United States price, shall include a detailed statement as to the manner in which the undertaking would be monitored by the Secretary which shall be in all material ways comparable to the manner in which dumping findings are monitored;

(c) the foreign manufacturer undertakes that for a period of not less than three years commencing within three months following the date of the preliminary determination of sale at less than foreign market value it will notify the United States importers of the terms of its undertakings and of the provisions hereof which are applicable in the event of any default in respect of those undertakings, and either (i) cause the termination of export of the products in question to the United States or (ii) cause the United States price of the products in question to be increased by an amount not less than the margin of sale at less than foreign market value in the preliminary determination; and

(d) in the case of a discontinuance on the basis of an undertaking with respect to United States price, the Commission has, within 30 days following a request for a determination by the petitioner in such proceeding made within 30 days following the giving of public notice of intention to discontinue such proceeding, determined that such undertaking is adequate fully to offset the margin of sale at less than foreign market value on exports to the United States.

In the event of any discontinuance of a proceeding, suspension of liquidation and payment of provisional duties shall continue until the Secretary finds and states in a notice published in the Federal Register that full performance of the undertaking which was the basis for such discontinuance is in effect.

Following discontinuance of a proceeding, the Secretary shall continuously monitor the performance of the undertaking which was the basis for the discontinuance. If there is default in the performance of such undertaking, the Secretary shall

immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries. Default by a foreign manufacturer in the performance of such an undertaking or by an importer who has been notified of such undertaking and who knows or reasonably should know of such default, and who imports goods covered by such undertaking, shall consititute a violation of 19 U.S.C. § 1592 and the penalties provided therein shall apply.

Not less than semiannually, the Secretary shall cause a report as to his monitoring of the performance of each undertaking which was the basis for the discontinuance of a proceeding to be published in the Federal Register. Such report shall include a detailed statement of the facts ascertained, the method of verification used and any problems encountered.

From time to time subsequent to six months following the discontinuance of any proceeding on the basis of an undertaking as to export price, the Commission, upon the request of the petitioner in such proceeding and upon a showing of a material change in the facts or of evidence of default in the performance of the undertaking, shall determine the adequacy of the undertaking fully to offset the margin of sale at less than foreign market value which may currently exist on exports to the United States or whether there had been such a default, as the case may be. If the undertaking is determined by the Commission not to be adequate to offset the then margin of sale at less than foreign market value, the Commission shall specify the revision necessary in the undertaking that will cause it to be adequate, and publish the revised undertaking in the Federal Register. If, within 30 days of such publication, the foreign manufacturer has not put into effect the revised undertaking as determined by the Commission, the Secretary shall immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries; and if the Commission determined that there had been a default in performance of the original or any revised undertaking, the Secretary shall immediately revoke the discontinuance, publish a final determination of dumping and commence collecting antidumping duties with respect to subsequent and unliquidated prior entries.

Time Limits for Preliminary Findings in Antidumping Cases

The suspension of liquidation (withholding of appraisement) is a key factor in determining the scope and effectiveness of relief under the antidumping and countervailing duty laws. For all practical purposes, the remedial duties are imposed only on imports entering after the suspension of liquidation. Dumped or subsidized imports which come in before suspension are not subject to antidumping or countervailing duties. The suspension order is the vehicle which enables the Treasury to reach back following the final determination to assess antidumping or countervailing duties on goods entered during the investigation and adjudication process.

Early suspension of liquidation, is therefore, crucial to any injured party who will find it imperative that this take place as soon as possible after filing of the complaint. On the other hand, the importer does not want suspension until there is a finding of dumping or subsidization. It is necessary to accommodate those conflicting interests by requiring a preliminary determination of the likelihood of an affirmative finding and concurrent suspension of liquidation as rapidly as the most efficient adjudication permits.

Such a preliminary finding and suspension of liquidation can be reasonably accomplished in countervailing duty cases within 90 days from the filing of a proper complaint. Antidumping determinations take somewhat longer. Therefore, a preliminary finding and suspension of liquidation should normally be able to be made within 120 days from the date of the filing of the complaint for antidumping proceedings. In order to meet the 120 days in antidumping, however, it will be necessary to provide adequate staff and to devise better administrative procedures that will allow such a determination to be made within that period of time.

The Treasury has sought 170 days in which to make a preliminary finding in an antidumping proceeding. As the authority responsible for investigating and determining whether there are less than fair value sales in antidumping cases, the Treasury would naturally seek as much time as it felt was required to complete its task in a fair and efficient manner. Although we believe a properly staffed and administered investigatory body should be able to complete the preliminary finding within 120 days after receipt of a complaint, we certainly feel that Congress should not allow time limits even greater than those sought by Treasury.

APRIL 11, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Executive Office of the President, Washington, D.C.

DEAR MR. AMBASSADOR: We wish to call to your urgent attention a potential loophole in the procedures being developed to obtain more effective countervailing duty and antidumping procedures. This issue was not fully addressed in our review of the subsidies-countervail code, but will certainly arise when we consider the antidumping code. Our concern relates to the question of discontinuance of countervail and antidumping procedures on the basis of foreign price assurances.

Specifically, it is our view that foreign price assurances should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

In order that there be a basis for determining the margin of dumping or the next subsidy, price assurances should not be accepted until a preliminary determination has been made. Compliance with price assurances should be monitored on the same basis as a final determination. Breach of an assurance should result in imposition of regular duties.

Failure to condition price assurances along the lines indicated above will result in the type of unbridled Administration discretion which has plagued the enforcement of these statutes and which, as a result, has given justifiable cause to complaints that trade policy is being poorly administered.

There is currently no provision in these existing laws to require less than the full amount of dumping margin or net subsidy. To open to subjective determination the acceptance of a lesser amount on the theory that it would be adequate to remove future injury would result in settlements at less than the full amount of the margin which could actually foster rather than deter dumping or subsidization settlements at lesser amounts and would incur a loophole in these statutes which would impair them to a point of little or no utility.

As you can recognize this assurance is of primary concern to industry in general and to labor and the resolution of this issue is absolutely essential to successful Floor action of the entire MTN package.

We would very much appreciate your early response.

Sincerely,

CHARLES A. VANIK,
Chairman.

Mr. VANIK. How is the trigger price mechanism working?

Mr. PEABODY. Well, as you know——

Mr. VANIK. The pressures from Japan are down, the imports are down.

Mr. PEABODY. Yes, sir, that is true, but you have to be careful in how you look to that. There was something pushing 21 million tons of steel that came in last year. I have only seen the numbers for the first 2 months of this year and if you annualize them it is something pushing 16 million tons.

Mr. VANIK. Of course our greatest source of unhappiness has been the specialty steel and some of the other groups that are involved.

Mr. PEABODY. Yes, sir.

Mr. VANIK. We are very much concerned about those and want to be sure we address ourselves to that problem.

Well, if you can supplement, don't hesitate to give us that. We will finish the markup next week so give us your supplementary ideas and let's get them in the record, not only for big steel, but we would like to have those from the specialty steels and the others that are involved.

Mr. PEABODY. Yes, sir.

Mr. VANIK. Thank you very much. We appreciate your testimony.

Mr. PEABODY. Thank you, Mr. Chairman. We appreciate the opportunity to testify.

Mr. VANIK. The next witness is with the Distilled Spirits Council of the United States and Kentucky Distillers Association, Mr. John F. McCarren, general counsel; and the representative of Heublein, Inc., Mr. Christopher Carriuolo.

I will let Mr. Cotter introduce Mr. Carriuolo.

Mr. COTTER. Thank you, Mr. Chairman.

It gives me a great deal of pleasure to have Mr. Christopher Carriuolo of Heublein, Inc., which is one of the largest manufacturing concerns in my district, with us. Mr. Carriuolo is the executive vice president and has been very active in civic affairs and is one of the outstanding citizens of the State of Connecticut.

Thank you, Mr. Chairman.

Mr. VANIK. Before you proceed I want to report to you that in my observations in the Soviet Union, there is a tremendous market for American bourbon, and the younger it is the better they like it; don't age it. There is a tremendous market that you ought to be aware of from my very quick observation. I cannot speak about some of the other products, but I get the feeling that there is a great untapped reservoir of interest in things that make Americans happy. I just want to say that this trade business works two ways and that you ought to be aware of the fact there may be some advantages and expanded markets that might be of some great value to you.

We are very happly to have you. Mr. McCarren, you will lead off and then we will have the statement by Mr. Carriuolo.

STATEMENT OF JOHN F. McCARREN, GENERAL COUNSEL, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC., ALSO ON BEHALF OF THE KENTUCKY DISTILLERS ASSOCIATION

Mr. MCCARREN. Thank you for this opportunity to appear before the subcommittee, Mr. Chairman. I am John McCarren, general counsel of the Distilled Spirits Council of the United States, Inc., otherwise known as DISCUS, the national trade association of the distilling industry whose members produce approximately 85 percent of all distilled spirits in the United States. Many DISCUS member companies also have substantial interests in the importation of distilled spirits.

I am authorized to state that the Kentucky Distillers Association joins in the views expressed herein.

As you are aware, DISCUS has opposed a change in the wine gallon method of assessing tax and duty on below-proof distilled spirits. However, a substantial minority of the DISCUS membership has been in favor of a change in the method so that the tax on all distilled spirits would be assessed on a proof gallon basis. It now appears that the Special Trade Representative has made promises to various foreign countries which, if approved by the Congress, would require a change in the method of taxation and implementing legislation to accomplish the change.

Other witnesses scheduled to appear before you today will discuss the proposal of the Special Trade Representative to eliminate the wine gallon method and you will hear the pro's and con's of this issue on which the members of our association are divided. I wish to focus on other related matters on which the entire distill-

ing industry is in agreement. On these matters we hope the Congress will take appropriate action in connection with its consideration of the Multilateral Trade Agreements.

There are several areas within the jurisdiction of this subcommittee where concessions could be made within the framework of the implementing legislation, which would lessen to some extent the adverse impact of the trade negotiations on the domestic industry, although we can offer no proposals for concessions to entirely offset the impact of a change in the method of taxation. I would like to stress again that while the DISCUS membership is divided on the issue of changing the method of assessing tax, it is unanimous in support of our proposals for concessions. These proposals have also received the endorsement of ISAC No. 1, the industry advisory body established by the Special Trade Negotiator.

Our proposal for concessions may be summarized as follows:

I. EXTENSION OF TAX DEFERRAL PERIOD

Extend the deferral period for payment of tax on distilled spirits withdrawn from domestic distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands for an additional period of 30 days.

II. ALL IN BOND

All operations at distilled spirits plants—production, storage, bottling—would be conducted under bond, including the right to transfer spirits to other bonded premises.

II.A. REPEAL OF RECTIFICATION TAX

Repeal is recommended only if all-in-bond system (item II above) is adopted.

III. EXTENSION OF ALL-IN-BOND CONCEPT TO WHOLESALE LEVEL

Within 1 year of extension of the tax deferral period, which I discussed as our first item, at distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands, extend the point of tax payment of distilled spirits shipped in bond to wholesalers (including control States), those States which have a monopoly of the controlled distilled spirits within their border, who have chosen to bond their facilities and have otherwise complied with relevant government requirements. This proposal is supported by the national association of the control States.

IV. REFORM OF FEDERAL ALCOHOL ADMINISTRATION ACT

At the present time a violation of provisions of section 5 of the act relating to trade practices may be prosecuted as a criminal offense under section 7 of the act. Most of these "violations" would at the most be subject to civil sanctions if any product other than beverage alcohol were involved. We propose the act be amended to make such violations civil only while retaining criminal penalties for such activities as engaging in business without the required Government permit.

V. DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT

Our final proposal is that bourbon, a distinctive American product, be designated as such. Now this could not be done directly by the Congress as we see it. What we are asking is that a commitment should be made by the Government to support industry efforts within the EEC and other foreign government representatives to obtain recognition of bourbon whiskey as a distinctive American product.

Under the U.S. regulations, products such as Scotch whiskey, Irish whiskey, Canadian whiskey and cognac are recognized as distinctive products of Scotland, Ireland, Canada and the Cognac region of France respectively. No alcoholic beverage sold in the United States can be called Scotch or Irish or Canadian whiskey or cognac unless it has been produced in the appropriate country in compliance with the laws of that country. Similar recognition should be given by foreign nations to bourbon whiskey which was originated in this country and is not produced in accordance with the standards of identity for bourbon in any other country in the world. This distinctive product of the United States should be accorded in other countries the same treatment which we give to these products which can claim a unique quality.

The Congress has recognized bourbon as a distinctive product of the United States. See Senate Concurrent Resolution 19, 88th Congress, second session.

Of these concessions we are discussing this morning the most important by far is the proposal for extending the time allowed domestic producers for payment of the heavy excise tax on their products. We feel that the request which the industry is making is a matter of simple justice.

In the distilled spirits industry, the Federal excise tax comprises about 64 percent of the value of shipments from the distiller to the wholesaler. Since current provisions require payment of the excise tax 15 days following the end of each half monthly tax period, distillers are paying a burdensome excise tax well before the product reaches the retail level.

Based on a comprehensive survey of wholesalers, about 60 days elapse between the time a shipment of distilled spirits leaves a supplier's warehouse and the time it leaves the wholesaler's warehouse. These 60 days—the period between initial shipment by the supplier and shipment by the wholesaler—may be regarded as nonproductive.

Consequently, the distillers request that payment of the excise tax be deferred a period of time long enough so that payment of the excise tax by the supplier approximates the date of shipment from the wholesaler to the retailer. Since the current excise tax payment provisions require remittance 15 days following the close of the tax period, distillers request that payment be deferred an additional 30-days.

This additional 30-day deferral is nothing more than a lag, not a reduction, in revenue to Treasury. Based on current levels of Federal excise tax receipts and short-term Treasury bill rates, the cost to Treasury of financing the lag in Federal excise tax receipts would be about $1 million per day. Since the distilled spirits indus-

try will be saving about $1.2 million per day, this cost is higher because private industry must pay higher interest rates than the Government, revenues from corporate income taxes will rise. These additional corporate taxes will reduce the net cost to Treasury to about $0.5 million per day. Thus, total cost to Treasury of the additional 30-day deferral will be about $15 million.

That is the end of my statement, Mr. Chairman. I thank you again.

Mr. VANIK. Thank you very much.

Mr. Carriuolo, do you have a statement?

Mr. CARRIUOLO. Yes, Mr. Chairman.

Mr. VANIK. I thought I would have you both testify before I go to the questioning of witnesses, if that is agreeable.

You may proceed.

STATEMENT OF CHRISTOPHER W. CARRIUOLO, CHAIRMAN OF THE BOARD, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC., AND EXECUTIVE VICE PRESIDENT, HEUBLEIN, INC.

Mr. CARRIUOLO. I am Christopher Carriuolo. I am from Farmington, Conn. Today I wear two hats. I am chairman of the Distilled Spirits Council of the United States as well as executive vice president of Heublein, Inc.

I noted what you said, Mr. Chairman, about your trip to Russia and I would like to import vodka from there. We are the largest producers of vodka outside of Russia and if you will give me a note to see somebody——

I would like to first put on the first hat, Mr. Chairman, as Chairman of the Board of DISCUS and support pretty much what our General Counsel John McCarren has said. These five proposals that we are talking about today that John just mentioned are almost unanimously endorsed by the industry. We just heard this past week that one of the largest segments of our industry, the WSWA, the wholesalers, 850 members, and I think they employ some 30,000 salesmen, warehousemen, and so forth, have also supported us in this package of concessions for the domestic industry.

Now I have a chart presentation here and since I prepared it I didn't want to throw it away. I didn't realize it was going to be such a big room. You have in your packet these charts reproduced. I am going to the fifth from the back, chart No. 15, and talk just a little bit, one second, about the extension of the tax deferral period. I don't know whether you realize it or not but 64 percent of the value of shipments from distiller to wholesaler is the Federal excise tax. Since the current provision provides that we have to pay our tax in 15 days at each half monthly period, this puts a tremendous burden on the American distiller because the importer does not pay the tax, the tax is paid by the wholesaler when he gets around to shipping the goods to the ultimate retailer.

Now we have to borrow money to pay our taxes and at the high cost of money today this is very important. There are about 60 nonproductive days before the goods move on to the retailer. If these 30 extra days were granted, it would save the U.S. distiller about $1.2 million per day and the benefits of the tax deferral would look something like this, that the deferral would be phased

in over a 5 year period. In other words, an extension of 6 days each year for 5 years and the saving would be $7.2 million. However, the cost to the government as John McCarren said would only be at the end of the fifth year, $15 million. The saving to the industry would be $18 million. Of course the rest is in income tax.

The second one, and I just want to talk about this because there is a lot of confusion, all in bond. All in bond simply means that the distilled spirits premises today is all in bond except for the bottling line. The bottling line currently is not in bond. The Government wants this. It would eliminate some supervisory people and it does not really mean anything to the industry and I think it saves the Government money so we are putting this in our package. There is no cost to the Government, really no saving to the industry. There is a saving, we feel, to the Government. That is all in bond at the distilled spirits premises.

The next one is the repeal of the rectification tax. This is the tax that only distillers pay. Importers do not pay this tax even though their goods are blended. It costs us about $25 million today to pay this tax but if we go all in bond, you pay one price, $10.50. As it is today we blend wine and we pay 30 cents and we pay 67 cents for the wine that is fortified and $1 for flavored spirits but now with all in bond there is really a $4 million saving to the industry with the repeal of the rectification tax which puts us on a par with the importers. By the way, this would cost the importers if they had to pay this tax about 62 cents a case.

The other one is extension of all in bond and this is chart 19, the next to the last in your packet. Within a year we would like to go and have the same treatment as imported products. This is quite a saving to our industy, about 38 cents per case, and it gives us the same advantage as the importers in that the wholesaler on a voluntary basis would pay the tax when he ships the goods, 15 days after he ships the goods to the retailer.

Of course, the last is the designation of bourbon. We feel this is important for the bourbon producers as a distinctive product of the United States.

Now that is so much for my hat as chairman of the DISCUS. I would like now to talk as executive vice president of Heublein and talk just a little bit about the $10.50 tax and the wine gallon proof gallon. Here you see that bottled goods at 80 proof pays $10.50 excise tax per gallon the same as if it came in a barrel at 100 proof and U.S bottled at 80 proof so there is a 20 percent differential. This is chart 1 in your packet.

Chart 2 shows that this has not been a detriment to the importers because look what has happened since 1960 to domestic spirits which in 1960 had 87 percent of the market and it is now down to 72 percent and all foreign spirits from 14 percent up to 28 percent. What is even more dramatic is when you look at the whisky share back in 1960 the domestic whisky had 84 percent of the whisky market; it is now down to 54 percent. The imported whisky market share was 16 percent in 1960 and it has gone up to 46 percent in 1976.

Take a look at the next chart which is Scotch whisky imports. You can see imports move from about 47 million gallons up to just under 60 million gallons in a 10-year period from 1969 to 1978.

Obviously the wine gallon has not been a problem for the importers. Look at the Canadian whisky imports from 32 million gallons in 1969 to 53 million gallons in 1978. Look what the whisky is a share of the total importers spirit market. Ninety percent of all the spirits come into the United States as whisky, only 10 percent liquors, brandy, gin, and other distilled products.

You might ask why we didn't ask for a lot of concessions originally as far as tariffs go. If you eliminated all the foreign tariffs for domestic products, it would not mean much because we have such an insignificant share of the foreign market and this is not primarily because tariffs are important but it is the nontariff barriers that prevent us from doing business in Canada, the United Kingdom and the rest of the common market—France, Italy, and Japan.

You can see here that the United States has a 3 percent share of the Canadian market, 1 percent of the United Kingdom, a quarter of 1 percent in France, a sixth of 1 percent in Italy, and 1 percent in Japan—really not enough to worry about. We are just not doing the export business because of not only the tariff barriers but the nontariff barriers as well.

Now there has been a tremendous imbalance in the trade deficit of distilled spirits. In 1967 it was $387 million and in 1977, 10 years later, $635 million. this is the imbalance of trade in distilled spirits. Also the foreign tariffs on U.S whisky, you say the wine gallon is a tariff barrier. Well, then why don't they eliminate the tariff barriers they have in the same country we are doing trading with? They have two tax systems, one for goods two liters or under—and that is a higher tax because it is bottled—and then they have a lower tax for two liters and above. That is still there, that has not been eliminated.

Now talking about jobs, there has been a lot of talk about how many jobs might be lost or none. There was a report that was widely circulated just a few weeks ago down here that the special trade representative quoted to me as though it were the gospel and it said that there are only 80 to 100 jobs lost in the industry because of the wine gallon tax. I know that there are more jobs in my own company that will be lost but what I don't understand about the discrepancy—this appeared a couple of years ago in the Glasgow Herald which said that is a campaign to create 6,000 more Scotch whisky jobs and this is taken when the wine gallon has disappeared and this discrimination is eliminated and the jobs will come back to Scotland.

Now here is one that appeared in the Washington Post on April 14 and here are some headlines from the Peoria paper, "Hiram Walker Will Close Its Distiling Plant." Now that is 1,150 jobs by their own admission, 850 permanent and 300 seasonal jobs. I don't begrudge them for closing this plant but I think it is the tip of the iceberg, it is what you are going to see more of if you don't give some benefits to the domestic industry. You are going to see more and more plants going out of business and closing down.

I think it is significant that this release came 2 days after the wine gallon was put into Mr. Strauss' package. Mr. Frank Fitzsimmons sent a letter and he has done some figuring and he has said the industry will probably lose 25,000 jobs. I think Leo Vernon is going to speak to this in more detail.

Now talking about prices, somebody said will the prices be lowered because of the wine gallon? I think there has been testimony that says no, we are not going to lower the price. What they are going to do is they are going to spend this money in marketing expansion to get a bigger share of the market. It is a sad commentary that this happens but this is what they are going to do.

Now we have been reducing tariffs, as you know, for some time. We have gone from $5 a proof gallon on Scotch whisky to 51 cents. We have gone from $5 on Canadian whisky down to 62 cents. In all those years I don't recall any price decrease at the shelf level.

Mr. VANIK. Well, if you are not going to lower the price, are all these jobs going to be lost just because of advertising?

Mr. CARRIUOLO. They will get a bigger share of business and we will get a significantly lower share. That line will go up faster and we will have a lower share.

That is really my testimony. I am concerned. I am concerned that we have an industry that is in trouble and I think that you should support any package that may give the domestic industry some help or else it will go the way of the beer business; you will have a couple of big producers and you will have all the little fellows going out of business.

That is the end of my statement.

[The prepared statement and charts follow:]

STATEMENT OF CHRISTOPHER W. CARRIUOLO, CHAIRMAN OF THE BOARD, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, AND EXECUTIVE VICE PRESIDENT OF HEUBLEIN, INC.

Mr. Chairman and members of the subcommittee, I am Christopher Carriuolo of Farmington, Conn., I am here today wearing two hats—as chairman of the board of directors of the Distilled Spirits Council of the United States and as the Executive Vice President of Heublein, Inc.

As chairman of the Board of DISCUS, the trade association composed of the producers of 85 percent of the distilled spirits produced in the United States and the major importers of similar beverages, I associate myself fully with the testimony which you have just heard from the association's General Counsel, John McCarren. The five proposals he has outlined are endorsed almost unanimously by all engaged in the business of producing and importing distilled spirits in this country. They also are endorsed by the national trade association representing wine and spirits wholesalers, and by the Industry Sector Advisory Committee to the Special Trade Negotiator representing the food and beverage industries.

Let me speak in a little more detail about these proposals.

CHART 15 (EXTENSION OF THE TAX DEFERRAL PERIOD)

Extend the deferral period for payment of excise taxes on distilled spirits for an additional 30 days.

The Federal Excise Tax comprises about 64 percent of the value of shipments from distiller to wholesaler. Since the current provisions require payment of the tax 15 days following the end of each half-monthly tax period, distillers are paying a tax well before it reaches the sales point at the retail level.

Under present arrangements the American distiller is not allowed as long a period for payment of the excise tax as is his competitor, the importer of distilled spirits from abroad. Within an average period of 23 days after distilled spirits leave the distillery—while they are normally still in the hands of a wholesaler and before the producer receives payment for them—the distiller must pay the excise tax. On imports, however, the tax becomes due 23 days on the average after the imported beverages leave the bonded premises of a wholesaler.

The American producer must borrow to pay the tax when the importer does not have to. Or, if not forced to borrow, the American producer must tie up his capital by early payment of the tax when the importer does not have to. Imports thus enjoy a cost advantage of about 38 cents per case due to the cost of money. What we are

proposing would be a step toward equalizing the time granted the American producer and the importer to pay the excise tax.

About 60 days elapse between the time a shipment leaves the domestic supplier's warehouse and the time it leaves the wholesaler's warehouse. There 60 days are "non-productive."

U.S. producers are asking for just half that time as an additional tax deferral period in payment of the Federal Excise Tax.

This could be phased in at a rate of six additional deferral days per year, so that a total of 30 days delay would be in effect in the fifth year

This would save U.S. distillers about $1.2 million per day. If started in 1980, it would have these results:

CHART 16 (BENEFITS FROM TAX DEFERRAL)

	Million
1980	$7.2
1981	14.4
1982	21.6
1983	28.8
1984 and beyond	36.0

Since this would result in an increase in corporate income taxes the net cost to the U.S. Treasury would be about $500 thousand per day, or at the time of the full 30-day delay, about $15 million per year.

CHART 17 (ALL-IN-BOND)

As another concession U.S. distillers ask that all operations at distilled spirits plant (production, storage, bottling) be conducted under bond, including the right to transfer spirits to other bonded premises.

CHART 18 (REPEAL OF THE RECTIFICATION TAX)

This is recommended only if the All-In-Bond recommendation is adopted.

The rectification or blending of distilled spirits is presently taxed at the rate of 30 cents per gallon and amounts to about $25 million annually. This tax is not paid by foreign producers. The tax loss of this concession would be offset if spirits were taxed on a proof gallon basis.

CHART 19 (EXTENSION OF ALL-IN-BOND CONCEPT TO THE WHOLESALE LEVEL)

Within one year of extension of the tax deferral period U.S. producers recommend that you extend the point of tax payment of distilled spirits shipped in bond to wholesalers (including Control States) who have chosen to bond their facilities and have otherwise complied with relevant government requirements.

Presently wholesalers may purchase bottled imports in bond paying the Federal Excise Tax only after the removal of the product from the wholesalers' warehouse. This option is not available on purchases of domestic products.

U.S. distillers recommend that wholesalers be accorded the same privilege of purchasing U.S. distilled spirits in bond, paying the FET based on the current provisions requiring payments of the FET on imported products.

Cost of this would be nil to the Treasury if the 30-day deferral of the FET were in effect.

CHART 20 (DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT)

Commitment should be made by the U.S. Government to support industry efforts with the E.E.C. and other foreign governments to obtain recognition of bourbon whiskey as a distinctive American product.

As I said, a total of all these measures would offer some relief but certainly not compensating balance for the competitive advantages granted foreign producers in the U.S. market, as a result of the proposed change to a proof-gallon method of taxation.

Now, Mr. Chairman, I want to change hats and speak to you as the Executive Vice President of Heublein, Inc., on the subject of the proposal of the Special Trade Representative to eliminate the wine-gallon system of calculating duty and excise on distilled spirits. My company, along with the overwhelming majority of purely domestic distillers and unions whose members' jobs are threatened by the change, is opposed to changing this system.

A change from the present method of assessing excise taxes to one of assessing on the basis of proof, rather than on wine or liquid gallons, would do substantial damage to the competitive position of the U.S. spirits producers threatening the

exodus of production facilities from this country, with the consequent loss of jobs not only in this industry but in those of its suppliers, glass bottles, packaging, trucking, warehousing, to name but a few.

The present method of taxation, which has been in force now for more than 100 years, calls for an excise tax of $10.50 for a liquid gallon (or wine gallon as we call it) of 100 proof or less, whether it's brought into the U.S. in bottles or in bulk.

CHART 1 ($10.50 EXCISE TAX)

Foreign producers exporting into the U.S. claim this method of taxation discriminates against them, but we say it doesn't. In fact, the business of foreign producers in this country, principally Scotch and Canadian whisky producers has grown multifold. In fact, it's never been better.

The same opportunity to bring distiled spirits into the United States, in bottles or bulk, exists for all. But to establish and further a premium, higher-priced image for their products, foreign producers elect to bring their major brands into the U.S. in bottles.

They have profited enormously from that decision.

CHART 2 (DISTILLED SPIRITS MARKET SHARE DOMESTIC vs. FOREIGN, 1958-77)

While the market share of U.S. distilled spirits producers has declined, that of foreign producers has increased.

CHART 3 (WHISKY MARKET SHARE DOMESTIC vs. FOREIGN, 1958-77)

U.S. whisky producers, particularly Bourbon, have suffered a declining market share here in the U.S. while foreign producers' market share has increased.

CHART 4 (SCOTCH WHISKY IMPORTS, 1969-78)

Here, for example, is the growth of imported Scotch in just the past nine years.

CHART 5 (CANADIAN WHISKY IMPORTS, 1969-78)

Here is the growth of Canadian whisky imports in the same period.

CHART 6 (WHISKY'S SHARE OF IMPORTED SPIRITS MARKET)

In total, imported whisky accounts for 90 per cent of all imported spirits.

CHART 7 (U.S. SHARE OF LEADING FOREIGN SPIRITS MARKETS)

In sharp contrast, here's the U.S. spirits producers' share of leading foreign markets—

Canada, 3 percent; United Kingdom, 1 percent; France, ¼ percent; Italy ⅛ percent; and Japan, 1 percent.

CHART 8 (INCREASING IMBALANCE OF TRADE IN DISTILLED SPIRITS)

The imbalance of trade in distilled spirits has been increasing steadily from $387 million unfavorable in 1967 to $635 million in 1977.

CHART 9 (LOWERING OF U.S. TARIFFS)

The steady lowering of U.S. tariffs on both Scotch and Canadian whiskies has also benefitted foreign producers. The tariff on a gallon of Scotch has dropped from $5 to 51 cents since Repeal while the tariff on a gallon of Canadian whisky has declined from $5 to 62 cents.

CHART 10 (COMPARISON OF U.S. AND FOREIGN TARIFFS ON WHISKY)

But in most other major world markets tariffs on U.S. products remain five to six times greater.

There will be just a few very big winners among foreign producers but many U.S. losers, big and small, and the ensuing competition will inevitably bring about the concentration of the U.S. distilled spirits business with a few major companies.

The imbalance of trade can be expected to increase much faster than it has in the past 10 years.

U.S. workers stand to lose jobs as foreign producers withdraw production facilities from the U.S., concentrating them to economic advantage in their own countries.

CHART 11 (GLASGOW HERALD, 6,000 JOBS)

Here's a news story from a Glasgow, Scotland paper which sees the change in the U.S. tax law favoring Scottish labor with 6,000 jobs.

CHART 12 (HIRAM WALKER CLIPPING, WASHINGTON POST, APRIL 14, 1979)

Just two days after this Trade Subcommittee expressed sentiment in favor of the change, Hiram Walker, a Canadian company, announced the closing of its Peoria plant with the loss of 1,200 full and part-time jobs, not to mention cutbacks that this will cause in jobs among supplier companies. This is Walker's only U.S. distillery and it was once the largest in the world. It is ironic that less than three weeks before announcing this plant closing, Hiram Walker submitted a formal statement to the Special Trade Negotiator and to Congress that only 80 to 100 jobs would be lost in the entire United States if the wine-gallon method of taxation were eliminated.

We believe this is but the tip of the iceberg for there are other U.S. plants likely to close or to join the ranks of those operating part-time.

CHART 13 (FRANK FITZSIMMONS SAYS— 25,000 JOBS LOST)

Frank Fitzsimmons, head of the Teamsters Union, has estimated job losses in the U.S. from this proposed change would amount to 25,000.

Consumers will lose, too, because the principal gainers from the reduced taxes, namely foreign producers of Scotch and Canadian whisky, have indicated by their actions and their statements to the Special Trade Negotiator that there will be no benefit to consumers in the form of reduced prices.

At a hearing on this subject conducted by the Special Trade Representative on March 20 of this year, the representative of the U.S. Department of Labor, after hearing the testimony of both sides, observed "• • • the economic effects (of eliminating the wine gallon system) would be a transfer of revenue from the Treasury Department to certain companies that ship bottled goods from foreign countries into the United States."

CHART 14 (SINCE 1967—COMPARATIVE PRICE INCREASES)

	Percent
Prices of Bottled in Scotland—Scotch	+21
Prices of Bottled in Canada—Canadian	+14

We firmly believe that the present method of assessing excise taxes is not discriminatory. And so do the U.S. courts, which, in their wisdom, have upheld it on several occasions.

We believe that the U.S. Congress in passing the 1974 Trade Act was of this same mind when it directed the U.S. Trade Negotiators to exchange competitive opportunities for like or same products in foreign markets.

But here's the unfair competition that remains:

The proposed change creates the opportunity for a flood of low-proof alcoholic beverages into the U.S market.

Tariffs in other countries are five to six times greater than ours.

Non-tariff barriers in other countries such as tied-in houses of the U.K., exist to exclude U.S. products.

Canada requires that all whisky imports be blended with Canadian whisky.

And there are other barriers to trade such as border licenses and inequitable ingredient standards.

Who will be the winners from this proposed change.

Principally three foreign producers: Hiram Walker, Seagrams, and the Scotch whisky cartel.

They will share $160 million or more yearly in reduced taxes which they can apply to increased competition with U.S. producers.

Foreign producers do not pay the rectification or blending tax or 30 cents per gallon required of U.S. producers.

Although the Special Trade Representative has not made public the specifics or tariff concessions negotiated in the MTN, we understand that European countries will continue to tax bottled imports at a higher rate than bulk—their version of the U.S. wine-gallon/proof-gallon method of taxation. This is done by setting a lower tariff on imports in containers of more than two liters than is imposed on containers of less than 2 liters. The largest bottled size is 1.75 liters. Thus the EEC will continue a practice which they complain is a discriminatory barrier to trade—when it is used by the United States.

The U.S. producers are asking this committee and the Congress to take the necessary measures to keep the present method of assessing the excise tax in force thereby avoiding the unfair competition that would follow such a change.

If this is not accomplished then we ask for some measure of relief, although there is none that can equal or offset the granting of $160 million yearly in tax reductions and the competitive advantages granted to foreign producers.

I have copies of the illustrated charts for your further review if you wish them.

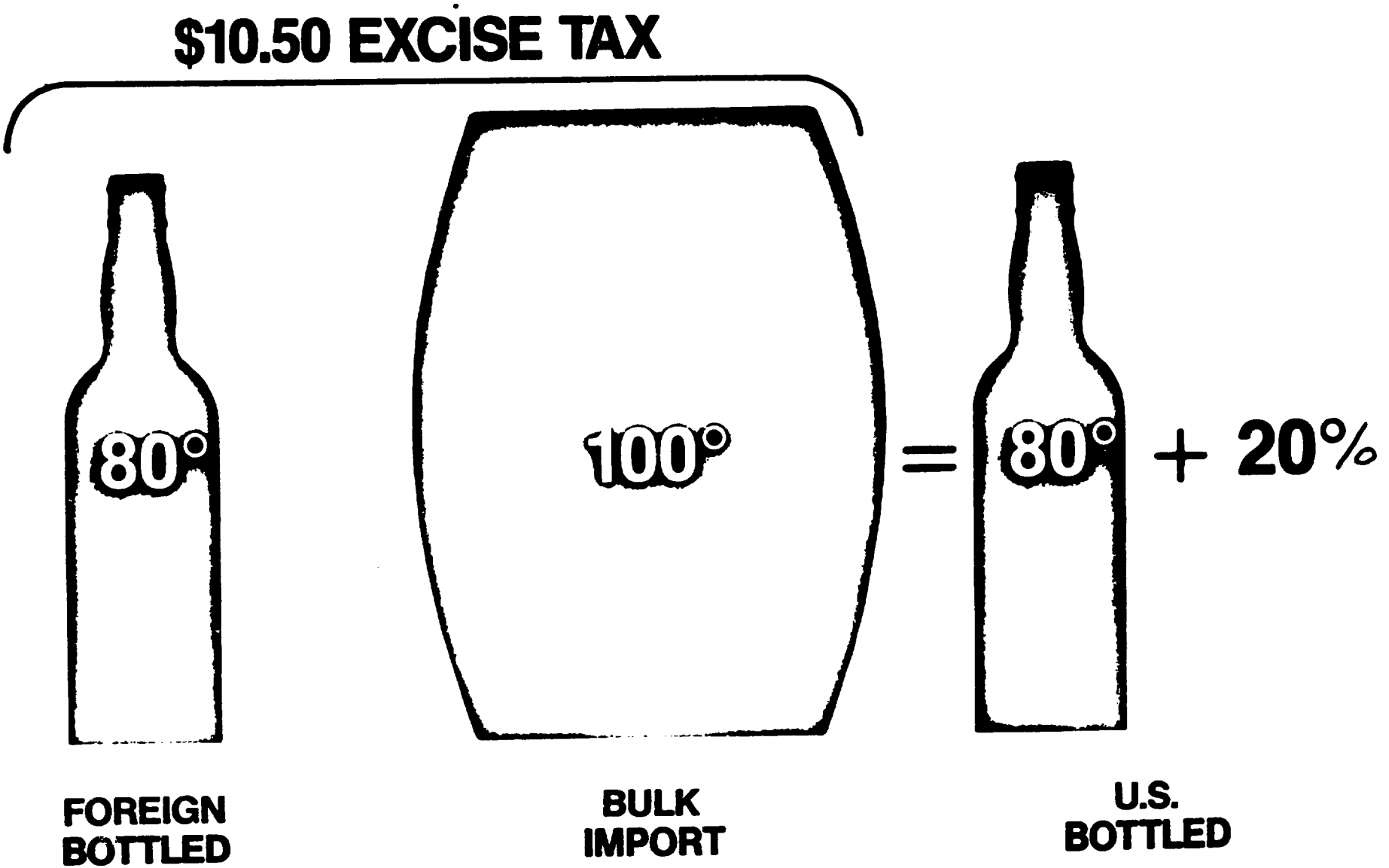
Thank you.

Presentation to
House Ways & Means Trade Committee

April 25, 1979
by

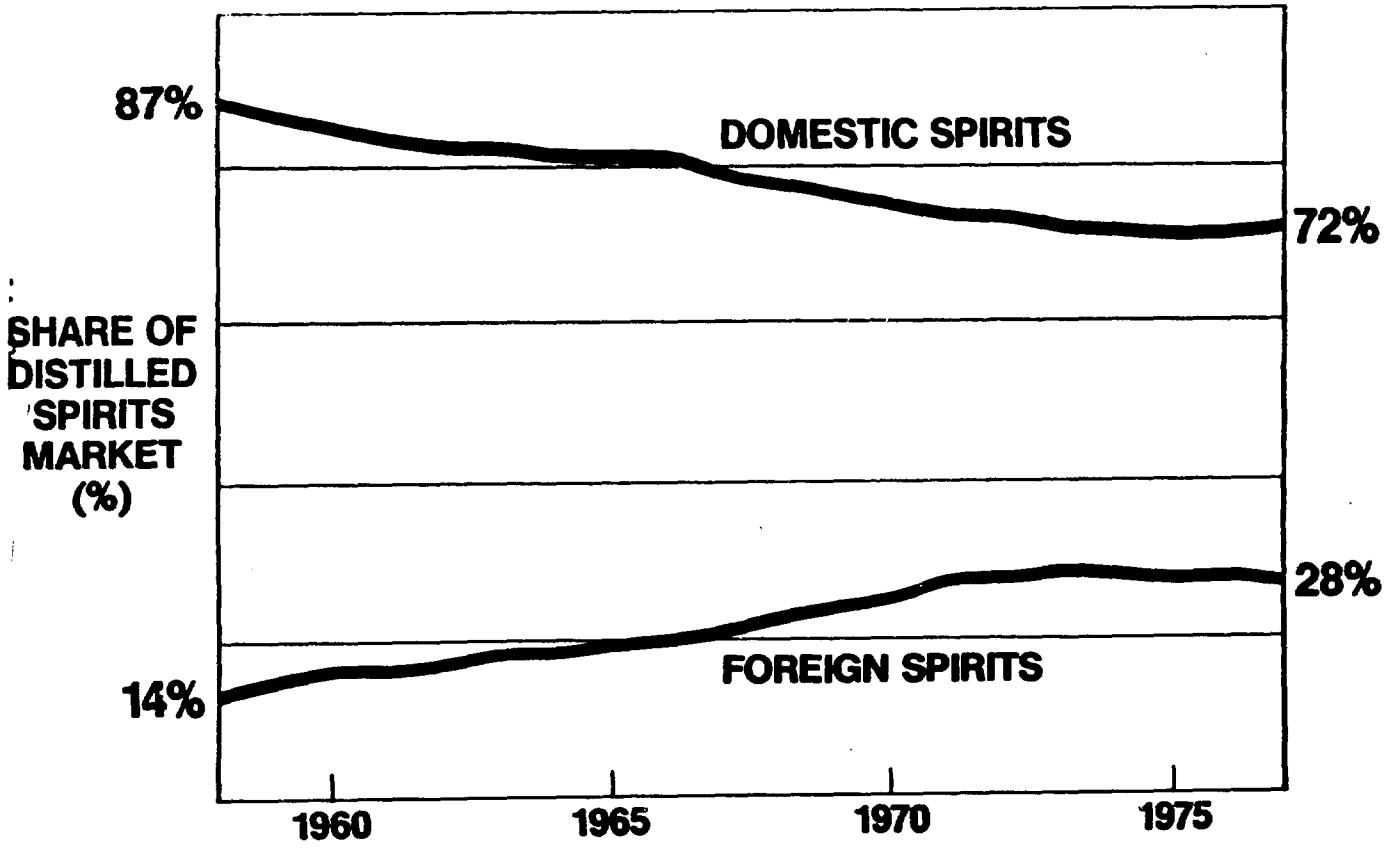
Christopher W. Carriuolo

Chairman, Distilled Spirits Council of the United States.
Executive Vice President, Heublein Inc.


$10.50 EXCISE TAX
80°
100°
=
80°
+ 20%
FOREIGN BOTTLED
BULK IMPORT
U.S. BOTTLED

DISTILLED SPIRITS MARKET SHARE

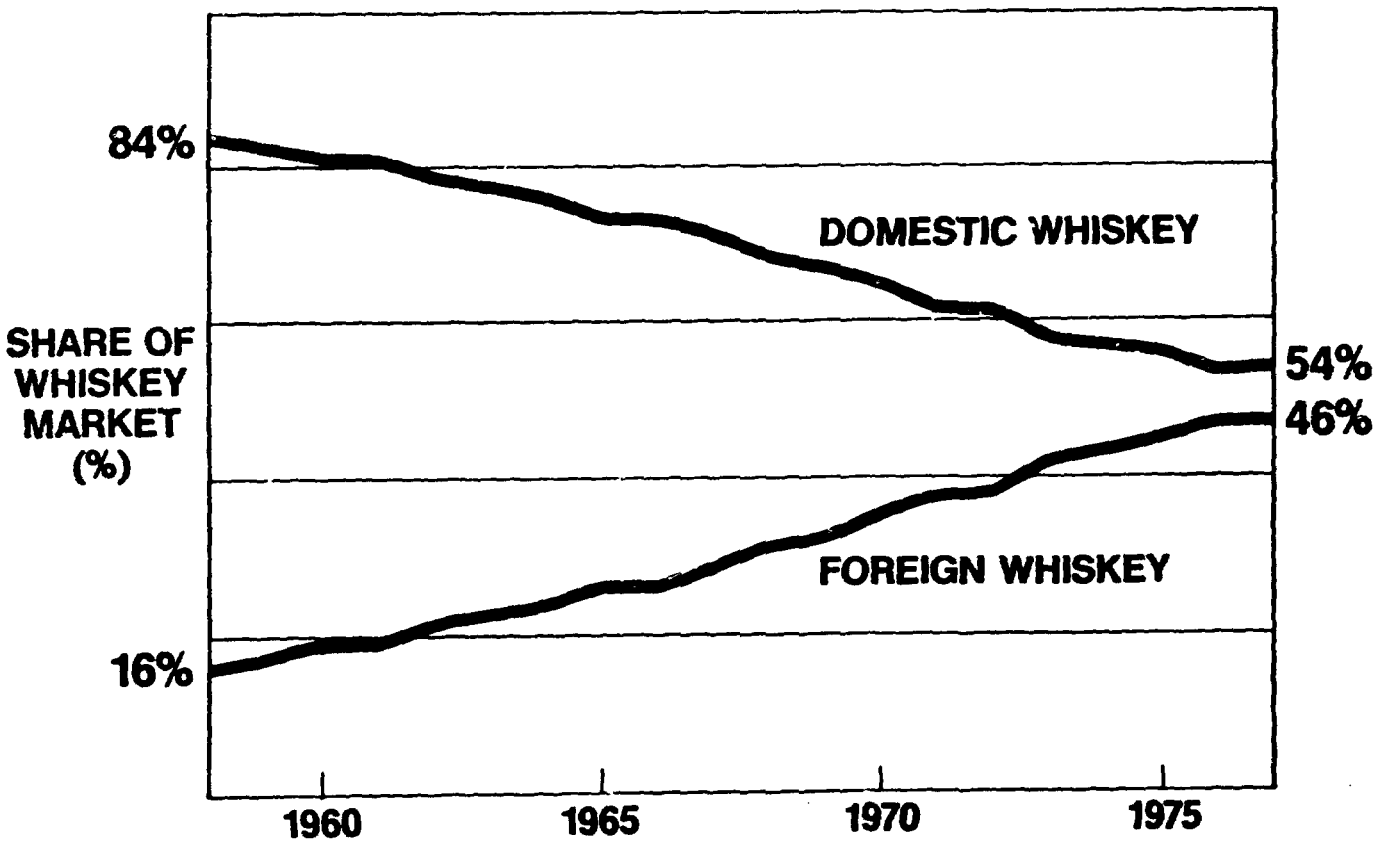
DOMESTIC VS. FOREIGN, 1958-1977



SOURCE: DISCUS, ANNUAL STATISTICAL REVIEW.

WHISKEY MARKET SHARE

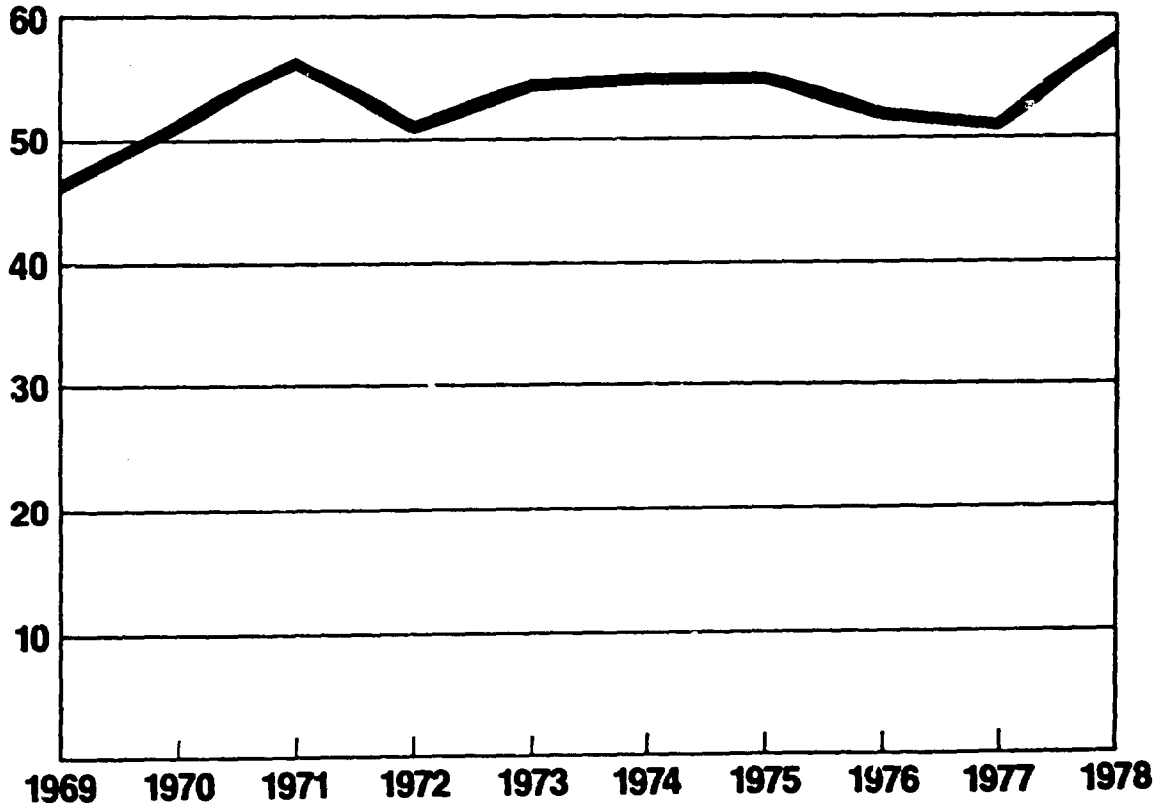
DOMESTIC VS. FOREIGN, 1958-1977



SOURCE: DISCUS, ANNUAL STATISTICAL REVIEW.

SCOTCH WHISKY IMPORTS

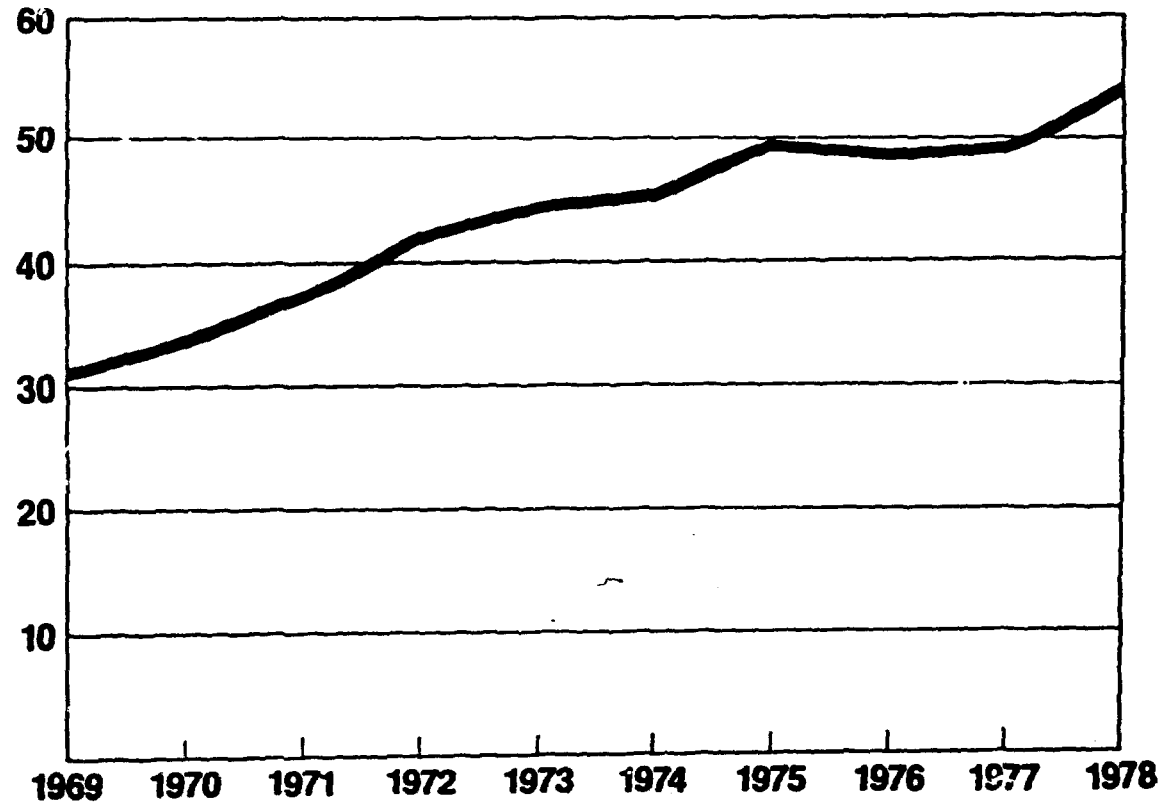
MILLIONS GALLONS — 1969-1978



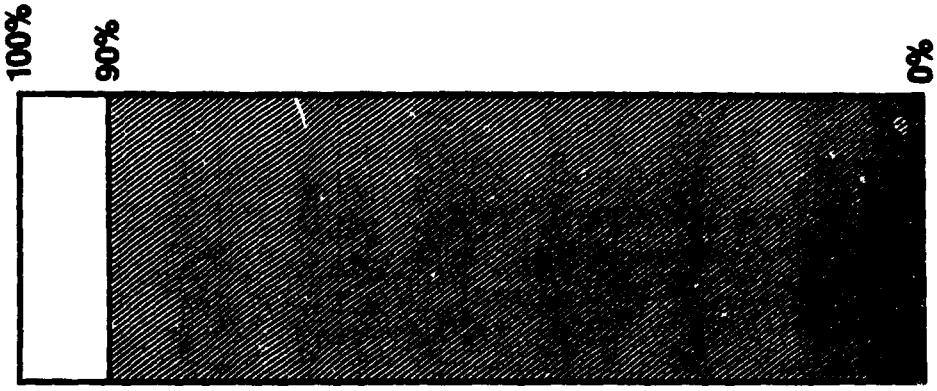
BULK-BOTTLED OUTPUT CONVERTED AT 82 PROOF AND TOTAL REFLECTS CONVERSION

CANADIAN WHISKY IMPORTS

MILLIONS GALLONS — 1969-1978



BULK-BOTTLED OUTPUT CONVERTED AT 86 PROOF AND TOTAL REFLECTS CONVERSION



WHISKY
SHARE OF
IMPORTED
SPIRITS
MARKET

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U.S. SHARE OF LEADING FOREIGN SPIRITS MARKETS

CANADA	UNITED KINGDOM	FRANCE	ITALY	JAPAN
3%	1%	1/4%	1/6%	1%

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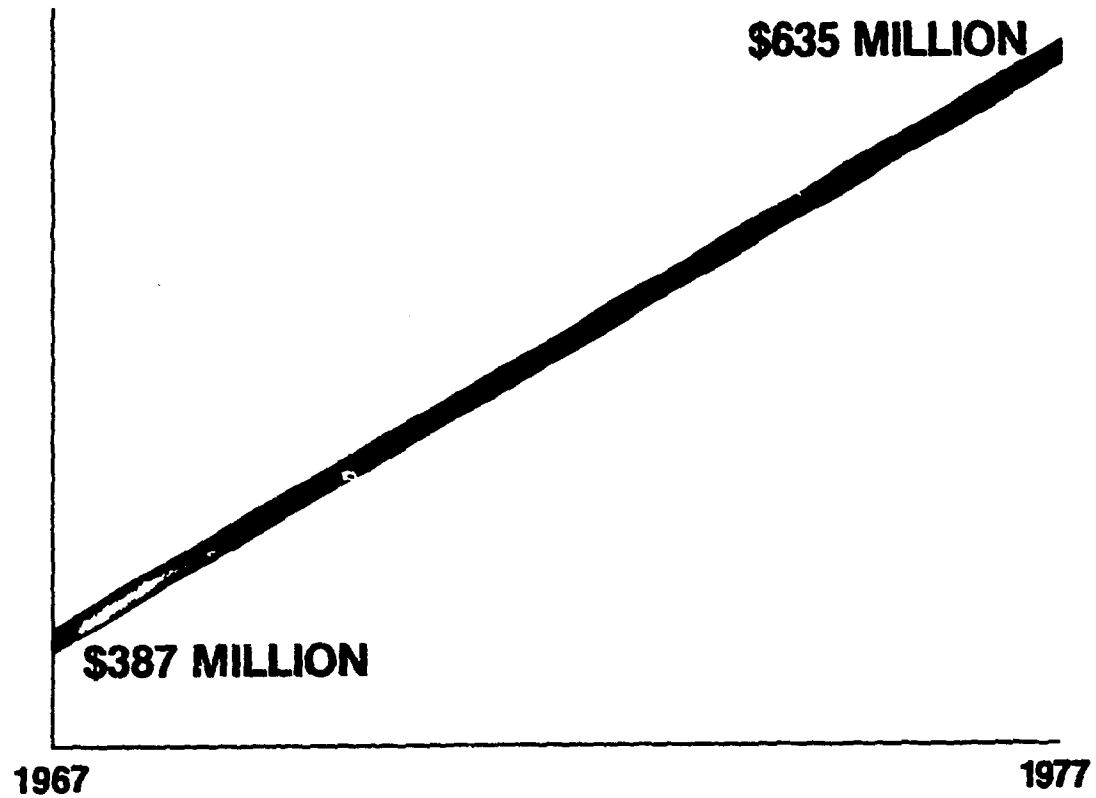
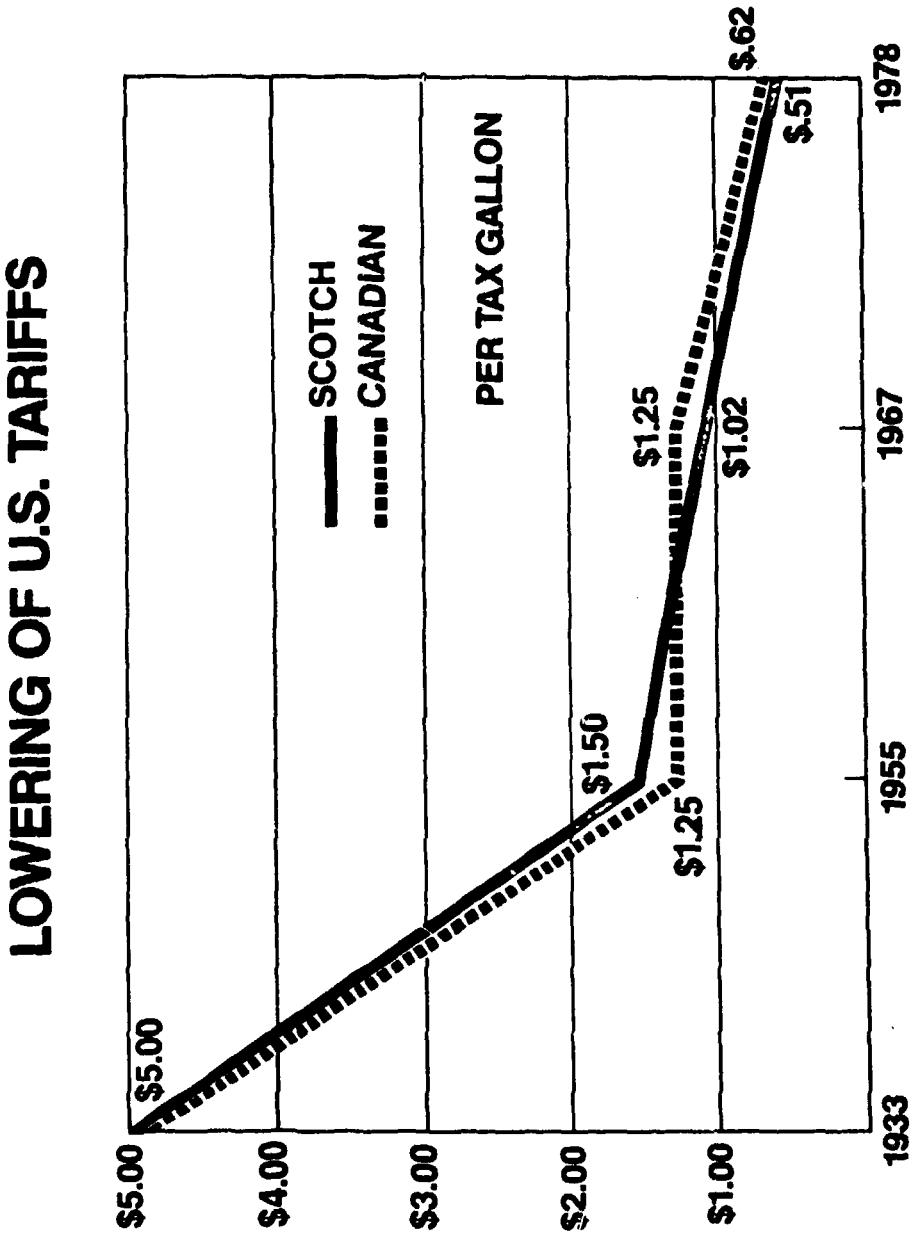
INCREASING IMBALANCE OF TRADE IN DISTILLED SPIRITS

(LOSS IN MILLIONS)




LOWERING OF U.S. TARIFFS
PER TAX GALLON
SCOTCH
CANADIAN
$5.00
$4.00
$3.00
$2.00
$1.00
1933
1955
1967
1978
$5.00
$1.50
$1.25
$1.25
$1.02
$.51
$.62

FOREIGN TARIFFS ON U.S.WHISKEY

EEC EXTERNAL TARIFF ON U.S. BOURBON WHISKEY (DOLLARS PER U.S. PROOF GALLON)*

COUNTRY	CONTAINERS OF 2 LITERS OR LESS (i.e. BOTTLED GOODS)
BELGIUM	$3.01
FRANCE	$2.58
GERMANY	$3.24
HOLLAND	$3.31
ITALY	$2.04
UNITED KINGDOM	$1.66

* BASED ON RATES OF CURRENCY EXCHANGE ON FEBRUARY 13, 1979

GLASGOW HERALD, Wednesday, April 11, 1979

"Campaign to create 6000 more Scotch whisky jobs"

"... that action must be taken to change an American law which means that whisky imported in a bottle has a 15% bigger tax than the same Scotch product imported to the United States in bulk and bottled there."

BEST COPY AVAILABLE

"DISTILLERY CLOSING: Hiram Walker & Sons will close its Peoria distilling plant,"

DISTILLERY CLOSING: Hiram Walker & Sons will close its Peoria distilling plant, its only distillery in the United States and once the largest one in the world.

Carter Hunt, the distillery's production manager, told approximately 850 employes at a meeting Thursday that out-dated facilities in Peoria and increasing costs will force the firm to terminate its U.S. operation by January 1982.

FRANK FITZSIMMONS SAYS

"25,000 JOBS LOST"

SINCE 1967

PRICES OF SCOTCH BOTTLED IN SCOTLAND	+21%
PRICES OF CANADIAN BOTTLED IN CANADA	+14%

EXTENSION OF TAX DEFERRAL PERIOD

BENEFITS FROM TAX DEFERRAL

1980	$ 7.2 million
1981	14.4 million
1982	21.6 million
1983	28.8 million
1984 and beyond	36.0 million

ALL-IN-BOND

REPEAL OF RECTIFICATION TAX

EXTENSION OF ALL-IN-BOND CONCEPT TO WHOLESALE LEVEL

DESIGNATION OF BOURBON AS A DISTINCTIVE AMERICAN PRODUCT

Mr. VANIK. Mr. Rostenkowski.

Mr. ROSTENKOWSKI. Mr. Carriuolo, will you give me an idea of the type of whisky you are discussing on the curve downward with respect to the amount of American whisky that is consumed? You had a chart there that showed import whiskies going up from 46 to 60 percent and the American domestic whiskies going down. What types of American whiskies are you referring to?

Mr. CARRIUOLO. The biggest loss, sir, has been the bourbon and blended whiskies. They have had a continual decline that was very much accelerated in the last 10 years.

Mr. ROSTENKOWSKI. Is that because of its proof?

Mr. CARRIUOLO. No; I think the proof is the same as the Scotch whisky. I think that most of the bourbon whiskies and blended whiskies are very similar in proof to Scotch whiskies.

Mr. ROSTENKOWSKI. Would you say around 86-percent proof?

Mr. CARRIUOLO. I think a lot of them are 80 to 86. The tendency in the last several years has been to reduce the proof to 80.

Mr. ROSTENKOWSKI. I just recognize that the American habit is going toward a lower proof whisky and that the foreign or the imported whiskies have always been down a little bit below 90 or 80.

Mr. CARRIUOLO. 86.8, 86.

Mr. ROSTENKOWSKI. What about the so-called lighter transparent whiskies?

Mr. CARRIUOLO. They are all 80 percent primarily. Vodka is almost all 80. There is some 100 proof sold and a little 90 proof but it is primarily 80 proof. They have been reduced.

Mr. ROSTENKOWSKI. Has there been an increase in the appetite of the Americans for those light whiskies as opposed to bourbons?

Mr. CARRIUOLO. We have a feeling that Americans drink more moderately and do prefer a lighter proof. If you took all distilled spirits sold in the United States 10 years ago times the proof and did it today, you would find it is, I think, about a 4-proof reduction in spirits and the consumption of spirits. It has been declining. A lot of the mixed drinks, cocktails, that our company sells today are from 60 proof all the way down to the 25 proof.

Mr. ROSTENKOWSKI. I have no further questions, Mr. Chairman.

Thank you, Mr. Carriuolo.

Mr. VANIK. Mr. Cotter.

Mr. COTTER. Thank you, Mr. Chairman.

Mr. Carriuolo, in your chart you made reference to Hiram Walker closing down a plant in Peoria. Has that occurred just within the past few weeks?

Mr. CARRIUOLO. Yes. I believe the release was the one in the Washington Post dated April 14. If I understand it, they are going to wind down the plant over the next 2 years.

Mr. COTTER. Is it a result of the change from the wine gallon or anticipation of the change from the wine gallon to proof gallon method of taxation, would you say?

Mr. CARRIUOLO. Well, I think there are probably other causes but I think the wine gallon gives them more options. If they get the wine gallon, they get the benefit. They are one of the companies that will benefit by the wine gallon and I think it gives them the option now they can do a lot more bottling in the Canadian plant. I

think they said in their article they will contract to pack some of their goods with other plants. By closing the plant, I think they will be able to sell the property and probably save $8 to $10 million by diverting production to other plants and to Canada.

Mr. COTTER. It has been suggested by people in the industry that some of the American distillers will possibly have to shut down their American operations as far as bottling Canadian whisky and Scotch in order to survive if we go to a proof-gallon method of taxation. Can you elaborate on that at all?

Mr. CARRIUOLO. I think the proof gallon is part of it because if you don't reduce the retail price of the goods, what do you do with that extra money? They have already indicated that they are going to spend it in advertising and marketing to increase their share of the market. What that means is that as you increase the import market, the domestic business goes. As Americans we are not drinking more. There is a market out there, it is growing. Just this past year it is growing at 2 percent. It was flat for 3 years and so they just get a bigger share of the market which is going to cause the domestic producers to wind down their plants. They just won't need that capacity.

Mr. COTTER. Does your organization have any figures on the number of jobs which would be affected if you changed to proof-gallon method?

Mr. CARRIUOLO. We have many alternatives. We figure that we will probably wind down our plants and we have to make the tradeoff decision—do we bottle our Canadian? We bring in Canadian in bulk and bottle it here in the United States in our four plants. Now we may bottle it in Canada. There is no advantage today in really bottling it in the United States. That means we would reduce the——

Mr. ROSTENKOWSKI. Excuse me. There is more advantage now?

Mr. CARRIUOLO. I am assuming you gave away the wine gallon.

Mr. ROSTENKOWSKI. All right.

Mr. CARRIUOLO. Maybe that is the wrong assumption.

Mr. ROSTENKOWSKI. I just wanted to understand that.

Mr. CARRIUOLO. That means we would wind down our four plants. As a matter of fact, I think we would want to sell one of our plants.

Mr. COTTER. I hope it is not Hartford.

Mr. CARRIUOLO. I hope so, too; it is my home. It can't be Hartford.

Mr. COTTER. Well, in other words, in order to compete, assuming we are on proof-gallon method, it would be to your advantage to bottle in Canada and bring it in rather than to bottle here after you brought it in in bulk?

Mr. CARRIUOLO. I say it is less of an advantage to bottle here.

Mr. COTTER. I see. Thank you.

I have no further questions, Mr. Chairman.

Mr. VANIK. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Mr. Carriuolo, I would like to thank you for a very excellent presentation well summarized.

Mr. CARRIUOLO. Thank you.

Mr. VANDER JAGT. Have there been any factors in plant closings other than the anticipated change in the tax treatment?

Mr. CARRIUOLO. You mean other factors in that——

Mr. VANDER JAGT. Yes. You referred to the plant in Peoria that was going to close and mentioned, I think, that there have already been some plant closings. Are there factors other than the anticipated change in tax treatment which account for this?

Mr. CARRIUOLO. Yes; I think the decline in bourbon whisky. With the decline in bourbon whisky you don't need those aging warehouses it used to have. I think there are a lot of factors that motivate this sort of thing but I think the biggest one is the increasing share of imported products causing a decline in domestic products. Marketing is the name of the game.

Mr. VANDER JAGT. Thank you.

Mr. JENKINS [presiding]. Mr. Schuize.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Carriuolo, during our consideration of the wine gallon matter our subcommittee was provided with a study of the Harvard Business School on the job impact of elimination. Do you want to comment on that study? Do you have an appraisal of that study?

Mr. CARRIUOLO. We had our people look at it because when Senator Ribicoff arranged for us to go down and talk to the STR people and the Treasury they were quoting the study like it was the Gospel. I am not a salesman, I am not a market researcher. I took the study back to our market research people and they said it was just a flawed study, it was not a professional job at all.

If you look in the footnotes you find in order to make the case that it would cost more to produce a case of whisky in Scotland than it does in the United States, they eliminate a very important factor. They put in the cost of the carton in Scotland and they just eliminated the cost of the carton in America. They said there was something like $2.91 a case increase in cost if you did the whole thing in Scotland. Our people figured out when they did the true freight cost and everything that the amount was 63 cents, so I think it was not a professionally done study. I hope it was not endorsed by the Harvard Business School because I am an alumnus of that school and I don't think they would put their name on such an unprofessional study.

Mr. SCHULZE. Thank you.

Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. JENKINS. You mentioned a few moments ago some of the nontariff trade barriers that other countries have. What barriers does Japan have? Do they have any nontariff or tariff trade barriers?

Mr. CARRIUOLO. Well, I think the distribution system there is pretty much controlled as I understand it. I have never been to Japan but Suntory, I believe, controls the distribution system, so even if you were able to get your products in there it would be difficult to get your products distributed. As you know, in Canada the provincial monopoly and the 10 Provinces control the liquor business and they just won't list your product. No matter what the

tariff barrier, if they don't sign it up on their list it is not going to be sold.

When you go to the United Kingdom and some other places in the common market, they have the tied house laws there where they allow brewers and distillers to own massive retail licenses—it is against the law in this country. It is not unreasonable for one brewer to own 10,000 retail licenses and he puts whatever he wants in those pubs or liquor stores. These are tremendous hurdles for us to overcome and that is why if you eliminated all the tariff barriers it would not mean too much to the domestic distillers because the nontariff barriers are insurmountable.

Mr. JENKINS. Thank you very much for your testimony. We appreciate each of you appearing before the committee.

Mr. MCCARREN. Thank you.

[The following was subsequently received:]

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES, INC.,
Washington, D.C., April 30, 1979.

Hon. CHARLES A. VANIK,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing conducted by your Subcommittee on the Multilateral Trade Negotiations on April 25, this Association was invited to submit additional information about its requests for modification of existing law and regulations that would eliminate inequities and unnecessary burdens affecting domestic producers.

The attached memorandum is submitted in response to this request. It indicates certain charges that we believe should be made by revision of statutes as part of the package of implementing legislation. It also points out two reforms that probably would be more appropriately undertaken by means other than statutory change in the implementing legislation.

We deeply appreciate the attention your Subcommittee is giving to concerns of our industry and its workers. We stand ready to assist you in any way possible in accomplishment of the important task in which you are engaged.

Sincerely,

SAM D. CHILCOTE, Jr.,
President.

Attachment.

MEMORANDUM TO MEMBERS OF THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS

I. Items which the subcommittee can recommend as legislative changes to partially offset the impact on the domestic industry of a change in the wine gallon method of taxation of distilled spirits.

A. Provide for additional deferment of payment of tax of 30 days. (See attached draft of necessary amendment to section 5061(a) Internal Revenue Code of 1954.)

B. Provide for all-in-bond system at distilled spirits plants, including repeal of the rectification taxes. (We understand that the Treasury Department is drafting and will submit appropriate amendments.)

C. Provide for future extension of the all-in-bond method of operation to the wholesalers level including agencies of States and political Subcommittees thereof. (The above proposals have the full support of the distilling industries including those who were on either side of the wine gallon-proof gallon issue, the National Association of the Control States and the National Association of Wine and Spirits Wholesalers.)

II. Items involving or requiring changes in law or Treasury regulations which could be recommended in the subcommittee report.

A. Reform and modernization of the Federal Alcohol Administration Act as it relates to trade practices in order to put alcohol beverage industry on the same footing as other legal industries.

B. Designation of bourbon whiskey as a distinctive product of the United States in order to gain the same type of recognition which is now given in this country to

Scotch, Canadian, and Irish whiskies and Cognac. (See attached letter dated April 23 to Chief Counsel, Committee on Ways and Means for further discussion of these points. See also attachment analyzing costs of above proposals.)

Section 5061. Method of collecting tax

(a) Collection by Return.—The taxes on distilled spirits, wines, rectified distilled spirits and wines, and beer shall be collected on the basis of a return. The Secretary shall, by regulation, prescribed the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax, *Provided: that the time for filing the return and payment of the tax on distilled spirits shall not be less than 45 days from the end of the semi-monthly period during which such spirits are withdrawn from the distilled spirits plant.* [*Emphasis supplied.*]

APRIL 23, 1979.

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am appearing today in response to the invitation of Charles A. Vanik, Chairman of the Subcommittee on Trade, Committee on Ways and Means, in the subcommittee's press release of April 6, 1979. I represent the Distilled Spirits Council of the United States, Inc., the national trade association of the distilling industry, whose members produce approximately 85 percent of all distilled spirits in the United States. Many DISCUS member companies also have substantial interests in the importation of distilled spirits.

I am authorized to state that the Kentucky Distillers Association joins in the views expressed herein.

As you are aware, DISCUS has opposed a change in the wine gallon method of assessing tax and duty on below-proof distilled spirits. However, a substantial minority of the DISCUS membership has been in favor of a change in the method so that the tax on all distilled spirits would be assessed on a proof gallon basis. It now appears that the special trade representative has made promises to various foreign countries which, if approved by the Congress, would require a change in the method of taxation and implementing legislation to accomplish the change.

Other witnesses scheduled to appear before you will discuss the proposal of the Special Trade Representative to eliminate the wine gallon method, and you will hear the pro's and con's of this issue on which the members of our Association are divided. I wish to focus on other related matters on which the entire industry is in agreement. On these matters, we hope the Congress will take appropriate action in connection with its consideration of the multilateral trade agreements.

There are several areas within the jurisdiction of this Subcommittee where concessions could be made within the framework of the implementing legislation, which would lessen to some extent the adverse impact of the trade negotiations on the domestic industry, although we can offer no proposals for concessions to entirely offset the impact of a change in the method of taxation. I would like to stress again that while the DISCUS membership is divided on the issue of changing the method of assessing tax, it is unanimous in support of our proposals for concessions. These proposals have also received the endorsement of ISAC No. 1, the industry advisory body established by the Special Trade Negotiator.

Our proposals for concessions may be summarized as follows:

I. Extension of tax deferral period

Extend the deferral period for payment of tax on distilled spirits withdrawn from domestic distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands for an additional period of 30 days.

II. All in bond

All operations at distilled spirits plants (production, storage, bottling) would be conducted under bond, including the right to transfer spirits to other bonded premises.

II.A. Repeal of rectification tax

Repeal is recommended only if all-in-bond system (Item II above) is adopted.

III. Extension of all-in-bond concept to wholesale level

Within 1 year of extension of the tax deferral period at distilled spirits plants and plants of producers of distilled spirits in Puerto Rico and the Virgin Islands, extend

the point of tax payment of distilled spirits shipped in bond to wholesalers (including Control States) who have chosen to bond their facilities and have otherwise complied with relevant government requirements. This proposal is supported by the national association of the Control States; that is, those states which have a monopoly of the sale of distilled spirits.

IV. Reform of Federal Alcohol Administration Act

A violation of provisions of section 5 of the Act relating to trade practices may be prosecuted as a criminal offense under section 7 of the Act. Most of these "violations" would at the most be subject to civil sanctions if any product other than beverage alcohol were involved. The Act should be amended to make such violations civil only, while retaining criminal penalties for such activities as engaging in business without the required permit.

V. Designation of bourbon as a distinctive American product

A commitment should be made by the government to support industry efforts with the EEC and other foreign government representatives to obtain recognitions of Bourbon whiskey as a distinctive American product.

Under the U.S. regulations, products such as Scotch whisky, Irish whisky, Canadian whisky, and Cognac are recognized as distinctive products of Scotland, Ireland, Canada and the Cognac region of France respectively.

"No alcoholic beverage sold in the U.S. can be called Scotch or Irish or Canadian whisky or Cognac unless it has been produced in the appropriate country in compliance with the laws of that country. Similar recognition should be given by foreign nations to Bourbon whiskey, which was originated in this country and is not produced in accordance with the standards of identity for Bourbon in any other country in the world. This distinctive product of the U.S. should be accorded in other countries the same treatment which we give to these products which can claim a unique quality.

"The Congress has recognized Bourbon as a distinctive product of the United States. See S. Con. Res. 19, 88th Congress, 2d Session."

Of these concessions, the most important by far is the proposal for extending the time allowed domestic producers for payment of the heavy excise tax on their products. The request which the industry is making is a matter of simple justice.

In the distilled spirits industry, the Federal Excise Tax (FET) comprises about 64 percent of the value of shipments from the distiller to the wholesaler. Since current provisions require payment of the FET 15 days following the end of each half-monthly tax period, distillers are paying a burdensome FET well before the product reaches the retail level.

Based on a comprehensive survey of wholesalers, about 60 days elapse between the time a shipment of distilled spirits leaves a supplier's warehouse and the time it leaves the wholesaler's warehouse. These 60 days—the period between initial shipment by the supplier and shipment by the wholesaler—may be regarded as "nonproductive."

Consequently, the distillers request that payment of the FET be deferred a period of time long enough so that payment of the FET by the supplier approximates the date of shipment from the wholesaler to the retailer. Since the current FET payment provisions require remittance 15 days following the close of the tax period, distillers request that payment be deferred an additional 30 days.

This additional 30-day deferral is nothing more than a lag, not a reduction, in revenue to Treasury. Based on current levels of FET receipts and short-term treasury bill rates, the cost to Treasury of financing the lag in FET receipts would be about $1 million per day. Since the distilled spirits industry will be saving about $1.2 million per day (this cost is higher because private industry must pay higher interest rates), revenues from corporate income taxes will rise. These additional corporate taxes will reduce the net cost to Treasury to about $.5 million per day. Thus, total cost to Treasury of the additional 30-day deferral will be about $15 million.

Sincerely,

JOHN F. MCCARREN,
General Counsel.

EXHIBIT 1.—*Cost/benefit analysis*

Extension of deferral period:	*Millions*
Cost to government	$13.0
Savings to industry	18.0

All in bond:	
Cost to government	.....
Savings to industry	.....
Repeal of Rectification tax:	
Cost to government	4.0
Savings to industry	4.0
Extension of all-in-bond concept to wholesale level: [1]	
Cost to government	6.5
Savings to industry	9.0
Total costs/savings if all items enacted:	
Cost to government	23.5
Savings to industry	31.0

[1] Assumes grace period for all products matches current grace period extended to bottled imports shipped to wholesalers (15 days).

NOTE.—The cost/savings differential stems from the Treasury's ability to borrow at lower interest rates than industry.

Mr. JENKINS. Mr. Leo Vernon of the Independent American Whiskey Association, Publicker Industries, the Ad Hoc Committee and Medley Distilling Co.; Mr. William J. Schieffelin III, Distilled Spirits Committee for International Trade; and Mr. James H. Lundquist, counsel.

If we can have the entire panel to come forward.

Mr. VERNON. I think we are a separate panel.

Mr. JENKINS. Very well. If you will, please identify yourselves for the record.

STATEMENT OF LEO VERNON, ON BEHALF OF INDEPENDENT AMERICAN WHISKEY ASSOCIATION; AD HOC COMMITTEE OF U.S. DISTILLING COMPANIES; PUBLICKER INDUSTRIES; AND MEDLEY DISTILLING CO.

Mr. VERNON. Thank you.

Mr. Chairman, my name is Leo Vernon and I thank you and the members of your committee for the opportunity to appear at this special hearing. I am speaking on behalf of the Independent American Whiskey Association which represents 42 small- and medium-sized distillers and bottlers who import and bottle foreign spirits and for an Ad Hoc Committee of seven large U.S. distilling companies. I am also appearing for Publicker Industries, a Connecticut company with plants in Pennsylvania and Louisiana, and Medley Distilling Co., a Kentucky distiller.

I am going to talk about the wine gallon you have heard so much about and the wine gallon that quite justifiably you may be tired of, so I hasten to assure you that my primary purpose in appearing here today is to support the program which you heard laid out this morning to help the domestic distilling industry which will certainly be deeply hurt by the elimination of the wine gallon.

I believe the entire industry is supporting the plan and I hope it will be adopted but before getting to it I would like to address myself to the far-reaching effects of changing the wine gallon method. It will certainly hurt the small bottling industry; indeed some of them are going to be forced out of business. Much of our business depends on our ability to import bulk liquors, bottle them here, and sell them at modest prices. If you eliminate the wine gallon, we estimate that more then half the bottling now done in the United States will be done in Canada, Scotland, Mexico, and other countries.

The loss of American jobs has been estimated by the International Brotherhood of Teamsters at 25,000. A few years ago two Scottish labor unions stated that the elimination of the wine gallon would create 6,000 new jobs in Scotland. If we add approximately 5,000 new jobs in Canada, and several thousand in Mexico, we are more than halfway to the 25,000 figure.

American bottlers use 410 million bottles to bottle the liquors we import in bulk. If that bottling is moved abroad, we will lose not only the jobs in American bottling plants but also jobs in the bottling machinery industry, the glass manufacturing industry, the carton manufacturing industry, and so on. Now on top of the loss of jobs, the United States will also lose $120 million a year in distilled spirits taxes and duties, the greater part of which will benefit two Canadian companies and a handful of Scottish companies.

Why, then, should we be changing the wine gallon? Foreign distillers claim that it constitutes a trade barrier but this alleged barrier hasn't prevented the Scotch whisky industry from increasing sales in the United States tenfold in the past 40 years and Canadian distillers from increasing sales sixfold. Let's look at what happened in 1978 alone. Imports from the United Kingdom gained 13 percent but scotch bottled abroad amounted alone to $331 million, an increase of 28 percent over 1977.

Canadian whisky imports increased by 11 percent, Irish whisky by 38 percent, brandy by 32 percent, and rum by 23 percent. Yet last year the sale of American whiskys declined. How can it be said then that the wine gallon is a trade barrier? In the face of these enormous increases in imports, it is pretty obvious that the wine gallon is not a trade barrier at all.

Don't think for a moment that the American consumer will benefit from a change in the wine gallon. One of the Canadian distillers seeking the change assured the Office of the Special Trade Representative that it will not reduce prices because any such reduction would erode the status position of its premium-priced products which sell for $3 or $4 a bottle more than Canadian whisky imported in bulk and bottled here. Over the past 40 years the United States has reduced the duty on Canadian and Scotch whiskys by about $10 a case and never has 1 cent of the saving been passed on to the American consumer.

So we ask again, why should we be making the change? We were told that the elimination of the wine gallon was the linchpin of the negotiations with the Common market and would lead to increased sales of U.S. agricultural products in Europe. We found it somewhat surprising that by the simple expedient of offering the better part of $120 million a year to two Canadian distillers who also own whisky plants in Scotland and to a handful of Scottish distillers we were able to persuade the rest of Europe to increase its purchases of U.S. beef, poultry, rice, fruits, and tobacco. Another surprising aspect of these negotiations is that the Canadian Government has not offered the United States any real concessions notwithstanding our generosity to their distillers.

Nevertheless, I must acknowledge the possibility that this committee will accept the linchpin theory and will decide to eliminate the wine gallon. In that event, however, I think it necessary that

this committee provide some assistance to American distillers to reduce the severe impact that will result. On behalf of the 50 companies which I represent, I ask only that we be given the same right now enjoyed by all foreign distillers with respect to the time of payment of distilled spirits taxes.

Many of you may be unaware that foreign distillers do not actually pay the distilled spirits tax; it is, in fact, paid by their American distributors or wholesalers when they remove the goods from customs bond. We ask the same privilege—that American distillers be able to ship their bottled liquors in Internal Revenue bond to their wholesalers and have them pay the tax when they withdraw the goods from bond. This would give us equality with foreign distillers. Since we realize that putting such system into effect will take perhaps 1 year, we ask that we be given immediately an additional 30 to 45 days to pay the tax.

We are told that the Treasury Department is opposed to this because a deferral for 30 days will cause a one-time lag of approximately $260 million in tax collections. Let us see how that will effect the budget. To replace this deferred tax, Treasury might have to sell $260 million in new bonds at a cost of about $24 million a year in interest but if American distillers don't have to finance this tax for the U.S. Government as they now do, they will be able to save as much as 15-percent interest on the $260 million or about $40 million.

Since the U.S. Treasury collects 46 percent on any additional income earned by American distillers, the Treasury would gain in income taxes about $18 million from the industry. Moreover, the Treasury will gain other revenue in addition to the $18 million. Ambassador Strauss has indicated that agricultural products in the magnitude of $3.8 billion will be benefited by the Trade Agreements. If this does in fact occur, the additional revenue will far exceed the relatively insignficant one-time loss to Treasury that I have mentioned. In any event, it will be insignificant to what we are giving to foreign distillers.

In closing, I would like to emphasize that our industry proposal will in no way diminish the benefits to be gained by American farmers through the Trade Agreements or in anyway impair the value of the concession made by Ambassador Strauss. Indeed, a healthy American distilling industry will be able to continue its purchases of corn, rye, and barley grains from U.S. farms. However, without your help in softening the effect of the U.S. agreement to eliminate the wine gallon method, U.S. distillers will be deeply hurt and so will American farmers.

I thank you for the opportunity of appearing here and if I can answer any questions, I would be very happy to do so.

[A newspaper article follows:]

GLASGOW HERALD Wednesday April 11 1973

Campaign to create 6,000 more Scotch whisky jobs

By IAN IMRIE,
Our Industrial Editor

A new campaign, which if successful could bring 6000 more jobs to Scotland, is being mounted by the Scotch whisky industry and the General and Municipal Workers' Union.

While they appear to be working independently of each other, both groups are exerting strong pressure to try to persuade the Government that action must be taken to change an American law which [illegible] that whisky imported in a bottle has a [illegible] than the same Scotch product imported to the United States in bulk and bottled there.

The GMWU are raising the question with Scottish MPs and at next week's annual conference of the Scottish Trades Union Congress. The Scotch Whisky Association have been trying to have the position changed for years and are now having talks with the Department of Trade and Industry.

DISCRIMINATION

An official of the association said last night: "The Department are currently looking into this matter to see if they can assist us. The discrimination is not against Scotch but against whisky imported in a bottle."

Mr George Robertson, to the United Kingdom Government.

While it was Britain's biggest dollar earner and annual production, was nearly 170 million proof gallons, only 23,000 out of two million Scottish workers were engaged in producing, distilling, and packaging whisky, which made it only fifth in the Scottish industry employment league.

About 11 million proof gallons are exported to the United States each year in bulk, compared to about 21 million proof gallons in bottles.

Mr Robertson said: "Although output of whisky is continuing to grow at a considerable rate, only one new major bottling hall complex has been built in the past five years meaning, at best, that employment in the industry has stayed static.

"More and more of our most famous national product is being sent to the US and elsewhere in anonymous tankers of bulk blended whisky to boost foreign bottling interests. It should be remembered that employment in the whisky industry is not concentrated in the distilling side but in the bottling process.

"This union calculates that by exporting bulk blends of whisky to the US in present quantities it costs Scotland between 5000 and 6000 jobs."

BEST COPY AVAILABLE

Mr. JENKINS. Thank you very much, Mr. Vernon, for your very fine statement.

Do you have any questions at this time, Mr. Rostenkowski?

Mr. ROSTENKOWSKI. No questions.

Mr. JENKINS. Mr. Cotter.

Mr. COTTER. Thank you, Mr. Chairman.

I want to congratulate you on a fine presentation, Mr. Vernon.

A change from wine gallon to proof gallon will mean approximately a $120 million windfall to a certain group or foreign based importers, is that correct?

Mr. VERNON. Yes.

Mr. COTTER. So what you are attempting to do is to enact this program, so to speak, to give American distillers somewhat of a—well, put them in a better position competitively than they would be if we didn't enact it because of this windfall which would go to the foreign distillers; is that correct?

Mr. VERNON. That is exactly so, Mr. Cotter.

Mr. COTTER. It will not be totally equitable but it will give us some help in this country.

Mr. VERNON. Yes; very much needed help.

Mr. COTTER. Thank you.

That is all I have, Mr Chairman.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I, too, would like to congratulate you for a very fine presentation.

I have a great concern with our domestic industry but particularly the small bottlers that you represent, and you state that this change in tax treatment will put some of them out of business. But the picture that you paint is so bleak even without this change in tax treatment that with the increasing share of the market for imported spirits and the declining share of the market for domestic spirits, wouldn't a lot of them close anyway with or without this change in tax treatment?

Mr. VERNON. Well, there is no doubt of that. In a competitive market there are some that survive and some that don't. Inevitably the marginal producer in any industry may go under. But we are in this situation: Many of them have a viable business, they live off it and it represents a certain amount of income to them and their small stockholders. Since we are making a rather substantial change, some of these marginal people will go under where if no other change were made they would be able to survive. The wine gallon has been in effect for over 100 years and regardless of the merits or the demerits of the system, businesses have been built up in the shadow of that protection and would continue perhaps for another 30 or 40 years if a big blow like this did not come along.

Mr. VANDER JAGT. With respect to the program that you have endorsed and that others have testified for this morning to soften the blow, if we make the change will it soften the blow enough to save some of those concerns and make the difference between their remaining in business rather than going out of business?

Mr. VERNON. Yes. As a matter of fact, this relief is vital to the small man as compared with the larger producer. The larger producers can borrow money, their profit margins are larger than the small chaps, and if there is a little more interest burden perhaps

they can get by. To the little man who has to borrow money at 15 percent, you know, it is prime plus, and 20-percent balances, so that his effective rate can be 15 or 16 percent. To carry the tax is a very substantial thing to him and if he can be relieved of the need to borrow at 15 percent, the amount of distilled spirits tax necessary to carry his low price goods it will make quite a difference to him. This is a burden that the foreign distiller who makes a much larger product does not carry at all.

Mr. VANDER JAGT. Thank you very much. I think you make a very good case.

Thank you, Mr. Chairman.

Mr. VERNON. Thank you so much for the opportunity.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. No questions.

Mr. JENKINS. Mr Guarini.

Mr. GUARINI. Can you spell out for us why our liquor industry seems to be constantly losing ground against foreign competition? What are the selling factors in that? Is it the exotic, that our people like to drink foreign made products? Is it that the cost of our industry is not competitive with some other parts of the world like Scotland, or is it the superiority of their product? Could you give me an insight into that, sir?

Mr. VERNON. Yes. Well, I hope so. I have had certain views on this for the last 32 years as to what is wrong with the American industry. In the first place there are changing tastes and inevitably no matter how good your product is the public is going to change and it will not want next year what it may have wanted 5 years ago so that the one trend which is very clear is the trend toward life.

Now the American bourbon is required by law to be made heavy which is another thing I had quite a scrap about with the governing agency. It is required to be put in new wood. A new barrel at the present time is $70 apiece, which when used cannot be used again, and it is sold to the foreign distillers for practically nothing. The new barrel gives bourbon a heavy flavor which perhaps could be lightened if the regulations were changed. My own feeling is that the trend toward lightness, toward vodka and gin which have very little favor compared with whiskey, is something we cannot blame on anybody.

The public is going in that direction and it has the right to have that so I cannot say that the foreign producers have taken advantage of anything in particular in order to gain the dominance that they have now. That is a trend but their cost of production is much lower because of our regulations and since they don't have to carry the tax their cost of doing business is so much lower and then of course there is always the prestige of import because there is no question that now in our affluent society the label "imported" has a prestigous connotation and it is going to give them an advantage.

So regardless of all the factors that come to it, the bottom line is this. We are in trouble whatever the reasons and a severe blow like this is just going to hurt us much more and accelerate the demise of the remaining American distillers. Now I don't see bourbon totally disappearing or blends totally disappearing. They will reach their level and presumably stay with a little help from the regula-

tions but at this time an added blow is something that will hurt us very much and what we are asking for is something that we should have had a long time ago anyway.

We are only asking to pay the tax the way the foreigners have been doing for 40 years. So we say, all right, give us now what we should have had 40 years ago because you are going to give them so much more that they don't need but again if we are going to be sacrificed on the linchpin theory, very well, let's try to keep us from being hurt too much.

Mr. GUARINI. Then there are things administratively we could do to dress up our act to be in a better position?

Mr. VERNON. Yes, indeed; and one thing is to give us an immediate 30-day extension which could be done administratively to pay the tax.

Mr. GUARINI. Is the bottle industry a growing industry in our country? Does it affect other than just distilled spirits? Is it a growing, sound industry in our country today?

Mr. VERNON. The bottling industry?

Mr. GUARINI. Yes.

Mr. VERNON. Indeed it is a very important industry in that many industries related to it are very important. I was just thinking if we eliminated 410 million bottles in this industry that travel from American glassmaking plants to American bottling plants and all those 410 million bottles are no longer produced in the United States but are produced abroad—of course not 100 percent are going to be gone but let's assume that—I was trying to figure out how many trucks we would not produce to carry those bottles from the glass factory to the distilling plant and how many teamsters would be unemployed who presently carry those 410 million bottles.

It is so easy to get up a study to say what this study says but I have found in the past there have been many academicians who have made studies of industry and I have had only two things about academician studies of industry where they have not been in the industry. They are very much like the fellow trying to describe a room by looking into the keyhole, they are generally wrong. The other thing is they generally come up with the conclusion that the people who pay them their fee for the report want them to come up with, they show that flexibility. So when we talk about the loss of jobs that we heard here, I can discuss it because we have had other hearings and other professors with other reports and they showed the same lack of insight as this one.

Mr. GUARINI. Thank you for your thoughtful and splendid presentation, sir.

Mr. JENKINS. Mr Lederer.

Mr. LEDERER. Mr. Vernon, I thank you for your testimony. I am proud of our Philadelphia lawyers, although I am not one myself and I am also proud of that.

A point that I am interested in is the effect on our State and local taxes, and the possible loss of revenues to our State and local governments. Particularly, say, with your industry right in our home city; our tax base is going to erode. I am not satisfied with the report that Treasury gave to us, and I would be interested to know what the industry can tell us about the effect the elimination

will have, on local revenues. I know it is going to be terrible in Puerto Rico. Anything your industry could give us, I would like to champion that cause.

Mr. VERNON. Thank you. I think we can get something together and we would be delighted to submit additional supplemental information.

Mr. LEDERER. Thank you.

[The material follows:]

Philadelphia, Pa., April 27, 1979.

Hon. RAYMOND F. LEDERER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN LEDERER: I was delighted to meet you last Wednesday at the hearing on the wine gallon issue and was greatly impressed by your interest in the problems of Pennsylvania distillers.

You asked that I advise you as to the effect on state local revenues in the event that the elimination of the wine gallon adversely affects the industry. In the past two days I have been able to obtain information in this regard from three Philadelphia companies—Publicker Industries Inc., Kasser Distillers Products Corp. and Charles Jacquin et Cie. These companies pay the following taxes to the City of Philadelphia: real estate, use and occupancy, general business, sales and use and wage tax. In addition they pay to the Commonwealth of Pennsylvania the following taxes: capital stock, unemployment, production, corporate net income and withholding on personal income. The taxes paid by these three companies to the City of Philadelphia amounted last year to approximately $1,200,000 and taxes paid to the Commonwealth aggregated more than $1,500,000. All three companies devote a considerable part of their business to bottling imported liquors and selling them at modest prices and would be affected most deeply by the elimination of the wine gallon. Any adverse effect on them would of course diminish the City's and Commonwealth's revenues.

In addition to these three companies, there are the Michter Distillery in Schaefferstown, Pennsylvania and Schenley Distillers in Aladdin, Pennsylvania. These two companies also have a substantial number of employees and could be hurt by the trade treaty unless tax deferral relief is provided.

I earnestly hope that you and the other members of the Committee will support the industry proposal so as to achieve equality with foreign distillers relative to the time of payment of distilled spirits taxes on domestic liquors.

Sincerely yours,

LEO VERNON.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. Just one brief question.

Many of the jobs that you are referring to, Mr. Vernon, are jobs in a very capital intensive area, aren't they?

Mr. VERNON. Yes; they are.

Mr. SCHULZE. And they are not jobs that are easy to come by, you are eliminating a pretty substantial investment at the same time.

Mr. VERNON. That is right, and producing the heavy machinery which is needed. If you go down the line, it becomes geometric almost and each one relating to the other and I don't think that the report went back to see the domino relationship with all of that.

Mr. SCHULZE. Therefore, the impact of the elimination of one job is far greater than it might be in some other industry.

Mr. JENKINS. Quite so. I quite agree with you.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. Vernon, it interested me a moment ago when you talked about the whisky barrel problem. None of us want to see any domestic business go out of business, quite the contrary. We want to put you in as competitive a position as we can. If the Government can do something to relax its regulation or taxes, we owe you that.

I am not familiar with the distilling industry. Is this an FDA regulation that you cannot use this barrel again or who?

Mr. VERNON. It is the regulation of the Bureau of Alcohol, Tobacco, and Firearms Division. I want to point out, however, that there are some technical aspects to the problem. Many years ago the industry itself was divided on the subject of the new barrel. The preprohibition practice was to have some new barrels and some old barrels and nobody cared whether you used an old barrel or a new barrel, and the only reason they used the new barrel was they used to ship in barrels at that time, rather than in bottles. Bottles was a late development but nobody paid any attention to the barrels. After repeal, as you can see, the industry is a very competitive industry. Some people make bourbon, and some people are blenders, and some people make gin.

When you talk about the industry, you are talking about the industry with a lot of factions in it which are competing with one another. Back in 1935, one faction of the industry was trying to put the other out of business and insisted that they adopt a regulation that all bourbon be made entirely in new barrels. That is how that came to be. Since that time, we have been trying to have hearings held which will modify that but there have been some members of the industry who have insisted that we adhere to that despite the fact that it produces a high cost and a heavier whisky because obviously some people who are successful in their bourbon business would not like to encourage the influx of other people who might be able to produce bourbon more cheaply.

Whatever it is, now that barrels have gone to $70 a barrel, which means that the advantage to foreign distillers is about $1 a gallon, I hope we have reached the point now where the Bureau will once more look into the problem of bourbon and its definitions and will modify its requirement so that a combination of new-barrel and old-barrel whisky—there is no question that bourbon requires a certain amount of new wood and, therefore, some new-barrel whisky is required to make bourbon but to make it in 100-percent new barrels I think is self-destructive and I hope the industry can get together in supporting a modification of that position.

Mr. MOORE. Let me ask you this. Should we be able to help you with the modification of that rule to let you do whatever you want to do concerning these barrels and you would reduce the competitive edge that a foreign distiller has by $1 a gallon, how would that compare with what we are about to do here in changing the wine gallon? Would that put you back about even?

Mr. VERNON. No; because not everybody is in bourbon. The ones that are going to be hurt the worst by this wine gallon thing actually are the small importers of foreign whisky who bottle it here so that the relief in the bourbon situation will help only the bourbon producers.

Many of the people I represent are small. They are not distillers, they are what are called rectifiers or blenders. They buy bulk whisky from others and they import Canadian whisky and Scotch whisky and thus they have a low, low overhead and don't have the extra expenses that the big distiller has. They are able to work on, say, $2 a case or $1.50 a case and get by. They would not be affected. They would be affected in this sense.

Let me go back. To the extent that bourdon is cheaper or could be more cheaper, we would be able to hold our own much more successfully both as to quality and as to cost so that it would be a very important thing but it would not take the place of what I am now saying with respect to the tax. The two are totally parallel, they are unrelated to one another. We need relief in many ways and the bourbon is one that the tax is the most pressing at this time.

Mr. MOORE. Mr. Vernon, you made the comment that you need relief in many ways. I would very much appreciate it if you would submit to us additional ideas or ways that we could make you competitive to what I am seeing from the MTN which is in fact that your industry is one of many that may be adversely affected. The whole idea is many of the adverse effects you are suffering from may well be governmental action regulations or tax laws or whatever that we can remedy to make you competitive. So maybe, perhaps, instead of trying to protect some industries we ought to be looking the other way in terms of trying to make them competitive and I think we have the power in the Government to do that in some cases. I would appreciate you letting us know what other forms of relief you will need because certainly we want to see you stay in business if the MTN passes and if we cannot come about with this tax change that you are asking for.

Mr. Chairman, I ask that the record be held open for this.

Mr. VERNON. That is the most welcome statement I could hear. I would be delighted to submit the information. I could submit it almost off the top of my head but I would rather spend a couple of days on it, and I think you very much for the opportunity.

Mr. MOORE. I would appreciate your sending me a copy as well as sending it to the chairman of the committee.

Thank you, Mr. Chairman.

[The material follows:]

Philadelphia, Pa., April 27, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VANIK: At the hearing before the Subcommittee on Trade held on April 24, Congressman Moore suggested that I list for the Subcommittee any regulations or statutes which unnecessarily restrict operations by American distillers.

There are, in fact, a number of areas where the regulation of the distilling industry could be liberalized without any jeopardy to the revenue or to the American consumer. However, the Treasury Department, at the instance of OMB, has proposed, and the distilling industry is supporting, a plan to permit all distilling, blending and bottling operations to be conducted in bond. If such a plan is adopted and a reasonable code of regulations is adopted by the Treasury Department it would eliminate most of the unnecessary restrictions which affect our industry's operations. An all-in-bond system would give us the same flexibility which Canadian and Scottish distillers now enjoy in their own countries.

Therefore, I would like to defer the examination of the problem until such time as the all-in-bond system is adopted and definitive regulations are written. If, at that time, it appears that the regulations are unduly restrictive, I would like the opportunity of calling the matter to the subcommittee's attention for whatever assistance it may provide.

There is one area which will continue to trouble the American distilling industry, and that is a regulation, administered by the Bureau of Alcohol, Tobacco and Firearms under the Federal Alcohol Administration Act, which requires that bourbon whisky be aged exclusively in new white oak barrels. In the early years after the repeal of prohibition (1934) certain powerful distillers sought restrictions on the labeling of whisky which they felt would hurt their competitors more than themselves. Thus in 1936, certain distillers persuaded the predecessor to the Bureau of Alcohol, Tobacco and Firearms to adopt the new barrel requirement for bourbon. Prior to the adoption a competing distiller had developed a good market for bourbon aged partly in old barrels. The regulation effectively stopped the sale of this brand since it could no longer be labelled "bourbon".

For many years, a number of distillers opposed any change in this regulation, feeling somehow that the restriction would prevent competitors from marketing a less costly product. We have now reached the point where the supply of white oak has diminished substantially and the demand for white oak for flooring, furniture and other uses is so great that the cost of a new barrel is $70 and some distillers cannot satisfy their immediate barrel needs.

It is ironic that the new barrel requirement not only imposes a cost burden of about $1.25 a gallon which foreign distillers do not bear, but it also serves to impart to bourbon whisky a heavy flavor at a time when the lightness of foreign whiskies makes them more attractive to consumers then the heavier whiskies.

Once the Congress has resolved all of the issues relating to the trade treaty it is my intention to ask the Bureau of Alcohol, Tobacco and Firearms to hold a hearing to review the new barrel regulation. At this moment, the needs of the industry with regard to the deferral of the distilled spirits tax are of vital importance and should take precedence over any other issue affecting the industry.

I would like to express my appreciation once more for the patience and interest which you and the other members of the Committee showed with relation to the problems which will flow from the elimination of the wine gallon. If the domestic industry is allowed to ship its case goods in bond to wholesalers as foreign distillers now do, some of the adverse effects of the wine gallon elimination will be offset and greater equality with foreign distillers in the American market will be established.

Sincerely yours,

LEO VERNON.

Mr. JENKINS. Thank you very much for a very excellent presentation Mr. Vernon.

Mr. VERNON. Thank you, Mr. Chairman.

Mr. JENKINS. I see that Congressman Udall has entered the hearing room. We would be delighted to hear our colleague from Arizona.

Welcome to the committee, Mr. Udall.

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. UDALL. Thank you, Mr. Chairman.

I hope it won't be too much of a shock to turn the committee's attention from bourbon to tomatoes. I am sure Mr. Vander Jagt will survive the transition.

Mr. LEDERER. Mr. Chairman, I would go along with that if they are Jersey tomatoes.

Mr. UDALL. Mr. Chairman, I will be very brief. I have a narrow subject but one of critical importance, I think, not only to Arizona and New Mexico but to the people of the United States. This committee and the country's affairs are going to be dominated for the next few years by how we make the transition from cheap energy sources to very expensive and diverse energy sources. One

of the aces in the hole, one of the most critical things before us, is to develop our relationship with Mexico and it deals with all the sensitive questions, not only the newly found oil and gas suppliers that they have which may rival Saudi Arabia in volume but from the Mexican standpoint, there is trade and commerce and immigration and all of these sensitive questions. Our Government is about to kick the Mexicans in the teeth at about the time when these negotiations are going on and it is unnecessary, it is damaging, therefore, I propose a brief amendment or a short amendment to correct this situation.

I am here today to urge the subcommittee to take whatever steps are necessary to prevent the Antidumping Act from being used as an unnecessarily protectionist device to eliminate all existing imports of perishable produce. Although I am quite certain that the act was never intended to be used in this way, the Treasury Department is apparently interpreting the act in a current case so as to require each individual sale of imported perishables to be made at above its full cost of production. That interpretation of the act is nothing less than preposterous.

It ignores legislative history and economic reality. It threatens the jobs of hundreds of thousands of Mexicans, many of whom will be forced to seek employment in this country. It threatens the sole industry and economic heart of an Arizona city that is dear to my heart. And it promises to eliminate nutritious foods for many Americans in many months of the year while raising vegetable prices generally by eliminating a healthy competitive force from the marketplace.

An interpretation of the act which would require each single sale of produce to exceed cost of production does not square with the reality of agricultural economics. Indeed, the Robinson-Patman Act, the domestic antiprice discrimination statute, specifically provides that there shall be no liability for price changes resulting from the actual or imminent deterioration of perishable produce or other factors affecting market prices. it is simply insane to suggest that a farmer who has a deteriorating crop on his hands is not going to sell it for what ever he can get and yet the Treasury is about to rule that every single sale, regardless of the time of year and the state of the market, has got be made above the cost of production.

I think the Treasury Department fails to understand that growing tomatoes, and that is the major product we are talking about, is not like manufacturing television sets. you cannot stop production by throwing a switch nor can you put your product in a warehouse when prices are low. No produce grower—in Mexico or in Ohio—would expect to recover his full costs, even if he knew what they were, on every sale. Below cost sales from time to time are a necessary and perfectly normal part of the agriculture business.

The investigation in which Treasury is considering this approach involves five winter vegetables—tomatoes, eggplant, squash, cucumbers, and peppers—imported from Mexico. However, the precedent set in this case could and no doubt would be applied to all other imported vegetables, as well as fruit and other perishables. Imports of perishables would dry up since no importer could live

with a requirement that he sell everything above full cost when he cannot even find out what the cost is until the end of the season after he has made his sales. Predictions based on past performance would be no protection for costs in this business vary considerably from year to year and from one grower to the next and yet each and every sale would have to be above the cost of production.

The impact on the American consumer will be very harsh. Half of the winter vegetables that we eat are imported. Since domestic supplies cannot possibly fill our entire needs, the result of blocking imports will simply be to drive up prices and create scarcities of this important source of nutrition.

The current dumping case is the latest in a series of attempts by Florida growers to cut off winter vegetables supplied from their only competitors in Mexico. They have in the past persuaded the Agriculture Department to impose discriminatory size restrictions which were thrown out by the courts and they have tried, so far unsuccessfully, to obtain legislation that for no good reason would require the Mexicans to pack their tomatoes in the same kinds of crates and boxes and manner that Florida has chosen.

These efforts are not defensive. It is not as though the Mexicans have been cutting sharp inroads into the U.S. market at the expense of Florida. Rather, Mexico has helped develop the U.S. market and now their competitors want to force them out so they will have a monopolistic control. The fact is that Mexico's and Florida's share of the U.S. vegetable market have remained quite stable over the past 10 years. Florida's production of the five vegetables in question has been trending steadily upward. Tomato production, for example, was 36 percent higher last year than a decade earlier. The acreage planted is virtually the same as it was 10 years ago despite greatly increased productivity. There is plenty of room for both suppliers.

The Florida growers have found a quirk in the law which coupled with a compliant Treasury Department will enable them to wall off import competition entirely. We should find that unacceptable. Unless we remedy that quirk in the law, however, the Florida growers will be free to increase prices to the consumer unchecked by any competition from any other source.

Florida does have reason to run scared over the long run but this has nothing to do with imports. We have here, and I think it has been submitted to the committee, a report from the University of Florida, the head of their food and agricultural science, who has pointed out that tomato cost per acre rose from $390 a year to $702 a year and he predicts they will rise to $1,300 by 1985 because it takes seven times as much fertilizer in the poor Florida soil to produce these kinds of crops. His conclusion was that the farmers eventually are going to have to switch to other less energy dependent crops and when this happens Mexico will be our only source of winter vegetables.

How can we be so absurd as to allow an act which obviously was not meant to be applied to perishables to be used to discourage imports from Mexico and to drive the farmers there into other lines of business and sour and poison our relationship with our great neighbors to the south? I cannot believe that Treasury is obliged to apply the law in this unthinking fashion without regard

to every day realities but since it seems bent on this approach we in Congress must rewrite the law to avoid a ridiculous and costly result.

In closing I would call the committee's attention to three things. There was excellent article in the New York Times on Sunday by our colleague Chairman Henry Reuss of the Banking Committee entitled "A Word On Behalf of the Mexican Tomato" which reviews some of the advisory and comes down hard in favor of the position I have just argued.

Also, I would advise the committee that our colleagues Mr. Frenzel and Mr. Mikva have both written to the State Department and to the administration on this question in strong support of the modest amendment that I am suggesting to the Antidumping Act.

Thank you, Mr. Chairman. I appreciate very much being heard this morning on this important issue.

[Attachments to the prepared statement follow:]

[From Lake City Reporter, Mar. 6, 1979]

FLA. FARM PRICES TOO HIGH BY 1985, RESEARCHERS PREDICT

TALLAHASSEE.—Florida's agricultural industry already one of the most energy dependent produce industries' in the world, will cease to be competitive with the rest of the nation by 1985, agricultural researchers warned state senators Tuesday.

The head of the University of Florida's Institute for Food and Agricultural Sciences (IFAS) told a Senate Ways and Means Subcommittee that Florida's agricultural production methods are already obsolete, and have been since the Arab oil embargo of 1972 brought up an end to the era of cheap, plentiful energy.

IFAS Vice President Ken Teefertiller asked the subcommittee for an additional $10 million in research funds over the next two years in an effort to "redirect," the state's agricultural research to find a low-energy, non-fossil fuel based means of production.

"Without such adjustments, by the mid-1980's Florida's national agricultural ranking will tumble from the top dozen to the lower third, greatly hampering our overall economy," Teefertiller told the senators.

That warning about the health of the state's second largest industry comes on the heels of recent predictions that Florida's largest industry, tourism, may be crippled if rising energy prices forces the nation into stricter conservation methods.

"By the most conservative estimates, world oil and natural gas prices will at least double by 1985," and IFAS report to the senate predicted. "Florida, which uses more oil and natural gas per acre for agricultural production than do other states, is hit much harder by each new price increase, eroding any competitive edge the state once enjoyed."

Teefertiller said that Florida farmers have become so dependent on energy consumption because of two basic factors.

First, the state's infertile, porous soil requires seven times more fertilizer per acre than the national average. And second, the state's subtropical climate which allows for the production of a greater variety of crops than most states, also provides a year-round haven for pests and diseases.

"Almost all of the state lies below the frost line," Teefertiller said. "And without an annual hard freeze to wipe out the pests, we are left pretty much dependent on petroleum-based fertilizers."

Teefertiller said that in 1972, the state's citrus growers were spending $87 an acre on energy costs, while its tomatoe growers were spending some $393 per acre.

By 1977, citrus growers were spending some $133 an acre, and energy costs for tomatoes had soared to $704 per acre.

He predicted that by 1985, under the state's present technology, citrus will cost $708 per acre to produce, while the energy costs for tomatoes will have risen to $1,307 an acre.

Teefertiller's research program, which calls for a 16 percent budget increase over the next two years, calls for a stepping-up of several on-going IFAS research efforts. Including:

The genetic improvement of plants, or "plant cloning" in an effort to develop strains of disease-free crops less dependent on pesticides.

A "biological nitrogen fixation," program, in which scientists are treating plants with bacteria, enabling the plants to produce some of their own fertilizer from the nitrogen in the air around them.

An "integrated pest management," program, which depends on the biolcgical control of pests rather than on their chemical eradication.

Along these lines, IFAS faculty have recently introduced parasite wasps in the South Florida area to control the citrus blackfly problem there.

The use of alternate energy sources, including solar crop drying techniques, and "biomass" conversion on the use of plant and animal waste-to fuel production.

Teefertiller said that one problem the state will face in the future will be in convincing farmers that some crops they have been growing for years should be sacrificed in favor of different, less energy-dependent produce.

"How are you going to tell the farmer in Homestead that he's got to stop growing tomatoes and start growing eggplants?" subcommittee chairman Curtis Peterson, (D-Baton Park) asked.

Teefertiller replied that it may be necessary to set up "development commodity" committees to work with state agricultural extension agents in convincing the industry to change.

"I am convinced that South Florida is going to become increasingly more important to the nation as a main source of winter crops, unless we are to depend more and more on Mexico and Central America," Peterson said. "And if that means growing less sugar cane in favor of different vegetables, then we have to start making those decisions now."

[From the New York Times, Apr. 22, 1979]

A Word On Behalf of the Mexican Tomato

(By Henry S. Reuss)

Washington.—The tomatoes Americans find in their supermarkets every winter frequently taste like pasteboard.

This is because Florida tomatoes are picked when green and gassed to make them look ripe.

That's a shame, considering that Mexico produces beautiful vine-ripened tomatoes all winter long and would love to ship them north in far greater quantities than we permit. Unfortunately, we treat the Mexican tomato like an illegal alien, with regulations and restrictions intended to make it as tough as possible for the tomato to cross the border and find its way to United States tables.

Cuba used to supply the bulk of our winter tomatoes. But when Fidel Castro declared himself a Marxist-Leninist, we responded with an embargo on trade, including tomatoes.

Florida then decided to get into the business in a big way.

The United States Corps of Engineers had drained the huge wetlands between Lake Okeechobee and the Everglades. The Florida tomato is grown in this reclaimed limestone and coral soil.

(The Corps of Engineers project has had an unfortunate side-effect, as Corps of Engineers projects sometimes will. Water now drains costly into the ocean before reaching the Everglades, thus imperiling a unique national treasure. John Good, superintendent of Everglades National Park, says: "We're worred, The vital aquifer is no longer being replenished as it used to be. Eventually the 'Glades' could be destroyed.")

Back to the tomatoes. Instead of being picked frequently, as they ripen, they are mass-harvested only three times a year, to save labor. Because many of the tomatoes are green and unripe, they are placed in methylenegas chambers for 24 to 36 hours until they turn red, or at least pink. Such premature picking robs the tomato of its taste and much of its nutritional value. In a study of tomato maturity, Professors C. B. Hall and E. D. Gull, both of the University of Florida, found that as much as 78 percent of Florida gassed-green tomatoes were inmature.

Mexican tomatoes, by contract, are harvested every day during the season, as they ripen.

The Florida growers' organization—the Florida Tomato Committee—naturally tries to keep Mexican tomatoes out of the United States.

In the late 1960's, the committee persuaded the Agriculture Department to decree larger minimum sizes for vine-ripened tomatoes than for gassed-green ones. The impact fell where it was intended, on the Mexican growers and their United States importers. In 1969, the importers went to the United States District Court presided

over by Judge John J. Sirica to have the Agriculture Department's order set aside. At the trial, the plaintiffs played a taped record of a Florida Tomato Committee strategy session, in which one of the largest Florida growers, Paul DiMare, was heard to say: "It will eliminate our competition and that's what we're trying to do. Let's face it, we're trying to eliminate our competition . . . We are mainly eliminating it out of Mexico." Judge Sirica, noting that this was the first use of a taped recording in his courtroom, invalidated the department's discriminatory regulation.

Since then, United States Government agencies have assailed the Mexican tomatoes with charges, never proved, that they are tainted with pesticides and deceptively packaged. Even the bureau of Narcotics has gotten into the act, periodically emptying whole truckloads of tomatoes at the border in vain searches for illicit drugs hidden among them.

The last Congress saw an unsuccessful effort to limit the number of tomatoes per packing crate. Currently, the Treasury Department is weighing the request of the Florida growers that the anti-dumping law be applied against Mexican tomatoes.

Tomatoes account for more than 5 percent of Mexico's exports, with some quarter of a million agricultural workers now growing them. As we exclude Mexican tomato imports, we invite uprooted Mexican tomato farmers and their families to try to make it across the border to add to the problem we already have with illegal immigrants. As Roel Garcia, Mexico's Foreign Minister, said recently, "If you put pressure on the tomatoes, then we will have more undocumented aliens going to the United States."

The great Mexican-American tomato war should cease. A peace treaty would mean not only that Americans could buy real tomatoes but also that one block to better United States-Mexico relations would be removed.

Mr. JENKINS. Thank you very much, Mr. Udall.

Mr. Guarini.

Mr. GUARINI. Mr. Udall, you are also making a case for all other kinds of products produced besides tomatoes?

Mr. UDALL. The amendment we are proposing relates to perishables. We want to treat perishables here the same way that Robinson-Patman treats them in domestic sales. It is simply dumb and and stupid and unjustified to have a rigid kind of rule about the cost of production for a perishable that might be totally applicable to shoes or television sets or something that is not perishable.

Mr. GUARINI. You made a good case for tomatoes and you say that should be extended to other perishables?

Mr. UDALL. Perishable imports.

Mr. GUARINI. Thank you.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to thank our colleague for shifting our hearings from bourbon to tomatoes. He has done it in his usual lucid and entertaining style.

Taking on the combined strength of the Florida growers does signal to me that our colleague has no intention of running in any Florida primaries in the near future. [Laughter.]

Mr. UDALL. Well, anybody who lost 14 primaries to Jimmy Carter has got to be humble. [Laughter.]

Mr. VANDER JAGT. As I recall it was 14 losses by a total of 3,400 votes in all 14.

Mr. UDALL. The people of Florida will not see me up and down that State, and I am not sure in the light of my position here today it would do much good if I did go down there.

Mr. VANDER JAGT. I do want to commend the gentleman. I think he makes a very good case and calls it forcefully to our attention. I think you make a good case for how absurd it is to try to treat

perishables as you would a television set and obviously on some individual sales they are going to sell it both ways.

The one concern that I have in correcting the obvious problem that you called so well to our attention, can it be done in such a way that it could not then be seized upon by the foreign government as a device to, on a regular basis, sell their products at below cost?

Mr. UDALL. My experts don't think so and I certainly would not want that to be the result and we will work with you very carefully in drawing the language tightly to see that we don't do that.

Mr. VANDER JAGT. I thank you for a fine statement.

Mr. UDALL. This committee always produces truth and justice and fights for the American way and I know I can count on you.

Mr. JENKINS. Thank you.

Mr. UDALL. Thank you, Mr. Chairman.

[The following was subsequently received:]

MAY 2, 1979.

Hon. CHARLES A. VANIK,
Subcommittee on Trade, House Committee on Ways and Means,
Washington, D.C.

DEAR CHARLIE: On Wednesday, April 25, I testified before the Trade Subcommittee on the urgent need to amend the Antidumping Act—which you will have an opportunity to do in connection with the Multilateral Trade Negotiation package—in such a way as to afford distinct treatment to imports of perishable agricultural goods.

An amendment of this sort is very important to me. I believe if you read my testimony, it will be important to you as well. Without such an amendment, virtually all imports of fresh produce will be eliminated due to an erroneous interpretation of the Antidumping Act which the Department of Treasury is about to make and which will treat agricultural and industrial goods alike, contrary to Congress' intent in passing the Act. Instead of ensuring fair competition for domestic producers, which was the real purpose of the Antidumping Act, an interpretation of this sort will guarantee a small group of winter vegetable growers no competition at all—to the clear detriment of the American consumer.

I understand that an amendment of the sort advocated in my testimony will be included on the agenda when you consider the MTN package. I urge you to support it. If it does not pass, American consumers will be denied high quality imported fruits and vegetables in the winter months of the year, and food prices inevitable will rise as a result of severe shortages. Moreover, our increasingly important relations with Mexico will suffer greatly but needlessly.

I have attached my statement to the Subcommittee, along with a copy of a recent New York Times article by our colleague Henry Reuss, both of which address the urgent situation presently facing winter vegetable imports.

If you have any questions on this matter, please do not hesitate to call me or Bob Reveles of my staff.

Sincerely,

MORRIS K. UDALL.

Enclosures.

A TALE OF TOMATOES * * * AND ECONOMICS

(By K. S. Kinney)

RACINE, Wis.—"You could call it a tale of two tomatoes," Henry Reuss told the receptive group from the league of Women Voters.

The tale was about a "Florida tomato industry which shouldn't be there at all," but exists only because trade barriers made economically and gastronomically superior Mexican tomatoes unavailable in the United States.

The tale also put the congressman from Wisconsin clearly on the side of the free trading angels and clearly with most of the league members attending the three day educational conference on foreign trade at the Wingspread Conference Center. He spoke Saturday.

Democrat Reuss used the tomato tale as a prime illustration of the folly of protectionism and its tendency to saddle American consumers with both higher prices—in this case, prices giving Florida growers higher incomes—and lower quality—in this case, leaving consumers with tomatoes tasting like pasteboard.

THE MORAL

The losses for both pocketbook and tastebud were forced on consumers by a U.S. industry that could supply the need for tomatoes in winter only because the growers were able to prevent the superior Mexican products from competing north of the border. Reuss said that besides harming the consumer, such protectionism encouraged illegal immigration by those Mexicans who could have found employment in a healthier Mexican tomato industry.

The moral of the story (at least the economic moral) was that " • • • the less developed world ought to be allowed to make more of the low cost goods we use." Reuss reminded his listeners that goods needed by lower income groups were those that faced high import barriers, forcing poor people to pay more for food, clothing and shoes.

It was a moral dear to the hearts of those—like most of Reuss' audience—who support the trade agreements. The league will probably be one of the few interest groups actively lobbying for passage of the agreements resulting from the "Tokyo Round" of trade negotiations now being concluded in Geneva.

CONGRESSIONAL VOTE

Congress will vote on the nontariff provisions, which generally call for a notable lowering of trade barriers, later this spring. Opposition is expected to be strong, especially from groups likely to be hurt from increased import competition—such as Wisconsin cheese producers who would face a higher quota for cheese imported from New Zealand.

The administration's problem is that while harm from the trade agreements will be concentrated in a few industries, benefits should flow to all consumers who would face lower prices and greater choice, but who undoubtedly would not organize themselves to lobby Congress.

The league undoubtedly would, as Reuss suggested when he ended his address by commending the agreements reached at Geneva and expressing his hopes for congressional passage—"with the help of the League of Women Voters."

And groups such as the league will concentrate on the wider public benefits of the agreements—those outlined by Ruess.

Mr. JENKINS. Next we have the Distilled Spirits Committee for International Trade, William J. Schieffelin III, and James H. Lundquist, counsel.

Mr. Schieffelin, your entire written statement will be made part of the record and you may proceed as you wish. You may give the entire statement or you may outline it for the committee.

STATEMENT OF WILLIAM JAY SCHIEFFELIN III, CHAIRMAN OF SCHIEFFELIN & CO., ON BEHALF OF DISTILLED SPIRITS COMMITTEE FOR INTERNATIONAL TRADE, ACCOMPANIED BY JAMES H. LUNDQUIST, COUNSEL

Mr. SCHIEFFELIN. Than you very much.

Mr. Chairman and members of the Subcommittee on Trade, I am William J. Schieffelin III, chairman of Schieffelin & Co., 30 Cooper Square, New York City, and appear before you today as a member of the Distilled Spirits Committee for International Trade. My firm imports wine and distilled spirits and I am the seventh generation of my family in a direct line from father to son to head our firm which was founded in New York City in 1781.

For the record I want you to know that the wine gallon method of assessing imported distilled bottled spirits has troubled my company for 111 years. Therefore, I appear before you today to register my support and that of all DISCIT members for the elimination of the wine gallon method of taxing imported distilled spirits. Each of

our member firms imports bottled distilled spirits, including Scotch whiskey, Canadian whiskey, gin, cognac, liquers and other products. It shoud be noted that DISCIT members account for over 40 percent of U.S. domestic production of distilled spirits. A list of our members is attached to this statement.

[The list folllows:]

Members: The Buckingham Corp., Kobrand Corp., The Paddington Corp., Renfield Importers, Schenley Industries, Schieffelin & Co., Joseph E. Seagram and Sons, Inc., Somerset Importers, Ltd., and Hiram Walker and Sons, Inc.

Mr SCHIEFFELIN. Mr Chairman, I have actively opposed the wine gallon assessment anomaly for more than 20 years. My firm has litigated the issue in the courts and strongly supported the administration in its efforts to negotiate settlement of this issue during the Kennedy Round of trade negotiations. Now, if reports I see are correct, Ambassador Strauss has succeeded in negotiating ample concessions for removal of this highly discriminatory tax. In view of the fact that your announcement No. 19 of April 10, 1979, outlines the precise discriminatory practices resulting from this statute, I will not burden the record with a detailed description of the law. I must say, however, that elimination of this form of taxation applicable to certain imported bottled spirits will have a salutary effect of importers and domestic producers alike. We believe that elimination of this major U.S. nontariff barrier to trade will help American products gain fair and equal treatment in major export markets.

Our economic studies of the industry relating to this issue have been submitted to members of the subcommittee and staff. Based on this information and on reports from DISCIT members we conclude that no major change in historic trade patterns relating to distilled spirits will result from the removal of the obsolete wine gallon basis of taxation. Additionally, we have found that there is little or no surplus foreign bottling capacity available at this time or in the foreseeable future. Accordingly, we do not see any negative impact on either the domestic distilling or the U.S. bottling industry. Without a doubt, American products already bottled in the United States will continue to be bottled in the United States. Also, abolition of taxation on additional water content in imported bottled spirits will, we believe, tend to moderate inflationary trends in the industry.

I do not have detailed information on the negotiations carried forward by the STR. However, we know that exports of American products will benefit from abolition of the wine gallon tax. Until conclusion of the Tokyo Round, U.S. distillers may have found it difficult to sell distinctly American quality products abroad, particularly in the European Community, because of certain limitations on advertising. Now, as a result of our negotiations, it is understood that advertising discrimination is very much a thing of the past. This is a beneficial concession within the distilled spirits sector. It is also understood that additional benefits to the United States economy are to be found in improved access for a number of American products, including tobacco, rice, citrus and preserved fruits and poultry products. We applaud the overall results of these negotiations.

In the subcommittee announcement of April 10 reference was made to repeal of the existing ratification taxes on domestic distilled spirits: the so-called all-in-bond approach. These two items apply to domestic production rather than imports and, therefore, are somewhat out of the scope of my expertise. Nevertheless, after checking with members of DISCIT, I can state that we support any changes submitted by your subcommittee which would help the domestic distilled spirits industry.

In summary, Mr. Chairman, I and my associates in the Distilled Spirits Committee for International Trade fully support elimination of the historic inequity of wine gallon taxation. We stand ready to assist you and your staff in every way. I will, of course, be happy to answer any questions you may have.

I would like to thank you very much for the opportunity of appearing before you and would like to submit for the record a statement to the Committee on Ways and Means of the United States House of Representatives on behalf of Hiram Walker & Sons, Inc., dated April 25, 1979.

Mr. JENKINS. Thank you. That will be made a part of the record.

[The statement follows:]

STATEMENT ON BEHALF OF HIRAM WALKER & SONS, INC.

Following recent press statements, Hiram Walker & Sons, Inc. has asked that the following statement be submitted on its behalf to the Committee on Ways and Means of the U.S. House of Representatives:

The closing of the Hiram Walker facility in Peoria, Ill. has nothing at all to do with the wine gallon/proof gallon issue currently being discussed as part of the overall trade package.

It is important to note that more than 80 percent of the distilled spirits produced and bottled in Peoria are made in the United States, and all products will continue to be produced and bottled only by American companies. The only reason for the closing of the plant was that it is an obsolete facility that would cost approximately $66 million to modernize. The plant is not closing immediately, it will be phased out over three years and during that time Hiram Walker will build a thoroughly modern $37 million facility in Fort Smith, Ark. Approximately 200 people will be employed initially at this facility. All products that are not produced and bottled in Fort Smith will be produced and bottled only by American firms. Hiram Walker is currently seeking to enter into business agreements with such companies.

In light of the large capacity and the substantial needs of Hiram Walker, it is unlikely that any one firm will be able to handle the bottling volume; and those firms that will handle the volume, will have to substantially increase their work force. It should be noted that Hiram Walker currently bottles some of its products under such arrangements. It might also be added that the bottling plants that could handle this capacity are located in numerous sections of the United States including the state of Kentucky.

Hiram Walker's current employees in Peoria will be assisted by the company in finding new employment in the area. Peoria is one of the few cities in the United States that has little or no unemployment problems, and major industries are planning substantial increases in their work force over the next five years.

Hiram management states unequivocably that it does not have any intention of bottling any distilled spirits currently produced and bottled in Peoria, outside of the United States. Many people continue to think of Hiram Walker only as an importer whereas in fact they do have and will continue to have a substantial production capability in the United States.

Mr. JENKINS. While I support the change in the bill, obviously I would have no objection to the tax changes that have been suggested by Mr. Purdon, an earlier witness before us, in the domestic industry.

Mr. SCHIEFFELIN. We would be very much in favor of anything which will assist the domestic industry, yes, sir.

Mr. JENKINS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I thank you for your testimony and for being here today.

You suggested that the domestic industry would not be threatened by this change away from the wine gallon method because there is no additional bottling capacity in foreign lands. I can assure you when earlier witnesses testified and showed headlines of 6,000 additional jobs that will be created in Glasgow, don't you think that if there is not the capacity that they will soon be able to develop the capacity?

Mr. SCHIEFFELIN. I was sorry to miss the earlier testimony due to a late flight. I am familiar with the headline to which you refer, sir. I think it unlikely in the present climate of investment opportunity in the United Kingdom that such eagerness that is expressed by the headline would become fact.

Mr. VANDER JAGT. You also said that this shift would help gain fair and equal treatment for our porducers in terms of exporting to other lands. We also had testimony earlier this morning that there are a whole variety of nontariff barriers that other lands have and that we have 1 percent of the market in Great Britain, one-tenth of 1 percent in France and less than 1 percent in Japan. Very little changes have been made in terms of arguing as to penetrate the foreign market. That would lead me to the conclusion, without pretending to know a great deal about it, that our producers do not have very fair and equal access to foreign markets.

Mr. SCHIEFFELIN. In response to that comment, sir, it seems to me that certain brands of American produced spirits have had some notable success amongst our trading partners abroad. This has been limited somewhat by the inability to advertise American whiskies in those markets, certain of them, as compared to either domestically produced spirits or spirits produced from other basic ingredients.

I believe some significant progress has been made in overcoming that barrier in addition to which I believe also some significant progress has been made in connection with the appellation of bourbon as being a distinctly American product. This happens to be a matter which I believe personally land my firm has believed for 198 years and we very much believe that cognac and sherry should be produced only in Spain and that bourbon should be produced only in the United States, and I think some significant progress has been made in this direction.

Mr. VANDER JAGT. You also testified that you would have no objection to any relief that we could plrovide for our domestic industry and explained that that is a little bit out of our field of expertise which is very understandable, of course, but could you not move beyond no objection to active support for the proposal that we defer for 30 days the collection of the tax on domestic spirits so that the domestic spirits tax policy would be the same as the tax policy tht we afford to imported spirits? Does that not make excellent sense, that we least keep our domestics on an equal footing with the foreign?

Mr. SCHIEFFELIN. I completely agree with that. It seems to me that it would be very wrong for us to ask for correction of an

anomaly and at the same time take the position of a dog in the manger and blocking the domestic industry definitively, yes.

Mr. VANDER JAGT. I thank you very much.

Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Guarini.

Mr. GUARINI. No questions.

Mr. JENKINS. Mr. Lederer.

Mr. LEDERER. No questions.

Mr. JENKINS. Thank you very much for your testimony.

I have one further question with regard to the nontariff barrier. One of the witnesses indicated that wholesalers in the United Kingdom control to some extent all the pubs and the retail outlets, and therefore, domestic bottlers cannot get their products into those establishments anyway. This is the point of the tariff barrier, is it not? Are you familiar with that?

Mr. SCHIEFFELIN. I am not familiar in detail, sir, with markets outside of the United States.

Mr. JENKINS. What about the Canadian practice that would require that Canadian imports from this country be blended with Canadian whiskey?

Mr. SCHIEFFELIN. Unfortunately, sir I am not at all familiar with the Canadian law nor the provisions thereof. However, I am certain that members of DISCIT can supply an answer to that question if you would so desire.

Mr. JENKINS. Thank you very much.

Thank you for your testimony.

Mr. SCHIEFFELIN. Thank you, Mr. Chairman.

Mr. JENKINS. Mr. Lederer.

Mr. LEDERER. Mr. Chairman, for the record, this morning we have received testimony from several groups on the wine gallon issue. It has been requested that the subcommittee consider additional taxes beyond what STR has recommended and also change to the bond system. I note that my colleague from Louisiana has stated that it is very desirous of making our domestic distilled spirits competitive and he has asked Mr. Vernon to place the view of the distilled industry in the record. Accordingly, I request that further discussion on this issue be taken up by this subcommittee in the near future and would so recommend to Chairman Vanik.

Mr. JENKINS. Is there discussion?

Mr. GUARINI. I agree with the recommendation.

Mr. JENKINS. Without objection, that request will be granted.

Our next panel, from the National Outerwear & Sportswear Association, consists of Morton Cooper, Morton Bauman, Stanley Nehmer, and Ralph Edwards.

Welcome to the committee. We appreciate each of you appearing.

Do each of you have a prepared statement? Both of those statements will be made a part of the record in their entirety and you may proceed as you desire. Mr. Cooper will begin.

STATEMENT OF MORTON COOPER, PAST PRESIDENT, NATIONAL OUTERWEAR & SPORTSWEAR ASSOCIATION, ACCOMPANIED BY MORTON BAUMAN, EXECUTIVE DIRECTOR, AND STANLEY NEHMER, CONSULTANT

Mr. COOPER. My name is Morton Cooper. I am president of Cooper Sportswear Manufacturing Co., Inc., Newark, N.J. I am also past president of the National Outerwear & Sportswear Association, Inc., which is the national trade association whose members account for the great bulk of domestic production of leather wearing apparel.

On the panel also is Ralph Edwards of Cape Girardeau, Mo., who will present a short statement.

Appearing with me are Morton Bauman, executive director of our association, and Stanley Nehmer, a consultant to our association.

INTRODUCTION

The National Outerwear & Sportswear Association welcomes this opportunity to appear today because the leather apparel industry and its workers have suffered for many years from burgeoning imports and we are concerned that the implementing legislation now under consideration in connection with the MTN package may hurt, not help, the manufacturers and workers in this traditional industry which is also among America's oldest industries.

I want to sketch briefly for the subcommittee the impact of imports on this industry, the efforts we have made to solve the problems we face from imports, our experience in dealing with the executive branch, particularly the Treasury Department, and our concerns regarding the implementing legislation for the multilateral trade negotiations.

We think our trade negotiators have a heroic job in negotiating the various international codes of conduct. But, with all respect to our negotiators, the codes are nowhere as important as the legislation to implement U.S. participation in these codes. What the new U.S. countervailing duty statute will say, for example, is much more important than the provisions of the code on subsidies and countervailing duties.

IMPACT OF IMPORTS ON THE LEATHER APPAREL INDUSTRY

At the beginning of this decade, the outlook for the domestic leather garment industry looked very promising due to fashion changes which had created rapidly increasing demand for leather garments. The optimism of workers and firms soon turned to gloom for while retail sales did climb as a result of strong demand, much of the increased domestic market was accounted for by low wage foreign supply, not by increased domestic output.

Past actions by the U.S. Government have contributed to the rising trend in imports. In the tariff area there was the Kennedy round negotiations which cut the U.S. duty on leather wearing apparel in half, the stimulating effect of which was almost immediately reflected in import data for 1968 and succeeding years. A second tariff action, some years later, was equally devastating and it provided a major boost to the penetration of the U.S. leather wearing apparel market by low cost foreign producers. This was

the inclusion of leather apparel in the list of products accorded duty free entry under the generalized system of preferences, effective January 1, 1976.

For a relatively high unit value item like leather apparel GSP exemption from the normal 6 percent ad valorem duty gave an unwarranted competitive advantage to developing countries which already had successfully penetrated the U.S. market by virtue of their low labor costs. However, further compounding the import problem of the domestic industry was the fact that many of the same countries which benefited from GSP zero-duty treatment for leather apparel also provided subsidies to their producers and exporters under various foreign governmental incentive programs. In these circumstances, domestic manufacturers found themselves simply unable to compete with foreign imports and, as a result, there has been a structural deterioration in the domestic industry, with half of the firms of a decade ago no longer in business. Those that remain are unable to maintain efficient levels of capacity utilization which would increase their productivity and lower unit costs by spreading overhead over a larger volume of production.

EROSION OF FIRMS AND JOBS HAS TAKEN PLACE DUE TO IMPORTS

Of 185 firms that produced leather wearing apparel in 1972, the International Trade Commission confirmed in its landmark unanimous injury finding on subsidized imports from Uruguay in April 1978 that almost half had since "discontinued such production." The same ITC report showed profits of the domestic producers to be way down, with many establishments reporting losses on all operations. As for jobs, the leather wearing apparel industry in 1974 had a work force of 10,100 persons. This was reduced to 8,500 in only 2 years. Since then, declines in production as a consequence of imports has led to the loss of at least 3,000 additional jobs with the result that current total employment in this industry is now estimated at not more than 5,500 production workers. What is even more galling is that this sharp reduction has been occurring even though there has been a significant expansion in total demand for leather apparel.

The leather apparel work force in this labor intensive industry has been especially hard hit by import competition because the workers, being largely unskilled, comprised of women and minority groups and falling into older age groups, have limited mobility and retraining potential for other employment. A job once lost in the domestic leather apparel industry in effect means indefinite unemployment. The consequences of such chronic unemployment also means indefinite social and economic costs which must be shouldered not only by the individual and his family but by his community and the Nation at large. The industry is heavily concentrated in urban areas, such as the New York metropolitan area.

SPIRALING IMPORTS HAVE CAPTURED GROWING MARKET SHARE

The leather wearing apparel industry consists primarily of small- to medium-sized firms which have seen their output shrinking. Sprialing imports have captured a growing share of the domestic market at the expense of domestic output. Between 1974 and 1978,

domestic leather apparel consumption in the country, on a value basis, increased by 54 percent, while domestic shipments declined by 14 percent. During the same period, imports increased a staggering 208 percent, or four times the growth in the domestic market.

Since 1968, imports as a percent of apparent consumption showed an almost continuously uninterrupted growth with the exception of only 1 year, 1974. By 1977, total imports accounted for over 50 percent of the U.S. market in terms of value. In 1978, this share exceeded 60 percent as imports totaled $318 million. Such increased imports occurred in the last 4 years even while domestic shipments showed actual declines.

Moreover, since official trade data are compiled only on a value basis, the import penetration is substantially underestimated. When measured based on quantity, imports as a percent of domestic consumption is estimated for 1978 to have been 72 percent. To our knowledge, no other domestic industry of this size confronts so high an import penetration rate.

RELATIONSHIP OF SUBSIDIES TO IMPORT GROWTH AND INDUSTRY DETERIORATION

Developing countries are notorious for their use of export subsidies as a device to promote their internal economic development. They see government fiscal incentives as justified by their need to protect local infant manufacturing industries and to promote their expansion through exporting. Many of these products are labor intensive in which the exporting countries already have a decided advantage in terms of much lower labor and material costs. To the extent that subsidies are granted by foreign governments to their producers and exporters, these convey additional unfair competitive advantages to the foreign suppliers in the U.S. market, thereby enabling them to considerably undersell the counterpart U.S. product. The leather apparel industry in the United States has been a classic example of the inexorable debilitating effect of such subsidized unfair import competition.

It has been documented that some of the developing countries have carefully nutured their leather apparel industry over the years, first by prohibiting exports of raw materials and later by restricting the export of finished leather. In some countries, Uruguay and Colombia, for example, the leather product industry has outgrown purely local raw material sources of supply and these countries are now significant purchasers in the U.S. market—which is uniquely one of the last open markets where rawhides can be purchased without restriction. One consequence of such increased foreign demand has been upward pressure on domestic raw material prices.

In the light of the primarily small scale companies which operate in this industry with a very slim profit margin and with production costs which have a heavy labor cost element, there is little management flexibility for effecting price declines as a means of offsetting lower foreign selling prices. In these circumstances, low-wage, low-cost developing country suppliers have a clear competitive cost advantage in the U.S. market. When the additional benefits of foreign export subsidies are factored into developing country ex-

ports price quotations, the disparity with the domestic price quotation is unbeatable and overwhelming to U.S. manufacturers.

As a result whereas 10 years ago the developed countries were by far the more important foreign suppliers of leather apparel in the U.S. market, their position has been dramatically replaced by the developing countries. For example, Spain and Italy together accounted for approximately one-fourth of the imports into the U.S. market in 1968 but their collective share is now down to less than 4 percent and overall the developing countries account for some three-fourths of all leather apparel imports into the United States.

GOVERNMENT RELIEF ACTIONS HAVE BEEN REPEATEDLY SOLICITED BY THE INDUSTRY—WITH POOR RESULTS

As the foregoing makes clear, the gains made by imports at the expense of domestic production and employment are not due to style or quality but primarily due to price advantages which not only can be attributed to lower foreign labor costs but also to the grant of zero-duty performance under GSP and the maintenance of foreign export incentive programs which convey competitive advantages to exporters in the U.S. market.

The leather apparel industry and its workers have sought to redress these unfair trade aspects by turning to the executive branch for the relief actions which Congress provided for in the Trade Act with regard to countervailing duties and the generalized system of preferences.

Unfortunately, it has been an uphill battle. The industry failed in its effort to eliminate preferences on leather apparel until this year when the President, at long last, withdrew leather wearing apparel from the preference list. Such action had been turned down twice previously, presumably because foreign policy considerations had been considered overriding by the executive branch. However, after a third petition and a fourth public hearing, the administration could no longer ignore the economic plight of the industry. It recognized that the industry's very survival was at stake in a continuation of preferences, and accordingly these were removed effective March 1, 1979. The executive branch erred in having placed leather apparel on the preference list in the first place and rectification of the injustice was long overdue. We appreciate the fact that the import senstivity of this industry has been recognized and corrective action taken.

With respect to foreign subsidies, leather wearing apparel has figured in a number of petitions to the Treasury seeking the imposition of countervailing duties to offset subsidized exports to our market. These petitions, which were initiated either by the National Outerwear & Sportswear Association, Inc., or the Amalgamated Clothing & Textile Workers Unions, have related to leather apparel imports from a number of countries, including Taiwan, Korea, Argentina, Uruguay, Columbia, and Brazil.

In its handling of these petitions, Treasury has given evidence of considerable administrative foot dragging and delays. It has made decisions which appear based more on U.S. foreign policy considerations than on the ecomonic facts in each case. In short, Treasury has not administered the countervailing duty statute in our opin-

ion as forcefully or as vigorously as the Congress or the business and labor communities have had a right to expect. More than that. Treasury has misused its statutory authority.

INDUSTRY EXPERIENCE REFLECTS POOR PERFORMANCE BY TREASURY IN ADMINISTERING COUNTERVAILING DUTY STATUTE

We join with so many others in criticizing the Treasury Department for its poor performance in administering the countervailing duty statute. We are critical of Treasury for—

Missing statutory deadlines;

Stretching the authority of the Trade Act of 1974 with regard to the granting of waivers;

Accepting unverified information from foreign representatives as a basis for its determination; and

Reducing the calculated amount of a subsidy and hence the countervailing duty in questionable ways.

TREASURY HAS MISSED STATUTORY DEADLINES

One of the important changes intended to strengthen the countervailing duty statute as incorporated in the Trade Act of 1974 was the 12 month time limit established for the Treasury Department's consideration of countervailing duty petitions. Notwithstanding the statutory time limits, Treasury missed its deadline in the case involving Argentine leather apparel where the 12 month statutory deadline for final determination was January 21, 1978, but where the decision was actually made on January 17, 1979, 1 year later.

The effect of failing to make its determination within the statutory deadline was to deny the National Outerwear & Sportswear Association, as the petitioner, due process.

I may note that in correspondence relating to our protest at this missed statutory deadline, the Treasury Department has admitted its "staff could—and should—have followed this case more punctually so that the statutory deadlines imposed by the Congress would have been met." A statement prepared by Treasury's Office of Tariff Affairs in this regard then went on to suggest by way of an apology that:

> With the knowledge that there would probably be a determination that no bounties or grants were being paid, the matter was not accorded priority attention * * *. It happened that a considerable workload engulfed the Office of Tariff Affairs at the time the final determination was due and the months thereafter in which this matter was given inadequate attention.

Obviously the vast Treasury Department did not see fit to allocate the necessary resources to permit it to meet its statutory obligations.

TREASURY HAS MISUSED ITS WAIVER AUTHORITY

Treasury has stretched the authority of the Trade Act of 1974 with regard to the granting of waivers. The Trade Act permits waiver of countervailing duties by the Secretary of the Treasury if three criteria are met. These are that: one adequate steps have been taken to reduce substantially or eliminate the adverse effect of a bounty or grant; two, there is a reasonable prospect that

successful trade agreements will be entered into with foreign countries providing for reduction or elimination of barriers to trade; and three, the imposition of the additional duty would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Treasury has consistently interpreted these three criteria—all of which must exist before a waiver can be issued—so loosely as to permit it to justify any action administratively decided upon. A glaring example of a horror story with respect to the stretching of Treasury's waiver authority is that related to Treasury's handling of its determination that Uruguayan subsidies on leather wearing apparel were equivalent to 12 percent of the export price. Could anyone reasonably conclude that the imposition of a countervailing duty on Uruguayan leather apparel would seriously jeopardize the conclusion of the multilateral trade negotiations?

In its final determination issued January 30, 1978, Treasury noted an intent to waive the imposition of countervailing duties on the basis that it had received assurances from Uruguay of a phase down of only one subsidy—the reintegro program of cash rebates which alone amounted to 20 percent or more of the value of the goods exported. However, because leather wearing apparel from Uruguay entered the United States free of duty under the generalized system of preferences, the International Trade Commission was required to determine whether Uruguayan subsidies on leather wearing apparel injured U.S. industry. Following a comprehensive investigation, the ITC in April 1978 announced a unanimous finding of injury. Nonetheless, even in the face of such a unanimous decision by the Commission with respect to the subsidized Uruguayan leather apparel, the Treasury Department carried out its planned waiver which was announced on June 30, 1978.

Treasury justified its waiver on the basis of Uruguayan assurances that it would phase out its major reintegro subsidy program by January 1, 1979. In agreeing to waive the countervailing duty on this basis, Treasury did not require the Government of Uruguay to reduce or eliminate other countervailable trade practices which the Treasury had determined to exist in Uruguay. Treasury's justification for permitting a waiver while the Uruguayans would leave these subsidies intact was that they were very small, perhaps in the order of 2 percent, whereas the major subsidy program which provided a subsidy of at least 20 percent was netted down to around 12 percent.

The domestic industry argued with Treasury officials that they were ignoring an additional subsidy benefiting Uruguayan tanners equal to 8 percent of the value of the leather content of various products exported. Treasury decided differently. However, some months later, Treasury discovered that, indeed, it had made a mistake and that the 8 percent subsidy on the leather content of products exported to the United States was countervailable. Thus, instead of a residual of 2 percent after the scaling down of the major subsidy, Treasury found that the remaining subsidy on Uruguayan leather apparel added up to a total of 13.3 percent. It decided to impose this countervailing duty effective November 13, 1978, and revoke its former waiver.

The Uruguayan waiver case is by no means unique as an example of an unacceptable stretching of Treasury waiver authority for in another petition affecting Brazilian textiles and apparel, including leather wearing apparel, Treasury went ahead and waived the countervailing duty of almost 38 percent on Brazilian textiles and apparel on assurances that subsidies would be reduced by half by January 1, 1979, and by the remaining half by January 1, 1980. In the interim of 1 year, Brazil is being allowed to continue subsidies without having countervailing duties applied to the detriment of American firms and workers.

With respect to leather wearing apparel, since this item then received zero-duty entry under GSP when imported from Brazil, the Treasury Department requested the ITC to undertake an investigation to determine import-related injury, as provided under the Trade Act for the imposition of countervailing duties, but at the same time the Treasury Department announced in advance of the ITC's determination an intention to waive countervailing duties with respect to men's and boy's leather wearing apparel from Brazil. It seems inconceivable in the face of Treasury's unfortunate experience with respect to the Uruguayan countervailing duty waiver on leather wearing apparel that it would repeat the pattern.

TREASURY HAS ACCEPTED UNVERIFIED INFORMATION FROM FOREIGN REPRESENTATIVES AS A BASIS FOR ITS DETERMINATION

Treasury makes most of its determinations with regard to the size of the countervailing duty or waiver of countervailing duty on the basis of data submitted to foreign governments or firms. In neither case are the data verified by Treasury. Admittedly, it is difficult for Treasury to verify data as submitted by foreign interests but as least an effort should be made to assure the American petitioner that, indeed, the data on which a determination was made by Treasury are reliable. Treasury says it must take the word of a foreign government, yet in the case of Uruguay just cited, the word of the foreign government was anything but good.

Moreover, sometimes there has been simply no word at all. For example, as the result of a request through the Freedom of Information Act, it has been learned that although Treasury waived countervailing duties on Uruguayan leather products at the end of January 1978 based on certain assurances from the Uruguayan Government, the factual information on which to base the waiver was not available to Treasury at the time of the waiver action. On May 15, 1978, 5 months after the waiver by Treasury, the Minister of the Uruguayan Embassy in Washington was told by Treasury that in October 1977 Treasury had requested of the Uruguayan Government:

> a detailed description * * * of the laws providing for the various offsets accepted by Treasury * * * as well as a detailed itemization of how the offsets were calculated for each of the product sectors.

That information had not been made available by Uruguay.

Apparently a copy of the December 28, 1977, decree of the Uruguayan Government reducing the reintegro was also not submitted in January 1978 before Treasury waived the countervailing duties.

At least Treasury was still inquiring about it from the Uruguayan Government in mid-May 1978.

TREASURY HAS FOUND WAYS TO MINIMIZE SUBSIDIES

The decision by Treasury with respect to petitions involving leather apparel imported from such countries as Colombia, Korea, and Taiwan shows clearly that Treasury has sought ways to minimize the amount of a subsidy which foreign governments have bestowed on leather apparel, thus minimizing the resultant countervailing duty as was the case for Colombian leather apparel, or leading to a conclusion that the amount of the subsidy is of a de minimis nature, therefore not requiring a countervailing duty, as was the determination for leather apparel from Taiwan and Korea.

While the countervailing duty statute provides that the duty imposed should be one to offset the net amount of the foreign government subsidy, Treasury in point of fact has stretched the concept of "net" to reduce the amount of subsidy found to exist by such items as taxes paid by the foreign industry involved even though those taxes would be paid in the absence of any subsidy, devaluations of foreign currency over the period between the time contracts are entered into and the subsidy is paid, the effect of inflation in the foreign country, customs duties paid by industries supplying the subsidized industry, the discount on export certificates when they are sold on the local stock exchange, and similar esoteric factors.

Nonetheless in the case of Colombian leather wearing apparel even when such exotic offsets were taken into account in Treasury's calculation, Treasury still identified two specific programs which were determined to be clear bounties and under which producers of men's and boys' leather apparel for export received subsidies equivalent to almost 6 percent of the value of shipments to the United States—an amount in fact equivalent to the normal 6-percent duty leviable on such goods in the United States.

LEGISLATION TO IMPLEMENT THE MTN IS OF CRITICAL CONCERN TO THE LEATHER APPAREL INDUSTRY—COUNTERVAILING DUTIES

From the foregoing it is clear that we are very seriously concerned with the way in which the future countervailing duty statute will be shaped in the implementing legislation which this committee and the Senate Finance Committee are now considering with the administration. We believe very strongly that the new countervailing duty statute should provide an effective and expeditious means for an industry such as ours to bring a case and to receive relief. This means that the vast discretionary authority which exists under the present countervailing duty statute must be substantially reduced so that the administering agency will act in accordiance with the intent of Congress in this area.

Unfortunately what we see in the preliminary decisions taken by this committee and the Senate Finance Committee is a countervailing duty statute which will make it even more difficult than in the past for an industry such as ours to secure relief from foreign government subsidy practices. I am referring here to such provisions as the following:

1. A FILING FEE OF $1,000 OR $5,000

We believe it is unconscionable for any petitioner to be required to pay a fee to the Federal Government to secure the relief that may be prescribed under a statute. To do so would create a precedent of far-reaching proportions. In the case of a small industry such as ours, the requirement that we post $1,000 or $5,000 will effectively inhibit our future efforts to secure redress from the grievances which I have noted above. Certainly ample authority will exist on the part of the administering agency not to accept a frivolous petition. No filing fee should be required to accomplish that purpose.

2. INJURY TEST

The injury test requirement which the United States has agreed to is certainly going to be an inhibiting factor with regard to future petitions. This is not because an industry such as ours cannot show injury from subsidized imports. Indeed we did so in the case of subsidized Uruguayan leather apparel as I noted above. It is rather the fact that an injury test will require time and expense to go before the International Trade Commission. No one should be under any illusion that you merely go before the ITC without full and adequate preparation of one's case, including engaging counsel or consultant to represent you.

Furthermore, for a small industry such as ours where management at the top is not in depth, the time it takes to spend a day in Washington, such as I am doing today, means time away from my plant and supervision of its operations. Companies in our industry are not among Fortune's 500 firms.

We are very much concerned that the definition of injury that will be included in the countrvailing duty statute will require a higher threshold of injury than has been the case under the present antidumping law. Our international obligations under the new subsidies code do not require this. And if the new countervailing duty statute is to provide an effective means of dealing with unfair trade practices, the definition of injury should not be made more stringent than under the present antidumping statute.

3. CONTINUED ROLE OF TREASURY DEPARTMENT

No action has been taken to date to remove the implementing authority under the countervailing duty statute from the Treasury Department. In its various press releases this subcommittee has indicated that the Treasury Department will continue to administer this statute. For the reasons which I have cited in my testimony and on the basis of other information which has been transmitted to this subcommittee over the last several months, we think it is wrong for the Treasury Department to be permitted to continue to have authority over this program. Despite its ample resources, the Treasury Departmernt has not seen fit in the past to allocate the necessary manpower to do an effective job under the statute.

We believe that philosophically the Treasury Department is not in tune with the aims of the statute in that it incorrectly views a countervailing duty as a protectionist restriction to trade rather

than a device to insure fair trade. Thus, we believe that Treasury is incapable of administering the statute as the Congress intends it to be administered. There is no reason to believe that the poor performance by the Treasury Department since the Trade Act of 1974 was passed will be corrected under the new legislation. Assurances in legislative history are meaningless, particularly when the leadership of any cabinet department changes. Indeed we heard from a high-ranking Treasury Department official with responsibility in this area that commitments made during the passage of the Trade Act of 1974 by the previous administration were not binding on the present administration.

We would urge, therefore, that the authority for administering the countervailing duty statute be removed from the Treasury Department. We hope that this function could be transferred to a new Department of Trade but in the absence of legislation to create such a department we would recommend that this function be transferred to the Office of the Special Trade Representative or to the Department of Commerce.

4. FOREIGN ASSURANCES TO TERMINATE INVESTIGATION

Vast discretionary authority is still contemplated under this statute. We are particularly concerned that this subcommittee and the Senate Finance Committee seem to be heading in the direction of permitting certain assurances from foreign entities to be accepted as a basis for terminating countervailing duty proceedings. I am referring here to provisions under consideration which would permit assurances with regard to price or with regard to quantitative limitations on exports to be used as a basis for terminating countervailing duty proceedings.

Whatever the merits of price assurances might be in connection with antidumping proceedings, we do not believe that there is a place for such assurances in the countervailing duty statute, particularly since the price assurances under consideration are those which would be sufficient to offset the injury, not those to offset the amount of the subsidy. There is a vast difference between these two concepts. This would be inconsistent even with the present practice under the antidumping statute where the price assurances that are accepted in some cases are those which offset the dumping margin, not those which offset the injury which may be found.

Even if provision is made for the petitioner to go before the International Trade Commission to challenge such a determination, we are not only once again getting into the realm of extra time and expense but putting a highly subjective matter before the International Trade Commission. It would be extremely difficult to use any objective criteria to determine whether the price assurances are adequate to offset the injury. On the other hand, price assurances that would offset the amount of subsidization is a more easily determinable concept.

Assurances with regard to quantitative limitations are equally objectionable insofar as the countervailing duty statute is concerned. What kind of quantitative limitations? Voluntary restraint arrangements or orderly marketing agreements? Does U.S. Customs administer such quantitative limitations or are they allowed

to be unilaterally administered by the exporting country? No voluntary restraint arrangement has worked as originally intended. There is no reason to assume that any foreign entity will administer such voluntary limitations in the same way that U.S. Customs would. At what levels are the quantitative limitations set? Who makes that determination? Here, too, you are getting into a negotiating situation where foreign political policy relationships will loom large.

Assurances with regard to price and quantitative limitations represent in our thinking nothing more than an extension of the waiver authority which Congress has recently extended to the end of September 1979. It is the same kind of discretionary authority that has been abused under the waiver authority and we see no reason to expect that if such assurances are permitted that the abuses of the waiver authority will not be continued in the future. We would urge, therefore, that no assurances with regard to price or quantitative limitations be permitted in the new statute as a means of terminating a countervailing duty investigation.

NEW NEGOTIATING AUTHORITY

We have one other matter of concern to bring to the attention of this subcommittee. Apparently the Senate Finance Committee has tentatively agreed to give the executive branch new 5-year authority to cut tariffs and to extend indefinitely authority to negotiate on nontariff barriers, the latter on the basis of the so-called fast track procedure. We find such provisions, particularly those relating to further tariff cuts, to be completely inconsistent with the concept of implementing legislation. We see no reason why such a proposal for further tariff cutting should not be considered by the Congress in the normal legislative fashion. We think it is wrong at this time for such tariff cutting authority to be extended until the results of the Tokyo round have been made known and the effects thoroughly digested. But the worst part of this proposal is that it is part of implementing legislation when it bears no relationsip whatsoever to implementing the results of the multilateral trade negotiations.

We find the request to extend negotiating authority on nontariff barriers to be less objectionable but we question very seriously whether that should be handled on a fast track basis in the future. There is no reason why new nontariff barrier agreements cannot be submitted to Congress for its approval in the normal legislative matter, instead of subjecting such consideration to the up or down approach of the present Trade Act of 1974.

Mr. JENKINS. Thank you very much, Mr. Cooper.

Mr. Edwards, we will be very happy to hear from you at this time.

STATEMENT OF RALPH L. EDWARDS, CHAIRMAN OF THE BOARD, RALPH EDWARDS SPORTSWEAR, INC.

Mr. EDWARDS. My name is Ralph L. Edwards. I am chairman of the board of Ralph Edwards Sportswear, Inc. We have our headquarters and main production facilities at 334 North Broadview Street, Cape Girardeau, Mo. I appreciate the opportunity to appear today before this committee to comment on certain aspects of the

implementing legislation with regard to the multilateral trade negotiations going on. I am appearing before this subcommittee as an individual on behalf of the firm that I founded over 33 years ago and the 320 employees who work with me.

Our firm is a member of the National Outerwear & Sportswear Association and I subscribe completely to the statement of Morton Cooper which has been submitted to the subcommittee. Mr. Cooper's statement provides ample evidence on the unfortunate experience of the leather apparel industry over the past several years in dealing with the Treasury Department and our lack of success in getting that Department to enforce the countervailing duty statute effectively and vigorously. He has also drawn attention to our concerns that the implementing legislation for a new countervailing duty statute should provide an effective and expeditious means for an industry such as ours to bring a case and have it receive the attention of the administrative body.

There are certain specific aspects of the implementing legislation which I feel also should be called to this committee's attention.

There are two provisions of the countervailing duty statute to implement the new code negotiated in Geneva which are essential not only to the leather apparel industry but to other American industries which have shared our experience over the past several years. In this connection, I should like to detail several suggestions as follows:

One, if a foreign government forbids or prohibits the export of an internationally traded raw material or commodity while at the same time the U.S. Government does not do the same, the effect of this action is to depress the price of such raw materials in the foreign county, giving foreign manufacturers a competitive advantage with regard to their raw material that is in effect a subsidy—an indirect subsidy resulting from an indirect action of a foreign nation.

Specifically here I am referring to the action of such governments as Brazil, Uruguay, India, Argentina, and Colombia which prohibit the export of their salted hides and skins. Such action depresses the local price of hides in these countries and grants to the local leather product manufacturer a price for this basic raw material, leather, far below that which leather product manufacturers in this country and other free trading countries pay. The net effect is that the foreign leather product manufacturer is able to effectively under-price U.S. manufacturers in shipments to this market and to Canada.

Unfortunately, Treasury does not accept this distorting tactic as a subsidy, although I am advised that the Special Trade Representative's Office agrees with my position that in a case where an export restriction artificially depresses the domestic market price in the foreign country, the difference between the domestic and world market price is a subsidy. John Grenwald said that they have found that this is a subsidy and that they have discussed this matter with a Treasury official involved in the administration of the countervailing duty law and on a personal and formal basis the man from Treasury concurred. I have a record of that.

I recommend to this subcommittee that this matter be spelled out in the implementing legislation to close a serious loophole in the present countervailing duty statute.

Two, another serious loophole exists in cases where the foreign government eliminates its subsidies on exports to the United States, but increases its subsidies on exports to other nations. We have a very serious case in point. You have heard from Mr. Cooper about the difficulties which the U.S. leather apparel industry has faced in its effort to secure a redress against the unfair trade practices of the Uruguayan Government with regard to that country's exports of leather apparel to the United States. A key to the recent action by the Treasury Department in eliminating the countervailing duty on all Uruguayan leather products exported to the United States was the action of Uruguay in doubling its subsidy on the export of leather products to all countries other than the United States at the same time that it eliminated its subsidies on the export of such products to this country.

Treasury acknowledged this in the Federal Register of March 22, 1979, but it stated:

> It is the position of the Treasury Department that while the doubling of the tanners subsidy on exports to third countries clearly creates a distortion in international trade, no remedy is available to this action within the limits of the countervailing duty law. It is possible that a more appropriate remedy to this sort of distortion is available through other sections of the U.S. tariff and trade laws.

I seriously disagree with their findings in this matter.

Since just about half of all Uruguayan leather wearing apparel is shipped to the United States and almost the same amount to all other countries, the net effect is that Uruguayan leather apparel manufacturers exporting to this country and elsewhere can maintain their present price structure on shipments to this country and to all other countries and yet, as interpreted by the Treasury Department, not be engaged in a practice that is countervailable under U.S. law. This action by Uruguay and the interpretation by the Treasury Department can indeed open a Pandora's box. I recommend strongly that in the implementing legislation this matter be dealt with to prevent a serious loophole in the future with regard to the countervailing duty statute.

My experience in dealing with the Treasury Department has led me to the clear conclusion, as Mr. Cooper has stated in his testimony as well, that the function for administering the countervailing duty statute must be removed from the Treasury Department if there is to be any chance of effective implementation of the countervailing duty statute in the future. I am convinced that whether it is administrative malaise, high-level directives, or an inherent philosophy in that Department, Treasury has not earned the right to continue to administer this statute. The management of the countervailing duty statute by the Treasury Department has been inept. No change in the countervailing duty laws will correct this if the Treasury Department is permitted to continue to administer this statue.

Gentlemen, I do not support the MTN package and the implementation of it if Treasury is to remain as the administering agency.

Thank you.

Mr. JENKINS. Thank you very much, Mr. Edwards, for your testimony.

The track record of the Treasury Department as it relates to your industry has probably been the single most important factor in my doubts about Treasury administration of the countervailing statue.

Mr. Cooper, if you will, the committee would like to have from you any specific suggestions in the areas that you discussed in your statement as to how this implementing legislation can be strengthened.

Mr. COOPER. Yes.

[The material follows:]

SPECIFIC SUGGESTIONS TO STRENGTHEN IMPLEMENTING LEGISLATION FOR THE INTERNATIONAL SUBSIDIES CODE

The National Outerwear and Sportswear Association makes the following suggestions on how the implementing legislation on subsidies and countervailing duties can be strengthened. This is being presented pursuant to the request of Representative Jenkins at the hearings before the Trade Subcommittee of the House Ways and Means Committee on April 25.

(1) *No filing fee.*—A very serious precedent of far-reaching proportions would be created by requiring a filing fee to accompany a countervailing duty petition. No American citizen should be required to post any amount of money to secure a redress under the unfair trade practices statutes. Instead it is recommended that the administering agency be permitted to reject any petition which does not contain all of the elements called for in such petitions, as stated in the statute or in regulations which may be promulgated by the administering agency.

(2) *Injury test.*—If an injury test is to be included in the new countervailing duty statute, it should not require a higher threshhold of injury than has been the case under the present antidumping law. Inserting the word "material" as a description of injury does not in itself create a higher threshhold of injury so long as the definition of what is "injury" is clear. We recommend that the statute make clear that the level of injury that must be shown before a countervailing duty is imposed not be inconsequential or frivolous. In our judgment this would be quite consistent with the new countervailing duty and subsidies code as well as with the threshhold of injury under the present antidumping statute.

(3) *Administering agency.*—We strongly recommend that until such time as a new Department of Trade may be created, or for the indefinite future if such a new department is not created, the functions now exercised by the Treasury Department in the countervailing duty statute be transferred to the Office of the Special Representative for Trade Negotiations. That office currently has similar authority in connection with cases under Section 301 of the Trade Act of 1974.

We do not believe it would be fatal to the transfer of this function if the present personnel in the Office of Tariffs and Trade of the Treasury Department were transferred with the function to STR. Obviously if the new countervailing duty statute is to be effectively administered, certainly more effectively administered than Treasury has been able to do since the Trade Act of 1974 was enacted, additional personnel beyond those presently in the Office of Tariffs and Trade will need to be brought into this program. We are not concerned that the present personnel of the Office of Tariffs and Trade of the Treasury Department, if transferred to STR, would continue the half-hearted administration of the countervailing duty statute that has been the case under the Treasury Department's aegis. The responsibility for Treasury's mismanagement of this program rests with the Secretary of the Treasury, the Undersecretary of the Treasury, the General Counsel of Treasury, and a Deputy Assistant Secretary of the Treasury.

(4) *Assurances to terminate investigation.*—We recommend strongly that neither price assurances or assurances related to quantitiative limitations be contained in the countervailing duty statute. As explained in our testimony, price assurances are relevant to antidumping proceedings but have no place in the countervailing duty statute.

If it is felt that price assurances and assurances with regard to quantitative limitations should be included in the statute, such assurances should be limited to cases involving domestic or internal subsidies, not to cases involving export subsidies. If they are utilized in domestic subsidy cases, the assurances should be those

which offset the subsidy, not a lesser assurance merely to offset the injury. We have said repeatedly that it is difficult to establish any objective criteria which would permit a determination of what a permissible level of subsidy might be that would not cause injury to a domestic industry and its workers.

(5) Export restrictions as countervailable measures.—We believe that the definition of subsidy contained in the statute, or at the very least in the legislative reports of Congress, make it clear that restrictions on exports by foreign governments which have the effect of lowering the price of the raw materials which foreign manufacturers purchase, provide a competitive advantage with regard to raw materials that is in effect a subsidy. We referred in our testimony to the situation with regard to hides and skins where the United States is probably the only open world market, in that we permit unrestricted exports of hides and skins while some of our major leather product competitors prohibit the export of this basic raw material. Such export restrictions should be included as countervailable under the statute.

(6) Closing another loophole.—Another countervailable measure should be made clear in the legislation where a foreign government eliminates its subsidies on exports to the U.S., but increases its subsidies on exports to other countries. Where the effect is that unit prices on exports to the United States and to other countries are not changed, thus giving the foreign producers the advantage of the increased subsidy on exports to other countries, this should be a countervailable action under U.S. law. We refer to this in detail in Mr. Edwards' statement.

Mr. JENKINS. I want to talk about two or three other matters and ask you a couple of questions. With regard to the filing fee, it is my understanding that that fee under the present proposal could be waived. Is that correct?

Mr. NEHMER. If I may comment on this, yes, it is, I think in the House in your subcommittee's version of it, but let's assume the Treasury Department continues as the administering agency. As you heard this morning, there was no great love for administering the statute which they are responsible for administering. We see no reason to expect that the fee will be waived, aside from the very serious principle, Mr. Jenkins, of any American citizen or group or company having to file a fee in order to get a redress under a particular statute. The precedent is fantastic and for an industry such as this one it definitely is an inhibiting factor.

Mr. JENKINS. What is your position as far as the Treasury Department being the agency to administer the law? I notice that you suggest STR, Commerce, anybody——

Mr. EDWARDS. Not Foggy Bottom.

Mr. JENKINS. Do you support the creation of a separate department to administer this?

Mr. COOPER. Yes.

Mr. JENKINS. Would you object to a provision in the implementing legislation that would permit price assurances to remove the subsidy practice, or alternatively to cease exporting the product in question to this country?

Mr. Nehmer, you may wish to respond.

Mr. COOPER. I just didn't hear.

Mr. JENKINS. Would you object to a provision in the implementing legislation which would permit assurances to remove the subsidy practice or cease exporting the product in question to this country?

Mr. COOPER. No, we would not be against it. If we had that assurance, we certainly would not be against it.

Mr. NEHMER. I should say, obviously, if the foreign government eliminates the subsidy practice, there is no basis for a countervailing duty. The problem that we have had, and it happens to be in this particular area of leather and shoes, Argentina gave assur-

ances to the Treasury Department that it would eliminate—and it did eliminate—its subsidy on leather footwear exports to the United States. Then they changed regimes down there and the new regime didn't tell the Treasury Department that it was reinstituting this. It took some months before Treasury found out about it and then it actually took them 11 months beyond the 12 months in the statute to come out with the final countervailing duty determination on Argentina footwear.

Mr. JENKINS. Would you say that the countervailing duty statute has not really benefited the industry very much because of the poor administration of it?

Mr. NEHMER. We have not even mentioned to you the way in which Treasury has held down the fixing of the countervailing duty by the use of various offsets. The legislation you have before you has a very important provisions on offsets, and that has been one where the Treasury has in very wide context been able to reduce the actual countervailing duty by deducting various items which we detail in the statement which has previously been told to this committee.

Mr. JENKINS. Is the industry as a whole opposed to the Senate version of the extension of the 5 years to reduce tariffs?

Mr. NEHMER. Absolutely.

Mr. COOPER. Absoluteiy.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Gentlemen, I appreciate your testimony and I think your testimony helps all of us realize that the whole secret to any situation after the MTN passes and becomes law is going to be a far better enforcement of whatever laws we have left on the books to protect industry than we have had in the past. I agree with you completely on the comments you have made, and I assure you that there will be many of us in Congress who are intending to support the MTN who will likewise see we get much better enforcement than we have in the past.

We have had a very dismal record and I have been trying to get the attention of the Treasury Department on business and farmers in my part of the country, so I understand what you are saying. All we can say is that the whole secret to the MTN is going to have to be a far better enforcement of the law as we have that we have on the books now because it has been very poor indeed.

Mr. Chairman, earlier I asked that the record be held open so one witness, Mr. Vernon, would be able to submit suggestions for his industry. I would like to have the record held open for all the witnesses who testified from the distillers industry group in that regard.

Mr. VANIK. For how many days should we hold the record open? Is until the middle of next week enough time? I want to get the record intact, so we can move on.

We will hold the record open until the middle of next week for that purpose.

If my good friend Mr. Jenkins would yield—he has been very courteously handling this matter in the interval that I have been gone—you know my own personal views on this department idea. You are going to end up with the same people no matter where you

are. There is no way we can get around the people that are in line for these positions. You put them on the Moon and they would be there or any other place. There is no way under our system that we can avoid that.

I have got the same concerns as you have about how improperly this function has been administered, and I have just not concluded myself that the department procedure—after we created the Department of Energy, I don't think there will be another department created, at least my people who have the memories of our past experience. So I think the House and the Senate would be very reluctant about that approach, but we can move functions. I would like to have you more thoroughly, if you can, outline procedures and some areas and methods by which these functions can be moved, because under a new direction they may perform more responsibly.

Mr. NEHMER. Could we submit something because we do have some real thoughts on this.

Mr. VANIK. I know you have a good contribution to make, and we certainly would like to have it.

Mr. JENKINS. As I understand this position, anything would be better than what the past experience has been.

Mr. VANIK. I just don't believe that—it can be worse.

Mr. JENKINS. Well, I don't know.

Mr. EDWARDS. It cannot be any worse than the yo-yo treatment.

Mr. JENKINS. That has almost been destroyed.

Mr. VANIK. Don't put it beyond the capacity of the Government at any time to make things worse. [Laughter.]

The hearing will be recessed until 1:30 p.m., at which time we are going to hear from the members of the steel caucus and proceed on with the rest of the witnesses.

Mr. EDWARDS. Thank you.

Mr. COOPER. Thank you very much.

[Whereupon, at 12:25 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Mr. VANIK. The subcommittee will be in order.

We have with us this afternoon our colleagues, the distinguished members of the Congressional Steel Caucus. I have called to see if I could get the full membership of this subcommittee here so that they can hear your testimony.

I want to point out that earlier this morning we heard the testimony of the Steel Institute, and, of course, there are some groups, the specialty steel people and some others, who were not heard.

I want to point out that I attribute to the Steel Caucus the tremendous accomplishments that were made on the trigger price mechanism. I will say to you gentlemen that if anyone should ever question you about what you have done in the U.S. Congress, among other things you can with pleasure respond that it was through your efforts and through the strong protestations that you made at the time our imbalance on steel was so severe that TPM was instituted. It was only your solidarity and your unanimity and your prestige as a very important element of the U.S. Congress

that resulted in the trigger price mechanism, which does seem to be working.

There are some problems with it, but our testimony this morning indicates that the machinery seems to be working and is producing salutary results. We are going to try to improve it, but I wanted first of all to tell you as members of the Steel Caucus that you have made in my judgment one of the noteworthy achievements by changing the basic law of commerce in this country relating to this specific industry, and that procedure will probably develop as a permanent part of our structure.

We will be pleased to hear our first witness, Mr. Joseph Gaydos, chairman of the Steel Caucus.

STATEMENT OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. GAYDOS. Mr. Chairman, in all fairness on behalf of the Steel Caucus I wish to publicly state together with my fellow officers who are in attendance here today that we will forever be grateful to the chairman of this committee, for his support in appearing with the caucus in the several conferences held at the White House during the steel crisis in late 1977.

Also he lent his prestige and knowledge in this field to the caucus when we need him most. I thank the chairman for his very kind remarks.

Mr. Chairman, we welcome the opportunity to present testimony before this subcommittee on the Multilateral Trade Pact and its implementing legislation. I wish to point out that John Buchanan, vice chairman, will appear later. Adam Benjamin, executive committee chairman, is detained but will submit a statement. Mr. Ralph Regula, executive committee vice chairman, will be here as scheduled. Of course, we have Mr. Murtha, on my right, a member of the executive committee, and Barbara Mikulski, secretary-treasurer.

Mr. VANIK. Do you all join in this statement?

Ms. MIKULSKI. You know me; I have my own.

Mr. VANIK. I want to point out that the entire statement will be entered into the record as submitted. You may excerpt or read from it.

Mr. GAYDOS. With your permission, Mr. Murtha will present half of the statement.

The current membership of the Steel Caucus is approximately 170 members. The other officers of the caucus appearing with us today are those whom I have mentioned.

The Steel Caucus was created in 1977 in response to growing concern over excessive steel imports and their impact on the domestic steel industry.

The purpose of the caucus is to identify the nature and causes of the problems affecting the American steel industry and promote the well-being of the industry and preserve the jobs of its workers.

During the last 25 years there has been a significant shift in the relative share of production among the world's leading industrial nations. By 1976 both Japan and the European Economic Community—EEC—were equal to or larger than the United States in total

output. International steel trade has played an important role in this shift. Both Japan and Europe have used steel exports to increase their rate of growth. The steel exports which have stimulated growth in Japan and Europe are, by and large, the same imports which have constrained growth here. Japan and the EEC have accounted for three-fourths of all steel imports into the United States. The U.S. economy has become increasingly dependent on foreign steel suppliers and has become the only large industrial nation which lacks the capacity to produce 100 percent of its domestic requirements.

The need for closer attention to these developments is borne out by the events of the 1973–74 period, when, for the first time in history other than during the war, the domestic industry was unable to supply the Nation's total steel requirements. As a result, U.S. customers were forced to pay premiums of $60 per ton or more for imported steel. But even at these high prices, foreign steel producers gave the U.S. market a lesser priority than their other markets throughout the world. In the final quarter of 1976 foreign producers increased their share of the U.S. market to levels approaching 20 percent. The United States continues to experience import penetration, which implies increased reliance on other sources which proved unreliable in 1973–74.

Japan's Government planners, banks and steel companies have developed a three-part strategy for building a large and internationally competitive steel industry. First, the industry has been encouraged to rapidly increase its production volume. Second, the steel industry has been provided with enormous capital inputs. Third, Government and business leaders have cooperated closely to protect the industry's financial position.

With regard to the European nations, although each nation is different, roughly the same elements, of the Japanese strategy can be found in the EEC. Excess capacity in Europe, as in Japan, creates great pressure to expand exports.

In the United States the opportunities and incentives for Japanese and European steel producers have not been available to American steel companies. Therefore, U.S. producers have not embarked on export programs comparable to those of Japan and the EEC. But lower production costs by themselves have never been sufficient to account for the success of foreign producers in the U.S. market. Instead, artifical exchange rates, tax rebates and below-cost prices have provided foreign producers with a margin of advantage they would not be able to derive from production cost advantages alone.

The Congressional Steel Caucus fully recognizes that the recently initialed Multilateral Trade Pact is the result of 5 years of difficult negotiations. Considering the divergent economic interests and systems represented by the 99 participating nations, the fact that a comprehensive agreement was reached at all is, in itself, an achievement. Furthermore, the caucus understands that all international negotiations contain an inherent bargaining process of reciprocal give-and-take. No single participating nation could honestly be expected to achieve all of its negotiating objectives. Against this perception of the realities of the negotiating process, the Steel Caucus shall examine the multilateral trade pact.

Although the U.S. Congress will not directly ratify the multilateral trade pact, it will be required to pass judgment on the implementing legislation which is necessary to bring our trade laws into conformity with the trade pact. However, this legislative task is impossible to undertake without a careful, close and patient study of the text of the agreement.

Two general questions must be answered. First, is this agreement the best possible agreement? Second, is compliance with this agreement in the best economic interests of the United States? In answering these questions, two aspects of the trade pact particularly interest the Steel Caucus: tariff cuts already negotiated and nontariff codes.

The countries which have been successful in dumping steel products in the United States without triggering an antidumping investigation under the TPM and while effectively insulating their home markets, have demonstrated in the trade negotiations their unwillingness to reduce their steel tariffs to the same level that the United States has offered. It is difficult to understand why the United States has reduced its steel tariffs to a lower level than those of its trading partners, particularly in light of the extreme difficulty the U.S. steel industry has had with dumping in its domestic market and the difficulty in gaining relief under the TPM. U.S. reduction in steel tariffs should not have been greater than that of its trading partners, and average steel tariffs of the United States should not be lower than those of the EEC, Japan and Canada.

Therefore, in implementing the nontariff codes, the Steel Caucus does not wish to weaken current U.S. Statutes aimed at remedying unfair trade practices. While wholesale dumping, various forms of Government subsidization and other unfair trade practices will never be completely eliminated, we should not in any way impede the ability of our present domestic laws in offsetting the effects of unfair trade practices. We shall examine very closely the text of the nontariff codes to determine how they state standards of conduct to govern international trading practices and remove the nontariff barriers to fair trade.

United States compliance with the multilateral trade pact will require certain changes in our domestic laws. The areas of concern to the Steel Caucus are the statutes governing unfair trade practices and Government procurement.

First, the Antidumping Act must not be weakened either in its substantive requirements or its enforcement mechanism. The following suggestions should be incorporated into any proposed changes amending the Antidumping Act:

One, the statute should retain the requirement that the dumped imports be a cause of injury to a domestic industry. There is no justification—and I repeat: no justification—for applying a more rigorous burden of proof upon domestic complainants, such as a substantial cause test.

Two, if the term "injury" has to be statutorily defined or qualified, it should be qualified as meaning anything more than immaterial or inconsequential. This meaning of the term is presently used by the international Trade Commission in administering the Antidumping Act.

Three, the amount of the antidumping duty imposed should fully offset the dumping margin. Furthermore, the availability of this remedy should not be removed by any settlement devices which assess a duty in an amount that is less than the amount of the dumping margin. The caucus strongly opposes the use of any subjective determination of a lesser amount as a remedy since such a settlement technique would not effectively offset the unfair advantage from dumping or discourage future dumping.

Four, a preliminary determination on an antidumping complaint should be made no later than 120 days from the filing of the complaint.

Five, since most other countries require cash deposits after a preliminary determination of dumping, the United States also should, as a deterrent, require provisional duties in the form of cash deposits equal to the margin of dumping.

Six, some provision should be made to expedite the assessment and collection of duties under this statute. It is ridiculous that after a finding of dumping has been concluded by the Treasury Department, it takes a total of roughly 3½ years to assess and collect duties.

Mr. VANIK. On that point I want to point out that it was the subcommittee's decision to require final liquidation no later than 18 months after entry. We tried to address ourselves to that problem.

Mr. GAYDOS. That is moving in the right direction, Mr. Chairman. The chairman and the committee should be complimented.

Mr. VANIK. Under the countervailing duties statute, we provide 95 days, which is an improvement in that section.

Mr. GAYDOS. Yes, decidedly, Mr. Chairman. I am very glad the committee has those positions and elements under consideration.

At this time, Mr. Chairman, with the Chair's permission, my colleague John Murtha, from Pennsylvania, a very active member of the caucus, will now discuss the countervailing duty statute, the safeguard code and the procurement code.

STATEMENT OF HON. JOHN P. MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND MEMBER, EXECUTIVE COMMITTEE, CONGRESSIONAL STEEL CAUCUS

Mr. MURTHA. Mr. Chairman, let me say again what Chairman Gaydos says about how much we appreciate your input, and certainly much of the success of the Steel Caucus goes to your very strong support in a very difficult situation. We very much understand and appreciate the tremendous input you had to our success.

We feel that it has been a phenomenal success in dealing with the Government. The last 3 months were perfect examples of how, under proper attitudes, the imports have been restricted substantially.

Mr. VANIK. You can speak on that subject without limitation of time.

Mr. LEDERER. Mr. Chairman, I hope his comments will be spread on the record.

Mr. MURTHA. The gentleman from Ohio, Mr. Regula, also asked to join us in this statement.

The second area of interest to the caucus is the countervailing duty statute. The implementing legislation should be designed to strengthen this law. The following recommendations should be included in the proposed legislation.

One, the amount of the countervailing duty should be imposed in the full amount of the subsidy to completely offset the unfair advantage of the net subsidy. Current law does not provide for a remedy to be imposed in an amount less than the full subsidy.

Two, procedures for settling a case in an amount less than the full amount should be prohibited. The caucus strongly opposes the use of any subjective determination of a lesser amount as a remedy since such a settlement technique would not effectively offset the unfair advantage of the subsidy or discourage future subsidization for trade advantage reasons.

Three, the statute should provide a definition of "bounty or grant" that incorporates the illustrative list of subsidies contained in the trade pact's subsidy code and that also, provides an analytical device for identifying new forms of subsidization.

Four, the legislation should not provide for a stricter burden of proof for complainants, as for example, by a substantial cause of injury test. The standard should simply be that the subsidized imports are a cause of injury.

Five, if the trade pact requires the United States to provide for an injury test in its Countervailing Duty Statute, then this term should be defined as meaning anything more than immaterial or inconsequential. The legislation should expressly state that even a minor impact from imports will be considered enough to require the levying of a countervailing duty if the affected industry is in economic difficulty at that time.

Six, the injury test in the proposed legislation should be applied to imported goods from signatory countries. If the imported goods come from a country that did not sign the subsidy code, then no injury test should be applicable. To levy a countervailing duty on imported goods from such a country, one need only establish the existence of a "bounty or grant" as under current law.

Seven, the time limit for reaching a preliminary determination in a countervailing duty proceeding should be 75 days from the date of filing the complaint.

Eight, the legislation should require provisional duties in the form of cash deposits equal to the amount of the subsidy to be made after an affirmative preliminary determination.

Nine, the legislation should expressly and clearly require the U.S. Government to seek and disseminate information on subsidization practices by foreign governments.

Ten, if the Government obtains information that foreign subsidies exist, it should be required by legislation to initiate an investigation.

Eleven, the legislation should provide that unions will have the right to file complaints and that a notice to initiate an investigation will be sent to any union having an interest in the investigation.

Twelve, various determinations under the countervailing duty and antidumping statutes should be subject to judicial review. The caucus recommends that the implementing legislation expand the

determinations subject to judicial review beyond the provisions of existing law by using the judicial review section of H.R. 3442, the Fair Trade Enforcement Act of 1979.

Mr. VANIK. On that point you will be pleased to know that we have expanded judicial review to include the requirements that you have suggested. We did that as a result of your earlier position. So we have really to that extent acceded to your recommendations.

Mr. MURTHA. We appreciate that, Mr. Chairman.

Mr. VANIK. They may not be in exactly the same format in which you recommended them but substantially, I think, you will find that we are on the same wavelength.

Mr. MURTHA. We appreciate it. We know that the caucus is always on the same wave length—almost always—as the chairman and the members of this very distinguished subcommittee.

The caucus third area of concern is any required changes in domestic legislation due to the safeguard code. At this point in time the safeguard code remains incomplete. The caucus is concerned that the code may necessitate a change in the causality test contained in section 201 of the Trade Act of 1974, the United States safeguard statute. The United States should retain the current statutory causality test rather than adopting the much stricter "principal cause of injury" test.

Our fourth concern is any proposed changes in Federal procurement laws. The U.S. signing of the procurement code will require the elimination of certain buy American laws. These changes in our laws and Federal procurement practices should be undertaken with utmost care to assure that other signatories to this code are abiding by that code's provisions in operating fair, open and rational bidding systems. Furthermore, the caucus recommends that some additional negotiations should be undertaken to gain greater access to Japan's procurement market.

In conclusion, it is the sincere hope of the Steel Caucus that all concerned parties can work together to enact legislation to better protect American industry from the unfair trade practices that have seriously affected our domestic industries over the past several years.

We appreciate very much this committee's tremendous cooperation in the past and we owe the majority of our success to the work done by this subcommittee. We appreciate it very much.

Mr. VANIK. On Nos. 1 and 2 of the items you raised, I want to point out that we did ask Ambassador Strauss to provide some relief on the price assurance item, which was the substance of your request.

I am very glad to have your testimony, Mr. Murtha. We appreciate the testimony submitted by you and Mr. Gaydos. Ms. Mikulski.

Mr. GAYDOS. May I claim that pleasure. As the chairman of the Steel Caucus it is my distinct pleasure to introduce to the committee formally for presentation our well-thought-of, hardworking secretary-treasurer.

Mr. VANIK. Unpaid.

Mr. GAYDOS. Pardon?

Mr. VANIK. Unpaid.

Mr. GAYDOS. That is right.

Mr. VANIK. Maybe she will get a free parking space when all the rest of us are paying for ours.

Mr. GAYDOS. Barbara, it is a pleasure to have you with us. You may proceed.

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND, AND SECRETARY-TREASURER, CONGRESSIONAL STEEL CAUCUS

Ms. MIKULSKI. Mr. Chairman, I am very pleased to appear before this subcommittee and add a few additional remarks, not so much additional but to reinforce what Chairman Gaydos and Mr. Murtha and Mr. Regula indicated.

I want to really very strongly and clearly associate my remarks with the Steel Caucus because the issues that they outline are mine as well. I did want to add a few personal comments.

One, this legislation is of absolute critical importance to this country. Yet at the same time I think we find ourselves in a paradox where many of us understand what the United States was after World War II as we helped build a free world where we were both the bank and the cop for the free world and yet as we have seen the 30 years of time passing we now see almost a steady decline of U.S. power, both internationally and certainly domestically, because of certain economic considerations.

It is therefore very critical that we have in place legislation that defines for the entire world the rules of the game under which we can operate freely and fairly. I think it has been splendid that Bob Strauss has played such an important role in bringing this Trade Agreement to fruition.

I understand for a long time that they were busy learning how to speak French rather than learning global economics. I must emphasize the fact that we do need certain key things in this legislation to guarantee fair trade for the American people and the world. We must have a definition of injury that will allow American companies that are being hurt by unfair import to receive prompt and appropriate relief as you have indicated.

We must have antidumping legislation that is truly effective. We must be able to safeguard ourselves against the kind of action we saw yesterday where fines in absolutely undeniable cases of dumping of Japanese TV sets have been reduced by 75 percent.

As long as the Treasury Department is willing to send a signal that we are willing to let people get off, then in effect our legislative initiatives will turn into folly.

Quite frankly once the Congress has spoken, I resent very deeply when an administration through techniques makes a mockery of what we consider the legislative policy intent to be. I am not suggesting that the country should erect high walls to keep out foreign products. No one who represents a port, no one with a name that represents an ethnic community could responsively take such a position.

Mr. VANIK. With respect to the duties that you talked about, they have not been reduced as yet by Treasury. They are under administrative review. I have been very, very tough on them on this issue. They may very well do that, but they are going to do that over my objection.

Ms. MIKULSKI. You see, Mr. Chairman, that is my point. You are a man of experience, stature, and ability. You represent not only a geographic constituency but by your colleagues having you on the Ways and Means we have also delegated certain responsibilities to you.

You speak for the American people. I am not sure who the Treasury Department speaks for. It pains me to think that some GS-16, whose name we don't even know, is making trade decisions through a back door policy technique when people such as yourself and other Members of the Congress speak. That perhaps is one of the biggest problems I find in the enforcement of this legislation. I thank you for the vigor with which you have pursued it. If you need a small voice from Baltimore to help you amplify your position I will be happy to join you.

Just to conclude my remarks I want to emphasize again——

Mr. VANIK. Could you please get your cops off my back? When I drive down the road I have never seen so many highway patrolmen in my life as I see in the State of Maryland. I drive about 35 miles an hour because I am afraid they may not have their equipment calibrated properly. I have not paid any recent dues. I think it is good though.

Ms. MIKULSKI. Mr. Chairman, even though we have had a former vice president who associates himself with Kuwait and other OPEC countries, our current government elected to enforce the 55-mile-an-hour limit and make sure we don't buy all that oil. I wish I could tell you we fix speeding tickets in Maryland but we have cleaned up our act and I can no longer help you. [Laughter.]

I hope the chairman will be kind when he edits the record.

Mr. Chairman, as much as I enjoy this exchange with you I would like to conclude my remarks, knowing the scholar that you are, by giving you a quote from Thomas Jefferson which I think would be kind of a set of guiding principles on what trade law should be.

In 1793 Jefferson said he wished every country to be employed in producing that which nature had best fitted it to produce and each to be free to exchange with others. The greatest mass possible would then be produced of those things which contribute to human life and human happiness. He went on to say:

> Should any nation, contrary to our wishes, supposedly better find it to their advantage to continue a system of prohibition, duties, regulations, it would behoove us to protect our citizens by counterprohibitions, duties, and regulations. Free commerce and navigation are not for the giving in exchange for restrictions and vexations.

I wish we would tell that to the Treasury that if a nation imposes high duties or prohibits our products altogether, it may be proper for us to do the same by theirs.

Mr. Chairman, I think that words of Thomas Jefferson would serve us and our administration well.

Thank you for listening to me.

[The prepared statement follows:]

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I am pleased to appear before this subcommittee today along with my fellow officers of the congressional Steel Caucus. Mr. Gaydos' testimony clearly defines our specific concerns. I should like to add a few personal remarks.

I'm sure the committee realizes the very deep interest which we and our constituents have in this legislation. It is not too much to say that your decisions could literally mean life and death for many of our communities. The jobs of hundreds of thousands of American workers, and the viability of an essential American industry, will be determined by the specific provisions of the MTN and its implementing legislation.

The completion of these agreements in Geneva represents a truly monumental accomplishment. I want to take this opportunity to place in the record my personal appreciation for Ambassador Bob Strauss and his staff who have worked so hard to bring these discussions to a successful close.

Now that the negotiations abroad have been completed, the work begins at home. It is up to the Congress of the United States to make sure that the legislation implementing these agreements, and all the other aspects of legislation pertaining to international trade, will be fair to the American people. We must have a definition of injury that will allow American companies which are being hurt by unfair imports to receive prompt and appropriate relief. We must have antidumping legislation that is truly effective; and we must be able to safeguard against the kind of action we saw yesterday, where fines in an absolutely undeniable case of dumping Japanese color television sets has suddenly been reduced by 75 percent; from $46 million to $12 million dollars.

My constituents include Bethlehem Steel executives, a lot of steelworkers not only at Bethlehem but at smaller stainless steel plants, and the businesspeople who supply them and their families. They know the economics of foreign steel production, and they are genuinely, rightfully concerned about the future of their jobs. After all, imports of foreign steel to this country have increased 10 times in the past 20 years. Foreign steel producers actually sell more steel to American industries than do domestic manufacturers: and now the so-called lesser developing nations are joining in the race by directly building and indirectly subsidizing their own steel producing facilities.

We are not suggesting that this country should erect high walls to keep out all foreign products. No one who represents the port of Baltimore—no one with a name like "Mikulski" who represents a proudly multiethnic community—could responsibly take such a position. We agree that trade with other nations should be encouraged and that it is ultimately in the best interests of this country. But free trade must be fair trade. We can't allow other countries to export their unemployment to the United States, and we can't continue to ignore the enforcement of antidumping laws.

These concerns are not new ones—either to the President or to the Congress. In 1973, Thomas Jefferson reported to the Congress on "commerce with foreign nations." He said:

* * * could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others * * * the greatest mass possible would then be produced of those things which contribute to human life and human happiness * * *.

"But should any nation, contrary to our wishes, suppose it may better find its advantage by continuing its system of prohibitions, duties and regulations, it behooves us to protect our citizens * * * by counterprohibitions, duties and regulations also. Free commerce and navigation are not to be given in exchange for restrictions and vexations; nor are they likely to produce a relaxation of them * * *.

"Where a nation imposes high duties on our productions, or prohibits them altogether, it may be proper for us to do the same by theirs * * *."

Mr. Chairman, I do not think we can do much better today, than to measure our international trade policies according to these words.

Mr. VANIK. Thank you very much for your very fine statement. The quote that you have is something that I think is a good instruction for all of us in our work.

Mr. Gaydos.

Mr. GAYDOS. Mr. Chairman, again on behalf of the Steel Caucus it is my personal pleasure to introduce to the committee our col-

league the vice chairman of the Steel Caucus, the very active John H. Buchanan, Jr.

STATEMENT OF HON. JOHN H. BUCHANAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA, AND VICE CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. BUCHANAN. Thank you Mr. Chairman, it is a pleasure to appear before your subcommittee and to thank you for your leadership in this vitally important area of international trade.

Mr. Chairman, your personal leadership is a very reassuring thing as we are faced with a difficult decision pertaining to the MTN and the legislation necessary to implement this agreement.

I must say that this is the first time that it has been my privilege to testify before your committee since the loss of our colleague, Bill Steiger. It is with a certain sense of sadness that I note we lack his presence and his wisdom as we face these decisions.

Mr. Chairman, I want to thank you for what I know your committee will do toward reaching good decisions on these difficult matters. It is my earnest hope that it is possible to come up with implementing legislation that will make the Tokyo round of trade negotiations work for the benefit of American business and American workers.

Mr. Chairman, from World War II forward we have simply not enjoyed fair and honest reciprocity in our trade arrangements with our trading partners. I need not recount the whole history of how after World War II we engaged in policies of aiding those countries that had been our enemies as well as our friends to get back on their feet, to rebuild, better located, more modern plants while our own industries, especially the steel industry so vital to our economy, had to operate at full capacity without opportunity for modernization.

We entered, in the same period, into trade arrangements that were on purpose less than reciprocal. We had all the chips and we decided we wanted to pass the chips around so all could play the game.

The problem has been that our trading partners have come into the bad habit of assuming that less than full reciprocity is the right arrangement, that less than even-steven fair trade between the United States and our trading partners is the way it has to remain.

Whatever happens with the winding up of the trade negotiations and however well we can succeed with implementing legislation, even if we have made significant successes in negotiations, even if we do well with your leadership with implementing legislation, we cannot improve the situation for American business and American workers unless our Government is willing to enforce the law, unless the Government is willing to get out of its adversary posture and into a position in which it actually takes the action the law requires or permits in defense of an industry when threatened by unfair foreign imports.

Mr. Chairman, the administration has signed and submitted to the Congress a series of agreements which are heralded as a "trade liberalization package." As a longtime member of the House Foreign Affairs Committee, I am fully cognizant of the multitude of

political and economic benefits which the conclusion of these agreements holds for the United States. Our own economy, and the economies of our major trading partners are increasingly interdependent. Today, imports and exports accout for roughly 16 percent of the GNP of the United States, 43 percent of the GNP of Germany, and 22 percent of the Japanese GNP. The mutual benefits of increased cooperation in world trade are obvious and compelling.

And yet, I approach these agreements with grave reservations and deep apprehensions. The past few years have seen the United States become the target of below-cost foreign imports of a myriad of products including steel, electronics, leather goods, and many others. The United States has literally become the dumping ground for the unemployment of our trading partners. The impact of these foreign imports has been devastating to many vital American industries, their workers and their workers families.

This situation has reached critical proportions through the unfortunate reticence of our Government to enforce the trade laws which the Congress has passed to protect this country from the deleterious effects of price discrimination in foreign commerce.

The Fair Trade Enforcement Act of 1979, which I have cosponsored and fully support, requires the Secretary of the Treasury to initiate an antidumping investigation whenever he receives information from any source, including personnel from other agencies of the U.S. Government, that imports are being sold at less than fair value. I urge the committee to incorporate this provision into U.S. law.

Once an industry has succeeded in forcing the Treasury Department to initiate such a case, it may take 12 to 15 months for a final determination to be made. Current law provides that the U.S. Treasury may take up to 6 months—9 months in complex cases—to reach a tentative decision and up to an additional 3 months to make a final determination of sales at less than fair value.

If Treasury's final determination is in the affirmative, the case is sent to the International Trade Commission which has another 3 months to decide whether less than fair value sales are causing injury to the domestic industry.

The Department of Treasury and the International Trade Commission have indicated that a reduction of these time limits is not feasible. Yet, there are compelling reasons for expediting a final resolution of an antidumping proceeding. A great deal of uncertainty is generated in the marketplace by a pending antidumping case.

The Fair Trade Enforcement Act of 1979 includes a provision to require the International Trade Commission to issue its injury determination within 4 months of a tentative finding of sales at less than fair value by Treasury. This provision would permit a reduction of 2 months from the total allowable time for a final injury determination without shortening the time given each agency for its investigation. This provision will help minimize uncertainty in the marketplace for U.S. producers, purchasers, and importers of a product under investigation.

Once the tentative determination of sales at less than fair value has been made, the Secretary orders the withholding of appraisement on imports of merchandise in question. That is, the actual calculation of duties on imports is suspended and all shipments on

which appraisement is withheld are subject to special dumping duties. Although the Antidumping Act authorizes the Secretary to retroactively withhold appraisement up to a period not exceeding 120 days prior to formal investigation, the Department has refused to exercise this authority. This practice on the part of Treasury should be discouraged.

Even after an American industry has charted the tortuous course through a lengthy, expensive antidumping proceeding successfully, there is no guarantee that the required duties will be systematically applied to the foreign product in question. The chairman and other members of the subcommittee are aware of the incredible situation with regard to the failure of the U.S. Customs Service to collect literally millions of dollars on imported Japanese television sets. Perhaps you are unaware, however, of similar cases involving other industries which illustrate the same problem.

In 1973, the specialty steel industry brought antidumping cases against France and Sweden alleging in the case of the former that certain French companies were dumping stainless steel wire rod in the United States. In the case of Sweden, the same allegations were made with respect to stainless steel plate. Both of these cases proceeded under the Antidumping Act and final dumping duties were issued with respect to these products. Through a freedom of information request filed by the specialty steel industry, it has been learned that not a single cent in antidumping duties has even been assessed against imported stainless steel rod from France since 1973—even though Treasury found dumping margins in excess of 6 percent.

In the case of stainless steel plate from Sweden, the Department is able to show that only $219,677 has been assessed during this 5-year period. Treasury is unable, however, to provide any information as to how much of that sum, if any, has ever been collected.

Mr. Chairman, my point is this. Our trade laws have simply been ignored by the very agencies charged by the Congress with their enforcement. Now, the administration is asking us to approve new trade agreements which further open our borders to foreign competition. As a Republican, I have no problem with the concept of increased competition for American industry. I have every confidence that the American worker can compete successfully in the foreign marketplace—as long as the competition is fair.

In order to gain my support for these agreements, I must have firm assurances from the administration that the past negligence of the Federal bureaucracy in enforcing the trade laws will cease. I am asking you, Mr. Chairman, and the other members of the subcommittee to send a message to this administration which cannot be misunderstood or misinterpreted—our trade laws must be vigorously and systematically enforced.

After World War II, the United States set out to rebuild the industrial base of Japan and much of western Europe. Given the international political and economic conditions of the time, this was good public policy. Part of this policy was the signing of trade and economic agreements with these nations which were less than fully reciprocal. In my estimation, we fell into a habit of less than fully reciprocal agreements which continues today in the MTN pact.

Our trading partners have made every use of this very beneficial relationship, and have taken it a few steps further. The Japanese and Europeans have erected tariff and nontariff barriers and have facilitated the growth of their own exports to the point of outright subsidy.

In contrast to our competitors, the U.S. Government has placed itself hostile in a posture toward business in general. In addition, the American marketplace has been so large that American Government and business saw little need to expand exports. As I noted earlier, this is no longer the case. We live in an interdependent world economy and we must export if we are to survive economically.

I believe we must have a coordinated effort on the part of all levels and branches of the Federal Government to assist business generally and to encourage exports specifically so that we can take advantage of the opportunities within the multilateral trade pact.

Without a policy of increased exports and rigorous enforcement of our trade laws, this trade agreement will provide further disruption and possible disintegration of many vital American industries. I am very hopeful that this subcommittee will do everything in its power to see to it that such policies are instituted.

For example, the Department of the Treasury has shown a consistent, deep-seated, reluctance to enforce the Antidumping Act of 1921. This is most clearly illustrated by examining Treasury's record of instituting antidumping cases. Present law confers on the Secretary of the Treasury the authority to institute an antidumping investigation upon receipt of information indicating sales at less than fair value, without waiting for a formal filing by a domestic industry.

Despite this provision in the law, Treasury has seen fit never to use this authority—save in the most recent, limited instances of fast-track antidumping cases under the trigger price mechanism.

Mr. VANIK. Thank you very much for your fine statement.

Before we proceed to questions I want to send over to your Steel Caucus secretary for your file a copy of a letter which Mr. Vander Jagt and I addressed to Ambassador Strauss on April 11 relating to the loophole that we thought existed in the assurances that would be required. In other words, specifically it is our view that the foreign price assurance should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

We are addressing this need with respect to countervailing duties and antidumping procedures. I will send that over for your files.

Mr. LEDERER. Mr. Chairman, I would like to thank the panel of our colleagues for their testimony this afternoon. I would like to say to Ms. Mikulski that we, from steel producing States, know that you need good fire for good steel. You certainly bring good fire to the Steel Caucus.

Ms. MIKULSKI. Thank you.

Mr. LEDERER. To my colleague from Pennsylvania I would like to say that I have been known to be of the reservation but on this issue I am on the reservation.

Mr. GAYDOS. We are most appreciative.

Mr. LEDERER. It is good to see you, Congressman Buchanan. Thank you for your testimony.

Mr. VANIK. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I too would like to welcome our colleagues. I apologize for being late. I would assume that you share my concern over the definition of injury and the injury test. Would you address that for a moment.

Mr. BUCHANAN. I am sure we would concur, yes, we share your concern. By definition injury should be as ITC has considered it, anything beyond that which is immaterial or——

Mr. SCHULZE. Anything more than negligible.

Mr. BUCHANAN. Anything more than immaterial or inconsequential. The word was so small and indicates such a tiny exclusion I could not even think of the word.

Mr. SCHULZE. I understand that other signatories or proposed signatories to the agreement do not like the term de minimus, which was one of the original proposals. I am happy with your language. I think frankly this is the heart of this whole agreement. I would hope that the Steel Caucus will really get their back up and we are really going to do a job on this thing.

Now I missed a portion of the testimony this morning also when the Iron and Steel Institute testified but I was shocked when it was reported to me that they said, "There might be some minor revisions, otherwise we are fully supportive." Does that agree with your position?

Mr. MURTHA. Let me say to the gentleman from Pennsylvania we have been in close contact with American Iron and Steel Institute and the unions on this issue. I don't think they have come to the point where they can make a judgment. They have been working with the administration. They hope that they can work things out which are the last words we have received.

As you know we introduced legislation which we felt would put the administration on notice that we just won't accept less than fair trade for the United States.

Mr. GAYDOS. If I may respond to my colleague on the injury interpretation, we have had no difficulty with it. We have found almost complete acceptance and support for a definition as set forth by Mr. Buchanan. We support the term that is presently used by the International Trade Commission in administering the Antidumping Act. That is the term we wish to use because we think it has been time tested, we think it is proper and we think it is effective. Anything more than that would be counterproductive and actually tear the heart, as you properly suggest, out of the agreement approved by this Congress.

Mr. SCHULZE. I note at the end of Congressman Buchanan's statement his comment on rigorous enforcement. That will be another element. Rather than depend on the good will of someone doing this it has to be spelled out specifically and we are going to look over their shoulder and make sure it is enforced or quite frankly I am going to oppose MTN all the way unless we get some good antidumping statutes as well as that definition of "injury" is going to have to be spelled out and be meaningful.

I would again like to thank my colleagues and tell them that I stand ready to work with them on this issue until we can have a satisfactory resolution.

Mr. VANIK. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. I would like to ask the members of the caucus if they can address themselves to the situation of the Steel Committee that MTN sets up, this International Steel Committee, how that is going to work.

Do you see it as something that will be beneficial to seel producing interests or something that will wind up, as some people have indicated, as maybe a forum to fix international steel prices?

Mr. GAYDOS. If I may respond to that and my colleagues may add to it, I believe it is probably our only salvation. I think it is a very practical approach to the problem. I believe that the OECD Steel Committee will be the proper forum to provide long term solutions to steel trade problems. Our Nation can no longer afford to approach steel policy on a legislation-by-crisis basis. The Steel Committee will have more time to monitor developments and anticipate potential problems in world steel trade.

We have always found that internationally if everybody participates in the process, the end result is one that has some staying power. That is what we need. We have to take a closer look at domestic production of steel, excess capacity, world demand, changes in trade patterns, and government intervention in the world steel market.

I have great faith, myself, personally and I think the Executive Committee in general agrees that the Steel Committee is where the future disposition of problems is going to take place—right in that organization. That is my conception of the role of the OECD Steel Committee.

Mr. MOORE. I think your testimony is helpful in answering criticism that has been leveled at that committee.

Mr. Gaydos, I notice on page 2 of your testimony, the last sentence, the second paragraph, you make the statement that the third point of Japanese strategy is that government and business leaders have cooperated closely to protect the industries' financial position. I could relate that to a comment made by Mr. Buchanan who said he was confident American steel could compete with any foreign interest on a fair basis. I wonder if you think that we in government are cooperating closely enough in seeing to it that regulations and taxes and that sort of thing are as good as they could be to assist our steel industry to compete with foreign interests.

Mr. MURTHA. Let me address one point of that. The steel industry I think has a real problem in faster writeoff of pollution control equipment in particular. It has been a tremendous burden on the steel industry in the last few years. I have lost 3,000 jobs in my district since the flood last year. It is because they don't have the ability to reinvest and increase their productive capacity. Fortunately because of the trigger price mechanism the domestic production of steel has increased and that is all we want. But in western Pennsylvania for a while over a year ago we had tremendous unemployment and it was coming from the fact that we were closing down coke batteries and the environmental restictions were

so stringent they weren't able to keep up and meet the environmental requirements and consequently we had to lay people off and import foreign steel.

One of the things we could certainly use is an immediate writeoff for pollution control equipment. It would be extremely beneficial even though it certainly will take some money out of the Treasury.

Mr. MOORE. I could not agree with you more.

Mr. GAYDOS. I would like to add to that, Mr. Moore, that we have an altogether different concept of doing business than Japan and even the EEC nations.

In Japan they allow their debt ratio to go up to 80 percent. In this country it is unheard of. If any of our people allow their debt ratio to go up that high they go bankrupt. I think the point that Mr. Buchanan was trying to illustrate and emphasize is that American competitiveness in steel will give this counry the edge in our domestic market. When we get in the outside world we compete against a horse of a different breed. Our trading partners have a different way of doing business. It is contrary to our basic principles and the concept of laissez-faire, free enterprise.

We do feel that if we had fair trade laws we wouldn't have to worry about foreign competition.

I feel so vehement about the fact that many people do not give our businessman due credit today. The American businessman is operating under many, many inhibitions and difficulties.

For instance, the antitrust laws. More money is spent in the legal department of U.S. businesses to protect him against antitrust laws than is spent for productive machinery. The Japanese don't have to be faced with this problem.

In the light of all of that I still emphasize the fact that the American steel industry doesn't have to change its principles to still be competitive worldwide and domestically.

Mr. SCHULZE. Will the gentleman yield.

Mr. MOORE. I yield to the gentleman.

Mr. SCHULZE. What would the position be today if we had rigid enforcement of the existing antidumping laws?

Mr. GAYDOS. I can tell you as far as the steel industry is concerned, No. 1, you would not have all this stock floating around. Foreign competitors are now starting to warehouse stock through subsidiaries which will be released on the U.S. market at times that could cause considerable economic disruption. We see definite penetration in that area. If we had reasonable fair trade laws I think it would help the expansion of U.S. steel production.

I think that foreign unemployment would cease to be exported from their factories into this country.

Mr. MURTHA. I think it would stop imports, to answer the question directly, if they enforced the present 1974 Trade Act without subsidizing overseas stock.

Ms. MIKULSKI. Not only speaking for the steel industry but I think if we had a vigorous enforcement, genuine enforcement of antidumping, we would have an electronic industry in this country we would be making TV sets, CB radios, a whole host of other electronic equipment that supply very good jobs.

No. 2, I think we would have a much more vigorous steel industry because what would the antidumping laws do? They would

create the climate for every one to play the fair enterprise game under the same rules.

The gentleman knows that in Japan, for example, they have all types of interlocking indirect subsidies so that when our guys go to borrow money, for example, at the prime rate it is very different than what you find in Southeast Asia. In fact, it would create the climate for true free trade.

Mr. GAYDOS. If I may add to that. The national defense demands nothing less. It demands a viable steel producing industry, there is no question about it.

These other things that Barbara mentioned I think are most important. You can add that this country no longer makes any Christmas tree ornaments or costume jewelry. At one time the costume jewelry business employed thousands of people in this country. Today there is no domestic costume jewelry business because unfair foreign competition destroyed our market. The same situation is occuring in textiles, leather, shoes, and electronic equipment.

With reasonable enforcement of our trade laws I believe we would not be accused of protectionism. We would be doing just what every other nation has been doing for years.

Mr. SCHULZE. Let's compare apples and apples. Don't tie one arm and one leg behind our backs when we are dealing with them.

Mr. BUCHANAN. Absolutely. The gentleman is precisely correct when he says this is really where the ball game is on enforcement. We must have enforcement. Had we had it we certainly would not be in the condition in the steel and other industries that we are now.

This is of crucial importance in this present procedure that, in the words of Thomas Jefferson, we bind men by the chains of law. It is symptomatic of the other thing that the gentleman from Louisiana referred to, and that is our Government lays burdens that are heavy to bear upon our industry in vivid contrast to the governments of our trading partners. We are going to have to face questions like pollution control, which may be socially necessary but does comprise a very substantial part of the economic burden and the overall problem of steel and other industries. There are other aspects of government policy that are going to need to change if we are going to create a climate that is truly fair domestically, including fast writeoff procedures, for example.

Mr. SCHULZE. I thank the panel and I thank the gentleman from Louisiana for yielding to me.

Mr. MOORE. I have listened to the answers. I take it from the comment just made by the gentleman from Alabama that most people in the caucus and my colleague from Pennsylvania on the committee seem to think that antidumping would solve all your problems. I am not sure of that. I am not convinced of that. What I would like to see you do, if we have time, I would ask the chairman to hold the record open, it would be greatly beneficial to us if the Steel Caucus could provide us with a list of things we ought to do at some point in the future should the MTN go through to put you in a better position than you are in now.

One item was mentioned by Mr. Murtha about the idea of rapid depreciation for pollution abatement of equipment. This is some-

thing we ought to do. It would help us in the deliberations of this committee in the future to point to our colleagues in discussing MTN. This is something we ought to look forward to in the future.

I would ask the chairman of the subcommittee to hold the record open to give you time to consider those points. I think when MTN is adopted, if it is we are going to be faced with two things to see that American industry survives. One is vigorous enforcement of the laws on the books; second, to take a look at the burden that Government puts on free enterprise to see if we cannot do something to ameliorate that burden to give an immediate shot at those countries where there is very close cooperation between business and government.

I don't think that cooperation exists close enough in this country in terms of our listening to what has to be done to make you competitive. We have piled it on and piled it on and let you compete if you can and go out of business if you don't. I don't think that is a position we ought to take. After MTN passes, you will be in a much rougher position than you are now. I urge you to provide us with a list of such solutions, if you could, that we could consider.

Mr. SCHULZE. I have businessman after businessman come into my office with the statement that they feel deep down that they are in an adversary relationship with the Department of the Treasury. This is almost unbelievable to me. I wonder if you have had a similar experience.

Mr. GAYDOS. We have had that view voiced before the caucus on numerous occasions because we do as a matter of policy open up our executive committee to hear complaints that are pertinent to the steel problem.

I do want to thank Mr. Moore for the suggestion to which we will respond immediately.

[The following was subsequently received:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 3, 1979.

Hon. CHARLES VANIK,
Chairman, House Subcommittee on Trade, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In further regard to the Steel Caucus' testimony before your Subcommittee on April 25th, 1979 and Congressman Moore's request for a list of areas where actions might be taken to assist the steel industry in its recovery, the following is a brief synopsis for your review.

(1) CAPITAL FORMATION

The domestic steel industry needs to expand its production. In 1978, the steel industry fell $1 billion short of its capital requirements. According to the industry, improvement in the capital formation picture requires government action which will:

Permit good earnings when markets are strong—no more informal price controls,
Weigh the economic impact of environmental and other regulations against benefits sought, and
Adopt tax policy which will encourage investment in productive facilities.

(2) REDUCING THE GUIDELINE LIFE FOR DEPRECIATION OF NEW STEEL MACHINERY

In its report to the President, the Solomon Task Force acknowledged that the steel industry's profitability over the last decade has been substantially below the average for all manufacturing industries. This has resulted in a decline in earnings and has contributed to the industry's inability to finance modernization and to obtain funds from external financing.

According to the report a combination of the trigger price mechanism and general tax reform would go a long way toward remedying the industry's cash flow problem. However, to close the gap completely, the Task Force recommended that the Treasury Department consider reducing the guideline life for depreciation of new steel machinery and equipment from 18 years to 15 years.

This reduction would produce additional tax benefits averaging nearly $60 million and would contribute to the steel industry's ability to increase its cash flow. The Treasury Department has been considering the reduction of the guideline life for some time, but, unfortunately, has yet to take positive action.

Your comments on, and consideration of, these points would be greatly appreciated.

Sincerely,

JOSEPH M. GAYDOS,
Chairman, Congressional Steel Caucus.

Mr. VANIK. We will leave the record open until the middle of next week. I just want to say two things. One is that I have been deeply concerned about the failure of the American automobile industry to produce a decent choice for gasoline efficient automobiles. Throughout America the industry is really doing very little.

On January 1 there were almost 5 million cars from one country that were here unsold. The Iranian crisis came along and those cars have picked up like hotcakes, they are gone. They are buying them off the racks, they are even advertising. You have two or three choices as far as American companies are concerned, and a good part of the time they are selling their own imported product, their captive industry abroad.

Frankly, you are losing more steel than you can ever imagine because of the ineptitude, this folly of our American industry. I would hope your organization will consider a resolution to alert them so that you can make some of this fight for steel use in autos. But the automobile industry ought to be admonished that the age of conservation is on us. They don't have until 1985 or 1990. They are going to be completely out of busines, if they don't provide a decent selection of choices for the American people in gasoline efficient automobiles.

On that standpoint, the imports have helped. If it weren't for the imports they would not even have moved at all. Frankly, I just feel it is bad leadership of our own automobile industry to let this happen.

The other point that I wanted to make dealt with what I thought could be the action of your caucus with respect to MTN. Do I take it to be your position that you are supportive of the MTN, if we make these corrections and make these adjustments? Because I am hopeful that we have your support when we go to the floor with this legislation.

Mr. GAYDOS. Mr. Chairman, if I may respond to that. As you well know, when you had the obligation on the floor of the House to seek an extension of the countervailing duty waiver as requested by the President, we stood behind you. We thought it was proper. We thought your arguments were convincing.

With all due respect to the integrity and history of this committee, if after we have had a chance to review the legislation in its final form and we find it to be acceptable, I think the chairman can rely upon this caucus.

Basically, if our position is incorporated into the implementing legislation you will find us beside you arguing and fighting for this law. You know that. I cannot become committed to a position prior to our finding out what the legislative language will contain.

Mr. VANIK. I have one other point. One of the reasons I was supportive of the trigger price mechanism and especially the specialty steel problem and others, is that I felt we ought to give our American industry a chance to catch up on its technology. I would like to see, and I hope your caucus will take some affirmative action of insuring that the industry will use the resources and the capital that is created by the preservation of their volume of business to make an investment in America with some new plants, so that they don't have to lean on the Government.

Future Congresses may be less concerned about their problem. So this is really the time to bring the industry up to date, to get them to expand, to develop new facilities that are going to meet all the requirements of the law and which will be more efficient as they start replacing some of the very old and obsolete facilities we have in America.

I don't think there is any law in the world that can ever protect the continued life of an obsolete facility. We have to reckon with that. We know their capital costs are great. Maybe in some special way we can address ourselves to that. Maybe it is time for them to put some commitment on the record about how and where they expect to strengthen and maintain their viability in America.

Mr. MURTHA. We will pass that recommendation on to them. They feel that their profit compared with the capital investment has not been large.

Mr. VANIK. It is not large compared with oil, certainly.

Mr. SCHULZE. Oil is not large compared to the Washington Post.

Mr. MURTHA. If we could get a faster write-off for pollution control equipment and maybe insist it go into productive investment that certainly would go a long way.

Mr. VANIK. We have to think of some special means. I think they have to put on the table pretty soon what their plans are, and how much they expect to rebuild and maintain their viability. This is a strong American industry, it is as American as the hotdog. We should insist that they modernize their facilities and remain competitive and keep viable their forces of production.

Mr. GAYDOS. I think your suggestion is well taken. We will follow your suggestion and have further meetings with industry and labor to discuss the matter in greater detail.

Mr. SCHULZE. I have the utmost respect and admiration for my chairman but I could not let pass his condemnation of the automobile industry without a comment.

I think our domestic automobile industry has lost millions and millions, perhaps billions of dollars by prematurely trying to sell small cars which were not purchased on the open marketplace by the people of this country. I do not think that they have abdicated their responsibility but have been very responsible citizens and are meeting the needs of our current problem with fuel consumption.

Mr. VANIK. I think the record will talk for itself on that. I don't think this is the time to really get into a debate on that point. I think the record is self-evident that they were caught by surprise

twice, first in 1973 and they seemed to have no awareness that there is an oil crisis going on. When they met it they met it by providing a diesel engine or front-wheel drive that is beyond our pocketbooks. It is the incredible upfront cost for this gasoline-efficient car that knocks all the efficiency out of it. It has to be efficiency at a level that people can buy.

I think they ought to be more resourceful. We have not really changed our technology much from the time I was a boy. They might still come back with that old Stanley Steamer.

I want you to know I have old automobiles, and they are much more gasoline efficient than the new ones. I am having my 1965 Ford right now repainted. It has a new motor. It has six cylinders. It has a stick shift. It is a pretty automobile. I get 24 miles to a gallon. I don't know why they can't do that.

Mr. SCHULZE. You might start the Vanik Steamer Co.

Mr. VANIK. Thank you, Mr. Gaydos.

I will express our gratitude to the Steel Caucus. You have been generous with your time. I want you to know we appreciate it, because we have had an interchange which will be invaluable to this committee in its deliberations.

Mr. GAYDOS. On behalf of the Steel Caucus I would like to mention that Mr. Philip Ola, the director of Steel Caucus, is with us today, accompanied by Mr. Bill Echols, Mr. Michael Lynch, and Mr. Bernie Manoella, who have assisted him in Steel Caucus matters.

I wish to thank my colleagues for appearing here with me. I definitely and unqualifiedly extend the caucus' sincerest respect and gratitude to the committee for arranging this time for us. I want the committee to understand fully that the caucus hopes that when the MTN implementing legislation reaches the floor of the House that we can stand as an ally to help support and pass this vital legislation.

We wish to conclude by congratulating the committee for a task well done under very difficult circumstances.

Mr. VANIK. Thank you very much.

Mr. GAYDOS. Thank you.

Mr. VANIK. The next witness is the joint appearance of the Passaic Color & Chemical Co., represented by Fred H. Hummel, president, and the Oil, Chemical & Atomic Workers International Union (AFL-CIO), represented by Eugene Wyatt, president.

STATEMENT OF FRED H. HUMMEL, PRESIDENT, PASSAIC COLOR & CHEMICAL CO.

Mr. HUMMEL. I am Fred Hummel, president of Passaic Color & Chemical Co., Paterson, N.J., which is one of the Royce Chemical group of factories in New Jersey.

With me is Mr. Wyatt, president of the Oil, Chemical & Atomic Workers, Local Union 8-406, which represents many of the workers in the Royce group of factories that do business with Royce and also speaking as a local president and for the OCAW International.

I will be brief so that I may relinquish, if satisfactory to you, Mr. Chairman, part of my time to Mr. Wyatt.

As stated in my written submission to the committee, we will feel we make a substantial contribution to the economy and em-

ployment of New Jersey with factories in Newark, Paterson, and East Rutherford.

Our particular concern is that the customs valuations method in the new trade agreement will result in unfair trade and trade favoritism to the detriment of independent dye manufacturers in the United States; 85 percent of the imports of competitive dyes are now between related companies overseas and here.

The overseas parent companies operate in a cartelized rationalized business environment encouraged by their governments to do so. I believe that with the present customs valuations method they will be able to escape the duties intended in the new agreement, if not fully, at least in part. When loopholes are left in an agreement they will be used. This is already the case with dyestuffs passing through Virgin Islands whereby millions of dollars, apparently, escape either the economic well-being of the Virgin Islands, as was intended, or U.S. duties.

Our reference to this is only to illustrate that without proper safeguards unintended problems will come up. The trade agreement is generalized trade. Eighty-five percent of the transactions between related companies is not generalized. The Virgin Islands situation takes up less than 5 inches of copy on one side of a sheet of the U.S. Tariff Schedule, and yet millions of dollars pour through this little loophole every year.

The new trade agreement needs a safeguard which it now lacks to protect against abuse and misuse of the fair trade intended. We feel that this can be corrected by adding a trigger mechanism if it does not work as a remedy. One way would be that any time a duty recovery drops below reasonable variables on competitive dye this would trigger the reversion to the rate of duties set at the time referred to by the new schedule of converted rates. Until such time as the U.S. Customs authorities have had an opportunity to investigate and to decide whether the principles of fair trade and fair value as called for in the trade agreement have been met.

We are working with trading partners who have a completely different set of rules. We must make sure that the trade between us works fairly. It is my opinion, based on more than 20 years in the American dyestuff industry, it will not work fairly without this or some similar safeguard that is now lacking in the agreement. Safeguards will not cause harm to the United States or to its trading partners if they are simply to insure that intentions get carried out.

I might add also that I am well aware we have many laws covering such matters as dumping, predatory pricing, unfair trade practices, and so on. My experience has been that discovery is difficult and damage has to be almost terminal and massive before our bureaucracy starts looking into it, presumably, Mr. Chairman, the same bureaucracy referred to on Monday.

It seems to me if we see a loophole we should simply close it. If we need a safeguard we should simply add it. I have been told that the Treasury Department does not feel that additional safeguards are required and yet having read in depth Customs valuations and been in business a long time, I don't believe it. I feel that without this safeguard, and I wish I could find perhaps a less dramatic

expression, I feel we are now writing a death warrant to the independent American dye manufacturer.

Mr. Chairman and gentlemen of the committee, I would like to thank you.

At this time I turn the balance of my time over to Mr. Wyatt.

[Mr. Hummel's prepared statement follows:]

STATEMENT OF FRED H. HUMMEL, PRESIDENT, PASSAIC COLOR & CHEMICAL CO., PATERSON, N.J.

Mr. Chairman, I am Fred Hummel, president of Passaic Color & Chemical Co., located at 28-36 Paterson Street, Paterson, N.J.

At the Office of the Special Trade Representative for Trade Negotiations, I was told we have not earned the right to live. I am here to prove to you and the trade negotiators that the independent dye maker has earned the right to life. After having been told this, it is quite evident to me I am fighting for the right to live.

Passaic Color is one of the Royce Chemical group of factories in Northern New Jersey. Royce has its principal office and factories in East Rutherford, New Jersey, with another plant in Newark, New Jersey and, of course, Passaic Color in Paterson. Royce has a total employment of slightly over 200 people and conducts business with almost 1,000 other firms, many of whom are in New Jersey.

Although Passaic Color has only approximately 15 employees in Paterson, its products and sales are integrated with those of Royce Chemical, thus contributing to total viability. We also have dyestuffs operations in East Rutherford. Approximately half of our total personnel are engaged, to some extent, in the manufacture, sales, distribution, research, quality control and administration of our dyestuff business.

Should the American dyestuff industry be killed, we would be right back where we were at the end of World War I, with America virtually totally dependent and at the mercy of foreign sources of colors and dyes.

In addition to the employment and economic impact, this would be the consequence of trade favoritism.

The reason I have asked to appear is to express my view on the multilateral trade negotiations that have been going on in Geneva for the last 5 years, specifically my view on customs valuations and the suggested changes by the special trade representative for trade negotiations.

Passaic Color is a manufacturer of synthetic organic dyestuffs. There are a number of other independent American dyestuff manufacturers in the northern New Jersey area.

There are literally hundreds of satellite businesses in New Jersey, who depend upon us for part of their income.

Thus, I feel the independent dyestuff manufacturers are an important part of the employment and economic viability in New Jersey. It is our feeling there is a very serious omission in the agreement concerning customs valuations.

Our general position is that we are for both free trade and fair trade, which we understand is precisely the position taken in the agreement which calls for fair trade, uniform trade and a neutral system for the valuation of goods. We recognize that times change. If the American selling price (ASP) basis of tariff evaluation is to give way to a new system of converted rates, with new rules for valuation, we are willing to accept this without argument—if it works along the lines our negotiators intended. This is our concern. We have no real idea if the converted rates result in the design of duty equivalency. We have to accept our negotiators word for it because we can't check it. Foreign companies in a cartelized, rationalized business environment do not provide price lists for their products. We have no way of being privy to the United States Customs records to find out the duty per unit value paid under our present system for competitive dyes on actual transactions; and more importantly, will not be able to find out the duty actually paid on transactions in the future.

Approximately 85 percent of the transactions for competitive dyestuffs are between foreign companies and their American company, a somewhat less than arms-length transaction. The rules and regulations coming from a multilateral trade negotiation are to regulate generalized trade. No way can 85 percent of the transactions between related companies be called generalized.

Our concern is, despite the rules on customs valuation, means to subvert the valuations can be devised by multinational companies, who can make decisions as to how much to charge themselves—which country to take their profit in—and when; particularly when the preponderance of transactions are between related firms.

To illustrate the reality of these concerns, it should be noted millions of dollars worth of foreign dyestuffs already pass through the Virgin Islands every year virtually duty free. This fact is well known to the U.S. Customs authorities and is technically legal because of the customs structure.

Unless the Agreement works with equality, it can result in unconscionable favoritism with a shattering impact on the American Dyestuff Industry. The effect on New Jersey would be extremely adverse—New Jersey being heavily industrialized, the leading benzenoid chemical producing State, (the category of chemicals affected by the elimination of ASP), and with small and medium sized business the backbone of the State.

We need a safeguard in the New Agreement, which it now lacks; to provide assurance to protect against abuse and misuse. There is no assurance to the American Dyestuff manufacturer that this agreement will provide equality.

We feel the omission in the Trade Agreement is a safeguard to make sure the Agreement works for competitive dyestuffs the way the Trade Negotiators have indicated it should. We feel this can be corrected by adding a trigger mechanism if it doesn't, and a remedy.

One way might be, if any time duty recovery drops per unit. taking into account reasonable variables, on a competitive dye; this would trigger a reversion to the ASP duty equivalent level set at the time the converted rates were set, in dollars, taking inflation into account. This would remain until the U.S. Customs authorities had an opportunity to investigate, to consult with American Dye Makers of the product and to develop an opinion as to whether the principle of fair trade and fair market value as called for in the trade agreement had been met—or subverted.

A discussion with personnel at the Office of Special Trade Representative was attempted on this subject, but I was told there is no hope of convincing them safeguards are needed; that the Agreement itself is sufficient. This is obviously not my opinion based on more than 30 years of experience in the American Dyestuff Industry.

We must recognize we are making a trade agreement with trading partners, who are working with a completely different set of rules.

Dyemakers in Europe and the Far East can get together to decide which one will make a particular product or color. They operate under a cartel system encouraged by their governments—they can rationalize their industry and do. That is not the way in America. And yet, the practicalities of multilateral trade necessities require we come up with one set of rules and regulations for these two totally different business systems. With this problem, and the problem of the majority of transactions between related companies, extraordinary precautions and safeguards are needed.

The addition of a safeguard will cause no harm to the United States or its trading partners.

My opinion is that if a safeguard and remedy are not included, the United States will have made a disastrous mistake, and mistakes do happen; with terminal consequences to American dyestuff manufacturers, American workers with New Jersey hard hit.

Thank you for the time extended to me to appear before the committee and to express my views.

Whatever questions the committee may have, I will be happy to answer to the best of my ability.

Mr. VANIK. We will hear from Mr. Wyatt and then we will go to questions.

STATEMENT OF EUGENE WYATT, PRESIDENT, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL 8-406, NEW JERSEY

Mr. WYATT. Mr. Chairman, my name is Eugene Wyatt, Jr. I am president of Local 8-406 of the Oil, Chemical & Atomic Workers International Union, AFL-CIO. I represent approximately 2,000 workers in the State of New Jersey, some workers who are employed in the dyestuff industry.

I am here to express my concern for the lack of safeguards within the multilateral trade negotiations agreement. The American employee has been traded away for a system of perverted

rates. I am not here to ask that we reject the trade agreement; however, I appear before this committee to ask that some safeguards be put into this agreement to protect the jobs of American workers.

If one American job is lost because of the lack of safeguards it is one too many. We can ill afford the luxury of more unemployment in the State of New Jersey, which at this time has a percentage of 12 unemployment. We do not need retraining assistance. Retraining assistance and unemployment are no substitute for real jobs. If putting additional safeguards in a trade agreement means protecting American workers, this must be done without delay. It hurts no one. Failure to do this would mean trading away American jobs to foreign workers.

I am not opposed to free trade. I am not opposed to fair trade. But I am opposed to subsidizing the foreign workers.

Mr. Chairman, I would like to ask your help and your support and that of the committee in attempting to insist on enforcement, some type of protective custody in this agreement. I am sure the workers that I represent and their families will be eternally grateful to you and this committee if you insist on some protective measures in that agreement.

I thank you.

Mr. VANIK. Thank you very much.

Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to thank our witnesses for their testimony. I have no questions.

Mr. VANIK. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I just want to say to our witnesses that I do share their concerns and especially agree that job training is no substitute for a permanent place of employment. That is one of the bonuses that is supposed to be held out for the loss of jobs under this agreement. I don't think that is satisfactory.

I have a great deal of concern over the final form of this agreement and understand and share your concerns.

Mr. VANIK. I want to point out to you that Congressman Guarini from New Jersey was detained today. He wanted to express his regrets. He has been very sensitive to the problem that you have outlined. He will report back to you after we analyze your testimony.

I want to thank you very much for appearing.

Mr. HUMMEL. May I add one more thing and I will be very brief.

I think that this committee over the years has had to deal with the problem of the American dyestuff industry many times, particularly the matter of ASP, which has been a burning issue on many of the rounds, particularly Kennedy. I think that what we are attempting to say today is a very fair position. We are not asking for the retention of ASP because we know that times change. We are not objecting to the converted rates even though we don't really understand what the net result of them is going to be.

I think what we are saying is in the modern world of trading that we simply want to be absolutely sure that the new agreement results in fair trade.

Mr. VANIK. I think you are making a very reasonable presentation.

Do you have any questions, Mr. Lederer?

Mr. LEDERER. No, Mr. Chairman, thank you.

Mr. VANIK. Thank you very much. We appreciate your testimony.

Mr. HUMMEL. Thank you, Mr. Chairman.

Mr. VANIK. The next witness is our former colleague, David S. King, counsel for the American Dinnerware Emergency Committee.

I presume that your organization is one that promotes the importation of dinnerware?

STATEMENT OF DAVID S. KING, COUNSEL, AMERICAN DINNERWARE EMERGENCY COMMITTEE, ACCOMPANIED BY WILLIAM K. INCE

Mr. KING. Actually, Mr. Chairman, I represent the domestic manufacturers.

Mr. VANIK. I want you to know, Mr. King, that some of my favorite dinnerware is the heavier boilerplate stuff we sell in America. I have a preference for a coffee cup that keeps my coffee warm. I like plates to be that heavy. My wife always introduces the kind of product that you advocate. She prefers the ornamental things, the tea cups that burn your hand as you hold them, and the coffee cups that don't hold anything.

Since we are going to a more frugal way of life I think more people will probably be turning to that dinnerware. This does not have any relevance to what you want to say except I want to tell you that I have my own coffee set and I think that I can convince you that it is superior to anything else in the world.

While the fine imported product might be nice for the fancy dinner parties, I think there is a place all over the world for the kind of pottery we make in West Virginia and southern Ohio—not in my district—which gives me so much joy and pleasure.

Mr. KING. Ohio is really the center of our industry.

Mr. VANIK. I know it is. We are very happy to hear from you, David.

Mr. KING. I appreciate your kindness, Mr. Chairman, and members of the subcommittee.

I have sitting with me my partner, Mr. William K. Ince. He represents Williams & King. Our firm represents the American dinnerware emergency committee, which we know as ADEC, whose members account for about 90 percent of the earthenware and stoneware table and kitchen articles that are manufactured in this country.

Our testimony today, Mr. Chairman, deals with a rather narrow but to us very important aspect of the recently concluded multilateral trade negotiations and the implementing legislation. This is the restructuring of the tariff nomenclature applicable to earthenware, stoneware and chinaware, table and kitchenware articles. It has been quite apparent over the years that a revision or restruc-

turing of the nomenclature was necessary. We understand that this has been accomplished as a result of the negotiations in Geneva.

This is part of the package. We favor this. What is before this subcommittee now is implementing legislation necessary to conform the U.S. Tariff Schedules to the new nomenclature which has been worked out as a result of the negotiations in Geneva.

To give you just a little bit of historical background, in 1972 our industry was one of the very few, I might add in this country, that did succeed in getting some special relief under the escape clause provision of the Tariff Act. This was done in recognition of the very special problems that this industry has. This special relief was extended partially in 1976. However, the important thing to remember is that this relief began to dwindle in importance and finally disappeared completely. That is, its benefits disappeared completely.

The reason for this is that the relief was predicated upon a value bracket that when inflationary forces would be generated and come into effect, they would force the particular article coming in that was protected, from our point of view protected in that bracket, they would force it up into a higher bracket.

For example, in 1971 the item that gave us the most competition was a dinner set of 45 pieces that sold then for up to $25. By 1977, which would be 6 years later, that same piece sold for up to $50. In other words, a 100-percent increase over a 6-year period.

Now, the point is that in the course of going from $25 to $50, this particular item moved from one bracket to another bracket, the lower bracket being a heavily protected bracket, and the upper bracket being a much lighter protected bracket, the result being that our industry suffered very greatly because of that.

So it was evident that some of the nomenclature was becoming very outmoded and needed to be brought up to date.

Now, there were some other problems, too, involving tariff loopholes. This gets very technical and I won't go into a long explanation, but it was generally agreed that there were loopholes arising out of the norm standards that they had worked out. For example, they had created a norm based on a hypothetical 77-piece set and the idea was that if a particular item came in and if the pattern was such as was represented in this 77-piece set, then it would receive one rate of duty, whereas, if one of the pieces was missing from the 77-piece set, then another rate would be applicable. So that meant that it was within the power of the importer to manipulate the duty according to whether the full 77 pieces were represented or not. This was one example of a loophole and there were several others.

So it became increasingly evident that a restructuring of the nomenclature was necessary. On April 30, 1976, by Presidential decree, as a result of hearings we had to extend the escape clause benefits, it was specifically provided that the Special Trade Representative should review the classification and rates of duty on dinnerware to determine if changes were necessary to close tariff loopholes, and change obsolete descriptions brought about by currency changes and inflation, and to enter into any negotiations to make any changes necessary.

Shortly thereafter, the Trade Policy Staff Committee decided that there was a need to revise the ceramic tableware tariff schedules to eliminate obsolete value categories and close tariff loopholes so that the schedules would reflect modern commercial practice.

As a result, hearings were held by the International Trade Commission and the Trade Policy Staff Committee in 1978. A new nomenclature proposal was developed in conjunction with those hearings and with subsequent modifications this proposal was agreed to in Geneva by our major trading partners.

The industry and its Representatives and Senators in Congress have gone on record with the Office of the Special Trade Representative as being in favor of the new nomenclature.

Now, this I know sounds very technical but what we are saying simply is that the nomenclature had been shown again and again to have been obsolete for the reasons that I have indicated and the feeling was in general that it needed to be revised. A revision was proposed. It has been accepted in Geneva. It is now before this committee and our hope is that it will be favorably acted on.

Mr. JENKINS [presiding]. Thank you, Mr. King.

Mr. Vander Jagt?

Mr. VANDER JAGT. No questions. I thank the witness for his testimony.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. I have no questions. Thank you very much for your testimony.

Mr. JENKINS. Your entire statement will be made a part of the record.

[The prepared statement follows:]

STATEMENT OF DAVID S. KING, ON BEHALF OF THE AMERICAN DINNERWARE EMERGENCY COMMITTEE

Mr. Chairman and members of the committee, my name is David S. King, and I am a partner in the law firm of Williams & King, Washington, D.C. I am here on behalf of the American Dinnerware Emergency Committee (ADEC) whose members account for about 90 percent of the earthenware and stoneware table and kitchen articles produced in the United States (list attached).

My testimony has to do with a very narrow, but very important (at least to this industry), aspect of the recently concluded multilateral trade negotiations and the implementing legislation. This is the restructuring of the tariff nomenclature applicable to imports of earthenware, stoneware and chinaware table and kitchen articles. I understand that the revision has been agreed to by our major trading partners, Japan and the EEC. All that is necessary is for implementing legislation to make some changes in the tariff schedules of the United States to conform them to the agreement.

A little history is in order to illustrate the importance of the nomenclature revision to the U.S. earthenware industry. In 1972 ADEC was successful in securing import relief under the "escape clause" provision of the Trade Expansion Act of 1962—the first, and one of only a few industries, to receive assistance under the provision. Import relief took the form of increased tariffs for four years, and it was extended, in part, for up to an additional three years in 1976.

However, because of the way in which the tariff schedules covering ceramic dinnerware are organized, that is, in the form of value brackets with differeing raters of duty, inflation over the last 7 years has had the effect of nullifying any protection afforded by tariffs. For example, whereas in 1971 the bulk of competing imported dinnerware was selling at wholesale prices of up to $25 for a 45 piece set, in 1977 the bulk of competing imports were selling at up to $50 for a 45 piece set. Since tariffs on the higher value brackets are lower than those on the lower value brackets, the effects of inflation have thus "moved" these competing imports from the brackets with some tariff protection to the brackets with relatively little tariff protection.

This phenomenon would have occurred in the absence of any escape clause relief, but the relief had the effect of dramatizing the phenomenon because the increased tariffs granted in 1972 followed the same pattern: they were imposed on the lower value brackets, and so became ineffective when the bulk of competing ware began to be imported in the higher value brackets. In addition to the value bracket problem, there were some tariff loopholes in the schedules resulting from inadequate descriptions of dinnerware not in sets.

On April 30, 1976, when the President extended, in part, the excape clause relief afforded the earthenware industry he directed his Special Trade Representative to review the classification and rates of duty on dinnerware to determine if changes were necessary to close tariff loopholes and change obsolete descriptions brought about by currency changes and inflation and to enter into any negotiations to make any changes necessary. Shortly thereafter, the trade policy staff committee decided there was a need to revise the ceramic tableware tariff schedules to eliminate obsolete value categories and close tariff hoopholes so that the schedules would reflect modern commercial practice. As a result, hearings were held by the International Trade Commission and the trade policy staff committee in 1978. A new nomenclature proposal was developed in conjunction with those hearings and, with subsequent modifications, this proposal was agreed to in Geneva by our major trading partners. The industry, and its Representatives and Senators in Congress, have gone on record with the Office of the Special Trade Representative as being in favor of the new nomenclature.

While we do not presume to clairvoyance, we believe that the new nomenclature will go a long way toward solving the problems I have described. It does reflect modern commercial practice. It eliminates most of the value brackets for both earthenware and chinaware, and therefore moderates the effects of inflation. It also cures the defects in product description that created hoopholes.

We understand that implementing legislation is necessary to make some changes to the existing tariff schedules, in order to adopt a part of the new nomenclature.

On behalf of ADEC I urge this committee to approve the adoption of this necessary legislation in order that the new nomenclature covering imported ceramic table and kitchen articles may be put into effect.

Thank you for affording me this opportunity to appear before you.

THE AMERICAN DINNERWARE EMERGENCY COMMITTEE MEMBERSHIP LIST

Anchor Hocking Corp., Chester, W. Va.; Hall China Co., East Liverpool, Ohio; the Homer Laughlin Co., Newell, W. Va.; the Pfaltzgraff Co., York, Pa.; Royal China Inc., Sebring, Ohio; and the Scio Pottery Co., Scio, Ohio.

Mr. JENKINS. Our next witnesses are from the American Restaurant China Council, Inc.: Mr. John C. Heebner, president; Samuel D. Magavern, counsel, and Irving J. Mills, the executive director. Do each of you have a prepared statement, or is there one?

STATEMENT OF JOHN C. HEEBNER, PRESIDENT, AMERICAN RESTAURANT CHINA COUNCIL, INC., ACCOMPANIED BY SAMUEL D. MAGAVERN, COUNSEL, AND IRVING J. MILLS, EXECUTIVE DIRECTOR

Mr. HEEBNER. There is one statement, Mr. Chairman. The two gentlemen with me have participated in the development of this statement.

Mr. JENKINS. Fine, the entire statement will be made a part of the record. You may proceed as you wish.

Mr. HEEBNER. My name is John C. Heebner and I am presidnet of Buffalo China, Inc. I am appearing here today as president of the American Restaurant China Council, Inc. With me are Samuel D. Magavern, counsel for the American Restaurant China Council, and Irving J. Mills, the executive director. The China Council is a trade association representing the majority of American manufacturers of hotel and restaurant china. Our product is identified TSUS Item No. 533.51.

The hotel and restaurant china industry throughout the world is labor intensive and factory employment costs range as high as 65 percent of manufacturing cost here in the United States. Our industry is a modern industry that is professionally managed and where capital investments are increasingly being made in plant and equipment to increase productivity. Although our plants are as efficient as any in the world today, the labor intensity makes it difficult to compete with foreign low-wage countries where standards of living are simply lower than ours. This problem is magnified when those exports are subsidized by foreign governments.

The tariff negotiations now being concluded have been a matter of grave concern to those of us employed in the commercial china industry and the communities in which we live. We know what price levels are required to sustain a viable operation that can pay negotiated union wages. We know that capital investments cannot be made if profits cannot be generated to pay for those projects.

We can do a lot to offset some of the foreign wage differential through capital investment, research and marketing programs. However, we are virtually defenseless against subsidized exports from a foreign nation.

Faced with the realities of the trade negotiations and an inevitable tariff reduction, we have done our best to present the facts and our point of view to the International Trade Commission and the Special Trade Representative. We participated in all of their public hearings and contributed further in many less formal sessions. We believe we have been given a fair hearing and that a true effort has been made to understand the problems of our industry and the limited transferability of clay working skills.

Although our information is necessarily limited, it does appear that the general framework of the ceramic tableware package negotiated by Ambassador Strauss is an effective compromise in reducing tariffs while still providing a reasonable opportunity for our industry to survive. We believe that a realistic tariff reduction will not produce industry disaster if the proposed nomenclature changes are kept as part of the package so that the tariff loopholes are closed.

The present tariff schedules clearly intended a distinction between hotel and restaurant chinaware and household chinaware. Unfortunately, the nomenclature contains definitions which are both vague and contradictory when defining stoneware, bone china, porcelain and subporcelain. This had made it impossible for the U.S. Customs officials to determine which product was really hotel and restaurant china. The loophole created is not only contrary to the intent of Congress but it deprives the U.S. Treasury of revenue and impacts adversely on our market.

To our knowledge, the ceramic tableware package negotiated in Geneva corrects the existing confusion by applying a simple in-use test to differentiate between the household market and the hotel and restaurant market. If the ceramic tableware is for the household market, it is so classified, and if it is for the hotel and restaurant market, it is so classified. These changes will restore the original intent of the existing tariff schedules and make the job of the Customs people more manageable while saving our industry from being injured in a way never intended. The loopholes will be

closed by harmonizing the rate of duty on all ceramicware imported for hotel and restaurant use and the intention of the law will be clarified and reaffirmed.

The fact that the nomenclature of TSUS 533.51 is now obsolete should be no surprise because all things change with the passage of time and so have our market conditions. The present nomenclature served its intended purpose well for over 40 years. Now is the time, we suggest, to implement the President's request to "generally bring the nomenclature into conformance with commercial conditions prevailing at the present time." By taking this action we will restore the historic distinction between commercial ware and bousehold ware and bring that definition in line with the President's request.

We see another benefit in the multilateral trade agreement in addition to the closing of the loopholes. We understand that a tighter control of subsidies granted by foreign governments to their exporting industries is planned as part of the total agreement. As already stated, we consider the foreign subsidies a serious problem and are pleased to see it included in the negotiations.

We realize that this has been a difficult and complex negotiation and we wish to commend Ambassador Strauss and his associates for negotiating a ceramic tableware package that reduces an existing tariff, closes significant loopholes in the law and yet allows a small, labor intensive industry the chance to compete.

Thank you.

[Attachment to the prepared statement follows:]

MEMBERS OF AMERICAN RESTAURANT CHINA COUNCIL, INC.

Buffalo China, Inc., Buffalo, N.Y.; Jackson China, Inc., Falls Creek, Pa; Mayer China Co., Beaver Falls, Pa.; Shenango China Co., New Castle, Pa.; Sterling China Co., East Liverpool, Ohio; Syracuse China Corp., Syracuse, N.Y.; and Walker China Co., Beford, Ohio.

Mr. JENKINS. Thank you very much, Mr. Heebner, for your statement.

Mr. Schulze?

Mr. SCHULZE. I have no questions.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. I have no questions.

Mr. JENKINS. Thank you very much for your testimony and for appearing before the committee.

Mr. HEEBNER. Thank you, Mr. Chairman.

Mr. JENKINS. Our last witness, representing the Syracuse China Corp., Mr. Charles S. Goodman with Susan G. Esserman, counsel, is now recognized.

We are pleased to have you before the committee. Your entire statement will be made part of the record. You may summarize your statement as you desire.

STATEMENT OF CHARLES S. GOODMAN, EXECUTIVE VICE PRESIDENT SYRACUSE CHINA CORP., ACCOMPANIED BY SUSAN ESSERMAN, COUNSEL

Mr. GOODMAN. I am Charles Goodman, excecutive vice president of the Syracuse China Corp. My statement will be brief, and I do request that my full statement be incorporated in the record.

Mr. JENKINS. Without objection, so ordered.

Mr. GOODMAN. I am here today to support the efforts of the administration to comply with the overall negotiating objectives established by Congress in section 103 of the Trade Act of 1974. In the act, Congress directed U.S. negotiators to reduce, eliminate, and harmonize industrial trade distortions to the maximum extent feasible. Pursuant to this direction, the Office of the Special Trade Representative (STR) has negotiated to close a loophole in the tariff classification for ceramic products that seriously threatens the very existence of the American commercial chinaware industry. We at Syracuse China emphatically support this position.

Low priced commercial chinaware products are being imported from countries such as Brazil and Korea where the cost of wages is a fraction of those by American companies. The wage difference is the key. The commercial chinaware industry, whether American or foreign, is extremely labor intensive. No matter how much the producer automates, and American producers have made tremendous investments in automation in recent years, labor represents up to 70 percent of the total value of commercial chinaware.

The standard of living in the United States is high and workers receive wages commensurate with that standard of living. However, our competitors in Brazil and Korea operate in a fundamentally different environment and pay their workers a small fraction of American wages. In order to place American and foreign competitors on an equal footing, Congress established in the tariff schedule a 45-percent ad valorem rate of duty for commercial chinaware.

Yet commercial chinaware is being imported today without payment of the substantial duty mandated by Congress as it is being erroneously imported as stoneware at a low rate of duty.

These low-priced products, however, are precisely the chinaware products to which Congress intended to apply substantial duties. The evidence on this point is overwhelming. The imports have been vigorously marketed in the United States as hotel chinaware. You have attached exhibit B to my statement an advertisement for fine hotel chinaware which fully demonstrates this point. These imports are being sold to the same hotels, restaurants, and other commercial purchasers as our commercial products. In many cases, the designs of the imports are mere copies of the designs developed by the U.S. producers. As you can see from the photograph which is attached to my statement and samples I brought along today, one of Syracuse China and one of the imported product, these china products are the same and the only difference detectable by the purchaser is the much lower price of the foreign product. According to all commercial standards, such as vitrification and degree of absorbency, the imports are clearly chinaware.

This importation of nearly identical chinaware under the stoneware classification is possible because the definitions of chinaware and stoneware in the tariff schedules are imprecise. Even worse, these definitions lend themselves to evasion by the foreign manufacturer either by selective choice of the samples given to the Customs or very slight variations in the manufacturing process. Clearly, either misapplication of the tariff schedule criteria or evasion must be now occurrring because articles that

are obviously chinaware are now entering as stoneware in large quantities.

Even though these imports escape the substantial duty mandated by Congress and are relatively cheap to manufacture because of their low labor cost, they are being sold in the United States at a price that does not truly reflect low production cost. The importers by setting their prices just low enough to increase their share of the American market are the only ones to profit from the loophole in the tariff classifications. Neither the foreign manufacturers nor the U.S. purchasers benefit from the low production cost. Moreover, the U.S. Treasury suffers because the prescribed duties are not being collected.

The U.S. Government, recognizing this classification problem has apparently negotiated to close this loophole at the multilateral trade negotiations. The new classification would require ceramic product marketed in the United States as commercial, hotel or restaurant ware to be classified on the basis of use. The same rate of duty would apply to ceramic hotel, restaurant, and other non-household ware, whether chinaware or stoneware. This classification avoids the complexities and potential for abuse inherent in the existing tariff schedules. The STR should be commended for its efforts and its recommendation should be ratified by Congress.

Recently, however, representatives of the foreign exporters have begun an intensive lobbying campaign against this new and realistic classification. These foreign interests seek nothing more than perpetuation of the loophole in the tariff schedules, a loophole which earns them fat profits but which threatens the profitability of U.S. companies and jobs of thousands of American workers. We in Syracuse China urge Congress to ignore this 11th hour campaign and adopt the much needed new classification reform which the U.S. Government has negotiated at Geneva.

Thank you.

Mr. JENKINS. Thank you for a very fine statement, Mr. Goodman.

[The prepared statement follows:]

STATEMENT OF CHARLES S. GOODMAN, EXECUTIVE VICE PRESIDENT, SYRACUSE CHINA CORP.

Good morning, I am Charles Goodman, executive vice president of the Syracuse China Corp. I am here today to support the efforts of the administration to comply with the overall negotiating objectives established by Congress in section 103 of the Trade Act of 1974. In that act, Congress directed U.S. negotiators to reduce, eliminate, and harmonize industrial trade "distortions" to the maximum extent feasible. Pursuant to this direction, the Office of the Special Trade Representative (STR) has negotiated to close a loophole in the tariff classification for ceramic products that seriously threatens the very existence of the American commercial chinaware industry. We at Syracuse China emphatically support this position.

I. Summary: The threat posed by low-priced imports

The American commercial chinaware industry is in a precarious state. Low-priced commercial chinaware products are being imported from countries, such as Brazil or Korea, where the cost of wages are a fraction of those incurred by American companies. These products are imported without payment of the substantial duty mandated by Congress in the tariff schedules of the United States. Congress, in order to place the American commercial chinaware industry on a competitive footing with its foreign rivals, established in the tariff schedules a 45 percent ad valorem rate of duty for commercial chinaware. (See exhibit A.)

However, these imports are being brought in as stoneware at a low rate of duty, even though they are advertised as chinaware, sold to the same hotels, restaurants, and other commercial customers as are domestic china products, and are considered chinaware under all of the long-established commercial standards in the industry. Moreover, the designs of these imports are often copies of the designs of American producers. The importation of this nearly identical chinaware under a stoneware classification is possible because the definitions of "chinaware" and "stoneware" in the tariff schedules are imprecise and confusing, difficult to apply, and defy well-established commercial standards for chinaware and stoneware.

The U.S. Government, recognizing this classification problem has apparently succeeded at the multi-lateral trade negotiations (MTN) in negotiating a new classification that would require ceramic products marketed in the United States as commercial hotel or restaurant ware to be classified on the basis of use. That approach is simple to apply and reflects commercial reality.

Recently, however, representatives of the foreign exporters, in an attempt to prevent adoption of this new and realistic classification, have begun an intensive lobbying campaign to maintain their ability to evade the duty prescribed by Congress. In the interet of preserving the jobs of thousands of American workers and the existence of the eight remaining United States companies, we at Syracuse China urge Congress to reject this belated and unjustified campaign. We therefore urge Congress to approve the classification revision negotiated at Geneva.

II. The import problem

The classification revision is needed to protect domestic producers and workers in a labor-intensive industry from low-priced imports from countries where labor is relatively cheap. This is not a case of protecting an inefficient United States industry. American producers of commercial chinaware have made tremendous investments in automation in recent years and are as modernized, automated, and efficient as any in the world.

The difference in wages between the United States and the countries from which these low-priced products are imported is the key. The commercial chinaware industry is extremely labor-intensive. No matter how much a producer automates, and regardless of whether the chinaware is produced in this country or abroad, labor will represent approximately 70 percent of the total value of commercial chinaware.

The standard of living in the United States is high and workers expect to receive and do receive wages commensurate with that standard of living. However, our competitors in less-developed countries, such as Brazil and Korea, operate in an environment fundamentally different from the United States, and they pay their workers a small fraction of American wages. In recognition of this problem and in order to place American and foreign competitors on an equal footing, Congress established a substantial duty on imported chinaware.

III. The need for a tariff classification revision

There is no doubt that the low-priced products now entering this country are precisely the chinaware products to which Congress intended to apply substantial duties. The evidence on this point is overwhelming:

"The imports are being vigorously marketed in the United States as 'hotel chinaware.' Exhibit B to this statement, an advertisement for 'fine hotelware china', fully demonstrates this.

"These imports are being sold to the same hotels, restaurants and other commercial purchasers as are commercial chinaware products.

"In many cases, the designs of the imports are mere copies of the designs developed by United States producers. As exhibit C illustrates, the only difference detectable by the purchaser is the much lower price of the foreign product.

"According to all of the commercial standards recognized in the United States, such as vitrification and the degree of absorption, the imports are clearly chinaware."

Yet these imports have been entering the United States as stoneware at a rate of duty less than one-fourth the duty levied on chinaware. This inequitable situation exists because the present provisions on ceramic ware in the tariff schedules are complex and ambiguous, which is readily apparent from a brief glance at exhibit D to this statement.

The current interpretation of these provisions is that the crucial distinction between chinaware and stoneware is the degree of translucence of the imported product—a factor that has no commercial significance whatsoever. That test is difficult to apply in practice. Even worse, it lends itself to evasion by the foreign manufacturer, either by selective choice of the samples given to Customs for testing or by slight variations in the manufacturing process. Clearly, either misapplication

of the test or evasion by the exporter must now be occurring, because articles that are obviously chinaware are now entering as stoneware in large quantities.

Even though these commercial chinaware imports escape the substantial duty mandated by Congress and are relatively cheap to manufacture because of low labor costs, the imports are sold to commercial customers in the United States at a price that does not reflect the low production costs. Thus, the importers, by setting the price below the price of American commercial chinaware just enough to increase their share of the market, are the only ones to profit from the loophole in the tariff classifications. Neither the foreign manufacturers nor the commercial purchasers in the United States benefit from the low production costs. Moreover, the U.S. Treasury suffers, because the prescribed duties are not being collected.

IV. The successful result of the multilateral trade negotiations

Early in the MTN process, our industry appeared before the Office of the Special Representative for Trade Negotiations in public hearings to apprise it of the classification problem. Those were open hearings, where all interested parties had an apportunity to state their views. No one opposed our position.

We urged the STR to seek in the MTN a more rational classification system for ceramic products. Specifically, we urged that commercial china be classified on the basis of its use, thus avoiding the complexities, uncertainties, and potential for abuse inherent in the present Tariff Schedule criteria. We proposed that the same rate of duty apply to ceramic hotel, restaurant, and other nonhousehold ware, whether chinaware or stoneware. This classification scheme would ensure that commercial china is classified in a way that reflects competitive reality and thus would accomplish the purpose intended by the Congress..

This use concept was adopted by the STR as a negotiating goal of the United States. We understand that the Tokyo Round agreements will include this new and more realistic classification. The STR should be commended for its efforts, and the result they have achieved should be ratified by Congress.

V. The threat: A last-minute political campaign by foreign interests

Throughout the MTN advisory process, foreign producers of commercial china and their United States importers and distributors remained silent. That silence is easily explained. When your present competitive advantage derives from a mere technical loophole and impacts so severely on American industry and labor, you cannot very well expose your position to the scrutiny of public debate.

Now, however, those same foreign producers and their United States importers have begun a last-minute political campaign to undo the constructive result of four years of public hearings, careful administrative considerations, and intensive international negotiation. That campaign is being directed at the STR, the Congress, and even the White House.

This belated effort does not deserve serious consideration. These foreign interests seek nothing more than the perpetuation of a loophole in the tariff schedules—a loophole which earns them fat profits, but which threatens the profitability of United States companies and the jobs of thousands of American workers. On behalf of the U.S. commercial china industry—its companies, its investors, and its employees—we urge Congress to ignore this eleventh hour campaign and to adopt the much-needed new classification reform which the U.S. Government has negotiated at Geneva.

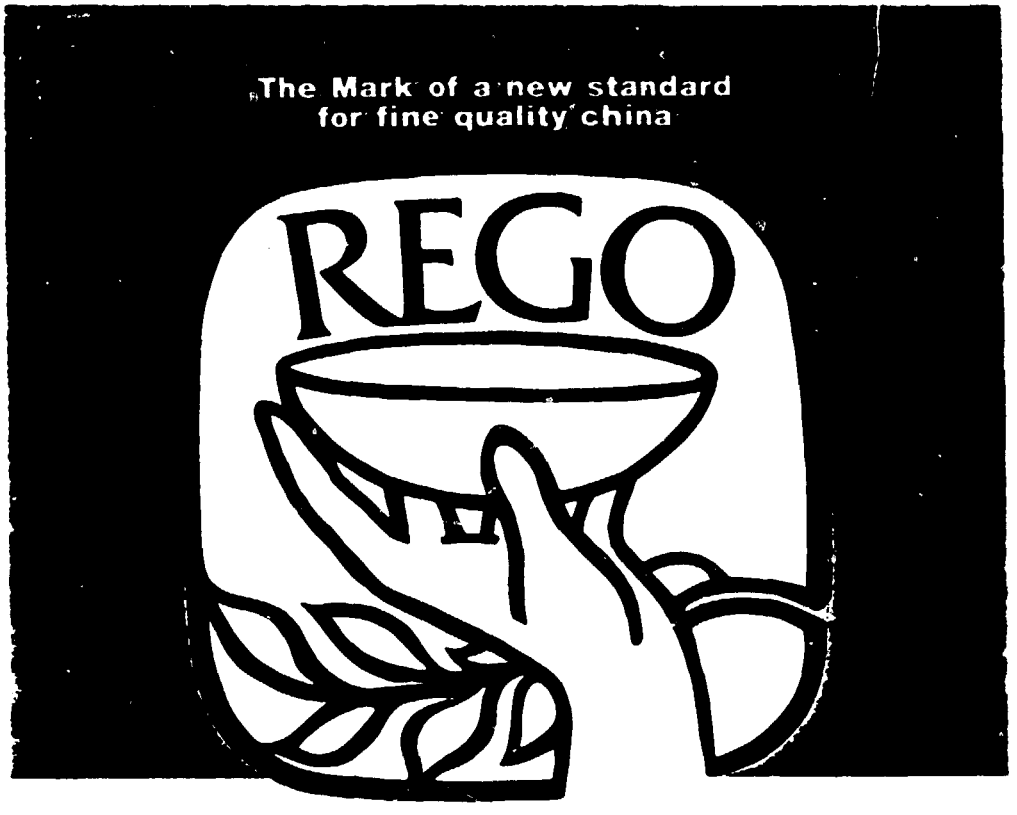
Part 2—Chinese Pressure—Continued
[26 F.R. 8040]

GSP	Item	Articles	Rates of Duty 1	Rates of Duty 2
		Subpart C—Table, Kitchen, Household, Art and Ornamental Pottery—Continued		
		Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients—Continued		
		Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
		Available in specified sets:		
A	533.22	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30.	5c per doz. pcs. +14% ad val.	10c per doz. pcs. +50% ad val.
A	533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7.	10c per doz. pcs. +21% ad val.	10c per doz. pcs. +50% ad val.
A*	533.24	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.	10c per doz. pcs. +21% ad val.	10c per doz. pcs. +50% ad val.
	533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12.	5c per doz. pcs. +10.5% ad val.	10c per doz. pcs. +50% ad val.
		Not available in specified sets:		
	533.31	Steins, mugs, candy boxes, decanters, punch bowls, protect dishes, tidbit dishes, tiered servers, and bonbon dishes.	5c per doz. pcs. +12.5% ad val.	10c per doz. pcs. +50% ad val.
		Other articles:		
	533.32	Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.	5c per doz. pcs. +12.5% ad val.	10c per doz. pcs. +50% ad val.
	533.33	Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.	10c per doz. pcs. +21% ad val.	10c per doz. pcs. +50% ad val.
	533.34	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.05 per dozen, and other articles valued over $2 but not over $3.40 per dozen.	10c per doz. pcs. +21% ad val.	10c per doz. pcs. +50% ad val.
	533.35	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.05 per dozen, and other articles valued over $3.40 per dozen.	5c per doz. pcs. +11% ad val.	10c per doz. pcs. +50% ad val.
A	533.41	Of bone chinaware	17.5% ad val.	10c per doz. pcs. +70% ad val.
		Of nonbone chinaware or of subporcelain:		
	533.51	Hotel or restaurant ware and other ware not household ware.	10c per doz. pcs. +45% ad val.	10c per doz. pcs. +70% ad val.
		Household ware available in specified sets:		
	533.62	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10.	10c per doz. pcs. +45% ad val.	10c per doz. pcs. +70% ad val.
	533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24.	10c per doz. pcs. +55% ad val.	10c per doz. pcs. +70% ad val.
	533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56.	10c per doz. pcs. +30% ad val.	10c per doz. pcs. +70% ad val.
	533.68	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56.	5c per doz. pcs. +10% ad val.	10c per doz. pcs. +70% ad val.
	533.69	Not covered by items 533.62, 533.65, 533.66 or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $6.	5c per doz. pcs. +10% ad val.	10c per doz. pcs. +70% ad val.

See footnotes at end of table, p. 440.

EXHIBIT A

BEST COPY AVAILABLE



If the underside of your tableware bears the Mark of REGO, you can be confident that long-lasting quality has been fired into it.

REGO is the new fine hotelware china with a difference. It is the culmination of more than a thousand-year-old Oriental potters' art refined to meet American standards and immediately available in all patterns at surprisingly reasonable cost. It is the mark of fine china.

Hotelware bearing the Mark of REGO is conveniently coded on the underside of each piece so you will always know what is in your inventory . . . just as your customers will always know that you only serve the best.

The Mark of REGO— a new standard for memorable and lasting service at affordable prices — is available exclusively through THC.

EXHIBIT B

Exclusive Agent. THC Systems [redacted] ushing, N.Y. 11357 (212) 767-4000

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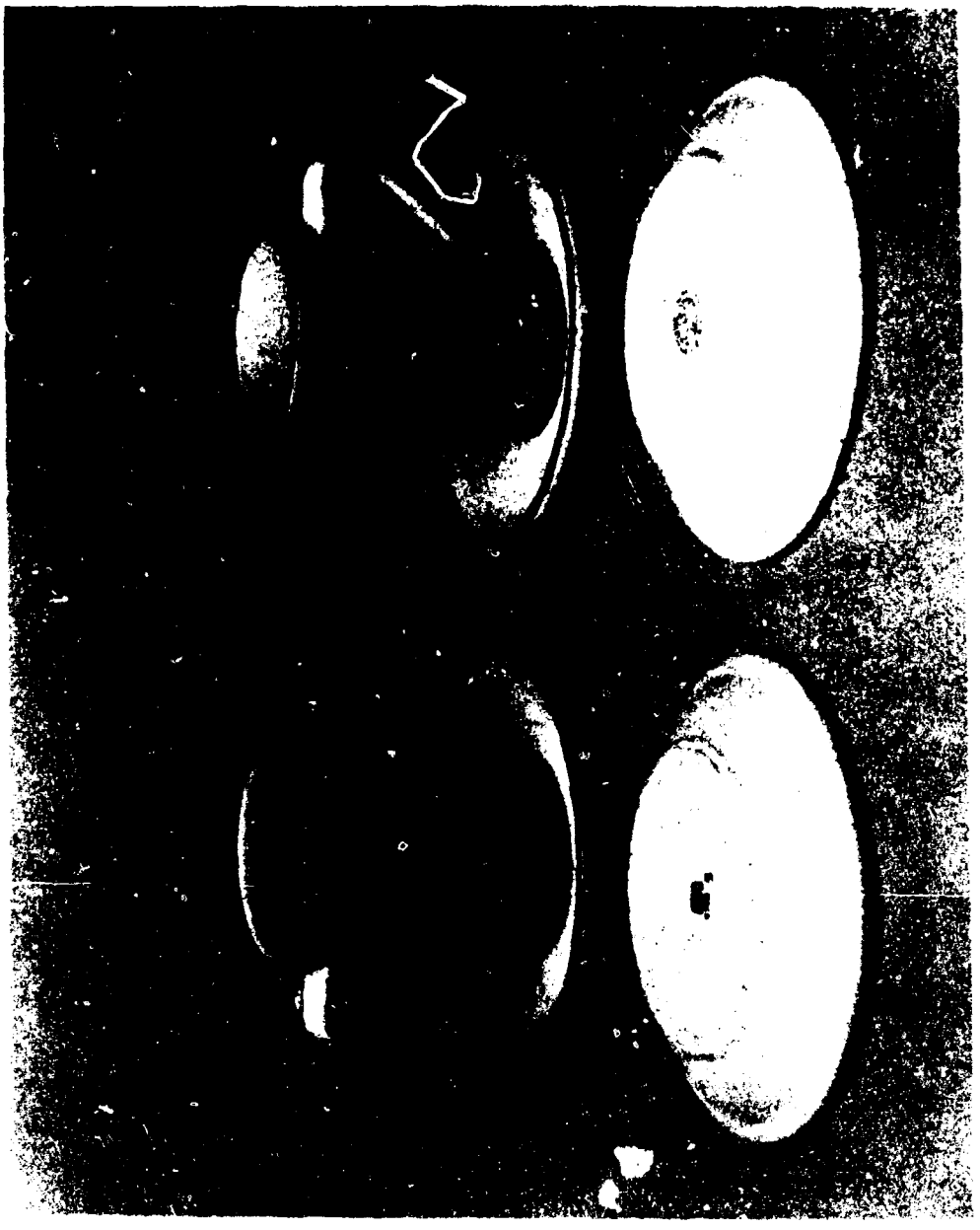

EXHIBIT C

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PART 3—CERAMIC PRODUCTS
(36 F.R. 8649)

OEP Item	Articles	Rates of Duty 1	Rates of Duty 2
	Part 3 headnotes 1. This part covers ceramic wares, and articles of such wares and, in addition, certain unshaped refractory material (subpart A) closely related thereto 2. For the purposes of the tariff schedules— (a) a "ceramic article" is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure, which body is composed essentially of inorganic nonmetallic substances and either is formed from a molten mass which solidifies on cooling, or is formed and subsequently hardened by such heat treatment that the body, if reheated to pyrometric cone 020, would not become more dense, harder, or less porous, but does not include any glass article; (b) the term "earthenware" embraces ceramic ware, whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient and will absorb more than 3.0 percent of its weight of water; (c) the term "stoneware" embraces ceramic ware whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient, is not commonly white, will absorb not more than 3.0 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when fully vitrified; (d) the term "subporcelain" embraces fine-grained ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired body which is white (unless artificially colored) and will absorb more than 0.5 percent but not more than 3.0 percent of its weight of water; (e) the terms "chinaware" and "porcelain" embrace fine-grained ceramic ware (other than stoneware), whether or not glazed or decorated, having a body which is white (unless artificially colored) and will not absorb more than 0.5 percent of its weight of water; (f) the term "bone chinaware" embraces chinaware or porcelain the body of which contains by weight 25 percent or more of calcined bone; (g) the term "nonbone chinaware" embraces chinaware or porcelain other than bone chinaware; (h) the term "coarse-grained", as applied to ceramic ware, embraces such wares having a body made of materials none of which had been washed, ground, or otherwise beneficiated; (i) the term "fine-grained", as applied to ceramic wares, embraces such wares having a body made of materials any of which had been washed, ground, or otherwise beneficiated; and (j) the term "body" includes any engobe or body slip, except engobe or body slip applied to the body as a decoration, and (k) the water absorption of a ceramic body shall be determined by ASTM test method designated C373-56 (except that test specimens may have a minimum weight of 10 grams, and may have one large surface glazed). **Subpart A—Refractory and Heat-Insulating Articles** *Subpart A headnotes:* 1. This subpart does not cover ceramic electrical ware (see subpart D of this part). 2. For the purposes of this subpart, "a heat-insulating article", whether shaped or not shaped, is one having a bulk density not over 75 pounds per cubic foot and designed to impede or resist the flow of heat at temperatures above 1600° F. 3. For the purposes of this subpart, "a refractory article", whether shaped or not shaped, is one having a bulk density over 75 pounds per cubic foot and designed to be used to resist temperatures above 2000° F. A shaped refractory article has special properties of strength and resistance to thermal shock and may also have, depending upon the particular uses for which designed, other special properties such as resistance to abrasion and corrosion. 4. For the purposes of items 531.31 and 531.34, a brick which contains both chrome and magnesite is classifiable according to which of those components is the greater by weight.		

EXHIBIT D

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Mr. JENKINS. Mr. Schulze?

Mr. SCHULZE. No questions, Mr. Chairman.

Mr. JENKINS. Mr. Moore?

Mr. MOORE. No questions.

Mr. JENKINS. Thank you very much for your testimony.

Ms. ESSERMAN. Could we give you the samples for your examination?

Mr. JENKINS. Certainly. The retail price is under $25, I assume.

Thank you very much, Mr. Goodman and Ms. Esserman.

These being the final witnesses for today, the committee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 3:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, April 26, 1979.]

44-398 - 79 - 24

MULTILATERAL TRADE NEGOTIATIONS

THURSDAY, APRIL 26, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Ed Jenkins presiding.

Mr. JENKINS. The committee will come to order. Because of the long list of witnesses for this morning the subcommittee will commence hearings as other members come into the hearing room.

At this time we have our first witnesses representing the American Paper Institute and National Forest Products Association, Mr. J. Stanford Smith, chairman and chief executive officer of International Paper Co., and Dr. Irene W. Meister, vice president of international affairs for American Paper Institute. If you will come forward and have a seat at the witness table.

We are delighted to have you appear before the subcommittee today. The written statement that you have prepared will be made a part of the record in its entirety and you may summarize or proceed as you desire.

STATEMENT OF J. STANFORD SMITH, ON BEHALF OF THE AMERICAN PAPER INSTITUTE AND THE NATIONAL FOREST PRODUCTS ASSOCIATION, ACCOMPANIED BY IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL AFFAIRS, AMERICAN PAPER INSTITUTE, AND JOHN WARD, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. SMITH. Thank you. I am J. Stanford Smith, chairman and chief executive officer of International Paper Co.

I am testifying today on behalf of the American Paper Institute and the National Forest Products Association. These organizations represent manufacturers producing about 90 percent of the nation's pulp, paper, and paperboard, and over 3,000 companies who produce the vast bulk of the nation's solid wood products. Testifying with me will be Dr. Irene W. Meister, vice president of the American Paper Institute and chairman of the industry sector advisory committee on paper. Also appearing with me is John Ward, representing the National Forest Products Association.

I appreciate this opportunity to discuss with you the crucial importance of the multilateral trade agreements to the nation as a whole and to the forest products industry—an industry which employs about 8 percent of the U.S. manufacturing labor force, sells roughly $100 billion worth of products, invests around $5 billion a

year in new facilities, accounts for $5 billion of direct exports, and whose products make possible many more billions of dollars of exports by other industries.

I have had the opportunity to serve on the President's Advisory Committee for Trade Negotiations as well as the industry policy advisory committee. And I am deeply impressed by the Herculean job that Ambassador Strauss, and his associates have done in the most ambitious round of trade negotiations ever held.

Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. By greatly increasing export opportunities for U.S. industries, the trade agreements will: One, contribute to economic growth; two, create more jobs; three, improve productivity; four, help reduce inflation; and five, provide better values for consumers.

For the U.S. forest products industry, these new trade agreements open up opportunities. The industry's raw material—trees—is a renewable resource. The productivity of U.S. forests has increased dramatically as a result of the large investments made by the industry. Consequently, the forest products industry can compete successfully anywhere in the world provided it's not hampered by unfair trade barriers.

Specifically, new export opportunities will open up for the U.S. forest products industry through lowering of world tariffs on such products as plywood, linerboard, and printing/writing papers.

The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on nontariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards, and customs valuation.

Reductions in tariff and nontariff barriers, will create opportunities for additional investment to meet growing demand for forest products worldwide. Investments by the forest products industry to serve domestic and world markets have grown at 11 percent a year during the past 10 years. The potential for expanded trade resulting from the MTN agreements, as well as growing domestic requirements, could boost the rate of investment of the forest products industry to at least 15 percent a year in the decade ahead.

Increased exports and investment will mean more U.S. jobs. Today approximately 140,000 jobs, or close to 10 percent of the total employment in the forest products industry, are either directly or indirectly dependent on exports. A significant portion of this employment is in the South where minorities are a very important segment of the work force.

And in addition to increased employment in the forest products industry, will come added job opportunities in the capital goods and raw materials industries which supply our needs.

No trade package could succeed in gaining all the advantages to which any single industry or any country is looking. But these agreements go a long way toward setting down some workable solutions to the complex trading problems we face today.

I am pleased to see that publications like the New York Times, Wall Street Journal, and Washington Post have all come out

strongly in favor of the new trade package. An editiorial in the latest issue of Business Week emphasizes that:

> The U.S. must look out for its exporters and push their interests in every way it can. If this country does not claim its fair share of expanding world markets, it can be sure that aggressive exporters from Europe and Japan will.

For the United States to reap the full benefits of the trade agreements, it is vitally important that these agreements become part of an aggressive export policy. We hope the Congress will take leadership in this.

Specifically, consideration should be given to the following:

Secure a strong legislative commitment to a national export policy to regain and strengthen a balance in our trade position.

Create investment incentives that would improve the competitiveness of American industry in world markets. This is especially important, given the decline in the U.S. manufacturing trade balance from surplus of $3.6 billion in 1977 to a deficit of $5.8 billion in 1978.

Authorize the Trade Policy Staff Committee to hold hearings annually in several parts of the country in order to take testimony regarding the U.S. international trade position and policies. This committee would then submit reports to the STR and the International Trade Advisory Council.

These recommendations for expanding U.S. Exports are in line with those being put forth by the Advisory Committee for Trade Negotiations.

In addition, there is a strong need to establish a focal point within the executive branch for the management of U.S. trade policy. In the past, lack of effective coordination and sustained attention to the formulation and execution of trade policy contributed to decline in our trade balance.

Mr. Chairman, this concludes my prepared testimony. After Irene Meister's testimony, I will be pleased to try to answer any questions you or the members of the committee may have.

Before proceeding with Irene Meister's testimony, may I also introduce John Ward, who is sitting with me, as the representative of the National Forest Products Association.

Ms. MEISTER. The industry sector advisory committee on paper, ISAC No. 4 which I have the privilege of chairing, met last week to evaluate the results of the MTN and to prepare our report for Congress.

Let me summarize briefly, Mr. Chairman, the ISAC's position within the framework of our industry's particular needs.

In 1978, paper industry's exports were about $2.6 billion, but our dependence on trade is much greater, close to $8 billion, when indirect exports are taken into account. Tariffs which are high in all of our major markets are the industry's biggest problem.

The key objective of the ISAC therefore has been to obtain significant reductions of tariffs in the European community, Japan and Canada.

We are grateful to Ambassador Strauss and his associate for the major efforts they have made on behalf of our industry and the results they have achieved.

Our negotiators had a difficult task, especially because protectionist pressures from the paper industry in several of our markets were exceptionally strong.

In the economic community we face a very special additional problem—lack of tariff parity with our major competitors, the Nordic countries. This disparity is growing and by 1984 tariffs on paper and paperboard coming from Scandinavia will be zero.

Currently EC tariffs on our products range mostly from 8 to 14 percent. The Community tariff offer will not eliminate this lack of tariff parity, but without the agreed upon tariff reductions, the disparity would be much greater.

We still have one serious problem in the EC negotiations concerning the definition of kraft products which we have detailed in the ISAC preliminary report to Congress.

We hope the issue will be resolved soon for otherwise the value of the EC tariff offer will be greatly impaired. Furthermore the United States has proposed to the EC a solution of this issue that would be fair and equitable for both the producing and consuming countries.

In Canada and Japan where tariff on paper and paperboard are still very high we have received meaningful concessions which will improve the U.S. paper industry's competitive position in these markets.

The ISAC report to Congress and our written testimony to your committee comment in detail on the reasons for the paper industry's strong support of the non tariff agreements. We are especially supportive of the agreement on subsidies and countervailing duties because capital intensive industries such as paper are receiving government subsidies in more and more countries.

We believe that the recently negotiated GATT code on subsidies—assuming it is effectively enforced—could provide a significant safeguard for our industry in the domestic market as well as in third country markets. Codes on standards and customs valuation are also important to us.

Let me turn briefly to yet another reason why the paper industry strongly supports the trade agreements which we believe will help the cause of export expansion. I am now speaking of the multiplier effect of indirect exports on domestic production and employment.

We define the paper industry's indirect exports as our domestic sales that take place only because of the export demand for the products of other industries. Packaging for exports and paper for exported printed matter are the best examples, but there are many others.

For 1977, the latest data we have, our industry's indirect exports were estimated at close to $5 billion. Attached to our written testimony is tabulation compiled by the American Paper Institute which estimates that foreign trade related employment in our industry—that is, employment related to direct and indirect exports—accounts for about 15 percent of total industry employment or over 103,000 workers. As overall U.S. exports grow so will the indirect exports of our industry.

In the course of its meeting last week, the ISAC 4 made the following recommendations for the implementing legislation:

One, implementing legislation should reflect the provisions of negotiated codes and agreements as closely as possible.

Two, enforcement of countervailing duties and antidumping laws must be strong, fair and effective, at the same time in fashioning relief for an injured industry the government must have the necessary flexibility to affect relief without creating widespread retaliatory trade problems. Such relief would include a negotiated solution when appropriate.

Three, implementing legislation must contain provisions for the continuation of the private sector advisory process for each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well as giving each sectoral committee an opportunity to participate when appropriate.

Four, the President should be given an extension of his tariff negotiating authority.

Five, there should be an expression of legislative intent that foreign trade is a national priority and that an effective U.S. governmental organization for dealing with foreign trade policy and programs is imperative. Better coordination of trade policy and programs is necessary but specific legislation, dealing with governmental reorganization should be left to the immediate post MTN period.

In summary export expansion should be clearly identified by Congress and the Executive Branch as a national priority. To reach this goal will require a concerted effort on the part of the U.S. government and industry.

The paper industry is convinced that congressional approval of the MTN package is essential if the country is to succeed in this undertaking.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF J. STANFORD SMITH, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL PAPER CO., ON BEHALF OF THE AMERICAN PAPER INSTITUTE AND NATIONAL FOREST PRODUCTS ASSOCIATION; AND DR. IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL AMERICAN PAPER INSTITUTE, ON BEHALF OF THE AMERICAN PAPER INSTITUTE

SUMMARY

The multilateral trade agreements are in the best interest of the nation, and of the forest products industry. Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. The testimony makes a number of specific recommendations on export expansion and implementing legislation.

For the U.S. forest products industry, these new trade agreements open up opportunities. Specifically:

1. New export opportunities will open up through lowering of tariffs by the European Community, Japan, and Canada—three of the largest markets for products such as plywood, linerboard, and printing/writing papers

2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stand to gain the most from three of these—the codes covering government subsidies, standards, and customs valuation.

3. The potential for expanded trade for the forest products industry resulting from the MTN agreements, as well as growing domestic requirements could boost our rate of investment at least 15% a year in the decade ahead.

4. Increased exports and investment will create new job oportunties—not only within the forest products industry, but in the capital goods and raw materials industries which supply our needs.

5. An overall increase in U.S. exports will have a multiplier effect on the domestic sale of forest products such as packaging for exported products, and paper for exported printed matter.

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements are made part of an aggessive export policy. We hope Congress will take leadership in this.

STATEMENT

Mr. Chairman, Members of the Committee, I am J. Stanford Smith, Chairman and Chief Executive Officer of International Paper Institute and the National Forest Products Association. These organizations represent manufacturers producing about 90 percent of the nation's pulp, paper, and paperboard, and over 3,000 companies who produce the vast bulk of the nation's solid wood products. Testifying with me will be Dr. Irene W. Meister, Vice President of the A.P.I. and Chairman of the Industry Sector Advisory Committee on Paper.

I appreciate this opportunity to discuss with you the crucial importance of the multilateral trade agreements to the nation as a whole and to the forest products industry—an industry which employs about 8 percent of the U.S. manufacturing labor force, sells roughly $100 billion worth of products, invests around $5 billion a year in new facilities, accounts for $5 billion dollars of direct exports, and whose products make possible many more billions of dollars of exports by other industries.

In addition, the U.S. is also an importer of forest products—mostly softwood lumber, newsprint, and pulp from Canada. The industry's heavy involvement in both imports and exports gives it a broad perspective from which to judge the merits of this trade package.

I have had the opportunity to serve on the President's Advisory Committee for Trade Negotiations as well as the Industry Policy Advisory committee. And I am deeply impressed by the Herculean Job that Ambassador Strauss, and his associates have done in the most ambitious round of trade negotiations ever held.

Every thoughtful citizen should strongly support this major step toward a world trading system based on greater efficiency in production and fairness in opportunity. By greatly increasing export opportunities for U.S. industries, the trade agreements will: Contribute to economic growth; create more jobs; improve productivity; help to reduce inflation; and provide better values for consumers.

For the U.S. forest products industry, these new trade agreements open up opportunities. The industry's raw material—trees—is a renewable resource. The productivity of U.S. forests has increased dramatically as a result of the large investments made by the industry. As a result, the forest products industry can compete successfully anywhere in the world provided it's not hampered by unfair trade barriers.

Specifically:

1. New export opportunities will open up for the U.S. forest products industry through lowering of world tariffs on such products as plywood, linerboard, and printing/writing papers.

2. The worldwide competitive position of the forest products industry will be further strengthened by the negotiated agreements on non-tariff barriers. The forest products industry stands to gain the most from three of these—the codes covering government subsidies, standards and customs valuation.

3. Reductions in tariff and non-tariff barriers, combined with proper domestic incentives, will create opportunities for additional investment to meet growing demand for forest products worldwide. Investments by the forest products industry to serve domestic and world markets have grown at 11 percent a year during the past ten years. The potential for expanded trade resulting from the MTN agreements, as well as growing domestic requirements, could boost the rate of investment of the forest products industry to at least 15 percent a year in the decade ahead.

4. Increased exports and investment will mean more U.S. jobs. Today approximately 140,000 jobs, or close to 10 percent of the total employment in the forest products industry, are either directly or indirectly dependent on exports. A significant portion of this employment is in the South where minorities are an important segment of the work force.

And in addition to increased employment in the forest products industry, will come added job opportunities in the capital goods and raw materials industries which supply our needs.

No trade package could succeed in gaining all the advantages that any single industry or any country is looking for. But these agreements go a long way toward setting down some workable solutions to the complex trading problems we face today.

I am pleased to see that publications like the New York Times, Wall Street Journal, and Washington Post have all come out strongly in favor of the new trade package. An editorial in the latest issue of Business Week emphasizes that, "The U.S. must look out for its exporters and push their interests in every way it can. If this country does not claim its fair share of expanding world markets, it can be sure that aggressive exporters from Europe and Japan will."

For the U.S. to reap the full benefits of the trade agreements, it is vitally important that these agreements become part of an agressive export policy. We hope the Congress will take leadership in this.

Specifically, consideration should be given to the following:

1. Secure a strong legislative commitment to a national export policy to regain and strengthen a balance in our trade position.
2. Create investment incentives that would improve the competitiveness of American industry in world markets. This is especially important, given the decline in the U.S. manufactures trade balance from a surplus of $3.6 billion in 1977 to a deficit of $5.8 billion in 1978.
3. Maintain a strong system of advisory committees, which has proven effective in this round of negotiations. Change ACTN into International Trade Advisory Council, reporting to both the President and the Congress.
4. Assure fairer tax treatment for U.S. business nationals who work aboard. This would help to maintain effective personnel for the sale of U.S. products abroad.
5. Authorize the Trade Policy Staff Committee to hold hearings annually in several parts of the country in order to take testimony regarding the U.S. international trade position and policies. This committee would then submit reports to the STR and the International Trade Advisory Council.
6. Legislatively establish a National Commission on Productivity consisting of 20 members representing labor, industry, the academic community, the Congress, and the Executive Branch. Their mission would be to analyze the causes of declining productivity in America including their impact on foreign trade, and to recommend to the President ways of correcting the problem. The President should then submit a report to the Congress within four months on the same subject.

These recommendations for expanding U.S. exports are in line with those being put forth by the Advisosry Committee for Trade Negotiations.

In addition, there is a strong need to establish a focal point within the Executive Branch for the management of U.S. trade policy. In the past, lack of effective coordination and sustained attention to the formulation and execution of trade policy contributed to a decline in our trade balance.

Mr. Chairman, this concludes my prepared testimony. After Irene Meister's testimony, I will be pleased to try to answer any question you or the members of the committee may have.

STATEMENT OF IRENE W. MEISTER

Mr. Chairman, Members of the Committee, Mr. Smith has just outlined the broad reasons for our industry's strong support of the Trade Package that you have before you. Your committee will be receiving a detailed report completed last week from the Industry Sector Advisory Committee on Paper (ISAC No. 4 position within the framework of our industry's particular needs.

The export performance of the U.S. paper industry has shown steady growth. Comparing 1967 with 1977—and taking into account that 1977 was not paper's best year due to lagging recovery in other industrial countries—the industry's export tonnage, including exports of waste paper, increased by almost 83 percent and the value of exports rose by 237 percent to $2.6 billion. This means that the industry's average annual growth in volume was over 6 percent and in value almost 13 percent. In view of this good performance why then do we need trade liberalization? Let me outline some of the reasons.

The European Community (EC)

The paper industry's major market is the European Community, where the value of dutiable exports in 1977 accounted for $322.7 million. In the E.C., our industry has been experiencing and will continue to experience a growing tariff disadvantage vis-a-vis our major competitors, the Nordic countries. By January 1984, under the treaty between the E.C. and the European Free Trade Association (EFTA), imports of paper and paperboard from the EFTA countries will enter all nine E.C. nations completely duty-free. Without meaningful tariff reductions in the E.C. for North America, the tariff disparity would adversely affect our competitive position and could lead to a loss of this important market. This, of course, is unacceptable to the industry, and would also have an adverse effect on the U.S. balance of payments. Although the lack of tariff parity in the E.C. will not be eliminated by the results of

the Tokyo Round, without the agreed-upon tariff reductions the disparity would be much greater. Decreased tariffs are needed to keep and attract steady, long-term U.S. exporters to the market—a plus for the U.S. paper industry but also for our foreign customers.

As of today, our industry still has one important unresolved negotiating issue in the E.C.; namely, the definition of kraft products, a $522 million export category, 31 percent of which went to the E.C. The present E.C. definition creates a significant and unfair nontariff barrier. Last year, the Harmonized Systems Committee of the Customs Cooperation Council, on which both the U.S. and the E.C. are represented, adopted unanimously a definition of kraft paper and paperboard, which is fair and equitable for both producing and consuming nations. Yet we are still encountering major problems in relating this definition to the E.C. offer. We hope that the U.S. negotiators will be able to convince the E.C. to accept this modern, up-to-date definition. Without it, the value of the E.C. tariff offer will be greatly impaired.

Japan

The Japanese Pulp and Paper Industry is the second largest in the world. Yet the high tariffs on paper and paperboard, most of them in the 12 to 15 percent range, have been effectively dampening our industry's efforts to expand in this market. The reduction of the Japanese tariffs coupled, we hope, with an effective reduction of powerful nontariff barriers, will permit our companies to develop the export potential for this large consuming market.

Canada

Ninety percent of paper industry imports into the U.S. are from Canada, and the bulk of this Canadian tonnage enters duty-free. These imports consist mainly of newsprint and pulp. The U.S. tariffs on the rest of the imports from Canada are low in comparison to current Canadian duties on paper and board products, which mostly range from 12 to 15 percent. While under the present offer the U.S. will make extensive reductions in its tariffs on paper industry's items, the substantial Canadian concessions will have narrowed the tariff gap between our two countries, thereby expanding the U.S. potential in that market. It has been the consensus of ISAC No. 4 that the U.S. industry will benefit from these concessions.

Nontariff barriers

Among the nontariff barrier agreements negotiated in Geneva, three codes are of particular interest to the paper industry although other agreements are also significant since they will improve, we believe, the overall aspects of the international trading system.

The U.S. paper industry is international in its character, and with proper incentives—an improved international trading system being a key one—will continue to expand. Yet in a world where subsidies for exports and domestic subsidies on production, especially for capital intensive industries such as paper, are an ever growing practice, we will be at a great disadvantage. We believe that the recently negotiated GATT code on subsidies, when coupled with effective domestic legislation on countervailing duties, will provide a very significant safeguard for our industry in the domestic as well as in third country markets.

In the past, we have experienced trade problems caused by the establishment by foreign countries of standards—such as, for example, specific product definitions—of which we were not even aware. The key word of the new GATT standards code, as we understand it, is "transparency." In other words, standards in all their many forms can no longer be trade barriers. When standards are formulated by individual countries, the signatories to the code will have a chance to object, if their effect will be detrimental to trade. We believe that it is indeed a great step forward in diminishing trade distortions.

We are also encouraged by the adoption of the code on customs valuation. All too often, arbitrary actions by customs authorities distort the true value of exported products by so-called "uplifts" or other arbitrary methods of valuation, thus effectively raising tariff duties without appearing to do so. The new code on customs valuation promises to decrease any uncertainty in export valuation and thus encourage more companies to enter the export field.

In reviewing the impact of the negotiated agreements on trade in general and on the paper industry specifically, the ISAC No. 4 felt strongly that the success of these agreements will depend greatly on their fair and effective enforcement. This in turn will require continued vigilance on the part of the U.S. government as well as U.S. industry.

Indirect exports

Let me now turn to another reason why the paper industry strongly supports trade liberalization. This reason, I believe, is usually not given enough consideration in the evaluation of the impact of trade on the domestic economy. I am now speaking of the multiplier effect of indirect exports on domestic production and employment. We define the paper industry's indirect exports as domestic sales that take place only because of export demand for the products of other industries. Packaging for exported products, paper for exported printed matter, and paper used in export documentation are examples of indirect exports for our industry. Practically every basic industry in this country has indirect exports with its own particular multiplier. As overall U.S. exports increase--and we assume that they will through a better trading system and liberalization of tariffs—so too will the paper industry's indirect exports, which in 1977 totaled an estimated $5 billion and resulted in the employment of 67,000 people.

From the national standpoint, exports must be a job-creating activity and an antidote to the loss of jobs occurring in industries that have lost their domestic or international competitiveness. Therefore, the export-creating potential of indirect exports with its multiplier effect is worthy of serious consideration by the U.S. government. Earlier this year, we urged the U.S. Department of Commerce to carry out a study based on the current Census data that would show in understandable terms the impact of indirect exports on domestic production and employment in the basic industries. We still think it is a very worthwhile effort, judging from the results we have obtained from a study that was listed to our own industry.

We are attaching a tabulation recently completed by the American Paper Institute, which estimates the foreign trade related employment in our industry. We have estimated that about 15 percent of the total industry employment, or over 103,000 workers, is related to paper industry's direct or indirect exports. As total U.S. exports increase, so will the indirect exports of the U.S. paper industry—another reason why we support successful conclusion of the MTNs.

Our industry did not get everything we wanted out of these negotiations. No one ever does. And, we also had to give up a major portion of our domestic tariffs on paper and paperboard. Nevertheless, it is the unanimous consensus of the Industry Sector Advisory Committee on paper that on balance our negotiators have done a good job and that our industry will be better off in the years to come, once the package has received Congressional approval. We also believe that the adoption of this package will signal to industry the commitment of the U.S. Congress and the Executive Branch that export expansion is a key national priority.

In the course of its meeting last week, the ISAC No. 4 made four recommendations pertaining to enabling legislation. They are as follows:

1. Implementing legislation should reflect provisions of negotiated codes and agreements as closely as possible.

2. Enforcement of the countervailing duties and antidumping laws must be strong, fair and effective. At the same time, in fashioning relief for the injured industry, the government must have the necessary flexibility to effect relief without creating widespread retailiatory trade problems. Such relief would include negotiated solution where appropriate.

3. Implementing legislation must contain provisions for the continuation of the private sector advisory process with each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well, and each sectoral committee should be given an opportunity to participate when appropriate.

4. The President should be given an extension of his tariff negotiating authority.

5. There should be an expression of legislative intent that foreign trade is a national priority and thus effective U.S. governmental organization for dealing with foreign trade policy and programs is imperative. Better coordination of trade policy and programs is necessary, but specific legislation dealing with governmental reorganization should be left to the immediate post-MTN period.

In summary, export expansion should be clearly identified by the Congress and the Executive Branch as a national priority. To reach this goal will require a concerned effort on the part of the U.S. goverment and industry. The paper industry is convinced that Congressional approval of the MTN package is essential if the country is to succeed in this undertaking.

The American Paper Institute

The American Paper Institute is comprised of manufacturers who produce approximately 90 percent of the nation's pulp, paper and paperboard. Their products include wood pulp, newsprint, printing and writing papers, tissue, wrapping or

packaging materials, and other paper or paperboard produced from virgin and recycled cellulose fibers.

In 1978, this industry produced nearly 62 million tons of paper and paperboard, and the net sales of the paper and allied products companies amounted to over $50 billion. The U.S. paper and allied products industry operates in every state in the Union, employing over 700,000 people and paying about $13.5 billion in wages, salaries and benefits. It is a basic industry, worldwide in scope, and among the ten largest in the country.

National Forest Products Association

The National Forest Products Association, with headquarters in Washington, D.C., represents more than 3,000 companies and 29 associations involved in the growing of timber and the manufacturing and distribution of lumber, plywood and other wood products. NFPA members account for the major portion of the basic wood products produced in the United States.

In 1978 the wood products industry produced over 30 billion board feet of softwood lumber, 7 billion board feet of hardwood lumber, 19 billion square feet of softwood plywood and many other wood products.

Industry sales in 1978 were close to $50 billion. The wood products industry employed over 750,000 employees and paid well over $10 billion in wages and benefits.

J. Stanford Smith

Mr. J. Stanford Smith is Chairman and Chief Executive Officer of International Paper Company, an integrated, multinational forest products company which employs over 50,000 people. He serves as a member of the Executive Committee of the American Paper Institute, and is Co-Chairman of the President's Advisory Committee for Trade Negotiations. He is also a member of the Industry Policy Advisory Committee for the trade negotiations, the Business Roundtable, and the Business Council.

Irene W. Meister

Dr. Irene W. Meister is Vice President, International of the American Paper Institute and Chairman of the Industry Sector Advisory Committee on Paper (ISAC No. 4). She also serves on several committees of national and international organizations, such as the U.S. Chamber of Commerce, OECD, FAO and UNEP.

U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976

State	Value of shipments (in millions)				Thousands of employees				Direct and indirect export-related employment as percent of total Industry 26 employment	Rank of Industry 26 in terms of export value within State
	Total Industry 26 shipments [1]	Direct exports [2]	Indirect exports [3]	Total of direct and indirect exports	Total Industry 26 employment [4]	Employment related to direct exports [5]	Employment related to indirect exports [6]	Employment related to total of direct and indirect exports		
Alabama	$1,815.7	$83.1	$182.4	$265.5	19.9	1.2	2.5	3.7	18.6	4
Arizona	92.4	3.4	9.6	13.0	1.2	0.1	0.1	0.2	16.7	9
Arkansas	984.0	91.0	93.6	184.6	11.1	1.3	1.3	2.6	23.4	2
California	3,066.5	128.2	308.6	436.8	40.7	1.8	4.3	6.1	15.0	10
Connecticut	563.4	28.5	56.2	84.7	8.9	0.4	0.8	1.2	13.5	6
Florida	1,446.8	212.0	129.6	341.6	16.6	3.0	1.8	4.8	28.9	2
Georgia	2,344.2	124.7	233.1	357.8	26.9	1.8	3.3	5.1	19.0	3
Illinois	2,152.1	34.0	222.2	256.2	38.3	0.5	3.1	3.6	9.4	13
Indiana	861.3	12.2	88.8	101.0	14.4	0.2	1.3	1.5	10.4	14
Iowa	354.0	10.1	36.0	46.1	4.9	0.1	0.5	0.6	12.2	12
Kentucky	515.2	53.8	48.5	102.3	8.0	0.8	0.7	1.5	18.8	6
Louisiana	1,450.2	126.2	139.2	265.4	16.0	1.8	1.9	3.7	23.1	4
Maine	1,406.0	107.9	136.3	244.2	17.8	1.6	1.9	3.5	19.7	1
Maryland	548.3	12.3	56.2	68.5	9.6	0.2	0.8	1.0	10.4	8
Massachusetts	1,603.1	71.3	160.8	232.1	31.2	1.0	2.2	3.2	10.3	7
Michigan	1,764.3	44.2	182.4	226.6	24.8	0.6	2.5	3.1	12.5	10
Minnesota	1,321.0	44.9	133.9	178.8	18.1	0.6	1.9	2.5	13.8	8
Mississippi	577.3	189.4	40.3	229.7	6.3	2.7	0.6	3.3	52.4	1
Missouri	787.1	12.8	81.6	94.4	14.8	0.2	1.1	1.3	8.8	13
New Hampshire	403.5	72.8	38.4	111.2	7.3	1.0	0.5	1.5	20.5	2
New Jersey	1,807.0	51.5	184.3	235.8	31.3	0.7	2.6	3.3	10.5	10
New York	2,620.2	77.2	266.9	344.1	48.6	1.1	3.7	4.8	9.9	5
North Carolina	1,319.1	80.6	130.1	210.7	17.5	1.2	1.8	3.0	17.1	6

U.S. PAPER AND ALLIED PRODUCTS INDUSTRY EXPORTS AND ESTIMATED EXPORT-RELATED EMPLOYMENT, 1976—Continued

State	Value of shipments (in millions)				Thousands of employees				Direct and indirect export-related employment as percent of total Industry 26 employment	Rank of Industry 26 in terms of export value within State
	Total Industry 26 shipments [1]	Direct exports [2]	Indirect exports [3]	Total of direct and indirect exports	Total Industry 26 employment [4]	Employment related to direct exports [5]	Employment related to indirect exports [6]	Employment related to total of direct and indirect exports		
Ohio	2,190.3	44.9	225.6	270.5	37.6	0.6	3.2	3.8	10.1	12
Oregon	1,046.1	39.1	105.6	144.7	9.9	0.6	1.5	2.1	21.2	4
Pennsylvania	3,075.2	62.1	316.3	378.4	42.4	0.9	4.4	5.3	12.5	14
Rhode Island	103.1	4.3	10.1	14.4	2.4	0.1	0.1	0.2	8.3	14
South Carolina	1,112.6	135.4	102.2	237.6	13.8	1.9	1.4	3.3	23.9	4
Tennessee	1,267.6	47.6	129.6	177.2	17.1	0.7	1.8	2.5	14.6	10
Texas	1,402.9	43.3	142.6	185.9	20.7	0.6	2.0	2.6	12.6	11
Vermont	184.7	8.6	18.2	26.8	2.3	0.1	0.3	0.4	17.4	2
Virginia	1,100.4	47.9	110.4	158.3	16.2	0.7	1.6	2.3	14.2	9
Washington	1,733.5	203.0	160.8	363.8	17.6	2.9	2.3	5.2	29.5	3
West Virginia	90.3	3.3	9.1	12.4	1.9	0.1	0.1	0.2	10.5	10
Wisconsin	3,704.6	78.9	380.6	459.5	44.1	1.1	5.3	6.4	14.5	6
Balance of States (15)	1,373.1	146.1	129.6	275.7	15.3	2.1	1.8	3.9	26.5	
Total	48,218.1	2,536.6	4,799.7	7,336.3	675.5	38.3	67.0	103.3	15.3	

[1] Paper and allied products industry is designated Industry 26 by the Bureau of the Census.

[2] Value of export shipments is based on individual State data reported by the Bureau of the Census and adjusted to the revised census figure for the value of total Industry 26 export shipments.

[3] Indirect exports are domestic sales which take place because of export demand for the products of all other industries. Total indirect exports, estimated to be $4.8 billion in 1976, allocated among States on the basis of each State's share of total nonexport shipments.

[4] Total industry employment based on census State employment data, adjusted to Bureau of Labor Statistics total Industry 26 employment figure for 1976.

[5] API estimates.

[6] API estimates.

Source: "Annual Survey of Manufactures, 1976, Origin of Exports of Manufacturing Establishments," issued by the Bureau of the Census, Department of Commerce, June 1978.

Mr. JENKINS. Thank you, Dr. Meister. Mr. Smith in your written testimony you made several recommendations including one on the need to maintain a system of advisory committees. What is the basis of your recommendation on that? How do you justify that particular need?

Mr. SMITH. I think we justify it on the basis of the fine work that has been done by Ambassador Strauss and his associates in setting up and working with such advisory committees in connection with the trade negotiations.

The net result is that the negotiators have been very well informed about the effect on jobs, the new chances for exports, the opportunities, and the problems ranging from nontariff barriers to tariff barriers, to definitions, to codes and so on.

In some of the earlier rounds of trade negotiations, people from industry felt there was not this good two-way exchange of information. But, it has been very beneficial this time. We think that the effective exchange of information is extremely important for the future.

Mr. JENKINS. You indicated that the MTN will help the forest products industry expand its exports. Presently information indicates that the industry is running near full capacity. How do you anticipate meeting the world demand and the expansion of exports in this field?

Mr. SMITH. If there is the kind of opportunity abroad that we think, these negotiations should help open it up, I am sure that the various companies within our industry will be expanding their capacity in order to meet that market as well as the market in the United States. Because we have an industry that is competitive on a worldwide basis, if there are no barriers we can successfully count on that as a permanent market.

As a member of the advisory committee, I have been struck by the fact that the industries which are afraid of losing some market in the United States because of inroads of foreign competition and which therefore are seeking protection, are very loud and noisy in pressing their point of view. On the other hand, the industries that are seeking to open up new opportunities sometimes have a harder time getting attention for their approach.

Yet in terms of the strength of the dollar and the strength of the balance of trade in the United States, it is very important that we emphasize helping those industries that are competitive on a world basis to expand.

Mr. JENKINS. You did not comment in your statement on the effect of your industry as far as the tariff reductions on paper and paperboards. In the years to come what do you consider to be the major threat to the industry's domestic market?

Mr. SMITH. The negotiations have given up most of the tariffs that remain in the United States on most paper and paperboard products. Many of them, such as news print and pulp, already flow into the United States tariff free. We are convinced that our future lies, not in tariff protection, but in maintaining world low cost leadership and in maintaining and enhancing the productivity of the whole forest products industry.

Because we think that productivity, not only in our industry, but in every industry, is so crucial to the maintenance of the strength

of the United States and to the reduction of inflation. I have in my written remarks called for the establishment of a national commission on productivity.

Mr. JENKINS. Doctor Meister, I was very much impressed with the documentation that is attached to your statement. I notice tht in my own State forestry products rank number three in export value. On pages 2 and 3 of your testimony, referring to the problem with the European community and the definition of kraft products, very briefly how do you think this committee could be of help in that regard? Do you have any suggestions?

Ms. MEISTER. We hope, Mr. Chairman, that this problem will be resolved by our negotiators. Negotiations on kraft have been difficult because it is a product that Europeans themselves do not produce except in just one country of the Common Market—only France produces kraft linerboards but they have competitive products, and this has been an area of great emotionalism rather than rational opposition.

Now the concessions we will receive are far from eliminating the tariff disparity with our major competitors, but at least we feel that we will be able to live with it, provided that we don't have a major nontariff barrier which now exists because of the EC definition of kraft. This definition would prevent us from using the most modern cost-effective technology in producing kraft products which will continue to be excellent in quality, will meet all standards and will be no threat to the European producers.

We are quite firm in our position that the tariff concessions which we have received are not going to be meaningful unless this problem is resolved.

Mr. JENKINS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman. I would like to thank both the witnesses for their excellent testimony.

Referring to the recommendations of Mr. Smith on pages 5 and 6, particularly recommendations one and two, my colleague from Oklahoma, Mr. Jones, and our colleagues from Illinois and Florida, Mr. Mikva and Mr. Gibbons and I have made some similar recommendations and we certainly appreciate that kind of back up.

With respect to the recommendations of Dr. Meister you say that they are the recommendations of ISAC No. 4. Were those recommendations made unanimously or by some consensus, or how were they developed?

Ms. MEISTER. Mr. Chairman and Mr. Frenzel, all the recommendations which are submitted were agreed upon unanimously by ISAC No. 4 which is a diversified group of executives representing, not only the manufacturing sector, but other sectors of the industry as well.

Mr. FRENZEL. Do you have the paper houses, the converters, the manufacturers and the whole range?

Ms. MEISTER. We have a range of industry.

Mr. FRENZEL. How many people are represented on ISAC No. 4?

Ms. MEISTER. We have now 16.

Mr. FRENZEL. Thank you. I yield the balance of my time.

Mr. JENKINS. Mr. Fisher.

Mr. FISHER. No questions.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. I have no questions but I would like to welcome the panel and thank them for their testimony.

Mr. JENKINS. Thank you very much for your testimony.

Our next witness is Mr. Gordon C. Hurlbert, president of Westinghouse Power Systems Co. Welcome to the committee. Your entire statement will be made a part of the record. You may proceed as you desire.

STATEMENT OF GORDON C. HURLBERT, PRESIDENT, WESTINGHOUSE POWER SYSTEMS CO., ACCOMPANIED BY CLAUDE HOBBS, VICE PRESIDENT, GOVERNMENT RELATIONS, WESTINGHOUSE ELECTRIC CORP.

Mr. HURLBERT. I would appreciate it if you would put the entire statement in the record and I will give some summary remarks. I have here with me Claude Hobbs, vice president of government relations for Westinghouse Electric Corp.

I am Gordon C. Hurlbert, president, Westinghouse Power Systems Co., one of the three major operating companies of Westinghouse Electric Corp., headquartered in Pittsburgh, Pa. Westinghouse is broadly diversified with 1978 worldwide sales of $6.7 billion and exports from the United States of approximately $800 million.

Our part of the corporation manufactures power equipment of the type most generally purchased by electric utilities and large industrial customers to generate, transmit, and distribute electric power. Our product line varies from small fuses and electrical hardware items costing only a few dollars to nuclear powerplants costing more than $1 billion.

Not only do we sell worldwide from our manufacturing facilities in the United States, but we have manufacturing facilities in most of the developed countries of the world. From our experience, detailed cost experience in manufacturing in those countries, we are convinced we can manufacture our products cost competitively in the United States.

I appreciate this opportunity to appear before you to present our view of the effects of the multilateral trade negotiations.

I would like to confine my testimony primarily to the impact that the MTN agreement is likely to have on several of the principal products of the Westinghouse Power Systems Co.

In the remarks that follow, I want to emphasize three points.

The results of the MTN for heavy electrical equipment do not bring reciprocity at all. Instead, foreign producers will gain a disproportionately larger entry into the U.S. market than they already enjoy, while American producers will continue to be denied access to major markets overseas.

Two, until European nations subscribe to the new Government Procurement Code and thus agree to open their markets for larger electrical equipment to American and other foreign bidders, and until Japan simply agrees to open its market for this equipment to us and others, the United States should first increase the "Buy American" differential rather than merely retaining present modest differential rates, and second, make no tariff reductions on these products.

Third, the U.S. Antidumping Act should not be weakened by allowing the Treasury Department to waive import penalties when a foreign company is found guilty of dumping in this country, merely by letting that company promise not to sell in the United States at prices not so low as to injure U.S. industry. Nor should that act be weakened otherwise.

Since the Tokyo Round of Multilateral Trade Negotiations was initiated in 1974, we have eagerly anticipated the prospect of opening a number of foreign markets which, for many years, have been closed to our principal products manufactured in the United States. I refer particularly to large electrical equipment, namely, large steam-turbine generators, large power transformers, and large power circuit breakers.

Unfortunately these hopes now appear to have been dashed.

In the Trade Act of 1974 Congress provided that:

> A principal U.S. negotiating objective * * * shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive oportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets for the importation of like or similar products * * *.

The Senate Finance Committee cited large electrical equipment as being particularly suited for trade negotiations on such a product sector basis.

In the Kennedy Round tariffs were reduced by the United States and by other countries around the world for imports of large electrical equipment. In the European countries and Japan, these duty reductions meant nothing because their nationalistic practices prevented them from buying American equipment. A tariff reduction on products which a country will not import is meaningless. American equipment manufacturers were the losers.

We believe that more equitable tariff and nontariff treatment for these products could be negotiated by the recommended sectoral approach. We hoped thus to eliminate this nontariff barrier to our exports.

We have been disappointed.

In the last 5 years, for example, U.S. private utilities and Government agencies have purchased almost 10,000 megawatts of steam-turbine generators from European manufacturers—enough to supply 45 percent of the entire Tennessee Valley Authority's 1978 peakload.

These machines have a current market value of approximately $500 million. To put the quantity in further perspective, the total orders placed by all purchasers in the United States in 1978 for steam-turbine generators were 14,600 megawatts, and only 8,900 megawatts in 1977.

During the same 5-year period, we were permitted to quote steam-turbine generators to European utilities on only one occasion. Last year the Austrian utility—Austria has no domestic manufacturer of turbine generators—permitted us to bid on a small coal-fired turbine-generator rated 330 megawatts. We recently have been advised that we are no longer in contention for this machine that it will be purchased from a European manufacturer.

Gentlemen, the U.S. large electrical equipment industry has fallen on hard times. We have had to reduce employment in our turbine generator facilities by several thousand people. How many more jobs shall we be forced to eliminate by one-sided trade agreements?

During the same general period U.S. agencies and private utilities purchased 570 megawatts of large hydrogenerator equipment from Japanese manufacturers. These lost orders were for four large machines of the type generally used in major hydroelectro dams. Although the proportion of U.S. business taken by the Japanese generally has been limited to between 15 to 25 percent of the annual commitments to purchase, these orders have been taken while the U.S. market was severely depressed in volume. As you might expect, during the same period we have had no opportunity to bid reciprocally for this type of equipment in Japan. In the past 2 years, foreign sales of extra-high voltage circuit breakers have exceeded 25 percent of the available U.S. order market.

I want to commend Ambassador Strauss and his colleaques for their sincere efforts to win for American manufacturers the right to bid and sell this equipment on the basis of value and price to utility organizations in Europe and Japan. But despite his well-know energy and persuasiveness, not even Mr. Strauss was able to succeed in that attempt. The Government Procurement Code which was negotiated in an effort to lead the governments of Eurpoe toward open, nondiscriminatory purchasing practices now turns out to be a failure so far as large electrical machinery is concerned.

The European countries refuse to have their electric utility entities purchase equipment under the new Government Procurement Code. And Japanese electric utilities continue their buy-only-Japanese policy. This means that those countries intend to continue their nationalistic purchasing practices. Our Ameican negotiators just can't get us into those markets.

But they have agreed to reduce American import duties on two very significant products—large power transformers and large power circuit breakers. They have also agreed to reduce the U.S. duty on another very significant product—large steam turbine-generators—although the latter reduction will be held in abeyance for 2 years in the vain hope that the European countries accede to the Government Procurement Code. The "Buy American" differential which has been effect since 1954 would be continued but not increased.

Maintaining the status quo on a number of our major large products and reducing our tariff rate on two of the products will not provide an incentive during the next 2 years for foreign industrialized countires to sign the Government Procurement Code.

In my judgment it is totally unrealistic to believe that this somehow benefits American manufacturers of this equipment. This naive policy had no beneficial impact in the past, and we cannot see how it will help now, The congressional recommendation in 1974 that there be equibtable product sector treatment of large electrical equipment has come to naught.

At a minimum, the Buy American Act differential on large electrical equipment should be increased and U.S. tariff rates on the equipment should not be reduced until the Japanese and Euro-

pean countries open their markets to American competition in these products. I urge Congress to help us get this much equity. How else can we make them open up their markets?

Large electrical equipment is quite different from most other products, and it is particularly sensitive to dumping. Today's typical steam-turbine generator unit costs from $30 to $50 million; 4 to 6 years are required to manufacture and deliver it. A large power transformer costs up to $1 million per unit, and 12 to 18 months are needed to manufacture and deliver it. Our large power transformer plant at Muncie, Ind., would cost from $100,000 to several hundred thousand dollars each, and large expensive plants are needed to manufacture them. Very large expensive plants are needed to manufacture steam turbines and heavy electrical equipment.

This extremely large, complicated machinery is essential to the functioning of modern electric utility systems.

As our country moves to reduce our reliance on oil and gas, we must convert more of our energy usage to coal, nuclear, and other advanced technologies. Virtually all of these resources will require a strong, technologically advanced heavy manufacturing industry to provide the machines for utilizing these scientific developments. Our national security will depend on such industry.

To remain healthy and maintain steady levels of employment, these large manufacturing plants must have orders.

Utilities purchase large equipment in a highly cyclical pattern. When a few utilities begin buying, many want to buy equipment. When the market for large equipment in Europe is depressed, it is often attractive for manufacturers there to seek export orders even at below normal prices in order to maintian employment and partially recover the overhead expense of large industrial plants. If such cut-price competition occurs in the United States when the American market for similar equipment is also depressed, the result can be very injurious to U.S. workers and manufacturers. This was the actual situation in 1978 in Europe and in the United States

The implementing legislation now being prepared for submission to Congress may contain provisions which will weaken the effectiveness of the U.S. antidumping law. Although they do not say it this way, there is little doubt that our foreign competitors want to maintain the right to dump their products into the United States, whether subsidized by direct home government assistance or by high prices in home country markets which are insulated from international competition.

They want to strip the United States of any effective legal remedy for protecting American industry and labor from such dumping.

Our Treasury Department wants legal authority to terminate dumping investigations by having the foreign exporter agree n t to sell at prices sc low as to injure American manufacturers. Tney also want to have Congress provide a new, untested definition of "injury" to U.S. industry. The proposed new concept of "material injury" could mean whatever foreign countries who are GATT members can successfully urge upon our Treasury Department and the International Trade Commission.

Why should Congress let foreign governments impose legal criteria for protecting American industry and labor from the foreigners' own unfair trading practices which are detrimental to U.S. industry and labor?

My plea to you, Members of Congress, is—don't give Treasury Department or any other Government agency this authority. It would let them decide what margin of unfair dumping injures American companies, and then by letting the foreign company sell at such prices Treasury could determine the price levels of imports we must compete against.

Neither U.S. industry nor Congress could effectively know whether such authority was being abused. If there is to be any abatement of a dumping action by obtaining a price undertaking, that price level should completely eliminate the dumping and the Treasury Department should actively police compliance with the undertaking.

Another proposal is for Congress to write into U.S. law the GATT concept of material injury, thus changing both the U.S. Antidumping Act and Countervailing Duty Act. I urge this committee and the Congress to insist that the implementing legislation, or that the legislative history, make it clear that this language is intended to work no change in our present law—and particularly that it will create no higher standard of what causes injury than the present law and practice under the Antidumping Act.

I will not repeat testimony you have already heard from others on the Antidumping Act proposals. I want to strongly endorse the testimony of Mr. Richard Cunningham on April 23. He is very familiar with the problems of our industry in this area.

The United States seems to be on the verge of extending most-favored-nation treatment to China, and perhaps to Russia. Western European countries and Japan are extremely protective of their own interests. The utilities and some heavy manufacturing industries in those countries are either owned by the governments or are mandated to carry certain social responsibilities and to maintain employment. These governments support their industries in the need to export—even at marginal prices; and they do it in subtle ways available to them through the structural differences in their tax and accounting laws.

We should not let those governments influence the writing of our laws which prescribed how we are to determine unfair import pricing, or which provide how much injury American industry must experience before our Government will protect Americans.

I urge you not to deny U.S. industry a strong, effective antidumping law.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF G. C. HURLBERT, PRESIDENT, POWER SYSTEMS CO., WESTINGHOUSE ELECTRIC CORP.

I am Gordon C. Hurlbert, President, Westinghouse Power Systems Company, one of the three major operating companies of Westinghouse Electric Corporation, headquartered in Pittsburgh, Pennsylvania. Westinghouse is broadly diversified with 1978 worldwide sales of 6.7 billion dollars and exports from the U.S. of approximately 800 million dollars. Our part of the corporation manufactures power equipment of the type most generally purchased by electric utilities and large industrial custom-

ers to generate, transmit and distribute electric power. Our product line varies from small fuses and electrical hardware items costing only a few dollars to nuclear power plants costing more than one billion dollars.

I appreciate this opportunity to appear before you to present our view of the effects of the Multilateral Trade Negotiations and the impact we believe they will have on our U.S. business.

Westinghouse operates worldwide. It is our policy to sell our products and services to any customer in the world, wherever located. Approximately 24 percent of our 1978 sales were made to overseas customers. While most of our manufacturing facilities are located within the United States, we have a number of overseas manufacturing divisions, and we own minority interest in a number of companies located in other countries. Because of our great involvement with international trade, I believe we are fully cognizant of the cost competitiveness of U.S. manufacturing vis-a-vis manufacturing in other parts of the world; and, I believe we understand the general business practices and export incentives of most of the industrialized countries of the world.

I would like to confine my testimony primarily to the impact that the MTN agreement is likely to have on several of the principal products of the Westinghouse Power Systems Company.

In the remarks that follow, I want to emphasize three points:

(1) The results of the MTN for heavy electrical equipment do not bring reciprocity at all. Instead, foreign producers will gain a disproportionately larger entry into the U.S. market than they already enjoy, while American producers will continue to be denied access to major markets overseas.

(2) Until European nations subscribe to the new Government Procurement Code and thus agree to open their markets for large electrical equipment to American and other foreign bidders, and until Japan simply agrees to open its market for this equipment to us and others, the U.S. should *(a)* increase the Buy American differential rather than merely retaining present modest differential rates, and *(b)* make no tariff reductions on these products.

(3) The U.S. Antidumping Act should not be weakened by allowing the Treasury Department to waive import penalties when a foreign company is found guilty of dumping in this country, merely by letting that company promise not to sell in the U.S. at prices not so low as to injure U.S. industry. Nor should that Act be weakened otherwise.

Since the Tokyo Round of Multilateral Trade Negotiations was initiated in 1974, we have eagerly anticipated the prospect of opening a number of foreign markets which, for many years, have been closed to our principal products manufactured in the U.S. I refer particularly to large electrical equipment, namely, large steam-turbine generators, large power transformers, and large power circuit breakers.

Unfortunately, these hopes now appear to have been dashed.

When the Trade Act of 1974 was being considered by this committee, by the Senate Finance Committee and the Congress, representatives of our industry urged a departure from the pattern of prior trade negotiations. Instead of merely authorizing our negotiators to grant import concessions on one group of products such as large electrical equipment in order to gain export concessions on other industrial products or agricultural products, the Congress provided that:

"A principal U.S. negotiating objective * * * shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets for the importation of like or similar products * * *."

The Senate Finance Committee cited large electrical equipment as being particularly suited for trade negotiations on such a product sector basis.

Our interest in this approach grew out of the Kennedy Round. Then, we urged that the industrialized countries of Europe and Japan not be granted any easier access to the United States market for large electrical equipment than American manufacturers of this equipment were accorded by the utility organizations in those countries. For many years Japan and European countries had followed the practice of buying large electrical equipment only from their own domestic manufacturers. Yet, simultaneously, these same manufacturers had been selling this equipment to government and private utility purchasers in the United States, with no deterrent other than a modest import duty and a small percentage differential for purchases by U.S. Government agencies.

In the Kennedy Round tariffs were reduced by the United States and by other countries around the world for imports of large electrical equipment. In the Europe-

an countries and Japan, these duty reductions meant nothing because their nationalistic practices prevented them from buying American equipment. A tariff reduction on products which a country will not import is meaningless. On the other hand, utilities in the United States, both those owned by the U.S. Government and by private investors, have purchased several hundred million dollars worth of large electrical equipment from European and Japanese manufacturers. In other words, American equipment manufacturers were the losers.

It was our hope and expectation that the United States negotiators would follow the Congressional directive with respect to the large electrical equipment product sector. We believed that more equitable tariff and non-tariff treatment for these products could be negotiated by this approach. We hoped thus to eliminate this non-tariff barrier to our exports.

We have been disappointed.

In the last five years, for example, U.S. private utilities and government agencies have purchased almost 10,000 megawatts of steam-turbine generators from European manufacturers—enough to supply 45 percent of the entire Tennessee Valley Authority's 1978 power generation requirements. These machines have a current market value of approximately $500 million. To put the quantity in further perspective, the total orders placed by all purchasers in the United States in 1978 for steam-turbine generators were 14,600 megawatts, and only 8,900 megawatts in 1977.

During the same five-year period, we were permitted to quote steam-turbine generators to European utilities on only one occasion. Last year the Austrian utility—Austria has no domestic manufacturer of turbine generators—permitted us to bid on a small coal fired turbine-generator rated 330 megawatts. We recently have been advised that we are no longer in contention for this machine, that it will be purchased from a European manufacturer.

Gentlemen, the U.S. large electrical equipment industry has fallen on hard times. We have had to reduce employment in our turbine generator facilities by several thousand people. How many more jobs shall we be forced to eliminate by one-sided trade agreements?

During the same general period U.S. agencies and private utilities purchased 570 megawatts of large hydro-generator equipment from Japanese manufacturers. These lost orders were for four large machines of the type generally used in major hydro-electro dams. Although the proportion of U.S. business taken by the Japanese generally has been limited to between 15 to 25 percent of the annual commitments to purchase, these orders have been taken while the U.S. market was severely depressed in volume. As you might expect, during the same period we have had no opportunity to bid reciprocally for this type of equipment in Japan.

In the past two years, foreign sales of extra-high voltage circuit breakers have exceeded 25 percent of the available U.S. order market. Because of patent infringements and other indications of unfair competition in large power circuit breakers, we have initiated an unfair trade complaint to the International Trade Commission. As noted by the General Accounting Office in its March 1979 Report, this kind of procedure is very slow, and several years may elapse before the matter is resolved.

I want to commend Ambassador Strauss and his colleagues for their sincere efforts to win for American manufacturers the right to bid and sell this equipment on the basis of value and price to utility organizations in Europe and Japan. But despite his well-known energy and persuasiveness, not even Mr. Strauss was able to succeed in that attempt. The Government Procurement Code which was negotiated in an effort to lead the governments of Europe toward open, non-discriminatory purchasing practices now turns out to be a failure so far as large electrical machinery is concerned. The European countries refuse to have their electric utility entites purchase equipment under the new Government Procurement Code. And Japanese electric utilities continue their buy-only-Japanese policy. This means that those countries intend to continue their nationalistic purchasing practices of buying nothing from American electrical equipment suppliers or from other foreign electrical suppliers that their own industries can make at home.

My personal expertise is in the area of utility equipment markets; however, I understand that these same restrictive practices also apply to surface transportation equipment purchased by government-owned transportation companies throughout Europe. For this reason, the parts of our corporation which manufacture electrical equipment and control systems for use in public transportation also are denied access to many foreign markets, while European and Japanese manufacturers have free access to American transportation markets.

Our American negotiators can't get us into those markets, yet they now propose to make it easier for the Europeans and that Japanese to continue to sell to U.S. utility organizations, both government-owned and investor-owned. Thus, the one-

way trade in large electrical equipment among the industrialized countries of the world will continue.

Our negotiators have agreed to reduce American import duties on two very significant products—large power transformers and large power circuit breakers. They have also agreed to reduce the U.S. duty on another very significant product—large steam-turbine generators—although the latter reduction will be held in abeyance for two years until the European countries accede to the Government Procurement Code. The Buy American differential which had been in effect since 1954, would be continued for all of these products, but not increased. It would remain 6 percent plus an additional 6 percent where the low American bidder would manufacture in an area of high unemployment.

Our U.S. Negotiators seem to think that maintaining the status quo on a number of our major large products and reducing our tariff rate on two of the products will provide an incentive during the next two years for foreign industrialized countries to sign the Government Procurement Code.

I applaud their good intentions on our behalf; but in fact, it is totally unrealistic to believe that this somehow benefits American manufacturers of this equipment. As we have stated, this benign policy had no beneficial impact in the past, and we cannot see how it will help now. The Congressional recommendation in 1974 that there be equitable product sector treatment of large electrical equipment has come to naught.

At a minimum, the Buy American Act differential on large electrical equipment should be increased and U.S. tariff rates on the equipment should not be reduced until the Japanese and European countries open their markets to American competiton in these products. I urge Congress to help us get this much equity. How else can we make them open up their markets?

But, that is not all.

There are other very disturbing proposals for Congressional action that would weaken the U.S. Antidumping Act. This Act provides the major protection manufacturers in the United States have against some of the proven unfair trade practices of our European and Japanese competitors.

Large electrical equipment is quite different from most other products, and it is particularly sensitive to dumping. Today's typical steam-turbine generator unit costs from $30 to $50 million. Four to six years are required to manufacture and deliver it. Our large steam-turbine manufacturing plant in Charlotte, North Carolina, would cost at least $200 million to build and equip today. A large power transformer costs up to $1 million per unit, and 12 to 18 months are needed to manufacture and deliver it. Our large power transformer plant at Muncie, Indiana, would cost more than $100 million today. Large power circuit breakers cost from $100,000 to several hundred thousand dollars each, and large expensive plants are needed to manufacture them.

This extremely large, complicated machinery is essential to the functioning of modern electric utility systems.

While they contain many standardized components, each of these large electrical machines is custom-engineered and manufactured to function compatibly with the electrical characteristics of a particular utility system.

As our country moves to reduce our reliance on oil and gas, we must convert more of our energy usage to coal, nuclear and other advanced technologies. Virtually all of these resources will require a strong, technologically advanced heavy manufacturing industry to provide the machines for utilizing these scientific developments. Our national security will depend on such industry.

To remain healthy and maintain steady levels of employment, these large manufacturing plants must have orders.

Utilities purchase large equipment in a highly cyclical pattern. When a few utilities begin buying, many want to buy equipment. When the market for large equipment in Europe is depressed, it is often attractive for manufacturers there to seek export orders even at below normal prices in order to maintain employment and partially recover the overhead expense of large industrial plants. If such cut-price competition occurs in the U.S. when the American market for similar equipment is also depressed, the result can be very injurious to U.S. workers and manufacturers. This was the actual situation in 1978 in Europe and in the U.S.

The implementing legislation now being prepared for submission to Congress may contain provisions which will weaken the effectiveness of the U.S. Antidumping law. Although they do not say it this way, there is little doubt that our foreign competitors want to maintain the right to dump their products into the United States, whether subsidized by direct home government assistance or by high prices in home country markets which are insulated from international competition. They want to

strip the United States of any effective legal remedy for protecting American industry and labor from such dumping.

Our Treasury Department wants legal authority to terminate dumping investigations by having the foreign exporter agree not to sell at prices so low as to injure American manufacturers. They also want to have Congress provide a new, untested definition of "injury" to U.S. industry. The proposed new concept of "material injury" could mean whatever foreign countries who are GATT members can successfully urge upon our Treasury Department and the International Trade Commission.

Why should Congress let foreign governments impose legal criteria for protecting American industry and labor from the foreigners' own unfair trading practices which are detrimental to U.S. industry and labor?

My plea to you, Members of Congress, is—don't give Treasury Department or any other government agency this authority. It would let them decide what margin of unfair dumping injures American companies, and then by letting the foreign company sell at such prices Treasury could determine the price levels of imports we must compete against. Neither U.S. industry nor Congress could effectively know whether such authority was being abused. If there is to be any abatement of a dumping action by obtaining a "price undertaking", that price level should completely eliminate the dumping, and the Treasury Department should actively police compliance with the undertaking.

Another proposal is for Congress to write into U.S. law the GATT concept of "material injury", thus changing both the U.S. Antidumping Act and Countervailing Duty Act. I urge this committee and the Congress to insist that the implementing legislation, or that the legislative history, make it clear that this language is intended to work no change in our present law—and particularly that it will create no higher standard of what causes injury than the present law and practice under the Antidumping Act.

I will not repeat testimony you have already heard from others on the Antidumping Act proposals. I want to strongly endorse the testimony of Mr. Richard Cunningham on April 23rd. He is very familiar with the problems of our industry in this area.

The United States seems to be on the verge of extending Most Favored Nation treatment to China, and perhaps to Russia. Western European countries and Japan are extremely protective of their own interests. The utilities and some heavy manufacturing industries in those countries are either owned by the governments or are mandated to carry certain social responsibilities and to maintain employment. These governments support their industries in the need to export—even at marginal prices; and they do it in subtle ways available to them through the structural differences in their tax and accounting laws.

We should not let those governments influence the writing of our laws which prescribe how we are to determine unfair import pricing, or which provide how much injury American industry must experience before our government will protect Americans.

I urge you not to deny U.S. industry a strong, effective antidumping law.

Gentlemen, I appreciate that your interest today is in the Multilateral Trade Negotiations and that major tax reform is not before you at this time; but our growing national concern for improving our export position soon must be addressed through the tax laws as well as trade treaties. The Congress must come to grips with the significant differences in tax treatment afforded to most of our competitors in other countries. If this is not done—the basic competitiveness of U.S. industry in world markets will continue to undergo slow and steady erosion.

Other countries' use of value-added taxes and their practice of taxing on the principle of "territoriality" leads to significantly different economics of competition. Some of our internal studies indicate that these practices can produce selling price differentials up to 20 or 30 percent relative to the prices of U.S. manufacturers. We must face up to these differences and recognize that so long as our basic rules of the game are so different, extraordinary account of these differences must be taken in our trade agreements and in the U.S. Government posture toward export and import commerce. These are some of the reasons it is so difficult to negotiate an equitable multilateral trade agreement. Many of the provisions—particularly those prohibiting government subsidies on exports—can provide for fair competition only where the system of taxation is identical among competing countries.

At an appropriate time, I would be happy to have representatives from our company review these issues in more depth with your staff or perhaps provide additional testimony for your future hearings.

Mr. JENKINS. Thank you Mr. Hurlbert. I think you pointed out vividly some of the very serious problems we have with parts of the proposal. I understand as of yesterday Ambassador Strauss ceased some of the negotiations with Japan on the Procurement Code itself based upon some of the points that you have made in your testimony today. They are serious and without question it disturbs me.

Mr. FRENZEL. Thank you, Mr. Chairman.

I must say that I was very impressed with the testimony, particularly in light of the fact that the Japanese Government has suspended its negotiations with Ambassador Strauss on procurement, feeling it has gone as far as it can go, but it has not gone anywhere in your field.

Congressman Jones, Congressman Mikva, Congressman Gibbons, and I have been directing a good deal of attention to opening up the market of Japan specifically, but by reference of course the EC as well.

We have been extremely disappointed, we have not been able to get the Japanese to move at all. I must say that I think your points are very well taken and it may be that there is some sort of specific legislative relief necessary in their case because obviously our negotiators, based on yesterday's decision, are now stonewalled, but I thank you for your excellent testimony.

Mr. HURLBERT. Thank you.

Mr. JENKINS. Mr. Fisher.

Mr. FISHER. I don't have anything.

Mr. JENKINS. Mr. Mikva.

Mr. MIKVA. I agree with what Mr. Frenzel said. I hope in our frustration with some of our trading partners that we don't emulate their bad practices.

I was impressed with your description of the way they have closed up the market to American businessmen and that this is not the way that good trading partners ought to behave with each other. But the answer, it seems to me, is not for us to follow that same perilous road, and whatever the future of our relations with Japan I hope we don't decide that what is good for A.T. & T. is good for Westinghouse and so on.

I think the practices, the exclusionary practices of Japan are as reprehensible, whether they are being performed by Japanese companies, as if they were being performed by the American Government.

Mr. HURLBERT. In my judgment, Mr. Congressman, if we would take the position, as our negotiators attempted to do, that we would not import this particular equipment, particularly from EEC or Japan, by our Government agencies, until their government agencies open it up, there would be a high probability that we could obtain orders in those countries.

We have no problem competing costwise. We manufacture turbines and generators in Belgium and Spain and we manufacture nuclear fuel in Japan. I am not concerned about competing with American labor and American technology. If we could just get a shot at the market.

Mr. MIKVA. I think we are saying the same thing. I think the end result is for us to try to get a shot, to help you get a shot at the market, not try to emulate their practices.

Mr. HURLBERT. We would much prefer that, Mr. Congressman.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. The one way we could do that is by being extremely tougher. I don't think we can do it by saying we are going to open up our markets. We would hope some day down the line you would do the same. I would hope Westinghouse is prepared to play hardball on this and urge its Members of Congress that unless we get somewhere with this issue, to not support the implementing legislation and the MTN agreement. I think you are right on target that opening the markets is extremely important. I think the sound injury test and a stong effective antidumping test, antidumping statutes which are followed through by the administration, are the keys to their whole passage of MTN.

Now, Mr. Hurlbert, you mentioned that the U.S. Government agencies and private utilities have purchased almost 10,000 megawatts of steam turbine generators in the last 5 years and you compared that to TVA's electric generation but that does not really give me a clear idea of what this means. How many turbines or generators were bought and how many would be needed to furnish Washington or Detroit with electricity or how many American jobs does this represent?

Mr. HURLBERT. There would be about 20 or 25 machines. That would be about three times as much as would be required to supply all of the electricity for Washington, D.C., and the Potomac electric service territory around Washington, D.C. I would estimate that we lost about 10,000 man-years of labor on those jobs.

Mr. SCHULZE. You also mentioned reducing employment in your turbine generating facilities by many thousand people. Was this a result of foreign imports?

Mr. HURLBERT. To be frank, it is a combination of the lower electric load growth that came after the OPEC price increase on oil, and the effect of foreign competition. In my judgment, perhaps of the 7,000 people that we have laid off, I would guess that perhaps a thousand of them would have been directly related to the foreign imports and the balance of them, the majority of them, would result from the reduced requirements, temporary reduced requirements for turbine generators by domestic utilities.

Mr. SCHULZE. Do you think liberalization of the law which will compensate those people who are laid off because of foreign competition is the answer to this? "You are going to lose your job but we will retrain you and give you some money." Is that a satisfactory answer?

Mr. HURLBERT. I think being laid off is harsh and hurts the people and also takes away their pride, so it is very harmful to the people in terms of the morale and what it does to the city, what it does to those manufacturing communities.

In addition to that, though, we must maintain a manufacturing design and engineering capability, in my judgment, for our domestic market, not only for turbine generators but for all of our advanced technology products. This is a major loss to this country, I think. We will be pushed out of the marketplace if we are not

allowed to fight back in their home markets and if we don't have a suitable antidumping law in my judgment.

Mr. SCHULZE. I think your point on page 10 that our national security is somewhat dependent on your industry is very well taken.

Mr. HURLBERT. That, by the way, is the argument of the other countries. The other countries argue that the same plants that build high pressure castings for steam turbines also build turrets for tanks and they build cannon barrels and they cannot let us ship into their markets for their own security purposes.

I think there is some validity to that argument. If it is valid there it is valid here, too, and from our point of view.

Mr. SCHULZE. One further question, Mr. Hurlbert. I would like to have your opinion on the effectiveness of the implementation of our existing antidumping laws. Do you think they have been vigorously pursued, and, if not, if they had been, wouldn't we be in better shape than we are?

Mr. HURLBERT. We have successfully prosecuted an antidumping case on a large power transformer in 1972, and frankly, I think that saved the domestic large transformer business.

Unfortunately we were appalled at a relatively recent finding of Treasury that a dumped product can be put with another product and then sell the combination at a lump sum price which they could not separately determine. This provided a loophole, with respect to a transformer and rectifier, and foreign suppliers now have 50 percent of our market. I think that can be relatively easily corrected by legislation.

Mr. HOBBS. May I comment on that, Mr. Schulze? I think we have seen in the past 5 or 6 years developments in the way the Antidumping Act is enforced that make it much more difficult to bring a successful case.

Mr. Cunningham related some of these matters in his testimony before this committee on Monday, I believe, of this week, so there is no need to repeat the detail. But the price adjustments that Treasury is making make it so that neither the complainant in the United States nor an exporter abroad can tell in advance how he is going to come out. He may not even know he is dumping when they get through adding and subtracting from his prices.

The injury test is not being administered by the International Trade Commission the way Congress instructed it to do in 1974, and in short it is a clear judgment on my part that the Antidumping Act is not being as effectively administered in recent years as it should be administered.

Mr. SCHULZE. I have had businessmen come to me and say they felt in dealing with Treasury in this area they were almost in an adversary relationship. Have you had that feeling?

Mr. HOBBS. I think Congress should not revise the Antidumping Act in this implementing legislation, but should take it up separately with full hearings to air every aspect of it. As we get to, at least theoretically, a more open trading world, Congress needs to know whether or not there in fact is an effective law on the books to protect against unfair competition, and it should not be amended in the manner now being proposed, in my judgment.

Mr. SCHULZE. I don't think we are going to accept their proposal.

Thank you gentlemen.

Mr. JENKINS. Mr. Hurlbert.

Mr. HURLBERT. May I say one thing, Mr. Chairman. Since I am over in foreign countries a great deal of my time, since we have sales and manufacturing over there, an effective administration of the Antidumping Act is the most effective way to get pressure on their governments to open up their markets. This really puts pressure on them to open up their markets, and if we could have effective implementation of the present Antidumping Act, I think with the next round of tariff negotiatons we will get concessions opening up their market. I really believe that. I talk to those foreign customers all the time.

Mr. JENKINS. Mr. Guarini?

Mr. GUARINI. No questions.

[The following was subsequently received:]

WESTINGHOUSE ELECTRIC CORPORATION,
Washington D.C., April 30, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of Westinghouse's testimony before your Subcommittee on April 26, we referred to a very significant loophole in the Antidumping act which was created last year by a Treasury Department ruling. That loophole allows a foreign exporter, after being found guilty of dumping, to evade that finding simply by selling the dumped product together with some other product for a single, lump-sum price. This ruling prevails notwithstanding the ability of those engaged in manufacture and sale of the product in question to segregate the products sold together and determine the price of each.

As was stated on the 26th, that same loophole was discussed in my testimony to your Subcommittee last fall. At that time, I proposed a brief corrective amendment. I am enclosing with this letter a copy of that amendment, together with a brief explanation of the proposed language. I also enclose the relevant position of my previous testimony, which elaborates upon the problems which will flow from this loophole.

On behalf of Westinghouse, I strongly urge that the Committee use this legislative opportunity to close this potentially serious loophole.

Sincerely,

CLAUDE E. HOBBS.

AMENDMENT PROPOSED BY WESTINGHOUSE IN SEPTEMBER, 1978

PROPOSED AMENDMENTS TO THE ANTIDUMPING ACT

The following amendments are proposed to deal with the two problems discussed in my testimony:

I. Amendment to section 202(a)

In order to make it clear that dumping findings cannot be evaded simply by selling the dumped product in conjunction with another product for a single price, Westinghouse proposes that the following sentence be added at the end of Section 202(a):

"Where merchandise of a class or kind as to which the Secretary has made public a finding as provided for in Section 160 is imported in conjunction with, in assembly with or accompanied by other merchandise, and where no separate price is charged for the merchandise covered by the finding, the Secretary shall determine the portion of the import price properly allocable to the merchandise covered by the finding, unless the Secretary determines that it is not possible to make such an allocation."

The phrase "not possible" has been selected deliberately, in preference to such alternatives as "not practical"or "not feasible", in order to make it clear that ingenious or complex combinations of merchandise will not be effective as a means of evading the Act.

EXCERPT FROM SEPTEMBER 1978, TESTIMONY OF CLAUDE E. HOBBS

I. Dumped products sold in combination with other products

As a result of one of the decisions made by Treasury after the large power transformer dumping finding, it will now be possible for almost any foreign exporter to escape the impact of a dumping finding simply by selling the dumped product in the United States in combination with another product for a single price. That ruling has already seriouly harmed Westinghouse and other U.S. transformer makers, and it is only a matter of time before other dumping findings will be undermined as foreign companies become aware of this loophole.

The issue arose in our case because power transformers are never used in isolation. Rather, they are used in conjunction with generators, substations, rectifiers, and other pieces of heavy electrical equipment. In many instances, a utility or industrial purchaser will buy the transformer separately, but in many other instances the transformer will be purchased along with other equipment with which it is to be used.

During the original investigation in the early 1970's the Japanese exporters tried to exclude from the inquiry those power transformers which were sold in conjunction with rectifiers. They argued that a transformer hooked up to a rectifier ceased to be a transformer and became a new and different article—a so-called rectiformer. We were able to demonstrate, however, that a transformer hooked up with a rectifier still remains a transformer, no different from any other large power transformer. We also were able to show that, even where the rectifier and transformer were sold together for a single, lump-sum price, any competent electrical engineer could accurately allocate that price between the rectifier and the transformer. The Treasury Department therefore ruled against the Japanese, holding that transformers sold with rectifiers were properly included in the dumping investigation and would be subject to any finding of dumping.

Last year, however, we were informed by the Customs Service that the Japanese has raised this issue again. Because a new regime had taken over at the Treasury Department, we again submitted proof that a transformer sold with a rectifier is no different than any other transformer, and that the price of the transformer can be accurately ascertained even when the transformer and rectifier are sold together for a single, lump-sum price.

This time, however, Treasury reversed itself and ruled in favor of the Japanese. Not because our evidence was inadequate. Indeed, Treasury acknowledged that these transformers were no different than other large power transformers and that the price for the transformer could be ascertained by an electrical engineer. This time, Treasury took the position that the Anti-dumping Act forbids them to impose dumping duties on a product which is sold in conjunction with a non-dumping product for a single, lump-sum price. In other words, no matter how readily the price of the dumped product may be separated from the price of the other product, Treasury maintains that it is forbidden as a matter of law from making any such separation of the lump-sum price into its components.

The impact of this ruling has been just what you would expect. It has been easy for the Japanese and other exporters to persuade U.S. purchasers to allow them to quote a single price covering the rectifier and the transformer. After all, it is in the purchaser's interest to obtain a lower price, even if it is a dumped price. Accordingly, low-priced imports have now taken just about half of the United States market for transformers used in conjunction with the rectifiers. Under Treasury's new rule, there is nothing we can do about this.

I think you will agree with me that this interpretation of the Act creates a huge loophole. All that any foreign exporter need do to escape the impact of the dumping finding as to product X is to sell product X and product Y together for a single price. In a procurement situation, the United States purchaser will naturally be eager to cooperate by buying two products as the same time, because it may mean a substantial savings to him by taking advantage of the dumped price. But this loophole would also be readily applicable to many consumer items. Suppose, for example, that the Department has found that fishing reels have been dumped. The foreign manufacturer could easily avoid that finding by selling reels and rods together for a single price.

Westinghouse therefore urges this Committee to amend the Act to reverse Treasury on this issue. This could be accomplished simply by adding a new sentence at the end of Section 202(a), requiring the Secretary to determine the portion of the import price properly allocable to the dumped merchandise wherever that merchandise is sold in conjuction with other merchandise for a single price. A proposal for such an amendment is appended to my written testimony.

Mr. JENKINS. Thank you very much for your testimony. Our next panel of witnesses consist of Jane P. Davis, Chairman, International Business Council assistant vice president, GTE Corp.; Peter F. McCloskey, president; and Jonathan H. Lasley, international marketing consultant.

We welcome you, and your entire written statement will be made a part of the record. You may summarize and proceed in the order you desire.

STATEMENT OF JANE P. DAVIS, CHAIRMAN, INTERNATIONAL BUSINESS COUNCIL, ELECTRONIC INDUSTRIES ASSOCIATION, ACCOMPANIED BY PETER F. McCLOSKEY, PRESIDENT; AND JONATHAN H. LASLEY, INTERNATIONAL MARKETING CONSULTANT

Ms. DAVIS. Thank you, Mr. Chairman.

I am Jane Davis, assistant vice president of the General Telephone & Electronics Corp. and chairman of the International Bussiness Council of the Electronic Industries Association—EIA. Accompanying me today are Peter F. McCloskey, EIA's president and Jack Lasley, chairman of ISAC-22, of which I am also a member.

My oral testimony will summarize our written statement which has been submitted for the record.

The 1978 merchandise sales of all U.S. electronic producers were over $55 billion. Of this, nearly 25 percent, $13.3 billion was exported. Electronic manufacturing directly employs 1.35 million Americans. Of those jobs, at least 260,000 are tied to exports.

Thus, not just EIA members, but the electronic industries as a whole, have a major interest in the results of the multilateral trade negotiations. We have been represented on 5 of the 27 ISAC's and have actively participated in the 5 years of negotiations. We feel that the results of the negotiations represent a substantial achievement most particularly in the area of nontariff barriers. We view the codes of conduct as a major step toward opening new markets, not just for electronics but for exporting industries in general.

Two, at least, of the codes have been successful; several more have achieved substantial percentages of their aims; one is, at this writing, an almost complete casualty. Each code contains what may prove to be the major contribution of the Geneva talks: the establishment of a set of procedures to resolve disputes.

The two successes are International Standards and Aircraft. The negotiators and their industry advisers have reason for great pride in these achievements.

Of the remaining codes, I would like to cover briefly those points about which we have some concerns.

First, the EC-EFTA Rules of Origin have discriminated against all non-European products—especially semiconductors.

Now, the alternate rules will bring substantial relief to U.S. exporters of component parts as the European equipment manufacturer may have up to 30 percent of the value of his product in nonorigin parts.

However, the 30 percent alternate rule which will be applicable to semiconductors remains highly discriminatory and is unsatisfactory. The protectionist measures of high duty rates and discrimina-

tory rules of origin are tantamount to subsidization of the semiconductor industry within EEC.

Further discussions toward the objective of a 50 percent rather than a 30 percent rule of origin are urgently recommended.

Second, in the Government Procurement Code there is one major lack. EIA is concerned that European Community and Japanese telecommunications entities have been excluded from coverage. The United States has responded by withholding several major Government agencies in addition to the national security purchases of the Department of Defense and has maintained the "Buy American" protection, so important for small business, for contracts with a value of less than $185,000.

Because of the nature of the U.S. marketplace, this is only a partial quid pro quo. As you have already heard, the most recent negotiations with the Japanese have apparently failed again, because their offered concessions proved to be illusory. We still hope this can be changed. We further hope that discussions with our European trading partners will continue toward the goal of making their communications entities also part of the free market process.

The codes are interactive and interrelated. Furthermore, there are many areas of commonality that characterize all the codes: In dispute settlement mechanisms, in reporting requirements, in variable preferential treatment of the developing countries, in options for granting conditional most-favored-nation treatment, and so forth. But the U.S. Government is almost totally unprepared in its present structure to respond to these new demands.

A growing number of voices have pointed out that the United States, by fragmenting its approach to trade, has helped create its current international economic difficulties. Some 57 departments, agencies, commissions, and so forth, have their fingers in this pie. The need to consolidate and centralize this organization is abundantly clear. Now the MTN has focused attention, we strongly hope that steps will be taken, either to place virtually all trade administration functions in a new Cabinet department endowed by statute with focal responsibility for U.S. trade, or, to give the functions to an existing Cabinet-level department, which would be so restructured that its primary responsibility would become the administration of U.S. trade.

We wish to make a further recommendation. In the experience of EIA's members, the advisory process established under section 135 of the Trade Act of 1974 has worked well. In order to provide for its continuation, EIA strongly recommends that provisions of the implementing legislation establish permanent ISAC's and LSAC's along the present structural lines—that is, by industry groupings rather than in accordance with code coverage. For advice on technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation, as and when necessary, of special panels.

To conclude, the Geneva agreement is a fine achievement provided that it be implemented with proper amending legislation, trade administration, and export policy. We hope that it will not be allowed to wither because of lack of understanding, inattention or parochialism.

Mr. Chairman and members of the Trade Committee, Peter McCloskey, Jack Lasley, and I would welcome your questions now, and will do our best to answer them.

[The prepared statement follows:]

STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION

I am Jane P. Davis, assistant vice president of the General Telephone and Electronics Corporation and chairman of the International Business Council of the Electronic Industries Association ("EIA"). Accompanying me today are Peter F. McCloskey, EIA's president, and Jack Lasley, chairman of ISAC-22.

My five-minute oral testimony will summarize our written statement, which I wish to submit for the record.

First, a few words about EIA. It is the major trade association of the electronic industries, with 285 member companies which are manufacturers of component parts, equipment and systems for communications, government, industrial and consumer end-uses.

The 1978 merchandise sales of U.S. electronic producers were over $55 billion. Nearly 25 percent, $13.3 billion, was exported to customers outside of the USA. Almost 10 percent of all U.S. exports was in electronic products. If the electronic content in capital equipment such as airplanes (in which avionics account for 20 percent of the cost) or automated machine tools were to be included, the figures would be significantly higher. Electronic manufacturing directly employs 1.35 million Americans. Of those jobs, at least 260,000 are tied to exports.

Thus, not just EIA members, but the electronic industries as a whole, have a major interest in the results of the Multinational Trade Negotiations. We have been represented on five of the ISACs: ISAC-16 on Computers and Business Machines; ISAC-19 on Consumer Electronics and Household Appliances; ISAC-20 on Instrumentation; ISAC-22 on Telecommunications and Non-Consumer Electronics; ISAC-24 on Aerospace; and have actively participated in the five years of negotiations.

We wish to express our overall satisfaction with the results. Several analysts have said that the short-term macro-economic effects are likely to be negligible, but that the longer-term benefits, particularly in the political realm, are considerable. These negotiations represent a major effort by most of the world's trading nations to work together toward a common goal. Success of this undertaking is a good augury for the future—a not inconsiderable achievement in a steadily shrinking world.

It was generally agreed at the outset of the Tokyo Round that the major hindrances to trade lay not in tariffs but in the non-tariff barriers ingeniously devised by most trading nations to protect their domestic markets and suppliers. These problems have been addressed in a series of codes of conduct, whereby the most egregious of these NTBs have been identified and attempts made to lessen their effects. Two at least of these efforts have been most successful; several more have achieved substantial percentages of their aims; one is, at this writing, an almost complete casualty. Each code contains what may prove to be the major contribution of the Geneva talks: the establishement of a set of procedures to resolve disputes over specific practices. I will return to this point later in my testimony.

The two successes are International Standards and Aircraft. As these two documents stand, they represent the kind of optimum free and fair access which the United States has been working for. The negotiators and their industry advisors have reason for great pride in these achievements.

Of the remaining codes, I would like to cover briefly those points about which we have some concerns.

First, ISAC-22 devoted a considerable portion of its initial Advisory Report to the EC-EFTA Rules of Origin which discriminate against all non-European products—especially Semiconductors.

The alternate rules will bring substantial relief to U.S. exporters of parts as the European equipment manufacturer may have up to 30 percent of the value of his product in non-origin parts.

However, the 30 percent alternate rule which will be applicable to Semiconductors remains highly discriminatory and is unsatisfactory. The protectionist measures of high duty rates and discriminatory rules or origin are tantamount to subsidization of the Semi-conductor industry within EEC. If the European Semiconductor industry is to grow and compare favorably with the rest of the world, it must do so on a fully competitive basis. Further discussions toward the objective of a 50 percent rather than a 30 percent rule of origin are urgently recommended.

Second, the Government Procurement Code accomplishes its objectives by inclusion of specific rules covering the drafting of specification, advance publicity of

tenders, restrictions in the use of single tendering, time allowed for bidding, supplier qualification, right of all potential suppliers to bid, opening and evaluation of tenders, awarding of contracts, requirements for ex-post facto information, procedures for hearing and reviewing protests.

However, there is one major lack. EIA is concerned that European Community and Japanese telecommunications entities have been excluded from coverage. The United States has responded by withholding several major Government agencies in addition to the national security purchases of the Department of Defense and has maintained the Buy American protection so important for small business, for contracts with a value of less than $185,000.

This, however, because of the nature of the U.S. marketplace, is only a partial quid pro quo. Negotiations with the Japanese are now going on, with strenuous efforts being made to open Nippon Telephone and Telegraph procurement to competitive bidding. We still hope this can be attained. We further hope that discussions with our European trading partners will continue the goal of making their communications entities also part of the free market process.

There are certain additional technical points in other codes, such as the questions of defining injury for purposes of both anti-dumping and subsidies, which will be or have been addressed by other witnessses. But all of these are refinements—necessary touches—on what in general is an excellent product.

It is not enough, however, that the negotiations have turned out a product which has the promise of leading to improved trade relations. The treaty and all its reams of supporting documents are not worth the paper they are printed on unless the Congress moves promptly to effective implementation. As was mentioned earlier, each code has a dispute mechanism designed to bring about just and speedy resolutions of disagreements.

Further, the codes are interactive, and inter-related. Thus, for example, what may not be reachable as unfairness under the Government Procurement Code might well be pursued as partial remedy under the "second track" of the Subsidies Code. Furthermore, there are many areas of commonality that characterize all the Code as well as the Framework Agreements: in consultation, conciliation and dispute settlement mechanisms; in reporting requirements; in unspecific but none the less variable preferential treatment of the developing countries; in national options for the granting of conditional most-favored-nation treatment; and so forth. But the United States Government is almost totally unprepared in its present structure to respond to these new demands.

Over the past several years a growing number of voices have pointed out that the United States, by fragmenting its approach to issues of international trade, has helped create its current international economic difficulties. Something in the neighborhood of 57 departments, agencies, commissions, etc., etc. have their fingers in this pie. The need to consolidate and centralize this organization is abundantly clear. Now the MTN has focused attention; we strongly hope that steps will be taken—

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

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

We wish to make two further recommendations: In the experience of EIA's members, the advisory process established under Section 135 of the Trade Act of 1974 has worked well. Especially at the industry sector level, it has provided a means of continuing dialogue with the Special Trade Representative and his negotiators that would otherwise have been impossible. The approach, we believe, has contributed much to the generally satisfactory shape of the Codes—provided, of course, that the latter are suitably implemented.

Accordingly, in order to provide for a continuation of this useful function, EIA strongly recommends that provisions of the implementing legislation accomplish the following:

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

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

In establishing permanent advisory committees, several improvements over the present process are desirable. For example, the committees should have direct access to interagency committees of the Executive Branch. When committee advise is sought, the advisors should be given more current and more complete information on a timelier basis. And, staffing of the committees by the lead administrative agency should be more consistent.

In addition, we would hope that, as the new structure is evolved, means will be found to preserve the reasons of knowledge and negotiating skills now residing in the staff of the Special Trade Representative. We have difficult times ahead in making these new codes truly effective. Our trading partners address the international marketplace much more pragmatically than do we. To expect them suddenly to relinquish long-cherished advantages and customs without protest is naive. An experienced and competent cadre will be an essential ingredient to maintaining U.S. competitiveness in world markets.

To conclude, the Geneva agreement is a fine achievement provided that it be implemented with proper amending legislation, trade administration, and export policy. We hope that it will not be allowed to wither because of lack of understanding, inattention, or parochialism.

Mr. JENKINS. Thank you for your testimony and also for your recommendations. With regard to a new Cabinet department, do you believe that the Treasury Department has not properly carried out the obligations that it has under existing law?

Ms. DAVIS. I think Treasury's administration of antidumping is an example of the kind of thing we would like to see changed.

Mr. JENKINS. I agree that it must be changed in some way.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman. I am a little confused. You were critical in several portions of your statement and ended up by saying, "We hope we will not be allowed to wither." In other words, you are saying whether your problems are solved or not, it should not be allowed to die on the vine. Or are you saying that we should follow through?

Ms. DAVIS. I think we should follow through. I think the question of government restructuring is a very difficult one and one that could well fall by the wayside simply because it runs into so many vested interests.

Mr. SCHULZE. The injury test is not satisfactory, and if the antidumping statutes are not strong, you still think that we should follow through on this round of negotiations.

Ms. DAVIS. I think these are matters that can be addressed in the implementing legislation.

Mr. SCHULZE. You are not answering my question. I do not mean to be tough, but do you think that we should have the firm good strong injury test and also strong effective antidumping statutes? Without these two items and operating of markets, do you still think we should go ahead with this? I guess what I am asking is, How firm is your position? Are you really feeling that we need good strong antidumping laws or is this not a problem in your industry?

Ms. DAVIS. We do need strong antidumping laws. There is no question about that.

Mr. MCCLOSKEY. Let me put it this way. The electronics industry has encountered as its most pressing problem the nontariff barriers

which this particular negotiation was designed to overcome. We are still living with dumping problems that exist under present laws as well. We feel we have been precluded from certain markets because of the nontariff barriers and not because of tariff barriers per se.

We see that the results of these negotiations have been exemplary in offering a mechanism that theoretically could remove nontariff barriers, but we are concerned that without effective enforcement mechanism the removal will become illusory. So on balance today we are certainly in favor of the legislation.

Now as far as dumping is concerned, we are very concerned about dumping as well. We have been active in a number of antidumping cases and we have been concerned with the delays in administration and we have been concerned about a lack of policy direction in that area.

We would like to see that strengthened as well. But I would say they are two different issues. We would like to see the MTN proceed.

Mr. SCHULZE. You do not want to go on record saying, without a good, strong antidumping statute and one that is going to be enforced, that you would not support the MTN passage.

Mr. MCCLOSKEY. I do not think I would go on the record that way.

Mr. SCHULZE. What you are saying is, "Do anything you want to. We are just going to go along." You are welcome to have that position.

Mr. MCCLOSKEY. We are in favor of strong antidumping.

Mr. SCHULZE. The only way you are going to get it is by taking a strong position and by saying "We want a good strong antidumping law. We might get hurt, but we will go along with this."

Mr. MCCLOSKEY. We feel we have been precluded from a number of markets that are potentially open today and if we also have a strong mechanism to insure those markets are open, we are trying to weigh those equities.

Mr. SCHULZE. Under the present situation with the lax enforcement of antidumping, you have been able to compete very well and you are happy with the situation the way it is?

Mr. MCCLOSKEY. No—well we have been impacted by instances where there has been dumping. Certainly in the consumer electronics industry in the United States we have experienced that. We have also experienced inability to get our products in the consumer electronics field into countries where we feel we should have gotten them. We are hopeful that this type of agreement under the code will help in that regard. I am not sure that it will, and we are confident it will not unless there is a strong enforcement mechanism within the Government to provide assistance.

Mr. SCHULZE. How much of your organization is involved with consumer products?

Mr. MCCLOSKEY. We have six divisions within the association. They are one of the divisions—a group in terms of sales—total sales, they are probably about 20 percent of the electronics industry that we represent.

Mr. SCHULZE. How do they feel about the existing antidumping statutes and their enforcement?

Mr. McCLOSKEY. I think that we would have to categorize that. Within the association we have also members who are currently manufacturing abroad or that are subsidiaries of foreign companies.

Mr. SCHULZE. You are in a tough position. I am not going to put you on a spot. Thank you very much.

Mr. JENKINS. Thank you very much for your testimony. The committee will stand in recess for 10 minutes in order to answer our rollcall.

[A recess was taken.]

Mr. JENKINS. The committee will come to order. Our next witness is Mr. Wallace Barlow, executive director of Share the Work Coalition.

Welcome to the committee. Your entire written statement will be made a part of the record, if you would like to summarize.

STATEMENT OF WALLACE D. BARLOW, EXECUTIVE DIRECTOR, SHARE THE WORK COALITION

Mr. BARLOW. I am Wallace D. Barlow. My Share the Work Coalition is known as the principal advocate of a "tilted" corporation tax. We would tilt in favor of the labor-intensive industries. In a poll of the candidates for Federal office in the last elections 91 percent of the respondents favored "Tilt."

Today, we are advocating a tariff schedule for future trade negotiations which would be tilted in the same manner, that is, on the basis of labor content, as well as wage ratios. The higher the labor content, wages as a percent of value added, the higher the tariff, since five times as many jobs may be involved. There is already a correlation between high labor content and high tariffs. We are suggesting that these determinations be made in a precise and systematic manner and from a common data base.

We visualize computers in Tokyo, Singapore, London, et cetera, operating on the same data base and containing in their memories the following:

1. Wage levels for each nation and industry.
2. Labor content for each product by nation and by SIC number.

To determine an equitable tariff for product A being exported from nation 24 and imported by nation 56, for example; one would enter the computer with an SIC number, the code for the exporting nation and the code for the importing nation. The machine would compute a weighted average of the wage level ratios and the labor content ratios and read out an equitable ad valorem tariff rate.

We ask that enclosure (1), which shows the labor content for some U.S. industries, be included in the record.

In closing, it is our view that labor content is relevant. It must be considered in future trade negotiations.

Thank you.

Mr. JENKINS. Thank you, Mr. Barlow. The exhibits that you have attached to your prepared statement will be made a part of the record.

Mr. BARLOW. Thank you.

[Attachment to the prepared statement follows:]

SHARE THE WORK COALITION

We represent the twenty million unemployed persons of the Free World

Wallace D. Barlow
Executive Director

6210 Massachusetts Ave.
Washington, D.C. 20016

Tel (301) 229-6066
Cables: Intresecon

ATTENTION WAGE-EARNERS: It is to your advantage to spend your money with the industries that are likely to return more than half of your money in the form of wages. In the United States the "Labor Content" of manufactures varies from 52% for shipbuilding to 10% for cigarettes. This means that the shipbuilders deserve your support. If one of these companies goes bankrupt, five times as many jobs are wiped out.

The COALITION, (A coalition of labor organizations and the labor intensive industries), hopes to be able to include in President Carter's omnibus tax reform bill a "tilting" of the corporation tax to provide a lower tax rate for the labor intensive industries and a higher rate for the automated industries. This may reduce productivity somewhat but it would improve the quality of life in the United States by wiping out the welfare system . It would create jobs for everyone willing to work.

In order for this plan to work, the demand for the products of the labor intensive industries must be increased at the expense of the automated industries. We ask that you discriminate in favor of your friends.

YOUR FRIENDS		YOUR ENEMIES	
Industry	Labor Content		Labor Content
Ship Building and Repairs	51.9%	Cigarettes	10.3%
Ordnance and Accesories, n.e.c.	48.6	Agricultural Chemicals	11.4
Motorcycles, Bicycles, Parts	46.4	Petroleum & Natural Gas Production	12.3
Apparel, other Textile Products	46.0	Finance, Insurance & Real Estate	12.7
Non-ferrous Foundries	45.3	Soaps, Cleaners, Toilet Goods	14.6
Electronic Components, Accesories	45.1	Pipeline Transportation	15.4
Musical Instruments	44.9	Petroleum Refining	15.6
Communication Equipment	44.4	Utilities, (Elec. Gas etc.)	16.7
Guided Missles, Space Vehicles	44.1	Industrial Organic Chemicals	17.3
Iron and Steel Foundries	43.9	Legal Services	19.5
Railroad Transportation	43.6	Misc. Foods & Kindred Products	20.3
Metal Services, n.e.c.	43.3	Drugs	20.5
Millwork, Plywood, Structural Members	43.1	Misc. Petroleum, Coal Products	21.4
Sawmills and Planing Mills	42.8	Sugar, Confectionery	21.8
Pottery and Related Products	42.6	Photographic Equipment & Supplies	22.3
Metalworking Machinery	42.6	Fats & Oils	23.1
Textile Mill Products	42.4	Telephone & Telegraph	23.2
Leather Products, exc. Footwear	42.2	Grain Mill Products	23.5
Furniture and Fixtures	42.1	Beverages	23.7
Engineering & Scientific Instruments	41.8	Industrial Inorganic Chemicals	23.8
Water Transportation	41.5	Coal Mining	24.1
Opthalmic Goods	41.4	Cement, Hydraulic	24.7
Contract Construction	41.3	Misc. Chemical Products	25.3
Aircraft and Parts	41.0	Preserved Fruits and Vegetables	25.7
Footwear, except Rubber	41.0	Quarrying & Non-metallic Mining	26.4
Blast Furnace, Basic Steel Production	40.8	Auto Repair, Services & Garages	27.0
Metal Forgings and Stampings	40.8	Wholesale Trade	27.0
Railroad Equipment	40.8	Tobacco Products, exc. Cigarettes	27.4
Cut Stone and Stone Products	40.4	Primary Nonferrous Metals	27.7
Misc. Professional Services	40.4	Paints & Allied Products	27.7

Footnote: "Labor Content" is defined as wages as a percentage of value added. In 1975 the average labor content in the United States was 34.6 % for manufactures and 31.4% for non-manufactures such as farming, mining, transportation and finance.

Encl. (1)

BEST COPY AVAILABLE

Mr. JENKINS. Thank you for coming before the committee.

Our next witness is Mr. Mitchell Cooper, counsel for the Rubber Manufacturers Association.

Welcome to the committee, Mr. Cooper. Your entire statement will be made a part of the record and you may either give the entire statement or you may summarize, as you wish.

STATEMENT OF MITCHELL COOPER, COUNSEL, FOOTWEAR DIVISION, RUBBER MANUFACTURERS ASSOCIATION

Mr. COOPER. Thank you. It is a bare-bones statement on a complex subject, but I will try to pare it so it will be briefer than it is. I am here as you know on behalf of 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.

Mr. JENKINS. It accounts for a great deal of employment in my district.

Mr. COOPER. Since 1932 the duty on rubber soled footwear with fabric uppers has been based on American selling price. The valuation code, which this subcommittee has been considering, and which will soon be before you more formally as part of the total Tokyo Round package, would eliminate the American selling price method of valuation. Ever since the enactment of the Trade Act of 1974 the rubber footwear industry has been urging the Office of the Special Trade Representative that American selling price as applied to the products of this industry has not been such an impediment to trade as to warrant its conversion.

The validity of this view is demonstrated by the history of domestic shipments and imports of rubber-soled canvas upper footwear. A summary of this history is attached to my testimony, and shows that even with the vaunted protection of ASP, domestic shipments have steadily declined on a year-to-year basis from 159 million pairs in 1972 to 83 million in 1978.

Over the same period imports have increased from 58 million pairs to an all time high of 173 million with the distressing result that imports for the year 1978 accounted for 67.6 percent of domestic consumption.

As the Tokyo Round negotiations intensified, it became increasingly clear that, no matter how persuasive our arguments, American selling price was to be sacrificed in the effort to achieve a uniform system of valuation. To the credit of Ambassador Strauss and his colleagues, our Government has, however, recognized the serious impact that imports have had on the rubber footwear industry, and has undertaken to convert American selling price in a manner designed to retain the level of protection which has been afforded by that valuation method.

As you know, the International Trade Commission assembled data for the Special Trade Representative, looking toward the conversion of ASP, and the Special Trade Representative's staff undertook endless hours of investigation and consideration of the kinds of rates which would be required to approximate the degree of protection provided by ASP. The rates resulting from that consideration and from subsequent negotiation with this country's trading

partners have been made available to you by the Special Trade Representative.

While the domestic industry would much prefer the retention of American selling price, we recognize the conscientious and good faith effort of our Government to convert ASP in a manner which will not significantly reduce the industry's level of protection. For this reason, with a deep breath and our fingers crossed, and without yielding our right to follow other avenues of relief from unfair import competition, we do not oppose the elimination of ASP on the terms negotiated by Ambassador Strauss.

I do think it important for this committee to recognize the inherent protective nature of ASP, and to recognize that this cannot be compensated for by a simple arithmetic conversion into an ad valorem rate. A 1976 International Trade Commission staff report listed the following unique features of ASP:

One, it provides for a duty increase on a given imported item at such time as the domestic industry produces a directly competitive item.

Two, under ASP the amount of duty changes with price adjustments by domestic manufacturers, thus providing for a flexible tariff.

Three, under ASP a change in the export price by a foreign supplier has no effect on the duty.

From these three elements the International Trade Commission staff drew the conclusion that, "any change to a dutiable valuation other than ASP eliminates those key features and, therefore, drastically alters the competitive relationship."

There are two additional characteristics of ASP, the loss of which will also be seriously detrimental to the domestic industry. ASP provides a greater deterrent to shifting from higher to lower cost sources than does export value. Thus, while the proposed conversion is based on shipments from Korea and Taiwan, the current sources of about 90 percent of all rubber footwear imports, the converted rates would mean a significant cut in duties from such lower-cost countries as India and Malaysia. Both of these countries are developing rubber footwear industries for which the converted rates would provide an added incentive to export. Secondly, ASP is a unique hedge against the effects of inflation on a domestic industry, for as domestic prices rise, ASP automatically increases the duties on competing imports.

We hope, and I emphasize that it is only a hope, that the proposed conversion will succeed in offsetting the loss of ASP. The rate of inflation has already outpaced the rate which was anticipated when this formula was devised. If inflation is not tempered by July 1981, when the proposed new duties are scheduled to go into effect, we may indeed have a rough road ahead—particularly since these converted rates decline with increases in the value brackets.

This industry surely will not emerge from the Tokyo Round with greater protection than it now has. If the Special Trade Representative's expectations for the conversion he has negotiated fall short, rubber footwear's protection will decrease and we shall be back to see you in order to seek your help in finding other remedies to this industry's oppressive import burden.

Thank you, sir.

[The prepared statement follows:]

STATEMENT OF THE FOOTWEAR DIVISION, RUBBER MANUFACTURERS ASSOCIATION

Mr. Chairman and Members of the Committee: My name is 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. Since 1932 the duty on rubber-soled footwear with fabric uppers has been based on American Selling Price.

The Valuation Code which this Subcommittee has been considering, and which will soon be before you more formally as part of the total Tokyo Round package, would eliminate the American Selling Price method of valuation. Ever since the enactment of the Trade Act of 1974, the rubber footwear industry has been urging the Office of the Special Trade Representative that American Selling Price as applied to the products of this industry has not been such an impediment to trade as to warrant its conversion. The validity of this view is demonstrated by the history of domestic shipments and imports of rubber-soled canvas-upper footwear. A summary of this history is attached to my testimony, and shows that even with the vaunted protection of ASP, domestic shipments have steadily declined on a year-to-year basis from 159,000,000 pairs in 1972 to 83,000,000 in 1978. Over the same period imports have increased from 58,000,000 pairs to an all-time high of 173,000,000, with the distressing result that imports for the year 1978 accounted for 67.6% of domestic consumption.

As the Tokyo Round negotiations intensified, it became increasingly clear that, no matter how persuasive our arguments, American Selling Price was to be sacrificed in the effort to achieve a uniform system of valuation. To the credit of Ambassador Strauss and his colleagues, our Government has, however, recognized the serious impact that imports have had on the rubber footwear industry, and has undertaken to convert American Selling Price in a manner designed to retain the level of protection which has been afforded by that valuation method. As Ambassador Wolff said in a November, 1977, speech to the Rubber Manufacturers Association, "We want to make sure that the United States' adoption of any new customs valuation system would not result in a decline of tariff protection for industries where the ASP basis of valuation is used with respect to competing imports."

As you know, the International Trade Commission assembled data for the Special Trade Representative, looking towards the conversion of ASP, and the Special Trade Representative's staff undertook endless hours of investigation and consideration of the kinds of rates which would be required to approximate the degree of protection provided by ASP. The rates resulting from that consideration and from subsequent negotiation with this country's trading partners have been made available to you by the Special Trade Representative.

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RUBBER-SOLED CANVAS—UPPER FOOTWEAR, 1964–78

[Figures are in thousands of pairs]

Year	Shipments [1]	Imports [2]	Exports [3]	Apparent consumption	Import to consumption (percent)
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	148,575	66,291	29	214,837	30.9
1974	144,496	67,352	[4] 1,010	[5] 210,838	31.9
1975	129,002	73,083	[4] 868	[5] 201,217	36.3
1976	119,726	115,399	[4] 1,218	[5] 233,907	49.3
1977	91,230	105,610	[4] 1,201	[5] 195,639	54.1
1978	83,363	172,706	644	255,425	67.6

[1] U.S. Census Bureau, Current Industrial Reports Series M31A.
[2] RMA No. 59B and Department of Commerce, TSUS 146 Schedule 7 & Part I.
[3] RMA No. 59 (1964–1973); U.S. Department of Commerce, U.S. Exports Schedule B (1974 to present).
[4] Includes protective footwear.
[5] Revised.

NOTE.—Figures presented here reflect the latest available data and contain all corrections and revisions for past years. Prepared by Management Information Services.

Mr. COOPER. Thank you, sir.

Mr. JENKINS. Thank you, Mr. Cooper. I understand your position to be that while you would certainly prefer to retain the American selling price, that you could probably live with the negotiated terms that Ambassador Strauss has presented. Furthermore, it is your position that any weakening of the conversion formula would cause you problems.

Mr. COOPER. I think that is an accurate statement. I would phrase it by saying we recognized the inevitability of the departure of ASP. We tried to get the best possible conversion. Ambassador Strauss and his colleagues worked hard to create an equitable and fair conversion. Time will tell whether their guess will work out or not.

Mr. JENKINS. Mr. Schulze.

Mr. SCHULZE. Thank you very much.

Mr. Cooper, approximately how many members do you have in your association?

Mr. COOPER. Ten companies.

Mr. SCHULZE. Would you tell me where they are located geographically?

Mr. COOPER. Yes, Maine, New Hampshire, Illinois, Georgia, most prominently, North Carolina, one company in Pennsylvania.

Mr. SCHULZE. They are fairly spread out. It is not concentrated in the North, is it?

Mr. COOPER. Total of 20,000 employees, Mr. Schulze. It is a small industry. The largest plant would not have more than about 1,200. The biggest plant had been Uniroyal in Nagatuck, Conn. It had 3,000, but lost out to imports from Korea and Taiwan and no longer exists.

Mr. SCHULZE. Thank you. Thank you very much.

Mr. JENKINS. Mr. Moore.

Mr. MOORE. No questions.

Mr. JENKINS. Thank you for your testimony.

Our next witness is Mr. Mark A. Cymrot, attorney for the Consumers Union. Mr. Cymrot, your entire written testimony will be made a part of the record, if you would summarize.

STATEMENT OF MARK A. CYMROT, ATTORNEY, CONSUMERS UNION

Mr. CYMROT. Thank you very much.

I come today representing Consumers Union, a nonprofit membership organization chartered in 1936. CU is one of the oldest and largest consumer education organizations in the United States, with approximately 300,000 members and the publisher of Consumers Reports which has a circulation of more than 2 million copies monthly.

Consumers Union has consistently been an opponent of trade barriers. We view them as a tax on American consumers. Therefore, we have supported the efforts of the special trade representative to remove tariff and nontariff barriers to trade.

I requested time to discuss the standards code which could be one of the major accomplishments of these negotiations. However, if it is not carefully implemented, it could seriously undermine health, safety, environmental and consumer protection standards in the United States. We urge the committee to guard against that possibility.

The Standards Code has basically four elements, as we see it. Open procedures for development of standards. The United States already has them with the Administrative Procedures Act. The code encourages the use of appropriate international standards. It bans standards that have intent of being obstacles to trade.

I might add any standard that is called a health or safety standard that is intended to be an obstacle to trade is not a standard which we are sympathetic with, and we would like to see those types of standards banned.

The code also bans standards that have the effect of being unnecessary obstacles to international trade. That term "unnecessary obstacles to international trade" is not defined in the Standards Code. Under the disputes settlement procedure, a definition will

have to be determined by an international trade committee. The international trade committee will have to define that term, hear the evidence including scientific evidence underlying the standard and then determine whether the standard is an unnecessary obstacle to trade.

We felt this was too broad a mandate for an international committee. It could create serious problems for public health standards in the United States because they are often higher than international standards. There is no one view on what the level of safety should be in any one country. The debates within the United States over saccharin, tris, red dye No. 2, the growing debate over FDA's certification system for drugs demonstrate the problem. Many foreign countries consider our certification system to be too strict. They exclude many foreign drugs from American markets. Yet, they have been determined as a level of safety that the United States wants.

Now, the way the negotiators solved this problem in part was to make the sanction for the Standards Code rather light. They are limited to the Standards Code themselves. If the United States should lose in this international committee and should decide to stand by its health and safety standards, the sanction would be that the complaining country would not give us the benefit of the Standards Code, that is give us open procedures and the like.

We feel that is a fair tradeoff because there are many benefits to be had in the Standards Code. The United States will have the opportunity to comment on foreign standards. Many American products that are now excluded from foreign markets will be able to get into those markets when barriers to trade are eliminated. American consumers will benefit from new foreign products admitted into the United States.

However, the implementing legislation should guard against the undermining of U.S. public safety standards. We are prepared to support both the Standards Code and the implementing legislation if the implementing legislation contains certain elements.

The first element would be a clear statement that nothing in the code or in the implementing legislation should prevent the taking of necessary measures for protection of health, safety, environment or consumers within the United States.

The second element would be a definition of an "unnecessary obstacles to international trade." The definition would be used when the United States is considering within the United States a complaint by a foreign country. We propose a definition that a standard is an unnecessary obstacle to international trade when it discriminates against a foreign product and is more restrictive than necessary to accomplish its purpose.

Along that same line a third element relates to the term "deceptive practice." The code has a general admonition in the preamble that the standards covered do not include deceptive practices standards. The term "deceptive practice" should be defined for U.S. implementation to include "unfair or deceptive practice" under section 5 of the FTC Act and also other consumer protection standards.

We believe that to be the intent of that term "deceptive practice." That intent should be spelled out in U.S. legislation to avoid litigation in the future.

No. 4 is that the domestic apparatus for handling of complaints by foreign countries should not be a disguised means of executive branch control over the independent regulatory agencies enacted by Congress. STR's most recent implementing proposals include a provision for an interagency body to be set up when there is a complaint against a U.S. standard.

That interagency body first will attempt negotiations with the complaining country, will defend the U.S. standards in the international committee, but then if we lose in the international committee, the interagency body will be authorized to determine what steps should be taken within the United States based upon the finding against us by the international committee.

Now we would like to see that interagency body have certain criteria that it must proceed on. Those criteria basically would be that the interagency committee could not overrule the U.S. public health standard unless it finds it to be intended to be an obstacle to international trade.

In other words, if it is intended to be an obstacle to international trade the interagency body would have authority to overrule it. If it has an effect of being an obstacle to trade, the agency that was empowered by Congress to promulgate the standard should reconsider the standard and determine whether it could be made less restrictive but still accomplish its basic public health and safety purpose.

Mr. JENKINS. Mr. Cymrot, before you continue, let me suspend the committee for about 5 minutes to make this vote. We will then finish with the remainder of your testimony.

Mr. VANIK [presiding]. The subcommittee will be in order. We are happy to proceed with your testimony, Mr. Cymrot.

Mr. CYMROT. I have had completed four items that Consumers Union feels is necessary to be included in the implementing legislation for the standards code.

The fifth item relates to STR's provision for a coordinating office, now it is actually two. One to be in the Commerce Department and one to be in the Agriculture Department. These coordinating offices will collect information, provide a point of contact for foreign governments to get information about U.S. standards.

They are also given authority to negotiate international standards. We are concerned that the authority to negotiate is too broad an authority. The technical decisions concerning international standards should be made by the expert agencies. For instance, FDA should be making technical decisions concerning drugs, CPSC should be making technical decisions concerning consumer products.

FTC similarly for d eptive practices.

Therefore, we would like to see the authority of these coordinating offices limited. To the extent that they negotiate international standards, they will act as agents for expert agencies, but it will be the expert agencies within the United States who will make the technical decisions concerning health, safety, environment and consumer protection standards.

Six, is that the implementing legislation should clearly state that it creates no private rights of action. The standards code is a government-to-government agreement. We see no reason why private companies should have the right to make complaints under the standards code. In fact, we would envision it would create enormous litigation in the United States. That is not necessary under the standards code; we think it is not intended and we think the implementing legislation, therefore, should clearly state no private rights of action are created.

Also, Consumers Union has an organizational concern with the standards code. We understand from reading the code and from the Office of Special Trade Representative that our activities are not intended to be included within the standards code. That is rating products in order to disseminate information to ultimate consumers. We would like to see the implementing legislation clearly state that the organization that rate products and disseminate information, rather than set standards for productions, should not be included within the scope of the standards code.

Finally, Consumers Union would like to support the continuation of the private advisory committee. We would like to see more consumers on the private advisory committees. Consumers Union representatives were brought in late in the process, and we don't see too many other consumers on these advisory committees. There are no consumers on industrial advisory committees that I am aware of. We think the consumers role should be expanded in the advisory process.

[The prepared statement follows:]

STATEMENT OF MARK A. CYMROT, ATTORNEY, WASHINGTON OFFICE, CONSUMERS UNION

Consumers Union[1] appreciates this opportunity to testify on the Multilateral Trade Negotiations and the proposed implementing legislation. We have requested time to testify on the Standards Code which could be one of the major accomplishments of the trade negotiations. However, if not carefully implemented, the Standards Code could seriously undermine health, safety, environmental and consumer protections standards in the United States. We urge the committee to guard against this possibility.

Consumers Union opposes trade barriers

Consumers Union is a staunch opponent of international trade barriers. Trade restrictions are a hidden tax on consumers. In our view, consumers will be best served when products from all countries are freely available in American markets. The broadest possible competition best protects consumers and helps to ensure high quality, low cost products on the market. We, therefore, have supported the efforts of the Special Trade Representative to reduce both tariff and non-tariff barriers to international trade.

To the extent that we have had an opportunity to review the trade package, it appears that the negotiators have made substantial strides toward the goal of free trade. We are hopeful that when the entire package is available, we will be able to support it enthusiastically.

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommerical grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with over 2 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

The Standards Code could be one of the major accomplishments of the negotiations

The Standards Code has the potential of being one of the major accomplishments in these trade negotiations. The Standards Code is designed to eliminate many of the discriminatory and anticompetitive standards which are intended or have the effect of keeping foreign products from the United States markets and U.S. products from foreign markets. However, it also could seriously undermine important health, safety, environmental and consumer protection standards in the United States.

The parties to the Standards Code have agreed to develop all standards, technical regulations and certification systems with open procedures similar to the U.S. Administrative Procedures Act. The adoption of international standards is encouraged. All standards that are prepared, adopted or applied with a view to creating obstacles to international trade are banned. These provisions are major achievements of the negotiations.

We, however, are concerned with the agreement provision that the parties shall ensure that standards not have, "the effect of creating unnecessary obstacles to international trade." All health, safety, environmental and consumer protection standards (hereafter public safety standards) have the effect of being obstacles to trade because they exclude unsafe products from the marketplace. The term "unnecessary obstacle to international trade" is nowhere defined in the Code. Only the preamble contains a general admonition that the Code is not intended to prevent the signatories from "taking measures necessary for the protection of human, animal or plant life, of the environment, or for the prevention of deceptive practices."

Under the disputes settlement procedure, an international trade committee, with the assistance of an expert panel, will determine whether a standard, including a public safety standard, is an "unnecessary obstacle to international trade." The committee hears complaints from signatory countries only when bilateral negotiations have not resolved the dispute. However, when it hears the complaint, the international committee will have to define "unnecessary obstacle to international trade," hear the evidence, including the conclusions of the expert panel which has reviewed the scientific evidence, and then decide whether the standard violates the Code.

Public safety standards are frequently the source of acute debate within the United States. Bans or proposed bans by U.S. administrative agencies on tris, saccharin and red dye No. 2 have been reconsidered by Congress. Debate concerning use of the pesticide DDT periodically recurs. There has been considerable debate concerning the Federal Drug Administrations procedures for the certification of drugs, including foreign drugs. Many banned products are available in Europe and in other countries at the same time that they are excuded from the United States. New drugs are much more easily introduced into foreign markets. The American public frequently insists upon higher safety standards than found in other countries.

However, under the disputes settlement procedure of the Standards Code an international committee will review the safety evidence and determine whether the standard violates the code. This committee may not insist on the same level of safety found in the United States and may not agree that the standard meets legitimate safety needs. Public safety standards considered legitimate by United States agencies, therefore, may not be considered legitimate by this international committee.

The sanctions in the Standards Code are not stringent. At most, the complaining country can be relieved from its obligations under the Standards Code. Therefore, with proper implementing legislation, the Standards Code can be a very reasonable compromise. The United States can gain the many benefits which the Code offers and, through the implementing legislation, assure that legitimate health, safety, environmental and consumer protection standards are maintained even if the United States should lose before the international trade committee.

The implementing legislation

As a member of an Agricultural Trade Advisory Committee, I was provided with the March 29, 1979, proposals of the Office of Special Trade Representative for implementing legislation for the Standards Code. I was distressed to find that the necessary protection for public safety standards were not in these proposals. I have discussed the proposed implementing legislation with the staff of STR on several occasions, including this past week. I now understand that necessary protections for public safety standards will be included in STR's implementing proposals. Briefly, Consumers Union believes the following elements are needed in the implementing legislation:

1. The Code and the implementing legislation should not prevent the taking of necessary measures within the United States for the protection of health, safety, the environment and consumers.

2. The term "unnecessary obstacle to international trade" should be defined as a standard or certification system that discriminates against foreign products and is more restrictive than necessary to accomplish its purpose.

3. The Code's reference to "deceptive practices" should be defined to include "unfair or deceptive" practices under § 5 of the Federal Trade Commission Act and also to include the other consumer protections presently available in U.S. laws. To avoid clarifying this point is to invite extensive litigation.

4. The domestic administrative apparatus set up to review various U.S. Administrative agency standards which are alleged to be unnecessary barriers to trade should be as simple as possible and should not constitute a disguised means for executive branch management of the independent agencies established by Congress.

STR's March 29 proposal contained a provision for an interagency committee to review complaints concerning U.S. standards. If a U.S. standard should be invalidated in the international forum, the interagency committee would be empowered to determine what action is taken within the United States including setting aside the U.S. standard. The interagency committee, therefore, is given the power to overrule an agency that originally had authority to establish the standard.

The interagency committee should be empowered to set aside a U.S. standard only after public comment under the Administrative Procedures Act, at public meetings under the Government in the Sunshine Act, and only when the standard does not serve a legitimate health, safety, environmental or consumer protection purpose.

5. STR's March 29 proposal contained provision for a central coordinating office within the Commerce Department. The Standards Code encourages the negotiation of international standards. The Commerce Department under the STR proposal would be authorized not only to coordinate U.S. positions at the negotiations of particular international standards but also to negotiate on behalf of all U.S. agencies. In our view, the Commerce Department should not be authorized to set U.S. policy on all international standards. Various agencies within the United States have expertise in areas of health, safety, environmental and consumer protection, e.g. Department of Agriculture, Federal Drug Administration, Federal Trade Commission and the Consumer Product Safety Commission. The agencies with the expertise in a particular safety area should be authorized to make the technical decisions within their areas of expertise. The central coordinating office can coordinate these negotiations but should not be given substantive authority to set U.S. policy in areas where it does not have technical expertise.

6. The implementing legislation should clearly state that it creates no private rights of action. The Standards Code is a government-to-government agreement. It does not require the United States to give additional rights to private companies. Private rights of action will lead to a proliferation of litigation. This problem can be eliminated by limiting the implementing legislation, like the Code, to government-to-government complaints.

7. Finally, Consumers Union has an organizational concern about the implementing legislation. STR has advised us that the activities of Consumers Union and other similar organizations are not intended to be included within the Standards Code. Yet, ambiguity on this point could lead to unnecessary and chilling litigation in the future. The implementing legislation should define "standard setting organization" to exclude organizations that rate products and dissiminate information about products to the ultimate consumer.

We have expressed our concerns to the staff of STR and we understand that they are in general agreement with us on each of these points. We, therefore, expect, after reviewing the specific legislative proposal, to support the Standards Code and the implementing legislation.

Consumers Union supports the continuation of the private advisory committee process

Finally, Consumers Union supports continuation of the private advisory committees. We urge that additional consumers be brought into the process and included on the industrial technical advisory committees as well as the agricultural technical advisory committees. Presently, consumer representations is only included on the agricultural technical advisory committees. To make this representation meaningful, consumers should be provided with back-up assistance and funding to support their participation.

Mr. V NIK. I want to say I concur in much of what you say, and I will hope that we get this earlier into implementing language or

into the legislative history. The positions that you make are well taken. They reflect my own interest and anxiety, so I will do what I can to try to get these written in either one place or the other, so they are part of the total package.

I want to thank you for your testimony. Do you have any questions, Mr. Moore?

Mr. MOORE. No questions. Thank you very much.

Mr. VANIK. Our next witness is American Federation of Labor, Rudy Oswald.

Mr. Oswald, your entire statement will be included in the record as submitted. You may excerpt from it or talk from it or whatever way you see fit in a manner that can crystalize the issues for our consideration.

STATEMENT OF RUDOLPH OSWALD, DIRECTOR, DEPARTMENT OF RESEARCH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. OSWALD. Thank you, Mr. Chairman.

I appreciate this opportunity to present our testimony to you. Accompanying me this morning is Ray Dennison, assistant director of legislation, AFL-CIO, and Elizabeth Jager, economist for AFL-CIO.

I would like to highlight certain parts of our testimony and indicate our major concerns.

Negotiators have drafted new codes of conduct and other quidelines for world trade. After a study of the various codes, Mr. Chairman, we feel that the impact of these negotiations could be destructive and devastating unless clearly defined implementing legislation is drafted to insure that much beneficial domestic legislation is not abandoned in the belief that a surge of exports will result.

Many of these changes in U.S. law will ease the importing of goods into this country, but will not, in themselves, insure the export of goods abroad. We must rely on the good faith of the signatory countries and their future actions for those export benefits.

We have particularly great concerns about the Government Procurement Code and the Standards Code. Their inclusion, we believe, could jeopardize our national well-being. The dangers far outweight any potential benefits.

In our testimony we offer a detailed series of recommendations for change in overall legislation and in the implementation of the various codes. However, as to the Government Procurement Code and the Standards Code, our priority recommendation is that they be returned to the Special Trade Representative and be renegotiated along with the Safeguards and Counterfeiting Codes that are now on the bargaining table.

This implementing legislation will affect not only U.S. trade laws but also a host of nontrade laws and regulations. The legislation Congress will consider goes far beyond the interests of importers and exporters. It will affect tax and consumer laws, "Buy American" and product standards laws, environmental and safety laws, as well as domestic legislation designed to help the U.S. economy.

We urge this committee to review in detail the implications of all the proposed codes and the implementing legislation. Once this committee accepts the package of proposed legislation now being drafted, it cannot, according to the rules of the 1974 Trade Act, amend that proposal. Thus, adequate time must now be devoted to the drafting of appropriate language to assure proper regard for American interests. Many of the details have not yet been supplied to affected parties to allow full input into this prospective legislation. Actually, the multilateral trade negotiations are still ongoing.

These agreements have many implications that need to be examined in detail before the final package of legislation to implement them is brought before the Congress. Once the legislation is introduced, there will be neither time nor opportunity to take appropriate action.

Negotiations are continuing on two additional nontariff codes: safeguards and counterfeiting. The most important of these, from labor's point of view, is safeguards. Safeguards in title II of the Trade Act of 1974, have provided import relief to injured industries such as specialty steel, shoes, color TV, and fasteners. The United States needs swifter and more effective safeguard actions. The implementing legislation should therefore amend title II of the Trade Act of 1974 to assure these improvements whether or not a separate safeguard code is negotiated.

The export interests of the United States are getting major attention in the press and in descriptions of the trade negotiations and the implementing legislation. American workers know the importance of export trade and seek more of it. But the actual legislation that will be drafter will have little to do with U.S. exports. Foreign governments' actions—not the U.S. legislation—will determine American's export future.

We urge that the implementing legislation require the U.S. Government agencies—the State Department, the Treasury Department, the Commerce Department, and the International Trade Commission: (1) To report on foreign government's actions that interfere with U.S. exports—either by violating trade agreements or in any other way; (2) to act to help U.S. export interests in international procedures; and (3) to take whatever retaliatory steps are necessary when U.S. export interests require it.

But the primary effect of the implementing legislation will fall on imports and on domestic laws and regulations often not related to trade. A number of specific concerns need to be addressed in the implementing legislation.

Three overall concerns require preliminary comments: The legal implications of codes, special problems related to nonmarket economies, and special and differential treatment for less developed countries.

First, the legal implications of these negotiated agreements should be clear. The issues are so far-reaching that a great many U.S. laws could be affected even though the negotiators and the Congress did not intend to change those laws.

An overall caveat should assure that the implementing legislation amends existing law only where such specific amendments are stated in the implementing legislation. The caveat should also state

that no other legislation amends such domestic legislation. This caveat should also appear separately in relation to each code.

Second, special problems created by imports from nonmarket economies and government-controlled companies require special provisions. Such imports should be treated differently. The nature of competition from nonmarket countries and government-controlled companies creates unfair impacts and jeopardizes U.S. producers and workers. This issue affects most codes—government procurement, standards, subsidies, antidumping, et cetera.

Third, the United States is already the most open area in the world and therefore already grants special and differential treatment to developing countries. But the negotiations also provide special and differential treatment for a group of unnamed developing countries in each code and in the overall framework of the changes in international rules.

We urge the Congress to examine just what the negotiations mean by a "developing country" and to find out the impact of such imports already surging into the United States from what often turns out to be highly industrial nations.

Special treatment for needy countries should be tailored to helping people within those countries—not to the creation of more poverty at home and abroad by export-led development at the expense of labor everywhere. Title V of the Trade Act of 1974 should be repealed, because it is obsolete.

In addition to these overall issues, the AFL-CIO believes that the code and other agreements create serious concerns. We have attached to this statement detailed explanations of these concerns and some recommendations for the implementing legislation. We consider all of the issues very important. But because of time pressures in these hearings, we will emphasize only a few in the body of this statement.

In terms of Government procurement, current international trade rules (GATT) exempt Government procurement, because taxpayers' dollars have been regarded as a proper source of encouraging domestic production and jobs. The Trade Act of 1974 was silent about Government procurement in its list of foreign practices on which negotiations were directed.

Many governments have no laws to change. They automatically buy their own products, to the extent they can, from their own domestic producers. The United States has a "Buy American" law which is badly in need of improvement. State and local governments frequently have separate "Buy American" practices.

The code on Government procurement says that the United States will grant other signatory countries the right to bid without "Buy American" preferences for certain Government agencies—including the Department of Defense with certain exceptions for the Corps of Engineers and certain products.

In exchange, some foreign governments, signatory to the agreement, will give the U.S. firms right to bid on certain government procurement in those countries.

This code will commit the United States to give special rights to bid on American Government contracts to developing countries by guaranteeing special technical help to developing countries who seek bids.

This code causes serious problems, because the United States needs to improve, not weaken its domestic preference laws. U.S. tax dollars should be spent of domestic products, not foreign, so that the U.S. economy may benefit from Government procurement activities.

As a result of our review of that we suggest the code be returned for negotiations in tandem with the Safeguard and Counterfeit Codes now being negotiated. If it is not possible to renegotiate the entire code for return to Congress at a later date then specific provisions of the implementing legislation should be insisted upon to minimize the damage that will likely occur.

Therefore we recommend that the committee insist on the following provisions in the implementing legislation. One, that the legislation should prohibit nonsignatory countries from access to bid on U.S. Government procurement, and should limit the bidding of signatures to the specific entities covered by the code.

Mr. VANIK. Either sign up or sign off. Otherwise they become freeloaders, getting benefit without making any commitment at any other part of the code.

Mr. OSWALD. And they should be limited to those entities included in the code itself because those are clearly the ones that the negotiators have agreed as a quid pro quo for what other countries have opened up.

Mr. VANIK. Go ahead.

Mr. OSWALD. Second, a clear rule-of-origin should be incorporated so that signatory countries can be the source of supplies for the U.S. market.

Third, specific language should exempt State and local "Buy American" laws. The codes imply that but we need specific language.

Fourth, foreign governments procurement requests should be listed in Commerce Business Daily so U.S. producers can appropriately know about what these other countries do have, so business can listen.

I have five other items on my list, Mr. Chairman, but for time problems I will emphasize our concerns with technical barriers to trade or standards.

You have heard some of those problems in the previous testimony and we believe that this code, while it is designed to encourage trade by setting up a system to review trade barriers that are caused by the use of product standards and certification systems. All products are covered by the code—including industrial and agricultural standards. The code promotes the use of international standards instead of national standards. The code provides a forum for exerting pressure to end standards that restrict trade. There are exceptions for health, national security, et cetera, but these are challengeable in terms of their effect on trade. Trade, not standards, becomes the paramount concern of the code.

The code applies to packaging, marking, or labeling requirements.

Certification systems must not be obstacles to trade. Certification systems should accept markings of certification from abroad. All local and State bodies shall arrange certification and testing systems so as not to exclude foreign country producers.

Developed countries agree to give technical assistance and more favorable treatment to developing countries. Developing countries need not develop international standards.

But the effect of the code is uncertain and the impact on existing U.S. domestic legislation could seriously undermine both existing and potential U.S. standards. Even the language of the code and the establishment of an international disputes mechanism state that the U.S. standards would be challengeable by an international group on the grounds that they had the effect of interfering with world trade.

The impact of the code could be serious for any type of existing protection from environmental and consumer protection laws to product safety laws and established practices of engineering and design throughout the United States. The effect on State and local governments and private standards setting bodies could also be serious.

As a result, Mr. Chairman, we feel that because of the uncertain impact of the code implementation should be deferred, that it be further negotiated so that there will be adequate protection for U.S. laws and should be submitted in the future to Congress when the multitude of problems that arise as a result of the Standards Code have been resolved and when there is adequate time to provide assurance that U.S. standards are adequately protected.

If it is not possible to renegotiate the entire code, then specific procedures should be insisted upon to minimize the damage to U.S. standards that will likely occur.

We prefer the whole code be renegotiated. Subsidies, Mr. Chairman, as you know, are a long-time concern. They are an unfair trade practice. It was one of the things that the 1974 Trade Act emphasized as an unfair trade practice and the new negotiations address some direct and indirect subsidy situations but the code does not include value-added taxes or border taxes as subsidies although the Trade Act of 1974 directed negotiations on such tax subsidy programs.

What actions will follow a violation is also dependent on a variety of mechanisms, both domestic and international.

U.S. law and the GATT do not now require an injury test before countervailing duty action is taken. U.S. law now requires the Treasury Department to put a countervailing duty—a tariff—on an import that has been subsidized to offset the amount of the foreign subsidy on a dutiable import. This requirement is seldom enforced. Most Americans do not even know what foreign subsidies exist or how to counteract them.

The new code requires an injury test for the first time and we are very concerned with that. Our recommendations in terms of the implementing legislation for this code are that they should assure that the code results in better arrangements to prevent unfairly subsidized imports from undercutting U.S. production and for action when foreign governments effectively ban U.S. exports due to claimed U.S. subsidies.

First, the law should have adequate definitions of subsidies and should include a value-added tax as a subsidy; and second, "injury" should be broadly defined as "more than immaterial or more than inconsequential" and should be based on the "threat of injury" as

well as actual injury. Also, "industry" should be broadly defined to include related products and processes because we have found from experience in the past that such items were often injured from such subsidies.

In your recent hearings, Mr. Chairman, you heard about the problems of butter cookies in New Jersey, even though the subsidy was made to butter in Denmark.

But we have some 15 specific areas that need to be addressed in the implementing legislation to assure that there is adequate action by the U.S. Government in assuring that subsidies will be countervailed against and that this unfair trade practice will not be allowed to undercut American activity and industries.

Other issues will need special legislative attention. An antidumping code was signed in 1968 and rejected then by Congress and it has been modified slightly as part of this MTN negotiation.

Improvement in U.S. antidumping legislation is an urgent need.

Mr. Chairman, you have held hearings on this issue for the past 2 years and have pointed out in your own statements a number of the problems with the current implementation of the Antidumping Act.

We believe the implementing package should strengthen U.S. antidumping legislation by speeding up the procedure and providing better assurance of action.

Mr. VANIK. What position do you take on the adjustment assistance bill we reported out—$70 million more than the OMB is willing to set aside for it? Do you have any feeling about it? I know sometimes you feel this is just burial insurance, and if you don't want it we probably won't get anything you know.

Mr. OSWALD. Mr. Chairman, we want it very much. We do believe it is burial insurance but we feel somebody should be buried with dignity. The changes you have recommended would provide for a better funeral for the person who has lost his job through imports.

Mr. VANIK. I said at the White House this morning that I thought this was an absolute essential requirement fo House approval of the MTN, so I would like to have that reenforced because OMB has not budged one inch, so we are going to the floor with a bill without OMB approval on it.

Their problem is the source of funds, but I have taken the position that we can't move MTN at all unless this is in place along with a meaningful antidumping section.

Mr. OSWALD. Mr. Chairman, if there is not that improvement it means that many workers who have been denied benefits in the past from trade-related situations will be further injured as a result of some of these things without any protection. We feel it is absolutely vital that those wokers get a decent burial.

Mr. VANIK. I hope you would let that position be more firmly known to OMB because some people there are of the impression since it is burial insurance there is no concern that you need it so I think you have to fortify our effort by giving us some support on it.

Mr. OSWALD. Mr. Chairman, we have gone through some of the discussions with OMB on burial insurance both on this and the social security bill. As you know OMB thought they could save money in the Social Security Act by removing burial insurance.

Mr. VANIK. We set them straight on that.

Mr. OSWALD. One of the interesting things in terms of the trade union movement, is that it has always been concerned about this type of insurance from the very beginning. Some of the earliest trade union activities were to set up burial insurance for their members.

I would just like to conclude, Mr. Chairman, in terms of highlighting that in addition to what we have in our formal statement we have provided the committee with details about our concerns with each of the codes. These are contained in the attached appendix.

We ask that each of our specific recommendations be considered by the Congress in the draft of the implementing legislation.

Once this legislation is introduced it will be very difficult to correct any untoward errors or omissions.

In conclusion we believe the implementaing legislation will not assure rights for U.S. exports. The Congress will be asked to decide how the U.S. laws will be changed to respond to proposed international codes. Therefore, this is not export-guaranteeing legislation. It is legislation that makes major changes in domestic law. Because of the multitude of problems, the Government Procurement Code and the Standards Code should be renegotiated. The implementing legislation should be properly considered in detail prior to its introduction and should be designed to insure the best interests of the United States.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF DR. RUDOLPH OSWALD, DIRECTOR, DEPARTMENT OF RESEARCH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO, a federation of 105 affiliated unions, represents workers in every type of industry from apparel and aerospace to telecommunications and zinc. We welcome this opportunity to comment on the multilateral trade negotiations and the proposed implementing legislation. The Executive Council of the AFL-CIO, the conventions of the AFL-CIO—all the policymaking and staff channels—have considered many aspects of the international trade negotiations for a long time.

The negotiators have drafted new codes of conduct and other guidelines for world trade. After a study of the various codes, Mr. Chairman, we feel that the impact of these negotiations could be destructive and devastating unless clearly defined implementing legislation is drafted to insure that much beneficial domestic legislation is not abandoned in the belief that a surge of exports will result. Many of these changes in U.S. law will ease the importing of goods into this country, but will not, in themselves, insure the export of goods abroad. We must rely on the good faith of the signatory countries and their future actions for those export benefits.

We have particularly great concerns about the Government Procurement Code and the Standards Code. Their inclusion, we believe, could jeopardize our national well-being. The dangers far outweigh any potential benefits.

In our testimony we offer a detailed series of recommendations for change in overall legislation and in the implementation of the various codes. However, as to the Government Procurement Code and the Standards Code, our priority recommendation is that they be returned to the Special Trade Representative and be renegotiated along with the Safeguards and Counterfeiting Codes that are now on the bargaining table.

This implementing legislation will affect not only U.S. trade laws, but also a host of non-trade laws and regulations. The legislation Congress will consider goes far beyond the interests of importers and exporters. It will affect tax and consumer laws, "Buy American" and product standards laws, environmental and safety laws, as well as domestic legislation designed to help the U.S. economy.

We urge this Committee to review in detail the implications of all the proposed codes and the implementing legislation. Once this committee accepts the package of

proposed legislation now being drafted, it cannot, according to the rules of the 1974 Trade Act, amend that proposal. Thus adequate time must now be devoted to the drafting of appropriate language to assure proper regard for American interests. Many of the details have not yet been supplied to affected parties to allow full input into this prospective legislation. Actually the multilateral trade negotiations are still ongoing.

These agreements have many implications that need to be examined in detail before the final package of legislation to implement them is brought before the Congress. Once the legislation is introduced, there will be neither time nor opportunity to take appropriate action.

These agreements are the result of more than four years of negotiations. On April 12 of this year, representatives of the U.S. and 23 nations initialed these new multilateral trade agreements on an ad referendum basis. This means the agreements will take effect only after the U.S. Congress and other governments approve them. The U.S. Congress is expected to act first.

The agreements include:

Tariff-cuts, averaging 31 percent. These are to be phased in over eight years. But details of the trade-offs for these tariff cuts and the amount of the foreign tariff-cutting is not clear. Evaluation of the balance between U.S. and foreign concessions is therefore not possible at this time. The Congress will not have to pass any legislation for most of this tariff-cutting, because the President was given authority to reach agreements and proclaim tariff-cuts in the Trade Act of 1974, without any additional Congressional approval.

Nontariff-matters.—These are the major subjects of the charge in world trade rules. The Trade Act of 1974 authorized and directed negotiations on non-tariff issues, because U.S. exporters have repeatedly claimed that they could not get into foreign markets or because U.S. producers have claimed that unfair foreign trade practices were undercutting U.S. producers at home and abroad. The Trade Act of 1974 requires that the non-tariff legislation shall be subject to an unamendable up or down vote within 90 legislative days of presentation to the Congress.

Non-tariff codes of conduct that modify or change world trade rules have been agreed to by the negotiators. These include: (1) Government Procurement, (2) Standards (technical barriers to trade), (3) Subsidies and Countervailing Duties, (4) Licensing, (5) Customs Valuation, (6) Sector Agreement on Aircraft, (7) Agricultural Agreements, (8) Framework (Reform of the International Trading System), (9) Anti-dumping.

Negotiations are continuing on two additional non-tariff codes: Safeguards and Counterfeiting. The most important of these, from labor's point of view, is Safeguards. Safeguards in Title II of the Trade Act of 1974, have provided import relief to injured industries such as specialty steel, shoes, color TV and fasteners. The U.S. needs swifter and more effective safeguard actions. The implementing legislation should therefore amend Title II of the Trade Act of 1974 to assure these improvements whether or not a separate safeguard code is negotiated.

The export interests of the United States are getting major attention in the press and in descriptions of the trade negotiations and the implementing legislation. American workers know the importance of export trade and seek more of it. But the actual legislation that will be drafted will have little to do with U.S. exports. Foreign governments' actions—not the U.S. legislation—will determine America's export future.

We urge that the implementing legislation require the U.S. government agencies—the State Department, the Treasury Department, the Commerce Department, and the International Trade Commission (1) to report on foreign government's actions that interfere with U.S. exports—either by violating trade agreements or in any other way, (2) to act to help U.S. export interests in international procedures, and (3) to take whatever retaliatory steps are necessary when U.S. export interests require it.

But the primary effects of the implementing legislation will fall on imports and on domestic laws and regulations often not related to trade. A number of specific concerns need to be addressed in the implementing legislation.

Three overall concerns require preliminary comments: The legal implications of codes, special problems related to non-market economies and special and differential treatment for "less developed countries."

1. The legal implications of these negotiated agreements should be clear. The issues are so far-reaching that a great many U.S. laws could be affected even though the negotiators and the Congress did not intend to change those laws.

An overall caveat should assure that the implementing legislation amends existing law only where such specific amendments are stated in the implementing

legislation. The caveat should also state that no other legislation is affected until the Congress or the enacting legislature amends such domestic legislation. This caveat should also appear separately in relation to each code.

2. Special problems created by imports from non-market economies and government-controlled companies requires special provisions. Such imports should be treated differently. The nature of competition from nonmarket countries and government-controlled companies creates unfair impacts and jeopardizes U.S. producers and workers. This issue affects most codes—government procurement, standards, subsidies, antidumping, etc.

3. The United States is the most open area in the world and therefore already grants special and differential treatment to developing countries. But the negotiations also provide "special and differential treatment" for a group of unnamed "developing countries" in each code and in the overall framework of the changes in international rules. We urge the Congress to examine just what the negotiators mean by a "developing country" and to find out the impact of such imports already surging into the U.S. from what often turns out to be highly industrial nations. Special treatment for needy countries should be tailored to helping people within those countries—not to the creation of more poverty at home and abroad by export-led development at the expense of labor everywhere. Title V of the Trade Act of 1974 should be repealed, because it is obsolete.

In addition to these overall issues, the AFL-CIO believes that the codes and other agreements create serious concerns. We have attached to this statement detailed explanations of these concerns and some recommendations for the implementing legislation. We consider all of the issues very important. But because of time pressures in these hearings, we will emphasize only a few in the body of this statement.

Government procurement (background)

Current international trade rules (GATT) exempt government procurement, because taxpayers' dollars have been regarded as a proper source of encouraging domestic production and jobs. The Trade Act of 1974 was silent about government procurement in its list of foreign practices on which negotiations were directed.

Many governments have no law to change. They automatically buy their own products, to the extent they can, from their own domestic producers. The U.S. has a "Buy American" law which is badly in need of improvement. At this time, the U.S. law is enforced with a 6 percent preference or a 12 percent preference for labor surplus areas or for minority or small business set-asides. A 50 percent preference exists for non-strategic defense items. State and local governments frequently have separate "Buy American" practices.

The code on government procurement says that the U.S. will grant other signatory countries the right to bid without "Buy American" preferences for certain government agencies—including the Department of Defense (with certain exceptions for the Corps of Engineers and certain products). In exchange, some foreign governments, signatory to the agreement, will give the U.S. firms right to bid on certain government procurement in those countries.

This code will commit the United States to give special rights to bid on American government contracts to developing countries by guaranteeing special technical help to developing countries who seek bids.

An international panel will decide on the disputes under this code.

Contracts (including service contracts incidental to providing a product) of approximately $190,000 or more are covered.

This code causes serious problems, because the U.S. needs to improve, not weaken its domestic preference laws. U.S. tax dollars should be spent on domestic products, not foreign, so that the U.S. economy may benefit from government procurement activities.

Government procurement (recommendations)

The code should be returned for negotiations in tandem with the safeguard and counterfeit codes now being negotiated.

If it is not possible to renegotiate the entire code for a return to Congress at a later date, then specific provisions in the implementing legislation should be insisted upon to minimize the damage that will likely occur.

Therefore, we recommend that the Committee insists on the following provisions in the implementing legislation:

1. The legislation should prohibit non-signatory countries from access to bid on U.S. government procurement, and should limit the bidding of signatures to the specific entities covered by the code.

2. A clear rule-of-origin language should be incorporated so that signatory countries can be the source of supplies for the U.S. market.
3. Specific language should exempt state and local "Buy American" laws.
4. Foreign governments procurement requests should be listed in Commerce Business Daily.
5. The implementing legislation should be for a two-year provisional basis and should provide that it does not go into effect before January 1, 1981, the date indicated in the code.
6. The implementing legislation should spell out the machinery for U.S. withdrawal, which is provided for in the code upon 60 days notice.
7. A special overall legal caveat should assure that the implementing legislation amends existing law only where specific amendments occur and it should clearly state that no other domestic legislation is affected until Congress specifically amends such domestic legislation.
8. Provision should be made that there will be no authorization for the reduction of U.S. product standards nor any retarding of prospective improvement of U.S. standards by this legislation.
9. Upon complaint, all participating countries should be required to make available the records and transactions of their state-owned companies.

Technical barriers to trade (standards) (background)

This code is designed to encourage trade by setting up a system to review trade barriers that are caused by the use of product standards and certification systems. All products are covered by the code—including industrial and agricultural standards. The code promotes the use of international standards instead of national standards. The code provides a forum for exerting pressure to end standards that restrict trade. There are exceptions for health, national security, etc., but these are challengeable in terms of their effect on trade. Trade, not standards, becomes the paramount concern of the code.

The code applies to packaging, marking or labeling requirements.

Certification systems must not be obstacles to trade. Certification systems should accept markings of certification from abroad. All local and state bodies shall arrange certification and testing systems so as not to exclude foreign-country producers.

Developed countries agree to give technical assistance and more favorable treatment to developing countries. Developing countries neet not develop international standards.

But the effect of the code is uncertain and the impact on existing U.S. domestic legislation could seriously undermine both existing and potential U.S. standards. Even the language of the code and the establishment of an international disputes mechanism state that the U.S. standards would be challegeable by an international group on the grounds that they had the effect of interfering with world trade.

The impact of the code could be serious for any type of existing protection from environmental and consumer protection laws to product safety laws and established practices of engineering and design throughout the United States. The effect on state and local governments and private standards setting bodies could also be serious.

Technical barrier to trade (standards) recommendations

The code should be returned for negotiation in tandem with the safeguard and counterfeit codes now being negotiated—and submitted to Congress at a later date when the multitude of problems passed by the standards code have been solved and U.S. standards are adequately protected.

If it is not possible to renegotiate the entire code, then specific procedures should be insisted upon to minimize the damage to U.S. standards that will likely occur.

Therefore, we recommend that the Committee insist on the following provisions in the implementing legislation:

1. The code should not be able to supersede federal or state regulations.
2. The U.S government should be able to take unilateral action to improve or impose its standards.
3. The test of violation of the code should be the adoption of a standard designed to discriminate against imports—not merely the fact that a standard has the effect of interfering with trade.

Subsidies (background)

Subsidies on exports are an unfair trade practice because government subsidies create unfair competition. The code cites subsidies on exports of industrial products as unfair. But the definition of a subsidy is not clear in the code. Aids to industries

in areas of high unemployment are considered sudsidies in the code. But the code does not include value added taxes or border taxes as subsidies although the Trade Act of 1974 directed negotiations on such tax subsidy programs.

What action will follow a violation is also dependent on a variety of mechanisms, both domestic and international.

U.S. law and the GATT do not now require an injury test before countervailing duty action is taken. U.S. law now requires the Treasury Department to put a countervailing duty (a tariff) on an import that has been subsidized to offset the amount of the foreign subsidy on a dutiable import. This requirement is seldom enforced. Most Americans do not even know what foreign subsidies exist or how to counteract them.

The new code requires an injury test and the injury must be caused by the subsidy itself.

The code will not apply to any country which does not sign it.

Subsidies (recommendations)

The implementing legislation for this code should assure that the code results in better arrangements to prevent unfairly subsidized imports from under-cutting U.S. production and for action when foreign governments effectively ban U.S. exports due to claimed U.S. subsidies.

1. The law should have adequate definitions of subsidies and should include a value-added tax as a subsio.
2. "Injury" should be broadly defined as "more than immaterial or more than inconsequential" and should be based on the "threat of injury" as well as actual injury.
3. "Industry" should be broadly defined to include related products and processes.
4. The amount of duty should be the full amount of subsidy.
5. Unions should have the right to sue.
6. Neither investigations nor countervailing duties should be ended until the subsidy and injury problems are solved.
7. Reasonably available information should be enough to start an action.
8. Both "injury" and "subsidy" should be weighed in reconsideration of countervailing duty orders.
9. Judicial review should be a right for unions as well as other domestic interests.
10. U.S. government should be required to provide information on foreign subsidies and should be required to start actions on its own motion.
11. No rights or obligations created by the code or the legislation should be enforced except as provided by the legislation.
12. Both developed and less developed countries should be given the same tests for unfair trade practices.
13. Availability and reliability of evidence should be specified.
14. Timing should include: continuance of existing orders until proven unnecessary, retroactivity, provisional duties when necessary and a time limit for the assessment.
15. Special provisions for imports from non-market economies should be included.

Other issues will need special legislative attention:

An anti-dumping code, signed in 1968 and rejected then by the Congress, has been modified slightly as part of the MTN. Improvement in U.S. anti-dumping legislation is an urgent need, as pointed out in hearings over the past few years. The implementing package should strengthen U.S. anti-dumping legislation by speeding up the procedures and providing better assurance of relief.

The implementation of the licensing code should provide for the U.S. to license all imports so that adequate records of imports will be available.

A customs valuation code, which repeals the American Selling Price method of valuation and makes many changes in the way goods entering the U.S. will be valued, calls for new considerations. The time to shift to the same method of valuation other nations use—c.i.f.—is long overdue.

An aircraft sector code reduces tariffs to zero on imports of civil aircraft and parts from all countries and makes new rules on co-production and other trade bargaining relationships. This will have an impact on U.S. jobs and production in a wide variety of industries. More detailed analysis should be provided Congress as to the impact on jobs and industries.

"Non-tariff measures not multilaterally dealt with" is a trade expert's term that means far more to American jobs and production than anyone has reported. The repeal of a single line item in the Internal Revenue Code concerning taxes on imported liquor will cost jobs and will lead to the closing of certain glass bottling and distillery operations in the United States because the advantage for such operations in this country has been removed. This is a tax change, but it was

included in overall negotiations. We urge that this agreement be dropped. Its supposed linkage to American agricultural exports is difficult to accept because agricultural concessions appear to have been paid for in many other agreements.

Another item has to do with aircraft repairs and parts purchased abroad. There is now a 50 percent tariff on such aircraft repairs and aircraft parts. Negotiations have apparently removed this tariff—at a potential cost of U.S. jobs and production—but without providing information about what was given in return or whether it is part of a code.

There is also an issue concerning foreign-built inflatable rubber rafts and hovercraft. This provision involves extensive changes in many U.S. trade and navigation laws to permit importation of foreign-built hovercraft. New U.S. technology is being developed in this industry in the U.S., but it would be snuffed out by the changes in this agreement. We believe that this provision should be dropped, if it hasn't already been dropped.

There are several other items—each of them affecting a change in U.S. law and impact on jobs and production. No explanation of what was offered in exchange for them has been granted.

More details on these codes are contained in the attached appendix. We ask that each of our specific recommendations be considered by the Congress in the draft of the implementing legislation. Once this legislation is introduced, it will be very difficult to correct any untoward errors or emissions.

In conclusion, we believe that the implementing legislation will not assure rights for U.S. exports. The Congress will be asked to decide how the U.S. laws will be changed to respond to proposed international codes. Therefore, this is not export-guaranteeing legislation. It is legislation that makes major changes in domestic law. Because of the multitude of problems, the Government Procurement code and the Standards code should be renegotiated. The implementing legislation should be properly considered in detail prior to its introduction and should be designed to insure the best interests of the United States.

Multilateral Trade Agreements, AFL-CIO Analysis and Recommendations on Nontariff Issues [1]

BACKGROUND

The international trade negotiations have gone on for more than four years under the authority granted the President in the Trade Act of 1974. On January 4, 1979 President Carter told Congress that he expected the international trade negotiations to be completed in 90 days. On April 12, the U.S. and 22 other nations initialed agreements on 7 non-tariff codes. The law requires at least the 90-day notice. In May the President will probably send the agreements to the Congress with a package of legislation to carry out the U.S. part of the agreement. The Trade Act of 1974 gives the Congress 90 legislative days to vote up or down without amendments the implementing legislation. But the law is silent about how long a time is appropriate to draft implementing legislation.

The labor advisors must report to the President and Congress whether they think the agreements will benefit the economic interest of the United States.

Tariff cuts averaging 30 percent are being negotiated. These do not have to be approved by Congress. They will be phased in over 8 years.

The President sent Congress summary descriptions of 8 codes and 6 other sets of issues. Labor and industry advisors have also been given texts of the codes and suggestions about implementing legislation.

No previous trade negotiations involved so many non-tariff issues. U.S. trade and non-trade laws will have to be changed. Hundreds of provisions of tariff and non-tariff matters are affected. We have asked for a complete list of laws and regulations that will be changed, but there is no list now available. These agreements affect many non-trade federal, state and local laws such as "Buy American" laws, laws on product standards or technical requirements for products, etc.

The international agreements have not been completed and information needed for final judgments is still not available. These comments, therefore, are preliminary. Only those who have seen the vague, contradictory and confusing language of the many international agreements can understand how difficult it is for labor representatives, business representatives and their representatives in the Congress to make effective decisions about a package of proposals now being drafted.

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[1] This is a composite of proposals endorsed by most interested affiliates as of April 17. The text is still preliminary because MTN agreements are not final and Administration's proposed legislative package is not available.

There is a whole host of laws that took generations to develop that are now about to be changed drastically—perhaps in a matter of weeks. Yet, at this moment, the proposed language is not available. Our concern is across-the-board in terms of American law, American jobs and the American standard of living.

Because countless U.S. laws and practices—federal, state and local—will be affected, the Congress is urged to move deliberately and carefully. Congressional committees with jurisdiction over non-trade issues should receive a full briefing on the implications for laws they have passed or may want to pass.

The words "Multilateral Trade Negotiations" are confusing. MTN has no special meaning for American citizens. But American practices and standards and laws are well known. Taxpayers know what "Buy American" means, but they may not know that a Government Procurement Code—once signed and put into law, could require repeal, or change by regulation thousands of "Buy American" laws and practices throughout America. Workers know about Occupational Safety and Health standards, consumer protection laws, building codes and other industrial product standards. They do not know that a code on "Technical Barriers to Trade" or Standards would make U.S. standards subject to international review.

The AFL-CIO has been unable to get detailed or comprehensive information about the barriers abroad which were removed in exchange for the concessions made by the United States. It is therefore not possible to identify accurately the economic balance or the competitive equivalency of the results.

General recommendations about "package" of implementing legislation

The package of legislative proposals should be drafted carefully because so many U.S. laws and regulations on trade and non-trade matters can be affected. Now that the agreement is signed, Congressional committees should have time to review their implications before the unamendable legislation is finally drafted. The Trade Act of 1974 does not set a deadline for submitting the legislation.

The scope of the entire set of proposals should be sent to Congress as a whole before the law is finally drafted.

The legal meaning of the package and each part of the package must be made clear. This is a new set of international agreements, but their legal status is not clear. One "trade" law should not supersede other domestic laws.

The legislation should clearly say that any legislation, not specifically amended by the implementing legislation, remains in full force and is not affected by any implication of the codes.

Any code provisions that refer to determinations by international agencies should make sure that such international decisions about U.S. practices are advisory only and have no force in U.S. law. Changes in existing U.S. laws and regulations should be only by the express authority of the legislature which originally enacted the law.

Judicial review is an important right that must be stated in law. Labor does not now have standing to sue for many purposes in trade laws. This right should be in each part of the package of legislation—for labor as well as other groups.

The constitutional impact of the international agreement on state and local governments should be carefully explored.

Trade with non-market economies or state enterprise should have specific legislative provisions.

Relationships between the codes should be clearly established so that provisions of law to implement one code will not contradict provisions in another code.

The maintenance of a strong, diversified U.S. economy with protection of U.S. workers and industries against unfair trade competition should be an important purpose of the statute.

SUBSIDIES

Subsidies on exports are an unfair trade practice. The code cites subsidies on exports of industrial products as unfair. But the definition of a subsidy is not clear. Aids to industries in areas of high unemployment are considered subsidies in the code.

What action will follow a violation is also dependent on a variety of mechansims, both domestic and international.

U.S. law and the GATT do not now require an injury test before countervailing duty action is taken. U.S. law now requires the Treasury Department to put a countervailing duty (a tariff) on an import that has been subsidized to offset the amount of the foreign subsidy on a dutiable import. This requirement is seldom enforced. Most Americans do not even know what foreign subsidies exist or how to conteract them.

The new code requires an injury test and the injury must be caused by the subsidy itself.

The code will not apply to any country which does not sign it.

This is a complicated problem and many legislative proposals have been made. A lengthier explanation follows this brief summary. This legal explanation calls for many specific provisions including definitions of subsidies and of injury, imposition of provisional duties and efforts to close the loopholes in existing law.

Recommendations

Definitions should be written in the statute. Proposed regulations should be made clear to the Congress. These definitions and regulations concern definitions of subsidy, of injury, and of industry—both upstream and downstream, as well as regional. An injury test should not be required especially for imports under Generalized System of Preferences. (See numbers 1 through 3 and number 15 in the attached legal section.) The value-added tax and foreign border taxes should be considered subsidies. Status of DISC should be clarified.

Amount of duty should be the full amount of subsidy. (See number 4.)

Unions should have the right to sue. (See number 5.)

Neither investigations nor countervailing duties should be ended until the subsidy and injury problems are solved. (See numbers 6 and 7.)

Reasonably available information should be enough to start an action. (See number 7.)

Both "injury" and "subsidy" should be weighed under specific provisions in reconsideration of countervailing duty orders. (See number 8.)

Judicial review should be a right for unions as well as other domestic interests. (See number 9.)

U.S. government should be required to provide information on foreign subsidies and should be required to start actions on its own motion. (See numbers 10 and 11.)

No rights or obligations created by the code or the legislation should be enforced except as provided by the legislation. (See number 12.)

Both developed and less developed countries should be given the same tests for unfair trade practices. (See number 13.)

Availability and reliability of evidence should be specified for use in decision making. (See number 14.)

Timing of application of countervailing duties should include: continuance of existing orders until proven unnecessary, retroactivity, provisional duties when necessary, and a time limit for the assessment. (See numbers 16 through 18.)

Questions

Why will this code be more effective than past law which provided an actual requirement for action by the U.S. government to offset unfair imports?

How will this code operate—specifically in terms of an industry or groups of workers who are losing their jobs because of unfairly subsidized imports?

What will force the U.S. government to act if another country violates the code?

How will this code affect U.S. aid to areas of high unemployment, such as the Economic Development Administration?

I. DETAILED LEGAL ANALYSIS OF SUBSIDIES AND COUNTERVAILING DUTIES

We now address several issues regarding subsidies and countervailing duties. The items discussed are not necessarily in order of priority

1. Definition of "subsidy"

There should be a definition of subsidies of purposes of the U.S. countervailing duty law. The definition proposed in S. 538 is an appropriate subject for consideration in this regard. Even if it were proper to leave this matter to regulations, it violates the spirit of § 102 of the Trade Act not to indicate what the regulations would say.

In light of the fact that an understanding has apparently been reached that DISC will not be regarded as a subsidy even though it clearly is a subsidy within the terms of the Code, it is imperative that we be given a full explanation of any negotiations which have occurred with respect to which foreign practices will or will not be regarded as subsidies by the U.S.

We submit that rebates of value-added taxes should plainly be treated as subsidies under the U.S. countervailing duty law.

The application of countervailing duty provisions in the context of non-market economies is a critical matter. The implementation package should spell out plainly how the U.S. will apply its countervailing duty law to non-market economies.

2. Definition of "injury"

The implementing legislation should not provide that injury will be defined "as that term is used in the Agreement," since (i) the definition in the Agreement is vague and could be misinterpreted, and (ii) a reference to terms "as used in the Agreement"could be read to require that the U.S. legislation be construed in whatever way the GATT panels may interpret the Agreement over the years.

Since subsidies are by definition unfair practices, the adoption of an injury requirement by the U.S. would represent a major concession, departing from existing U.S. law. Any injury test should therefore not be defined in a manner which would present roadblocks to obtaining relief against unfair practices. Rather, the threshold to relief should be low. the use of terms such as "material" and "significant," as contained in some proposals, could be interpreted to impose a high threshold, and the definition should be redrafted to avoid such terms. Any injury formulation should be drafted so as to make plain that the subsidized imports need not be the principal cause, or a substantial cause, of an industry's injury, nor should the injury from subsidized imports be weighted against other factors which may be contributing to injure an industry.

The legislation should expressly provide that even a small impact from imports will be deemed sufficient to trigger a countervailing duty if an industry is already in economic difficulties. This is critical if the U.S. is to retain a diversified industrial base rather than being reduced to those industries whcih are healthy enough to survive in the face of unfair trade practices.

A Sec. 201 or 203 finding should be regarded as prima facie evidence of injury.

The legislation should also expressly provide that the various factors listed as relevant to the question of injury are not all-inclusive. and that all other relevant economic factors may be considered. (The code itself says as much.)

If Title V of the Trade Act is not repealed, a new arrangement should be developed to end the inequitable situation in which a product receives both a subsidy and GSP benefits and yet no countervailing duty may be applied unless an injury test is met.

Finally, and perhaps most important, any injury test should include a recognition that the nature of a subsidy and its probable effects are to be considered in determining injury. In particular, injury should be presumed in the case of an export subsidy, including disguised export subsidies.

3. Definition of "industry"

(a) "Like or directly competitive." Experience affecting industries such as footwear, consumer electronics, garments, and steel products has proved that it is critical that the effect of subsidies both "upstream" and "downstream" be considered and remedied.

(b) Regional industry. The reference in the proposed legislation to a region that constitutes "an isolated market from other regions of the United States" is unnecessarily narrow, as well as unrealistic. The concept of a regional industry may appropriately be applied whenever producers of the domestic industry for a class or kind of merchandise are located in a particular geographic area and primarily serve the market in that area, and imports have been concentrated in that area, even though a major part of the U.S. industry is not injured.

4. Amount of duty

Countervailing duties should be in the full amount of the subsidy.

5. Status of unions in countervailing duty proceedings

We strongly support the right of unions to file CVD complaints. It is imperative that interested unions should have all the procedural rights that are accorded to other groups, such as importers, exporters, and other U.S. producers. Thus, the legislation should either (i) provide that affected unions shall be deemed "parties to the complaint" and "parties to the investigation," or (ii) provide a mechanism by which unions may obtain that status upon request at any stage in a proceeding.

6. Discontinuance or termination of a proceeding

(a) Termination. A proposal states that an investigation "will be terminated without imposition of provisional measures or countervailing duties if the Secretary determines that the net amount of the subsidy has been eliminated." Any provision of this nature is fraught with danger, and this formulation goes much too far. For

example, if a subsidy has resulted in injury which would make a retroactive duty appropriate, that duty should surely be assessed regardless of whether the subsidy has subsequently been eliminated. In addition, a system under which an investigation would be terminated whenever a subsidy had been eliminated would induce foreign governments to grant subsidies, then eliminate them temporarily once an investigation was initiated, only to reinstitute them (perhaps in a new guise) after the investigation had been terminated. To avoid this, whenever a subsidy has been maintained, a finding to that effect should be made, and if it is determined that the subsidy has since been eliminated, provisions should be made for imposing a countervailing duty on an expedited basis in the event that the subsidy is reinstituted.

Finally, the Secretary's determination [2] to terminate an investigation on the ground that the subsidy has been eliminated should be subject to appeal.

(b) Discontinuance. The proposal that an investigation may be discontinued on the basis of undertakings with respect to price or volume which are thought to eliminate "the injurious effect of the subsidy" is even more objectionable. In addition to the problems just discussed with respect to "terminations," this proposal would nullify the principle that duties are to be in an amount which will remove the full subsidy, not just the injury. The proposal would open a gaping loophole in the CVD provisions. Discontinuance should be permitted only with the approval of the affected domestic interests.

7. Basis for initiating an investigation

A complaint need only provide a "reasonable indication" of subsidy and injury, on the basis of evidence that is "reasonably available to a complainant," is appropriate and important. The same standard should govern the initiation of an investigation by the government on its own motion (see item 11).

8. Reconsideration of CVD orders

On the one hand, there obviously must be a mechanism by which the amount of a countervailing duty may be modified as the amount of the subsidy changes—although to the extent possible, the terms of the CVD order itself should be drafted with a view to that matter, and should provide for automatic adjustments in the amount of the duty in certain circumstances. On the other hand, however, the mechanism for modification of orders should not provide a route by which elimination or reduction of duties may be obtained without the full procedural protections which apply to the initial CVD order. And any substantial modification of an order should be subject to judicial review. At most, an investigation should be undertaken only if the Secretary has received persuasive evidence that the industry is no longer subjected to injury, threat of injury, or retardation. Moreover, an investigation "should not be undertaken until at least 18 months following the publication of the last injury determination." And the legislative history should emphasize that because subsidies are unfair practices, U.S. policy is that once a subsidy has been shown to have caused injury as defined in U.S. law, the U.S. objective is elimination of the subsidy, not just the injury.

9. Judicial review

Final determinations may be appealed. This should be corrected, and the provisions should make clear that in the case of an affirmative final determination, an affected union or domestic producer who believes that the amount of the duty is too low will have standing to appeal.

Any negative determination, discontinuance, or termination of an investigation should be subject to judicial review. (See item 6(a).)

Any matter which may be appealed by other affected interests should likewise be appealable by unions. (See item 5.)

10. Reporting of foreign subsidy practices

Provisions requiring the government to obtain and disseminate information regarding foreign subsidy practices should be included in the legislation, not just the regulations, and the details of the provisions should be made available as soon as possible.

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[2] All reference in these comments to actions of the Secretary of Treasury, the International Trade Commission, STR and other agencies, reflect the roles of these agencies, and do not indicate any position on the part of the AFL–CIO as to which agency or agencies should be responsible for enforcing the various provisions of the U.S. trade laws.

11. Investigations self-initiated by the Government

The legislation should require, not just permit, an investigation to be initiated by the government on its own motion when appropriate information is obtained.

12. Foreclosing suits in U.S. courts against U.S. practices

The bill should provide generally that no rights or obligations created by the code or by the implementing legislation may be enforced except as provided in the legislation. In addition, there should be a provision which unambiguously forecloses suits in U.S. courts (federal, state or local) based on any claim that a U.S. practice violates the Subsidies Code or the implementing legislation. It should also be provided that government procurement of an article which is claimed to have received a U.S. subsidy may not be challenged on that basis.

13. Application of CVD to less developed countries

The AFL-CIO would like clarification as to whether the countervailing duty provisions would apply to imports from less developed countries in the same manner as they apply to export subsidies of developed nations. For example, would countervailing duties be assessed against subsidies of a less developed country which has not violated its "phase-out" commitments under Article 14 of the code? The AFL-CIO's view is that a subsidy should be the subject of a countervailing duty regardless of whether a developed country or a less developed country is the source of the product.

14. "Best available evidence" and reliability of data

The legislation should clearly permit the use of best available evidence if, for example, a party provides information which is found to be unreliable. Moreover, the legislation should provide that the Secretary and the Commission should verify the reliability of information received before the information is given weight.

15. Definition of "imported"

The terms "area of production" and "imports through other countries" should be clarified.

16. Transition rule

To require injury investigations of all outstanding countervailing duty orders, as proposed by STR, would result in great instability and uncertainity, and would place an excessive burden on the Commission. Those orders are valid, and should not be placed in limbo. Injury investigations should be commenced with respect to outstanding orders only if the Secretary receives positive evidence that no injury, threat of injury, or retardation of a domestic industry exists.

17. Retroactive duties and provisional measures

The circumstances in which retroactive duties may be assessed need definition. In addition, such duties may be assessed with respect to unappraised imports, and there should be a provision for withholding of appraisal. Provisional measures should not entail merely the posting of a bond. Instead, the full estimated duty should be collected and placed in escrow. This would remove an incentive for delay on the part of importers and foreign manufacturers.

18. Assessment process

There should be a time limit on liquidation of merchandise imported under a CVD order, with improved rights on the part of domestic interests to be informed of decisions made in the assessment process and to comment on or challenge such decisions.

ANTIDUMPING

Antidumping code

Dumping is an unfair trade practice in U.S. and international law. It means predatory pricing by selling in a foreign market at less than home market prices and injuring industry. The U.S. has had an antidumping statute since 1921. Many U.S. industries have been injured. Congressional hearings on efforts to improve the

antidumping statute and procedures have been held during the past two years. Several specific bills are before the Congress to improve procedures.

A code on antidumping was rejected by Congress in 1968. At the insistence of the European Community, the provisions of that code have been modified and the U.S. has agreed to change the code. The agreement may become part of the MTN implementing legislation.

Recommendations

Requirement for action to investigate whenever reasonable indication of dumping is reported or discovered by the government. (See number 1 in the attached legal section.)

Faster procedures—including provisional measures on dumping duties. (See number 2.)

Ending authority to stop investigation or dumping findings without petitioner's consent. (See number 3.)

Reform assessment process for establishing and collecting dumping duties. (See number 4.)

Right of domestic interests—including unions—to information. (See number 4.)

Right of domestic interests to appeal. (See number 4.)

Time limits on the final collection of dumping duties. (See number 4.)

Verification of data must be required. (See number 5.)

Codify definition of "injury" and revise definition of "industry" to assure upstream and downstream effect. (See numbers 6 and 7.)

Special provisions for non-market economies. (See number 8.)

Questions

How will antidumping code and new legislation under it assure that the Treasury will enforce the antidumping law?

Why was this issue left until the last part of the negotiations?

Why did the Europeans want this code to be adopted now?

Detailed legal analysis of antidumping

There is widespread agreement that the U.S. Antidumping Act, as presently written and applied, has proved inadequate to stem the wave of illegal dumping which has decimated many American industries. Recent Congressional hearings and proposed legislation attest to the need for improvements in the Act, in areas such as the following:

1. Adopting a requirement that a dumping investigation shall be initiated whenever the government receives—either on its own or from any interested party (including a union)—information which gives a reasonable indication that dumping is taking place or has taken place.

2. Faster procedures, including timely withholding of appraisement and effective provisional measures.

3. Elimination of the authority to discontinue an investigation without the consent of the petitioner, and appropriate restrictions on revocations of dumping findings.

4. A complete reformation of the assessment and collection process, which has proved to be the weakest link in the statutory scheme. These changes should include:

Prompt collection of estimated special dumping duties at the same time that regular duties are paid (rather than the present practice of accepting an inexpensive bond, which merely provides an incentive for delaying the process).

Precise limitations on the permissible types of adjustments and allowances which may be made in the margin of dumping at the assessment stage.

A right of access on the part of affected domestic interests, including unions, to the data and analysis upon which the amount of the actual assessed duty is based, together with a right to participate at the administrative level in the assessment process and to take part in administrative protests.

Provisions granting domestic interests the same rights to appeal assessments as are accorded to importers. (Under § 516 of the Tariff Act as presently written, although importers may appeal assessments on an entry-by-entry basis, U.S. manufacturers may only appeal test cases and may obtain only prospective relief—while unions have no appeal rights at all.)

Time limits on the final collection of dumping duties.

5. A requirement that all data relied upon must be verified, and that the best available data shall be utilized as the basis of decision if a party fails to provide data in a timely, reliable, and verifiable fashion.

6. Codification of the definition of "injury" contained in the Senate Finance Committee's report accompanying the Trade Act of 1974.

7. Revision of the definition of "industry," replacing the phrase "like or directly competitive" with terms which will insure that the upstream and downstream effects of dumped products are considered and remedied.

8. Adoption of realistic and objective statutory rules for computing the margin of dumping where state-controlled economies are involved.

The Administration proposals include a few positive steps, such as certain limited improvements in the speed of proceedings, verification requirements, and other matters, but for the most part the proposals either fail to address the critical points listed above, or suggest changes which are unsatisfactory and, in many instances, actually adverse to domestic interests. In particular:

While the proposals shorten some of the procedural time limits in the statute, they cut back on the statutory authority to impose retroactive duties and retroactive withholding of appraisement. Thus, despite the speedier proceedings, actual relief would amount to less and would be less timely than the present U.S. law permits. In addition, the provisional relief authorized by the proposals consists of no more than a requirement of posting bond.

The proposals permit the government to self-initiate a dumping investigation; but they should require such action in appropriate cases.

Far from reducing the government's discretion to discontinue and terminate cases, the proposals would greatly expand that authority. Cases would be subject to discontinuance whenever assurances were received which were deemed sufficient by the government to overcome the injury to the domestic industry. Thus the actual margin of dumping would not be assessed; even taking so-called "assurances" at face value, only a portion of the margin (the "injurious" portion) would be eliminated.[3] Since the entire margin of dumping represents an unfair practice, there is no justification for not requiring the elimination of the full margin.

Similarly, the proposals set overly lenient criteria for revocation of a dumping finding. The proposals appear to call for a revocation if a foreign supplier merely stays out of the U.S. market for 2 years, without requiring the supplier to demonstrate his willingness and ability to sell at fair value in the U.S. And the proposals call for injury findings to be reconsidered upon receipt of evidence of any "change in the condition" of the affected U.S. industry.

The proposals with respect to the assessment process are unclear and do not appear to remedy the extremely serious deficiencies noted above.

Instead of adhering to the definition of injury enunciated in the 1974 Senate Finance Committee report, the proposals would adopt the less satisfactory code definition.

The proposals do nothing to correct the problems which have resulted from the application of the "like or directly competitive" test.

The proposals do not address the question of state-controlled economies.

There should be no requirement for posting bonds to enforce rights.

The proposals adopt a concept of "regional industry" which is unduly restrictive and is worse than existing ITC interpretations.

Under the proposals, the concept of "fair value" would be replaced by definitions of "foreign market value" and "U.S. Price." Since the definitions are not provided, comment is not possible. This proposal obviously could change our Antidumping Act in a fundamental way, and full details of the proposal should be provided immediately.

Since many of the antidumping proposals track the countervailing duty proposals, the AFL–CIO's comments regarding the latter should also be considered, where applicable, in the context of the antidumping proposals.

CUSTOMS VALUATION

This code establishes new international standards for valuing imports at Customs because complex valuation systems can restrict trade. Foreign nations asked for a code, because they objected to the American Selling Price (ASP)[4] method of valuation. But the U.S. system was found to be less troublesome than that of other nations.

The U.S. gives up ASP and converts the ASP valuation to "equivalent tariffs." Some of those tariffs will be cut. The code sets up five (5) permissible ways to value

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[3] For further comments on the subject of discontinuances and terminations, see the section on Subsidies, pp. 5–6.

[4] Like the countervailing duty, ASP predates GATT and was grandfathered in. ASP allows the U.S. to apply tariffs on the American Selling Price rather than on the foreign export value in such products as benzenoid chemicals and rubber footwear.

imports: (1) Transaction value (the price paid for the goods), if Customs decides in a related-party transaction that the reported price (Ford of U.S. exporting to Ford of Canada) is not correct, it may use one of the other four alternatives; (2) value of "identical" goods; (3) value of similar goods; (4) "deductive" value—i.e. Customs establishes price; (5) computed value—cost of production.

The code establishes an international committee to give out advisory rulings on valuation. It sets up panels to handle disputes mechanisms. This code will be administered in the GATT at the political level and at the International Customs Council at the technical level.

Less developed countries have three to five years to sign after the code starts in 1981. Those who sign will get technical assistance. The code allows for lower valuation of some imports under preferential tariffs from less developed countries.

Recommendations: CIF basis

The U.S. should adopt the CIF (cost, insurance, freight) basis of valuation, as the most realistic basis and the one which most nations have adopted. The U.S. now values imports on the f.o.b. export value at the foreign port as the basis for tariffs. Most nations use the landed value (c.i.f.) for tariffs.

Right of appeals

Right of appeals for importers and exporters are established throughout the code. There are no rights of appeal for other people who want action under other provisions of law. Section 516 of the Tariff Act of 1930, which permits an American "manufacturer, producer or wholesaler" to appeal a Custom determination should be amended to extend the same right to interested unions. U.S. producers and workers should be able to appeal under the code.

Revision of tariff rates subject to ASP

The Congress should seek documentation of the assertion that tariff rates for TSUS items currently subject to American Selling Price valuation are being adjusted to provide "substantially equivalent" protection.

Relationship between or among codes

U.S. laws relate customs valuation (i.e. price) to dumping and subsidies, etc. The code may not be used to attack dumping. The law should indicate the connection. Otherwise, many suits may be needed to process a claim.

Precedent of U.S. laws

An international group should not prevail over U.S. Customs law, but the code apparently puts an international GATT council in charge. Under the code, the U.S. effectively agrees to take no action until GATT rules on disputes.

Related-party transactions

Implementing legislation should require Customs to closely scrutinize related-party transactions before accepting transaction value as the customs value. The burden of proof should be on the parties to the transaction, and Customs should be required to obtain specified types of information before accepting transaction value in a related-party case. Where the buyer and seller are related, market value should be the test value.

Customs should be required to obtain the information needed to identify the relationships between parties to a transaction and producer.

Nonmarket economies

Valuation of goods from nonmarket economies has often been unsatisfactory under existing practices. This should be clarified, and the legislation should be specific on this point.

Less developed countries

No special and differential treatment for less developed countries is justified. Customs value should be true value, especially since less developed countries are given special tariff concessions under GSP.

Questions

Antidumping, countervailing duties, subsidies, etc., relate to Customs valuation of imports. If valuation is a matter of international disputes settlement, how can anyone know what the amount of dumping duties or subsidies will be? What are the mechanisms for enforcing this code? How do they work for U.S. exporters? How will other affected U.S. interests get needed information? What will be the effect of the changes in valuation on U.S. statistical information on imports?

IMPORT LICENSING

Most countries have import licensing systems. The U.S. does not.

The proposed code covers only the procedures for administration of import licensing rather than the existence or extent of licenses.

If the U.S. implements a code that says nothing against licensing, the implementing legislation should provide the U.S. with the benefits that a licensing system can give in monitoring trade.

The proposed legislation should:

1. Direct the President to establish licensing systems to cover different kinds of trade problems. Executive Orders should be limited to what is included in specific statutory language. The U.S. licensing systems should be designed to (*a*) aid in monitoring all imports; (*b*) to provide added information related to producers' national origin to the extent possible; (*c*) to report the name of the actual producer of product abroad so that we would know if product is made by U.S. producer; (*d*) to make information publicly available under "Freedom of Information Act" without exemptions; (*e*) provide information on both quantity and value: (*f*) assure licensing for national security.

2. Clarify the relationship between the licensing code and the customs valuation code so that the legislation does not conflict.

3. Deny licenses for imports on the basis of violation of U.S. labor standards laws with specific prohibition of goods produced by child labor, prison labor or forced labor.

4. Assure that licenses provide fair access to the U.S. market when imported products are restricted for sale in the U.S. No auction system should be authorized because it would not assure fair access. (Otherwise, for example, a large sugar importer could bid highest to import sugar if it were under quotas. This would add to costs and prevent competition at home.) Auctioning of licenses is, therefore, not appropriate.

5. Make special licensing provisions for nonmarket economy imports.

In addition to the specific legislative proposals stated above, there are vexing questions concerning licensing.

Question

What recourse will the U.S. have if another country violates the code? What action to enforce U.S. rights has been suggested by the Administration? How will it be carried out and by whom?

TECHNICAL BARRIERS TO TRADE (STANDARDS)

This code is designed to encourage trade by setting up a system to review trade barriers that are caused by the use of product standards and certification systems. All products are covered by the code—including industrial and agricultural standards. The code promotes the use of international standards instead of national standards. The code provides a forum for exerting pressure to end standards that restrict trade. There are exceptions for health, national security, etc., but these are challengeable in terms of their effect on trade. National standards can be judged by an international panel. Their continuation and improvement could be subject to international approval related to trade. Trade, not standards, becomes the paramount concern of the code.

The code applies to packaging, marking or labeling requirements.

Certification systems must not be obstacles to trade. Certification systems should accept markings of certification from abroad.

All local and state bodies shall arrange certification and testing systems so as not to exclude foreign-country producers.

Developed countries agree to give technical assistance and more favorable treatment to developing countries.

Developing countries need not develop international standards.

A Committee on Technical Barriers to Trade will settle disputes on this agreement and recommend action for violation. A five-year review is provided for the code and a yearly review of the implementation and operation of the code. The panel will not be able to force changes in foreign barriers now affecting U.S. exports. But, once Congress enacts legislation to implement the code, U.S. standards will be subject to the international agreement.

The code provides for special help to developing countries in the form of helping them develop standards and helping them to establish testing procedures in foreign countries. Testing methods and certification systems are extremely important because the code provides that foreign testing and foreign certification should be

acceptable in the U.S. Fraud will be a problem; that is, a country will certify a product meets U.S. testing standards when in fact it does not. This is a vital section for consumers, workers, etc., because the health and safety reservation in the code refers only to the product that is traded, not the way it is made and is subject to challenge as a barrier to trade.

Recommendations

This code may be used to weaken the current industrial standards of the U.S. and prevent improvement of them. Since that is not the stated objective of the code, some means of assuring U.S standards should be achieved regardless of trade impact.

The code should not be able to supersede federal or state regulations.

The U.S. government should be able to take unilateral action to improve or impose its standards.

The test of violation of the code should be the adoption of a standard designed to discriminate against imports—not merely the fact that a standard has the effect of interfering with trade. Thus, standards are a valid U.S. objective that should be more important than exporter's or importer's rights.

Legal implications

Because of these very serious questions and concerns about the impact on U.S. laws and practices, the language of the implementing legislation should be very specific:

First, in terms of the Regulatory Process in the U.S.:

Private standards now involve 400 private organizations and 200,000 private standards. There is no estimate of how many U.S. federal, state and local standards there are.

A wholesale revamping of U.S. regulatory efforts is entirely unjustifiable. The purpose of the Standards Code—to discourage discriminatory manipulation of standards—is important. That should be the only objective. Any approach that would put trade considerations into the regulatory process in every area of standard-setting (including for example, OSHA, though many other standards are involved) should be rejected.

Similarly, any requirement that standards "are not to create unnecessary obstacles to the commerce of the United States" could give rise to a host of attacks on legitimate regulations—including industrial regulations, OSHA standards, building codes, etc. Many product standards involved are affected—in which it would be argued that the benefits produced by a particular standard are so small in relation to the adverse trade impact that the standard amounts to an "unnecessary obstacle."

The use of Executive Orders to change legislation concerning "unnecessary obstacles" to trade is unacceptable. Any such Executive Orders would constitute an improper incursion into the regulation process as fashioned by Congress and state and local governments.

Second, in terms of the effect of international panels on U.S. law:

The decisions of international panels should not be considered binding on the U.S. One proposal has been that Justice, upon request of STR following an adverse determination, would be authorized to seek an injunction against the application of a domestic standard. This is unacceptable.

There should be no obligation on U.S. agencies when an international panel finds against the domestic standard. STR should; (1) seek revision through domestic standards bodies—not go to court; (2) STR should present international views but not promulgate them; (3) unless no legitimate reason for a standard is found, the international decision should not prevail.

There should be no language in the statute to make STR consider trade as a goal of U.S. standards.

Legislation should expressly state that the enforcement mechanism discussed above is exclusive. No general language is acceptable.

AFL—CIO is particularly concerned that adverse determinations of international panels under the code might be given weight by American courts in suits brought against domestic standards under the commerce clause of the Constitution. The result could be that an adverse international determination would in effect prove fatal to a domestic standard. That would obviously be undesirable. We therefore believe that the implementing legislation should state as the sense of Congress that no determination by an international panel is entitled to any weight under U.S. law (except as a factor to be considered by the federal government in deciding whether to propose a revision of a standard) and in particular, that no international finding adverse to a domestic standard should be given weight by an American court in

determining whether the standard constitutes an impermissible burden on commerce.

Finally, there is evidence that not only certain domestic standards, but also certain U.S. laws, could be subject to challenge by virtue of the implementation of the Standards Code. These laws would involve those that specifically require a Federal agency to discriminate against imported products such as impure foods, drugs or toxic substances. The Congress must be told what laws are affected. Consumer protection, industrial product standards, and other laws are involved. Many Congressional committees may be affected.

Provisions to deter fraud should be included in any foreign certification provisions.

Questions

Do the union labels count as technical barriers to trade? How does the committee which supervises the code determine what standards have the "effect" of interfering with trade? Does the U.S. think trade or standards should be paramount? Where does the code say that it does not apply to state and local building codes? What U.S. laws are affected?

GOVERNMENT PROCUREMENT

This code changes international rules to make government purchases that "discriminate against" foreign bidders (such as U.S. "Buy American" laws and practices) a violation of GATT as interpreted by this code. Most countries have no laws or published practices for their "Buy National" policies. Their governments buy from their own domestic producers (often government-owned) to the extent they can. It is difficult to see how the U.S. can get equal rights in this code. (This is traditionally a taxpayer—not a trade—issue.)

This code will commit the United States to give special rights to bid on American government contracts to developing countries by guaranteeing special technical help to developing countries who seek bids.

An international panel will decide on the disputes under this code.

Contracts (including service contracts incidental to providing a product) of approximately $190,000 or more are covered.

Rules of origin

Code advantages should go only to suppliers from countries which sign the agreement. But the code says no rule of origin different from normal trade rules can be established. To enforce the code, an effective rule for origin must be established. Local content or value added should be used.

Recommendations

U.S. laws should be generally strengthened, not weakened, to allow for domestic preferences. New prohibitions against U.S. contracts for non-signatories, plus new prohibitions for non-covered agencies or entities are needed. (Non-signatory countries should be barred by U.S. law from bidding on U.S. contracts.)

Less developed countries should have no special rights to use U.S. taxpayers' dollars for U.S. procurement.

Strategic military items and agencies should be exempt.

Clear rules of origin should be included so that code signatories will be source of imports under government procurement.

Enforcement should be certain and practicable within U.S. law.

Services should be exempt. The current language apparently encourages foreign bidding (i.e. if a service contract for a bid for a product is involved, it will be up for international bidding if the service is a small fraction of the cost of the project).

State and local "Buy American" laws and practices should be specifically excluded.

Provision for future strengthening of U.S. "Buy American" law should be included.

Questions

Should there be automatic termination after three years? (Retaliation—immediately withdrawn for violators?) Defense procurement is included. How will national security items be made clearly exempt?

A panel of the Committee on Government Procurement of the GATT will determine disputes. What will guide the panel on the U.S. "Buy American" laws? Or rules of origin?

The code applies only to signatories, but how can this be enforced? What parts of the code apply to signatories? The Panel of the GATT Committee determines

whether any country can suspend in whole and in part the application to any party or parties. How does this fit in with U.S. "Buy American" laws (a) now on the books?, (b) now in process because members of Congress will seek them?

Technical specifications for government contracts may not be set that "have the effect of creating unnecessary obstacles to international trade." Who determines this? We do not have the metric system. This is a barrier to trade. Who is to determine whether it is "necessary?"

How does this interact with the standards code?

There shall be no requirement in government contracts about a trademark or name or patent, design or type unless no other way of expressing the issue "or equivalent" can be made. That is easily enforced in the U.S. How can it be enforced for Hungary? for France? for Malaysia?

AIRCRAFT

The Trade Act of 1974 requires the negotiators to negotiate by sectors as much as possible. Only steel has been the subject of the beginning of sector bargaining until the last few months, and only in the OECD. In recent months, an aircraft code to reduce all trade barriers for civil aircraft has been concluded as a sector negotiation.

The agreement affects all aircraft, engines and parts, with a specific agreed list for tariff purposes.

The standards code is incorporated in this code. The code also refers to government support, costs of military research, etc. The code applies to states.

Signatories agreed not to use "unreasonable" pressure to buy aircraft and parts—i.e. to favor their own companies or to require technology transfer (co-production).

Recommendation

More detailed analysis should be provided to Congress on this code which affects many industries and jobs.

Questions

If the U.S. seeks to establish an "open market for trade in a broad range of aircraft products," will the other countries stop having "national aerospace industries of their own?" Government-owned or managed aircraft industries? If not, how can the market be open?

Codes on subsidies, government procurement, and standards exist. Why is this "industry" a special exception? Why do all other codes not apply to aircraft? How will this relationship to other codes be determined?

What about less developed countries? Do they get "special rights?" What about countries which do not sign?

What industries and locations will be affected? Aircraft includes thousands of parts and hundreds of product lines—textiles, plastics, electrical equipment, seating, etc.

PROPOSED AMENDMENT ON TRADE WITH NONMARKET ECONOMIES

The General Agreement on Tariffs and Trade has many signatories which are non-market economies. This is difficult to explain and understand since the GATT is based on market principles, but the result is that political pricing, dumping, etc., can literally wipe out U.S. production without a fair examination of the problem for domestic producers.

Title IV of the Trade Act makes it clear that trade with non-market economies should be worked out on a bilateral basis with the ability to regulate that trade whenever market disruption occurs.

Despite efforts by the Congress in the Trade Act of 1974, both in Title IV and in the dumping section, to make sure that U.S. production is not adversely affected by these essential differences between the U.S. and other non-market countries, the law has not worked. Foreign policy considerations usually prevail and imports are encouraged from the non-market economies, regardless of impact in the U.S.

Recommendations

Section 405 of the Trade Act of 1974 and Section 406 should be amended to assure that emergency action and market disruption action be related to the additional effect of imports on impacted domestic industry—both upstream and downstream.

The International Trade Commission has neither monitord nor reported adequately on non-market economies' trade. This should be changed so that special monitoring of imports from non-market economies can be used to show the impact on U.S. jobs and industries.

Section 205 of the antidumping act as amended in Section 321 of the Trade Act of 1974 should be enforced. (This has been avoided by Treasury regulations in dumping cases to help imports from non-market countries.) A new provision to emphasize special direction to the Treasury Department or the appropriate statutory agency to prevent dumping from non-market economies should be enacted. The current Treasury regulations should be overturned.

Questions

What does the Administration plan to do to take care of possible very sharp influxes of products from non-market countries? China, for example, may be getting developing country status.

Why should imports from these countries be included in Sec. 201 actions for "fair" competition?

SPECIAL AND DIFFERENTIAL TREATMENT FOR LESS DEVELOPED COUNTRIES

In 1973, the "developed" countries agreed to give "special and differential treatment" to the "less developed countries." Since then, however, the oil embargo, rapid industrialization and technology transfer have changed world trade and world economies. "Developed" and "developing" countries have shifted—in wealth and power.

The United States grants "special and differential" treatment for less developed countries already in the sense that the U.S. market is open whether or not the other countries allow U.S. exports to enter their markets freely.

There are almost 100 countries now in the GATT negotiations. But only 84 are signatories of the GATT. Some members are Communist countries. Some are "less developed countries." Some are both. Regardless of politics—state-planned and controlled economies do not practice or believe in the "free trade" or market principles of GATT.

If any other nation joins the GATT, it will grandfather in its existing "protectionist" and "nationalist" policies. Many "less developed" countries have high tariffs, license all imports, require production in their country of products, such as cars, before they can be sold in their country, require export of a certain amount of production and subsidize their exports. They also get preferential tariffs under Title V of the Trade Act of 1974. This is a one-way street for the U.S.

Recommendations

The GATT was urged to "graduate" countries when they get developed. There has been no agreement.

AFL-CIO supports repeal of Title V of the Trade Act—which grants zero tariffs on thousands of products imported from less developed countries, because it is obsolete. At least, there should be a provision for realistic "graduation" of countries and products.

An amendment to Section 301 of the Trade Act of 1974. This tells the President to withdraw concessions whenever any country maintains unjustifiable trade barriers. The amendment should say that failure to sign a code creates a presumption of maintaining such unfair barriers.

Questions

Most of the codes have provisions for "special and differential treatment for less developed countries." They differ from code to code. These are really special rights to penetrate an already battered U.S. market. Most of the explanations of the codes have said these are soft obligations and if countries don't sign, the U.S. won't grant the benefits. But legislation has not made this concept clear.

How can these seemingly contradictory concepts—"most won't sign" and "nonsigners won't get the benefits"—have a satisfactory explanation? How can this be enforced—denial of benefits to countries not reciprocating? Why should rapidly industrializing countries continue to get special and differential treatment?

ENFORCEMENT OF U.S. RIGHTS

The relationship between this area and the framework provisions has not been adequately explored.

Recommendations

First and foremost, it must be stated unambiguously that no U.S. law, policy, or practice may be altered by an international panel, but only by the legislature responsible for the matter. If this point is not made clear, the MTN could result in a wholesale transfer of authority from American legislative bodies to international panels, and to whatever agency serves as the representative of the U.S. before those

panels. We strenuously oppose any such result, and we are quite sure that the Congress, not to mention state and local governments, would not countenance it.

This problem applies to every code, and is particularly acute with respect to subsidies and standards. Countless laws, policies and practices of the federal government, and of state and local governments as well, could potentially be the subject of complaints under those codes. These laws, policies and practices involve the judgment of American legislative bodies concerning an enormous range of matters: economic development and full employment, social policy (including minority rights), health and safety, and innumerable other proper subjects of legislative action. It would be unthinkable to place all these matters in jeopardy by permitting American legislative decisions to be altered by the action of federal agencies or of international bodies, without express consideration and approval on the part of the legislative body involved.

Consequently, it is absolutely critical that the legislation deny any such power to federal agencies and to international panels. In addition, detailed proposals as to how American interests will be represented against foreign complaints in the international dispute settlement process must be drawn up and presented for comment. Among other things, any such proposals should provide a meaningful role for advisors from labor and other sectors, and should ensure that the U.S. parties affected by an international proceeding will have a meaningful voice in the proceeding.

We are also concerned with how potential U.S. complaints against foreign practices will be handled. There must be an effective means by which U.S. parties can ensure that STR will vigorously prosecute American complaints in the international dispute resolution process.

U.S. rights under the codes will have little meaning unless adequate information is obtained regarding foreign practices. For example, full information concerning foreign subsidies must be obtained and disseminated to interested U.S. companies and unions. Similarly, an effective mechanism for monitoring and surveillance of foreign customs valuation practices must be established. Other codes present similar problems. These cannot be resolved by general language about U.S. rights; rather, a program for obtaining and disseminating information concerning violations of the codes by foreign governments and for handling U.S. complaints must be devised on a code-by-code basis.

MTN IMPLEMENTATION-FRAMEWORK/GATT REFORM

The importance of the provisions for the "Framework" or "GATT Reform" have not been finally spelled out. The legal effect is still unclear. The proposals on framework would require actions contrary to the provisions of the Trade Act of 1974 on the Balance of Payments. They would authorize "developing countries" to continue to maintain quotas. They would require delay in action to protect American industry that was being unfairly impacted;. They would criticize arrangements such as the Orderly Marketing Agreements for color TVs, specialty steel and shoes, where foreign exports are curbed. A great many statutes would be affected and administrative changes would be required if the framework provisions are endorsed.

Recommendations

This is a GATT policy document. Many of these policies have already been contradicted by U.S. law and by proposed language to implement the code. Such inconsistencies should be corrected before an implementing package is made final.

Question

What is the legal effect of this agreement—in the U.S. and in other countries?

PRIVATE SECTOR ADVISORY COMMITTEES

These committees have proved useful and should be improved.

The post-MTN advisory structure should reflect not only the "trade policy interests" but the private sector interests of U.S. domestic constituents. The domestic interests of the U.S. must be reflected in trade advisory groups. Labor should have separate committees.

Legislation should not be so permissive that clear-cut directions are not available. Otherwise, the Administration can avoid getting clear and useful advice from groups who may not agree with potential decisions on policy. The democratic process requires involvement of those who seek changes in, rather than adherence to, U.S. policies.

Section 135 of the Trade Act of 1974 should not broaden the mandate of advisory committees to merely include "support of implementation of trade agreements and other trade policy activities." This language is too vague.

The revision of existing authority to permit advisory committees should not allow so much flexibility and should be geared to effective representation of labor as well as other groups.

Reports to advisory committees by government should be required—not the other way around.

Advisory committees right to supply reports is necessary. A mandate to private countries to provide reports is not advisable.

We need to know what "new committees are envisaged."

The operation of the Advisory Committee should get much more substantive information rather than information on process of negotiations.

List the exemptions from the provisions of the Federal Advisory Committee Act that are contemplated.

SERVICES

Multilateral trade negotiations cannot provide adequate treatment of issues related to services. The definition of services is so variable that negotiations on a wide scale are not appropriate. Only bilateral efforts are appropriate.

U.S. trade law provides relief for injured U.S. service industries and jobs in Section 301 of the Trade Act of 1974.

Recommendations

The Trade Act of 1974 should be amended as follows to protect service jobs and industries:

1. Title II should provide for adjustment assistance for merchant seamen and other service employees.

2. Section 201(a) of the Antidumping Act, 1921, as amended, should be amended by adding after the word "merchandise" the words "or service."

3. All subsequent sections of the Antidumping Act, 1921, containing the word "merchandise" shall be amended in the same manner.

4. Section 406 of the Trade Act of 1974 is amended as follows:

(a) Subsection (a)(1) is amended by in inserting after the word "country" the words "or service provided by a Communist country." Subsection (a)(1) is further amended by adding after the word "industry" the words "or a service provided by a domestic industry."

(b) Subsection (a)(3) is amended by inserting after the words "produced by" and before the words "domestic industry" the words "or a service provided by." Subsection (a)(3) is further amended by adding after the word "article" the words "or service."

(c) Subsection (b)(1) is amended by adding after the word "article" the words "or service."

(d) Subsection (c) is amended by adding after the words "Communist country" the words "or a service provided by a Communist Country." Subsection (c) is further amended by adding after the word "article" the words "or service."

(e) Subsection (d)(2) is amended by adding after the words "product of," the words "or service which is provided by."

(f) Subsection (d)(2) is amended by adding after the words "such article" the words "or service,." Subsection (d)(2) is further amended by adding after the words "produced by" the words "or provided by."

(g) Subsection (d)(2) is amended by adding after the word "article" and before the word "like" the words "or a service." Subsection (e)(2) is further amended by adding after the words "produced by" the words "or service provided by."

NONTARIFF MEASURES NOT DEALT WITH MULTILATERALLY

Like many of the issues, this title is confusing. The U.S. has bargained with other nations to remove certain U.S. laws or provisions that other nations object to in the overall negotiations and many of them involve tariff changes. The information about what was given in return for these negotiations is not available to labor. Many of the changes can cost many jobs:

1. *Wine-gallon.*—The U.S. taxation of imports of distilled spirits (liquor) and some cordials has been at 100 proof regardless of the actual proof of the imported liquors. In the overall negotiations, the U.S. has agreed to change U.S. tax and trade regulations to provide for the assessment of taxes on all imported distilled spirits in direct relation to the proof of the spirits. This can lead to the closure of certain glass bottling and distillery operations, because the advantage of distilling and bottling in the U.S. has been removed.

2. *Duty on aircraft and aircraft repairs.*—This provision may be included as part of the aircraft code, because the code refers to removing all duties on repairs. The

provision would remove the tariff of 50% now charged on the cost of aircraft equipment purchased or repairs made abroad for U.S. registered aircraft. This can affect both production and service jobs in aircraft and many unions will be affected.

3. *Standards of identity for pineapple.*—This provision will probably not be in the implementing legislation because the U.S. government has already helped the Malaysian pineapple interests in preparing a petition to amend Food and Drug Administration regulations. This is a matter of concern, because it appears that standards will be questioned by U.S. government personnel—possibly for multinational interests abroad.

4. *Foreign-built inflatable rubber rafts and hovercraft.*—This Provision involves extensive changes in many U.S. trade and navigation laws to permit importation of foreign-built hovercraft. New U.S. technology is being developed in this industry. It is believed that this provision will be dropped.

5. *U.S. watch-marking requirements.*—This provision would remove the requirement for identifying marking on the face of the watch and make other tariff changes for imported watches. The loss of U.S. jobs and production in watches has continued and the Soviet Union is now selling watches with a Swiss label in the U.S.

6. *Recurring duties on railway rolling stock and per diem charges for railroads.*—This would establish a new tariff item for railway rolling stocks to make it possible for Canadian Cars to avoid tariffs on such cars and to change the ICC regulation established March 21, 1977 to eliminate the current requirement that certain moneys paid by U.S. railway users be used only for the purchase of U.S.-built railcars.

7. *Agricultural and horticultural implements, parts and accessories.*—This would change the tariff classifications to grant zero tariffs on parts of farm equipment and accessories. The accessories include products not necessarily identified as "farm equipment parts"—i.e. anything that goes with a farm implement. Factories that produce parts for farm equipment and accessories for farm equipment will be affected in various parts of the country. Their chances of getting relief if impacted by imports will be hampered because the statistics on imports will be changed and identification of imports over a period of time will be difficult.

8. *Watch nomenclature.*—This would change the tariff descriptions about watches for communist and non-communist countries.

9. *Conforming column 2 changes for AVE rate conversions.*—The tariffs on all items which have "specific duties" (i.e. cents per pound or per unit, such as 5 cent per pair of shoes or one cent per pound of metal) will be changed to "ad valorem equivalents"—i.e. a percentage tariff or 10 percent for shoes under $10). This affects many items, particularly steel products and chemicals. Some may have been cut more than 50 percent. The provision would allow the tariff rates for imports from the countries which do not now receive most-favored-nation treatment (Communist countries) to be conformed with the rates for other countries. The schedule can affect many items.

10. *End-use classification for agricultural machinery and parts.*—This would authorize new tariff provisions and the lowering of tariffs to zero for farm equipment and parts. Most parts are subject to tariff. End-use classifications instead of descriptive classifications based on what the product actually is (rather than what it is used for) will create a difficulty in establishing the historical patterns of imports of parts for farm equipment. This will be convenient for multinational firms which want to import parts from other countries. It will be more difficult to prove injury from imports.

11. *Broom-corn price breaks.*—The provision would allow price levels used in the quotas applicable to corn for use in brooms to be adjusted. This change was promised to Hungary as part of the bilateral agreement negotiated between the U.S. and Hungary.

In general, the labor advisers have opposed all the above items, because they can cost both U.S. jobs and production by encouraging imports—often in a way that will make identification of injury more difficult. The trade-off for these items has never been made clear. The final provisions to be established for these items or the final decisions in negotiations as to whether they were included have also not been made clear. They deserve detailed attention by the Congress before any changes in law are made.

COMMERCIAL COUNTERFEITING

The U.S. is seeking an international agreement that would protect against trademark and trade name piracy by allowing requirements for forfeiture of the pirated merchandise. But the code is supposed to make sure that such forfeiture is not a

"non-tariff barrier to legitimate trade." The U.S. seeks international discipline (meaning an international committee to decide the rules), but the code includes a flat statement that the law of the nation prevails in terms of detaining or seizing merchandise.

Thus, Pierre Cardin will be protected and so will Levi Strauss of Levis whether or not they make the goods in China or in Hungary or in New York.

U.S. labor and export industry could be injured in many ways, especially since the code sanctions forfeiture for piracy of labels or trade marks. The law of the country which requires forfeiture prevails. Therefore what appears to be a valid name in the U.S. could be considered a counterfeit abroad.

This code is completely "protectionist" if violation is found because goods are completely barred or forfeited. No other code allows such interference with trade for any other reasons. There are no special rights for "developing countries."

International Committee which supervises the code appears to be merely one for reporting and consultation.

Recommendations

Since marking and labeling of country of origin and standards are as important to U.S. industry and labor as piracy, they should be given equivalent treatment with piracy in any statute.

SAFEGUARDS

Article XIX of the GATT and Section 201 of the Trade Act of 1974 provide that industries which are threatened with serious injury may get import relief. Most countries merely adopt trade restrictions without regard to Article XIX. The U.S. wanted a code so that everyone would comply. A code on these "safeguards" has not been completed. But the U.S. law (Sec. 201) of the Trade Act is the source of action on the few industries that have received any relief since 1974 (such as color TV, specialty steel, CB receivers, fasteners and footwear). The U.S. should seek to improve its own law.

Recommendations

1. Relief should be available both on an emergency basis and on a selective basis. The Administration calls emergency relief "fast track." A provision for "emergency" relief should be more specific. The threat of injury should be enough of a test. "Selective" means that imports flooding in from any given country can be stemmed by granting the right to impose temporary relief on imports from that country temporarily while relief against imports from all other countries is being considered.

2. The rule of law in GATT and in Section 201 that relief is available when there is a threat of injury is usually ignored, as we have found in specialty steel, color TVs, shoes, etc. An industry has to be almost totally destroyed before action is taken, if then. The statute should make clear that a threat of injury is important. This can be done with slight additions to Section 201.

3. U.S. industries have been lost because of the interpretation of the words "like or directly competitive" in the test of injury statute. Imports must be the cause of injury to an industry which makes a "like or directly competitive" product. For example, imports of parts of TV sets must displace parts producers in the U.S. or no injury can be found from imports of parts. Also, if TV sets are imported, then injury can be found only by comparing imports of sets with production of sets. The fact that TV sets are made up of parts is ignored. The interpretation of "like or directly competitive" has been so limited by this that the U.S. loses (a) the parts of the industry, (b) the sets producers, and (c) eventually both. This can happen in aircraft, steel products, or any other industry. This strict interpretation prevents the development of high technology and new technology because the industry has been exported. Therefore, the test of "like or directly competitive" should be changed to reflect the need or development of a healthy industry in the U.S.—both upstream and downstream—in the production process.

4. A proposed recommendation should indicate Congressional intent that the health of domestic industries should be promoted rather than the current language in Section 201, which promotes an "orderly adjustment" to foreign competition.

5. No requirement that imports from any one country be the only cause of injury should be allowed. For example, if the U.S. has imports from 10 countries and the 11th country is added and injury occurs, there should be a right to relief.

6. No review of existing cases should be agreed upon. The U.S. needs more effective safeguard action.

7. Failure of other countries to use GATT Article XIX methods for safeguard actions should be prima facie evidence for Section 301 action by U.S. (unjustifiable barriers to trade).

8. Imports from non-market economies cannot be viewed as "fair"competition and therefore such trade should be especially monitored and regulated along with "safeguard actions."

GLOSSARY OF TERMS

ASP—*American Selling Price:* Valuation of imports that is based on the U.S. market price rather than the foreign value.

c.i.f.—*Cost, insurance, and freight:* The landed value of imports (including shipping costs, insurance and freight) is used by most nations as basis for tariffs. U.S. uses value at foreign port (f.o.b.) as the basic value for assessing tariffs.

CVD—*Countervailing duty:* A charge to offset subsidies on imports.

DISC—*Domestic International Sales Corporation:* A U.S. tax provision that allows U.S. firms to set up a corporation (Domestic International Sales Corporation) for exports. As long as the profits for the exports stay in the DISC, they get a special tax break.

GATT—*General Agreement on Tariffs and Trade:* An agreement signed in Geneva in 1947 to set world trade rules. Since 1947, 84 countries have signed the agreement. When a nation signs, its existing trade laws are grandfathered into the agreement. The purpose of GATT is to promote free trade. Most-favored-nation treatment (giving all countries the benefit of the lowest barrier negotiated with any one nation) has been a basic principle. GATT was never adopted by Congress, but U.S. has negotiated under GATT since 1947 and has applied its rules with Congressional consent.

GSP—*Generalized System of Preferences:* Title V of Trade Act of 1974 provides for "preferences"—that is, zero tariffs under some circumstances on imports from countries designated as "developing" countries. Over 2700 items from over 100 countries and territories have already received such treatment.

ITC—*International Trade Commission:* The Tariff Commission, renamed in the Trade Act of 1974, now judges injury and other impacts of imports.

MTN—*Multilateral trade negotiations:* A phrase for the current international agreements reached in Geneva, Brussels, Tokyo and other cities over the past several years for a wholesale change in world trade rules. One hundred (100) countries participated in negotiations. Some participants in the MTN are not members of the GATT.

OECD—*Organization for Economic Cooperation and Development:* A group of 24 countries, based in Paris, which was established in 1961 to help members promote economic growth, to promote the world economy and to improve the lot of the developing countries, particularly the poorest. The members are mostly industrialized countries.

STR—*Special Trade Representative:* Office established by Congress in 1962 to coordinate trade negotiations. The Special Trade Representative, Robert Strauss, holds the rank of Ambassador and reports directly to the President.

Mr. VANIK. Thank you very much.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I appreciate the fine testimony and I have no questions.

Mr. VANIK. Mr. Guarini.

Mr. GUARINI. No questions.

Mr. VANIK. Mr. Schulze.

Mr. SCHULZE. Thank you, Dr. Oswald. I think your testimony along with the accompanying material you present is probably the most comprehensive we have received and a lot of work has gone into it and it is very much appreciated.

Dr. Oswald, I have been trying to determine the economic impact of MTN as we know it now on the Northeast and have had a very difficult time getting good sound figures. Have your people done any research on this or can you add anything to my request.

Mr. OSWALD. Mr. Schulze. I am sure you are aware of the report that was made by the Congressional Budget Office. I think it is

very difficult to give that question a complete answer at this time. Part of it will depend upon the tariff cuts which still are not finished in the negotiations. Part of it will depend upon precisely the language that the Congress puts into the implementing legislation because that language again can have a tremendous impact in terms of what those codes will mean in terms of domestic U.S. industries.

As a result we have not been able to give a global, or necessarily even a specific, impact statement for a particular industry. We cannot say this particular industry, on balance, will get this much and this other industry will get that much. We can point out, too, a number of specific problems. Part of our detail tries to address that in terms of what we are still looking at in terms of the overall implementing language and how you can write to mitigate some of those problems.

I think that is very important, to make sure that that language does not exacerbate the problems but rather mitigate them.

Mr. SCHULZE. In your research if you do come up with any figures that are indicative of the problems in specific regions or industries it would be most helpful to those of us who are trying to strengthen this implementing legislation, as you recommend, to have some of those figures. So if you do come up with something I for one would appreciate very much having them.

Mr. OSWALD. We have specific problems with certain parts, for example, with Government Procurement Code. There we are attempting to change that code recently in terms of its impact for minorities and small business but there was no change for high unemployment areas. That remains a problem for many industries.

There are discussions by the special trade representative where numbers are used of $10 billion of U.S. procurement as being open and we will receive $20 billion from other countries. We have tried to get detailed information about what specific products and elements are being opened up and have serious problems.

For example in Department of Defense there are exclusions for certain areas that are described as strategic but it allows procurement of transportation vehicles except for buses.

To me, that reads that foreign countries then could bid on trucks. Trucks are made in a number of locations. Trucks, at least in my understanding of discussions with Defense Department people, were always considered to be a strategic item. Yet the codes seems to imply that the trucks are on the list of things that could be bid on by foreign governments.

I give those examples because of the problems of the details of those codes. I am afraid that unless the implementing legislation takes care of some of those problems we will have all sorts of things that will not be able to be handled by the courts or by the agencies afterward. The specific intent of Congress must be made known in how that implementing legislation is written.

Mr. SCHULZE. With your presentation you have gone a long way toward assistance in that. I thank you.

Mr. VANIK. I am going to point out I am carefully going over your testimony. I think we hope to be responsive to what you wanted on safeguards. We are going to look at the procurement codes and see how we can handle that issue.

On the definition of injury I think we are not far apart, and I don't see any problem, for example, in the right of labor unions to have full equality with producers and so forth under the subsidies and countervailing code.

We are going to try to see how much we can do to accommodate the implementing legislation to what you have recommended. I feel that you are very deeply involved.

You are a principal and we are going to try to address ourselves to these matters. We will be working on that next week, and as you know you will have an opportunity to follow closely what we are doing and I want you to let us know very, very quickly if these recommendations you make are not substantially considered, because we expect to do that very carefully.

Mr. OSWALD. We thank you very much.

Mr. VANIK. Thank you very much, Dr. Oswald. You have made very useful contributions here that I think are very important.

Mr. GUARINI. As a gut reaction, even though you have no specifics. As to your sense of economics, to follow through with the question Mr. Schulze asked, is it your educated guess that the Northeast is going to be hit the most in semiskilled—as I see in the report—areas as far as unemployment is concerned and are the central cities the ones that are going to be the whipping boy of the MTN?

Mr. OSWALD. Mr. Guarini, I read the report of the Congressional Budget Office. I thought that it set forth very solid reasons as to why that will take place. I have read the so-called rebuttals to that, and, except for the notion that there may be certain protections in the garment and textile industries, it is clear that there will be severe hardships for a number of industries like the older industries often located in smaller communities and I think heavily imported in that area.

Clearly some of the Northwest has been benefiting recently from large trade orders in aerospace and aircraft. Yet there may be concerns some time in the future as a result of some of the negotiations and the impacts even in that industry. But at this point they are doing very well. I think clearly there will be serious problems in the Midwest and in the Northeast as a result because they are heavily involved in our older manufacturing sectors.

Mr. GUARINI. I assume that labor would be very interested in assistance in the form of reeducation of employees and relocation of the unemployed?

Mr. OSWALD. We are very interested in that but we are also concerned that the United States does not become purely a service industry, that we do maintain a diversified industrial base. We are very concerned that everything does not just allow U.S. industry to use its profits to invest in some offshore base as a means of slipping good into this country so that we become completely dependent on foreign production and foreign sources.

We saw how devastating that was in terms of oil in the last 5 years. We are very concerned that that same sort of devastation does not occur in other industrial sectors.

Mr. GUARINI. Do you think our DISC program encourages this or do you wish not to take a position on this?

Mr. OSWALD. We have had a longstanding position on DISC that relates to its fairness. On that basis we have opposed DISC as a means of being an unfair tax arrangement under which those corporations paid a smaller share of their tax for their export oriented operations.

Mr. VANIK. Thank you very much. We very much appreciate your testimony.

Are the machinists groups ready for testimony? Could we come back at 2 o'clock and try to get a wider involvement of members of our committee?

If there is no objection, the committee will stand in recess until 2 o'clock at which time we will conclude the testimony for the day.

[Whereupon, at 12:50 p.m., the hearing was recessed, to reconvene at 2 p.m.]

AFTERNOON SESSION

Mr. VANIK. The subcommittee will be in order.

The next witness is the witness of the International Association of Machinists & Aerospace Workers. Is Mr. Winpisinger here?

Mr. POULIN. No, but I am here.

Mr. VANIK. Well, you tell him the only reason I came here today was to see him.

Mr. POULIN. That is the only reason I am here, to tell you why he is not here. [Laughter.]

Mr. VANIK. All right. We will be pleased to have your testimony. You may proceed. Your entire statement will be admitted in the record as submitted or you may comment on it in any way you see fit, whichever you prefer.

STATEMENT OF GEORGE POULIN, RESIDENT VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, ON BEHALF OF WILLIAM W. WINPISINGER, PRESIDENT, ACCOMPANIED BY HELEN KRAMER, ASSISTANT TO DIRECTOR OF INTERNATIONAL AFFAIRS, AND JERRY THOMPSON, LEGISLATIVE DIRECTOR

Mr. POULIN. My name is George Poulin, the resident vice president of the International Association of Machinists & Aerospace Workers.

Mr. Winpisinger wanted me to convey to you and to all the members of your committee that he is sorry he can't be here and that he had another late assignment out of town which came up late last night and he wanted me to expressly tell you that.

Mr. VANIK. I hope he manages to get United Airlines flying again, because I have been walking home and it takes a little while.

Mr. POULIN. That has been on his agenda. I think a matter before your committee probably shares more of his time right now than even that strike but he is working on that one also. That is just one of his part-time jobs that he works on, as you know.

As you said, Mr. Chairman, the testimony before you in writing will be admitted into the record and I won't try to read what is in the testimony However, I would like to make a couple of remarks. My remarks will be extremely brief.

I do have with me today Dr. Kramer, who is our specialist on the foreign trade bill and our legislative director Jerry Thompson is with me here today.

I will give it to you really in layman's terms, Mr. Chairman. To say that the machinists and aerospace workers are extremely concerned about the bill before this committee, the trade bill and trade negotiations, would be really an understatement of great magnitude because many of our members have suffered and continue to suffer under the Trade Act the way it is now and will certainly be affected no matter what comes out of what is enacted into law.

Therefore, 2 years ago, 2½ years ago, under the guidance of our international president we commissioned and brought onboard some real specialists and technicians in this field just to see if we could not relieve some of the sufferings of our members as to trade assistance and trade adjustment. I might add that your bill in that area has our support. We view that as a necessary first step to beginning to relieve our members of some of the problems we have when we are hit with loss of plant because of imports or exports.

In addition to bringing onboard several technicians we have made a major study in the electronics field. Zenith, for instance, is one that was recently studied. We commissioned and made a film concerning the plights and the hardship of losing work overseas to the Asian countries or wherever the work goes in the television industry which is zero in this country right now. We lost the last of our membership in Zenith not too long ago. We decided to do a half hour film on that.

Mr. VANIK. Haven't you picked up some of that loss with the Japanese? We have got some Japanese companies that are producing in America.

Dr. KRAMER. Yes, Mr. Vanik. The Japanese have been buying out bankrupt American producers. It seems to me that their main motivation is to avoid the effects of any quotas that might be imposed as under the orderly marketing agreement and it is my understanding that for the most part these plants are merely assembling parts manufactured in Japan so that American workers are reduced to being assemblers and cabinetmakers rather than having the manufacture itself where most of the value added and employment is generated.

Mr. VANIK. None of those plants are total producers then, are they? They are just taking component parts in from abroad from Japan?

Dr. KRAMER. That is my understanding, although I heard that one of the Japanese companies is going to expand its operation; however, I have not seen any definitive report on that.

Mr. VANIK. I thought they were going here for semiconductors and some other things.

Dr. KRAMER. Well, they are certainly trying to break into the market in semiconductors and I know that the U.S. semiconductor industry has been very concerned about this particularly since the Japanese Ministry for International Trade and Industry has targeted semiconductors and computers as the industries into which they desire the Japanese to make progress in the 1980's with the support of government subsidies.

Mr. VANIK. We will have the semiconductor industry tomorrow, but in this shift of management, do your people lose out or do you pick up some of the membership?

Mr. POULIN. Mr. Chairman, it is a mixed bag to date. It is my understanding that we even come down and lost out in almost every case, and I will cite one quick example of that. It happened to be in an industry where we have a large membership and that is the airframe industry. The Mitsubishi Corp. set up a plant in this country in Texas and we have attempted to organize it on several occasions. One of the problems we have is that while they recognize unions and they deal with them in Japan, here they employ all the antiunion tactics to keep the unions out. That is the case with Mitsubishi and that has been the case with most of the Japanese.

So my answer to your question would be invariably we lose out almost 100 percent. That has been our fallout.

Let me conclude my remarks with just a couple of more minutes of your time, Mr. Chairman, and turn it over to question and answer.

The film we made is called "We Didn't Want It To Happen This Way." It will be shown on cable TV this weekend for the first time. It is not just a PR piece for the machinists, it is a PR piece for the whole country and the Congress, if you will—the plight that happens when a whole community is affected by a plant of this size shutting down. I think it dramatizes that if nothing else, and really there is no alternative. There is no solid relief for the IAM members or anybody else that might be organized or not.

I think your amendments in your bill go a little way toward addressing that problem, so we are doing the same thing. You are trying to relieve some of the problems we have, and we are trying to highlight those problems to give our support for your bill in that area. Our members are becoming sophisticated in this area, but they are becoming sophisticated through the school of hard knocks, if you will, Mr. Chairman, because they actually experience that they have to go out and retrain themselves on whatever subsistence they might get on unemployment compensation. Really the employer to date has not accepted any responsibility that he owes any more, if you will, to that employee that may have worked 20 or 30 or 40 years for him. He is satisfied to say that his contribution and his share of the payroll tax for that State unemployment agency or whatever it might be that comes back in the way of additional assistance through the Federal unemployment programs, is enough and will take care of the job.

I think the person who chaired the meeting earlier on this morning addressed himself to one of the manufacturers on that question. I didn't really hear a satisfactory answer except that, you know, all of us have to face up to those situations, it is just a fact of life. I just happen to think that not only employers but the trade union movement, you in your job as chairman of this committee and the Congress, the Senate, and the White House have more responsibility to address themselves to these problems in a more realistic fashion, like they do in some of the European countries. I would think that maybe that is what we ought to come down to and I very much support your position on at least reducing some of

the problem we have with the additional money you are pouring into trade adjustment assistance.

[The prepared statement follows:]

STATEMENT OF WILLIAM W. WINPISINGER, PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS

Mr. Chairman, members of the Committee, my name is William W. Winpisinger. I am President of the International Association of Machinists and Aerospace Workers (IAM), representing almost a million members.

We are grateful to the Ways and Means Committee for giving us this opportunity to comment on the Tokyo Round trade agreements and the domestic implementing legislation. Our members regard international trade relationships as one of the most serious problems afflicting American workers today.

The I.A.M. represents workers in about 300 manufacturing and nonmanufacturing industries. Seventy-seven percent of our members work in aerospace, electrical machinery, fabricated metal products and non-electrical machinery. The balance of our membership is employed in the air transport, automotive repair and railroad industries, in repair and maintenance work for retail, wholesale and other service establishments, and in local, state and federal government.

Thus, the interests of our membership coincide with the interests of the United States economy as a whole, with the exception of the agricultural sector. It is from this perspective that we have been arguing for some years in public forums that U.S. international trade policies based on the assumptions of free trade cannot protect our national interests in a world dominated by mercantilist trade policies, where international flows of capital and technology can alter comparative advantages practically overnight.

We have called for fair trade policies that would achieve genuine reciprocity with our trading partners. As experienced negotiators, we have argued that the United States should not offer open market access to countries that erect barriers to our exports, for otherwise there is no incentive for those countries to remove their barriers. The same principle applies to the problem of export subsidies granted by less developed countries as a means to penetrate our markets. Our trade policies must combine a carrot and stick approach to induce these countries to accept rules of fair competition. Furthermore, we have argued that U.S. policy must take into account the fact that extensive public ownership and government subsidization of industry in other developed market economies have substantial effects on the ability of U.S. industry to compete both domestically and in world markets. Our comments on the trade agreements and domestic legislation are offered in this framework. We shall not attempt to comment on every aspect of the agreements.

I. SUBSIDIES/COUNTERVAILING DUTIES

Several provisions of the Subsidies Code represent improvements over the existing GATT articles. In particular, we welcome the recognition that subsidies given to an industry to achieve broad economic and social objectives may have incidental trade impacts injurious to the interests of another country. The Code recognizes that such domestic subsidies may give an industry competitive advantages in export markets, causing or threatening injury to another signatory's industry in the latter's home market. Further, such subsidies may impede the exports of another signatory's industry, either to third markets or to the home market of the subsidized industry.

While these provisions offer U.S. producers a potential remedy against unfair competition, they represent only a permissive framework. Their effectiveness will depend on the availability of information about foreign subsidy practices, and on domestic enforcement of U.S. interests.

For these reasons, we recommend that Congress require the Office of the Special Trade Representative (STR) to compile, and make available to the public, information on foreign subsidy programs, and that all federal departments and agencies be required to forward to STR any information they acquire on such programs. The legislation should require the government to initiate an investigation on its own motion when information is obtained on the existence of a subsidy.

Second, we recommend that Congress limit administrative discretion in discontinuing investigations on the basis of assurances by a foreign government.

The implementing legislation should distinguish between direct or disguised export subsidies and domestic subsidies. For export subsidies, the Treasury Department should be permitted to suspend investigations only if the foreign government agrees to eliminate the subsidy completely within six months, or to eliminate entirely exports of the subsidized goods to the U.S.

For domestic subsidies, we support allowing suspension of an investigation subject to the right of the petitioner, concerned labor union or trade association to appeal the decision.

To guard against violations of undertakings, it is essential to implement Article 4.6 of the Subsidies Code. This authorizes, in cases of violation of undertakings, the immediate application of provisional measures using the best information available. If the final determination finds that a subsidy has caused injury to domestic industry, it should be mandatory to levy retroactive countervailing duties on imports entered during the 90 days before the application of provisional measures. Retroactive assessment should not apply to imports entered before the violation of the undertaking.

To prevent an exporting country from flooding the U.S. market with a subsidized article while negotiations on assurances are taking place, provisional duties should be assessed as soon as preliminary findings of the existence of a subsidy and of injury to domestic industry have been made. For non-signatory countries, no injury test should be applied as a condition of assessing provisional duties.

The law should state that the Secretary of the Treasury shall order the withholding of appraisal as soon as a preliminary finding has been made of the existence of a subsidy.

One of the objectives of the legislation should be to create strong incentives for less developed countries to adhere to the Subsidies Code. Accordingly, the legislation should specify that no injury test will be applied in subsidy cases involving non-signatory countries, for both dutiable and non-dutiable merchandise, including articles granted duty-free treatment under the Generalized System of Preferences (Title V of the Trade Act). For signatory countries, the law should make clear that, upon a finding of injury to a domestic industry, countervailing duty should be assessed on a subsidized article imported under G.S.P.

With respect to the definition of injury, we support the concept applied under the Anti-dumping Law since January 3, 1975. That is, the injury should be "not immaterial and not insignificant." A finding under Section 201 or Section 203 of the Trade Act should be regarded as prima facie evidence of injury.

We strongly support the right of labor unions to have full equality with importers, exporters and U.S. producers in all procedures under the subsidies/countervailing duty law. Labor unions should have the right to file complaints, and notice of a decision to initiate an investigation should be sent to unions which have an interest.

The legislation should either provide that affected labor unions should be deemed parties to the complaint and parties to the investigation, or provide a mechanism by which unions may obtain that status upon request at any stage in a proceeding.

Domestic interests should have improved rights to be informed of decisions made in the assessment process, and to comment on or challenge such decisions. There should be a time limit on liquidation of merchandise imported under a countervailing duty order. Congress should take this opportunity to do everything possible to avoid the kind of administrative breakdown that occurred in the Treasury Department's handling of the color television dumping case.

Under the administration' proposal, several critical stages in the countervailing duty procedures are not stated to be subject to appeal.

Final determinations should be subject to judicial review, and in the case of an affirmative final decision, an affected labor union or domestic producer that believes the amount of the duty is too low should have standing to appeal.

Any negative determination, discontinuance or termination should be subject to judicial review.

To foreclose suits in U.S. courts against U.S. practices, the legislation should provide that no rights or obligations created by the Subsidies code (or any other code) or by the implementing legislation may be enforced except as provided by the legislation.

In addition, there should be a provision that unambiguously forcloses suits in U.S. federal, state or local courts based on any claim that a U.S. practice violates the Subsidies Code or the implementing legislation. The law should also state that government procurement of an article which is alleged to have received a U.S. subsidy may not be challenged on that basis.

II. GOVERNMENT PROCUREMENT

According to STR, the objective of the government procurement code is to create a more open system that will enable Americian producers to compete for sales to foreign governments on a non-discriminatory basis. Realization of the full potential inherent in the agreement will depend in our view on the strength of the domestic implementing legislation. This should aim at both creating strong incentives for

other governments to broaden the scope of their procurement offers, and at providing facilities to assist U.S. firms interested in bidding on foreign government contracts. Suitable provisions should be included on means of enforcing U.S. rights under the agreement, including retaliation against violators in the event that GATT procedures for consultation and dispute settlement fail to resolve a problem.

Congress is being asked to grant continuing negotiating authority, in the hope that current signatories will agree to expand the agreement's coverage, and that additional countries will adhere to the code.

We strongly believe that continuation of existing "Buy American" preferences on non-covered procurements, as proposed by the administration, offers insufficient inducement to current signatories to expand entity coverage, and in particular to open up their telecommunications procurement to American bidders.

We urge Congress to require agencies not included in the U.S. list of covered entities to refuse to accept bids from all foreign suppliers, unless the item is unavailable domestically. The procuring agency should be required to certify the domestic unavailability of the item, citing the evidence for this determination.

All federal agencies should be required to refuse bids from non-signatory major industrial countries, as defined in Section 126(d) of the Trade Act. Further, all federal agencies should be required to refuse bids from all non-market economy countries. For other non-signatory countries, we agree with the administration's proposal to grant the President authority to waive this prohibition:

(a) For countries that apply the code de facto, or agree to phase it in on an acceptable schedule;

(b) For countries that enter into a bilateral agreement with the U.S. provi[illegible] for reciprocal treatment in government procurement; and

(c) For least developed countries, as defined by the United Nations (per capita GNP of less than $250 in 1976 prices).

However, we strongly object to the administration's proposal to extend this waiver authority to agency heads on a case-by-case basis. This isn't a loophole—it's an open-sesame, and the end result will be that the larger and richer developing countries will lack sufficient incentives to adhere to the code.

Because of the conditional most-favored-nation principle inherent in this code, adoption of an adequate rule of origin is crucial to prevent non-signatories from gaining undue advantages. The administration proposal to adopt the current U.S. "substantial transformation" rule would make a farce out of enforcement of this code. This loose rule leaves it to the discretion of the U.S. Customs Service to determine whether an article imported for use by a federal agency contains sufficient value added in the exporting signatory country. It is quite conceivable that the Customs Service would certify an article although 75 percent of its value orginates in one or more non-signatory countries.

We urge the Congress to provide that at least 50 percent of a product's value must originate in a particular signatory country in order to be considered as a product of that country. In this regard, the European Community must not be treated as a whole, since E.C. members have not offered identical lists for covered procurements.

For imports, the U.S. Customs Service should be required to verify the origin of a product. For U.S. suppliers, the procuring agency should be required to verify that at least 50 percent of the product's value is of domestic origin. For contracts granted to U.S. firms under various preference schemes, however, Congress should require that the domestic content be at least 75 percent. This provision would apply primarily to small and minority-owned businesses. Its objective is to maximize the domestic employment opportunities generated by government procurement, without being unduly restrictive.

An appropriate office of the U.S. Government should be designated to receive complaints from firms, trade associations, labor unions or groups of workers concerning alleged violations of the rule of origin and other unfair trade practices in violation of domestic laws and the Agreement on Government Procurement.

III. AMENDMENTS TO DOMESTIC SAGEGUARD (IMPORT RELIEF) PROCEDURES

International agreement has still not been reached on improving the implementation of GATT Article XIX, Emergency Action on Imports of Particular Products. The administration intends to present to Congress its legislative proposals in this area in the Fall. The I.A.M. has long been dissatisfied with domestic import relief procedures. Import relief, when granted at all, has been neither timely nor adequate in most cases. We would be derelict in our duty to protect the interests of our members if we were to support the multilateral trade agreements in the absence of adequate protections against severe market disruptions caused by increased imports. For this reason, our support will definitely not be forthcoming if the domestic

implementing legislation does not include in the original package satisfactory amendments to Title II, Chapter 1 of the Trade Act.

1. Amend Sec. 201 to provide a fast track procedure.

2. Substitute for the present Section 202(c)(1) the following language: "information and advice from the Secretary of Labor on the estimated number of jobs that would be lost in the next five years in the impacted industry, as well as the indirect job losses in supplier firms, if import relief is denied, and the impact on communities in which the industry is located; as well as the adequacy of adjustment assistance under Chapter 2 as a substitute for import relief, and the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance;

3. Substitute for the present Section 202(c)(2) the following language: "information and advice from the Secretary of Commerce on the industry's ability to benefit from adjustment assistance in the absence of import relief, as well as on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under Chapters 2 and 4, and the probable effects on the industry in the next five years if import relief is denied."

4. Amend Section 202(c)(3) to add to the criteria the President should take into account "the national interest in an adequate production base for the article in question."

5. Amend Section 202(c)(4) to add the following at the end of the existing clause: "taking into account the effects of import relief on capacity utilization and the attendant effects on production costs and sales prices."

IV. SPECIAL AND DIFFERENTIAL TREATMENT OF LESS DEVELOPED COUNTRIES

Point 1 of the GATT Framework Agreement concerns special and more favorable treatment of developing countries.

In the best traditions of the labor movement, the I.A.M. believes strongly in the principle of the international solidarity of labor. Just as we have fought domestically for legislation to achieve social justice for disadvantaged groups in the United States, we have supported legislation to aid the poor and needy in the rest of the world. To help workers in the Third World to improve their conditions of work and to raise their living standards, the I.A.M. conducts overseas trade union education programs for metalworkers in Asia and transport workers in Africa. Moreover, through our participation in the International Metalworkers' Federation and the International Transport Workers' Federation, we give assistance to Third World unions in their struggles with multinational corporations and repressive governments. We support U.S. aid programs aimed at meeting basic human needs, and the transfer of appropriate technology to promote rural development, improved health care, sanitation, nutrition, housing and education, and to help indigenous enterprises to provide more employment opportunities and raise the productivity of labor.

Because we sympathize with the goal of improving the living standards of the world's poor, we support forms of special and differential treatment that will help to achieve that objective.

We have been critical, however, of the absence both in the trade agreements and domestic programs of any criteria for defining a less developed country. At some stage, an LDC must "graduate" into a more developed status.

Point 1(7) of the Framework Agreement contains a vaguely worded graduation principle, which states: "Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement of their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement."

The billion dollar question is which, if any, of the so-called less developed countries participating in the trade negotiations are going to sign the agreement.

We regard it as absolutely essential for the implementing legislation to include criteria for granting special and differential treatment to less developed countries, and criteria for graduating countries from LDC status. As part of this domestic implementation, Title V of the Trade Act should be amended to provide for review and Congressional oversight of the Generalized System of Preferences. G.S.P. is a form of special and differential treatment granted unilaterally by the United States without requiring reciprocal concessions, in accordance with a pledge made by the major developed countries in the Tokyo Declaration of 1973.

Statistical analysis of the distribution of G.S.P. benefits among beneficiary countries shows that the program is not working to achieve the objective of helping the poorest countries to diversify their exports to the United States. Five countries that

already had substantial export-oriented manufacturing sectors at the start of the G.S.P program account for 68.1 percent of all G.S.P. duty-free imports in 1977. These leading suppliers are, in descending order, Taiwan, Republic of Korea, Hong Kong, Mexico and Brazil. In 1977 they exported $5.06 billion worth of goods eligible for G.S.P. to the United States. However, the value of goods actually entering duty-free amounted to $2.64 billion. Some of these goods lost duty-free entry because of the competitive need limit. Actually, because of an error by the U.S. Department of Commerce in calculating the annual competitive need limit, more imports have been allowed in duty-free than called for by Section 504(c) of the Trade Act. For 1977, the limit set was $33.4 million, when it should have been $29.9 million. The error is being announced in the Federal Register, January 12, 1979, is $37.5 million, whereas it should be $33.4 million. The error lies in using the wrong year's value of U.S. G.S.P. in the formula.

Each year, some of the leading beneficiary countries lose their eligibility for duty-free entry of certain products because of the competitive need limit. Although because of the newness of the G.S.P. program we do not have statistics for many years, the data suggest that the poorer countries gain in market share when the major suppliers lose their duty-free privilege.

The absence of criteria for beneficiary status and the granting of duty-free treatment to advanced developing countries with major export-oriented manufacturing sectors have created serious problems for American labor unions struggling to protect workers in import-sensitive industries. Unions with small and overworked research staffs have had to go through time-consuming procedures before an interagency committee to argue against petitions to add more products to the list of eligible articles, or to defend petitions for removal of times. In many cases we have discovered that the governments petitioning to add new items are fronting for multinational corporations, sometimes U.S.-based and sometimes Japanese-owned. These deficiencies and the absence of any review to show whether the development of poor countriews and the welfare of their people is being advanced have generated considerable bitterness in the American trade union movement about this program. There is a general impression that the program is a ripoff on behalf of multinational companies, and that American jobs have been lost as a result.

We, therefore, urge the Congress to establish criteria for granting special and differential treatment to less developed countries, as provided in the trade agreements, and for determining eligibility for G.S.P. treatment. These criteria might be per capita G.N.P., total value of exports to the United States, balance of trade with the United States, and the share of manufactures in total merchandise exports. No single one of these criteria should be taken as definitive. For G.S.P., an additional criterion should be the total value of G.S.P. duty-free exports to the United States.

Both the World Bank and the U.S. Overseas Private Investment Corporation (OPIC) use a graduation principle of per capita G.N.P. (adjusted for inflation) in their aid programs. The World Bank uses 550 dollars, and OPIC uses 1000 dollars (1975) as the cutoff point. We recommend adoption of the higher OPIC figure, adjusted for inflation and foreign exchange fluctuations.

We recommend the following amendments to Title V:

Section 502(b)

Add to the list of countries that shall not be designated: Taiwan, Republic of Korea, and Hong Kong.

Section 502(c)(2)

Add to the criteria the President shall take into account in designating any country as a beneficiary developing country: "the country's total value of exports to the United States, balance of trade with the United States, and the share of manufactures in its total merchandise exports."

Section 504(c)(2)

Amend as follows: "A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may not be redesignated a beneficiary developing country with respect to such article at any time in the future."

Add Section 504(f)

"Whenever the President determines that any country has exported to the United States in a given calendar year a total quantity of eligible articles having an appraised value in excess of an amount which bears the same ratio to $200,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product

of the United States for calendar year 1979, then, not later than 60 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country for the purposes of this title."

Section 505

Amend as follows: "(b) On or before the date which is 5 years after the date of the enactment of this Act, and by March 1 every year thereafter, the President shall submit to the Congress a full and complete report on the operation of this title. This report shall include for each beneficiary country an analysis of how it meets the criteria specified in Section 502(c)(2) (as amended) and 502(c)(4), and a review of requests for designation and removal of articles from the eligibility list, the recommendations thereon of the Secretaries of Commerce and Labor, and the final action taken. The first report shall in particular address itself to the reasons for designating Mexico, Brazil, Israel, Yugoslavia and Singapore as beneficiary developing countries.

"(c) The appropriate committees of Congress shall recommend whatever legislative action they deem appropriate in light of the President's report."

V. TECHNICAL BARRIERS TO TRADE (STANDARDS CODE)

The purpose of the Standards Code is to discourage discriminatory manipulations of product standards, product testing, and product certification systems for the purpose of erecting barriers against imports. The Code would also encourage the use of open procedures in the adoption of standards, such as those used in the United States under the Administrative Procedures Act, and international standardization.

A reservation is contained in the text to protect domestic health, safety and environmental standards and national security. Nevertheless, the administration's proposal of March 9, 1979 for implementation of the Standards Code would place many legitimate U.S. standards in jeopardy. Congress should draft the implementing legislation to ensure that the Code does not provide an avenue for attacking American standards which, in the judgment of the responsible legislative, administrative, and private regulatory bodies, serve legitimate purposes. Implementing legislation should be limited to achieving the stated purpose of the Code, namely the elimination of "discriminatory manipulations" of standards. In particular:

1. The legislation should not contain provisions admonishing U.S. standard-setting bodies to "take account of the effect of domestic regulations on U.S. foreign trade," or prohibiting the adoption of standards which "create unnecessary obstacles" to trade, or any similar requirements. Such provisions would inevitably prove to be impediments to the regulatory process. Standards would be subject to attack, at both the regulatory and judicial levels, on the grounds that "trade impact" had been inadequately analyzed and considered, or that the benefits attributable to a particular standard were so minimal in relation to its trade impact that the standard should be deemed an "unnecessary obstacle" to trade. As a result, standards adopted for perfectly legitimate domestic purposes, with no intent of manipulating trade, could be struck down by the courts even though the standards were fully consistent with the regulatory criteria set by Congress, state legislatures, and other responsible bodies. To foreclose such results, the implementing legislation should not contain any directives or statements of policy which purport to state how American standard-setting bodies should carry out their responsibilities.

2. Injunctions should not be authorized aginst U.S. standards which a GATT panel has found to violate the Code, even when the administering U.S. agency desires to enforce the panel's decision. Instead, the agency (Special Trade Representative's Office, or whatever agency is given the authority under a reorganization) should be authorized in appropriate cases to present an international decision to the U.S. standard-setting body which issued the standard in question, for consideration by that body. The regulatory body with responsibility for the challenged standard would then be in a position to determine whether a modification of the standard would be warranted in view of the legitimate regulatory purposes governing the issuance of the regulation in question. If a modification were warranted, it could be made by the body which issued the standard, and which would have the fullest knowledge and expertise regarding the standard.

3. Whatever method is adopted for implementing the Standards Code as it affects U.S. standards, the legislation should state explicitly that the means of enforcement provided in the legislation is exclusive. No general language should be included regarding efforts by the federal government to ensure compliance with the obligations of the Code and/or of the implementing legislation, since such language might be construed to authorized a number of inappropriate courses of action, such as the withholding of federal funds from state, local or private standard-setting bodies that are deemed to have violated the Code.

4. The legislation should state that it is the sense of Congress that no determination by an international panel is entitled to weight under U.S. law (except as a factor to be considered by the federal government in deciding whether to propose a revision of a standard under the procedure described in 2. above), and in particular, that no international finding adverse to a domestic standard should be given weight by a "court in determining whether the standard constitutes an impermissible burden on commerce. In the absence of such language, it is likely that U.S. courts will give weight to adverse determinations by international panels in suits brought against domestic standards under the Commerce Clause. The result could be that an adverse international determination would in effect prove fatal to a domestic standard.

5. Finally, we note that the administration's March 9 draft states that not only certain domestic standards, but also "certain U.S. laws" could be subject to challenge by virtue of the implementation of the Standards Code. The draft states that "these laws would most likely include those that specifically require a Federal agency to discriminate against imported products" (p. 9). We would like to be advised of the laws to which these statements refer, and we hope that the Congress will be alert to any attempt to weaken the enforcement of U.S. laws through a backdoor procedure.

VI. ANTIDUMPING CODE

Article 12 of the International Anti-Dumping Code provides for anti-dumping action on behalf of a third country by an importing country, on application of the third country.

Domestic implementation of this provision would give the United States recourse when U.S. export markets are lost as a result of dumping by another country's exporters into markets outside the customs territory of the United States.

So far we have seen no attempt to draft language to implement this provision, and we urge the Congress to do so.

With respect to other recommendations for domestic anti-dumping procedures, we endorse the proposals of the AFL–CIO.

VII. CONGRESSIONAL DIRECTIVES ON GATT REVISION: SECTION 121

Sufficient progress has not been made toward realizing two of the objectives cited in Section 121. These are:

"(4) the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT," and

"(5) revision of GATT articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs."

International Fair Labor Standards

Negotiations on this objective were not pursued during the Nixon and Ford Administrations in spite of the urgings of labor advisers on trade policy, and have been resisted by the Departments of State and Treasury. STR seems to have been lukewarm, at best. Strong support has come from Secretary of Labor Ray Marshall.

In May 1978, Representative Henry Reuss introduced a concurrent resolution requesting the inclusion of environmental and occupational safety and health standards in negotiations on international fair labor standards. Ambassador Robert S. Strauss wrote to Representative Reuss on June 27, 1978 that an Interagency Task Force on Labor Standards and Trade Distortions has been established to carry out the Congressional mandate.

The Nordic countries have suggested the inclusion of fair labor standards in the GATT safeguard provisions, so that an importing country forced to adjust to increased imports could take into account working conditions in the exporting countries. We agree with the Nordic countries' view that the country imposing safeguards should not be required to adjust to imports of goods made under unacceptable working conditions.

At its December 1977 convention, the AFL–CIO adopted a resolution supporting a binding and enforceable code of international fair labor standards.

This effort has the strongest support of the I.A.M. and of international organizations representing the world's free trade unions. It is aimed not at restricting trade with the less developed countries, as is often alleged, but at preventing the most flagrant abuses of working people as a way of achieving competitive advantages in international trade.

It is our understanding that the U.S. interagency task force is investigating the feasibility of four minimum standards for industrial production concerned with

slave or forced labor, child labor, toxic substances in the workplace, and discriminatory labor standards applied in export production or import-substitution industries. We hope that progress in international negotiations will make it possible to include recognition of "the human rights of workers in all lands for free association, for organization and pursuit of democratic collective bargaining, and for withholding of their labor in unacceptable working conditions," as stated in the AFL–CIO resolution.

Border Tax Adjustments

No progress has been made in the negotiations towards eliminating the trade-distorting effects of rebates of excessive value-added taxes on exports and their imposition on imports as part of the base for calculating import duties. We hope that this matter will be vigorously pursued in the forthcoming months, along with reconsideration of the U.S. DISC tax loophole.

On behalf of the members of the I.A.M. and their families, I want to thank the members of the Committee for their attention to our views. Our final judgment on the trade agreements depends on the effectiveness of the implementing legislation Congress decides to adopt.

Mr. VANIK. There is not any area in which your testimony is at variance with the AFL-CIO?

Mr. POULIN. I think it differs in techniques and tactics. If there are some that Dr. Kramer can highlight, I am sure she will.

Mr. VANIK. Do you have any comments you would like to give me, Doctor?

Dr. KRAMER. I think it is more a question of emphasis and specific details than substantive difference with the exception of title V.

Mr. VANIK. Well, I had a couple of questions here.

What effect do you think the elimination of tariffs will have on domestic parts production?

Dr. KRAMER. Are you referring to the civil aviation agreement?

Mr. VANIK. Yes.

Dr. KRAMER. Well, you know, this is one of the areas to which we have not received any satisfactory answer either from the industry or from STR and that is because, as I am sure you are aware, the aerospace industry has been for some years engaged in various kinds of coproduction arrangements and in the most recent period that has had the effect of decreasing the positive influence of aerospace exports on the balance of trade. In fact, in the Commerce Department industrical outlook survey that appeared in January the analyst concluded his discussion of the outlook for the aerospace industry with the following statement and with your permission I will just read it, it is short.

"The U.S. aerospace industry leadership advantage is being eroded through mutual defense hardware production and on the civil side through shared risk manufacturing. These programs involve large technology transfers which negatively affect the trade balance. Civil shared programs, advertised as competitive bidding, generally involve licensed foreign manufacturing of products delivered from abroad. The lower foreign product price is in most cases made possible through government subsidies."

Now that is the main problem and we have no way of anticipating what the policies of the domestic industry will be once this agreement is put into effect.

Mr. VANIK. What effect do you think the elimination of 50 percent on the aircraft repairs will have?

Dr. KRAMER. We emphasized time and again to the Special Trade Representative that we were concerned that the effect of this part of the agreement would be to encourage the shift of maintenance and repair work to overseas bases, in particular to low wage areas. The special trade representative's office responded that this was extremely unlikely but on the other hand several years ago the Air Transport Association tried to get a bill to accomplish this through the Congress. Suspicion arises naturally in the minds of our people that if the industry was seeking this kind of change then they must have had some plans. Of course we have no assurance of what the impact will be. As Vice President Poulin has already pointed out, unlike Western European countries we do not have any kind of broad economic dislocation program in this country to deal with the impact of job loss, whether it is the result of changes in trade or some other cause such as energy problems.

Mr. VANIK. Well, you have heard my remarks that I made earlier. We certainly want to address ourselves to the issues that you have raised, and you will be able to follow carefully our final work on markup, which will take place next week. We hope to finish it next week, so please feel free to let us know about how you react to the changes that we are putting in as we do it, because I am sensitive to the recommendation you have made. I feel that we have got to accommodate these problems in order to develop a political case for getting the MTN through.

I want to say I don't think it is going to be a perfect proposal nor can I expect that our implementation is going to be all that good, that it is going to meet every problem. What we will be reaching for is a substantial recognition of these problems, so I hope you would judge us by the substantial recognition rather than the total accommodation because we just can't accommodate everything in our work. We will try to arrive at something that in the aggregate is going to be acceptable to you and to the Congress.

Thank you very much.

Mr. POULIN. Thank you very much, Mr. Chairman.

Mr. VANIK. Next we will hear Mr. Willis R. Hoard, manager, cling peach advisory board.

Mr. Coelho will introduce Mr. Hoard.

You might say, Mr. Coelho, I am a consumer of peaches.

Mr. COELHO. I have 220 different commodities.

Mr. VANIK. Very good to have you.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Mr. Chairman and my distinguished colleagues on the Trade Subcommittee, I am here this morning to introduce to you Mr. Willis R. Hoard, manager, California Cling Peach Advisory Board. Accompanying Mr. Hoard is Mr. Charles Herrington, a past chairman of the cling peach advisory board for 25 years and chairman of the board's export committee. The board represents all producers and marketers of clingstone peaches in California. Clingstone peaches are processed for use either as peaches or as the principal ingredient in canned fruit cocktail. All U.S. canned clingstone peaches come from the State of California.

There are approximately 1,200 peach growers in California. The peach industry is an important one to my district. I am proud to say that over one-third of clingstone production and acreage come from my district.

Sale of California's cling peaches and fruit cocktail represents about $500 million in sales annually. The California cling peach industry has continued to expand production in order to be able to supply export markets. Exports presently account for approximately $70 million on an annual basis. Consequently, the cling peach industry has closely followed the Tokyo Round of the multilateral trade negotations and has participated wherever appropriate. Mr. Hoard and Mr. Herrington, on behalf of the cling peach advisory board, are here to congratulate Ambassador Strauss on a job well done for American agriculture and to urge adoption of the trade package.

Mr. VANIK. We are certainly happy to hear from you. I might say that your statement, Mr. Hoard, will be entered in the record as submitted and you may read from it or proceed in any way you see fit.

STATEMENT OF WILLIS R. HOARD, MANAGER, CALIFORNIA CLING PEACH ADVISORY BOARD, ACCOMPANIED BY CHARLES HERRINGTON, PAST CHAIRMAN OF THE CLING PEACH ADVISORY BOARD AND CHAIRMAN OF THE BOARD'S EXPORT COMMITTEE

Mr. HOARD. Thank you very much, Mr. Chairman.

We have only a few brief remarks. We appreciate the fact that the statement has been accepted.

As Congressman Coelho has said, we have been very much interested in world trade matters involving our commodities for some time. I should say also that the United States is our biggest market and that includes the great States of Pennsylvania and Ohio. We work hard in marketing domestically, investing $2 or $3 million a year in promotion prior to working overseas.

Our overseas exports for all California specialty crops total $3 billion, and as Tony said, cling preaches account for about $70 million. We work with the Foreign Agricultural Service as a cooperator in market development in ten European countries, in Japan and other Far East areas, including several developing countries, and that is important to us.

We have had quite a little experience with section 301 and have a case that we are not quite sure where it is. We think we have won it but you don't quite know sometimes with the EEC what has happened. We have problems with them as everyone does. They remain a problem to us but we are marketing there. We think that in other areas of the world, we don't know yet for sure, but we expect that we have several benefits coming that will help our cling peach exports as well as canned fruit cocktail, and that is one of the other very great canned fruit products that is exported worldwide.

We are concerned with the nontariff codes, with standards, with subsidies. We want to see rules of the game that will be fair to us as well as to others and that we can live with. Subsidies are an administering problem. A case of cling peaches can be delivered to

a European market in the community, including paying the duty, for about $14 or $15 a case. Yet Italian growers and canners enjoy a subsidy of $21 a case and that is a little hard to compete with.

We are very pleased with the efforts put forth by Ambassador Strauss and his colleagues at STR. We are impressed with the fact that our industries and others have input through the APAC and ATAC committees and that has been helpful to us.

We have been working a long time with world trade matters. In the Kennedy Round something happened. Some people say not much happened for agriculture but for us at least something happened. The quota in Japan, which was restrictive was removed as a result of discussions then, and that laid the groundwork for us to grow in Japan from virtually nothing to now about $25 million worth of our products moved into that country this current year. Next year we expect it to be our biggest single export market.

Those are just a few summaries. We again say we support the bill. We think it is beneficial to agriculture, to the agriculture contribution to the balance of payments and to trade for America.

[The prepared statement follows:]

STATEMENT OF CLING PEACH ADVISORY BOARD

INTRODUCTION

This statement is made on behalf of the Cling Peach Advisory Board, which represents all peach producers and marketers in the State of California. The Board is organized pursuant to statutory requirements of the State of California and engages in market development, promotional, advertising, research, and quality control programs for the members as well as matters involving public affairs. There are approximately 1,200 peach growers in California and total sales are close to $500 million. Exports presently account for approximately $70 million on an annual basis. Cling peaches are marketed in the form of canned peaches, canned fruit cocktail and other products containing cling peaches.

THE TOKYO ROUND—AN OVERVIEW

We have closely followed, and participated wherever appropriate, in this seventh trade negotiation since the inception of the General Agreement on Tariffs and Trade (GATT). For the first time in a major trade negotiation, the agricultural sector of our economy has been well represented. In fact, Ambassador Strauss, our negotiators, and the United States Department of Agriculture deserve congratulations for focusing on the difficult and complex issues of agricultural trade in a manner consistent with President Carter's mandate, which was expressed in his 1977 Annual Report to Congress on the Trade Agreements Program: "* * * Across the board we are pressing for equality of access for our exports in the markets of developed countries. In particular, ways must be found to deal with problems of *agricultural trade* and nontariff measures, which received relatively little emphasis in earlier negotiations" (emphasis added).

The priority which our negotiators gave agriculture was well deserved. Our balance of trade deficit is already at a crisis level. Without agricultural exports, including millions of dollars of exports from the State of California, the deficit would be at a level that is difficult to imagine.

TARIFF CONCESSIONS

No official data exists with respect to specific trade concessions received for products of interest to the Cling Peach Advisory Board. However, based on currently available information, we anticipate that import duties for canned peaches and canned fruit cocktail will be somewhat reduced in ten countries. Seven of these are developed countries where fairly significant increases in trade appear possible. The remaining three are developing countries where only very small export increases can be anticipated. Until the concessions are confirmed and the specific level of tariff decrease identified, it will be difficult to project the impact on trade with any degree of certainty. However, we would anticipate that if the unofficial reports are

close to being accurate that millions of dollars in additional trade for our products will be generated.

THE PENDING SECTION 301 CASE ON EEC IMPORT RESTRICTIONS

In September of 1975, a complaint was filed pursuant to Section 301 of the 1974 Trade Act covering certain import restrictions on processed fruits and vegetables established by the European Community ("EEC"). The Cling Peach Advisory Board has actively participated in this case. The import restrictions involved minimum import prices, import certificates, which are actually import licenses, provision for suspension of imports of all processed fruits and vegetables, whether subject to import certificates or not, and an added duty based on sugar content. Pursuant to the 301 complaint, a panel of GATT contracting parties found the minimum import price procedure to be contrary to the international trade rules. The proposal was subsequently dropped by the EEC.

However, the other impediments remain in effect and the EEC has since adopted another policy which we believe is in contravention of the provisions of GATT. A grower subsidy program has been introduced to encourage increased internal production of fruits and vegetables.

These policies have adversely affected exports of our products to the EEC. We are, therefore, quite interested in any legislative action with respect to Section 301.

REVISION OF SECTION 301

In anticipation of legislative modifications to Section 301, we urge any such amendments should have no adverse effect on cases presently pending under this Section. Specifically, such cases should not need to be refiled. Also, resolution of such cases should take absolute priority over cases filed subsequent to enactment of any new legislation.

While our 301 case was partially effective in removing at least one of the EEC's adverse trade policies, substantial problems remain because of continued imposition of import certifications and the value added duty. In this regard, we strongly recommend that any amendments to this section recognize the need to accomplish resolution of such disputes within a reasonable time. The maximum time necessary to achieve such resolution would appear to us to not exceed one year.

NONTARIFF CODES

In terms of long range considerations, the most noteworthy accomplishment of this negotiation will probably be the initial development of non-tariff codes to govern rules of the game in international trade. These codes, covering such matters as licensing, government procurement, standards, subsidies and countervailing duties will, if effectively enforced, have dramatic influence in increasing world trade. For agriculture in general and cling peaches in particular, the proposed code on subsidies is the most significant. As we have already noted in discussing trade impediments implemented by the EEC, subsidies are commonly used against U.S. agriculture exporters under the guise of encouraging and improving local production of the commodity in question. The validity of Ambassador Strauss' plea for equity and equal competitive opportunities in world trade has been no better illustrated than by the indiscriminate use of subsidies. We do not suggest the subsidies code will be a panacea and by itself eliminate this problem. However, it is certainly a step in the right direction.

Our major concern in this area is the very real prospect that many of our trading partners will not accept the proposed codes. This is not an academic concern since at present, 21 years after the institution of GATT, only 75 percent of the approximately 150 countries with which the United States conducts its major trade are affiliated with GATT. Also, we note that the codes contain provisions which provide for "withdrawal" from the codes within a 90-day period.

The United States has made a major effort to conform to the principally accepted criteria for fair international trade, and we have tended to be extremely tolerant of the indiscretions of others. The time would seem to be right for the United States to move to a reciprocal "Most Favored Nation" policy. In the long run, if the codes are to operate effectively, we believe this Committee must at least consider a policy that involves granting Most Favored Nation rights only to those countries which accede to GATT (or the new trade codes) or which bilaterially agree to comparable trade rules. It is submitted that an effective policy in this regard should be self-enforcing and could be accomplished by modifying our tariff schedules to provide for different rates of duty for those countries complying with the referenced rules of trade as compared to the rate for those which fail to comply. These particular comments are intended to generate initial consideration of this type of approach, and depending

upon the development of the trade package and collateral legislation, we will be prepared to more fully develop this concept.

CONCLUSION

The Cling Peach Advisory Board urges adoption of the trade package. We congratulate Ambassador Strauss and all of those connected with the negotiations who have worked long hours against difficult odds in the interest of American agriculture. Concessions which have apparently been achieved will result in increased exports of our products.

We endorse any proposal which will have the effect of streamlining Section 301 cases and in particular which will have the effect of expediting such matters. Any amendments to 301 should not adversely affect pending 301 cases.

Regardless of the extent of participation that our trading partners exhibit with respect to proposed non-tariff codes, internal collateral legislation should be adopted, particularly in the area of foreign subsidies, which will have the effect of enforcing such codes.

This negotiation represents a healthy step forward for U.S. agriculture. Peach growers in California hope that the momentum established by Ambassador Strauss and his negotiators will continue forward until complete equity in world trade has been achieved.

Respectfully submitted.

Mr. VANIK. Thank you very much.

Mr. HOARD. As the Congressman mentioned, Mr. Herrington would like to make a few comments. He is a grower and is aware of our problems in our industry and I think you will be very interested in his comments.

Mr. VANIK. Sometime you can tell me how I can keep my trees growing.

Mr. HOARD. We will volunteer Mr. Herrington for that. He is a professional. He will come by and help you.

Mr. VANIK. He can give me a letter of advice.

Go ahead.

Mr. HERRINGTON. Mr. Chairman, I am anxious to emphasize the fact that I am a grower, I spent 35 years producing cling peaches and have made my entire living as a producer during that period of time. It is true that I have done some work in the export field and have taken a active part in the Peach Advisory Board leadership and made trips to Europe and acted in the tripartite conference and have some knowledge of export affairs but I emphasize to you that I am basically a producer and do have expertise in the field in the influence of legislation on producers.

I appear here today with both pride and appreciation—pride that we live in a country where an individual producer can appear before his Government representatives and express our desires and our needs but appreciation that Ambassador Strauss and his people and you, our elected officials, recognize some of the problems and needs of our specialty crops in California that have not always been recognized before.

I appear here officially for the Cling Peach Advisory Board representing the 1,200 growers in California under that State marketing act but I think I also come here unofficially for many hundreds and thousands of specialty crop growers in California who also express that same pride and appreciation to Mr. Strauss and to government in general for its recognition of the problems of our specialty crops in California.

Mr. Chairman, our industry is a family oriented industry. Forty thousand acres of cling peach trees in California covered by 1,200 growers is just something over 30 acres per grower. Many of those

producers are third and fourth generation producers producing cling peaches on the same ground that their families did before them.

It is an accepted fact that nowhere in the world can producers put at roadside the highest quality peaches as efficiently and as economically as the producers of cling peaches in California. Our processes are also recognized worldwide for their efficiency and for their economy but after we get our peaches inside the cans something happens. Many of those things that happen are affected by artificial trade barriers, subsidized production in many countries, minimum import prices, manipulated freight rates and quotas.

These problems are problems that are of a badly oriented type. The industry has no way to solve them without looking to Government. We cannot deal with these problems without your help. Let me comment in passing that even though we are not one of the major commodities, the effect of markets and the restrictions on markets and the 15 percent of our production that goes into the export market has the same devastating effect upon our producers, our processers, our labor that works both in the fields and in the canneries, and upon the merchants and the general economy of many small towns and valleys of California.

We recognize that we probably cannot be given the same recognition that some major commodities get but we hasten to say to you again that the effects of the type restrictions on the exports and the effects of subsidies and manipulated freight rates have that same devastating effect upon our communities and our people that it does on major commodities. These negotiations that have been going on for the many past months and this trade bill appear to have many provisions that will be helpful to our industry.

We appear here today again with pride and with appreciation for the fact that our Government people, both Ambassador Strauss and his people and the Members of Congress, are recognizing the problems of our specialty crop and we urge that any thing that any of you can do to successfully see the trade bill through the various committees in the Congress will be deeply appreciated by the specialty crop people in California.

Thank you, sir.

Mr. VANIK. Thank you very much.

Do you have any questions, Mr. Shannon?

Mr. SHANNON. No.

Mr. VANIK. Mr. Moore?

Mr. MOORE. No questions, Mr. Chairman.

Mr. VANIK. The next witness is Mr. Ronald K. Shelp, chairman of the International Service Industry Committee of the Chamber of Commerce of the United States.

Mr. Shelp, your statement will be admitted into the record as submitted and you can read or excerpt from it.

STATEMENT OF RONALD K. SHELP, CHAIRMAN, INTERNATIONAL SERVICE INDUSTRY COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY GORDON J. CLONEY, DIRECTOR, SPECIAL POLICY DEVELOPMENT, AND ELIZABETH PERKINS, EXECUTIVE SECRETARY, MTN TASK FORCE

Mr. SHELP. Let me introduce my colleagues who are with me. On my left is Mr. Gordon Cloney, director of special policy development, U.S. Chamber of Commerce, and on my right is Dr. Elizabeth Perkins who is the executive secretary of the MTN Task Force.

For your information the national chamber's international service industry committee consists of approximately 35 to 40 service companies and their trade associations that operate only in international markets. In addition, it includes a group of academic and other experts.

Earlier this week your committee heard national chamber testimony by Ambassador Eberle which concluded that the nontariff agreement should be approved. Recommendations on implementing legislation were cited at that time. My purpose today is to elaborate on aspects of that which relate simply to service industries.

As you well know, the United States has been for many years and was the first service economy. Over 60 percent of GNP comes from services and some 65 to 70 percent of employment is provided the services. Thus, we commend the Congress for its initiative in the Trade Act of 1974 which included provisions for dealing with various barriers to trade in services as well as in goods.

In retrospect the importance of that congressional initiative can now be seen. By 1974, the year that the Trade Act was passed, the services sector, which had traditionally been considered simply an aid to merchandise trade, had grown and diversified. Total U.S. services account trade stood at over 30 percent of all U.S. imports and exports and the account was positive, producing a $10 billion surplus.

Four years later in 1978 total services account trade had increased by 90 percent to $129 billion, again almost 30 percent of total U.S. imports and exports, and it had produced a $23 billion surplus. As you know, this is probably the only positive item we have seen on our balance of payments for some time.

With this background in mind I think it is appropriate to refresh your memory on what Congress required in the Trade Act of 1974 vis-a-vis service industries:

By defining both "trade" and "commerce" to include services; by mandating service industry representation on the advisory committee for trade negotiations; by creating authority to negotiate reductions to nontariff barriers to service trade; by including services in the recourse provisions of section 301 of the act; by including consideration of services in the extension of nondiscriminatory treatment of Eastern bloc countries; and by requiring reporting on progress.

In all these areas Congress clearly mandated executive action to deal with practices by foreign governments that deny or restrict access by U.S. service industries to foreign markets.

It will be interesting to review what has happened since then. For several years regrettably nothing happened. Finally, in early

1976, Special Trade Representative Dent referred the unresolved question of service industry negotiations to a White House Inter-Agency Task Force on Services and the MTN. In December 1976 the task force report was released. The report concluded that sales of U.S. services abroad were important and increasing through both exports and foreign investment. Twenty-seven specific recommendations were set forth of which the first five dealt with the multilateral trade negotiations. These 27 recommendations are attached to my written testimony.

The task force proposed that the special trade representative specifically explore the following during the trade negotiations:

First, introducing service industry problems into discussion of the codes on subsidies and government procurement;

Second, discussing barriers to service trade in the bilateral phase of the MTN; and

Third, introducing service industries in the broader context of improving the GATT.

Now that you have a program before you that is the result of the negotiations we would like to examine exactly how many of these objectives were accomplished. Frankly, from a service industry perspective, specific negotiating accomplishments are clearly modest and there is some question as to whether the principle of multilateral GATT negotiations on service industry trade barriers has actually been established. As you can well imagine, we believe it should.

First the Government Procurement Code, one of the recommendations of the task force, is the only MTN "result" where there is reference to services. Currently it deals only with "services incidental to the supply of products" while deferring "service contracts per se" for the future when the "possibility" of expanding code coverage will be "explored." Hence, the subcommittee may wish to pursue the following questions with the STR during these hearings.

With regard to the Government Procurement Code, what is meant by "services incidental to the supply of products"? What services are covered? What will be the advantages and disadvantages to the U.S. service sector?

Second, with regard to "service contracts per se" what is the outlook and timetable for expanding the Government Procurement Code to include service contracts and what has been accomplished in terms of obtaining commitments to support such expansion by trading partners?

The Subsidies Code, viewed as a potentially appropriate vehicle for dealing with service industry problems by the interagency task force, contains no reference in the text to services. Some relevant questions are:

What efforts were made to include services in the Subsidies Code and what circumstances precluded such consideration in the final agreement, or in fact is it precluded?

Is the Subsidies Code susceptible to the eventual coverage of subsidies to services in international commerce and, if so, on what basis? If not, what efforts are planned by the STR to pursue the issue and what reponse is anticipated from trading partners?

Finally, a modest number of service barriers were tabled for bilateral negotiations under the GATT although the results, if any,

are not yet known to the public. We certainly hope that this will be followed through on and that the concessions that were not granted will be assiduously pursued by the administration with the particular countries involved.

Last, there is no provision to the best of my knowledge for introducing service industries in the broader context of improving the GATT, something that was recommended by the 1976 task force.

It is important that the MTN implementing legislation you are considering be cast so that further progress is possible in dealing with service trade barriers, particularly through the Government Procurement Code and the Subsidies Code. Obviously, sufficient negotiating authority must continue to exist to pursue this objective.

Second, as Ambassador Eberle testified on Monday of this week, it is important that the private sector advisory process apparently to be established at the close of the current MTN negotiations, include services. For your information, there is no ISAC for services at present. The President's authority under the 1974 Trade Act would permit a services ISAC but a private sector advisory committee for services was never established by the administration.

The accomplishments of the Tokyo Round of multilateral trade negotiations are numerous and the national chamber supports the nontariff agreements that have been reached. In many areas much more has been achieved than many observers thought possible. At the same time, further progress on a number of issues will be needed in the future. We encourage the administration to vigorously pursue efforts to reduce remaining barriers to trade, particularly barriers to the increasingly significant international trade in services.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF RONALD K. SHELP, CHAMBER OF COMMERCE OF THE UNITED STATES

I am Ronald K. Shelp, vice president and director, American International Underwriters Corporation and chairman of the International Service Industry Committee of the Chamber of Commerce of the United States.

I appreciate the opportunity to appear before this Subcommittee on Trade of the House Ways and Means Committee. Earlier this week the committee heard National Chamber testimony which concluded that the nontariff agreements offer "potentially significant benefits to the entire United States economy" and should be approved. Specific National Chamber recommendations for implementing legislation were cited at that time.

My purpose today, as chairman of the National Chamber's International Service Industry Committee, is to elaborate on aspects of the trade negotiations which relate to service industries. These include advertising, accounting, banking, insurance, air transport, lodging, leasing, licensing, franchising, construction, computer services, engineering, shipping, communications, motion pictures and others. These industries deal in intangible or what are often called invisible products.

The service industries' trade performance is reflected in the "services" account which includes the U.S. exports and imports of service industry products as well as direct investment flows, fees and royalties—all intangible or "invisible" products. The services account is a statistical counterpart to the "merchandise" account which includes exports and imports of manufactured products and commodities—all tangible items.

At the initiative of the Congress, the negotiating authority set forth in the Trade Act of 1974 includes the following provisions for dealing with barriers to trade in services as well as in goods:

Title I, Chapter 1, Section 102 directs the President to negotiate the harmonization and reduction of nontariff barriers and other distortions in the services as well as in the goods trade. Congress clearly defined the parameters of international trade in subsection (g) of Section 102:

"(g) For purposes of this section—

"(3) the term 'international trade' includes trade in both goods and services."

Title I, Chapter 3, Section 135(b)(1) provides that "service industries" shall be represented on the Advisory Committee for Trade negotiations.

Title I, Chapter 6, Section 163(a) specifically requests the President's annual report to the Congress on the trade agreements to include services, e.g.: "the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against service industries (including transportation and tourism) and investment * * *"

Title III, Chapter 1, Section 301 provides relief from unfair trade practices to services. The President is afforded the authority to retaliate against foreign countries that maintain unjustifiable or unreasonable tariff or other import restrictions which burden or discriminate against United States commerce. Subsection (a) states: "For purposes of this subsection, the term 'commerce' include services associated with the international trade."

Title IV, Section 405(b)(1)(a), which enables the President to enter into nondiscriminatory commercial agreements with countries previously denied such treatment, makes reference to services. As a condition of renewal it is required that: "(A) a satisfactory balance of concession in trade and services has been maintained during the life of such agreement."

Title VI, Section 601(10) defines the term commerce to include "services associated with international trade."

The importance of the Congressional initiative to create these provisions is as clear today as it was in 1974. By 1974, the services sector, once considered simply an aid to merchandise trade, had grown and diversified to the point where it was viewed as a significant element of international trade in its own might. In that year, total U.S. services account trade stood at over 30 percent of all U.S imports and exports and the account was positive, producing a 10 billion dollar surplus.

By 1978, total services account trade had increased by 90 percent to 129 billion dollars, again about 30 percent of total U.S. imports and exports and it produced a 23 billion dollar surplus, the importance of which is heightened by the 1978 deficit of 34 billion dollars in merchandise trade.

Therefore, by defining both "trade" and "commerce" to include services in Section 102 and in Section 601, by mandating service industry representation on the Advisory Committee for Trade Negotiations in Section 135, by creating authority to negotiate reductions to nontariff barriers to service trade in Section 102, by including services in the recourse provisions of Section 301, by including consideration of services in the extension of nondiscriminatory treatment of eastern bloc countries in Section 405 and by requiring reporting on progress in Section 163, Congress clearly recognized the importance of service industry trade. It also mandated the executive action believed necessary to deal with practices by foreign governments that deny or restrict access by U.S. service industries to foreign markets, or which hurt the competitive position of U.S. services in such markets, in third country markets or at home.

Both before and following the signing of the Trade Act of 1974, the Chamber of Commerce of the United States organized meetings between representatives of U.S. service industries and officials from the Special Trade Representative's office and the Commerce Department to urge the preparations that would be necessary to apply this new authority in Geneva. We recognized a need to act with some dispatch since negotiation on service trade barriers was not a traditional GATT activity. As a new issue for our trading partners as well as for the U.S. negotiators, it would present procedural challenges.

These industry-government discussions continued inconclusively for about eighteen months. In early 1976, Special Trade Representative Dent referred the still unresolved question of how to approach service industry negotiations to a "White House Inter-Agency Task Force on Services and the MTN" whose purposes were to identify the problems faced by U.S. service industries in international commerce and to develop recommendations for addressing them.

Twelve months later, in December 1976, a task force report was released.[1] The report concluded that services were of large and growing importance to U.S. international commerce although this was not widely recognized. It noted that sales of U.S. services abroad were increasing through both exports and foreign investment. The report therefore recommended that government should address both service industry trade problems and service industry investment issues through appropriate international fora. Twenty-seven specific recommendations were set forth.[2]

Of these recommendations, the first five dealt with the Multilateral Trade Negotiations. The task force concluded that service industry trade problems should be raised on a "carefully selected" rather than on a "wholesale" basis. The report cautioned against "undue expectations" as the subject was new to multilateral trade negotiations and long-term in nature. It further noted the need to develop an inventory of trade problems. In this context, the task force report proposed the following actions:

"(3) The Special Trade Representative (STR) should be requested to explore the feasibility of:

"*(a)* introducing selected and specific trade-related service industry problems into discussion of codes pertaining to subsidies and to government procurement practices;

"*(b)* discussing a limited number of barriers pertaining to services trade with selected countries in the bilateral phase of the MTN; and

"*(c)* introducing service industries in the broader context of improving the GATT."[3]

In mid-1977, apparently based upon these priorities established through Executive Branch inter-agency analysis of the Congressional mandate to deal with service industry trade, the STR introduced selected service industry issues in Geneva some thirty months after the Trade Act was signed.

Today, over four years after the Trade Act was signed, we have before us the product of the Geneva negotiations. What are the results in achieving the unique Congressional mandate to begin multilateral negotiations to reduce barriers to service industry trade?

The government procurement code provisions Part I (Scope and coverage) Section 1, subsection (a) states the agreement applies to: "Any law, regulation, procedure and practice regarding the procurement of products by the entities subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se;".

Part IX (Final Provisions) of this Code makes provision at not later than the end of the third year to "explore the possibilities of expanding the coverage of the Agreement to include service contracts."

A modest number of service barriers were tabled for bilateral negotiations under the GATT although the results, if any, are not yet known to the public.

The subsidies code text contains no reference to services—this code was cited for attention in behalf of service industries in the Inter-Agency Task Force Study.

Finally, in reference to the priorities for negotiating service industry trade barriers in the MTN set by the 1976 Inter-Agency Task Force, there is, to my knowledge, no provision for "introducing service industries in the broad context of improving the GATT."

What do we make of these accomplishments in light of congress historic 1974 mandate which urged action based upon Congressional recognition that there were no guidelines, standards, or multilateral procedures for dealing with service trade barriers?

From a service industry perspective, specific negotiating accomplishments are clearly modest and there is some question as to whether the principle of multilateral GATT negotiations on service industry trade barriers has actually been established.

The government procurement code, the only MTN "result" where there is reference to service, now deals only with services incidental to the supply of goods, while deferring "service contracts per se" for the future when the "possibility" of expand-

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[1] U.S. Service Industries in World Markets: Current Problems and Future Policy Development. The task force was chaired by the Department of Commerce. Other agencies serving on the task force were: the Departments of State, Treasury, Labor, Transportation, Health, Education, and Welfare, and Housing and Urban Development; the Office of the Special Trade Representative; the Office of Telecommunications Policy; the Civil Aeronautics Board; the Federal Reserve Board; and the Council on International Economic Policy.

[2] The recommendations are attached as Appendix A.

[3] 1976 Task Force Report, p. 62.

ing code coverage will be "explored." Hence the Subcommittee may wish to pursue certain questions with the STR during these hearings:

With regard to the government procurement code, what is meant by "services incidental to the supply of products?" What services are covered? What will be the advantages and disadvantages to the U S. service sector?

With regard to "service contracts per se" what is the outlook and timetable for expanding the government procurement code to include service contracts and what has been accomplished in terms of commitments to suport such expansion by trading partners?

The subsidies code, proposed as a potentially appropriate vehicle for dealing with service industry problems by the Inter-Agency Task Force, contains no reference in the text to services. Relevant questions are:

What efforts were made to include services in the subsidies code and what circumstances precluded such consideration in the final agreement? and,

Is the subsidies code susceptible to the eventual coverage of subsidies to services in international commerce (for example under Article 19, Section 7) and, if so, what basis? If not, what efforts are planned by the STR to pursue the issue and what response is anticipated from trading partners?

In conclusion, the Trade Act of 1974 mandated initiatives by our government to respond to the trade problems faced by U.S. service industries through multilateral negotiations. In light of the progress to date, this Subcommittee may want to obtain for its record as complete an understanding of what has actually been accomplished as possible.

Looking ahead, it is important that the MTN implementing legislation, which you will consider, be cast so that further progress is possible in dealing with service trade barriers. This is particularly true with regard to the government procurement code and possibly the subsidies code. Moreover, other possibilities for progress in reducing barriers to service trade may exist elsewhere within the GATT structure. Obviously, sufficient negotiating authority must continue to exist to pursue this objective.

The accomplishments of the Tokyo Round of multilateral trade negotiations are numerous and the National Chamber supports the nontariff agreements that have been reached. In many areas much more has been achieved than many observers thought possible. At the same time, further progress on a number of issues will be needed in the future. We encourage the Administration to vigorously pursue efforts to reduce remaining barriers to trade, particularly barriers to the increasingly significant international trade in services.

APPENDIX A

The following points are the 27 recommendations made in the December 1976, White House Inter-Agency Study, "U.S. Service Industries in World Markets: Current Problems and Future Policy Development."

Recommendations

1. Service industry trade problems should be raised for discussion in the MTN on a carefully-selected basis, focusing on those problems most similar to the goods-related NTB's already scheduled for discussion.

2. The wholesale introduction of services sector negotiations for either services as a whole or for individual service industries should be avoided in the MTN.

3. The Special Trade Representative (STR) should be requested to explore the feasibility of:

(a) introducing selected and specific trade-related service industry problems into discussions of codes pertaining to subsidies and to government procurement practices;

(b) discussing a limited number of barriers pertaining to services trade with selected countries in the bilateral phase of the MTN; and

(c) introducing service industries in the broader context of improving the GATT.

4. As services have not previously been dealt with in multilateral trade negotiations, realism should be maintained and the generation of undue expectations of success are to be avoided. A longer-term objective in raising services in the MTN should be to put our trading partners on notice that greater attention will be paid to services in future negotiations.

5. Building upon information developed for this report, a detailed inventory of specific service industry trade and investment problems should be compiled and maintained by the Commerce Department. This inventory would aid in evaluating which barriers might be raised explicitly in the MTN and it would also be useful to the work of the consultative and action organizations recommended below.

Government industry consultation

6. A services sector ISAC should not be created.

7. A "Service Industries Consultation Committee" should be established under the auspices of the Department of Commerce. This committee would be comprised of industry and labor representatives of those services sectors that participate most heavily in international commerce, but should not focus on the transportation industries that already possess good communications channels with the government.

8. The Service Industries Consultation Committee should provide advice and communication on the broad spectrum of international business and economic issues that affect the service industries, including investment-related matters and promotional questions. The committee should be outside the ISAC structure, but its primary focus should be international commerce. However, the committee should review relevant domestic commerce matters when they are an integral part of the problem at hand.

9. Staff support for the committee should be provided by the Commerce Department. A principal point of contact and responsibility for the services sector should also be identified in the Office of the Special Trade Representative.

10. A joint Commerce/Labor study group should be formed, with input from the International Trade Commission, to examine the feasibility and ramifications (including both the financial and legal aspects) of extending the coverage of the trade adjustment assistance provisions of the Trade Act to include dislocations arising from imports of services. During the course of its examination, the study group would be expected to meet with and seek the advice of the recommended Service Industries Consultation Committee.

11. The President's Export Council should be expanded to include representation by service industries that participate to a significant extent in export markets.

Government organization

12. A Commerce/State/Treasury/Labor/STR Committee, chaired by Commerce and reporting through the EPB, should be formed to focus attention on the international trade and investment matters relevant to the service industries—on a routine, ongoing basis. Other agencies should participate as appropriate. The committee should have the general purpose of increasing the awareness of service industries' problems throughout the relevant parts of these agencies; and should also serve as the focal point for the implementation of specific courses of action that may be decided upon as a result of this report, and for the development of such future policies and initiatives as may be indicated. Such initiatives would make the fullest use of existing multilateral and bilateral mechanisms for both trade and investment. The committee should be established at least at the Deputy Assistant Secretary level.

13. The joint committee should, as one of its first actions, consider the means by which the OECD Committee on Invisibles can be brought to focus more closely on service industries than is now the case. Achievement of this objective would be a valuable step toward raising other developed nations' awareness of service industries.

14. Agencies represented on the joint committee should be encouraged to review resource allocations with a view toward increasing the now under-represented analytic and policy resources applied to services trade and investment.

Services and investment

15. Though not conclusive, the analyses in this study tended to indicate the mix and priority of service industries' investment problems differed from those of the extractive and manufacturing industries. This point should be discussed in the Service Industries Consultation Committee. Its advice should be employed by the joint committee recommended in (12) to determine whether and how the government's process of assigning priority to individual investment issues should be modified.

16. The joint committee should also determine the means by which specific investment problems of the service industries can more fully be included in bilateral investment discussions, particularly with LDC's.

17. The joint committee should further serve as the point through which the State and Commerce Departments can jointly develop an effective "early warning" system for identifying specific service industry investment obstacles as they may occur. The Commerce Department in particular should designate an analytic policy focal point for service industry investment problems.

Services and the LDC's

18. The creation of small and inefficient service companies by LDCs can in many instances retard, rather than advance, economic development by consuming resources in a less than optimal manner. Barriers to foreign service companies can also retard the transfer of technology and managerial know-how. A study of the economic behavior, contributions, and costs of service industry investments in LDC's should be initiated. Its results, both positive and negative, should be provided to U.S. service industries, developmental agencies, and appropriate LDC's.

19. The joint committee recommended in (12) should investigate the means by which specific investment problems of service industries can be more fully included in bilateral investment discussions with LDC's and in multilateral investment discussions, e.g. in UNCTAD.

Selected sectoral initiatives

20. Given both the complexities of the maritime industry's problems and the extensive attention already being devoted to them, initiatives in this area—such as those to deal with increasing bilateralism—should be left to the agencies and mechanisms in the government most cognizant of the variety of issues present. It would seem counter-productive either to add more agencies to this process or to seek inclusion of the maritime industry in the MTN.

21. The joint committee recommended in (12) should develop a detailed proposal for upgrading the existing OECD insurance mechanism into a forum that addresses the fundamental disagreements that now exist regarding liberalization of insurance in the developed countries.

22. The joint committee should also investigate the means by which specific U.S. insurance industry complaints can be discussed with particular LDCs in bilateral negotiations, and should review strategies and approaches taken by the United States with regard to insurance in UNCTAD.

23. The Department of Commerce should begin devoting resources to the economic and policy analysis of general and life insurance in the international economy, broadening its present scope beyond maritime insurance. Particular attention should be given to the role that U.S. insurance companies can play in assisting the development of the LDC economics.

Data and information

24. A working group on international services data should be formed as part of the joint committee recommended in (12). Membership should include the Bureau of Economic Analysis and OMB's Statistical Policy Division.

25. The Bureau of Economic Analysis should be requested to prepare a presentation for this group on the means by which service industry international data are presently obtained, the ways in which presently unpublished data can more broadly be made available, and the ways in which the industry and geographic coverage of the data can be improved within the context of the President's forms-reduction program. Particular attention should be devoted to the manner in which services affiliates are to be handled in the proposed new bench mark survey of the U.S. direct investment abroad.

26. The working group should discuss with industry representatives, trade associations, and trade publications the possibilities for improving data and conducting special surveys.

27. The working group should formulate and present to the joint committee recommended in (12) the specific steps that can be taken to improve services trade and investment data, along with recommendations for the provision of the requisite resources.

Mr. VANIK. Thank you very much for your testimony.

Are there any questions? Mr. Shannon.

Mr. SHANNON. You said that the Government Procurement Code is incidental to the training transaction. Can you explain your views further?

Mr. SHELP. Well, I can certainly tell you what I and the members of the service industry think that phrase should mean. I am not sure that is what it does mean. We think that this reference is an opportunity for the administration to vigorously broaden the services concept in the code. For example, in my industry which is insurance we would hope that it means that all the insurance

transactions related to trade in procured goods would be included and that American insurance would have the chance to compete in supplying insurance not only on trade but supplying the insurance on construction related to goods and their installation, and so forth.

The same thing would go for shipping, for construction or engineering services related to goods and so forth. I get the impression, however, that the trading partners and perhaps the administration is considering a much more narrow definition but I don't know. We will encourage you to vigorously push for as broad an interpretation as possible.

Mr. SHANNON. Have you talked to Ambassador Strauss about this or been in touch with the members regarding this interpretation of that clause?

Mr. SHELP. Yes, we have. They know our concerns. I would say they are being considered.

Mr. SHANNON. Of course that is a matter of communication with the other countries. I assume that that would be discussed otherwise, it leaves an area open for disagreement.

Mr. SHELP. Certainly. I gather that is one of the many areas that is to be defined in the post MTN period as they start implementing these codes.

Mr. SHANNON. Do you feel that the sector that you represent had its input at the negotiating table or do you feel that you were not consulted adequately concerning your particular views?

Mr. SHELP. Well, as a personal view I think late in the game we did. Early in the game the administration or several administrations did not take a very active role on services at all so it probably was not very important. Certainly once they began to deal with services we had our input but regrettably that was pretty far along in the negotiations so that not a great deal would be expected to be accomplished by that point. Hopefully it has paved the way for future negotiations.

Mr. SHANNON. Your European friends in the Common Market, are they in the mold or dealing with services as well as products amongst themselves?

Mr. SHELP. Probably not in most cases.

Mr. SHANNON. Have services been used between countries as is norm for trade and trading areas or has it just been products as far as it has progressed?

Mr. SHELP. It should be very important to Europeans. The invisible account is the only positive account in the British balance of payments, for example, for many years and I think also in the Swiss. It is one of the most important contributors of the Swiss account.

In answer to the first part of your question, I think some persuasive encouragement needs to be given to the Europeans who participate in this MTN exercise. I have had some involvement on the private sector level in recent years and I would say that it is beginning and we are beginning to create a realization in Europe about the importance of services in the international trade.

Mr. SHANNON. The interagency mechanism when carried out by the Government, has that recommendation been acutally enforced?

Mr. SHELP. Regrettably not. That was the recommendation No. 12, which was in the 1976 task force report. I understand that the administration is now considering establishing this and the work program is being developed. We would encourage you—and some of the Members of Congress already have—to encourage them to get on with it, we in industry have been doing so for years. The reason we think it should be established is very simple because it is very low awareness of the services in Government agencies dealing with our foreign trade.

We need some coordination in all aspects of policymaking, but we are not yet making policy to deal with the services. We have an industrial bias in this country—international economic policies made under the assumptions about manufacturing industry, and the service industry factor is not factored in.

Second, there is the problem of involvement by different Government departments. When we deal with them now in our industry, we just have to go to each department. Some interagency coordination would be desirable. I know it may sound ironic to you to have a private sector spokesman encouraging a new interagency mechanism in the Government but it seems to be a wise recommendation in this case.

Mr. SHANNON. I assume that our knowledge and management ability in the field of business would put the United States in a very fine position where we are able to include this as a part of trade.

Mr. SHELP. Definitely, I think a $23 billion surplus in the service account balance last year is a good indication of that.

Mr. SHANNON. Is there an advisory group that is set up or should be set up as the post——

Mr. SHELP. There is not at present. One of the recommendations we would make is that in setting up the post-Tokyo round advisory committees which will be carrying on advising our Government, there should be one on services. Ours at the chamber is sort of ex officio.

Mr. SHANNON. The national chamber of commerce is officially pushing for an advisory group?

Mr. SHELP. They have been encouraging that for several years.

Mr. SHANNON. Thank you very much.

Mr. VANIK. Mr. Moore.

Mr. MOORE. No questions.

Mr. VANIK. The next witness will be Dr. Samuel M. Rosenblatt, senior economic consultant of the International Economic Policy Association.

We are happy to have you with us, Dr. Rosenblatt. Your statement will be made a part of the record and you may read from it or excerpt from it, whichever you desire.

STATEMENT OF SAMUEL M. ROSENBLATT, SENIOR ECONOMIC CONSULTANT, INTERNATIONAL ECONOMIC POLICY ASSOCIATION

Mr. ROSENBLATT. Thank you, Mr. Chairman.

I have also submitted to the committee a written oral summary which I will proceed to read rather than summarize the full written statement.

Mr. VANIK. Without objection, your written statement will be made part of the record.

Mr. ROSENBLATT. My name is Samuel M. Rosenblatt and I am here today in my capacity as senior economic consultant to the International Economic Policy Association. The association is a nonprofit research group with a diverse but broadly representative membership of American companies. Although the views I will give reflect the research which the organization has done, I am not in a position to speak formally on behalf of any specific company or industry.

I need hardly stress to you the importance of the balance of payments and the role that trade plays in the U.S. economy. The absolute increases in our international trade are impressive. Our combined exports and imports a decade ago were $66 billion whereas in 1978 these flows totaled $318 billion. Some of this growth, of course, reflects inflation but there has also been impressive growth in real terms as U.S. combined exports and imports as a percentage of GNP has doubled in the last decade.

Despite the benefits of such growing interdependence, the U.S. trade balance has been in the red in 6 of the past 8 years.

These facts should help illuminate several fundamental problems that affect an assessment of the trade package.

First, the U.S. is a profligate user and importer of OPEC oil—$42.3 billion cost at present. We simply must get that hemorrhage under control.

Second, a slow but steady decline in some areas of U.S. trade competitiveness.

A key question which Congress and the American people need to ask is whether the MTN results will give the United States a fair chance to correct its adverse trade balance.

Two factors are at work here:

First, attitude of U.S. business toward international trade--and willingness to compete. These unfortunately lag behind the economic reality of growing U.S. involvement internationally described above.

Second, excessive reliance on the use of floating exchange rates to create a self-equilibrating system may also vitiate against the need for balance-of-payments discipline. This system does not operate in a vacuum and involves considerable lags as well as foreign government interference.

Thus in an economic sense and as a source of encouragement to exports, this MTN package should be accepted. Similarly in a political sense, this package of agreements represents a culmination of multilateral efforts that extend over a 4- to 6-year period during which the international trading community was subjected to a series of stresses exceeded only by the 1930's worldwide depression. Nevertheless, the negotiating GATT members succeeded in perpetuating the trade liberalizing pattern followed since the end of World War II. The trend toward tariff reductions will be continued.

Moreover, in the nontariff barrier area, this agreement marks the first comprehensive attempt to deal with the nontariff impediments to trade that have proliferated as tariff and quantitative restriction type barriers have receded in importance.

Moving forward on these codes of conduct will clarify what is acceptable international trade behavior and presumably open up more international trade to international competitive forces. Thus in an overall sense, the United States stands to benefit from the acceptance of these agreements. But to do so, other countries will have to implement the codes in a fair manner. That is why implementation is so important. The benefits of expanded trade tend to be distributed more widely than the costs of adjusting to these increased trade flows.

Since the Trade Act of 1974 we have been attempting to make our trade adjustment assistance programs a more effective tool to cope with import-related problems. In previous testimony befor this committee I supported an expansion of these programs, especially those aspects that looked toward adjustment rather than simple maintenance and perpetuation of noncompetitive industries. IEPA continues to support this approach.

To date it has not been possible to reach agreement on an acceptable safeguards code, due primarily to the split between the parties on the use of conditional, nondiscriminatory (MFN) treatment.

Under this concept, article XIX of the GATT would be amended to provide an international sanction to the use of selective import controls against that country or countries whose import increases where thought to be responsible for causing injury to a domestic industry. Imports from all other countries presumably would be unimpeded.

On the basis of recent history with the use of article XIX, or lack thereof, section 197 of the Trade Act, and the potential for abuse of a selective restraint program, I personally believe the United States should continue to seek a revitalized international safeguards agreement that would continue to include nondiscriminatory treatment.

The international safeguards program should also include provisions to require a nation taking temporary safeguards actions to adopt a positive adjustment assistance program. This would be supportive of the idea that these safeguards were intended to be temporary.

With regard to developing countries, a chief complaint of the "Group of 77" has been the failure of the international trading system to address aggressively their special problems. The developed world has attempted to respond. In 1966, part IV was added to the GATT articles. This addition exempts the LDC's from the requirement of reciprocity. Most of the developed nations also instituted generalized systems of preference-type programs.

In dealing with the developing world, on this and other international economic policy issues, it is essential that this group of countries not be treated as a homogeneous mass. Clearly policies appropriate to the least developed nations should not automatically be extended to the advanced developing countries. But this raises the contentious question: When does a less developed country become a developed country?

At some point the rapidly growing set of nations must take up an equal share of responsibilities in the system and begin phasing

out the special benefits granted to them, as implied under the concept of graduation.

The basic thrust of the various codes of conduct agreed upon at the GATT negotiations is in the general direction of greater transparency, clarity and simplicity in the international rules of trade. They are also intended to achieve a greater openness in the international system and so enhance the opportunities for trade. IEPA strongly supports these general principles.

It is my understanding that the suggested implementing legislation will be designed to make the rules and criteria governing trade more explicit and the implementing system more efficient and so more responsive to the needs of American importers and exporters. This is all to the good.

While I am not in a position to comment on the specific aspects of each of the codes as regards agency responsibility, time requirements, burden of proof and judicial review, I would like to note the following general principles:

The incorporation of an injury test in the countervailing/subsidy code, along with the prohibitions against export subsidies and the indentification of domestic subsidies is appropriate.

Efforts to expedite the processing of trade complaints are generally laudable. However, we must also make certain that ample opportunity is provided to those opposed to develop an adequate counterposition.

We should guard against the recurrence of instances of multiple jeopardy, such as occurred recently in the case of TV imports, from the simultaneous filing of a number of petitions for import relief under different statutes.

An area that is of major concern to IEPA, both in the implementation of these agreements and as a general trade principle, concerns the role of services in international trade. You just heard from the chamber on that and I think I can safely skip that portion of my testimony at this point.

Mr. SHANNON [presiding]. Your position is the same?

Mr. ROSENBLATT. Very much in support of the need for persistent and permanent attention to the international trade in services, yes, sir.

Mr. SHANNON. Thank you.

Mr. ROSENBLATT. The key questions about implementation of the trade agreements may be answerable only in terms of the way the U.S. Government improves its organization for carrying out such implementation.

I understand that the administration has committed itself at least to consider these structural aspects as part of the overall trade package, and that one leading contender is the Roth-Ribicoff proposal to establish a new and independent Department of Trade and Investment. There appears to be a general consensus that reform of some sort is badly needed, but some doubt that a totally new department is either feasible or desirable. It might be better to build on an existing organization, with the Department of Commerce or an expanded STR being logical candidates.

In either event, this larger organization could be given responsibility not only for the implementation of those tasks that stem directly from the MTN's but from other trade-related matters as

well, such as the Eximbank and OPIC, plus some Treasury trade enforcement functions, and certainly the staffing of U.S. foreign trade missions. But I would not want to go as far as some critics of the present performance of the Departments of Commerce, Treasury, and State on these matters, and centralize all functions, for that might merely strip key Cabinet departments, who will inevitably continue to have an important role in international economic policy, of their expertise in this area. Moreover, a centralized function may be more vulnerable to being isolated by its bureaucratic opponents.

The domestic system put in place to monitor the international agreements must provide an effective avenue for U.S. exporters to lodge their complaints and get appropriate U.S. Government responses and, as applicable, corrective government action.

The above, however, is only half of the problem. No matter what decisions are made about departmental allocation of functions, the key question is executive branch coordination and in our Government that really can be done only at the Presidential level. So we would urge Congress to enact. in whatever reorganization bill may become part of the package, that there should be a body—call it a Council on International Economic Coordination or what you will—to be chaired by the President or his designee, comprising State, Treasury, Commerce, and Agriculture and Labor as a minimum with such other appointees as the President may elect. Such a body needs a very able Presidential aide as its interlocutor. One possibility might be to build on the authorization, title, and prerequisites of the existing STR even if the detailed staff functions are moved elsewhere.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF SAMUEL M. ROSENBLATT, SENIOR ECONOMIC CONSULTANT, INTERNATIONAL ECONOMIC POLICY ASSOCIATION

Mr. Chairman, my name is Samuel M. Rosenblatt and I am here today in my capacity as Senior Economic Consultant to the International Economic Policy Association. The Association is a nonprofit research group with a diverse but broadly representative membership of American companies. IEPA spokesmen have testified before your Committee many times over the past two decades on subjects related to America's international economic interests. We appreciate your courtesy in inviting us back today.

Although the views I will give you today reflect the research which our organization has done, I am not in a position to speak formally on behalf of any specific company or industry.

We have submitted a written statement for the record and, with your permission, I will summarize it as briefly as possible. I also hope, Mr. Chairman, that in view of the fact that the final text of the agreements and their details have only just become public, we can file for inclusion in your record some supplementary comments based on the further advice of our expert advisors on trade matters which we expect to be receiving during the next few weeks.

Of the topics listed in the Subcommittee's press release of April 6, I would like to address selected aspects of Nos. 1, 2, 5, and 7.

Increased interdependence

Since you presided, Mr. Chairman, at the important hearings which this Subcommittee held in 1977 on the causes of the U.S. trade deficit, I need hardly stress to you the importance of the United States balance of payments and the role that trade plays therein for the U.S. economy. Table 1 shows the trends of various categories of the U.S. balance of payments over the last 16 years. Through the 1960's and into the early 1970's the U.S. current account continued to show a surplus. This was especially true for the private sector of the economy, whereas the

public sector, primarily government expenditures for defense and foreign aid, generally ran a deficit.[1] These accounts also reveal the very large positive contribution that the service sector, broadly defined to include return on investment, has made. This point is emphasized below in the context of our international trade policy.

The absolute increases in our international trade are also revealed in these figures. For example, our combined exports and imports a decade ago were only $66 billion whereas in 1978 these flows reached a total of $318 billion! Some of this reflects inflation but in real terms, there has also been a continual and impressive growth, whereby the U.S. interaction with the international economy as a percentage of GNP has literally doubled in the last decade. If services and investments are included, our international commerce is now equivalent to one-fifth of our GNP!

Despite the benefits of such growing interdependence, the U.S. trade balance has been in the red in six of the past eight years since 1970, and one of those was the 1975 recession year. The deficit was a whopping $34 billion in 1978. The Administration estimates a $26-28 billion trade deficit figure for 1979 and a current account deficit of some $8-9 billion.

These figures, Mr. Chairman, sketch out several fundamental problems that affect any assessment of this multilateral trade package.

One is that the United States is a profligate user and importer of OPEC oil, which, at its present excessive and, in our view, unreasonable cost, accounts for $42.3 billion of our imports. We simply must get that hemorrhage under control, no matter what we do on other trade matters. But that staggering number trends to mask a second problem which is a slow but steady decline in our trade competitiveness in other sectors.[2]

It seems to us that the key question which Congress—and the American people—ought to be asking about the MTN results is, do they give the United States a fair chance to correct the adverse balance of trade? I put the proposition that way because a number of factors are at work: First, there is the attitude of American business toward international trade competition and its effectiveness in this competition. Quite frankly, these have sometimes left something to be desired. As a nation we really have not yet caught up psychologically with the growth and significance of the international sector to the American economy.[3]

Among our other self-inflicted handicaps is the belief, particularly among many economists, that the use of floating exchange rates creates a more or less self-equilibrating system that no longer requires balance of payments discipline. They argue that as the deficit rises, the lower the dollar falls, the more attractive our exports and the more expensive imports become, thereby reversing the deficit. But we have—or should have—learned that the adjustment is not automatic, and that the J-curve has a long downstroke and a substantial time lag. Moreover, we are now seeing the inflationary consequences of our neglect of the dollar; if and as it rises—which will be helped by a better trade balance—a stronger dollar will aid in curbing inflation.

In addition, the exchange rate system does not operate in a vacuum. The protectionist and/or aggressive export promotion policies of other countries—too long encouraged by American generosity in the afterglow of or postwar economic dominance—also play a key role. It is understandable, then, that various forms of protectionism are growing in this country, and not always without justification.

From a strictly economic perspective, the foregoing data have clearly indicated that the United States has a much greater stake in the international arena than ever before in its history and that the country needs to take advantage of every opportunity presented to provide encouragement to its export-oriented industries. I believe that this can be accomplished through the acceptance of the proposed MTN package.

In a political sense, it seems equally critical that this package be approved. The package of agreements soon to be formally placed before the Congress represents a culmination of multilateral efforts that extend over a four- to six-year period, depending on when one chooses to mark the start of the "Tokyo Round." Over these years the international trading community has probably been subjected to a series

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[1] For data on earlier years and more detail, see "The United States Balance of Payments: An Appraisal of the U.S. Economic Strategy" (1966), and "The United States Balance of Payments: From Crisis to Controversy" (1972), IEPA, Washington.

[2] The views of IEPA's president, Dr. Timothy Stanley, are contained in the record of Committee hearings on November 3, 1977 at which you invited him to join a panel of experts to discuss this question.

[3] Not only have exported goods risen as a percentage of all U.S.-produced goods (from 8 percent in 1964 to 14 percent in 1977) but by 1977 the return on foreign investments constituted over 35 percent of the Fortune 500's overall profit, which remains the primary source of capital for U.S. investment and growth.

of shocks and stresses exceeded only by the worldwide depression on the 1930's. The solutions adopted in response to that period were clearly autarkical and protectionist, and certainly contributed to the political and economic tensions that resulted in World War II. In the 1970's these pressures included the need to rework the world's financial and payments system, the energy crisis and the associated rapid increases in energy costs, and the large trade imbalances that developed among major regions of the world and between the U.S. and many of its major trading partners.

In the face of these stresses, however, the member countries of GATT, as represented by these agreements, have succeeded in perpetuating the trade liberalizing pattern followed since the end of World War II. For example, at that time, the average ad valorem rate of duty on all dutiable U.S. imports was around 32 percent. By the conclusion of the Kennedy Round reductions this average had fallen to around 8 percent. The Tokyo Round calls for a continuation of this trend, with tariff reductions to be phased in over an 8- to 10-year period. These reductions would reduce the average tariff on industrial dutiable imports to 5.8 percent from its present level o 8.3 percent. These should not be either large or sudden enough to produce significant distortions in world trade patterns. But they should keep the world moving in the direction of competition and efficiency rather than toward protectionism, inefficiency and higher prices.

In the nontariff barrier area, this agreement may mark a historic breakthrough. It represents the first comprehensive attempt to come to grips with the nontariff impediments to trade that have proliferated as the tariff and quantitative restriction type of barriers have receded in importance. Moving forward on these codes of conduct in such areas as countervailing and subsidies, government procurement, international standards and customs valuation, will clarify what is acceptable international trade behavior and presumably open up more of international trade to international competitive forces. Thus, in an overall sense, the U.S. stands to benefit from the acceptance of these agreements. But to do so, other countries, such as Japan, will have to implement codes such as on government procurement, in a fair manner. That is why implementation, which I will address below, is so important.

As has always been true regarding structural shifts associated with trade liberalization, the benefits of this expanded trade tend to be distributed more widely than the costs of adjusting to these increased trade flows. This is certainly true when one considers the benefits to consumers in the form of wider consumer choice and lower prices which can help dampen our raging inflation. While the benefits of increased exports may be somewhat more narrowly focused on individual industries, regions, or groups of workers, the economic expansions associated with these exports which bring increased benefits in the form of more employment, wages and profits, are not usually associated with or offset by increased costs to the economy. The exception might be those instances when domestic shortages are forecast to result from these increased exports, but this is a matter that can be handled under the purview of the Export Administration Act. The particular problems of more open trade occur on the import side of the ledger since it always is selected industries, products, workers, and regions who feel the direct impacts of these increased imports.

Since the Trade Act of 1974 amendments to the trade adjustment assistance programs, this nation has been attempting to make this series of programs a more effective tool to cope with these specific import-related adjustment problems. In previous testimony before this Committee, I supported an expansion of these programs, especially those aspects that looked toward adjustment rather than simple maintenance and perpetuation of noncompetitive industries. IEPA continues to support this approach and holds to the position that it can and should be made a more dynamic part of our trade liberalizing efforts. For much the same reasons, we support U.S. attempts to gain a safeguards agreement as part of this package.

Safeguards agreement

To date it has not been possible to reach agreement on an acceptable safeguards code. This is due primarily to the split between the parties on the use of conditional, nondiscriminatory (MFN) treatment under this code. The EC and some other European nations are urging the adoption of this procedure whereas the developing countries have balked at its inclusion.

Under this concept, Article XIX of the GATT would be amended to provide an international sanction to the use of selective import controls against that country or countries whose import increases were thought to be responsible for causing injury to a domestic industry. Imports from all other countries presumably would be unimpeded.

On the basis of recent history with the use of Article XIX, or lack thereof, Section 107 of the Trade Act which called for the U.S. to attempt to negotiate a new international safeguards procedure, and the potential for abuse of a selective re-

straint program, I personally believe the U.S. should continue to seek a revitalized international safeguards agreement that would continue to include nondiscriminatory treatment.

The international safeguards agreement has been little used and easily circumvented. Countries have avoided its use, in part because of its retaliatory provisions and in part because they have been able to achieve the same purposes by other means, in particular the use of orderly marketing agreements and voluntary export restraint programs. These have occurred outside the purview and surveillance of any multilateral body and have generally been a reflection of the trading weight of the individual country participants rather than any agreed upon international principles. These agreements have also tended to proliferate, not only across sectors or products, but within a product classification, as witnessed by the extension of orderly marketing agreements on color TV imports from Taiwan and Korea, after imports from Japan had been put under restraints.

We recognize that from time to time certain industries are faced with major overcapacity or competitive pressures that may require such exceptional treatment. However, as a general rule, these problems should be dealt with in an internationally accepted framework that would provide certain minimum assurances to all trading nations about the equity of the resulting trade limitations.

We would also suggest that the international safeguards program include some provisions that would require a nation taking temporary safeguards actions to adopt a positive adjustment assistance program as part of these safeguards. This would be supportive of the idea that these safeguards were intended to be temporary and not become a permanent fixture. It would also go beyond the passive adjustment concept that is implied by placing a limitation, and perhaps a deceleration, on the duration and level of the safeguards restraints. As a minimum, this passive adjustment concept needs to be part of a safeguards program.

Let me now turn to one final aspect of point 2 on your agenda which was concerned with relations with developing countries. A chief complaint of the "Group of 77" nations has been the failure of the international trading system to address aggressively their special problems. Indeed many believe, or at least aver, that the rules and performance of the system are designed to prevent them from sharing in the benefits of trade.

The developed world has attempted to respond to some of these complaints. In 1966, Part IV was added to the GATT articles. This addition exempts the LDC's from the requirement of reciprocity, a critical concept in the GATT, and permits certain behavior, for example, the use of balance of payments restrictions for development purposes, which is at least formally forbidden to the developed world. In addition, following UNCTAD II, most of the developed nations instituted Generalized Systems of Preference type programs. These permit certain products of the Third World to enter developed markets at much lower or zero tariff levels.

The LDC's often claim that these preference systems are of little or no assistance since they are not internationally binding and generally incorporate annual quotas for imports of a specific product at these reduced tariff levels. Moreover, they also contend that as average tariff levels come down, the value of these preferential systems declines. While these objections are accurate and the systems could be improved, probably with little risk to developed countries, the preferences to provide an opportunity for export development by countries not already in these markets.

In dealing with the development world, in this and other international economic policy issues, it is essential that this group of countries not be treated as a homogeneous mass. Clearly policies appropriate to the least developed nations should not automatically be extended to the advanced developing countries. For example, some of the fastest growing non-oil LDC's at present, namely South Korea, Taiwan, Singapore, and Brazil, are the most deeply involved in the international trading system. Brazil is different from the other three in that its industrial structure is based on great physical resources, while the first three have very little in the way of natural resources. The rapid growth of this group of advanced developing countries does raise a question which in the abstract should be a pleasure to consider, but in reality is extremely contentious. When does a less developed country become a developed country? According to IFS figures the GNP/capita of Singapore in 1977 was $2,749 (in current terms) and Taiwan reached $1,174. South Korea, while substantially lower in GNP/capita, has been growing recently at an almost 15 percent per year rate of growth. As a comparison, the estimated per capital GNP in Turkey is $1,140, Portugal $1,640, and Greece $2,870.

While recognizing that there are special circumstances involved in these per capita income figures, i.e., much of the increase is associated with inflation and the distribution of income is badly skewed, at some point these nations must take up an

equal share of the responsibilities in the system and begin phasing out the special benefits which have been granted to them. Notable in the trade area are the subsidies provided to many exporters in these countries and the use of high tariff levels to protect "infant" industries.

The point at which this process must begin is a political question, which must be resolved so that the limited international aid resources can be allocated most effectively. The context of the GATT negotiations provides an adequate opportunity to confront this issue. In this sense, then, we support the graduation concept, by which the advanced developing countries recognize the necessity of phasing out some of these benefits along with their assuming more of the responsibilities associated with the international trading system.

Implementation of the agreements

The basic thrust of the various codes of conduct that have been agreed upon at the GATT negotiations and that Congress will be considering, is in the general direction of greater transparency, clarity and simplicity in the international rules of trade. They are also intended to achieve a greater openness in the international system and so enhance the opportunities for trade. IEPA strongly supports these general principles.

The overall direction of the suggested implementing legislation that has emerged from the various closed sessions held by this Committee and its Senate counterpart has also been supportive of these concepts. As far as can be judged, efforts will be made to make the rules and criteria governing trade more explicit and the implementing system more efficient and so more responsive to the needs of American importers and exporters. This is all to the good.

While I am not in a position to comment on the specific aspects of each of the codes as regards agency responsibility, timing requirements, burden of proof, and judicial review, I would like to note the following general principles:

The incorporation of an injury test in the countervailing/subsidy code, along with the prohibitions against export subsidies and the identification of domestic subsidies is an appropriate action to take.

Efforts to expedite the processing of trade complaints are generally laudable. However, in an effort to achieve this, we must also make certain that ample opportunity is provided to those opposed to these complaints to develop an adequate defense or counter position. A legislatively imposed schedule that is too tight may preclude this latter possibility.

We should guard against the recurrence of instances of multiple jeopardy, such as occurred recently in the case of TV imports, from the simultaneous filing of a number of petitions for import relief. This involves some clarification of the relationships among petitions filed under Section 201 of the Trade Act, the Antidumping Act of 1921, as amended, the countervailing statute of the Tariff Act of 1930, as amended by Section 331 of the Trade Act of 1974, unfair trade provisions of Section 337 of the Trade Act of 1930, as amended, and under Section 301 of the Trade Act of 1974.

An area that is of major concern to IEPA, both in the implementation of these agreements as well as a general trade principle, concerns the role of services in international trade. I noted earlier the positive contribution to our trade balance that stems from our trade in services.

In 1978 U.S. private service sector balance of payments export earnings, including returns on direct investment, were approximately $52 billion. On a net basis, the sale of international services contributed over $23 billion surplus to the balance of payments account. The services account is one of the fastest growing areas in world trade and comprises a diverse group of industries from construction and engineering, air transport tourism, shipping and insurance, to accounting and motion picture services.

Domestically, recent statistics from the Bureau of Labor Statistics indicate that the service sector represents two-thirds of the total work force and by 1985 the Bureau predicts that three-fourths of the work force will be employed in service industries. Additionally, approximately 65 percent of the private sector's contribution to GNP in this country is generated by service industries. The importance of services internationally was recognized for the first time with the passage of the Trade Act of 1974. Section 102, Section 135(b)(1), Section 136 and Section 405 all include provisions that emphasize the importance of services as part of the successful implementation of this act. Section 301 is probably the most important part of the Trade Act of 1974 that deals with services. It empowers the President to withdraw trade agreements concessions, or impose fees or restrictions on the service of any foreign country which burdens, restricts or discriminates against U.S. commerce or engages in discriminatory or other acts or policies which are unjustifiable

or unreasonable and which burden or restrict U.S. commerce. For the purpose of this section, commerce was specifically defined to include "services associated with international trade."

Section 601(10) also defines the term commerce to include services associated with international trade.

The use of the term "associated with" unfortunately has limited the applicability of certain Trade Act remedies to only those service industries associated with international trade in goods. It is clear, however, that the intent of Congress was to recognize to importance of service industries in and of themselves and not just as an appendage of the goods trade. In the report of the Committee on Ways and Means on the Trade Act, it is made clear that the Congress expected the Administration to enter into discussions with foreign countries to eliminate tariff or nontariff barriers against U.S. international service industries.[4] However, until about 18 months ago, the Executive made only limited moves to address service industry problems, and despite the history surrounding the legislation, as well as the Report of your full Committee, a narrow interpretation of services was used in these efforts so as to restrict action to service industries directly associated with the export of goods.

When the Administration did move, after considerable pressure from service industries and other sources, the Office of the Special Trade Representative laid on the table in Geneva some of the problems dealing with service industries. Unfortunately, since this was put forward late in the negotiating process, little progress actually was made. Thus, for example, we understand that under the government procurement code if the procurement includes not only goods but also services related to those goods then those services would be open for competitive bidding if covered by the overal code itself. In addition, certain services provided at preferential rates in support of a goods export would be considered subject to the provisions of the subsidy code. However, services in and of themselves and the problems surrounding service industries, including discrimination and unfair treatment are not covered under the present MTN agreements.

It is our firm belief, Mr. Chairman, that service industries and the growth of service returns to foreign exchange to the United States will continue to be a key ingredient in maintaining our economic strength abroad. Apparently your committee is of the same opinion as was recognized in your April 6, 1979 Press Release No. 17. In that release you agreed to accept the Senate Finance Committee's recommended provision regarding changes in 301(a) in order to clarify that services, whether or not associated with specific products, are to be protected under Section 301. It agreed to amend that section so that "the term 'commerce' includes services associated with international trade whether or not the trade is related to specific products."

In spite of these recommendations and in light of the historic treatment afforded this problem, however, this change may not be adequate. As long as the term "associated with international trade" is used, I fear that a narrow interpretation of the words "associated with" will be maintained by any Administration which wants to evade the issue of services. It would seem better to drop the words "associated with" completely and indicate that "the term 'commerce' includes services in international trade whether or not the trade is related to specific products." This should also be used in Title VI, Section 601(10) where the term commerce is again defined.

Structural and organizational aspects

There is an old legal aphorism that "substance is secreted in the interstices of procedure." The application of that statement here is that the key questions about implementation of the trade agreements may be answerable only in terms of the way the U.S. Government improves its organization for carrying out such implementation.

I understand that the Administration has committed itself at least to consider these structural aspects as part of the overall trade package, and that one leading contender is the Roth-Ribicoff proposal to establish a new and independent Depart-

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[4] Page 66 of that report states "It is the intent of the Committee that 'commerce' as it is used in Section 301(a) is to include services as well as goods. Although the Committee understands that the trade agreements of the type authorized under Title I of the bill do not usually extend to the treatment of services, it is much concerned over present practices of discrimination against U.S. service industries including, but not limited to, transportation, tourist, banking, insurance, and other services in foreign countries. It is the Committee's intent that the President give special attention to the practical elimination of this discrimination by the use of authority under this provision to the extent feasible as well as steps he may take under other authority. This intent is further indicated in the Section 163 requirement that he report to Congress on the result of action taken to remove this discrimination in international commerce against U.S. service industries." House Committee on Ways and Means report on the Trade Reform Act of 1973 (enacted as the Trade Act of 1974) No. 93-571.

ment of Trade and Investment. In talking with numerous business leaders, there appears to be a general consensus that reform of some sort is badly needed. But, in my own view, and that of others to whom I have talked, there is some doubt that a totally new department is either feasible or desirable. It might be better to build on an existing organization, with the Department of Commerce or an expanded STR being logical candidates. If an expanded Commerce Department were selected it should be reorganized so as to deal with the dichotomy that has long existed there between domestically and internationally oriented functions. This reorganization might include the creation within the Department of an agency headed by a deputy or undersecretary of Commerce.

In either event, this larger organization could be given responsibility not only for the implementation of those tasks that stem directly from the MTN's, but from other trade-related matters as well. It could consolidate functions such as the Ex-Im Bank and OPIC, plus some Treasury trade enforcement functions, and certainly the staffing of U.S.-foreign trade missions. But I would not want to go as far as some critics—and there are many—of the present performance of the Departments of Commerce, Treasury and State on these matters, and centralize all functions. For that might merely strip key Cabinet departments, who will inevitably continue to have and important role in international economic policy, of their expertise and of those experienced staffers who are sensitive to the need for a coherent foreign economic policy. Moreover, it can be argued that when a function is centralized, it is most vulnerable to being isolated by its bureaucratic opponents.

As noted, the reductions in nontariff barriers are the most significant result of the MTN. Consequently, the most important domestic follow-up over the next five to ten years will be the institutional arrangements and mechanisms used to monitor these agreements. This differs from international monitoring. The system put in place must provide an effective avenue for U.S. exporters to lodge their complaints and get appropriate U.S. Government responses and, as applicable, corrective government action when business runs into the traditional "stone wall" or foreign government "technocratic" stalling under one or another of these codes. If the government fails in this regard, the next piece of trade legislation may very well break with our 40-year plus history of trade liberalizing efforts.

The above, however, is only half of the problem. No matter what decisions are made about departmental allocation of functions, the key question is executive branch coordination. And in our government that really can be done only at the presidential level. So we would urge Congress to enact, in whatever reorganization bill may become part of the package, that there should be a body—call it a Council on International Economic Coordination or what you will—to be chaired by the President or his designee, comprising State, Treasury, Commerce and Agriculture and Labor as a minimum, with such other appointees as the President may elect. Such a body needs a very able Presidential aide as its interlocutor. One possibility might be to build on the authorization, title and perquisites of the existing STR, even if the detailed staff functions are moved elsewhere.

While we are all in favor of invigorating those functions which will improve America's competitive performance in the world economy, and our exports in particular, there is only one level at which the balance between fiscal and monetary, foreign and domestic, and many other identifiable elements can be reconciled, and that is the White House.

Thank you, Mr. Chairman. I would be pleased to answer any questions that you or other members of the Subcommittee may have.

TABLE 1.—U.S. BALANCE OF PAYMENTS, 1962–79, SELECTED YEARS

[In millions]

	1962	1966	1970	1972	1974	1975	1976	1977	[1] 1978	[2] 1979
Merchandise exports	$20,781	$29,310	$42,469	$49,361	$98,306	$107,088	$114,694	$120,585	$141,819	
Merchandise imports	−16,260	−25,493	−39,866	−55,797	−103,649	−98,041	−124,047	−151,644	−176,008	
Trade balance	4,521	3,817	2,603	−6,416	−5,343	9,047	−9,353	−31,059	−34,189	−26–28
Net service [3]	3,918	5,088	6,405	7,912	16,328	14,889	18,402	19,211	23,259	
Balance on goods and services	6,026	5,966	5,654	−2,125	8,905	23,060	9,361	−10,514	−10,885	
Unrequited transfers	−2,638	−2,932	−3,294	−3,854	−7,186	−4,615	−5,022	−4,708	−5,076	
Current account	3,388	3,034	2,360	−5,979	1,719	18,445	4,339	−15,222	−15,961	−8–9
Long-term capital [4]	−3,471	−2,472	+1,071	+5,387	+4,538	−11,943	−1,278	+21,628	+5,384	
Basic balance	−83	562	+3,431	−592	+6,257	+6,502	3,061	6,406	−10,577	

[1] Preliminary balance of payments basis.

[2] Forecast.

[3] Includes return on investment, (including reinvested earnings which are netted out in capital transactions).

[4] Includes non-reserve official Government transactions and subtractions for reinvested earnings.

Source: Department of Commerce.

Mr. SHANNON. You plan a council which would keep in place all the other organizations we have within the Treasury, Commerce, State Department, ITC?

Mr. ROSENBLATT. That is correct.

Mr. SHANNON. And be another layer of government overlooking the fragmented policies that we have today?

Mr. ROSENBLATT. Well, our recommendation is in two parts. One is to do something in terms of restructuring the departmental level but the other is to reconstitute an organization similar to CIEP or something at the White House or Executive Office level to provide a more continuing and permanent intergration and coordination of policy which seems to go off in many directions from time to time.

Mr. SHANNON. I think everybody would agree that we are structured in fragments and that we should coordinate better, and this has impeded our trade efforts considerably, but would you be in accord with what is being discussed quite openly and there are some bills filed on it regarding a special Cabinet level position for trade where all the pieces would be put together in one super department that would be responsible to the President directly?

Mr. ROSENBLATT. No; I don't think so because you would still have competing bureaucracies at the departmental level who would necessarily have to be involved in these issues and in a sense depending upon the tug and pull of bureaucratic pressures and personalities involved, the new department could simply operate in a vacuum all unto itself.

Mr. SHANNON. Well, we do have the structural problem of intercommunication.

Mr. ROSENBLATT. There is no doubt about that.

Mr. SHANNON. Relating to each other's department.

Mr. ROSENBLATT. Yes, sir.

Mr. SHANNON. Thank you very much, Doctor.

Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. SHANNON. We appreciate your being here. Thank you very much, sir.

I would like to close the hearings at this time and announce that they will begin tomorrow morning at 10 a.m., in this room. The first witness will be Ambassador Robert S. Strauss, Special Representative for Trade Negotiations, and Ambassador Alonzo McDonald, Deputy Special Representative for Trade Negotiations.

We will adjourn the hearing at this time.

Thank you very much.

[Whereupon, at 3 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Friday, April 27, 1979.]

MULTILATERAL TRADE NEGOTIATIONS

FRIDAY, APRIL 27, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. VANIK. The subcommittee will come to order.

Ambassador Strauss and Ambassador McDonald, I would like to welcome you to the hearing this morning. I have sat here along with my colleagues for many hours this week and I want you to know that I have heard a lot of praise about the job you have done and the agreements you have made with our trading partners. In my opinion—and I believe I speak for most of the members of the subcommittee—this praise is well deserved. It is something that we have been able to see in the course of the colloquy and the development of inquiry here with the various public witnesses whom we have had.

While there are many areas that are unresolved and some dissatisfaction, no one has testified here that you are in any way derelict in your responsibilities to the Congress of the United States.

As I check with some of our foreign trading partners, they seem to have the feeling that they have lost a great deal in this concession, and probably many Americans feel that we have lost something. But that is probably the test of a true agreement, because, in this sort of a matter, everybody has to do some giving and this makes a relationship between our trading partners which provides for commerce by rules that are common and uniform throughout the world.

We still have much work to do in our consultations and developing the necessary and appropriate legislation to implement these agreements. For example, deep concern has been brought out during the course of our testimony on the injury and casualty provisions in the countervailing and antidumping provisions. Similar concerns were expressed about the nature and amount of discretion the Secretary of the Treasury will have to discontinue investigations of unfair practices under these provisions.

Questions were raised concerning the reciprocity being achieved under the Government procurement code, particularly for some industry sectors, if implementing legislation is not drawn to prohibit free rides by our trading partners. The failure to achieve a safeguards code and the possible inadequacy of our present import relief provisions was also stressed.

Finally, there is a lack of satisfaction in specific product areas concerning the failure to achieve enough market access abroad or, alternatively, reluctance to agree to a reduction in our own barriers as part of the overall negotiations.

By and large, however, the theme of the hearings has been one of general approval of the results of negotiations.

I would like to stress the importance I attach to developing implementing legislation that will substantially meet the concerns of our domestic industries and workers in the unfair trade practices area and other provisions I have mentioned. I am convinced that the needed basis of support for approval of negotiations rests on our achieving that goal.

Ambassador Strauss, we will be very happy to hear from you. I understand that you have another commitment. I hope it is not in the Middle East because we hope and expect that you are going to stay with us on this trade matter until it is cleared through the Congress.

I hope that Ambassador McDonald will be able to remain to adddress some of the aspects of the international codes that we have touched upon in our markup sessions.

Ambassador Strauss and Ambassador McDonald, we will be pleased to hear from you.

STATEMENTS OF AMBASSADOR ROBERT S. STRAUSS, SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS, AND AMBASSADOR ALONZO McDONALD, DEPUTY SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Ambassador STRAUSS. Thank you very much, Mr. Chairman. Let me begin by saying to you that, for myself and for my two colleagues Ambassador McDonald and Ambassador Wolff, who is in Europe right now for meetings on steel over the weekend, and for our other colleagues on the staff, each of us is grateful personally and professionally for the remarks that you have made. We have worked so hard and I have worked my associates so very hard that your taking the time for a bit of praise will mean very much to them. I shall convey it to everyone in the office on my return in a few minutes.

Let me next say that, with respect to the conclusion and windup of these negotiations and the legislative process, a team of wild horses could not pull me off this job until it is completed in a way that the President wants it completed. This committee and its counterpart in the Senate wants it completed, and the Members of Congress do.

I say to the Members of Congress, both Republicans and Democrats alike, and I would be remiss if I didn't say that, in my judgment, the measure of progress that we have made is one that should be shared by all of us, Republicans and Democrats alike, on this committee and throughout the Congress and in the Senate.

Mr. VANIK. One of the unique things about our work here is that this is one area of legislation where we have completely bipartisan positions.

Ambassador STRAUSS. We truly have. What has impressed me is that I have come in from a very partisan position as chairman of the Democratic Party——

Mr. VANIK. Don't tell me you are going to move to the other side.

Ambassador STRAUSS. No; but I tell you this: It is mighty comforting snuggling up to my Republican friends over here. I am glad that while I was highly partisan I was not accused of taking cheap shots along the way. It has stood me in pretty good stead.

Mr. Chairman, let me make another reference before I address the overall issue, and that is to a specific matter that has been in the press lately, the status of the Japanese negotiations. It has been so skewed and construed and misconstrued that I should like to put on the record where we stand. I have unhappily read accounts which leave a rather inaccurate perspective and perception.

We are in accord with the Japanese in almost every respect of any consequence except in the area of government procurement. It is my genuine and sincere belief that the Japanese have tried and are trying very hard to meet our minimal requirements and they have been unsuccessful in doing so because of the same kind of political problems that we face in this country.

I think that we are always very quick to criticize, and I have negotiated hard and strongly and firmly with the Japanese, and at times throughout the past 2 years I have felt that they weren't as responsive as I would like them to have been. I think they have tried sincerely and genuinely to meet our minimum demands.

We have tried, on the other hand, to be as flexible as we possibly can in seeing that our minimum demands are entirely reasonable. I can assure you and the members of this committee and the Congress and the American public that our demands are reasonable and, while they are sincere, there is a gap and we have no resolution of that gap; we can move no further.

That is in respect to the Government procurement code and particularly with respect to a narrow portion of that—telecommunications and specifically, in switching gears and computers. Other than that, our issues are reasonably well put to bed.

We will solve that problem somewhere, sometime, somehow. If we don't, we will deal with it in this country to see that the agreement works equally both ways or not at all. We want none of the best of it; we are not going to take any of the worst of it. It has to be a two-way street.

Mr. VANIK. I take it that you are still optimistic.

Ambassador STRAUSS. We are at a delicate and sensitive stage, and I don't want to comment on it in any more detail than that. I am not here to carp or criticize but to try to put, in an unemotional posture, where we stand and to make absolutely certain that the record is crystal clear that we have been as flexible as we could reasonably be, and that the Japanese Government has tried, I think, genuinely and is trying at this very moment to achieve our mutual objectives.

Now, Mr. Chairman, let me go on a broader basis and direct myself to this whole week's proceedings, which we have followed very carefully and I have followed them with great interest. I think that, while there has not been as much press on it as I would have hoped, it has provided the American people with a unique opportunity to better understand the importance of the Tokyo round and its implications for employers, workers, and consumers.

I am grateful for the support for these negotiations shown by individuals representing a great depth and breadth of our Nation's economic interests.

I have frequently said that the results of the Tokyo round should not be oversold and not be exaggerated. Perhaps that reflects my cautious nature, which some may fail to recognize. But we should not undersell it, either, Mr. Chairman. Our negotiators—Bob Strauss, Alonzo McDonald, Alan Wolff—did not get 100 percent of what we sought or even what we think we deserve, but what we did get represents an achievement of vast potential for the exports of this country.

I believe that in 10 years we will look back on the Tokyo round as the beginning—not the end, but the beginning—of the most dramatic period of expansion in world trade in our Nation's history.

Some will now accuse me of overenthusiasm, Mr. Chairman. That is not my purpose. I firmly believe that what we have brought back from Geneva stands on its own merits, despite some admitted shortcomings. It is worthy of the strong support of this Congress and of the American people.

The Tokyo round package that we will submit to the Congress shortly contains many concrete benefits for the United States of America. For enterprising American business it means new opportunities for profitable sales abroad. For our more import sensitive industries, for which we do not at this time anticipate new foreign markets, the Tokyo round, along with other administration programs, offers an opportunity to adjust to a changing world economic reality with a minimum of discomfort.

The agreements offer hope and encouragement for more active and rewarding U.S. participation in future world trade. They can help us to restore the dynamism and the positive spirit for which American industry is justly proud and famous.

For our workers, the Tokyo round means new job opportunities in higher-paying industries. A good job in a company with a future is the best kind of job security I can think of.

To our farmers, the Tokyo round means a continuing and growing role in world markets, a dramatic expansion of export opportunity.

The stage is set for reducing and removing barriers erected over the years that have blocked our exports. The stage is set for unleashing the most efficient, most formidable agricultural force that the world has ever known, that of this country. Our negotiators have protected what we have already worked so hard to achieve and build for a future in which our exports will be given more importance than today.

To American consumers, this round provides the most important benefits of any of the postwar trade negotiations. Consumers will now have a broader choice of goods at the best available price.

Perhaps even more important in the long run are the codes of conduct which represent the key achievement of the Tokyo round. Through these codes, consumers will have easier access to the kinds of goods they desire. An open trading system is a major achievement in this age of consumer awareness. It is one which few people would have throught possible just a few years ago.

Mr. Chairman, you and members of your committee have heard the testimony of a great many knowledgeable people over the past 10 days. There is little for me to add at this point. I do want personally to express my appreciation to those who have labored so diligently to reach this point in the Tokyo round process. I want to thank the Members of Congress, as I said earlier, and particularly their staffs and your own staff, who have already devoted many hours to the negotiations in Washington and in Geneva.

I want to thank our more than 900 private sector advisers from industry, agriculture, and labor. Their participation has been for me one of the most rewarding aspects of this negotiation. I know, Mr. Chairman, from the role you played in the 1974 Trade Act, it must give you and those involved with you, your staff and others, tremendous satisfaction to see what this participation—industry, agriculture, labor, private sector—has meant.

I want to thank our negotiators and those in the many Washington agencies in the Government for supporting bringing home a good package under trying circumstances.

I want to thank the members of the press for doing their best to help me twll the world about the Tokyo round and for their uncharacteristically gentle treatment of this particular negotiator.

Together we have taken many steps down a difficult road and we are now beginning the final leg of this journey. Diligence, persistence, and tenacity on the bipartisan basis that I spoke of earlier has carried ut this far. This represents the best spirit of the American process and we hope to continue it.

Much of the credit truly belongs to President Carter, and I hope the press in this room will hear what I am saying. Despite constant pressure to act negatively, President Carter has consistently demonstrated real leadership and vision. He is a leader with the character and determination to stand up for what is best for America, for our workers and our farmers and our consumers. His courage, his willingness to take political repercussions has made our successful conclusion of this trade agreement possible, just as the willingness to take political scars by both Republicans and Democrats on this committee made it possible. I thank you very much, Mr. Chairman.

Mr. VANIK. Mr. Ambassador, along with the thinking that you have expressed, I see a moderate but steadily increasing level in world trade but I think we have to look at the other fallout benefits for the American people and for the rest of the world. This is one of the most complex agreements ever negotiated between nations and, as you know better than anyone else in this room, one agreement leads to another. Trade is the currency of peace and, as we exchange products, we exchange concerns and understanding.

The real achievement of the Tokyo round is that it probably uniquely constitutes a larger mass of agreement than we can find in almost any other part of our negotiating relationships. I think that this interrelationship between the nations can be only for the good.

Before you leave I have some pressing questions. First of all, the steel caucus was very much concerned about the last-minute steel tariff reduction offers by our trading partners and they expressed concern to me on this point.

Apparently they say that, on the evening before the multilateral trade pact was to be signed, the European Economic Community withdrew its original steel tariff reduction offer of 30 percent, where a 6.9 percent existing average tariff level was to be reduced to a 4.8-percent level and, instead, a 21.7 percent steel tariff reduction was offered and 6.9 percent was reduced to 5.4 percent as an average tariff level. Do you have any comment on that?

Ambassador STRAUSS. Mr. Chairman, I have general knowledge about that. Later on Ambassador McDonald will testify on this specifically. I think the last-minute changes that were made were of a balancing nature, and our industry advisers were involved in that. We made additions and withdrawals in the balancing. The tradeoffs were satisfactory to the industry at that time.

Ambassador MCDONALD. Mr. Chairman, that is may impression. Our industry's position, as it was communicated to us in Geneva, was that they were far more interested in withdrawals than in contributions of other countries. In fact, we had at one time offered a considerably higher level of reductions, which the Europeans were very pleased with. But our industry said that our offers were far too high and that we should move them back. That is exactly what we did.

Mr. VANIK. So we moved back in tandem? Is that what you are telling me?

Ambassador MCDONALD. No; we took the initiative. The United States moved first. We basically said: "This is our bottom line; we cannot go any farther than this." Then it was up to the Europeans to try to seek a balance at the lower level which we established at the insistence of our steel industry. Our advisers clearly pointed out to us that they were much more concerned about imports from Europe into our country than they were about exports from the United States to Europe. It was within that perspective that these changes were made.

Ambassador STRAUSS. I suspect that the final agreement met with less accord in Europe than it did here.

Ambassador MCDONALD. I am sure our European friends would have been delighted to put them both on the table if it was in their best interest to do.

Mr. VANIK. One problem has been created for Puerto Rico and the Virgin Islands. The Governor the Puerto Rico complained about tremendous revenue losses that will be sustained by the Commonwealth because of the actions we were proposing with respect to the wine gallon situation.

Ambassador STRAUSS. I spent a great deal of time with the Governor also. He is unhappy and legitimately concerned. I told him that we would continue to follow this problem and see what this revenue loss amounts to. Our figures and his don't relate very well. In any event, I think the Governor has a legitimate concern that he is expressing. It is something we have to continue to direct ourselves to. Their volume is going up so high, increasing at such a rapid rate they are doing exceedingly well.

Mr. VANIK. I guess the consumption of alcohol and beverages increases with the inflation rate. People are trying to take solace in other things.

Ambassador STRAUSS. My comsumption of alcohol, Mr. Chairman, has increased with the completion of the negotiation and my association with age.

Ambassador MCDONALD. Mr. Chairman, just to give another perspective on that issue, we are certainly aware of the concerns of Puerto Rico and of its Governor for any reduction in tax revenues that might be caused by this. Our own indications are, however, that that is not the case. There could be an argument made that they might miss potential revenue growth as a result of the concessions. Based on our own figures, sir, it would appear that there has been an enormous rise in rum consumption within our country over the last decade. That happens to be one of the distilled spirits which our consumers are taking a fancy to at an increasing rate.

As a matter of fact, our Puerto Rican imports into the mainland account for 18 times the level of imports at this stage and their growth rate just the last year was the equivalent of four times all imports.

Mr. VANIK. The concern was that some of the rum industry might go to the other islands that do not have a relationship with the United States?

Ambassador MCDONALD. Yes, but we don't see any really economic indication that that would really be a possibility. We suspect, sir, that less than 1 percent of all the rum sold in the United States will have a lower effective tax as a result of what we are doing. We really can't see any direct loss.

Mr. VANIK. Can you tell me of any specific advantages that will come to both Puerto Rico and the Virgin Islands as a result of the MTN?

Ambassador MCDONALD. Yes, indeed both in terms of the choice of goods they have and particularly some of the choice of goods at lower priced items, many of which we import into our country and with their particular average per capita income they are one of the big beneficiaries of, first of all, the availability of those goods within the United States and secondly of any measures that will in fact reduce our high tendency toward a greater inflation rate.

Consequently, we think that they in fact will be one of the bigger beneficiaries, certainly at the consumer level, for all of the concessions that we have given. We also don't see that they are paying a direct price, Mr. Chairman. They have benefited enormously with the relationship that they have in terms of rum sales on the mainland. We intend to see that they do. As Ambassador Strauss has indicated, certainly the administration will be diligent to make sure that their tax revenues are not affected in any appreciable degree, certainly not to the extent that the Governor expressed concern that they might be. This is a joint concern by everyone in the administration in discussing this issue.

I think that the Governor can be reassured on that issue.

Mr. VANIK. We have one general theme of concern and that is the concern of the older industrial production centers of America like my own. The New England coalition and our older centers are very troubled. Of course part of the trouble I realize is in the need to modernize and rebuild our capacity.

I was always hopeful that the trigger price mechanism might lead to some glaring announcement that our domestic steel indus-

try would feel confident encough to take on some very substantial major reconstruction to become more competitive. I felt that these provisions that we provided, what we did in the trigger mechanism and other steps, would be something that they should not come to rely on permanently, that they ought to be making a real effort, and I think this applies to the aging industries of America, to make a real effort during this pause and during the time that is afforded to update and shape up and become more competitive with the new plants and modern facilities.

I have been urging a rekindling of the technology of America. When you look at technology, it has been spurred by pressing needs such as war and the space program. I think what we need is a rekindling of technology on a regular basis, without the intervention and reliance on those emergency situations. I have been proposing and planning to sponsor and support legislation that would provide incentives for technology, because I think that this is an essential thing that would be useful, not only on the domestic scene but in our capacity to compete.

I am sometimes chagrinned with the great amount of trade that we have lost around the world. I said abroad the other day that I didn't feel the American people had any joy when their technology was sold under a foreign label. I think we ought to try to get more direct sales of American technology, services and improvements rather than let others who are specially priviledged to do it for us. At the same time I think that we should continue to rekindle out technology so that the world buyers look upon us as a source of creating better products at competitive prices.

I think if these products have high quality and attractiveness that we certainly ought to be able to compete in spite of the fact that the cost of financing in foreign countries is very, very competitive and perhaps much better than ours.

So I hope that in addition to your many other responsibilities, Mr. Strauss, I hope that you can bear on the President and suggest to him the urgent need for providing some real incentives to maintain the flow of technology and research and development in this country, so that our goods can maintain the preminence that they had in the past.

Ambassador STRAUSS. Thank you Mr. Chairman. I will do that. May I conclude then with one overall observation.

I hope we all keep in mind that we have reached the stage, Mr. Chairman, in this process where we conclude it is obvious that we are now going to have those who are most interested in imports into this country examine this only to find the warts of its restrictive aspects, tariffs remain too high, the implementing legislation will be too tough in terms of countervailing and antidumping, and all the other concerns that they legitimately have.

When we have finished with those who are concerned with imports we turn around and find those concerned with exports and they are concerned that the restrictive aspects are not sufficient, that the tariffs of others have not been reduced enough. They are both concerned, one wanting more and one wanting less, one wanting more, the other wanting less on injury test standards, and on and on.

We find ourselves where you begin to wonder, even though everyone of these things has been worked out carefully, this montage, if you will, that will balance to make what I hope will be a decent, symmetrical and attractive and decent picture, but if we just examine it in terms of its negative aspects, then we will end up, as I said when we opened these hearings, looking at the one-fourth of the glass that remains empty instead of the three-fourths of the glass that is full. Of course there are imperfections. I say that in conclusion as I said in the beginning.

We stand behind and present to you this trade negotiation in its concluding stages with pride in our work and I will look forward to working closely with you in the next few weeks and months as we bring it through the Congress.

Thank you, sir.

Mr. VANIK. I hope, Mr. Ambassador, that we can accelerate the schedule that we earlier discussed.

Ambassador STRAUSS. I, too.

Mr. VANIK. I think it is highly important that we move on this legislation just as rapidly as possible. That is going to involve very intensive work between the Senate Finance staff and our staff in order to get this language nailed down, so that we can have the implementing legislation specifically before the Congress.

Ambassador STRAUSS. I would like to get it done in mid-May, and I see that everyone is looking at each other and shaking his head. I don't know how to get on the record that we are going to be driving at an early conclusion.

Mr. VANIK. Perhaps we could say early June.

Ambassador STRAUSS. Mr. Chairman, unless we are going to take my date, let us do it in private.

What do you say we sign off on May 20 instead of June 15?

Mr. VANIK. I don't think the legislation will be drafted in that time. As quickly as it is drafted, we will move to the implementation.

Ambassador STRAUSS. I don't want to fall down on that. We have gone too far down the road. I just wanted to remark on those dates to be sure everyone was alert.

Mr. VANIK. They were awake.

Now I have a series of questions that relate to the agricultural problem. A great deal of concern has been expressed in the closing days of our discussion on the citrus problem and how the California producers particularly and the Northwest fruit producers are very much concerned about how we come down on that problem. Do you have any comment on that?

Ambassador MCDONALD. Yes, I do, Mr. Chairman. Actually I think our citrus people have come out very well on this negotiation, although less well than we had hoped because our concessions from the Europeans were minescule in the final analysis. We were not able to get all that we wanted. On an overall basis I think that we have some concessions that are extremely valuable for that industry all over our country, not just in one particular geographic section.

Let me just mention, taking fresh oranges as an illustration, sir, we have one of the major concessions from Japan. We have achieved a movement that will have taken their absorption of this

product up almost six times from the initial level that we had at the time of the negotiations between Ambassador Strauss and Minister Ushiba in January of last year through the implementation period already agreed in 1983.

Not only that, we have a further commitment for additional negotiations at that time, seeking the next level of liberalization and the United States has already expressed its intent to press for a complete openness of that market in their off-season. We also have extensive concessions in grapefruit including a reduction in the duty from the European Community, but altogether we have concessions on grapefruit from some 13 different countries. We also have concessions, sir, on limes and lemons, on orange juice, on grapefruit juice and on lemon juice. I would say in total, sir, although we would have liked to have had more, as Ambassador Strauss said, and we were particularly disappointed by the lack of a more forthcoming offer from our European partners, we feel that on balance we have obtained positive results for that sector of our agricultural industry and we believe they are far better off as a result of these negotiations than they possibly could have been without them.

Mr. VANIK. In the area of cheese quotas we have recommended, if there is an allegation of subsidized cheeses undercutting the U.S. wholesale market, the USDA should conduct a 30 day investigation of the situation. Foreign nations should be given 15 days to stop the practice and if they do not the President would have 7 days to take quota or tariff action against them. Do you have any objection to spelling out these time limits in the legislation?

Ambassador MCDONALD. We will have to look at the practicality of implementing this within the USDA's normal framework of operations, but to the degree that it is actually operational within the present market monitoring system, I do not believe that we would.

Our concern is just as that of Congress, to make sure that these commitments are in force and lived up to. We believe that they have been entered into in good faith by our negotiating partners, and we have their commitment to collaborate with us to make sure that those agreements are fulfilled.

Mr. VANIK. Do you have any objection to spelling it out in legislative language, in the implementing language?

Ambassador MCDONALD. I will have to refer that to the USDA for a definite answer.

Mr. VANIK. Will the existing 301 cases brought by the various fruit and vegetable associations receive priority attention under the new laws?

Ambassador MCDONALD. We are attempting to move all those 301 cases forward, Mr. Chairman, and we are anxious to reconcile all those pending cases as quickly as we can so that we can begin operating on the new system.

Mr. VANIK. What about priorities? Do you acknowledge that they will be given priority or not?

Ambassador MCDONALD. I do not know that final priorities have been established, sir, because we have had a request from each one who has a pending case to give that one priority. I think we will be looking at two or three criteria. One is how long the case has been

pending already, so that we can clear out those that would appear to be the most equitable for early attention.

We have no intention of delaying the pursuit of any of those. We hope they can all be resolved promptly.

Mr. VANIK. There is concern by consumer groups, and I share that concern, that the concentration of standards authority in commerce will weaken current line agencies that have responsibility for food quality and other health and safety measures. Now what can we do and how do we reassure these consumer groups that their interests are going to be protected?

Ambassador MCDONALD. Mr. Chairman, there has been nothing negotiated in our international agreement that will lead to that condition. It is entirely within our hands to make sure that those who have assigned responsibilities fulfill them fully.

Mr. VANIK. It will not disturb the independent agencies and others involved in establishing those standards?

Ambassador MCDONALD. It should not.

Mr. VANIK. There has been testimony that the application of antidumping laws does not make sense in the case of perishable fruits and vegetables. Does your office have any language that you can provide which would discourage dumping in, for example, tomatoes and other vegetables without destroying all vegetable trade?

Ambassador MCDONALD. We do not have the language yet worked out, but we are actively studying that question because there is a middle ground that we must achieve Mr. Chairman. We have heard very carefully the testimony presented here this week and we are seeking to find an equitable solution.

Mr. VANIK. Now is it true that Japan will cut its tariffs or the rates actually applied rather than the higher GATT rates?

Ambassador MCDONALD. That is a question still under discussion but it is our impression, sir, that that is what they will do. We have been insisting upon that in our discussions in Geneva now for at least the last 18 months that I have been personally familiar with and we believe that is the only equitable result. Therefore we think that can be achieved.

Mr. CONABLE. In some cases they are cutting their rates from what they consider their permanent rates even though they are below the bound rate and above any temporary cuts that have been given as concessions in the meantime. I take it that the Japanese are winging it a little on that and offering their cuts in different ways on different products. Is that correct?

Ambassador MCDONALD. In general, they are following the standard pattern, Mr. Conable. The only exceptions are in a few product areas where we did negotiate time differentials on staging. We obtained certain concessions either by delayed implementation or by a different staging pattern. In general we are anticipating that Japan will reduce its tariffs following a normal 8-year pattern, and they will be reducing from their applied rates. They will also be reducing in parallel their legally bound rates in the GATT. We anticipate that we will begin to benefit from the tariff reduction from an applied basis just as with other countries with whom we are negotiating.

Mr. CONABLE. Mr. Ambassador, I have something in mind or I would not have asked this question. That of course is film which is a product made in some quantity in my district. The situation there is the Japanese have a bound rate of around 40 percent under the Kennedy round. They reduced the rate as a matter of grace to 16 percent for which, of course, my constituents were duly grateful. They then made a temporary reduction under further pressure to 11 percent.

Originally they decided that when the American tariff on film was going down from 5 to 3.7 percent that they would be willing over the period of this negotiation to reduce the rate on film in a fairly straight line reduction from the bound rate of 40 percent, the effect of which would be to have their actual charged tariff effective only the last year of the phase-in while ours was a straight line reduction from 5 to 3.7.

I guess they agreed finally to reduce their tariff from the 16-percent level which had become their permanent rate in effect even though it wasn't bound. It is my understanding that if that is the case it will be 1983 or so before their reduction begins to affect what they actually have been charging as a temporary rate until recently.

This seems to me like a fairly typical Japanese operation where they are promising fuuure benefits for actual present concessions and I would hope that our rate won't go down at all until the actual improvement in the rate becomes apparent. Is there some area for negotiation on this still?

Obviously it is not a bad result in the long run but the phase-in can have quite a bit of inequity in its effect if you have the kind of figures that I have described to you.

Ambassador MCDONALD. I think your description, Mr. Conable, is exactly accurate. It is an issue that we are following as we are now going through the verification stage. The United States has requested, as you might suspect, that we begin the actual reductions from the currently applied rate, from the rates effective April 1 of last year following the special concession.

We believe that that is where we should end up at the end of the day. We are pursuing our discussions directly along that line.

Mr. CONABLE. I am terribly anxious that in dealing with the Japanese that we trade current benefits for current benefits and not current benefits to them for future benefits from them. That has been the pattern that has been difficult to achieve because they are good negotiators, bright people, and have perhaps the best of intentions, but usually a time schedule which involves considerable lagging.

Ambassador MCDONALD. I would have to make one other comment, Mr. Conable. I think that Ambassador Strauss has fully followed the approach that you have outlined in terms of seeking current benefits on a reciprocal basis. This is one reason that we have had some of the discussions that we have had. We also have reconfirmed at the negotiating table in Geneva of the agreement worked out between Ambassador Strauss and Minister Ushiba in January of last year. They made a breakthrough, in our view, with the conceptual understanding to seek a rough parity between our tariff rates at the conclusion of the implementation of the Tokyo

round. Although the verifications are not yet complete but are still in process, we believe on the basis that we have signed off will clearly achieve that important objective.

Mr. CONABLE. Mr. Ambassador, I am not expressing dissatisfaction, I hope you understand that. I have no objection to trading future benefits for future benefits or present benefits for present benefits. I just don't think they should trade present benefits for future benefits to be achieved from them. I hope that we will follow that pattern in our negotiations.

Ambassador MCDONALD. We certainly will. I think our positions are indentical on that.

Mr. CONABLE. Mr. Chairman, is it all right to ask an unrelated question as well?

Mr. VANIK. Yes.

Mr. CONABLE. Mr. Ambassador, I really am a little uncertain about the state of DISC. Perhaps I should have been here to ask this of Ambassador Strauss but I am sure you can advise me as well. Is there anything in the MTN that will affect this now or in the future? It is my understanding that at some point we are going to have to talk about this type of subsidy. I know it is a sensitive issue with the Europeans in particular. I know there are GATT proceedings of one sort or another that are addressed to ruling DISC out of order and as an unfair tax subsidy. I understand the subsidies code does not affect DISC.

Yet I assume it is going to have to be talked about at some point. I am wondering if there are any commitments of any sort with respect to DISC other than it will be talked about and if any concession has been achieved by any understanding that we have acquiesced in the finding of illegality under GATT relative to DISC, I want to be sure I know where I stand on that. I was a strong supporter of DISC and continue to believe that it is necessary to provide some degree of symmetry in a system which does give substantial subsidy as a result of the remission of some sorts of taxes.

Can you tell me in categorical fashion at this point what the status of DISC is?

Ambassador MCDONALD. The status of DISC has not been affected at all, Mr. Conable, by the course of these negotiations in Geneva. We have deliberately placed that aside as a separate issue, desiring and feeling the necessity to leave that as a domestic issue to be handled and dealt with separately. We declared that intent at the outset with our negotiating partners, and they had that view in mind as we carried out the negotiations on the subsidy code. Our partners recognized that this was not a problem that could be resolved in the course of these negotiations.

So, for all practical purposes we have grandfathered DISC. We have not affected its status whatsoever, nor do we have any obligations as a result of these negotiations that would in any way change its status.

Mr. CONABLE. If you have no obligations what are your expectations?

Ambassador MCDONALD. Our expectations, sir, are neutral as far as the negotiation on MTN. We have deliberately kept these issues separate from the negotiating process.

Mr. CONABLE. Thank you, sir.

Mr. VANIK. Mr. Ambassador, there has been much interest from abroad in our executive sessions and the American implementing process. Our subcommittee has expressed a similar interest in the details of the European Community's implementing process as it relates to the Commission, the Council, and the member states. Can you throw any more light on just how the Community will implement and the anticipating timing?

Ambassador MCDONALD. I will try to elaborate, Mr. Chairman. One of the difficulties of being overly precise is that this is a new experience also for the European Community. They have not negotiated on such a broad scale before and they will be finding their way to a degree in the legal implementation process.

But we have accepted from the beginning of the Tokyo round of negotiations the decision of the member states themselves that they were negotiating as a unit in the course of the Tokyo round discussions. That is the way they have proceeded, and that is the way we have proceeded as well.

We anticipate that the Commission will be speaking with due authority of the member states in implementing the agreements that have been worked out in Geneva. First of all, it is our understanding that the agreements themselves will be translated into the equivalent of European law, that the actual texts themselves will be the operative versions, and therefore that will be quite an important step in and of itself.

Second, we have requested of them that in any case where they believe there might be some legal question about the Commission actions being binding on member states, that they also request signatures by their member states or follow any other appropriate procedure within their own ranks that they think would fulfill their complete obligation to us.

We have thus far had a number of discussions between our legal experts on both sides. As I say, they are moving in a bit of unfamiliar territory but we know of nothing at this stage that would indicate any laxness in their part in terms of following through with full implementation exactly in line with the spirit of the negotiations, Mr. Chairman.

Mr. VANIK. Now I personally regret that a safeguards code was not agreed to, because I fear that safeguards action by other countries undisciplined by an international code will only divert more trade to the United States. What are the chances of agreeing on the code and what timing do you see is possible?

Ambassador MCDONALD. Mr. Chairman, I share completely your views on that. We have had long discussions among ourselves and many of your committees members and staff members about this issue. We have not given up on having a safeguards code in the final completed package. As a matter of fact, even in the last hours in Geneva some 2 weeks ago before we signed the protocoal, we agreed that we would make a final attempt following the completion of the UNCTAD meeting in Manila to assemble the negotiating group and see if we could not bridge the final remaining differences on the safeguards code.

We are committeed to do that. My own personal estimate is that we have about a 50-50 chance of being successful, but I can assure

you that we will be giving it our full support and we will be thoroughly disappointed if we are unsuccessful in bringing along that code. In my personal view, sir, it is an important element, as you have stated, in maintaining a system of law and order in international trade. Safeguards is an area in which we would certainly like to see the rules clarified and broadened.

Mr. VANIK. Mr. Conable has a question.

Mr. CONABLE. Mr. Ambassador, what will that do to LDC's currently toward the safeguards code? They don't like selectivity for obvious reasons. How do they stand now? They were originally I think not very happy about a safeguards code at all but now, because they expect the Europeans are likely to apply such a code selectively anyway, have some greater desire perhaps to see a code in the hope that it will limit or define the appropriateness of selectivity.

Ambassador MACDONALD. Mr. Conable, they have shown a judicious level of flexibility and tolerance, recognizing the pragmatic difficulties they currently face. They would have certainly preferred almost an absolute prohibition of any safeguard actions except those under the strictest interpretation of article XIX of the GATT.

But on the other hand they are realists, and they recognized that a proliferation of activities that are a de facto series of informal safeguards actions, are perhaps even harder to defend and harder to combat. Consequently their position has moved from one of being absolutely opposed to selectivity even to the extent a few months ago of leaving the negotiating table any time the work came forward, to one of now trying to define selectivity within the framework of a disciplined system with which they could live.

In the closing days of the negotiation, I found great support for the idea of having a safeguards code among their thought leaders, and I expect that they will be pressing very hard to have a safeguard code.

If that code appears to be just a total opening of a chute, down which the disciplines of the system could disappear, then they as well as we, will vigorously oppose it. But if they can see a vigorous disciplined system that they can challenge on a multilateral basis, in which reasonable criteria are being applied to any safeguards action and in which they have an opportunity to make sure that it is going to be handled in a open forum with objective review processes and later recourses then my suspicion is that we might be able to move ahead.

I think the LDC's will insist upon a situation in which any member of the GATT who operates unilaterally in contradiction to the general guidelines of the agreement will be considered in violation of its GATT obligations. We share that point of view.

Our views are not very dissimilar from those of the LDC's at this point, and we will be working closely with them as well as with our European friends in an attempt to bridge any remaining differences.

Mr. VANIK. On that same point, what about the nonmarket economies? I urged the Soviets last week to consider becoming involved with GATT in this structure of trade relationships that they involve. I cited particularily the problem that we had in

trying to determine methods of computing the cost of production in nonmarket economies. What are the prospects for the so-called nonmarket economies signing up and complying with the codes that are involved?

Ambassador McDONALD. We have seen considerable interest on behalf of several of the nonmarket economy countries that have participated and even in the early group of signatories in Geneva. One or two of those countries signed the overall agreement. They have shown an interest and they are growing closer to the circle of the system. They are beginning to diversify. They are beginning to have need to access to other markets and they are recognizing that they need goods also from abroad. We see that tendency.

Mr. Chairman, you have touched on one of the major unresolved problems that is facing our trading system. We do not honestly know what is a proper interface between market economies and nonmarket economies. We have to do a lot more conceptional thinking about that problem because we do not have appropriate ways to measuring or assessing the fairness of the situation, and it is a quasi-political question. It also involves some basic economic thinking.

My suspicion is that how to bridge that difference will be one of our top priorities as a country and as a trading system in the years ahead. I would rank that even ahead of the difficulties with the LDC's. Relations with LDC's are certainly a tough remaining problem coming out of the previous negotiations because we have failed to totally integrate them within the system. We have made a start with the LDC's, but we have only made a minuscule shift in positions with the nonmarket economies.

Mr. VANIK. I would like to have you tell us very, very briefly—I know you have been here for a long time as a witness and we have had you spending day after day here with us—can you just summarize very briefly the effect on the MTN on a sectoral basis? Are you able to do that or would you prefer to do that for the record?

Ambassador McDONALD. I had anticipated, Mr. Chairman, a fairly lengthy statement. In view of the time that you have graciously already accorded me both in executive sessions and individually with members of the committee in Geneva and privately here, I would not presume to take up the time of the group in a public hearing to go over that. But I would welcome the opportunity with your permission, sir, to place this statement in the record for reference, if I may do that. I would also, if I could, because we do have a major communications problem to the general public, I would like to make just a brief statement of overview, just skimming out from one part of this a perspective on the overall negotiations.

I think that it is critical to keep in mind, first of all, to reemphasize the point made by Ambassador Strauss that the road does not stop here even with congressional approval of the results. We have in fact begun a much longer journey, one that you and other members of the committee have insisted will require constant attention to new mechanisms and procedures that need to be worked out and need to be firmly established.

I would certainly urge on others within our administration and on the Members of Congress that we maintain full diligence after

this round to continue to look after our trade interests on an active basis. I would have to testify, sir, that in the view of many of our negotiating partners we have been a passive participant in periods outside of the active negotiations themselves.

I think that is no longer a tolerable posture nor an acceptable policy for the United States. Therefore, I would urge, regardless of what format we follow or what procedure or what initiatives, that we change that impression in the world marketplace. And I believe that that will mean dollars and cents to our own economy. It will mean jobs for our people and at the same time it will lead to a realistically more equitable and fair system overall.

But we do have the fundamentals in place and these fundamentals fall into four basic component areas. As Ambassador Strauss emphasized, the nontariff measure codes of conduct really do form the keystone of this negotiation. They open up areas in which governments have previously held to themselves the full prerogative as if these were fully domestic considerations. They no longer are purely domestic in today's interdependent world and in this negotiation we believe we have recognized that fact.

Second, we at the negotiating table are extremely proud to bring home a broad and ambitious agricultural program. We have some shortcomings, as you correctly pointed out earlier, Mr. Chairman, in a few areas, falling short of what we had aspired to obtain. But we believe that the agricultural package that we have brought back is by far the best one yet negotiated in any round of this kind and will fully merit the active and enthusiastic support of our agricultural community and even more will help us to permit a continuation of the superb growth record in agricultural exports which we as a country have enjoyed over the last decade.

As you know, sir, we will be operating this year at a rate of about $30 billion a year in agricultural exports. And one of our primary objectives is to make sure that that road not only remains open but that we increase the access opportunities for our farmers and also the equity of the system in which we are resolving agricultural trade difficulties.

The third deals with a series of tariff concessions of real importance, comparable to the last negotiating round. We have agreed with our negotiating partners, the major developed countries, that the reductions on the average among ourselves will run about one-third. In today's rather questionable economic climate we think that that was the maximum utilization of the generous mandate given us by Congress that was appropriate to follow through on at this stage of the game.

We also believe, sir, that the attention that the administration has given to treating selectively various sectors of our industry, recognizing our points of sensitivity, also merits your careful attention. And we are pleased with what we think is a relatively good balance in that area.

Then the fourth area, as a framework for international trade constituting a long-needed overhaul of the present world trading system, we have discussed that at some length. But one of the keynotes within that particular area of the negotiation is a vastly improved dispute settlement apparatus.

We on the part of the United States have been struggling to make sure that the GATT is not simply a long-term debating society. We want to be open to and effective in responding to real commercial conditions and to changes in commercial conditions.

Consequently, this dispute settlement mechanism we believe will help enormously in avoiding some confrontations that have not only led to economic problems, but also to political questions at the same time.

I think, Mr. Chairman, with that very brief overview I will let my full prepared statement be a part of the record, but naturally I will be willing to address any other questions that you or members of the committee have either now or any time during the course of the deliberations.

As you know, we have come back from Geneva under the deliberate instructions of the President and Ambassador Strauss to make sure that we could make available to Members of Congress and to the general public the actual results of the negotiations, to improve the process of communications and to make sure that we will be at your disposal to both understand and to recognize the full range of commitments we have made. It has been a great personal pleasure to work with you and your committee during the course of this negotiation, sir, and I welcome the extensive amount of time that all of you and the members of your staff have devoted to this exercise and to us individually who are particularly concerned with carrying it out.

Thank you, Mr. Chairman.

[The prepared statement of Ambassador McDonald follows:]

STATEMENT OF AMBASSADOR ALONZO L. MCDONALD, DEPUTY SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

It is a pleasure for me to have this opportunity to discuss with you the results of the Tokyo round and to elaborate further on the testimony given by Ambassador Strauss. These hearings could not come at a more propitious moment in my view. It is vitally important that the Tolyo Round results be explained to the American people as the Congress prepares to meet to consider the merits of the legislative package to be submitted shortly.

Over the past few weeks, since my return from the negotiating table in Geneva, I have had the opportuity to meet with business and agricultural leaders throughout the United States. Their own satisfaction with the final result has been mirrored by the many positive comments made before this Subcommittee in the past few days.

Throughout the long Geneva discussions U.S. negotiators relied heavily on our Congressional and private sector advisors. We knew in specific terms what our private sector sought from these negotiations; we went to Geneva with their advice in our briefcases, and they made many trips to keep us up to date. We also knew about the concerns of Congress; we met with you and your colleagues here and in Geneva on frequent occasions. We now come back having signed the documents concluding the negotiations, convinced that your negotiators have carried out our mandate to the maximum extent possible. We have obtained much of what we sought and the fundamentals we absolutely need for a new era of trade prosperity for the United States.

Mr. Chairman, I have said before that the Tokyo Round result is potentially the most significant development in world trade since the GATT was established over 30 years ago. Tremendous opportunities await those willing to seize them. The work of this Subcommittee will be of fundamental importance as our nation seeks to obtain maximum possible benefits from the agreements.

Thus, our road does not stop here nor with Congressional approval of the result. We have, in fact, begun a much longer journey, one that will require constant attention to the new mechanisms and procedures we have worked so hard to establish, and diligence on the part of the United States to represent our interests aggressively.

OVERALL RESULT

The Tokyo Round package is comprised of four inter-related elements, each drawing strength from the others: (1) A series of precedent-setting codes of conduct and agreements in nontariff areas of increasing trade importance; (2) a broad and ambitious agricultural package; (3) major tariff concessions to the United States, obtained at a time when few people thought substantial tariff cuts would be possible; and (4) a framework for international trade constituting a long-needed overhaul of the present world trading system.

Together these elements represent the biggest result ever obtained in a trade negotiation. They were negotiated at a most inauspicious time for forward movements of this kind, but ironically at a time when the world badly needs such a tonic for political as well as economic reasons.

The Tokyo Round was a balanced negotiation. Each nation gave as well as received. It was a joint effort that recognized our interdependence and the necessity to work collaboratively if we are to maintain a liberal, fair and expanding system.

Thus, all nations will benefit from the Tokyo Round. Since we represent the world's largest economy, we can be proud of that fact.

I believe that the results represent substantial improvements that will wear well with time. We did not strike a temporary deal; we were in those negotiations for the long pull and we came out substantially better off than when we went in. This was a critical perception for us at the negotiating table because we believe the Tokyo Round lays out the basic rules of the game for world trade for the remainder of this century.

Mr. Chairman, I would like to summarize briefly the four major components of the Tokyo Round package. I will want to emphasize the codes of conduct due to the great public and Congressional interest in them, but they should be viewed in the perspective of the overall benefits we have received in agriculture, industrial tariffs and in the upgrading of the trading system itself.

AGRICULTURAL RESULTS

We can be proud of the special position American agriculture has earned in the world marketplace. Through a conbination of hard work, initiative and capital we have become the most efficient producers of food in the world. Agricultural exports now amount to over $30 billion annually, more than four times as great as a decade ago. In the Tokyo Round we sought to build upon that impressive base to assure continued growth in this important sector.

As expected, the difficulty of the negotiations cannot be exaggerated. Agricultural issues touch on many sensitive areas of national policy and even involve questions of political stability and national security. Thus, governments tend to act conservatively in this domain, especially in an environment of economic uncertainty which plagued us during the negotiations.

There was a real danger throughout the negotiations that agriculture would be bypassed as has happened in previous Rounds. U.S. negotiators resisted those efforts tenaciously. We stood firm with Ambassador Struss' commitment, "no deal without agriculture."

The results, while far from perfect, add substantially to our agricultural export potential. They fall into essentially three categories. First, we have reduced trade barriers to improve agriculture market access. Secondly, we have negotiated arrangements which will enhance the degree of intergovernmental cooperation in dealing with agricultural trade problems. Finally, we have negotiated special provisions in some of the codes of conduct of special benefit to agriculture.

To achieve greater market access, we obtained specific trade concessions on nearly $4 billion in U.S. agricultural exports. The concessions should provide new opportunities in most of our major markets, including Japan and Western Europe.

We have conservatively estimated that these concessions will result in at least a one-half billion dollar increase in U.S. agricultural exports at today's prices. Their value in the future will be worth incalculably more.

On the other hand, the agricultural concessions we granted were quite modest. Although we have made concessions in some sensitive areas, the effect, if any, will be minimal.

As the number one agricultural producer in the world, we stand to gain more than anyone from a smoothly functioning system.

The codes of conduct will also increase discipline in areas where distortions have traditionally affected the free flow of agricultural products. Hence, in the interest of brevity, I will only mention one code, the one on subsidies.

While the subsidies code will not eliminate subsidies in agriculture, a step even we are not prepared to take, it will clearly isolate those circumstances under which

subsidies can be used unfairly and it will make governments more responsible in applying such practices. In fact, the agricultural section of the subsidies code could well turn out to be one of the most important long-run contributions of the Tokyo Round to U.S. agricultural interests.

There has been considerable discussion in connection with agriculture of the so-called wine gallon method of assessment on imported bottled and distilled spirits. In the negotiations on a new customs valuation code, the United States agreed to eliminate this unique valuation system because of intense interest on the part of our trading partners.

This U.S. concession was crucial to the negotiations. It was the top priority EC request in agriculture and it made possible their valuable concessions to us in tobacco, beef, poultry, canned fruit and mixes, rice, prunes and table grapes, among others. Frankly, without the U.S. concession on wine gallon there would be no U.S./EC agricultural package.

Furthermore, the offer of a change in the wine gallon assessment method enabled us to negotiate concessions in many developed countries to facilitate U.S. liquor exports.

So, Mr. Chairman, we make no apologies for this concession. We believe it was fair contribution on our part, and, in fact, the U.S. distilling industry itself has been sharply divided on the issue.

FRAMEWORK FOR WORLD TRADE

Another major result of the Tokyo Round has been to lay the groundwork for a more modern, updated trading system based on an equitable division of benefits and contributions. The negotiations on a "framework for world trade" were particularly important in the context of our relations with the developing countries. They demonstrated that a balanced and mutually satisfactory result between developed and developing nations is possible.

The framework package significantly modernizes the GATT and makes it more effective and credible. It is comprised of agreements in five basic areas:

1. It sets our improvements in the GATT rules and procedures for avoiding and, where necessary, resolving trade disputes;
2. It modernizes the rules and procedures covering import restrictions taken for balance of payments purposes;
3. It updates GATT provisions regarding safeguard actions by developing countries for development purposes;
4. It clarifies the full scope of the existing GATT rules concerning export control measures; and
5. It establishes provisions for differential and more favorable treatment for developing countries balanced by provisions for the progressive assumption by developing countries of greater levels of responsibility as their capacity to make contributions improves.

INDUSTRIAL TARIFF REDUCTIONS

Since industrial tariffs are not the subject of our discussions today, I will only mention them briefly as one component of the complete package. Although tariff cuts were the focus and essentially the substance of earlier rounds, they were much less important in the Tokyo Round. I would rate their relative importance as no more than 25 percent of the total package, which simply emphasizes the much broader scope of benefits resulting from these negotiations.

The MTN tariff results will put us on a better footing vis-a-vis our major trading partners. Overall industrial tariff cuts will average around 33 percent for developed countries. In negotiating our reductions, we have been ever mindful of our sensitive industries in the United States and have sheltered them from significant tariff disruption.

The tariff reductions will open new export opportunities in specific product areas, especially in mid to high technology industries such as electric and nonelectric machinery, chemicals, transportation equipment, photographic equipment, paper products, and scientific instruments where the United States enjoys competitive advantages. These are only illustrations. There are many other benefits which will become apparent as the full schedules are verified and become generally available.

A rough estimate of the tariff reductions impact on the American consumer suggests potential benefits considerably greater than $10 billion. A research study earlier showed even higher potential results. Even if we do not assume that the full benefits of tariff reductions are passed immediately to consumers, the benefits do enter the economy and provide added stimulus as they work their way through the system. This level of overall savings could represent the equivalent of a tax reduc-

tion equal to eight-tenths of 1 percent of U.S. GNP. This would represent a tax savings equivalent ot more than $60 per capita and some $250 per family.

I must admit to a certain skepticism, Mr. Chairman, about the validity of predictive numbers of this kind, but they do give us a rough indication of the direction in which we are moving.

The figures I have cited do not begin to take into account nonquantifiable benefits such as improved consumer choice and the stimulus to technological innovation that greater access encourages. Nor do they reflect corrections in prior imbalances with our trading partners that have been achieved in these negotiations.

BENEFITS OF CODES OF CONDUCT

Mr. Chairman, I would like to devote the remainder of my remarks to the nontariff measure codes of conduct because they in fact constitute the bulk of the nontariff measures and the most significant single component of the Tokyo Round package, and they are of immense consequence for this country.

CODE ON SUBSIDIES AND COUNTERVAILING DUTIES

Almost all of the Industrial Sector Advisory Committees (ISACs) and Agricultural Technical Advisory Committees (ATACs) established under the Trade Act considered government subsidies to be a priority concern to their industries. This code was among the most difficult nontariff assignments given U.S. negotiators because of deeply entrenched nature of most governmental subsidy programs and the many years of direct confrontation with other nations on this subject. Thus, all participants brought to the negotiating table a sense of animosity and frustration and, yes, even despair about reaching an agreement in this delicate area.

For these reasons, the results are particularly gratifying. They should bring special benefits to a number of important sectors of our economy including: agriculture in general; food and kindred products; rubber and plastic materials; stone, clay and glass products; ferrous and nonferrous metals and products made from them; office and computing equipment; machine tools and other noneletrical machinery; communication and nonconsumer electronic equipment; automotive equipment; other transport equipment; electrical machines and apparatus; sound recording or pre-production apparatus; photographic and cinemagraphic supplies.

As you can see, the list of beneficiaries is long since this area desperately needed a new commitment to international discipline.

For the United States overall, the benefits include an obligation by foreign governments to eliminate export subsidies completely on nonprimary products. It also provides solid grounds for the first time to challenge domestic subsidy practices that distort trade results.

At the same time, the United States retains our right to take countervailing duty actions to protect domestic producers from other kinds of subsidies, including now foreign domestic subsidies. Moreover, we also have the option in certain cases to use provisional measures while our domestic investigations are in process. Finally, we obtained guarantees of greater transparency in openness in the countervailing duty proceedings employed by other governments.

The key concession by the United States in these negotiations is to include an injury test in our domestic legislation, something our trading parterns have sought for many years. Much of our present discussions with Congress deals with the nature of the injury test for U.S. law. We believe that we have established an appropriate standard for material injury in the way we have dealt with it in the antidumping code.

We believe that the code itself is clearly beneficial to the United States but it can be even more effective with updated and accelerated domestic procedures. Together these two factors combined in our implementing legislation should mark this part of the Tokyo Round results as a major step forward in this problem area, both domestically and internationally.

GOVERNMENT PROCUREMENT CODE

Opening up the behind-the-scenes purchasing practices of foreign governments was another major priority of our advisory groups. Given the vast potential market overseas—upward of $20 billion in our first coverage effort—and the near 100 percent effectiveness of foreign blocks to U.S. exports, the government procurement code should be seen as one of the major achievements of the Tokyo Round from the U.S. point of view.

In contrast to almost all other nations, the United States maintains largely an open purchasing system. We only have percentage preferences for domestic suppliers which are clearly and openly delineated by statute. Essentially our country has

believed that competition is healthy and that it generally prevents unreasonably high prices, a factor of great importance when taxpayers' monies are at stake.

For the first time the code lays firm obligations and procedural requirements on others. Also for the first time it includes effective enforcement measures which we can use to insure observance of the rules by other signatories.

Specifically, under the terms of the code, foreign governments will be required to publish notices of proposed contracts, accept bids from all qualified suppliers, provide inquiry rights in the course of bid preparation, provide information to losing suppliers, and submit to tight dispute settlement procedures.

All in all we have made an impressive beginning to the opening up of government markets. No products were excluded for any entity covered except defense ministries. Several high technology industries will be included by all countries, such as computers, business and office machinery, scientific and measuring instruments. Other industries, such as telecommunications, electrical machinery, and aerospace equipment will be included by some countries. We have included comparable product coverage on our side only for those countries will to reciprocate.

From the U.S. point of view coverage is now generally balanced—except for the case of Japan where we have emphatically said that the code will not apply unless they agree to broaden their coverage to include the key purchases by Nippon Telephone and Telegraph—a $3 billion market now closed to us. Both governments have worked sincerely to be flexible on this issue and we have narrowed our differences. Yet, a gap still remains that must be resolved.

We have estimated that the code will increase U.S. exports by between $1.3 and $2.3 billion over the next three to five years and U.S. job opportunities by between 50,000 and 100,000. If coverage is broadened in the future as expected, we can anticipate still more gains.

As you know, the coverage of the code was treated separately from the code negotiations themselves. Since our negotiating partners were not able in the first step to include all of their public sectors, we decided not to include any more on our side than needed to achieve reciprocal balance

It is in this area of initial coverage that we and you have heard of considerable complaints. We understand the disappointments, but we could not in one step close completely the gap between the level of mixed economies that have evolved. It took us about 20 years of negotiations to get this far which represents an essential first step if we are to move progressively in the future toward expanded coverage.

As for the code proper, we believe there have been few, if any dissenting voices. It is a solid code, and I believe it clearly exceeds the expectations of most of our advisors.

CODE ON TECHNICAL BARRIERS TO TRADE (STANDARDS)

Again, a large number of our advisors identified standards as a major concern. Our government received complaints last year on this subject related to some $10 billion in trade. Since the United States already follows many of the procedural requirements of the code, its impact will be greater on foreign practices than on our own.

We expect to receive special benefits in a number of sectors including lumber and wood products, office and computing equipment, machine tools, electrical machinery, consumer electronic products, scientific and controlling instruments and consumer electronic products, communication equipment and nonconsumer electronic products, nonelectrical machinery, transport equipment, pharmaceuticals, food stuffs, animal and animal products, beverages and fish and fish products.

The code will include important general benefits for U.S. exports including the following: ensuring access to national and regional certification systems on a nondiscriminatory basis, acceptance of U.S. goods for testing on an equal basis with domestic goods overseas, more information on prospective standards and certifications systems with a right to submit comments, guarantees of a reasonable time between adoption and entry into force of new standards, and an effective dispute settlement mechanism.

CUSTOMS VALUATION CODE

This agreement is designed to eliminate arbitrary aspects from the customs valuation of imported merchandise, a problem of increasing importance as world trade continues to grow. By utilizing the actual transaction value of traded merchandise as the primary basis for customs valuation, a major source of uncertainty will be removed from the system.

We believe that the code will especially benefit several important U.S. sectors such as wood products, cleaners, plastic materials, nonelectrical machinery, transport equipment, chemcials, electrical machinery, textiles and foodstuffs.

The code will benefit many U.S. exporters by eliminating the common practice of artibrarily "uplifting," or increasing the value of imports for customs duty purposes at the discretion of customs officials. The code establishes a clear right of appeal when U.S. exporters are dissatisfied with assessed customs valuation overseas, and like the other codes, establishes an effective dispute settlement mechanism.

CODE ON IMPORT LICENSING PROCEDURES

A majority of ISACs identified licensing as an important concern. It is often a nuisance to traders and, not unsurprisingly, the most frequently complained about nontariff measure regarding specific limitations on trade, that is quotas, embargoes, export restraints, etc.

The code will provide a big boost for small U.S. businesses just starting in the export field by reducing much of the red tape and uncertaintly that may have contributed to a reluctance to enter export markets. Procedures and products subject to licensing must be published so all are aware of the rules of the game and time limits requiring expeditious processing of license applications.

U.S. industries with a particular interest in this code include hand tools, cutlery and tableware, nonelectrical machinery, transport equipment, ores, metals and metal manufacturers, chemicals, electrical machinery, animals and animal products, foodstuffs and beverages.

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

A latecomer to the negotiations, an agreement on trade in civil aircraft was negotiated among the major developed countries participating in this industry.

Although the United States is the dominant supplier of civil aircraft to the world, our market share has declined in recent years. The appearance of foreign competitors and the increasing tendency of their governments to subsidize or otherwise support their national industries is an increasing incursion into the American market share. Japan, Canada and the EC have already declared their intentions to build strong national aerospace industries. Given this environment and the heavy dependency of the U.S. industry on export sales (some 60 percent of commercial transport production and 25 percent of general aviation production), U.S. negotiators felt that a comprehensive agreement covering tariff and nontariff measures would help stem the present trend and provide important benefits to our country.

In general, the agreement provides for a framework to consult and avoid or, at least manage trade disputes. In specific terms, U.S. component manufacturers will benefit through better access to subcontracts of foreign and engine manufacturers and be able to compete on the same duty-free basis as EC component manufacturers now do in intra-Europe trade.

Furthermore, signatories may no longer require that national airlines buy domestically produced aircraft, nor exert unreasonable pressures on them to do so. Such policies have been a far greater barrier in the past to U.S. exports than tariffs.

Although U.S. airframe and engine manufacturers and civil aircraft parts manufacturers will receive the greatest direct benefits, other U.S. interests are also served by opening up export opportunities for the aerospace sector which is the largest net contributor to our industrial balance of payments.

Mr. Chairman, that briefly summarizes some of the major benefits to this country from the Codes of Conduct. These are highly technical subjects but the general public should not let the technicalities stand in the way of their recognizing the fundamental importance of these agreements for our country.

The groundwork is clearly laid by these codes for a fairer, as well as a more liberal trading system in the future. But we cannot count on automatic implementation or blind adherence even by all signatories. This Committee, the Congress as a whole, and particularly the Administration must enforce our rights with a new will, a new resolve and a much greater degree of effectiveness.

Even from this sketchy overview, Mr. Chairman, it is evident that Tokyo round opportunities and benefits will be spread throughout the American economy. Some industries and agriculture will likely move quickly to increase their export stake; other industries may need help. this Administration stands ready to provide appropriate assistance so that President Carter's export goals can be realized.

Competition and an ongoing process of industrial rejuvenation have made this country the world's greatest economic power. We need to continue to direct our maximum energy toward building on that solid base to guarantee future prosperity. I believe that the Tokyo round has taken a major step in making that possible. Thank you.

Mr. VANIK. Mr. Conable.

Mr. CONABLE. Mr. Ambassador, do you feel you have the support of the Cheese Manufacturers of America for your package?

Ambassador McDONALD. Mr. Conable, I will say that we do not have the support of all of them at this time. I believe that we are rapidly moving to a better understanding that will lead us to have a majority of that group with us, at least I think we can convince them, which we firmly believe, that their situation will be certainly no worse and may even be better by a combination of actions not only on what we have done a granting concessions but also in some administrative improvements that directly help that industry.

Mr. CONABLE. Is there pending any further action with respect to cheese or is it just persuasion?

Ambassador McDONALD. Well, it is question of understanding more than persuasion, Mr. Chairman. That group was highly sensitive to the possibility that we would act without due care to their interests. And that was a natural concern since we had so many requests of an exhorbitant kind from other nations for concessions. They were even rightly concerned, I would say, right up to the moment of the actual signing in Geneva. I heard from them even the day before as much as from any other individual group.

The real concern and one reason for their sensitivity of feeling was that we might very well be attempting to use them as a balancing factor in the final hours of discussion. I have tried to assure them that that was not our intention, that we had nothing in the wings that would create surprises for them, that we had very laboriously worked out a program that we thought was fair.

I would also have to say here, sir, that we had great help in the course of that from a key member of your committee during the course of our negotiations, the late Representative Steiger. He made sure that what we were doing to that industry, among other actions, was proper. We never operated very far afield.

Mr. CONABLE. I have one other question, Mr. Chairman.

Both the House and Senate committees are interested in clarifying that services are to be included under the protection of section 301. Where do we stand with Canada with respect to the border broadcasting dispute this morning? Are negotiations on this issue probable? Is there a mechanism for doing it? I am most regretful about this whole affair And I wish it could be resolved.

Ambassador McDONALD. We share your concern in hoping that it can soon be resolved. It is not resolved to my knowledge yet, Mr. Conable. But discussions are underway and we have even recently made certain presentations. But we regret to say it has not been resolved as of this minute.

Like you, we are hopeful that it can be. We anticipate continued discussions until we can find an appropriate solution. I think that our situation with Canada looks very good at this time. There are one or two minor things on both sides that we are looking at and verifying. But I think we can say that we are in essential agree-

ment with Canada on the overall elements as part of the Tokyo round.

Mr. CONABLE. Thank you, Mr. Chairman.

Mr. VANIK. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. McDonald, you have already answered the question this morning, or Mr. Strauss did, about Japanese negotiations on government procurement of telecommunications equipment. My only comment is that I would hope that you would take to those negotiations the concerns of Members of Congress as was expressed yesterday on the floor of the House and by my colleagues on this committee that were very concerned, very annoyed somewhat over the protectionism that the Japanese hold out on this issue.

I mean to see that whatever they refuse to go along with we just refuse to go along with from this side of the aisle as well. If they can't go along with Government procurement on telecommunications we won't either. I think they ought to understand that, that we expect a hard line to be drawn in this area for them to come to the bargaining table in good faith and not from a protectionist point of view.

I know negotiations are ongoing. I ask you to take to net negotiations that the Members of Congress intend to take a hard line on this particular issue.

Ambassador MCDONALD. I thank you, Mr. Moore. I can only confirm what Ambassador Strauss has indicated. We believe we have operated openly and with flexibility on this issue. We do not believe we have been unreasonable or dogmatic or arrogant in any way. We are searching for a resolution of a principle, and that is the reciprocal opening of markets one county to another. That has been the guiding principle that we have attempted to follow through these negotiations. And we are applying it in this instance as well. I will have to say, as Ambassador Strauss did, that the Japanese Government has understood this and they have moved even further than they felt they could at times, I am sure.

So we are not dealing with a question of bad faith. we are dealing with what the actual political limits are on both sides. Recognizing our political limit, sir, we have no intention of moving beyond the pale either.

So we must find a solution. I believe in due course we will find a solution but we must have an equitable solution that we as negotiators and you as Members of Congress can stand up before our people and justify.

I understand and agree with what you have said. They are not going to have access to our Government procurement markets if we don't have access to theirs.

We have made that clear.

Mr. VANIK. Thank you very much, Mr. Ambassador. I just want to state one closing thought, that you ought to leave some word out there in Geneva that there is reason for many of the international organizations to consider moving their headquarters to the new world, to America, to even some of our own communities in the United States that are quite satisfactory and can provide adequate accommodations for thes things.

One of our tremendous expenses last year in this committee was the cost of keeping a delegation or group on hand to monitor the negotiations. And the reason there has not been more individual participation by members of this committee is that they simply could not afford it.

As you know, the cost of an overnight sleep in Geneva is about $120, and breakfast is either $12 or whatever they want to charge. It seems to me that the negotiating countries of the world ought to find a more efficient place to do their business. Particularly we have something to offer in America with the present devalued dollar and we can compete with anybody in the world for providing facilities and accommodations where we could bring in some of these international organizations with their francs and their marks and their yen.

I don't think we ought to overload Switzerland. I think it is overloaded. We ought to let them know that the cost of international negotiations is also an important factor and that the nations of the world ought to look at the possibility of reducing these costs which I know are going to be ongoing and they are going to continue, that there are competitive places in the world that offer facilities and accommodations on a permanent, lasting basis with a much lower overload cost. Let us give them a little more competition.

Mr. CONABLE. Either that or we ought to strengthen the dollar.

Ambassador MCDONALD. I can assure you that those of us in residence in Geneva with our families had a daily reminder in trying to balance our budget. We share sympathetically your view.

Mr. VANIK. Thank you very much, Mr. Ambassador. We very much appreciate your splendid work throughout the course of the negotiation and in committee.

I would like now to stress to the witnesses that I hope that they will summarize their statements. We have a long list of witnesses. It is the intention of the Chair to proceed right straight through on our business without interruption today. This process can be facilitated if the testimony can be directed to the key issues that are involved which we will carefully study as we go along.

Mr. Ambassador, my thanks extend to all of the members of your good staff whom we individually want to recognize in some other way before we are through with our work.

Ambassador MCDONALD. Thank you very much, Mr. Chairman.

[Letters to Ambassador Strauss requesting his response follow:]

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C., April 11, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Executive Office of the President, Washington, D.C.

DEAR MR. AMBASSADOR: We wish to call to your urgent attention a potential loophole in the procedures being developed to obtain more effective countervailing duty and antidumping procedures. This issue was not fully addressed in our review of the subsidies-countervail code, but will certainly arise when we consider the antidumping code. Our concern relates to the question of discontinuance of countervail and antidumping procedures on the basis of foreign price assurances.

Specifically, it is our view that foreign price assurances should be adequate to eliminate the full margin of dumping or the full amount of the net subsidy, not merely the indeterminate amount of injury deemed to be taking place.

In order that there be a basis for determining the margin of dumping or the net subsidy, price assurances should not be accepted until a preliminary determination has been made. Compliance with price assurances should be monitored on the same basis as a final determination. Breach of an assurance should result in imposition of regular duties.

Failure to condition price assurances along the lines indicated above will result in the type of unbridled Administration discretion which has plagued the enforcement of these statutes and which, as a result, has given justifiable cause to complaints that trade policy is being poorly administered.

There is currently no provision in these existing laws to require less than the full amount of dumping margin or net subsidy. To open to subjective determination the acceptance of a lesser amount on the theory that it would be adequate to remove future injury would result in settlements at less than the full amount of the margin which could actually foster rather than deter dumping or subsidization settlements at lesser amounts and would incur a loophole in these statutes which would impair them to a point of little or no utility.

As you can recognize this assurance is of primary concern to industry in general and to labor and the resolution of this issue is absolutely essential to successful floor action of the entire MTN package.

We would very much appreciate your early response.

Sincerely,

CHARLES A. VANIK,
Chairman.

GUY VANDER JAGT,
Ranking Minority Member.

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C., April 23, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Washington, D.C.

DEAR MR. AMBASSADOR: At the opening session of our public hearings on the Multilateral Trade Negotiations this morning, the Subcommittee on Trade heard extensive testimony from Puerto Rico's Governor, Honorable Carlos Romero-Barcelo, and Honorable Amadeo Francis, Commissioner of Commerce in the Virgin Islands. Both witnesses expressed grave concern about severe damage to their economies and prospects for future growth that could result from the Administration's proposal to reduce taxes imposed on rum imports by elimination of the wine-gallon method of assessing taxes and tariffs, coupled with a reduction in the current duty rate.

Governor Romero-Barcelo estimates that Puerto Rico will lose between 20–30 percent of its U.S. market to foreign suppliers if the tariff is reduced the full amount and that elimination of the wine-gallon system would drastically reduce federal excise tax collections, which by law are currently rebated to the Puerto Rican treasury. Commissioner Francis testified that the Virgin Islands could expect proportional losses to its rum industry and treasury because of the proposed changes.

This is a dimension of the distilled spirits issue of which the Subcommittee has not heretofore been aware. Therefore, to complete our record, I would appreciate your comments about the MTN effect on the Puerto Rican and Virgin Islands economies. Specifically, how can these economies make up for the projected revenue and production losses if the rum concession is implemented, and what are the expected benefits to both Puerto Rico and the Virgin Islands from the MTN agreements overall?

For your convenience, I have enclosed copies of the testimony.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C., April 25, 1979.

Hon. ROBERT S. STRAUSS,
Special Representative for Trade Negotiations,
Washington, D.C.

DEAR MR. AMBASSADOR: In the Subcommittee's public hearing on the Mulitilateral Trade Negotiations on Tuesday, we received testimony from Congressmen Goldwater and Lagomarsino on two points on which your comments will be helpful.

The first concerns the disadvantage our citrus producers face in exporting citrus to the European Community, given the preferential tariff treatment imposed by the EC on citrus imports. I am sure you are aware of the importance of the full export potential of citrus to California producers. Is there any possibility of a reduction in the Community's preferential tariff on citrus?

In light of the long history of the section 301 action filed by the citrus industry against the EC on its preferential tariff on oranges, I am hopeful we can report some progress when we formally consider the trade legislation.

Your comments will be greatly appreciated.

Sincerely,

CHARLES A. VANIK, *Chairman.*

Mr. VANIK. The next witness will be the American Imported Automobile Dealers Association: Robert M. McElwaine, president; Fred O. LaFevers, chairman; and Bart S. Fisher, counsel.

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN IMPORTED AUTOMOBILE DEALERS ASSOCIATION, ACCOMPANIED BY FRED O. LaFEVERS, CHAIRMAN, AND BART S. FISHER, COUNSEL

Mr. MCELWAINE. Mr. Chairman and distinguished members of the committee, we thank you for this opportunity.

Mr. LaFevers is a Volkswagen dealer in North Carolina and our counsel, Mr. Bart Fisher, is of the firm of Patton, Boggs, and Blow.

The American Imported Automobile Dealers Association represents some 4,750 American businesses engaged in sale and service of imported automobiles and the 150,000 employees of these businesses. In many ways ours is a prototype of an import dependent industry. Various economic studies have been carried out which have shown that this industry is a net contributor to employment in the United States.

In our view, the multilateral trade negotiations created an opportunity to achieve a free flow of goods in the international trade sector of the automobile industry which is probably the largest worldwide integrated manufacturing industry in the world. And we believe that opportunity was lost.

Mr. Chairman, I don't mean by this statement to denigrate the achievements of the negotiators in completing this complex and very difficult agreement. But it would be unfair to the members of our association not to say that they are grievously disappointed in the outcome.

Section 101 of the Trade Act empowers the Executive to eliminate any duties of less than 5 percent. The tariff on automobiles on the effective date was 3 percent and, therefore, the possible maximum duty reduction was 100 percent.

We understand that the United States has agreed to reduce the automobile tariff to 2½ percent which is a minimal tariff cut of only 16 percent.

AIADA believes that the reduction is insufficent, it does not reflect the worldwide integrated nature of the automobile industry and it does not fulfill the negotiating objective which states that: "The overall U.S. negotiating objective shall be to obtain the harmonization, reduction or elimination of devices which distort trade or commerce."

The retention of a 2.5-percent tariff on automobiles—essentially a nuisance duty—ignores the integrated nature of the automobile industry. The automobile industry, more so than any other, has become truly international. The manufacture of automobiles requires a huge, vertically diversified company to be competitive, and manufacture has become concentrated in the hands of a few dozen global corporations.

Because their sales are international, these companies have been able to take advantage of the competitive efficiencies of the countries where they operate. This has brought about an internationalization of production and sales and has helped create the concept of a world car.

The Ford Pinto, for example, may include a transmission from France, an engine from Brazil, and be assembled in Canada—yet it is sold as a domestic U.S. automobile. Transmissions from France are also assembled into other small Ford cars.

The Volkswagen Rabbit has brakes by Bendix, headlamps by GE, windshield and windows by Combustion Engineering, tires from Goodyear—and the body includes magnesium from Dow, steel from Bethlehem Steel, and solvents from Cayuga Chemicals in Cleveland.

Both Ford and GM produce automobiles in Australia, Brazil, Argentina, Mexico, and South Africa. Ford has completed a $300 million new facility in Spain. Volkswagen has commenced U.S. production of its Rabbit. Some cars sold as imports may represent more American man-hours than some labeled as domestic product. Tariffs distort this internationalization of products and interfere with the consumer's receiving the advantages of competitive efficiencies of all the industrial nations of the world.

Furthermore, the U.S. automobile industry is hardly in need of protection, when it has just enjoyed the most profitable year in its history. Even American Motors has enjoyed the most profitable quarter in its history despite all its problems.

Today's newspapers show that General Motors and Ford have just enjoyed the most profitable quarter in their history. Headlines in today's paper read: "General Motors and Ford profits and sales soar." This shows that of the record profits enjoyed by the Ford Motor Company in this past quarter, 63 percent came from sales outside the United States.

AIADA feels that the United States should have honored its pledge made to its trading partners in 1965, to further liberalize the automobile sector of the world economy.

Furthermore, a fundamental inequity exists in U.S. automotive trade. An automobile manufactured in Canada enters the United States duty-free whereas automobiles from Europe and Japan cannot. The present arrangement discriminates among captive imports of U.S. manufacturers imported from Japan and Europe and from Canada. In short, in the automobile sector the negotiations

have failed to achieve the negotiating objective of elimininating artificial distortions of trade. Since the half percent reduction in the tariff has been negotiated, however, we certainly recommend that the tariff reduction to 2½ percent be carried out at one stage. This reduction would fall within the maximum yearly percentage reduction allowed by the Trade Act. Staging a tariff reduction of one-half of 1 percent over several years would certainly create unnecessarily small reductions, unnecessarily delaying the entire process.

Contrary to the viewpoint expressed by certain administration officials, the chicken war is not concluded. The 16.5-percent penalty duty imposed in 1965 on automobile trucks valued at $1,000 or more to retaliate against the higher import fees on poultry imposed by the European Economic Community has not been eliminated.

Instead, the chicken war duty continues as an historical anachronism which should have been eliminated in the MTN. AIADA believes that this duty could have been eliminated if U.S. negotiators had not linked its elimination to extraneous issues.

Furthermore, we understand from various sources that no concession was made on the basic 8.5-percent ad valorem duty on automobile trucks. This duty was not connected with the chicken war and could have been reduced to reflect the integrated nature of the automotive industry and to bring to the consumer a variety of choices and prices.

First, the United States requested a concession from Japan, which was not a party to the chicken war but on whose exporters of automobile trucks the main burden of the tariff has fallen in recent years.

Second, as a condition for reducing the penalty duty, the United States requested that the EEC reduce its duty on heavy trucks, which were in no way involved in the original chicken war. We believe that the chicken war should have and could have been settled on its own terms. The original rationale for the 16.5-percent duty has disappeared, and it seems that the device is being kept solely as a protectionist measure.

We raise this issue now because under section 102 of the Trade Act the negotiating authority to rectify this omission extends until January 1, 1980. We believe the administration should attempt to fully resolve the chicken war and eliminate the penalty duty on automobile trucks by utilizing current negotiating authorities while the EEC may be willing to negotiate a resolution.

NONTARIFF BARRIER AGREEMENTS

Because AIADA begins from the premise that a free flow of goods is in the best interest of the United States, we support in general the content of the nontariff barrier codes which should go far in eliminating artificial distortions of trade. As negotiated, the codes promise to harmonize international responses to various trade practices, particularly in the definition and treatment of subsidies, in harmonizing customs procedures, and should conforming changes be made in the International Antidumping Code, to conform treatment of antidumping and countervailing duties, as

intended by article VI of the General Agreement on Tariffs and Trade.

The negotiated codes furnish the means to liberalize world trade, which is in the best interests of the United States, and we urge the committee to carefully consider any implementing legislation which would undercut the codes agreed to by the U.S. negotiators, because of protectionist pressures.

Trade policy must balance the benefits from the free flow of goods against the economic dislocations caused by foreign competition. A free flow of goods brings lower prices to the consumer, acts as a prod to innovation, and helps control inflation by restraining prices of domestic goods.

Finally, on the part of the United States, an open trade policy leads to favorable diplomatic fallout. Protectionist measures would strain relations with our trading partners, weaken their economies, and reduce American influence.

AIADA salutes this committee on its adoption of the material injury standard as part of the countervailing duty implementing legislation.

The material injury test was a major concession made by the United States as a quid pro quo for other governments restricting the use of subsidies.

If this committee had retained the proposal announced in its press release of March 19, whereby the de minimis injury standard of the antidumping law would have been adopted, then the committee would have gutted a major U.S. concession.

As we said previously, trade policy must reflect the balancing process between the benefits flowing from free trade and the economic dislocations caused by foreign competition. The benefits of imported goods including broader consumer choice, price competition and discipline for domestic products, and greater innovation in product development, are too well established to permit the exclusion of foreign goods unless material injury to a domestic industry can be shown.

AIADA supports the incorporation of the material injury test into U.S. antidumping law, for the same reasons stated above, as it is illogical to interpret GATT article VI one way for countervailing duties and another way for antidumping duties.

Our written testimony, which we present for the record, contains in more detail the views of the imported automobile industry on those particular aspects of the codes which should and should not be incorporated into U.S. law.

We urge now that this committee and Congress implement as far as possible the provisions of the nontariff barrier codes and that this committee in recommending implementing legislation carefully weigh the benefits obtained from the free flow of goods in international commerce and the interests of the importing community against the pressures of the more protectionist segments of the U.S. economy.

Thank you, Mr. Chairman. We will be happy to answer any questions you might have.

[The prepared statement follows:]

STATEMENT OF THE AMERICAN IMPORTED AUTOMOBILE DEALERS ASSOCIATION

On behalf of the 4,750 American businesses engaged in sale and service of imported automobiles and their 150,000 employees, I welcome this opportunity to comment on issues relating to the implementation of the agreements, tariff and non-tariff, reached at the Multilateral Trade Negotiations. The imported automobile industry is the prototype of an import-dependent industry, and economic studies have shown that this industry is a net contributor of employment to the U.S. economy.[1]

AIADA favors in general the free flow of goods in international commerce with as few governmental restrictions as possible. The Multilateral Trade Negotiations created the opportunity to achieve this goal in the automotive sector, which is probably the largest worldwide integrated manufacturing industry, and that opportunity was lost.

Tariff negotiations on automobiles

Section 101 of the Trade Act of 1974 empowers the Executive to eliminate duties if the rate of duty existing on January 1, 1975, is less than 5 percent ad valorem. The tariff on automobiles (TSUS 692.10) on that date was 3 percent ad valorem and therefore the possible maximum duty reduction was 100 percent. We understand that the United States has agreed to reduce the automobile tariff to 2.5 percent ad valorem—a minimal tariff cut of only 16 percent. AIADA believes that the reduction is insufficient, does not reflect the worldwide integrated nature of the automobile industry, and does not fulfill the negotiating objective set forth in section 103, which states: "The overall United States negotiating objective under sections 101 and 102 shall be to obtain * * * the harmonization, reduction, or elimination of devices which distort trade or commerce."

The retention of a 2.5 percent tariff on automobiles—essentially a "nuisance duty"—ignores the intergrated nature of the automobile industry. The automobile industry, more so than any other, has become truly international. The manufacture of automobiles requires a huge vertically-diversified company to be competitive, and manufacture has become concentrated in the hands of a few dozen global corporations. Because their sales are international, these companies have been able to take advantage of the competitive efficiencies of the countries where they operate. This has brought about an internationalization of production and sales and has helped create the concept of a "world car."

The Ford Pinto, for example, may include a transmission from France, an engine from Brazil, and be assembled in Canada—yet sold as a "domestic" U.S. automobile. Transmissions from France are also assembled into Ford Mustangs, Mavericks and Fiestas.

The Volkswagen Rabbit has brakes by Bendix, headlamps by GE, windshield and windows by Combustion Engineering, tires from Goodyear—and the body includes magnesium from DOW, steel from Bethlehem Steel, and solvents from Cayuga Chemicals in Cleveland.

Both Ford and GM produce automobiles in Australia, Brazil, Argentina, Mexico and South Africa. Ford has completed a $300 million new facility in Spain. Volkswagen has commenced U.S. production of its Rabbit. Some cars sold as "imports" may represent more American man-hours than some labeled as domestic product. Tariffs distort this internationalization of products and interfere with the consumer's receiving the advantages of competitive efficiencies of all the industrial nations of the world.

Furthermore, the U.S. automobile industry is hardly in need of protection, when it has just enjoyed the most profitable year in its history. Even American Motors has enjoyed the most profitable quarter in its history.

The United States could have fulfilled in the MTN the pledge made in 1965 to its trading partners to generalize the experience of the United States-Canadian Automotive Parts Agreement, but failed to do so. In 1965, the U.S. delegate to the GATT stated that "the United States would later be willing to consider the further reduction 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 the United States should have honored its pledge made to its trading partners in 1965 to further liberalize the automobile sector of the world economy. Furthermore, a fundamental inequity exists in U.S. automotive trade. An automobile manufactured in Canada enters the United States duty-free whereas automobiles from Europe and Japan cannot. Furthermore, the present arrangement discriminates among captive imports of U.S. manufacturers imported from Japan

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[1] Harbridge House, Inc., "The Imported Automobile Industry, An Assessment of Key Aspects of Its Impact on the U.S. Economy and The American Consumer" (December 1976).

and Europe and from Canada. In short, in the automobile sector the negotiations have failed to achieve the negotiating objective of eliminating artificial distortions of trade.

We recommend that the reduction in the tariff be implemented in one stage, reducing the tariff by .5 percent, to 2.5 percent ad valorem. This reduction would fall within the maximum yearly percentage reduction allowed by section 109(a)(2) of the Trade Act of 1974. Staging the tariff reduction over several years would create unnecessarily small reductions and unnecessary delay.

Failure to conclude the Chicken War

Contrary to the viewpoint expressed by certain Administration officials, the "Chicken War" is not concluded. The 16.5 percent penalty duty imposed in 1965 on automobile trucks valued at $1000 or more to retaliate against the higher import fees on poultry imposed by the European Economic Community has not been eliminated. Instead the "Chicken War" duty continues as an historical anachronism which should have been eliminated in the MTN. AIADA believes that this duty could have been eliminated if U.S. negotiators had not linked its elimination to extraneous issues. Furthermore, we understand from various sources that no consession was made on the basic 8.5 percent ad valorem duty on automobile trucks. This duty was not connected with the Chicken War and could have been reduced to reflect the integrated nature of the automotive industry and to bring to the consumer a variety of choices and prices.

The nontariff barrier codes and implementing legislation

As negotiated, the codes promise to harmonize international responses to various trade practices, particularly in the definition and treatment of subsidies, in harmonizing customs procedures, and should conforming changes be made in the International Antidumping Code, to conform treatment of antidumping and countervailing duties, as intended by article VI of the General Agreement on Traiffs and Trade. The negoitiated codes furnish the means to liberalize world trade, which is in the best interests of the United States, and we urge the Committee to carefully consider any implementing legislation which would undercut the codes agreed to by the United States negotiators, because of protectionist pressures.

1. *Subsidies and countervailing duties codes.*—AIADA believes that the subsidies and countervailing duties code established a workable framework for controlling the use of subsidies in international commerce. AIADA supports the concessions made by the United States concerning the definition of injury to mean "material injury." The subsidies/countervailing duties code does not explicitly require that the injury in explicit terms be "material." Instead the code would require that a significiant increase in subsidized imports (in either absolute or relative terms) must depress prices to a significant degree or prevent price increases, with consequent impact on domestic producers, measured by a number of economic factors. The presence or absence of any one factor would not be decisive. This appears to establish more than the de minimis test now existing in U.S. practice. The benefits of imported goods, including broader consumer choice, price competition and discipline for domestic products, and greater innovation in product development, are too well estabished to permit the exclusion of foreign goods unless material injury to a domestic industry can be shown.

AIADA salutes this Committee on its adoption of the material injury standard as part of the countervailing duty implementing legislation. The material injury test was a major concession made by the United States as a quid pro quo for other governments' restricting the use of subsidies. If this Committee had retained the proposal announced in its press relaese of march 19, whereby the de minimis injury standard of the Antidumping Law would have been adopted, then the Committee would have gutted a major U.S. concession. As we said previously, trade policy must reflect the balancing process between the benefits flowing from free trade and the economic dislocations caused by foreign competition. The benefits of imported goods, including broader consumer choice, price competiton and discipline for domestic products, and greater innovation in product development, are too well established to permit the exclusion of foreign goods unless material injury to a domestic industry can be shown.

The code's factors indicative of injury to a domestic industry contain two indicia which are of concern to AIADA and which we believe should not be incorporated into U.S. law. These are the price discipline exerted on domestic products and the relative increase in imports. Material injury, by definition, could hardly be established unless it could be shown that an absolute increase in imports had taken place. Merely to consider the price discipline imports have exerted on domestic products would appear to be totally inadequate in determining sufficient injury to

justify countervailing duties. Such criteria as the reduction in prices, or the prevention of price increases caused by subsidized imports should be scrutinized carefully and somewhat skeptically unless an absolute increase in imports can be shown to have occurred simultaneously.

By the same standards, a relative increase in imports—one in which imports themselves have not increased, but domestic production, or the percentage of domestic production consumed, may have fallen--would seem insufficient proof of injury to justify such drastic action as the imposition of countervailing duties.

As J. H. Jackson, in "World Trade and the Law of GATT," pointed out: "This concept of 'relative increase' seems inappropriate in an escape clause that is based on the policy of allocating the burdens of market adjustment. * * * Here an actual increase in imports has occurred, so it seems very difficult to justify placing this burden on the foreign products. It appears that the "relative" increase concept is a protective device."

AIADA particularly supports three of the procedural aspects contained in the code and urges their incorporation into U.S. law. These are: time limits on countervailing duty investigations, sufficient evidence in the complaint showing material injury before an investigation is commenced, and full public findings as to fact and law and reasons therefor.

The initiation of an investigation creates uncertainty in the importing community and interferes with the smooth operation of import transactions. Furthermore, when provisional bonds are required to be posted, their amount may exceed the countervailing duty finally determined to be due. On the other hand, the domestic manufacturers desire to have as speedy an imposition of countervailing duties as possible to remedy material injury to the industry. For these reasons, all investigations should be concluded within one year of the filing of the complaint, as required by the code.

Second, because of the uncertain interference with commerce caused by an investigation, no proceeding should be initiated unless sufficient evidence of material injury is demonstrated in the complaint to indicate a reasonable probability that the proceeding will result in imposition of a countervailing duty.

In the past, notices of findings of existence of a subsidy have not set forth detailed decisions as to what exactly constitutes the subsidy and why. There have been no findings of fact and law in these cursory public notices, as there should be when the rights of importers are adversely affected. Furthermore, reasoned decisions would have some precedential value enabling both importers and foreign exporters to anticipate which practices may be the subject of a countervailing duty investigation or to enable them to argue against a certain practice being found to be a subsidy.

The International Antidumping Code and U.S. law

Although not yet concluded or signed, the negotiators have proposed that the International Antidumping Code (IAC) be amended to conform in certain respects to the subsidies/countervailing duty code. This part of our submission concentrates on what AIADA believes to be necessary and desirable amendments to the IAC and to U.S. antidumping law.

(a) *Definition of injury.*—The IAC already requires that dumped imports be the principal cause of injury or threat thereof to the domestic industry (Article 3). The proposed subsidies code would require that a significant increase in subsidized imports (in absolute or relative terms) must depress domestic prices to a significant degree or prevent price increases, with consequent impact on domestic producers, measured by a number of relevant economic factors. Apparently, the presence or absence of one factor would not be decisive. Thus, both codes include a material injury test; the proposed subsidies code seems to reformulate the test. Furthermore, this Committee has recommended that the injury standard in U.S. countervailing duty law be a material injury standard.

The current U.S. antidumping law has no material injury test; once dumping has been established, antidumping duties may be obtained if de minimis injury is established.[2] Nor is any degree of causality stipulated by U.S. law. That, too,

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[2] The Antidumping Law, 19 U.S.C. § 160, as amended by the Trade Act of 1974, merely requires that a domestic industry "is being or is likely to be injured, or is prevented from being established" by reason of dumped imports. The Senate Finance Committee Report to the Trade Act says the following: The term "injury," which is unqualified by adjectives such as "material" or "serious," has been consistently interpreted by the Commission as being that degree of injury which the law will recognize and take into account. * * * Injury must be harm which is more than frivolous, inconsequential, insignificant or immaterial.

appears to be a de minimis test.[3] The proposed subsidies code would in some fashion create a material causation standard by requiring that the subsidized imports, and not other factors, are the cause of injury to the domestic industry.

The IAC, however, requires that dumped imports be the principal cause of material injury (Article 3(a)). The standard proposed by the subsidies code (and acceded to by only some of the parties) may be somewhat of a material causation standard only because subsidized imports, and not other factors, must cause the effects which lead to a determination of material injury. AIADA believes that the present "principal cause" standard of the IAC should be retained and that that standard be incorporated into U.S. antidumping law.

By "material injury," or "material cause," AIADA means to use the term "material" in the dictionary sense, "having real importance or great consequences" (Webster's New Collegiate Dictionary (1977 ed.)).

Uniform guidance as to the factors leading to a determination of material injury would be furnished by both the present IAC (Articles 3(b)) and the proposed subsidies code, and AIADA believes that these guides should be incorporated into U.S. antidumping law, with the exception of the price discipline factor and relative increase in imports factor, for the reasons stated above. We believe that U.S. response to subsidies and dumping should be uniform. First, both trade practices and appropriate responses are covered by Article VI of the General Agreement on Tariffs and Trade and conceptually should be treated the same. It is illogical to interpret Article VI one way for countervailing duties, and another way for dumped duties. Second, the dumping, particularly large-scale continuous dumping, stems in many cases from the same economic causes as subsidized products. An increasing phenomenon in recent years affecting conditions of international trade has been increased government participation in the business operations of formerly private enterprises or increased government aid to industrial sectors. The result in many cases has been the creation of the "profitless enterprise." Unlike U.S. enterprises which are shareholder-owned and expected to earn a profit, these enterprises can lose enormous amounts and thereby are able to export products at less than fair value because of government subsidization.

The second economic phenomenon in recent years follows from this trend: the presence of large-scale or continuous dumping, encouraged by government policies, in the form of subsidies, internal market restraints,[4] or barriers to reentry of the dumped or similar goods,[5] used to subsidize excess employment or carry unneeded capacity. The result is the export of products at less than fair value—in effect the export of subsidized products.

Thus, the real dumping problem is no longer sporadic or intermittent dumping which is essentially the profit-maximizing action of the private firm. In the real world, subsidized and dumped products are the same in many cases, and the international response and the U.S. statutory response to both situations should be uniform. Furthermore, conceptually, the response to both problems should be the same, since Article VI of the GATT should be interpreted in a uniform manner for both countervailing and antidumping duties.

If the injury provisions of the subsidies code are enacted into the countervailing duties laws while the antidumping laws remain unaffected, U.S. businesses will be given a choice of remedies, the ease of each remedy differing greatly due to the definition of injury. It is illogical to have a differing standard of injury to deal with what is, in effect, the same economic situation, and for this reason, the United States should have a coordinated statutory response to deal with related problems. Furthermore, AIADA also supports the addition of conforming amendments to the IAC so as to bring international resolution of dumping problem into conformity, as intended by Article VI of the GATT.

This Committee's response may well be, if continuous dumping is a problem for the United States, should not the injury standard be de minmis so as to ensure more vigorous enforcement of the antidumping laws? We maintain that the use of a de minimis injury test is not the solution for the following reason.

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[3] In the leading case of *Ferrite Cores from Japan*, U.S. Tariff Commission Pub. No. 360 at 4 (1971) the Commission applied the de minimis test to causation: However, if injury is attributable in part to the LTFV sales of ferrite cores and such injury is more than de minimis we must make an affirmative determination. The relative importance of such injury to injuries caused by other factors is irrevelant.

[4] For example, those imposed by the EEC under the Simonet and Davignon Plan. See "The Economic Implications of Foreign Steel Pricing Practices in the U.S. Market", a study prepared for the American Iron and Steel Institute by Putnam, Hayes & Barlett, Inc. at 21-25 (August 1978).

[5] See the discussion on the closed Japanese internal market for steel in Id. at 19.

Trade policy must reflect the balancing process between the benefits flowing from free trade and the economic dislocations caused by foreign competition. The economic interests of all segments of the U.S. economy must be taken into account. International trade benefits the U.S. economy by providing consumers with lower-priced goods, acting as a prod to innovation, is an effective anti-monopoly policy, and helps stem inflation by preventing scarce local supplies from being bid up precipitously.

Although we are not defending dumping, on the benefit side dumping represents lower prices to consumers, results in more competition and improved industrial performance, and acts as an anti-inflationary mechanism of price control.

Should the United States persist in maintaining the de minimis injury standard, this balancing process will be eliminated at the outset by easing the imposition of antidumping duties. If the benefits to consumers from international trade and lower-priced goods are to be withdrawn because antidumping duties are imposed, then the loss of consumer and other trade benefits should occur only when a domestic industry has been materially injured, with the injury caused in significant part by the dumped imports. The government should intervene in the economic marketplace only when a domestic industry is injured to a significant or important degree.

(b) *Definition of domestic industry.*—The U.S. antidumping law, 19 U.S.C. § 160, refers to injury to "an industry in the United States." In practice, the United States has in some cases found injury to an industry if there is injury to a regional sector of that industry. For example, in 1955, the Commission found the relevant market to be the state of California.[6] In 1970, the Commission adopted the principle that "an injury to a part of the national industry is an injury to the whole industry."[7] However, because of the constitutional provision that duties must be uniformly applied throughout the United States (Article I, section 8, clause 1), antidumping duties (though differing as to monetary amount to reflect the margin of dumping) must be imposed at all ports of the United States on the entry of dumped products, thereby protecting sectors of the industry not injured and depriving consumers in all parts of the country of lower-priced goods. Again, this situation totally skews the balancing process in favor of parochial domestic interests.

For these reasons, AIADA believes that solely the definition of "domestic industry" we understand to be contained in the subsidies code be incorporated in specific terms into the U.S. antidumping law. AIADA also suggests that the provisions of the IAC which permits determination of injury on a regional basis not be incorporated into the U.S. antidumping law. The regional definition of industry permitted in the code should not be accepted for the reasons stated above, and certainly the differing duty concept whereby countervailing duties would only be assessed on those products accepted for constitutional reasons.

(c) *A second-tier remedy procedures for setting certain antidumping cases on a Government-to-Government level.*—In cases where government ownership of or intervention in business operations or where other government policies contribute to continuous dumping, or indeed, sporadic or intermittent dumping, the United States should establish a second-tier, or "second track" settlement procedure similar to that proposed by the subsidies code.[8]

The present antidumping procedures are tailored to settle a particularized adversary proceeding between private parties where intermittent or sporadic dumping is occurring as a result of conscious profit maximizing action. The present form of proceeding cannot effectively resolve what are essentially national controversies involving either public enterprises or enterprises harnessed in the service of a government policy.

Therefore, AIADA proposes that the following domestic procedures, or similar measures, be incorporated into U.S. antidumping law. A private firm, or an industry, which believes it is being materially injured by dumped imports can petition, as at present, for a Treasury investigation. Once investigation results in a determination of injury by the International Trade Commission, the Government would have two options as to how to proceed:

(1) First, if the offending party is a private enterprise, and its pricing behavior is not related to governmental actions, duties could not be imposed.

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[6] "Cast Iron Soil Pipe from the United Kingdom," US Tariff Commission, Inv. No. 5 (1955).

[7] "Steel Bars, Reinforcing Bars, and Shapes from Australia," US Tariff Commission, Pub. No. 314 at 4 (1970).

[8] The subsidies code provides that matters can be referred by individual governments to the Committee of Signatories for review by a panel and recommendations by the Committee to the parties involved on a solution. These recommendations, of not followed, can evoke appropriate countermeasures by the Committee.

(2) Whenever dumping has occurred as the result of government subsidization, ownership of business enterprises, or other government policies, the United States Government could choose to bring the case to Antidumping Committee of the GATT. Through the auspices of that Committee, the United States would attempt to negotiate on a government-to-government level the elimination of the offending government's practices. AIADA believes that such a "second track" option would be a far more effective way of containing large-scale dumping. If the United States is unsuccessful in negotiating a resolution, antidumping duties would then be imposed, pursuant to present law, on the dumped article. Furthermore, AIADA recommends that the U.S. Government consider raising at the negotiations on the IAC, its amendment to include a dispute settlement procedure similar to that in the subsidies code, whereby the GATT Antidumping Committee would function much as the Committee of Signatories.

(d) *Price assurances.*—Article 7 of the IAC provides that antidumping proceedings may be terminated without imposition of dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices to eliminate the margin of dumping or to cease to export to the area in question at dumped prices. We understand that the subsidies code includes a provision on the use of "assurances" to expedite the conclusion of proceedings. The Antidumping Act of 1921, as amended, contains no provision on the use of assurances, and Treasury practice to date has been to accept price assurances only when the margin of dumping is less than one percent. The purpose of the Antidumping Act is to eliminate the dumping margin, and not to act as a protectionist barrier and if that can be achieved through voluntary action on the part of the exporter, the purpose of the Act is thereby served.

(e) *Discretionary waiver of antidumping duties.*—Unlike the IAC (Article 8(a)) and the subsidies code, U.S. antidumping law leaves no measure of discretion with regard to the imposition of antidumping duties. The IAC states the proposition that "[i]t is desirable that the imposition [of antidumping duties] be permissive. * * *" AIADA recommends that U.S. law be amended to allow the President, upon reporting to Congress, limited discretion (the conditions to be referenced in the Act) to waive dumping duties where adverse economic consequences may result from their imposition, for example, serious anti-competitive effects. Due to the complexity of the economic issues involved, waiver should be permitted where the impact on the U.S. economy does not counterbalance the barriers to the free movement of goods and consequent competitive benefits.

(f) *Termination of finding of dumping.*—The Antidumping Act contains no explicit provision for the termination of findings of dumping and the lifting of dumping duties. Both the IAC (Article 9(a)) and, we understand, the subsidies code contain provisions which would require that antidumping or countervailing duties remain in force only so long as, and to the extent necessary to counteract, the dumping or subsidization which is causing material injury. The subsidies code would also require review of the continued need for the countervailing duty. Conforming changes may be made to the IAC, and AIADA supports those amendments. Furthermore, AIADA urges that conforming changes be made to U.S. antidumping law, and procedures established to provide for a review process initiated by either government investigating authorities or by interested parties. Our submission is based on the premise that because trade policy must reflect the necessary balance between the free movement of goods, with its consequent benefits, and protection of domestic interests, dumping duties should be imposed only when material injury to the domestic industry has been found to exist. Thus, when that material injury no longer exists, dumping duties should no longer be necessary.

Mr. VANIK. I just want to say this. We are very carefully watching the trade imbalances. For example, while they have been going down with our relationship with Japan we are very much concerned about how the Iranian crises and the shift toward more imported or gasoline efficient cars is going to affect us.

I can only say this, that the happiness you express with respect to one company's profitability resulting from a great percentage of overseas business does not really meet the root of the problem, and that is the way it affects American labor and American industry.

I think I have made myself clear about my great fears of an automobile problem resulting principally from the failure of the American industry to realize that they ought to get into the gaso-

line efficient car market. They offer very few choices compared with the vast number of choices that are provided by the imported product. The imported product in effect has forced and is forcing the American industry to a point of reconciliation of this issue of conservation.

So, there has been that fallout and help that I think has occurred. They are not going to move unless they are economically shoved. While we are having a good year and we have blossomed into 1979 with little problem in the intervening period, I think that as the problem of gasoline prices becomes more and more acute and as the inflation in America continues to be more and more unrestrained because of the fact that we have this continued reliance because of the fact that we have this continued reliance on imported sources for oil, I am worried about the yearend figures.

America certainly can't tolerate the tremendous imbalance of trade resulting from a massive shift to an imported product. I just urge that you and the countries which produce the products that you sell realize that you have a healthy piece of our market, a healthier piece of our market than is afforded to imported automobiles in any other part of the world.

No other country in the world provides such an access as is provided in the United States. The only thing that I could counsel to your industry and all of the producing countries is that if they are interested in importing, they should try to protect a share of the American market for American workers.

I suggest moderation. I suggest a mindful eye as to what effect massive incursions can cause in the American economy. You have always the ever-present problem of dealing with some drastic actions that Congress can quickly take to curb huge intrusions and upsetting conditions in our own domestic industry.

You have to be mindful of the limit of tolerance. I know this is very difficult. Aggressive salesmen can't help but do their work. But your industry must be mindful of the acceptable limits and avoid adverse effects over the long term for your industry.

So I think that you have to be mindful of that and keep your eye watchfully attuned to the deficits, because those trade deficits are going to have more of an effect on how this Congress accepts your industry in America than any other thing I can think of.

Mr. McELWAINE. Mr. Chairman, we do continuous economic projections. Even at the present time when we are having quite a boom in sales because of fears over gasoline and pricing, our projections still show the imported automobile sales taking no more than 17 to 17.5 percent of the market through 1979.

The reasons for this being numerous:

One, the many price increases we have had with the falling dollar.

Two, the fact that many of our dealers frankly are running out of cars. The supply is limited of imported cars.

Mr. VANIK. We had 500,000 from one country the 1st of January and they have been practically cleaned out.

Mr. McELWAINE. Yes, but that is not an unusual inventory, Mr. Chairman. When you are selling 2 million cars a year, as we are, that is a 3-month inventory. Our normal inventory is 4 months. So that is not unusual.

Mr. VANIK. I just wanted to apprise you of the overall problem. Thank you very much.

Mr. MCELWAINE. Thank you, Mr. Chairman.

Mr. VANIK. The next witness we have is the National Tool, Die & Precision Machining Association and Small Business Legislative Council. Mr. Frank Wikstrom.

I want to point out that we have reached a point in our proceedings where everybody here is the next speaker. There is no audience here that we have to worry about too very much. So, if you want the Chair and the members of this committee to really tune in on the issues that are critical, I would suggest that you try to get to the key issues. Otherwise, we might not follow as carefully an extended statement that is based on your full statement.

So, I want to say, Mr. Wikstrom, your entire statement will be in the record as submitted. You may read from it or you may excerpt from it, but try to give us the punchlines, because we are getting punchy up here.

STATEMENT OF FRANK WIKSTROM, NATIONAL TOOL, DIE & PRECISION MACHINING ASSOCIATION, AND SMALL BUSINESS LEGISLATIVE COUNCIL, ACCOMPANIED BY HERBERT LUBENSON, VICE PRESIDENT OF ENVIRONMENTAL AFFAIRS OF THE NATIONAL SMALL BUSINESS ASSOCIATION AND ASSOCIATE DIRECTOR, SMALL BUSINESS LEGISLATIVE COUNCIL, AND BRUCE N. HAHN, MANAGER, GOVERNMENT AFFAIRS, NATIONAL TOOL, DIE & PRECISION MACHINING ASSOCIATION

Mr. WIKSTROM. Thank you, Mr. Chairman.

I would like to introduce myself and introduce the two gentlemen with me. I am Frank Wikstrom, chairman of the Government Relations Committee and a past president of the National Tool, Die & Precision Machining Association. Our association represents over 10,000 small businesses who manufacture tooling, dies, special machines, molds, or perform precision machining in the United States.

This industry is the foundation of all American manufacturing, for every product manufactured in this country must rely on our industry for primary components used in the manufacturing process. Similarly our industry's products are critical to all defense and aerospace procurement in the United States.

I am also appearing today on behalf of the Small Business Legislative Council (SBLC), an organization of national trade and professional associations whose membership is primarily small business. SBLC focuses on issues of common concern to the entire small business community. The SBLC membership and their affiliates represent approximately 4 million small business firms nationwide.

Sitting with me on my left is Mr. Herbert Lubenson, vice president for government affairs of the National Small Business Association. He is associate director of the Small Business Legislative Council.

Sitting on my right is Mr. Bruce N. Hahn, manager of government affairs for the National Tool, Die & Precision Machining Association.

I will read my summary first and then take a few excerpts from the full statement presented to you.

We feel that Congress should not approve the multinational trade agreement in its present form. This country is simply giving up so much more than it is gaining.

Small and minority business will be hurt the most. Some 98 countries would be eliminating restrictions on a total of around $22 billion in contracting. That averages under $250 million per country. We would get to compete with these 98 countries for a share of that business. We would in effect give up by virtue of elimination of much of the Buy American Act and the Labor Surplus Procurement Act program at least $14.2 billion in executive procurement alone.

GSA figures show that at least $4.4 billion of that is direct small business procurement. Of course, small and minority business groups do considerable subcontracting for the remainder.

By contrast to those figures Ambassador Strauss estimated that the total amount of small business contracts which would be in jeopardy would be $300 to $400 million. This he said in his testimony on March 20 before the House Committee on Small Business. He gives numbers which are from one-eleventh and one-fifteenth of the figures which are shown in GSA published statistics.

I think he is totally misleading the American public and Congress if he is trying to put those figures over. There is no evidence of export assistance for small and minority business from SBA, Department of Commerce or Eximbank.

The administration of the small business community agrees that small business is not equipped to make export effort without help. All three organizations have testified that resources available to help small and minority businesses are stretched to the limit.

Despite administration promises, there are no significant appropriations to help these organizations take care of the so-called 22 billion birds in the bush. The Buy American Act recognizes that U.S. business has many more regulations and restrictions than its foreign competition. It also recognizes that much U.S. business profits and payrolls are returned to the Government in the form of income taxes, corporate and personal, thereby reducing the effective cost of U.S. products. It just makes good economic sense and should be retained.

Finally, most of the figures we see are fuzzy. Where we have been able to secure hard government data on the Trade Office, we find the administration buys as much as 1,000 percent. In no case do we think Congress should be expected to approve any trade agreement until it receives hard and specific, line-by-line data on the effect on U.S. small minority and large business and on the balance of payments.

The multilateral trade agreement does not, one, address internal buying policies of other nations. It does not address the question of farming out to nonsignatory nations. It does not address the fact that the least developed countries get special treatment.

Even if they do not sign the code, therefore, there is no need to change their status. It does not address the fact that all of the industrial nations who are signatory to the code have widespread State participation in industry.

Thus, we would compete with the State-owned firms where there is no need to earn profits, no fear of bankruptcy, no dividends to

pay. They enjoy low-cost loans, et cetera. All of these factors defy rules of capitalism as practiced in the United States.

Now, I ask you is it possible to outbid such firms in the marketplace? One person who read about the proposed program made this comment about trying to do business here. I would like to quote. I am having just a bit of trouble finding that particular page. Give me 1 minute.

One small manufacturer made this comment about the proposed MTN action. He says, and I quote:

> If I were responsible for a U.S. company that was seeking Federal contracts and had not been successful, I would move my headquarters to San Marino, Bermuda, or Haiti, where I would not be concerned with OSHA, social security, income taxes, labor standards, minimum wages or labor unions, and find myself in a much better position to compete and actually to obtain U.S. Government contracts.

We just feel that a terrible thing is being done to small business in the United States. We are the patsies. We are the ones who are going to get hurt. Big business is not going to get hurt to the extent small business is. We have had this effort to set aside, we have had these programs to provide setasides for small business. Now, these things are being traded away.

Thank you.

[The prepared statement and attachments follow:]

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

My name is Frank Wikstrom. I am Chairman of the Government Relations Committee and a past president of the National Tool, Die and Precision Machining Association. Our association represents over 10,000 small businesses who manufacture tooling, dies, special machines, molds, or perform precision machining in the United States.

This industry is the foundation of all American manufacturing, for evey product manufactured in this country must rely on our industry for primary components used in the manufacturing process. Similarly our industry's products are critical to all defense and aerospace procurement in the U.S.

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

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

Soon the Administration will be sending to the Hill the Multilateral Trade Agreement.

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

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

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

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

Ambassador Strauss stated before the House Committee on Small Business on March 20 that no exact figures were available on just how much in current small business sales to Federal agencies will be lost to MTA. He speculated that it might be $300-400 million. At his side at the time was Robert Griffin, formerly Deputy Administrator with the General Services Administration. Mr. Chairman, for many years each Federal Agency has been required to file detailed quarterly reports on

procurement with the Office of Finance of the GSA. We find it hard to understand why this information could not be provided to the committee. And we also find the estimate ridiculously low. According to the data compiled, provided by GSA's Office of Finance, the annual small business procurement by the executive agencies is 28.6 billion.[1] Approximately 9 billion of this is direct small business procurement and a significant portion of the remaining 19.6 billion results in subcontracting contracts to small business. GSA figures show that only half of the small business direct contracting will be exempted. Large contractors will fare much better—about two-thirds of the large contracts will still remain exempt. We are giving away over 4 billion in small business procurement and 6.8 billion in large business procurement. Our estimate is that we are talking about five to six billion dollars in small and minority business procurement contracts—not the 300 to 400 million as Mr. Strauss has speculated.

Another matter that concerns us are rumors that the "price" for restoration of the small business set asides will be the elimination of NASA procurements from the exempt list. If that happens subtract another $3.4 billion in exempt procurement and add it to the $10.8 billion giveaway. Remember also that you are talking about depending on foreign sources for critical technology. Technology developed for our space program is technology which is eventually applied to our defense program. Is it in the interest of the United States to be dependent on other countries for the ability to produce sophisticated systems and ordinance for our military needs? This technology also filters down into consumer products, giving domestic industry a head start in such areas as mini computers and many other areas.

In spite of the set-aside changes already made in MTA, the business community in the United States is bound to be affected by provisions still in the Treaty. If the door is shut to big business by the elimination of the Buy American Act, considerable subcontracting to small or minority business by large business or by government will be lost. The total government procurement that could be affected permanently in sales to Civilian Executive Agencies is $14.2 billion.

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

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

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

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

The present Federal Procurement Regulations provide as follows:

Sec. 1-6.104.4 Evaluation of bids and proposals

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

(b) Except as provided in paragraph (d) of this section, bids and proposals shall be evaluated as provided in this section so as to give preference to domestic bids. Each foreign bid shall be adjusted for purposes of evaluation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, except that a 12 percent factor shall be used instead of the 6 percent factor if the firm submitting the low acceptable domestic bid is a small business concern or a labor surplus area concern (as defined in § 1-1.701 and 1-1.801 respectively), or both. However, if an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, the case shall be submitted to the head of the agency for decision as to whether the award to the small business concern or labor surplus area concern

[1] See attachments A-H.

would involve unreasonable cost or inconsistency with the public interest (see § 1-6.103-3). If the foregoing procedure results in a tie between a foreign bid as evaluated and a domestic bid, award shall be made on the domestic bid. When more than one line item is offered in response to an invitation for bids or request for proposals the appropriate factor may be applied to any group of items as to which the invitation for bids or request for proposals specifically provides that award is to be made on a particular group of items.

It is important to note that Federal procurement with certain exceptions must go to a U.S. small business if its bid is within 12 percent of the foreign offer. The 12 percent differential represents partial offsetting of the lowered cost of doing business by foreign competitors who are not subject to compliance with wage laws, U.S. government regulations, pension programs, etc.[1]

The MTA scraps this 12 percent differential in favor of competition by businesses from some 98 nations. Those countries, in practical effect, will subsidize this competition because they need not conform to U.S. business regulations (see attachment N).

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

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

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

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

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

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

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

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

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

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

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[1] See Attachment M.

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

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

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

When members of Congress stated their strong opposition to limiting the set-aside program under MTA, Ambassador Strauss was able to remedy the situation quickly. He can do the same with respect to the Buy American Act and the Labor Surplus Program if Congress strongly registers its opposition. Unless the MTA is amended to correct these two inequities, we urge you to vote against its adoption.

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

American Association of Nurserymen, Washington, D.C.
American Textile Machinery Association, Washington, D.C.
Association of Diesel Specialists, Kansas City, Mo.
Association of Physical Fitness Centers, Bethesda, Md.
Automotive Warehouse Distributors Association, Kansas City, Mo.
Building Service Contractors Association International, McLean, Va.
Business Advertising Council, Cincinnati, Ohio.
Direct Selling Association, Washington, D.C.
Electronic Representatives Association, Chicago, Ill.
Furniture Rental Association of America, Washington, D.C.
Independent Bakers Association, Washington, D.C.
National Association of Plastics Distributors, Devon, Pa.
National Association of Retail Druggists.
Independent Business Association of Washington, Bellevue, Wash.
Independent Sewing Machine Dealers of America, Hilliard, Ohio.
International Franchise Association, Washington, D.C.
Institute of Certified Business Counselors, Lafayette, Calif.
Local and Short Haul Carriers National Conference, Washington, D.C.
Machinery Dealers National Association, Silver Spring, Md.
Manufacturers Agents National Association, Irvine, Calif.
Marking Device Association, Evanston, Ill.
Menswear Retailers of America, Washington, D.C.
National Association for Child Development and Education, Washington, D.C.
National Association of Brick Distributors, McLean, Va.
National Independent Meat Packers Association, Washington, D.C.
National Office Machine Dealers Association, Zanesville, Ohio.
National Beer Wholesalers' Association of America, Falls Church, Va.
National Burglar and Fire Alarm Association, Washington, D.C.
National Electrical Contractors Association, Bethesda, Md.
National Family Business Council, West Bloomfield, Mich.
National Home Furnishings Association, Washington, D.C.
National Home Improvement Council, New York, N.Y.
National Independent Dairies Association, Washington, D.C.
National Office Products Association, Alexandria, Va.
National Paper Trade Association, New York, N.Y.
National Patent Council, Arlington, Va.
National Pest Control Association, Vienna, Va.
National Small Business Association, Washington, D.C.
National Tire Dealers and Retreaders Association, Washington, D.C.
Printing Industries of America, Arlington, Va.

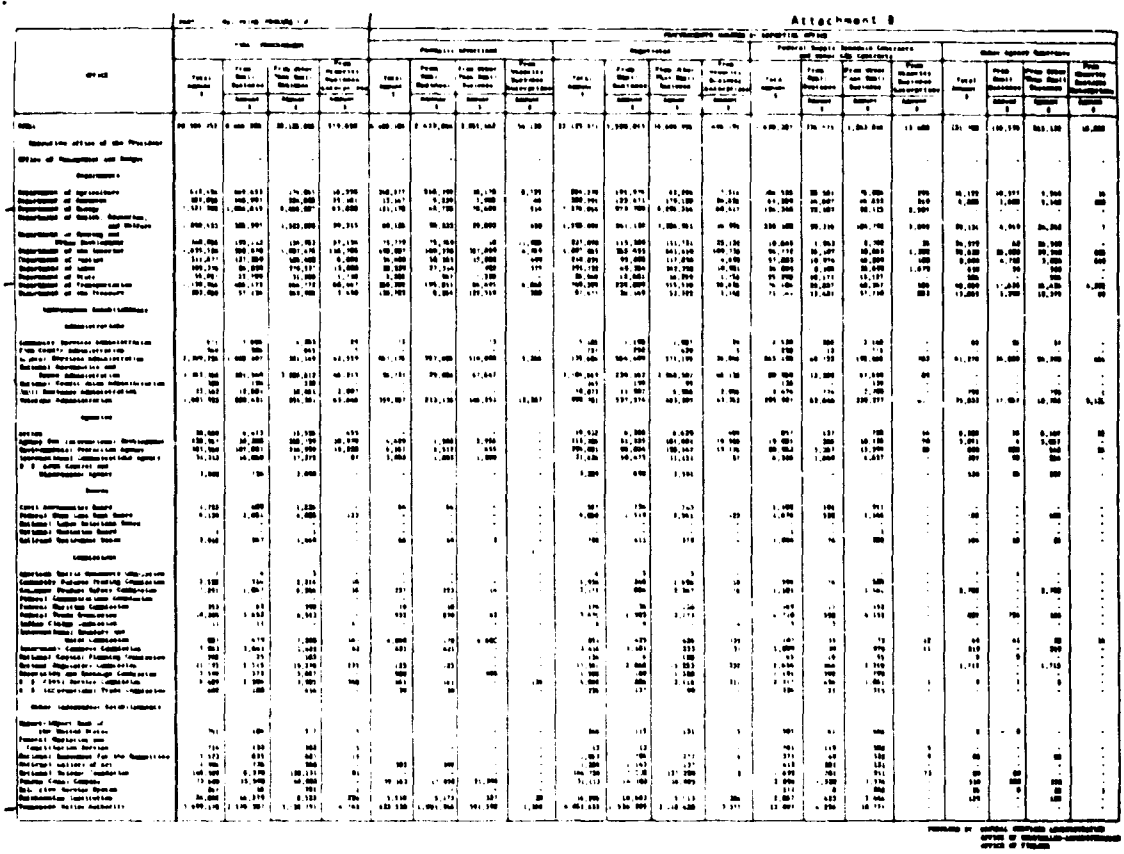
ATTACHMENT A

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

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

Fiscal 1978

Attachment B



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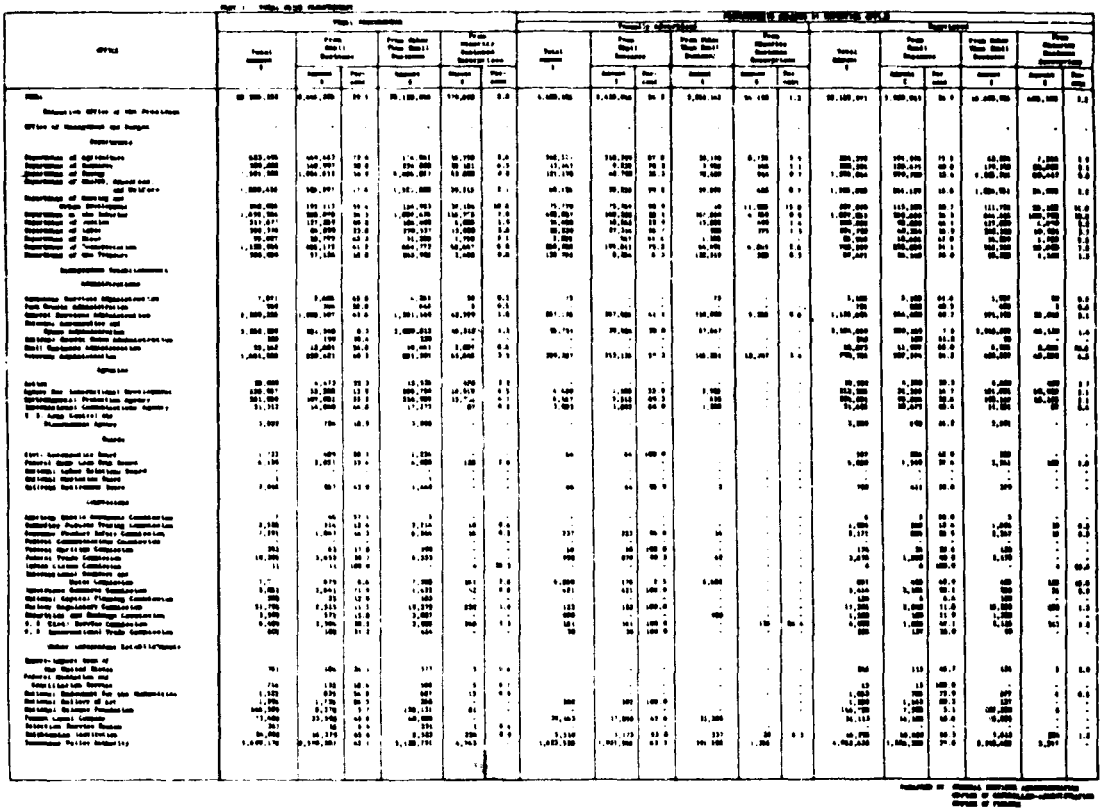

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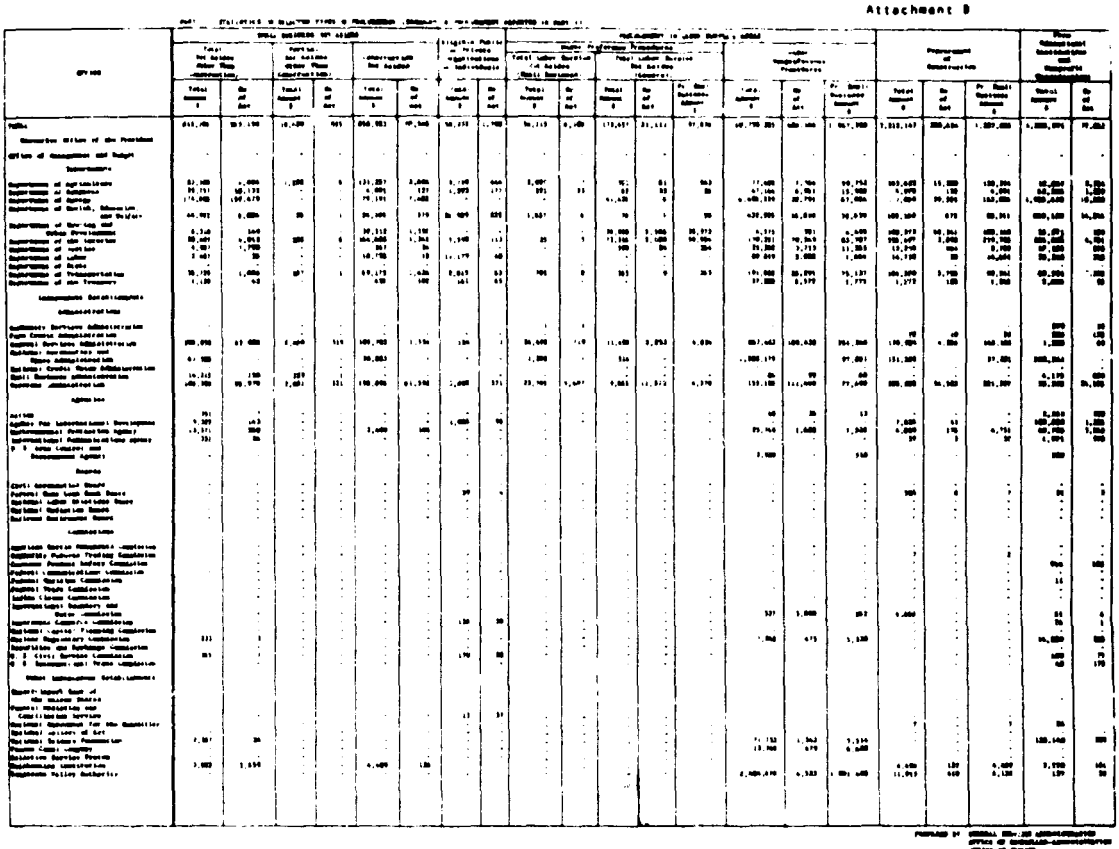

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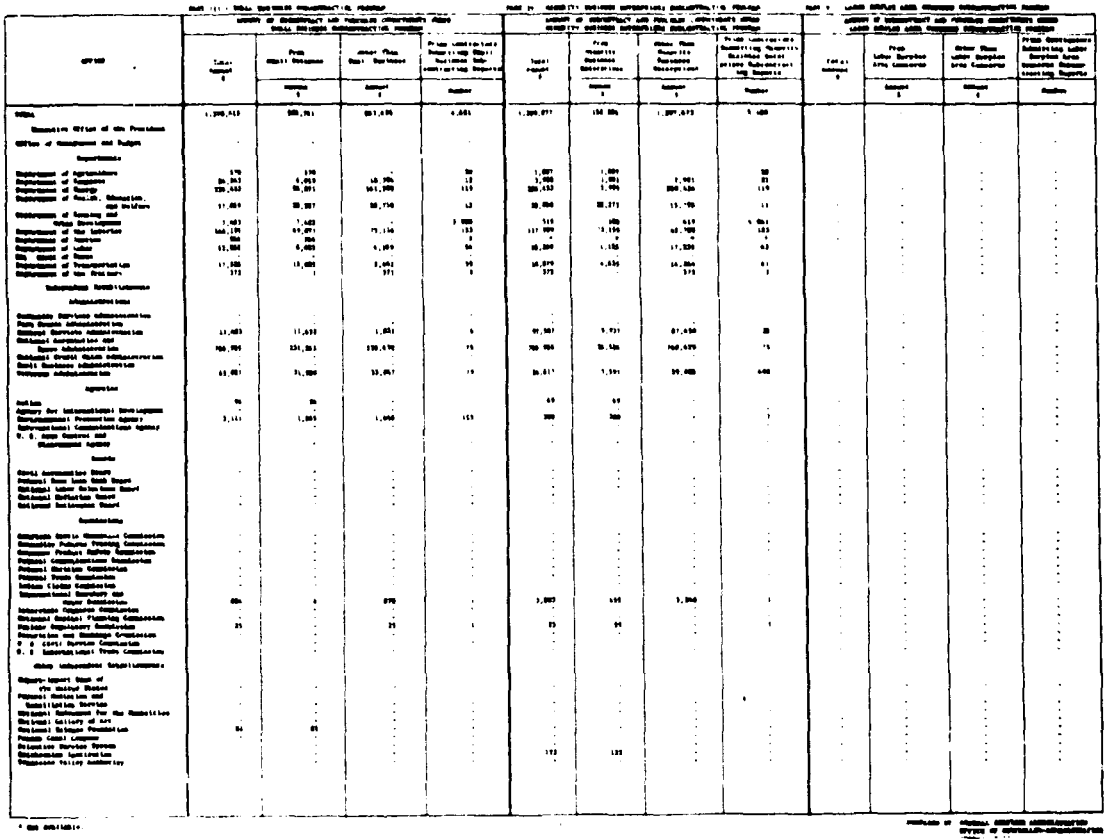

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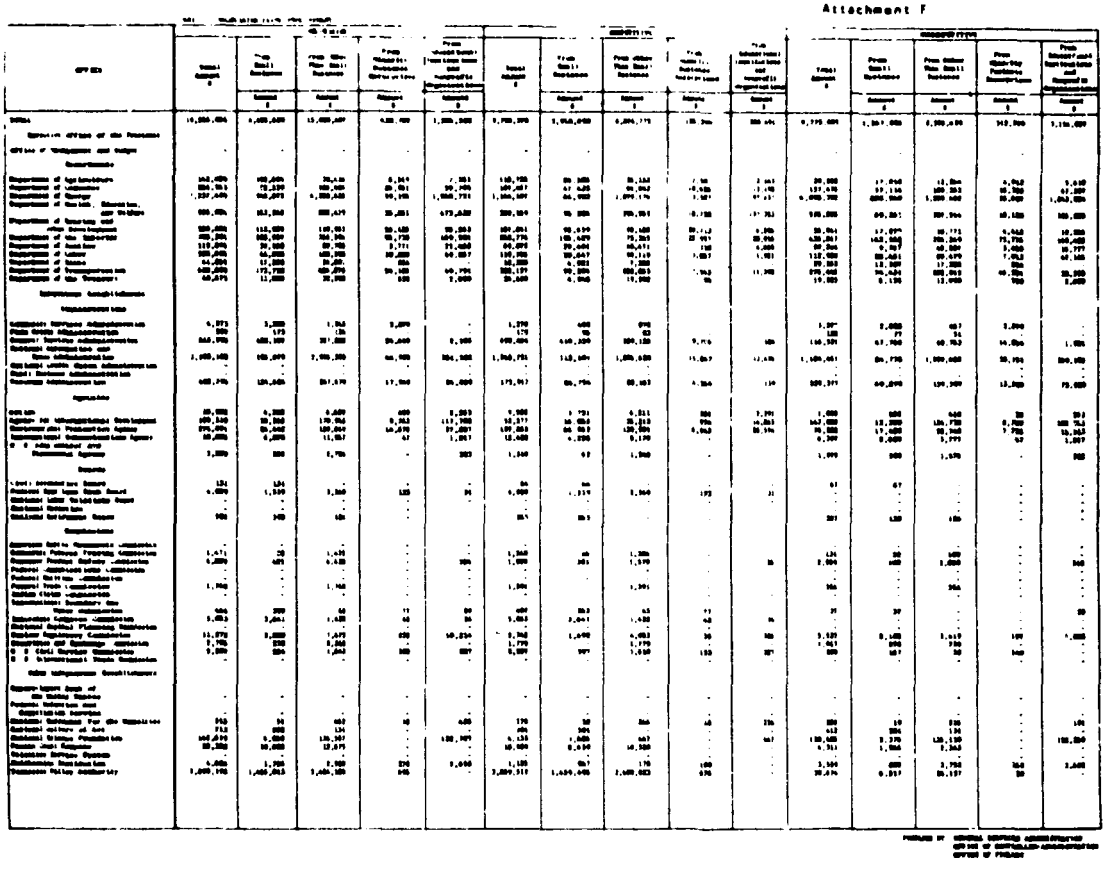

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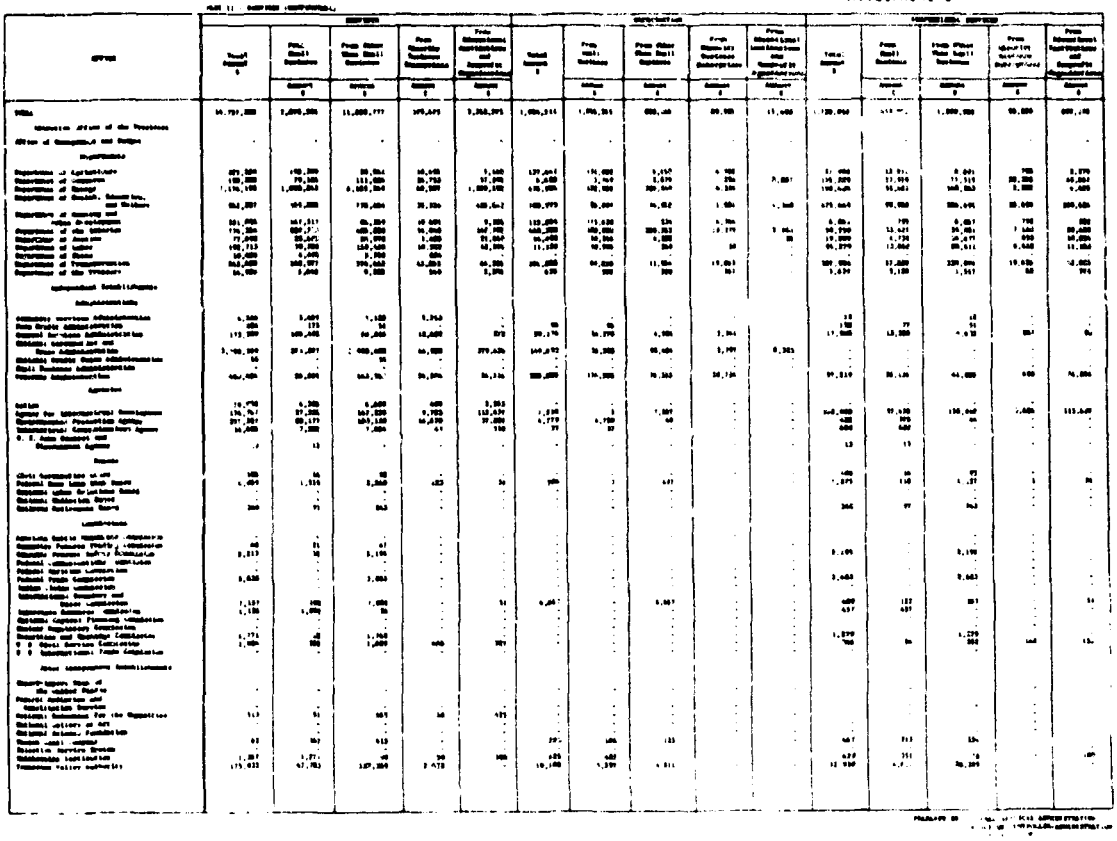

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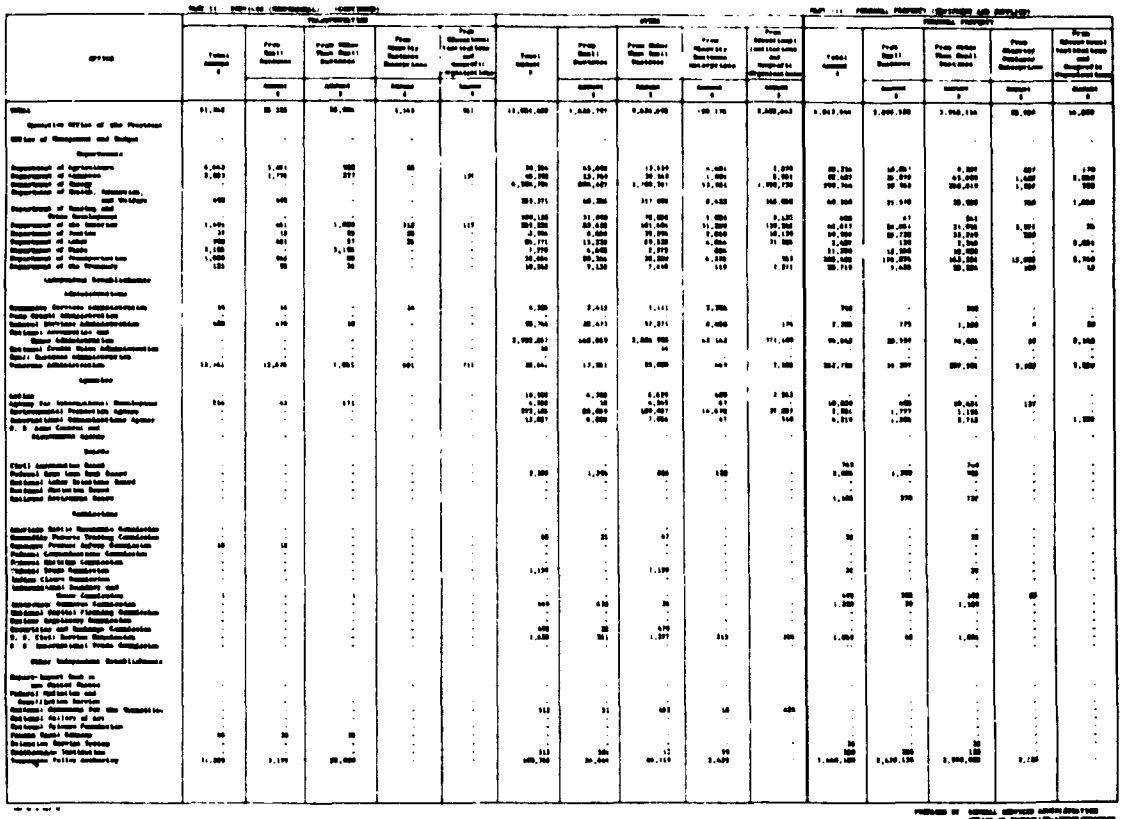
Attachment H



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ATTACHMENT I.—*Minority business enterprises subcontracting program*

Minority business enterprises subcontracting to Government	$152,204,000
Minority business enterprises subcontracting to large business	1,207,673,000
Total	1,359,877,000

Source: Procurement by civilian executive agencies for the period Oct. 1, 1977, to Sept. 30, 1978. (Prepared by General Services Administration, Office of Finance.)

ATTACHMENT J.—*Small business subcontracting program*

Small business subcontracting to Government	$506,761,000
Small business subcontracting to large business	863,652,000
Total	1,370,413,000

Source: Procurement by civilian executive agencies for the period Oct. 1, 1977, to Sept. 30, 1978. (Prepared by General Services Administration, Office of Finance.)

ATTACHMENT K.—*Total prime procurement*

From small business	$8,446,206,000
From other than small business	20,120,046,000
From minority business enterprises	579,658,000
Total	28,566,252,000

Source: Procurement by civilian executive agencies for the period Oct. 1, 1977, to Sept. 30, 1978. (Prepared by General Services Administration, Office of Finance.)

ATTACHMENT L

PROCUREMENT IN LABOR SURPLUS AREAS

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

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

ATTACHMENT M

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

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

[From the New York Journal of Commerce, Mar. 29, 1979]

ATTACHMENT N.—WORLD TRADE, DEFENDERS OF SMALLER U.S. FIRMS FORCE STRAUSS TO AMEND NEGOTIATING PLANS ON PROCUREMENT PRACTICES CODE

(By Richard Lawrence, Journal of Commerce Staff)

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

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

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

Mr. Strauss insisted that small businessmen stood to win "substantial gains" at only "infinitesimal risk" from the proposed code. He cited estimates that only about 7 percent of federal business reserved for small business would be opened to foreign competition. In 1978 terms, that would amount to $350,000.

OPPOSITION VOWED

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

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

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

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

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

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

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

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

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

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

What, then, will the U.S. offer foreigners? It will waive the 6 and 12 percent price preferences GSA extends to domestic suppliers for such civilian agencies as State

Department, the departments of Urban Development and Housing, Education and Welfare—in other words, those now excluded from the code.

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

FOREIGNERS SHARE

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

(Last year, total federal procurement—goods and services—approximated $79 billion.)

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

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

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

Mr. JONES. Thank you very much.

Do any of your colleagues have any statement?

Mr. WIKSTROM. My two colleagues here have helped prepare the data. We have many tables here from SBA and others which are contained herein. They have helped me develop these figures in support of the entire written statement.

Mr. JONES. Thank you.

Maybe I should ask if they want to make some additional comments.

Mr. LUBENSON. Based on testimony before the House Small Business Committee, it is very obvious minority and small business organizations were going to be quite opposed to any treaty agreement. As a result, within about 48 hours they were able to renegotiate on two provisions which was the small business fees set-aside and on the minority set-aside.

However, "Buy American" and "Labor Surplus" still exists in the contract. We have been warned that if the small business set-aside and the minority set-aside were retained here in this country, they were going to be traded for something else.

What we now suspect and we have some evidence to the effect that where in the past NASA contracts were excluded in exchange for the set-aside provisions, they now have thrown something like $3.3 billion of NASA contracts into the pot for the foreign governments to bid on.

Mr. JONES. It sounds to me like you are more interested in protecting these markets here than aggressively pursuing markets abroad. Is that a fair statement?

Mr. WIKSTROM. I would say that since we represent small business, and when I am talking small business I am talking about really small business. My own company is a company of 25 people, including me, on the corporate payroll. We are not by and large people who are going out into the export market which they say now we make available to you.

Small business is not export oriented and we have no evidence that there is anything being done to help us. Despite what is being said by the administration we find no evidence that there is anything being done to help us export.

Also, small business does not have large capital nor does it have generally the large manufacturing programs with the tremendous volumes of products produced and would, therefore, in most cases not be able to compete for the market in those other countries.

The 98 countries we are talking about are countries which are already serving those markets, already have an in. And many of them do not have the burdens of doing business that are imposed on the American producer.

Therefore, I think we are at a grave and serious disadvantage in trying to offset by going into the international trade field.

Mr. JONES. I would say that you are right. Much small business and much large business is not export minded or conscious of our export potential. But there are some aggressive small businesses in my area in Oklahoma who are doing a whale of a job in developing markets overseas and they have employees numbering in the 20 to 40 category. Mr. Frenzel and I will be introducing some legislation to expand and give new incentives to exporters with special emphasis on small business, so hopefully we can develop more of the consciousness necessary for exports from this country.

Mr. LUBENSON. May I add, sir, that just recently the Department of Commerce, Small Business Administration, the Export-Import Bank, and the OPIC group admitted that they had very little going in the way of programs, effective programs, for the small business community. In effect, we know that from the last 20 years the Department of Commerce has failed miserably in terms of their programs for the small business community.

Mr. JONES. You are preaching to the choir on that. I agree with you wholeheartedly. Hopefully we are going to have a little legislative boost to change some of that.

Mr. WIKSTROM. You spoke, sir, about small people doing export business. I, myself, with a small business do export. I have my machinery in England, Belgium, Germany, Italy, Spain, Canada, Kuala Lumpur, Malaysia, and there is some in Japan. Hopefully I will get into Australia. So, I do know a small business with the product for which there is a need in the world market will be able to export but that is because there is something special about that product that makes people want to buy it regardless of trade barriers. There is a special need we fill. When we are going into the general contracting and general export that is not necessarily the same situation at all. I am sure that your constituents in Oklahoma certainly have a good product for which there is a worldwide market regardless of any trade agreement and, therefore, they are successful in that field. I am glad to hear they are.

Mr. JONES. I differ with you on your testimony. I think Ambassador Strauss and our negotiators have helped to break down substantially some of these subtle barriers in international markets that prevent our product from competing. We have a difference of opinion on that.

Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Gentlemen, I understand from reading your testimony and listening to you that your main complaint is the "Buy American" protection being taken away.

Mr. WIKSTROM. That is correct.

Mr. MOORE. Do you foresee any situation that would allow foreign companies to have access to Government procurement being acceptable to you?

Mr. WIKSTROM. I don't know what it would be. I really don't know how to answer that question because I don't know what is going to be made available.

Mr. MOORE. The next question is let us assume that the MTN does become law and we do have the problems that you are talking about, and I assure you we are all concerned about small business and have no desire to see you put out of business, but to the contrary, to make you competitive and do what you believe you can do. We believe that American business with proper incentive shackles taken off can compete with anybody. What can we do in Congress to make you competitive? You mentioned OSHA. What do we need to do to make you competitive so that you can compete?

Mr. WIKSTROM. Our concern is that we have burdens upon us. We have burdens that costs of manufacture which are not imposed on people that we compete with. We don't know how we are going to overcome those factors. We can't say that other people must carry these burdens unless you are going to put some kind of special tax on them to make a compensating offset.

Mr. MOORE. That is what we can't do.

Mr. WIKSTROM. I know that, That is why I don't know how we are going to do it. Either you are going to have to put some kind of burden to make it equitable or you are going to open the door to them. I don't know the easy answer.

Mr. MOORE. There is not an easy answer I am sure. What we have talked about is the possibility of rapid rates of depreciation for Government order devices or procedures.

Mr. WIKSTROM. Those should have been done a long time ago.

Mr. MOORE. You mentioned capital. I know in your business if you have a customer that buys your dies or your tooling processes or whatever, it may well be he is going to have to have some capital formation, tax incentives to have the money to buy dies from you and retool.

I would appreciate your doing this. This particular chairman and myself are very interested in these sorts of things. I would appreciate it if you would take the time—the record has been left open until Wednesday of next week—if you could take the time to sit down with your board or whatever and give us some advice or some comments on paper, even a shopping list, if you will, of what we can do if this passes to make you competitive. We very much appreciate that. We are trying to build evidence of what happens after MTN as much as we are about MTN. I would appreciate such a list from you.

Mr. WIKSTROM. I appreciate the opportunity to put something additional in the record. I will see what we can come up with in the response to your questions.

Thank you very much.

Mr. JONES. Chairman Vanik, I think, had some questions he wanted to ask.

Mr. VANIK. Did the set-aside provision take care of small business? You know, we pressured for that change. so I think you are protected on the set-aside issue.

Mr. HAHN. That is what Mr. Strauss has maintained.

Do you want to handle that?

Mr. LUBENSON. Yes, we feel protected on the set-aside with the negotiations. They were still negotiating at the time of the testimony before the House committee. And they made the set-aside and minority set-aside change. However, many of the firms that obtain prime contracts that normally would subcontract to the smalls and minorities, if those large firms are going to get cut out, so will the smalls and so will the minorities.

Mr. VANIK. If there is any innovation, I think you are in a position to provide it. I do realize the special problems you have in getting some of this foreign business because it is a very complex operation and small businesses can hardly afford it unless they develop some consortium arrangement.

You are at a level where I think you can compete really. In some parts of the free world there is nothing like the free small business activities that we have in the United States. I think we probably lead the world in this kind of business activity. I think you ought to be able to really cut into these markets if you could just be spared the tremendous overhead cost of negotiating and selling and merchandising the product. You can't afford negotiating. You can't do a lot of those things that are essential. I am hopeful that in whatever we do that we provide some means of really exploring the real potential for the small business group.

We have some adversity we have to sometimes suffer. But in my community we have more small businesses than we have almost anywhere else in the United States. We have a capacity for self-survival.

Mr. WIKSTROM. I believe that.

Mr. VANIK. Anything needed in the world can be made in my area. I was impressed by the 900-day seige of Leningrad. The Russians are very sensitive about the risk of war and the people in the streets are all concerned about SALT. They ask, "Do we really want peace?" And to an extent that we can't even measure, there is nothing comparable in the United States; our people are indifferent. When you look at cities like Leningrad where they lost more people than we did in all wars combined in that 900-day seige, when you look at the capacity of that little area and the way they were able for 900 days to create all the things they needed, to create all the things they needed to sustain life at a very low level, but yet they produced, and they produced weapons, and they produced defensive things against the attack of the Nazis, and that is the kind of capacity that is so important in our country.

I was deeply impressed, however, it worked out, that with their resourcefulness they were able to survive that way and for that long.

I want to address myself to this special thing because I think one man running his own industry or one small group running its own

enterprise can cut corners that larger enterprises get lost in in their computers.

One of the special things I want to address my efforts to is the need to maintain this very highly competitive power that we have in small business enterprise. One of the things I am hoping that we can come out of this Congress with is a stimulus on technology. I would hope you would be supportive of this. I feel that we are running out of technology, and as I told the Soviets last week that there was no joy in America when American technology was sold to them under a foreign label.

I don't like the way our multinational corporations can sell our technology that we can't directly sell. I don't know how to get a handle on this problem. But I want you to know that to the extent that we can we are going to try to figure out some way either through centralized trading organizations or some such facility to create real openings in these markets.

Second, I hope we can refurbish your technology incentives that will make it possible for you to make some technological breakthroughs. You can do it with a plant of ten as well as you can do it with a plant of 100,000. You probably can do it more effectively. Among your own workers are people who can point out some technologies. I always feel that this opportunity to develop a better way is very, very broad. You have within the capacity of your own plants people who probably can come up with an idea at practically little cost which a big, powerful industry would have to spend millions of dollars on research to acquire.

So, be mindful of this. We know your special problems. We know that your strength and vitality is one of the keystones of our American system. Thank you very much.

Mr. LUBENSON. I might say this committee can do a great deal to stimulate innovation and technology through the incentives that can be provided, tax incentives particularly.

Mr. MOORE. That is precisely what you should tell us in a letter, precisely what we can do, cut taxes, give investment tax credits. You tell us so that we can consider that. You are correct, we can do something about it.

Mr. WIKSTROM. Thank you very much.

Mr. JONES. Thank you.

Our next witness is Patrick F. J. Macrory, counsel, West Mexico Vegetable Distributors Association and Union Nacional de Productores de Hortalizas.

Mr. VANIK. Excuse me, Mr. Jones. I want to tell you to be careful about these fellows. I made a trade speech and appearance in Mexico and I confronted members of their organization in an encounter during which they brought in all the television media and chewed me all over the place.

I want you to be careful, because this is a very powerful and effective group. I know that the industry has an overlap effect in some of the adjoining States. We have had Congressman Udall and others who have been very sensitive about the need for an understanding of the special problems that relate to the Mexican tomato industry.

This is a vital source of a winter supply of vegetables for the American people. I hope we can work out a relationship which will

be mutually beneficial. The need for tomatoes in America is so great in the winter that we ought to be able to use everybody's tomatoes if we just work out an orderly system of getting them to the market in a way that they do not disrupt our American business.

In my own community we have probably the Nation's largest tomato production under glass. I know there is a great interest in the Florida industry. It seems to me we ought to be able to work out a system. we need vegetables so critically in our American market during the winter that there ought to be a good productive role for every segment of the industry.

We certainly want to maintain our good relationships with Mexico. We will buy some of your tomatoes if you will sell us some gas and oil with it, you know. Maybe we can work out a combination arrangement.

Remember that we don't particularly like to pay more than we pay Canada. All of these things are interrelated.

So as you go back to your community remind them that we want to develop a broader interrelationship in all segments of our commerce between our countries.

STATEMENT OF PATRICK F. J. MACRORY, COUNSEL, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION AND UNION NACIONAL DE PRODUCTORES DE HORTALIZAS

Mr. MACRORY. Thank you, sir.

I know my client will deeply appreciate your remarks.

Mr. Chairman, I appreciate the opportunity to testify here this morning. I should note that I am accompanied by Mr. Albert Yamada.

As Chairman Vanik pointed out, Congressman Udall testified eloquently on this subject on Wednesday. So I can be extremely brief.

For the record, I am testifying on behalf of the West Mexico Vegetable Distributors Association, an association of some 50 U.S. companies based in Nogales, Ariz., and the Union Nacional de Productores de Hortalizas, an organization of Mexican vegetable growers. Members of these two groups are currently involved in a massive investigation under the Antidumping Act, which covers five winter vegetables imported from Mexico—tomatoes, eggplant, peppers, cucumbers, and squash.

This case is the first one to deal with perishable goods under the act in its present form. It has thrown up an anomaly in the act that if not corrected will have rather profound consequences adverse to consumers in this country and also to our relationships with Mexico.

My purpose in testifying is to try to make the subcommittee aware of this anomaly and request that it consider some corrective measures. I will first describe the anomaly, and then go on to discuss the consequences if it is not corrected. Finally, I will suggest some possible solutions.

First, I would like very briefly to touch on the legislative history of the Antidumping Act. The act as a whole does not appear to be geared toward agricultural products. Its primary aim is to deal with the problem of dumping of industrial products. The Anti-

dumping Act was passed by Congress as title II of the Emergency Tariff Act of 1921. Title I of that act placed extra specific duties on various agricultural products. And the House report on that bill stated that this part of the bill was specifically designed to deal with the large surpluses of farm products in this country caused chiefly by the dumping here of great quantities of foreign products.

During the debate on the bill the chairman of the Senate Finance Committee noted that while it was possible to place additional duties on agricultural products,

> It is impossible to provide adequate and logically framed compensatory duties on the manufactured products. It is hoped, therefore, that the antidumping provision will to some extent relieve our manufacturing interests.

It seems rather clear from this that Congress did not particularly have in mind the problem of agricultural products in its passage of the Antidumping Act.

Now, in 1975 Congress added section 205(b) of the act. And although it is a rather complex provision, it provides essentially that sales below cost to the United States are to be regarded as dumped sales even if they are no lower than the home market price.

I think the rationale is rather clear. It was felt that a number of foreign countries give more support to their companies than in this country, and that these companies were therefore able to sustain below cost sales for a longer period of time than was possible for American companies. It was felt to be unfair that they should come in the U.S. market with these advantages and to be able to compete on what Congress believed to be unequal terms with their U.S. competitiors.

The purpose of 205(b), I believe, was to equalize the terms of competition between American and foreign companies in the U.S. market. I am aware that the cost of production provisions in Section 205(b) does not meet with universal favor. I believe the General Accounting Office recommended that it be repealed. I am certainly not prepared to fight that battle this morning.

My concern is its impact on perishable products. I don't believe Congress had perishable products in mind when it passed either the orginial Antidumping Act or section 205(b). The fact is that whatever the situation in the industrial sector, sales at full production cost are a necessary part of every produce business whether in the United States or elsewhere.

Why is this? I think basic economic principles make this quite clear. Unlike, say, a manufacturer of television sets, where prices decline to below full production costs, the tomato grower can't stop production. He can't close down his factory and he can't store his product. There are alternatives available to a manufacturer.

The produce grower does not have those options. He is bound to sell his product as long as he recovers anything more than his variable cost—in other words, his cost of harvesting and marketing—so that he will offset at least some part of what can be called fixed costs, the costs already incurred prior to harvesting in the production of the fruit or vegetable. I think that is a very elementary proposition.

At page 7 of my written testimony I have given citations from a number of economic textbooks which spell out this principle. It is a very basic principle of agricultural economics. In fact, the Florida

growers who initiated this investigation themselves state the principle very clearly in their petition—it's one of the best statements we could find, far clearer than most textbooks. They point out that if the market price is above the harvesting cost but below the total of sunken and harvesting cost, the farmer will harvest and market the crop hoping to recover some of his sunken cost.

We had a study done of the California lettuce industry which produces a very large portion of the total U.S. lettuce consumption. This was prepared by Dr. Robert Firch of the department of economics, of the University of Arizona. He studied sales from these two producing areas over a 10-year period. The results of this are summarized in the tables which are attached to my statement. They make it very clear what the pattern is in a typical produce industry.

If you look at the tables the horizontal lines marked with the figure 1 represent the full production cost and the lines marked 2 represent the variable cost. What this shows is that it is absolutely normal to have quite a large number of sales below full production cost. In fact, totaling it up, Dr. Firch estimated that some 30 percent of the time that lettuce is being sold from these areas all sales are below full production cost. For an additional 40 percent of the time some are above, some are below.

This is a normal condition and to be expected in this industry. Indeed, I think if one found a situation where all produce sales were being made above the full production cost one might suspect that something was interfering with the free market forces.

The Treasury Department, however, appears to believe that the Antidumping Act requires each and every individual sale of imported produce to be above full production cost. Now, I really don't believe that Congress had this in mind in enacting the act. And, of course, the effect would be extraordinarily discriminatory because U.S. producers will be able to sell below cost whenever the market requires it but importers will not be able to. What was meant to be an equalizing statute to equalize terms of competition between foreign sellers and U.S. producers in the U.S. market will become a means of placing a highly unequal burden on importers.

I might note, as I will discuss later in a little more detail, that the Robinson-Patman Act, which is the domestic counterpart of the Antidumping Act and which prohibits price discrimination domestically, has specific language dealing with the problem of perishable products. It recognizes that you cannot apply a rigid anti-price-discrimination rule in this area. Also, there are State statutes forbiding sales below cost generally, which have language specifically dealing with the problem of perishables.

Let me speak for a moment as to the possible consequences of an antidumping finding here. There are two possibilities as I see it, and neither of them is very palatable.

The most likely effect of an antidumping finding in this case is that simply that imports will cease. This is a far more drastic result than the normal dumping case where the foreign manufacturer will yell and scream a little about unfairness, but eventually he will adjust his price upwards. He may lost a little market share in the United States, but he will continue to do business.

Here it is different. And let me explain why.

First of all, look at the situation from the point of view of the importer. Of course, I am talking now about the importer in Nogales, Ariz. It is important to keep in mind that the importers are required to pay the antidumping duty, and they may not get reimbursed by the growers. The law is clear on that. The importer must pay. The importer has been told by the Treasury Department that he has to make every sale above full cost. I suppose the next step would be to try to find out what that full cost is. The importer might get in touch with the grower he represents and say: "How much is it costing you to produce a package of tomatoes?" The gorwer will respond:

I haven't the faintest idea. Call me up at the end of the season and I will tell you. I don't know now. I don't know how much I have put in, how many times I have to fertilize or irrigate. Above all, I don't know that my yield will be. It will depend on the weather and incidence of disease. That is what determines my unit cost.

The wretched importer is stuck with an impossible situation. He has been told he has to sell above production cost. If he gets it wrong he will be liable to heavy duty, but he can't find out what that production cost is. There are tremendous variations in the production costs. In the course of the investigation we have developed costs for 40 of the growers, and they are all over the place. There is as much as 100-percent variations simply because of different relative efficiencies, disease, weather, and so forth. It is impossible to make a guess ahead of time.

The importer will always have to live with the possibility that a profitable year where he thought he made a $20,000 profit suddenly turns into a disastrous year, when he gets a bill a year or two later from Customs for additional antidumping duties. Several of my clients say they don't think they can live with that. In fact, they believe that taking their money and putting it on the tables at Las Vegas would be a more predictable way of making a living.

As for the grower, his economic situation is altered because he has now been told he can't sell in the United States whenever market prices are below full production cost. So at these times when he would normally expect to recover at least part of his fixed cost he will have to destroy his crop because in this situation there is no alternative outlet for this industry.

As a result, I think there is a very strong likelihood that application of the antidumping here will dry up sources of foreign perishable products. Fifty percent of winter vegetables consumed in this country are imported from Mexico. If those disappear prices will go up an supplies down. Indeed, I understand that Chairman Kahn testified before the Joint Economic Committee yesterday and spoke quite strongly about his concern with this problem.

Now, suppose I am wrong. Suppose my fears are not warranted. Suppose that some of these growers and importers do manage to live with this situation. That is going to create an administrative nightmare. It is not like a normal antidumping case where you have perhaps half dozen foreign manufacturers. I received figures from my clients yesterday. There are 400 growers shipping tomatoes to the United States from Mexico, 800 shipping cucumbers, 400 shipping squash and bell peppers, and 150 shipping eggplant. An antidumping finding here would mean that the Customs Service will have to determine the cost of production for each one of these

growers individually. They can't take an average. They will have to apply those figures to each individual sale. We estimate that there are more than a million individual sales a year.

Just to give you an idea of the magnitude of the problem, in the investigation that is going on now Customs selected 39 growers and 25 distributors. The allowed them to report 1 day a week of sales because of the great burden of reporting all sales. That alone has turned up between 40,000 and 100,000 individual transactions. We are using a computer to analyze them. Even with that, it is a colossal task. To try to do that with every individual sale would be a nightmare. It will undo all the efforts now being made to streamline the duty assessment phase of the antidumping cases. It will certainly make the administration of the steel trigger price system look like child's play. I think this makes it rather clear that Congress did not visualize the act being applied in this way to perishable products.

Another thing to keep in mind is that with the Treasury Department interpretation of the Antidumping Act, these consequences will come about not as a result of predatory conduct on the part of foreign growers, but because of normal practices which are accepted in the produce business everywhere.

Let me turn for a moment to possible solutions. I certainly hope that the subcommittee will consider as part of its reforming work on the Antidumping Act, which is being dealt with as part of the MTN implementing legislation, an amendment to correct what is, I submit, an obvious anomaly. I think there are a number of options available. And I will just sketch out three of them.

No. 1, one could simply exclude perishable products altogether from the purview of the Antidumping Act in view of the obvious administrative unworkability of a dumping finding. I might say here even without the difficulty of the cost of production it would still be incredibly difficult to apply. Some of the growers involved in this case make sales to Canada as well as the United States. These are made by shippers in Nogales who ship to both countries. They treat both countries as one market. The f.o.b. Nogales price they quote at any one time is identical. The price is the same.

The difficulty in trying to make comparison for antidumping purposes is that changes occur so frequently. In the cases where there are Canadian sales we have lined them up with the U.S. sales on the same day. Usually the prices are the same, but sometimes they are not because the market price sometimes changes within a given day, or there may be a problem with the quality of the vegetables. It is incredibly difficult to make the kind of careful close analysis that the Antidumping Act requires.

Total exclusion is therefore one possibility, and one can recognize that there are other remedies available if, in fact, domestic producers are being injured by imports.

Now, there are two other possibilities that I have outlined here. One is language which I have included as a proposal A appended to my statement. This would be a modification of the Robinson-Patman Act provision. It would essentially say that no dumping duties would be collected on the importation of perishable agricultural merchandise where the sales below foreign market value or constructed value have occurred as a result of imminent or actual

deterioration of the merchandise. That is the language used in the Robinson-Patman Act. If this language is adopted it is important to make it clear, as I believe the Robinson-Patman Act makes clear, that it does not simply mean an exception where the fruit is on the verge of going rotten. I think this is meant to embrace the broader concept that often you have to sell this type of product for whatever the market will bear because you can't store it, you can't keep it for more than a couple of days. I think that is important in considering this proposal.

Now, I have also appended proposal B. This is rather more complex. I am afraid that is inevitable when amending a technical statute. The concept, however, is rather simple. It provides that perishable goods would not be treated as dumped or less than fair value sale provided two conditions are met.

No. 1, the volume and extent of sales taking place below cost have been no greater than occur in the ordinary course of trade in perishable agricultural merchandise. So you would determine what are the normal standards in the industry, and provided that below cost sales met those standards, then there would be no LTFV sales. If, on the other hand, there was some kind of predatory manipulation of volume of sales or prices during the season, then I think this amendment will take care of that.

No. 2, the second condition would be that the growers recover their costs plus a profit on their sales to the United States within a period of time that is reasonable for perishable agricultural merchandise. This is the part I regard as absolutely critical, because it would enable the Treasury Department to get away from a sale-by-sale approach which I have tried to point out is not only unrealistic but also unworkable.

The language here would allow the Treasury Department to determine what is reasonable. I think it is important to point out here that I don't think this should be limited to one season. People in this business don't necessarily expect to make a profit every single season. I think if you would turn for a moment to the third page of the charts—marked page 11 at the top—I can illustrate this point rather graphically. It is clear that in 1974 the growers had an extremely good year. They made profits on most of their sales. In 1975 obviously it was not such a good year. There were losses made on more sales than there were profits. 1976 seems to be about an average year.

So that is, as I said, my second proposal for an amendment. I think it is that second part that is critical. The first part is complicated and maybe unnecessary.

Congressman Vander Jagt on Wednesday expressed some concern that any amendment made does not simply permit foreign producers to continue to sell below cost at all times. I think it is clear that the second part of this amendment requiring you to make a profit over a reasonable period of time would prevent that kind of practice.

In conclusion, Mr. Chairman, I do not believe what I am suggesting is unreasonable. I am not proposing blanket immunity for foreign producers to engage in predatory conduct that may adversely affect U.S. interests. I am asking Congress to ensure that a legislative provision which was designed to require foreign suppli-

ers to compete in the U.S. marketplace on an equal footing with their U.S. competition, does not become a means of imposing a grossly unequal burden on the foreign suppliers, with its attendant costs for U.S. consumers.

I would ask that my full statement be included in the record. Thank you very much indeed for this opportunity to testify.

[The prepared statement and attachments follow:]

STATEMENT OF PATRICK F. J. MACRORY, ON BEHALF OF THE WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION AND THE UNION NACIONAL DE PRODUCTORES DE HORTALIZAS[1]

PROPOSAL

An amendment to the Antidumping Act to authorize the Treasury Department when conducting investigations involving imports of perishable produce to take account of the peculiar economic constraints affecting such produce.

SUMMARY OF PRESENTATION

The Treasury Department is currently conducting an investigation under the Antidumping Act which, for the first time, requires it to apply Section 205(b) of the Act (the cost of production provision, added in 1975) to imports of perishable produce. To apply the provision in a way that would require each individual shipment of imported perishable produce to be sold at above its full cost of production would be contrary to common sense and the economies of produce growing.

The inability to control short-term output, coupled with the perishable nature of the product and the substantial price fluctuations dictated by market conditions, require the grower to sell whenever he can recover more than the costs of harvesting and marketing. To forbid access to foreign producers when market prices are below full cost, while at the same time U.S. producers are free to continue selling below full cost whenever the market so requires, would be highly discriminatory. It would also hurt consumer interest, by reducing supply and increasing prices. The effect of such a ruling might well be to effectively prohibit all imports of perishable produce.

An amendment to the Antidumping Act, that would authorize Treasury to compare returns to the produce grower with his costs on a realistic basis, rather than sale-by-sale, is needed to avoid these highly undesirable consequences.

INTRODUCTION

I am testifying on behalf of the West Mexico Vegetable Distributors Association, an association of some 50 U.S. companies based in Nogales, Arizona, and the Union Nacional de Productores de Hortalizas, an organization of Mexican vegetable growers. Members of these two groups are currently involved in a massive investigation under the Antidumping Act, which covers five winter vegetables imported from Mexico—tomatoes, eggplant, peppers, cucumbers and squash.

It would not be appropriate to discuss that particular investigation in detail. The point I wish to bring to the attention of this Subcommittee is that the investigation—the first under the Antidumping Act in its present form to involve perishable produce—has brought to light a serious anomaly in the Act, as the Treasury Department interprets it. If not corrected, this anomaly will probably bring an end to imports of the vegetables in question into this country. The impact upon U.S. consumers would be very severe, since around half of all the fresh vegetables consumed in this country in winter months are imported. Availability will be sharply reduced, and the prices of what is available will increase substantially. Moreover, the same principle could be used to block imports of other perishable produce, such as fruit, cut flowers, and other types of vegetables.

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[1] This testimony was prepared by a member of the firm of Arnold & Porter, 1229—19th Street, N.W., Washington, D.C. 20036, on behalf of the firm's clients, the West Mexico Vegetable Distributors Association of Nogales, Arizona, an organization of U.S. distributors of imported fresh vegetables, and Union Nacional de Productores de Hortalizas, Blvd. Zapata Km. 2, Culiacan, Sinaloa, Mexico, an organization of Mexican fresh vegetable producers. Since UNPH is a foreign organization, Arnold & Porter is registered with the Department of Justice under the provisions of 22 U.S.C. § 611, et seq., as an agent of such foreign principal. Copies of this testimony are being filed with the Department of Justice, and copies of Arnold & Porter's registration statement are available for public inspection at the Department of Justice. Registration does not indicate approval of this material by the United States Government.

The anomaly can be described in the form of a simple question—must each individual shipment of perishable produce imported into this country be sold at a price above its full cost of production? As I will explain in more detail, such a requirement would be totally at odds with economic reality and the everyday practices of produce growers in all countries. It would place foreign growers wishing to export to the United States at an extraordinary disadvantage compared with their U.S. counterparts, who are already protected by quite substantial tariffs.

The Antidumping Act was not intended to be applied to perishable produce

It seems quite clear that the Antidumping Act was enacted primarily with industrial rather than agricultural products in mind. The Act became law as Title II of the Emergency Tariff Act of 1921. Title I of that Act imposed substantially higher duties on agricultural products, specifically to deal with the problem of the "large surplus of farm products in this country caused * * * chiefly by the dumping here of great quantities of foreign products." (House Report No. 1 to accompany H.R. 2435, 67th Cong., 1st Sess., April 13, 1921). During the debate on the measure Senator Simmons stated that the antidumping provisions were "almost of as much importance to the general industry of the country as the emergency tariff provisions are to the agricultural industry."[1]

In other words, title I was intended to alleviate the problem of dumped agricultural products; and Title II, the Antidumping Act, to deal with the dumping of industrial products. Very recently, the General Counsel of the Treasury Department has stated that "the law clearly is not tailored to deal with the special problems" where agricultural products are involved.[2]

The basic tests under the Antidumping Act

The primary test under the Antidumping Act as originally enacted was a comparison of the prices of sales in the United States with prices in the producer's home market. If there were no sales in the home market, sales to some other export market would be used. Only in the very rare instance where the foreign producer made all its sales to the United States—or for some reason its home market or third country sales did not provide an adequate basis for comparison—was it necessary to ascertain production costs in order to determine what is termed "constructed value" (essentially cost of production plus profit).

In 1975 Congress added Section 205(b) to the Antidumping Act. Although rather technical in form, Section 205(b) in essence provides that sales to the United States below cost of production are to be treated as dumped sales, regardless of their relationship to home market or third country prices.[3] Although the legislative history is rather thin, the amendment seems to have been engendered by a belief that for a variety of reasons, including the greater availability of governmental support, foreign companies are often in a position to sustain below-cost sales for a considerably longer period of time than U.S. companies. The purpose of the amendment was simply to require foreign companies wishing to enter the U.S. market to compete on equal terms with their U.S. counterparts, and to prohibit them from practices that U.S. companies are unable to engage in.

The absurdity of applying a rigid cost of production standard to perishable produce

Like the original Antidumping Act, Section 205(b) seems rather clearly directed toward industrial products. It cannot logically or reasonably be applied to imports of perishable produce, at least on a sale-by-sale basis. For, whatever the standards applicable to the industrial sector, it is perfectly normal and accepted practice for produce growers to sell below full production cost at certain times of the season.

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[1] 61 Cong. Rec. 911 (May 2, 1921). See also p. 1067, where Senator Penrose (chairman of the Senate Finance Committee) stated: "While this bill imposes compensatory duties on certain cotton and wool manufactured articles, it is impossible to provide adequate and logically framed compensatory duties on the manufactured products. It is hoped, therefore, that the antidumping provision and the valuation provision will to some extent relieve our *manufacturing* interests." (Emphasis supplied.)

[2] Letter dated March 20, 1979, from Robert H. Mundheim to Congressman Morris K. Udall. It is perhaps also relevant to note that there are laws which specifically provide for the imposition of import restrictions on agricultural imports under certain circumstances, e.g., Section 22 of the Agricultural Adjustment Act, Section 8(e) of the Agricultural Marketing Agreement Act of 1937, and Section 204 of the Agricultural Act of 1956. These provisions do not, of course, apply to industrial products.

[3] This provision applies wherever the below-cost sales have been made in substantial quantities for an extended period of time, and are at prices which do not permit the recovery of all costs within a reasonable period of time. The exception implicit in this language might well have been intended to cover precisely the type of situation being discussed here—i.e., sales below cost occurring in the normal course of business. However, Treasury appears to give it much narrower interpretation.

The distinction, of course, is an obvious one. In the first place, supply and demand in agriculture are much less predictable, so that market prices fluctuate far more substantially than in the industrial sector. Additionally, unlike a manufacturer of, say, television sets, the produce grower cannot slow down or stop production in the short run, and he cannot store his product. His access to alternative markets is strictly limited by shipping time. So long as he can recover more than his costs of harvesting and marketing, he must sell his crop, in order to recover at least part of his fixed cost.

No one can take serious issue with this proposition. Every textbook on the subject sets it forth as an elementary principle.[4] Even the Florida growers, who initiated the current investigation, stated the point succinctly in their petition: "When the crop reaches maturity the farmer has only a short time period within which to judge the market and decide whether or not to harvest his crop. If the market price is below even his harvesting costs it does not make economic sense to harvest the crop; instead it will be left to rot in the field in order to cut his losses. If the market price is above harvesting costs, but below the total of sunken and harvesting costs, the farmer will harvest and market his crop hoping to recover some of his sunken costs and cut his losses."[5]

And a recent study of the two largest lettuce-producing areas in California—areas which face no import competition that could arguably affect prices—shows that for some 30 percent of the time that lettuce from these areas is sold, all sales are below cost; during another 40 percent of the time some sales are below cost; and for only 30 percent of the time are all sales above cost. Attached to this statement are charts prepared by Dr. Robert S. Firch, of the Department of Economics of the University of Arizona, which vividly demonstrate the extent of sales below full cost that routinely take place in this type of industry.

Thus, some sales below cost are a normal and necessary condition of the produce business. Yet, the Treasury Department is being urged to apply the Antidumping Act in a way that would require each individual sale of imported produce to be above full cost. I do not believe that Congress had such an arbitrary and unrealistic result in mind either when it passed the original Antidumping Act or when it added Section 205(b) in 1975. A ruling along these lines would be grossly discriminatory to foreign suppliers, since their U.S. counterparts would free to continue the normal practice of selling below cost whenever the market so dictates. and the consequences of such a ruling would be extremely serious, as I will now point out.

The consequences of an adverse determination

What will be the consequences of a finding that sales of imported produce below cost, even though no greater in extent than is normal for this kind of business, constitute dumping? There are two alternatives, each highly unpalatable:

(a) *Imports of perishable produce will cease.*—The likelihood is that foreign growers would simply cease to supply the U.S. market. Look at the situation from the standpoint of the importer. Any sale he makes below the grower's full production cost will render him liable for antidumping duties. By law he cannot pass the duties back to the grower. And by the time the extra duties are assessed it will be much too late for him to include them in his prices to his customers. In order to protect himself, therefore, at the beginning of the season a distributor might ask his grower how much it will cost him to produce a package of tomatoes this season. The grower's response would be: "I haven't the slightest idea. I don't know how many times I will have to irrigate my land, to use pesticide, etc., so that I don't even know what my overall costs will be. But above all, my cost per unit will depend on my total yield for the season, and I can't tell you that until the season is over."

So the unfortunate importer faces an impossible situation—he will be penalized if he makes any sale below a particular dollar figure, but he cannot find out what that figure is until the end of the season. He might take the grower's cost of the previous year and add a safety factor. But that will not help him if the grower's yield is sharply reduced by, say, disease or flood occurring toward the end of the season. Thus, the importer would have to constantly live with the fear of receiving a large bill from the Customs Service for imports made a year or more before, that could turn a profitable year into a financial disaster. If I were an importer faced with this kind of uncertainty, I think I would try to find a safer way of earning a living.

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[4] See, for example, Dummeier and Hefleblower, "Economics with Application to Agriculture" (1940), pp. 223, 247; Bromley and Buse, "Applied Economics: Resource Allocation in Rural America" (1975), p. 392; Wilcox and Cochrane, "Economics of American Agriculture" (1951), pp. 462, 465.

[5] "Petition of the Florida Fresh Winter Vegetable Industry Under the Antidumping Act of 1921 Concerning Fresh Tomatoes, Peppers, Cumcumbers, Eggplant and Squash Imported From Mexico" (Sept. 12, 1978), at 43.

The situation would not be much brighter from the grower's perspective. He will be told that he cannot sell in the U.S. market at any time that the market price is below full production cost. At these times, then, since he has no viable alternative outlets, he must simply destroy his crop, and cannot recover even part of his fixed costs. The economics of his business would be radically changed, quite possibly to the point of unprofitability.

Where does this leave the American consumer? Imports supply a large proportion of U.S. demand—in the case of winter vegetables around fifty percent. Without these supplies to supplement U.S. production, the availability of this important nutritional source will be substantially reduced and the prices will rise sharply. Fresh produce would be entirely unavailable in many parts of the country in winter months, because domestic producers simply cannot supply the whole country themselves.

(b) *An administrative nightmare.*—Even if some imports continue despite these enormous difficulties, the administrative problems for the Customs Service would be literally mind-boggling. The pending investigation, which has involved a carefully selected sample of 36 growers and 24 importers, has been complex enough. Over 100,000 individual transactions must be examined. Even with the aid of a computer the task is colossal. But it is insignificant compared with what would happen after a finding of dumping.

Each year Customs would have to calculate individual production costs for each of the relevant products for each of the thousands of Mexican growers who export their produce to the United States.[6] It would then have to obtain from the importers details of each individual sale—which probably number more than a million annually—and compare these with the cost of production. Administration of the steel trigger price system would seem like child's play by comparison. Assessment of duties in this one case could negate all the commendable efforts of the Administration, encouraged by Congress, to speed up and streamline the duty assessment phase of antidumping cases.

The consequences I have sketched out are not very appealing. And they could come about not because of any predatory or abnormal activities by the foreign suppliers, but as a result of perfectly standard market practices being forbidden by a law which obviously was not designed to cover this type of situation.

I might add in passing that application of the Antidumping Act in a way that would prohibit any sales of perishable produce below full cost could well come back to haunt U.S. farmers. I understand that the Canadian Government is quite concerned about below-cost imports of perishables from the United States at certain times of year. Until now, the Canadian antidumping law has not been used in this situation, but action by the United States Government along these lines might be seen by Canada as an open invitation to follow suit.

Possible solutions

It is for these reasons that I urge the Subcommittee to consider, as part of its work on the Antidumping Act, an amendment that would make it clear that the Act does not have to be applied to perishables in a way that requires each sale to be made above cost. The simplest solution might be to exclude perishables from the purview of the Act altogether, in view of the obvious administrative difficulties of applying the Act to such products. There is much to be said for this approach.

An alternative would be to incorporate language similar to that appearing in Section 1(a) of the Robinson-Patman Act (15 U.S.C. § 13(a)), an anti-price-discrimination statute that is the domestic counterpart of the Antidumping Act: "[N]othing herein contained shall prevent price changes from time to time when in response to 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 * * *."[7]

This provision recognizes that anti-price-discrimination measures cannot be applied rigidly to perishable produce. I have attached to this statement as Proposal A a possible amendment to the Antidumping Act modeled on this provision.

Another perhaps more conservative approach would be to amend the Act along the lines of Proposal B, also attached to this statement. This amendment would, I

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[6] The Act requires antidumping duties to be calculated based on each individual producer's sales and/or costs figures, and does not permit use of an industry average. See Section 212(3), 19 U.S.C. § 170a(3). Even if it were legal, use of some kind of an average would be extremely unfair, since production costs vary substantially from grower to grower, depending both upon relative efficiencies and the vagaries of local weather, the incidence of pests and disease, etc.

[7] It is interesting to note that almost identical language appears in Section 303(b) of H.R. 3442, the section of a major antidumping bill introduced earlier this month by Congressman Murtha that deals with private antidumping actions.

believe, provide adequate protection for U.S. producers against any kind of unfair or predatory competition on the part of foreign suppliers, while at the same time permitting the foreign suppliers to continue to engage in normal market practices. Although the language looks quite complex*—inevitable, I am afraid, in amending a highly technical statute—the concept is really quite simple: suppliers of perishable produce would not be liable under the Antidumping Act provided that two conditions were met:

1. The volume and extent of below-cost sales were within the normal limits for this type of business. If, on the other hand, there had been some kind of manipulation of sales volume and/or prices that took the volume and extent of below-cost sales outside the usual range, then the Act would apply.

2. The growers had recovered their costs (and, where constructed value is involved, a profit) over a period of time that is reasonable for this type of business. This would ensure that Treasury does not apply the production cost test on an unrealistic sale-by-sale basis, while at the same time protecting against long-term predatory below-cost selling. I do not think it would be appropriate to tie this test down to a single season, since many farmers do not expect to make a profit every season. Agriculture is highly cyclical, and a common pattern is for the farmer to make small losses in the majority of seasons, interspersed with occasional very profitable years.

I do not believe that what I am suggesting is unreasonable. I am not proposing blanket immunity for foriegn producers to engage in predatory conduct that may adversely affect U.S. interests. I am asking Congress to ensure that a legislative provision which was designed to require foreign suppliers to compete in the U.S. marketplace on an equal footing with their U.S. competition, does not become a means of imposing a grossly unequal burden on the foreign suppliers, with its attendant costs for U.S. consumers.

PROPOSAL A

Section 202 of the Antidumping Act, 1921 (19 U.S.C. Sec. 161), is amended by adding at the end thereof the following new subsection: "(d) No dumping duties shall be levied, collected and paid on the importation of perishable agricultural merchandise where such sales below foreign market value (or, in the absence of foreign market value, constructed value) as have taken place have occurred as a result of the actual or imminent deterioration of the merchandise."

PROPOSAL B

1. Section 202 of the Antidumping Act, 1921 (19 U.S.C. Sec. 161), is amended by adding at the end thereof the following new subsection:

"(d) No dumping duties shall be levied, collected and paid on the importation of perishable agricultural merchandise where, in the absence of foreign market value, the Secretary of the Treasury determines that (1) the volume and duration of sales below constructed value have been no greater than occur in the ordinary course of trade in perishable agricultural merchandise, and (2) within a period of time that is reasonable in the ordinary course of trade in perishable agricultural merchandise the revenues received by the producer on its sales of such merchandise to the United States have enabled it to recover:

"(a) All costs incurred in producing such merchandise;

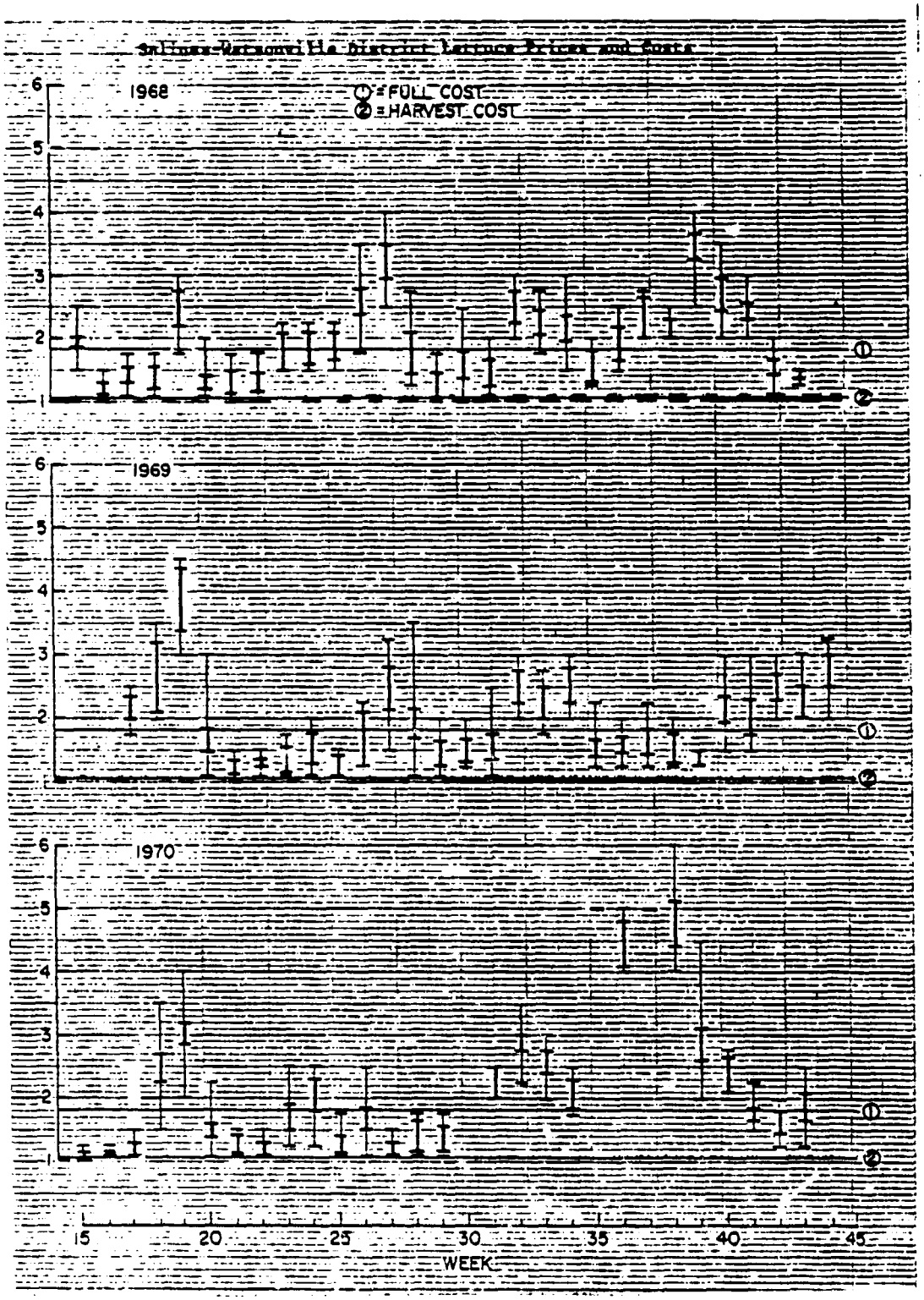
"(b) An amount for general expenses and profit as defined in Section 165(a)(2) of this Act; and

"(c) The cost of all containers and coverings of whatever nature, and all other expenses incidental to placing such merchandise in condition, packed ready for shipment to the United States."

2. Section 205(b) of the Antidumping Act, 921 (19 U.S.C. Sec. 154(b)) is amended by inserting the following language between the second and third sentences thereof: "In the course of making such a determination in a case involving perishable agricultural merchandise, the Secretary shall take due account of the fact that sales at less than cost of production may be a part of the ordinary course of trade in such merchandise, and he shall not disregard sales made at less than cost of production where he determines that (1) the volume and duration of such sales have been no greater than occur in the ordinary course of trade in perishable agricultural merchandise, and (2) within a period of time that is reasonable in the ordinary course of trade in perishable agricultural merchandise, the revenues received by the producer

* I should note that the Treasury Department is quite familar with the term "ordinary course of trade," since this expression appears in the existing definition of Foreign Market Value, Section 205(a). The Department has quite frequently had to determine whether foreign market sales were in "the ordinary course of trade," so should have no difficulty with the concept here.

on its sales of such merchandise in the home market, or, as appropriate, to countries other than the United States, have permitted it to recover all costs incurred in producing such merchandise."



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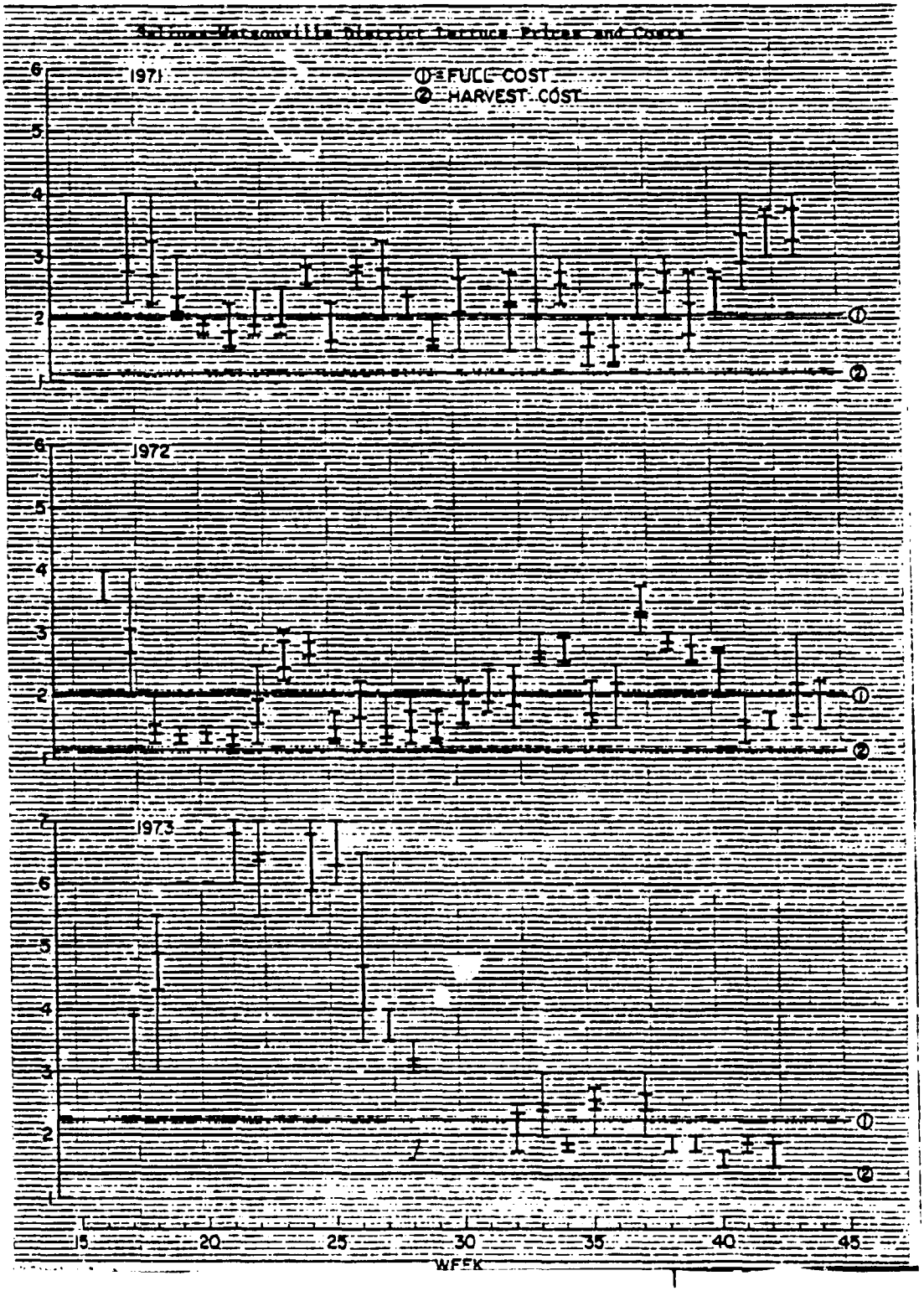

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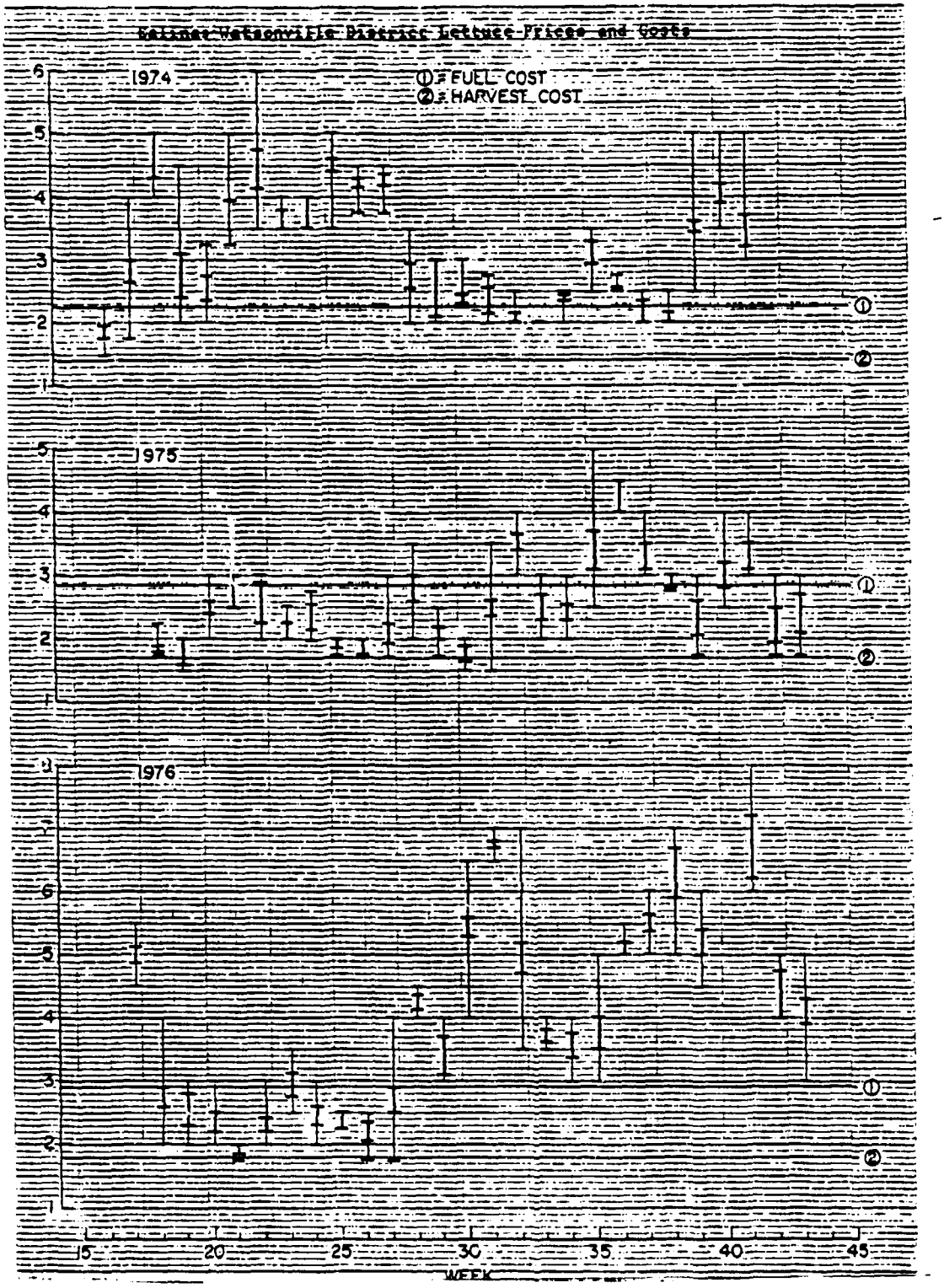

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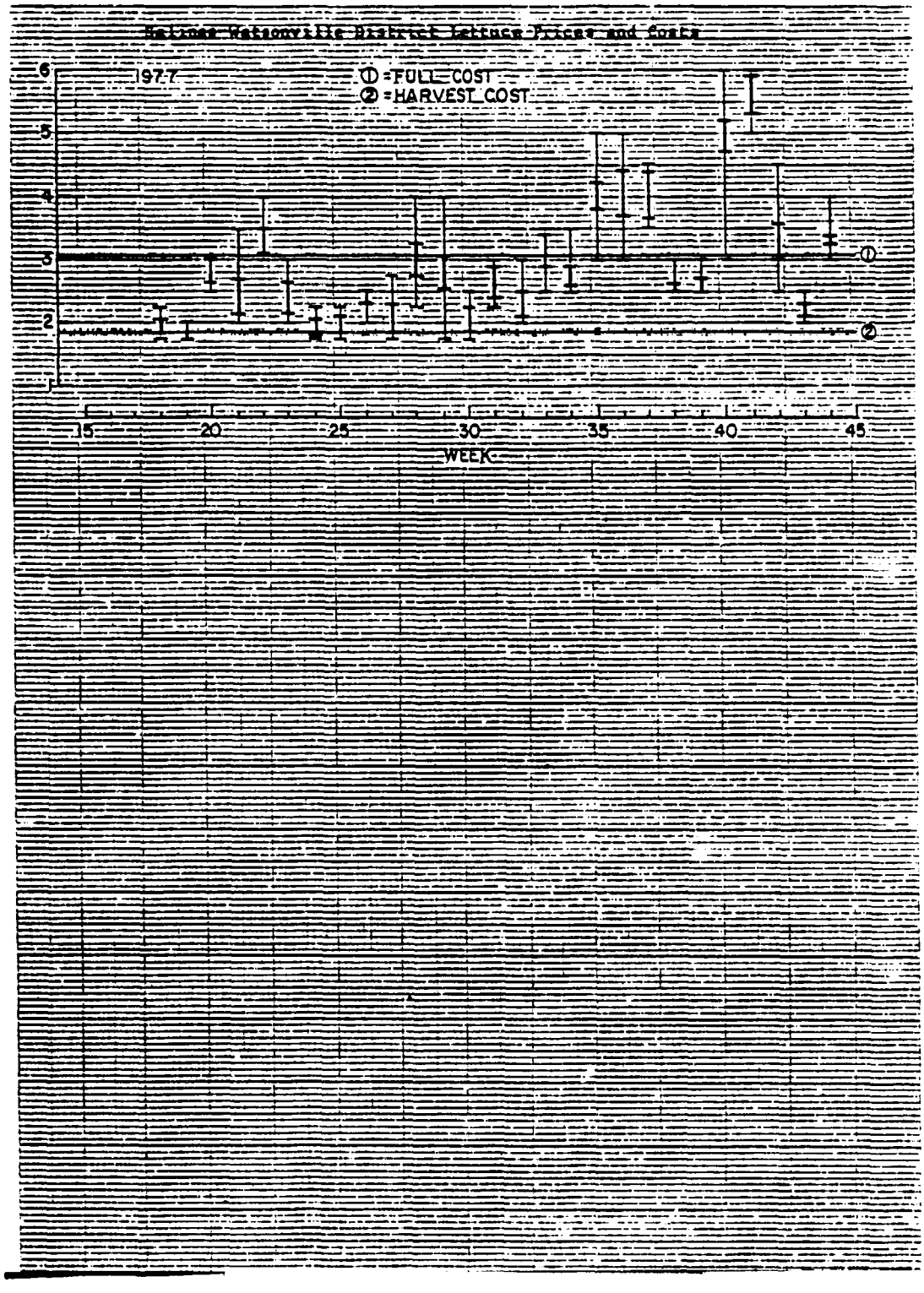

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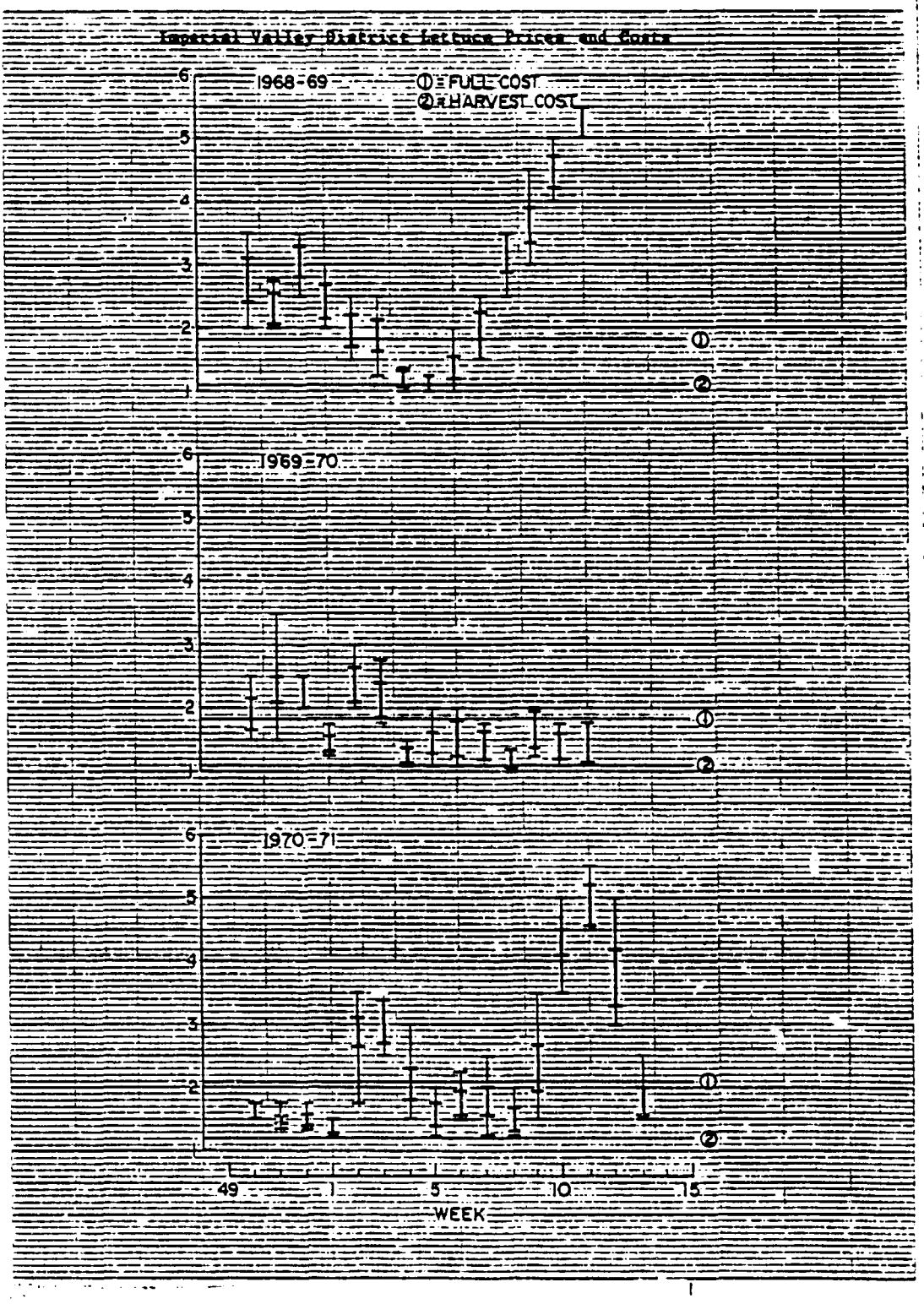

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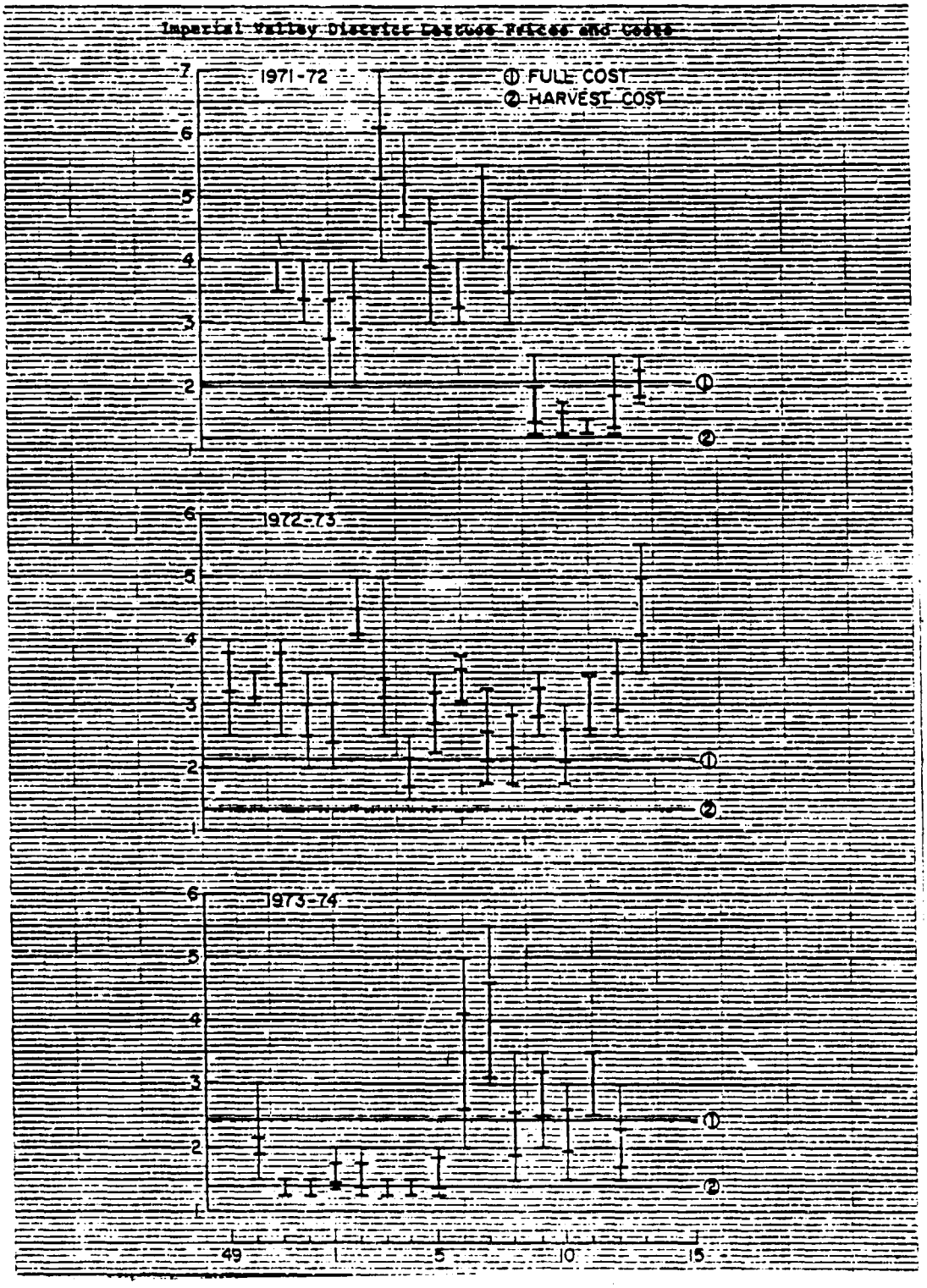

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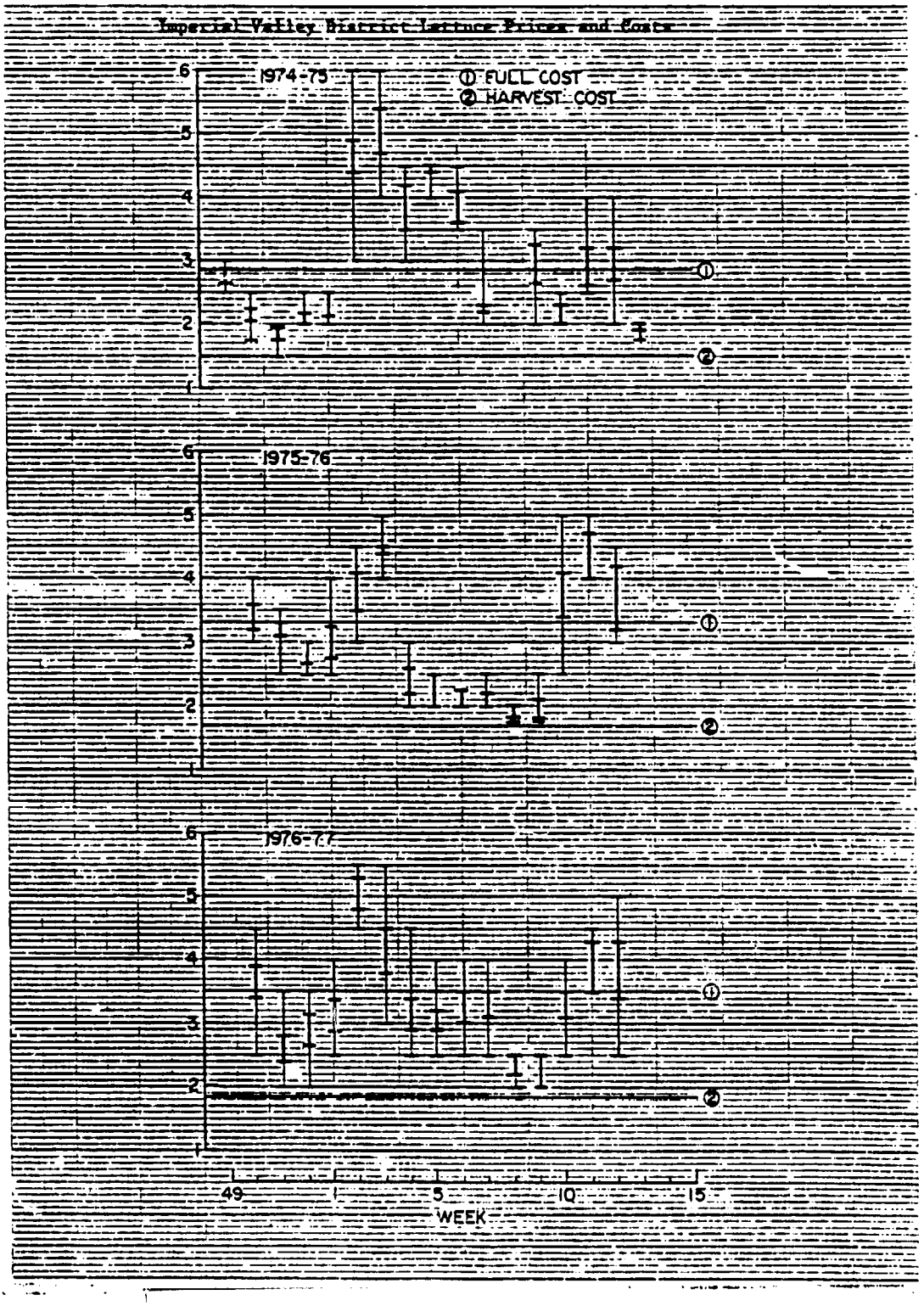

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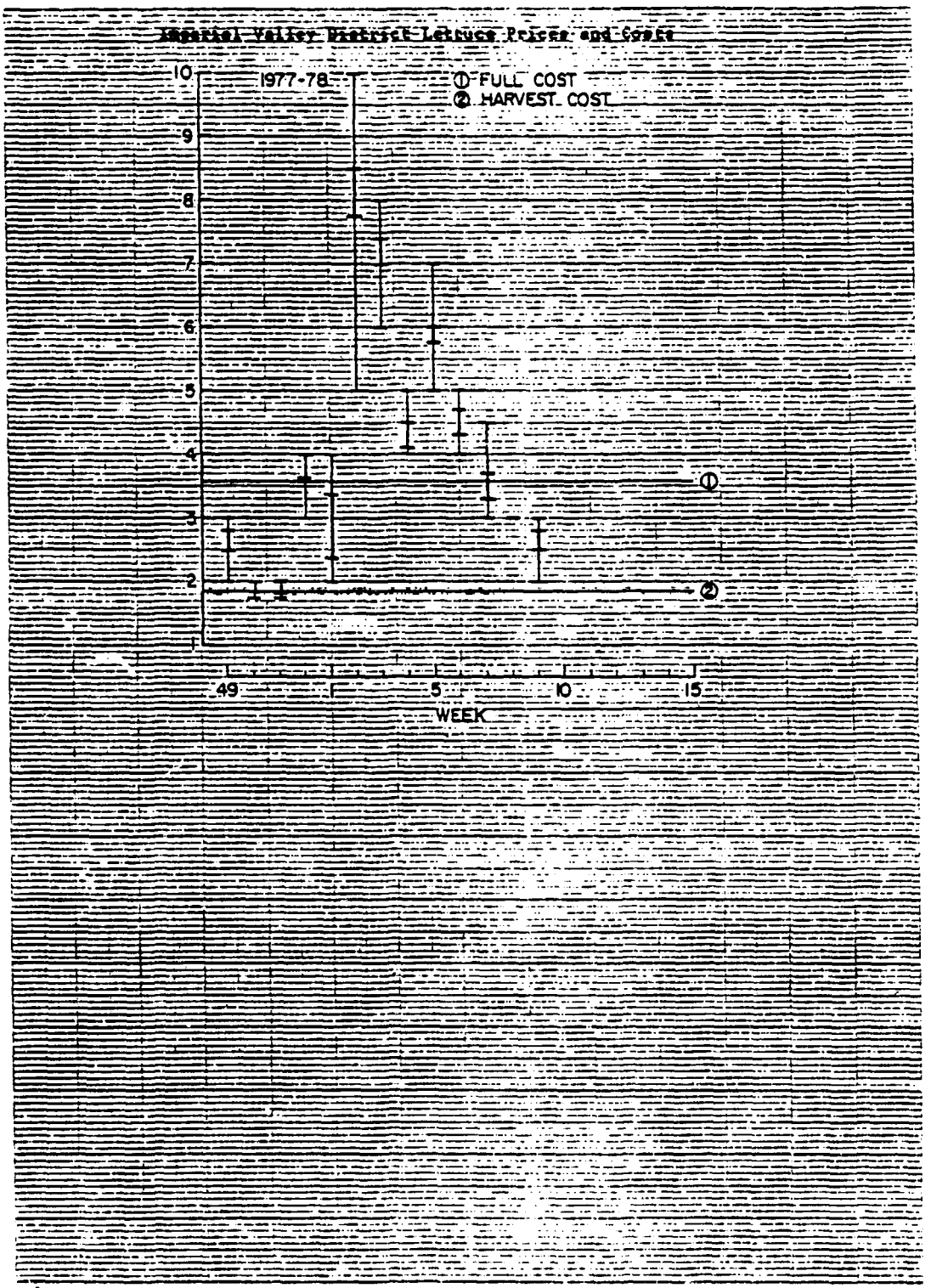

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Mr. JONES. Thank you. Your full statement will be included.

Let me compliment you, Mr. Macrory, on a very fine statement in setting out the problem as you perceive it, and in giving a range of options to the committee to solve that problem. I think that is very fine testimony that you gave.

Mr. Moore?

Mr. MOORE. Thank you, Mr. Chairman.

Are there justifiable times when the products you are talking about are sold in the United States at below the price they are selling at where they came from?

Mr. MACRORY. No, sir. You mean in Mexico in this case?

Mr. MOORE. Yes.

Mr. MACRORY. No. In fact, this industry was set up and designed to serve the U.S. market. In fact, it is the reverse of a dumping situation. Anything that is not sold to the U.S. market is sold in Mexico for whatever price they can get. It is usually rather low because in the winter months there is local production in Mexico around Mexico City and other markets. And there really aren't any substantial markets for their products.

I might also state that the Mexican growers will only ship the top quality product to the United States. In the case of tomatoes it is U.S. No. 1 grade. Anything that does not meet that standard they will sell locally in Mexico at very low prices. Often the prices are a fraction of what they get on their U.S. returns, which is another reason why this case does not fit within the normal concept of dumping as economists view that term.

Mr. MOORE. Thank you.

Mr. JONES. Thank you very much, Mr. Macrory.

The next witness is William K. Quarles, Jr., president of the California-Arizona Citrus League.

STATEMENT OF WILLIAM K. QUARLES, JR., PRESIDENT, CALIFORNIA-ARIZONA CITRUS LEAGUE

Mr. QUARLES. I have David P. Bernstein with me, counsel for the Citrus League. The league consists of farmer cooperatives and independent shippers who handle over 85 percent of the fresh citrus fruit produced in Arizona and California.

The league speaks on behalf of the California-Arizona citrus fruit industry on matters of general concern such as legislation, foreign trade and other similar topics.

Representatives of the league have devoted much time and effort to the promotion of exports and have concerned themselves with international trade problems since the early 1920's.

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 10-year period ending 1976-77, exports represented 34 percent of total shipments of fresh citrus from California and Arizona. During this period, the proportion varied from a low of 27 percent to a high of 45 percent. Consequently, our export markets are truly vital to us.

The committee has asked for advice on several aspects of the trade negotiations of concern to our industry. Of course I think it is recognized that we are speaking here from reported information, having no exact details on the negotiations available.

First, however, the league wishes to express to Ambassador Strauss and the other members of the U.S. negotiating team its appreciation for the dogged persistence with which they have pursued gains beneficial to U.S. agriculture.

Ambassador Strauss' task has been a formidable one; namely, to increase market access and reduce trade barriers which restrict the free flow of trade in an era characterized by an increasing drift toward protectionism.

Ambassador Strauss' aim was to try to achieve fairer rules for freer trade. In this context he has continually focused on gains for American agriculture.

He has impressed upon his counterparts from other countries that these negotiations cannot be concluded without a positive result in the agricultural sector.

He not only deserves credit for negotiating the U.S. interest, but we think also deserves credit for pushing trade negotiations, the whole negotiations process.

As he mentioned this morning, in 10 years we will look back and consider that the Tokyo round was the beginning of the rapid spark of world trade. I kind of wonder if maybe we also would be looking back in 10 years and instead of calling it the Tokyo round, we might be calling it the Strauss round.

We are most appreciative of his efforts and believe that we should all commend him for it.

Now with regard to tariff concessions on citrus, there were reductions, it is reported, in 11 countries. Five of these are developed countries where some modest increases in trade appear possible. The remaining six are in lesser developed countries with the prospect of at least introducing some trade.

The precise impact of the negotiations on our industry is difficult to gage. We are also, as was indicated, trying to make an assessment without the exact knowledge of the results of the negotiations. Ambassador McDonald mentioned earlier today the gains of the citrus industry in Japan.

Japan has and maintains an illegal import quota on fresh oranges and orange and grapefruit juice. The goal of our industry, certainly during the trade negotiations, was the total elimination of that illegal import quota.

Also, they maintained some extremely high duties on fresh grapefruit and fresh oranges—40 percent during this time of year and 20 percent during the summer and fall months.

As far as the results are concerned, based upon reports, the citrus industry did not approach its objectives. However, the concessions reportedly gained are a sharp movement in the right direction.

In the fruit and vegetable area, not only citrus, but overall, there were 21 tariff reductions granted by Japan, most of which are 50 percent reduction or greater. Only six, we understand, were less than 40 percent.

Of major interest on citrus, reductions on fresh lemons will be 50 percent—from 10 percent ad valorem to 5 percent; and on fresh grapefruit there will be a 40-percent reduction. These numbers are significant and their impact will be felt.

However, we are disappointed that the tariffs remain on fresh lemons and fresh grapefruit in light of the fact that Japan does not produce either commodity on a commercial basis.

The illegal import quota on fresh oranges will be raised from the 1977 base of 15,000 metric tons up to 82,000 metric tons in 1983.

The dollar impact cannot be accurately assessed until all the details of the negotiations are disclosed. However, our rough estimates at present are that the increased trade and the concessions negotiated on citrus with Japan should be in excess of $40 million.

While we had hoped the illegal import quotas would be completely eliminated, as was indicated, the reported package with Japan is progress.

Our support for it is based in large part on what we understand is the collateral agreement between the United States and Japan to commence discussions in 1982 with the ultimate objective of total elimination of the illegal quotas.

Shifting now to the European Community, the current status of negotiations at least on citrus, as we understand them, is a major disappointment.

The European Community is the world's largest importer of fresh oranges. They withdrew most-favored-nation tariff treatment from the United States some time ago, and our market share has dwindled significantly from that time.

They conduct and administer a tariff preference scheme which is of particular concern to the navel orange growers in Arizona and California.

Basically, in the West we have two groups of oranges, navel oranges which are winter oranges, and the valencia oranges which are the summer oranges. All the gains that we are aware of as a general rule during the trade negotiations would benefit only the valencia oranges. Our navel oranges growers are concerned. We have an area here in the European Community where we could benefit the navel orange growers.

The denial of most-favored-nation treatment to the United States takes the form that in mid-October through March the United States must pay a 20-percent duty on fresh oranges going into the European Community. At the same time, Spain, their next-door neighbor, pays only 12 percent, Morocco, right across the Mediterranean, pays only 4 percent. Virtually all the other Mediterranean Basin citrus producers are scattered between 4 percent and 12 percent at some level, again while the United States is paying 20 percent.

It is our understanding that at present there has been absolutely no offer of a movement on this issue by the European Community. We are not suggesting that the lack of progress is due to a lack of effort on behalf of Ambassador Strauss and his staff. Quite the contrary, they have been pushing extremely hard and it is our belief that they are continuing to push on this issue, but the operation is extremely strong as well. Nonetheless, we feel that it would be a very poor precedent if the United States were to accept

less than substantial movement back toward most-favored-nation treatment on this very important issue.

The failure of the EEC thus far to progress this matter underscores the need of this committee to urge resolution of the western citrus industry's pending section 301 case. On January 18, 1977, the California, Arizona, Texas, and Florida citrus industries joined in an action pursuant to section 301 of the Trade Act of 1974 covering the EEC's system of preferential tariffs on fresh and processed citrus. This case is still pending.

It is our understanding this committee intends to consider the possible revision of section 301 in connection with its review of the trade package. Section 301, in our opinion, must be modified to insure that pending cases are resolved within a reasonable time, preferably within a year.

As was indicated, the tariff preference scheme violates the basic provisons of the GATT, the most-favored-nation provision of article I. The United States should insist on receiving most-favored-nation treatment within a reasonable time after the negotiations are over or retaliate as contemplated under section 301.

Mr. Chairman, the members of the California-Arizona Citrus League have followed these negotiations with great interest and concern. We acknowledge the concessions Ambassador Strauss has achieved with Japan. We know that the concessions obtained from Japan were the result of some tough negotiations. We continue to have confidence in the ability of our negotiating team to face and surmount equally tough opposition from the EEC.

The league looks forward to actively supporting the trade package as soon as some significant progress is made for citrus in the EEC negotiations. Concomitantly, we urge a quick resolution of the citrus industry's pending section 301 case. The importance of this issue transcends the domestic citrus industry. If the EEC can arbitrarily withdraw most-favored-nation status from the United States for citrus, what is to stop the EED from similar actions on other products?

Thank you, Mr. Chairman. I will be pleased to answer any questions.

[The statement follows:]

STATEMENT OF THE CALIFORNIA-ARIZONA CITRUS LEAGUE

INTRODUCTION

This statement is made on behalf of the California-Arizona citrus industry by the California-Arizona Citrus League. Our members are farmer cooperatives and independent shippers who handle over 85 percent of the fresh citrus fruit produced in Arizona and California. Our member-growers produce oranges, lemons, grapefruit, tangerines and limes. This fruit is marketed in both fresh and processed forms.

The League speaks on behalf of the California-Arizona citrus fruit industry on matters of general concern such as legislation, foreign trade and other similar topics. Representatives of the League have devoted much time and effort to the promotion of exports and have concerned themselves with international trade problems since the early 1920s. 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 ten year period ending 1976-77, exports represented 34 percent of total shipments of fresh citrus from California and Arizona. During this period, the proportion varied from a low of 27 percent to a high of 45 percent. Currently the dollar value of citrus and citrus products exported by the California-Arizona citrus industry exceeds $216

million annually. The importance of the maintenance and continued expansion of this level of exports cannot be overemphasized.

THE MTN: A GENERAL ASSESSMENT

This Committee has asked for advice on several aspects of the trade negotiations of concern to the California-Arizona Citrus League. First, however, the League wishes to express to Ambassador Strauss and the other members of the U.S. negotiating team its appreciation for the dogged persistence with which they have pursued gains beneficial to U.S. agriculture. Ambassador Strauss' task has been a formidable one: namely, to increase market access and reduce trade barriers which restrict the free flow of trade in an era characterized by an increasing drift toward protectionism. Ambassador Strauss' aim was to try to achieve fairer rules for freer trade. In this context he has continually focused on gains for American agriculture. He has impressed upon his counterparts from other countries that these negotiations cannot be concluded without a positive result in the agricultural sector.

TARIFF CONCESSIONS: AN OVERVIEW

In the area of tariff concessions, unofficial reports indicate that duties on commodities of direct interest to this industry will be somewhat modified for exports to eleven countries. Five of these are reportedly developed countries where some modest increases in trade appear possible. The remaining six are developing countries where the prospects for at least introductory trade are promising. Compensating concessions appear to have been granted to non-market less developed countries for various products of interest to us. The citrus industry is pleased overall with the prospect of these concessions.

The precise trade impact is difficult to gauge. However, it has been said that the difference between a surplus and shortage is often only ten percent of a total crop. It is our experience that this generality is more or less accurate, and in any given year, trade concessions which at first glance appear insignificant can have an important effect in marketing an agricultural crop.

CONCESSIONS FROM JAPAN

One of the key goals of the citrus industry in this round of negotiations was the elimination of Japanese import quotas on fresh oranges and citrus juices and a sharp reduction of the extremely high duty on all citrus commodities. Prior to the negotiations, foreign market penetration into Japan for these commodities was minimal, especially when viewed in light of the total magnitude of U.S. imports from Japan.

We understand that the negotiations with Japan have now been concluded. While the citrus industry did not approach its objectives, the concessions obtained from Japan are a movement in the right direction.

In all, twenty-one tariff concessions were obtained on fruits and vegetables. Most are 50 percent cuts or greater, and only six were less than 40 percent. Unofficial reports are that the tariff on fresh lemons will be reduced by 50 percent and on grapefruit by 40. These numbers are significant and their impact will be beneficial. However, we are disappointed that the tariffs remain in that Japan does not produce either commodity commercially. Japanese orange imports on a fresh equivalent basis, taking into account the concession on concentrated orange juice, will increase from 25,000 in 1977 to 136,000 tons by 1983.

The dollar impact on exports cannot be assessed until the precise provisions of the actual trade package with Japan have been disclosed. However, we conservatively project that the value of increased trade for the fresh orange and citrus juice concessions in Japan alone will be in excess of $40 million. While we hoped that the quota system and certain citrus tariffs would be completely eliminated, the reported package with Japan is progress. Our support for it is based in large part on what we understand is a collateral agreement by the U.S. and Japan to enter into further disucssions in 1982 aimed at achieving the ultimate objective of complete elimination of the quota.

TARIFF CONCESSIONS FROM THE EEC

Unlike Japan, the current status of the negotiations on citrus with the EEC represents a major disappointment to our industry. As we understand it, the negotiations with the EEC have not yet been concluded. However, to date, we understand no concessions whatsoever have been obtained for citrus from the EEC. Elimination or reduction of the EEC's preferential import duties on fresh oranges and citrus producers for the benefit of selected Mediterranean countries is of the highest priority for the U.S. citrus industry. The EEC is the world's largest importer of

fresh oranges. Due to the preferential treatment granted to other exporters, our share of exports to Europe has dwindled to about half what is was just a few years ago.

The preferences operate as a particular hardship to the thousands of navel orange growers in California and Arizona. This is due to the fact that the preferences are most pronounced during the winter months, which is the peak harvesting and shipping season for these growers. For example, from October 16 through March 31, U.S. orange imports are subject to a 20 percent ad valorem duty. During this same period, oranges from Spain are subject to a 12 percent duty, and oranges from Cyprus and Israel pay an 8 percent duty. Oranges form Algeria, Morocco and Tunisia pay on a 4 percent duty.

The California-Arizona Citrus League does not intend to imply that this lack of progress with the EEC was a result of a less than complete effort by our negotiators. We are confident that throughout the negotiations, Ambassador Strauss has never waivered from his resolve to "go to the mats" for the citrus industry. The opposition to granting a concession in this area form the EEC is undoubtedly strong. Nonetheless, the California-Arizona Citrus League urges the members of this Committee to impress upon the office of the Special Representative for Trade Negotiations the need for Most Favored Nation (MFN) treatment from the EEC in this most important area prior to a conclusion of the negotiations. It would indeed be a blow to our industry if the U.S. were to leave the negotiating table with no progress on this MFN issue.

THE CITRUS INDUSTRY'S PENDING SECTION 301 CASE

The failure of the EEC thus far to progress this matter underscores the need for this Committee to urge resolution of the western citrus industry's pending Section 301 case. On January 18, 1977, the California, Arizona, Texas, and Florida citrus industries joined in an action pursuant to Section 301 of the Trade Act of 1974 covering the EEC's system of preferential tariffs on fresh and processed citrus.

We understand that the Committee intends to consider possible revision of section 301 in connection with its review of the trade package. Section 301 must be modified to insure that the pending cases are prosecuted and resolved within a reasonable time, preferably not to exceed one year.

As was earlier indicated, the system of tariff preferences also violates one of the most basic provisions of GATT, the Most Favored Nation provision of Article I. This provision essentially provides that any contracting party shall receive the same advantages and privileges granted by any other contracting party to any product originating in any other country. Assessing the United States at 20 percent duty while assessing Algeria and Morocco a four percent duty for the same product at the same time cannot by any stretch of the imagination meet the requirements of this provision. The U.S. should insist on obtaining the MFN treatment it deserves.

If our negotiators cannot achieve elimination of the EEC's discriminatory, unjustifiable and unreasonable preference system within a reasonable time after adoption of the trade package, the U.S. must retaliate as contemplated by Section 301.

NON-TARIFF CODES

In terms of long-range considerations, the most noteworthy accomplishment of this negotiation will probably be the initial development of non-tariff codes to govern the rules of the game in international trade. These codes, covering such matters as licensing, government procurement, standards, subsidies and countervailing duties will, if effectively enforced, have a dramatic influence on world trade.

For agriculture in general and the citrus industry in particular, the proposed code on subsidies is the most significant. Aside from the tariff preference system we have already noted, the EEC also implements subsidies which are commonly used against U.S. agricultural exporters. We do not suggest the subsidies code will be a panacea and by itself eliminate this problem. However, the establishment of a generally accepted set of rules for subsidies is a step in the right direction.

CONCLUSION

The member-growers of the California-Arizona Citrus League have followed these negotiations with great interest and concern. We acknowledge the concessions Ambassador Strauss has achieved with Japan. We know that the concessions obtained from Japan were the result of some tough negotiating.

We continue to have confidence in the ability of our negotiating team to face and surmount equally tough opposition from the EEC. The League looks forward to actively supporting the trade package as soon as some significant progress is made for citrus in the EEC negotiations.

Concomitantly, we urge a quick resolution of the citrus industry's pending Section 301 case. The importance of this issue transcends the domestic citrus industry. If the EEC can arbitrarily withdraw MFN status from the U.S. for citrus, what is to stop the EEC from similar actions on other products?

Mr. JONES. Thank you very much.

Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. JONES. I was interrupted a couple of times, but specifically, as far as recommendations on the implementing legislation or anything of that nature, do you have anything that you are asking us to do?

Mr. QUARLES. Basically, what we are asking you to do is that if the trade negotiations result in less than substantial movement toward most-favored-nation treatment with the European community on citrus, we are requesting that this committee recommend retaliation in trade with the European Community.

[The following was subsequently received:]

CALIFORNIA-ARIZONA CITRUS LEAGUE,
Van Nuys, Calif., May 4, 1979.

Hon. CHARLES VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN VANIK: Thank you for the opportunity of appearing before your Committee to express the views and concerns of the California-Arizona Citrus League with respect to the multilateral trade negotiations. Following my oral presentation, Congressman Jones inquired as to any specific legislative proposals or requests which the citrus industry might have for inclusion in the trade package and its implementing legislation.

I would simply like to reiterate what I previously stated orally and in my written statement. In connection with any proposed revision of Section 301 of the Trade Act of 1974, it is suggested the Committee urge in its Report that STR immediately prosecute and resolve the western citrus industry's pending Section 301 case. We would further urge that this resolution occur within a reasonable time, preferably within one year following adoption of the trade package. Furthermore, we would urge STR to prosecute the pending cases in the order in which they were filed. I am enclosing for your consideration some proposed language for inclusion in the portion of the Committee's Report dealing with amendments to Section 301.

Thank you, Mr. Chairman, for your attention to this matter of serious concern to the western citrus industry of California, Arizona and Texas.

Very truly yours,

WILLIAM K. QUARLES, Jr.,
President.

PROPOSED LANGUAGE FOR INCLUSION IN LEGISLATIVE HISTORY OF AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974

The Committee recognizes that under the existing Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, the President must use the full authority of his office to cause foreign governments to dismantle discriminatory preferential tariffs which reduce foreign sales of competitive United States products.

The Committee feels strongly that amendments to Section 301 should have no adverse effect on cases filed under Section 301 which are still pending prior to the enactment of this legislation. Pending cases need not be refiled. The Committee recommends that they be taken up by STR in the order in which they were filed. Simultaneously with its efforts under formal Section 301 proceedings, the Committee urges STR to pursue resolution of the matter through bilateral negotiations. Resolution of pending cases is to take absolute priority over cases filed subsequent to enactment of this legislation.

Regardless of whether STR chooses to resolve pending Section 301 cases bilaterally or under the General Agreement on Tariffs and Trade, the Committee recognizes the need to accomplish such resolution within a reasonable time, and no later than one year following the enactment of this legislation. If the United States is not able

to obtain equal treatment for its products within one year, the Committee finds that the United States shall take retaliatory measures as set forth under Section 301.

The Committee recognizes that the U.S. citrus industry's pending Section 301 case, Docket No. 301-11, is a pertinent example of a case requiring speedy resolution. It was filed in December, 1976, to obtain remedial action against the EEC's imposition of discriminatory tariff preferences for citrus and citrus products. This discriminatory tariff preference had previously been the subject of similar actions brought in 1970 and again in 1973 when the EEC was enlarged from six to nine countries. These earlier cases were filed pursuant to Section 252(d) of the Trade Expansion Act of 1962, the predecessor provision to Section 301. Yet the matter of the EEC's discriminatory, unreasonable and unjustifiable tariff preference on citrus and citrus products has never been resolved. The Committee urges that resolution of this case should be given top priority by STR.

Mr. JONES. Thank you very much. We appreciate your testimony.

Our next witness is Mr. Wayne Swegle, president, Millers' National Federation.

Your entire statement will be included as part of the record. You may summarize or proceed as you wish.

STATEMENT OF WAYNE SWEGLE, PRESIDENT, MILLERS' NATIONAL FEDERATION

Mr. SWEGLE. Thank you, Mr. Chairman. I will summarize.

The Millers' National Federation is the trade association of the wheat flour milling industry in the United States and our members represent about 87 percent of the flour milling capacity of the country.

Our interest in the multilateral trade negotiations stems from two points of interest. I am a member of the agricultural policy advisory committee, and from that standpoint I would like to commend this committee for its wisdom in the Trade Act of 1974 in the method by which it involves the private sector in the policy decisions and technical aspects of the trade negotiations.

Second, our interest is addressed to our 301 case which involves illegal EEC subsidization of flour exports to third-country markets which have effectively displaced us from most of those markets around the world.

We feel that our negotiators have done an exceptional job for agriculture, both in terms of improved access to markets and in the area of nontariff barriers, which as you know are perhaps more important than the tariff levels themselves.

As an industry we have a particular interest regarding the subsidy code and amendments to section 301. We filed a brief on November 21, 1975, a complaint regarding the European subsidies. Hearings were held the following January.

Nevertheless, the matter remains unresolved. We understand that certain amendments will be made to section 301 to make it consistent with the new subsidies code.

The Millers' National Federation would urge this committee to specify in its report that pending section 301 cases will not be adversely affected by the proposed changes to section 301.

We feel that we should not have to refile our case. Further, Millers' National Federation would ask this committee to recommend that pending section 301 cases be taken up by STR in the order in which they were filed.

In addition to pursuing the resolution under section 301 proceedings or under provisions of the GATT, Millers' National Federation

urges the United States to simultaneously utilize the procedures available under the proposed subsidies code for pursuing removal of the EEC's export subsidy on wheat flour.

The proposed subsidies code includes its own dispute settlement mechanism. The committee report should instruct STR on its own motion to begin immediately, following passage of the trade package, to prosecute the federation's case under the new subsidies code.

In closing, Mr. Chairman, we would urge swift passage of the trade agreement and necessary implementing legislation.

[The prepared statement follows:]

Statement of the Millers' National Federation

INTRODUCTION

This statement is made on behalf of the Millers' National Federation, the national trade association of the flour milling industry of the United States. Our members represent approximately 87 percent of the commercial flour milling capacity in the United States.

The Millers' National Federation has been active in international trade matters on behalf of its members since 1952. The Export Subcommittee of the Federation is charged with direct responsibility for assisting the U.S. milling industry with its interest in international trade. Wheat flour is exported from approximately 30 states through 40 ports on the Atlantic, Pacific, Gulf Coast and Great Lakes and has gone to more than 100 countries in the world.

The Millers' National Federation is here today to express its support for the efforts of the office of the Special Representative for Trade Negotiations in this seventh "round" of the trade negotiations since the founding of the General Agreement on Tariffs and Trade (GATT). We in the flour milling industry are pleased with the importance that Ambassador Strauss, Ambassador Wolff, Ambassador McDonald and others on the U.S. negotiating team have placed on agriculture in the negotiations. The further reduction of both non-tariff and tariff barriers for individual agricultural products and the establishment of new international rules to assure that trade will be conducted more fairly and equitably between nations are two goals that we support.

THE NEW SUBSIDIES CODE

The efforts of our negotiators to ameliorate non-tariff trade barriers represent a new dimension in multilateral trade negotiations. Of greatest importance to Millers' National Federation and to U.S. agriculture is the proposed non-tariff code on subsidies. Under the provisions of the proposed subsidies code, use of export subsidies in such a manner as to displace the trade of other countries in third markets, or to result in material price undercutting in such markets, would be prohibited. Exports of wheat flour from the United States have been severely damaged as a result of export subsidies granted to EEC flour millers. With the aid of export subsidies, EEC flour millers have been able to displace sales of U.S. flour in third countries. In addition, the EEC's protectionist system has virtually eliminated previously existing market opportunities for U.S. flour within the EEC.

The EEC is not a successful wheat producer when viewed from the standpoint of either economics or quality. One of the U.S. negotiating objectives, which the Millers' National Federation applauds, is the development of a world trading system based on efficiency in production and fairness in opportunity.

THE PENDING SECTION 301 CASE ON EEC WHEAT FLOUR SUBSIDY

In order to seek remedial relief from the EEC's illegal subsidy on wheat flour, the flour milling industry determined to invoke the use of Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411. This section provides that the President must use the full authority of his office to cause foreign governments to remove export subsidies which reduce exports of competitive U.S. products. The brief in Docket 301-6 was filed on November 21, 1975, over 3½ years ago. Hearings were held the following January. Nonetheless, the matter remains unresolved. It is our understanding that certain amendments to Section 301 have been proposed to make it consistent with the new subsidies code. The Millers' National Federation would urge this Committee to specify in its report that pending Section 301 cases will not be adversely affected

by the proposed changes to Section 301. The Millers' National Federation should not have to refile its case. Further, Millers' National Federation would ask this Committee to recommend that pending Section 301 cases be taken up by STR in the order in which they were filed.

THE EEC'S WHEAT FLOUR SUBSIDY: A VIOLATION OF GATT

The EEC's subsidy on wheat flour also violates its contractual obligation to the United States under Article XVI of the General Agreement on Tariffs and Trade. There is no question that the EEC's direct payments to its flour millers upon the exportation of their wheat flour constitute subsidies. The proposed subsidies code, if accepted, should strengthen the ability of the United States to insist that the EEC honor its commitment under GATT.

THE EEC'S WHEAT FLOUR SUBSIDY: A VIOLATION OF THE NEW SUBSIDIES CODE

In addition to pursuing resolution under Section 301 proceedings or under the provisions of GATT, the Millers' National Federation urges the United States to simultaneously utilize the procedures available under the proposed subsidies code for pursuing the removal of the EEC's export subsidy on wheat flour. The proposed subsidies code includes its own dispute settlement mechanism. The Committee report should instruct STR on its own motion to begin to prosecute the Federation's case under the new subsidies code immediately following passage of the trade package.

The flour milling industry in the United States has confidence that the United States can obtain the removal of the EEC's export subsidy on wheat flour. If this cannot be accomplished within a reasonable time, or at most, within one year of the passage of the trade package and its implementing legislation, then the only other alternative is for the United States to retaliate under the provisions of 19 U.S.C. § 2411.

CONCLUSION

The Millers' National Federation believes that Ambassador Strauss has kept his pledge that any package he brought back would include meaningful gains for agriculture as a whole. Chief among these gains is the proposed subsidies code. The U.S. now has essentially three separate vehicles for attacking the EEC's illegal export subsidies on agricultural products: Section 301 proceedings, proceedings under the new subsidies code, and Article XVI of GATT. The question presented by the wheat flour industry's case is much broader than the subsidy on wheat flour. The policy of the United States for some time has been to eliminate foreign export subsidies which damage U.S. exports in third markets. This case squarely presents the issue as to whether or not the U.S. will use the applicable law to eliminate export subsidies. If the challenge to the EEC wheat flour export subsidy is not successful, then it will signal to the EEC and other GATT members that the U.S. does not intend to enforce its domestic law or to prevent export subsidies by foreign countries. Millers' National Federation urges that a most appropriate follow-up to a successful conclusion of the negotiations would be for the United States to simultaneously invoke Section 301, the proposed subsidies code and GATT to persuade the European Economic Community to terminate its damaging export subsidies on wheat flour. We urge swift passage of the trade agreements and necessary implementing legislation.

Mr. JONES. Thank you very much, Mr. Swegle, for your testimony.

I think the recommendations and requests you make are very reasonable. I have talked to committee counsel about including those things in the report.

Mr. Moore, do you have any questions?

Mr. MOORE. No questions, Mr. Chairman.

Mr. JONES. Thank you very much.

Mr. SWEGLE. Thank you, sir.

[The following was subsequently received:]

MILLERS' NATIONAL FEDERATION,
Washington, D.C., May 2, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Congressman Jones was serving as Chairman in your temporary absence from the hearing room. In our oral testimony as well as in our written statement, we covered essential points of concern to the Millers' National Federation. These relate to the European Community's illegal subsidy on wheat flour. This illegal subsidy has effectively displaced the flour industry of the United States in commerical export markets around the world.

We filed a complaint under Section 301 in 1975, which is as yet unresolved. We have an interest therefore in: (1) amendments to Section 301 as they might affect our case; and (2) in gaining attention to our case under the proposed new subsidies code.

Congressman Jones' comments at the close of our testimony are encouraging. We would feel greatly reassured if the elements we presented were reflected in the Committee report. To that end, I am taking the liberty of submitting some suggested language directed at these two items for your consideration.

Thank you, Mr. Chairman, for your attention to our concerns.

Cordially yours,

WAYNE E. SWEGLE, *President.*

PROPOSED LANGUAGE FOR INCLUSION IN LEGISLATIVE HISTORY OF AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974

The Committee recognizes that under the existing Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, the President must use the full authority of his office to cause foreign governments to remove export subsidies which reduce foreign sales of competitive United States products. The amended Section 301 would make the existing provisions consistent with the subsidy/countervailing duties code and its implementing legislation.

The Committee feels strongly that the amendments to Section 301 should have no effect whatsoever on cases filed under Section 301 which are still pending prior to the enactment of this legislation. Pending cases need not be refiled. The Committee recommends that they be taken up by STR in the order in which they were filed. Simultaneously with its efforts under formal Section 301 proceedings, the Committee urges STR to pursue resolution of the matter through bilateral negotiations. Resolution of pending cases is to take absolute priority over cases filed subsequent to enactment of this legislation.

Regardless of whether STR chooses to resolve pending Section 301 cases bilaterally or under GATT, the Committee recognizes the need to accomplish such resolution within a reasonable time, and no later than one year following the enactment of this legislation. If the United States is not able to obtain equal treatment for its products within one year, the Committee finds that the United States shall take retaliatory measures as set forth under Section 301.

The Committee recognizes that the pending Section 301 case of the Millers' National Federation, Docket No. 301-6, is a pertinent example of a case requiring speedy resolution. It was filed on November 21, 1975 to obtain remedial action against the EEC's imposition of export subsidies on its wheat flour. Since that time, hearings have been held but no action has been taken to obtain removal of the EEC's export subsidy. The Committee urges that resolution of this case, which has been pending for nearly 3½ years, should be given top priority by STR.

PROPOSED LANGUAGE FOR INCLUSION IN LEGISLATIVE HISTORY OF IMPLEMENTING LEGISLATION FOR SUBSIDIES CODE

Under the provisions of the new subsidies/countervailing duties code, use of export subsidies in such a manner so as to displace the trade of other countries in third country markets, or to result in material price undercutting in such markets, is prohibited. The implementing legislation for the new subsidies/countervailing duties code constitutes an entirely new provision of United States law. The Committee emphasizes that it is separate and apart from either the provisions of Section 301 of the Trade Act of 1974 or the countervailing duty statute. In the Committee's judgment, it is important that where export subsidies are the subject of a pending case brought under Section 301 prior to the enactment of this legislation the United States shall immediately pursue its remedies under the subsidies code in addition to

pursuing resolution under Section 301 proceedings or under the provisions of GATT. STR should initiate action pursuant to the procedures set forth in the subsidies code on pending Section 301 cases no later than 30 days following enactment of this legislation.

The Committee is particularly concerned that the pending Section 301 case filed by the Millers' National Federation, Docket No. 301-6, be initiated quickly under the new subsidies code provisions as well as prosecuted promptly under Section 301. This case was filed nearly 3½ years ago, on November 21, 1975, to obtain remedial action against the EEC's imposition of export subsidies on its wheat flour. Hearings were held over three years ago, in January, 1976. Nonetheless, the matter remains unresolved. The Committee urges STR on its own motion to immediately begin to prosecute the Millers' case under the subsidies code.

Mr. JONES. The next two witnesses are our former colleague, Sheldon Cohen, and Bart S. Fisher, representing Wometco Enterprises, Inc., and Buffalo Broadcasting Co.

Mr. Cohen, welcome back to the committee.

STATEMENT OF SHELDON COHEN AND BART S. FISHER, ON BEHALF OF WOMETCO ENTERPRISES, INC., AND BUFFALO BROADCASTING CO.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. JONES. Your statement will be included in full. You may summarize if you wish.

Mr. COHEN. I will try to save the committee's time by summarizing as much as I can.

As you indicated, I appear on behalf of Wometco Enterprises, the parent company of KVOS-TV, which has a station in Bellingham, Wash., and on behalf of Buffalo Broadcasting, which has a station, WIVB-TV in Buffalo, N.Y.

I am accompanied by Bart S. Fisher of Patton, Boggs & Blow, who is working on this case with us.

We are concerned about Canada's action, or lack of action, in respect of some very discriminatory action, taken toward the border broadcasting stations.

In 1976, the Canadians enacted a piece of legislation which denies to Canadian advertisers the right to deduct advertising which is shown or played on American stations located in the United States along the border.

There are a number of those stations in addition to the two that we represent. The harm to our stations has been quite dramatic.

The fall in the revenue of those stations has driven some to loss or break-even positions, and has harmed dramatically some of the others.

The number of dollars involved is very small. The Canadians have stated that they considered their legislation to be a domestic matter and they have refused in every instance our entreaties, those of the other stations, those of our State Department, those of our Treasury Department negotiators in regard to the tax treaty, and those of the STR representatives in regard to negotiating out an understanding.

We have offered several compromise positions, and the various U.S. Government representatives have been extremely cooperative in putting forth the positions that our clients and those similarly situated have put forth.

The Canadians, on the other hand, have been entreating this committee and the Senate Finance Committee to make changes in our domestic law which they feel adversely affects them.

Those provisions involve section 274(f) of the Internal Revenue Code, which was amended several years ago by our 1976 act. That section restricts in some measure the ability of American business people to deduct the cost of multiple foreign conventions. The Canadians wish to have an exemption from certain aspects of that statute. We take no position on liberalization of the foreign convention rule. We don't favor it, and we don't oppose it.

We find it quite anomalous and quite objectionable that the Canadian Government, and Canadian enterprises, should be entreating our legislature to treat them better than we treat other foreign governments at the same time they are treating American business people quite low on the scale, much worse than they would treat Canadian business people.

Of course, the Canadian advertisers get a deduction for full expenses on Canadian broadcasting. At the same time, Mr. Chairman, the Canadian cable television industry is fully utilizing the American product without cost.

So, we find all of this anomalous. We also find that the Canadian Government in responding to our section 301 complaint, which was filed with the Office of Special Trade Representative some while back, has made some statements that section 301 was not intended to cover this type of broadcasting or TV services.

We believe, as stated in our memorandum, that it was. Then Senator Walter Mondale amended the act a number of years ago when he was in the Senate to cover services.

However, we are asking this committee and we have asked the Senate Finance Committee that appropriate language be put into section 301 by amendment and appropriate committee report language be placed in the reports of the committee so that no one could have any miscomprehension that this committee and the Congress believe that services are an integral part of international trade. Services move hand in hand with other types of trade, and indeed our Government believes in fair treatment for both foreign and domestic suppliers of those services.

We believe that this additional pressure may help our governmental representative and special trade representatives and our Treasury representatives in dealing with Canadian officials.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF WOMETCO ENTERPRISES INC. AND BUFFALO BROADCASTING CO.

Mr. Chairman, my name is Sheldon Cohen of the law firm of Cohen & Uretz in Washington, D.C. I am appearing on behalf of Wometco Enterprises, Inc., parent company of KVOS Television Corporation, licensee of KVOS-TV, Bellingham, Washington, and on behalf of Buffalo Broadcasting Co., Inc., licensee of WIVB-TV, Buffalo, New York. I am accompanied by Bart S. Fisher, Esquire, of Patton, Boggs & Blow, who will assist me in answering any questions you may have.

We are responding to the Subcommittee's notice asking whether or not the trade negotiations have been successful. Where U.S. border broadcasting services are concerned, the negotiations have not been successful in eliminating a major nontariff barrier to trade in U.S. broadcasting services. Specifically, we are referring to the tax law of Canada, known as Bill C-58, which denies deductibility for cross-

border advertising directed primarily towards a market in Canada. This is a burdensome form of tax discrimination against U.S. broadcasters.

I recently appeared before the Committee on Ways and Means concerning the proposed "North American" exemption to section 602 of the Tax Reform Act of 1976, which limits the deductibility of expenses of attending foreign conventions. These two issues are linked, and we are here to testify that the MTN was not successful as a forum for achieving the elimination of a major non-tariff barrier to trade in advertising and broadcasting services, and that other measures are necessary to bring Canada to the negotiating table.

Negotiating objectives of the Trade Act

Section 102 of the Trade Act directs the President to take all appropriate and feasible steps to harmonize, reduce or eliminate non-tariff barriers to the international trade of the United States. Section 102 includes trade in services as part of international trade. Services were not originally explicitly included within the terms of the Trade Act. However, the Senate Finance Committee adopted an amendment proposed by Senator Mondale, which became the language of section 102(g)(3). The Senate Finance Committee Report on the Trade Act states: "The Committee also felf strongly that barriers affecting services as well as goods should be eliminated" (Sen. Rep. No. 93-1298 at 74). That negotiating objective has not been fulfilled with respect to U.S. border broadcasting services.

Bill C-58 and the history of U.S.-Canadian broadcasting relations

In September, 1976, the Government of Canada implemented a non-tariff measure, commonly knwon as Bill C-58, as section 19.1 of its Income Tax Act. Bill C-58 denies an income tax deduction to Canadian business for the cost of advertisements broadcast to a primarily Canadian audience by a "foreign broadcast undertaking," that is, by the border U.S. broadcasting station. A deduction is permitted for similar advertisements placed on Canadian stations.

The U.S. broadcasting industry developed much faster than its Canadian counterpart and Canadians grew accustomed to seeing U.S. programs over the air. As Canadians grew increasingly fond of watching U.S. programming, the Canadian cable industry was spurred to development, and U.S. signals were sent all over Canada. It is generally admitted that the immensely profitable Canadian cable system was built up on the strength of the U.S. signals. On the U.S. side, the border broadcast stations received no tangible benefits for the service they were providing to Canada until Canadian advertisers recognized the popularity of U.S. signals with Canadian audiences, and began to purchase time on U.S. stations. Thus, an international trade in advertising took place in which Canadian businesses purchased U.S. advertising services; the advertisements themselves were broadcast across the border. The broadcasting services are thus associated with international trade in advertising services and in many cases are associated with international flows in the goods advertised. The total dollar flow was small compared to the overall Canadian and U.S. television industry revenue base, but became significant to the border stations.

These stations' Canadian advertising revenues fell drastically following implementation of Bill C-58. Gross Canadian advertising revenues dropped by more than 50 percent from $18,185,000 in 1975 to $9,171,000 in 1978. The net amounts, excluding Canadian commissions, dropped from $14,052,665 to $6,133,273. Canadian revenues for WIVB-TV dropped to 50 percent of their former levels between 1975 and 1978, and KVOS-TV has been reduced to operating at a break-even level.

Bill C-58 is classic protectionist legislation. It is a unilateral reversal of the traditional broadcast relations between the two countries Furthermore, it is inequitable, in that it chokes off any opportunity for the stations to be compensated, in the form of advertising revenues, for the services they provide to Canada.

In January, 1978, many of the border television stations petitioned the Office of the Special Trade Representative to raise the issue with the Canadians at the MTN. This was done and the response of the Canadians was that an internal tax measure, and therefore Bill C-58 and the resulting shift in cross-border advertising and broadcasting services, were "non-negotiable." Thus, the MTN did not serve as a forum for achieving the elimination of a nontariff barrier blocking trade in U.S. border broadcasting services.

In August, 1978, fifteen border stations filed a complaint pursuant to section 301 of the Trade Act of 1974 with the Section 301 Committee. Hearings were held in November, 1978. At the hearings, certain Canadian witnesses and Committee members questioned whether section 301 covered broadcasting services. Specifically, the question presented was, how could broadcasting services be covered if they were not linked to "the" international trade in a specific good. Thus, some witnesses argued

that section 301 covered only certain services, e.g., marine insurance, which were associated with trade in goods. In addition, certain witnesses assumed that broadcasting services were somehow sui generis, and therefore exempted from section 301.

We maintain that broadcasting services are protected by section 301 and that Bill C-58 is an unfair foreign trade practice as meant by section 301. The Section 301 Committee has jurisdiction to consider our complaint and that much was admitted by John Donaldson of the Office of the Special Trade Representative in testimony before this Subcommittee.

Broadcasting services are covered by section 301. That section defines "U.S. commerce" as including services associated with international trade. Section 301(a)(2) provides as much protection for services as for products and is nowhere delimited to coverage of services related to products that move through international ports of entry. The legislative history for section 301 reveals that both the Senate and House intended section 301 to have the widest possible coverage with respect to services. Moreover, the recommended amendments of this Subcommittee and the Senate Finance Committee would clarify any possible ambiguity in the reading of section 301 and reiterate the original intent that broadcasting services were meant to be covered.

Broadcasting services are associated with international trade on three different levels:

First, broadcasting is associated with international trade in cross-border advertising. The commodity being sold is time, or the ability to influence the viewer, to the Canadian client. The Canadian entity sends the money to the U.S. broadcaster, which in return broadcasts the commercial message across the border.

Second, broadcasting services are linked to three levels of international trade in merchandise. First, broadcasters themselves import the tape cartridges and films of Canadian commercial messages sent down from Canada. The revenues from the sale of time to advertisers enables U.S. broadcasters to purchase foreign television programing. Second, advertising services are associated with international trade in the products bought by Canadian consumers in response to the advertisements. For example, a Canadian shoe store imports shoes and subsequently advertises on a border station to increase its Canadian sales. Third, many of the constituent parts of products sold by cross-border advertising are imported into Canada, e.g., parts and accessories for Volvo automobiles which are assembled in Canada.

Finally, broadcasting services themselves are "trade." There is a trading relationship between a user and a supplier of broadcasting services, through the taking and use of the service, both on an off-air and cable basis. The "taking" is particularly evident with Canadian cable television systems, which take these signals, augment them, and retransmit them several hundred miles from the border. This is not a case where the signal crosses the border without anything happening to it.

The petitioners intend to vigorously pursue the merits of their section 301, and if necessary to seek retaliatory action against Canada, pursuant to the terms of section 301. We urge the incorporation of this Committee's amendment to section 301(a)(2) into the Trade Act and adoption of report language indicating clearly that broadcasting services are covered by section 301. Bill C-58 is an unreasonable and an inequitable foreign trade practice, and intransigence of the Canadian Government in the MTN forces us to use section 301.

We also intend to pursue other routes to achieve a negotiated resolution to Bill C-58. We will press for continued linkage between Bill C-58 and relief for Canada from section 602 of the Tax Reform Act of 1976, which limits the deductibility of expenses of attending foreign conventions. The Congress has affirmed on two previous occasions the linkage of these two tax issues. In April 1977, the Senate defeated 48-45 an amendment to provide a North American exemption. The defeat of this proposal was in part attributable to concern over Bill C-58. In September 1978, the House Ways and Means Committee reported on a bill which would have made Canada's benefit from the North American exemption contingent on beginning negotiations on the future of broadcast relationships between the two countries. You should note that at the same time the Canadian Government has been rebuffing U.S. initiatives regarding amendment of Bill C-58, saying that it is an internal tax measure, it has been seeking amendment of the Internal Revenue Code. Linkage between Bill C-58 and other bilateral issues is necessitated by the intransigence of the Canadian Government, in the MTN and elsewhere, in refusing so far to negotiate the elimination of this non-tariff barrier. However, we believe that an opportunity for negotiations may present itself, and that linkage of these issues should continue until then. The Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty (the "Clyne Committee") published the results of

its inquiry on April 11, 1979. It recommended that "the federal government should renew discussions with the United States with a view to resolving the border television dispute at an early date." The Committee was moved by the "serious friction" and the possibility of "retaliatory measures in other fields of enterprise" which has resulted from Canada's treatment of the U.S. border stations. The Committee concurred in the statement made to it by the U.S. border stations: "* * * we urge that the problems of the Canadian broadcasting system (in this particular matter) can only be resolved in the context of an amicable understanding between the two countries."

What is the basic issue here? The basic issue is the reliability of Canada as a trading partner. Bill C-58 is a unilateral response to a bilateral problem and its refusal to even negotiate indicates that Canada may adopt this posture where other bilateral trading issues are at stake, for example in its dealings with the United States regarding the natural gas pipeline. The U.S. border stations are simply asking for equitable treatment by the Government of Canada. If Canadians want to see our signals and if the Canadian cable systems are to make great profits from the use of our signals, then we should be able to earn compensation for our services through the medium of Canadian advertising revenues. The Government of Canada should at least negotiate the issue.

Mr. JONES. Thank you, Mr. Cohen. I might say most of us on the subcommittee are familiar with this problem. If not unanimously, a substantial majority of us agree with the position you have taken. I believe that the final product in the implementing legislation and the report dealing with 301 will reflect the position you tal in your testimony. It will be strongly supported by the subcommittee.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. JONES. Thank you very much.

Our next witness is Mr. George Prill, consultant to the Aerospace Industries Association and General Aircraft Manufacturers Association. Mr. Prill, your statement too will be included in its entirety and you may summarize.

STATEMENT OF GEORGE C. PRILL, CONSULTANT, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA AND GENERAL AIRCRAFT ASSOCIATION

Mr. PRILL. Thank you, Mr. Chairman.

I have a fairly short statement. We will have for the Congress, of course, a very complete report which will give the full views of the industry.

I am appearing here as a consultant to both the Aerospace Industries Association of America and the General Aviation Manufacturers Association. The membership of the two associations includes all of the companies involved in the export of civil aircraft produced in the United States. I have had the pleasure of serving as chairman of the Aerospace Industry Sector Advisory Committee since it was formed.

We will submit to the Congress a complete report on the industry's analysis of the agreements reached. However, for the purpose of the committee today, I think it will suffice to say that the aerospace industry supports the package of tariff reductions and agreements on nontariff measures resulting from the multilateral trade negotiations and recommends its adoption. Our interest, of course, centers on the agreement on trade in civil aircraft.

We do not see the package as a victory for our side in the sense that it would be a defeat for the other. Rather, we see it as a balanced agreement providing reciprocity for all the signatories. As

with all good agreements, all signatories benefit and there are no losers in the world's aerospace industries.

The basic philosophical concept that shaped the approach of the U.S. industry, in our effort to achieve what we have been calling the "Marquis of Queensbury Rules" of the international marketplace, was our recognition that competition over the next two decades will be very different from that of the last three.

The U.S. private industry is faced with competent, technologically advanced, well managed competitors that are owned or closely integrated with national governments. If these competitors were to play the game with the brass knuckles of government-directed procurements, offset production demands and government-granted inducements, it would be a very rough game.

On the other hand, if the United States continued imposing tariffs on aircraft imports or were to discriminate against imported aircraft using licensing or certification procedures, we would limit Canadian, Japanese, and European access to the world's largest single national market, the United States.

Such a situation would be a de facto trade war with resultant loss to the airlines and general aviation users as well as to the high technology aerospace industry of the United States and its allies.

Thus, we believe that opening the borders increases competition, while requiring that competition be fair.

I might add for the record that Chairman Vanik was asking earlier about the need for research and development to keep American technology strong and moving and we support that, obviously, very strongly. It is essential that we have that.

However, governments will not, under the terms of this agreement, subsidize individual production programs. That applies to us as it does to others. Subsidy is a very complicated issue. We do not expect it to be settled easily but the basic principle that has been agreed is a good one.

Operating under this implemented MTN package, we expect that we will export more and export on a secure basis, thereby insuring that there will be more jobs in our industry and more business for the thousands of our small business suppliers who do not always consider themselves as "international traders," but who export by virtue of their sales to subcontractors or directly to the manufacturers of civil aircraft.

Because we have rules, there will be more certainty and, therefore, a better opportunity for long-range planning. This is essential to the buildup of skilled labor forces and the acquisition or construction of new facilities.

You heard testimony just a few moments ago, Mr. Chairman, about the problems of small business. I might put into the record that our industry is a classic example of how small business exports by selling to primes and to so-called second tier manufacturers.

Just for one typical wide-bodied airliner, there are more than 4,700 different companies which supply components to the prime contractor. Of those, 3,600 are small business. When you move down a tier, there are at least 40,000 second tier suppliers. Of those, three-quarters, or another 30,000, are small business.

So, we see in our industry a great avenue for small business exports. These small businessmen are suppliers to the primes. The primes cannct exist without them. They are very competitive. They will not be undersold, and we see them prospering as a result of this agreement.

The next two decades will provide a market for the civil aerospace industry of about $300 billion—no small sum. The biggest individual market, but still less than half, will be the United States. We, the U.S. market, will be decreasing in percent even though our sales will go up, between now and the year 2000.

No mangement in the United States, Canada, Japan, or Western Europe can undertake a new program with any sense of success unless they can be assured of a fair shot at world sales. Obviously the bigger and more advanced the aircraft, the more true this is. But the principle carries through to the smaller general aviation aircraft and helicopters, as well. In short, we all need a world market to compete, and rules are needed to define this market. Obviously, if we do not have rules, we will be in trouble.

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

Every witness emphasized this is the beginning, not the end. We certainly agree with that. We certainly want to see ourselves tightly tied into the ongoing process. I was delighted Ambassador Strauss applauded the industry advisers. We applaud him back but there is no doubt in our minds that the industry advisers have contributed a great deal and the inuustry government team has worked together very well. We want to see that continue.

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

Thank you, Mr. Chairman, for this opportunity to discuss this important subject. You will have our full, detailed and, I am afraid, somewhat dull analysis at a later time. However, in summary, we in aerospace urge adoption and implementation of the MTN package, including the aircraft agreement. This should be coupled to continuing strong industry involvement and the facility for proper monitoring and surveillance.

Mr. JONES. Thank you, Mr. Prill. I think you represent an industry which has been very aggressive and innovative and certainly has helped the U.S. position in the world markets. Your main suggestion to this committee, then, in writing the implementing legislation is to set up a mechanism to monitor and make recommendations for further changes. Is that basically your recommendation?

Mr. PRILL. Yes. That is a very strong recommendation. In our full report we have a number of points. In the approval, on an up or down basis, in the Congress, we certainly think the package should be approved. It is so complicated that no one truly understands all the implications. The highly desirable aspect of the agreement to us is that instead of saying we will have another round a few years off, it says we will continue to implement change, we will talk, we will consult, we will act like adults in trying to work out problems, and we applaud that.

We have seen it work. I have had the personal pleasure of being a participant for the last year and a half or 2 years in this and I know it works. In an industry such as ours, the high technology industries, we know the other side very well and we can work things out with them.

Mr. JONES. When we have follow-on legislation to put together a cabinet level department for international trade, maybe we need to build into that agency, that department, what you are talking about: a mechanism or a bureau to have this exchange of ideas or a monitoring presence of the private sector.

Mr. PRILL. We think that is highly desirable, Mr. Chairman. The fact is that almost all of the high technology industries around the world are owned by national governments. As we look into the next 20 years, looking at the year 2000, all of our activities were aimed at the year 2000, as we look to the future, we see ourselves, more and more, competing with new phenomena on the world scene, well managed government-owned international or multinational companies.

We do not have these organizations in the United States. It is a new type of organization. A good example of it is Rolls Royce. A good example is Airbus Industries, and deHaviland and Canadair in Canada. They are fine companies, well managed and highly competitive.

We do not object to their national government owning them. That is their system. We are not trying to rewrite history or change facts. However, unless we have fair rules of competition and the U.S. Government works with our industry, we are in for deep trouble.

Mr. JONES. So, you are really recommending that we institutionalize the industry advisory groups on an ongoing basis?

Mr. PRILL. And keep them flexible. One of the problems we have had in the ISAC's now in effect is that they were not very flexible. They operated with the small cacoons of their own industry. They did not go cross-industry. They had great problems with negotiating secrecy. We could not set up subcommittees of experts. We will give you detailed recommendations leading to more flexible ISAC's.

Mr. JONES. I wish you would give detailed recommendations. After we dispose of the MTN there are a number of us who want to establish an international trade bureau to address these questions of ways to improve exports as well as ways to protect the legitimate interests of the United States. So any suggestions would be welcome.

Mr. MOORE. Thank you, Mr. Chairman.

That concern I share. You made a comment that we need to work a little better between Government, business and this coun-

try. I take it what you are getting at is a favorite theme of mine. When we dispose of MTN we need to sit down and assess our regulatory situation and our tax laws to assist our businesses to make sure they remain competitive or become competitive.

The chairman has left the record open until Wednesday of next week. If you have anything specific that will aid your industry to be competitive, we will be interested in receiving that.

Mr. PRILL. I will see that we broaden our submission on this. Our industry has made numerous recommendations over the past in bits and pieces. One of the great advantages of this implementing legislation will be the chance to put all of this together.

We certainly appreciate the committee's recognition of the need for a strong export policy.

Mr. JONES. Thank you very much, Mr. Prill.

Our next two witnesses represent the Ferroalloys Association, Mr. George A. Watson and Thomas M. Lemberg. Your statement will be included in the record in its entirety and you may summarize as you wish.

STATEMENT OF GEORGE A. WATSON, EXECUTIVE DIRECTOR, FERROALLOYS ASSOCIATION, ACCOMPANIED BY THOMAS M. LEMBERG, COUNSEL

Mr. WATSON. Good afternoon, Mr. Chairman. I am George Watson, the executive director of the Ferroalloys Association. With me today is Mr. Thomas Lemberg, our counsel.

As you said, we have prepared and submitted our full statement to your committee which we request be part of the record. Today I would like to summarize our statement and cover only three of the four points we made in the written statement. The Ferroalloys Association, as a word of explanation, represents the vast bulk of the noncaptive U.S. producers of chromium, manganese, and silicon ferroalloys, metals, and related products. These ferroalloys and metals are additive materials produced from various metallic ores and are essential ingredients in the production of all carbon and specialty steels, iron castings and many aluminum products.

First, with regard to the subsidies code and the implementing legislation, we object to the addition of an injury test and as well the presently proposed definition of injury and the casual linkage required between the amount of subsidy and the extent of injury.

At a minimum, any injury test should not require a domestic industry to bear the burden of proving that its injury is material, however that might be defined.

We sincerely hope the implementing legislation will resolve these and other problems we see in the code that we have detailed in our written statement.

The second point is that some GSP countries enjoy not only the benefits of GSP but also grant export subsidies which are bounties or grants under the countervailing duties statute. Congress, we think, should amend the GSP provisions of the Trade Act to withdraw such GSP benefits with respect to a product from a GSP country as to which countervailing duties are assessed.

Third is the question of tariffs. The Trade Act of 1974 states as its purpose that, "The trade agreement should harmonize or reduce and eliminate barriers to trade on a basis which assures substan-

tially equivalent competitive opportunities for the commerce of the United States."

We submit that the tariff agreements as we understand them as presently proposed not only fail in this objective but actually increase duty disparities and substantially reduce the domestic ferroalloy industry's competitiveness in world competition.

As a result of the unilateral U.S. duty concessions in the Kennedy round and the extension of GSP in 1976, our industry has had to endure a large duty disparity because of our declining ferroalloy duties and the much higher tariffs charged by both Japan and the European Community. This unjustified disparity in duties has made our country tne focal point of world ferroalloy exports to our industry's grave detriment.

The present agreements do nothing to reduce this disparity and indeed in some respects increase it, a clear case of negative harmonization.

We regret to say that our advice to our trade negotiators through respective ISAC's may have been heard but unfortunately was never really understood. We asked as an industry only for equality in duties and furthermore stated our willingness to go to zero duties on all products if Japan and the European Community would do the same.

Since the inception of these prior unilateral reductions ferroalloy imports have risen from 15 percent in 1968 to 51 percent of the domestic market today. We ask you to sit back and think for a moment what 51 percent import penetration means to an industry, an industry that is as modern and efficient as any in the world. We do have all the latest technology in the production of ferroalloys. We have not lagged behind the rest of the world as I have heard some remarks made today about other industries.

In our case, this penetration has closed U.S. plants. It has exported U.S. jobs. It has decreased our company's profitability and it has adversely affected our country's balance of trade and has seriously increased our country's dependence on potentially uncertain sources of ferroalloys critically essential to our economy and national defense.

Now, the present agreement will reduce our duties again while Japan and the European Community have offered only minor concessions with the result being an increase in the unjustified disparity. Our industry welcomes free and fair competition. But, what we cannot survive is competition in which the deck is stacked against us and only us.

The present tariff agreements, if finalized as they now stand, portend for our industry a long and dark night.

On behalf of our industry, we thank you for the opportunity to present our views on the trade package. Mr. Lemberg and I will be delighted to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF GEORGE A. WATSON, EXECUTIVE DIRECTOR, THE FERROALLOYS ASSOCIATION

The Ferroalloys Association represents the vast bulk of the non-captive United States producers of chromium, manganese and silicon ferroalloys, metals and related products. These ferroalloys are additive materials produced from various ores

and are essential ingredients in the production of all carbon and specialty steels, iron castings and aluminum products.

The U.S. ferroalloys industry has been sorely beset by imports for some years. The problem has been aggravated by actions and policies of our own Government—particularly the substantial unilateral ferroalloy duty reductions by the U.S. in the Kennedy Round, and, since 1975, other essentially unilateral import policy decisions, such as the extension of GSP to a number of ferroalloy products. As a result, surging imports have come to threaten the very existence of the U.S. industry.

The Ferroalloys Association wishes to make four specific sets of comments encompassing duty inequities, the subsidies code, the application of the GSP program to the ferroalloy industry and the relationship of developing country subsidies to the GSP program.

1. The Geneva negotiations of ferroalloy duties

Our industry's most important concern is with the duty levels for ferroalloy products which have just been negotiated in Geneva. The Ferroalloys Association strongly objects to the duties agreed upon by the principal consumers of ferroalloys: namely the United States, the European Community and Japan.

Unilateral U.S. actions—Kennedy Round concessions, extension of GSP and artificially low conversion of specific duties to an ad valorem basis—have created a massive, economically unjustified and harmful disparity between U.S. ferroalloy duties and the ferroalloy duties of the EEC and Japan. Although it was to have been one of the goals of the Tokyo Round to eliminate or greatly alleviate this disparity, the Geneva negotiations have left the disparity firmly and fully in place. As a result, the Tokyo Round negotiations have, with respect to ferroalloys, failed to obtain the "harmonization, reduction, or elimination of industrial trade barriers and distortions" and of "devices which distort trade or commerce" required by Section 103 of the Trade Act of 1974. They must, therefore, be repudiated.

Prior to the Kennedy Round negotiations, U.S. duties on ferroalloys were somewhat greater than comparable Japanese and EEC tariffs. In the Kennedy Round the U.S. made substantial reductions in its ferroalloys duties while both Japan and the Common Market placed ferroalloys on their "exceptions" lists. Unfortunately, actions by the U.S. Government since the Kennedy Round negotiations—culminating in the aptly named Tokyo Round—have only increased the disparity.

Because many U.S. ferroalloy duties are specific or compound, price increases reflecting nothing more than inflation have substantially eroded actual U.S. duty levels—a situation which has not affected Japan and the EEC with their purely ad valorem duties. And the recent conversion of these rates to ad valorem duties was calculated by the Administration on the basis of the recent year in which prices were the highest and, hence, the converted duties became the lowest of all of the possible alternatives.

Further, in 1975 the U.S. extended duty-free GSP treatment to a number of ferroalloy products. By contrast, the EEC has denied any such treatment to ferroalloy products; and, Japan has granted GSP to ferroalloy products subject to a severe quantity limitation (less than one percent of Japanese consumption) which has rendered its GSP "generosity" utterly meaningless. The result has been to exacerbate the duty disparity created by our Kennedy Round concessions.

The result of these one-sided U.S. tariff reductions has been all too plain and all too damaging for U.S. ferroalloy producers. Thanks to these unilateral policies—(i) our Kennedy Round concessions, (ii) our extension of GSP and (iii) our decreases in the ad valorem equivalent of specific duties brought about by the impact of inflation on and the Administration's arbitrary choice of the conversion year to ad valorem tariffs—the U.S. has become the focal point for world ferroalloy imports coming both from Japan and the EEC and from third world countries. Ferroalloy imports which averaged about 15 percent in the late 1960s before all these concessions have multiplied fourfold on an absolute basis, and in 1978 seized an incredible 51 percent of our U.S. home ferroalloy market.

Thus, in large part as a direct consequence of our Kennedy Round and other unilateral duty reductions, imports have grabbed over half of our market. Forced to compete with foreign producers which often are subsidized and which bear a considerably smaller cost for such regulatory items as pollution control than do U.S. producers, we alone of all world ferroalloy producers were also forced to compete without significant duty protection. In a highly competitive, greatly price-sensitive world market, the fact that our duties were twenty five to forty percent of the duties of Japan and the EEC sent massive import tonnages to our shores.

And, so, I am here asking you to sit back and think for a moment about what 51 percent import penetration means to an industry which is as modern and efficient as any of its overseas competitors. In our case, it has closed U.S. plants, exported

U.S. jobs, adversely affected U.S. industry earnings and our country's balance of trade and increased U.S. dependence upon potentially uncertain foreign sources of the critical products which our industry produces.

Clearly, the U.S. ferroalloy industry desperately needed elimination of the duty disparity that has been a major factor in literally killing us. We spent many hours and much energy fully informing our trade negotiators of our plight. But, most unfortunately, what we got from the Tokyo Round was something quite different from the elimination of the disparity which law, economics and fairness demanded.

The U.S. ferroalloys industry's complaints about the Tokyo Round duty negotiations focus upon both our concessions and, even more significantly, the failure of our negotiators to extract the needed concessions from our trading partners. Under the circumstances, we should not have subjected any ferroalloy to any U.S. duty cuts whatever. Some of the cuts our industry received—for example the unilateral reduction on the critical, import-beset product silicomanganese—are substantial and certain to be harmful. And, what hurts now and will hurt for years to come is the fact that both the EEC nor Japan were permitted to avoid making significant reductions. Indeed, each of them withdrew significant ferroalloy items from their initial, themselves meager, offers list at the last moment.

As a result of the Tokyo Round negotiations, the disparity between U.S. ferroalloy duties and comparable Japanese and European duties has not shrunk. Before the Tokyo Round began, the EEC's duties (on a weighted average basis) were 2.2 times the U.S. ferroalloy duties. The proposed Geneva agreements would actually increase the EEC to U.S. duty disparity ratio to 2.6 to 1. Prior to the Tokyo Round negotiations, Japan's duties (on a weighted average basis) were 3.0 times comparable U.S. duties. The agreements reached in Geneva would actually increase that disparity to a 3.7 to 1 ratio.

The U.S. ferroalloy industry is far from protectionist. We have consistently urged the worldwide elimination of all ferroalloy duties. We want to reduce trade barriers—but not if this nation is to act alone. Our industry sincerely wishes that it could appear before you today to applaud the job our government has done in Geneva. We wish that we could come before you and cheer an agreement which had eliminated all ferroalloy duties and non-tariff barriers in the U.S. and the EEC and Japan and provided for a genuinely free and open world competition. We want free and fair competition. What we cannot survive is a competition in which the rules are stacked against us—American ferroalloy producers—and only us.

It appears as if our industry, like many other American industries, has been sacrificed on the altar of the Administration's determination to gain some kind of trade agreement, no matter how destructive or at what costs. Our industry is being destroyed by our government's apparent decision to have this country be the only major ferroalloy market essentially unprotected. With imports having taken advantage of our Kennedy Round and other concessions to seize over half of our market already, the proposed tariff agreements increasing these excessive, unjustified duty disparities portend for our industry a long and dark night.

2. The subsidies/countervailing duties code

The Ferroalloys Association strongly objects to amending the U.S. countervailing duty statute to conform to many aspects of the Subsidies/Countervailing Duty Code negotiated in Geneva. A domestic industry's burden of proving an unlawful subsidy, even though it may be generally known to exist, has been difficult enough without adding to the burden by adopting code provisions as U.S. law.

The Ferroalloys Association would deplore any amendment to the U.S. countervailing duty statute to require an injury determination for dutiable products. And, if an injury test is added, our industry would deplore an amendment permitting a subsidies investigation to be dismissed in its initial stages on injury grounds (as Code Article 2, Section 4 would provide).

Today, it is no secret that certain International Trade Commissioners persist in interpreting the injury criteria in the antidumping statute in a far more stringent way than Congress has (by statutory language and legislative history) clearly mandated. The addition of an injury test would give a Commissioner similar license in countervailing duty cases to impose upon a domestic industry a far greater burden of proving subsidy-caused injury than that specified in the words of any statute Congress enacts.

More fundamentally, proof of subsidy-caused injury is very difficult (especially in light of the code's efforts to make any causal tie that can justify an injury finding be very clearly delineated). This is so even though the causal factor can generally be presumed: since imports usually get business by underselling U.S. producers, and any subsidy is obviously crucial to the exporter's willingness and ability to undersell. It is likely to be very difficult indeed to isolate—and prove to the satisfaction of

the ITC—the injury which the subsidized sales have caused from the effect of other possible causes of an industry's injury. As such, to add an injury test is likely to deprive a U.S. industry which is genuinely suffering as a result of unlawfully subsidized imports from receiving the relief which the countervailing duty statute is meant to provide. At a minimum, any injury test added to the statute should be carefully drawn so that the extent of the injury and of the causal tie between the unlawful subsidy and that injury which a domestic industry must prove is reasonable and not unduly burdensome. For example, any requirement that the injury proven be "material" would go a long way towards rendering the countervailing duty statute useless.

The Ferroalloys Association also objects strongly to other aspects of the code. For example, the code uses such phrases as "significant increase in subsidized imports" and "significant price undercutting" in the injury provisions of Article 6, Section 2, and, in Article 14, creates a powerful, perhaps unsurmountable, presumption that subsidies by a developing country are to be tolerated by a U.S. industry without complaint. These provisions would, if adopted into American law, greatly weaken the effectiveness of the statute. Likewise, consider the provision that the countervailing duty assessed should be less than the amount of the subsidy if a lesser duty would remedy injury (Article 4, Section 1). And, consider the provision that any countervailing duty finally calculated which exceeds the provisional calculation is, to the extent of the difference, not to be collected (Article 5, Section 6). If enacted, these and other provisions scattered throughout the code would unjustifiably weaken a statute of great importance to assuring that imports enter the United States fairly and by the rules—a statute whose proper enforcement is essential if any free trade policy is to work, and to work without continual Congressional involvement in the details of each affected industry's problems.

Unfortunately, the code seems to rest on the assumption that the subsidization of exports, so detrimental to the U.S. ferroalloy industry, is really not so bad after all and should, except in rare circumstances, be tolerated. But, the rules of the international trade arena are and should be otherwise; and, the U.S. should not bowlderize its countervailing duty statute in the manner suggested by the code.

The Ferroalloys Association applauds any efforts to streamline the time schedule and processes pertinent to the enforcement of the countervailing duty laws.

3. GSP and the ferroalloy industry

The ferroalloy industry has suffered greatly from the duty-free status granted to imports of major ferroalloy products under the Generalized System of Preferences. Although the Ferroalloys Association has filed several petitions with the Office of the Special Trade Representative seeking to have ferroalloy products especially injured by GSP withdrawn from that program, STR has rejected each petition. Further, our industry lives with the continuing threat that STR will some day decide arbitrarily to extend GSP to import sensitive ferroalloys not presently included in that program. Because GSP imports have had a devastating impact upon our industry and because STR has been unwilling to enforce the Trade Act's requirement that GSP not be extended to products that are "import sensitive in the context of GSP," Congress should enact H.R. 3344—a bill to add ferroalloy products to the list of products statutorily exempt from GSP.

4. GSP treatment of products subject to countervailing duty

Furthermore, some GSP countries have abused the privilege afforded by GSP treatment for their U.S. shipments by granting export subsidies which are "bounties or grants" under the countervailing duty statute. Congress should therefore amend the GSP provisions of the Trade Act to withdraw GSP with respect to a product from a GSP country as to which countervailing duties are assessed.

On behalf of our industry, we thank you for this opportunity to present our views to you. We will be delighted to answer any questions you have.

Mr. VANIK. Mr. Moore, do you have any questions?

Mr. MOORE. No questions, Mr. Chairman.

Mr. VANIK. I have no questions. I certainly appreciate your very fine statement. We will study it.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. VANIK. The next witness will be the Semiconductor Industry Association with George M. Scalise, vice president of administration and international operations, Advance Micro Devices, and Stanley Nehmer, consultant, and Peter B. Archie, counsel.

Your entire statement will be in the record. You may excerpt it or read from it.

STATEMENT OF GEORGE M. SCALISE, ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION, ACCOMPANIED BY STANLEY NEHMER, CONSULTANT, AND PETER B. ARCHIE, COUNSEL

Mr. SCALISE. Thank you, Mr. Chairman.

Mr. Chairman, let me begin by expressing my thanks for the opportunity to appear and testify here today on behalf of the U.S. Semiconductor Industry Association.

My name is George Scalise, I am vice president, international operations of Advanced Micro Devices, Inc., located in Sunnyvale, Calif. With me are Stanley Nehmer, of Economic Consulting Services, Inc., and Peter B. Archie, of the Washington law firm of Peabody, Rivlin, Lambert & Meyers.

I would first of all like to acknowledge your mention of the importance of technology in our foreign trade and we certainly endorse the views that you expressed earlier. I would like to emphasize first of all that the principle of the MTN has our full and philosophical support. We do feel that there has been an excellent job done in the negotiation of this very complex treaty and we too applaud those who have been involved in that process.

However, we do anticipate that the lower tariffs in the MTN and the new dumping and countervailing duty codes will not be determinative of the trade patterns in semiconductors. In this case the MTN does not really resolve the particular problems of a high technology industry such as ours. The basic problems that we are facing are the lack of access to foreign markets, the substantial subsidization of R. & D. by foreign governments, particularly the Japanese, and business practices condoned abroad which would be unlawful in the United States.

Not adequately addressed by the MTN codes is the targeting by the Japanese of the U.S. semiconductor market and the threat that such targeting practices will injure our industry. Targeting is specifically intended to expand Japanese semiconductor production and exports.

The massive government subsidies are designed specifically to favor Japanese companies by increasing their share of foreign trade in semiconductors. The Japanese R. & D. subsidy was part of the target industry program designed to capture a large share of the U.S. market.

The Japanese program has already succeeded by capturing approximately 35 percent of the U.S. market in only 3 years for an important product called the 16,000 bit random access memory or 16K RAM. The 16K RAM represents the very heart of present product technology that serves as the foundation of the next generation of integrated circuit products.

Therefore, it is of the utmost importance that this market be maintained at some viable level.

We suggest that targeting of our semiconductor market and our restricted access to foreign markets must be addressed as vital problems of international trade policy.

Finally, we suggest that the implementing legislation adopt refined standards for determining threat of future injury based on the appearance of specific early warning signals. We feel this is very important. We also feel that it is possible to achieve this measure through a monitoring of the rate of change of market share of specific high-technology products.

From its inception, the U.S. semiconductor industry has been characterized by the innovative and continuous development of semiconductor components of ever increasing complexity. These innovations evolved from single function devices such as transistors and diodes to integrated circuits which contain the equivalent of 10 to 15,000 transistors per chip.

A chip is piece of silicon approximately 100th of an inch thick and approximately one quarter of an inch square. If you look at the head of a pin it would serve as an approximation. We are talking today of 10,000 to 15,000 transistors per chip. We are now moving in the area of approximately 30,000 transistors per chip.

As was stated so well by Robert Noyce, vice chairman of Intel, one of our members:

> What we have seen has been to some extent a steady quantitative evolution: Smaller and smaller electronic components performing increasingly complex electronic functions at ever higher speeds and at ever lower cost.

Current research points to a future complexity level of up to 1 million transistors per chip in the very large scale integration, or "VLSI", projected for the 1980's and 1990's. Again referring back to your earlier comment, this is not an aging industry but truly a dynamic high-technology industry.

Product development is the key to our business; it is a direct function of research and development expenditures and capability to fund such expenditures from current products. The new products will finance the next phase of R. & D.

To remain viable in our industry, one must maintain continuity from one product stage to the next. Today, the RAM is the key product line in this chain of evolution. If at any point a foreign competitor can break this innovative chain, the injury may be irreparable.

The technology needed to advance to the next stage would be inhibited if profits necessary to finance R. & D. are siphoned off by the foreign-owned competitors. Our industry simply would have insufficient profits to finance continuing research.

In addition, as foreign companies accumulate U.S. market share, our companies would lose the process enhancement or experience curve which comes with volume production. In the semiconductor industry, declining costs and increasing yields are a demonstrable result of continual accumulation of manufacturing experience.

The national defense ramifications of our being number two in high technology research are particularly acute. In the 1980's electronics will become even more important in our defense systems. We should not be dependent upon foreign countries for the most advanced electronics, nor should we lose power to control access to the technology which could be used against our interests.

Let me offer some of the following comments on the MTN codes:

First of all, we suggest that the injury standard in the new countervailing duty statute, the new antidumping statute, any

amendments to sections 201 and 301 of the Trade Act of 1974, and section 337 of the Tariff Act of 1930, include provisions designed to assure prompt relief from the threat of future injury.

Second, if new negotiating authority is included in the statute, we strongly urge that our negotiators be instructed to address the unique problems of our high-technology industries, including substantially equivalent access to foreign markets.

Third, we respectfully submit that execution of the MTN Government procurement code between the United States and Japan would be inappropriate until such time as we have tangible evidence that Japan has in fact opened both its private sector and public sector markets to our high technology products.

Fourth, we strongly endorse the position asserted by witnesses earlier in these hearings that the U.S Government must effectively and expeditiously enforce the unfair trade laws which are now on our books.

Fifth, we concur that unfair trade remedies are only meaningful if statutory deadlines are as short as possible, consistent with standards of due process, and if our agencies and departments strictly observe the deadlines, any assurances on pricing, subsidies or other unfair practices must include detailed, forceful and mandatory monitoring procedures.

Finally, we suggest that the statute include a private cause of action against foreign manufacturers for violations of our trade laws, including the dumping laws and the unfair trade laws, and provide for treble damages which would deter the kinds of conduct which we have seen destroy other U.S. industries.

In conclusion, our industry is solidly detemined that the Japanese targeting effort will destroy neither our technological leadership nor our industry. To succeed, our determination must be backed by the legislative and executive branches of our Government.

Our goal is not to duplicate the unfair and disruptive tactics of the Japanese and not to adopt a protectionist posture, but to achieve a solution which preserves our industry by opening the Japanese market to our products and by eliminating unfair practices that disrupt our domestic market.

In particular, we should all seek to avoid prolonged and acrimonious disputes which could leave lasting scars on all participants.

As we face the 21st century we must not forget that many of our country's natural resources are being depleted, certainly our petroleum and natural gas reserves. Our hope of maintaining acceptable trade balances must be based on an area where we have always excelled—technical innovation. Technology is also a depletable resource but, unlike petroleum, it can be renewed if our markets provide the funds for research and development. If we are unable to maintain technological superiority in the semiconductor field, we could soon find ourselves dependent on foreign sources for the electronics necessary for defense and communications systems, at risks and costs comparable to our present dependence on foreign sources of energy.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF GEORGE M. SCALISE ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. Chairman, let me begin by expressing my thanks for the opportunity to appear and testify here today on behalf of the United States Semiconductor Industry Association. My name is George Scalise, I am Vice President—International Operations of Advanced Mirco Devices, Inc., located in Sunnyvale, California. With me are Stanley Nehmer, of Economic Consulting Services, Inc., and Peter B. Archie, of the Washington law firm of Peabody, Rivlin, Lambert & Meyers.

I.—SUMMARY

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

The basic problems facing our industry are lack of access to foreign markets, the substantial subsidization of R&D by foreign governments, particularly the Japanese, and business practices condoned abroad which would be unlawful in the United States.

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

We suggest that targeting of our semiconductor market and our restricted access to foreign markets must be addressed as vital problems of international trade policy.

Finally, we suggest that the implementing legislation adopt refined standards for determining threat of future injury based on the appearance of specific early warning signals.

II.—BACKGROUND

Semiconductors, which contain one or more electronic functions on a silicon chip approximately ¼ inch square, replaced vacuum tubes 25 years ago as the primary medium for amplifying or switching electronic signals. Semiconductor technology provided the fundamental basis for the end equipment market, estimated at $100 billion in 1979, which is forecast to rise to $200 billion by 1985. The end equipment market includes computers and related equipment, telecommunications equipment, industrial products and consumer products. Defense systems throughout the world are increasingly reliant upon semiconductors.

The U.S. semiconductor industry has been characterized by the innovative and continuous development of semiconductor components or ever increasing complexity. These innovations evolved from single function devices such as transistors and diodes to integrated circuits which contain the equivalent of 10 to 15,000 transistors per chip, to large scale integrated circuits which contain on the same small chips 30,000 equivalent transistors. As stated so well by Robert N. Noyce, Vice Chairman of Intel, one of our members: "what we have seen has been to some extent a steady quantitative evolution: smaller and smaller electronic components performing increasingly complex electronic functions at ever higher speeds and at ever lower cost." [1]

Current research points to a future complexity level of up to 1,000,000 transistors per chip in the "Very Large Scale Integration" ("VLSI") projected for the 1980's and 1990's. Ours is truly a dynamic industry and this innovation results in a short life for each generation of products.

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[1] "Microelectronics", Scientific American, September, 1977, vol. 237, No. 3, p. 63.

III.—DISCUSSION

1. Competitive posture of foreign companies

Innovative process and product development in our industry requires that evolution from one product stage to the next be maintained for viability of the industry. Today, the RAM is the key product line in this chain of evolution. If at any point a foreign competitor can break this innovative chain, the injury may be irreparable. The technology needed to advance to the next stage would be inhibited if profits necessary to finance R&D are siphoned off by the foreign-owned competitors. Our industry simply would have insufficient profits to finance continuing research. In addition, as foreign companies accumulate U.S. market share, our companies would lose the process enhancement or "experience curve" which comes with volume production. In the semiconductor industry, declining costs and increasing yields are a demonstrable result of continual accumulation of manufacturing experience.

Our principal competitors are Japanese and European companies—which are typically large, integrated firms as compared to the U.S. industry which includes many smaller firms. In addition to pitting small companies like ours against large, well-financed Japanese companies, the Japanese system has structural differences which should be taken into account in considering our industry:

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

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

Japanese firms do not depend on the equity market to finance growth and hence do not have to achieve a high rate of return in order to attract capital.

The bank credit permits the companies to finance long run deficits necessary to penetrate foreign markets.

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

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

As part of its targeting of electronics industry, Japan's government subsidized a massive research effort and sanctioned cooperative research which would violate our antitrust laws.

Practices such as two tier pricing and target industries have long been regarded by many in the United States as presenting unfair trade issues. Many joint research activities which are common in Japan would probably be challenged under our antitrust laws if duplicated by our companies without government approval. Thus, our semiconductor companies are unable to counter the substantial advantages of our foreign competitors.

These policies have been particularly effective in accelerating the development of the Japanese semiconductor industry. New U.S. high technology semiconductor devices have been designed into Japanese equipment, only to be replaced in large part by Japanese made devices which duplicate the U.S. product. Virtually every type of semiconductor product in use today in Japan—including diodes, transistors, bipolar ICs and mos circuits—was initially imported from United States companies. In every area U.S. semiconductor firms now hold declining market shares as Japanese production comes on stream.

Using the policies I have just outlined, the Japanese operate a nearly closed domestic semiconductor marketplace. Some sections of the Japanese economy are so closely controlled that semiconductor procurement is limited to Japanese suppliers by formal government policy. The recent display of great reluctance on the part of Nippon Telephone and Telegraph to open its procurement to foreign producers is a graphic illustration of Japan's restrictive market policy.[2]

The massive government sponsored target industry program in Japan—aimed directly at our semiconductor and computer industries—constitutes in my view a threat of future injury of proportions which should be cognizable under the unfair trade provisions of our trade treaties and the implementing statutes. However, even if our government undertook to challenge these practices by enforcing laws presently on the books, the delays make remedies such as countervailing duty and antidumping actions less meaningful to the semiconductor industry than to other industries.

Let me explain.

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[2] "U.S.-Japan Talks on Procurement Again Break Down," The Wall Street Journal, Apr. 26, 1979, p. 18 (Eastern edition).

As indicated a moment ago, research and development is the key to success in the semiconductor industry. Some products may be obsolete long before any subsidy or dumping violation could be determined and the sanctions implemented.

2. The massive Japanese research effort

The massively subsidized VLSI program for semiconductor research exemplifies the process by which the Japanese government channels and coordinates technological development by its companies. MITI and the Japanese computer industry agreed on a four year plan that would achieve the critical first step for a Japanese computer industry capable of penetrating the United States market. The Japanese goal is worldwide leadership in semiconductors and computers by the 1980's. They are well on their way toward this goal.

The major Japanese electronics firms formed, under MITI direction, a VLSI cooperative research laboratory. These industry groups contributed scientists and facilities while substantial financing came from government sources. If the Japanese target of substantial U.S. market penetration is achieved, I suggest to you that the profits to repay the research "loans" will come from U.S. consumers.

3. Basis of the Japanese threat to our industry

Because both Japanese investment and research funds are channeled by the government and not based on profit performance, Japanese companies tend to invest heavily in production capacity. If this results in excess capacity, it motivates dumping in the world markets. Their protected domestic market permits artifically high, noncompetitive prices which cover all overhead costs and permits them to peg export prices at the very low levels necessary to cover incremental variable costs. Such aggressive export prices assure a strong and expanding foreign market position and rapid penetration of the U.S. market.

And with this two tier price structure, when a cyclical down-turn occurs in the economy and demand weakens at home, the Japanese, with their heavy fixed obligations and guaranteed employment, have an incentive to flood the export markets with products at below cost prices until their capacity limits are reached. We have seen this in industries such as steel and color television.

By comparison, the U.S. approach to the semiconductor market has been characterized by an open market and free trade philosophy. U.S. semiconductor firms have freely licensed technology to Japanese firms with no restrictions from our government. We have exported our advanced products to Japan. We have allowed imports to enter the U.S. at consistently low tariffs. We have allowed the Japanese unrestrained and unlimited import market access. We have allowed Japanese equity investments in, and outright acquisition of, U.S. semiconductor firms. Finally, we have placed no restrictions at all on the establishment of foreign-owned subsidiaries in the United States.

The U.S. market is thus vulnerable to dumping of Japanese products as well as to market penetration of new products developed under the Japanese research subsidy program.

There has been minor liberalization on the part of the Japanese, but only under the most extreme pressure. In 1974, Japan for the first time relaxed its laws prohibiting direct foreign investments and liberalized imports of many semiconductor devices. More recently, again under foreign pressure, MITI disclosed for the first time heretofore secret patents of the VLSI Technology Research Association. But the patents were disclosed only when American semiconductor makers vigorously attacked the Association's exclusive patent ownership. Excluded, however, is that part of the technology using processes determined to be "government owned."

For the past thirty years we have generously shared our technology with the Japanese. We have licensed many more patents to them than we have received in return. Their industry's foundation is our technology. But what do we get in return? Very little. Their market is virtually closed and some of their key patents are still classified "secret" and apparently reserved for the exclusive use of the Japanese companies.

4. Japanese protectionist attitudes

Still not addressed, however, are the deeply ingrained social and institutional attitudes that have led to a bias against imports, a "buy Japanese" policy at most Japanese companies, and the ever increasing balance of trade in favor of Japan. The Japanese have a litany of excuses for this imbalance and for not buying any American products when Japanese products are available:

Non-compliance with Japanese "standards," although the Japanese typically decline to specify the standards or to disclose how our products fail to comply;

Assertions that U.S. product quality is somehow deficient;

The U.S. companies have not made a sufficient effort to develop the Japanese market; and

The U.S. companies have a "lack of understanding" of the Japanese market.

Speaking for the semiconductor industry, these arguments simply lack merit. For example, from the beginning, the U.S. semiconductor industry has been very export minded. Our industry launched major marketing efforts in all world-wide semiconductor markets, including Japan. This effort has been successful in all foreign markets—including Japan, at least during the early life cycle of a high technology product. But after Japanese firms duplicate the design of advanced products originally developed and produced here, United States companies are denied continued access to those markets in Japan.

Over the last three years, imports of Japanese ICs into the U.S. have climbed steadily. Last year the balance on semiconductor trade for the first time was in a deficit position.

For example, in the 16K RAM market—a key component of our most sophisticated computers—the Japanese target program has proved successful. The Japanese companies have captured a 35 percent share of the United States market in just three years.

5. National defense implications

The national defense ramifications of our being "number two" in high technology research are particularly acute. In the 1980's electronics will become even more important in our defense systems. We should not be dependent upon foreign countries for the most advanced electronics, nor should we lose power to control access to the technology which could be used against our interests.

6. Implications for the MTN package

Against this background description of the U.S. semiconductor industry and the challenge it faces from imports, let me offer the following comments on the MTN codes:

We suggest that the injury standard in the new countervailing duty statute, the new antidumping statute, any amendments to Sections 201 and 301 of the Trade Act of 1974, and Section 337 of the Tariff Act of 1930, include provisions designed to assure prompt relief from the threat of future injury; [3]

If new negotiating authority is included in the statute, we strongly urge that our negotiators be instructed to address the unique problems of our high technology industries, including substantially equivalent access to foreign markets;

We respectfully submit that execution of the MTN Government Procurement Code between the United States and Japan would be inappropriate until such time as we have tangible evidence that Japan has in fact opened both its private sector and public sector markets to our high technology products;

We strongly endorse the position asserted by witnesses earlier in these hearings that the United States government must effectively and expeditiously enforce the unfair trade laws which are now on our books;

We concur that unfair trade remedies are only meaningful if statutory deadlines are as short as possible, consistent with standards of due process, and if our agencies and departments strictly observe the deadlines;

Any assurances on pricing, subsidies or other unfair practices must include detailed, forceful and mandatory monitoring procedures;

Finally, we suggest that the statute include a private cause of action against foreign manufacturers for violations of our trade laws, including the dumping laws and the unfair trade laws, and provide for treble damages which would deter the kinds of conduct which we have seen destroy other U.S. industries.

Let me comment briefly on these points. Because of the technology evolution in our industry, the statutory injury standard which is most likely to be meaningful is the "threat of future injury." In our industry, relief after the fact of actual injury may come too late to preserve the historic position of our technological leadership. Once leadership in our domestic market is lost, there will be insufficient profits to finance "catch up" technology. As our enforcement agencies have been reluctant to award relief solely on the basis of such a threat, Congress should:

Make clear that a threat of injury alone is sufficient to award relief; and

Establish criteria which establishes a presumption of threat.

The actual injury experienced by U.S. industries such as color television and C.B. radios was preceded by events which can be used to predict injury. A sudden

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[3] For example, these standards would permit relief if the market share of foreign-owned producer imports accelerates sharply over a short period of time such as has already occurred in segments of the RAM market.

increase in the market share of imports of foreign manufacturers is the best evidence of a threat and should be sufficient to support an award of relief.

We feel that realistic standards can be developed on the basis of the rate of change of market share which would enable the enforcing agencies to act responsibly and quickly to prevent a threat from becoming a reality.

We feel that assurances should not be a substitute for adjudicated relief. If adopted, however, the following conditions should be included:

Any quantities limitations should be administered by U.S. Customs.

Substantial liquidated damages should be imposed for violations.

The arrangement must be insulated from foreign political relationships.

Possibilities of administrative abuse should be substantially reduced.

CONCLUSION

Our industry is solidly determined that the Japanese targeting effort will destroy neither our technological leadership nor our industry. To succeed, our determination must be backed by the legislative and executive branches of our government. Our goal is not to duplicate the unfair and disruptive tactics of the Japanese and not to adopt a protectionist posture, but to achieve a solution which preserves our industry by opening the Japanese market to our products and by eliminating unfair practices that disrupt our domestic market. In particular, we should all seek to avoid prolonged and acrimonious disputes which could leave lasting scars on all participants.

As we face the 21st century we must not forget that many of our country's natural resources are being depleted—certainly our petroleum and natural gas reserves. Our hope of maintaining acceptable trade balances must be based on an area where we have always excelled—technological innovation. Technology is also a depletable resource, but, unlike petroleum, it can be renewed if our markets provide the funds for research and development. If we are unable to maintain a technological superiority in the semiconductor field, we could soon find ourselves dependent on foreign sources for the electronics necessary for defense and communications systems—at risks and costs comparable to our present dependence on foreign sources of energy.

Mr. VANIK. You have pointed up some very special problems, some of which are beyond the MTN. I think you will concur, the thing that we have to do is deal with our antidumping code. I am very concerned about your industry. I hope that we can promptly deal with it.

Do you have any questions, Mr. Moore?

Mr. MOORE. Thank you, Mr. Chairman.

I want to compliment you on a very thorough statement. I have read it. It is a very excellent statement. I think we have a two-part consideration. The chairman has hit on a part I thoroughly agree with.

To make MTN work once it is adopted, we must vigorously enforce the codes we have on the books. I assure you that members of this subcommittee I have heard speak have indicated that same desire and same will.

I note on page 5 you point out something very interesting. That is the necessity of capital in your high technology industry to develop new technology. You point out how the Japanese have no problems of gaining capital like you do.

I did some research the other day and discovered 10 years ago American industry research and development funding was growing at 10 percent per year. Today it is growing at less than 2 percent per year. We are spending less money on research and development.

We also learned that we have fewer engineers and scientists who work today in private industry than 10 years ago. There is no excuse for that either except possibly we in Congress are not doing something to make that possible. I would appreciate if you would

give us a detailed statement on what we can do to help you amass the capital other than to protect you from targeting which we will certainly attempt to do.

I think you will need more capital even if we are successful in doing that. I would appreciate your submitting to the committee, if the chairman will agree, by no later than Wednesday of next week, any ideas you have on how we can help you formulate the capital you need to develop the technology you need to stay competitive.

Mr. SCALISE. I appreciate the opportunity to do so. We will go to work on that immediately and prepare specific recommendations for you.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. VANIK. Thank you very much. We very much appreciate your testimony.

The next witnesses are the National Customs Brokers and Forwarders Association, Mr. Sigmund Shapiro, vice president and director, and Mr. Morris V. Rosenbloom, director, Washington Office.

Your entire statement will be submitted in the record. You may excerpt from it or read from it any way you see fit.

STATEMENT OF MORRIS V. ROSENBLOOM, DIRECTOR, WASHINGTON OFFICE, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION, ACCOMPANIED BY M. SIGMUND SHAPIRO, VICE PRESIDENT AND DIRECTOR

Mr. ROSENBLOOM. Thank you very much.

Mr. Chairman and members of the subcommittee, my name is Morris Victor Rosenbloom. I am president of American Surveys and appear here today in my capacity as director of the Washington office of the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA).

I am pleased to be joined by Mr. M. Sigmund Shapiro, president of Samuel Shapiro and Co., Inc., customs brokers and international freight forwarders of Baltimore and Washington. Mr. Shapiro is vice president for Customs Brokerage and a director of the NCBFAA. In addition, he is a director of the American Importers Association.

On behalf of NCBFAA President William R. Casey, Jr., who is president of the Myers Group, Inc. of Rouses Point, N.Y., I should like to express his regret at being unable to be in Washington today to present our testimony. His views and those of our national association are conveyed in the brief remarks that follow.

In accordance with Chairman Vanik's request that presentations be limited in length, we shall focus our remarks on two subjects of particular concern: (1) The importance of retaining the f.o.b. duty collecting system rather than change to the CIF method of customs valuation; and (2) The need to have Presidential proclamations that announce a change in duty status of a particular item become effective on merchandise exported on or after the date of the proclamation.

Rather than be repetitious by offering specific recommendations which would parallel those expressed to the subcommittee by the American Importers Association, we prefer to endorse in general the positions of AIA on legislation dealing with countervailing

duties, antidumping, shortened time limits, and aspects of import licensing.

Before calling upon Mr. Shapiro to provide additional views, I shall present a few comments regarding a question that has been raised about changing the f.o.b. duty valuation system to collecting duties on a cost, insurance, and freight (CIF) basis. We believe that such a change would be a serious mistake.

The f.o.b. system, which has been in effect for more than 150 years, has a major advantage in that it does not discriminate in the amount of duty between ports of entry or between the mode of transportation.

Many organizations are on record in opposition to such a change in customs valuation. One of them is the board of commissioners of the Port of New Orleans. Another is our affiliated association in New Orleans. In a recent telegram to Senator Russell Long, President Paul F. Wegener included the following points:

> If CIF values were used for customs dutiable purposes, there would be a distinct advantage to importers of merchandise from the far east to enter their goods on the West Coast of the United States, therefore paying duty on a lower value.
>
> There would be a distinct advantage on imports from Europe for the importers to pay duty on the East Coast of the United States, therefore avoiding the payment of duty on higher values that would be assessed against cargo arriving at Louisiana ports.
>
> Due to the complexities of ocean freight rates in various conferences being separate for each coast of the United States, we do not feel CIF value is the proper method of collecting duty and would urge you to forego your support of this measure.
>
> We believe that the proper method for dutiable purposes should be FOB value or transaction value.

NCBFAA President Casey, in supporting the views expressed in the telegram sent by the New Orleans Association, added in his mailgram to Senator Long that: "In the interest of fair and equitable competition, we urge that you not introduce a CIF valuation type of legislation."

An important fact to be considered is that CIF dutiable values discriminate against small business importers who must pay high freight rates on small shipments, whereas large importers buying identical articles from the same country pay low freight rates for such items as cargo shipments. Another is that CIF dutiable values discriminate against inland States that have a port—international airport—of entry. An example would be St. Louis, Mo.

In closing my remarks, our association is the only nationwide organization representing the customs brokerage and international freight forwarding industry. A nonprofit organization, the original group was incorporated in 1897. Located in all of the major ports of the country, the NCBFAA has 23 affiliated local associations of brokers and forwarders which maintain close liaison with the national association.

Our members include customs brokers licensed by the U.S. Treasury Department as qualified to enter and clear merchandise through Customs, ocean freight forwarders licensed by the Federal Maritime Commission to handle export shipments, international air cargo forwarders licensed by the Civil Aeronautics Board, and IATA air freight sales agents. Through our membership we handle most of the general cargo imported into, as well as exported from, this country.

It is now my pleasure to ask Mr. Shapiro to present several observations about the significance of the MTN and specific points about our two areas of primary concern.

Thank you.

Mr. VANIK. We will be happy to hear from you, Mr. Shapiro.

Mr. SHAPIRO. Thank you, Mr. Chairman.

As Mr. Rosenbloom has mentioned my affiliations, I shall not take your time to repeat them.

We welcome this opportunity to present or views on issues relating to implementation of the multilateral trade negotiations—MTN. Inasmuch as our role in the international trade picture is that of expediting and facilitating the movement of both export and import traffic, I will confine my remarks to the administration and implementation of the MTN rather than to its substance.

My hope, in doing so, is to be able to convey to the subcommittee the need for simplification of the laws and regulations that at present hinder the flow of our export and import trade.

We applaud the efforts that have been made to modernize our valuation statutes. It is important to us and to our trading partners to operate our customs and tariff laws under a customs valuation system that is applicable, familiar, and equitable to all of our trading partners.

The MTN customs valuation can do a great deal to contribute to uniformity of treatment. We deplore, however, any efforts to change our method of customs valuation from f.o.b. to CIF.

We recommend that the f.o.b. basis of customs valuation be retained with a uniformity of definition that either encompasses an ex-factory price or an f.o.b. port of export price, but not both.

We feel that imposition of CIF would discriminate between suppliers, distort trade patterns, discriminate between U.S. ports and increase costs to the consumer. We also believe that any such change would require compensation to our trading partners which would entail a whole new round of tariff-cutting negotiations.

As I said at the outset, our comments are mostly procedural and as an example of the need for cutting through the complexities of tariff administration, I would call the committee's attention to an existing practice which should be modified as it hampers the orderly administration of our trade laws.

Existing laws give the President wide latitude to change duty status under the generalized system of preferences or other provisions of law. It has been the practice for the President to issue a proclamation changing duty status of a particular item "entered on or after the date of the proclamation." The effect of this procedure means that merchandise on the high seas can be subject to different duty treatment with no warning to the parties involved with the transaction. It also means that cargo landing at, for example, the west coast, could be afforded different duty treatment from cargo aboard the same vessel arriving later at an east coast port.

Efforts have been made by our association and other interested parties to modify this procedure by having the proclamations effective on merchandise exported on or after the date of the proclamation. We believe that this is a sound and reasonable proposal which would eliminate a number of uncertainties in international trade.

In those instances where the President is prohibited by law from issuing a proclamation in such a manner, he should publish 30 days in advance of the issuance of a proclamation his intent to issue such a proclamation. This would enable businessmen to conduct their operations without the threat of economic loss because of duty status change.

We believe that the MTN is an opportunity to create a world partnership in trade which the United States should not let go by. We hope, however, that it be permitted to operate in a fashion that would do the greatest good for the greatest number of people.

Thank you.

Mr. VANIK. I want to thank you very much. Any questions, Mr. Moore?

Mr. MOORE. No questions.

Mr. VANIK. We certainly appreciate your statement. I hope you understand our position. We are getting near the peril point of our exhaustion. Your statement will be carefully analyzed.

Tom Kossel, counsel of the firm of Daniels & Houlihan, representing Imperial Arts Corp.

STATEMENT OF TOM KOSSEL, COUNSEL, ON BEHALF OF IRWIN SCHNEIDER, PRESIDENT, IMPERIAL ARTS CORP.

Mr. KOSSEL. I will be as brief as possible. My name is Tom Kossel. I am here to testify on behalf of Mr. Schneider of Imperial Arts, Inc., which is an importer of dinnerware. Briefly, in a nutshell, the upshot of my client's testimony is that they have been denied procedural due process by the International Trade Commission and Special Trade Representative. They are being saddled with a tremendous increase in duty of over 400 percent, that this increase in duty is destined to devastate their business, that they have never had a genuine opportunity to object or to present the merits of their position, and that it is within the power of this committee to recognize injustice without any way jeopardizing the MTN trade package or the implementing legislation.

I will read portions of the statement; most of it has been deleted for the sake of brevity.

I am here today because, according to all of the information I can obtain, the administration proposes to raise the duty on the dinnerware that I import from 11 percent to 48 percent—an increase in duty of more than 400 percent.

There is no economic need for an increase in the duty on dinnerware from Japan from 11 to 48 percent. The particular variety of dinnerware that we import from Japan is not even made in this country. It is not dumped by the Japanese. It is not subsidized by the Japanese. It is fairly exported by them and fairly imported by us and it hurts no one.

I make these economic points to this committee because we were never given an opportunity to make them anywhere else. Mr. Strauss' office would deny that we never had an opportunity to make our case. The Office of the Special Representative for Trade Negotiations would tell the committee that the STR and the ITC held hearings on this matter at which we had an opportunity to testify. Indeed, they did have hearings. The notices, however, which appeared in the Federal Register of April 4 and April 27, 1978,

listed the dinnerware as, "Articles which may be considered for increases in existing duties * * * incidental to modifications in the tariff nomenclature".

We submit that no one can reasonably and fairly say that this statement gives us fair notice that the STR was thinking of increasing the duty from 11 percent to 48 percent. We submit that no one can reasonably say that this increase in duty from 11 percent to 48 percent, an increase of 400 percent, is incidental to modifications in the tariff nomenclature.

The notices are attached to our statement which I request be submitted in full. The committee can decide for themselves whether proper notice was given.

[The prepared statement and attachments of Irwin Schneider follow:]

STATEMENT OF IRWIN SCHNEIDER, PRESIDENT, IMPERIAL ARTS CORP.

Mr. Chairman and Members of the Committee, my name is Irwin Schneider. I am President of Imperial Arts Corporation of Elk Grove Village, Illinois. Our company imports dinnerware which is sold to a variety of institutional users such as airlines, hotels, restaurants, schools and hospitals.

I am here today because, according to all of the information I can obtain, the Administration proposes to raise the duty on the dinnerware that I import from 11 percent to 48 percent—an increase in duty of more than 400 percent.

For this astronomical duty increase to be part of a package that supposedly is designed to liberalize trade is, in my view, outrageous.

There is no economic need for an increase in the duty on dinnerware from Japan from 11 to 48 percent. The particular variety of dinnerware that we import from Japan is not even made in this country. It is not dumped by the Japanese. It is not subsidized by the Japanese. It is fairly exported by them and fairly imported by us and it hurts no one.

I make these economic points to this Committee, Mr. Chairman, because I was never given an opportunity to make them anywhere else. My understanding is that the laws of this country—such as Section 201 of the Trade Act of 1974—normally give people on all sides of an issue an opportunity to state their case before a decision to restrain imports by astronomically high duties is made. But Ambassador Strauss' office did not do that in the case of the dinnerware we import.

Candor requires me to inform the Committee that Mr. Strauss' office would deny that we never had an opportunity to make our case. I am sure that the Office of the Special Representative for Trade Negotiations would tell the Committee, as they have told us, that the STR and the International Trade Commission held hearings on this matter at which we had an "opportunity" to testify. Indeed, they did have hearings. The notices, which appeared in the Federal Register of April 4, 1978 for the ITC and April 27, 1978 for the STR, listed the dinnerware which I import (TSUS Item 533.38) as: "Articles which may be considered for increases in existing duties, to the extent permitted by Sections 101(a) and 101(c) of the Trade Act, *incidental to modifications in the tariff nomenclature.*" (Emphasis added.)

Mr. Chairman, how can anyone honestly and fairly say that this statement gave us fair notice that the STR was thinking of increasing the duty on the dinnerware we import from 11 to 48 percent? How can anyone honestly and fairly describe an increase in duty from 11 to 48 percent as "incidental to modifications in the tariff nomenclature"? Attached to my testimoney are copies of the two notices that appeared in the Federal Register—the only notice that was given that any action was in anyway being contemplated. Committee members may decide for themselves whether that is fair and adequate notice to anyone.

Mr. Chairman, my company cannot even be certain that the duty increase from 11 to 48 percent is exactly what Mr. Strauss has proposed, because we are told by his office that the matter is confidential and as a mere importer affected, I cannot even be told what the details are. The Office of the STR, however, has confirmed that our understanding is "generally correct".

Mr. Chairman, I do not understand all of the legalities of the procedure under which the Committee is operating and under which the Congress will operate in implementing this trade package. I do know that everything I have heard or read about the actions of the Congress and the U.S. Government in these trade negotia-

tions was to try to liberalize trade and to improve the rules of international trade. How can an increase in duty of 400 percent in anyway fit into a program like that?

I do know that the Constitution gives the Congress the authority to regulate foreign trade, and through hearings such as this, you are doing that. I would ask this Committee to exercise its legal authority to regulate foreign trade by preventing the STR from raising the duty on the dinnerware we import. This Committee, as the watchdog on foreign trade for the Congress, should not permit any duty increase on any product at anytime to be accomplished in the way the Administration tried to accomplish the dinnerware duty increase—by totally inadequate, if not misleading, announcements in the Federal Register about products which "may be considered for increases" "incidental to modifications in the tariff nomenclature". If they proposed to raise a duty on a product, they should be required to say so clearly and accurately to give everyone an opportunity to make a case.

Second, this Committee should not tolerate the inclusion of such astronomical duty increases as part of a package designed to liberalize and reform international trade. Increased protectionism of this magnitude is contrary to the spirit, if not the letter, of the Trade Act of 1974.

Thank you very much.

to Nissel neither increased Nissel's market share nor decreased that of U.S. producers. U.S. converters increased their sales significantly during this period and increased their market share by 128 percent. In addition, some purchasers indicated that orders were sometimes placed for Japanese fabric because of quality.

Likelihood of injury.—Information compiled in this investigation does not reveal that an industry in the United States is being or is likely to be injured by LTFV imports. To the contrary, there is evidence of a healthy recovery from the level of operations in the recession year 1975. In view of the increasing trends noted above with respect to U.S. producers' shipments, employment, and profitability and the decreasing trend of LTFV imports, we do not feel that there is likelihood of injury to the U.S. industry. Furthermore, discussions pending between the governments of the United States and Japan with respect to Japanese exports of impression fabric to the United States may preclude any significant increase in the quantity of such exports.

CONCLUSION

It is clear from the above considerations that the U.S. industry selling impression fabric in the United States is not being and is not likely to be injured by reason of the importation of impression fabric of manmade fiber from Japan found by Treasury to be, or likely to be, sold in the United States at LTFV. Therefore, we find in the negative.

By order of the Commission:

Issued: March 29, 1978.

KENNETH R. MASON,
Secretary.

(FR Doc. 78-8960 Filed 4-3-78; 8:45 am)

[7020-02]

[TA-203-4; 7 A-131(b)-2; 332-100]

CERTAIN CERAMIC ARTICLES

Consolidated Investigations and Hearings

Notice is hereby given that the United States International Trade Commission on March 30, 1978, at the request of the Special Representative for Trade Negotiations, instituted consolidated investigations under sections 203(b)(2) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2253(b)(2) and 19 U.S.C. 2151(b), respectively) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to certain ceramic articles. The letter from the Special Representative requesting the investigations is attached hereto and made a part thereof.

Section 203 investigation. The investigation under section 203(b)(2) of the Trade Act is for the purpose of advising the President of the Commission's judgment as to the probable economic effect on the industry concerned of the immediate termination of the relief provided for by Proclamation 4436 of April 30, 1976, with respect to the ceramic articles provided for in items 923.01, 923.07, 923.13, and 923.15 of the Appendix to the Tariff Schedules of the United States (TSUS).

Section 131(b) investigation. The investigation under section 131(b) of the Trade Act is for the purpose of advising the President of the Commission's judgment—

(a) With respect to each article described in List I[1] of the Special Representative's notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers; and

(b) With respect to all articles provided for in TSUS Items 533.11 through 533.77, described in List II[2] of the Special Representative's notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under Paragraph 1 of his notice would have on domestic industries producing like or directly competitive articles and on consumers.

Section 332 investigation. The investigation under section 332(g) of the Tariff Act of 1930 is for the purpose of providing the Special Representative—

with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS Items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

A proposed draft nomenclature for such ceramic articles is attached to this notice and made a part thereof.

Consolidated Public Hearings Ordered. Public hearings in connection with these consolidated investigations will be held in the Commission's Hearing Room in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 9:30 a.m., e.d.t., Monday, May 1, 1978. Persons requesting to appear at the hearings should advise the Secretary of the Commission, in writing, at his office in Washington, 701 E Street NW., Washington, D.C. 20436, not later than noon, Wednesday, April 26, 1978.

The hearings will proceed continuously and consecutively. The Commission will hear testimony and receive information first with respect to the section 203(b)(2) investigation; second with respect to the section 131(b) investigation; and third with respect to the section 332(g) investigation. It is requested that persons submitting requests to appear indicate the hearing or hearings for which the appearance is requested.

Issued: March 30, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
Washington.

HON. DANIEL MINCHEW,
Chairman, U.S. International Trade Commission, Washington, D.C. 20436

DEAR CHAIRMAN MINCHEW: In announcing his decision on April 30, 1976, to terminate import relief and restore concession rates of duty on imported ceramic tableware, President Ford directed the Special Trade Representative to review the classifications and rates of duty on ceramic dinnerware and related articles in the Tariff Schedules of the United States (TSUS) and to determine if changes are necessary to close tariff loopholes and change obsolete descriptions brought about by currency changes and inflation, and to enter into negotiations to modify trade agreement concessions on these articles in order to make such changes as would be determined necessary. The ceramic tableware provisions of the TSUS were subsequently reviewed by the Trade Policy Staff Committee, which concluded that a renegotiation of virtually all of the provisions is necessary, including those items which are still subject to increased rates of duty.

If possible, it is our intention to handle the modification of the tableware provisions in the context of the Multilateral Trade Negotiations. However, before we can proceed further with this project, we need the following advice from the Commission:

1. Under the provisions of section 33 (g) of the Tariff Act of 1930, I request, at the direction of the President, that the Commission provide me with a proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

2. Pursuant to section 203(b)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11646, I request that the Commission advise the President, through the Special Trade Representative, of its judgment as to the probable economic effect on the domestic industry concerned of the immediate termination of import relief on the ceramic articles temporarily provided for in TSUS items 923.01, 923.07, 923.13, and 923.15.

3. In accordance with section 131(a) of the Trade Act of 1974 and section 4(c) of Execu-

[1] List I attached to the STR request covers all articles for which the President originally proclaimed import relief pursuant to the provisions of section 351 of the Trade Expansion Act of 1962. In view of this import relief action, the President has not previously requested from the Commission "probable economic effect" advice on these articles.

[2] List II attached to the STR request covers the current permanent provisions of items 533.11 through 533.77 in subpart C of Part 2 of schedule 5 of the TSUS.

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tive Order 11846, I am furnishing the Commission herewith the notice, which is being published in the Federal Register, that the ceramic articles initially excluded from the original notice of international trade negotiations, listed in January 1975, may in the future be considered in such negotiations. I request that the Commission provide me with its advice, in accordance with section 131(b) of the Act—

(a) With respect to each article described in List I of the present notice, as to the probable economic effect of the continuance or reduction of United States duties on domestic industries producing like or directly competitive articles and on consumers, and

(b) With respect to all articles provided for in TSUS items 533.11 through 533.77, described in List II of the present notice, the probable economic effect which any increases in duty necessary to implement the nomenclature proposal provided by the Commission under paragraph 1 above would have on domestic industries producing like or directly competitive articles and on consumers.

I would appreciate your supplying me with the above advice as expeditiously as possible, but not later than June 1, 1978.

Sincerely,

ROBERT S. STRAUSS.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

NOTICE OF ARTICLES THAT MAY BE CONSIDERED FOR MODIFICATION OR CONTINUANCE OF UNITED STATES DUTIES OR ADDITIONAL DUTIES

1. In conformity with Section 131 of the Trade Act of 1974 (19 U.S.C. 2151) notice is hereby given of articles that may be considered for modification or continuance of United States duties, or additional duties. The articles are set forth in List I and List II below.

2. Some of the articles in List I and parts of some of the items in List II (those that are marked with an asterisk) currently are subject to import relief provided initially pursuant to Section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)). In accordance with Section 125(b) of the Trade Act of 1974 (19 U.S.C. 2137), *the President is to convey such articles, or parts of items, from international trade negotiations as long as any import relief action is in effect with respect to them.* This notice of the possible future consideration of such articles or parts or items in international trade negotiations, and the request for advice of the U.S. International Trade Commission referred to in paragraph 3 below, are being made to provide for the possibility of negotiations with respect to them should the import relief actions terminate.

3. The U.S. International Trade Commission is being requested to furnish its advice, pursuant to Section 131 of the Trade Act of 1974, as to the probable economic effects of modifications or continuances of existing import duties for the articles in List I, and increases in existing duties, incidental to conversions to the tariff nomenclature, of the items in List II.

ROBERT S. STRAUSS,
Special Representative for Trade Negotiations.

List I

Articles which will be considered for modification or continuance of the existing[1] United States duties, or additional duties, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act.

TSUS item[1] and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16 of the Tariff Schedules of the United States) or of fine-grained stoneware:

Available in specified sets:

533.26 pt.* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12 but not over $22.

Not available in specified sets:

533.31 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.33 pt. Cups valued not over $0.50 per dozen; saucers valued not over $0.30 per dozen; plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $1 per dozen.

533.35 pt. Cups valued over $0.50 but not over $1 per dozen; saucers valued over $0.30 but not over $0.55 per dozen; plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $1 but not over $2 per dozen.

533.36 pt. Cups valued over $1 but not over $1.70 per dozen; saucers valued over $0.55 but not over $0.95 per dozen; plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $2 but not over $3.40 per dozen.

533.38 pt.* Cups valued over $1.70 but not over $3.10 per dozen; saucers valued over $0.95 but not over $1.75 per dozen; plates not over 9 inches in maximum diameter and valued over $1.55 but not over $2.85 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 but not over $4.85 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $3.40 but not over $6.20 per dozen.

List II

Articles which may be considered for increases in existing duties, to the extent permitted by sections 101(a) and 101(c) of the Trade Act, incidental to modifications in the tariff nomenclature.

TSUS item and articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11 Of coarse-grained earthenware, or of coarse-grained stoneware.

Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:

533.14 Valued not over $1.50 per dozen articles.

533.16 Valued over $1.50 per dozen articles.

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine grained stoneware:

Available in specified sets:

533.23 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is not over $3.30.

533.25 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $3.30 but not over $7.

533.26 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $7 but not over $12.

533.28* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12.

Not available in specified sets:

[1] The term "existing" is used herein as defined in section 601(7) of the Trade Act: "The term 'existing' means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column number 1 of the schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A)."

[1] Tariff Schedules of the United States (19 U.S.C. 1202).

* These articles are currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

* Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1991) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

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533.31 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
533.41 Of bone chinaware.
Of nonbone chinaware or of subporcelain:
533.51 Hotel or restaurant ware and other ware not household ware.
Household ware available in specified sets:
533.63 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is not over $10.
533.65 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $10 but not over $24.
533.66 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $24 but not over $56.
533.68 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $56.
533.69 Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $8.
Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69.
533.71 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.
Other articles:
533.73* Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.
533.75* Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen.
533.77* Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen.

The attachment "Tentative Nomenclature Proposal" is provided to project the issues involved in the President's request received March 13, 1978, for—

A proposal on how the nomenclature and rates of duty for ceramic articles provided for in TSUS items 533.11 through 533.77 could be revised so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions prevailing at the present time.

The TSUS items 533.11 through 533.77 referred to in the President's request are ceramic "articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients" which are included in subpart C of part 2 of schedule 5 of the TSUS. The basic headnote definitions of ceramic articles in part 2 and the basic headnote concept of "available in specified sets" set forth in subpart C are believed to be sound and commercially acceptable. The tariff "loopholes" and obsolescence involved in these provisions are the direct result of the inadequacy of value as a descriptive technique to distinguish between articles which are inherently the same, but are distinguishable only by their source or brand name.

With the advent and continuation of the Trade-agreements program, the predecessor tariff provisions covering the articles here involved were subdivided into a melange of tariff descriptions distinguishing between specific articles on the bases of their sizes and values. Predictably, inflation and the ingenuity of importers resulted in increasing obsolescence and the introduction of tariff avoidance practices.

Although these problems were addressed in the development of the TSUS provisions, they were only partially and, due to continuing inflation, temporarily solved. Ideally, all the provisions attempting to distinguish between articles on the basis of their values should be eliminated for the reason that they are inexact, difficult to administer, and generate unreliable data for analytical purposes. In the attached tentative proposal, product distinctions based upon value would be reduced to four, all of which would be applicable to ceramic articles "available in specified sets," viz., two provisions for earthenware and stoneware and two for chinaware and subporcelain. The specifics of the tentative proposal are outlined below.

On the attached sheets, there are reproduced: (1) the current permanent tariff provisions applicable to earthenware and stoneware (TSUS items 533.11 through 533.38), and the tentative nomenclature proposal for such articles; and (2) the current permanent tariff provisions applicable to chinaware and subporcelain (TSUS items 533.41 through 533.77), and the tentative nomenclature proposal therefor.

The tentative proposals would involve the following changes in the current provisions:

(a) As a "housecleaning" measure, items 533.14 and 533.16 would be replaced by a single item 533.15 without rate change.

(b) The four items 533.23 through 533.28 applicable to articles "available in specified sets" would be replaced by two new items 533.22 and 533.24. Thus, all such stoneware and earthenware would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(c) Item 533.31 would be replaced by a new item 533.32 that would be limited to steins and mugs which are the only articles presently named in item 533.31 that are being imported in commercially significant quantities.

(d) The four items 533.33 through 533.38 would be replaced by a single new provision item 533.37 that would apply to all other articles of stoneware and earthenware "not available in specified sets", including the items enumerated, except steins and mugs, in item 533.31.

(e) The four items 533.63 through 533.68 applicable to articles "available in specified sets" would be replaced by two new items 533.62 and 533.64. Thus, all such chinaware and subporcelain would be in two rate provisions differentiated, as at present, on the basis of the aggregate value of the articles in a "norm" set.

(f) Item 533.69 and three items 533.73 through 533.77 would be replaced by a single new provision, item 533.74,[1] that would apply to "articles available in specified sets not covered by items 533.63 through 533.68" and all other chinaware and subporcelain "not available in specified sets".

(g) Conforming changes in subpart C headnote 2 would be made, i.e., (A) the parenthetical "(items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, 533.68, and 533.69)" would be deleted from lines two through four of paragraph (a) and the parenthetical "(items 533.22, 533.24, 533.62, and 533.64)" would be inserted; (B) "or (c)" would be deleted from the next to the last line of paragraph (a); (C) the phrase "items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, and 533.68" would be deleted from lines three and four of paragraph (b) and the phrase "items 533.22, 533.24, 533.62, and 533.64" would be inserted; (D) paragraph (c) would be deleted and paragraph (d) would be redesignated as "(c)"; and (E) headnote 3 would be deleted.

It can be seen from the foregoing that the major tentative nomenclature proposals are those described in (b) and (d) for stoneware and earthenware and in (e) and (f) for chinaware and subporcelain.

Presumably, the ceramic articles available in specified sets provided for in lower value brackets of new TSUS items 533.22 and 533.62 would be those which are the most directly competitive with domestic production and

*Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

[1] Of the nine individual articles described in TSUS item 533.71, steins and mugs are the only ones imported in commercially significant quantities. It would be desirable to provide for a new TSUS item 533.72 limited to steins and mugs, with the other named articles falling into proposed new TSUS item 533.74. However, such proposal is not being made for the reason that the proposal would require a change in the column numbered 2 rate of duty for such other named articles which change would require legislative approval.

would be made dutiable at higher rates than would the products provided for in the higher value brackets of TSUS items 533.24 and 533.64. The effectiveness of the new provisions would depend upon the extent to which realistic value brackets were established for these provisions taking into account the current and anticipated impact of inflation on U.S. markets for ceramic articles.

New TSUS items 533.37 and 533.74 would not only eliminate a number of tariff descriptions based upon the sizes and values of individual ceramic articles, but would provide an opportunity to establish for such TSUS item a rate of duty the same as would be made applicable respectively for the lower value brackets of new TSUS items 533.22 and 533.62. This arrangement would greatly simplify the nomenclature, facilitate customs administration and also would eliminate the "loopholes" inherent in the current permanent provisions.

CURRENT PERMANENT PROVISIONS FOR I. CHEMWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware.....	2.5% ad val.	15% ad val..
	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:		
533.14	Valued not over $1.50 per dozen articles.....	6% ad val.	15% ad val.
533.16	Valued over $1.50 per dozen articles.....	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
	Available in specified sets:		
533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30.....	5¢ per doz. pcs. + 14% ad val. (14.3 AVE)	10¢ per doz. pcs. + 50% ad val.
533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7.....	10¢ per doz. pcs. + 21% ad val. (21.8 AVE)	10¢ per doz. pcs. + 50% ad val.
533.26	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.....	10¢ per doz. pcs. + 21% ad val. (26.1 AVE)	10¢ per doz. pcs. + 50% ad val.
533.28	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12.....	5¢ per doz. pcs. + 10.5% ad val. 1/ (11.4 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

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CURRENT PERMANENT PROVISIONS FOR EARTHENWARE AND STONEWARE

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of fine-grained earthenware, etc. (con.):		
	Not available in specified sets:		
533.31	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	5¢ per doz. pcs. + 12.5% ad val. (13.6 AVE)	10¢ per doz. pcs. + 50% ad val.
	Other articles:		
533.33	Cups valued not over $0.30 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen	5¢ per doz. pcs. + 12.5% ad val. (19.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.35	Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen	10¢ per doz. pcs. + 21% ad val. (27.5 AVE)	10¢ per doz. pcs. + 50% ad val.
533.36	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen	10¢ per doz. pcs. + 21% ad val. (24.6 AVE)	10¢ per doz. pcs. + 50% ad val.
533.38	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen	5¢ per doz. pcs. + 11% ad val. 1/ (11.6 AVE)	10¢ per doz. pcs. + 50% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 21% ad val.)

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TENTATIVE NOMENCLATURE PRO. 1
FOR EARTHENWARE AND STONEWARE

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware	2.5% ad val.	15% ad val.
533.15	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt	6% ad val.	25% ad val.
	Of fine-grained earthenware (except articles provided for in item 533.15) or of fine-grained stoneware:		
	Available in specified sets:		
533.22	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $ 1/	1/	80c per doz. pcs. + 50% ad val.
533.24	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $ 1/	5c per doz. pcs. + 10.5% ad val.	70c per doz. pcs. + 50% ad val.
	Not available in specified sets:		
533.32	Steins and mugs	5c per doz. pcs. + 12.5% ad val.	10c per doz. pcs. + 50% ad val.
533.37	Other articles	1/	10c per doz. pcs + 50% ad val.

1/ The values and/or rates of duty to be determined by the President.

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CURRENT PERMANENT PROVISIONS FOR CHINAWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
533.41	Of bone chinaware	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val. (48.2 AVE)	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.63	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10	10¢ per doz. pcs. + 48% ad val. (50.6 AVE)	10¢ per doz. pcs. + 70% ad val.
533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24	10¢ per doz. pcs. + 55% ad val. (57.0 AVE)	10¢ per doz. pcs. + 70% ad val.
533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56	10¢ per doz. pcs. + 36% ad val. (37.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.68	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56	5¢ per doz. pcs. + 18% ad val. (18.3 AVE)	10¢ per doz. pcs. + 70% ad val.
533.69	Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $8	5¢ per doz. pcs. + 18% ad val. (18.9 AVE)	10¢ per doz. pcs. + 70% ad val.

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CURRENT PERMANENT PROVISIONS FOR C[illegible]AWARE AND SUBPORCELAIN

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1978)

SCHEDULE 5. - NONMETALLIC MINERALS AND PRODUCTS
Part 2. - Ceramic Products

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving, etc. (con.):		
	Of nonbone chinaware or of subporcelain (con.):		
	Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	22.5% ad val.	70% ad val.
533.73	Other articles: Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen	5¢ per doz. pcs. + 22.5% ad val. 1/ (24.7 AVE)	10¢ per doz. pcs. + 70% ad val.
533.75	Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $2.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen	5¢ per doz. pcs. + 30% ad val. 2/ (30.9 AVE)	10¢ per doz. pcs. + 70% ad val.
533.77	Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen	5¢ per doz. pcs. + 17.5% ad val. (18.0 AVE)	10¢ per doz. pcs. + 70% ad val.

1/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 48% ad val.)
2/ Provision subject to temporary tariff adjustment modification (10¢ per doz. pcs. + 55% ad val.)

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TENTATIVE NOMENCLATURE PROPOSAL
FOR CHINAWARE AND SUBPORCELAIN

Item	Articles	Rates of Duty	
		1	2
	Articles chiefly used for preparing, serving:		
533.41	Of bone china	17.5% ad val.	10¢ per doz. pcs. + 70% ad val.
	Of vitrified chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware	10¢ per doz. pcs. + 45% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware available in specified sets:		
533.62	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $___1/___	1/	10¢ per doz. pcs. + 70% ad val.
533.64	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $___1/___	5¢ per doz. pcs. + 15% ad val.	10¢ per doz. pcs. + 70% ad val.
	Household ware not available in specified sets:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes	22.5% ad val.	70% ad val.
533.74	Other articles	1/	10¢ per doz. pcs. + 70% ad val.

1/ The values and/or rates of duty to be determined by the President.

[FR Doc. 78-8872 Filed 4-3-78; 8:45 am]

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[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

Public Hearing

Pursuant to Public Law 92-463, notice is hereby given of a public hearing to be held by the Office of Management and Budget under the provisions of the Federal Reports Act of 1942 (44 U.S.C. 3506).

The purpose of the hearing is for the Office of Management and Budget to give interested persons an opportunity to be heard before determining whether or not the provisions for public reports contained in the proposed information collection protocol, "Generic Description of Data Collection for Sections 301, 304, 306, and 307 of the Clean Water Act of 1976" are necessary for the proper performance of the functions of the Environmental Protection Agency or for any other proper purpose.

The hearing, to be held in Room 2008, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. on May 8, 1978, at 9:30 a.m., will be open to public observation and participation.

Further information regarding the hearing may be obtained from the Regulatory Policy and Reports Management Division, Room 10201, New Executive Office Building, Washington, D.C. 20503, telephone 202-395-3773.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-11470 Filed 4-26-78; 8:45 am]

[3190-01]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

CERTAIN IMPORTED CERAMIC TABLEWARE

Public Hearings in Connection With Consideration of Articles for Modification or Continuance of U.S. Duties or Additional Duties

1. In accordance with section 133 of the Trade Act of 1974 (19 U.S.C. 2153), notice is hereby given of public hearings to be held by the Trade Policy Staff Committee (TPSC) in connection with the current consideration by the TPSC of possible modification or continuance of U.S. import duties, or possible additional import duties, for certain imported ceramic tableware items. These hearings will be held on May 23, 1978, in room 730 at the Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C. 20506. The hearings will begin at 10 a.m. Information regarding the hearings may be obtained from Mrs. Carolyn Frank, Secretary, Trade Policy Staff Committee, at the address given above, and at telephone 202-395-7210.

2. In the FEDERAL REGISTER of March 14, 1978, the Special Representative for Trade Negotiations provided the following notice:

In conformity with section 131 of the Trade Act of 1974 (19 U.S.C. 2151), notice is hereby given of articles that may be considered for modification or continuance of U.S. duties, or additional duties. These articles are set forth in list I and list II below.

Some of the articles in list I and parts of some of the items in list II (those that are marked with an asterisk) currently are subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)). In accordance with section 127(b) of the Trade Act of 1974 (19 U.S.C. 2137), the President is reserving such articles, or parts of items, from international trade negotiations as long as any import relief action is in effect with respect to them. This notice of the possible future consideration of such articles or parts of items in international trade negotiations, and the request for advice of the U.S. International Trade Commission referred to in paragraph 3 below, are being given to prepare for the possibility of negotiations with respect to them should the import relief action terminate.

The U.S. International Trade Commission is being requested to furnish its advice, pursuant to section 131 of the Trade Act of 1974, as to the probable economic effects of: (a) Modifications or continuances of existing import duties for the articles in list I; and (b) increases in existing duties, incidental to modifications in the tariff nomenclature, for the items in list II.

3. Public hearings in connection with the possible modifications or continuances of existing import duties for the articles set forth in list I, and regarding the possible increase in existing duties incidental to modifications in the tariff nomenclature for the items in list II, will be held at the time and place described in paragraph (1) above.

4. Persons requesting to appear at the hearings should advise the Secretary of the Trade Policy Staff Committee, in writing, at the address given in paragraph (1), not later than the close of business on May 17, 1978. Briefs or other written material may be submitted in 20 copies in support of, or in lieu of, an oral presentation at the hearings, but are not required. There is no prescribed format for such written submissions, but they should: (a) Clearly designate on the first page the name and address of the persons submitting the brief, and (b) present in nonconfidential form a summary statement of the views submitted. Persons making such submissions are requested to designate clearly each page for which they request confidential treatment and so indicate such pages on the cover of submissions. Any material for which confidential treatment is requested, and for which the TPSC determines that it cannot accord such treatment, will be returned to the person who submitted it.

WILLIAM B. KELLY, Jr.,
Chairman,
Trade Policy Staff Committee.

LIST I

Articles which will be considered for modification or continuance of the existing[1] U.S. duties, or additional duties, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act.

TSUS Item[2] and Articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.18 of the Tariff Schedules of the United States) or of fine-grained stoneware:

Available in specified sets:

533.28 pt.* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12 but not over $22.

Not available in specified sets:

533.31 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.33 pt. Cups valued not over $0.50 per dozen; saucers valued not over $0.30 per dozen; plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen; plates over 9 but not over 17 inches in maximum diameter and valued not over $1 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $1 per dozen.

533.35 pt. Cups valued over $0.50 but not over $1 per dozen; saucers valued over $0.30 but not over $0.55 per dozen; plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen; plates over 9 but

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[1]The term "existing" is used herein as defined in section 601(7) of the Trade Act: "The term 'existing' means: (A) When used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of the schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A)."

[2]Tariff Schedules of the United States (19 U.S.C. 1202).

*These articles are currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $1 but not over $2 per dozen.

533.36 pt. Cups valued over $1 but not over $1.70 per dozen; saucers valued over $0.55 but not over $0.95 per dozen; plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $2 but not over $3.40 per dozen.

533.38 pt.* Cups valued over $1.70 but not over $3.10 per dozen; saucers valued over $0.95 but not over $1.75 per dozen; plates not over 9 inches in maximum diameter and valued over $1.55 but not over $2.85 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 but not over $4.85 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $3.40 but not over $6.20 per dozen.

Of nonbone chinaware or of subporcelain:

Household ware not covered by item 533.63, 533.64, 533.66, 533.68, or 533.69 of the Tariff Schedules of the United States:

533.71 pt. Steins and mugs, if valued not over $3.60 per dozen.

Other articles:

533.73 pt.* Cups valued not over $1.35 per dozen; saucers valued not over $0.90 per dozen; plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued not over $4.50 per dozen.

533.75 pt.* Cups valued over $1.35 but not over $4 per dozen; saucers valued over $0.90 but not over $1.90 per dozen; plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen; and creamers, sugars, vegetable dishes or bowls, platters or chop dishes, butter dishes or trays, gravy boats or gravies and stands, any of the foregoing articles valued over $4.50 but not over $11.50 per dozen.

LIST 11

Articles which may be considered for increases in existing duties, to the extent permitted by sections 101(a) and 101(c) of the Trade Act, incidental to modifications in the tariff nomenclature.

TSUS Item and Articles

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11 Of coarse-grained earthenware, or of coarse-grained stoneware.

Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:

533.14 Valued not over $1.50 per dozen articles.

533.16 Valued over $1.50 per dozen articles.

Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:

Available in specific sets:

533.23 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is not over $3.30.

533.25 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $3.30 but not over $7.

533.26 In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $7 but not over $12.

533.28* In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C, part 2 of schedule 5 of the Tariff Schedules of the United States is over $12.

Not available in specified sets:

533.31 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.

Other articles:

533.33 Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.

533.35 Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.

533.36 Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen.

533.38* Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen.

533.41 *Of bone chinaware.*

Of nonbone chinaware or of subporcelain:

533.51 Hotel or restaurant ware and other ware not household ware.

Household ware available in specified sets:

533.63 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is not over $10.

533.65 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $10 but not over $24.

533.66 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $24 but not over $56.

533.68 In any pattern for which the aggregate value of the articles listed in headnote 2 (b) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $56.

533.69 Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2 (c) of subpart C, part 2 of schedule 5 of the Tariff Schedule of the United States is over $8.

Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:

533.71 Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.

Other articles:

533.73* Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.

533.75* Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen.

533.77 Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen.

[FR Doc. 78-11352 Filed 4-26-78; 8:45 am]

*Part of this item is currently subject to import relief provided initially pursuant to section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981) and extended pursuant to Section 203(h)(3) of the Trade Act of 1974 (19 U.S.C. 2253(h)(3)).

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Mr. KOSSEL. I just would like to add a comment or two.

My client is not denied the utility of modifying the arbitrary and obscure distinctions pertaining to ceramic dinnerware which were contained in schedule 5 of the tariff schedules, on the contrary it believes that the commercially vital distinction between earthenware/stoneware on the one hand and nonbone China and subporcelain on the other made little commercial sense and resulted in unnecessary discrimination.

We are also not here to object to the substance of the nomenclature in modifications the exact nature of which we cannot even know in any case because the matter is confidential although the information that we do have available indicates to us that the classifications are not to be based solely upon the end use of the product which seems to me by its very nature is discriminatory and lends itself to fraud. We do believe, however, that as a party whose business will be devastated by incidental increases in the tariff rate amounting to 400 percent we should have been permitted a genuine opportunity to shape the end result of the nomenclature modifications.

We do believe that the Federal Register notices were in no way calculated to inform American interests that tariff rate increases from 11 to 48 percent were contemplated. I can assure you, Mr. Congressman, that if such a result in any way would have been read into this notice that there would have been strong and vigorous representation on the part of not only the importers of ceramic dinnerware but of the primary end uses—hospitals, schools, restaurants, airlines, nursery homes, hotels. The fact that none of these parties were present itself speaks to the adequacy of the notice.

My client has a compelling case showing that producers of dinnerware have no such need for such exorbitant protection that they are profitable, and even now that the production combined with the imports cannot meet U.S. demands we are not here to argue that either. What we would object to is that the merits of those contentions were never heard, that no genuine opportunity to put our thoughts forward was supplied.

Mr. Congressman, we believe that the situation is correctable and that it can be rectified without interfering with the MTN trade package or the implementing legislation. We are willing at the convenience of any members of the committee or of Congress to meet with them and discuss concrete proposals which can provide the procedural due process that is owing and where we can discuss this issue and where solutions can be set forth.

In this connection I might suggest that we would fully support a provision that would be added to the implementing legislation which would provide the President with a residual authority to permit further reductions in tariff rates and that a clause be added to that provision which would give preference to those parties who were seriously injured either by accident or design as a result of the efforts of the Special Trade Representative to meet the legitimate goals of the trade negotiations.

That concludes my statement.

Mr. VANIK. Thank you very much.

As you know, we cannot really do very much on the tariff codes but I am certainly hopeful that we can find some way to provide

the relief you seek. Our staff will be available throughout these hearings. I would be pleased if you would carry on further colloquy with some of the members of the staff and address yourselves to this issue because Mr. King was here the other day and testified. You may have a special problem and you may want to discuss it with staff.

Mr. Moore?

Mr. MOORE. Thank you, Mr. Chairman.

We have heard testimony yesterday on this subject from the other side.

Mr. KOSSEL. Yes, sir.

Mr. MOORE. What is basically the difference as you understand between stoneware and chinaware? It seems to be we treat them as one at the higher tariff rate rather than two different things, one at the lower rate and one at the higher rate. So what is the difference between the two? I could not tell.

Mr. KOSSEL. I am not a technician or an engineer. I don't know the technical distinction. My understanding is that it has to do with the ability to absorb. I understand that under the old tariff schedules the distinction was based on the degree of translucence. Now my client does not disagree that those distinctions were arbitrary and resulted in discrimination. They do not disagree that there was a need to modify the nomenclature in those tariff schedules. The are not particularly happy with the end result of those modifications as we understand them because as I understand them the tariff duty rate now is based upon the end use of the product.

Well, think of that. That by its very nature is discriminatory in the first place and in the second place it is a system that is designed for fraud because how can customs verify at the time of importation what the end use of that product is going to be? So I don't think that what they did come up with is particularly that per se. Aside from that however, we don't really care to argue that issue. That is a result that has been concluded and we don't feel that we can do anything about it at this point but what we do think we can do something about is the unnecessary result, the incidental result of a 400-percent duty increase on the products that we imported to this country, a duty increase that will put us at a 48.5 percent competitive disadvantage and which will devastate and ruin our business.

Mr. MOORE. Basically then what you have just said is that you agree there should have been a clarification of the nomenclature of these items that were coming in, that you object to them coming into a higher rate, they should have come into a lower rate between two different types of nomenclature.

Mr. KOSSEL. Yes, sir. Our clients have proposed on a number of occasions that all of these products contain the same duty rate, that there be a uniform duty rate, that there is no real commercial distinction between the products.

Mr. MOORE. Thank you.

Thank you, Mr. Chairman.

Mr. VANIK. Thank you very much.

The record will be open through May 2 for any other material that you and other witnesses may want to put in.

On Monday morning at 10 o'clock this committee will commence hearings on the beef bill which will take all day on Monday and perhaps into the night. Tuesday we will begin at 10 o'clock with the markup session on the MTN and at 2 o'clock on Tuesday we will break in on that process to mark up the beef bill. On Wednesday, Thursday, and Friday we hope to complete all our work on the markup of the MTN.

The committee will now stand in adjournment until 10 o'clock on Monday.

[Whereupon, at 1:55 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

JOINT STATEMENT OF RETAIL CLERKS INTERNATIONAL UNION AND AMALGAMATED CLOTHING & TEXTILE WORKERS UNION

I. INTRODUCTION

This statement is submitted on behalf of members of the Retail Clerks International Union and the Amalgamated Clothing and Textile Workers Union whose workers in the footwear industry are concerned with the pending legislation to implement the Multilateral Trade Negotiations. The domestic nonrubber footwear industry has been faced with injurious competition from imports for more than a decade. A decade of various governmental relief programs has still left the import problem largely unresolved. We are hopeful that legislation to implement the MTN will result in a more effective mechanism to deal with ever increasing imports of nonrubber footwear, particularly imports subsidized by foreign governments. Although nonrubber footwear has been exempt from tariff cuts in the MTN because this industry received import relief under the "escape clause" of the Trade Act of 1974, shoe workers have suffered from the consequences of the movement to free trade because imports are concentrated in the labor-intensive industries.

We should like to present to the Subcommittee a brief discussion of the current state of the domestic industry and the impact of imports on our workers and firms. In addition, we should like to examine the Administration's attempts at import relief for the footwear industry and the continuing problems with the present import relief program. We then present our views on the legislation now under consideration to implement the MTN package.

II. THE NONRUBBER FOOTWEAR INDUSTRY AND IMPORT IMPACT

There have been serious reductions in the number of firms and workers in the domestic nonrubber footwear industry since the 1960's. The number of plants operating in the industry has declined dramatically—by almost one-third—from 1967 to the present. Since 1968, production has declined without interruption except for one year (1976). Production in 1978 was actually the lowest in 43 years.

Concurrently, employment has followed a downward trend. Between 1968 and 1978 there was a displacement of 68,300 production workers and an overall reduction in total employment of some 77,600 employees, representing a decrease of a third of the labor force in a decade.

Imports of nonrubber footwear have continued upward, relentlessly capturing an ever-increasing share of the domestic market. From 1968 to 1978, imports rose from 175 to 374 million pairs and imports as a percent of the domestic market rose from 21.5 to 49.4 percent in this period.

A significant feature of the avalanche of imports has been a shifting of foreign source supply with substantial amounts of nonrubber footwear increasingly coming from such low-labor cost countries as Taiwan, Brazil, Hong Kong, Argentina, Korea, India, Romania, and Poland, with Korea becoming the third major supplier after Taiwan and Italy beginning in 1976.

Labor input plays a major role in the production of nonrubber footwear and, therefore, wage rates constitute a major cost variant in production costs. In the United States, labor cost, in fact, represents over 30 percent of the final cost of production. Well over 40 percent of domestic production costs also is represented by the input of raw materials.

The significance of heavy labor-intensiveness and reliance on domestic raw materials is that U.S. nonrubber footwear production costs are substantially above foreign production costs, especially in the developing countries where wage rates are at

exceedingly low levels and where overall production costs for export markets may benefit from direct or indirect government subsidy programs.

In its escape clause report to the President dated February 8, 1977, the International Trade Commission estimated that in 1975, hourly earnings in Korea and Taiwan averaged 14 percent of the U.S. rate. A Bureau of Labor Statistics study showed that estimated hourly compensation (including fringe benefits) for production workers in leather products industries in mid-1976 was $4.25 in the U.S.; $.63 in Brazil; $.46-.50 in Korea; and $.47-.49 in Taiwan.

Such disparities, reflecting higher relative costs of U.S. vis-a-vis foreign labor, leather and other raw material inputs, have enabled foreign suppliers to capture an ever increasing share of the domestic market. Meanwhile, the domestic nonrubber footwear industry has experienced a continued decline in production and employment.

III. IMPORT RELIEF PROGRAM PROVES UNSATISFACTORY

The footwear industry has been especially concerned about the effects of import competition on domestic production and employment since 1967 when imports of nonrubber footwear exceeded 100 million pairs for the first time and reached 18 percent of U.S. consumption.

Several investigations into the economic state of the footwear industry have been conducted by the International Trade Commission (and former Tariff Commission) since 1967. In April 1976, President Ford opted for expedited adjustment assistance for firms and workers in an "escape clause" case under the Trade Act of 1974 rather than provide import relief as recommended by the ITC. Imports continued to increase, while domestic production and employment continued downward. Firms and workers found adjustment assistance totally unsatisfactory. It has provided no solution to unemployed workers from this industry.

The most recent ITC investigation, concluded in February 1977, resulted in a second unanimous finding of injury by the Commission. During the hearings leading up to the determination, industry representatives urged a global system as the only effective form of import relief for the footwear industry. Expert witnesses estimated that an effective five-year program of import relief could increase domestic production by 100 million pairs annually. This would bring output back to a level experienced just a few years ago. Moreover, the industry felt that the employment effects of such increased production would be most dramatic, resulting in an additional 40 to 60 thousand jobs, including jobs in supplier industries. Given the locale of most shoe plants and supplier establishments, the majority of these jobs would represent additional jobs in rural or semi-rural areas.

A majority of the Commission recommended a tariff-rate quota as the import remedy in this case. One of the Commissioners, who offered an alternative tariff remedy, also estimated substantially increased domestic production and employment levels if import relief should be granted.

The import relief remedy chosen by President Carter in April 1977 was that of orderly marketing agreements (OMA's with only two principal foreign suppliers, i.e., Taiwan and Korea. The agreements, implemented on June 22, 1977, were on a four year basis with quota levels containing some built-in growth during the life of the agreements.

To a limited extent, the OMA's were effective—imports from the two controlled countries were reduced from 225 million pairs in 1977 to 148 million pairs in 1978. However, the overall effect of the OMA's as an import relief mechanism proved to be highly unsatisfactory. Imports from uncontrolled countries rose dramatically from 143 million pairs in 1977 to 226 million pairs in 1978, and were well above the 1976 levels from uncontrolled countries. The net result was another increase in imports of nonrubber footwear from 368 million pairs in 1977 to 374 million pairs in 1978. Import penetration also continued to increase, and reached a record 49.4 percent in 1978.

At the time of President Carter's grant of import relief for the shoe industry in April 1977, there were 159,000 employees in the industry. In December 1978, there were only 152,000. Indeed, for the full year 1978, average employment at 155,800 employees was the lowest recorded level for the nonrubber footwear industry. Reduced employment in 1978 likewise reflected a level of production which was the lowest in 43 years.

These figures concern the industry and its workers, for they show the OMA's have fallen far short of their intended objectives to give the industry a necessary respite against further import surges and an opportunity to adjust to import competition.

IV. COUNTERVAILING DUTY ACTIONS TO OFFSET SUBSIDIES HAVE ALSO BEEN LARGELY UNSUCCESSFUL

It should also be noted that efforts by the domestic industry over a period of years to offset foreign government subsidies on footwear exports to the U.S. have also been largely unsuccessful. Countervailing duty petitions with regard to footwear from Korea and Taiwan have led to de minimis findings because of various questionable offsets to subsidies calculated by Treasury. A petition with regard to Uruguayan footwear resulted in a waiver of the countervailing duty in January 1978, a revocation of the waiver in November 1978 when Treasury discovered it had made an error, and the termination of the countervailing duty in March 1979 based in part on Uruguay's termination of a key subsidy on exports to the U.S. and a doubling of the subsidy on exports to other countries. Small countervailing duties are in effect on footwear from Spain, Brazil, and Argentina. In the case of Spain the countervailing duty originally established some years ago was reduced suddenly without public notice in June 1978, only to be increased again several months later when Treasury realized it had erred in reducing it. In the case of Brazil, the industry had to sue the Secretary of the Treasury in Federal Court to get action. In the case of Argentina, Treasury initially rejected a countervailing duty when the Argentine Government terminated its footwear subsidies and then had to reinstitute the investigation when Argentina reneged on its commitment. The final determination in the Argentine footwear case took 11 months longer than the statutory deadline specified in the Trade Act of 1974.

V. CONCERNS REGARDING IMPLEMENTING LEGISLATION FOR MTN PACKAGE

We are concerned that the legislation being drawn up at present to implement the MTN package should provide for effective redress of unfair trade practices. Based on the foregoing analysis of the impact of imports on the footwear industry and its workers, we wish to call the following specific points to the attention of the Subcommittee.

(1) *Definition of injury.*—An effort is being made to require a stiffer test of injury in the countervailing and antidumping statutes than presently exist under the antidumping statute. Inclusion of a standard of material injury within the framework of the new countervailing duty statute would introduce an unreasonably stiff injury requirement to gain relief from a subsidy which is, after all, a clear unfair trade device. We do not believe that the injury test should be frivolous or that the threshold of injury should be inconsequential. But we do strongly believe that now that an injury test has been imposed as a requirement before a countervailing duty can be levied, the threshold of injury should not be more stringent than the one that has been in use under the antidumping statute since the Trade Act of 1974 was enacted.

(2) *Termination of countervailing duty cases on basis of certain assurances.*—Apparently consideration is being given to permit certain assurances from foreign entities with regard to price and with regard to quantitative limitations on exports as bases for terminating countervailing duty proceedings. We believe such assurances have no place in a countervailing duty statute.

Furthermore we understand that the price assurances being considered in the implementing legislation would be those which would offset the injury and not offset the amount of subsidy. We think this would be most unfortunate. It will be extremely difficult to use any objective criteria to determine whether price assurances are adequate to offset the injury. On the other hand price assurances that would offset the amount of subsidization is a more easily determinable concept.

Assurances with regard to quantitative limitations are equally objectionable in the countervailing duty statute. Would these quantitative limitations be voluntary restraint arrangements or orderly marketing agreements? Would U.S. Customs administer these limitations? Who would determine the level at which the quantitative assurances should be set?

Clearly the wide discretionary authority that would be involved in provisions for assurances would be nothing more than an extension of the waiver authority which Congress has recently extended to the end of September 1979, the same kind of discretionary authority that has been consistently abused by the Treasury Department.

(3) *Filing fee.*—We believe it is unconscionable for any petitioner to be required to pay a fee to the Federal Government to secure the relief that may be prescribed under a statute. We understand that the Senate Finance Committee has proposed that there be a $5,000 filing fee to accompany countervailing duty petitions and that the Ways and Means Committee has considered a filing fee of $1,000. Very clearly the posting of a filing fee would effectively inhibit future efforts to secure redress

from foreign subsidy practices. Ample authority exists for the administering agency not to accept a frivolous petition and no filing fee should be required to accomplish that purpose.

(4) *Continued role of Treasury Department.*—The record of the poor performance by the Treasury Department under the present countervailing duty statute makes it clear that the Treasury Department is not philosophically in tune with the aims of the countervailing duty statute. That agency incorrectly views the countervailing duty as a protectionist restriction to trade rather than as a device to insure fair trade. Treasury has mismanaged the countervailing duty program and we believe it would be a serious mistake to continue to entrust the implementation of the countervailing duty statute to the hands of that agency. We recommend instead that this function be transferred to a new Department of Trade and, in the interim before such a department is created, we would recommend that this function be transferred to the Office of the Special Trade Representative or to the Department of Commerce.

(5) *Export restrictions should be countervailable.*—If a foreign government forbids or prohibits the export of an internationally traded raw material while at the same time the United States Government does not do the same, the effect of this action is to depress the price of such raw materials in the foreign country, giving foreign manufacturers a competitive advantage with regard to their raw material that is in effect a subsidy. In the case of hides and skins, the raw material for leather footwear, such restrictive action is pursued by the governments of Brazil, Uruguay, India, Argentina and Colombia. The net effect is that leather product manufacturers in those countries are able to effectively under price U.S. leather product manufacturers in shipments to this market. Unfortunately Treasury does not accept this distorting tactic as a subsidy. The new countervailing duty legislation should make it clear that such export restrictions are countervailable.

(6) *Closing a loophole.*—Another serious loophole exists in cases where a foreign government eliminates its subsidies on exports to the United States but increases its subsidies on exports to other countries (see above). This has occurred recently in the case of the Uruguayan Government which eliminated its tanner subsidy on the export of leather products to the United States, but doubled such subsidy on exports of leather products to all other countries. The effect of such action has been to give the Uruguayan exporter the same subsidy payments, permitting no changes in unit prices in Uruguayan leather product exports. Yet Treasury has found such a practice not to be countervailable under U.S. law. We recommend strongly that in the implementing legislation this matter be dealt with to close a serious loophole in the countervailing duty statute.

(7) *New negotiating authority.*—It has come to our attention that the Senate Finance Committee has tentatively approved a measure to grant the Executive Branch a new five-year authority to cut tariffs and allow for indefinite authority in negotiating non-tariff barriers, the latter on the basis of the so-called "fast track" procedure.

In regard to cutting tariffs, we think any granting of such authority at this time would be premature. Such considerations should be made only after the results of the Tokyo Round have been recorded and their implications fully understood. Even then measures which grant such authority should be duly considered in Congress.

We object to the inclusion of these provisions in the MTN package. Proposals to allow tariff cutting or negotiating authority in non-tariff barriers should be considered in Congress through the normal legislative process.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., April 20, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your press release of April 6, inviting comments on the Multilateral Trade Negotiations and the necessary implementing legislation, the American Farm Bureau Federation submits the following comments for inclusion in the printed record.

The code provisions of importance to U.S. farmers are:

1. The Code on Subsidies and Countervailing Duties,
2. The Standards Code, and
3. The Code on Safeguards (not yet concluded).

We offer the following specific comments on sensitive areas of these codes and the implementing legislation:

1. *Subsidized prices.*—Adequate provisions should be made in the code and in implementing legislation to prevent the undercutting of market prices. A country should have the right to seek and obtain a remedy as quickly as feasible if its domestic prices are undercut by subsidized imports.

The possibility of price undercutting under the increased cheese quota has been of concern to American dairy farmers. We believe that the remedy for price undercutting which was recommended and described in your subcommittee's press release of April 6, if implemented, would address adequately any possibility of price undercutting in the case of cheese imported under the quota.

In addition, adequate provisions need to be made to address the serious problems of sales diversion and disruption of trade in third markets by subsidized exports, as in the current case of subsidized EC wheat.

We are informed by the trade negotiators that the new subsidies/countervailing duty code will bring discipline to this problem. Farm Bureau would have preferred a provision which eliminated the use of export subsidies on agricultural products. However, we have been told that this was an impossibility since it would have meant, in essence, the dismantling of the European Community's Common Agricultural Policy (CAP). Thus, acceptance of a discipline on export subsidies, rather than an outright attack on the use of subsidies, was the only choice with a chance for success.

We are troubled, however, by reports that some EC ministers are saying that acceptance of a discipline under the new subsidies code "legitimizes" the use of export subsidies by the EC and, consequently, the EC's Common Agricultural Policy. It is essential that we not give the impression that export subsidies and the variable levies of the CAP are to become a part of a permanent approach to world trade. We remain dedicated to the elimination of export subsidies. Therefore, we would like to see a strong statement of policy in the implementing bill which would dispel the notion that acceptance of a subsidies discipline legitimizes a subsidy. We remain hopeful that, in future negotiations, changes can be obtained in the European Community's Common Agricultural Policy which will break down the protectionism that exists there.

In addition, while we are opposed to export subsidies, we believe it is important that the U.S. government retain the legal right to subsidize U.S. exports if the disciplines of the new subsidies code break down after their implementation.

2. *Health and inspection standards* should be used only to insure wholesome and sanitary products. The code and implementing legislation should, to the fullest extent possible, preclude their use to restrict trade.

3. *Injury test.*—We prefer the present system of not having to prove injury; however, we understand that it was necessary to accept an injury test. The code and the implementing legislation should define injury, with reference to agricultural products, as interference with domestic agricultural support programs or other interference with the orderly marketing of agricultural products. It is most important that implementing legislation not cripple the operation of Section 22 of the Agricultural Adjustment Act, as amended, which has been vital to the well-being of U.S. agriculture.

4. *Time limits on countervailing and antidumping investigations.*—We believe that, in the past, the time between the filing of complaints and the taking of appropriate action has been too long, particularly in cases where a subsidy is easily identified and the threat of injury is apparent. We are not in a position to recommend a precise time limit. However, we feel that the specified time limits should be as short as feasible.

Expedited process for relief from injury.—Perishable Commodities: As indicated earlier, the Code on Safeguards has not been completed. Nevertheless, we believe that it would be prudent to amend the "escape clause" of the Trade Act of 1974 to provide faster relief procedures for injury caused by the importation of perishable commodities.

Section 301 procedures.—We suggest that the procedural requirements for complaints filed under section 301, as outlined in your subcommittee's release of April 6, be modified by addition of the words underscored below:

"5.b. Initiation of procedures—STR must respond to the complaint within 45 days by either beginning a formal section 301 proceeding, or by publishing the substantive reasons as to why the case is lacking in merit and thus will not be pursued."

Mr. Chairman, you also invited comment on the implications of "conditional, nondiscriminatory (MFN) treatment" for the trading system. We believe that U.S. farmers continue to lose export sales in a number of important markets because certain nations do not have most-favored-nation status and the right to receive export credits. Farm Bureau policy on this subject is as follows:

"We favor the sale of American farm and industrial products in world markets wherever this will advance the best interest and security of the United States.

"The U.S. should approve most-favored-nation (MFN) tariff treatment for any countries that agree to reciprocate and conduct themselves in accordance with the General Agreement on Tariffs and Trade."

We will appreciate your consideration of these comments.

Sincerely,

JOHN C. DATT,
Director, Washington Office.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 9, 1979.

Hon. AL ULLMAN,
Subcommittee on Trade, Longworth Building,
Washington, D.C.

DEAR AL: I have taken the liberty to enclose a statement from Dan Younkins concerning the "dumping" of precious metal fine wire in the United States, which I understand was the subject of a recent hearing before the Trade Subcommittee. Mr. Younkins is President of an industry in my district effected by this "dumping."

Any consideration you would give Mr. Younkins and the fine wire industry concerning their plight would be greatly appreciated.

With best wishes,

Sincerely,

RICHARD SHELBY.

Enclosure.

STATEMENT OF DANIEL YOUNKINS II, PRESIDENT, AMERICAN FINE WIRE CORP., SELMA, ALA.

The American Fine Wire Corporation is one of about ten U.S. companies that produce fine (small) wire from precious metals and alloys (eg. gold, platinum) for use in the electronics, biomedical, and defense industries. None of these U.S. companies is large by the standard number of employees—the range is perhaps as small as fifteen to the largest of about seventy. Our company has twenty-seven employees. However, there is a very small man/machine ratio to the total selling price of product due to the material in the product and the nature of its production.

In 1978 the combined production of these companies was in excess of one billion feet of wire with a market-place value of $50 to $65 million. The U.S. production of such wire has had modest growth in the past few years, yet selling price has declined by 50% and more. This is not due to any breakthroughs in manufacturing technique—today, wire is made much as it was sixty years ago when such wire was used in radio-type vacuum tubes.

BACKGROUND SITUATION

As in any manufacturing process, product selling prices is composed of three elements—raw materials, labor, and overhead and profit.

(1) *Raw Materials.*—Although precious metal prices vary from day to day throughout the world, they are commodities and have a stable price at any point in time. (i.e. no company would sell gold for $200 per ounce when the world price was $250 per ounce).

(2) *Labor.*—As I am positive you know so well, the Japanese labor rates in skilled and semi-skilled manufacturing catagories are equal to or greater than comparable U.S. wage rates. The Sunday, April 29, 1979 edition of the Atlanta Journal/Constitution carried a feature article on this subject. Of major industrial nations of the world, the Japanese manufacturing labor rates are highest at an average of about $6.86 per hour. The United States ranked sixth at about $5.50, and behind such other countries as West Germany, Sweden, and Switzerland. In the case of American Fine Wire Corporation, our labor rates in Selma, Alabama are less than average U.S. rates.

(3) *Overhead and Profit.*—In our industry, all of the companies are small, privately held firms. There are exceptions where there are fine wire divisions of larger companies—these divisions are comparable in size to the individual companies. Overhead is consistently low and profits are meager to non-existant. Competition is as keen as in any high technology industry with our number of suppliers.

CURRENT SITUATION

Occurring in the fine wire market-place is:

(1) Non-American competition is selling their fine wire products in the U.S.A. for prices 20 to 30 percent below their costs. I have been shown and discussed price quotations from Far East fine wire producers with a very large U.S. Semi-conductor producer. In one case, the Far East products price was less than our unburdened, labor cost, exclusive of raw material, overhead, and any profit. This is a pure case of "dumping."

(2) Non-American producers are also selling their fine wire products to U.S. firms at electronic assembly facilities of these firms in the Far East. This wire then enters the U.S.A. assembled in an electronic device, circuit, or finished consumer product. Much data has been gathered by various U.S. firms (ie-integrated circuit manufacturers, calculator/watch producer, computer peripheral manufacturer) describing situations where off-shore competition sells their product to the U.S. owned, foreign based facility and the sub-component parts re-enter the U.S. This is nothing more than "dumping" with a circuitous route.

(3) Current import regulations impose a 20 percent import duty on the foreign gold wire content of devices entering the U.S.A. We are convinced and we are told that, in many instances, this duty is being avoided.

These products are being "dumped" on the U.S. market and represent a major unfair competitive advantage for foreign companies. This, so obviously, can and is having a devastating effect on these small U.S. companies. Several are being forced to abandon these markets and are threatened with extinction. Articles in the March 26, 1979 issues of Electronic News and Time Magazine outline fully how this activity is hurting the Electronics Industry of the United States.

A full and flourishing fine wire industry in American is essential to our well-being as a country. If the fine wire manufacturing capability is not kept strong we, as a country, could lose much of our self-sufficiency in the electronic industry which is so vital to our national defense.

Your understanding and cooperative assistance in bringing this situation to light is most important. Moreover, when legislation is drafted, and eventually enacted, it should include whatever protection is possible for this small, yet critical, portion of American manufacturing capability.

STATEMENT OF AMERICAN TEXTILE MANUFACTURERS INSTITUTE, WASHINGTON, D.C.

The American Textile Manufacturers Institute (ATMI) supports the national trade policy within the context of the Administration's Textile Program as announced by President Carter at the White House on March 22, and attached herewith as Annex A. In examining the results of the Multilateral Trade Negotiations (MTN) published thus far, we have developed the following suggestions with respect to the implementing legislation now being developed by this Subcommittee:

1. Subsidies code

We support the recommendations made by Mr. Charles R. Carlisle in his testimony of April 23 before this Subcommittee. ATMI is a member of the Ad Hoc Subsidies Coalition for which he spoke.

2. Government procurement code

As provided in the Administration's Textile Program, textiles and clothing covered by the "Berry Amendment" to the Defense Department Appropriation Act are to be excluded from the Code's coverage. Thus Defense will continue to purchase textiles and clothing solely from United States sources. Both the Code and the implementing legislation should spell this out very specifically.

3. Safeguards code

This Code has not been completed at Geneva; however, we understand that negotiations are continuing. Such a Code, if completed, must in no way impinge upon the GATT Multifiber Arrangement (MFA).

4. Counterfeiting code

This Code also has not yet been completed. We believe it essential to retain the draft provision requiring confiscation of counterfeit goods.

5. Tariff snapback

The new tariff rates agreed at Geneva have not yet been published but we understand that certain United States textile and apparel duties have been reduced. The Administration's Textile Program contains a commitment (Annex A, page 3)

that a "snapback clause, effective during the implementation of the MTN tariff reductions, which will restore textile and apparel tariffs to their pre-MTN levels if the MFA does not continue to be in effect or a suitable substitute arrangement is not put into place, will be adopted as part of the implementation of the MTN tariff reductions." Precise language to accompany this should be part of the legislation as well as of the GATT Protocol.

6. Extended authority

The Senate Finance Committee on April 5 announced tentative agreement to include in the MTN implementing legislation an extension of the President's negotiating authority granted by the Trade Act of 1974. ATMI strongly opposes any extension of the President's negotiating authority beyond its scheduled expiration date, January 2, 1980. Tariff reductions negotiated under the Trade Act of 1974 cover, it is understood, almost all of the products imported into the United States which are subject to duty. These reductions which are, it is reported, slated to be implemented over a period of up to 10 years, were negotiated in the context of the general economy, as well as the health of the domestic industries involved. We respectfully submit that it would be inappropriate to negotiate additional reductions in duties before the full effect of the reductions already negotiated can be measured. Accordingly, we urge that the Congress not extend the President's negotiating authority given under the Trade Act of 1974.

ADMINISTRATION TEXTILE PROGRAM

Pursuant to the President's statement of November 11, 1978

The Administration is determined to assist the beleaguered textile and apparel industry and is committed to its health and growth. This industry provides employment for almost two and one-half million people, the largest single source of jobs in our manufacturing economy, and provides our consumers with a reliable, competitively priced, vital source for all the many vital clothing, medical, military, industrial and other products of its modern technology.

In 1978, U.S. imports of textiles and apparel amounted to seven billion dollars. U.S. exports amounted to only 2.6 billion dollars, a differential of almost five billion dollars. This situation, with trade restrictions abroad and our lack of success in exporting, contributed to unemployment at home. It must be improved in the national interest. Accordingly, today, the Administration is announcing a new approach to deal more effectively with the serious problems that face this industry.

GLOBAL IMPORT EVALUATION

The United States Government will, on a continuing basis, conduct a global import evaluation, consisting of a continuous evaluation of textile and apparel imports, from all countries, category-by-category. The purpose will be to analyze the impact of textile and apparel imports from all sources in the context of U.S. market growth and conditions in the industry. The results of this analysis will be evaluated for their negative and positive consequences for trade measures, in the light of U.S. rights under the Multifiber Arrangement (MFA).

A member of the Cabinet, pursuant to a directive from the President, will have personal responsibility for overseeing the global evaluation program, in cooperation with the agencies having responsibilities with respect to textile trade, and will report quarterly to the President on its implementation. The program will begin not later than March 31, 1979.

IMPORT CONTROLS

Based on the continuous global import evaluation of textile and apparel imports from all countries, category-by-category, the following actions will be taken:

1. Import surges that cause market disruption, as defined in Annex A of the MFA, will be aggressively controlled, whether they occur from one source or many, under agreements or otherwise. In all of the import control actions, special attention will be paid to the most import-sensitive or import-impacted product categories.

2. There will be aggressive and prompt enforcement of U.S. international rights, including the use of MFA Article 3, and Article 8 (involving circumvention) where the criteria of these articles are met.

3. Understandings with respect to existing agreements with the leading major exporting countries will be reached to tighten controls for the remaining life of these agreements, and to eliminate threats of further market disruption through import surges which arise from one agreement year to another due to: (i) the use of flexibility provisions; (ii) partially filled quotas in one year followed by more fully filled quotas in the next year; or (iii) surges that occur in the course of a single

agreement year when an undue proportion of the year's shipments is concentrated in a short span of time. In order to preclude harmful fluctuations, where quotas have been substantially undershipped in the preceding agreement year, in concurrence with the MFA concept of orderly growth in trade, year-to-year increases in such cases should not normally exceed the previous year's shipment's plus one-half of the unfilled portion of the previous year's quota but in no event more than the current year's quota. Thereafter, the applicable growth and flexibility provisions would apply.

4. Where necessary to preclude further disruption from the leading major exporting countries, the Administration's objective will be to assure that (1) 1979 imports will not exceed 1978 trade levels or 1979 base levels, whichever are lower, and (2) in each of the three following years, import growth will be evaluated annually by category (including all flexibility provisions for each category) in the context of the estimated rate of growth in the domestic market in that category, and adjustments made. Particular attention shall be paid to the most sensitive categories, especially in apparel, where the import to domestic production ratio is high and indicative of market disruption. The industry and government will cooperate to the fullest extent possible so that current data on domestic production on a category or product basis will be available to assure the effective working of this provision.

5. The United States Government has just negotiated a more effective bilateral arrangement with Japan to remove the serious problem of disruptive fluctuations. Strong efforts must also be made by the Government and industry to expand substantially textile exports to Japan.

6. Recognizing the potential for sharp and disruptive growth in textile and apparel imports from any major new supplying country, the United States Government will seek to negotiate import restraint levels with the supplier as close as possible to the most recent levels of trade for heavily traded or import-sensitive products and to secure an effective means to expeditiously deal with disruptive import surges in any other category, in the context of the global import evaluation program described above.

7. There will be improvement in quality and timing of monitoring efforts to provide the information for prompt evaluation and appropriate actions. The present system will be reinforced and, working with industry and labor, means for faster feedback and response will be developed.

8. Consistent with federal practices and procedures, there will be full and prior industry/labor consultation on strategy, outlook and problems with respect to bilateral agreements.

MTN

A snapback clause, effective during the implementation of the MTN tariff reductions, which will restore textile and apparel tariffs to their pre-MTN levels if the MFA does not continue to be in effect or a suitable substitute arrangement is not put into place, will be adopted as part of the implementation of the MTN tariff reductions. In the event the MFA is not renewed or a suitable arrangement is not put into place, legislative remedies will be proposed to allow the President authority to unilaterally control imports of textile and apparel products consistent with the policy enunciated in this statement.

As a matter of continuing policy, the textile and apparel items included in the Berry Amendment will be excluded from coverage of Government Procurement Code liberalization.

LAW ENFORCEMENT

A major effort, made possible by a special appropriation of the last Congress, designed to dramatically improve the administrative enforcement of all our textile agreements, is currently proceeding. This program must be carried through expeditiously.

U.S. trade remedies against foreign unfare trade practices, including the countervailing duty law and antidumping act, will be improved, their administration made more responsive and their procedures accelerated in accordance with legislation implementing the Multilateral Trade Negotiations.

Customs will improve and make more thorough its monitoring and enforcement efforts, including the use of penalties available under law where appropriate, with respect to improper transshipments, country of origin requirements, and violations of quantitative limits, with the objective of preventing evasion of restraint and quantitative limitations.

INDUSTRY EXPORT DRIVE

The industry will initiate a major export drive, with the U.S. Government's commitment of full support, including: a market development program, and vigorous USG efforts to tear down foreign trade barriers.

HIGH-LEVEL TEXTILE POLICY GROUP

The President will appoint a high-level Industry-Labor-Government Policy Group to identify and bring public attention to problems affecting the competitiveness of the industry.

OTHER SPECIFIC ACTIONS

The pilot program to enhance productivity in the apparel industry will be expanded to include the ladies' apparel industry.

U.S. INDUSTRY COMPETITIVENESS

The textile and apparel industry indicates its resolve to make maximum efforts to maintain international competitiveness, through promoting efficiency within the industry, to continue to act responsibly pursuant to the President's anti-inflation program guidelines, and to support the national trade policy, which includes as an integral part the program of orderly growth in textile trade as outlined above. For its part, the Administration will act expeditiously to put the foregoing program into effect and expects concrete results in sixty days.

CONCLUSION

This textile program is an integral part of the MTN package. However, the Administration will begin implementation of the program immediately and many of the essentials will be in place within the next several months.

STATEMENT OF HON. ADAM BENJAMIN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. Chairman, thank you for allowing me the opportunity to testify before the subcommittee on Trade regarding the recently initialed Multilateral Trade Pact and its implementing legislation.

Oil price increases, worldwide recession, international monetary instability, widely varying rates of inflation and the emergence of developing countries as exporters of manufactured products have placed strains on the trading system, shifting patterns of trade and producing large imbalances in the flow of trade. Some of these factors have disrupted the U.S. economy and caused a significant dislocation of workers. Under these circumstances, opposition to the MTN Agreement and pressure for more restrictive trade practices is growing.

I would like to commend Ambassador Strauss and the Special Trade Representative's staff and Chairman Vanik and the other members of this Subcommittee for their diligent work in this complex and critical field of international trade.

I support the objectives underlying the U.S. Government's approach to the multilateral trade negotiations. I concur in the need for expansion of world trade and its resulting benefits to the world economy.

While I support the MTN objectives, I am concerned with the MTN results. The initialed MTN codes contain generalizations which must be clearly defined in the implementing legislation if our domestic industries are to be protected from unfair foreign competition.

The steel industry in particular has been severely impacted by foreign competition. Steel imports have averaged about 20 million tons a year over the past two years, taking 18% of the U.S. market. The steel trade deficit alone last year was about $5.6 billion, and it has become the second largest contributor to the U.S. trade deficit.

I believe the Trigger Price Mechanism is a good faith effort by the Treasury Department to enforce the anti-dumping laws which has long been allowed to be ineffective. However, this program involves trade-offs somewhat against the best interests of Amercian steel, since it allows European steel to come into this market below costs.

I am concerned that our domestic industry also be protected from unfair competition through a clearly defined anti-dumping code and countervailing duty statute. It is essential that these mechanisms incorporated substantive requirements which provide for impartial enforcement, insulated from political manipulation.

It is equally imperative that there be firm time limits on the length of the investigation period prior to a preliminary determination on both anti-dumping and countervailing duty complaints.

Regarding the reduction in tariffs applied to U.S. imported steel, I find it difficult to justify the U.S.'s offer to reduce its steel tariffs to a lower level than those of its trading partners. The EEC, Japan, Canada and the U.S. should have similar, if not identical, steel tariffs. It is also disconcerting to feel that the steel industry is being scarificed for the substantial gains in the agricultural markets.

The Procurement Code is another area which demands close examination, in order to avoid eliminating buy American laws without providing adequate replacements. We must insure that the code's provisions facilitate the operation of fair, open and rational bidding systems by all signatories.

I am very pleased to note the development of an international steel committee as a result of the trade negotiations. I believe this committee will provide a valuable communications channel which can assist in stabilizing our world steel industry and therefore our economy in general. I sincerely hope the U.S. will continue to actively participate in the development of this worthwhile organization.

In conclusion, I believe we must keep foremost in our minds the need for an international trade agreement which will establish a structural mechanism which is functional. We must insure the use of clear and concise criterion which leave no room for political manipulation and will protect our domestic industries from unfair competitive practices.

JOINT STATEMENT OF FRANK B. SNODGRASS, VICE PRESIDENT AND MANAGING DIRECTOR, BURLEY & DARK LEAF TOBACCO EXPORT ASSOCIATION, AND KIRK WAYNE, PRESIDENT, TOBACCO ASSOCIATES

Our two organizations strongly supported the Trade Act of 1974, which provided the authority for the Tokyo Round of negotiations. We have historically supported all attempts aimed at obtaining freer access to international markets for U.S. produced leaf tobacco.

During the Tokyo Round, we had representatives serving on the Agricultural Technical Advisory Committee [ATAC] for tobacco, who made numerous trips to the E. C. and Geneva, Switzerland, assisting the U.S. negotiating team through our contacts in that area.

We have followed the Trade Negotiations and urge the committee to report favorably upon the MTN package which has been submitted by the President's Special Trade Representative.

This trade package will be very beneficial to the U.S. leaf tobacco trade and to our economy.

The MTN have brought forth significant tariff reductions for U.S. unmanufactured tobacco exports from several major trading partners. Our understanding of the tariff concessions gained in these negotiations are as follows:

The European Community has offered to cut duty by one-third on imported flue-cured, Burley, dark fired, and Maryland types of tobacco. In 1978 the European Community was a market for nearly one-half of total U.S. unmanufactured tobacco exports at a value of $618 million, of which flue-cured exports totaled $470 million, Burley $85.4 million, dark fire-cured $35 million and Maryland and other $28 million.

Australia, a $27 million market for U.S. unmanufactured tobacco exports in 1978 has offered to reduce their import duty by 60% and maintain present share of imports in their tobacco usage.

New Zealand a $7 million export market for U.S. tobacco in 1978 has offered to cut tariffs by up to 45%. The U.S. will be the primary beneficiary of this tariff concession.

Finland, a U.S. tobacco export market for $14 million in 1978 has offered to reduce and bind their tariffs on tobacco at a duty-free level.

The significant importance of the above outline duty concessions for $666 million of U.S. unmanfactured tobacco exports is brought further into perspective when considering that these markets represent 85 percent of U.S. tobacco shipments to countries where tariffs have an impact on trade.

STATEMENT OF THE CALIFORNIA AVOCADO COMMISSION

SUMMARY

The California Avocado Commission supports passage of the proposed trade package resulting from the multilateral trade negotiations. We urge the inclusion of implementing legislation which will give the President authority to take emergency unilateral safeguard action in order to prevent possible serious injury to domestic producers of perishable crops.

INTRODUCTION

This statement is submitted on behalf of the California avocado industry by the California Avocado Commission. The Commission represents all producers and marketers of avocados in the state of California. California produces approximately 80% of the avocados grown in the United States.

The California Avocado Commission applauds the efforts and accomplishments of the Office of the Special Trade Representative in the seventh "round" of trade negotiations since the founding of the General Agreement on Tariffs and Trade (GATT). We are pleased with the importance that Ambassador Strauss, Ambassador Wolff, Ambassador McDonald and others on the U.S. negotiating team have placed on agriculture in the negotiations.

The proposed agreements have essentially two purposes: (1) the establishment of new international rules to assure that trade will be conducted more fairly and equitably between nations, and (2) the further reduction of specific barriers, both non-tariff and tariff, for individual products. The efforts of our negotiators to ameliorate non-tariff trade barriers represents a new dimension in multilateral trade negotiations and involves important changes from the existing General Agreement on Tariffs and Trade.

TARIFF CONCESSIONS

Unofficial reports have indicated that a significant duty concession has been achieved for exports of avocados to Japan. If such a concession is confirmed, we believe that the concession for avocados will be most helpful to our future trade with that country.

California avocado growers are concerned, however, with reports of a significant reduction in the current import duty for both fresh and processed avocados entering the United States. Because of the rapid growth and supply situation in other avocado producing countries, U.S. avocado growers rely primarily on the U.S. market to sell their product. In fact, only about 5% of our avocados are exported outside of the U.S. Currently, avocado production and demand in the United States are balanced. Demand is continuing to gradually expand as is production. Our growers have invested heavily in both production and market development. The industry has been fearful that a significant change in U.S. tariff policy may cause great market disruption for the U.S. avocado industry. The prices of avocados from our principal, and often only supplier, the Dominican Republic, have not changed materially for many years. We judge that this has occurred because avocado production there is largely a "cottage" industry which has been little affected by worldwide inflation. In real terms, the prices of U.S. imports of avocados have been declining over time. Should this continue, we forecast difficulties in the future. A significant reduction in the U.S. import duty for avocados would compound these difficulties significantly.

PERISHABLE PRODUCTS

The Commission wishes to address the need for implementing legislation which will provide the President with domestic authority to take emergency unilateral action to prevent potentially serious injury to domestic producers of perishable crops. Many perishable commodities have short marketing life after harvest or are harvested in only a short time period each year. Market disruption from imports for such commodities, if not quickly corrected, could nullify a producer's performance with that commodity for an entire year. Further, corrective action effective after the completion of harvest or marketing would not ameliorate the disruption and, in effect, would invite similar disruption in future years.

The last such authority was contained in the Trade Agreements Extension Act of 1951. It required accelerated corrective action in the instances described. Similarly, under Section 22 of the Agricultural Adjustment Act of 1938, accelerated action was provided whenever the Secretary of Agriculture advised the President that conditions existed requiring emergency treatments. Such fast track handling is not now provided in the Trade Act of 1974.

The General Agreement on Tariffs and Trade, Article XIX, permits rapid injury investigations and the establishment of provisional measures in "critical circumstances". In such critical circumstances no prior consultation with affected exporters is required. The proposed safeguards code would also have permitted such rapid injury investigations and provision import restrictions in critical circumstances. The MTN implementing package presents an opportunity to reinstate into U.S. law, consistent with the GATT, procedures to deal with the unique problems of perishable products such as avocados. The legislation should give the president authority to temporarily restrict imports of perishable commodities if the International Trade Commission, or other designated body, determines that the particular commodity is being imported in such increased quantities and under such conditions as to threaten serious injury to domestic producers of like or directly competitive products. The legislation should provide for the monitoring of perishable commodities imported, daily or weekly tabulation of import statistics as necessary, and rapid injury investigations by the International Trade Commission or other designated body upon request by either the President or a member of the affected industry.

An outline of appropriate legislation providing for prompt surveillance, investigation, injury determination, report and Presidential action has been drafted by the U.S. Department of Agriculture. The California Avocado Commission urges that the language of that draft be made a part of the legislative proposals submitted to the Congress for the purpose of implementing the multilateral tariff negotiation agreements.

CONCLUSION

On balance, the California Avocado Commission believes that the achievements of the Tokyo Round of the multilateral trade negotiations represent a step forward for U.S. agriculture. Rather than closing markets or erecting more trade barriers, adoption of the agreements will mean additional market access for U.S. agricultural products and a liberalization of existing agricultural trade barriers. Ambassador Strauss has kept his pledge: namely, that any package he brought back would include meaningul gains for U.S. agriculture. Therefore, we urge approval of the trade package. The package should include implementing legislation which will give the President authority to take emergency unilateral safeguard action in order to prevent possible serious injury to domestic producers of perishable crops.

STATEMENT OF CITC INDUSTRIES, INC.

One of the most unfortunate aspects of the MTN proposal is the one which deals with the American Selling Price (ASP) as it relates to rubber-soled footwear with fabric uppers.

The Special Trade Representative (STR) Conversion rates run counter to the objectives of the Tokyo Round because they provide for duties far in excess of the current ASP duties. In addition, a large number of shoes not presently under ASP will carry duties almost double the existing rate.

It is a matter of record that approximately 72.4 percent of the footwear under 700.60 is not dutiable under ASP. Yet STR under the guise of eliminating this objectionable non-tariff barrier—American Selling Price—recommends that the duty on such non ASP items as boots and open toes, slip on type be increased from 20 percent ad valorem to 37½ percent ad valorem.

An objective view of the other categories will show that the popular footwear purchased by low and lower-middle income wage earners will bear the highest duties while the higher priced shoes purchased by the higher income consumer will be dutiable at the lowest rate. Much of the footwear that will be dutiable at the new high rates is non-competitive with the domestic product. The producers in this country have not in recent years shown a real interest in manufacturing low end goods.

A domestic spokesman has told the Committee that the rubber-canvas footwear industry "will not emerge from the Tokyo Round with greater protection than it now has." An objective comparison of the current rates and the projected rates indicates that the protection will not only be greater but will apply to a wider variety of footwear. This same witness for some domestic companies referred to STR's request to the International Trade Commission (ITC) for data looking toward conversion of ASP to straight ad valorem rates. It is noteworthy that, in the ITC report to STR, the Commission's proposed converted rates of duty, based on actual Custom's entries, did not exceed 48 percent and unlike the STR proposal left at 20 percent most of those shoes which had never been under ASP.

Despite the unrealistic rates in STR's proposal, especially in the athletic and leisure categories, where duties will range between 60-70 percent, the domestic industry advised you that if this doesn't appease them they may be back for more protection.

When can the consumers and the taxpayers of America expect "protection" for themselves? The domestic footwear industry, especially in the area of athletic and leisure footwear, has transformed its method of operation to automation. The vast majority of this type of footwear made in the United States is today machine produced. It is becoming increasingly difficult for exporting countries to compete with domestic automated shoes even with minimal duties. If the manufacturing costs are comparable between the United States and its trading partners merely adding the freight cost to the shoe cost will make it difficult to import canvas-rubber footwear on a competitive basis. It is our respectful recommendation that you urge the STR officials to revise downward the proposed rates and provide for future staged reductions.

STATEMENT OF THE CONSUMERS FOR WORLD TRADE

Consumers for World Trade respectfully ask this Committee and the Members of Congress to review the recently-concluded multilateral trade agreements and to consider the package of proposed implementing legislation in the light of its impact upon the interests of American consumers—the one "special interest" group which includes all Americans, regardless of job, income level, age, sex, or state of residence. CWT believes that consumers—especially low- and moderate-income families—the elderly and other fixed-income groups will benefit from lowering trade barriers and expanding world trade, as the best means to provide American consumers with the widest possible choice of goods at the lowest possible prices—a matter of high priority in this time of continuing inflation.

Consumers for World Trade is a new organization, formed early in 1978 by concerned citizens, economists, trade experts, and others who are alarmed by the growth of protectionist attitudes in many quarters. We are keenly aware of inflationary pressures which are hurting all Americans, and especially the most vulnerable lower- and middle-income families. CWT supports expanded foreign trade to help promote healthy economic growth at stable prices. We believe it essential to support policies that will expand choices for consumers, and will help to counteract inflationary price increases which are now reported in almost every sector of the economy.

Thus, we have three major areas of concern to bring to the attention of the Congress:

Availability of imported goods is a $2 billion per year bargain to the American public—but at the same time, American consumers are now paying up to $15 billion in higher prices every year, as a result of restrictions on imports of foods and manufactured goods, such necessities of daily life as sugar, meat, dairy products, textiles, clothing, footwear, and dozens of other products.

A recent study by a Brookings Institution economist documented direct savings to American consumers of about $2 billion annually, thanks to the availability of imported goods. These savings are especially important to lower-income buyers, since the price ranges in which they buy are particularly served by imports. In addition to these direct dollar savings, there are further, incalculable savings to consumers as import competition helps to keep down prices of comparable domestic goods.

While there are no exact figures on the costs to American consumers of all the protectionist laws, regulations and administrative policies now on the books, responsible studies by government agencies and private research institutions suggest that the extra bill—paid by American consumers—is up to $15 billion per year. For example, the President's Council on Wage and Price Stability estimates that the average 29.3 percent tariff on apparel imports costs American consumers $2.7 billion per year. Rigid quota limits on textile and apparel imports cost another $369.4 million annually; and since the lowest-cost apparel items are subject to the most severe restrictions, the low-income consumers is the one who suffers the greatest penalty.

Similarly, the President's Council calculates that limitations on beef imports cost American consumers between $350 million and $1 billion in added costs. Again, this hits hardest at low- and middle-income families, since our imports of beef—comprising only 7 percent of total U.S. consumption—are primarily lean cuts used for hamburger and relatively-low-cost manufactured meat products.

Protection for the steel industry, including "orderly marketing agreements" and the new trigger-price mechanism (TPM), is estimated to cost American consumers more than $4 billion this year in inflated prices. Use of the trigger price system has in effect set a floor for steel prices, insuring against any lowering of steel prices, domestic or foreign. In the months since the TPM was put into effect, U.S. steel producers have raised their prices more than 9.5 percent, or an average increase of more than $50 per ton.

One more example: The Congress is well aware that American consumers already pay more than 60 percent above the world price for sugar, an essential ingredient in almost every food product we buy except meat. Legislation pending before you this year to raise the wholesale price of sugar to 15.8 cents per pound (compared to the current world price of about 9.4 cents, landed in New York) would, in effect, impose a 68 percent tariff, that would cost American consumers $1.4 billion annually. The built-in escalator provisions in that legislation would add another $250 million every year in costs of cane and beet sugar, and an extra $330 million annually if the price of corn sweeteners rose, as anticipated, in tandem with beet and cane sugar.

We hope that Congress will take meaningful steps to counter inflation through legislation that will lower these restrictions on trade, and allow your constituents the widest possible access to goods at the most reasonable prices possible.

We support the lower tariff schedules and those new agreements negotiated in the Tokyo Round which will reduce the non-tariff barriers to trade—especially those barriers such as special valuations procedures and national restrictions on government procurement. These barriers obstruct world trade at great costs to American producers seeking to expand our exports of farm and manufactured products—and they have raised prices to consumers and taxpayers. (Let's remember who pays for government purchases!)

The proposed code on Subsidies and Countervailing Measures appears to offer a realistic approach to overcoming the ambiguities and inconsistencies of the GATT's provisions on subsidies, with new definitions and proposed procedures that should promote openness and fairness in international trade. New agreements on import licensing and customs valuation will reduce or eliminate needlessly burdensome procedural impediments to international trade, and new mechanisms for settlement of disputes appear to be a positive step.

Essentially, the MTN package goes a long way toward modernizing and strengthening the world's commercial code, the General Agreement on Tariffs and Trade or GATT, as Congress asked in the 1974 Trade Act. Although some important elements of the package are not yet complete—the package initialed in Geneva, April 12, does not include an agreed Safeguards Code, and the extent of Japanese participation in the proposed government procurement code is still uncertain—we remain hopeful that those portions of the negotiations can be concluded in a way that will enhance prospects for American producers and consumers.

It is our understanding that we have successfully negotiated with our main trading partners a balanced set of tariff reductions to be phased in gradually over a period of years. Although these cuts are not as steep as the reductions taken in previous GATT negotiations, we welcome this progress toward the further dismantling of tariff barriers to trade. It is sometimes stated that tariffs no longer matter. The truth is that they remain as the most pervasive restraint on international trade. Their effect is to distort the use of productive resources and to make antional economies less efficient. Since the MTN reductions will be made in small increments over a long period there will be ample time for industries to make adjustments to lower tariff protection. It is simply not true that the tariff bargain will be disruptive to domestic producers.

Implementation of the agreements remains the area of our greatest concern. We have indicated in recent statements our concern that concessions by the Administration to particular industry groups demanding additional protection will add billions of dollars in extra costs to consumers. We fear that certain objectionable provisions, if enacted into legislation, would have long-term detrimental effects, raising new procedural barriers which would stifle trade and inevitably boost costs to American consumers.

In particular, we oppose more compressed time limitations governing various stages in proceedings arising under Anti-dumping, Escape Clause and Countervailing Duty statutes. While the government's procedures may well need streamlining, and it is vital to assure prompt and fair determinations of complaints, we fear that the proposed accelerated investigations and rigid time limitations would seriously limit the opportunity to gather adequate data to conduct a fair investigation. These proposals virtually deny due process to American firms seeking to import goods, and

almost insure adverse findings which will—in the end—lead to more limited choices and/or higher costs for American consumers.

The "Pay first, we'll determine the guilt later" procedure for assessing penalties in cases of alleged dumping appears to be unwise and unfair. To levy fines even before any investigation has been conducted or findings made that goods have, in fact, been "dumped" places unfair burdens on traders. The current system of posting bond appears to have worked adequately.

Most important, the more restrictive definition of injury in Countervailing Duty cases, does not appear to comply with the definition negotiated in the MTN Subsidies Code, and there seems to be serious doubt that our trading partners (especially the European Common Market) will accept language that does not require a showing that the alleged injury to American producers constitutes "material" injury justifying imposition of countervailing duties.

We emphasize that CWT supports vigorous and fair administration of statutes designed to protect U.S workers and industries from unfair or unlawful foreign competition. Those companies and workers are adversely affected by such practices should be able to obtain prompt resolution of their appeals, and effective adjustment assistance; and those suppliers who violate internationally-accepted codes should be subject to penalties as provided by law.

Finally, we understand that the Treasury Department is currently conducting an investigation to determine whether tomatoes and other winter vegetables from Mexico are being "dumped" in the U.S. market. We also understand that the Antidumping Act may be applied in this case in a way that would require each individual shipment of imported vegetables to be sold at above its full cost of production. Such a requirement would, in our view, be absurd, since the substantial price fluctuations that are characteristic of produce markets and the lack of a produce grower's ability to control short-term output make it impossible for him to recover his full cost on every sale. A ruling by the Treasury Department along these lines would discriminate against foreign suppliers, since U.S. producers would be free to continue to sell below cost when the market so dictates. It would also be highly damaging to consumers, by reducing supplies and increasing prices of these important items.

We, therefore, urge the Committee to consider amending the Antidumping Act in a way that would authorize the Treasury Department to apply the Antidumping Act to imported perishable produce in a manner that recognizes the economic realities of the produce business, and would not require it to examine returns on a sale-by-sale basis.

In conclusion, we would stress that Consumers for World Trade supports the general thrust of the MTN agreements as steps in the direction of expanded trade that will benefit American consumers. We hope that the Carter administration will conclude the negotiations on those parts of the MTN still to be resolved to the mutual benefit of all Americans and our trading partners.

We urge the Congress to implement these agreements in a manner that will bring all American consumers the benefits of trade—more goods, greater variety, innovations in style and technology, and, above all, better bargains for the consumer's dollar.

STATEMENT OF ROBERT C. LIEBENOW, PRESIDENT, CORN REFINERS ASSOCIATION, INC.

We are pleased to present the following comments on the Multilateral Trade Negotiations (MTN) on behalf of the members of the Corn Refiners Association, Inc. (membership list attached). Specifically, our comments will address the disadvantages to the corn refining industry brought about by concessions made by the United States on tariff items and the proposed code on subsidies.

On December 8, 1978, Corn Refiners Association, Inc. (CRA), filed a petition with the United States Customs Service alleging that producers of potato starch in the European Economic Community (E.C.) are the recipients of bounties or grants on the production of dextrines and soluble or chemically treated starches (T.S.U.S. item number 493.3000) within the meaning of Section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303, "§ 303"). In our petition we urged that a countervailing duty (CVD) equal to the net amount of these bounties and grants be promptly imposed upon such items.

CRA has learned that, at a time when the corn refining industry is seeking to establish that European producers of starches and dextrines are heavily subsidized for export to the U.S. market, the Special Representative for Trade Negotiations has offered to reduce tariffs currently collected on items entering the United States

under T.S.U.S. item number 493.3000. In addition, tariff reductions on the other items of concern to the corn wet milling industry have been made (i.e., T.S.U.S. item number 135.5000, potato starch, and T.S.U.S. item number 135.5500, starches other than potato starch). The Corn Refiners Association and/or its member companies were not privy to the fact that major reductions in tariffs on the above-listed items were being contemplated before offers were made in the MTN negotiations.

We are extremely concerned, that while an investigation of the subsidy practices of the E.C. on dextrines and soluble or chemically treated starches is underway, the rules for determining subsidies and CVD imposition are being changed. We do not approve of the need for an injury test in CVD determinations and are distressed by the apparent lack of an automatic imposition of CVDs under the MTN agreement. We do not feel that a United States industry should have to suffer damage through sales volume loss or price effects before a CVD may be imposed.

Finally, we wish to declare emphatically for this record that with respect to the U.S. offer on T.S.U.S. item number 493.3000, Corn Refiners Association, Inc., was effectively excluded from being able to advise the government.

During the committee's deliberations, we urge members to keep in mind that the corn wet milling industry stands to lose an important domestic market for dextrines and soluble or chemically treated starches if the U.S. offer on T.S.U.S. item number 493.3000 is finalized. Loss of this market would occur at the expense of many American jobs.

MEMBER COMPANIES

ADM Corn Sweeteners (A division of Archer Daniels Midland Co.), Cedar Rapids, Iowa
American Maize-Products Co., New York, N.Y.
Amstar Corp., San Francisco, Calif.
Anheuser-Busch, Inc., St. Louis, Mo.
Cargill, Inc., Minneapolis, Minn.
Clinton Corn Processing Co. (A division of Standard Brands Inc.), Clinton, Iowa
CPC International Inc., Englewood Cliffs, N.J.
The Hubinger Co., Keokuk, Iowa
National Starch and Chemical Corp., Bridgewater, N.J.
A. E. Staley Manufacturing Co., Decatur, Ill.

CORNING GLASS WORKS,
Corning, N.Y., April 25, 1979.

Chairman CHARLES A. VANIK,
Subcommittee on Trade, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: My name is Henry F. Frailey. I am Vice President of Corning Glass Works and Chairman of the Imports Committee of the Tube Division of the Electronic Industries Association. This letter is written in response to your request for comments on the Multilateral Trade Negotiations and the implementing legislation which the Administration will propose to the Congress within the next few weeks. I would be pleased if you included this letter in the record of your Subcommittee's formal hearing on this matter.

As your Subcommittee is well aware, the Imports Committee, which I now chair, filed a petition with the Secretary of the Treasury in March of 1968 which eventually resulted in the publication of a formal dumping finding, Television Receivers From Japan-T.D. 71-76. Unfortunately, the record of our Government in providing a remedy for the injury suffered by our industry because of the relentless dumping by Japanese television manufacturers over the past ten (10) years is dismal. Members of the American television industry and its workers have experienced and will continue to experience enormous injury and suffering because our Government refuses to assess and collect the special dumping duties called for by law. Since the present efforts of the Imports Committee are directed at obtaining proper enforcement of a formal dumping finding, I will limit my remarks to those aspects of existing law which most directly effect our present efforts.

There are several problems to which I would like to direct the attention of the Trade Subcommittee at this time. The first, and perhaps the most important, deals with the potential impact which the implementing legislation to the MTN Agreement may have on our industry's ongoing efforts to secure proper enforcement of Treasury's long standing dumping finding on television receivers. The Treasury department has refused to liquidate all but a few entries of television receivers

which were imported after June 30, 1973. It is absolutely essential that the entire backlog of entries from July 1, 1973 to the present date be liquidated as soon as possible. Any changes which the implementing legislation may have on the assessment and collection of dumping duties should not be made retroactive so as to apply to customs entries made prior to the effective date of the new legislation. All television receivers which enter this country prior to the date when the implementing legislation is signed by the President must be liquidated according to existing law. If the provisions of the new Antidumping Code regarding assessments are made retroactive, the relief for which the American television industry and its workers who have waited so long will be subjected to further delays and uncertainties.

In order to improve the enforcement merchanism for the assessment and collection of special dumping duties following the publication of a formal dumping finding by the Secretary of the Treasury, three separate statutes must be amended:

(1) The provisions for administrative and judicial review of assessments available to both importers and domestic manufacturers, producers, etc. under sections 514-516 of the Tariff Act of 1930, as amended, 19 U.S.C. 1514-1516.

(2) The jurisdictional provisions of Title 28 of the U.S. Code respecting the subject matter jurisdiction and powers of the U.S. Customs Court.

(3) The substantive provisions of the Antidumping Act of 1921, as amended, 19 U.S.C. § 160 et seq.

There are a number of deficiencies in the administrative and judicial review provisions of §§ 514-516 of the Tariff Act of 1930, as amended.

(a) The statute fails to make any distinction between the treatment of ordinary customs cases on the one hand and unfair trade practices cases on the other hand. In cases involving dumping, there are formal findings of wrongdoing and injury which justify administrative and judicial review procedures capable of dealing with unlawful practices and providing remedial benefits for the domestic interests more expeditiously and decisively.

(b) The statute fails to provide a formal role for the real party in interest—members of the injured domestic industry—in the assessment process and in the administrative review of an importer's protest from a dumping assessment. The Customs Service is therefore deprived of the special knowledge and expertise which the members of the domestic industry could contribute to the complex assessment calculation.

(c) The statute fails to insure that the domestic industry is furnished with sufficient information with respect to the methodology used to assess special dumping duties so as to permit it to evaluate whether those duties were properly assessed. Procedures permitting the domestic industry's access to information used by Customs in the assessment process should be promulgated which include provisions for *safeguarding* business confidential information under protective orders rather than denying interested parties access to such information.

(d) The availability of administrative and judicial review is not balanced as between importers and the domestic industry.

Importers review

(1) Is conducted on an entry by entry basis at both the administrative and judicial levels

(2) Evidence may be submitted on three separate occasions—prior to assessment, during the administrative protest, at a trial de novo in the Customs Court

(3) The result of a successful appeal to Customs Court is applicable immediately to all unliquidated entries

(4) There is no provision for formal participation by the injured domestic industry in the enforcement process. The Customs Service is poorly positioned to challenge the factual data submitted by foreign manufacturers and importers. Active participation by the domestic industry with its specialized knowledge and expertise would help Customs overcome this problem

Domestic industry's review

(1) Representatives of the domestic industry have extremely limited access to information needed to properly evaluate the methodology and factual basis for the Customs Service assessment action.

(2) Challenge of the Customs Service action cannot be made on an entry by entry basis. Rather, Customs selects test cases—one entry per port—which the domestic interest may protest and appeal to the Customs Court. The use of test cases is entirely inadequate where Customs action with respect to individual entries does not present common legal or factual issues of general applicability with respect to all entries.

(3) The results of a specific Customs Court challenge is prospective only. The rule of the case applies only to merchandise which is imported following the Customs Court ruling. All prior entries must be liquidated using the assessment methods under challenge. There is no procedure for withholding of appraisement pending a Customs Court ruling.

(e) Challenges to the assessment of special dumping duties, whether by an importer or by a member of the domestic industry, should go through an unitary administrative review and appeal process where all interested parties may participate. Under the present system the party satisfied with the initial determination is left behind when that determination is taken through the review and appeal process by the other party.

In order to deal with the broad range of issues which will arise from any new legislation which addresses the problems outlined above, the subject matter jurisdiction of the Customs Court must be expanded and that Court given broad equity powers.

(a) The Court should be given powers to issue injunctive orders and writs of mandamus against government officials in appropriate cases.

(b) The Court should have authority to order the withholding of appraisement on merchandise in appropriate cases and to compel the assessment and collection of special dumping duties in case where that is appropriate.

(c) The scope and availability of judicial review in the Customs Court should be clarified with respect to the broad range of issues over which that Court will have jurisdiction.

The inability of various domestic interests to obtain relief under the Antidumping Act is due in a large measure to the failue of the Treasury Department to administer the Act properly and the inaccessibility of the Courts to remedy that failure in all but the most extreme cases. Changes in our legislative approach must be made in order to make the Treasury Department accountable for its actions.

Very truly yours,

HENRY F. FRAILEY.

STATEMENT OF THE COUNCIL OF UNITED STATES FEED INGREDIENT PROCESSORS AND EXPORTERS, WASHINGTON, D.C.

OVERVIEW OF THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN COMMUNITY AS IT RELATES TO PRESENT AND POTENTIAL PROBLEMS FOR U.S. PROCESSORS AND EXPORTERS OF FEED INGREDIENTS (NGFI)

The European community—an excellent market for non-grain feed ingredients

U.S. processors and exporters of feed ingredients have a large stake in the maintenance and expansion of the non-grain feed ingredient market in the European Community. It is well-known that the U.S. has a major interest in the Community as a market for soy meal and that this market has been growing steadily.

However, in recent years, the European Community also has become an excellent market for other non-grain feed ingredients (NGFI), including corn gluten, corn by-products, wheat millfeeds, rice bran, beet pulp, citrus pulp, brewers and distillers grains, and feed tallows. In 1978, the U.S. shipped more than $250 million of these commodities to the E.C. (see Appendix I).

Imports of non-grain feed ingredients by the Community have increased dramatically in recent years because domestic and imported supplies of grains, such as soft wheat, barley, and corn, are relatively expensive in comparison with non-grain feed ingredients as a result of the E.C.'s grain price system and import policies.

To the extent feed rations will allow, there is a great incentive for European feed mixers to substitute non-grain feed ingredients for grain whenever possible. As a case in point, the Dutch compound feed industry is reducing steadily the grain share in its formulas by replacing grains with non-grain feed ingredients. In 1967 the grain portion constituted two-thirds of Dutch feed rations. However, the grain share in total feed production dropped from 23.8 percent in 1975-76 to 18.2 percent in 1976-77, and it is believed that a further decline to 15-16 percent occurred in 1977-78.

Because of the recent growth in imports of non-grain feed ingredients, the E.C. has taken certain actions and it is considering others designed to restrict directly or indirectly the importation of non-grain feed.

The European community's common agricultural policy

In order to understand the reasons for Community alarm over the growth of non-grain feed ingredient imports, it is necessary to have a general understanding of the

E.C.'s Common Agricultural Policy (CAP), especially as it relates to grains (see Appendix II).

The CAP is a fundamaental part of the European Community. The E.C.'s agricultural policies have resulted in high agricultural prices, stimulated chronic surpluses, and generally insulated the E.C. from world competition. The net effect of E.C. grain policy has been to raise domestic grain prices to a level almost twice that of the world price. The grains policy has caused the accumulation of burdensome surpluses of soft wheat and barley which must be subsidized heavily if they are to be sold in the export market. Further, as a result of the variable import levy, E.C. importers have not been able to buy cheaper grain from foreign sources as long as domestic grain is available.

International trade agreements

The CAP is very effective in preventing competitively priced grains—such as corn, barley, and wheat—from entering the E.C. market except to serve the residual needs of the community. However, as a result of previous international trade agreements, the E.C.'s import levy system does not apply to many of the non-grain feed ingredients.

The E.C. is a member of the General Agreement of Tariffs and Trade (GATT) and has participated in all multilaterial trade negotiations, beginning with the Dillion round of the negotiations in 1960–61. During these trade rounds, in exchange for reciprocal trade concessions from other countries (i.e., the U.S.), the E.C. has agreed to bind (or fix) their external tarriffs on many of these non-grain feed ingredients at zero, or at relatively low levels (see Appendix III).

The principal reason the NGFI market has expanded to its current level is because the variable import levy does not apply uniformly to imported grains and NGFI; as a result, imports of non-grain feeds enter the Community at prices lower than alternative domestic or imported feedstuffs.

Euopean community officials threaten to impede the flow of NGFI imports

For the last year or so, the E.C. has been considering ways to restrict imports of certain non-grain feeds. The E.C. has addressed this issue under two separate but inter-related plans.

One method would provide a competitive advantage to locally produced feedstuffs by means of a domestic subsidy; the second method would raise the import levy or duty on non-grain feeds.

To encourage the use of more domestically produced vegetable protein, the Community has introduced production subsidies for field peas and beans when they are incorporated into animal feed. The existing subsidy on the production of dried forage also has been expanded. While these subsidy programs contain no outright import restrictions, they encourage production and use of domestic protein feeds. These subsidies affect directly the volume of imports of the same type of products and indirectly the imports of other protein feed.

A more direct approach than the use of domestic subsidies is the increase of the duty on certain or all of the non-grain feed ingredients. This has been threatened, but not done, on soy meal, wheat bran, and manioc. In terms of volume, manioc and soy meal represent by far the Community's largest non-grain feed ingredient imports.

The E.C. has frequently stated that it must impose some discipline on imports of soybeans and soy meal. The U.S. has resisted this aggressively because of the importance of the E.C. market which now accounts for $2.5 billion. Under international agreement, the E.C. has bound its duty for soybeans and soy meal at zero; according GATT rules the U.S. would be entitled to compensation for any trade lost as a result of an E.C. impairment (renunciation) of this zero tariff binding. Because of the huge trade flow involved, such an action would be very expensive for the Community; it therefore seems unlikely that the E.C. will make a frontal attack on soybeans or soy meal.

The Community also has discussed openly during recent years restrictions on manioc imports because it strongly believes that manioc has had a destabilizing impact upon its internal domestic grain situation. Ninety percent of the E.C. supply of manioc comes from Thailand; the other ten percent from Indonesia. Manioc imports from Thailand were six million metric tons (mmt) this year, an increase of 50 percent over 1977, and are estimated to exceed 11.5 mmt by 1985.

Manioc contains primarily starch and very little cellulose. It is used as a grain substitute with protein supplements. If manioc imports from Thailand could be reduced, more E.C. feedstuffs—particularly soft wheat and barley—could be utilized internally. Thailand, at present, is not a member of the GATT. It is possible

therefore that the E.C. could raise the duty on manioc imports from Thailand without violating any international trade agreement.

Last year the E. C. threatened to increase fourfold the duty on wheat bran. Milling residues, including wheat bran, represent a potential target for E.C. actions since the import duties for these products are not bound under the GATT. Duties on bran and certain corn by-products could be raised by the E.C. without violating an international trade agreement; however, the U.S. can be expected to protest such action. The E.C. was restrained from taking such action on wheat bran by vigorous official U.S. protests. These U.S. efforts were in large part prompted by the then newly-formed Council of U.S. Feed Ingredient Processors and Exporters.

There is presently no indication that the E.C. will take action against those NGFI tariffs (i.e., corn gluten, beet pulp, brewers by-products or other products of the starch industry, citrus pulp) that are bound under GATT. The E.C. is aware that an impairment of these bindings would elicit costly U.S. reprisals; however, there is no guarantee that at some time in the future the E.C. may not impair these bindings in order to appease domestic grain farmers.

Conflicting interests within the European community

The E.C. believes that a restriction of non-grain feed ingredient imports would (1) lead to greater usage of domestic grains such as soft wheat and barley; (2) lead to higher feed costs, thereby reducing the chronic surplus in the dairy sector; and (3) result in a more balanced domestic market for both grains and dairy.

The argument that a reduction or elimination of imports of relatively low priced, high quality non-grain feed ingredients could solve the problem of burdensome surpluses in the grains and dairy markets places the cost adjustment on the animal feed industry and livestock producers, the consumer, and the E.C.'s trading partners. Therefore, the internal domestic pressure within the Community to take steps to restrict imports of non-grain feed ingredients is somewhat offset.

These relatively low-priced non-grain feed ingredient imports, which can be incorporated into animal feeds either as grain substitutes or protein supplements, are of great benefit to E.C. feed compounders who want to supply high quality feed-stuffs at reasonable prices for use by E.C. livestock farmers. On the other hand, E.C. grain farmers desire the highest possible price. Therefore, gains to E.C. growers resulting from reduced imports of non-grain feed ingredients would be negated by losses in the feed industry and livestock sector. Both the feed and livestock industries would face reduced profit margins and lowered demand as a result of higher input costs associated with a reduced availability of imported non-grain feed ingredients and an increased use of high-priced domestic grains or vegetable protein. Ultimately, this burden would fall upon the E.C. consumer.

A more logical but politically more difficult alternative would be for the E.C. to reduce or freeze the current levels of domestic price supports for grains and dairy products. Lower prices for these products would either stimulate demand or cause a reduction in production. This action would result in lower consumer cost, reduced E.C. outlays for farm price supports, and the continuation of non-grain feed ingredient imports. The E.C. is currently considering several proposals of this type; however, proposals suggesting internal price freezes will not be popular with the farmers affected by such actions. So the easiest political route for the E.C. is to deal with NGFI imports.

Outlook for NGFI imports to the community

To achieve the magnitude of reduction in non-grain feed ingredient imports desired by the Community, the indication is that manioc will be a prime candidate for some type of import limitation. Recently Thai manioc exports to the E.C. have been growing much faster than other non-grain feed ingredient trade.

The E.C. Commissioner of Agriculture recently returned from Thailand. During his visit, it was apparently decided that the E.C. will take no formal action at this time to restict manioc imports from Thailand. The E.C. will not raise the tariff on manioc imports, nor will it enter into any formal "orderly marketing arrangement" with the government of Thailand. However, the Thais have agreed to hold their manioc exports to the E.C. to the same level as last year. In exchange for this commitment, the E.C. will form a "joint-working party" with the Thai government in order to study potential production of a crop alternative to manioc in Thailand and will lend financial and technical assistance to this project.

It remains to be seen whether or not this will achieve the results desired by the Community. If this agreement does not prove to be effective, then the E.C. may feel compelled to move to a more formalized restriction against manoic. The E.C. may also propose a deconsolidization (unbinding) of the current six percent duty on manioc.

There are two bodies of opinion within the E.C. regarding manioc import restrictions. Some elements in the Community would be satisfied with controls over the expansion of manioc imports. Once this was accomplished, no other action would be taken on non-grain feed ingredients. Other elements within the E.C. desire stronger and more sweeping measures, believing that manioc should be only the first step in a systematic plan to restrict all imports of non-grain feed ingredients.

There are presently no indications which group will prevail, nor, if the second body of opinion is adopted, what actions the E.C. might take with respect to other non-grain feed ingredients.

Because of the volatile nature of this situation, U.S. processors and exporters of feed ingredients must keep a watchful eye on the Community. The fundamental problem in the E.C. is their policy on grains; in fact, it may be said that non-grain feed ingredient imports may be exerting some downward pressure on the E.C. grain price level. However, there are no indications the Community will take the domestic actions necessary to solve the grain and dairy surplus problem.

Instead it appears likely that the E.C. will take some steps to insure that manioc imports do not continue to grow at the expansive rate of recent years. The Community also may challenge other non-grain feed ingredients, either by restrictions on imports or through a program designed to stimulate domestic production.

The U.S. has a huge stake in the maintenance and expansion of the non-grain feed ingredient market in the Community. The members of the Council of U.S. Feed Ingredient Processors and Exporters enjoy this trade and wish to remain reliable trading partners. However, if the E.C. threatens to restrict the level of these imports by trade restrictions or discriminatory domestic actions, the Council stands ready to take whatever action is necessary through the Executive Branch or Congress to protect these important markets and defend U.S. trade rights with the Community.

APPENDIX I

TRADE ESTIMATES OF U. S. EXPORTS OF NON-GRAIN FEED INGREDIENTS
DOLLAR CIF VALUE (MILLIONS)

	1972/73	1973/74	1974/75	1975/76	1976/77	1977/78	1978/79 1/	
	1018.5	1064.7	707.5	926.1	1012.1	1123.8	1194.0	TOTAL EXPORTS
Soy Meal	600.9	660.1	495.3	527.9	556.7	573.1	597.0	EXPORTS TO E.C.
	59.%	62.%	70.%	57.%	55.%	51.%	50.%	% of TOTAL TO E.C.
	58.9	73.6	80.5	105.7	135.2	217.2	315.0	TOTAL EXPORTS
Corn Gluten	57.1	91.7	78.1	103.6	132.5	212.9	309.0	EXPORTS TO E.C.
	97.%	98.%	97.%	98.%	98.%	98.%	98.%	% of TOTAL TO E.C.
	23.8	34.0	25.8	28.2	49.0	21.6	21.0	TOTAL EXPORTS
Alfalfa (Dehy.&	--	--	.3	10.4	29.4	13.8	13.7	EXPORTS TO E.C.
Sun-cured)	0.0%	0.0%	1.%	37.%	60.%	64.%	65.%	% of TOTAL TO E.C.
	10.6	8.7	7.6	11.8	30.0	10.1	12.0	TOTAL EXPORTS
Wheat Mill-	9.4	16.4	4.6	11.3	29.4	8.5	10.1	EXPORTS TO E.C.
feeds	89.%	189.%*	60.%*	96.%	98.%	84.%	84.%	% of TOTAL TO E.C.
	2.7	1.3	1.3	2.2	9.7	4.9	3.9	TOTAL EXPORTS
Rice Bran	1.3	1.7	1.3	2.2	9.4	4.5	3.6	EXPORTS TO E.C.
	48.%	132.%*	100.%	100.%	97.%	92.%	92.%	% of TOTAL TO E.C.
	10.9	10.8	24.0	29.2	54.4	31.8	59.0	TOTAL EXPORTS
Beet Pulp	5.3	4.0	1.2	8.2	25.0	16.9	10.0	EXPORTS TO E.C.
	49.%	37.%	5.%	28.%	46.1%	53.%	17.%	% of TOTAL TO E.C.
	25.4	17.6	30.4	41.8	78.4	52.2	82.0	TOTAL EXPORTS
Citrus Pulp	21.3	17.2	26.4	41.0	76.0	51.2	80.4	EXPORTS TO E.C.
	94.%	98.%	87.%	98.%	97.%	98.%	98.%	% of TOTAL TO E.C.
	1.9	5.5	7.0	5.1	8.5	5.3	6.0	TOTAL EXPORTS
Brewers & Distillers	1.5	4.6	4.6	4.0	8.2	4.3	4.9	EXPORTS TO E.C.
Grains	78.%	83.%	65.%	78.%	96.%	81.%	81.%	% of TOTAL TO E.C.
	1152.7	1236.2	884.1	1150.1	1377.3	1466.9	1692.9	TOTAL EXPORTS
TOTAL	696.8	795.7	611.8	708.6	876.6	885.2	1028.7	EXPORTS TO E.C.
	60.%	64.%	69.%	62.%	64.%	60.%	61.%	% of TOTAL TO E.C.

1/ Data for 1978/79 are preliminary.
* Different shipping period caused difference.

APPENDIX II—COMMON AGRICULTURAL POLICY[1]

The Common Agricultural Policy (CAP) forms a basic part of the European Community or Common Market. The basic outlines of a common system of farm support and protection were described in Title II of the Treaty of Rome, the document establishing the Community. The CAP can be best described in terms of three principles: common pricing, Community preference, and common financing. Common pricing involves the establishment of a Community wide price system whereby theoretically a single level of price support is supposed to apply for each farm commodity throughout the Community. Similarly, there should be free agricultural trade between Member States of the Community. However, in practice there are large variations among national farm prices within the Community, and taxes (and subsidies) are applied to intra-E.C. farm trade. Community preference insures that domestic products will always have a competitive advantage over the imported like product. Common financing requires the Community to fund any activity or effort that may be required to effect the Common Agricultural Policy.

Almost all significant agricultural products are now covered by a common market organization—that is, a CAP. The Common Agricultural Policy relies largely on a price support policy to maintain farmer incomes; but indirect or deficiency payments, presently used only in limited cases, are gradually becoming more favored. Also, with minor exceptions, the Community does not apply production quotas or controls. The characteristic mechanism used to protect the Community price support system from imports is the variable levy.

The E.C. grains policy affords the best example of the operation of a common market organization in the agricultural sector. It can be regarded as central to the Community agricultural system because of its ramifications for derived products and for competing corps.

The market for the most important grains is supported by government purchasing of any amount offered at fixed support, or "intervention" prices. The intervention price is somewhat below the "target" price, which may be described as the desired wholesale price. The threshold price is equal to the target price, which is set for the most deficit grain area at Duisberg, Germany, minus transport costs from Rotterdam.

Imports are prevented from selling at less than the target price because their prices must meet the minimum import or "threshold" price. To insure that grains do not enter below the threshold price, the Community calculates each day a variable levy equal to the difference between the threshold price and the lowest CIF offer price for grain, adjusted for quality. This levy is added to the CIF price. The Community also makes use of export subsidies for grains or processed grain products, to relieve pressure on the internal market. Basically, these subsidies are set at whatever level is necessary to enable the Community to compete in the world market.

[1] Source: Facts on Agriculture in the United States and European Communities, Office of the Agricultural Attache, U.S. Mission to the E.C., Brussels, September, 1978.

APPENDIX III

The principal non-grain feed ingredients which could be considered for tariff or levy increases by the European Community.

CXT No.	Product	Tariff or Levy Autonomous	Tariff or Levy GATT Binding
07.06	Manioc	Levy (6%)	6%
23.02 AI	Brans of corn and rice	Levy	Not bound
23.02 AII	Brans of other grains (including wheat bran)	Levy	Not bound
23.03 AI	Byproducts of the starch industry -- corn with over 40% protein	Levy	Not bound
23.03 AII	Corn gluten feed (less than 40% protein)	Free	Free
23.03 BI	Byproducts of the sugar industry, including sugar beet pulp	Free	Free
23.03 BII	Brewers' byproducts and other byproducts of the starch industry	Free	Free
23.06 A	Fruit residues, including citrus pulp	Free	Free
23.06 B	Other feed of vegetable origin (EXCLUDING oilcake and meal	4%	2%

Source: Common Customs Tariff of the European Economic Community

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STATEMENT OF DIAMOND/SUNSWEET, INC., STOCKTON, CALIF.

Mr. Chairman, we appreciate the opportunity to express views of Diamond/Sunsweet, Inc., a major marketer of dried fruits and tree nuts in California, in connection with the procedure by which the House builds a legislative history to support what we hope will be acceptance by the Congress of the implementing legislation now being developed in Committee.

The Tokyo Round of international negotiations represent clearly the ultimate challenge to the imagination and resourcefulness of U.S. business and to the international community in attempting redefinition and restructuring of the "rules of the road" for worldwide trade.

The language of the codes to be proposed to the Congress has been agreed to. Now the Congress and the Administration must agree on the precise nature of the U.S. statutory language need to implement them.

While the language of U.S. statutes will constitute interpretation in this country, other nations can be expected to interpret the codes with probably different emphasis, and perhaps more aggressively. We believe, therefore, that U.S. statutes should clearly defend U.S. producers and growers against unfair and illegal actions by foreign governments and foreign countries whether such acts occur in this country, in such foreign countries or in third countries. The language should be clear and fair and not inconsistent with code language, and should in the most unequivocable manner possible, the intent of Congress to defend its industries and growers against illegal and prejudicial actions of foreign countries or companies.

At the outset, Mr. Chairman, permit me to recall that Diamond/Sunsweet, Inc. interest in the entire MTN matter centers around the need for, and indeed the obligation of, the United States to let nothing interfere with fair and responsible access by domestic companies to foreign markets. Inevitably this includes increased access where there is economic advantage and where export sales reflect that advantage. This cooperative asks no favors; no subsidies, no special export incentive

programs, not even tariff reductions though it will accept what was negotiated on its behalf. Diamond/Sunsweet asks only that its government defend it against efforts of foreign governments to disrupt its export trade by placing illegal or prejudicial restraints on them, and putting them at risk by their adoption of their own uneconomic production.

Fully 35 percent of Diamond/Sunsweet production is exported, and 50 percent of that is to the EEC. It cannot survive the continuing harassment to which it has been subjected during the past 3 years.

Mr. Chairman, as you know, Diamond/Sunsweet and other members of the industry came before this subcommittee in 1977 to seek its support for House Resolution 238 which expressed its dissatisfaction with EEC regulations designed to interrupt historic trade patterns for dried prunes, walnuts and certain other fruits and vegetables. We appreciate your unanimous support and that of the entire House. Combined with similar Senate action, the EEC backed off. We are grateful for your support.

Yet, top officials of Diamond/Sunsweet and other representatives of the trade returned only last week from a "fishing" expedition to Europe in an effort to uncover the source of the latest clandestine effort by certain EEC interests to place a "safeguard" tax on walnut exports from California (almonds and filberts were also mentioned). Only after a 10 day effort, including visits to the trade, European government leaders other than in France, and the EC Commission in Brussels and our own mission in Brussels, was this group able to determine the nature of the charge and temporarily forestall it.

The language of the codes negotiated by Ambassador Strauss and his dedicated staff with consumate skill is statesman-like and broad. In that connection we would summarize our views regarding the basic thrust of several of the codes and the implementing language we support.

Section 301 of the Trade Act of 1974 is defective as a dispute settlement mechanism. It is not a public process as it must become. It contains no time limits for decisionmaking which is essential to commerical adjudicatory procedure. It contains no recommendation to the President by the STR for resolution of any finding of injury, nor any provision for public disclosure of action taken, or refused, by the President, which we believe is crucial to the entire process. While such language should be harmonized with the procedures under the subsidy code a resolution of the dispute which defends domestic growers and producers by retaliation if needed is requirement.

We commend to the subcommittee the language offered in S. 538, and support the published agreements by the Senate Finance Committee and this subcommittee.

Further we commend to you the language agreed to by both committees on the Dumping proposals generally embodied in S. 538. We do not believe there is any compelling need for any injury test that is differenct in concept, and clear language, of Section 201 of the Trade Act of 1974. In our statement before Trade Policy Staff Committee of the STR on March 19, 1979 on behalf of Western Growers Association of Newport Beach, California we described in detail our views on "Definition of Industry," "Injury Test," and "Disputes Settlement Procedures," in connection with anti-dumping proposals. We quote from that statement as follows:

"I. DEFINITION OF INDUSTRY

"Defining an 'industry' for the purpose of determining whether subsidized imports have caused or threaten injury should remain the comprehensive and flexible process described in the Trade Act of 1974. Section 201, (b), (3) (C). Note should also be taken of the language of 19 UST 4352, IAC Article 4, (a) (ii). With reference to the IAC language, we believe the words 'in exceptional circumstances' should be stricken, and the words 'or serving each market' be inserted in line 3 between 'market' and 'regarded.'

"The compelling question in dumping matters is whether less than fair value pricing by a foreign company or companies serves to disrupt and distort established supply patterns, and thereby causes injury to U.S. industry or agricultural producer. The compelling question involving use of government subsidies applied to commonly produced or grown products of foreign companies is whether such subsidies serve to disrupt and distort established supply patterns in one or more markets in the Untied States.

"We believe that the IAC and the subsidy/countervail code and in particular U.S. statutes should be so constructed as to permit definition to include any producer or grower or combination thereof who serves a regional market by producing or growing within that regional market or who serves such regional market through

distribution to such regional market, and, to include any producer or grower who serves a particular class of trade in the United States.

"The emphasis in these proceedings should be less on intricate formulae for defining industry and much more on the trade disruption and distortion impact of such LTFV sales or subsidized foreign products; loss of sales, loss of profits, inability to attract capital and loss of domestic jobs. It is the predatory pricing feature resulting from dumping and subsidized foreign products that is to be penalized when unveiled.

"II. INJURY TEST

"As in the matter of industry definition, the measurement of injury must be kept comprehensive and flexible. The standards to be matched, in our view, should be illustrative but without precise numbers included. We share the view that an injury test should not become an esoteric and academic analysis of the factors of production and distribution. Any attempt to quantify and rank the elements, in toto, which might contribute to injury, would end in fruitless and frustrating controversy and would contribute nothing to resolution of the dispute.

"The language of the IAC, 19 UST 4351, Article 3, paragraph (a) is helpful. If the word 'the' in the second line were changed to 'a' when modifying 'principal cause' an adequate and simple 'Determination of Injury' requirement would have been stated. If, under paragraph (b), the evaluation process includes such items as sales trends, profit trends, market share, return on investment and employment as illustrative, not compelling, of injury analysis, a quite adequate and simple 'valuation' requirement would have been stated.

"We find adequate as well for injury determination purposes the Section 201, (b), (4) of the Trade Act of 1974, 'For purposes of this section the term "substantial cause" means a cause which is important and not less than any other cause.' Since all these disputes are matters of judgment, we feel language should stay away from assigning specific values to the various factor.

"In view of the fact that no provision is likely to be made for assessment of double or treble damages for trade disruption activities, we believe our statutes should provide for relief of, or retaliation for, unfair trade disrupting and distorting practices of foreign companies or governments within the shortest possible time frame, in accordance with simple automatic adjudicatory administrative procedures and with the same kind of 'transparency' this government historically has practiced and which we all should endlessly urge all other nations to duplicate.

"III. DISPUTES SETTLEMENT PROCEDURES

"We support all efforts to regularize trade disputes settlement through simple, clearly stated administrative procedures, and with fixed time limits omitting most previously granted discretion to mid-level government executives to decide issues presented by U.S. citizens, and with publication of considerations and results in each case, affirmatively or negatively.

"We commend to your attention to S. 223, S. 264, and S. 538 in the Senate, and HR 2612 in the House; all bi-partisan efforts to defend fairly U.S. growers and producers from predatory pricing practices of foreign companies, and the subsidy practices of foreign governments.

"In the most fundamental sense we believe that a policy of fariness and firmness, exemplified by specific disputes settlement mechanisms that work, actually promote trade. Application of simple commercial rules, including penalties, rewards and procedures with a beginning and an end are constructive forces in internatinal trade if achieved in an impartial forum and in the sunshine.

"On the other hand, use of wide discretion in government decision-making in such matters has 2 basic flaws:

"A. U.S. trading partners, lacking a clear understanding of the rules guiding U.S. policy (Treasury indecision and STR deferral) and prompted by their domestic companies, may take political liberties (risks) which place trade entirely in the political arena, and invites needless confrontation between governments. We view this as an impediment to trade, a deterrent.

"B. U.S. petitioners are not now certain or satisfied that due process has been achieved or whether their complaints have been dealt with on their merits, or rather sacrificed for some unknown and perhaps unworthy cause, all done under the guise of 'confidentiality.'

"We submit that a simple procedure going to the heart of the impact of the actions by foreign countries and governments in terms of trade disruption and distortion, not endless verbiage, will in fact promote the interests of trade. Support

by the STR for these key changes referred to above in implementing language would insure acceptance by the House and Senate."

In further reference to import relief under Section 201, support the Senate Finance Committee agreement for an expedited procedure calling for a 90 day investigation under certain circumstances. This procedure, however, does not reach certain types of potential injury which can befall the perishable fresh fruit and vegetable industry because of the very short season, perhaps 8-10 weeks. A sudden or continuing surge of imports at peak domestic harvest could easily destroy domestic growers however efficient they are. Such destruction of an efficient industry is not in the best interests of the United States.

I recommend a special expedited procedure, therefore, for the fresh fruit and vegetable industry, with the USITC completing the investigation within 20 days, and the President to decide on appropriate measures 10 days after that in the case of an affirmative USITC finding.

There are those who worry that "due process" will be denied in an investigation of injury shorter than 1 year. We submit that due process is not a function of time, but rather a function of diligence, fairness, availability of reliable data and a well disciplined administrative procedure.

In that connection, our information suggests clearly that the USDA is presently equipped to report fresh fruit and vegetable import data in whatever form needed for use by the USITC to support or not a probable cause of serious injury well within the 20 day period. The USITC has the experience. We know of no other requirement except to draft the legislation and proceed to satisfy due process.

Fundamental to all investigatory and dispute settlement is a time schedule, and public notice of progress and results, especially where commercial matters are concerned. The experience of recent history clearly indicates chronic administrative slippage by Treasury and other agencies. We are not interested in assessing responsibility. A simple time schedule, continuing public notices and the support of an aggressive and perceptive Congressional oversight activity should provide timely resolution of alleged violations of U.S. statutes.

Some observers attempt to relate the results of the current MTNs to the U.S. overall deficit trade balance and to judge the negotiations as a success or failure to the extent that our exports will surge either a result of tariff cuts or as a result of code interpretation by the United States and foreign countries.

Since an MTN is designed to "balance" concessions as between nations and among nations, it would be reasonable to presume that the trade balance matter would remain after the negotiations pretty much where it began. Therefore, we conclude that the purpose of the MTNs was not to redress the international trade balance in one nation's favor as against another, but perhaps to improve the quality of life for all citizens of the world.

At the same time, the deficit trade balance clearly needs attention.

Our view is that the deficit is structural, and long term. It does not depend upon the fluctuations of the international exchange rate of various currencies, nor should it. What is desperately required is a mechanism to focus on the development and implementation of a national trade policy. What is further needed is legislative support for an expanded, imaginative, firm and fair and realistic export policy, such legislative authorization is not now in place, and advantage should be taken of the current and natural interest in the impact of international trade by Congressional and industry leaders to push ahead with at least the beginnings or blueprint for a national export policy.

This subcommittee has a Special Task Force chaired by Congressman James Jones whose perspective analysis and reporting of trade barriers, in Japan for example, has served well the public's need to know the barriers in place. The Foreign Relations Committee of this House has issued a report delineating trade export incentive progrrams put in place by our major trading partners. The GAO plans to issue a report this summer further analyzing Japanese trade barriers.

We think the time has come to translate much of our information into practical legislation. While we support a new department of international trade, we are aware that substantial opposition exists in this House against any precipitous action. Therefore, an intermediate course might involve putting into law certain export incentive programs broadly discussed.

One such example is that proposed by Senators Bentsen and Danforth, S. 1003. It patterns some of its concepts after the French and Germans with respect to taxes, and combinations of companies to operate overseas. It refers to Japanese practices which may be germaine. None of them by themselves constitute a blueprint for the United States. All of them do serve to highlight the nature of the competition which

exists in the world vis-a-vis U.S. exports. We believe there are lessons worth learning. We believe that there are programs which can be enacted into law which can make a major contribution toward redressing the adverse balance of trade which the United States faces, and will continue to face.

Mr. Chairman, we appreciate deeply this opportunity to express our views.

STATEMENT OF MICHAEL L. HALL, PRESIDENT, GREAT PLAINS WHEAT, INC.

Our organization is pleased to have this opportunity to present our views on the relative merits and deficiencies of the various provisions of the Multilateral Trade Agreement Package under consideration by the Congress.

Great Plains Wheat (GPW) is a nonprofit, nonpartisan organization of U.S. wheat farmers, organized through respective state wheat commissions in Colorado, Kansas, Minnesota, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. The GPW foreign market development program for wheat is an ongoing process, broad-based program of market intelligence, trade servicing, technical and marketing assistance, and nutritional and related activities. All of these programs are carried out by GPW on behalf of U.S. wheat farmers and under U.S. wheat farmer auspices and approval in order to develop, expand and maintain foreign markets for all five classes of U.S. wheats.

The GPW market development program is now entering into the third decade of very successful and rewarding effort for both the U.S. wheat farmer and the United States. U.S. wheat farmers produce on the basis of efficiency and economies of scale, looking to the export market for a signifcant percentage of their income. The U.S. economy and balance-of-trade have benefited because of the export earnings from U.S. wheat exports. For example, twenty years ago the United States was exporting only around 400 million bushels of wheat. In this 1978-79 season, the United States will export one billion bushels of wheat, a performance that has been achieved in six out of the last seven years. Consequently, our organization is extremely interested in the outcome of the GATT negotiations because the international climate and rules for trade in wheat will be affected by this GATT trade package for fundamental and genuine reasons.

In 1978 U.S. agricultural exports accounted for $27.3 billion, and were a major factor in preventing an even greater trade deficit that year and offsetting to a considerable degree the substantial pickup in U.S. imports, particularly petroleum at ever increasing import prices. Although the overall quantity of U.S. agricultural exports continues, its aggregate value remains constant or is declining by various commodities because of depressed prices in the U.S. farm sector and a depreciating dollar in the world money markets. Given these circumstances, the projected record volume of about 122 million tons of U.S. agricultural exports in 1979 will account for export earnings of around $30.3 billion—up about $3.0 billion from the $27.3 billion in 1978. U.S. wheat exports accounted for just under $4.1 billion of our export earnings in 1978, which represents a substantial component in our agricultural sector of U.S. total trade, or for about 15 percent of the total value of farm exports, notwithstanding that the current value of wheat is down from the immediate past years.

To develop, maintain and expand foreign markets is not only vital to the overall U.S. economy and balance of trade; it is crucial in order to maintain a healthy U.S. wheat economy. And a vigorous U.S. export expansion program for U.S. wheat is the most viable and significantly sustaining vehicle in which to travel on that road to higher and more remunerative prices for U.S. wheat farmers. U.S. wheat farmers want to produce for the export market because they have realized improved net income during those seasons of sustained levels of wheat exports as a percentage of total U.S. production and/or during those same seasons of sustained levels of U.S. wheat exports as a percentage of total wheat trade.

It is difficult if not impossible to make an overall assessment of this GATT trade package, a view that is shared by many observers because of the myriad of international trade measures treated by this comprehensive set of negotiations commonly called the Tokyo Round. This judgment or assessment process is the prerogative of the U.S. Congress in ratifying the package. In addition, this process is made even more difficult simply because the Congress must either accept or reject as a whole the negotiated trade package. There is no opportunity for selected modification or augmentation to the various provisions and measures in the package. Nevertheless, the Congress will be developing enabling legislation to provide for implementation by and participation of the United States in this International Trade Agreement. This process would allow the sense and purpose of the Congress to be well expressed in some troublesome areas of the trade package.

With respect to the proposed GATT trade package, GPW is very concerned by the apparent lack of any gains or benefis for wheat in the area of international trade. Our organization is equally about the possibilities of potential set-backs in maintaining a competitive posture and aggressive international trade policy for U.S. wheats. This general judgment about the progress or gains for U.S. wheat in these latest multilateral trade negotiations is based on four criteria, the purposes of which have consistently been cited in support of the Tokyo Round:

(1) reduction or elimination of tariff or nontariff trade barriers;

(2) fair and effective competition for foreign markets;

(3) improved rules to govern the use of export subsidies;

(4) liberalization of international trading rules to facilitate expanded world trade.

Based against that set of criteria, there have been no gains for U.S. wheat farmers for various reasons. And even at the concluding stages of the trade negotiations in Geneva and the development of enabling legislation for the trade package in Washington, U.S. wheat exports were and are faced with almost unbelievable barriers that serve to prevent further growth in wheat trade in various markets, and particularly developed country markets.

As you are well aware, both Japan and the nine-member countries of the European Communities (EC) maintain exorbitantly high tariff or nontariff measures against U.S. wheat exports. For the week of April 17, 1979, the EC variable import levy against third-country wheat imports was a record high of U.S. $179.49 per metric ton (or U.S. $4.88 per bushel). The landed price for U.S. wheat in Rotterdam, The Netherlands, was only U.S. $150.50 per ton (or U.S. $4.10 per bushel) for U.S. Dark Northern Spring wheat at 14 percent protein. Consequently, the EC processor or consumer of U.S. wheat is required to pay an import tariff at the border 119 percent higher—yes, one-hundred and nineteen percent higher—than the actual landed commercial value of the U.S. wheat.

Another example also serves to further underscore our view about the lack of any progress for U.S. wheat farmers in the current round of trade negotiations.

Japan maintains in principle a similar restrictive import regime for wheat, notwithstanding some difference in the mechanisms, vis-a-vis the European Communities. On the basis of wheat prices today and the rate of exchange between the U.S. dollar and the Japanese yen, severe barriers are maintained by the Japanese Food Agency (JFA) against U.S. wheat imports. During the week of April 17, 1979, the landed value of U.S. Hard Red Winter wheat at 12 percent protein in Japan was approximately U.S. $169.45 per ton (U.S. $4.61 per bushel). Nevertheless, the JFA, a state monopsonistic buyer on the international side and a monopolistic seller on the domestic side, resold that wheat at an average price of U.S. $320.00 ton (or U.S. $8.71 per bushel). As in the case of the EC wheat import regime, the JFA assessed an import tariff at the border of U.S. $150.55 per ton (or U.S. $4.10 per bushel). This Japanese border tariff or duty is only 88 percent of the landed commercial value of U.S. Hard Red Winter wheat in comparison with the EC import duty on wheat. Consequently, the Japanese miller, and ultimately the Japanese consumer, are forced to pay much higher prices for U.S. wheat because of Japanse tariff or nontariff barriers against imported wheat.

With respect to the EC agricultural import system that employs variable import tariffs against imported wheat, we believe it is significant to recite briefly the international trade history that has resulted in a record import duty of 119 percent against U.S. wheat. During the initial stages of the development of the EC Common Agricultural Policy for Grains, the United States and the EC Commission signed an exchange of letters on March 7, 1962, that mutually agreed that the United States ". . . shall have all the contractual rights held by them on quality wheat on September 1, 1960". During the series of international negotiations for various wheat agreements and the so-called Kennedy Round of multilateral trade negotiations, the United States and the EC Commission mutually reaffirmed the U.S. grain rights in a series of letters commonly called "standstill agreement". The United States reiterated these grain rights on July 19, 1974, with respect to the enlargement of the European Communities from six to nine member countries.

The U.S. grain rights for wheat on September 1, 1960, were based on a fixed 20 percent import duty on U.S. wheat imported into Germany; a 30 percent import duty in France; a 30 percent import duty in Italy; and a zero import duty in The Netherlands and Belgium. That is to say, prior to EC membership and during the late 1940's and 1950's, these countries agreed individually to bind their respective import duties on imported wheats. The U.S.-E.C. standstill letters on these U.S. grain rights confirm these (GATT) bound import duties, along with a mutual agreement for negotiations on tariff schedule modifications under the GATT should the EC CAP result in modifying the September 1, 1960, fixed import duties. A compari-

son of the level of fixed import duties on wheat as of 1960 and the current level of variable import duties based on April, 1979, prices is as follows:

	1960 fixed level		1979 variable level		Percentage increase
	$/Bu	$/MT	$/Bu	$/MT	
Germany	0.80	30.10	4.88	179.49	410
France	1.23	45.15	4.88	179.49	297
Italy	1.23	45.15	4.88	179.49	297
Netherlands	0	0	4.88	179.49	488
Belgium	0	0	4.88	179.49	488

Our organization is extremely concerned with the EC variable import levy mechanism of the CAP on both imported wheat and corn inasmuch as it is this mechanism that provides for the collection of receipts from which the EC Commission defrays in large part the expenses for EC subsidies for European wheat exports. Moreover, we are concerned that the U.S. negotiators may not have pressed their European counterparts on this issue of the exorbitantly high import duties at the border against U.S. wheat and the disruptive practice of subsidizing wheat to third-country markets.

The fundamental concern and apprehension of our organization are over the public and private assertions of EC Commission officials that the United States has now accepted in principle and in fact the operations of variable import levies and export subsidies as integral features of the CAP. These assertions from Brussels suggest that the EC Council of Ministers has accepted the U.S. advocacy of the current proposed code on export subsidies in return for the U.S. acceptance of having U.S. industries prove "material injury" before the U.S. Government would impose countervailing duties against directly subsidized exports to the United States. There is a strong concern that this code also contains an inherent acceptance of market sharing by the major trading countries in the world. Consequently, the proposed GATT negotiated code on export subsidies and countervailing duties becomes the essential baseline from which U.S. wheat farmers assess the multilateral trade package as they look to the export market in the decade of the 1980's.

1. *Subsidy and countervailing duties code.*—The provisions of this proposed code do not appear to address the fundamental causes for which they were advanced for negotiation in the current round of international trade negotiations. Unless the proposed code places a genuine restriction on the use of export subsidies, little would be gained for the United States to accept anything less than an outright prohibition on this exporting practice. Failing the willingness of other countries to accept full responsibility to prohibit at best or restrict at least the use of export subsidies, then the best code for the United States would be simply to put into place a selective wheat export subsidy program to offset and counteract any such practice by competitive wheat exporting countries.

A. We are concerned too with the apparent interlocking provisions of the proposed code with proposed international commodity arrangements or other GATT instrumentalities. It is not clear in the language of several public documents whether the issue of export subsidies would be considered and resolved under the auspices of the proposed GATT consultative council on international commodity agreements or under the prevailing commodity agreement for wheat. Neither a procedure nor a time frame is clearly defined for such resolution of trade disputes, an area that could be addressed in the enabling U.S. legislation.

B. The draft language in the subsidy code that would apparently modify Article XVI of the General Agreement on Tariffs and Trade strongly suggest an acceptance of market sharing by the United States. Moreover, it suggests that some countries would be permitted to continue to subsidize agricultural exports in order to be competitive to maintain a predetermined share of the market. Such phrases as "equitable share of world export trade"; "bearing in mind the development on world market"; "normal market conditions"; and "prices materially below those of other suppliers" are simply qualitative criteria over which little, if any, agreement could ever be reached between countries in disputes over the injurious effect of export subsidies. The use of such qualitative criteria in the language of the proposed subsidy code only confirms the unwillingness of some major exporting countries to participate in such an agreement wherein which precision and specificity would prevent their use of export subsidies.

C. In addition to our concern over such undefined criteria, we believe that it is extremely important for the United States to preserve its unilateral freedom of choice to implement export subsidies for wheat and other commodities when faced with severe and unfair subsidized competition for foreign markets. In this regard, we would like to note that our organization filed a Complaint under Section 301 of the 1974 Trade Act with the Office of the Special Trade Representative. This Complaint was filed on November 2, 1978, about the sustained use of wheat export subidies by the EC Commission. A complete file of this Complaint was published in the December 2, 1978, issue of the Federal Register, the purpose of which was to announce public hearings on the 301 Complaint on February 15, 1979. Our organization has not received any official response to our Complaint about this disruptive practice of EC wheat export subsidies to third-country markets.

D. In order to appreciate U.S. wheat farmer concern about wheat export subsidies or an international code on subsidies, it is important to understand the direct income effect on U.S. wheat farmers from uncontested and unchallenged subsidies from other countries.

During January 1979, the EC Commission established a record high for wheat export subsidies, placed at 80 units-of-account or equivalent to about US$131.20 per metric ton (or US$3.57 per bushel). At that time, the authorized level of EC wheat export subsidy was just about equal to the commerical value of the commodity at port shipping positions in Europe. In order to meet the subsidized competition for foreign wheat sales from the European Communities at that time, other competitor countries began to discount the export prices of wheat. The Argentine National Grain Board reduced the minimum export clearing price for wheat down sharply from the previous level of US$146.00 per metric ton (or US$3.97 per bushel) to US$130.00 per metric ton (or US$3.54 per bushel). The Canadian Wheat Board (CWB) sold sizable quantities of Spring wheat at prices apparently discounted by approximately US$6.50 per ton (or US$0.18 per bushel) compared with U.S. Hard Red Winter wheats at the Gulf. Australia made sizable sales to the People's Republic of China at prices reported at US$124.00 per metric ton (or US$3.40 per bushel) at Australian export positions.

Consequently, the EC wheat export subsidies, relatively small in volume as a percentage of world wheat trade, was much like dropping a price pebble in a placid pond. The rippling effect was tremendous inasmuch as the Common Market wheat export subsidies broke the international wheat price by US$10.00 to US$15.00 per ton (or US$0.25 to US$0.40 per bushel) over the past several months.

E. Although the matter of countervailing duties is not of direct and immediate concern and consternation to U.S. wheat farmers as is the matter of export subsidies, it is conceivable under an extremely unfortunate set of circumstances that U.S. wheat farmers could be called upon to request countervailing duties against imported wheat or wheat flour products. It is our position that the only test that should be required is to determine whether a commodity or a product receives an export subsidy into the U.S. market before countervailing duties are imposed. For the United States to agree to include a domestic injury test in such a countervailing duty code is only to complicate, confuse and ultimately obscure the real issue under examination: whether a commodity or product receives an export subsidy at whatever level in order to be competitive in the U S. market. To determine domestic industry injury is extemely difficult because of many economic and social factors; therefore, any product or commodity determined to have received an export subsidy should immediately be faced with a comparable U.S. countervailing duty at the border.

2. *GATT consultative council on international commodity agreements.*—We have expressed reservations about and objections to various aspects of the proposed code on export subsidies and countervailing duties. They are compounded by the apparent comprehensive set of interlocking commodity agreements for dairy, meat and sugar products as well. The proposed international commodity agreements for agricultural commodities range from one containing a comprehensive schedule of fixed minimum and maximum prices to be adjusted on the basis of quality differentials at identified FOB positions to several ones that are only consultative in nature. It is difficult to determine the role and function of such a proposed GATT Consultative Council on International Commodity Agreements. But the role and function of such a proposed Council take on a greater significance with respect to the code on export subsidies and countervailing duties as this code appears to be the controlling document over the operations of the proposed international commodity agreements. We believe that additional explanation and clarification are required before anyone were to advise in favor of the United States entering into that proposed agreement, and particularly because of the draft language therein that would require partici-

pating countries to submit any proposed changes and modifications of national agricultural production and trade policies to that council prior to the implementation of such new programs.

CONCLUSION

With respect to our views on the proposed subsidy and countervailing duty code and the GATT Consultative Council for International Commodity Agreements, we fail to see any overall achievements in facilitating the expansion of market access for either U.S. wheat or feed grains. Nor do we believe that there has been any movement towards a freer international agricultural system by the lowering or removal of many import barriers to U.S. wheat and feed grain exports. Quite the contrary! There appears to be an evolving U.S. acceptance of highly protected import constraints for wheat and other agricultural commodities in other countries, complicated by the use of disruptive export trading devices to ameliorate chronic surplus production of agricultural products, particularly in the grains sector.

We realize that there are other commodities and products, industrial and agricultural, for which the United States may well have obtained meaningful concessions from other countries for greater access to foreign markets through either the reduction or elimination of nontariff barriers, tariff barriers or both. These gains in obtaining greater foreign market access for various speciality crops, meat, citrus and tobacco are significant. In addition, there appears to be some achievements in obtaining greater foreign market access for U.S. rice exports, particularly to the Common Market. These gains for the United States must ultimately be weighed against the concessions either received or granted by the United States with respect to the predominant export earning crops such as wheat, feed grains and soybeans. The gains in the industrial sector must be weighed against the gains or losses in the agricultural. This judgment or assessment must be made by the Congress. Because of the lack of progress for U.S. wheat based on the four criteria identified at the outset of this statement and the genuine potential for set-backs in the future with respect to sanctioning unfair competition, our organization must conclude that there is little, if any, demonstrable benefits in this GATT trade package for U.S. wheat farmers. And on a broader level, we fail to understand the assertions that this proposed trade package will serve to abate the rising tide of trade protectionism around the world. Based on our assessment, this proposed trade package could well serve to provide the international sanction for and acceptance of the current trade protectionist patterns and regimes. This implied acceptance of such practices would only lead to more protectionist measures by our trading partners under the hollow allegiance to freer and fairer trading principles, all of which are currently prevailing in the area of international trading of wheat and grains.

STATEMENT OF THE GTE PRODUCTS CORP.

GTE Products Corporation ("GTE") is a wholly-owned subsidiary of General Telephone & Electronics Corporation. GTE manufactures and markets a wide variety of products and services in the United States and in foreign countries to the private (consumer and commercial) and governmental sectors. GTE imports and exports articles in both finished and unfinished states; it competes in markets that are sensivitve to import competition and in markets that present significant export opportunities. GTE employs nearly 100,000 persons in its domestic and international operations; its sales during 1978 were $4.1 billion.

I. GENERAL POSITION

Among the goals of the United States during the multilateral trade negotiations ("MTN") were the expansion of opportunities for United States commerce in international trade and the maintenance of a disciplined, open-world trading system. GTE believes that U.S. labor and industry can benefit from liberalized international trade and that a resurgence of a protectionist trade philosophy is to be avoided; but only if the United States follows a dedicated tough-minded approach to assure that it receives the commercial benefits for which it negotiated. To that end, GTE supports the following positions:

Expansion of section 301.—Amend Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) to allow interested U.S. parties:

(i) To file complaints against foreign practices which violate the Codes;

(ii) To participate in complaint investigations; and,

(iii) Most important, to obtain from the U.S. Government information necessary or appropriate to determine whether U.S. benefits under the Code are being impaired by foreign practices.

Creation of Trade Department.—Create a separate, cabinet-level department of the executive which would coordinate U.S. trade policy among the 57 agencies presently handling international trade, and which would effect trade policy without the need of interagency review and prior approval. Such a department should be charged with obtaining, more efficiently than under the present system of inter-agency negotiation and accommodation, Code benefits due to U.S. commerce.

Continuation of dispute resolution agency.—Continue the International Trade Commission ("ITC") as an independent agency to resolve, in conformance with applicable Codes and applicable U.S. laws, unfair trade practice and other issues concerning foreign trade.

The ITC would continue its present cease and desist (and contempt) power over a non-Code matter. It would also find fact and recommend to the President (and, at the president's direction, order) remedies to proscribe the adverse affect of a foreign trade practice which violates a Code or implementing law, if that practice is not the subject of, or is not satisfactorily resolved through, a dispute settlement mechanism. The ITC would also serve as the surveillance arm under GATT and the Code dispute settlement procedures.

End bifurcated proceedings in countervailing duty and antidumping matters.

Expansion of Presidential retaliatory power.—

(i) Allow the President to take timely and effective retaliatory action in the event that a Code dispute settlement mechanism is not available and/or fails in its essential purpose and foreign practices are found to impair the flow to the U.S. of Code benefits in the U.S. domestic market or in a foreign country; and,

(ii) Allow the President to take retaliatory action, on a country-by-country and product-by-product basis with respect to each Code to which a foreign country is a signatory.

Provisions for public information.—Provide greater availability of information to the public with respect to trade matters being discussed between the U.S. and a foreign country.

Promulgate appropriate rules concerning ex parte conversations (during the pendency of adjudicatory or other administrative proceedings) involving a U.S. Government entity and representative(s) (private or official) of foreign trade, to provide that when such conversations take place, there be promptly made public a fair summary of such conversations, including identification of the parties taking part in such conversations.

International trade as an important policy matter.—

(i) Require that an administrative agency include as part of the economic impact study undertaken prior to the promulgation of regulations, a study of the impact of the regulations on U.S. foreign trade;

(ii) Express in the history of appropriate implementing legislation that the U.S. intends affirmative assistance to and the development of U.S. exports; and

(iii) Avoid the use of trade policy as an adjunct to other U.S. policies such as foreign relations.

II. POSITIONS WITH RESPECT TO IMPLEMENTING LEGISLATION FOR SPECIFIC CODES

GTE believes that the MTN implementing legislation, or future legislation concerning foreign trade, should encompass the concepts contained in the following comments.

A. Antidumping

1. *Injury, causation, similar product.*—With respect to determining the existence of injury, criteria should be flexible enough to allow evidence of injury which may be peculiar to an industry; undue weight should not be given to any specific criterion. Also, proof of injury should not depend on whether there exists a relative or absolute increase in dumped imports over a particular period. As qualified by these comments, the criteria set forth in the Senate Finance Committee statement of April 5, 1979, are acceptable.

As to causation, the dumped imports should be a substantial cause of injury if there exists more than one cause; that is, the dumped imports should be a substantial cause when compared to any other cause, but it may not be the only or most important cause. Within these criteria, the injury is "by reason of" the dumped imports as required by the Countervailing Duty Code. (We understand that the injury and causation sections of the U.S. Antidumping law will be modified to conform to those same sections in the Countervailing Code. Also, it is our understanding that the Causation definition in the Countervailing Duty Code would allow for several coexistant causes of injury and that the preceding comments about causation would be consistent with the Code).

The term "similar products" should be defined to include products with characteristics substantially similar to those under consideration, in addition to, rather than as an alternative to, identical products, if there is a significant degree of commerical interchangeability between the identical and substantially similar products.

2. *Montoring LTFV activity after termination of finding.*—For at least three years after a final dumping finding is terminated, the administering authority should monitor the importation of merchandise which was subject to the determination:

(i) If less than fair value ("LTFV") sales are found during the monitoring period, and antidumping investigation with respect to injury should be initiated promptly.

(ii) In the event that a final dumping finding is terminated because LTFV sales, although present and continuing, do not give rise to an actionable level of injury, and if during the monitoring period such LTFV sales again reach an actionable level of injury, the dumping finding should be reinstituted.

3. *Effect of discontinuance of antidumping proceeding on other matters.*—A final negative determination with respect to (or the discontinuance of) an antidumping investigation should not require termination of a separate investigation with respect to the same class or kind of merchandise. For example, assuming bifurcated antidumping proceedings continue, a notice by Treasury to the ITC of discontinuance of an antidumping investigation should not require that an ITC investigation with respect to the same class of goods (other than an investigation undertaken pursuant to the antidumping statute) be discontinued.

4. *Equalizing certain rights of importers and domestic manufacturers.*—In order to improve the enforcement mechanism for the assessment and collection of special dumping duties, Sections 514–516 of the Tariff Act of 1930, as amended, and Title 28 of the U.S. Code with respect to subject matter jurisdiction and powers of the Customs Court, should be amended as follows:

a. Amend Section 514 (19 U.S.C. 1514) to provide for members of an injured domestic industry a formal role in the process of assessing special dumping duties and in the administrative review of an importer's protest from a dumping assessment In this way, customs service will gain the special knowledge and expertise which members of the domestic industry can contribute to the complex assessment calculation.

b. Amend Section 516 (19 U.S.C. 1516) to balance between importers and the domestic industry the availability of administrative review. A domestic manufacturer should have the right to protest, at least annually, a determination by the Secretary of Treasury as to the proper amount of duty due on an imported item with respect to as many entries as necessary to correct assessment errors which work to its detriment. Presently, Section 1516(c) allows a manfacturer to contest only one entry per port of entry. Where there do not exist legal or factual issues which are common to all entries adversely affecting the domestic manufacturer (as is likely in a complex dumping case) this test-case method of protest is ineffective.

c. Amend Section 516(g) to allow a Customs Court order, which upholds the protest of a domestic manufacturer to a dumping duty assessment, to be retroactive to the date of the incorrect appraisement. Presently, if a manufacturer successfully challenges a duty determination via a test case, only merchandise entered for consumpition (or withdrawan from warehouse for consumption) after the date of the Customs Court order overruling the challenged determination, is subject to the correct appraisement. All past unliquidated entries and all entries up to the date of the Court order must be liquidated in accordance with the overruled assessment.

d. Amend Section 516(a) to give the domestic industry access to information needed to evaluate properly the methodology and factual basis for a Customs assessment action. Such information may be made subject to appropriate protective orders. Present law provides only the the domestic industry may be told the amount of the special dumping duty assessed.

e. Expand the subject matter jurisdiction of the Customs Court and specifically give that Court equity powers to deal with the broad range of issues which will arise if the administrative review provisions of the Tariff Act of 1930, recommended above, are adopted. Also, the Court specifically should be given powers to issue injunctive orders and writs of mandamus against government officials in appropriate cases. The Court should also have authority to order the withholding of appraisement on merchandise and to compel the assessment and collection of special dumping duties.

B. Subsidies and countervailing measures

1. *Injury, causation, and similar product.*—Place in the subsidies legislation the same injury, causation, and "similar product" criteria as discussed in item II. A.1. at page 5, with respect to Antidumping.

2. *Regional industry concept.*—Provide a regional industry concept whereby if one or several producers sell all or a substantial portion of their production in a distinct region of the United States which region constitutes an isolated market from other regions of the United States, then such producer or producers may be considered as a separate industry. Such a regional industry concept should continue in the Antidumping law.

3. *Public information.*—Provide public information in the countervailing duty ("CVD")/subsidy context as discussed in item I. at page 4, above, with respect to Antidumping.

4. *Monitoring subsidy activity after termination of finding.*—In cases where a final CVD determination is terminated, provide a monitoring system with respect to the existence of subsidies and to injury which may be caused by subsidies, similar to the monitoring system discussed in the Antidumping context at item II.A.2. at page 6, above.

5. *Limitation on terminating a CVD finding.*—A final CVD determination should not be terminated so long as exports by a United States industry are being impaired by shipment of the subject subsidized articles to export markets of the U.S.

C. Customs valuation

1. *Reasonable means valuation.*—The implementing or companion legislation should not proscribe the duty of customs officers to ascertain the foreign market value or constructed value of articles "by all reasonable ways and means" in certain antidumping situations. (See 19 U.S.C. 168.)

2. *Assists.*—An importer in a arm's-length transaction with a foreign exporter to the U.S., should not have to account for the value of assists provided to such exporter by such importer.

3. *Confidential information.*—Confidential information supplied to Customs by a private party should be made available to a non-U.S. Government party but only under an appropriate protective order from a court of competent jurisdiction.

D. Government procurement

1. *Equitable treatment by signatories.*—Signatory countries which exclude U.S. competition from procurement by their government-owned or controlled telephone, postal, or other such entities, or which discriminate against U.S. competitors in any way associated with their government's procurement process, should not be granted any right under the Code to bid for U.S. Government contracts at specified entities or, alternatively, for U.S. Government contracts covering the same class of products which such countries exclude or against which they discriminate. The intent should be to secure as much trade opportunity (on an absolute or fair relative basis) for the U.S. as the U.S. gives to each other signatory.

2. *Equalize social engineering costs.*—Legislation should be enacted to require U.S. Government contract officers to equalize bids between U.S. and foreign competitors so that accounting regulation costs and social engineering costs (such as those associated with EEO, OSHA, and EPA), which must be borne by U.S. firms but not by foreign firms, do not put U.S. businesses at a competitive disadvantage.

Statement of Frank Casale, General President, International Leather Goods, Plastics & Novelty Workers' Union, AFL–CIO

I. INTRODUCTION

My name is Frank Casale. I am General President of the International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO. I want to record the strong concerns of our member workers in handbag factories that legislation to implement the multilateral trade negotiations must be drawn so as to ensure a more effective mechanism for relief against unfair subsidized imports than now exists under the current procedures for implementation of the countervailing duty statute.

In this connection, firms and workers in our industry have repeatedly turned to the Executive Branch seeking redress against subsidized imports through imposition of countervailing duties provided for by Congress. Unfortunately, our experience has been that the industry has been unjustifiably denied this means to offset unfair import competition as Congress clearly intended and American workers expected by the provisions of the countervailing statute. Therefore, we believe it is critical that the future statute which results from the new international code on subsidies and countervailing duties should be placed under the administrative responsibility of an agency other than the Treasury Department. Based on our industry's deplorable experience, that Department has been guilty of woeful mismanagement of the current statute. It has clearly misused its statutory authority. This has been demon-

strated numerous times by Treasury's unjustified waiving of the imposition of countervailing duties, even though Treasury's own investigation had determined that practices exist in foreign countries that are clearly bounties or grants and therefore countervailable within the meaning of the countervailing duty statute. In at least 2 cases involving a leather product, though not handbags, Treasury even exceeded the timetable specified for final determinations in the statute. This is indicative of that Department's sloppy management procedures. Treasury has shown a disposition to make decisions based more on foreign policy considerations than on economic facts. How else can one react to its negative findings in several handbag cases where various offsets were calculated to reduce the net bounty to a de minimis determination?

II. HANDBAG INDUSTRY HAS BEEN CRUELLY BUFFETED BY IMPORTS

1. There has been serious erosion of jobs and firms

Many industries in the United States confront competition from imports, but few industries have experienced so devastating a toll in the loss of over one-fifth of all manufacturing establishments and of production workers' jobs under pressure of imports as has the United States handbag industry. Although 1976 is the last year for which official data are available regarding domestic shipments these data as well as later estimates give evidence of a serious structural deterioration in the handbag industry. For the decade between 1967 and 1976, Bureau of Census data reveal that output fell dramatically by 24 percent while imports increased by 128 percent in volume and a staggering 312 percent in value so that the import penetration rate nearly tripled. It amounted to nearly 30 percent on a value basis and 53 percent on a quantity basis in 1976, but since then, erosion of the industry as a result of imports has become even more devastating.

Comparing 1978 with the preceding year, imports rose 50 percent, while estimated domestic production showed a critical decline. The value of shipments rose only 5.3 percent while units of output actually declined by around 2 percent. As a result, imports have taken an even heftier slice of the domestic market, accounting for 64 percent of the market in 1978 against 57 percent in 1977 on a quantity basis. Measured on a value basis, imports accounted for 39 percent in 1978 against 31 percent in the preceding year. Obviously, no industry can withstand such persistently injurious import competition and still survive. The handbag industry is no exception.

It needs to be stressed that the gains made by imports at the expense of domestic production and employment are not due to style or quality but primarily are due to price advantages which in turn can be attributed to lower foreign labor costs, and, especially, the benefits enjoyed by many foreign suppliers due to the subsidies received under foreign government incentive programs.

Labor represents from 20 to 25 percent of the cost of handbag production and therefore the disparity between U.S. and foreign wage scales constitute a significant competitive factor. The wide gap is reflected in unpublished data of the Labor Department which show that in 1976, estimated hourly compensation in the leather products industry (including all fringe benefits) amounted to $4.25 in the United States, but only 63 cents in Brazil, 46 cents to 50 cents in Korea, and 47 cents to 49 cents in Taiwan.

Imports have also been stimulated by the U.S. tariff cuts in the Kennedy Round which sliced the U.S. import duty on leather handbags by 50 percent. However, the most significant stimulant to imports, particularly from the developing countries, has been the maintenance by foreign governments of export incentive programs benefitting their producers and exporters of handbags. These have contributed to the burgeoning levels of imports of handbags and have created major disruption to the domestic industry.

It should be kept in mind that the domestic handbag industry, though relatively small in comparison to many other industries, takes on added significance by virtue of several distinguishing characteristics.

It is heavily labor-intensive. Some three-fourths of its workers are black or Hispanic origin. The labor force, moreover, is predominantly semi-skilled, with women constituting 65 percent of the total.

Manufacturing is carried on principally in several states on opposite coastlines. However, the heaviest concentration is in the metropolitan New York area, mainly in New York City. Since 1972, based on official Census data, it has been estimated that some 5,000 handbag production jobs have been lost which has meant unemployment for perhaps double that number of workers in the industry as a result of the closing of companies. There were 496 handbag establishments in 1967; fewer than 400 now remain.

2. Export subsidies have not been remedied through Treasury's implementation of countervailing duty statute

Particularly the developing country suppliers have used export incentive programs to undersell U.S. handbag producers and thus capture a larger share of our market. Domestically produced handbags compare favorably with foreign made merchandise on the basis of style and quality. However, foreign suppliers have been able to penetrate the U.S. market in leather, vinyl and all other types of handbags, not only because they have definite advantages in terms of lower wages but most unfairly, they have the unwarranted advantage of the substantial export subsidies provided to them by their governments.

Treasury has acknowledged such subsidies exist and provide significant unfair competitive advantages to the foreign suppliers by its affirmative countervailing duty decisions with regard to leather handbags from such countries as Colombia, Uruguay, and Brazil. In all three cases, however, Treasury has seen fit to waive the imposition of countervailing duties because it obtained certain assurances from the supplying countries that these subsidies will be eliminated. In our opinion, such foreign assurances have been vague, inadequate and not in accordance with the Congressional intent. In their effect, these separate waiver actions by Treasury have been clear rebuffs to the domestic industry in its efforts to stay afloat against low-cost, low-wage and subsidized imports.

Such actions in handbag countervailing duty petitions make it apparent that Treasury regards a countervailing duty more as a restriction on competition than as a corrective action against unfair competition in our market.

III TREASURY HAS EXERCISED VAST DISCRETIONARY AUTHORITY IN ITS IMPLEMENTATION OF THE COUNTERVAILING DUTY STATUTE

1. Calculating net subsidies has resulted in negative findings

This is reflected in Teasury's policy, which they justify as provided for in the countervailing duty statute, of reducing the gross amount of subsidy by various offsets. Although in most cases the reductions are in the form of indirect taxes related to the product which receives the subsidy, Treasury has found some rather exotic items with which to reduce the subsidy. These include, in the case of the waiver on handbags from Colombia, the effects of the devaluation of the peso on the grounds that the Colombian Government allows as much as nine months to elapse before subsidies are paid. In this case Treasury even reduced the subsidy by the cost of the interest on the money not received by Colombian handbag producers and exporters during this nine-month period. Treasury describes this offset in the Federal Register of May 2, 1978 as "the present value effect of the (exporter's tax certificates) resulting from the inflationary impact on . . . delayed payment." Furthermore, since these exporter's tax certificates are sold in the Bogota Stock Exchange, Treasury also allowed as an offset the "discount paid by holders of (exporter's tax certificates) in the stock exchange, thus effectively not providing full value of the (exporter's tax certificates) once sold." It is interesting to note that several of these offsets were disallowed in a more recent case involving Colombia textiles and apparel, and when this was called to Treasury's attention, the Department had no recourse but to go back to its earlier decision and recompute the countervailing duties on Colombian handbags.

It is so important to recognize that the reductions which Treasury makes in the subsidy through subtracting the indirect taxes related to the products, ignore completely the fact that in virtually all of the foreign counties concerned these indirect taxes would have been borne by the manufacturer even in the absence of the subsidy program, and that the subsidy program clearly is intended to give the foreign manufacturers an edge in selling to the U.S. This is exactly what the countervailing duty statute is aimed at offsetting, but Treasury nevertheless goes on deducting these indirect taxes to the point where many negative or de minimis determinations result or the countervailing duty is significantly smaller than it should be.

2. Accepting unverified information as basis for decisions

In another handbag case—relating to handbags from Taiwan—brought to Treasury jointly by the International Leather Goods Plastic and Novelty Workers' Union, AFL-CIO and the National Handbag Association, Treasury found that that Taiwanese handbag industry had received de minimis aggregate benefits from the Government of the Republic of China, but that indeed three Taiwanese firms had recieved benefits considered to be bounties or grants within the meaning of the countervailing duty laws. Such benefits were preferential short-term finance, income tax holidays and incentives for firms located in export processing zones. As a result, on

June 3, 1977 Treasury assessed a countervailing duty on shipments from these three Taiwanese handbag manufacturers.

However, on the basis of information presumably received from the Government of Taiwan, Treasury later announced the lifting of the countervailing duty on two of these companies and Treasury also announced that benefits received by a third company were now considered to be of a de minimis nature. In short, by its announcement in the Federal Register of November 23, 1977 Treasury revoked the original countervailing duty order published in the Federal Register of June 3, 1977.

Clearly, such back and forth decisions by the Treasury Department, based on unverified information received from foreign representatives, are objectionable and do an injustice to the workers in an industry such as ours who have been so cruelly buffeted by subsidized imports.

3. Treasury has misused its waiver authority

This Subcommittee has had brought to its attention numerous examples of Treasury's misuse of its waiver authority. However, one of the earliest and most glaring examples of such misuse was the action of the Secretary of Treasury Simon on May 11, 1976 to suspend the 14 percent U.S. countervailing duty on Brazilian handbags effective July 1, 1976. Ostensibly this action was taken on the basis of Brazilian government assurances that it would phase out its export subsidies on handbags over an 18 month period beginning July 1. In reality the Secretary made his decision following a visit to Brazil where there was discussed various trade policy matters and where obviously the handbag waiver decision was part of a negotiated "deal" with the Brazilian authorities.

U.S. workers and firms in the handbag industry strongly objected to that waiver action by Secretary Simon on the basis that the action was inconsistent with the provisions of the Trade Act.

Congress provided that three conditions had to be met, at least two of which were not in this case, before the Secretary of Treasury could waive the countervailing duty.

Condition one requires a determination that "adequate steps have been taken to reduce substantially or eliminate the adverse effect of the bounty or grant". Treasury made no investigation of the effects of its action on the state of the health of the handbag industry. No inquiries were made of the industry to see what the effects of the action might be as was clearly the intent of Congress in the Trade Act with regard to all import actions affecting an industry.

Condition three requires a determination that "the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of (the multilateral trade) negotiations". Certainly, the attitude of Brazil, even as one of the leaders of the developing countries, would not affect the outcome of these trade negotiations and it is difficult, therefore, to see now the U.S. countervailing duty on handbags could at that time have been considered by the Treasury Department to "seriously jeopardize" the satisfactory conclusion of trade negotiations in which Brazil could gain much but had little to give. Could anyone have reasonably determined in 1976 that the MTN negotiations were going to succeed?

In light of the above, the domestic workers and firms in the handbag industry considered the Treasury action as grossly unfair and unwarranted. Keeping in mind that Brazil in just a few short years had increased its leather handbag exports to a level making it one of the top foreign suppliers, clearly Treasury's 1976 waiver of the imposition of countervailing duties on Brazilian handbags had a serious adverse impact on domestic production and jobs in the domestic handbag industry.

IV. IMPLEMENTING LEGISLATION MUST ENSURE MORE EFFECTIVE RELIEF AGAINST UNFAIR IMPORT COMPETITION

Handbag workers are not in disagreement with the aim of the multilateral trade negotiations, in that they represent a major international effort to control a broad range of government policies regulations and other actions that tend to restrict trade, whether or not designed for that purpose.

We think it entirely proper and desirable that the U.S. and other countries should seek to adopt mutually beneficial rules and procedures to deal with international trade problems such as those relating to product standards, customs matters, safeguard actions, government procurement and especially in the important area of subsidies and countervailing duties. Indeed, the avowed aim of the latter code, which is to control and restrict the international use of subsidies in international trade, is a commendable one. Yet, rhetoric apart, the real influence of the subsidies code and the other international codes of conduct will depend to a significant degree, not on the language of the codes negotiated in Geneva, but on their implementing legislation, how the codes are administered by the U.S. and foreign govern-

ments, and how they are interpreted internationally through decisions and actions by GATT institutions.

Workers in the handbag factories whose livelihoods have been jeopardized by unfair import competition resulting from the prevalent use of export subsidies by foreign supplies in our market, are fearful that the implementing legislation which this Committee and the Senate Finance Committee are now considering with the Administration may further dilute the present mechanism, even though admittedly weak and ineffective as it is now. Our concerns in this regard have been generated by what we see in the preliminary decisions taken by this Committee and the Senate Finance Committee in shaping a future countervailing duty statute through implementing legislation. Specifically, we are concerned over the implications of the following provisions now under discussion. We believe these require careful reevaluation and revision in order that the new countervailing duty statute should provide an effective and expeditious means for an industry such as ours to bring a case and to receive relief.

1. Discretionary authority of administering agency must be clearly delineated

One of the great weaknesses in the current statute is the vast discretionary authority Treasury has assumed in accepting unverified information from foreign representatives as a basis for its determinations, and in accepting foreign assurances. In this regard, this Committee and the Senate Finance Committee are considering permitting certain assurances from foreign entities with regard to price and with regard to quantitative limitations on exports to be accepted as a basis for terminating countervailing duty proceedings.

We believe price considerations have no place in a countervailing duty statute, even one in which injury becomes an element for the imposition of countervailing duties.

Price considerations as they are now utilized under the anti-dumping statute are those linked to offsets of the dumping margin, not to injury. How would the International Trade Commission go about developing objective criteria to determine whether a given assurance by a foreign government would be adequate as an injury offset? It would seem more logical, if price assurances were to be used in the subsidy statute, that they be calculated as offsets to the amount of subsidization.

Similarly, we see much legal confusion and ambiguity with regard to the issue of quantitative assurances. If a foreign subsidized supplying country provides assurances of such a nature, who or what is to be the controlling and surveillance mechanism? Is it to be a U.S. or foreign responsibility? Are these quantitative limitations to be compulsory or voluntary? Such questions suggest that far from reducing the discretionary authority of the agency administering the new countervailing duty statute, quantitative assurances in the statute would inevitably lead to an extension of administering agency discretionary authority.

2. Stiffer injury test in statute would create new impediment for relief actions

Some developing countries view an export subsidy as a substitute for, or to supplement, some internal or external financial policy. From their point of view, therefore, subsidies may be justifiable for their internal economic development.

In fact, subsidies augment an already substantial cost advantage enjoyed by developing country suppliers in the U.S. handbag market Subsidies thus enable foreign subsidized suppliers to penetrate our market substantially over and above the level that could be anticipated to materialize without benefit of such unwarranted additional cost benefits. By virtue of such cost benefits, foreign subsidized handbag producers and exporters have exercised a potential for further sales in the U.S. market as their own marketing strategies dictate.

Flowing from this is the question of the definition of injury in the statute now under consideration.

First, we strongly believe that any injury test requirement to which the U.S. has agreed at Geneva should not be a serious impediment for relief under the statute. Ours is an industry composed of small to medium-size scale firms which neither have the resources nor the time to engage in extensive and expensive litigation. An injury test would make this so.

What concerns our union even more is that the definition of injury may go beyond that standard which is described in the language of Section 201(a) of the Anti-dumping Act, 1921, as amended. Under that present anti-dumping standard, injury must be more than de minimis, not one which is material injury. To the handbag industry, inclusion of a standard of material injury within the framework of the new countervailing duty statute introduces an unreasonably stiff injury requirement to gain relief from a subsidy which is, after all, an unfair trade device.

In summary, the handbag industry is opposed to any definition of injury which would be included in the countervailing duty statute that would require a higher threshold of injury than has been the case under the present anit-dumping law.

3. Filing fees as a requirement for a countervailing duty petition impose a new burden for petitioners

This Subcommittee is considering a filing fee of $1,000 and the Senate Finance Committee is said to be considering a filing fee of $5,000 for any petition seeking redress under the countervailing duty statute. Again, handbag workers and the industry as a whole, composed as it is of small scale companies which have limited financial resources at its disposal, would find such filing fees a deterrent to their efforts to seek redress against unfair competition as the Congress provides for under this statute.

4. The Treasury Department must not be the administering authority for any new countervailing duty statute

The ample experiences of the handbag industry in the countervailing duty petition process confirm our belief that the administration of any new countervailing duty statute must be removed from the Treasury Department to an agency more philosophically in tune with the aims of the statute.

5. Closing a loophole

Also, this Subcommittee should give careful attention in the implementing legislation to close a serious loophole in the present countervailing duty statute by specifying more precisely that a foreign government's action to eliminate subsidies only on exports to the U.S., while retaining subsidies on exports to other countries, is not in compliance with the U.S. countervailing duty statute.

Reference can be made to a recent action by Treasury in which a countervailing duty determination relating to Uruguayan leather handbags was revoked on the grounds that the Uruguayan government had eliminated its subsidies. However, the Treasury Department acknowledged that one specific subsidy—a tanners' subsidy—had at the same time been doubled with respect to all countries other than the United States.

In this connection, Treasury stated in the Federal Register of March 22, 1979 that:

"It is the position of the Treasury Department that while the doubling of the tanners subsidy on exports to third countries clearly creates a distortion in international trade, no remedy is available to this action within the limits of the countervailing duty law. It is possible that a more appropriate remedy to this sort of distortion is available through other sections of the U.S. tariff and trade laws."

Since substantial quantities of Uruguayan handbags are shipped to countries other than the United States the net effect is that Uruguayan handbag manufacturers exporting to this country and elsewhere can maintain their present price structure on shipments to this country and to all other countries, and yet, as interpreted by the Treasury Department, not be engaged in a practice that is countervailable under U.S. law.

We think this type of foreign practice—in its intent and in its effect—is to negate any relief the U.S. handbag manufacturers may obtain through the imposition of countervailing duties, and should be countervailable.

V. IMPLEMENTING LEGISLATION SHOULD NOT INCLUDE NEW NEGOTIATING AUTHORITY

The concerns of handbag workers, as previously discussed, focus primarily on the preservation of an effective relief mechanism against unfair imports. Handbag workers are not opposed to imports per se—we are opposed to imports where unwarranted competitive advantages are bestowed in our market to foreign suppliers.

In this regard, it is understood that the Senate Finance Committee is agreeable to an Administration request for a new five-year authority to cut tariffs and to convey an indefinite authority for negotiation on non-tariff barriers, the latter on the basis of the so-called "fast track" procedure.

We do not agree that such provisions belong properly in the implementing legislation in the MTN package. Rather such actions require and deserve intensive separate attention and study by the Congress in the normal legislative fashion.

Further tariff cuts on any product should be considered only after the full impact (and results) of the Tokyo Round as fully known and can be objectively evaluated. Negotiations to remove non-tariff barriers are a desirable effort but negotiation of any non-tariff agreements likewise deserves separate consideration in Congress' usual legislative procedures.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Washington, D.C., May 2, 1979.

Hon. CHARLES VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: The International Union, UAW, has long been counted among the ranks of those American unions committed to liberal international trade policies. The leadership of our union has always held that a freer flow of goods should increase competition, lower prices to the consumer, and even increase job opportunities.

But our trade experiences since the Kennedy Round have disappointed us. The expectations of benefits to American workers fed during that earlier round of trade liberalization were not borne out. And the ones that were, have not been very equitably distributed.

Trade since the Kennedy Round has not contributed to price stability. Not only have our exports not kept up with imports, but our exports, jobs, trade balances and the value of the dollar have fluctuated widely. Workers are experiencing high rates of unemployment, with inadequate government assistance to protect them. It is no wonder that they are skeptical of the Tokyo Round trade package now before you.

The UAW still believes that expanded trade can be beneficial to the American people, both as workers and consumers. But this will take some adjustments in the implementation of the new trade policies, taking into account the dramatic changes that have occurred in the world economy—namely, high unemployment and a world market dominated by giant multinational corporations that control prices, affect currency fluctuations, and increase worker and community insecurity through their ability to shut down plants without warning and move overseas.

Our experience as labor advisors to the negotiators during the past four years, does not lead us to believe that adequate provisions have been adopted so far that take these conditions into account. If adequate guarantees are not forthcoming on these issues, through legislation or specific actions, the UAW does not believe that our membership could be persuaded to support the trade package.

We have made it clear time and again that it would be incorrect to presume UAW support of MTN unless and until we have satisfactorily protected the interests of our members.

We would like to propose some recommendations, and we would appreciate your including them as part of the hearing record.

1. We believe it is highly unlikely that members of the committee would sacrifice their jobs to get this trade bill passed—even though the bill might prove beneficial to the American consumer. Yet this is exactly what Congress asks American workers to do when it passes such legislation with inadequate compensation for their job loss. Or for the loss of their social security pension credits, seniority, and company-paid health insurance.

If it is in the national interest to expand trade, then the costs and sacrifices resulting from that expansion should be shared equitably by all of us.

There already exists several examples of decent federal adjustment assistance programs for workers whose jobs are lost due to government actions. The Redwood Employee Protection Program (REPP) provides approximately equal compensation to wages and benefits lost. The compensation period is determined by the age and seniority of the worker at the time of lay-off. Compensation covers health and pension benefits, and provides job training as well. Amtrak, Conrail, and Urban Mass Transit legislation offer similar programs.

This contrasts sorely to the currently offered trade adjustment assistance programs, in which benefits are kept low, fringe benefits are wholly unprotected, eligibility criteria are extremely difficult to meet, and inexcusable delays are encountered in determining eligibility. A recent Congressional Budget Office study calls the program "far from adequate."

The New York Times, in a recent editorial, called for better programs "on grounds of fairness." Even a majority of the Board of Directors of the Chamber of Commerce, twice voted in favor of better adjustment assistance programs, on recommendations drawn up by current Treasury Assistant Secretary Fred Bergsten.

The UAW urges Congress to adopt a comprehensive adjustment assistance program at least matching those benefits of other existing federal adjustment programs.

2. The present trade assistance program has been denied to workers laid off by a company which supplies parts or services to a separate company whose sales drop due to imports. However, such workers would qualify if the two companies were

instead one vertically integrated company. Eligibility for benefits should depend on whether imports constitute a sufficient cause of unemployment; eligibility should not hinge on the extent of vertical integration of the corporations in an industry.

Last month the Ways and Means Committee approved the Vanik Bill which included the Downey Amendment to put supplier workers on the same footing as end-product workers: they would receive benefits if imports "contribute importantly" to their unemployment. The committee removed language from the original bill that would have placed an additional arbitrary barrier to their eligibility. The original bill's language for supplier workers would require not only that imports be an important cause of unemployment but also that 25 percent of their output go to firms previously certified as import-impacted. This added requirement would serve no purpose but to deny or delay benefits to workers laid off due to imports.

We urge the approval of the Downey Amendment.

3. Another concern of workers that impels them toward protectionism is the danger that their standards may be undermined by competition from imports produced by exploited labor. Moreover, we are seeing more and more cases of corporations running overseas to escape OSHA and environmental regulations—and unions.

Foreign governments must not be allowed to win competition for the U.S. market by providing the most repressive substandard labor conditions to employers—often runaway U.S. companies.

In the 1974 Trade Act, Congress explicitly directed the President to negotiate an agreement on international fair labor standards. However, the Office of the STR has virtually ignored this mandate in the four years since. They have instead focused their efforts on agreements sought by business groups, such as subsidies, standards, government procurement.

Only in recent months have U.S. negotiators begun issuing pronouncements on fair labor standards. But they propose to begin negotiations on standards only after the Tokyo Round is completed.

We cannot wait for another ten years before we reach agreement on this vital issue. The Congress should require the Administration to initiate a new round of GATT negotiations on international fair labor standards, backed by a provision that would limit approval of the new trade agreement to a specified period of time, unless, within that period, there is submitted to and approved by Congress an additional agreement providing for such labor standards.

The UAW urges the committee to require the Administration to live up to its commitment on labor standards.

4. American workers are also cynical over promised foreign trade benefits when they see their own companies close up shop, go overseas, and export back to the U.S. market. U.S. law provides that all taxes paid to foreign governments on income earned abroad can be directly credited against U.S. tax liabilities on that income. In contrast, state and local taxes paid in the U.S. by corporations are simply a deduction for federal tax purposes. This difference provides an automatic incentive to invest outside the U.S. Such overseas investments are not due to the rationales ascribed to "comparative advantage"—but to conscious U.S. government policy.

Another tax break favoring foreign over domestic investment is the deferral provision by which corporate income derived abroad is taxed only when it is repatriated to the U.S.

In effect, U.S.-based multinationals are provided billions of dollars in interest-free loans or profits that remain entirely free of U.S. taxes if they are not repatriated. The UAW urges the committee to eliminate the deferral provision and replace it with a tax on foreign source corporate income as earned.

The House Ways and Means Subcommittee on Trade is not technically required to consider the above issues as part of the legislation approving the trade agreement.

But unless these measures are included as integral parts of legislation approving the trade agreement, the chances for its enactment are negligible to non-existent.

On the more narrow issue of legislative language to accompany the MTN codes, we would like to make the following recommendations:

THE STANDARDS CODE

The UAW has fought long and hard for decent health and safety protection for American workers. We have only dented the surface with existing federal regulations—they must be constantly improved.

The purpose of the Standards Code is to prevent the foreign manipulation of product standards and certification systems. It is currently an acknowledged practice among all governments to devise product standards and testing procedures that domestic industries can meet more easily than their foreign competitors.

The UAW is concerned that in addressing the problems of foreign standards manipulation, the Code could be manipulated by our own companies to undermine worker health and safety regulations. Signatories are supposed to use international standards—which are usually less stringent than U.S. standards—as the basis for their own regulations. Regulators are admonished not to devise standards "with the view to creating obstacles to international trade".

The UAW urges the committee to adopt strong implementing legislation such that pursuit of effective standards more stringent than international norms will not be inhibited by approval of this code. We also want legislative guidance for U.S. standards setters to the effect that workers' health and safety must always be their paramount concern. We will oppose any legislation counselling regulators to "take into account the effects of U.S. domestic regulations on trade."

GOVERNMENT PROCUREMENT CODE

STR has apparently backed away from two reasonable positions taken last summer in its presentation to the Labor Policy Advisory Committee. First, for those countries not giving substantial access to U.S. companies to bid on government contracts, the U.S. threatened to raise substantially the currently low Buy American differential. Second, in order to avoid being assessed by that Buy American differential, the bidder (foreign or American) would have to show that most of the value added would be done in the U.S. or a country making substantial concessions under the Code. If the Code is passed, Congress should raise the Buy American differential for non-signatories and require of other bidders that at least 50 percent of the content be produced by signatories. A number of U.S. laws now require minimum levels of American content for specific types of government purchases. Without a signatory content requirement, the U.S. Buy American law would be undermined vis-a-vis non-signatories.

U.S. COUNTERVAILING DUTY LAWS

The 19th century term "bounty or grant" can no longer suffice as the definition of countervailable foreign government practices. The new statute should clearly list those practices that deserve sanctions.

While the UAW favors the stiffest sanctions on subsidies used solely to promote exports, we would urge a more flexible approach toward subsidies designed to remedy pressing domestic problems.

There are two types of subsidies that require further study by the committee: location subsidies and international tax practices.

In the auto industry in particular, profitable companies are demanding competitive bribes—in the form of direct subsidies, tax holidays and below cost land, plants and infrastructure loans—for the location of their new plants. Such economic cannibalism serves as one more welfare program for the rich that distorts economic decisions. The subsidy competition does not increase output. It only serves to encourage early abandonment of current plants. Assistant Secretary of the Treasury for International Affairs, Fred Bergsten, has acknowledged the need to end government competition for new plant locations and the failure of the subsidy code to deal adequately with the problem. The Administration should be directed to pursue further negotiations on this issue, particularly with Canada, that would cover not only national, but also state, provincial and local levels of government as well.

Differing systems of international taxation have also worked to distort trade. The European system of value-added taxes that are rebated on exports, for example, often make European prices—though not production costs—cheaper than comparable U.S. products. Because of the complexity of the problem, we would support a separate international conference to deal with it.

LOCAL CONTENT, CO-PRODUCTION AND OFFSETS

In order for American companies to sell to certain countries, they must meet certain local content, co-production and offset requirements.

Under local content requirements, a company must produce or purchase parts such that the total value-added it generates within the country, is above a fixed percentage of the company's sales there. Much of Latin America has used the technique and raised the floor percentage to force expansion of domestic auto industries. However, Mexico has now gone beyond developing its economy internally by requiring local production worth 110 percent of domestic sales by 1981, thus insuring net exports.

While foreign governments must purchase imports (such as aircraft for their military or government-owned airlines), competitive bidding for co-production and offset arrangements have been used to play off U.S. companies against each other.

Co-production entails a negotiated amount of subcontracting by local producers as a condition of purchase. For offset requirements, the exporting company must agree to offset the balance of payments defict for the purchasing government by arranging to buy goods or make local investments unrelated to the company's export. Here again, some countries have established offset levels above 100 percent of the U.S. company sales amount and thus required net exports.

While the recent aircraft agreement addresses the issues of co-production and offsets, it does so in such a feeble way that it is not clear that any past practice is outlawed. Further agreements to curb local content requirements, co-production, and offsets are needed.

SPECIAL AND DIFFERENTIAL TREATMENT FOR LESS DEVELOPED COUNTRIES

The UAW has always supported a more equitable distribution of wealth within our own country—and internationally as well.

Within the context of the MTN, we support the principle of special and differential treatment for the less developed countries. But we would urge the committee to make exceptions of consistent violators of human and trade union rights. If these countries are to receive special treatment, it should be in the form of sanctions—not special assistance.

We also believe there should be some procedure to "graduate" certain "advanced developing countries," e.g. Brazil, Mexico, South Korea, to assume full GATT obligations. The GATT now explicity permits self-appointed developing countries to restrain imports more restrictively than developed countries.

The "framework" agreement sanctions preferential treatment toward developing countries and provides for graduation. However, the language is very loose and imposes obligations enforceable only by unilateral action or bilateral negotiation rather than by the GATT itself. The U.S. government should now take advantage of the graduation clause to get better treatment for U.S. exports and police unfair trade practices by advanced developing countries.

In conclusion, the UAW will support an MTN package that remedies the defects we've cited above. We continue to believe in the benefits of liberal trade. But we cannot support a policy that does not share those benefits fairly and equitably.

American workers want to share in the benefits of open trade, along with the rest of American society. But we are no longer willing to shoulder the burdens—alone.

Sincerely,

DOUGLAS A. FRASER, *President.*

STATEMENT OF THE JOINT RETAIL COMMITTEE ON FREE TRADE

This statement is filed on behalf of the Joint Retail Committee on Free Trade, which is composed of the American Retail Federation, the National Retail Merchants Association, 30 other national retail associations, and the 50 state retail associations. The Committee, through its membership, represents over a quarter of the U.S. Gross National Product, and over one million retail stores, employing well over 12 million employees.

The Joint Retail Committee on Free Trade (JRCFT) urges the Congress of the United States to ratify the International Trade Agreements and Codes negotiated by the President of the U.S., and to enact legislation which will implement the codes without substantial modifications from the International Agreements. Retailing supports the ratification of the International Agreements and Codes for the following reasons, each of which is discussed later in this statement:

1. It is important that the International Agreements, which form a framework for solving many problems that are anticipated in the next decade, be ratified in order to avoid the prospect of increased protectionism, both within the U.S. and among our international trading partners.

2. In a time of rising inflation, there are modest benefits which accrue to the U.S. consuming public through the International Codes and Tariff Reduction Schedule.

3. The International Agreements encourage competition by establishing new international rules to promote fair trade, by developing new settlement mechanisms, and by limiting unfair trade practices.

It is essential that the Congress of the United States, in writing implementing legislation jointly with the Administration, avoid restrictive amendments which neither benefit the economy as a whole, the United States consuming public, nor the principle of free trade competition, both in the domestic market and in the international market. Although the Agreements fall short of the objectives retailing had for the Multilateral Trade Negotiations, they represent a balanced approach

that considers all segments of the economy. The U.S. trade position and the U.S. offer on tariffs and non-tariff barriers were worked out through continuous negotiations on a broad scale with industry, labor and agricultural advisory committees representing the principal segments of the economy and an overall advisory committee reporting directly to the President.

Retailing opposes the present attempt by industries represented in those advisory committees to negotiate with the Congress new and more restrictive trade positions than those adopted by the President and his advisors in the negotiations with the international community.

1. It is important that the International Agreements, which form a framework for solving many problems that are anticipated in the next decade, be ratified in order to avoid the prospect of increased protectionism, both within the U.S. and among our international trading partners.

The International Agreements are a step in the direction of containing worldwide protectionism by reaffirming the free world's philosophy to build international trading relationships on agreed-to rules of conduct. At this time, with inflation being a major problem in all free world nations, with energy costs skyrocketing, and with unemployment being a serious problem, both in the United States and for most of our international trading partners, it is a victory in itself that the negotiators were able to agree on codes to limit non-tariff barriers, to establish new GATT frameworks, and to agree on tariff reductions.

The international implementation of these agreements and codes will be reciprocal, so that it is still very possible for negative, destructive trade practices to be adopted either by the U.S. or by other of the signatory nations to the detriment of international trade. The restrictions which the United States impose at this time can be as injurious to the process of international trade as a rejection of the Agreements.

The responsibility of leadership in implementation of the Agreements rests squarely on the Congress of the United States. This nation is the first of the major powers to begin the process of implementation and, literally, the eyes of the world are upon the Congress. Our trading partners will take their lead from the Congress. Restrictive interpretations and narrow construction of rights and responsibilities by this nation will become a prototype for such action by other nations. Congress has the responsibility to provide the quality of leadership which has maintained this nation's position as the world economic leader. We, therefore, urge, and will define hereinafter, specific areas where protectionism should be avoided and where the Agreements should receive the full endorsement of Congress.

2. In a time of rising inflation where the United States consumer has a decreasing disposable income, there are modest benefits which accrue to the U.S. consuming public through the International Codes and Tariff Reduction Schedule.

The Trade Act of 1974 for the first time required the President to consider the impact of international trade actions on the consuming U.S. public. Even with this injunction, there will be only modest benefits which accrue to the United States consumer. The area where consumers could have benefited most was through tariff reductions.

The Trade Act of 1974 empowers the President to make reduction of up to 60% of existing tariffs. As the negotiations began, the U.S. made a very dramatic and significant offer to reduce tariffs with a high harmonization factor. This was met with little enthusiasm by our trading partners. In the intervening years, this formula has been adjusted to the point that it no longer has a substantial effect on consumer goods, and will only have a small influence on prices. Because of statutory requirements, goods which were protected under safeguard procedures were mandatorily excluded from the tariff reductions. While the Multilateral Trade Negotiations have been under way, several safeguard proceedings have been brought under Title II of the Trade Act of 1974. At the conclusion of those proceedings by the U.S. International Trade Commission, relief was granted to certain consumer products, as color television receivers and non-rubber footwear. Tariff reductions on these items were, therefore, excluded from the Tariff Reduction Formula.

Another group of consumer products, certain rubber footwear, which has been covered by the American Selling Price doctrine, has had additional tariffs imposed upon it that were to be the equivalent of the protectionism received under the American Selling Price doctrine. In a number of cases, the tariff protection will amount to greater protection than ASP, resulting in higher landed costs for importers and retailers.

A fourth major group of consumer items which is part of the Multilateral Trade Negotiations is apparel and textile products. These products are already receiving the protection of the Multifiber Arrangement which establishes quotas. That quota

protectionism has worked substantial increases in the price of consumer goods, with the major amount of the economic benefit flowing to the exporting nations, away from the U.S. consuming public. A whole system of purchased quota allotments has arisen in foreign nations in connection with this Multifiber Arrangement. In spite of that protectionism, and the fact that textile products and apparel are covered by higher duties than many other products, the apparel tariff reductions agreed to by the U.S. will amount to only 12 percent to 14 percent and will not commence until 1982. In addition, the Administration has agreed to a whole new series of controls in order to gain the support of the textile and apparel industry.

There is no great windfall for American consumers in tariff reductions, but the reductions themselves are welcome and will help in the fight against inflation. Price competition in the retail industry is such that the savings or reduction in the landed cost of goods is normally passed on to the consumer. This is true of imports which compete with like or similar products. A recent market survey and analysis conducted by William R. Cline, senior fellow of The Brookings Institution, and the Survey and Research Laboratory of The University of Illinois, is evidence of this principle. Through 4,300 direct price observations and purchases of competing like products, Dr. Cline established that imports in the common market are an average 10.8 percent cheaper than domestic products, of the 168 products tested. The savings was 13.1 percent for the low income U.S. consumer. We have attached a copy of that survey to this testimony and ask that it be made part of the record of these proceedings.

Dr. Cline conducted his study for the Joint Retail Committee on Free Trade, but was given complete control over methodology, the products surveyed, the choice of cities and stores, and the time frame in which to conduct the survey analysis. It should be emphasized that this study is based on the actual products and prices available to the U.S. consumer at the time of the price observation or purchase. It is readily apparent that imports of consumer items do have an important competitive effect on the United States market.

Price and quality competition is extremely important during this period of high national inflation. The consumers hardest hit by restraints on international trade of consumer products are the consumers to whom price is the most important. That is the consumer with the least money. In many cases, price outweighs all other factors, such as quality, fashion, and durability. The low-end consumer goods which these fixed income consumers select are hardest hit by quotas such as those now established by the Multifiber Arrangement and the Orderly Marketing Agreements on non-rubber footwear. Interestingly enough, these consumers receive the least benefit from the proposed tariff reductions, or the lack thereof, negotiated in Geneva.

If the Cline report were not enough to establish the pass-through of benefits by retailing to the consumer, a second series of statistics should be examined by the Congress. In this period of inflation, the highly competitive nature of retailing keeps prices low. The total percent rate of increase from 1967 to 1977 of the Consumer Price Index was 87.6 percent, while the General Merchandise Index rate of increase from that period was only 54 percent. The rate of price inflation in general merchandise retailing is less than half the national rate of inflation and, in fact, is below the goal set by the President in his deceleration program. Intensive competition is further reflected by the low level of profit margins in general merchandise reatiling. These range from 2.5 percent to 3.4 percent in the past ten years. It is with this anti-inflationary effect in mind that retailing urges the Congress of the United States to implement the non-tariff barrier agreements and to put no further pressure on the Administration to adopt procedures which would have an inflationary effect on consumer prices.

Now that the Tariff Reduction Schedule is agreed to, the U.S. should carefuly examine the U.S. Tariff Schedule to determine whether other tariff reductions could be made that would benefit the United States consuming public and help to reduce inflation. There will no longer be any need for the United States to withhold tariff concessions in order to benefit our trading posture in the Multilateral Trade Negotiations. The United States should unilaternally make the miximum tariff reductions for all products where less than 5 percent of the domestic demand is being produced in the United States. In such cases, there is no protection of the U.S. industry and the tariff is merely a revenue measure which works directly as a hidden inflationary contributor to consumer prices. When the temporary protection of the Orderly Marketing Agreements on non-rubber footwear and color television sets expires, there should begin staged reductions in the tariffs on those goods, consistent with the reductions negotiated on other industrial goods.

The International Agreements encourage competition by establishing new international rules to promote fair trade, by developing new settlement mechanisms, and by limiting unfair trade practices.

Retailing believes competition is the basic element of a free market system. It is one of the underlying foundations of the capaitalistic economic system. It is retailing's great support of the principle of free competion in the marketplace that led to its support of the Trade Act of 1974 and of the Multilateral Trade Negotiations. The principle of competition should operate internationally as well as within the United States market. The industrial policy of some nations has impeded the growth of international competition and has worked to the detriment of U.S. industry. Retailing supports the efforts of the Administration to reduce these anti-competitive forces in the international markets, to eliminate non-tariff barriers and to establish international standards.

However, the United States must be careful tc avoid constructing a system of organized international trade which would have the effect of raising prices and eliminating fair competition. The retail industry views with some skepticism those who cry for free enterprise in the domestic market, but seek extensive protection against international competition. The elimination of international competition or the erection of permanent barriers make an industry sluggish, reduces the pressures for growth in productivity and makes that industry dependent on the support of the federal government. Such industries do themselves a great disservice and may well end up dying of a self-inflicted wound. In fact, general merchandise retailers are finding that the same Orderly Marketing Agreements Quotas, erected for the protection of industries which could not compete with low-end foreign goods, are now working to force or encourage foreign producers to compete only in a higher quality and higher price range of goods which were heretofore not competitive with U.S. goods. Thus, low-end and low-priced goods fall completely out ot the marketplace.

The Valuation Code is a very beneficial thing to the entire trading community. It eliminates a complex and archaic system of valuation and replaces it with transaction value as the principal valuation procedure. In the area of consumer goods, transaction value should cover better than 90% of the imports without the use of the correlary means of determination in the International Code. However, there is now discussion that the United States should adopt a CIF (cost-insurance-freight) basis of valuation instead of the FOB system now in use. Such a system would work great discrimination against the U.S. consuming public, against certain modes of transportation, and against selected U.S. ports. The adoption of a CIF basis of valuation would require a re-negotiation of the tariff reductions or compensation by the United States to its trading partners. Since all countries are not of equal distance from the U.S., freight and insurance will vary according to countries. Either a complex adjustment formula would be necessary or a series of bilateral negotiations with our trading partners would have to begin immediately.

A CIF basis of valuation would increase the tariffs of the United States and take away the already small benefit of proposed tariff reductions which would accrue to the United States consuming public. In addition, air freight carriers, which are more costly, would be injured, but in some cases that cost would have to be assumed and passed on, especially in the fast-paced area of fashion goods. Fashion goods are perishable items and must reach the marketplace during the unique period of demand or their worth is greatly decreased. American flagships, when their costs are higher, would be avoided with freight being shipped in the carriers of other nations. Ports of entry which are the least distance from the exporting nations, in most cases the major ports on the east and west coasts, would be used in order to avoid increased freight costs as part of the valuation base. Retailing strenuously opposes the adoption by the United States of a CIF basis of valuation, and urges that the present FOB basis be retained.

In the area of unfair trade practices, retailing stands with the rest of the U.S industry in condemning unfair and anti-competitive trade actions by other nations. The addition of an injury test in the Subsidies International Agreement is most welcome.

There is a great pressure being exerted to make the countervailing duty law and the anti-dumping law of the United States more restrictive. In both of these proceedings, a retailer must rely upon the U.S. government to fairly and impartially find facts, make conclusions of law, and determine remedies.

The cost of products abroad, the subsidies of a foreign nation to its manufacturers, the price at which a foreign manufacturer sells in his own market and the price at which such a manufacturer sells to other importers and retailers are all beyond the scope of knowledge of any U.S. retailer. Indeed, there are antitrust laws which prevent the communication of such information. Consequently, when an anti-dump-

ing or countervailing proceeding is instituted at the U.S. Treasury, the government is as responsible to the retailer as it is to the domestic manufacturer to make an adequate and fair determination. Without specifically discussing the reduced time limits now under consideration, it should be noted that in the absence of new methodology, authorizations and appropriations, it is unlikely that the government's determinations will improve in quality, even though they are made with greater speed.

Since the burden of additional duties falls upon the retailer or importer, and not on the manufacturers (in the exporting country) which received the subsidies or permitted the dumping, there should not be provisional or retroactive measures in U.S. law which unnecessarily discriminate against U.S. retailers and importers. Retailing will strongly oppose any attempt to include provisional and/or retroactive measures in U.S. law.

Although the International Code on Subsidies calls for material injury as the standard, there is great resistance to the incorporation of that word in the language of our countervailing duty law. Material injury and substantial cause are key elements in an unfair trade practice proceeding. If the United States reduced the threshold level for relief so that countervailing or anti-dumping remedies are available for less than important and material injury, or where the imports are not a clear identifiable cause of such injury, the effect would be to invite an array of insignificant and trivial proceedings that would prevent the fair and accurate handling of petitions where U.S. industry is, in fact, the victim of unfair trade practices by foreign governments or manufacturers.

In the area of fair competition, the Congress should await the outcome of negotiations on a safeguards code before amending the U.S. law. Congress must be careful not to permit the development of a system of quotas and non-tariff barriers through Orderly Marketing Agreements for a lengthy period to prop up industry which cannot compete in world trade.

In both fair and unfair trade practices, there is opposition to discretionary authority on the part of the Executive Departments and the President, even though cases have a more far-reaching effect than just on the industries filing the petitions for relief. This is a serious problem since discretionary authority may be abused or may be a cloak for inaction. At the same time, rigid systems which call for far-reaching economic penalties can be just as injurious. There is an element which weighs on the side of discretion for the Executive. The U.S. has in recent years placed retailers and importers in a position of multiple jeopardy where, for the same series of transactions, a series of different restrictive proceedings have been commenced. This multiple jeopardy does not allow for the real termination or settlement of an international problem. The attempt to limit the procedural time periods, reduce the burden of proof necessary for relief and broaden the availability of proceedings to firms beyond those making like and directly competitive products argues that some elements of discretion must still be available to the President in order to protect broad U.S. interests and avoid anti-competitive action.

CONCLUSION

Since retailing is such a large and diverse part of the U.S. Gross National Product, its fortunes are tied directly to the economy as a whole. Unemployment in any sector or community of the United States affects retail sales and retail employment in that area. The retail community will be seriously affected by the implementing legislation accompanying the International Agreements, but it will survive either enactment or rejection of those Agreements by Congress. The consumer will pay a greater burden in this inflationary age if the Congress demands protectionist provisions be included in the implementing legislation to be sent by the President. The economy as a whole will suffer if the Agreements are not ratified. Retailing, therefore, urges their adoption without significant change.

IMPORTS AND CONSUMER PRICES: A Survey Analysis

William R. Cline
Senior Fellow
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Summary

Imports are playing a vital role in fighting inflation. A study* conducted by William R. Cline, senior fellow of The Brookings Institution, reveals American consumers receive significant direct savings by purchasing imported products which are less expensive than comparable domestic products. In addition, they receive measurable indirect savings from the effect imports have in restraining prices charged by domestic producers.

Despite growing pressure to increase restrictions on certain imports, the study clearly reveals that a liberal import policy is a powerful force in fighting the country's number one economic problem. In examining whether imports are less expensive than domestic goods of comparable quality, the study concludes:

- Imported products are an average of 10.8 percent cheaper than domestic products.
- American consumers receive direct savings of more than $2 billion annually from the availability of imported consumer goods (not including automobiles and food).
- Based on spending patterns of low income consumers, imported goods purchased may be as much as 13.1 percent cheaper than domestic goods.

In over three-fourths of the 168 products sampled, imports from the newly industrialized countries of Asia and Latin America are less expensive than comparable domestic products. Because of large exchange rate movements among the industrialized countries, many imports from Europe and Japan are now as expensive or more expensive than domestic supplies. Nevertheless, the addition of products from Europe and Japan which compete with and add to the total domestic supply has the effect of restraining prices domestic firms charge.

*Note: The analysis was based on a survey conducted in August 1978 by the Survey Research Laboratory of the University of Illinois which collected 4300 observations on prices of imported and domestic goods, spread evenly across four geographically diverse cities (Atlanta, Chicago, Los Angeles and Philadelphia) and four types of retail establishments.

On the other hand, the imposition of quotas or other nontariff barriers which restrict the influx of imported goods results in large consumer losses. While the price of imported goods may remain below that of comparable domestic goods, domestic producers are able to maintain higher prices than would otherwise be possible. Such is now the effect of quotas on apparel, footwear and color television sets imported into the U.S., and there are pressures for still more import restrictions.

In short, imports fight inflation because their prices are lower than those of comparable domestic goods. Even when imports sell at the same price as domestic goods, they restrict the price domestic producers can charge. Domestic supply is an average of 12 percent higher in price than imported products and if imports were cut off, domestic prices would rise still higher.

It is clear from this study that policies to assist specific domestic industries suffering adjustment difficulties from imports should not seek to further restrict imports by seeking imposition of tariffs or nontariff barriers. Alternatives such as adjustment assistance are preferable in order that consumers may continue to receive the full benefits from imported products.

1. Introduction

It is a critical time for public policy on imports. In recent years there have been several protectionist actions. The United States has negotiated voluntary quotas on imports of shoes from Korea and Taiwan, on color television sets from Japan, and on specialty steel. The administration has implemented a program of trigger prices for steel that, in effect, limits steel imports (though not as severely as alternative measures might have done). The United States has renewed bilateral agreements on import quotas for textile products under the MultiFibers Arrangement, restricting imports from 18 principal supplying countries. Moreover, there are calls for much more extensive protection against imports. Largely the result of high unemployment stemming from the worst recession since the 1930s (in 1974-1975), these protectionist forces may derive additional support from concerns about the sharp decline of the dollar and the large trade balance deficits experienced in 1977 and 1978.

Yet there is another economic problem that is paramount for the country: inflation. For several months in 1978 the consumer price index accelerated to annual inflation rates on the order of 10 percent. The administration's program of wage and price guidelines, and its package of measures announced on November 1, 1978, to deal with the declining dollar and inflation (including an increase in the discount rate by a full percentage point) are ample evidence that at this juncture inflation is the country's number one problem.

Imports play a vital role in fighting inflation. This study seeks to examine, perhaps more rigorously than ever before, one aspect of that anti-inflation role: the extent to which imports provide a savings to consumers by making available products at prices below those of comparable domestic products. To the extent that imports do restrain inflation, the calls for increased protection directly jeopardize the prospects for dealing with the most serious economic problem, inflation. Protection would aggravate inflation in two ways. First, by reducing the availability of cheaper imported goods (if they are cheaper --the main subject of this study) increased protection would cause a shift to more costly domestic supply. Second, by limiting the availability of total supply, protection would lead to an indirect rise in prices, as domestic firms raised their prices and consumers paid more in order to reach a new equilibrium between smaller supply and, therefore, smaller demand (which could only be reduced by the discouragement to consumption coming from higher prices).

Some advocates of higher protection maintain that imports do not restrain inflation because retail-

44-998 - 79 - 43

ers do not pass on to consumers the savings available from imported products, but pocket large profits instead. As evidence these critics cite a recent study by the Library of Congress that implied that retail stores charge higher markups on imports than on domestic products. [1]

These critics miss a major point about the inflation-retarding role of imports. Even if imports are sold to consumers at prices identical to those of domestic products, the very presence of imports causes the prices for domestic goods to be lower than they otherwise would be. For products with monopolistic tendencies, imports provide a source of competition that restrains prices domestic firms can charge. For products with competitive organization, imports hold down prices simply by virtue of the fact that they raise total supply, causing supply to equate with demand at a lower price (that is, a price where consumers will buy enough more to absorb the added supply).

However, a legitimate empirical question is whether indeed imports are cheaper than domestic products of comparable quality. If they are, then there is a ***direct*** anti-inflationary contribution of imports in addition to their indirect role of increasing supply.

The purpose of this study is to examine whether imports are cheaper to the consumer than domestic goods of comparable quality. The method applied in the study is that of survey analysis. This study employs a large sample survey of prices for imports and domestic goods. The Survey Research Laboratory of the University of Illinois carried out the survey in retail establishments of all major types and in diverse geographical locations. The survey collected price data on well-specified products, providing the maximum possible assurance that the quality of product was comparable for domestic and imported goods.

The survey approach is far preferable to the investigation of markups as a way of determining whether the consumer receives a savings from cheaper imports. The survey examines directly what the consumer actually pays. By contrast, information on product markups provides only an indirect hint about whether the consumer pays lower prices for imports. Moreover, information on markups is extremely fragmentary. Furthermore, it is insufficient to determine whether markups are higher on imports than on domestic products. An accurate analysis must consider in addition whether any such higher markup exceeds the increment required to cover higher costs associated with purchase abroad (such as the lack of the option of returning merchandise, the travel and research costs required to establish reliable foreign

suppliers, and so forth).[2]

Section 4 below sets forth the empirical results of the sample survey on import prices compared to domestic prices. First, however, section 2 explores the theoretical logic behind the analysis, and section 3 describes the nature of the sample survey itself.

2. Theoretical Issues

Before turning to the sample survey, it is necessary to discuss in theoretical terms whether one would expect imports to be cheaper than domestic products. First, the discussion clarifies that ***the availability of imports makes prices lower even if imports sell at the same price as domestic goods.*** Second, "product differentiation" is explored as a general reason why imports prices could differ from (and be cheaper than) domestic goods of comparable quality. Third, the discussion examines the case of imports under quotas, and shows that imports could be cheaper than domestic supply because some of the "rent" generated by the presence of quotas could reach the consumer.

2.1. Availability of Imports and Equilibrium Price

It is possible to use elementary supply and demand analysis to show that the availability of imports reduces prices even if the imported product sells for the same price as the domestic product. Consider a graph of supply and demand (like those in introductory economics text books), Figure 1.

The three graphs show price on

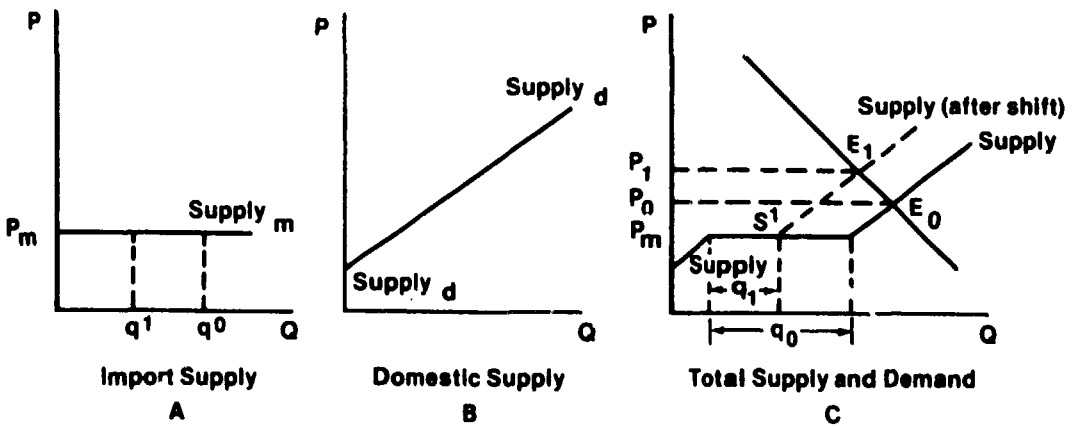

FIGURE 1
IMPORT AND DOMESTIC SUPPLY

the vertical axis and quantity on the horizontal axis. Part A shows the import supply at a constant and low purchasing price of P_m. Part B shows the domestic supply curve, rising from low price for low quantity to high price for high quantity. Part C shows total supply—the combined supply from imports at price P_m and domestic production ranging from the lower left to upper right. Now at the outset suppose a quota of q_0 is allowed for imports, then the horizontal portion of the total supply curve along price P_m will be the amount q_0 coming from imports (part C of the figure). The total supply curve begins at the left with a small initial portion of low-cost domestic supply; it then continues horizontally at price P_m for the amount q_0 of imports under quota; then it rises at higher cost for domestic supply.

With a total demand curve of DD (showing little quantity demanded at high price, much demanded at low price), the initial supply-demand equilibrium occurs at E_0 where the supply and demand curves cross. At this point the price is P_0 for all goods, domestic and imported (and importers get a windfall gain equal to the excess of P_0 over P_m, though in this model the consumer pays the full P_0).

Now suppose the import quota is cut in half to q_1, it will cut the horizontal length of the total supply curve at price P_m. As a result, the total supply curve for domestic supply costing more than P_m will shift over to the left by the amount of reduction in imports. The new equilibrium of demand and supply will occur at E_1, where price is higher (P_1).

The new equilibrium of demand and supply will occur at E_1, where price is higher (P_1).

Therefore, the standard analysis of supply and demand shows that when import supply is cut back, market prices will rise even if the price paid by the consumer is the same for both imports and domestic goods.

2.2 Product Differentiation

The price of imports may differ from the domestic price, however. The simple textbook diagram of supply assumes that all supplies of a "good" are identical. In reality different supplies are different in some degree. Even in extremely homogenous products, such as wheat or corn, there are numerous grades reflecting different properties and differing market tastes.

Imports almost by definition are affected by "product differentiation", the term designating differing perception by consumers for similar products. This differentiation makes it possible for the import to sell at a different price from the domestic good. Furthermore, ***there is not necessarily an implication of superiority or inferiority of an import because it sells for more or for less than the domestic product.*** The case of imported automobiles illustrates this point most graphically. Several years ago the Mercedes Benz and the Datsun (for example) sold at reasonable or even bargain prices relative to their American competitor cars (such as the Cadillac and the economy Ford,

respectively). Now, after massive appreciation of the German mark and the Japanese yen, these imports sell for much higher prices relative to the American substitutes than they did before. No one would argue that suddenly the quality of German and Japanese automobiles has become superior and the quality of American automobiles has become inferior. Instead, the changing relative prices reflect changing supply and demand of ***separate,*** differentiated products.

Consider the example of automobiles in graphical terms. Suppose parts A and B of Figure 2 show the supply and demand for a domestic good and an imported good that, by objective criteria (horsepower, styling, durability, etc.) are comparable. Suppose that at historical period o the import is at low cost, and sells for P_{m_o} well below the domestic price. An analysis of import price relative to domestic at that point will find imports cheaper.

Now suppose that a later historical period foreign supply becomes much more costly. The supply curve for imports shifts to S'S' and the domestic demand for the import item falls from Q_0 to Q_1. The new import price, P_m, is shown to be higher than the domestic price. The ***quality of the imported good relative to that of the domestic good has not changed.*** What has changed is that fewer people

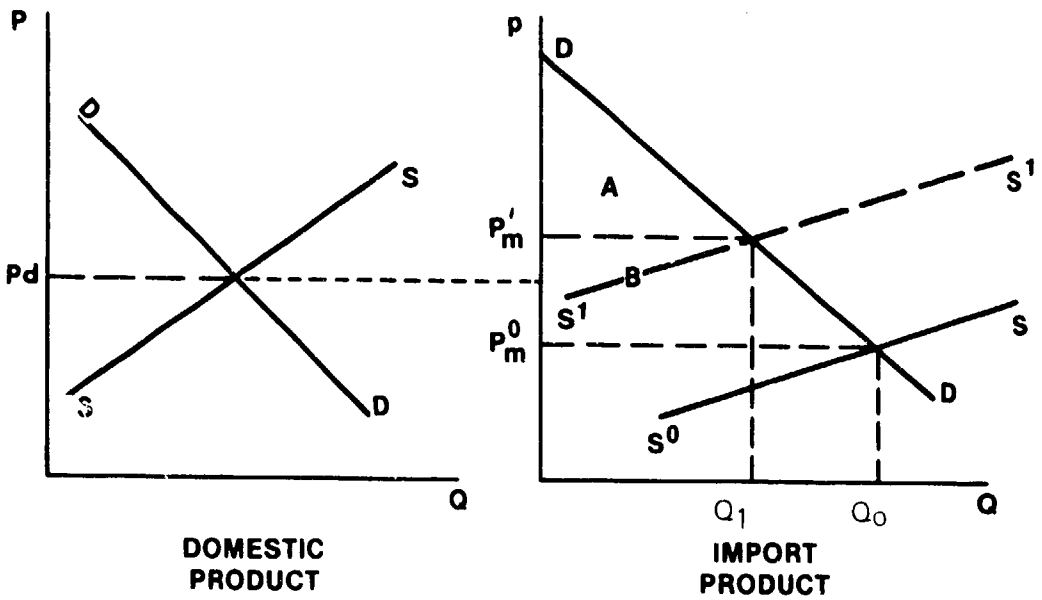

FIGURE 2

are able to purchase the import. A measure of the loss of consumer benefit from the new, higher price of the import is the loss of so-called "consumer surplus". This concept refers to the total of consumer savings of what they actually paid compared to what they would have been prepared to pay, and it equals the area under the demand curve but above the market price level. As shown in the diagram when the import price rises, consumer surplus declines from area A+B+C to area A alone.

In summary, the analysis of product differentiation suggests that even for products of comparable quality the import price may differ from the domestic price, and that moreover this difference may switch from the imports being cheaper, to its being more expensive than domestic supplies even though there is no change in relative quality of the two products.

At the level of actual experience, it seems likely that precisely this type of shift has occurred for imports from Europe and Japan. Once a great bargain, they may in many cases be as expensive as, or even more expensive than, domestic supply, because of changing exchange rates and changing costs abroad compared to U.S. costs. Following this reasoning, it is probably supply from newly industrializing countries, such as Korea, Taiwan, Brazil, and Mexico, that still provides bargain prices for the American consumer (and still provides the larger area of consumer surplus). These newly industrial countries still have low labor costs, and increasingly they have the skilled manpower available for manufacturing. Moreover, imports from these countries are often carried out by multinational corporations (either as producers or purchasers), providing assurance that quality control characteristics necessary for the American market are met. This question is an empirical one, and is examined below. The main point here is that product differentiation provides a theoretical basis for accepting evidence that the price of an imported good may differ from the price of a domestic good even though there is no objective quality difference between the two.

2.3. Quotas

There is a second reason why imports may be cheaper than domestic supply even when quality is comparable. For imports under quotas, the market process does not "clear". Low cost foreign supply is available only in the limited quantities allowed by the quota. As a result, foreign supply is not expanded to the point where it reaches higher cost comparable to domestic production cost. [3] Because the foreign cost remains low, there exists a "windfall rent" for some party along the production to consumer chain—a rent equal to the difference between domestic production cost and foreign production cost. Some of this rent may reach the consumer, providing him with a lower price on imports than on domestic goods. Some of the rent may accrue to

the foreign supplier or to the importing intermediary. (Of course, the fact that imports under quotas may be cheaper than domestic goods does not imply that quotas benefit the consumer. On the contrary, the presence of quotas enables domestic producers to hold prices higher than they otherwise could, causing a loss to consumers. Although imports at prices below domestic prices may provide partial relief to consumers from the loss imposed by quotas through higher domestic prices, the restricted quantities permitted under quotas will keep this relief limited.)

The case of quotas is relevant for American imports of apparel, footwear, and television sets. The United States has quotas on textile imports, quotas on footwear from the two crucial low-cost suppliers (Korea and Taiwan, which accounted for almost two-thirds of import volume in 1977), and quotas on television imports from Japan.

Whether those products under quotas will in fact be cheaper than domestic production is an ambiguous question. The point is that they ***may*** be cheaper. It is true that when facing quotas, foreign suppliers may decide to raise their prices, absorbing all of the potential rent themselves. But if they do not wish to run the risk of losing market share to similar suppliers in other countries (especially Japan, where apparel quotas are not fully used, or Europe, where they do not exist), then the suppliers may absorb relatively little of the windfall gain. For their part, the importing merchandisers might absorb the windfall gain if their market structure were non-competitive. But with numerous merchandising firms competing among themselves, these windfall gains will tend to be small. That leaves the consumers. Under these circumstances, there can be a windfall gain to consumers in the form of a lower price. A lower price for imports than for domestic goods, despite comparable quality, ***does*** imply some form of disequilibrium; the market is not "clearing", with all potential customers receiving all the low-priced imports they want. Instead, some form of rationing is implied, such as queueing up for imports that are "on order" but not as readily available as the more expensive domestic product.

In summary, economic theory suggests three points of fundamental relevance to this study. (1) The availability of imports makes prices lower than they otherwise would be, even if the imported product sells at exactly the same price as the domestic product. (2) Product differentiation explains why the import price may be either higher or lower than the price of a domestic good with characteristics that are identical on objective criteria. Therefore lower price for imports does not necessarily mean lower quality of the imported product. (3) The presence of quotas (as in the case of apparel, footwear, and television sets) gives rise to a windfall rent that may reach the consumer, making

the price of the import cheaper than that of the domestic good.

3. The Sample Survey

Appendix B provides a complete account of the sample survey. The discussion here summarizes its most important features.

To begin with, the sample was large. Approximately 4,300 price observations were collected on 168 specifically identified products. Too often in congressional testimony on import prices one side has produced an assortment of cheap imported sweaters (for example) while the other side has produced its own small collection of import items just as expensive as domestic equivalents. This level of discourse is inadequate to the formulation of public policy. Instead, this study employs a large and scientifically designed sample survey that can provide the basis for a rigorous answer to the question of whether the American consumer receives a direct savings on imported products.

The sample draws from geographically diverse areas, in order to be representative of U.S. consumption. The sample was evenly divided among Los Angeles, Chicago, Philadelphia, and Atlanta.

The products sampled were chosen for their representativeness of consumption and imports. A total of 168 products entered the sample. [4] 41 in footwear, and the remainder in hardgoods. Therefore, the product coverage encompasses the full range of consumer items found in retail stores. The only main consumer products excluded are automobiles, food products, and pharmaceuticals.

Each product was defined in relatively specific terms, as may be seen from table B-1 in Appendix B. The instructions to enumerators were to make the utmost effort at collecting prices only for comparable quality items for the product in question. (Appendix B reports the instructions to enumerators.) Because of the detailed specifications assigned to each product, and in view of the instructions to enumerators, it is reasonable to expect that the price observations for imports and domestic products refer to products of comparable quality. Any remaining divergences in quality among observations should be random, and with the large sample taken, that randomness should pose no problem (because there will be enough observations that those erring in one direction will be offset by those erring in the other).

The sample was designed to obtain equal numbers of observations for imports and for domestic products, in order to provide the basis for analysis of the difference between the prices of the two. In particular, for each of the 168 specific products, an attempt was made to obtain, in each of the four cities, 6 observations on domestic goods and 6 observations on imported goods.

The sample design also took into account the type of retail outlet. In each city for each product, an attempt

was made to obtain at least one domestic and one import observation from each of the four store types: chain, department, discount, and specialty. In addition, the survey data recorded whether the product was on sale or not. Although the basic analysis below uses the actual transactions price (that is, the sale price if the product was on sale), in the cases of sale items the original price was recorded as well, for the analysis of markdowns.

Finally, the period of the survey, August 1978, was selected after discussion with retail merchandising experts, as a "typical" period for the survey. In particular, the survey was timed to avoid the end of season clearance sales that are common in July. Moreover, summer items were avoided in favor of fall items, in order to avoid leftover stock likely to be on sale.

Appendix B of this study, prepared by the Survey Research Laboratory of the University of Illinois, reports further details of the sample.

4. Empirical Results

The results of the price survey are summarized in Tables 1 through 4 of the text and Tables A-1, A-3 and A-4 of Appendix A. The central focus of the empirical analysis is upon the question: Are imports cheaper than comparable domestic products? All of the analyses distinguish between two subgroups of imports: those from Europe, Canada, and Japan (Region A); and those from Latin America and Asia excluding Japan (Region B).[5] This distinction is essential because imports from Europe and Japan are likely to be more expensive than those from the developing countries, given the movement of exchange rates in recent years and given probable influences of taste and fashion.

4.1. Frequency of Cheaper Imports

Table A-1 of Appendix A reports for each of the 168 products sampled the average domestic price, average price for imports for Region A, and average price for imports from Region B. The table also shows the corresponding price ratios of imports relative to domestic products, the number of observations for each case, and "t statistics" for a statistical test for difference of means between import price and domestic price (with a separate test for each region).

In order to assess the extensive results of Table A-1, text Table 1 presents a summary of these results. Table 1 reports the results by 19 product groupings. Within each grouping, the table shows the number of individual sample products for which comparisons between domestic price and import price were available. It then shows the percentage of those individual products for which imports from the region in question were found to be cheaper than domestic goods. For example, the first two entries in the table indicate that there were 10 products in women's apparel with price comparisons between imports from Region A and domestic

Table 1

Percentage of Sampled Products with Imports Cheaper than Domestic Goods

Product Group	*Imports from Europe, Japan, Canada (Region A)*		*Imports from Latin America, Asia (Region B)*	
	Number of Sub-products with Comparison (A No.)	*Percentage of Sub-products with Imports Cheaper* (A %)	*Number of Sub-products with Comparison* (B No.)	*Percentage of Sub-products with Imports Cheaper* (B %)
I. Apparel				
Women's	10	70%	14	71%
Men's	11	36%	18	83%
Girls'	6	67%	10	50%
Boys'	3	67%	9	78%
Subtotal	30	57%	51	73%
II. Footwear				
Women's	9	0%	9	78%
Men's	12	17%	11	91%
Girls'	5	0%	8	88%
Boys'	6	0%	4	100%
Subtotal	32	6%	32	88%
III. Hardgoods				
Watches	4	0%	4	75%
Tools	3	100%	1	100%
Recreational	10	40%	10	90%
Small appliances	7	29%	5	80%
Typewriters, calculators	3	100%	2	100%
Housewares	11	36%	13	85%
Radio, TV, stereo	4	100%	4	100%
Photographic	3	33%	2	50%
Furniture	3	100%	3	33%
Floor, wall coverings	2	100%	2	50%
Miscellaneous	14	21%	12	67%
Subtotal	64	45%	58	78%
All Products	126	38%	131	78%

Source: Appendix A, Table A-1

goods. Of these 10 products, 70 percent (or 7 products) showed imports being cheaper than domestic supply.

The first major pattern shown in Table 1 is that imports from Region B are systematically cheaper than domestic goods. This finding holds almost without exception; it is almost equally true of the three broad groups —apparel, footwear, and hardgoods; and it generally shows up strongly, with on the order of 80 percent of the sample products showing imports from Region B as cheaper than domestic goods.

The second pattern shown in Table 1 is that, unlike imports from Region B, those from Region A are not generally cheaper than domestic products. The majority of products show Region A imports as cheaper for apparel. For footwear, however, a large majority of products show imports from Region A as not cheaper than domestic supply. For hardgoods, the simple majority of products shows imports from Region A as not being cheaper than domestic products, although here the simple average is misleading. Region A imports are cheaper in some crucial goods such as radio, television, and stereo, so that a weighted average finds imports from the region to be cheaper than domestic supply (as discussed below).

Taking the simple sum for all products, imports from Region B are cheaper than domestic supply in 78 percent of the product cases, but from Region A imports are cheaper in only 38 percent of the cases. Again, however, it is necessary to weight the products by their relative importance in trade, as is done below.

4.2 Results by Store Type

A question that immediately arises is whether these results are reliable even when the type of merchandise outlet is taken into account. For example, if most of the observations on imports from Region B come from discount stores while most of the domestic observations come from expensive department or specialty stores, the data might represent only different levels of retail services and costs rather than any true distinction between the prices of imports and domestic goods. For this reason the same calculations as shown in Appendix Table A-1 have been conducted for four separate groupings of data: observations from chain stores, department, discount, and specialty stores, respectively. Using these separate calculations it is possible to examine whether imports tend to be cheaper than domestic supply even when "holding constant" the influence of store type.

Table 2 presents a summary of the results by store type. It is clear from the table that the strong pattern of cheaper imports from Region B in Table 1 persists even when distinguishing among store types. The percentage of products for which imports from Region B are cheaper than domestic supply remains high, on the order of 70 percent.

Table 2

Percentage of Sampled Products with Imports Cheaper than Domestic Goods By Type of Store

Type of Store	*Imports from Europe, Japan, Canada (Region A)*		*Imports from Latin America, Asia (Region B)*	
	Number of Sub-products with Comparison (A No.)	*Percentage of Sub-products with Imports Cheaper* (A %)	*Number of Sub-products with Comparison* (B No.)	*Percentage of Sub-products with Imports Cheaper* (B %)
I. Chain				
Apparel	9	44%	46	70%
Footwear	18	33%	18	78%
Hardgoods	36	69%	24	71%
All Products	63	56%	88	72%
II. Department				
Apparel	16	62%	44	73%
Footwear	25	32%	19	74%
Hardgoods	34	35%	24	79%
All Products	75	40%	87	75%
III. Discount				
Apparel	7	71%	39	64%
Footwear	11	45%	21	38%
Hardgoods	35	45%	29	72%
All Products	53	55%	89	61%
IV. Specialty				
Apparel	15	33%	42	69%
Footwear	26	15%	26	81%
Hardgoods	57	53%	28	86%
All Products	98	40%	96	77%

Source: Project calculations.

The results of Table 2 for imports from Region A are similar to those of Table 1 with respect to relative positions of different product groups. Thus, imported apparel and hardgoods tend to be cheaper or comparable in price to domestic supply, while footwear imports from Region A tend to be more expensive than domestic, just as in Table 1. However, the addition of detail by store type makes a sizeable difference in the degree of these price differences. In general, when store type is neutralized (Table 2), imports from Region A are found to be cheaper than domestic supply much more frequently than when store type is not distinguished. For example, within each store type, footwear imports from Region A are cheaper than domestic in about one-third of the cases. But if all store types are considered together, footwear from Region A is cheaper than domestic in only 6 percent of the cases. Thus, for footwear much of the apparent greater cost of imports from Region A really reflects a concentration of these imports in the higher cost stores—department and specialty stores.

Despite these distinctions, Tables 1 and 2 broadly point to the same conclusions: imports from Region B (developing countries) are almost always cheaper than domestic supply; imports from Region A are also generally cheaper for apparel, but they are comparable in price for hardgoods and they tend to be more expensive than domestic supply for footwear.

4.3. Significance Tests

Before turning to analysis incorporating weights by product, further results reported in Table A-1 of the Appendix warrant attention. The table reports t-statistics for tests on significant difference of means. That is, for each product there are several domestic observations and several import observations. The simple test for difference of means enables one to say whether prices of domestic and import supply differ in a statistically significant way. [6] In many cases there are frequently too few observations on a single product to permit a clear significance in the difference of means. For those products in which the mean prices do differ significantly, however, the results are as follows. For Region B, there are 40 products (out of the total of 168) in which imports are significantly cheaper than domestic supply, but only 3 products for which domestic supply is significantly cheaper (at the 10 percent statistical level). Thus, the significance tests strongly support the general pattern of the results for Region B: imports are systematically cheaper than domestic supply.

For Region A, the cases of statistically significant difference in price tend to show imports as more expensive than domestic supply. There are 31 products for which imports from Region A are significantly more expensive than domestic supply, and

only 14 products for which Region A imports are significantly cheaper than domestic goods.

4.4. Weighted Aggregate Results

Table 3 presents the central empirical results of this study. In this table, the relative importance of each product group is taken into account. The table is therefore more meaningful for general conclusions than Tables 1 and 2, which refer to simple frequencies for the sample products, which include as "products" items as significant as a color television set (number 142) and as modest as a corkscrew (number 131).

The calculations underlying Table 3 follow these steps. First, within Regions A and B separately, the weighted average ratio of import price to domestic price is calculated for the product group in question. For the various hardgoods categories, each individual sample product is weighted in proportion to the value of imports in 1975 (Appendix A, Table A-2), for the specific region. Thus, a single figure is obtained for the percentage difference of import price from domestic price for each of the 11 sub-categories of hardgoods, for Region A and Region B separately. For apparel and footwear, the import data are of aggregation that make the use of the entire categories preferable to any attempt to distinguish sub-categories. (In particular, the trade data do not divide by the categories "men's, women's, boys', and girls' ".) Because of the large number of products in each of these broad categories (52 for apparel, 41 for footwear), and because of the frequent occurrence of products with an extremely small number of observations from the region in question, it was necessary to weight each product by the number of import observations for apparel and footwear. [7]

The first two columns of Table 3 report the results of these calculations for Regions A and B separately. As shown in the table, imports from Region B are systematically cheaper than domestic supply. These imports from developing countries are cheaper by approximately 12 percent for apparel, 24 percent for footwear, and 24 percent for hardgoods. (The weighted average figure for all hardgoods uses the import value for each sub-category as the basis for weighting.) Imports for Region A are slightly more expensive than domestic supply in apparel (4 percent) and in footwear (20 percent). These results suggest the influence of fashion and brand attraction in these softgoods. In hardgoods, by contrast, even the imports from Region A are cheaper than domestic supply. Here, certain subsectors are especially important to the overall result. In the category for radios, televisions, and stereos, in particular, imports from Region A are 30 percent cheaper than domestic supply, and this category accounts for 25 percent of the value of hardgoods imports from Region A (Table A-2, Appendix A). The only hardgoods categories where there appears to be a premium

Table 3

Percentage Difference of Import Price from Domestic Price[a]

Product Group	*Imports from Europe, Japan, Canada (Region A)*	*Imports from Latin America, Asia (Region B)*	*All Imports*
I. Apparel	+ 4.3%	− 11.6%	− 8.7%
II. Footwear	+ 19.9%	− 23.5%	−11.5%
III. Hardgoods			
Watches, clocks	+ 74.4%	− 13.8%	+ 31.2%
Tools	− 30.4%	− 25.8%	−29.9%
Recreational goods	+ 12.5%	− 34.1%	− 4.9%
Small appliances	+ 8.7%	− 9.1%	+ 7.8%
Typewriters, calculators	− 27.6%	− 27.2%	−27.6%
Housewares	− 15.6%	− 29.9%	−19.4%
Radio, TV, stereo	− 30.0%	− 30.2%	−30.0%
Photographic equipment	+ 8.9%	− 26.4%	+ 6.0%
Furniture	− 10.4%	+ 1.8%	− 8.5%
Floor, wall coverings	− 14.1%	n.a.	−14.1%
Miscellaneous	+ 1.0%	− 19.9%	− 7.8%
Subtotal, hardgoods	− 5.4%	− 23.7%	−11.8%
All Products	− 0.4%	− 16.3%	−10.8%

a. Within regions, weighting is proportional to the value of imports by product group (Table A-2, Appendix A). Weights between regions for individual product groups are proportional to quantity of imports, determined from relative import values as adjusted by relative price from each region. For footwear, weights between regions are based directly on 1977 data for number of pairs imported (International Trade Commission data).

Source: Tables A-1 and A-2 Appendix A.

for taste or fashion for imports from Region A are watches and clocks, and photographic equipment.

At the aggregate level, imports from Region A are almost identical in price to domestic products. The savings on imported hardgoods are offset by premiums on imports of apparel and shoes from these industrial countries. From Region B, by contrast, aggregate imports are much cheaper than domestic supply, costing 16 percent less (average based on import value weights).

In order to arrive at a final evaluation of the relative price of imports, it is necessary to aggregate imports from both Regions A and B. The procedure followed in Table 3 does so while retaining the valuable information about the different relative prices for the two regions. The final column of the table is a weighted average difference of import price from domestic price. The weights as between Regions A and B for each product group are quantity weights. [8] For footwear, these quantity weights are available directly from 1977 data on the number of pairs imported from each region. [9] For the other product categories, the content is too heterogeneous to make weighting for observed "units" meaningful. Therefore the quantity weights are derived indirectly. The import values (Table A-2) are used as the basis for the weights, but only after "deflating" the import value for Region A by the relative price of Region A goods compared to Region B goods as implied by the first two columns of Table 3. These "deflated" values then provide the basis for quantity weights to obtain the weighted average import price relative to domestic price (final Column, Table 3). [10]

The aggregate results shown in the final column of Table 3 show that overall imports are indeed cheaper than domestic supply. Imports are cheaper in each of the three broad categories: apparel, footwear, and hardgoods. Imports are cheaper in each of the three broad categories: apparel, footwear, and hardgoods. Moreover, imports are cheaper than domestic supply by a considerable degree: approximately nine percent for apparel, 12 percent for footwear, and 12 percent for hardgoods. A final aggregate price comparison is obtained by weighting each of the three broad product categories in proportion to total imports (Table A-2). This final aggregate estimate finds that ***overall imports are 10.8 percent cheaper than domestic products.***

The crucial role of supply from developing countries in this aggregate result deserves highlighting. The aggregate result for Region A alone shows imports almost identical in price to domestic products. It is the large saving on import from developing countries (Region B) that derives the final result whereby aggregate imports are approximately 11 percent cheaper than domestic supply.

Table 3 also may shed light on the role of protective quotas as opposed to such influences as taste and

brand identification. In the sectors of apparel and footwear, U. S. imports from Region B are subject to severe quota controls. In both of these sectors, Region A supply is considerably more expensive than supply from Region B (by 18 percent and 57 percent, respectively). In the sector of radios, television sets, and stereos, by contrast, the principal U. S. quota restriction is against imports of color television sets from Japan, in Region A. And in this sector, supply from Region A is just as cheap as supply from Region B—both being 30 percent cheaper than domestic supply. These patterns suggest that the presence of quotas facilitates the charging of higher prices by the suppliers not subject to the quotas. In clothing and footwear, the restraint on lower cost supply from developing countries appears to facilitate the charging of high prices by European and Japanese suppliers. In the case of television sets, limits on low-cost imports facilitate the charging of high prices from the main alternative supplier—domestic U.S. production—leading to a wide price difference between domestic and imported supply. These patterns imply that loosening up these quotas would provide savings to the American consumer by permitting a larger shift from more expensive domestic supply to cheaper imports (in the case of television sets) and from expensive domestic, European, and Japanese supply to cheaper supply from developing countries, in the case of apparel and footwear.

4.5. Savings to the Consumer

The results presented in Table 3 may be used to estimate the total annual savings to the American consumer made possible by the availability of imports. These savings arise because, unit for unit and holding quality constant insofar as possible, imports are found to be cheaper than domestic production. The present flow of imports therefore provides a direct savings to the consumer; if the consumer had to shift entirely to domestic supply he would lose on each unit shifted because of the higher price for domestic supply. And of course if imports were abolished there would be an enormous additional ***indirect*** cost to consumers, because domestic prices would not stay fixed (or even continue inflating at their previous rate) but would rise to close the gap caused by the decrease in total supply as imports ceased. The estimate here concentrates solely on the ***direct*** consumer savings from imports, not the additional indirect savings represented by the fact that domestic prices would be even higher in the absence of imports.

In order to estimate the direct savings to American consumers made possible by imports, it is first necessary to consider the amount they spend currently on imported goods. In the first half of 1978, total retail sales by general merchandise, apparel and furniture firms amounted to $83.3 billion,[11] so that total retail sales for 1978 may be estimated as approximately $167 billion. This fig-

ure corresponds approximately to the total sales of stores in the universe of retail firms handling merchandise of the type examined in this study: essentially, manufactured consumer goods excluding automobiles and food. On the basis of information from the retail trade industry, the share of imports in total retail sales is approximately eleven percent.[12] Therefore, total retail sales of imported merchandise amount to an estimated $18.4 billion for 1978. The calculations of Table 3 showed that imports cost the consumer 10.8 percent less than domestic supply. Therefore, if consumers had to rely on domestic supply alone, they would have to pay 12 percent higher prices[13] for each unit previously imported (the *direct* effect, excluding indirect effects of an induced rise in the price of domestic goods). Applying this 12 percent figure to the base $18.3 billion spent on consumer imports in 1978, the resulting estimate is that ***American consumers save $2.2 billion annually by obtaining imported goods at prices below those of domestic goods.***

4.6 The Low Income Consumer

Imports may play a special role in providing consumer savings to low income families. Although data are not available for the fraction of consumer imports purchased by the poor, it is reasonable to expect that families pressed by extremely limited budgets seek out the savings available through imports. Moreover, as between the imports from costlier Region A and cheaper Region B, it is likely that low income families focus their purchases on goods from Region B. One piece of indirect evidence on this possibility comes from data on imports of footwear. A recent sample survey of footwear merchandisers reported that Korea and Taiwan generally supplied a high proportion of low-valued shoes in 1976 and 1977. These two suppliers accounted for virtually the entire import sales for women's plastic dress and casual shoes of under $5.00 and for men's plastic work shoes of under $12.00. For leather footwear, Korea and Taiwan supplied 76 percent of imported work shoes and 93 percent of imported athletic shoes, and both categories may be assumed to be purchased chiefly by low income groups. By contrast, industrial countries supplied the bulk of imported leather dress and casual shoes, which were probably purchased by higher income families than were leather work, athletic, and plastic shoes.[14] These fragments of evidence support the idea that imports purchased by the poor come mainly from the Region B area (developing countries).

In order to determine the likely savings to low income Americans through imports, it is necessary to apply weights that represent their consumption. Table A-5 of Appendix A presents some approximate estimates of relative weights of the categories included in this survey, based on consumer expenditure data for families with incomes below $8,000 in 1972-73 (approximately 40 percent

of all households).[15] Although the correspondences in categories between the present study and the consumer expenditure study are incomplete, the weights computed in Table A-5 are sufficient to obtain an idea of the specific percentage savings from imports, for low income Americans as a group. When these consumption weights are applied to relative prices of overall imports (from both Regions A and B), the result is that imports are 10.7 percent cheaper than domestic goods. However, if one accepts the idea that most imports purchased by low income groups come from lower-cost Region B, then (applying the weights of Table A-5 to the second column of Table 3) ***low income consumers save as much as 13.1 percent*** on the purchase of imports as opposed to domestic goods.

4.7 Discount Sales

The survey results shed some light on practices of discount sales as related to imports. Although the sample period of August, 1978 was specifically chosen in order to avoid a period of major sales (and the items where relevant, were general fall styles so that summer clearances were avoided), the sample results did record the sale price and the original price for those products found to be on sale.

To the extent that a larger fraction of imports tended to be sold at discount than is true for domestic goods, there would be an additional source of consumer savings from imports. To the extent that, when they are on sale, imports are marked down by a larger percentage than domestic goods on sale, there would be still another source of savings for consumers through the purchase of imports. Indeed, the Library of Congress study on retail markups cites testimony by the International Trade Commission suggesting that when imported footwear is on sale the consumer receives a larger percentage discount than on domestic goods on sale.[16]

Table 4 presents the information contained in the sample survey with respect to discount sale practices. As shown in the table, only a very small fraction of the sample observations were on sale at the time of the survey, averaging on the order of 5 percent of the sample. Moreover, the sale markdowns were not especially large, with markdowns from original price by one-quarter to one-third.

The table shows that markdowns on apparel and footwear tended to be larger than markdowns on hardgoods. The largest markdowns were on footwear. The table does suggest that (a) imports are more frequently on sale than domestic goods, and (b) mark downs for imports are larger than markdowns for domestic goods—although neither pattern is pronounced. Both patterns distinguishing imports from domestic goods show up most clearly in the case of footwear. In

Table 4

Patterns of Discounting in Retail Sales: Imports and Domestic Goods (August, 1978)

	Domestic		*Imports*	
Product Group	*Percentage of Total Observations on Sale*	*Sales Price as Percentage of Original Price*[a]	*Percentage of Total Observations on Sale*	*Sales Price as Percentage of Original Price*
Apparel	4.4%	67.9%	4.6%	67.9%
Shoes	2.3%	65.5%	5.3%	63.7%
Hardgoods	6.4%	75.7%	5.0%	73.6%

a. Unweighted averages of percentages for individual items on sale.

Source: Project calculations

this sector the percentage of imported goods on sale was more than twice the percentage of domestic goods on sale. Moreover, the sale price as a fraction of original price was slightly lower for imports than for domestic footwear. For hardgoods, similarly, the sale price of imports was a modestly lower fraction of original price than the corresponding fraction for domestic goods.

Table 4 does not begin to tell the whole story with respect to the impact of discount sales on the relative price of imports. As the season nears its end, the incidence of discount sales becomes much greater for softgoods, and the fraction of items on sale would be much higher than the level of 5 percent found in August. As the season moves into periods of volume discounting, it is possible that the modest differences between imports and domestic goods apparent in Table 4 become much more significant, and that imports become still cheaper in relative terms because of greater volumes and percentages of discounting than for domestic goods. However, the results of the survey itself can speak only to the modest differences already apparent in the non-sale period of August, 1978.

4.8 Regression Analysis

The final set of statistical analyses carried out with the survey data involve the estimation of "regression models" that "explain" the price of a particular observation by a number of "variables". Specifically, each of the characteristics of the observation enters as a "dummy variable" taking on the value of unity when applicable and zero otherwise. For a particular product group, the average price is then "explained" by a statistical regression which relates the price of each observation to its distinguishing characteristics, as measured by a dummy variable for each of the following: city of the sample, product in question, import from Region A or B versus domestic supply, type of store, location of store (center city versus suburb), and budget area versus regular area. The principal concern of this study is with the coefficients on the dummy variables for imports. If the import variable is negative, then the result indicates that the import is cheaper than domestic supply even when taking into account all of the other factors such as store type, city, and so forth.

The specific regression models applied use the logarithm of price as the dependent variable and the series of dummy variables as independent variables.[17] The results of the regression tests appear in Tables A-3 and A-4 of Appendix A. Broadly speaking, these results confirm the results already discussed. The regression analyses systematically tend to show imports from Region B to be cheaper than domestic products (i.e. the regression coefficients on the dummy variable for Region B are usually negative). They show imports from Region A to be cheaper than domes-

tic products in some cases (apparel, tools, televisions, furniture, floor coverings) and more expensive than domestic products in others (footwear, watches, clocks, recreational, small appliances, typewriters, housewares, photographic equipment, miscellaneous) (Table A-3). The result for apparel is interesting in that it finds imports from Region A to be cheaper than domestic products, with a strong statistical significance (high t-statistics). By contrast, apparel imports from Region A are found to be more expensive in the direct analysis of price ratios (Table 3 above). This result suggests that once store type, budget area, location, and so forth are held constant, even Region A supplies of apparel are cheaper than domestic supply. Generally, however, the regression results echo those already calculated (in Table 3 especially) on the basis of the simpler analysis of import price relative to domestic price. (The regression results for footwear, for example, strongly confirm that imports from Region A are more expensive, and from Region B less expensive, than domestic supply. Similarly, strong statistical results for the regressions support the conclusion on Table 3 that all imports are cheaper than domestic supply in the categories of tools and of radio-TV-stereo.)

Finally, the regression analyses throw light on tangential aspects of merchandise trade. Table A-4 reports the coefficients for dummy variables other than those indicating imports. These results indicate that: (a) department stores are about 48 percent more expensive than chain stores (the base), while discount stores are on the order of 40 percent cheaper than chain stores and specialty stores are 22 percent more expensive; (b) goods sold in apparel budget areas are 32 percent cheaper than other goods; (c) the center city is 8 percent cheaper than the suburban shopping center for apparel, but 25 percent more expensive for hardgoods.

4.9. Summary of Survey Results

The sample survey results strongly indicate that imports are cheaper than comparable domestic products. In the aggregate, when weighting results by the significance of each product category in total consumer imports, the ***prices of imports are found to be 10.8 percent cheaper*** than prices of comparable domestic goods. Imports from Latin America and Asia excluding Japan are even cheaper. ***When considering the products weighted according to consumption by low income households, imports from developing areas are 13 percent cheaper than domestic products.*** Overall, the American consuming public saves more than $2 billion yearly as the direct result of purchasing imports that are cheaper than domestic goods.

5. Conclusion

This study uses sample survey data for a total of 4,300 observations on domestic and import prices, collected by the Survey Research Laboratory of the University of Illinois, to examine whether or not imports are cheaper than comparable domestic goods. Detailed product specification and instructions to the surveyors provide assurance that the price comparisons are for domestic and imported goods of comparable quality.

The chief finding of this study is that imports are indeed cheaper than comparable domestic goods. ***Overall, imports are 10.8 percent cheaper than domestic products.***

Within imports, products coming from Latin America and Asia excluding Japan (Region B) are considerably cheaper than products imported from Europe, Japan and Canada (Region A), as was expected. Across all products, imports from the developing Region B are some 16 percent cheaper than domestic goods, whereas imports from industrial Region A are almost identical in price to domestic goods. The contrast is especially striking for footwear, where imports from Region B are 23.5 percent cheaper than domestic supply but imports from Region A are actually 19.9 percent more expensive than domestic footwear.

The fact that imports are cheaper than domestic products means that ***American consumers save more than $2 billion annually*** as the direct result of cheaper import prices (not including their indirect savings made possible by the fact that domestic prices themselves would be driven up if import supply were curtailed). Moreover, these savings are probably especially important to low income families. Assuming that the poor focus their import purchases upon the cheapest supply, that from developing Region B, ***import prices are an estimated 13 percent cheaper than domestic prices for low income families*** (using budget weights applicable to families in the lowest 40 percent of the U. S. income distribution.)

The general policy implication of these findings is that the presence of imports has a vital role to play in providing savings to the consumer and in restraining inflation, the nation's number one economic problem. Therefore, any proposed measures to reduce or limit imports should be viewed with the utmost caution. Even in those special cases where import injury appears to warrant some action, the appropriate remedy will probably be the use of adjustment assistance, a measure that, if administered properly, can attend to the needs of specific dislocated workers without jeopardizing the benefits provided by imports to consumers.

Another more specific policy implication is contained in these results. The price data for apparel, footwear, and radio-TV-stereo products strongly suggest that the consumer pays an especially high price for the systems of voluntary quotas in these sectors.

Imported apparel and footwear from developing Region B are much cheaper than domestic (and Region A) supply, yet the regimes of quotas seriously impede the extent to which American consumers can take advantage of these low cost supplies. Similarly, import prices for television sets are cheaper than domestic prices, yet voluntary quotas against Japan limit the extent to which the consumer can benefit. The price data for these three specific sectors graphically illustrate how the consumer and the fight against inflation suffer when the nation adopts import quotas as the means to relieve a domestic sector considered to be injured by imports. These specific results again point to the need to make the transition to adjustment assistance so that the injury of the specific sector may be addressed without inflicting broader injury upon the American consumer and the economy as a whole.

NOTES

1. U. S. House of Representatives, Committee on Ways and Means, ***Library of Congress Study on Imports and Consumer Prices*** (Washington, D.C.: U. S. Government Printing Office, 1977).

2. It must be added that, in the case of the Library of Congress study, the information available on markups did not meet criteria for rigorous empirical investigation. There were no national or survey data on actual markups. Most of the information reported stemmed from oral statements of individual observers' perceptions of usual practice. In the section of the study concerning apparel, the Library of Congress study cited testimony of four representatives of labor unions, and no representatives of the retail industry. In the section concerning shoes, the study referred to two testimonies by representatives of the American footwear industry, one empirical study by the footwear industry, and one study prepared for the footwear retail industry. It is possible that by selecting seven out of eight reference sources from the side of labor and domestic producers, the study may have obtained an unbalanced view of markup practices by the retail industry for imports as opposed to domestic goods. ***Ibid.,*** pp. 2-6.

3. That is, foreign output does not move as far out along the upward sloping supply curve (toward higher cost production) as it would if foreigners could sell larger quantities (in the absence of quotas).

4. Because there were too few observations available for some of these products, the surveyors also took observations on "substitute" products. In those cases where the substitutes were very close to the original product, the analysis merges their observations with those for the original product. Otherwise the substitute products are omitted from the analysis (see notes to Table B-1).

5. Region A also includes imports from all other areas excluding Latin America and Asia. It thus includes communist countries and Africa; but in practice imports from Region A are primarily from Europe, Japan and Canada.

6. The tests apply to assumption of equal variance for the two groups being compared. The text discussion applies a general critical level of 1.65 for the t-statistics, the critical value for significance at the 10 percent level for large numbers of observations. See Paul G. Hoel, ***Introduction to Mathematical Statistics*** (New York: John Wiley & Sons, 1962), p. 277.

7. An additional detail of the calculations is that they are not merely the weighted average of the ratio of import to domestic price. That average would be biased upwards; a single ratio could swamp all others, because the upper limit of the ratio is infinity while the lower limit is zero even though the true mean for random variation would be unity. To take this assymetry into account, all cases with the ratio of import price to domestic price greater than unity were first imverted, then averaged (weighting); then the inverse was taken of this weighted inverse. Then that weighted average was combined with the weighted average of all ratios below unity to obtain the overall price ratio. Thus:

$$R = \sum_i w_i \frac{P_{mi}}{P_{di}} + 1/\sum_j w_j \frac{P_{dj}}{P_{mj}}$$

where R is the weighted average ratio of import to domestic price, w is the product weight, P_m and P_d are import and domestic price respectively, and subscript i and j refer to all cases with product price ratio P_m/P_d below and above unity, respectively.

8. Within each product group it is appropriate to use quantity weights, not value weights, to obtain the overall ratio of price for imports relative to domestic supply for the product group. Proof: within a given product group it is desired to find P_m/P_d where P_m is average import price (region A and B combined) and P_d is domestic price. But $P_m = V_m/Q_m$ where V_m is total value of imports and Q_m is total quantity. 3ut $V_m = V_A + V_B$ and $Q_m = Q_A + Q_B$ where subscripts A and B denote region of origin. We are given the individual price ratios $\frac{P_A}{P_d}$ and $\frac{P_B}{P_d}$ from the separate regional analysis (where P_A, P_B are import prices from Regions A and B, respectively. The proposition to be demonstrated is that

$$\frac{P_A}{P_d} \cdot \frac{Q_A}{Q_m} + \frac{P_B}{P_d} \cdot \frac{Q_B}{Q_m} = \frac{\bar{P}_m}{P_d}$$

that is, that quantity weights should be used. If this last equation may be shown to be valid, the proposition is demonstrated. It may be rewritten as:

$$\frac{V_A}{P_d Q_m} + \frac{V_B}{P_d Q_m} \stackrel{?}{=} \frac{\bar{P}_m}{P_d}$$

or, therefore, as

$$\frac{V_A + V_B}{P_d Q_m} \stackrel{?}{=} \frac{P_m}{P_d}$$

and further, as

$$\frac{1}{P_d} \frac{V_m}{Q_m} = \frac{P_m}{P_d}$$

and the proposition is demonstrated.

9. According to I.T.C. data, 72.3 percent of the quantity of nonrubber footwear came from Region B in 1977, and 27.7 percent from Region A. International Trade Commission, "Non-Rubber Footwear: U.S. Production, Imports for Consumption, Apparent U.S. Consumption, Employment, Wholesale Price Index, and Consumer Price Index: Fourth Calendar Quater 1977" (Washington, D.C.: I.T.C., 1978).

10. The specific procedure used is the following.

Let $\lambda = \frac{P_A}{P_d} / \frac{P_B}{P_d}$ for each category (Table 3). Then $\frac{\bar{P}_m}{P_d}$ is calculated as:

$$\frac{\bar{P}_m}{P_d} = \frac{P_A}{P_d} \frac{V_A/\lambda}{(V_A/\lambda) + V_B} + \frac{P_B}{P_d} \frac{V_B}{(V_A/\lambda) + V_B}$$

11. U.S. Department of Commerce, ***Current Business Reports: Monthly Retail Sales and Accounts Receivable,*** BR-78-06, June 1978, p. 4.

12. Discussions with retail industry experts provided specific data on the share of imports (both directly purchased abroad and purchased from intermediary import firms, but excluding U.S.-assembled products using foreign components) for 23 major retail firms representing a total of $45 billion in net sales for 1977 (Standard and Poor's ***Corporation Records***). When each firm's import share is weighted by its fraction of total retail sales for the 23 corporations, the result is an industry-wide estimate of eleven percent for the share of imports in total sales.

13. That is, 1.00/(1.00 - 0.108) = 1.12.

14. Brimmer & Company, Inc., *Retail Sales of Non-rubber Footwear 1976-1977 Reported in the Survey of Retailers' Non-rubber Footwear Transactions*

15. Ideally the appropriate weights to use for each product group would be the share in total imports of consumption goods purchased by low income families. That is, ideally the same basis as that used in table 3 -- share of each product group in total imports -- would be used again, but limited to the set of imports purchased by the poor. In the absence of such data, it is necessary to weight by consumption shares for the poor, implicitly assuming that the share of each product group in the imports of the poor is proportional to the share of each product group in their consumption.

16. "Library of Congress Study. . . ", p. 5.

17. For hard goods, the model estimated for each sub-category was:

$$\ln p = a + b_1 CHI + b_2 LA + b_3 PHL$$
$$+ c_1 DPT + c_2 DIS + c_3 SPL$$
$$+ d_1 CEN$$
$$+ e_1 IMPA + e_2 IMPB$$
$$+ F_1 X_1 + F_2 X_2 + F_n X_n$$

where CHI, LA, PHL, DPT, DIS, SPL, CEN, IMPA, IMPB, and X_i take on values of unity if the observation is from (respectively) Chicago, Los Angeles, Philadelphia, department store, discount store, specialty store, center city, Import Region A, Import Region B, and sub-product group "i"; and these variables take on the value of zero otherwise. For apparel and (separately) for footwear, a series of price range dummy variables based on the average price for the sub-product replaced the series of product dummy variables.

In this formulation, the antilog (natural base) of the coefficient or a particular dummy variable tells the fraction which the variable causes the price to be multiplied by, all else held constant. For example, the model states that

$$P = e^a + b\,CHI \ldots + e_2 MPB + \ldots$$

Suppose the result is that coefficient $e_2 = -0.2$. Then a product imported from Region B is the fraction $e^{-0.2} = 0.82$ times as expensive as the domestic product which serves as the base for the estimate, or 18 percent cheaper than the domestic product.

APPENDIX A

Statistical Tables

PROD	P_d	P_A	P_B
1	90.12	84.60	54.49
2	14.10	9.95	12.36
3	13.64	NA	18.00
4	14.05	NA	11.04
5	13.81	NA	12.10
6	17.32	11.99	15.79
7	20.64	14.75	27.55
8	6.84	5.59	4.44
9	45.80	27.96	34.86
10	18.16	13.19	14.37
11	5.25	6.82	4.31
12	19.41	19.36	25.52
13	20.08	NA	20.65
14	4.76	3.73	NA
15	13.00	NA	5.50
16	49.75	NA	39.16
17	75.69	93.17	51.45
18	13.68	NA	12.57
19	13.55	12.00	10.01
20	12.17	NA	10.67
21	9.92	NA	6.90
22	17.79	NA	10.18
23	16.59	21.50	14.99
24	18.78	28.00	15.62
25	13.09	20.00	14.49
26	16.99	16.50	17.27
27	15.69	19.50	17.43
28	52.03	59.88	43.49
29	14.69	12.00	11.55
30	21.89	NA	14.49
31	28.98	26.65	28.52
32	11.19	NA	7.65
33	15.14	12.77	11.09
34	8.18	NA	6.48
35	9.23	12.17	2.89
36	11.97	NA	8.23
37	9.44	NA	10.51
38	5.74	5.49	5.99
39	7.20	NA	9.86
40	7.00	3.99	9.52
41	21.55	46.50	17.25
42	8.84	6.99	6.39
43	7.49	2.99	7.84
44	9.25	7.50	6.53
45	8.95	NA	7.49
46	11.26	5.59	9.27
47	34.24	NA	30.21
48	7.32	NA	8.39
49	9.96	NA	10.92
50	7.92	13.00	7.91
51	9.96	NA	8.38
52	10.29	NA	5.99
53	55.20	60.60	15.71
54	25.32	29.61	15.99
55	26.38	28.92	NA
56	4.81	NA	NA
57	25.25	31.32	23.48
58	26.07	29.90	20.49
59	17.89	31.50	12.69
60	11.32	NA	19.99

TABLE A-1

P_A/P_d	P_B/P_d	# d	# A	# B	t_A	t_B
1.048	0.600	8	1	14	-0.14	3.29
0.706	0.877	20	1	8	0.37	0.35
NA	1.320	19	0	13	0.00	-1.43
NA	0.916	15	0	19	0.00	0.45
NA	0.877	16	0	18	0.00	0.85
0.692	0.911	15	1	15	0.75	0.56
0.618	1.335	20	9	9	3.01	-1.42
0.815	0.649	11	6	1	1.20	1.04
0.610	0.761	10	1	15	1.43	2.15
0.726	0.791	16	5	8	1.50	1.37
1.300	0.822	17	8	6	-1.51	0.82
0.998	1.315	21	11	5	0.02	-1.95
NA	1.029	12	0	15	0.00	-0.16
1.350	NA	9	16	0	-1.16	0.00
NA	0.423	2	0	4	0.00	7.73
NA	0.787	6	0	12	0.00	1.13
1.231	0.677	16	3	4	-1.32	1.97
NA	0.891	10	0	8	0.00	0.61
0.896	0.739	14	1	16	0.28	2.00
NA	0.876	21	0	23	0.00	0.86
NA	0.696	20	0	18	0.00	2.98
NA	0.572	17	0	8	0.00	2.87
1.156	0.806	21	1	8	-0.47	1.49
1.491	0.832	21	1	19	-1.84	1.96
1.528	1.107	20	1	12	-2.02	-0.88
1.089	1.016	14	2	13	-0.62	-0.20
1.243	1.111	21	2	8	-0.91	-0.62
1.151	0.836	15	8	11	-2.09	1.65
0.817	0.786	18	1	16	0.67	2.54
NA	0.662	20	0	2	0.00	1.05
0.920	0.994	13	3	17	0.30	0.14
NA	0.684	20	0	9	0.00	3.44
0.844	0.732	18	5	11	0.96	2.30
NA	0.793	14	0	12	0.00	1.11
1.319	0.312	19	6	1	-1.95	1.82
NA	0.697	20	0	17	0.00	3.04
NA	1.114	10	0	13	0.00	-0.64
0.956	1.043	10	2	3	0.15	-0.18
NA	1.369	12	0	11	0.00	-2.08
0.570	1.360	19	1	5	1.94	-1.92
2.158	0.800	8	2	4	-5.01	1.10
0.790	0.721	21	1	10	0.50	1.81
0.999	1.047	14	1	4	1.85	-0.18
0.811	0.706	8	1	16	0.35	1.88
NA	0.838	20	0	8	0.00	1.98
0.497	0.823	13	1	16	1.53	1.46
NA	0.892	16	0	11	0.00	0.93
NA	1.146	21	0	11	0.00	-1.17
NA	1.096	16	0	14	0.00	-0.90
1.641	0.998	23	1	12	-1.74	0.01
NA	0.941	21	0	12	0.00	1.16
NA	0.582	11	0	4	0.00	2.42
1.207	0.871	19	10	7	-1.13	0.99
1.276	0.695	21	13	5	-2.25	2.09
1.096	NA	18	13	0	-0.55	0.00
NA	NA	8	0	0	0.00	0.00
1.212	0.905	8	6	12	-2.78	0.84
1.147	0.786	13	11	6	-1.00	1.47
1.760	0.709	20	2	17	-2.60	2.73
NA	1.755	3	0	1	0.00	-1.13

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TABLE A-1, Continued

PROD	P_d	P_A	P_B	P_A/P_d	P_B/P_d	# d	# A	# B	t_A	t_B
61	21.73	27.35	18.34	1.259	0.844	8	8	7	-2.08	1.11
62	5.84	NA	4.20	NA	0.720	15	0	7	0.00	0.92
63	24.60	25.33	NA	1.030	NA	10	9	0	-0.19	0.00
64	9.36	22.95	9.77	2.452	1.043	23	1	14	-3.44	-0.32
65	18.76	23.32	15.69	1.243	0.836	14	3	19	-0.88	1.44
66	44.06	69.00	NA	1.566	NA	13	3	0	-2.33	0.00
67	42.45	48.04	NA	1.132	NA	19	14	0	-0.87	0.00
68	41.00	50.70	39.75	1.237	0.969	18	12	4	-1.76	0.17
69	46.05	49.79	45.00	1.081	0.977	17	10	1	-0.75	0.04
70	24.77	36.63	12.90	1.479	0.521	18	15	1	-2.26	0.93
71	26.00	26.99	NA	1.038	NA	1	1	0	0.00	0.00
72	11.15	NA	9.99	NA	0.895	3	0	2	0.00	0.41
73	16.74	NA	10.95	NA	0.654	14	0	1	0.00	1.10
74	38.37	93.50	35.00	2.437	0.912	13	4	1	-2.92	0.35
75	30.99	34.38	22.56	1.110	0.728	21	5	10	-0.58	2.16
76	25.63	17.48	18.49	0.682	0.721	17	4	6	2.06	2.23
77	39.71	39.17	42.49	0.986	1.070	20	11	2	0.12	-0.28
78	12.65	25.43	11.64	2.009	0.920	21	2	17	-3.16	0.74
79	11.74	NA	10.07	NA	0.858	18	0	10	0.00	1.18
80	12.96	16.63	10.31	1.283	0.795	20	11	3	-2.15	1.22
81	16.46	20.14	12.99	1.223	0.789	15	7	2	-1.81	1.06
82	17.53	18.00	13.63	1.027	0.777	15	1	4	-0.08	1.15
83	15.60	20.00	12.91	1.282	0.828	14	1	20	-0.51	1.16
84	13.49	NA	9.54	NA	0.707	16	0	9	0.00	2.11
85	15.74	18.99	14.99	1.206	0.952	8	2	11	-1.02	0.47
86	8.28	NA	9.22	NA	1.114	20	0	13	0.00	-0.72
87	15.85	20.00	13.27	1.262	0.837	15	1	19	-0.53	1.25
88	10.16	NA	9.60	NA	0.944	20	0	14	0.00	0.45
89	20.01	26.31	12.06	1.315	0.603	17	6	3	-1.42	1.73
90	16.27	23.79	NA	1.462	NA	16	5	0	-3.44	0.00
91	15.52	15.66	NA	1.009	NA	21	9	0	-0.08	0.00
92	16.50	19.31	NA	1.171	NA	10	3	0	-0.94	0.00
93	17.01	17.99	16.52	1.057	0.971	17	3	3	-0.30	0.14
94	42.84	118.71	30.78	2.771	0.719	12	4	5	-2.65	0.59
95	61.78	159.59	55.96	2.583	0.906	18	12	9	-4.27	0.37
96	54.60	91.42	39.68	1.674	0.730	14	20	1	-2.65	0.44
97	7.73	8.14	8.45	1.054	1.094	21	4	11	-0.21	-0.51
98	7.68	4.91	NA	0.639	NA	19	6	0	1.97	0.00
99	32.95	19.95	NA	0.605	NA	10	1	0	1.00	0.00
100	7.76	6.07	5.75	0.782	0.742	15	12	4	2.95	2.01
101	118.69	140.15	78.00	1.181	0.657	15	8	3	-1.22	1.76
102	18.64	21.05	13.98	1.129	0.750	6	6	4	-0.69	1.11
103	21.35	NA	NA	NA	NA	11	0	0	0.00	0.00
104	31.65	39.00	1.98	1.232	0.063	3	1	1	-0.28	1.11
105	14.73	18.17	3.99	1.234	0.271	12	16	1	-1.07	1.20
106	25.19	16.79	11.09	0.666	0.440	18	10	8	2.55	4.21
107	25.93	42.95	20.99	1.656	0.810	20	1	3	-2.18	1.10
108	18.07	8.99	10.82	0.496	0.595	11	4	10	2.49	2.77
109	16.97	31.00	14.41	1.827	0.849	7	3	14	-2.10	1.05
110	5.54	NA	7.07	NA	1.383	16	0	7	0.00	-1.63
111	2.41	2.17	1.87	0.902	0.777	17	6	7	1.36	3.23
112	10.19	6.95	NA	0.683	NA	11	1	0	0.20	0.00
113	12.58	13.64	10.16	1.084	0.808	12	16	6	-0.84	1.46
114	23.73	28.61	NA	1.206	NA	17	14	0	-2.45	0.00
115	19.65	NA	NA	NA	NA	16	0	0	0.00	0.00
116	38.57	36.77	NA	0.953	NA	15	10	0	0.28	0.00
117	99.99	120.62	94.00	1.206	0.940	1	10	2	-1.31	0.69
118	16.58	10.93	17.99	0.659	1.085	20	6	1	4.43	-0.46
119	14.25	NA	NA	NA	NA	22	0	0	0.00	0.00
120	18.87	20.71	17.25	1.096	0.914	19	11	11	-1.00	0.93

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TABLE A-1, Continued

PROD	P_d	P_A	P_B	P_A/P_d	P_B/P_d	# d	# A	# B	t_A	t_B
121	76.05	96.07	59.98	1.231	0.769	22	15	2	-1.49	0.65
122	231.94	199.57	176.69	0.835	0.739	10	15	4	1.47	1.85
123	130.75	102.70	NA	0.785	NA	9	20	0	2.46	0.00
124	24.61	15.46	14.70	0.628	0.597	10	8	9	1.24	2.09
125	1.62	2.04	1.00	1.120	0.546	14	19	4	-0.89	1.38
126	19.89	13.45	13.23	0.676	0.665	9	8	4	1.16	0.92
127	59.14	63.06	62.84	1.066	1.063	12	7	7	-0.49	-0.65
128	7.10	20.14	2.22	2.837	0.313	17	8	1	-5.58	1.16
129	9.30	1.99	3.64	0.375	0.696	12	1	13	2.13	1.83
130	8.45	16.25	NA	2.161	NA	20	12	0	-3.66	0.00
131	2.69	2.66	2.69	0.987	0.929	8	12	6	0.16	0.79
132	2.04	NA	1.23	NA	0.604	8	0	1	0.00	0.57
133	10.92	17.99	9.86	1.063	0.583	7	1	8	-0.11	1.90
134	24.29	NA	18.12	NA	0.746	4	0	12	0.00	1.60
135	27.13	41.07	20.30	1.514	0.748	9	9	11	-1.70	1.88
136	7.99	7.61	1.27	0.957	0.159	5	5	9	0.10	4.10
137	2.48	NA	2.83	NA	1.141	15	0	3	0.00	-0.77
138	9.10	10.00	3.99	1.099	0.439	9	1	1	-0.29	1.61
139	261.57	186.30	180.46	0.712	0.690	5	9	10	1.39	1.42
140	117.94	77.02	83.27	0.653	0.706	3	11	6	2.70	1.53
141	52.45	37.51	36.35	0.715	0.693	2	10	10	1.02	2.10
142	410.98	378.16	338.54	0.920	0.824	20	17	3	0.96	1.63
143	64.15	51.69	26.74	0.806	0.417	6	12	4	0.56	1.48
144	36.97	58.19	39.01	1.574	1.055	18	13	6	-1.54	-0.29
145	3.20	3.23	NA	1.010	NA	16	7	0	-0.08	0.00
146	120.15	109.99	NA	0.915	NA	9	1	0	0.39	0.00
147	151.99	131.54	125.00	0.865	0.822	4	11	3	1.25	1.44
148	31.98	29.00	38.78	0.907	1.213	10	1	8	0.39	-0.47
149	7.99	NA	22.00	NA	2.753	3	0	1	0.00	0.00
150	48.27	NA	NA	NA	NA	12	0	0	0.00	0.00
151	162.03	NA	NA	NA	NA	11	0	0	0.00	0.00
152	3.06	0.32	2.81	0.105	0.970	5	3	4	1.20	0.08
153	124.47	106.99	179.00	0.859	1.438	2	4	1	0.40	-0.58
154	60.54	106.25	45.23	1.755	0.747	13	4	8	-2.08	1.34
155	9.56	10.00	5.29	1.047	0.553	9	1	15	-0.15	4.86
156	27.30	34.87	NA	1.277	NA	10	16	0	-1.30	0.00
157	22.80	NA	22.05	NA	0.967	13	0	17	0.00	0.19
158	174.48	119.59	41.25	0.685	0.236	2	1	5	0.21	1.60
159	464.41	400.63	NA	0.163	NA	14	12	0	1.67	0.00
160	6.70	8.74	2.39	1.304	0.357	18	8	5	-1.64	9.42
161	7.54	7.60	6.49	1.008	0.862	17	15	4	-0.07	0.89
162	5.72	6.57	6.85	1.147	1.197	8	17	1	-0.81	-0.42
163	1.33	2.02	NA	1.522	NA	20	18	0	-2.38	0.00
164	0.93	1.06	1.09	1.139	1.174	11	8	4	-0.86	-0.82
165	8.87	15.29	10.35	1.724	1.167	3	6	4	-1.26	-0.76
166	497.77	317.84	249.00	0.639	0.500	5	9	1	2.39	5.80
167	6.56	8.49	4.59	1.295	0.700	14	14	1	-1.10	0.54
168	6.82	10.98	8.65	1.611	1.269	3	1	3	-2.47	-0.90

Symbols:

PROD = product identification number. P_d, P_A, P_B = average price for domestic, Region A import, and Region B import goods, respectively. # d, # A, # B = number of sample observations for domestic, Region A import, and Region B import goods, respectively. t_A, t_B = t statistics for test on difference of price means for domestic versus (i) Region A and (ii) Region B, respectively.

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Table A-2

Imports of Consumer Products by Product Group
($ millions, 1975)

	Product Group and Number	*SITC Import Code*	*Value of Imports from:* *Region A*	*Region B*
I.	Clothing			
	1-52	84	533.2	1,991.3
II.	Footwear			
	53-93	851	757.8	518.2
III.	Hardgoods			
	Watches, clocks			
	94-97	864	289.2	137.1
	Tools			
	98, 100	695.2	156.5	21.6
	99	729.6	25.0	0.1
	Recreational			
	101, 103	733.1	109.9	23.6
	102; 104-112	894.4	164.1	75.1
	Small appliances			
	113-115; 118-121	725.03	28.0	1.4
	116	725.04	34.2	0.3
	117	725.01	25.4	0.7
	Typewriters, calculators			
	122, 123	714.1	143.7	5.9
	124	714.3	128.5	0.5
	Housewares			
	125, 127, 152	666	238.5	22.0
	126-128, 130-131, 135-136	697.2	63.7	37.2
	129	n.a.	n.a.	.a.
	132, 137, 138	6569170[a]	2.9	4.4
	133, 134	6327220[a]	13.8	32.9
	Radio, TV, stereo			
	134	891.1	526.5	76.6
	140, 141	724.2	366.8	293.9
	Photographic equipment			
	143-145	861.4, 861.5, 861.6, 862.4	399.0	24.4

Table A-2 (continued)

Product Group and Number	*SITC Import Code*	*Value of Imports from:* *Region A*	*Region B*
Furniture			
146-150	821	328.9	68.4
Floor, wall coverings			
151, 153	657	57.8	45.9
Miscellaneous			
154, 157	831	54.5	162.9
155	8994100[a]	3.4	18.4
156	897.1	92.9	34.2
158	891.4	27.5	6.7
159	697.1	15.4	17.6
160, 164	8943400[a]	41.5	3.5
161	8612210[a]	26.7	4.7
162	690520	5.5	0.1
163	5541000[a]	4.1	0.3
166	717.3	172.0	13.8
167	8992420[a]	10.1	1.9
168	8942420[a]	7.8	7.2
Total, Group III		3,563.8	1,143.3
Total, Groups I-III		4,854.8	3,652.8

[a]U.S. Schedule A, Department of Commerce

Source: (1) SITC data: United Nations, ***Commodity Trade Statistics 1975: United States,*** ST/ESA/STAT Ser. D/77-14
(2) Schedule A data: U.S. Department of Commerce, FT 135, December 1974, ***U.S. General Imports: Schedule A Commodity by Country.***

Table A-3

Regression Analysis: Coefficients on Import Dummy Variables

Product Group	*Regression Coefficients on Imports from:*		*Number of Observations*	$\bar{R}^2$
	Region A	*Region B*		
I. Apparel	−0.195 (3.18)	−0.0062 (0.19)	1461	0.367
II. Footwear	0.425 (9.47)	−0.213 (5.06)	1074	0.339
III. Hardgoods				
Watches, clocks	0.976 (5.18)	0.362 (1.68)	130	0.629
Tools	−0.284 (2.89)	−0.283 (1.45)	74	0.807
Recreational goods	0.300 (2.17)	−2.202 (1.47)	260	0.536
Small appliances	0.108 (2.00)	−0.107 (1.14)	214	0.891
Typewriters, calculators	0.729 (2.17)	0.683 (1.28)	84	0.216
Housewares	0.313 (3.84)	−0.309 (3.48)	308	0.811
Radio, TV, stereo	−0.272 (2.86)	−3.26 (2.79)	105	0.859
Photographic equipment	0.806 (3.54)	0.579 (1.68)	81	0.573
Furniture	−0.011 (0.07)	0.054 (0.38)	62	0.841
Floor, wall coverings	−0.687 (0.85)	−1.065 (1.03)	27	0.792
Miscellaneous	0.218 (2.59)	−0.013 (0.12)	357	0.860

Source: Project calculations.

t-statistic in parentheses.

Table A-4

Regression Analysis: Coefficients on Dummy Variables for City, Store Type, Budget Area, and Location

Dummy Variable	*I. Apparel*	*II. Footwear*	*III. Hardgoods*[a]
City[b]			
Chicago	0.059 (1.3)	−0.141 (2.7)	0.262 (2.2)
Los Angeles	0.018 (0.04)	−0.005 (0.1)	0.449 (3 8)
Philadelphia	0.060 (1.4)	−0.049 (1.0)	0.232 (2.04)
Store Type[c]			
Department	0.391 (9.5)	0.327 (6.5)	0.532 (4.4)
Discount	−0.427 (9.3)	−0.463 (8.5)	−0.970 (0.8)
Specialty	0.256 (6.0)	0.202 (4.6)	0.098 (0.9)
Budget Area[d]	−0.377 (3.6)	n.a.	n.a.
Center City[e]	−0.082 (1.9)	−0.012 (0.2)	0.222 (1.9)

t-statistics in parentheses

[a]Pool of all hardgoods sectors except watches and clocks, typewriters and calculators, and photographic equipment

[b]Base = Atlanta

[c]Base = Chain stores

[d]Base = Regular areas of store

[e] Base = Suburban shopping center and other

Table A-5

Product Weights for Consumption of Low-Income Families

Survey Category	*BLS Category*[a]	*Weight*[b]
Apparel	Clothing	.543
Footwear		.114
Watches, clocks	n.a.	n.a.
Tools	n.a	n.a
Recreational goods	n.a.	n.a.
Small appliances	Small appliances	.015
Typewriters, calculators	n.a.	n.a.
Housewares	Housewares	.010
Radio, TV, stereo	Television	.077
Photographic equipment	n.a.	n.a.
Furniture	Furniture	.147
Floor, wall coverings	Floor coverings	.040
Miscellaneous	Household Miscellaneous	.054
Total		1.000

a. Bureau of Labor Statistics, ***Consumer Expenditure Survey: Integrated Diary and Interview Survey Data, 1972-73,*** Bulletin 1992, Washington, D.C., 1978, pp. 28-29.

b. Calculated from ***Ibid.*** Disaggregation of clothing into apparel and footwear applies consumer expenditures on the two sectors in 1973, as reported in C. Almon, Jr., M. Buckler, L. Horowitz, and T. Reimbold, ***1985: Interindustry Forecasts of the American Economy*** (Lexington, Mass.: Lexington Books, 1974), p. E10.

APPENDIX B

Methodology and Implementation of the Sample Survey

(prepared by the Survey Research Center of the University of Illinois)

Preliminary work took the form of meetings with representatives of several companies heavily involved in the retailing of both domestic and imported goods. Their opinions were sought on such questions as: For what goods would both domestic and imported versions be found in the stores? Which four cities would provide a good representation of the total U. S. retailing market? Which time of year would be best for doing the study? What kinds of stores should be included?

Meetings were held with representatives from Montgomery Ward, Sears, Roebuck and Co., Kmart, and the Associated Merchandising Corporation. In addition, some time was spent making store visits in Champaign-Urbana and in Chicago, to learn more about what was available.

The methods of the Consumer Price Index were also studied, and inquiry was made into using some of the CPI specifications for this study. This did not work out, however, since the CPI procedure has recently changed quite radically from specifying items very precisely to leaving a lot of choices to the pricer. In addition, the objectives of the two surveys were very different, that of the CPI being to follow price trends of items over time, while ours was to compare the domestic and import prices of an item at one point in time.

It was decided that the four cities to be included would be Los Angeles, Chicago, Atlanta, and Philadelphia, and that the period of pricing would be the month of August, to allow time for the summer merchandise to be largely cleared away and the new fall merchandise to be stocked. All four store types—department, chain, discount, and specialty —would be included. These were defined as follows:

Chain stores are large stores containing a variety of departments with nationwide branches located in the major cities of the United States. Examples of stores meeting the criteria of chain store for this study are Sears, Roebuck & Co. and J. C. Penney Co.

Department stores are large stores containing a variety of departments. However, their marketing area is limited to the city or region in which they are located. In each city all major department stores were visited.

Discount stores are also large stores containing a variety of departments. However, the distinguishing feature of these stores is the selling of merchandise in volme at reduced prices. Stores that specialize in only one type of item, for instance, discount clothing, were not included. Four discount stores were surveyed in each city.

Specialty stores are relatively small, non-departmentalized stores which sell primarily one type of item, for instance, men's and women's clothing stores, sporting goods stores, hardware stores, and jewelry stores. Every type of specialty store which corresponded to the types of items being priced was surveyed in each city. However, the number of stores visited of any one type varied across cities. For example, shoe stores were visited in every city, but the number of shoe stores visited per city fluctuated with the ease or difficulty of ascertaining a domestic and imported price on the specific shoe under investigation. The total number of specialty stores surveyed per city were Atlanta, 95; Chicago, 72; Los Angeles, 68; Philadelphia, 61.

Initially, the plan was to price 100 items (40 apparel, 20 footwear, and 40 hard goods), obtaining five domestic and five imported price observations for each item. The number of items specified was expanded to 168, to allow for unavailability of some items in one or more locations, and the number of price observations desired was changed from five to a minimum of four and a maximum of six. Ideally, a pair of observations (an imported and a domestic version) would be obtained from each store type. Approximately 50 apparel, 40 footwear, and 75 hardgoods items were specified.

Data from the national Consumers Expenditures Survey of 1972-73 and from Commerce Department reports on imports were used to establish the initial, somewhat broad, categories to be priced. The chain store catalogues (which indicate imported items) were used as an aid to selection and specification of products. A complete listing of the item specifications, designed to maintain comparable quality of the items priced, is presented in Table B-1.

Since imported goods must, by law, be clearly labeled as to country of origin, the absence of such labeling was taken to indicate domestic manufacture or assembly. For the purposes of this study, country of origin was determined by where the item was assembled, if that differed from the origin of materials used.

A limited field period (6 days in each city) and budgetary considerations necessitated an efficient and economical study design. Information from leading department stores across the country indicated that within a city prices on items between branches of a store tended to be identical. Therefore, if only one store of any number of branch outlets was surveyed, the prices collected would be representative of all branches of that store. For instance, if one store of the many Marshall Field stores in Chicago was visited, those prices would represent all Marshall Field stores in Chicago.

With this information and the goal of collecting approximately 340 prices (170 domestic and 170 imported) in 4 types of stores within a limited field period, the most reason-

able approach to achieve this goal was to visit areas in which the 4 types of stores were clustered, namely, shoping centers and downtown shopping areas.

The shopping centers visited were designated on the basis of containing at least one chain, one department, and a variety of specialty stores. These 3 types of stores were worked simultaneously at each selected shopping center and downtown area until all chain stores and the major department stores had been surveyed. Downtown locations were worked in all cities to ensure representation of small stores and shops in that area. Since discount stores are not generally located in shopping centers or in downtown areas, there stores were visited on separate trips. Some specialty stores, such as hardware stores, are not usually located in major shopping centers; these, also, were worked on separate trips. In general, cooperation from the managers of the selected stores was good. Incidents of refusals or hesitation to participate in the survey were few and primarily from specialty stores.

The data collectors for each city (except Chicago) consisted of a team of 4 SRL staff members, plus a local person who had been recommended by a research organization in the area. In addition to serving as a data collector, a secondary function of the local person was to advise the staff members of the best routes through the cities and to supply additional information about shopping areas. This assistance tended to increase the efficiency of the field operation.

The data collection team worked the entire item list in every chain, department, and discount stores surveyed. Obviously , in specialty stores only the prices for items which pertained to that type of store were collected. In some cities where a specified item was not available, substitutions were made. For instance, in Los Angeles downhill skis were not available, so another sporting good item was substituted. Substitution due to unavailability of an item was a minor problem since most items were fairly common consumer goods available in most stores and cities. Approximately 1,000 prices per city were gathered during the month of August, 1978. The data collection periods for each location were as follows:

Chicago[1] - August 1-2, 8-18
Los Angeles - August 14-19
Philadelphia - August 21-26
Atlanta - August 22-26

The instructions to data collectors appear in Annex B-1. A few changes were made after the beginning of field work and these are footnoted.

[1]Because Chicago served as a training ground for all field personnel, and because of some procedural changes made after the start of field work, data collection here was carried out over a longer period than elsewhere.

TABLE B-1
Item Specifications

Women's Apparel

No.	*Item*	*Specification*
001	All-weather coat	Cotton-poly blend poplin, single-breasted trench coat —zip or button out pile lining, belt, pockets
002	Pants	Elastic waist, polyester knit, front creases stitched, solid color
003	Bow blouse	Polyester knit, button front, bow-neck, cuffed long sleeve
004	Shirt	Polyester knit, pointed collar, cuffed, long-sleeve, front button placket
005	Shirt	50/50 poly-cotton plaid tailored shirt, front button placket, cuffed long-sleeve
006	Cardigan sweater	V-neck, 2 front patch pockets, ribbed orlon acrylic, set-in sleeve
007	Pants	Corduroy, front zipper, waist band, elaborate pocket trim
008	Shell	Sleeveless, double-knit nylon or polyester, plain jewel neckline, long zipper
009	Ski jacket	Nylon, fiber filled, multi-colored, zip front, 19-24 in. long
010	Vest	Jr. sizes, corduroy, 3-4 buttons, patch pockets
011	Hat	Acrylic knit, ski cap type, solid color
012	Velour pullover	V-neck or crew neck, cotton-poly ribbed cuffs, neckline, bottom
013	Yoked blouse	Jr. size, poly crepe, round collar, gathered at yoke, long sleeve, cuffs, button front
014	Scarf	27 in. square, polyester (silky look), decorative design
015	Gloves	Women's leather look, acrylic knit lined, 11 in. long

Men's Apparel

016	Down-look jacket	Quilted nylon shell, hip-length, hood, closed pockets; regular size
017	All-weather coat	Cotton-polyester blend, zip or button out lining of acrylic pile, pockets, above knee length.
018	Knit shirt	Long-sleeve pullover, poly-cotton knit, collar, 4-button placket; one pocket, solid color
019	Plaid shirt	100% cotton flannel, 2 flap pockets, shirttails
020	Dress shirt	65% poly/35% cotton broadcloth, long-sleeve, one-button cuff, chest pocket, solid color
021	Dress shirt	Same as above, but short-sleeved
022	Dress slacks	Double-knit poly, slant front, inset back pockets, flared, Ban-rol type of waistband
023	Dress slacks	Woven polyester, slant front, inset back pockets, flared, Ban-rol type of waistband, solid color
024	Fashion jeans	Western style, front scoop pockets, embroidered or pleated back pockets, regular denim
025	Jeans, regular	Perma-press, 100% cotton; scoop front, patch back pockets, flared (orange stitching)
026	Pullover	Wool-blend - (70-80%) full-fashioned or set-in sleeves, rib-knit trim cuff, hem, neck
027	V neck pullover	Orlon acrylic, long set-in sleeves, solid color
028	Sport coat	Corduroy, single-breasted, nylon lining, 2 patch pockets
029	Western shirt	Cotton-poly plaid, snap or button closures with yoke
030	Robe	Kimono-style wraparound velour (acetate-nylon) patch pockets, solid color, knee length
	Terry cloth robe	Same type
031	Men's warm-up suits	100% acrylic, rib knit cuffs and waist, zippered jacket, straight leg pants
032	Pajamas	Button coat style, elastic waist, long sleeve, ankle-length pants, poly-cotton fabric
033	Turtleneck	Medium weight knit, solid color, pullover, 100% acrylic

Girls' Apparel

034	Shirt-7-14	50/50 poly-cotton broadcloth, long sleeve, one-button cuff, shirttails, solid color
035	Slacks, dress 7-14	Double knit acrylic, elastic waist, button trim on waist
036	Jeans, 7-14	Western-style, front scoop and back patch pockets, 100% cotton denim, solid colors
037	Sweater, 7-14	V-neck, cable stitch, ribbed collar and cuffs, acrylic, solid color
038	Turtleneck pullover	Nylon-poly rib knit; long sleeve, reinforced cuffs and bottom; solid color
039	Sweater vest	Ribbed pullover, ribbed trim on neck, armhole, and waist
040	Sweatshirt	Sized 2-6x; hood, zipper front acrylic-cotton blend. 2 pockets, knit cuff, waistband.
041	Snowsuit	Infant, newborn to size 2, one-piece nylon, zip-up front with legs
042	Knit pant set	Toddler girl; poly-cotton blend striped or printed top, pull on pants
043	Coveralls	Infant size; cotton corduroy, zipper front, crotch snaps, solid color, trimmed collar

Boys' Apparel

044	Flannel shirt	Printed plaid; size 8-16; long-sleeve 100% cotton flannel
045	Pajama	Coat style; polyester flannel
046	Nylon warmup jacket	Flannel-lined, shirt style collar, snap front slash pockets, elasticized wrists, drawstring
047	Down-look jacket	(Size 8-20) stand up collar, flap patch pockets, hood, zip front, storm flap
048	Knit sportshirt	Collar and placket style, 3 or 4 button, long-sleeve, square hemmed bottom
049	Sweater	Crew-neck, acrylic-blend knit, set-in sleeve
050	Jeans	Western style, front scoop pocket, set-in back pockets, reinforced knees, flared legs

Boys' Apparel (continued)

051	Dress pants	Polyester knit, modified flare, 2 front slash and 2 back pockets
052	Shirt-overall set	Infant size; knit poly-cotton shirt, corduroy overalls, snap crotch

Women's Shoes

053	Dress boots	Leather uppers, full-length zipper, about 15 in. high, unlined
054	Women's leather casual shoe	Slip-on style; cusioned lining, crepe wedge sole
055	Classic pump	Leather uppers, 1-3/4 in. heel, closed heel and toe
056	Plastic rain boot	Clear or smoke color, slightly over ankle height
057	Casual boot	Uppers man-made; full length side zipper; 2-in. heel; crepe sole and heel
058	Sandal	Open toe, 3–5 crossed straps, leather uppers; 2–3 in. heel.
059	Traditional slip-on	Crepe sole covered wedge heel 1½-2 in., man-made upper with gathered moc-toe
060	Leather moc	Unlined, all leather or suede
061	Athletic shoes	Smooth leather uppers, suede split, leather trim, padded collar, vinyl soles
062	Slippers	Women's scuffs, open heel and toe, acrylic uppers, vinyl soles
063	Sling-back pump	Uppers man-made materials, closed toe, adjustable strap, approx. 2 in. heel
064	Oxford sneaker	Cotton duck upper, rubber sole, no trim, 4 eyes

Men's Shoes

065	Athletic shoes	Nylon upper with split leather reinforced toe, heel, eyelet area; traction treaded
066	4 ½ strap and buckle boot	Plain toe adjustable strap, leather upper, leather sole
067	Classic oxford	Plain toe, tie shoe, leather upper and sole
068	Moc-toe slip-on	Leather upper and sole, matching leather vamp band
069	Dress shoe	Strap and buckle slip on, calfskin upper, leather lined; leather sole
070	Men's chukka boots	Sueded split-leather uppers, unlined moc-toe styling, crepe rubber sole and wedge heel
071	Rubber and leather boot	Leather shaft, rubber sole and heel. Chain tread sole, unlined
072	Zippered rubber dress boot	Black, zipper front, lined
073	Romeo style slipper	Leather with man-made sole
074	Monk strap	Leather with man-made sole and heel
075	Work style boots	Leather uppers, 6 - 8 in. high, traction tred soles and heels
076	Work shoes	Black oxford, rubber soles and heels, leather uppers
077	Hiking boots	Rubber soles and heels lugged for traction, cushioned insole, leather uppers
078	Tennis shoes	Cotton canvas uppers, reinforced rubber toe, metal eyelets, rubber soles

Girls' Shoes

079	Casual shoe	Moc-style T-strap casuals; vinyl uppers; buckle strap; wedge heel, cushioned nylon tricot linings; rubber outsoles
080	Casual shoes	Sueded oxfords; suede split-leather uppers; rubber outsoles and wedges with ridged bottoms

081	Casual shoe	Strap and buckle slip-on. Leather uppers with contrast stitched trim. Moc-toe styling. Any synthetic ribbed wedge bottom
082	Saddle shoe	White leather uppers with vinyl trim; oblique toe; sturdy foam sole and wedge heel
083	Jogging shoe	Nylon and sueded split leather uppers; vinyl stripes; nylon tricot lined; padded vinyl collar, padded back; rubber toe guard; traction-treaded rubber sole; cushioned insole
084	Dress shoe	T-strap; crinkle vinyl upper; cutout design across vamp; vinyl sole and heel
085	Boot	Approx. 10" high, vinyl upper, man-made sole and heel, unlined, full-length side zipper
086	Oxford sneaker	Rubber sole, canvas uppers

Boys' Shoes

087	Athletic shoes	Nylon upper with split leather reinforced toe, heel, eyelet area; traction treaded sole
088	Tennis "sneakers"	Oxford style, cotton duck uppers; metal eyelets, rubber soles
089	Hiking boots	Padded collar, speed laces, leather uppers
090	Leather oxford	Moc-toe, 3-4 eyelets, leather uppers, ridged sole and heel
091	Oxford casuals	Moc-toe, suede split-leather uppers, contrast stitching on vamp, crepe style shoes
092	Slip-ons	Plain toe, monk straps, leather uppers, adjustable buckled strap
093	Work style boots	Leather uppers, 6 - 8 in. high, traction tred sole and heel

Watches

094	Men's watch, metal band	LED (Light emitting diode) display of red light. 5 function (hours, minutes, seconds, day and date). Quartz movement.

Watches (continued)

095	Men's watch, metal band	LCD (liquid crystal display) constant readout. 5 function. Quartz movement
096	Men's watch	Hour, minute and sweep hand. Day of the week and date display. 17 jewel movement, self-winding. Metal case and band
097	Watchband	Men's expansion link, metal, one piece

Tools

098	Hammer	16-oz steel head, wood handle, curved claw
099	Electric drill	3/8 variable speed reversible; insulated; 1/3-1/2 HP, 2.4 to 3.2 amps. (no top or side handle)
100	Pipe wrench	10 in. size, heavy duty

Recreational Goods

101	Bicycle	Men's lite-weight, 10 speed, 23 in. frame, 26" or 27" wheels, drop bars
	Volleyball	Leather, official size and weight
103	Tricycle	12" front wheel, metal frame
104	Cross-country skis	Light touring, fiber glass
105	Fishing reel	Ultra-light spin cast reel (ex. Zebco 113)
106	Tennis racquet	Nylon strung, leather grip, hardwood ply construction
107	Camp stove	Double burner, white gas or propane
108	Backpack	Nylon, padded shoulders, zippered pockets, no frame (record size)
109	Soccer ball	Regulation, leather covered
110	Jump rope	Swivel handles, with nylon bearings
111	Tennis balls	Canister of 3 regulation size and construction USTA approved
112	Children's roller skates	All metal, outdoor use. Fits on shoe

Small Appliances

113	Mist curling iron	20-40 watts. Dot signal when ready for use.
114	Mist hair curling	20 rollers in an electric cabinet. Between 200 and 300 watts
115	Cordless electric toothbrush	Comes with several brushes
116	Men's electric shaver	Foil head, not rotary. Cord model, not rechargable. Built in trimmer
117	Compact refrigerator	Between 2 and 3 cubic feet capacity. Freezer section
118	Hand mixer	5-speed electric, chrome plated beaters, push button ejector, approx. 90-100 watts plastic case (no rack, bowls)
119	2 slice automatic toaster	Snap open crumb tray
120	Blow hair dryer	1000-1200 watts, low and high settings for speed and heat (no attachments)
121	Food processor	Stainless steel blade, plastic housing, plastic container, 2-4 additional cutting disks

Typewriters, Calculator

122	Electric typewriter	12 in. power return, standard (not cartridge) ribbon
123	Manual typewriter	12 in carriage, portable, back-space, full-width tabulator, steel frame, plastic shell
124	Calculator	Inexpensive, 6-function, sq. root and % keys, 8 digit display, floating decimal, LED display, memory

Hardgoods-Housewares

125	Coffee mugs	Ceramic, 8-10 oz. capacity, simple or no design
126	Steak knives	6-piece steak set; stainless steel blades, wood holder-flat board (not box or cube base)
127	Stoneware dinner sets	45-piece service for 8. Oven proof and dishwasher safe

Hardgoods-Housewares (continued)

128	Frying pan	Teflon-like (non-stick) interior, painted porcelain enamel exterior; 10" open skillet
129	Kitchen (diet) scale	Comes with bowl, weighs up to 1 lb., marked in ozs. and grams
130	Meat slicing knife	Stainless steel, 9-10 in., smooth (non-serrated) edge
131	Corkscrew	Winged-style, chrome-plated
132	Toaster cover	2-slice size, vinyl material
133	Spice rack	Colonial hard-wood rack, 12 bottles
134	Wooden salad bowl set	3-piece bowl and 2 servers
135	Tableware	50-piece service for 8, stainless steel flatware, knives have forged blades
136	Kitchen shears	Heavy duty blades
137	Placemats	Poly-cotton blend, not quilted
138	Tablecloths	52" x 70", cotton, perma press

Radio, TV, Stereo

139	Stereo phonograph	With AM-FM radio and 8 track player. 3-speed record changer on top of receiver with 2 separate speakers. 100% solid state, separate bass, volume and treble controls; AFC. Simulated wood grain. Diamond needle, ceramic cartridge. Head phone jack. 2 speakers per cabinet, approx. 5 in. speaker. Comes with dustcover, adjustable stylus pressure. (No anti-skating adjustment, pressure magnetic cartridge, cueing lever, or Dolby noise reduction feature)
140	CB radio	40 channel mobile unit, 100% solid state, LED READ OUT (on unit, not mike) 4 watt output power PLL digital frequency synthesizer (needs no crystals) (No automatic scanning, antennas)
141	Digital clock-radio	Snooze control; AM/FM, 100% solid state
142	Color TV	19" portable; VHF to UHF, 100% solid state chassis

Photographic Equipment

143	Binocular	Standard angle, 7 x 35 mm lens
144	110 Camera	Uses 110 film cartridge, built-in telephoto lens, 24-25 mm. lens, automatic exposure
145	Camera film	35 mm., 36 exposure, color slide film, ASA 64 Processing *not* prepaid
146	4-drawer chest	Wood-grained laminate on chipboard, hardboard back and drawer bottom; side guide for drawers, approximately 30 x 16 x 39
147	Bentwood rocker	Cane seat and back, wood frame
148	Director's chair	Hardwood frame, hemmed canvas seat and back
149	Cube lamp	Approx. 10 in. high, colored base, 6-in. round globe
150	Pole lamp	Extendable; 3 lights, 60W; decorated swivel shades. Ceiling to floor style

Floor and Wall Coverings

151	Broadloom carpeting	Machine woven, 80% - 20% blend, 40 yards
152	Ceramic tile	4¼" x 4¼" standard bathroom floor tile, white
153	RYA style rug	Approx. 4 feet by 6 feet. 50 - 80% acrylic fiber

Hardgoods, Misc.

154	Bag, attache-type	Women's leather, double handles, zipper top, stitched trim, outside zippers
155	Umbrella	Women's, nylon, crooked handle
156	Gold chain	16 in. 14K gold fine link chain
157	Shoulder tote bag	Approx. 15 x 14 x 7; vinyl on cotton; zip top; outside and inside pocket, shoulder strap
158	Acoustic guitar	Full size, 6-string with case
159	Microwave oven	Basic memory ability

Hardgoods, Misc. (continued)

160	Cigarette case	Leather pouch with metal fastener
161	Sun glasses	Polaroid lenses, plastic frames, simple design
162	Cuticle scissors	3/4", very sharp points with fine cutting blades
163	Bar soap	Scented, bath size
164	Cigarette lighter	Disposable butane lighter
165	Travel alarm clock	Fold up, leather case, brass hinges
166	Sewing machine	Free arm, touch and sew, wide variety of stitches
167	Hair brush	Women's flat brush with wooden handle and natural bristles
168	Chess set	Small traveling set with metal board and magnetic pieces in wood box

Substitutions

Chicago

601[a]	(100)	Pipe wrench	8" size, heavy duty

Philadelphia

801[a]	(038)	Girls' turtleneck pullover	Cotton-poly rib knit, long sleeve, reinforced cuffs and bottoms, solid color
802[a]	(128)	Porcelain frying pan	Teflon-like interior, 10" size, unpainted silver exterior
803[b]	(099)	Crescent wrench	10" size, all steel
804[b]	(112)	Boot roller skates	Vinyl boots with hollow steel wheels for outdoor use
805[b]	(168)	Backgammon set	12 x 6", folding wooden box, felt-lined, plastic pieces
806[b]	(099)	Electric sander	1/5 HP, 115 volts, double insulated, orbital and straight sanding motion, 8 x 4.5 sander, screw in sandpaper

Atlanta

501[a]	(038)	Girls' turtleneck pullover	Same specs as No. 801 in Philadelphia
502[a]	(043)	Overalls	Same as regular item No. 043, except no shirt
503[a]	(074)	Mens' monk straps	Same as regular item No. 074, except leather bottoms
504[a]	(102)	Volleyball	Same as regular item No. 102, except leather-*look*
505[b]	(115)	Shower head	Wall mount, multiple spray, pulsating action shower head
506[b]	(119)	Can opener	Electric with removable cutter and magnetized lid holder, standard size
507[b]	(149)	Desk lamp	All metal with 18" folding arm, 1 bulb, round shade

Los Angeles

701[a]	(001)	All-weather coat	Same as regular from No. 001 except 100% polyester
702[a]	(005)	Shirt	Same as regular item No. 005 except 65-35 poly-cotton
703[a]	(006)	Cardigan sweater	Same as regular item No. 006 except cable stitched and 100% acrylic
704[b]	(018)	Knit shirt	Same as regular item No. 018 except short sleeved
705[a]	(020)	Dress short	Same as regular item No. 020 except 100% cotton
706[a]	(028)	Sport coat	Same as regular item No. 028 except with inset pockets
707[a]	(034)	Shirt	Same as regular item No. 034 except 65-35 poly-cotton
708[a]	(036)	Jeans	Same as regular item No. 036 except has decorative stitching on pockets
709[a]	(037)	Sweater	Same as regular item No. 037 except has crew neck
710[a]	(035)	Dress slacks	Same as regular item No. 035 except it has pockets and doesn't have button trim
711[a]	(043)	Coveralls	Same as regular item No. 043 except made of broad-cloth

712[a]	(045)	Pajamas	Same as regular item No. 045 except made of broadcloth
713[a]	(050)	Jeans	Same as regular item No. 050 except has patch pockets
714[a]	(050)	Jeans	Same as regular item No. 050 except no reinforced knees
715[b]	(056)	Leather strap and buckle slip-on	Moc-toe, leather upper, other parts man made, one inch heel
716[b]	(060)	Canvas slipper	Unlined, man-made sole, closed heel and toe, wedge heel with jute trim
717[b]	(063)	Sandal	Wood spiked heel (2-3" high), wood sole, 2-4 crossed straps, leather uppers
718[a]	(067)	Classic oxford	Same as regular item No. 067 except with man-made sole
719[b]	(071)	Moc-toe oxford	Suede uppers, other parts man-made, ridged bottoms, 3-4 eyelets
720[b]	(072)	Oxford casual	Leather uppers, 2-3 eyelets, man-made ridged bottoms, moc-toe
721[b]	(092)	Athletic-style suede shoe	Contrast stitching, man-made bottoms with traction tread, padded collar, suede uppers
722[a]	(100)	Pipe wrench	Same as regular item No. 100 except 8"
723[a]	(104)	Canteen	Metal with cloth cover
724[b]	(110)	Jump rope	Same as regular item No. 110 except no nylon bearings
725[a]	(137)	Placemats	Same as regular item No. 137 except is quilted
726[b]	(151)	Area rug	100% wool pile, 5' x 9', oriental design
727[a]	(144)	110 camera	Same except comes with flash and film
728[b]	(168)	Cribbage game	Hard wood board, continuous track
729[b]	(071)	Oxford casual	Leather uppers, 2-3 eyelets, other parts man-made, ridged bottoms

Notes:

a. Product observations merged with those of main product listed in parentheses for purposes of empirical analysis.

b. Product observations excluded from empirical analysis.

ANNEX B-1

Field Instructions

Purpose and Objectives

The purpose of this study is to compare the retail price of a number of different items of merchandise that are produced in this country with items of essentially the same quality that are sold in this country but are imported from elsewhere. To do so, we shall be seeking price information on the domestic and imported versions of approximately 100 products in each of four cities. The products are divided into broad categories such that we shall be seeking price quotations on approximately 40 items of apparel, 20 footwear items, and 40 hardgoods items.[1] The cities in which this information will be sought are widely scattered major urban areas of the country, namely, Chicago, Philadelphia, Atlanta, and Los Angeles.

To allow for differences in pricing policies and other factors, five price quotations are to be sought for each of the domestic and imported versions of each item in each city. As a result, we will be seeking in this study from each city, 500 price quotations for items of retail merchandise produced domestically, and 500 price quotations for corresponding items that are imported from other countries.

The prices of these items are to relate to prices asked in the store, as noted by the price tags. Where there is any question, the focus of the data collection operation is on the fall merchandise lines, not on merchandise lines that are presently being depleted.

The price quotations will be sought in each city during the period of one week by a staff of four people. Since the synchronization of the collection of these data by four people working more or less independently is very tricky, arrangements will be made for the members of each team to meet at the end of every day, and to tally what information has been obtained and what is still needed. This will also provide an opportunity to discuss problems that arise during the day, and to adjust the logistics of the operation as such instances indicate.

[1]The number of items was expanded as described above in the Methodology Report.

Guidelines for Selecting Items in Stores

When you walk into a store, you first have to make a decision whether to introduce yourself to the store personnel, or to look for the particular items on your own. If it is a very large store, or if the sales people seem to be very busy, it may be best not to try to take up their time by introducing yourself, but rather to look for the items yourself. This is especially so if you are able to orient yourself so that you do not have much difficulty in locating the section where the particular items may be located.

If, however, you are not sure where to find items, or if you are approached by the salesperson, it may be best to introduce yourself at the very start, and possibly enlist their help in locating items. When you introduce yourself, explain that we are doing a price comparison study on behalf of the American Retail Federation, an organization of the major retailers in the country, and show them the letter of introduction that you will have with you. Do not go into details on the purpose of the study, or what the Retail Federation may hope to obtain as a result of this study. Simply say that it is our task just to collect this price information in the best way that we can, that we are not interested in price comparisons among individual stores, but rather in comparing prices for imported versus domestic versions of the same product, and that we would appreciate their help in obtaining the necessary price information.

In working with the store personnel, feel free to show them the list of products for which you are looking for price information for that type of store. Do ***not,*** however, under any circumstances, let them see sheets containing price information that you may have collected from other stores. Such information is to be treated in absolute confidence, and is not to be shown to any other stores that you visit.

In discussing the availability of different items with the personnel of the store, it is a good idea to make notes on what they say with regard to whether particular items that are not available may not be available in that city at all, or only may not be available in the particular store. It would be especially useful if you record item specifications for products that store personnel say are available, and which they suggest might substitute for products that they say are not available. Such information is especially useful in making substitutions in the latter part of the week for items that do not seem to be available at all in that city. Please keep in mind, however, that any such items must be available both in imported and domestic versions.

You may have to exercise a considerable amount of judgment in deciding when a particular item in the

store corresponds with the item on your list. The correspondence will not always be exact in terms of the item specifications, but the difference in the specifications may be so little as to be of no practical consequence to the average consumer. This is in fact the criterion that you should use in deciding whether to record the price of an item or not. In other words, if the item in the store differs from your specifications in a way as to be of no practical consequence in terms of the serviceability or the attractiveness of the item to the consumer, it may be assumed that it meets the written specifications.

To be sure, cases of doubt are bound to arise. In such instances, when you record the price also be sure to record what is the nature of the difference between the specification of the item in the store, and the specification on your record sheet. Whether or not such a difference is large enough to warrant excluding the item can be discussed at the meeting of the teams that evening, and this information can also serve as a basis for deciding in the office at a later time on the reasonableness of your decision

When you visit a particular store, be sure to try to obtain price quotations for as many different items as are listed on your record sheet. For this purpose, the imported and the domestic versions of a particular product are different items, and price quotations for each may be obtained in the same store if both the imported and the domestic versions of that item are carried by that store. Do not, however, record more than one price for a particular item. For example, if you find two price quotations for a domestic man's shirt corresponding to the specifications on the form, record only one of those prices. The price that should be recorded is that of the more heavily sold item (if that information is available), or otherwise the lower price.

In choosing the price for an item, be sure to choose the price for the "standard" item of that type. In the case of a man's shirt, for example, do not record the price of the "extra large" model, or of a model that is atypical in terms of color scheme or style.

The following additional guidelines should be kept in mind while selecting items for pricing.

1. Do not record sale prices. If an item you select appears to be on sale, find the original price.

2. Do not select leftover summer stock items.

3. Avoid selecting items that are intended to be a part of a set (for example, the vest of a 3-piece suit); try to find separates.

4. Avoid verbal price quotes from sales clerks—get the prices from printed tags or stickers.

Forms

In connection with the collection and recording of price information, you will be using three forms.

Form A contains the specifications for the items for which you will be seeking price information. It is organized by major category of goods so that you need make use of only those sheets for the product categories with which you are working. This form is not confidential, and you may feel free to show it to any store personnel from whom you may seek assistance.

The form lists by product category each of the items on which we will be seeking price information. Within each category, each item has a number and a descriptive name followed by the information on the specifications for that item. These specifications are those which you will seek to match in the stores. It is perhaps needless to say that virtually all of the items will have other characteristics as well (such as different colors and patterns for clothes), but these other specifications are not relevant for the present purposes.

Form B is the Item Record Form. There will be at least one such form for every store that you visit. The name and address of the store are indicated in the upper left-hand corner. The store type is indicated in the upper right-hand corner. In the body of the form, each pair of rows represents a different item; one row is for the domestic price, and another row for the price of the item, if imported. In a particular store, you will try to obtain as many of these prices as you can, in accordance with the criteria outlined in Section 11. When you record a price for a particular item, be sure also to record all the other information in the other columns of that row, namely, if the item was on sale (and if so, the original price), if the item was in the bargain section (if it is a department store), and the country of origin, if the item is imported. The country of origin should be written in beside the other category in the column labeled ***origin.*** Some of these data may not be ascertainable, such as country of origin, or original price, but before recording "n.a." make an effort to obtain this information from store personnel.

Form C is a tally form that will be used by the team as a group, and by the team leader to summarize every evening how much price information has been obtained on each item. It is essential that this form be brought up to date at every meeting so that we can see as the work progresses, for which items we already have enough information, and for which items more information and more price quotations are needed.

STATEMENT OF FRANK L. KING, EXECUTIVE VICE PRESIDENT, WRITING INSTRUMENT MANUFACTURERS ASSOCIATION, INC.

The Writing Instrument Manufacturers Association, weighing the pros and cons of the Multinational Trade Agreement package being submitted to the Congress, favors its adoption, although strongly objecting to the action of our government in offering to the GATT the maximum allowable 60 percent reduction across-the-board on just about every mechanical writing and marking instrument and component from TSUS No. 760.05 through 760.42, in contrast to offers from the EC of 44 percent and 37 percent, of 44 percent from Canada and even lesser offers from other developed nations, the only exception being Japan, which made a substantial counteroffer in the neighborhood of 60 percent. We depart from the views of our ISAC No. 26 in the belief that, from the overall standpoint, the agreement represents a big step forward for the future of our industry's international trade posture.

We have consistently asked that our negotiators hold the offers on our products to no more than 40 percent and we now ask again that the Special Trade Representative, Ambassador Robert Strauss, modify the offers on this industry's products to a lower level than the 60 percent formula in the initialed agreement, preferably to no more than 40 percent.

We have maintained a long-term posture of favoring freer trade and of seeking the reduction or elimination of the multitude of non-tariff barriers confronted by our industry's products worldwide. We are deeply concerned that this sixth round of trade negotiations since World War II has only partially tackled the problems posed by such non-tariff barriers and the fact that this country took a position of stopping at the water's edge and not asking for reciprocal elimination of such barriers in so many sensitive areas is disappointing. It had been our hope that our government's negotiators would have strived to develop some form of mechanism to uproot and exterminate, to the greatest degree possible, the hundreds of troublesome barriers posed against our products.

Clearly, these non-tariff barriers will keep us at some disadvantage in attempting to increase our exports during the coming years. If, as we understand may be the case, the EC pauses after the first three staged reductions to study the results and decide their future course with regard to subsequent reductions, we strongly urge that our own government do the same and give industries like our own ample opportunity to present their views on the course of events at that time.

K MART CORP.,
Troy, Mich., April 23, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR CONGRESSMAN VANIK: The Trade Subcommittee Press Release of April 6, 1979 invites statements addressing enumerated topics and issues concerning the Tokyo Round of Multilateral Trade Negotiation agreements and implementing legislation.

In compliance with requested Subcommittee procedure, I state that I represent the K Mart Corporation and have set forth immediately below a brief topical outline of points to which comments or recommendations are hereinafter made:

"[from the April 6 press release]

"5. The necessary and appropriate statutory procedures for implementing the Multilateral Trade Negotiations, in terms of agency requirements, burden of proof, judicial review, et cetera:"

A. Countervailing duties;
B. Antidumping duties;
C. Safeguards;
D. Customs valuation—retain FOB basis; and
E. Licensing.

The outlined comments and recommendations are as follows:

A. Countervailing duties

(1) *Administering agency.*—The "injury" determination portion of a proceeding should be handled by an Administrative Law Judge, probably at the USITC.

(2) *Definition of "injury".*—Legislation implementing the injury test clearly should not adopt or set up any "presumption" in favor of a complainant, or for that matter in favor of a respondent. "Preponderance" evidence standards should be

applied by the fact-finder in determining existence of injury to domestic producers regardless of, separately, the causation standard(s) or criteria to be set or suggested by amended statute. As indicated in (1), supra, an Administrative Law Judge should preside over this quasi-judicial, fact-finding determination.

(3) *Definition of "like product".*—Legislative definition of "like product" should, realistically, take account of market-place substitutability and directly competitive impact upon products which are very substantially similar in style, quality, and interchangeable ultimate use, again as determined under a "preponderance" evidence standard by an Administrative Law Judge.

(4) *Judicial review.*—Administration of the countervailing duty law should be fully subject to judicial review, based upon existing judicial standards of substantial evidence requirements, not upon de novo or other review standards. Application of certain reasonable time limits circumscribing judicial review would be meritorious.

(5) *Note.*—The implementing legislative proposals should not permit imposition of countervailing duties on any retroactive basis, which would redound to the prejudice of and denial of due process for American importers and retailers who purchase goods unknowing of any foreign government subsidy.

At the same time, any legislative proposal to authorize "provisional measures" such as payment of "estimated" countervailing duties or performance bonds upon a "preliminary positive finding that a subsidy exists" should be avoided, where a "preliminary positive finding" would (apparently) precede the initiation and conclusion of an investigation properly subject to due process of law and an evidentiary fact-finding by the administering agency.

B. Antidumping duties

(1) *Relation to countervailing duty concepts.*—The countervailing duty and antidumping laws with respect to causation and injury tests should not necessarily be the same, insofar as the countervailing duty injury test may, under the ultimate implementing statute, be a somewhat softer or lower standard. Without the test of implementing legislation being yet available, comment in this area is difficult. However, the antidumping law is in essence a foreign trade price discrimination law, with a properly strict injury standard (injury being determined only "by reason of the importation" of certain merchandise at less than fair value prices) which should not be softened so as to allow inclusion of apparent or inconclusive evidence of domestic industry economic factors. To be borne in mind, is the fact that regulatory policy considerations are conceivably quite different in the case of countervailing duty law where foreign government export subsidies of exports are involved as contrasted to antidumping law situations whereunder discriminatory market-price behavior of individual foreign firms is involved.

C. Safeguards

(1) *Sections 201 to 203.*—A preponderance evidence standard should be added by express legislative amendment of Section 201 of the 1974 Trade Act (19 USC §2251) with respect to: (1) the determination by the International Trade Commission of "substantial cause" and (2) its fact-finding of "serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Implementing amendments should also provide that these factual determinations be performed by an Administrative Law Judge in an evidentiary proceeding for the protection of the interests of, both, complainants and respondents. In this respect, such implementing legislative amendments would provide more reliable standards for quasi-judicial Import Relief practice and development of a more consistently reliable body of precedental case law at the USITC.

The earlier proposed adoption of an expedited, or "fast track", Import Relief proceeding in the USITC which would in effect cut in half the present time limits for an ITC Import Relief determination proceeding, makes legislative adoption of a preponderance evidence standard, to be applied by an Administrative Law Judge, all the more important.

(2) *Definition of "domestic industry".*—Neither the international "Safeguards" code agreement nor the implementing legislation should alter the definition of "domestic industry" under existing "Import Relief" statutory provisions (Sections 201-203 of the Trade Act of 1974) if such alteration or amendment would impair or reduce the existing necessary factual economic basis requirements for determining "injury."

(3) *Judicial review.*—Administration of the "Import Relief" law should be fully subject to judicial review, based upon existing judicial standards of substantial evidence requirements, not upon de novo or other review standards. Application of certain reasonable time limits circumscribing judicial review would be meritorious.

D. Customs valuation retain FOB basis

Care should be taken that neither the implementing legislation nor any regulation promulgation authority thereunder authorizes any change from the current FOB (Free on Board or Free Along Side) basis to a CIF (Cost Insurance Freight, i.e., landed) basis for import merchandise valuation methods, for the reason that such a change would immediately and automatically increase costs of imported merchandise in a major, inflationary degree. This is due to the fact that duties would then be assessed upon extraneous insurance and freight costs in addition to the imported product's price. CIF would also result in wide disparities in duty assessment dependent upon whether East Coast or West Coast, or other, ports of entry were selected or necessarily utilized by importers and retailers.

The chaotic result would be capricious and discriminatory duty expense impact upon small and large importers and retailers, alike, whose selling outlets are necessarily in or near a particular port of entry which is located at a greater distance and higher ocean shipping cost point from given foreign source countries. On an import from Europe, for example, the retail store located at a West Coast port of entry would suffer a larger, discriminatory customs duty expense than would a retail store located at an East Coast port, under CIF valuation. Under the present FOB valuation basis, both retailers pay equal amounts of duty, as they should.

At the same time, any attempted governmental shift from FOB basis of valuation to a CIF basis would constitute a "revenue raising" measure (or an "implementing revenue bill" under § 151 of the Trade Act of 1974) under Article I, Section 7 of the Constitution and require origination in the House of Representatives pursuant both to the statute and Constitution.

E. Licensing

(1) *Scope of Code.*—The implementing legislation should not impose any requirement or authorization that the USA, as an importing country, may require import licenses in order to administer export restraint arrangements (such as Orderly Marketing Agreements or voluntary export restraint agreements) between the USA and an exporting trading partner.

(2) *Implementation method*—Clearly, the provisions of an international licensing code should be implemented through legislation rather than by Executive Order. This is so because of the very purpose of the draft international licensing code to reduce administrative "red tape" and unnecessary administrative impediments to trade. For the Congress to allow Executive or administrative rulemaking would not be in keeping with the stated underlying purpose of the code.

Sincerely,

JAMES C. TUTTLE,
Antitrust and International Counsel.

STATEMENT OF HUGH C. KIGER, EXECUTIVE VICE PRESIDENT OF THE LEAF TOBACCO EXPORTERS ASSOCIATION AND THE TOBACCO ASSOCIATION OF UNITED STATES

SUMMARY

The United States is the world's largest exporter to tobacco and ranks third as an importer. Consequently we have the most to gain from a more open international trading system.

U.S. tobacco exports now total about $2 billion annually and our tobacco imports are valued at about $500 million. Our net trade in tobacco is about $1.5 billion which makes a major contribution to our balance of payments.

Our association strongly supported the Trade Act of 1974 which provided authority for the Toyko Round negotiations. Over the years we have urged legislation aimed at reducing, reciprocally, tariffs and nontariff barriers to trade and reforming the international trading system.

We feel that the new set of codes will curb nontariff restrictive practices and represents an important revision of the international trading rules.

The trade package provides substantially better access for U.S. tobacco in some key markets and concessions by the U.S. tobacco will not have a significant impact on U.S. tobacco imports.

In our view the trade package is one that will be very beneficial to U.S. tobacco trade, to U.S. trade and to our economy as a whole.

On balance we feel that the MTN package will result in long-term and stable export growth and expanded trade opportunities. In our view, failure to approve this trade package would have a seriously damaging effect on the U.S. and the entire world economy.

We strongly urge that Congress approve the trade package negotiated in the Tokyo Round of the MTN.

STATEMENT

Mr. Chairman, I am Hugh C. Kiger, Executive Vice President of LTEA and TAUS, with headquarters at 3716 National Drive, Raleigh, N.C. 27612. These two associations share the same executive office. LTEA is a voluntary organization of 45 leaf tobacco exporters. The 56 regular members of TAUS consist of leaf tobacco exporters as well as some manufacturers, warehousemen, storage firms, and processors and the 66 associate members of the association consist of firms directly or indirectly engaged in the handling, financing, transportation, servicing, or storage of leaf tobacco and its products. Attached to our written statement as Appendix A is a list of the members of LTEA. Appendix B is a list of the members and associate members of TAUS.

Members of these two associations purchase about 70 percent of U.S. tobacco crops and account for practically all of our shipments of tobacco to overseas markets. We appreciate this opportunity to express our views on the multilateral trade negotiations (MTN).

Tobacco trade has played a key role in the history and economy of our country. The shipment of tobacco from Jamestown, Va., over 360 years ago was the beginning of international trade in this country. Tobacco exports have been an important part of U.S. trade since that time.

The U.S. plays a dominant role in world tobacco trade. We are the world's largest exporters of tobacco and rank third as an importer.

The importance of the foreign market for U.S. tobacco cannot be overemphasized. The export market provides an outlet for about one-third of our total tobacco crops and provides an outlet (in the form of leaf or products) for over half of our flue-cured tobacco.

U.S. exports of tobacco and tobacco products now total about $2 billion annually. The value of U.S. tobacco imports is about $500 million. Thus, our net trade in tobacco is now about $1.5 billion—a significant contribution to our balance of payments.

The domestic market for tobacco has been static during the past few years and it appears that this trend will continue. On the other hand, world tobacco trade is expected to increase and the export market provides the best potential as an outlet for our tobacco. If the U.S. is to participate in this expanding world market, it is important that we gain better access to foreign markets.

Over the years our associations have recognized the fact that trade is a two-way street—to export we must import. We have supported trade legislation designed to reduce tariff and non-tariff barriers to trade with our trading partners on a reciprocal basis.

We strongly supported the Trade Act of 1974 which provides authority for the Tokyo Round of the MTN. I have been serving as a member of the Agricultural Policy Advisory Committee (APAC) for Trade Negotiations and as Vice Chairman of the Agricultural Technical Advisory Committee (ATAC) for tobacco. Thus, I have had the opportunity to observe the negotiating progress and results achieved from an on-the-sport viewpoint.

During the previous seven negotiating sessions held under the auspices of the General Agreement on Tariffs and Trade (GATT), little progress was made in achieving better access for U.S. tobacco. However, we feel that the trade package negotiated during the Tokyo Round is a balanced and fair deal and contain some major concessions for tobacco.

Our comments regarding the MTN will deal primarily with the new set of nontariff codes and with the advantages and disadvantages of benefits gained for U.S. tobacco and for concessions which the U.S. granted on tobacco.

Prior to the Toyko Round, the previous negotiating sessions under the auspices of GATT had dealt primarily with tariff reductions. However, in recent years as tariffs have been progressively reduced, many nations have adopted non-tariff measures to restrict tobacco imports. In many countries such measures have replaced tariffs as a primary obstacle to trade. In our view the new set of codes of conduct, which establishes new ground rules for world trade, will effectively diffuse the protectionist measures contained in the nontariff barriers to trade. This represents the most important revision of international trading rules in 32 years and is a real plus for the United States.

Subsidies.—Some subsidies are used by our trading partners to displace our tobacco exports. We feel that this code will prohibit export subsidies, provide a new

discipline for the first time on use of domestic subsidies, and set up rules relative to counter measures against subsidized products that adversely affect trade.

Standards.—To date new product standards have not been a major source of tobacco trade disputes. However, we feel that standards and technical regulations in the period ahead could be an impediment to international tobacco trade. We feel that the guidelines and enforcement procedures of this code will assure that standards are not applied in a discriminatory manner to curtail our tobacco exports.

Licensing.—Over the years many countries have used import licensing to reduce or bar U.S. tobacco exports. We feel that this code will reduce the effect on U.S. tobacco exports of unnecessary import licensing requirements.

Government procurement.—Many countries purchase tobacco through Government monopolies but governments do not normally purchase tobacco for government use. Under provisions of this code government tobacco monopolies can continue to purchase tobacco in a nondiscriminatory manner.

Customs valuation.—This code provides a standard method of duties collectible on an import. We feel that this code will help remove the possibilities for manipulation in customs valuation relative to tobacco.

Safeguards.—Some countries use safeguard clauses which can be used to limit imports of tobacco that injure the domestic tobacco industry. This code will require countries to observe certain international trading rules and also make them subject to international discipline.

A substantial concession was obtained from the European Community whereby the tariff on our tobacco going to that key market will be reduced by about one-third. This produces better access to that major market which, in recent years, has provided an outlet for nearly half of our tobacco exports. The trade package also contains some meaningful concessions on tobacco from other trading partners, including Australia and New Zealand.

The concessions on U.S. tobacco imports are such that they will have little impact on the level of U.S. tobacco imports.

In our view real progress was made in modernizing the GATT. The dispute-settlement mechanisms have been improved and steps have been taken to bring the developing countries into the disciplines of GATT.

APPENDIX A

MEMBERSHIP LIST OF LEAF TOBACCO EXPORTERS ASSOCIATION, INC.

W. A. Adams Co. Inc., Oxford, N.C. 27565.
The Austin Co., Inc., P.O. Box 360, Greeneville, Tenn. 37743.
Austin Carolina Co., Box 809, Kinston, N.C. 28501.
Carolina Leaf Tobacco Co., P.O. Box 796, Greenville, N.C. 27834.
Carrington & Michaux, Inc., Box 24597, Richmond, Va. 23224.
China American Tobacco Co., Inc., Rocky Mount, N.C. 27801.
Commonwealth Tobacco Co., Kenbridge, Va. 23944.
Dibrell Brothers, Inc., Danville, Va. 24541.
Dibrell Carolina Far Eastern Corp., P.O. Box 137, Greenville, N.C. 27834.
Dickinson Tobacco Co., Inc., Box 587, Richmond, Va. 23219.
Dunnington-Beach Tobacco Co., Box 468, Farmville, Va. 23901.
Eastern Tobacco Co., Box 338, Farmville, N.C. 27828.
K. R. Edwards Co., Inc., Box 1337, Smithfield, N.C. 27577.
Falls City Tobacco Co., Box 480, Louisville, Ky. 40201.
E. B. Ficklen Tobacco Co., Greenville, N.C. 27834.
G. R. Garrett Co., Inc., P.O. Box 796, Greenville, N.C. 27834.
Greenville Tobacco Co., Inc., P.O. Box 2007, Greenville, N.C. 27834.
Hail & Cotton, Inc., P.O. Box 70102, Louisville, Ky. 40270; and P.O. Box 2465, Rocky Mount, N.C. 27801.
International Tobacco Co., Inc., P.O. Box 1824, Greenville, N.C. 27834.
W. B. Lea Tobacco Co., Inc., Rocky Mount, N.C. 27801.
Maury Leaf Tobacco Co., P.O. Box 693, Richmond, Va. 23206.
Jas. I. Miller Tobacco Co., Wilson, N.C. 27893.
A. C. Monk & Co., Inc., Farmville, N.C. 27828.
Monk-Henderson Tobacco Co., P.O. Box 246, Farmville, N.C. 27828.
Mullins Leaf Tobacco Co., Box 32, Mullins, S.C. 29574.
Edward J. O'Brien Co., 100 N. Sixth St., Louisville, Ky. 40202.
Piedmont Leaf Tobacco Co., P.O. Box 756, Winston-Salem, N.C. 27102.
T. S. Ragsdale Co., Inc., P.O. Drawer 937, Lake City, S.C. 29560.
E. S. Robey & Co., Franklin, Ky. 42134.
W. L. Robinson Co., Inc., Durham, N C. 27702.

W. I. Skinner Co., Inc., Williamston, N.C. 27892.
Southeastern Tobacco Co., Inc., 113-115 East Third St., Robersonville, N.C. 27871.
Southwestern Tobacco Co., Inc., P.O. Box 25039, Richmond, Va. 23230.
Standard Commercial Tobacco Co., 6620 W. Broad Street Road, Attn: Mr. Eugene S. DesPortes, Richmond, Va. 23230.
E. R. Sykes & Co., P.O. Box 1387, Rocky Mount, N.C. 27801.
J. P. Taylor Co., Box 1377, Goldsboro, N.C. 27530.
J. P. Taylor Co., Box 380, Henderson, N.C. 27536.
Thorpe & Ricks, Inc., P.O. Box 271, Rocky Mount, N.C. 27801.
Tobacco Trading Corp., Box 1127, Durham, N.C. 27702; and 2110 Bardstown Road, Louisville, Ky. 40205.
Universal Leaf Tobacco Co., P.O. Box 25099, Richmond, Va. 23260.
G. F. Vaughan Tobacco Co., P.O. Box 160, Lexington, Ky. 40501.
Virginia Tobacco Co., Danville, Va. 24541.
R. P. Watson Co., Inc. P.O. Box 30, Wilson, N.C. 27893.
Wendell Tobacco Co., 151 Third Street, Wendell, N.C. 27591.
Whitehead & Anderson, Inc., Lumberton, N.C. 28358.
Winston Leaf Tobacco Co., P.O. Box 2499, Winston-Salem, N.C. 27102.

APPENDIX B

TOBACCO ASSOCIATION OF UNITED STATES, INC., ROSTER—ACTIVE MEMBERS

W. A. Adams & Co., Inc., P.O. Box 159, Oxford, N.C. 27565.
The Austin Co., P.O. Box 360, Greenville, Tenn. 37743.
Austin Carolina Co., P.O. Box 809, Kinston, N.C. 28501.
Blair Tobacco Storage, P.O. Box 314, Richmond, Va. 23202.
Burley Auction Warehouse Assn., P.O. Box 670, Mt. Sterling, Ky. 40353.
Carolina Leaf Tobacco Co., P.O. Box 796, Greenville, N.C. 27834.
Carrington & Michaux, P.O. Box 24597, Richmond, Va. 23224.
Carrollton Redrying Co., P.O. Box 29, Carrollton, Ky. 41008.
China American Tobacco Co., Rocky Mount, N.C. 27801.
Clay Storage Co., P.O. Box 789, Mt. Sterling, Ky. 40353.
Commonwealth Tobacco Co., Kenbridge, Va. 23944.
Dibrell Brothers, Inc., Danville, Va. 24541.
Dibrell-Kentucky, Inc., P.O. Box 928, Bowling Green, Ky. 42101.
Dickinson Leaf Tobacco Co., P.O. Box 587, Richmond, Va. 23219.
K. R. Edwards Co., Inc., P.O. Box 1337, Smithfield, N.C. 27577.
Export Leaf Tobacco Co., P.O. Box 27207, Richmond, Va. 23261.
Falls City Tobacco Co., Inc., P.O. Box 480, Louisville, Ky. 40201.
E. B. Ficklen Tobacco Co., Greenville, N.C. 27834.
G. R. Garrett Co., Inc., P.O. Box 796, Greenville, N.C. 27834.
Gieske & Niemann, 55 Gwynns Mill Court, Owings Mills, Md. 21117.
Greenville Tobacco Co., Inc., P.O. Box 2007, Greenville, N.C. 27834.
Hail & Cotton, Inc., P.O. Box 70102, Louisville, Ky. 40270; and P.O. Box 2465, Rocky Mount, N.C. 27801.
House of Edgeworth, P.O. Box 6-S, Richmond, Va. 23217.
Imperial Tobacco Limited, P.O. Box 1848, Wilson, N.C. 27893.
International Tobacco Co., P.O. Box 1824, Greenville, N.C. 27834.
W. B. Lea Tobacco Co., Inc., Rocky Mount, N.C. 27801.
Liggett & Myers Tobacco Co., Leaf Department, P.O. Box 341, Durham, N.C. 27702; Attention: Mr. J. C. Burton.
Maury Leaf Tobacco Co., P.O. Box 693, Richmond, Va. 23206.
Jas. I. Miller Tob. Co., Wilson, N.C. 27893.
A. C. Monk & Co., Inc., Farmville, N.C. 27828.
Monk-Henderson Tobacco Co., P.O. Box 246, Farmville, N.C. 27828.
Moss Tobacco Co., Inc., P.O. Box 38, Horse Cave, Ky. 42729.
Mullins Leaf Tobacco Co., P.O. Box 32, Mullins, S.C. 29574.
Edward J. O'Brien Co., 100 N. Sixth St., Louisville, Ky. 40202.
Overseas Commodex Corp., 109 S. Main St., Rocky Mount, N.C. 27801.
Parker Tobacco Co., Maysville, Ky. 41056.
Piedmont Leaf Tobacco Co., P.O. Box 756, Winston-Salem, N.C. 27102.
T. S. Ragsdale Co., Inc., P.O. Drawer 937, Lake City, S.C. 29560.
E. S. Robey & Co., Franklin, Ky. 42134.
W. L. Robinson Co., Durham, N.C. 27702.
Rudolph Hach & Co., Inc., P.O. Box 77, Hopkinsville, Ky. 42240.
W. I. Skinner & Co., Inc., Williamston, N.C. 27892.
Southeastern Tobacco Co., Inc., 113-115 East Third Street, Robersonville, N.C. 27871.

G. Stalling & Co., Lynchburg, Va. 24505.
E. R. Sykes & Co., P.O. Box 1387, Rocky Mount, N.C. 27801.
Thorpe & Ricks, Inc., P.O. Box 271, Rocky Mount, N.C. 27801.
Tobacco Trading Corp., 2110 Bardstown Road, Louisville, Ky. 40205; and P.O. Box 1127, Durham, N.C. 27702.
Universal Leaf Tobacco Co., P.O. Box 25099, Richmond, Va. 23260.
G. F. Vaughan Tobacco Co., P.O. Box 160, Lexington, Ky. 40501.
Virginia Tobacco Co., Inc., Danville, Va. 24541.
R. P. Watson Co., Inc., P.O. Box 30, Wilson, N.C. 27893.
E. V. Webb & Co., Inc., Kinston, N.C. 28501.
Whitehead & Anderson, Lumberton, N.C. 28358.
W. H. Winstead Co., Inc., P.O. Box 118, Upper Marlboro, Md. 20870.
Winston Leaf Tobacco Co., Inc., P.O. Box 2499, Winston-Salem, N.C. 27102.

TOBACCO ASSOCIATION OF UNITED STATES, INC., ROSTER—ASSOCIATE MEMBERS

Alltrans International, Inc., P.O. Box 7184, Portsmouth, Va. 23707, Attn: Mr. H. J. Hulderman; and Trans Freight Lines, Inc., One Harmon Plaza, Secaucus, N.J. 07094, Attn: Mr. Harold G. Holden, Vice President—U.S. Manager.
Alltransport, Inc., Suite 1104, First Virginia Bank Tower, 101 St. Paul Boulevard, Norfolk, Va. 23510, Attn: Mr. Raymond N. Weller.
Alton Box Board Co., P.O. Box 3124, Wilson, N.C. 27893, Attn: Mr. Palmer G. Laughridge.
AMF Incorporated—U.S. & Canadian Operations, P.O. Box 601, South Windsor, Conn. 06074, Attn: Mr. Jeffrey W. Allen, Manager, Administrative Services.
Anders Williams & Co., Suite 400, Two Commercial Place, Norfolk, Va. 23510, Attn: Mr. Rolf Williams, President.
Associated Container Transportation (USA), 90 West Street, New York, N.Y. 10006, Attn: Mr. M. B. Northern, President; and Room 205, Building 4D, 7737 Hampton Blvd, Norfolk, Va. 23505, Attn: Mr. John Respess.
Arenco-Cardwell, Inc., P.O. Box 3797, Richmond, Va. 23234, Attn: Mr. Henry S. Holland, III, President.
Atlantic Container Line, Limited, Suite 200, Citizens Office Bldg., Norfolk, Va. 23510, Attn: Mr. L. J. Platteel.
Bank of America, 315 Montgomery Street, San Francisco, Calif. 94104, Attn: Mr. Robert J. O'Neill, Assistant Vice President; and Bank of America International of Florida, 1000 Brickell Avenue, Miami, Fla. 33131, Attn: Mr. William C. Holmberg, Vice President.
Bank of Virginia, P.O. Box 25339, Richmond, Va. 23260, Attn: Mr. William H. McCarthy, Sr., Vice President.
Barber Steamship Lines, 17 Battery Place, New York, N.Y. 10004.
Branch Banking & Trust Co., Wilson, N.C. 27893.
Citibank, N.A., 55 Wall Street, New York, N.Y. 10043, Attn: Mr. Jaap S. Kiep, SAO, Agribusiness Department.
Containship Agency, Inc., 7737 Hampton Blvd., Bldg. 4D, Rm. 213, Norfolk, Va. 23505, Attn: Mr. H. M. Williams.
Continental Forest Industries—Corrugated Division, 128 Crews Drive, Columbia, S.C. 29210, Attn: Mr. Mike Murphy; and Office Park Two, Greenwich, Conn. 06830, Attn: Mr. Tony White.
Contact Marine Carriers—c/o Transocean Transport, Inc., P.O. Box 524, 10 S. Franklin Turnpike, Ramsey, N.J. 07446, Attn: Mr. T. F. Cermack, Sr., Vice President.
Vernon H. Craggs, Inc., 10 E. Baltimore St., Baltimore, Md. 21202, Attn: Mr. Vernon H. Craggs, President.
The Dai-Icho Kangyo Bank, Ltd., One World Trade Center, Suite 4911, New York, N.Y. 10048, Attn: Mr. Yutaka Toda, Manager, Planning & Investment.
Dart Containerline, Inc., 5 World Trade Center, Suite 9343, New York, N.Y. 10048.
Farrell Lines, Inc., 7737 Hampton Blvd., Norfolk, Va. 23505, Attn: Mr. W. L. Durrett, Regional Manager.
First & Merchants National Bank, P.O. Box 27025, Richmond, Va. 23261, Attn: Mr. Henry P. McGill, Jr.
First State Bank, Greenville, N.C. 27834, Attn: Mr. Jerry Powell, Executive Vice President.
Fishburne Equipment Co., Inc., P.O. Box 338, Arden, N.C. 28704.
First Union National Bank of North Carolina, Charlotte, N.C. 28288, Attn: Mr. James R. Simpson, Vice President.

Fred P. Gaskell Co., Inc., P.O. Box 3157, Norfolk, Va. 23514, Attn: Mr. Robert E. Garris, President.

Gen-Trans International, Inc., P.O. Box 3564, Norfolk, Va. 23514, Attn: Mr. William F. Tierney, President.

Hampton Roads Steamship Agency, Inc., P.O. Box 3324, Norfolk, Va. 23514, Attn: Mr. Paul V. Fox, Sr., President.

Hapag-Lloyd AG, c/o U.S. Navigation, Inc., 1 Public Square Building, Cleveland, Ohio 44113, Attn: Mr. James F. DeChant.

The Hipage Co., P.O. Box 3237, Custom House Station, Norfolk, Va. 23514, Attn: Mr. J. G. Page, President.

T. Parker Host, Inc., C & O Terminal Building, Newport News, Va. 23607.

International Paper Co., Route 2, Box 245 Beaverdam, Va. 23015, Attn: Mr. Calvin F. McAlexander.

"K" Line—Kerr Corp., 90 Washington Street, New York, N.Y. 10006, and Kerr Steamship Co., Inc., P.O. Box 3477, Norfolk, Va. 23514, Attn: Mr. J. E. Thompson, General Manger.

Lavino Shipping Co., North Carolina Maritime Bldg., P.O. Box 300, Wilmington, N.C. 28401, Attn: Mr. Jack Tilley.

Lockwood Trade Journal Co., Inc., 551 Fifth Avenue, New York, N.Y. 10017.

Machine & Conveyor Mfg. Ltd., P.O. Box 24342, Richmond, Va. 23224, Attn: Mr. Horace L. Odom.

Marsh & McLenna, Inc., P.O. Box 1857, Richmond, Va. 23215.

Maersk Line, 1 World Trade Center, Suite 3527, New York, N.Y. 10048, Attn: Mr. William J. Honan, Jr.

Maritime Terminals, Inc., 7737 Hampton Blvd., Norfolk. Va. 23505, Attn: Mr. James N. Crumbley, General Manager.

Mitsui O.S.K. Lines, Ltd., 1 World Trade Center, Suite 2211, New York, N.Y. 10048, Attn: Mr. K. Muranaka, General Manager.

North Carolina National Bank, P.O. Box 120, Charlotte, N.C. 28255, Attn: International Division.

Norton, Lilly & Co., Inc., P.O. Box 569, Norfolk, Va. 23501.

Peninsula Ports Authority of Va., P.O. Box 338, Newport News, Va. 23607.

Proctor & Schwartz, Inc., 7th St. & Tabor Road, Philadelphia, Pa. 19120, and 1151 Hanover Green Drive, Mechanicsville, Va. 23111, Attn: Mr. Burke Owen Jr.

Prudential Lines, Inc., 303 E. Fayette St., Suite 500, Baltimore, Md. 21202, Attn: Mr. Reginald L. Rinder, Regional Sales Manager.

Richmond Waterfront Terminals, Inc., P.O. Box 446, Richmond, Va. 23203, Attn: Mr. E. H. Phillips, President.

Sea-Land Service, Inc., P.O. Box 309, Portsmouth, Va. 23705, Attn: Mr. Jerry R. Belote, Sales Manager.

Seaport Shipping, P.O. Box 747, Morehead City, N.C. 28557, Attn: Mr. Clifton A. Lynch.

Seatrain Agencies, Inc., 88 Pine Street, New York, N.Y. 10005, Attn: Mr. Bernard G. Monaghan, Vice President, Sales.

Seatrain Lines, Inc., Container Division, Suite 1050, Bldg. J., 6855 Jimmy Carter Blvd. Norcross, Ga. 30071, Attn: Mr. Edward C. Bromeier, Vice President, National Accounts.

Southern Overseas Corp., P.O. Box 2110, Wilmington, N.C. 28402.

Southern Stevedoring Corp., P.O. Box 3242, Norfolk, Va. 23510, Attn: Mr. R. J. Nolan, President.

Speight Seed Farms, Inc., P.O. Box 507, Winterville, N.C. 28590, Attn: Mr. William Kitt Snyder, Vice President.

Tobacco Reporter—Harcourt Brace Jovanovich Publications, 757 Third Avenue, New York, N.Y. 10017, Attn: Lois Sanders, Vice President; and 700 Walnut Bldg., Room 312, Cincinnati, Ohio 45202, Attn: Roslyn Segal, Publisher.

Union Camp Corp., 2701 Peyton Street, Richmond, Va. 23228, Attn: Mr. E. L. Greene, Manager, Tobacco Packaging.

Union Planters National Bank of Memphis, P.O. Box 387, Memphis, Tenn. 38174, Attn: Mr. James C. Shelley, Vice President.

United States Lines, 8 Selden Arcade, Norfolk, Va. 23510, Attn: Mr. Frank Johnson.

United Virginia Bank, P.O. Box 26665, Richmond, Va. 23261, Attn: Mr. Edwin D. Brooks, Jr., Vice President.

Virginia National Bank, P.O. Box 600, Norfolk, Va. 23501, Attn: International Section.

Virginia National Bank/Richmond, 707 E. Main St. Richmond, Va. 23214, Attn: Mr. J. Timothy Sexton, Vice President.

Virginia Ship Agency—Division Eller, 428 Law Building, Norfolk, Va. 23510, A
Mr. T. O. Winingder, Consultant.

Wachovia Bank & Trust Co., N.A., P.O. Box 27886, Raleigh, N.C. 27611, Attn:
Sam Northrop, Jr.

Waters Associates, Inc., 34 Maple Street, Milford, Mass. 01757, Attn: Mr. H
Clemente.

Weyerhaeuser Co., P.O. Box 11435, Lynchburg, Va. 24506, Attn: Mr. Daniel
Rudolph, General Manager.

Yamashita-Shinnihon Steamship Company, Ltd., No. 1 Commercial Place, N
folk, Va. 23510, Attn; Mr. W. L. Friedlein, Assistant Manager.

MAN-MADE FIBER PRODUCERS ASSOCIATION, INC.,
Washington, D.C., May 4, 1979

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade,
Washington, D.C.

DEAR CHAIRMAN VANIK: The Man-Made Fiber Producers Association is concern
about certain provisions in the implementing package for the Multilateral Tra
Negotiations and appreciate the opportunity to express our views. Our Associati
represents the manufacturers of more than 90 percent of the man-made fibe
produced in the United States. Man-made fibers, in turn, account for 75 percent
all the fiber used in American textiles.

Our Association supports national trade policy within the context of the Admini
tration's Textile Program which was announced by President Carter on March 2
and a copy of which is attached. We feel that strong and effective legislatio
implementing the MTN will contribute significantly to the effectiveness of th
Administration's Textile Program.

MMFPA is a member of the Ad Hoc Subsidies Coalition and strongly endorses th
testimony presented to the Subcommittee by Mr. Charles R. Carlisle, chairman o
the Coalition. Particularly, we believe, the new countervailing duty statute shoul
rule out discontinuance of cases based on price or other assurances; it shoul
severely restrict the amount of "offsets" by which countervailing duties may b
reduced, and the injury test should be no more onerous than that applied t
antidumping cases since January 3, 1975. These are equally important from the
standpoint of the antidumping statute and should be included in the legislation.

We are surprised that requests have been made for continued authority to reduce
duties and to negotiate on non-tariff barriers to trade. Our industry is opposed to
this provision for a five year extension of duty-cutting authority and permanent
authority to negotiate on non-tariff barriers because we believe such a far-reaching
proposal should be subject to the normal legislative process.

While the final duty reductions made under the MTN have not been officially
published, newspaper reports reveal that substantial duty reductions were made on
man-made fiber, textile and apparel during the Tokyo Round. We know these
reductions will result in increased imports in critical areas and before further duty
cutting authority is granted the impact of the current reductions must be evaluated.

In addition, no one ever dreamed that the Trade Act of 1974 would be self-
perpetuating. Certainly nothing within the Act suggests that Congress intended to
extend the Act's principal provision beyond January 3, 1980.

We do not believe this extension is needed, but if Congressional consideration is to
be given, it should be through the regular legislative process, complete with public
hearings and the privilege of amendment. Congress should not grant this broad
authority under a legislative procedure that bars amendment and requires an "up
or down" vote within 60 days of submission.

We are confident that after full evaluation and review, the Ways and Means
Committee will reject this proposal.

Finally, Mr. Chairman, we are highly pleased that the President in his Textile
Program recommended a "snap-back" clause under which textile tariffs would
revert to their original levels if the Multifiber Arrangement is not continued or
suitably replaced. The Program also stipulates that clothing covered by the "Berry
Amendment" to the Defense Department Appropriation Act are to be excluded from
the coverage of the Government Procurement Code. The implementing legislation
should specifically contain both these provisions.

We appreciate the opportunity to offer these suggestions and we request that our
comment be made part of the hearing record.

Sincerely youre,

CHARLIE W. JONES.

Attachment

FEBRUARY 15, 1979.

ADMINISTRATION TEXTILE PROGRAM—PURSUANT TO THE PRESIDENT'S STATEMENT OF NOVEMBER 11, 1978

The Administration is determined to assist the beleaguered textile and apparel industry and is committed to its health and growth. This industry provides employment for almost two and one-half million people, the largest single source of jobs in our manufacturing economy, and provides our consumers with a reliable, competitively priced, vital source for all the many vital clothing, medical, military, industrial and other products of its modern technology.

In 1978, U.S. imports of textiles and apparel amounted to seven billion dollars. U.S. exports amounted to only 2.6 billion dollars, a differential of almost five billion dollars. This situation, with trade restrictions abroad and our lack of success in exporting, contributed to unemployment at home. It must be improved in the national interest. Accordingly, today, the Administration is announcing a new approach to deal more effectively with the serious problems that face this industry.

GLOBAL IMPORT EVALUATION

The United States Government will, on a continuing basis, conduct a global import evaluation, consisting of a continuous evaluation of textile and apparel imports, from all countries, category-by-category. The purpose will be to analyze the impact of textile and apparel imports from all sources in the context of U.S. market growth and conditions in the industry. The results of this analysis will be evaluated for their negative and positive consequences for trade measures, in the light of U.S. rights under the Multifiber Arrangement (MFA).

A member of the Cabinet, pursuant to a directive from the President, will have personal responsibility for overseeing the global evaluation program, in cooperation with the agencies having responsibilities with respect to textile trade, and will report quarterly to the President on its implementation. The program will begin not later than March 31, 1979.

IMPORT CONTROLS

Based on the continuous global import evaluation of textile and apparel imports from all countries, category-by-category, the following actions will be taken:

1. Import surges that cause market disruption, as defined in Annex A of the MFA, will be aggressively controlled, whether they occur from one source or many, under agreements or otherwise. In all of the import control actions, special attention will be paid to the most import-sensitive or import-impacted product categories.

2. There will be aggressive and prompt enforcement of U.S. international rights, including the use of MFA Article 3, and Article 8 (involving circumvention) where the criteria of these articles are met.

3. Understandings with respect to existing agreements with the leading major exporting countries will be reached to tighten controls for the remaining life of these agreements, and to eliminate threats of further market disruption through import surges which arise from one agreement year to another due to: (i) the use of flexibility provisions; (ii) partially filled quotas in one year followed by more fully filled quotas in the next year; or (iii) surges that occur in the course of a single agreement year when an undue proportion of the year's shipments is concentrated in a short span of time. In order to preclude harmful fluctuations, where quotas have been subtantially undershipped in the preceding agreement year, in concurrence with the MFA concept of orderly growth in trade, year-to-year increases in such cases should not normally exceed the previous year's shipment's plus one-half of the unfilled portion of the previous year's quota but in no event more than the current year's quota. Thereafter, the applicable growth and flexibility provisions would apply.

4. Where necessary to preclude further disruption from the leading major exporting countries, the Administration's objective will be to assure that (1) 1979 imports will not exceed 1978 trade levels or 1979 base levels, whichever are lower, and (2) in each of the three following years, import growth will be evaluated annually by category (including all flexibility provisions for each category) in the context of the estimated rate of growth in the domestic market in that category, and adjustments made. Particular attention shall be paid to the most sensitive categories, especially in apparel, where the import to domestic production ratio is high and indicative of market disruption. The industry and government will cooperate to the fullest extent possible so that current data on domestic production on a category or product basis will be available to assure the effective working of this provision.

5. The United States Government has just negotiated a more effective bilateral arrangement with Japan to remove the serious problem of disruptive fluctuations. Strong efforts must also be made by the Government and industry to expand substantially textile exports to Japan.

6. Recognizing the potential for sharp and disruptive growth in textile and apparel imports from any major new supplying country, the United States Government will seek to negotiate import restraint levels with the supplier as close as possible to the most recent levels of trade for heavily traded or import-sensitive products and to secure an effective means to expeditiously deal with disruptive import surges in any other category, in the context of the global import evaluation program described above.

7. There will be improvement in quality and timing of monitoring efforts to provide the information for prompt evaluation and appropriate actions. The present system will be reinforced and, working with industry and labor, means for faster feedback and response will be developed.

8. Consistent with federal practices and procedures, there will be full and prior industry/labor consultation on strategy, outlook and problems with respect to bilateral agreements.

MTN

A snapback clause, effective during the implementation of the MTN tariff reductions, which will restore textile and apparel tariffs to their pre-MTN levels if the MFA does not continue to be in effect or a suitable substitute arrangement is not put into place, will be adopted as part of the implementation of the MIN tariff reductions. In the event the MFA is not renewed or a suitable arrangement is not put into place, legislative remedies will be proposed to allow the President authority to unilaterally control imports of textile and apparel products consistent with the policy enunciated in this statement.

As a matter of continuing policy, the textile and apparel items included in the Berry Amendment will be excluded from coverage of Government Procurement Code liberalization.

LAW ENFORCEMENT

A major effort, made possible by a special appropriation of the last Congress, designed to dramatically improve the administrative enforcement of all our textile agreements, is currently proceeding. This program must be carried through expeditiously.

U.S. Trade remedies against foreign unfair trade practices, including the countervailing duty law and antidumping act, will be improved, their administration made more responsive and their procedures accelerated in accordance with legislation implementing the Multilateral Trade Negotiations.

Customs will improve and make more thorough its monitoring and enforcement efforts, including the use of penalties available under law where appropriate, with respect to improper transshipments, country of origin requirements, and violations of quantitative limits, with the objective of preventing evasion of restraint agreements and quantitative limitations.

INDUSTRY EXPORT DRIVE

The industry will initiate a major export drive, with the U.S. Government's commitment of full support, including: a market development program; and vigorous USG efforts to tear down foreign trade barriers.

HIGH-LEVEL TEXTILE POLICY GROUP

The President will appoint a high-level Industry-Labor-Government Policy Group to identify and bring public attention to problems affecting the competitiveness of the industry.

OTHER SPECIFIC ACTIONS

The pilot program to enhauce productivity in the apparel industry will be expanded to include the ladies' apparel industry.

U.S. INDUSTRY COMPETITIVENESS

The textile and apparel industry indicates its resolve to make maximum efforts to maintain international competitiveness, through promoting efficiency within the industry, to continue to act responsibly pursuant to the President's anti-inflation program guidelines, and to suppor the national trade policy, which includes as an integral part the program of orderly growth in textile trade a outlined above. For its

part, the Administration will act expeditiously to put the foregoing program into effect and expects concrete results in sixty days.

CONCLUSION

This textile program is an integral part of the MTN package. However, the Administration will begin implementation of the program immediately and many of the essentials will be in place within the next several months.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 24, 1979.

Mr. JOHN MARTIN,
Chief Counsel, Committee on Ways and Means,
Washington, D.C.

DEAR MR. MARTIN: Enclosed is a letter from one of my constitutents who makes an excellent point about the benefits of expediting certain agreements contained in the Multilateral Trade Negotiations.

As you are currently holding hearings on this issue, I would like to submit these comments for inclusion in the record.

Sincerely,

PAUL N. MCCLOSKEY, Jr.

NCR CORP.,
DATA PATHING DIVISION,
Sunnyvale, Calif., April 18, 1979.

Hon. PAUL N. MCCLOSKEY, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MCCLOSKEY: The Office of the Special Trade Representative has negotiated with Japan a very favorable duty rate reduction on computers and business equipment. The Japanese have agreed to reduce their extremely high protectionist rates down to around six per cent. Although this will continue to be in excess of the U.S. rates (which will go to 3.7), they are nonetheless a significant improvement over the current situation.

If these duty reductions were to be implemented promptly, so that the industry could realize the benefits over a relatively short period of time, we would be satisifed with the results. However, the Japanese current international bound rates fo. these products range from 15 to 25 per cent. They have indicated that they intend to implement the duty reductions over an eight-year period from these rates rather than the current applied rates ranging from 10.5 to 17.5 per cent. This proposal eliminates any real duty reduction for at least the first four years and does not effectuate the final offered duty rate (six per cent) until 1987.

Recognizing the rapid change of technology in our industry and various other competitive factors, this would result in the virtual nullification of any apparent benefits from the Japanese offer.

NCR has advised STR Ambassador Strauss of the seriousness of this situation and now request your assistance in pressing the matter. The most important action at this time would be to have the Japanese concede to implement the reductions from their current applied rates (the 10.5 to 17.5 per cent rates) rather than the higher international bound rates. In addtion, they should accelerate the implementation of these rates so that the benefits can be realized within three to five years (before current technology is obsolete). This can be accomplished by developing a shorter phase-in period or by agreeing to greater rate reductions during the first few years and lesser reductions for the remainder.

We appreciate your attention and assistance in this matter.

Sincerely,

O. E. COOK.

METZGER, SHADYAC & SCHWARZ,
(FOR) MELEX USA, INC.,
Raleigh, N.C., April 27, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee of Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: This firm represents Melex USA, Inc. ("Melex USA"), a wholly-owned subsidiary of Pezetel, the Foreign Trade Enterprise of the Polish Aviation Industry.[1] Melex USA is a Delaware corporation with principal offices at 1201 Front Street, Raleigh, North Carolina and is the importer of golf cars from Poland. The purpose of this letter is to offer our comments on behalf of Melex USA in connection with the Subcommittee's hearings on the Multilateral Trade Negotiations, currently under way. I very much hope this letter will be made part of the record of these hearings and that the Subcommittee will take our views into consideration in connection with their deliberations on this very important matter.

It is my understanding that Article 15 of the proposed MTN Subsidies and Countervailing Duties Code sets forth acceptable standards for calculating the "foreign market value," for purposes of calculating a dumping margin, of a product imported from a state-controlled-economy country ("SCEC"). As the Subcommittee knows, the issue of how to fairly calculate such a "foreign market value" is the subject of Section 205(c) of the Antidumping Act of 1921 (the "Act"), as enacted by the Trade Act of 1974, and has been the subject of a great deal of considered deliveration at the Treasury Department and Customs Service. Since Poland has a state-controlled economy and since Melex USA imports its product from that country, this issue is of critical importance to the ability of Melex USA to continue its business.

Melex golf cars have been sold in the United States since 1971. Sales are made to independent U.S.-owned distributors who purchase and install U.S.-made batteries and chargers and then resell or lease the vehicles to municipal and independent golf courses and others throughout the United States. These U.S. distributors also provide extensive after-sale service as well as necessary marketing. Approximately one-half of the retail sales price of Melex golf cars "returns" to Pezetel in Poland.[2] While the Melex golf car has achieved a measure of acceptance in the U.S. market because of its simple and economical design, Melex golf cars account for only a small share of the U.S. golf car market, which is dominated by two major U.S. corporations, Textron, Inc. and AMF Incorporated, whose reported revenues for 1978 were $3.2 billion and $1.3 billion, respectively. Golf car sales by those two corporations account for approximately 70 percent of all U.S. golf car sales.

We wish to make one point of great concern to our client:

Article 15 of the Subsidies and Countervailing Duties Code of the MTN provides that, with respect to the application of a signatory nation's antidumping legislation to imports from SCEC's, the foreign market value may be determined by reference either to the price of a like product in a third country (not the importing signatory) or the constructed value of a like product in a third country (not the importing signatory). No preference is given to either price-based calculations or to a constructed value basis for foreign market value and prices in the importing country (duly adjusted) can only be used as a base if neither of these two tests can be applied. Section 205(c) of the Act and amended Customs Service Regulation 19 C.F.R. § 153.7 are consistent with the provisions of Article 15 and are the result of experience and considered deliberation with respect to the problem. Congress should not change that law or the administrative practice currently being observed without a careful examination of the long-range impact upon U.S. trade with state-controlled economy countries.

Melex USA and its U.S. distributors have a vital interest in how the Act is administered. Since November, 1975 imports of golf cars from Poland have been subject to a Finding of Dumping (T.D. 75-288) based not upon any evidence of sales at less than home market prices, prices to third countries or constructed value, but rather based upon finding during the "fair value" stage of the proceeding (covering the 1974-75 period) that Melex golf cars were sold in the U.S. market for less than a small "Mom and Pop" Canadian producer of golf cars sold its product in Canada. The Canadian company, which reportedly produced only a few hundred custom made golf cars compared with Melex's production capacity of about 10,000 per annum, in no way could be considered to reflect "the normal costs, expenses, and profits" of the Melex golf car as required by Section 205(c) of the Act. Not only did

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[1] This firm is registered with the Department of Justice as the agent of Melex USA, Inc. under the Foreign Agents Registration Act of 1938, as amended (Registration No. 2861).

[2] Where, in fact, the dollars received by Pezetel are ultimately used to purchase U.S. exports to Poland, which have long been substantially in excess of Polish exports to the United States.

the small Canadian company's golf car price not bear any resemblance to the economic efficiencies extant in the Polish production of golf cars, its prices were not even known to the Polish producer at the time of exportation. The extensive data submitted by Melex USA regarding the constructed value of the Melex golf car in Canada and establishing that sales were not made at less than fair value were ignored. We have taken the position that this approach to an admittedly difficult problem violated several rules of fundamental fairness as well as the then existing law.

More recently, the Treasury Department determined to base the Melex golf car's "foreign market value" for entries during much of the 1976-1978 period on the price of the largest selling U.S. golf car, the E-Z Go golf car, manufactured by Textron. Again, extensive constructed value data submitted by Melex USA were ignored. The use of E-Z Go's U.S. selling price as Melex's "foreign market value" (FOB Poland) renders it impossible for the Melex golf car even to meet the price of the E-Z Go car, since the cost of transportation to the U.S., entry costs, normal duty and insurance will apparently not be deducted from this "foreign market value." Next to an embargo, it's hard to imagine a more effective device for bringing all trade to a halt. Moreover, even if such adjustments were made Melex could not compete in this market with prices legally pegged to those of its much larger competitors. Apart from its manifest anticompetitive nature, which will do nothing but entrench the existing duopoly, it is clear that Congress, when it enacted Section 205(c) of the Act in the Trade Act of 1974, never granted Treasury the authority to use United States prices as "foreign market value" for merchandise from state-controlled-economy countries, where competent, verifiable constructed value data was timely submitted. It should not do so now.

The basic unfairness of using the prices of other producers, including U.S. producers, which do not reflect the normal costs, expenses and profits of producing the Melex golf car is self-evident. In an effort to deal with this problem and, more generally, the problem of valuing all merchandise from SCEC's for antidumping purposes, the Treasury Department amended Customs regulation Section 153.7 (19 C.F.R. § 153.7) last September, and this new regulation will apply to entries made after that date. Under this amended regulation another producer's prices can still be utilized as "foreign market value," but only if the third country and the relevant industry are found to be comparable in terms of economic development to the SCEC producer. If prices do not exist in a comparable country, then a constructed value test is employed which recognizes the elements of production in the SCEC, but costs them out in a comparable market-economy country. The amended Section 153.7 is more nearly consistent with Section 205(c) of the Act than the former Section 153.7. More importantly here, though, Section 205(c) of the Act, as now applied by Section 153.7, is consistent with the letter and spirit of the Antidumping provisions of the MTN agreements.

As noted above, Article 15 of the Subsidies and Countervailing Duties provisions of the MTN states that either "the price at which a like product of a country other than the importing signatory * * * or * * * the constructed value of a like product in a country other than the importing signatory * * * " is the stated test. No preference is given for either prices or constructed value. This same standard is embodied in Section 205(c) of the Act. Accordingly, it is not necessary to change existing U.S. law in this respect in order to conform to the MTN agreements. It is also clear in both Section 205(c) of the Act and the principal provision of Article 15 that if prices are used as a basis of fair value they must not be U.S. prices. The Article 15 test is the price "of a country other than the importing signatory" (emphasis added). Section 205(c) already embodies this approach: "* * * the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses and profits as reflected by * * * the prices * * * at which such or similar merchandise of a non-state-controlled-economy country or countries is sold * * *

"(A) for consumption in the home market of that country or countries, or (B) *to other countries, including the United States* * * *"(Italics added.)

Since the United States is not an "other" country with respect to itself, the term "non-state-controlled-economy country" in the context of Section 205(c) does not include the United States.

The only provision in Article 15 for use of prices in the importing signatory is when neither a third country price nor a third country constructed value can provide an adequate basis for determining fair value. In essence, it is to be used only as a "last resort." Section 153.7 is fully consistent with this MTN provision. Section 153.7(b)(3) states:

"If neither section 153.7(b)(1) nor (b)(2) provides an adequate basis for determining the price or constructed value of such or similar merchandise, then the prices or constructed value, as determined from the sales or production of such or similar merchandise in the United States, shall be used."

Thus, in this respect as well, existing U.S. law conforms to Article 15. Longstanding Treasury practice also conforms to this approach. It is our understanding that, except as noted above in the Melex case, *Treasury has never used U.S. prices* as "foreign market value." It is regrettable that it has chosen to do so in the case of golf car entries during 1976-78, contrary to the requirements of Section 205(c) of the Act, since ample constructed value data was presented to Treasury and should have been used as the basis of "foreign market value."

We understand that the basic purpose of these hearings is to consider changes in U.S. law which are necessary to implement the MTN agreements. It should not be the occasion for making changes to U.S. law unnecessary for that purpose or, more seriously, changes which actually contravene the MTN provisions.

We respectfully urge the Subcommittee to recommend no changes to Section 205(c) of the Act, which already embodies the meaning and spirit of the MTN agreements, and instead to reaffirm in its Report that, indeed, no change is necessary because Section 205(c) is already in compliance.

Sincerely yours,

CARL W. SCHWARZ, *Counsel.*

MIRRO ALUMINUM CO.
Manitowoc, Wis., April 17, 1979.

Hon. AL ULLMAN,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ULLMAN: I am writing in regard to metal cookware imports. The results of the current Multilateral Trade Negotiations will be submitted soon to the Congress for acceptance and ultimate approval. Although the specifics of the package are not known at this time, I want you to be aware of some thoughts I have concerning the matter of metal cookware imports.

Since January 1, 1976, the General System of Preferences has allowed many products to come into our country duty free from developing nations, such as Korea, Taiwan, Mexico and others. Metal cookware is among those products imported and, in 1978 on a unit basis, imports amounted to almost 48% of the total units produced by domestic manufacturers.

The imports of metal cookware have a serious affect on United States manufacturers. It is estimated that the U.S. cookware industry lost close to $50 million in shipments in 1978. Production capacities were vastly underutilized, resulting in the employment of fewer hourly-paid production people. In our own specific case, the MIRRO Corporation had 100 less production employees in 1978.

We believe in fair trade; we also believe in being treated fairly. As you consider legislation resulting from the Multilateral Trade Negotiations, I ask that you seriously consider the problems of the metal cookware industry. We are looking for fair trade rules, giving us an equal opportunity to complete in domestic and foreign markets.

Sincerely,

C. W. ZIEMER, *President.*

STATEMENT OF M. K. HAYENGA, EXECUTIVE VICE PRESIDENT, NATIONAL CORN GROWERS ASSOCIATION

Our organization is pleased to be able to present our views on Multilateral Trade Agreement. The National Corn Growers Association represents grower members in 47 states. We are gravely concerned as to what happens in trade agreements since we have international marketing arms accross the world. We have worked over the years to obtain these markets for our producers. The exporting of corn is of major concern to us and should and well be to you serving on the Ways and Means Committee. The agricultural industry is one that is helping very significantly to defray the deficit in the Balance of Trade. When agricultural commodities such as corn were removed from trade, the deficit would become substantially higher.

We are dissatisfied with the trade negotiations that have taken place. Coarse grains have gained nothing. We realize that gains were made in some areas of

industrial uses. These gains must be weighed against the exportation of grains and no gain or loss that may have resulted.

We realize the time and effort spent by professionals that went into this and respect the results that were obtained, even though coarse grains did not benefit.

We realize the length of time spent and a decision must be reached by Congress and Senate, so let's make the decision and move ahead.

STATEMENT OF THE NATIONAL COTTON COUNCIL OF AMERICA

The National Cotton Council of America is an overall industry group which represents cotton farmers, ginners, warehousemen, seedcrushers, merchants, cotton spinning mills, and cooperatives. Our membership extends from the Carolinas to California in what is known as the Cotton Belt.

Since we must export approximately fifty percent of our production in order to maintain a healthy and viable cotton industry in the United States, our members are highly interested in international trade. We are convinced that a high level of international trade on a multilateral basis is vital to the prosperity of our country and contributes to peace. We also believe that maximum efforts should be made to eliminate unreasonable restrictions against U.S. exports by foreign countries. Furthermore, when foreign products, which are competitive with U.S. domestic products, are shipped to the United States at prices made possible by subsidies, we think that countervailing duties should be imposed equal to the foreign subsidies.

While we favor a high level of international trade, we believe that international trade should be carried out on an orderly basis. In this regard, we believe that the Administration should continue to support appropriate federal action to provide reasonable restraints against imports of products manufactured from cotton and cottonseed, and those commodities directly competitive therewith, in order to hold such imports at levels which will not cause excessive adverse interference with our domestic markets. If Bilateral Agreements are negotiated under the Multifiber Agreement with all significant suppliers of textile products to the United States and if the Multifiber Agreement (MFA) and the Bilateral Agreements thereunder are administered effectively, it is considered that the textile imports into the United States would be on an orderly basis.

While we understand and appreciate the concept that the Developed Countries should give reasonable preferences to imports from the Developing Countries in order to help them develop economically, we do not believe that such preferences should be granted if the preferences would significantly adversely affect any segment of our economy.

ENFORCEMENT OF THE RIGHT OF THE UNITED STATES UNDER TRADE AGREEMENTS

In regard to the various Agreements and Codes covered by the "MTN Package," the Council fears that the United States would diligently enforce the provisions of any agreement which we enter into but that many other countries would be lax in their enforcement. In our opinion, this would place U.S. firms at a disadvantage vis-a-vis foreign firms.

While the Council does not agree with all of the suggested provisions included in the various proposed agreements, the Council does agree that it would be desirable to more clearly define the provisions of the General Agreement on Tariffs, and Trade (GATT) so that obligations, rights, and responsibilities under GATT are more clearly understood by the signatories.

In respect to agricultural policy, the Council agrees that it would be desirable for the agricultural policy officials of various countries to consult on a continuing basis in order to try to preclude development of problems that might arise as a result of actions taken under national agricultural programs.

SUBSIDIES AND COUNTERVAILING MEASURES

A healthy and viable U.S. cotton industry is dependent upon a strong U.S. domestic market as well as a significant export market. Imported textiles displace U.S. domestically produced cotton textiles which are made principally with U.S. cotton. While some imported textiles contain cotton, they are not necessarily made from U.S. cotton. In fact, less than thirty percent of such imports, on the average, contain U.S. cotton. Accordingly, the Council believes that reasonable restraints should be applied to textile imports in order to hold such imports at levels that will not cause excessive interference with our domestic markets.

The Council recognizes and appreciates that efforts are being made to reasonably control international trade in textiles through the MFA and the Bilateral Agreements thereunder. But the Council considers that the rate of growth of textile

imports into the United States should be limited to the growth of the U.S. domestic market. While the Council understands that the special and deferential treatment that will be accorded to the Developing Countries under the MTN regulations will permit them to subsidize exports, the Council does not think that textile and apparel items covered by the MFA should be accorded such treatment. Such action would undermine the MFA.

The Council believes that countervailing duty investigations should be concluded in the minimum possible time, and preferably within 90 days.

The Council concurs that the U.S. DISC Program should not be considered as a subsidy program for U.S. exports. In addition, the Council supports the continuation and expansion of U.S. government export credit programs, provided the terms of such credit are not concessionary. Furthermore, the Council takes the position that industry and government supported cooperative cotton market development activities should be carried out in foreign countries by the United States, in order to maintain and expand markets for U.S. cotton and cotton products in such countries.

TECHNICAL BARRIERS TO TRADE

The Council agrees that Section 22 of the Agricultural Adjustment Act of 1933 is basic to the U.S. Agricultural Program and that no action should be taken under the MTN agreements which would rescind or undermine this important legislation.

The Council recognizes that the "Universal Standards" for upland cotton, which are established by the U.S. Department of Agriculture in consultation with U.S. and foreign industry and trade representatives, are the basis for selling, buying, and arbitrating American-type cotton all around the world. Under the circumstances, the Council believes that special efforts should be made to assure that the "Universal Standards" are not undermined by any of the MTN regulations.

GOVERNMENT ACTIONS

The Council agrees that the U.S. Department of Defense's purchases of textiles and apparel should be exempt from coverage by the MTN government procurement regulations.

In cases where foreign government agencies (such as the Cotton Corporation of India) purchase cotton, the MTN regulations should assure that U.S. cotton is equitably considered by such agencies. Furthermore, the MTN regulations should assure that U.S cotton is fairly treated under any import licensing procedures that are established by signatories to the MTN regulations. In addition, in respect to Customs valuation, the MTN regulations regarding Customs valuation should not discriminate against imports from the United States.

The Council urges that U.S. patents, copyrights, and trade names be protected under the MTN regulations against infringement by foreign entities.

INTERNATIONAL COMMODITY AGREEMENTS

The Council does not consider that the United States should enter into any international agreements regarding market allocation or buffer stocks or make any commitments which would result in controlling or limiting the production, trade, stock level, or price of U.S cotton, cottonseed, or their products. We do not believe that such agreements would be in the best long-term interests of U.S. cotton, U.S. agriculture, or our national economy.

GENERAL

The Council endorses the principle that international trade should be more open and fair and welcomes the progress that was made in this regard during the Tokyo Round negotiations. Also, the Council supports efforts to liberalize international trade as long as such efforts are in the best overall interests of the United States, and provided U.S. agriculture, particularly the U.S. cotton industry, is treated fairly and realistically. While the U.S. negotitators did not fully achieve all of the U.S. objectives during the MTN negotiations, indications are that the implementation of the "MTN Package" could materially assist us in overcoming our trade and payments imbalances and would result in long-term trade benefits to our country.

SUPPLEMENTAL STATEMENT OF THE NATIONAL COTTON COUNCIL OF AMERICA

After submitting our April 25, 1979 statement in regard to the Multilateral Trade Negotiations and the International Codes agreed to in Geneva, the National Cotton Council of America learned that in the proposed implementing legislation consideration is being given to the possibility of extending the President's negotiating author-

ity granted by the Trade Act of 1974 beyond its scheduled expiration date of January 2, 1980.

Accordingly to our understanding, the Administration has requested that the President's current tariff-cutting authority be extended for five years, and that the President's authority to negotiate on all non-tariff barriers be made permanent. In our opinion, the implementing legislation for the "MTN Trade Package" should not grant any authority for future negotiations. Furthermore, we believe that the granting of any authority for future negotiations should be handled in the customary legislative fashion after full hearings have been held.

Since significant tariff and non-tariff matters were negotiated during the Tokyo Round of the Multilateral Trade Negotiations, we believe it would be unwise to extend the President's autority to negotiate additional reductions in U.S. tariffs or non-tariff measures until we have had an opportunity to measure and evaluate the results of the Tokyo Round negotiations.

In addition, after submitting the statement on April 25, 1979, the Council learned that consideration is being given to the development of criteria for determining injury under the Subsidies Code which would make it difficult, if not impossible, for manufacturers of products that have been severely impacted by imports to obtain reasonable relief from such imports. We believe that the criteria for determining injury should be reasonable and that the countervailing duty investigation should be concluded in the minimal possible time.

Since subsidization constitutes a per se violation of fair-trade concepts, the Council presume that subsidization of exports to the United States by foreign countries results in de facto injury to U.S. manufacturers of competing products. Under the circumstanes, we do not believe that an "injury test" should be necessary in cases where there is a clear demonstration that foreign subsidies have been applied to products exported to the United States. However, if the Subcommittee considers that it will be necessary for the United States to agree to an "injury test" in order to obtain the cooperation of other countries for the inclusion of "internal" subsidies under the International Subsidies Code, the Council considers that the "injury test" applied to countervailing duty investigations should be the same as that applied under our Antidumping Act since January 3, 1975. Consequently, if the implementing legislation includes a procision for an "injury test," the Council recommends that the "injury test" for countervailing duty cases be the same as the "injury test" for antidumping cases.

Statement of the New York State Grange Executive Committee, Chester Smith, Member, State Grange Dairy Committee

The Executive Committee of the N.Y. State Grange is opposed[1] to the multilateral trade agreement which is about to go before Congress. The Committee's opposition is based primarily on the loosening of present countervailing duty regulation which would be allowed by the agreement. These regulations now protect American dairy farmers from subsidized imports of dairy products, particularly cheese from the European Common Market. The Committee also opposes expansion of the quota for cheese imports contained in the agreement.

Under the proposed new pact the United States would agree to seek amendment to the countervailing duty statute to require domestic industries to prove injury from subsidized imports before such duties are applied. We are aware that last minute negotiation recognized opposition of U.S. dairy interests by making a special provision for cheese in the form of a so-called "fast track", 55 day limit to review injury from subsidized imports, with such review under the jurisdiction of the Secretary of Agriculture. This modification of the "proof of injury" provision is insufficient protection to American dairy farmers from the unfair competition of subsidized imports.

As long as dairy exports are heavily subsidized by some countries, as they are by the EC, American dairy farmers need full protection from such unfair competition, as now provided by the countervailing duty statute. They obtained the present measure on needed protection only after a long and hard fight in recent years. Any lessening of this protection by any after the fact "proof of injury" provision would be a case of locking the barn door after the horse is stolen. This conclusion is based on the known reluctance of some Administration officials to enforce the countervailing duty statute. Proof of injury may well prove to be practically impossible to get recognized, even under a fast track 55 day rule. It would likely be a giveaway of the American dairy industry.

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[1] Position adopted by the State Dairy Committee on April 19 and endorsed by the Executive Committee on April 20, 1979.

The Grange Executive Committee is well aware of the importance of foreign markets to some segments of American agriculture, particularly grains and oilseeds, and that generally speaking the principal of free trade is commendable, but inadequate protection from the unfair competition of subsidized imports is not free trade.

Dairying is the dominant farm enterprise in New York. The Empire State is the third leading dairy state in the Nation. Its 21,000 commercial dairy farmers had gross income of over one billion dollars in 1978. Seventy five percent of this income went for production expenses and was a major source of the business of feed stores, hardware merchants, machinery dealers and banks in hundreds of rural communities, as well as support of the tax base for school districts and town governments. For the above reasons, and since it cannot be amended, the Executive Committee of the New York State Grange opposes the trade agreement.

COUNTERVAILING DUTY STATUTE

I. Basic requirements of Subsidies Code.

A. Bars use of export subsidies for non-primary products.

B. Specifically allows use of subsidies in agriculture. Only limits are when subsidies:

(1) Displace other nation's exports in a market.

(2) Result in material price undercutting.

C. Amendment of countervailing duty statute to require proof of injury and demonstration that imports are the cause of injury.

II. Consequences of the proposed change.

A. It would (in the case of dairy) permit full resumption of subsidized imports. This means elimination of even the minimal restraints provided under countervailing duty waiver agreements.

(1) Present export subsidies on cheese are: EEC, 20 to 60 cents per pound; Sweden, 40.1 to 55.5 cents; Finland, 18.6 cents—$1.6; Norway, zero to 20 cents; Switzerland, 58.3 to 96.4 cents.

(2) Certain basic cheeses and other products are proscribed from subsidization under the waiver agreements: Swiss (EEC, Austria); Monterey, Colby, Cheddar, Industrial Block (EEC).

B. The bulk of the import expansion proposed is from the subsidizing nations.

C. The requirement that material price undercutting be present and that injury be proven showing imports as the cause removes any protection of the domestic industry.

(1) Material price undercutting specifically allows for lower pricing of imports through subsidization. Actions such as multiple sale rebates, transfer of product between units of multinational firms further allows deception, evasion.

(2) A proof of injury requirement in any form reverses the intent of the law. Countervail has been a technique to prevent injury. It would now be a law permitting, even requiring, injury.

D. The basic change in the statutory intent would destroy the case history underlying the law.

E. The demonstrated unwillingness to pursue enforcement would be granted legal sanction. This would be true whether administration remained in Department of Treasury, were moved to another existing agency or placed in a new Department of Trade.

III. Improved administrative procedures do not promise relief and could be carried out under present law.

A. Expedited action on complaints: Present law requires a decision within 12 months. It does not require Treasury to take 12 months to reach a decision.

B. Provisional relief measures. These could be provided now. This is essentially what is being done by Treasury pending action on the waiver extension. If it is legal in this instance, it would be legal as a general practice.

IV. Given these facts, the only alternative is to leave the countervailing duty statute in its present form, without the addition of an injury requirement of any type. The intent of the trade talks was to limit the use of export subsidies, not sanction them. The latter has been done. The agreement is worse than existing law. With reluctant enforcement or no enforcement, a domestic industry at least has recourse to the courts to obtain action. Implementing of the agreement permits subsidization, allows price undercutting, requires injury, and removes the ability of domestic industry to obtain redress.

EXPANSION OF SECTION 22 IMPORT QUOTAS ON DAIRY PRODUCTS

I. Multilateral Trade Negotiations (as thus far revealed)

A. Increase cheese quotas from 57,960 metric tons to 110,333 metric tons, an increase of 90.4 percent.

B. Place all cheese imports other than sheep and goat's milk varieties and soft cured cheeses such as Cammembert and Brie under quota.

II. Effect of actions:

A. This would increase the "base" from which future evasions and/or quota expansions will take place. Since 1966 alone, cheese quotas have been permanently increased as follows:

(1) 1966, Cheddar quota raised 33 percent

(2) 1967, Cheddar quota raised 261 percent; quota established on "Other American" cheese to cover evasion products

(3) 1968, Quotas established on processed Edam and Gouda and pricebreak system established on Swiss, Gruyere-Process and "Other, NSPF" to cover evasion products

(4) 1969, Quotas established on Italian, not in original loaves to cover evasion product; Pricebreak quota on "Other NSPF" increased 43 percent

(5) 1971, Pricebreak quota established on Low Fat Cheese to cover evasion

(6) 1972, Swiss quota increased 378 percent; Gruyere-Process quota increased 242 percent; "Other NSPF" increased 62 percent.

B. The proposed expansion is equivalent to adding 670 million pounds of milk to the U.S. supply. The adjustment for this must be made in the American market. Absorption in the short term will add $75 million per year to the cost of the dairy price support program. In the long term it will require reducing domestic production by that amount—the equivalent of forcing 1,200 to 1,500 dairy farmers out of business.

C. There is a major impact on farm income. Updating of the 1974 USDA study on such impact shows the farm price of milk reduced by 21 cents per hundredweight for each 500 million pounds milk equivalent of imports. This means a $343 million income loss based on 1978 milk production levels from the cheese import expansion alone. Adding the expansion to the level of dairy product imports in 1977 (1,968 million pounds milk equivalent) yields farm income losses of over $1.35 billion.

III. The U.S. already has the most open market for dairy products of any major producing nation. Other nations use rigid quota systems, licensing procedures, or variable duties to bar imports. On the basis of any valid economic comparison, the EEC would provide a major market for U.S. dairy products. This is not the case due to their exclusionary practices which they declared "non-negotiable" in the MTN. This position was accepted by the U.S.

IV. The negation of the countervailing duty statute has the effect of expanding cheese imports by 66 percent. 62,621 metric tons of the 94,984 metric tons imported in 1977 entered from countries who must use export subsidies to penetrate this market.

V. Assurances provided the Senate Finance Committee during consideration of the Trade Act of 1974 (by letter to Senators Nelson and Mondale) call for Congressional review and approval of any expansion of cheese import quotas through the same process used for approval and implementation of other segments of the MTN agreements. To date no notification has been given Congress.

VI. The only alternative, given the negative effect of the expansion and the lack of any offsetting measures, is to reject the expansion of Section 22 import quotas on cheeses.

Statement of Senator Miguel A. Hernandez Agosto, President, Popular Democratic Party and Puerto Rico Minority Leader

The Puerto Rican economcy will receive a very serious blow if the proposed 30 percent reduction in tariff for imported rum is approved and if the present tax assessment method for distilled spirits is changed from the wine gallon to a proof gallonage method. Both changes are part of the package agreement negotiated by the United States in the so called Tokyo Round.

We understand it is part of an effort by the U.S. to foster freer international trade and to assist developing nations in their goal to achieve greater participation in that trade.

This new outlook by the U.S. in its commercial foreign policy is justified in many ways and we do not question its validity. We agree that unfair conditions that do not allow developing countries to compete on an equal basis with the U.S. market should be eliminated. We feel Puerto Rico should not oppose these changes merely because they may be harmful to us. However, we are forced to oppose the proposed tariff and change of tax assessment method for distilled spirits because such changes, while allowing other countries to compete within the U.S. market, would

put Puerto Rico at a definite disadvantage in competing with imported rums from other countries in the U.S. market.

Ever since Congress approved the Trade Expansion Act of 1962, which served as the basis for the tariff agreements now under consideration, it was anticipated that the new agreements might affect certain commercial sectors and industries within the U.S. That is why the act provides mechnanisms to try to avoid undue harm to said industries and sectors, or if unavoidable, to establish adequate compensation.

From the very beginning in its political and economic relationship between Puerto Rico and the United States, Congress realized that the Puerto Rican government needed to be provided with special sources of income that would allow it to render the necessary governmental services to its citizens. That is why our first organic act, the Foraker Act of 1902 which established Puerto Rico's relations with the federal government, made the allowance that all tariffs collected by U.S. Customs on foreign products imported into Puerto Rico, as well as taxes imposed in the states on all products produced in Puerto Rico for sale in the U.S., would be returned to the Puerto Rican treasury. These tariff and tax reimbursements have been an important source of revenue with which the Puerto Rican government has been able to finance its public administration. This is especially true of the funds generated by sale of Puerto Rican rums and tobacco in the U.S.

In the case of Puerto Rican rum, the funds obtained from tax reimbursement of sale of our rum in the U.S. during the Second World War, allowed Puerto Rico to establish its Operation Bootstrap shortly after the war. Operation Bootstrap was widely hailed for its success in helping bring Puerto Rico out of abject poverty and into the developing industrial world. During the past year, for example, the Puerto Rican treasury received some $180 million from federal tax reimbursements on rum sales in the U.S. That amount was 12 percent of net receipts to Puerto Rico's general fund for that year. In addition to other negative factors, the changes now being proposed in tariffs and tax assessments would endanger this important source of government revenue.

Puerto Rico received a similar blow in the 1930s when tobacco sales slacked off considerably in the U.S. market. The difference with the present situation is that rum sales are so much larger than tobacco sales ever were so that the decrease in revenue would be that much greater. In addition to the Puerto Rican treasury, one of our major industries and an important sources of direct and indirest jobs would also be adversely affected. The rum industry is one of the pillars of our industrial community. Investment in this industry is in the hundreds of millions of dollars. It employs some 1,400 workers who are paid annually some $10 million. Together with the beer industry, this sector generated a gross product of some $297 million during the year 1978, which represents a substantial part of the overall Puerto Rican gross product.

Since most foreign countries block Puerto Rican rum with their own tariffs, the U.S. market remains the sole market for our product. Last year, for example, Puerto Rico shipped 16.9 million gallons of 100% proof rum to the states and only 0.86 million gallons to other countries. If our rums were made to compete with foreign rums on an unequal basis, we might be losing our only market, and with it, an important source of government revenue, commercial production and jobs.

Since 1917, imported distilled spirits entering the U.S. market at or above 100% proof have been taxed on the basis of alcohol volume. If however, imported distilled spirits enter the U.S. at less than 100% proof they have been taxed on the basis of liquid volume content, or wine gallons. If this assessment method is changed and all imported spirits are taxed by their proof gallonage, foreign bottled rum would pay $5.88 less on each case sold in the U.S. With the 30 percent reduction in tariffs, the combined savings per case of foreign rum would increase to $6.04 during the first year. That would put Puerto Rican rum in a very difficult competitive position if you take into consideration the fact that our rum producers face much higher production costs due to application of federal minimum wages, the Environmental Protection Agency (EPA) requirements, the Federal Occupational Safety and Health (OSHA) standards and other cost factors not faced by the foreign rum producing countries.

We firmly believe that the essence of our political and economic relationship existing between Puerto Rico and the U.S. predicates the need for Puerto Rico to participate in the decision-making process in which important tax changes such as the one now being contemplated are taken. That is why, during the 1960 Kennedy Round in Geneva, the U.S. allowed Puerto Rican representatives to sit in on the talks as observers and our views were taken into consideration before any accords were reached. It was due to that observer status that the Puerto Rican economy was not adversely affected, in spite of the wide tariff reduction agreed upon by the U.S.

That procedure should have been followed in the present round of talks and we would hope that it will be followed in the future.

Perhaps some compensation is being considered to offset the damages to Puerto Rico's economy, should these changes go through as they have been announced. In this respect, it is important to point out that in order for compensation to be adequate to the damage being done to our economy, a mere appropriation of funds, would not suffice. One must bear in mind that what is being damaged is our producing capacity and that compensation must, therefore, be in such a measure as to allow our economy to replace jobs and to improve our capacity to generate income which would be lost due to these tariff and tax changes.

STATEMENT OF HECTOR JIMENEZ JUARBE, EXECUTIVE VICE PRESIDENT, PUERTO RICO MANUFACTURERS ASSOCIATION

The Puerto Rico Manufacturers Association is a private, voluntary, non-profit organization established in 1928 for the purpose of uniting all Puerto Rican Manufacturers into a strong and effective body in order to further their mutual interests as they relate to the public and private sectors of the Commonwealth of Puerto Rico.

Particularly, the Association's efforts are interwoven with the development and advancement of programs designed to improve the economy of this small and isolated island, and, especially, in the development of those programs which contribute to the improvement of the climate for industrial growth.

The membership of the Manufacturers Association includes most of the major manufacturing corporations operating in Puerto Rico. In all, 1,024 companies, of which 280 are only manufacturing-related, belong to the Association. It is relevant of state that these member companies employ no less than 75 percent of the manufacturing force in the island.

Throughout the history of the Association and even before "Operation Bootstrap" came into being, this organization has worked closely with the public sector devising innovative structures to strengthen and develop the socio-economic conditions of the people of Puerto Rico. Basically, our efforts have been channeled through joint ventures with the Economic Development Administration Fomento.

The comments of the Puerto Rico Manufactureres Association before the Subcommittee on Trade of the Ways and Means Committee House of Representatives at the Hearings on the Multilateral Trade Negotiations follow:

The Rum Industry in this island generates 12 percent of the public revenue and is responsible for thousands of direct jobs.

Lower tariffs on imported rum could create havoc in our economy. In 1977 our unemployment rate was abnormally high, hovering around 21 percent. Today it is still over 17 percent, even though we have been recovering from the world-wide stagflation phenomena of 1974-75.

Any action by Congress to reduce or eliminate the tariffs on rum imported to the U.S. would be a death blow to our economy and to the effort and achievements that we, as a people, have made during the last thirty years to overcome historically adverse economic conditions.

It is also relevant to state that such action by Congress would impose a harder task in our self-esteem and on the American tax payer, for then, more Puerto Ricans would depend on the welfare measures of both the federal and local government.

In any case, the net result would be adverse to the interests of the United States and Puerto Rico in terms of political and socio-economic conditions.

The adverse effect upon the economy of Puerto Rico would be compounded by granting the petition of the European Economic Community, Canada, Jamaica, Trinidad-Tobago, Poland and Bangladesh to the effect that the federal tax on bottled imported distilled spirits at 100 percent proof or less, shall be based upon the gallon proof.

This change (now the tax on wine gallon basis) would have two quantitative effects that would translate into economic benefits for the imported rum, in detriment of the competitive position of the Puerto Rican rum, its economy and industry.

As a result, the foreign rum importer would reduce his investment per case by some $6.88.

And it all means, again, the same: the rum industry in Puerto Rico, its competitive position and the economy of this island would suffer the consequences.

It must be noted that 85% of the rum produced in Puerto Rico is sold on the mainland and that this irreparable harm to Puerto Rico will come about by a

decision of Congress based on non-economic reasons, in favor of imported rums and against the best interests of Puerto Rico.

We trust that you give this important matter the urgent attention it requires. We make ours the petition of the Government of Puerto Rico.

Respectfully submitted.

RELIANCE ELECTRIC CO.,
Cleveland, Ohio, April 30, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Ways and Means Committee, Washington, D.C.

DEAR CHAIRMAN VANIK: We generally support the objectives of the multi-lateral trade negotiations and believe that the reduction of tariff and other trade barriers should be beneficial to the United States. However, the reduction of such barriers makes it that much more important that our laws dealing with unfair trade practices be strengthened, rather than weakened. For that reason we are writing to express our company's deep concern over some of the countervailing duty law amendments being proposed.

There are three areas we find particularly important:

1. *Injury Test.*—The United States initialed the Subsidies/Countervailing Duty Code in Geneva on April 12. That Code obligates the United States to adopt an injury test in its countervailing duty law. This will make it more difficult for domestic industries to obtain relief against subsidized imports. While it may have been a political necessity for the United States to concede this point in Geneva, we urge that the injury test be no more difficult than the injury test currently applied under the Antidumping Act.

2. *Effective Date of Injury Test.*—Since the United States obligation to adopt an injury test did not come into being until April 12, it seems to us that the injury amendment to the countervailing duty law should only apply to complaints filed on or after April 12. In that connection Reliance Electric filed a countervailing duty petition on February 14, 1979 with respect to scales and weighing machinery from Japan which are subsidized under Japan's High Yen Measures Law.

3. *Offsets.*—In our view, the Treasury Department has been lax in its enforcement of the countervailing duty law. One of the worst examples of administrative undermining of the law involves the question of "offsets". Over the years Treasury has effectively narrowed the scope of actionable subsidies by interpreting the law to permit an increasing range of offsets against foreign subsidies. For example, Treasury has reduced the amount of countervailing duties in certain cases of "phantom" indirect tax rebates (i.e., offsets for indirect taxes that were not rebated on export but could have been rebated on export if the foreign government had so desired) and by the degree of economic disadvantage of locating in one region versus another. Our understanding is that the Subcommittee has tentatively approved language which would ratify Treasury's practice in this regard and would give Treasury discretion to expand the range of offsets even further. This would seriously emasculate the countervailing duty law. We earnestly hope, Mr. Chairman, that when your Subcommittee makes its final decision on this matter it will limit these offsets to (1) application fees and similar payments to the foreign government necessary to obtain the subsidies, (2) the loss in value of the subsidy resulting from delayed remittance by the government, and (3) any export tax designed to neutralize the effects of the subsidy on exports.

We wish to express our admiration of your leadership role in formulating the trade policy of the United States at this most important juncture in history. I believe that the recommendations we have made in this letter will promote the best interests of the United States and that they are deserving of your support.

Sincerely yours,

HUGH D. LUKE, *Chairman.*

SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.,
Washington, D.C., April 25, 1979.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: These comments are in response to the Subcommittee Press Release of April 6, 1979, concerning implementation of the Multilateral Trade

Negotiations (MTN) and should be included in the record of the hearings conducted by the Subcommittee from April 23-27, 1979. This submission is not made on behalf of any particular client, but is a reflection of our long experience as legal practitioners in the international trade and customs' law field.

The Subcommittee has asked for comments on the advantages and disadvantaged to the U.S. of the international codes, and on changes in existing laws which may be either necessary or appropriate to implement these agreements. The Subcommittee is specifically concerned with procedures affecting agency responsibility, timing requirements, burden of proof, and judicial review.

We wish to confine our comments primarily to the subject of Antidumping. As we understand it final agreement has still not been reached on revisions to the Antidumping Code, but nevertheless proposed amendments to U.S. law have been the subject of Executive Branch consultations with the Congress. Our failure to address the other subjects raised by the Subcommittee should not be construed as either an endorsement of or opposition to the agreements or proposed legislation to implement them. Rather we have narrowed the focus of our analysis so as to highlight our concerns that certain proposed modifications to the Antidumping Act are inimical to the national interest.

The purpose of the MTN is, and has been to continue the liberalization of the multilateral trading system which developed after the Second World War, centered about the General Agreement on Tariffs & Trade (GATT). Successive rounds of tariff negotiations have led to a downward spiral in the high levels of tariff protection previously erected by the industrial countries. These protective walls were the residue of the chaotic period of the 1930's when the bigger-thy-neighbor policies of the major trading nations contributed to and reinforced world-wide depression. For the U.S., the mandate for this round of negotiations is contained in the Trade Act of 1974, wherein the Congress enjoined the President to work toward the reduction and elimination of barriers to trade which prevent the development of an open and non-discriminatory trading system. For the first time these negotiations were to address themselves in a comprehensive way to the problems of the various nontariff barriers to trade—the importance of which have increased as the general level of tariff protection has decreased. It is, therefore, incumbent upon us when evaluating the results of the MTN to keep the ultimate objective in mind—the continued liberalization of the multilateral trading system. While progress has been made in addressing several major barriers to trade, unfortunately some MTN implementation proposals now being considered would have the opposite effect.

Any amendments to the U.S. law must specifically adopt the material injury standard set forth in Article VI of the GATT and in both the original and renegotiated Antidumping Code to bring the U.S. into conformity with its international obligations. Furthermore, in order to rationalize the statute the amendments should include the requirement that the dumped imports must be an important cause of injury, and not less important than any other cause. If these imports are an unimportant cause of injury then obviously dumping duties will not correct the real problems of the domestic industry but will actually be counterproductive because they will be viewed as alternatives to steps which could be really effective in reversing the industry's decline.

There have been numerous additonal suggestions for amending the Antidumping Act including recommendations of the Senate Finance Committee, and draft legislation developed by special-interest groups and various members of Congress. These amendments which would fall under the "appropriate" category in the implementation legislation since they are not required by MTN agreements, are to some extent designed to make antidumping procedures parallel to modified countervailing duty inquiries, and appear designed to make the Act a more efficient tool for restricting imports into the United States. These attempts are, we believe, stimulated by the diminished competitiveness of U.S. manufacturers in world markets and massive U.S. trade deficits. We should not be deluded by the rhetoric of special interests. These developments are not the result of "dumping" or "unfair trade practices" abroad, but flow from a continued relative decline in productivity in the United States and the massive balance of payments effects of OPEC oil price increases. Solutions, therefore, must address these underlying causes.

It is not within the scope if this Subcommittee's proceedings and it would be therefore inappropriate to address these issues in greater depth here. The fact remains, however, that the Congress and Administration have come under great pressure from declining American industries because of these developments—steel, textiles, consumer electronics to name the most prominent and most vociferous—and have been willing to increasingly go along with "solutions" to the basic weaknesses of these industries which limit imports, at consumers' expense, but fail to

provide any reasonable expectation that these industries will regain their competitiveness.

Many of the proposals to amend the Antidumping Act are simply attempts to convert the Act from a remedial to a punitive statute. It has been proposed, among other things, that the pricing investigatory authority be transferred from the Treasury Department to the USITC or Commerce Department because Treasury is too subject to taking "policy" into consideration; that time limits be radically shortened to provide expedited relief to petitioners; that discretion to reject petitions which fail to present a prima facie case of Sales at Less Than Fair Value (SLTFV) or injury be eliminated or restricted; that preliminary injury analysis by the USITC to weed out weak cases be eliminated as too burdensome to petitioners; that dumping duties be assessed retroactively; that importers be required to deposit estimated duties based on stale investigations and analyses which ignore intervening price revisions; that Treasury's adjustments to foreign market value which are small and "bothersome" be ignored; that discontinuances based on price assurances be eliminated; that findings be revoked only after many years of price monitoring; that safeguards heretofore applied to maintain the confidentiality of business confidential information be virtually eliminated; that Customs require pricing information on all invoices and that the data thus collected by published periodically.

This list is far from exhaustive, but the intent is obvious. It is self-evident that suggestions such as these are in complete contradiction to the mandate to liberalize and eliminate trade barriers contained in the Trade Act of 1974. Such amendments cannot be considered as "appropriate" to that purpose and should not be considered as part of the MTN implementation package.

Because of the peculiar nature of the legislative process mandated by Sections 102 and 151 of the Trade Act, it will not be clear which changes the Administration will seek in the Act until the bill, which cannot be amended, is submitted to the Congress. However, the deliberations and recommendations of the Senate Finance Committee, insofar as they have been made public, provide guidance as to those proposals which seem most likely to be a part of the package. We have, therefore, confined our comments primarily to these issues:

TIME LIMITS

We believe proposals to shorten maximum time limits for completion of various stages of antidumping inquiries to be ill-advised. The time for completion of the initial fair value investigation has already been compressed by more than half over the past decade. Given the complex nature of the data foreign exporters are required to produce within 30 to 60 days under current procedures, and the necessity that this data be verified by U.S. Customs representatives in the foreign country, any further compression would simply lead to initial arbitrary and incorrect determinations requiring later modification.

The Senate Finance Committe recommendations would provide that in normal cases preliminary Sales at Less Than Fair Value determinations and withholding of appraisment decisions must be made within 120 days of the receipt of a petition. This compares to the present statute which allows approximately 7 months. In complex cases the Committee proposes a maximum of 165 days, compared to the present limit of 10 months. The Committee proposes to allow 75 days for the final fair value decision—extendable by 60 days upon the request of petitioners or respondents—and 45 days for USITC to make its injury finding following the final fair value decision.

These restriction to the time for carrying out investigations are unacceptable if the statute is to be administered in an objective way. The shortening of the initial investigatory period, proceding the preliminary determination is especially unreasonable because:

It is during this period that the basic judgments which control the course of the investigation must be made. It is very difficult later to decide for instance that third country prices, or constructed value are appropriate for foreign market value, instead of home market prices. The period following the preliminary can only be used to "fine tune" the determination by seeking additional information or verification of particular claimed adjustments.

Initiation and preliminary SLTFV decisions will have to be made on incomplete information, causing unnecessary diversion of investigatory resources to cases that will eventually result in negative decisions, makin git more difficult to focus on instances where relief is really appropriate.

Trade will be unnecessarily disrupted by arbitrary withholding of appraisement decisions, even though they may be reversed at a later stage of the investigation.

Antidumping investigations deal with extremely complex issues—prices must be adjusted for differences ir home and foreign markets and for variations in merchandise. Cost of production inquiries obviously require even a more detailed and complicated factual inquiry. Furthermore, there may be large numbers of foreign manufacturers concerned (in the Mexican vegetable case for instance there are over 4,000 different producers who will be subject to any finding) who keep their records differently, who are geographically remote from the investigating authority, who are not within the sovereign authority of the United States and who speak and keep records in foreign languages. Furthermore, a single "class or kind" of merchandise which is the subject of an investigation may often include numerous different products—different sizes, shapes, qualities, etc.—for each of which data must be collected and analyzed. The task of identifying the producers and products in any case, delivering questionnaires, and translating documents, without any analysis or verification, can easily absorb all or most of the 100 days between initiation and preliminary determination that the Senate Finance Committee would allow in normal cases. "Complicated cases" such as those involving cost of production analyses and/or manufactured products where significant and sophisticated variations existed between products sold in different markets may require the use of outside technical experts to assist in the investigation. In such cases the formulation of questionnaires—that is merely asking the right questions—may take weeks. Often it may not be clear until an advanced stage of the initial pricing investigation that a cost of production issue exists, which means in effect that the investigation must be restarted, with a whole new set of questions to be answered by respondents. Trips abroad by teams of Customs officers and outside experts may be required as in the recent cost of production investigation of steel plate from Japan. The Senate Finance Committee limitations would not permit such procedures.

There has been criticism of the verification process and demands that it be made more meaningful. Verification of costs, prices and other factors affecting foreign production and sales is difficult to begin with given language difficulties and different bookkeeping and data retention standards around the world, and it will perforce be even less meaningful if investigating authorities are given insufficient time for the process. A further source of criticism has been that petitioners are given insufficient opportunity to participate in the investigatory process. Recently efforts have been made, and are evidently to be expanded, to assure that more and more information is provided to petitioners during the inquiry so that they may be aware of the issues, and submit relevant information themselves where appropriate. Shortened time period for investigations will largely foreclose any meaningful opportunity of this kind for petitioners as decision makers will not have the luxury of waiting for petitioners' response to respondents' submissions before making determinations.

We believe that the maximum time for completion of the initial fair value investigation must be at least 6 months from the date a petition is received if the determination to withhold appraisement is to be made on the basis of anything more than allegation. In complicated cases an additional 3 months is required, and any case requiring a cost of production analysis, either because of allegations in the petition, or because of information developed during the course of the investigation should automatically be designated as complicated.

The 75 days (extendable by 60 days upon the request of either petitioners or respondent) recommended by the Committee for reaching a final fair value determination is sufficient. However, we believe that the USITC must continue to have the 90 days afforded to them by present law following the final fair value determination in order to give proper consideration to the question of whether injury was by reason of the Sales at Less Than Fair Value.

PAYMENT OF ESTIMATED DUTIES

The proposal to require the payment of estimated dumping duties after a finding, based on the fair value investigation, rather than to require (as is now the practice) that financial security be posted pending assessment on an entry-by-entry basis, is a clear effort to punish importers even if no Sales at Less Than Fair Value are occurring. If prices have been adjusted to eliminate any SLTFV, as is the rule in dumping cases, the purpose of the Act has been accomplished. Even if estimated duty payments are later returned when the assessment process is completed and no margins are found to be present, importers have lost the use of their money for extended periods of time. Furthermore, it should be noted that calculating estimated duties based on margins found to exist during fair value investigations would be unreasonable and capricious. Fair value determinations are not subject to the rigorous statutory mandate which governs the assessment process following a finding. Often different, less accurate methods of price comparison have been used to

determine fair value—methods which are necessarily abandonded to a more exacting analysis during the assessment stage and which radically alter the initially calculated margins.

It is argued that the collection of estimated duties is necessary to force exporters to produce the pricing data necessary for assessment in a more timely manner. We do not believe this to be the case. Delays in assessment have historically not resulted from the failure of foreign manufacturers to cooperate, but from long delays in Customs' preparation of "master lists" upon which assessments depend. This process has of necessity been given low priority by Customs and Treasury because they have had insufficient resources, both quantitatively and qualitatively to devote to this activity. The answer to streamlining the assessment process is, therefore, not to sanction arbitrary and inequitable procedures, but to commit the necessary human resources to the task on a continuing basis.

If despite these arguments to the contrary it is decided to require the deposit of estimated duties following a finding, there must be some limitations placed on the use of stale analyses for computing the amount of duty to be required in the interests of equity and to prevent the complete stifling of trade in products subject to such a finding. The 18 months limit from entry to assessment which the Senate Finance Committee proposes could lead to situations where estimated duties were being calculated on sales which took place two and a half years before the entry in question! To prevent such a patently irrational situation Customs should be required to issue a new master list within 6 months of the submission of all relevant data by an individual manufacturer. Furthermore, Customs should be required to inform respondents within 45 days of such submissions as to the adequacy of the data submitted, whether additional data will be required, and what a preliminary review of the submission indicates. If Customs fails to meet these requirements, adequate financial security would be acceptable on entries until such time as new master lists are issued. Such a procedure would provide importers and foreign manufacturers with some assurance that they would not continue to be penalized because of bureaucratic delay.

DISCLOSURE OF CONFIDENTIAL INFORMATION

Various proposals have been made to provide for the disclosure of business confidential information, otherwise exempted from disclosure under the Freedom of Information Act, through the use of protective orders. The Senate Finance Committee recommends that information submitted in confidence to Treasury or the USITC could be made available to counsel for interested parties under either "an administrative or court protective order." Further details of the Committee's proposal are lacking but we understand that the sanction for violation of the administrative order is intended to be prohibition from all appearances before the agency for 7 years, and that such orders would be issued only with the approval of the party submitting the information. Court orders, which presumbly would be more meaningful in that violations could subject attorneys to contempt of court citations, would be issued by the Federal District Court for the District of Columbia.

We find these proposals unnecessary and extremely prejudicial to the legitimate interests of those subjected to scrutiny under the Act. These procedures are investigatory, not judicial or adversary in nature. The matter at issue here is the appropriate tax due from the taxpayer—the importer and manufacturer—to the U.S. Government. While the petitioner has a role to play in providing sufficient information to the administering authorities to cause the initiation of an inquiry, his participation in the investigation itself must be strictly limited. It is totally inappropriate for him to be allowed in effect to sift through his competitors' tax return! The data required of manufacturers in an antidumping inquiry include the most precious of trade secrets, prices, discounts, sales organization details, marketing methods, not to mention cost of production. Nothing could be more anti-competitive than to require that this data be made available to the manufacturer's competitors. It has often been suggested that many antidumping petitions are filed with as much hope of ferreting out the competitors' trade secrets as of obtaining an affirmative finding. Furthermore, it is difficult in many instances to distinguish between counsel and his client where relationships are of a continuing and longstanding nature, despite the most honorable of intentions on the part of counsel.

The procedures necessary to provide for a meaningful and objective review of the facts prior to the determination of whether a protective order should be issued can only further impede the rapid completion of these investigations. The present system of requiring non-confidential summaries of confidential information, as imperfect as it is, is far preferable to the alternative suggested.

PRELIMINARY INJURY EXAMINATION

In order to eliminate frivolous cases, which drain the resources of the administering agencies at great cost to the taxpayers, while diverting attention from domestic industries really in need of relief, all petitions should be directed to the USITC as well as the Treasury. The USITC would determine shortly after the initiation of an investigation whether sufficient evidence of injury exists to warrant continuation of the proceedings. While currently the law does provide for such a procedure, in instances where the Secretary of the Treasury determines "substantial doubt" of injury to exist, logically all cases should be subject to preliminary scrutiny by the agency charged with analyzing evidence of injury so that unnecessary inquiries can be quickly ended. The present test, which requires the USITC to determine that there is "no reasonable indication of injury" should be reversed, making it a positive, rather than a negative standard. Unless the Commission finds the existence of a reasonable indication of material injury and of a causal link between the allegedly dumped imports and that injury, the investigation should be terminated as is required by Article V of the Antidumping Code. The Senate Finance Committee has recommended a somewhat similar procedure but specifics, other than allowing 45 days for the USITC consideration of the issue, are thus far lacking.

PRICE ASSURANCES

A major step toward increasing the effectiveness of the statute as a remedy for injurious price discrimination, and relieving the administrative burden which has come with the increased number and complexity of cases, would be a revision of the presently restrictive use of price assurances as a means of expeditiously resolving antidumping investigations in a non-arbitrary fashion, while providing the protection to affected industries contemplated in the Act. While price assurance/discontinuance procedures could presently be modified by Treasury without recourse to legislation, it is understandable that the Department is hesitant to take a step of such magnitude without Congressional acquiescence, given current criticism of its administrative efforts.

It is interesting to note that of the some 70 dumping findings outstanding at the end of 1977, only 14 pre-date 1970. Of course many older findings have been revoked, but it is also true that previously a much more flexible "price assurance" policy was in effect. If SLTFV were found producers were encouraged to adjust prices, give assurances of no future sales below fair value, and the antidumping procedure was terminated (on the theory that the statutory objective had been accomplished). Under pressure from those who believe this procedure was too lenient to foreign producers, and provided no monitoring of their future price behavior, the Treasury radically revised its price assurance policy. In May, 1970 two changes were made. First, investigations would no longer be terminated with a negative SLTFV determination when price assurances were received, but only discontinued with a requirement for continued price monitoring by Customs. Second, price assurances would only be accepted when margins of Sales at Less Than Fair Value were "minimal." Minimal margins were interpreted as no more than 1 percent on a weighted average basis (that is, for example, margins of 50 percent on 2 percent of sales, or margins of 1 percent on 100 percent of sales). While this definition has been expanded slightly over time it is basically still the benchmark used to determine whether discontinuance is appropriate.

With the benefit of hindsight, it is clear that while the former modificiation made sense, the standard adopted in the latter was far too inflexible. Those familiar with fair value investigations know that the mathematical margin for error alone far exceeds 1 percent—5 to 10 percent is closer to the mark. Furthermore, keeping in mind the remedial objectives of the statute, why impose any numerical limitation on the acceptance of price assurances? The only test ought to be the Secretary's satisfaction that foreign producers intend to abide by a commitment on future pricing which will eliminate Sales at Less Than Fair Value. Such a commitment, coupled with reasonably thorough monitoring of those prices by Customs, should accomplish the statutory objectives without requiring the assignment of hundreds of Customs officers to keep the assessment process current and resorting to the requirement that estimated duties be deposited. Regulatory and statutory authority already exists to enforce assurances through the threat of a retroactive withholding of appraisement in response to any violation. A flexible price assurance policy would also greatly reduce the pressure on the Secretary to discontinue cases because of "special circumstancess," although that option should still be available to him in those rare instances where conditions change radically following the initiation of an investigation, making its continuation inappropriate. The reasonableness of that determination is, of course, subject to judicial scrutiny.

COST OF PRODUCTION

To further rationalize the statute, Congress should repeal Section 205(b) of the Act. Cost comparisons as opposed to price comparisons are not originally a dumping concept. This provision was added to the law by the Trade Act of 1974. The Congress provided little guidance in that statute and in the legislative history as to how "cost of production" (COP) is to be calculated. As a result there has been confusion and uncertainty in administering the provision and a significantly expanded burden on the limited resources of the Customs Service in conducting these extremely complex inquiries in foreign countries. All petitioners seek to turn antidumping investigations to cost of production calculations simply as a means of obtaining information on their competitors' operations. Foreign producers have been reluctant to turn over their most closely held industrial secrets to U.S. authorities who are subject to the Freedom of Information Act and the discovery procedures of the U.S. Courts. No producer wants to give up this kind of data. Recently, U.S. petitioners have refused to give their COP to Treasury upon request to aid in determining what foreign COP might be! This reluctance can be expected to increase considerably if the previously discussed proposal concerning the release of confidential data under protective orders is adopted.

Rather than amend the provision to provide more precision to its terms it would make more sense to delete it from the Act altogether returning the law to its pre-Trade Act form which defined Sales at Less Than Fair Value only in terms of price. This is a complicated enough calculation, but one with which U.S. authorities have some experience, and a concept which has been internationally sanctioned. We note that the March 15, 1979, Report to the Congress by the Comptroller General, on U.S. Administration of the Antidumping Act of 1921, recommends deletion of Section 205(b), concluding that problems involving below-cost sales "could be better handled under other U.S. trade legislation."

JUDICIAL REVIEW

Section 516 of the Tariff Act of 1930 should be amended to provide the same right of immediate judicial review of antidumping determinations for importers and foreign exporters as domestic manufacturers enjoy under present law. Currently importers must wait until an entry of the product in question has been liquidated and assess additional duties before protesting, under Section 514 of the Tariff Act. This often is several years after the Treasury or USITC determination. Domestic manufacturers on the other hand may immediately appeal an antidumping determination to the Customs Courts under Section 516. In the interests of equity this disparity should be removed. The Senate Finance Committee recommended this modification in the law.

SECTION 337

The Senate Finance Committee has also proposed that Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 as amended) be amended to clarify the relationship of the statute to the Antidumping Act and the countervailing duty law (19 U.S.C. 1303, as amended). The amendment would make clear that Section 337 does not cover actions clearly within the purview of the other two statutes. This proposal would prevent a continuation of the confusing situation which has existed in recent years and which led to duplicative investigations and unseemly bureaucratic wrangling between agencies of the U.S. Government. We strongly support this recommendation.

AGENCY RESPONSIBILITY

It has been suggested that responsibility for the administration of the Antidumping Act be shifted from the Treasury Department. The fact that the issue is raised at all is illustrative of the dissatisfaction being voiced in some quarters with current Treasury administration of the law. While our experience with Treasury and Customs, like those of other practitioners in this field, has had its ups and downs, we believe that many of the criticisms result from indequate resources having been devoted by the U.S. Government to the administrative effort. This is a problem which will not be resolved by moving functions around the government. Furthermore, it is our belief that reorganization of the government for the purposes of conducting trade policy and administering the trade laws is far too important to be dealt with as a secondary issue in the context of MTN implementation. It is a separate and separable issue which deserves the full focus of the Congress' attention at a more appropriate time.

PETER O. SUCHMAN.
GAIL T. CUMINS.

STATEMENT OF NORMAN C. SCHWARTZ, ON BEHALF OF SIEGEL, MANDELL & DAVIDSON, P.C.

I am pleased to have this opportunity to submit this statement, on behalf of my firm and myself, regarding the necessary and appropriate statutory procedures for implementing the Multilateral Trade Negotiations. I am an attorney with the firm of Siegel, Mandell & Davidson in New York City. Our firm consists of 10 attorneys, all of whom are full-time practitioners of Customs law, and my statement reflects both my own views and those of my colleagues.

Our concern is primarily procedural. If we correctly understand the various press releases issued by this Subcommittee, it appears that certain legislation concerning matters which are only remotely or distantly related to the actual "implementation" of the Tokyo Round trade agreements is being included for introduction as part of the legislative package under the "fast-track" procedures of § 102 and § 151 of the Trade Act of 1974 (19 U.S.C. § 2112, § 2191).

The implementing bill contemplated by the Trade Act of 1974, and which is subject to the "fast-track" procedures, is limited, under the explicit terms of § 151, to "only" a bill which includes:

(A) a provision approving such trade agreement or agreements;

(B) a provision approving the statment of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

Our concern is with certain legislative changes proposed pursuant to subparagraph (C). Apparently, the "fast-track" legislative package now being drafted will include provisions making substantial changes in the following areas (among others):

1. The scope of review, and the standing of parties, in civil actions before the Customs Court challenging "positive" or "negative" countervailing duty determinations.

2. The type of hearing required in countervailing duty cases before the Treasury Department and the International Trade Commission, and whether such hearing is subject to the Administrative Procedure Act.

3. Substantive and procedural changes in § 301 of the Trade Act of 1974 pertaining to unfair trade practices, and § 201-203 of the Trade Act of 1974 pertaining to import relief actions.

We believe the intention of the 93rd Congress in drafting § 151 is clearly expressed in Senate Report No. 93-1298, 93rd Congress, 2d session, on H.R. 10710. At page 107 of its report, the Senate Finance Committee concluded that non-tariff barrier agreements entered into by the executive should be approved by the Congress, because "virtually all non-tariff barriers in the United States are matters of law", and Congress should not abrogate its legislative responsibilities. However, the Finance Committee also recognized that our trading partners require "reasonable assurances that the negotiated agreements would be voted up-or-down on their merits". Hence, the Finance Committee drafted, and the Congress enacted into law, the unusual "fast-track" procedures contained in § 151.

It is quite clear that § 151 contemplates a relatively restricted legislative package, as is evidenced by the word "only" appearing in the definition of the term "implementing bill" contained in § 151(b)(1) of the Trade Act of 1974 (19 USC 2191(b)(1)). We submit that any "fast-track" legislation which is "necessary or appropriate" to implement a trade agreement should cover only those matters directly related to the provisions contained in the trade agreement, per se. Otherwise, the legislative process is seriously compromised, and bills will be introduced and, presumably, enacted without the normal safeguards, and, arguably, in the absence of due process of law.

We therefore urge this Subcommittee, as well as the Executive branch, to carefully segregate those matters which are directly covered by the trade agreements in question from those matters which are not, and to limit the scope of the "fast-track" package bill to the former. We express no opinion here on the merits of any proposed legislation being considered by the Subcommittee. Certain changes in law may be necessary or desirable within the framework of our international trade

relationships. But such changes, which do not bear a reasonably direct relationship to that which has been negotiated and signed under the Tokyo Round, should be introduced, debated, and enacted pursuant to the normal legislative process.

I thank the Subcommittee for this opportunity to testify.

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,
New York, N.Y., April 23, 1979.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, House Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR SIR: This statement is being submitted by the International Committee of The Society of the Plastics Industry, Inc. (SPI) in response to the opportunity extended by the Subcommittee on Trade, House Committee on Ways and Means. SPI, by this statement, wishes to address issues regarding implementation of the Multilateral Trade Negotiations, believes that its position is consistent with those of ISAC #5—Chemicals—and ISAC #8—Plastics and Rubber.

By way of introduction, The Society of the Plastics Industry, Inc. is composed of over 1,400 companies who supply raw materials, process or manufacture plastics and plastics products, engineer or construct molds or accessory equipment for the plastics industry, and engage in the manufacture of plastics machinery. The Society is the major national trade association of the plastics industry, its membership being responsible for more than three fourths of the total dollar volume of industry sales in the United States. The International Committee of SPI is comprised of over 70 U.S. companies engaged in international trade in plastics markets, including resins, basic fabricated products, and processing machinery.

In reviewing the current information on levels of proposed tariff reductions and descriptions of non-tariff codes, we feel that the OSTR with the assistance of the Advisory Committee has done an excellent job of seeking out the problems and working with the negotiators to draft appropriate provisions in the codes which cover the important areas.

There is, of course, a broad gap betwen reaching general agreement on a subject and delineating the mechanisms by which the adoption of such codes can be implemented by the members of the GATT. Because these will have to be delineated and implemented before we really know the effects on U.S. plastics producers, it is important that this be done carefully to protect the rights of U.S. producers and traders.

We feel that implementing legislation should be worded in a manner to make the broad language of the codes more precise and the authority more specific in its impact. This is particularly true because of the tendency for government and industry in the U.S. to have an adversary position, whereas abroad the relationship tends to be more cooperative. Thus, industry in the U.S. needs to have the areas of uncertainty more clearly defined to avoid the adverse effect of vague measures, but at the same time not restrict U.S. industry to a greater extent than our trading partners.

We favor the use of Industry Advisory Committees comprised of people familiar with foreign trade and the terms used in the negotiations to provide guidance so that these more precise wordings do not have counterproductive impacts.

The American plastics industry and the machinery industry supplying processing equipment have long been successful in the export market, but, while many of these sales continue to rise in dollar value, the rising prices conceal a leveling out in volumes and a sharp decrease in the percentage of total world export markets supplied.

It is for these reasons that we are concerned that provision be made for a supportive element in the U.S. government which can be understanding of the problems of exporters and be active in assistance to them. The legislation being designed to implement the trade agreement, should be more facilitative than restrictive for U.S. plastics producers.

Experience in trading in plastics, fabricated products, and equipment has given many in the industry a deep comprehension of the importance of tariffs and non-tariff measures of U.S. practices, such as DISC, export-licenses, and other U.S. provisions, and the relative value of the non-tariff measure codes, which have been achieved at the MTN. The following comments concerning some of the codes most important to the plastics industry are based on this experience.

SUBSIDIES AND COUNTERVAILING DUTIES

The tariff changes negotiated will have more impact than the non-tariff barriers in our trade with some countries. In other countries both the conventional non-tariff restrictions and very subtle forms of producer-trader financing organizations and government "manipulation" have made exports from the U.S. to such countries difficult. Because of such circumstances "de facto" barriers to trade not specifically seen as direct subsidies should be considered in the implementing legislation as cause for complaint.

Another serious problem is that of the trend in world plastics industries toward government ownership of producing and marketing facilities. These industries diverge from the principles by which free enterprise operates, and eventually are subsidized by the governments owning them. In other cases, where governments own the supplies of basic feedstocks such as petroleum or natural gas, artificially low prices for these can result in unfair competition. Because of these factors, we feel that a strong Subsidy-Countervailing Duty Code is essential.

Our government must also take a serious and concerned approach to the administration of its trade laws and the behavior of our trading partners under the Agreement. Actions on subsidized imports should be taken without delay-and applied in a firm and equitable manner against all named countries.

We believe the following provisions should be included in the code:

1. Flat prohibition against export subsidies.
2. Tightened rules on settlement of disputes.
3. Recognition of harmful effects of domestic subsidies.
4. Improved visibility of subsidy practices.
5. The requirement of proof of injury appears unnecessary and should be made minimal.
6. Imports from nonsignatory countries and less developed countries should receive comprehensive treatment and include sufficient specificity.

We therefore recommend:

1. The imposition by the U.S. of countervailing duty should, where damaging subsidies can be shown to exist, be mandatory rather than voluntary.
2. The injury test criteria for both antidumping and escape clause actions should be based on injury that is greater than immaterial or inconsequential.
3. Cases involving injurious exports from state owned, state controlled, or state aided industries should be based on comparable cost data from constructed value determinations of the most similar country with private enterprise.
4. The criteria for determining a country's degree of development should be based on a sector rather than the country's entire economy.
5. The definition of U.S. domestic industry should be such as to permit one or more products or locations to qualify as a separate industry if they have specific features that clearly identify them as separate from others.

VALUATION CODE

One of the principal features of the proposed valuation code is the elimination of the American Selling Price (ASP). We do not feel (without knowing the quid pro quo for giving up ASP) we can endorse its acceptance until we know:

(1) The tariff levels,
(2) The benefits which have been obtained in exchange, and
(3) A proper conversion of rates to their post ASP equivalents.

If the problems with ASP can be settled satisfactorily, it will be important to eliminate undesirable wording or add footnotes to prevent the "up-lift of valuation" by countries to which plastics exports are shipped. If this is done, the plastics industry will support the implementation of the code.

SAFEGUARDS

Disruption of U.S. plastics markets by foreign government-owned plants and other sources which have not been found to provide cause for action under antidumping or countervailing duty laws, should be covered under this code.

We feel that in wording the implementing legislation, the definition of domestic industry should be worded in such a way that a single product or area can qualify as the U.S. industry in question if factors do in fact result in it being so affected. It should also cover products "like or directly competitive with" products affected.

SUMMARY

The SPI International Committee, having reviewed publicly available information on the tariff reductions and non-tariff codes, endorses both aspects of the MTN treaty. Assuming no radical changes in the final negotiations, we believe that our

sector will gain substantially equivalent competitive opportunity by passage of the treaty with appropriate implementing legislation by the Congress.

Respectfully submitted.

DAVID S. WEIL,
Chairman, International Committee.

STATEMENT OF THE SPECIAL COMMITTEE FOR U.S. EXPORTS

The Special Committee is a participating group of more than 1,200 business concerns and 80 supporting business associations whose operations and concerns are directed to the export of U.S. products. The Special Committee's major concerns are with the effect of the U.S. tax system on exports by U.S. businesses and the ability of those businesses to compete in foreign trade in view of the many tax advantages and incentives and direct and indirect subsidies provided to foreign competitors by their governments.

The membership of the Special Committee has various interests in the MTN Agreements. However, the Committee's specific interest is with the treatment of export tax subsidies under the Agreements.

Regarding export tax subsidies, the Agreements contain an Illustrative List of Export Subsidies which includes certain tax practices. The development of more specific rules regarding tax subsidies for exports is consistent with the intent of Congress when the Trade Act of 1974 was enacted.

However, of the many issues addressed in the Agreements, some are vague and will require later clarification and interpretation. Tax subsidies are clearly one such issue.

The U.S. tax system has been modified a number of times in recent years to restrict potential U.S. tax benefits from export activities. In 1962 and 1964 Subpart F was added to the Internal Revenue Code which imposes U.S. taxes for the year earned on the income of certain foreign subsidiaries controlled by U.S. persons. The U.S. has also promulgated and vigorously enforced rules and regulations requiring transactions by a U.S. company with a foreign entity to be reported on an arms length basis under Section 482 of the Internal Revenue Code. The regulations governing the source of income and deductions under Section 861 of the Internal Revenue Code have been revised to insure proper reporting. Moreover, after various changes by Congress and new interpretations by the Internal Revenue Service regarding the foreign tax credit over the last several years, consideration is presently being given by the U.S. Treasury Department to comprehensive new regulations in that area.

All of these actions have been carried out unilaterally by the U.S. to insure that there are no tax advantages from export sales. Other nations have failed to adopt similar provisions in their tax systems and in many cases have used the so-called "loopholes" which have been closed in the U.S. systems as a mechanism to encourage exports.

The one significant U.S. export tax incentive is DISC, which was enacted in 1971. Congress' purpose in enacting DISC was to a large extent to offset the many foriegn tax incentives including rebate of value added taxes, the territoriality system under which foreign earnings are not taxed, the lack of arms length standards, etc.

DISC along with various tax practices of other nations was considered by GATT panels for several years and GATT documents L/4422, L/4423, L/4424 and L/4425 were published on November 2, 1976 questioning the appropriateness of the tax practices. The new Multilateral Trade Agreements do not address these issues directly but they imply that such practices will be subject to further evaluation under the new code.

The Special Committee's view is that tax practices under the new Agreements should not be considered on a piecemeal basis. An international conference among the signatories would be a better way to proceed. At such a conference, tax practices and their subsidy affect on exports could be considered jointly and in detail.

The Special Committee urges that the Subcommittee on International Trade include in the implementing legislation an expression of the consensus of the U.S. Congress that an international conference to consider tax subsidies be held after the ratification of the Multilateral Trade Agreements by the various signatories.

STATEMENT OF TEXAS CITRUS MUTUAL AND THE TEXAS CITRUS EXCHANGE

SUMMARY

The Texas citrus industry supports passage of the proposed trade package resulting from the multilateral trade negotiations. At the same time, we urge our negotiators to continue to seek concessions from the European Economic Community (EEC) for fresh and processed citrus. Also, we believe Section 301 of the 1974 Trade Act must be strengthened and that the Western citrus industry's 301 complaint against the EEC must be resolved within a reasonable time.

INTRODUCTION

This statement is made on behalf of Texas Citrus Mutual and the Texas Citrus Exchange.

Texas Citrus Mutual is a voluntary, nonprofit trade association composed of growers of citrus fruits in the Rio Grande Valley of Texas. The more than 2,500 growers in the organization produce oranges, grapefruit and tangerines. Mutual represents its grower-members on matters of general interest and importance, which include problems of international trade.

The Texas Citrus Exchange is a federated marketing cooperative which handles approximately 40 to 45 percent of the citrus production in the State of Texas. Exchange members include four cooperative packing associations owned by about 1,500 grower-members. In addition, the Texas Citrus Exchange owns and operates two citrus processing plants. The Exchange markets fresh oranges and grapefruit, bulk citrus concentrate, single-strength juice and cattle feed made from citrus peel.

The Tokyo Round of trade negotiations has been followed with keen interest by citrus growers in Texas. The Texas citrus industry is entering a period of increased production and the development of world markets is critical to our future success. The development of a progressive export program has been made difficult by trade impediments directed against the United States cirtrus industry by Japan and the European Economic Community, our two largest potential markets.

THE TOKYO ROUND: A GENERAL ASSESSMENT

Our interest in developing export trade caused us to carefully follow the efforts of Ambassador Strauss and our trade negotiators during the Tokyo Round. Regardless of the specific provisions which may emerge for the trade package, we are certain of one thing. The agricultural sector for the first time in a major trade negotiation has received the emphasis and priority it so richly deserves. It is only through day-to-day observations of the negotiating process that one can truly recognize the monumental task that faced our negotiators. In the area of agricultural trade barriers, Ambassador Strauss faced long-standing and deeply imbeded agricultural trade barriers. Two such barriers that we have been deeply affected by are the Japanese system of import quotas on fresh oranges and citrus juices and the EEC's system of preferential duties for fresh oranges, fresh lemons and citrus juices.

While we would like to report that success was achieved with respect to both of these barriers, this unfortunately is not the case. However, substantial gains were accomplished and the Texas citrus industry will be in a better competitive position upon adoption of this package than it was prior to the commencement of this Round.

It is on this basis that we endorse and support the trade package that has been presented to this Committee. We commend Ambassador Strauss and our trade negotiators for the arduous task they have performed so effectively and urge that the United States continue to work toward a free and fair system of world trade.

JAPAN

One of the most frustrating trade barriers subject to this negotiation was the Japanese quota on fresh oranges and citrus juices. This quota operated so as to effectively foreclose the tremendous Japanese market from U.S citrus producers. We understand that through periodic intervals the orange quota will be increased to approximately 80,000 metric tons by 1983. Substantial increases in the quota have also been achieved on a similar basis for grapefruit juice and orange juice. More importantly, it is also understood that the trade agreement with Japan includes provisions whereby the parties agree to commence further negotiations in late 1982 for the purpose of achieving further increases in the quota, with the ultimate objective being complete elimination of it.

While we would have preferred to completely eliminate the quota, our negotiators have definitely achieved a healthy precedent by the increases that have been obtained. The dollar impact on exports cannot be assessed until the precise provi-

sions of the actual trade package with Japan have been disclosed. However, we would conservatively project that the value of increased trade for the fresh orange and citrus juice concessions in Japan alone will be in excess of $40 million.

OTHER CONCESSIONS

While no official data exists with respect to specific trade concessions received for our products from other countries, initial indications are that the citrus industry received other benefits. Based on currently available information, we anticipate that import duties will be reduced for citrus and citrus products in 11 countries. While the trade impact will not be as dramatic as will be experienced in Japan, the aggregate effect of these reductions, if confirmed, will create definite advantages to the U.S. citrus industry. It has been said that the difference between a surplus and shortage is often times only 10 percent of the total crop. It is our expericence that this generality is more or less accurate, and in any given year trade concessions which at first glance appear insignificant can have an important effect in marketing an agricultural crop.

More fundamentally, the concessions reportedly achieved in 11 other countries substantiate to us that Ambassador Strauss has kept his word to not have American agriculture deserted during the Tokyo Round.

EEC

Our one major disappointment is the apparent failure to reduce or eliminate the discriminatory import duty preferences granted by the European Economic Community for fresh and processed citrus to 12 countries in the Mediterranean basin.

This system operates so as to grant tariff discounts to various nonmembers of the European Community, to the disadvantage of the United States and other exporters. The preferences violate the Most Favored Nation provision of the General Agreement on Tariffs and Trade and are in contravention of basic principles of free trade. The preferences have a pronounced effect on the Texas citrus industry since the discrimination is most severe during the winter months, the very period when Texas orange producers are in heaviest production. In fact, direct participation by Texas in the EEC fresh orange market is almost foreclosed by the extremely high margins of preference which occur during the October-April period. During this time the duty on Texas oranges is 20 percent, while the duty for the recipients of the preference is as low as 4 percent.

Similar preferences exist for citrus juicies, which also greatly impede the exportation of these products from Texas to the EEC.

The ability of our industry to continue its development is being seriously impeded by the effective foreclosure from a market of 256 million consumers.

Texas citrus growers hope that this Committee will urge our negotiators to continue their efforts to seek elimiation of this unlawful tariff scheme. Also, as will be discussed in further detail below, something must be done to improve Section 310 proceedings which have been initiated to correct abuses such as the European preference system.

THE PENDING SECTION 301 CASE ON EEC TARIFF PREFERENCES

On January 18, 1977, the Texas citrus industry joined with the California and Arizona citrus industries and filed a complaint pursuant to Section 301 of the 1974 Trade Act covering the EEC's system of preferential tariffs on fresh and processed citrus. The import restrictions have been described above and have had the desired effect of increasingly foreclosing U.S. citrus growers from the Common market. The system of tariff preferences violates one of the most basic provisions of GATT, the Most Favored Nation provision of Article I. This provision essentially provides that any contracting party shall receive the same advantages and privileges granted by any other contracting party to any product originating in any other country. Assessing the United States a 20 percent duty while assessing Algeria and Morocco a four percent duty for the same product at the same time cannot by any stretch of the imagination meet the requirements of this provision.

We understand that the Committee will review possible revision of Section 301 in connection with its review of the trade package. If our 301 case is a good example, and we think it is, Section 301 must be modified to insure that the pending cases are prosecuted and resolved within a reasonable time, probably not to exceed one year. We believe that if our negotiators cannot achieve elimination of the preference system within a reasonable time after adoption of the trade package, retaliation as contemplated by Section 301 must be initiated.

NONTARIFF CODES

In terms of long-range considerations, the most noteworthy accomplishment of this negotiation will probably be the initial development of nontariff codes to govern rules of the game in international trade. These codes, covering such matters as licensing, government procurement, standards, subsidies and countervailing duties will, if effectively enforced, have a dramatic influence in world trade.

For agriculture in general and the citrus industry in particular, the proposed code on subsidies is the most significant. Aside from the tariff preference system we have already noted, the EEC also implements subsidies which impede U.S. agricultural exports. We do not suggest the subsidies code will be a panacea and by itself eliminate this problem. However, the establishment of a generally accepted set of rules for subsidies is a step in the right direction.

SAFEGUARDS

We are disappointed that the proposed safeguards code was not ultimately endorsed pursuant to the negotiations. Notwithstanding this failure, we believe that implementing legislation for the multilateral trade negotiations should give the President authority to take emergency unilateral safeguard action in order to prevent possible serious injury to domestic producers of perishable crops. It is understood that the United States Department of Agriculture has drafted an outline of such legislation. Because of the short marketing life after harvest of perishable commodities, the impact and disruption caused by imports can have disastrous consequences.

Under current U.S. law, the President has no domestic authority to take such emergency unilateral safeguard action rapidly enough to prevent potentially serious injury to domestic producers of perishable crops. Article XIX of GATT permits rapid injury investigations and the establishment of provisional measures in "critical circumstances".

The type of legislation contemplated would give the President authority to temporarily restrict imports of perishable commodities if the International Trade Commission or other designated body determines that the particular commodity is being imported in such increased quantities and under such conditions as to threaten serious injury to domestic producers of like or directly competitive products. The legislation should provide for the monitoring of perishable commodities, daily or weekly tabulation of import statistics as necessary; and rapid injury investigations by the International Trade Commission or the designated body upon request by either the President or a member of the affected industry.

CONCLUSION

Texas citrus growers have followed these negotiations with great interest and concern. We believe the only rational frame of reference for judging the success of the negotiations is to compare tariff and nontariff barriers existing prior to the initiation of Ambassador Strauss' effort to what will emerge if the trade package is adopted. This being the test, we urge adoption of the trade package. We further want to congratulate Ambassador Strauss and his staff for the perserverance, insight and tenacity they have exhibited in this most difficult task.

We regret that there was no progress with the EEC in relation to the products we produce and process. Because of the importance of this market to citrus producers in the United States, and more importantly because of the very dangerous precedent this system of preferential tariffs establishes, we urge the Committee to encourage our negotiators to continue efforts to seek elimination of the preferences, either on a bilateral basis or whatever basis is appropriate.

We recommend serious consideration be given to modifying Section 301 in a fashion that will make this remedy more meaningful and the development of domestic safeguard legislation as previously described.

In the final analysis, Texas citrus growers believe the stage is now set for meaningful progress toward the elimination of artificial, unlawful and discriminatory trade practices in world commerce. The stage has been set through the effort of Ambassador Strauss and we want to take this opportunity to again convey our thanks and gratitude. The only alternative to acceptance of this trade package is to return to an unstructured and unpredictable stage of world trade. Adoption of this package does not guarantee the erradication of protectionism and selfish national interests, but it does provide a healthy starting point for a world trading system that will ultimately benefit every consumer and every country.

UNITED STATES CATHOLIC CONFERENCE,
DEPARTMENT OF SOCIAL DEVELOPMENT AND WORLD PEACE,
Washington, D.C., May 3, 1979.

Hon. CHARLES A. VANIK,
Chairman, Committee on Ways and Means, House Subcommittee on Trade, Washington, D.C.

DEAR MR. CHAIRMAN: I understand the House and Senate shortly will be submitting recommendations to the Administration on legislation to implement the Multilateral Trade Negotiations (MTN) package. The United States Catholic Conference (USCC) did not ask to testify before the Subcommittee on Trade because we assumed the hearings would be of a fairly specialized and technical nature. However, we do have some suggestions to offer on the codes relating to the interests of developing countries which we hope you can take into account.

The Tokyo Declaration in 1973 stressed that a major objective of the MTN would be to provide increased trade opportunities for developing countries. Many developing countries question whether this objective has been achieved and have threatened not to sign the agreement.

The USCC believes the United States in support of this objective should implement the codes to accord "differential and more favorable treatment" to developing countries as permitted by the agreed GATT "framework" language. Such preferential treatment is essential for most developing countries to enable them to compete in the markets of industrialized countries. It is also essential to go beyond the general language of the codes and define as precisely as possible in U.S. implementing legislation the nature and scope of such special treatment. Otherwise the codes may be used as legal cover to further restrict developing countries' imports as many of them fear. In our view concessions made by the United States to enlist the support of protectionist interest for the MTN already have imposed too heavy a price on developing countries. Further restraint will seriously impair their future development prospects.

We believe preferential treatment for developing counties is especially important in the case of the Subsidies and Countervailing Duties Code and the Government Procurement Code.

In the case of the Subsidies and Countervailing Duties Code we favor the application of the injury test to subsidized imports from all developing countries whether or not they are signatories. We believe such injury should be defined as demonstrably "material" as required by GATT Article VI. Subsidized imports from the least-developing countries, even where injury can be demonstrated, should be exempt from countervailing duties or else taxed at reduced rates. For imports from most other developing countries a reasonable period of time should be negotiated for the phasing out of subsidies before countervailing duties are applied except on cases of severe injury.

In the case of the Procurement Code we favor extending most favored nation treatment to the least-developed developing countries regardless of whether they sign the code. We also believe the United States should not require full reciprocity from most other developing countries and that the extent of such reciprocity should take fully into account the development, financial and other needs of each country.

Finally we support the extension of the Administration's tariff cutting authority under the Trade Expansion Act for another five years. In using this authority, the United States should give particular attention to the negotiation of bilateral tariff agreements covering products of special interest to developing countries which received less favorable tariff concessions from the Tokyo Round than industrialized countries.

Sincerely yours,

Rev. J. BRYAN HEHIR,
Associate Secretary.

STATEMENT OF JOSEPH CASEY, CHAIRMAN, IMPORT TASK FORCE, VALVE MANUFACTURERS ASSOCIATION

Mr. Chairman, my name is Joseph Casey and I am chairman of the Import Task Force for the Valve Manufacturers Association. The Valve Manufacturers Association includes seventy-two manufacturers who account for approximately eighty percent of the total United States industrial valve producing capacity. The domestic valve manufacturing industry has a total annual sales of approximately $1.7 billion. I am also President of Mark Controls Corporation, Evanston, Illinois, a major U.S. valve producer.

I am pleased to testify on behalf of the valve manufacturers on the Multilateral Trade Negotiations. In accordance with the Committee's press release, I shall direct my comments to two of the areas designated by the Committee for comment. Specifically, I shall comment on the overall advantage or disadvantage of the trade package and make additional comments on the need for adjustments to our domestic trade law.

First, it is difficult to discern with any accuracy the global gains derived from any efforts to liberalize trade. The task of determining advantages, or disadvantages, is not made any easier when one attempts to understand with precision who gains and who loses, as a result of trade liberalization, within a national economy. The reason for this difficulty is simple: the gains and losses that result from liberal trade are not evenly distributed within an economy.

For example, while consumers may, over the short run, gain from unrestrained trade, some domestic businesses will suffer reduced production and, indeed, may be forced to close. A business closing, of course, hurts workers and imposes welfare costs on local governments. In short, what appears as a gain has a significant cost attached to it.

As a practicial matter, the extent to which any gain can be quantified rests on the details of the tariff reduction formulas and the elimination of non-tariff barriers that will emerge in the final trade package. Without final figures on the reductions to be affixed to specific products, it is difficult to say with precision who gains or loses within the American economy.

Yet, something of a general nature can be said about the gains and losses that are likely to result from adoption of the Geneva trade package.

Those industries most apt to suffer from trade liberalization are those that are labor intensive or those that utilize simple, well-known technologies. Those of us in the valve manufacturing industry fear, because we bear these characteristics, that the trade agreement may result in harm to our industry and its workers.

For a particular American industry to benefit from the trade negotiations, the tariff barriers and restrictions in foreign countries would have to be reduced. Once this is accomplished domestic industries with sophisticated or advanced technology will reap the benefits of greater access to foreign markets since the products of these industries are the items in greatest demand abroad.

Since it is industries with new technologies that will gain through trade liberalization, the American workers that will suffer most from freer trade are semi-skilled workers. With these workers engaged in industrial activities located in the urban centers of the North and East, these geographic areas will suffer from trade liberalization. Insofar as semi-skilled workers occupy lower income positions in our economy, the lower income workers and their families will bear the major share of the adjustment that is sure to follow trade liberalization. It is these workers, incidently, who are always less mobile and harder to re-train for work in other parts of the economy.

In summation, while consumers may enjoy some short-term gains from trade liberalization there will be significant costs paid by certain industries, certain workers and certain sections of the country.

Those of us in the valve manufacturing industry are braced for the adjustments that are sure to result with the institution of the Geneva trade agreement. In the face of this, we seek careful review of the multilateral trade agreement by the Congress in the expectation that we can avoid having to shoulder an unnecessarily large proportion of the burden of adjustment.

The adoption of the Geneva trade package will require some important adjustments to existing American trade law. Of particular interest to those of us facing subsidized foreign competition, is the Subsidy Code contained in the Geneva trade package. Adoption of the Subsidy Code provisions will require changes in the current domestic countervailing duty law.

The implementing legislation that will accompany the trade package must be very clear as to the institution of a "material injury" test in either our present countervailing duty law or antidumping statute. Under current law, a domestic petitioner in a countervailing duty case does not have to establish an injury unless the merchandise in question is entering the United States duty free. The requirement to demonstrate injury, in the view of the valve manufacturers, should demand no more than is currently required in our antidumping law. It seems quite reasonable that relief from subsidization, which is a per se violation of free trade, should not rest on a difficult burden of proving injury.

Likewise, the implementing legislation should improve on the Treasury Department's current administration of the countervailing duty law. The implementing legislation should prohibit the Treasury Department's practice of reducing calculat-

ed subsidies. In addition, the legislation should place a prohibition on ex parte meetings between domestic government officials and representatives of foreign countries or firms involved in a countervailing duty dispute, unless a record is kept of such meetings and is available to petitioners. Information submitted by foreign parties to the Treasury Department should be available to the domestic industry involved in the case in order to give the domestic petitioners an opportunity to rebut the foreign parties' contentions. Currently, this information is not distributed to the domestic parties involved in a case. Legislation should require Treasury to verify all information, including that which is obtained from a foreign government, before it can be used in making a determination. The reasons for Treasury's determinations should be published in the Federal Register and Treasury should publish periodic reports on foreign subsidy practices in the Register.

The right to seek judicial review of Treasury determinations should be expanded beyond its present limits to include trade unions and trade associations. Currently only manufacturers, producers and wholesale can gain judicial review. Judicial review ought to be expanded to include direct appeal of the amount of duty imposed, and of a suspended investigation.

Lastly, in the important issue of price assurances, the valve manufacturers oppose the use of price assurances to suspend either a dumping or a countervailing duty investigation. Price assurances would require far too much monitoring by the Treasury Department in order to assure compliance. If price assurances were to be permissible, it would be the valve manufacturers' position that these assurances must completely eliminate the entire dumping margin or level of subsidization.

In conclusion, I wish to thank you for providing me an opportunity to testify on behalf of the Valve Manufacturers Association.

STATEMENT OF ABRAHAM TUNICK, WASHINGTON COUNSEL, WINE & SPIRITS WHOLESALERS OF AMERICA, INC.

This statement is submitted on behalf of Wine and Spirits Wholesalers of America (WSWA) the national trade association of wine and spirits distributors doing business in 40 States, the District of Columbia and Puerto Rico. WSWA's 800 members directly import most of the alcoholic beverages entering the United States.

Inasmuch as our members are distributors for all suppliers of alcoholic beverages—both imported and domestic—some of whom are sharply divided on the wine gallon/proof gallon controversy and since this is a matter primarily of concern to our suppliers, WSWA has determined to assume a completely neutral position on this issue.

However, we are advised that the Distilled Spirits Council of the United States (DISCUS) proposes to submit to your subcommittee five specific proposals for inclusion in a package of implementing legislation under the Trade Act of 1974, ostensibly to compensate the United States distilling industry for the proposed elimination of the method of assessing Federal Excise Taxes and Customs Duties on imported distilled spirits on a wine gallon basis when imported under proof and imposing the tax and duty on a proof gallon basis.

We would like to comment on those proposals in the order in which they are to be presented.

1. Extension of tax deferral period for distilled spirits plants

Although wholesalers are not directly affected, WSWA fully supports a liberalization in the time of payment of the Federal Excise Tax. Such an extension would result in tax payment at a time more nearly approximating the date of shipment from the wholesaler to the retailer.

2. All in-bond operation for distilled spirits plants and repeal of the rectification-tax

This change has been recommended by the Comptroller General of the U.S. and your subcommittee has tentatively agreed with these recommendations. We also understand that the Treasury Department concurs and intends to seek implementing legislation. WSWA is in complete accord.

3. Extension of all in-bond concept to wholesale level on optional basis

This is a matter of particular interest to wholesalers and WSWA fully supports it. The proposed change would not only conform the time for tax payment of domestically produced alcoholic beverage with imports but would also be consistent with the method of payment of State taxes on alcoholic beverages in most States.

All domestically produced alcoholic beverages must be purchased by the wholesaler on a tax paid basis and he bears the burden of financing the Federal Excise Tax

from the time the products are delivered to his warehouse until after he sells to and receives payment from the retailer—a period of 60 to 90 days.

We must assume that if the "all in-bond concept" for wholesalers is adopted, the implementing law and regulations will allow wholesalers who elect to go "all in-bond" free and unlimited access to his warehouse without "over the shoulder" government supervision and tax payment would be made on the basis of audit on a return system. We understand that this is in full accord with the Comptroller General's recommendation for the "all in-bond concept" for distilled spirits plants. We also assume that surety and structural requirements will be fair and reasonable.

4. Reform of the Federal Alcohol Administration Act

WSWA fully supports the recommendation to amend the FAA Act to eliminate criminal sanctions for trade practice violations.

It is particularly significant that a violation of the Federal Trade Commission Act which among other things is designed to regulate trade practice conduct and unfair methods of competition for the general business community subjects the violator to civil sanctions only. We know of no other industry subjected to criminal sanctions for trade practice violations similar to those specified in Section 5 of the FAA Act.

WSWA respectfully urges your favorable consideration of this matter.

5. Designation of bourbon as a distinctive American product

Our government recognizes Scotch, Irish, and Canadian Whiskey and Cognac to be distinctive products of Scotland, Ireland, Canada and the Cognac region of France.

As a matter of equity and fairness, there should be a reciprocal recognition by foreign governments that bourbon is a distinctive American product.

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