

MULTINATIONAL TRADE NEGOTIATIONS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON GENERAL OVERSIGHT AND
MINORITY ENTERPRISE
OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
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MULTINATIONAL TRADE NEGOTIATIONS

TUESDAY, MARCH 20, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND MINORITY ENTERPRISE OF THE
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2359, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN LaFALCE

Mr. LaFALCE. The Small Business Subcommittee on General Oversight and Minority Enterprise will come to order.

Over 4 years ago, the Trade Act of 1974 was enacted into law. This provided the President and his Ambassador, now Robert Strauss, with authority to proceed with the the multilateral trade negotiations that have been taking place since that time.

These negotiations were thought desirable since Congress felt "that barriers to international trade are reducing the growth of foreign markets for the U.S. products, with an adverse effect on the U.S. economy."

After 4 years of negotiations, President Carter advised Congress and the public this January that he intends to enter into a number of trade agreements relative to certain matters including subsidies and counterduties; technical barriers to trade; licensing; customs valuation; commercial counterfeiting; aircraft; and, the agreement which will be the focus of this morning's hearing—Government procurement.

During the past week, there have been statements in the national media, by small business and minority business groups, and by many of my colleagues, that this so-called procurement code will have a highly disastrous effect on the set-aside programs presently in effect for small businesses, for minority businesses, and for firms located in labor surplus areas; under the code, certain procurements will no longer be eligible for set-aside.

Equally as important, statements have been made that, apart from the set-aside programs, the procurement code will have a most deleterious impact on the number and dollar amount of contracts awarded in open competition to such firms.

Since they are under the procurement code, they will now be competing for such contracts with foreign firms which will have cheaper sources of labor, which are not subject to stringent Government regulatory programs—such as OSHA, and environmental controls—and which receive from their governments special treatment and/or subsidies.

Nevertheless, Ambassador Strauss maintains: One, that the impact on the set-aside programs will be relatively insignificant; and, two, that the export opportunities created by the agreement will more than compensate for any losses.

As this subcommittee has jurisdiction over these three set-aside programs, it is imperative that we ascertain to the extent possible, and in advance of the formal signing of the agreement, the likely effect the procurement code may have on these areas of our concern.

To this end, we have invited Ambassador Strauss, as well as representatives from small business, from minority business, and from the Northeast-Midwest coalition which is vitally interested in the labor surplus set-aside program.

I sincerely hope that through today's hearing the uncertainty surrounding the effect of the multinational trade agreement will be eliminated and that the true facts of the situation will be established.

The distinguished ranking minority member of this subcommittee, Representative Tim Lee Carter, will be joining us shortly.

At this time, without objection, I would like to introduce into the body of the record, the remarks that he has prepared.

I reserve the option for him delivering those remarks personally as soon as he arrives.

OPENING STATEMENT OF HON. TIM LEE CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

MR. CARTER. Mr. Chairman, I appreciate your calling these hearings because I feel that the future of many of our smaller businesses is in jeopardy. Frankly, I was shocked to learn of what has already been traded away at the expense of our small and disadvantaged business community.

It is my hope that our efforts are not too late to prevent the sacrifice of small business to the multinational business interests. Mr. Strauss—your own employees have described the negotiating process as being in the "fine tuning" stage. I also understand that the trade agreement is to be signed sometime around the first week in April in Geneva. I trust that you will address your apparent noncompliance with the law which states that you must consult with the various committees of the Congress having jurisdiction over matters involved in your negotiations. I would also appreciate your telling us whether the President has personal knowledge of what you propose to do to our minority enterprise program and our labor surplus area program.

The American people have never liked what I perceive as a "take it or leave it" attitude. And—they are not going to buy a pig in a poke that costs more than it's worth. I trust that we will be provided with some hard answers to our concerns regarding our minority and labor surplus area programs.

Thank you, Mr. Chairman.

MR. LAFALCE. Does any member of the subcommittee wish to make a very brief introductory comment before we hear Mr. Strauss?

We are honored today to have in attendance the chairman of the full Small Business Committee, Representative Neal Smith of Iowa. Mr. Smith?

**OPENING STATEMENT OF HON. NEAL SMITH, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF IOWA**

Mr. SMITH. I want to welcome Ambassador Strauss to the subcommittee today not only because you are a good drawing card, but also because you are a guy who talks our language and maybe we can understand what is going on.

We really do need some consultation in this subcommittee and what is going on in the trade conferences.

Ambassador STRAUSS. Thank you.

Mr. LAFALCE. Mr. Addabbo? Mr. Addabbo is the past chairman of this subcommittee.

**OPENING STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. ADDABBO. As the Ambassador knows, I have the greatest admiration for Ambassador Strauss and the efforts he has vigorously undertaken to better the functioning of our economy in the world marketplace.

It was, therefore, with great personal reluctance that I publicly disagreed with him last week concerning the effect of the Government procurement code provisions of the proposed trade agreement now being finalized.

Let there be no mistake—I have expressed my concern not because I am opposed to liberalized trade—since I am not—but, because I am strongly in favor of small and minority business enterprise and am willing to go to any length to preserve the progress we have long fought for in this area.

I sincerely hope that Ambassador Strauss will demonstrate to us today, in the clearest terms, that his efforts to liberalize trade are not only commensurate with but, indeed, in furtherance of, expressed national policy to foster small and minority business enterprise.

I do not want to be forced into the position of deciding between liberalized trade and full implementation of small and minority business programs. These two great goals should not be considered mutually exclusive.

But, if the proposed trade agreement casts the issue in that light—if it purports to limit the scope of 8(a) or set-asides or the subcontracting program mandated by Public Law 95-507, or the Buy American Act, I shall not hesitate to take whatever action is necessary to advocate small and minority business interests.

For members of the public who may not be fully aware of the congressional procedure mandated by the Trade Act of 1974, this hearing does not, in any way, start to toll the 45-day limitation this committee has to consider proposed legislation implementing the trade agreement.

That time period starts to run from the time the implementing bill is introduced in the House. Therefore, when the administration offers its implementing bill, this committee will have additional opportunity to review the exact text of the President's recommended statutory changes.

Thank you very much.

Mr. LAFALCE. Thank you very much, Mr. Addabbo.

I should have mentioned that in addition to being the past chairman of this subcommittee, that he is present chairman of the Defense Appropriations Subcommittee of the full Appropriations Committee.

We are also fortunate to have on the subcommittee the chairman of the task force of the Subcommittee on Minority Enterprise and the chairman of the Congressional Black Caucus, Parren Mitchell. I know he has words to say.

OPENING STATEMENT OF HON. PARREN J. MITCHELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. MITCHELL. I will be very brief.

Ambassador Strauss, you were kind enough to share with some of the members of the committee the information which purports to be a justification for the incursion into the set-aside programs for small minority businesses. I thank you for sharing those with me.

It is with regret that I advise you, and members of this committee, that if this scenario is allowed to stand, it represents a betrayal of small business.

More specifically, what the Ambassador is recommending represents a betrayal of minority business in light of what the President has done over the last year. The President, on three occasions, has recommitted himself to the cause of minority business. One of those occasions of recommitment was reiterated no later than a few weeks ago.

I do not think the President knew about this agreement, because I think it is a sellout. I think it is a betrayal of small business and minority businesses; and, indeed, a betrayal of the President, if this is allowed to stand.

I thank you, Mr. Chairman.

Mr. LAFALCE. Thank you, Mr. Mitchell.

We are honored today to also have in attendance members of the full committee who are not members of the subcommittee, but who were invited to attend. We have Mr. Baldus, Mr. Skelton, Mr. Marriott, and Mr. Erdahl. I wonder if any of the others have brief remarks they would like to make?

Mr. Skelton?

OPENING STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. SKELTON. I would like to welcome Ambassador Strauss. As he knows, I have long been an admirer of him and his ability.

As a preface, I am undertaking a survey in my own congressional district, Mr. Ambassador, of the small businesses which deal in exports. I will be particularly interested in your comments regarding the benefits for small business and minority enterprises in the area of exports.

I am quite distressed with the article that I found in the Washington Post on the 14th of March. According to your statement, which I have glanced at, that article is rather inaccurate. I hope you will address yourself to those inaccuracies. It gives concern to those of us who have small businesses, and particularly those who are involved in export businesses.

I thank you and I welcome you, Ambassador Strauss.

Mr. LaFALCE. Thank you, Mr. Skelton.

Ambassador Strauss, now that we have done our thing preliminarily, we would ask you to do your thing.

We welcome you today. You may proceed in any manner you see fit.

TESTIMONY OF ROBERT STRAUSS, SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS, ACCOMPANIED BY ROBERT T. GRIFFIN, SPECIAL ASSISTANT TO MR. STRAUSS; W. DOUGLAS NEWKIRK, DIRECTOR, TRADE NEGOTIATIONS AND AGREEMENTS DIVISION, DEPARTMENT OF COMMERCE; AND MORTON POMERANZ, SENIOR INDUSTRIAL ADVISER TO MR. STRAUSS

Ambassador STRAUSS. Thank you very much.

Before I read my prepared statement into the record, Mr. Chairman let me first thank you, Congressman Smith, for your remarks. I want you to know I appreciate them very much.

Congressman Addabbo, I think that had I been furnished the information that you were furnished, and if I believed that it was reliable and acted upon it as reliable information, then I would have associated myself with your remarks. I certainly understand your position in view of the information you received.

Congressman Mitchell, of course I am distressed and disturbed that you feel as you do. I hope we will be able to dispel your concerns. I know that in the light of the actual facts these concerns are unwarranted.

While I may be guilty of many things, I assure you betrayal is not one of the things that I have been guilty of in my life of 60 years, particularly in the area of minorities.

Not only did the President reaffirm several weeks ago his commitment to small and minority business, but I am here today to again reaffirm for the President, this administration, and for myself, that the Carter administration is delivering that commitment with respect to the small and minority businesses.

Mr. MITCHELL. I will be out of order by saying that I do not think, preliminarily, the agreement can deliver if your program goes through, but I will wait for your testimony.

Ambassador STRAUSS. Thank you.

Let me proceed with my prepared remarks.

Thank you, Chairman LaFalce and members of the subcommittee.

I am most appreciative, Mr. Chairman, to you and this subcommittee for affording me this opportunity to discuss with you the Tokyo round of the multilateral trade negotiations we are now completing in Geneva, particularly from the point of view of small business and minority enterprises.

As some of you may know, I have personally spent a good deal of my legal and business career counseling small and minority businesses, and participating in their success and failures. Since assuming my present position as Special Representative for Trade Negotiations, one of my negotiating objectives has been to secure greater access to foreign markets for small and medium, as well as larger, American concerns.

The MTN package that we will submit to the Congress this spring will contain many positive benefits for small business and minority enterprise, but in no area are the benefits greater than in Government procurement.

Consequently, I was disappointed and distressed this past week when inaccurate information on the impact of this proposed code created false concerns. Each of you has every reason to be concerned with the inaccurate information that surfaced, as I assure you that I would be had I been furnished such information—regretfully, information that bears no relationship to the circumstances we are dealing with here.

It is for this reason that I am particularly grateful to you, Chairman LaFalce, and members of the subcommittee, for the invitation to appear here today and to put this matter in proper perspective. The actual effect of this code is small when compared to the large benefit to be gained.

Let me take just a minute to review with you first the background and purpose of this code. The American system of open and competitive bidding on procurement contracts simply does not exist overseas. Until now, American firms have been largely shut out of foreign government procurement.

For a decade, the United States has been trying to negotiate a code to require fairness and openness in foreign procurement; today we are on the verge of that vital first step. If we can successfully complete it, this code will be a key achievement in the overall agreement. It will provide us with significant new export opportunities which will benefit a wide range of industry including the high technology industries in which we excel. It will substantially contribute to export opportunities for U.S. producers of all types and sizes.

I am especially pleased because this code will be of particular benefit to American small businesses. While many U.S. Government procurement contracts tend to be for very large quantities, foreign procurement contracts are smaller and more manageable by small businesses. The Department of Commerce estimates that small business accounts for not more than 10 percent of U.S. annual export, other estimates put it as low as 3 or 4 percent. But, whatever the percentage, many more small firms have the capability and capacity to export than are now involved.

As part of the implementation of this trade agreement, we intend to work toward greatly expanding the export assistance programs for small and minority businesses to assist them in capitalizing on the foreign markets opened up by this code. This assistance can include direct contacts on pending tenders, translation activities, and direct assistance in dealing with foreign purchasing entities and other such assistance. This administration is working with small and minority business representatives in creating a useful program along these lines. A White House task force, under Assistant to the President Stuart Eizenstat, is presently monitoring progress in reaching the President's goal of a \$1 billion minority set-aside under 8(a) during fiscal 1979.

I might also, to reassure this committee, point out that the task force will also evaluate with us the impact of the MTN procurement code and other codes on small and minority business to be certain it is

not negative before any final approval of the codes or the entire agreement is given.

Small firms have several advantages they should recognize. First, they can serve customers more personally. Secondly, in fluctuating market conditions, the smaller firm has a shorter response time and can adapt much faster. Third, smaller firms can more effectively adjust to the needs of smaller foreign procurement markets.

They also face several weaknesses and it is here that President Carter is determined to help shore them up.

With respect to coverage of domestic procurement, the proposed procurement code has a number of essential limiting factors which have not been adequately set out in the discussion to date:

First, only those countries which open their procurement to us will be able to receive the benefits of our changes on procurement. Many countries simply will not become signatories to this Government procurement code.

Second, only contracts above a threshold amount of about \$190,000 will be covered by the code, another exclusion.

Third, a number of important products are completely excluded from the code. Among these items are: All those goods necessary to our national security—which includes many goods of manufacturing potential to small and minority businesses; all Defense Department purchases of textiles, clothing, apparel, food, specialty metals, ships and ship components, and shoes; all construction and service contracts, where so much of minority and small business participation occurs; and all GSA handtool and stainless steel flatwear purchases. In addition, purchases by those entities not covered by the code are, of course, excluded.

Among the entities that we have proposed not be covered are the entire Departments of Transportation and Energy, the Army Corps of Engineers, TVA, Amtrak, ConRail, parts of NASA, and the U.S. Postal Service. All purchases by State and local authorities are also excluded, including those based on Federal grant moneys.

Now let us look at the dollar balances as we now estimate them. Please keep in mind that the figures I am using are the best data now available to our Government. Although we have better data on procurement in our country because our procurement has been more open than any other nation, the information, I must repeat, is still not as hard as we would like. You will recall that in the first representations I made to the Congress I pointed out that there could be areas of inaccuracy. We are continuing to try to develop hard data, but I wanted to get this first information to you now.

This code will require exact calculation of foreign procurement data for the first time, and we have already begun a Federal procurement data system to do such calculation domestically. The code has provisions to review this data annually to insure that each country is getting its fair share of the procurement market.

In 1978, the entire U.S. Government had procurement contracts amounting to almost \$79 billion. Of this amount, \$5.1 billion was set aside for small and minority businesses. Because of all the exclusions I have just outlined, we now estimate that the maximum set-aside amount placed into competition with foreigners is about 7 percent. When we get better data, which is now 1 month late, but we expect to

get it in the next week or two, this percentage might go up a point or two. Please bear in mind, however, that under normal competitive conditions only a small percentage of the overall amount would actually be lost.

At the same time, let me point out here, if I may, that the reason that the negotiations on this code remain open and have not been completed is that we have not had the hard data necessary to establish in specificity the benefits and disadvantages of this agreement. For that reason, the Government procurement negotiation has not been closed out. Also, I should mention that the only change being made for much of this exposure is that the "buy American" preference will no longer apply. Foreign firms will still have the added costs of transporting products to our markets, paying applicable customs duties, satisfying many of our other standards, and doing everything else necessary to compete with domestic firms: and in the area of Government procurement they really have not been too successful.

Any negotiation is a two-way street. For everything you obtain, there is something that you must give. Instead of apologizing, let me make it crystal clear before this committee that I take pride in the fact that for a modest risk, this Nation will have gained access to a foreign government procurement market conservatively estimated at a potential upward of \$20 billion. This is a market we have had little or no opportunity to reach before now.

Yet, at the same time, I can assure each of you that President Carter stands firm behind his commitment to greatly expand the Federal Government's minority set-aside program, to reach every single goal to which we have always been committed. I have discussed this area carefully with Administrator Weaver of the SBA who understands our negotiating objectives.

Mr. Weaver has assured me that he is committed to reaching the \$1 billion figure for minority set-asides this year. He agrees with me that the small amount of contracts opened by our procurement code to foreign bidding will not—and I repeat, will not—interfere with nor reduce the Federal Government's promised expansion of these programs. We have carefully negotiated our international commitments to be mindful of this administration's domestic commitments. Deputy Secretary of Defense Charles Duncan echoes that commitment in firm language.

Mr. Chairman, in my judgment, the negotiations on this code are a major plus for America. We must now concentrate our attention on developing the necessary increase in assistance to our small and minority business institutions through SBA, the Commerce Department, the Export-Import Bank, and the other agencies of our Government so that we can also increase the percentage of small and minority business exports dramatically. I believe that this code will mark a new era of small and minority business opportunity that will pay off many times over.

I will be pleased to answer any questions.

Thank you very much.

Mr. LAFALCE. Thank you very much, Ambassador Strauss.

We will now proceed with questioning. I believe because of the number of Congressmen here that we must abide rather strictly to the 5-minute rule.

Second, I will call on all the members of the subcommittee first. Subsequent to that, we will ask the members of the full committee who are in attendance today if they have questions.

Mr. GONZALEZ. Mr. Chairman, may I ask for a privilege inasmuch as we have a fellow Texan.

I was not able to get here on time because we also have various constituents from Texas up here for another purpose, but I think in all fairness I should say this. In all probability it will not be said. This is because of the fact that I am charged with knowledge.

Mr. Strauss' background in Texas has been very much associated with the cause of small business. He has been—essentially he is a Democrat. [Laughter.]

That says a lot. He does have a very distinguished record not only as a public servant, but in private business capacity. I feel that what he says here today is very sincere and very much present in his mind as he proceeds with his present duties.

So, it really is a pleasure to welcome Mr. Strauss. He is a well-known and distinguished Texan. I deeply appreciate the fact that you had the good sense to call this hearing and have him lead off for this morning.

Thank you very much for this privilege, Mr. Chairman.

Ambassador STRAUSS. Thank you.

Mr. LAFALCE. Thank you.

Having spelled out two rules that we will proceed by, I will now make an exception to it and call upon the chairman of the full committee, Representative Smith, to begin the questioning.

Mr. Smith?

Mr. SMITH. Mr. Ambassador, I have a statement and then a question. I will have to leave in a few minutes to chair another hearing.

I think you come in here under a sort of cloud because the fact of the matter is that this committee, in my opinion, justifiably feels that that we have not had the kind of cooperation that we need out of the administration with regard to small business.

When you say in your last paragraph: "We must now concentrate our attention on developing the necessary increase and assistance to our small and minority business institutions through SBA, the Commerce Department, the Export-Import Bank, and the other agencies of our Government so that we can also increase the percentage of small and minority business exports dramatically," that says a lot. I think you are right. That is what we have to do.

Even in the last few days people from the administration have been up on the Hill opposing a bill that we have reported from committee which is for that very purpose.

So, I sympathize with you. It is not your fault. You probably do not even know about it.

Ambassador STRAUSS. That is correct.

Mr. SMITH. We have not had the kind of cooperation that we need. I think that raises a suspicion on the part of the committee. Whenever we see anything that affects small business, we feel that way.

I know you have considerable influence in the administration. I am glad you are exposed to the small business problem right here and now.

Ambassador STRAUSS. Thank you.

Mr. SMITH. I hope you will carry through and see to it that the administration will alleviate some of these feelings that the committee

has so that maybe they will not go ahead with the harmful aspects of the trade negotiations and instead will help small business get the set-asides that they ought to have.

Ambassador STRAUSS. Thank you.

Congressman Smith, let me say this. I think it would be a great tragedy if we well-meaning individuals here let a red herring be drawn across this issue. We need to focus our attention more appropriately on other issues.

Congressman Mitchell knows this. He may think we made a mistake in these negotiations. I hope we can dispell that.

I believe he would blame any mistakes on ignorance, not cynicism, on my part. He knows that for a long time this is an area in which I have had a deep interest. As a matter of fact, on one occasion he and I worked together for 2 or 3 days in this area. I was concerned. He was desperately looking for help, as I recall, he was finding very little assistance around the country. We have to continue to build opportunities for our small and minority businesses, and Congressman Mitchell knows I believe in this.

What we need to be doing is developing the skills, and providing the tools, and putting the muscle behind programs to give the minority business and the small business the kind of lift it needs to become more competitive. That is what we ought to be concentrating on. We should not get sidetracked. This Nation's economy needs it, small business needs it, and minority business needs it.

Mr. SMITH. I hope you get that message through downtown.

Ambassador STRAUSS. I have no difficulty with that commitment. President Carter knows that. I would not be true to my boss if I did not say that. I know that he feels this way. If there has been any failure communicating with him on that, you will certainly have my support and assistance.

Mr. SMITH. Thank you.

Ambassador STRAUSS. Let me add one more thing. I believe Mr. Weaver of the SBA knows it. I have had the finest cooperation from him.

Mr. SMITH. I think the President and Mr. Weaver both know it, but I think there is an iron curtain or something that gets drawn. It is easy to do with the President because he is so busy on so many things. But we need some attention.

Ambassador STRAUSS. There is no question about it.

Mr. SMITH. Thank you.

Mr. LAFALCE. Thank you, Mr. Chairman.

Ambassador Strauss, I am curious as to precisely what section of law you proceeded under to negotiate this Government procurement code.

As I read the law, the Trade Act of 1974, it seems to me that the tenor of that act is such that individual products must be considered in the trade negotiations on a case-by-case basis.

Insofar as the negotiation effect of the procurement code is concerned, it does not appear to be the case. There appears to be absent in the Trade Act any provision which will enable any negotiations of this code which have occurred on a wholesale basis; that is, all goods purchased by an agency.

Mr. SMITH. It would appear that the negotiation of the procurement code is ultra vires, the act of 1974. The effect of such a determination,

it would seem to me, would render the rigorous congressional procedure inapplicable.

I would ask you to comment on this.

Ambassador STRAUSS. The particular section, as I recall, is section 102. All of our nontariff barrier codes cover the full range there. I would be glad to provide counsel to give you more specific answers. But that is the general authority under which we operate. There has never been a question about it.

Mr. LAFALCE. There is now a question of it. I would ask your counsel to give us written justification. I believe there is excellent argument to be made that you may well have acted *ultra vires*.

Ambassador STRAUSS. Maybe I will want to forget the whole thing after today. [Laughter.]

But at the moment I do not want to accept that.

We will furnish you a brief.

Mr. LAFALCE. Very well.

Without objection, that material will be inserted in the record at this point.

[Material to be supplied follows:]

The legislative history of the Trade Act of 1974 contains references to government procurement as a nontariff barrier to trade (see, for example, Hearings before the Committee on Ways and Means on H.R. 6767 at page 6767). The study of the Tariff Commission on nontariff barriers to trade (Trade Barriers, Report to the Senate Finance Committee, April, 1974) in Chapter IX, contains a detailed history of the recognition of government procurement as a nontariff barrier to trade.

Mr. LAFALCE. Mr. Strauss, you stated you had a consultation with the administration regarding this. I am curious if there was prior consultation regarding the Government procurement code with the Small Business Committee, with the White House, the Domestic Policy Council, and the Task Force on Minority Enterprise, with the Office of Procurement Policy and with the SBA.

By "prior consultation," I mean before this hit the media about 2 or so weeks ago.

Ambassador STRAUSS. Yes; there has been prior consultation. I would also like to point out that to the best of my knowledge, there has been prior consultation with all affected agencies. There might be an instance in which I'm mistaken, but generally there has been consultation.

In addition, I want to point out to you that one of the things that is so sad and happens to us so often is that a story comes out in the newspaper and bad information is furnished and people are justifiably concerned and these Representatives are worried that they are neglecting their constituencies. You have a responsibility; you should be concerned about such reports. But, before the cake has been baked, we are already starting to figure out how to fix the things that may cause it to fall.

For example, we are a few weeks away from reaching the stage of consultation with the Congress on the details of this agreement because we did not have as much hard information as we wanted. Keep in mind, we do not have an agreement yet. We do not have the completion of the Tokyo round. Keep in mind that we are just starting work on this area. I leave here today to testify before the Ways and Means Committee. We are just starting the legislative process on the Hill.

Mr. LAFALCE. When do you contemplate entering into an agreement? I have heard it may be as early as the first or second week in April.

Ambassador STRAUSS. It could be some time shortly after the first week of April. I hope, very frankly, that the data will be available. We expected it 6 weeks ago. It is not here yet. It is open and if it is delayed, we will have to delay.

Mr. LAFALCE. From whom have you sought that data?

Ambassador STRAUSS. We have a data resource bank. It is the Federal procurement data base, which is under OMB, I am told we will have the information within a week or so.

Mr. LAFALCE. When did you make a request of OFPP which runs that data base for that information that you are seeking?

Ambassador STRAUSS. Mr. Chairman, let me think. I do not know the answer to that. I do not know how long they have been working on it. I hope that you understand that this is a pretty substantial negotiation. I would not have handled that. I do not want to mislead you.

Mr. LAFALCE. Would any of your assistants have that information?

Ambassador STRAUSS. I'm informed that it was requested a couple of years ago.

Mr. LAFALCE. Were they advised of that a couple of years ago, of the proposed Government procurement code?

Ambassador STRAUSS. Yes.

Mr. LAFALCE. They were?

Ambassador STRAUSS. Yes.

Mr. LAFALCE. We will have the OFPP before us because, from what I understand, they were caught, or rather, surprised by the whole thing. They woke up to it a few weeks ago, at best.

They were also surprised that a request was made of them ostensibly 2 years ago. They have not been able to come up with it yet. They are now shooting to come up with it within a week or two.

I think their activity has only begun within the past few weeks.

Ambassador STRAUSS. Let me say this to you. They have been working on developing their system for a long period of time. I have no complaints about them. I am not quarreling with them. But, they have been developing their data system. Our people have advised me that they have been in touch with them on this as long as 2 years ago. I personally have not been in touch with anyone.

Let me assure you that I am not going to misrepresent anybody or anything up here. I have gone too far to overpromise.

Mr. LAFALCE. Mr. Strauss, you state that we are going to be benefiting by the Government procurement code because it is going to open a market of approximately \$20 billion or more which we are not now able to access.

You also state that you do not know how much of this will be available to small business and minority enterprise.

My first question is this.

How is this market going to be opened up? What type of restrictions presently exist in foreign countries that would be eliminated by the Government procurement code?

Ambassador STRAUSS. In most countries—

Mr. LAFALCE. Do they have set-asides and such things?

Ambassador STRAUSS. They do not.

Mr. LAFALCE. What would be eliminated?

Ambassador STRAUSS. We are negotiating right now, for example, with the Japanese on what is going to be eliminated and what is going to be included. You may have seen in the paper that it is a question of whether their whole communication system would be included or excluded. We claim that it should be included. They say it should be excluded. The truth of the matter is, Mr. Chairman, that there has been no openness and no transparency whatsoever in Government procurement in any country. It has been a market that has been closed. That is the reason that there is great reluctance in opening it up.

Mr. LAFALCE. What I am trying to get at is this. What laws exist insofar as Government procurement is concerned?

Ambassador STRAUSS. They do not accept bids, Mr. Chairman. It is that simple.

Mr. LAFALCE. Do they refuse bids by foreign companies by law?

Ambassador STRAUSS. That is right.

No; I am sorry, it is just by practice, not by law.

Now they are agreeing in writing that they will open up their bidding process and will assure U.S. firms of an equal opportunity to bid and there will be transparency and light thrown into the darkness. It will cover in excess of \$20 billion worth of goods.

Mr. LAFALCE. So there are no set-aside provisions?

Ambassador STRAUSS. We are given an opportunity to compete for \$20 billion worth of business. We have had no opportunity to compete for it before. It is that simple.

Mr. LAFALCE. There seems to be a discrepancy between the 7-percent figure that you use or the Department of Commerce is using, and the 3-percent figure that the Small Business Administration uses in determining the amount of exports which are accounted for by small business.

Ambassador STRAUSS. Commerce uses around 10 percent, and others have used 3 or 4 percent. I wanted to take the lowest possible number to be conservative because there are two different figures floating around. I am unable to testify with exactness about either one.

Mr. LAFALCE. Does Commerce use the 10-percent figure?

Ambassador STRAUSS. It is probably a definitional problem, as many of these things are.

Mr. LAFALCE. My 5 minutes have expired.

Mr. Addabbo?

Mr. ADDABBO. Thank you very much, Mr. Chairman.

I want to commend the Ambassador on his statement in trying to clarify some of the questions that have been raised.

You have made a profound statement insofar as principles are concerned, and your hopes and the administration's hopes, with respect to how minority and small business will be affected.

I saw fit to go public last week on this problem because, as the chairman just pointed out, we are under a tight time constraint. The agreement might be finalized in a very short time. Very few knew what was in the agreement until very recently.

Also, I was constrained to go public because under the law if there was an implementing bill, we would not have a chance to amend it. It would be an up or down vote.

My problem has been this. Sitting on this Small Business Committee and chairing the subcommittee for several years, I have heard too often the language that you have been giving us today.

We have heard this administration's and past administrations' promises in this area. But those promises never come to bear fruit.

We hear about an increase of \$1 billion. But as we look at the statistics, we find instead of 1978 increasing, 1978 goes below prior years. For 1979 we are waiting for statistics.

We need hope for small and minority businesses.

Suddenly there is a trade agreement which is going to take us one step backward and we are going to take away the rights and privileges which we have fought for in the past.

On that basis I felt that the American people, the public, especially those who could easily be adversely affected, should have knowledge as to what is going on.

You said my figures are wrong. We have spoken privately on this question.

I know, Ambassador Strauss, that this negotiation has gone on for some time. You are a good attorney. You have represented the people. In negotiating this procurement code, you have been negotiating away certain rights and privileges that we have fought for, for small businesses.

Can you tell me what your research tells you? What has been the average value of a small business set-aside; that is, the dollar value? Do you have those figures? Were those figures ever given to you?

Ambassador STRAUSS. The small and minority business set-aside, if I understand your question correctly, was approximately \$5 billion out of the total coverage of \$79 billion.

Mr. ADDABBO. That was a \$5 billion total. Did they give you a figure as to what the average size of an individual contract was?

Ambassador STRAUSS. We do not have that figure. We do not have that information. I cannot provide it to you.

Let me say this, however. I believe that this will be helpful and that it will answer some of your concerns and also those of Congressman Parren Mitchell. With respect to all of DOD's 8(a) procurements, only about 3 percent will be subject to any kind of outside competition because of the Government Procurement Code. Only about 3 percent of the 8(a)—

Mr. ADDABBO. You take the worst example. When you take DOD, you take the worst example. DOD has been the greatest offender of small business programs. Statistics in hearing after hearing, and year after year, have proved that DOD has done the least for small business.

We have tried to force them and we have tried to get a small business director for them. They give us delays and excuses. Do not give DOD as an example. They have done nothing. They have never done anything.

Ambassador STRAUSS. Mr. Congressman, let me say this.

It is my judgment that the Deputy Secretary, Charlie Duncan, over there, does this. This is one of the high priority items on his agenda.

Mr. ADDABBO. He has so testified before this committee. I am hoping eventually he will turn around. He has also given the same testimony before Defense appropriations.

Mr. MITCHELL. If the gentleman will yield, let me say this. I want to share with the gentleman later on an internal memo from DOD as to how they will attempt to subvert Public Law 95-507—it is already written how they intend to skirt around the law that was signed by the President last October.

Thank you for yielding.

Mr. LAFALCE. Your time has almost expired.

Mr. ADDABBO. Ambassador, I am saying that someone has not given you all the facts. I know if you had all the facts and all the statistics, proper statistics, you would have looked at this in a different light.

Let me give you one figure. In fiscal year 1978, there were \$183 million of Federal procurement for manufactured products awarded to minorities under the 8(a) program. It was \$183 million. That was for manufactured products under 8(a).

The average amount for each contract was approximately \$526,000.

Can you tell me how this new trade agreement will impact on that \$183 million?

[Pause.]

Mr. ADDABBO. You cannot, because you do not have the data.

Ambassador STRAUSS. I believe that part of our problem is that we are having this hearing before it is possible to obtain that information.

I want to assure you that long before we enter into any agreement and long before we start the implementing legislation, we will be absolutely certain that the adverse impact on small and minority business is so minimal compared to the gains, that the members of this committee will substantially be satisfied.

Mr. ADDABBO. For my information and that of the public and the members of the committee, let me ask this: We have the code that we have heard about.

How can this code be turned around as far as the foreign countries are concerned? Can it be turned around? Can it be abrogated? Or can it only be abrogated by the Congress, if implementing legislation is defeated?

Ambassador STRAUSS. In the first place, it could be left out of the implementing legislation. That would be one way of turning it around.

I want to assure you that I understand that I have the responsibility to satisfy the Congress before I put it in the implementing legislation.

Mr. ADDABBO. In other words, it is up to the Congress now. It would be difficult for you to go back to the negotiating table in Geneva to change it; right?

Ambassador STRAUSS. Yes; it would be. It would be difficult. I can say this, though. With our long range goals in mind, we are going to have a rather strict verification of the pluses and minuses that will come from this package. I hope when you come back here and balance the tradeoffs, you will see the results. I am no miracle worker and neither are you. Nevertheless, we do the best we can.

I think we will show you that we have negotiated an agreement that is so substantially in the best interest of this Nation that you will want it. Specifically, it will stand in the best interest of our small and minority businesses. You will want us to enter into it, not abrogate it.

Mr. ADDABBO. I believe you are right, but after you get all the facts, I assure you that you will make some amendments.

Mr. LAFALCE. Thank you.

I think one of the difficulties that Mr. Addabbo was wrestling with is this. If the provisions of the 1974 Trade Act are truly applicable, we have to vote it up or down. We cannot offer amendments.

It poses a serious difficulty for all of us who would like to endorse the overall multinational trade agreement which you have negotiated.

But we have serious difficulties with certain of the provisions.

It is also a heavy responsibility for certain sectors of the United States, small business and minority enterprises in high unemployment areas.

The difficulty with the consultation process is that it appears to be taking place at a time when the code is virtually locked in. Were we to bring out facts to show that the preliminary data is incorrect, and your preliminary judgments were incorrect, there might be little recourse for you and it might put us in a difficult position.

Let us hope, Mr. Ambassador, for the sake of the multilateral trade negotiations, that you are correct.

Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

Let me make two observations.

President Harry Truman was one of the greatest civil rights Presidents that we had. After he left office, we embarked upon a major piece of civil rights legislation. President Truman said that we had gone too far. He was a businessman; and, he thought it was invading his business territory.

When the chips were down, even the great civil rights President, Harry Truman, abandoned us.

Your record has been excellent, but I think what you are attempting to do here represents an abandonment of what we believe in.

Toward that end, I shall introduce a bill later today, which will not affect your trade agreement per se, but will attempt to protect us against any future incursions into minority and small business preferences.

It will simply mean, if my bill is passed, that sections 8 and 15 of the Small Business Act shall remain in full force and effect; and, shall continue to apply as if any such provision of law enacted after the date of this enactment of this section had not been enacted.

I will tell you what I am trying to do, frankly. I am trying to bulwark against another incursion, one such as the present effort against small and minority businesses.

You have extraordinary powers. You have been given extraordinary powers to negotiate this agreement.

Ambassador STRAUSS. Mr. Congressman, let me say this. I am aware of the fact that I have extraordinary powers under the 1974 Trade Act. I am trying to handle this very judiciously, and to do so in full consultation with the Congress. I fully appreciate what you are saying.

Mr. MITCHELL. Thank you.

I did not raise a question. I want to get to my questions now.

Ambassador STRAUSS. I am sorry.

Mr. MITCHELL. The gravamen of the argument that you are trying to advance is that \$20 billion is going to be opened up to small and minority business, i.e., it will manifest contractual opportunities in the foreign marketplace.

Ambassador STRAUSS. Yes.

Mr. MITCHELL. That sounds great on the surface, but the histories of AID and the history of OPIC and the history of Eximbank have been ones of excluding small and minority businesses. I see no likelihood of them changing at any time in the future.

Contrary to what you said, this provision of "opening up" the foreign market will do little or nothing to benefit small and minority businesses. It will benefit the multinational corporations. That is obvious. They have bases in these countries. They will hire in-country the people to do the contracts that they get.

Let me come to my specific questions, if I may. Then, if you want to reply after I have raised my questions, I will gratefully respond.

I told you that you have extraordinary powers. Under those extraordinary powers you were able to negotiate this trade agreement to this final point.

At any time before March 5, did you specifically consult with Mr. Eizenstat or anyone on his staff about this section of the multilateral trade agreement? Did you consult with Mr. Eizenstat?

Ambassador STRAUSS. Mr. Congressman, we have been in close consultation with all the affected agencies of Government during these trade negotiations, including Mr. Eizenstat's staff.

Mr. MITCHELL. I am talking about this specific section.

Ambassador STRAUSS. I do not know. I cannot answer that in the affirmative because I was not involved in those specific consultations. I was not personally present for these discussions. I cannot misrepresent that. That was not my role. One of the others in my office was involved in that interagency process. It was not me.

Mr. MITCHELL. Let me try this another way.

At any time before March 5, did you consult with any other representatives of any of the minority trade associations on this section of the act?

Ambassador STRAUSS. They are represented on our advisory groups.

Mr. MITCHELL. Who are they?

Ambassador STRAUSS. I can get you the names.

Mr. MITCHELL. I want to know. I cannot see any representative of the Minority Trade Association selling out to something like this.

Please give me the names.

Ambassador STRAUSS. Carl Gregory.

Mr. MITCHELL. He is an economist. He is not a representative of any Minority Trade Association.

I have one last question.

At any time before March 5, did you personally consult with any of the representatives of the trade associations of the small business groups, not minorities, but the white majority small business groups—as the question pertains to this section of the law?

Ambassador STRAUSS. I would not have done that, no.

Mr. MITCHELL. Then under your extraordinary powers, you delegated this to other people. I think they are guilty of complicity; and, what I think has occurred is enormous damage to the small minority business communities.

Mr. LAFALCE. If the gentleman will yield, let me say this.

Mr. Strauss, would you provide, for the record, a written statement advising us of the consultation that did take place by your representatives with the representative groups that Mr. Mitchell has made reference to and the dates on which the consultations took place?

It should be specific with regard to the Government procurement code. We would be interested in that.

Ambassador STRAUSS. Yes.

Mr. LAFALCE. Without objection, so ordered.

That material will be placed in the record at this point.

[The written statement referred to above was not provided to the subcommittee.]

Ambassador STRAUSS. Let me say this for now. We have had our interagency consultations with all agencies, including the OFPP, the White House staff, and others. Our advisory groups have representatives of labor, industry, and agriculture, which are all involved. We have had consultations on a weekly basis with the staffs of the House Ways and Means Committee and the Senate Finance Committee. All of our advisory groups meet with some regularity. I am acting under the 1974 Trade Act. I did not pass that act. You gentlemen did. I am trying my best to discharge my responsibilities under that.

Mr. MITCHELL. May I interrupt to clear up something?

I yielded to the Chairman. Do I have any time left?

Mr. LAFALCE. Go right ahead.

Mr. MITCHELL. Let me get my last question in.

Finally, lastly, and ultimately, let me ask you this.

Armed with the extraordinary powers that you have to put together this trade agreement, did you, at any time, prior to March 5, consult with the President of the United States on this section with which we are dealing, knowing of his commitment—one that he has repeatedly made—to minority business?

Ambassador STRAUSS. I did not.

Mr. MITCHELL. Thank you very much.

Ambassador STRAUSS. May I add further, Mr. Mitchell, this. It seems to me so important that we not get lost here. When we talk about the jobs that are not going to small and minority business out of the \$20 billion, the vast amount of that, as you and I both know, will go to multinationals and the large corporations. Of course it will. But, I must say that we are talking about a great Nation here. What we want to do is not lose anything for small and minority business while we get those additional contracts that provide jobs for minorities. They enable them to gain jobs and opportunities and end up in business for themselves. They result in subcontracts which can be beneficial to small and minority business. There is an amalgam montage of issues out there. No one single issue and no one single thing dominates.

I must try to make this very clear. The record must be absolutely clear. What we have done is what you would have wanted us to do. We have excluded and excluded and excluded from the coverage of the Government procurement code.

Mr. MITCHELL. But you have included and included and included the opportunities for the multinational corporations.

Mr. Strauss, those jobs will go to those people working for the multinational corporations overseas and the subcontracts will go to the multinationals who have bases in these countries already. You cannot tell me differently.

Ambassador STRAUSS. There I must disagree with you.

Mr. MITCHELL. I disagree with you.

Ambassador STRAUSS. Those contracts come back here. Those contracts take place in the large urban centers. A great many of them do. The reason that the large multinationals are going to benefit from these large Government procurement opportunities more than small

business is because they do more business. They are better equipped to do it. What we have to do is strengthen and improve the ability of small business in terms of the delivery that they can give.

Let me say this to you. With an infinitesimal risk, small and minority business stands to make substantial gains here. I would not be worthy of my salt if I did not fight for that because I am right and I know I am right.

Mr. MITCHELL. You are wrong and I know you are. [Laughter.]

Mr. LAFALCE. Thank you.

Mr. GONZALEZ?

Mr. GONZALEZ. Thank you, Mr. Chairman.

Mr. STRAUSS, I think the big concern has been stated here. Though I may not agree with the thrust of the criticism, I do think this is a concern.

First, whether it is 8(a), the set-aside, or what have you, there is no way that anything you do under the procedure thus far will keep any ability on the part of small business to compete with the multinationals. I do not see how that could be done.

But the biggest fear I have is this. If there is any possibility that small business could come in, how can we expect to compete with the sweatshops of Hong Kong and Taiwan and Japan? I think this is what we are doing here. I think that, for the first time, what we are doing is legitimizing the sweatshop in competition with the American labor standards.

Ambassador STRAUSS. Congressman, that is a perfectly solid and legitimate question. That is the reason that we excluded from this code all contracts under \$190,000. The reason we excluded textiles, shoes, and apparel and all of these other things is for that very reason. We excluded those because we did not want to have to compete in the very area that you are talking about. We will not have it.

It was a legitimate concern. I think we have satisfied that concern.

Mr. GONZALEZ. Does the agreement include the purchasing of services?

Ambassador STRAUSS. No, sir, construction and service contracts are outside of the agreement. This represents 90 percent of minority and small businesses involvement.

These points are very good. We need to get these on the record.

I did not come into town yesterday like a fool. I have had 60 years on this Earth and for about 40 of them have been negotiating and representing people. I did not sell out, nor have we ignored the concerns of any group in this country, large or small. They are both entitled to support, particularly the small business concerns. They are weak and they need the help. The President knows that and I know that. This agreement takes that into account. I will fight for it because I know it is right. I have that obligation. If I did do it, I would be wrong, and you ought to fire me.

Mr. GONZALEZ. I do not at all question your ability. You have been able to sell that carload of watermelons time and time again. [Laughter.]

There is no question about that.

What I am saying is this.

I am afraid, by the very nature of the reality of the world, regardless of any individual's ability, we are opening new facets and agreements

that will place American business, not only small but big, at a disadvantage with the sweatshop conditions and the submarginal labor situations that traditionally have existed.

In fact, many of the multinationals that will be coming in, by virtue of this agreement, are the ones which have set up the low labor costs operations for introduction into the United States.

Ambassador STRAUSS. Of course they have.

Mr. GONZALEZ. We have not done anything about that. What I see here is this.

For us on the border, we will continue to see the expansion of this on the Mexican side, for example, to the detriment of labor and industry in the United States. I do not know how in the world we can compete.

Ambassador STRAUSS. Let me give you very quickly the answers to that.

First, only those countries that sign will participate. Many do not want to sign and do not want to take the worst of it. I think they would under this. Only the ones that sign will get the benefit.

Second, we exclude all contracts that are \$190,000 or less.

Third, we exclude a great many products, including all national security purchases; all Defense Department purchases of textiles, clothing, apparel, food, specialty metals, ships, ship components, shoes; all construction contracts; all service contracts; all GSA handtool and stainless steel flatware purchases; purchases by entities not covered by the code are excluded.

The entire Department of Transportation is excluded. The Department of Energy, of NASA, the Army, the Corps of Engineers, of TVA, Amtrak, ConRail, the Postal Service, AID—all these are excluded. All State and local purchases; all purchases involved where Federal moneys are involved are excluded.

So, when you get through all those exclusions, we have taken into account all the concerns that you have mentioned and more. That was not brought out in the information that was furnished to the members of this committee.

Mr. GONZALEZ. That is the reason I am raising the question.

Ambassador STRAUSS. I am glad you raised it. It gives me a chance to satisfy that.

Mr. GONZALEZ. I am glad we had a chance to supply the record with this aspect of the negotiations.

You mentioned a \$190,000 level cutoff. Why was that figure arrived at? I understood the administration was seeking a lower level? Is that true?

Ambassador STRAUSS. Yes; we wanted a lower level, but it was negotiated.

Mr. GONZALEZ. Was there any particular reason, other than compromise?

Ambassador STRAUSS. We thought we could get our hands on more business over there and the kind of business from which we could profit. It was the export opportunity that we were after there.

The answer to this question is the necessity of increasing our export opportunities and not giving it up where we are weak. There are also import opportunities here. There was some criticism of my entering into the textile agreement or the discussions which we worked out with the textile industry. We took considerable criticism on that, but

remember that there are 3 million people involved in that industry. Most of them are women and minorities; that is, those who need protection the most. The whole thing is a delicate balance.

I do not blame Congressman Mitchell. He would not be a Congressman and he would not be worthy of his salt if he was not concerned and protective. I do not think you would want me to be any less—you would not want me not to fight for what I think is right and to try to make my point.

I have negotiated hard for this country. I will negotiate hard for this Congress to pass what I think is right. It does not mean it is totally right, right now, but we are going to be negotiating before we enter into it.

Mr. GONZALEZ. Thank you, Mr. Chairman.

Mr. tLAFALCE. Mr. Carter, the distinguished minority ranking member?

Mr. CARTER. Thank you.

Mr. SRAUSS, would you please describe the mechanism by which procurement of opportunities will be announced to American small business?

Ambassador STRAUSS. Give me that question again, please.

Mr. CARTER. Will you please describe the mechanism by which procurement opportunities will be announced to American small businesses?

Ambassador STRAUSS. It has to be by publication in the country of purchase.

Mr. CARTER. I see.

How much time will be provided to respond?

Ambassador STRAUSS. There has to be adequate time under the provisions of the procurement code. It will be covered in implementing legislation. That is a very good and practical question. We would develop the mechanisms to get our hands on that information and make it available to the proper sources here, just as we do with contracts in this country.

Mr. CARTER. But you do not give any time limit?

Ambassador STRAUSS. A minimum of 30 days. That is what I recall.

Mr. CARTER. I see.

On page 6 I notice something that disturbs me: "I should mention that the only change being made for much of this exposure is that the buy American preference will no longer apply."

How in the world can you explain that? This is America. We all want to buy American. Do you mean to tell me that you come before this committee to tell me you do not want us to buy American any more?

Ambassador STRAUSS. No, sir. What I am saying is that we have certain areas of business in this country that have a buy American preference. In most instances it runs between 6 and 12 percent. I guess 12 percent is more typical. Countries and industries have been coming over here and bidding on that business with a 6-percent or a 12-percent disadvantage and take the worst of it on the buy American preference. On the other hand, under their practices and sometimes laws, we have been forbidden to bid at all, not just bid against the 6 percent. We have opened up \$20 billion of potential business for us

by exposing less than half of that amount without the buy American situation.

This option to bid has always been available in this country, but it has never been available in other countries. That is the reason we have had great difficulty in negotiating this code, and that is the reason we are going to have difficulty in getting signatories to it.

Mr. CARTER. What is the largest market in the world today for products out of this country?

Ambassador STRAUSS. This country?

Mr. CARTER. Yes; this country. That is why I think we should buy American. We should concentrate on this country. We should help our businesses, both minority and labor. We can do this by buying American.

I cannot understand this movement abroad. It is anathema to me. I cannot understand it.

Of course, over the years we have seen that our multinational businesses have moved, not only to Taiwan, but to Korea and to Japan. We have General Motors, I believe, that is the second largest manufacturer in Germany today. Ford is one of the largest manufacturers in Great Britain.

Multinationals really have not helped American labor, as I see it. We have lost many jobs because of these moves abroad.

You spoke of shoes. This is a subject which is pretty well known throughout the east, particularly in Brockton, Mass., and other areas of our country.

What percentage of the shoes that the Americans wear today are made in America? What percentage of the shoes made in America today, or used in America today, are bought here?

Ambassador STRAUSS. I do not know that detail.

Mr. CARTER. Less than 50 percent, if I understand it correctly. Most of them are imported. I regret this.

Ambassador STRAUSS. Yes; a great many of our shoes are imported. There is no question about that. You would be interested to know that the shoe industry has been developing export capability.

Mr. CARTER. I still believe that we should concentrate on small business. Not only that, I believe we should buy American.

Thank you, Mr. Chairman.

Mr. LAFALCE. Thank you, Mr. Carter.

Mr. Marriott?

Mr. MARRIOTT. Thank you, Mr. Chairman.

Thank you, Mr. Ambassador.

I appreciate being here. I am not a member of the subcommittee, but I appreciate having the opportunity to ask you a few questions.

Frankly, I think you are doing a very good job. It is a tough assignment. I think you have hit the nail on the head—in negotiating you have to look beyond the 8(a) program and beyond set-asides and put everything in perspective. I think you are doing a pretty good job of that.

I am concerned, however, about a couple of things. The first thing, I guess, is this.

We, on this committee, would never have known what is going on regarding your negotiations had not somebody from the Ways and Means Committee told us. I think this is a bad situation.

Also, it looks to me, as we talked with some of your people earlier, that the negotiations were in the fine-tuning stage with no consultation at all with this committee.

I really wonder how you justify that type of activity.

Ambassador STRAUSS. That is a good question. Let me say this.

In the first place, I am charged in my work with the Congress to work through the Ways and Means Committee. Whoever on the Ways and Means Committee chose to tell you that you ought to get involved in this was exactly right. That is their responsibility. This represents a broad cross section of this Congress.

Unhappily, I do not think the information was structured very well, or as accurately as it could have been. The problem was not put into proper perspective. You are right that it is difficult to do that. It is difficult for me not to respond to Congressman Carter who I know is very concerned about this matter. I cannot tell him how this negotiation is going. The answer is that I am negotiating for America. He is from Kentucky.

Mr. CARTER. I am an American also.

Ambassador STRAUSS. But what I am trying to say is this—

Mr. CARTER. You did not say buy American. You said not to buy American.

Ambassador STRAUSS. But I am trying to say this. Out of this negotiation—

Mr. CARTER. You have it plainly in writing not to buy American.

Ambassador STRAUSS. I am trying to tell you this. That is the reason we excluded so much.

Mr. CARTER. We cannot exclude it. It is the greatest market in the world and we ought to concentrate on it.

Ambassador STRAUSS. But we also want to export. For example, we have the greatest tobacco producers in your State. Your State will benefit dramatically from these negotiations. We have to give something to get these benefits. It does not come free. It is a negotiation. Kentucky will benefit and the tobacco people will benefit.

Mr. CARTER. I thank you for that.

Mr. LAFALCE. Thank you, gentlemen.

Mr. MARRIOTT, you have the balance of your time.

Mr. MARRIOTT. Let me ask a couple more questions, Ambassador Strauss.

You indicated in your prepared testimony that the total U.S. procurement in 1978 was about \$79 billion.

Ambassador STRAUSS. Yes.

Mr. MARRIOTT. Of that amount, \$5.1 billion was set aside for small business.

Ambassador STRAUSS. This is correct.

Mr. MARRIOTT. I am assuming that at least 25 percent of that figure was under the 8(a) program for minorities, roughly; that is, about \$747 million?

Ambassador STRAUSS. As I recall, around \$700 million.

Mr. MARRIOTT. Right.

You also indicated that we had to give a little in order to get a shot at \$20 billion worth of something.

Ambassador STRAUSS. Yes.

Mr. MARRIOTT. My question is this.

As you see it, what would we give up? Of the \$5.1 billion in 1978, which was for small and minority businesses, how much of that do you anticipate might be lost? You indicated that you thought President Carter would take the 8(a) program from \$747 million to \$1 billion in 1979. It appears that we will be gaining something there.

So, how do you look at that?

Then tie that into another question. How does the whole thing, that is, the \$20 billion, affect our balance of trade situation? Can we tie in what small business and minority business is losing with Mr. Mitchell's concerns? What is the bottom line?

Furthermore, what is the big picture in terms of what we are gaining in terms of a balance of trade?

Ambassador STRAUSS. Let me respond,

In the first place, only around 7 percent or 8 percent, which I feel reasonably confident will prove to be accurate. That is that portion of the \$5 billion. Seven percent of the \$5 billion will be exposed and not lost. Seven percent or 8 percent of it is all that foreign countries can even bid on.

Let us assume that we keep 90 percent of it in this country, which we traditionally do, at a minimum. That is very conservative.

If you are talking about 7 percent—

Mr. MARRIOTT. \$400 million is exposed; is that right?

Ambassador STRAUSS. Yes, if you want to give or take \$100,000; that is right.

Mr. ADDABBO. If the gentleman will yield, let me say this.

After you get the facts, you may change some of your views. We are not talking about \$5 billion under Federal procurement. We are talking about \$20 billion. That is out of total Federal procurement of \$78 billion.

Ambassador Strauss. That is right.

Mr. ADDABBO. \$5 billion went under the set-aside program. That is the figure that you are using, which is proper. I do not know about the percentages.

However, small business received a total of \$19.2 billion of Federal procurement under the protection of the Buy American Act. You are not discussing that other \$14 billion.

How will the trade agreement affect that \$14 billion?

Ambassador STRAUSS. A great deal of that is excluded by the exclusions.

Mr. ADDABBO. But precisely how are you going to affect it?

Ambassador STRAUSS. I need to develop that for you. That is under the small and minority business set-aside.

Mr. ADDABBO. I am not talking now about minority or small business set-aside. I am talking about small business and minority business awards through open competition.

Ambassador STRAUSS. I believe I am right. I want my staff to correct me if I am wrong.

This area has always been open for competition. Domestic business is competitive.

Mr. ADDABBO. Small business competitive awards—

Ambassador STRAUSS. To domestic and international competition.

Mr. ADDABBO. Small business can bid on this because there are limitations and there is the protection of buy American.

Ambassador STRAUSS. I think we are saying the same thing. I need to lay it out in a little more orderly way. We want to be sure we are using the same definition.

Mr. LAFALCE. Let us try to conduct the hearings also with a little more order.

We will give 1 more minute to Mr. Marriott.

Mr. MARRIOTT. What you are saying is this.

The bottom line with all the baloney set aside, \$300 million to \$400 million may be in jeopardy in terms of the small business enterprise; right?

Ambassador STRAUSS. I do not want to hang on that exact number. That was my first information. I believe the figure will hold up reasonably well.

I am waiting for hard information.

Mr. MARRIOTT. Could you provide us with a specific statement in terms of the effect of small business and the bottom line numbers and maybe the overall effect of the balance of trade solutions that may come out of this?

Ambassador STRAUSS. Certainly.

Mr. LAFALCE. Without objection, that material will be inserted in the record at this point.

[Material requested not supplied.]

Ambassador STRAUSS. The last question is a gut question. We are not going to cure the trade problems of this Nation. Our deficit problems are deep seated. They run from our energy imports to our failure to develop the right kind of export thrust. In addition, we have not assisted either large or small business, and this is particularly unfortunate for small and minority businesses because they need it the most.

We have a tremendous export problem in this Nation. Let's face it. What we have done here, to state it very simply, is not to cure the problems, but what we will have done, if and when we finish these hard negotiations, is that we will have torn aside a great many barriers to fair trade. These are barriers of false standards that other countries have used, and barriers of lousy licensing and unfair and illegal licensing, where they said it needs three plugs and you put 2½ plugs, where they said it was 110 volts and now we need 105.

We will have come to grips with the problem of subsidized product coming to each of your markets. We will have come to grips with that. We will have come to grips with custom evaluation, an area of abuse which has affected this Nation greatly. We will have come to grips with counterfeiting and sending in false items that take advantage of the consumers.

We will have opened markets and increased markets for agricultural products. I mentioned tobacco earlier. This will dramatically improve our export opportunities in many areas.

Nevertheless, I have failed in at least one-third of what we went after. We will bring back a "B" and not an "A-plus" result. However it will be so much better for this Nation than where we were before. If we permit this debate at a time when we have strong consumer interests and terrible inflationary problems, a time when we have to be careful not to enter another Smoot-Hawley era, it would be terrible for this Nation. We cannot let that happen.

Somebody has to have the guts to stand up and fight for these things. I am going to do it. I am going to do it as long as I have this job. When we finish these negotiations and if I permit this debate to focus on the one-third of my failures, and on the one-third of what we did not accomplish and what we had hoped to do, it will go down the tube. But if we focus on the two-thirds of what we did accomplish, then the Congress will vote favorably on this and the Nation will be better for it.

Mr. MARRIOTT. The Grand Old Party, or what is left of us, is also behind you.

Ambassador STRAUSS. Yes, I know that. I did not sell out. I just tilted it a bit. [Laughter.]

Mr. MARRIOTT. Thank you, Mr. Chairman.

Mr. LAFALCE. Mr. Strauss, I want to read into the record at this point section 102(c) of the Trade Act, which specifies that prior to entering into an agreement "there should be consultation, not only with the Committee on Ways and Means of the House, and the Committee on Finance, but with each committee of the House and the Senate which has jurisdiction over legislation involving subject matters which would be affected by such trade agreements."

Mr. Strauss, you have mentioned the export market opportunities as being \$20-plus billion. Does that include or exclude the developing countries? Are the developing countries subject to the provisions of the Government procurement code?

Ambassador STRAUSS. Those that do not sign do not get the benefits. Signatories get benefits and suffer the obligations.

Mr. LAFALCE. Are you suggesting, however, that the developing countries would not be signatories?

Ambassador STRAUSS. Those that are not signatories are still faced with our buy American penalties of 6 and 12 percent. Only those that sign will participate.

Mr. LAFALCE. Are there any countries which would sign the total agreement, but who might not sign the Government procurement code?

Ambassador STRAUSS. As a matter of fact, the way it is done is this: There will be eight codes, let us say. Some countries will sign one but will not sign another. Some will sign all. We will sign them all, at least we presently contemplate that we will.

Mr. LAFALCE. Because there will be different signatories to different aspects of the MTN, do you intend to seek a single implementing bill to effectuate all of the codes, or might you submit separate bills on each code?

Ambassador STRAUSS. We are in markup right now. It will be one bill.

Mr. LAFALCE. Is there not a provision of the law saying that if you will submit one bill that you will have prior consultation with each of the House and Senate committees with responsible jurisdiction?

Ambassador STRAUSS. That is correct.

Mr. LAFALCE. Has there been that type of consultation as to whether there should be one implementing bill or separate codes with the committees with appropriate jurisdiction?

Ambassador STRAUSS. There has been great consultation on how to present it. I do not know if it has been with every single committee. I would doubt it has.

Mr. LAFALCE. It seems to me that the law requires that that is the type of consultation that should exist regarding the method being submitted to the Congress. It would be my judgment that the Government procurement code, as a political matter, might well be sent up separate from the rest.

It seems to me, Mr. Strauss, as a pragmatist and politician, that we are jeopardizing the whole for a small part. If the small part is de minimis as you say, then I wonder. For example, you say there would only be 7 percent in the \$5 billion.

Ambassador STRAUSS. May I interrupt to say this?

I said give or take a point or two. I do not want to misrepresent.

Mr. LAFALCE. Your testimony also said you thought you were being conservative using the 7 percent figure.

Ambassador STRAUSS. That is correct. But I could be wrong. I do not have the hard information. I want to be absolutely certain I do not misrepresent.

Mr. LAFALCE. The point I want to make is this.

We have a tough road ahead of it. The buy American provision in and of itself, which probably is absolutely essential to the MTN, is going to encounter tremendous opposition.

Then when you also add what well could have been natural allies to those opponents, like individuals concerned about the set-aside, then it makes your overall task that much more difficult.

My question then is this. How essential to the success of MTN is the Government procurement code? The Government procurement code is not essential to the MTN.

Ambassador STRAUSS. The Government procurement code is not essential—

Mr. LAFALCE. Is or is not?

Ambassador STRAUSS. It is essential to America.

Mr. LAFALCE. It is not essential to MTN?

Ambassador STRAUSS. It is a basic point of our overall trade package.

Mr. LAFALCE. Let me put it like this. Would the other countries have any problem in signing the other provisions of MTN if the United States backed off on what you had negotiated insofar as the Government procurement code is concerned?

Ambassador STRAUSS. I would think this. I do not know the answer to that. But I would say that the Government procurement code that we have negotiated represents the largest and most important marketing opportunity for American ingenuity, creativeness, and business skill that has come out of these negotiations, or any negotiations in many, many years. I want to repeat—I am not here to apologize for it. I am here to take pride in it. I want to defend it.

Mr. LAFALCE. I understand that.

Earlier I asked you to provide the subcommittee with a written statement in answer to some of the questions that Mr. Mitchell raised regarding prior consultation.

In addition to that, I wonder if we can also ask you for the input that was given by the industry sector advisory committee specifically on the Government procurement code.

I would like to know whether they have agreed with the code.

I want specific instances where consultation with regard to the Government procurement code was had with OFPP, Mr. Eizenstat's office, and the task force that he chairs, and SBA.

Ambassador STRAUSS. Certainly.

Mr. LAFALCE. Without objection, that material will be inserted in the record at this point.

[Material requested not supplied.]

Mr. LAFALCE. I had Administrator Weaver before the subcommittee a week ago today. His knowledge was de minimis regarding this. That is being rather generous.

I had OMBE in my office yesterday, and as of yesterday, their knowledge of this was de minimis. That is being generous.

Therefore, I anxiously await your written statement regarding consultations that your staff assistants had with their assistants.

Ambassador STRAUSS. I cannot let this hearing close without saying this to you. Both your statements and your tone of them indicated some interest in implying that I was being less than candid and forthcoming. I would not misrepresent before you, Mr. Chairman. I have been around this country a long time. Let this record clearly reflect that what I said here I believe to be true.

Let me further say to you that I was also careful to say what I did not do. I want to help as much as I can on this matter. I understand your concerns. I thank you for having this hearing. I am not trying to be misleading by what I did not do. I did not talk with Vernon Weaver about this until last week or this week. I do not remember. Our people have been in touch with them.

Mr. LAFALCE. I must clarify I know without a shadow of a doubt that you are presenting the absolute truth insofar as you have it in your position.

You also stated that you were not charged with responsibility directly for having the consultations, but it was your staff representatives.

Ambassador STRAUSS. I am ultimately charged with the responsibility. It is in my bailiwick.

Mr. LAFALCE. What we want, Mr. Strauss, is to simply know when your staff representatives consulted with their staff representatives, which is information that none of us have right now.

Ambassador STRAUSS. I am sure whatever Mr. Weaver told you was accurate. He would never misrepresent anything to you, nor would I. I can assure you of that.

Mr. LAFALCE. We are just trying to get the facts. We want to thank you.

Mr. Carter?

Mr. CARTER. Mr. Strauss, we had quite a trade deficit last year, as I recall.

Ambassador STRAUSS. Yes; about \$30 billion.

Mr. CARTER. How much of that was to the OPEC nations?

Ambassador STRAUSS. I do not have that figure at hand. Strangely, it is less than one would have thought. I was surprised when I saw it.

Mr. CARTER. What was the reason why our deficit was no greater than it was?

Ambassador STRAUSS. It was no greater than it was——

Mr. CARTER. What was the largest volume of exports in terms of dollars?

Ambassador STRAUSS. Our largest export area in terms of dollars would be agriculture.

Mr. CARTER. Yes, over \$25 billion, or perhaps \$30 billion, that is true.

But in spite of this, with Japan we had quite a trade deficit.

Ambassador STRAUSS. Yes.

Mr. CARTER. Do you remember the figure?

Ambassador STRAUSS. About \$12 billion.

Mr. CARTER. \$1½ billion, as I recall. There might be some differences.

Do you think what you have done now would diminish this trade deficit with Japan?

Ambassador STRAUSS. If we do what we ought to do, we will have set the stage for reversing this trade deficit. We have written about the first two or three chapters of a long book; however, people such as yourself and myself and others are going to have to stay at this job. It is not going to happen overnight. It is not going to be easy. We have ourselves in a mess with the trade deficit. We have to fight our way out of it I can assure you, Bob Strauss did not cure it with what he has done. But I have given us a chance.

Mr. CARTER. With West Germany we had quite a trade deficit also. I do not recall the amount; is that not true?

Ambassador STRAUSS. Yes. We have positive balances with most nations, but West Germany and Japan are the two where we had substantial deficits. That is outside of OPEC.

Mr. CARTER. I believe that is because we did not buy American. I believe that is because we did not buy American, and, largely, because they subsidized many of their products.

Ambassador STRAUSS. We have a subsidy code in the trade package which will help us. The American buying public, Mr. Congressman, will go to this. I have shown you statistic after statistic. The public is in favor of protection until they go shopping. Then they look at Japanese cars and television sets and they look at textiles from somewhere else. The American public does not buy American. There is no question about that.

Mr. CARTER. In many cases they do not, as evidenced by the deficits in these two countries.

Ambassador STRAUSS. That is correct.

Mr. CARTER. But we know that both these countries subsidize their products; is that not correct?

Ambassador STRAUSS. It depends. We are going to have a subsidy code in this package. One of the great gains we have is that we are going to have this subsidy code.

Let me give you an example of what I am talking about. Let us take citrus or tobacco, to use an agricultural product that we have talked about already. One of the things we are going to do in the subsidy code is this. We are going to see that our product, which is manufactured in America and shipped into country "X", does not have to compete with a subsidized competitive product from country "Y."

Let us say an orange, or a pound of tobacco, comes from a country into the EC, and we find out it has outside subsidies. We are not going to cure it. The world will still have plenty of sin in it when we get through, but for the first time we are going to have a code to deal with such abuses. We will have some laws to deal with it.

Mr. CARTER. Could you give me an estimate of what a Chevrolet car would sell for in Japan; that is, what the price of it is?

Ambassador STRAUSS. For about twice what they would sell a comparable car here in this country.

Mr. CARTER. About twice?

Ambassador STRAUSS. Yes.

Mr. CARTER. That is quite inequitable. In your trade and negotiations have you done anything about this?

Ambassador STRAUSS. We have done a good deal about it. But the truth of the matter is that these codes and this agreement does not mean that we have solved our problems with some of our trading partners, like Japan. It means that we have put ourselves in position to to come to grips with them.

When we finish the MTN, and I hope we will successfully do this by summer, than we can turn ourselves right then and there to implementing these codes and working toward solving these other problems. It does not mean that we will walk away and keep working on the trade deficit. It means we will start getting after it with Japan. It puts some rules and laws there.

It is hard for you to understand, I think. I could not believe that for generations this country has been doing business around the world without a set of updated rules to guide that trade. Other countries have put up formidable barriers and we are finally coming to grips with them.

Under the Government procurement code, to respond to Chairman LaFalce's question of whether or not the other nations would be willing to sign everything else if we pulled out Government procurement, then they will pay us, or tip us, for taking us off the table. The Government procurement code is what we have insisted upon. No one else has insisted on that.

The reason I have said I am not sure how many signatories there will be is that I know I will get the EC to sign, and Japan. But other than that, I have no signatories. Nobody wants any part of the Government procurement code except the United States of America, the gainer. The others are losers because they lose on the foreign competition. The United States gains from Government procurement.

Mr. CARTER. I certainly hope, Mr. Ambassador, that when this comes to a conclusion that we will have a more equitable method of trading with West Germany and with Japan.

We have been at a distinct disadvantage over a period of many, many years.

Ambassador STRAUSS. I hope that this is what Congress will focus on; that is, whether the United States will gain enough to make it worthwhile. I could not agree with you more.

Mr. CARTER. Thank you.

Mr. LAFALCE. Mr. Addabbo?

Mr. ADDABBO. Thank you very much, Mr. Chairman.

Mr. Ambassador, my only point is this: If we go ahead with even a small loss to our small business community and our minority business community, what happens is that the gainers gain more and the losers continue to lose.

We have the highest unemployment in our minority communities. If we cut into these contracts further, you are going to hurt these people further. There is a report by the Budget Committee that points this out clearly.

In your statement, on page 3, you talk about the Department of Commerce. I am afraid Commerce had more to do with this trade agreement than the Small Business Administration. You talk about more being done for the small business person.

We had hearings several years back, many hearings, on the problems of the small business being involved in export trade. Commerce

promised everything, and the administration promised to carry through. Still that figure has not increased. You say:

As part of the implementation of this trade agreement, we intend to work toward greatly expanding the export assistance programs for small and minority businesses to assist them in capitalizing on the foreign markets opened up by this Code.

Is there implementing legislation for that part, or will we have to enact new legislation?

Ambassador STRAUSS. I hope that in the implementing legislation you will find something in there to satisfy that. I share the concern that you express. I share the concern that Congressman Mitchell expressed. I think we have satisfied these concerns. That is the reason for all these exclusions. That is the result we have worked for in our negotiations.

I do not know, nor do I desire to defend, the history of small and minority business and its treatment, either by our social, or by our economic, or by our Government institutions because I cannot defend that history. The case is not a good one.

But I want to say this to you. President Carter has made a firm commitment to achieve \$1 billion in minority set-asides in 1979. I assert to you today that that commitment will be kept. I assert to you today that to the extent that there is anything detrimental to small and minority business in that set-aside program, it will be made up elsewhere. I assert this to you unequivocally because you are entitled to that assertion.

I assure you, we will have a program for aid to small and minority business.

Mr. ADDABBO. We have heard those words before and we have heard about the billion dollars and we have not seen anything implemented to achieve that goal.

You talked about statistics. Foreign governments have been able to bid on certain Federal procurements. Do you know about how much has gone to foreign firms in the last year or the last 2 years?

Ambassador STRAUSS. The GAO reports 3 percent.

Mr. ADDABBO. Do you have a breakdown?

Ambassador STRAUSS. We looked closely at this, but we still do not have enough detail. Yet, we did see that dictating machines and hand tools and some plastic things and generating equipment—

Mr. ADDABBO. Equipment that had been wiped out of the U.S. market; right?

Ambassador STRAUSS. That is the reason it is excluded. Practically everytime you come to one of these sensitive items, we have already put an exclusion on it. I believe that we have done a pretty good job here. If it is not "A-plus work," I think you will find it is "B-plus."

Mr. ADDABBO. I have not looked at the entire thing, but I would imagine the other 99 percent of the covered contracts you have—but again, in those segments which can least afford it, you deleted them?

Ambassador STRAUSS. No, I am talking about this segment. I hope that the statistical information we get will be able to demonstrate the benefits better. In addition, if we have failed to plug up a hole, then this information will enable us to plug it up. We are both on the same side on this.

Mr. ADDABBO. I agree.

Ambassador STRAUSS. I am not against you.

Mr. ADDABBO. I think you went ahead with this because you could not be in all places at all times. You had to assign priorities. Those who gave you certain information when the code was negotiated did not have all the figures and did not give you all the figures.

On that basis, it may look good on paper, but in actuality, it is not.

Ambassador STRAUSS. It is not the fault of my staff. It is my fault if there is any fault. I would like to see you go back home and try to explain to your constituents that your staff made some blunder and that you did not. Those voters would tell you what you could do. [Laughter.]

Mr. ADDABBO. That is why you are here and not your staff.

Ambassador STRAUSS. Yes, I understand.

Mr. LAFALCE. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

I will try to talk quietly because I often have a feeling that when voices are raised it is done defensively.

Mr. LAFALCE. If the gentleman will yield, let me say this. I had an esteemed Jesuit professor who once told the entire class that "when your arguments are sound, speak softly, and when your arguments are very weak, yell." [Laughter.]

Mr. MITCHELL. I intend to speak softly, Mr. Chairman. [Laughter.]

Ambassador STRAUSS. I hope you do not make me yell. [Laughter.]

Mr. MITCHELL. I hope you will not yell, Mr. Strauss.

For 5 years in this Congress, I have worked to get a minority enterprise act passed. It was incorporated into omnibus small business legislation last year. It was signed into law by the President of the United States on October 24 at 3:15 in the afternoon. It was praised by the President. It is now Public Law 95-507.

Did you, or your staff, review the provisions of Public Law 95-507 as you put together this trade agreement?

Ambassador STRAUSS. I did not.

Mr. MITCHELL. Did any of your staff?

Ambassador STRAUSS. I feel sure that they did, but I am unable to say that with absolute certainty. I will attempt to find that out.

Mr. MITCHELL. I hope you do find that out. I must assume that they did not because what you are proposing guts Public Law 95-507.

So I would hope that the staff would not have reviewed it because it would mean that they might have been accomplices in this affair. I would not want them to be that.

If they did not do it, it portrays an abysmal ignorance and lack of concern about small and minority business.

Mr. Strauss, you said you were going to fight hard for this. I will fight hard against you. You will probably win. You will probably win because every time that minorities have been exposed, in terms of a greater good for the rest of the country, it has been minorities who have been shafted.

You will fight, and I will fight you, and you will win. More than likely you will win.

But I would suggest to you that in your winning, what you will have done is to perpetuate the exclusion of minorities from participation in this economic system.

I will not ask you any more questions. I do not intend to ask another question, Mr. Chairman. History is before us. The last 5 years of what has developed with reference to us is before us.

So, go ahead and fight. Let me fight and let me congratulate you preliminarily on winning, and let me commiserate with you for what you are doing to minority businesses today.

Ambassador STRAUSS. Before this legislation comes before you for a vote, I hope we can demonstrate that this is in the best interest of the minorities of this Nation. If it is not, in our judgment, and in the judgment of many others, then it will not be presented to the Congress. I can assure you of that.

Mr. MITCHELL. Thank you.

I have no further questions.

Mr. LAFALCE. Mr. Gonzalez?

Mr. GONZALEZ. Thank you, Mr. Chairman.

I have two followthrough questions on some of the things that Mr. Carter raised.

First, as to the mechanics on the bidding process, let me ask you this: How well does the small businessman know about the existence of these bids?

Ambassador STRAUSS. Under the code a bid has to be published in the nation of origin a minimum of 30 days before that time. We will track the same system.

Mr. GONZALEZ. Will it be in English?

Ambassador STRAUSS. Yes. Translation will be afforded. We will have a program to translate it and to get that into the stream and furnish it in the same way that contract bids are furnished in this country.

So, we will try to dovetail that where we would eventually end up in English in this country.

Mr. GONZALEZ. There will be notification so that there will be some chance for the average small businessman to be aware of the bidding; is that right? Of course, you say it will be in the English language.

Ambassador STRAUSS. It will be published, of course, but it will not be published in every language in the world. We have to put in place a retrieval system that will retrieve it and publish it in this country.

Mr. GONZALEZ. I see.

The other question I have is this. This is a feeling I have that all of this would be moot because of the emergence of the EMS, that is, the European Monetary System—and its companion organization, the European Monetary Fund, which, as you know, has been the creation of West German leadership.

Do you view that—I just wish that you were on that side of the table also as well as in the trade negotiations because I think that with the emergence of EMS, no matter what we do here, I think it will be undone by our losing with respect to EMS.

Do you share that feeling? Or, do you think like some of our administration spokesmen from the Treasury that it is great and imposes no danger to the United States?

Ambassador STRAUSS. I do not think it is great by any stretch of the imagination. I think there is a stabilization of that. I have read a good deal of both views of this matter. It depends on what you read last.

There is the stabilization of European currencies in the EMS that is probably going to be good for the world. While I am increasingly convinced that we are going to gain nothing out of it, the EMS really should not affect our competitive position. I hope I am right in that conclusion. Of course, I have not followed this as carefully as those in

the Treasury Department or the Federal Reserve System have, but I hope it will be less debilitating than you think, if it is debilitating to us at all.

Mr. GONZALEZ. Of course, I am very much concerned. I am mostly concerned about the absence of concern on the part of Congress. Congress seems to be almost oblivious to what is happening here. The leadership also.

The Secretary of the Treasury has been ambivalent. The Under Secretary of the Treasury for Monetary Affairs says that it even can be a great thing.

I do not see how, because it is obvious that the challenge is to the dollar position. If we do not have sound currency, then how can we win out on trade negotiations?

Ambassador STRAUSS. With respect to the EMS, I must not make the mistake of trying to be an expert on something that I do not know anything about. I will not comment on what is not in my area of responsibility and I do not know much about this. Yet, of course we have to have a stable dollar. There was supposed to be great trading benefits that were going to come to us when the dollar got weaker, but I have not seen any yet. The experts told me that, and the book said it, but the benefits have never arrived. Maybe they will come in the next boat.

Mr. GONZALES. I was hoping that for some good reason you would have been brought in at the discussion tables with the Treasury while this was going on as sort of an interagency type of thing.

I am convinced that they are tied in together. I do not see how we can separate them. Maybe this is not the time to bring it up, but it seems to me that it will impinge on whatever hard work you have done.

If it is crowned with success, it will end up being cancelled out by the other things with regard to the international situation.

Ambassador STRAUSS. I cannot respond to that. I have heard those concerns. I will convey those concerns. I understand what you are saying very well.

Mr. GONZALEZ. Thank you very much.

Thank you, Mr. Chairman.

Mr. LAFALCE. I have a few more questions.

Insofar as the export opportunities are concerned are the foreign markets, at least insofar as the Government procurement systems are concerned, now closed to U.S. headquartered multinational companies?

I am talking about in addition to the companies operating exclusively within the United States.

Ambassador STRAUSS. In some countries, I know they are. I am informed that it varies from country to country.

Mr. LAFALCE. Do most countries open up their government procurement system?

Ambassador STRAUSS. I am informed that most countries do not.

Mr. LAFALCE. Some countries, like Great Britain—

Ambassador STRAUSS. You cannot get foreign business bidding against domestic companies in most countries. In this country you have always been able to do that.

Mr. LAFALCE. I am wondering if this procurement code might not tremendously encourage our multinational companies and corporations to establish foreign subsidiaries abroad and then supply commodities to the United States.

Ambassador STRAUSS. They do not have to do that. I would think the contrary would be the case.

Mr. LAFALCE. What do you think?

Ambassador STRAUSS. This is a question which is subjective in nature. It does not have anything to do with the domestic trade practices. It concerns the rights of other countries. I do not think such a transfer of production will occur but I could be wrong. There may be judgements that are far better than mine on this matter.

Mr. LAFALCE. I think we will have to bring this to a conclusion, Mr. Strauss. I am sure you are happy about that.

Ambassador STRAUSS. No, I am happy to have been here. This discussion was desperately needed and I hope I have shed a little light.

Mr. LAFALCE. You have.

There are certainly a number of outstanding questions left open. This is primarily because of the lack of available data. The primary purpose of this hearing was to ascertain the facts.

Therefore, as soon as that data has been assembled and accumulated, we would very much like to receive it as expeditiously as possible.

So far as I am concerned, I have attempted to take a balanced point of view. I have not come out and said that I vehemently oppose this Government procurement code. I said I hope you are right.

Insofar as your assessment of its impact is concerned, I am especially concerned about the minority enterprise in the section 8(a) program.

So much of what we are doing is for social purposes insofar as the developing countries are concerned. It would seem to me that with so many exceptions, perhaps if your negotiators were aware of Public Law 95-507, that the section 8(a) program may, of itself could have been excluded also.

I would hold that out as a potential future consideration in addition to some of the other set-asides.

I would also state that it would be very helpful for me and for other members of the committee who would like to be cooperative, but find it difficult because of the responsibilities with which we are specifically charged, if you or the Department of Commerce or SBA, or OMBE—I guess it would be the primary responsibility of the Department of Commerce—could spell out with great specificity, with tremendous specificity, the manner in which you had hoped to have the small business community, particularly the minority small business community, access that export market.

I do not mean the type of generalities that we have heard so often in the past from administrations, present and past.

I mean a specific plan of action that the small business and minority business community would be able to take advantage of.

With that specificity, I would think that you would have a much better chance. Without it, those of us who are very concerned about the set-aside provisions, and the entire access of the small business and minority business community to Government procurement, would have difficulty in doing what we would like to.

Ambassador STRAUSS. I think the Congress, and particularly those that you represent, are entitled to that. We will provide that for you, Mr. Chairman.

Mr. LAFALCE. Mr. Addabbo?

Mr. ADDABBO. For the record, when you supply this information, the trade agreement, or the implementing legislation and how they

will affect laws about the small business set-aside program and the Buy American and the 8(a) program and the various other programs under small and minority business. I would ask you to review for the record what you feel the purposes of those acts are and how the trade act would affect the purposes under its various provisions.

Ambassador STRAUSS. Yes, we will do that.

Mr. LAFALCE. Thank you.

Without objection, that material will be inserted in the record at this point.

[Material requested not supplied:]

Mr. ADDABBO. I do hope you will have an observer here for the rest of the hearing this morning to listen to the small business people who may or may not be adversely affected.

Ambassador STRAUSS. Yes; I will fulfill that.

Mr. ADDABBO. Thank you very much.

Thank you, Mr. Chairman.

Mr. LAFALCE. Mr. Strauss, we thank you very much for your testimony.

Ambassador STRAUSS. I thank you for your courtesy. There was a great deal of inaccurate information getting out. I was concerned about it. I thank you for inviting me. This has been an opportunity for me to try to put this in a little better perspective. I am grateful to you and I assure you that we will continue to work to supply the information you have requested and hopefully to satisfy the concerns that you have. We will do so promptly.

Mr. LAFALCE. Thank you very much.

We will now hear from Representatives from the Northeast-Midwest Coalition, Congressman Robert W. Edgar, chairman.

We will also ask Congressman Corrada to step forward, if he is present.

Let us take a short recess at this time.

[Recess taken.]

Mr. ADDABBO [acting chairman]. The committee will come to order.

We will now hear from the chairman of the Northeast-Midwest Coalition, whose constituents would be adversely affected by any cutback of small business programs, our colleague, Congressman Bob Edgar.

Bob?

TESTIMONY OF HON. ROBERT W. EDGAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA AND CHAIRMAN, NORTHEAST-MIDWEST CONGRESSIONAL COALITION; ACCOMPANIED BY LARRY ZABAR, EXECUTIVE DIRECTOR; AND ROBERT NIEHAUS, STAFF ECONOMIST, NORTHEAST-MIDWEST INSTITUTE

Mr. EDGAR. Thank you, Mr. Chairman.

Before I begin to testify this morning, I would like to introduce the two people on my right and left. To my right is Bob Niehaus, who is the staff economist for the Northeast-Midwest Institute. To my left is Larry Zabar, the new Executive Director of the Northeast-Midwest Congressional Coalition.

I would like to read my statement. I think it is brief enough. It deals with the issues that you have just gone through, but it adds a few new items which I hope you will consider.

Mr. Chairman, it is a pleasure to be here this morning to discuss some serious concerns raised by the Multilateral Trade Negotiations—MTN—now being concluded in Geneva and shortly to be considered by the Congress.

As chairman of the Northeast-Midwest Congressional Coalition, I am deeply concerned about the impacts the MTN will have on the economy of the Northeast and Midwest—and particularly on the labor surplus area set-aside program.

Mr. MITCHELL. May I interrupt?

I hope this will be in order.

I hope these witnesses will be shown the same courtesy that was shown to our Ambassador when he was here. I would suggest to you that the committee, that is, the hearing is not in order because this member cannot hear the witness.

I wonder if we could get order.

Mr. ADDABBO. Well taken.

The committee will be in order.

We will ask that the rear door be closed.

Please continue.

Mr. EDGAR. The concept of targeting Federal procurement contracts to firms located in areas of high unemployment grew from an Executive order issued in 1952, known as Defense Manpower Policy No. 4—DMP-4.

The order gave Federal procurement officers the authority to restrict bidding on Federal contracts to firms located in areas of labor surplus. Only in the last 3 years, however, has a concerted effort been made to put the targeted procurement policy to greater use.

President Carter assigned high priority to the "labor surplus area" procurement preference program as part of his urban policy initiative announced in March 1978.

The domestic agencies are establishing ambitious, laudable goals for increasing their use of this program. The President's initiative would expand the volume of procurement spending going to labor surplus areas from its present level of \$228 million per year to more than \$1.2 billion annually. This would be an increase of more than fivefold.

It appears, however, that the procurement code of the proposed multilateral trade agreements would eliminate part of the current volume of spending set aside under this program for areas of economic distress.

More importantly, it would appear that the agreement would make it much more difficult or impossible to meet the goals for expansion of the program.

In short, the proposed procurement code would put one of the President's key initiatives for dealing with distressed cities in serious jeopardy.

In a time of exceedingly tight budgetary restrictions, the targeting of Government purchases to distressed areas provides one of the most cost-effective forms of economic development assistance available to policymakers.

This is not simply a program designed to redistribute income around the Nation. When inflationary pressures are pushing the prices of goods and services ever higher, concentration of Government spending in economically slack regions and sections of the economy helps moderate price increases, and thereby makes everyone better off.

I have asked the Northeast-Midwest Institute to estimate as precisely as possible the quantitative impact of the proposed procurement code on the labor surplus area set-aside program. While the Institute's results are still tentative and highly fragmentary, they suggest that the impact will be substantial.

It is my understanding that the MTN agreements exempt all contracts worth less than \$190,000. The administration's statement that most individual contracts would be under this threshold appears to be true; in fact, 60 percent to 90 percent of all contracts for each agency surveyed are under this threshold amount.

The problem, however, is that most of the total dollar value of contracting is in contracts worth more than \$190,000. In order to achieve a fivefold expansion in the labor surplus area program, procurement agents will need to make substantial use of contracts worth more than \$190,000.

The data which I have provided for you this morning represents a fragmentary breakdown of contracting values within several agencies. It is important to note the data on table 3 provided by HEW, which indicates a shift in contracting between fiscal year 1977 and fiscal year 1978.

I would ask that this be inserted in the record at this point.

Mr. ADDABO. Without objection, that will be placed in the record at this point.

[Table referred to above follows:]

TABLE 3.—HEW (PUBLIC HEALTH SERVICE FILES)

	Fiscal year 1977		Fiscal year 1978	
	Number of contracts	Value (millions)	Number of contracts	Value (millions)
Value per contract:				
0 to \$2,500.....	2,937	\$1.9	2,850	\$1.9
\$2,501 to \$25,000.....	4,051	44.3	3,490	38.5
\$25,001 to \$50,000.....	1,358	48.4	1,291	46.3
\$50,001 to \$100,000.....	1,527	112.4	1,491	108.7
\$100,001 to \$500,000.....	1,761	360.9	1,765	367.4
\$500,001 to \$1,000,000.....	180	122.7	190	135.6
\$1,000,001 and over.....	81	222.4	97	268.4

Mr. EDGAR. There is a distinct shift from the number of contracts of lesser values to contracts of higher values. This shift can be explained in large measure through the simple economic effects of inflation. Increasing prices are predictable with each succeeding year.

The MTN code is designed to set up a structure for trading over the next decade or more. All this considered, the constant MTN threshold of \$190,000 will serve to constrict significantly all preference programs over the next decade.

Furthermore, this expansion will need to come from civilian agencies such as HUD, HEW, and GSA because of restraining legislation, such as the Maybank amendment, which prohibits the Defense Department from paying price differentials on contracts for the purpose of alleviating economic distress.

One of the major exclusions under the MTN procurement codes is defense purchases, the one area in which the labor surplus area preference program is almost totally inactive. This leaves agencies which engage in major labor surplus area contracting subject to the code.

According to the Special Trade Representative, the limitation of preference programs under MTN will eliminate an estimated \$300 million now targeted under all preference programs. However, this estimate is based only on the past performance of preference programs.

The use of this data can be misleading because it represents the historical failure of agencies to implement the preference programs. The President's directive to increase the use of these labor surplus set-asides implies that the future dollars lost to preference programs will far exceed the administration's estimates of \$300 million.

The Northeast-Midwest Congressional Coalition has just released a major report prepared by the Northeast-Midwest Institute, citing some of the serious difficulties facing the administration's efforts to implement the President's goals for an expanded labor surplus area set-aside program.

We believe that accomplishment of the President's objectives would be difficult enough without any change in the legal basis of the set-aside program. With the proposed MTN changes, reaching these goals may be impossible.

The administration has indicated that there are a number of exclusions to the procurement code. However, these exclusions are not likely to leave enough room for the labor surplus area set-aside to operate meaningfully.

The size limitation of Government contracts may leave room for small business contracts under the \$190,000 threshold, but holds little potential for larger businesses which provide needed employment in decaying local economies.

It is my understanding that most of the product-category exclusions operate only for the Department of Defense and parts of GSA so that these exclusions would not substantially help the administration meet its goals for expanding the program.

The Northeast-Midwest region has a large stake in all aspects of the MTN agreements, and especially in the procurement code. The industries in our region tend to be older, and too many of our workers fall into the "last-hired, first-fired" category that marks the unskilled and semiskilled portions of the work force.

In fact, a recent study of the MTN agreements of the Congressional Budget Office concludes that:

Most of the net job losses resulting from trade liberalization will take place in the urban areas of the North and East, particularly in Illinois, Massachusetts, Michigan, New York, Ohio, and Pennsylvania.

Relative to their populations, the four New England States of Maine, New Hampshire, Vermont, and Massachusetts will suffer the largest displacement of workers. Newly created jobs would be concentrated in the Southern, Midwestern, and Western areas of the United States.

These industrialized urban areas already are disadvantaged by the trend of economic events. To add to this trend by undermining one of President Carter's major urban initiatives would be a double blow.

Thank you for letting me testify before the subcommittee. We did provide tables which indicate, I think fairly significantly the kind of points that we were making, particularly table 1.

Mr. ADDABBO. Thank you very much.
Without objection, they will be inserted in the record at this point.
[Tables follow:]

TABLE 1

	HEW fiscal year 1977 (main computer file)	HUD fiscal year 1978
1. Number of contracts under \$180,000.....	4,978	291
2. Percentage of total contracts.....	90	66
3. Dollar value of contracts under \$180,000.....	\$160,882,868	\$11,907,355
4. Number of contracts above \$180,000.....	567	149
5. Percentage of total contracts.....	10	34
6. Dollar value of contracts above \$180,000.....	\$336,356,547	\$107,501,057

These figures are the best available data and are not complete. They are considered to be an accurate sample.

TABLE 2.—NASA FISCAL YEAR 1978

Value per contract	Number of contracts	Value of contracts
0 to \$990,000.....	5,567	\$113,000,000
\$1,000,000 to \$4,999,000.....	910	185,085,000
\$5,000,000 to \$9,999,000.....	177	122,844,000
\$10,000,000 to \$49,999,000.....	207	442,497,000
\$50,000,000 and above.....	71	1,976,558,000

Mr. ADDABBO. Let me say, as a member of the Coalition, amen to your statement. Those representing Ambassador Strauss will, I hope, carry this message.

Mr. Mitchell?

Mr. MITCHELL. I have one quick question.

Quite apart from the employment picture, what would be your estimate as to the percentage of small businesses in those geographic areas for which you have concern?

What would be a percentage of those who are engaged in the export-import business?

Mr. EDGAR. We do not have any figures. We would be glad to do some work on that. I know that David Birch from MIT had an opportunity to speak at length last week with me and has done a major study of the small business enterprise.

As a component of his study, I believe he has done some work on the kind of businesses and where they get their particular business, including trade.

I will be glad to explore that question and get some answers.

Mr. MITCHELL. Thank you.

Mr. ADDABBO. Without objection, that material will be placed in the record at this point.

[Information requested above follows:]

NORTHEAST-MIDWEST CONGRESSIONAL COALITION,
U.S. HOUSE OF REPRESENTATIVES,
April 6, 1976.

HON. JOHN J. LAFALCE,
Chairman, Subcommittee on General Oversight and Minority Enterprise,
Committee on Small Business, Washington, D.C.

DEAR JOHN: I have attached for your use the revised transcript of my testimony before the subcommittee on March 20, 1979. Please note that the tables of data have been modified slightly to make them easier to understand.

During the course of my testimony, our colleague Parren J. Mitchell inquired about the likely distribution among different sizes of firms of export gains resulting from the Multilateral Trade Negotiations (MTN). Mr. Mitchell specifically asked about the fraction of exports from New England which are produced by small businesses.

It appears that regional data on exports by size of firm is not available. Communications with the U.S. Department of Commerce, the U.S. Small Business Administration, and the Smaller Business Association of New England, Inc., failed to uncover any regional information of this type.

However, for the United States as a whole, it appears that about 25,000 firms currently engage in export trade of some kind. Approximately 20,000 of these firms might be classified as "small" by the definition of the U.S. Small Business Administration. Although this is a large number, and about 80 percent of the total number of exporting firms, the dollar value of exports from these businesses is quite small. As a reasonable approximation, at most 10 percent of the value of U.S. exports come directly from the 80 percent of exporting firms which can be classified as small. While this fraction may vary from region to region, it is unlikely that a large portion of current exports from any region come from small businesses.

If the export gains for trade liberalization under the MTN follow this historical pattern, I must conclude that most of the increase in foreign sales from these agreements will go to large firms, not small ones.

I regret that my response cannot be more complete. I am hopeful that detailed information will be available in the future to allow study of this issue. In this context, I understand that the First National Bank of Boston is planning to survey small businesses in New England about their export activities. I will be happy to pass along to you any further information I receive about this.

I hope this is useful to you. I appreciate the opportunity to appear before you.

Cordially,

ROBERT W. EDGAR,
Chairman.

Enclosure.

TABLE 1.—NUMBER AND VALUE OF PROCUREMENT CONTRACTS BY SIZE CATEGORY, HEW AND HUD

Category	HEW (fiscal year 1977)		HUD (fiscal year 1978)	
	Number and value	Percent of total	Number and value	Percent of total
Under \$180,000:				
Number of contracts.....	4,978	90	291	66
Value of contracts (millions).....	\$161	32	\$12	10
Over \$180,000:				
Number of contracts.....	567	10	149	34
Value of contracts (millions).....	\$336	68	\$108	90
Total surveyed:¹				
Number of contracts.....	5,545	100	440	100
Value of contracts (millions).....	\$497	100	\$120	100

¹ These data are incomplete. They include only about 25 percent of HEW procurement. For HUD, the fraction of data omitted is not known. More complete statistics are not available.

Sources: U.S. Department of Health, Education, and Welfare and U.S. Department of Housing and Urban Development.

TABLE 2.—NUMBER AND VALUE OF PROCUREMENT CONTRACTS BY SIZE CATEGORY, NASA, FISCAL YEAR 1978

Value per contract	Number of contracts	Percent of total	Value of contracts (millions)	Percent of total
0 to \$999,000.....	5,567	80	\$113	4
\$1,000,000 to \$4,999,000.....	910	13	185	
\$5,000,000 to \$9,999,000.....	177	3	123	4
\$10,000,000 to \$49,999,000.....	207	3	442	16
\$50,000,000 and above.....	71	1	1,977	70
Total surveyed¹.....	6,932	100	2,840	100

¹ Data may be incomplete.

Source: National Aeronautics and Space Administration, Government Procurement Office.

TABLE 3.—NUMBER AND VALUE OF PROCUREMENT CONTRACTS BY SIZE CATEGORY, HEW, PUBLIC HEALTH SERVICE

Value per contract	Fiscal year 1977				Fiscal year 1978			
	Number of contracts	Percent of total	Value (millions)	Percent of total	Number of contracts	Percent of total	Value (millions)	Percent of total
0 to \$2,500.....	2,937	24	\$1.9	5	2,850	25	\$1.9	4
\$2,501 to \$25,000.....	4,051	34	44.3	6	3,490	31	38.5	5
\$25,001 to \$50,000.....	1,358	11	48.4	12	1,291	12	46.3	11
\$50,001 to \$100,000.....	1,527	13	112.4	40	1,491	13	108.7	38
\$100,001 to \$500,000.....	1,761	15	360.9	13	1,765	16	367.4	14
\$500,001 to \$1,000,000.....	180	2	122.7	24	190	2	135.6	28
Over \$1,000,000.....	81	1	222.4		97	1	268.4	
0 to \$100,000.....	9,873	83	207.0	23	9,122	82	195.4	80
0 to \$500,000.....	2,022	17	706.0	77	2,052	18	771.4	
Total surveyed ¹	11,895	100	913.0	100	11,174	100	966.8	100

¹ Data may be incomplete.

Source: Office of Contracts and Procurement, Department of Health, Education, and Welfare, Public Health Service.

Mr. MITCHELL. I would appreciate it, because my data, which may be faulty, shows that in the New England States, and in the areas that we discussed, less than 3 percent of small businesses are engaged in export-import; and, this \$20 billion that Ambassador Strauss talks about, is not going to go to them. It will go to the multinationals.

Mr. EDGAR. I appreciate your question. I think the staff at the Northeast-Midwest Institute can do some research and get back to you in a relatively short period of time on the percentages that we discover and the regions of the country that are involved in the trade issue.

Mr. MITCHELL. Thank you very much.

Mr. ADDABBO. Thank you very much.

Our next witness is Congressman Corrada.

I am sorry. He seems not to be here.

Our next witness will be the National Federation of Independent Business, Mr. William F. Dennis, director of research; the National Small Business Association, John Lewis, president; and Lola Dickerman, director of the Small Business Association of New England.

Mr. MITCHELL [acting chairman]. Mr. Lewis, welcome to the committee.

The chairman will return in a moment.

In order to save time, I think we would like for you to start with your testimony. We are appreciative of your coming here this morning.

You may speak in any order you so desire. In addition, if you have written statements, they can be submitted for the record. You can talk to the major salient points.

Mr. Lewis, you may proceed.

TESTIMONY OF JOHN LEWIS, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION; ACCOMPANIED BY HERBERT LIEBENSON, VICE PRESIDENT, GOVERNMENT AFFAIRS; AND HERMAN DIRECTOR, CHIEF STAFF ECONOMIST

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Chairman, in the letter of invitation we were requested to summarize in 3 minutes. I am going to do my best to do that.

My name is John Lewis. I am president of the National Small Business Association, a multi-industry association representing approximately 50,000 small businesses nationwide.

With me today on my left are Herbert Liebenson, vice president for Government Affairs; and on my extreme left is Herman Director, chief staff economist.

We express our disapproval of the approach taken in the administration's negotiated Multilateral Trade Agreement, (MTA).

Under current Federal procurement policies, the small business set-aside program, has proven to be a successful means of insuring the small and the minority business sector of an equitable share of Government contracting dollars.

Indeed, hundreds, and even thousands of small businesses, depend upon Federal contracts, both as prime contractors, or subcontractors, for their very existence.

It is unfathomable that this administration is contemplating cut-backs in the set-aside program when, in fact, the program should be further extended.

The proposed policy of slashing small business set-asides to provide new access to U.S. markets for foreign companies will have damaging effects on our economy at a time when the economic health of small business as measured in numbers and market share, depending on the industry, continues to decline.

We cannot accept the contention made by Ambassador Strauss that this country can open up \$20 billion in supply opportunities for American exporters to foreign nations by easing bidding limitations on \$300 million worth of small business set-asides.

In fact, we are talking about much more than set-asides. The Special Analyses Budget of the U.S. Government for fiscal year 1980 indicates an increase in Government procurement of about 15 percent.

This means that, on the basis of current small business participation ratios, approximately \$16 billion of potential small business procurements will be endangered and subject to increased foreign competition.

The impact of an exemption for lower level contracts under \$190,000 can be determined only after a very careful study, taking into account not only past experience, but the increasing effect of inflation on this arbitrary figure. In some product lines, the \$190,000 figure may be quite small.

The administration is saying, in effect, to small business: "Do not worry about what you may lose in domestic procurement. You can make it up in sales overseas."

Well, how does this work out in practice?

At the White House Conference on Small Business in Dallas, Tex., on January 23, Ambassador Strauss said that the administration wants to channel up to \$100 million of Small Business Administration loan guarantees to small business exporters to provide seed money for entry into foreign markets.

However, there has been no request from the administration for loan guarantees for the purpose of exporting. Instead, it is expected for those people who want to export to compete against others seeking business loans and other guarantees from the SBA.

In other words, the size of the pie stays the same. There are just more hands reaching for a slice of it.

In the same speech, Ambassador Strauss said:

There still exists a psychological fear that small firms cannot operate successfully in international markets and a fear of foreign practices which make sales abroad unpredictable.

Most certainly they are unpredictable.

For many years, the Department of Commerce and other agencies have attempted unsuccessfully to establish export programs and license agreements between small companies of the United States and other foreign companies.

In fact, the Overseas Private Investment Corp. has 125 employees devoted to seeking and guaranteeing trade opportunities for American firms.

Our understanding is that after 8 years of existence they have helped only 500 companies, most of them big, to export to 90 countries. This does not seem a too promising avenue for small business.

In the previous witness' testimony, they discussed the inconsistency of the proposed MTA, with the regulations involving the labor surplus areas.

The truth is that the impact will be especially hard on small business, since the regulations require that small businesses be given preference in implementing the labor surplus areas procedures.

In addition, the MTA is inconsistent with the Buy American Act, which restricts the acquisition of foreign supplies. With certain exceptions, only domestic products shall be acquired for public use.

The impact on small business will be more acute since small businesses may now get preference in bidding if they are within 12 percent of a foreign offer.

Another concern is concentration, Mr. Chairman. Domestic small and minority owned businesses do not have the wherewithal or the expertise to penetrate markets in foreign nations. Instead, the new policy is a tilt toward the giant corporation because their deep pocket and market power will enable them, and only them, to pluck new markets overseas.

The net effect of the proposed policy then would be to further reduce the market share for small firms and concentrate more economic power in the hands of corporate giants.

There could be immediate benefits in terms of overall reduction in trade deficits, but the resultant increase in economic concentration is potentially a more onerous situation.

As that happens, the small business sector withers, taking with it millions of jobs, and the competitive edge of small business in this country will be lost.

Another problem is that in many respects the competition with the suppliers of foreign nations is unfair. One member of our Association made this comment about the 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.

Another concern, and the last concern that we will express today, is that this is a reversal of the report of the House Small Business Committee in 1978. Year-long hearings were held by the Subcommittee on Antitrust.

Its conclusion was that:

Unless direct and concerted action is taken now, small business, the mainstay of a truly competitive system, will continue to decline.

MTA is a step backward. This is not direct and concerted action forward. It is the reverse of that.

Thank you, Mr. Chairman.

Mr. ADDABBO [acting chairman]. Thank you, Mr. Lewis.

Without objection, your written testimony, in its entirety, will be inserted in the record at this point.

[Mr. Lewis' prepared statement follows:]

PREPARED STATEMENT OF JOHN LEWIS, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION

Mr. Chairman and members of the committee: My name is John Lewis. I am president of the National Small Business Association (NSB), a multi-industry association representing approximately 50,000 small businesses nationwide. With me today are Herbert Liebensohn, vice president for Government Affairs, and Herman Director, chief staff economist.

On behalf of the Nation's small business community, we wish to express our displeasure with the approach taken in the Administration's negotiated Multi-lateral Trade Agreement (MTA). This Agreement restricts many of the long-standing programs gained after many years of effort by small business—this includes negating of small business set-asides, minority set-asides, etc. Most of these decisions have been made without even consulting small business.

At the White House Conference on Small Business in Dallas, Texas, on January 23, Ambassador Robert S. 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. Instead, it is expected for those people who want to export to compete against others seeking business loans and other guarantees from the SBA.

In the same speech Ambassador Strauss said:

There still exists a psychological fear that small firms cannot operate successfully in international markets and a fear of foreign practices which make sales abroad unpredictable. The most effective way for firms to discover the flexibility and personal service that allow small firms to seize on export opportunities is to experience it or to observe others.

For many years the Department of Commerce and other agencies have attempted unsuccessfully to establish export programs and license agreements between small companies in the United States and other foreign companies. In fact, the Overseas Private Investment Corporation has 125 employees devoted to seeking and guaranteeing trade opportunities for American firms. Our understanding is that after 8 years of existence they have helped only 500 U.S. companies (most of them big) to export to 90 countries. They are now emphasizing a small business approach.

Under current Federal procurement policies, the small business set-aside program has proved to be a most successful means of ensuring the small business sector of an equitable share of government contracting dollars. Indeed, hundreds and even thousands of small businesses depend upon Federal contracts both as prime contractors or subcontractors for their very existence. It is unfathomable that this administration is contemplating cutbacks in the set-aside program when, in fact, the program should be further extended.

It should be noted that there are presently agreements which this government has made with other countries providing for foreign companies to offer bids on Federal contracts except for small business set-asides. This is particularly true in the area of defense. It seems incongruous to us, at least, why this administration plans a reduction in small and minority business set-asides when foreign nations stringently adhere to our own small business set-aside program, and screen these from eligibility for bids by their own companies.

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 may want to compete on U.S. Government contracts, be subjected to the same certification program? Who will administer the program to ensure competency?

The proposed policy of slashing small business set-asides to provide new access to U.S. markets for foreign companies will have damaging effects on our economy because some \$9 billion worth of small business contracting opportunities would be lost. We are concerned about this situation because the economic health of small business, as measured in numbers and market share, continues to decline.

We realize that the level to which this principle will affect small business contracting opportunities is open to debate, but we cannot accept the contention, made by Ambassador Strauss, that this country can open up \$10 billion in Federal supply opportunities to importers in foreign nations by easing bidding limitations on \$300 million worth of small business set-asides.

In 1977 civilian Executive agencies reported total procurement of \$24,991,632 of which \$6,542,612, or 26.9 percent, was from small business. The Defense Department procured an additional \$7,000,000 from small business.

The Special Analyses Budget of the U.S. Government for the fiscal year 1980 indicates an increase in government procurement of about 15 percent. This means that, on the basis of current small business participation ratios, approximately \$16 billion of potential small business procurements will be endangered and subject to increased foreign competition. The impact of an exemption for lower level contracts, under \$150,000, can be determined only after very careful study taking into account not only past experience but the increasing effect of inflation on this arbitrary figure.

To indicate the inconsistency of the proposed MTA action with existing law, current Federal Acquisition Regulation of the Office of Federal Procurement Policy states that:

It is the policy of the Government to award appropriate contracts and grants to, and to execute agreements with, eligible labor surplus area concerns . . .

The proposed International Procurement Code of MTA will nullify this provision. The impact will be especially hard on small business since the regulations require that small businesses be given preferences in implementing the labor surplus area procedures.

Was the Office of Federal Procurement Policy consulted in the drafting of the International Procurement Code?

Another inconsistency is the "Buy America" Act which restricts the acquisition of foreign supplies. With certain exceptions only domestic products shall be acquired for public use. The impact on small business will be more acute since small business may now get preference in bidding if they are within 12 percent of a foreign offer.

In addition, the new export markets that will allegedly be opened up as a result of these agreements will be closed, for all practical purposes, to domestic small and minority-owned businesses which do not have the wherewithal or expertise to penetrate markets in foreign nations. Instead, the new policy is a tilt toward the giant corporations, because their deep pocket and market power will enable them, and only them, to pluck new markets overseas.

The net effect of the proposed policy, then, would be to further reduce market share for small firms, and concentrate more economic power in the hands of corporate giants. There could be immediate benefit in terms of overall reduction in trade deficits, but the resultant increase in economic concentration is potentially a more onerous situation. As that happens, the small business sector withers, taking with it millions of jobs, and the competitive edge of business in this country.

In fact, last year another Subcommittee of the House Small Business Committee issued a report, after year-long hearings, which amplifies this point. The administration's new small business set-aside policy runs completely contrary to the conclusions of the "Future of Small Business" report:

Economic concentration remains a major obstacle to the creation of an economic climate in which small business can survive and thrive. Unless direct and concerted action is taken now, small business, the mainstay of a truly competitive system, will continue to decline.

One member of our association 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.

Is it not time we restore a little sanity to our network of laws, agreements, and programs?

Mr. ADDABBO. All right.

Our next witness will be Lola Dickerman, director of the Small Business Association of New England.

Ms. Dickerman?

TESTIMONY OF LOLA DICKERMAN, DIRECTOR, SMALL BUSINESS ASSOCIATION OF NEW ENGLAND; ACCOMPANIED BY AL DANIELS, COCHAIRMAN, PROCUREMENT COMMITTEE

Ms. DICKERMAN. Thank you, Mr. Chairman.

My name is Lola Dickerman. I am the director of the Small Business Association of New England, which is the country's oldest and largest regional association.

The association has been in existence for 41 years.

I am the director of the association, and co-chairman of its Procurement Committee.

Co-chairman of procurement is Mr. Al Daniels, who happens also to hold the title of president of the Black Corporate Presidents of New England.

Through our co-chair, we work together in the interest of both small and minority businesses in New England.

I would like, first of all, to say this. I do not have a prepared text. My invitation came on Thursday last, but I am delighted to be here without a prepared text.

I would like to endorse what Mr. Lewis has said. His statement is very good. I do not disagree with anything that he said.

Let me talk about New England. We have run perhaps the only privately sponsored small business export program in the country. We are very proud of it. It is only 2 years old.

We have taken our small businessmen on trips abroad. We have had four such trips. We have had 25 companies involved, having from 10 to 400 employees.

All of these trips were to Europe. They resulted in better than \$2 million in sales in our first three trips. That is a tiny number, but we are awfully pleased about it. It gives you some idea about what can be done on a self-help basis.

Mr. ADDABBO. That is what President Kennedy said. "Do not ask what your country can do for you. Ask what you can do for your country."

Ms. DICKERMAN. We are acutely aware of what our country is trying to do for us. We had Mr. Daniels come down last week to talk at the Sunset hearings over at the OFPP.

When we spoke at those hearings we addressed ourselves to the new amendments to the Small Business Act and to the new regulations being written by OFPP.

This is the first time that we have seen in many years at looking at regulations and a statute with new regulations that would put, for the first time, some real teeth into the procedure of getting subcontracting

goals in our prime contracts for small and minority businesses. Although the phrase is no longer "minority business," either in the statute or the regulations, I will say it that way for shorthand.

So, we are delighted in seeing that something was finally happening in that area.

I can present to you, if I may, our comments about the new proposed Government Procurement Act, which is being proposed on the MTN.

It will devastate that subcontracting program as well as all of the other business opportunities, notwithstanding the exceptions that are available to small business and to minority business. This is our opinion.

We do not even have those subcontracting regulations beyond the point of comment. They will be gone.

We are shocked beyond telling that such a thing should be proposed now. On behalf of the association I would like to tell you that I perceive it in this way.

We have the biggest buyer in the world, the U.S. Government, which has seen slowly and painfully the need to undertake to do supportive things for the parts of our economy which are important to our system and to the growth of our system, namely, the small businesses.

This operates 180 degrees out of phase with that whole thrust. We are appalled by it. We are surprised by it. We were not consulted. We did not know of it until Thursday late. I have found out now the reason we are so late in learning is probably because we do not read the Washington Post up in Boston. [Laughter.]

But in any event we thank you for inviting us. We are glad for the opportunity to speak to this question. We have to tell you this.

Let me present a small analog. I am not suggesting that it is the Governor of our State, because we never speak ill of anyone, but in a mythical world, there was once a Governor of a State who promised the people, as he was getting elected, that he would roll back taxes. Everybody burdened with taxes was thrilled to hear of it.

So, to achieve this great goal he then announced that if he were elected he was going to cut back on the money that was given to the families with dependent children. That struck some of us in this mythical state as being a terrible way to achieve a great national goal.

So, I would like to endorse the great national purpose of free trade and opening up and dealing with our trade problems in this country, but, please, gentlemen, not on our backs.

Thank you.

Mr. ADDABBO. That is the best description I have heard of the program yet. [Laughter.]

Mr. Dennis, Director of Research of the National Federation of Independent Business is our next witness.

Mr. Dennis?

**TESTIMONY OF WILLIAM B. DENNIS, DIRECTOR OF RESEARCH,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

Mr. DENNIS. Thank you, Mr. Chairman.

I am director of research for the National Federation of Independent Business.

I ask that my statement be placed in the record.

Mr. ADDABBO. Without objection, your entire statement will be placed in the record.

[NFIB prepared statement follows:]

**PREPARED STATEMENT BY JAMES D. "MIKE" McKEVITT, WASHINGTON COUNSELL,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

NFIB, on behalf of its 565,000 small and independent member firms appreciates the opportunity to present our views on the Multi-Lateral Trade Negotiations and possible contents of its implementing legislation. We applaud the Chairman, interested Members of the Committee and Subcommittee, and the staff for their prompt response to published reports regarding the content of this Agreement.

Since we are essentially discussing a secret document, NFIB wants to be circumspect. We do not wish to go off "half-cocked" without any more information than that found on page 1 of a recent Post article. But, we are interested—interested from the twin perspectives of a trade agreement that benefits the American economy, of which small business is an integral part, and interested from the perspective of a critical segment of the economy which directly stands to lose an important part of a market upon which its vitality is tied.

It appears to NFIB that the critical steps at this juncture are to gather information, sift fact from fantasy, evaluate the relative advantages and disadvantages, and subsequently rationally determine our course of action. As a result, our testimony raises questions; it does not present a view. However, we must admit that the tenor of events and the information available to date do not leave us with a positive disposition toward the Agreement.

NFIB's basic questions are as follows:

I. CONTENT AND IMPACT

A. Specifically, what small business "set-aside" programs would be affected by the Agreement?

1. Approximately how many small businesses would be affected?

(a) How were those figures derived?

(b) What types of businesses and products will be affected, e.g. high tech firms and products, new enterprises, etc.

(c) Do these affected firms have potential for export, bearing in mind the direct relationship between firm size and export capacity?

2. What is the dollar value of procurement affected?

(a) How were those figures derived?

(b) Are any changes in "breakout" contracts included in the calculations?

(c) Are renewable contracts covered by the Agreement?

B. Approximately how much American procurement is covered by the SDR 150,000 exclusion?

1. How does that compare with other nations, particularly industrial nations?

2. How would this be affected if the exemption were changed to SDR 1,000,000? or SDR 5,000,000?

3. What was the United States' position on this issue and why?

C. What other exemptions or exceptions are provided by the Agreement, e.g. security?

1. Can any nation unilaterally declare one or more? What if one does?

2. Are "developing industries" excluded?

(a) Does the United States have any "developing industries"? What are they?

3. Do Lesser Developed Countries (LDC's) have any particular privileges?

(a) What about a multi-national operating in an LDC? Is it considered a national of the LDC or its corporate headquarters?

D. Does the Agreement apply only to the Federal Government or State and local governments as well?

1. Will the Administration propose tying Federal assistance or grant-in-aid programs of any type to State and local adherence to the Agreement?

2. Will the Administration encourage or in any way use its persuasive powers to reach the same end?

E. Who would be eligible to bid on these former set-asides? Foreign small business? Foreign multi-nationals? American multi-nationals?

1. Would Robinson-Patman apply to foreign multi-nationals?

2. Would small business be forced to compete with foreign firms receiving export subsidies, tax advantages, and other types of preferential treatment?

(a) If "Yes"—

1. Doesn't that place American small business at a disadvantage?
2. What similar compensating advantages do American small businesses have?

(b) If "No"—

1. How is it to be enforced?
 2. How is a small business going to be able to prove unfair competition?
 3. As a practical matter, what type of assistance can be expected from any government agency in pressing a small business claim?
3. How are taxes paid by American firms to be calculated in bidding here and abroad?

II. SMALL BUSINESS EXPORT

A. Approximately how many small businesses export and what percent of American exports do their products constitute?

1. How are those figures derived?
2. For purposes of these figures, how is a small business defined?
3. Of all small business exports, how much is trade with Canada or Mexico?

B. What is the U.S. Government prepared to do to assist small American firms to export?

1. What are the possibilities of small business increasing their exports? in terms of numbers of businesses and dollar volume?

2. What is to prevent a foreign government from imposing all types of administrative barriers?

(a) How is the small firm able to redress a grievance?

(b) How is a small firm able to locate opportunities in a series of relatively small markets?

III. BENEFITS

A. What are the direct benefits that will accrue to small business under the Agreement?

B. What are the indirect benefits including impact on inflation, savings to the taxpayer, etc.?

IV. PROCEDURE

A. Were representatives of small business, formal or informal, in the private sector or the public sector, consulted before or during the negotiations?

1. If "Yes"—

(a) Who were these representatives?

(b) What are (were) their positions?

(c) What is their background?

(d) To what extent did they attempt to elicit the views of others in small businesses?

(e) How often were they consulted?

(f) What were their views?

(g) When were they brought into the process?

(h) Did they actively participate in any decision affecting small businesses?

2. If "No"—

(a) Why were there none?

(b) Why wasn't the Small Business Administration (SBA) at least consulted?

(c) Were representatives from the Departments of Commerce and Labor ever involved?

Mr. Chairman, with the limited time for preparation and the lack of solid information, we have not been able to supply a more comprehensive list of the points in which we have an interest. Nevertheless, we hope these questions will help you understand our concerns. From the answers received will NFIB's direction be determined.

Mr. DENNIS. On behalf of 565,000 small and independent member firms, we appreciate the opportunity to be here. We particularly express our appreciation to this committee, to the committee members, and to the staff, for bringing this matter to light.

We have hoped for a long time that the Small Business Committee, of both the House and the Senate, would engage in such activities as this. It is the type of activity we have envisioned. You have done it well. We thank you very much.

At this particular juncture we are attempting to gather information and ask questions. We are attempting to be as judicious, if I may say so, as possible, despite everything we read. We are waiting for the administration to try to make the case. So far we have not seen that they have.

Unfortunately, the act and the procedures under which this entire matter will be considered is going to make it very difficult for us to get the type of information that we would like.

Nevertheless, we look at this with jaundiced eye, particularly from the tenor of events today.

Many of the questions that we posed are questions that you have posed, particularly questions on figures and how figures are derived. This is something that the chairman brought up and the point is well taken in that regard.

It seems that the administration is operating under the assumption that what small firms will lose, they will gain through exports. We are being asked to take this on faith. We are being asked to take a number of things on faith.

First of all, there is a claim that there are going to be more firms exporting and that there will be all types of help forthcoming. We have not seen it. It is a promise. It is faith again.

Secondly, these types of contracts that supposedly will be eligible to small businesses abroad, as well as many others, are with governments. Governments are not profitmaking organizations. That is not their purpose. While their purpose is to extend economic benefits, it also has social and security functions.

Therefore, despite any best attempts, or any best offer that small business may give a foreign government, in the back of their minds there must always be that consideration for the local enterprise, which is also bidding on that contract.

As a practical matter, can you see a representative from the State Department coming down hard on a foreign government for a failure to give a legitimately won contract of, let us say, \$1 million, to a small American firm? We cannot.

There is one problem or one other point that I would like to make. It is clear that no small business association, and no small business group, has ever been consulted during the process of these negotiations. We are also very doubtful that at any time the Small Business Administration was consulted.

As you may have recognized, NFIB has emphasized to this committee many times our desire that advocacy at SBA be beefed up and strengthened to become a viable and recognizable part of the Federal Government and the Federal Establishment.

This is a perfect example of why that is needed. Thank you.

Mr. ADDABBO. Thank you very much.

Mr. Mitchell?

Mr. MITCHELL. I want to thank all of the witnesses.

Let me make one comment to you. That was excellent testimony, Mr. Dennis.

The fact that you did not know about the negotiations that were going on does not surprise me. Neither did we, as Members of Congress.

It was apparent that there was a veil of secrecy cloaked over this until the dastardly deed was accomplished. So, I am not surprised that you did not know.

Let me say this. I appreciate your testimony. I think the record is very clear. Let me summarize some points that were made by this panel.

You have had the absence of any Government agency designed to help small business in export-import. You get AID, Eximbank, and OPEC, and you did it on your own in New England. You had the absence of the administration to go ahead and make the request for loan guarantees for small businesses to go into export-import or to buttress that effort.

Thirdly, you have a minimum number of small businesses presently engaged in export-import.

Put all three of those facts together, and I must conclude that to dangle \$20-plus billion out there as a plum for negotiating this nefarious agreement is cruel and dishonest.

On all three levels—the assistance from the Federal agencies, the loan guarantees, and actual participation in export-import—we are not participants. It is a false hope that has been put out to us.

Let me tell you something. I am with you. But we are fighting the multinational corporations and their representatives in the administration and in this Congress. That is what we are up against. It is political now.

I do not know whether I am breaking the rules of the House or not, but I would urge a massive outpouring of mail to the President of the United States from all of your associations, not just the individual members.

Take all these multinationals to task. Then it is tough. Let the President know, in no uncertain terms, that you do not want this dagger plunged into small business.

Thank you, Mr. Chairman.

Mr. LaFALCE. Let me explain to the panel that the reason I was absent was that a Commerce subcommittee was having hearings on the problem of toxic substances with specific reference to the Love Canal, which is within my congressional district and a problem I have lived with night and day for 2 years. I had to testify.

So, I hope you will accept that explanation.

Are there any further comments that any of the panelists would like to make before we conclude this portion?

Ms. DICKERMAN. Yes, if I may, I would like to say this.

I might mention this. I have a personal comment I would like to make on something that was said by the Ambassador this morning.

In the course of his testimony this morning he mentioned, by and large, foreign countries do not open their process to American bidders.

As it happens, because I am a lawyer, I have spent part of the years of 1966 and 1967, and all of the year 1968 in Europe. My field is Government contracting. I was over there in the course of proceeding with that work at SHAPE and NATO.

As a matter of fact, large companies who wish to do business with the countries in Europe, with which I have had experience, have, as a matter of fact, a very handy device that they were using in the late 1960's and are still using today in getting involved in those procurements.

These countries in Europe are very sensitive about such things as balance of payments. The technique is to form a consortium.

You have a company in the Netherlands forming a consortium with a company in the United States as they put together a weapons system, or whatever the infrastructure is that is being purchased. When the balance-of-payments question becomes acute, they do subcontracting or build plants in Europe.

So, I would like to suggest to you that as you pursue, as a committee, the question of the opportunities for American business abroad in these foreign countries, that you might look beyond the superficial view, beyond the top layer of how these things are done.

If you looked at it in depth, you will find American industry in terms of the large Government contractors participating very rigorously in the procurements abroad.

I just wanted to make that comment on what was said this morning.

Thank you very much.

Mr. LAFALCE. Thank you.

Mr. Lewis?

Mr. LEWIS. Mr. Chairman, responding to Congressman Mitchell, let me say this.

We have taken the first step, at least. We have sent a letter to President Carter expressing our displeasure about a number of facets about this proposed MTA. With your permission, I would like to submit that letter for the record.

Mr. LAFALCE. Certainly. We will insert it in the record.

Without objection, so ordered.

[Letter referred to above follows:]

NATIONAL SMALL BUSINESS ASSOCIATION,
Washington, D.C., March 15, 1979.

The PRESIDENT,
The White House, Washington, D.C.

MR. PRESIDENT: On behalf of the Nation's small business community, we express our displeasure with the administration's proposed action, as reported in the Washington Post of March 14 and March 15, 1979, restricting the longstanding programs of small business set-asides in Federal procurement activities.

Small business, and our economy as a whole, would suffer greatly from this step, which would deprive small business of the "fair share of procurement dollars" which you pledged as a goal in 1976. The proposed policy of slashing small business set-asides to provide new access to U.S. markets for foreign companies will have damaging effects on our economy because some \$9 billion worth of small business contracting opportunities would be lost. We are concerned about this situation because the economic health of small business, as measured in numbers and market share, continues to decline.

We realize that the level to which this principle will affect small business contracting opportunities is open to debate, but we cannot accept the contention made by Ambassador Strauss, that this country can open up \$10 billion in federal supply opportunities to importers in foreign nations by easing bidding limitations on \$300 million worth of small business set-asides.

In addition, the new export markets that will allegedly be opened up as a result of these agreements will be closed, for all practical purposes, to domestic small and minority-owned businesses which do not have the wherewithal or expertise to penetrate markets in foreign nations. Instead, the new policy is a tilt toward the giant corporations, because their deep pocket and market power will enable them, and only them, to enter new markets overseas.

The net effect of the proposed policy, then, would be to further reduce market share for small firms, and concentrate more economic power in the hands of corporate giants. There could be immediate benefit in terms of overall reduction in trade deficits, but the resultant increase in economic concentration is potentially a more onerous situation. As that happens, the small business sector withers, taking with it millions of jobs, and the competitive edge of business in this country.

In fact, last year the Small Business Committee of the House of Representatives issued a report, after year-long hearings, which amplifies this point. The administration's new small business set-aside policy runs completely contrary to the conclusions of the "Future of Small Business" report:

Economic concentration remains a major obstacle to the creation of an economic climate in which small business can survive and thrive. Unless direct and concerted action is taken now, small business, the mainstay of a truly competitive system, will continue to decline.

We urge you, Mr. President, to reconsider the proposed action with regard to the Multilateral Trade Negotiations. Our concern, though, is not only for the 50,000 small businesspeople we represent. As bad as this move would be for the goal of keeping the small business sector flourishing, it would be even worse for the economy as a whole. In effect, we would be spending yet more of the strength of our system of capitalist enterprise on short-term gains in our trade balances.

Thank you, Mr. President, for your consideration.

Sincerely,

JOHN LEWIS,
President.

Mr. LaFALCE. We thank all of you for your presentation.

We call to the table Resident Commissioner from Puerto Rico, Congressman Baltasar Corrada.

TESTIMONY OF HON. BALTASAR CORRADA, RESIDENT COMMISSIONER IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. CORRADA. Thank you, Mr. Chairman.

Mr. Chairman, and members of the subcommittee, during the past week very disturbing information has been filtering out of the Multilateral Trade Negotiations.

In the course of these negotiations, the United States has apparently made certain concessions with regard to procurement of Government contracts.

In conjunction with allowing foreign producers greater access to bidding on Federal contracts in the United States, the administration has seemingly promised to eliminate certain special procurement preferences to small and majority firms.

I am extremely concerned that the elimination of these special preferences will do irreparable harm to our Nation's small and minority businesses. Members of the Hispanic and black communities have fought long and hard to promote the role of minority business in the area of Government contract procurement.

The preferences that have been established for small and minority firms in this area are necessary if we are to have a bidding process which is not dominated by large corporate concerns.

Congress has been very careful to avoid exploiting the inherent economic vulnerability of our small and minority businesses.

Preferences have been carved out in the labor surplus procurement program, the 8(a) program, and in the Buy American Act. We cannot now turn our backs on a long-standing congressional policy which has proven workable and extremely fair to small business.

Ambassador Strauss has responded to many questions about possible concessions in the trade negotiations by saying that he might entertain an offer for a particular concession if he were offered sufficient quid pro quo reciprocity.

Let us examine the trade-off in the instant case. If we open up \$10 billion worth of U.S. Government contracts to overseas manufacturers

and eliminate certain special procurement preferences for small and minority firms, U.S. exporting firms will have access to some \$25 billion worth of foreign government contracts.

Now we should ask who are the U.S. exporting firms which are capable of availing themselves of the greater access to the foreign government contracts?

Small and minority businesses are, in most cases, not sophisticated enough, nor do they have sufficient resources to take advantage of the foreign procurement market. They have needed technical, managerial, and financial assistance in cracking the domestic procurement market.

How can we now expect it to be advantageous for them to have access to foreign procurement markets without the protection of some preference?

In essence, what we will have is a sacrifice of a substantial amount of the \$18 billion in Federal procurement contracts now awarded to small and minority firms in exchange for greater access to \$25 billion worth of foreign government contracts by our large exporting corporations.

Where is the quid pro quo for our small and minority concerns?

While minorities comprise close to 20 percent of our country's population, less than 4 percent of our country's businesses are owned by minorities, and account for less than 1 percent of the Nation's gross business receipts.

The rectification of this gross imbalance is a primary objective of programs such as the 8(a) business development program. The participation of the disadvantaged minority community in the mainstream of business activities in our economy should not be minimized.

We cannot eliminate or cut back programs such as 8(a) without serious and adverse socioeconomic repercussions. It is the only Federal program offering preferential treatment to minority-owned small businesses in the procurement area.

I am not arguing against negotiating reciprocal concessions in the procurement area, but I strenuously object to any provision in the Trade Agreement which would unravel the very positive and clearly justifiable policy of providing special procurement preferences or set-asides for small and minority businesses.

I am not convinced that special restrictions in the agreement which guarantee the maintenance of the preferences as to certain products are sufficient to protect the socioeconomic integrity of our small and minority concerns in the procurement area.

The least influential, yet most important cornerstone, of our private enterprise system are our small businesses. It is extremely unjust to turn back the progress these concerns have made, and which we have helped them make, toward remaining competitive in a market, increasingly dominated by big business.

I urge my colleagues to actively oppose the loss of preference in the procurement area for small and minority businesses which apparently will result from the multilateral trade negotiations.

Mr. LAFALCE. Thank you very much for your outstanding testimony, Mr. Corrada.

I have no questions. I wonder if the gentleman from Maryland does?

Mr. MITCHELL. I have no questions. I merely have some suggestions.

I think Congressmen should not be just legislators. I think they should be activists. I would firmly recommend to you, my dear colleague, that you get very busy in organizing the small businessmen in

Puerto Rico and have them bombard the White House with telegrams and mailgrams.

I might be breaking the Rules of the House, as I said before, by urging you to do this in a committee meeting, but I do not care. This situation is so grave that if there is such a rule, it ought to be broken.

The only weapon we have to fight the multinationals with is an agonized expression coming from small businessmen all over the country.

Please take the lead role and use your WATTS line to do it, if you have to. [Laughter.]

Mr. CORRADA. I appreciate very much the suggestion of the gentleman from Maryland.

Mr. LAFALCE. The Chair must rule that no rule has been broken. [Laughter.]

Mr. CORRADA. Let me state that I do intend to have a meeting with the other members of the Congressional Hispanic Caucus. As a caucus, we expect to take action in this matter. We will address it to the President. We will undertake other actions along the lines suggested by our dear friend from Maryland.

Thank you, Mr. Chairman.

Mr. LAFALCE. If you read between the lines, perhaps Mr. Mitchell is also saying that it would not be a bad idea if you invited the chairman of the subcommittee, Mr. Mitchell, to Puerto Rico to help you out. We like Puerto Rico. [Laughter.]

Thank you very much.

We will now have a panel representing the small business and minority enterprises in our country, consisting of the Latin American Manufacturers Association, the National Association of Black Manufacturers, the National Business League, and the Interracial Council of Business Opportunities.

We will ask you to come to the table.

I believe before we begin, Mr. Mitchell would like to make a comment.

Mr. Mitchell?

Mr. MITCHELL. A brief comment, Mr. Chairman.

I know these gentlemen. I welcome them. I should not feel guilty about this. It is the way I guess things happen on the Hill.

I want to comment that this is no way denigrating the performance of anyone. I want to comment that in all the years I have been here, generally it is the minority businessmen who testify last.

That is unfortunate. Very often the press is gone. They do not benefit from your comments. Most of the subcommittee members have departed for other areas of duty. They do not benefit first-hand from your comments.

This procedure, I am sure, is not in any way reflective of racism; but it is the sort of protocol procedure that is used.

I just wanted to lay that out to you.

Mr. LAFALCE. Thank you.

Let me underscore the fact that Ambassador Strauss was asked to testify at 9 o'clock this morning. There was arbitrarily established a panel that I had no knowledge of, one of small businesses in general, and of minority businesses in particular.

The reason we had the Congressmen first was because congressional courtesy usually is awarded to the Congressmen.

When I went to a subcommittee chaired by Mr. Scheuer, the representatives from the EPA suspended their testimony so that I could testify and then come back here.

With that, let us hear from left to right, as I view the members of the panel.

Let us hear from Dr. Burrell, president of the National Business League.

Dr. Burrell?

**TESTIMONY OF DR. BERKELEY G. BURRELL, PRESIDENT,
NATIONAL BUSINESS LEAGUE**

Dr. BURRELL. I am Berkeley Burrell, president of the National Business League.

I might add this: We are somewhat older than the U.S. Chamber of Commerce, having been founded in 1900 by Booker T. Washington. That makes us 12 years older than the U.S. Chamber.

Mr. Mitchell, I appreciate your comment. I might say that I understand the pecking order here. They took the Ambassador and Members of Congress. They take the white people and then they take us.

I only feel discriminated against a little bit over here. Just once in a while I feel that. That is the only time I really feel discriminated against.

Mr. LAFALCE. I must interrupt. Let us make it clear that you are not being asked to testify here after the white people.

Dr. BURRELL. Yes, sir. It just appears that way.

Mr. LAFALCE. Please continue.

Dr. BURRELL. I am appearing today as president of the National Business League, America's oldest national business organization, and the largest association of minority business persons in this country.

The full text of my prepared remarks have been submitted for the record, and I would like to take a few moments to summarize the thrust of that statement which concerns the impact of the reported agreement reached by the Carter administration on the Multilateral Trade Pact, as I understand it.

One of the concessions that this administration has made is to relax the preferential treatment given domestic small and minority business firms in their efforts to penetrate the Federal procurement market.

If this is so, we are compelled to voice our strong and unequivocal opposition to such a move. Not only is it contrary to the stated position of the administration, it is at clear variance with the interests of the small and minority business community.

Further, it would sanction, once and for all, the near total grip that large corporations have on the lucrative Federal procurement market.

Relaxing Federal policies that earmark portions of Government business for small and minority firms represents a giant step backward for the collective efforts of those of us who believe that the strength and viability of small business is crucial to the vitality of the American economy.

Let us be clear. The issue before us today is not simply one which affects minority enterprises. It is an issue which strikes at the very heart of the struggle for equal treatment for small business in this country.

Small business constitutes 97 percent of all American business firms and provides jobs for 60 percent of the Nation's private nonagricultural work force. It produces 43 percent of the gross national product and accounts for 48 percent of the gross business product.

Yet, perhaps the most critical aspect of small business development is its job creation potential.

Through contracting opportunities with the Federal Government, the small business firm increases its potential for employment at a time when our unemployment levels are reaching frightening proportions, and astronomical proportions in the black community.

This pact would deny the small and minority business community the means to increase employment opportunities.

Further, we must understand that in the minority private sector, Federal procurement contracts offer the opportunity to build capacity in minority firms to expand their ability to shoulder a more substantial responsibility in job creation.

This international trade agreement is clearly at variance with the administration's public positions, policies, and goals for reducing unemployment through a greater reliance on the private sector.

Already the percentage of procurement dollars going to small firms is barely visible. Big business receives about 80 percent, small business, about 19 percent, and minority firms, less than 1 percent.

This already well-documented disparity will become exacerbated by the influx of foreign companies that do not have to contend with the maze of Federal regulations which already strangle smaller concerns.

Mr. Chairman, if this agreement is sustained, what becomes of Public Law 95-507? What becomes of H.R. 90, which the House Small Business Committee has considered with favor?

This agreement must be rejected if we are not to make a mockery of small business in this country. It is ill-conceived. It is ill-advised and in direct contradiction to the efforts of four previous presidents.

It will virtually sanction monopolistic practices by big business.

Mr. Chairman, this agreement is not simply bad policy. It is bad business as well.

Thank you very much.

Mr. LaFALCE. Thank you. Your statement will appear in the record at this point.

[Dr. Burrell's prepared statement and attachment follow:]

PREPARED STATEMENT OF DR. BERKELEY G. BURRELL, PRESIDENT NATIONAL BUSINESS LEAGUE

Mr. Chairman, Members of the Committee: My name is Berkeley G. Burrell. I am President of the National Business League and Chairman of its National Council for Policy Review. As you know, the National Business League is the oldest national business organization in America, twelve years older than the U.S. Chamber of Commerce. Founded in 1900 by Dr. Booker T. Washington, the League is dedicated to the building of commerce and industry in the minority community. Nationally, through 120 chartered chapters in 37 states and the District of Columbia, the League is the largest organization of minority business men and women in America. Its National Council for Policy Review is a coalition of nearly 70 major minority businesses, trade and professional associations in this country. It is the only organization in the minority community which cuts across business, trade and professional lines to coalesce and represent its divergent interests.

I am here today representing the National Business League. And while the issue before this Committee is of great concern to the associations which comprise

the Council, we have not had an adequate opportunity to canvass its members for specific support of the statement I am about to make. Therefore, while I am convinced that my views today are fully consistent with those of the Council, I do not speak on its behalf today. Fortunately, however, some representatives of member associations are present today to testify on the important issue before this committee.

Members of the Committee: I appreciate the opportunity to spend a few moments with you today to discuss the impact of a reported agreement reached by the Carter Administration on a multi-lateral trade pact. It is our understanding that one of the concessions this Administration has made is to relax the preferential treatment given domestic, small and minority business firms in their efforts to penetrate the federal procurement market.

If this is so, we are compelled to voice our strong unequivocal opposition to such a move. Not only is it contrary to the stated policy position of the Administration, it is at clear variance with the interest of the small minority business community and with the intent of recent Congressional actions as well. This action would represent a devastating blow not to the minority private sector, but to all small business as well. Further, it would sanction, once and for all, the near total grip that large corporations have on the lucrative federal procurement market.

There may be some short-term benefits to corporate America in this agreement. But the deleterious effect on the American economy is certain and long-term. It should no longer be necessary for any of us to come before a Congressional Committee and explain the importance of the small business community to the American economy. Yet the appalling fact is that even with this Administration, headed by a small businessman, we must explain just why this pact should not be consummated. It appears that small business has not yet made an impression on the political process of this country, nor on its political leaders, sufficient enough to promote fair and equitable treatment from our Government.

Small business constitutes 97 percent of all American business firms; provides jobs for 60 percent of the nation's private, non-agricultural work force, produces 43 percent of the Nation's Gross National Product, and 48 percent of the gross business product. Small businesses sustain the economy of smaller communities and help support and diversify the economy of larger cities. Their existence encourages hundreds of thousands of Americans to start new businesses each year, which is vital to a healthy economy and to the preservation of the free enterprise system.

Yet one of the most critical aspects of small business is its job-creation potential. Through contracting opportunities with the federal government, the small business firm increases its potential for employment. At a time when our unemployment levels are reaching frightening proportions—and astronomical proportions in the Black and minority community—this pact would deny the small and minority business community the means to increase employment opportunities. We must further understand that in the minority private sector, federal procurement contracts offer the opportunity to build capacity in minority firms to expand their ability to shoulder a more substantial responsibility in job-creation.

This international trade agreement is clearly at variance with the Administration's positions, policies and goals for reducing unemployment through a greater reliance on the private sector.

The Administration's apparent approval of a new multi-lateral trade agreement could effectively vitiate the efforts of minorities and small business persons to compete for the more than \$90 billion in federal procurement activities conducted by our Government annually. Over-turning or relaxing federal policies that earmark portions of government business for small and minority firms represents a giant step backwards for the collective efforts of those of us who believe that the strength and viability of small and minority business is crucial to the vitality of the American economy.

It is a particular slap in the face to the minority private sector which fought long and hard, often without any visible encouragement from this Administration, to gain acceptance and passage of Public Law 95-507. But let us be clear, the issue before us today is not simply one which affects minority enterprise. It is an issue which strikes at the very heart of the struggle for equal treatment for small business in this country. Small Business, which has long demonstrated its labor intensive nature, could now be effectively frozen out of major federal expenditures of our government.

Already, the percentage of federal procurement dollars going to the small business community is barely visible. Majority firms continue to garner more than eighty per cent of all federal procurement business. The small business

community, depending on whose figures you chose to believe, receives, somewhere from ten and nineteen per cent of federal procurement contracts; this, despite the fact, that small businesses account for nearly ninety-seven per cent of all business firms in this country. And the minority private sector receives a meager one per cent of procurement dollars during an exceptionally banner year.

And now, small business, which has had to compete against the likes of General Electric, IBM and American Motors—which not so long ago was officially classified as a small business firm—will have to confront foreign competition under this new trade pact. Not only do we have to compete with Fortune 500 companies, many of which flourished when the anti-trust principle was nothing more than a whispered concept, now we will have foreign companies with an even greater competitive edge with which to deal. Nothing in recent years can rank with this trade pact in inequality, injustice and danger to the viability of the small business community. Surely you know that foreign companies do not have to contend with the plethora of federal regulations and interventionist activities from the federal government that often strangle the small business concern. Moreover, the opportunity for greater international trade, as a result of this agreement, is clearly more feasible for larger corporation than for small and minority business firms.

No matter how one looks at this agreement, one can not help but have the feeling that a temporary advantage for big business is being sought at the expense of the small business community. If this agreement is sustained, what becomes of Public Law 95-507? What becomes of H.R. 90 which the House Small Business Committee has already considered with favor?

This agreement must be rejected if we are not to make a mockery of small business in this country. The agreement is ill-conceived, ill-advised and in direct contradiction to the efforts of four previous American Presidents. At a time when the Administration is preparing for a White House Conference on Small Business—which already has the trappings of a travesty—this agreement will lay the lie to any pretense that our government fully supports small and minority business development in this country.

The fact that large corporations have over the years conspired to deny minority firms, in particular, access to a greater role in the American economy, has amounted to higher prices in the market place and a loss of productivity in the total economy—which has ultimately hurt the consumer. To protect the consumer, the economy must be productive. Since 1946, with the passage of the Full Employment Act—and more recently with the Humphrey-Hawkins Act—the United States has been legally committed to a growing, increasingly competitive economy for all of its people. We still have the challenge of decreasing the nation's unemployment, increasing its productivity, improving the GNP through substantial increases in business receipts in the small and minority business community, thereby improving America's competitive position in world markets.

This trade agreement is in direct contravention of these goals. I can not over-emphasize that this agreement is not simply a retreat from the Administration's stated commitment to minority enterprise development, it is an affront to the entire small business community. No cosmetic dressing can hide that fact. This agreement will not increase competition in the business community. It will virtually sanction monopolistic practices by big business. As a result, it will cripple capacity-building efforts by the minority private sector and relieve government of its responsibility to promote a free, competitive economy.

We cannot allow this agreement to stand. It is not simply bad policy; it is bad business as well.

Thank you.

WESTERN UNION CONFIRMATION COPY,
Washington, D.C.

The PRESIDENT,
The White House, Washington, D.C.

Media accounts of the administration's apparent approval of a new multi-lateral trade agreement could devastate the efforts of the minority private sector to penetrate the lucrative government procurement market—now estimated at \$90 billion. Overturning or relaxing Federal policies that ear-mark portions of Government procurement business for small and minority business firms represents a definite set-back for the minority business community. The practical effect of this reported action is to place Federal procurement dollars almost exclusively in the hands of large corporations. The National Business League is strongly opposed to any relaxation in current procurement policies. Already, the percentage of

procurement dollars going to the minority community is barely visible at less than 1 percent. Majority firms continue to garner in excess of 80 percent of all Federal contracts.

The white small business community receives approximately 19 percent. Far from pursuing the administration's often stated goal of doubling or tripling the share of Federal contracts that are awarded to minority firms, this agreement carries the prospects of eliminating minorities from the procurement process altogether. According to published reports, the administration admits that this agreement, if sustained, would reduce by half the amount of contracts going to the general small business community.

The minority private sector could be frozen out completely. This action is especially disturbing in light of the massive effort by the minority private sector to gain a congressional mandate to expand its access to Federal contracts. The White House ultimately supported that effort. Yet, its decision on the trade agreement not only contradicts its public policy on minority enterprise, it places this administration squarely at odds with Federal efforts under four previous American Presidents. The administration's reported action is ill-conceived and ill-advised. If true, it should reverse itself immediately.

Sincerely,

DR. BERKELEY G. BURRELL,
President, National Business League.

Mr. LaFALCE. We will next hear from Mr. Baker, president of the National Association of Black Manufacturers.

Mr. Baker?

TESTIMONY OF EUGENE BAKER, PRESIDENT, NATIONAL ASSOCIATION OF BLACK MANUFACTURERS

Mr. BAKER. Thank you, Mr. Chairman.

I am president of the National Association of Black Manufacturers.

I would appreciate the remarks that Congressman Mitchell made, but also, Mr. Chairman, do feel the same impact and share the same concerns that my colleague to my right, Dr. Burrell, has.

Mr. Chairman, since this is my first opportunity to appear before a committee of the 96th Congress, I would like to take this opportunity, on behalf of the organization I represent—the National Association of Black Manufacturers, NABM—to congratulate you and the other members of this subcommittee for your continuing leadership on behalf of minority business enterprise.

For the benefit of the new members of the subcommittee, I would like to state the NABM is a national trade group that represents over 800 minority manufacturing firms. We also represent the majority of minority manufacturing and related firms that received 8(a) contracts during the last fiscal year.

Our comments today will deal principally with the multilateral trade agreement—which surfaced in the Washington Post newspaper last Wednesday, March 13, 1979—and has since been the source of much concern within the minority business community.

I want to state at the outset of this testimony that the NABM welcomes those nontariff trade matters that serve to enrich the American economy and create additional business opportunities abroad for American firms, but we will never support in any form those trade initiatives that cut into the limited Federal procurements that small and minority business currently receive.

Based on the information we have received in recent days, this is essentially what we are being asked to do. We are being asked to understand that the latest trade agreement recently concluded in

Geneva is good for American business—that an additional \$25 billion in foreign business will accrue to American firms while all that we give up in return is approximately \$300 million.

Reportedly, in order to carry out its part of the agreement, the administration has pledged to relax current restrictions in Federal procurement policies that have required agencies of the Government to grant preferences to certain domestic firms, and we are asked to understand this as well.

Presently, we do not understand. In fact, it is unconscionable that the administration permitted negotiations to progress this far without attempting to brief representatives of small and minority business or to solicit its input.

It was only a short time ago that this subcommittee considered and later favorably reported out, the most significant legislation ever, to assist the development and expansion of minority business enterprise.

The subject legislation, Public Law 95-507, eventually passed both Houses of Congress and was signed by the President on October 24, 1978.

That historic action, coupled with the President's own proclamation to triple the amount of Federal procurements going to minority firms, provided a renewed impetus to Federal effort to bring minority firms into the mainstram of the American economy.

Indeed, Public Law 95-507 is so new, in fact, that most of the policy changes required by the law are not in effect. Yet, we are asked to understand that the relaxing of certain provisions will not harm minority procurements, but instead will actually help these firms gain entry to foreign markets.

It now appears that the commitments made to minority business are no longer a priority matter, and that the multilateral proposal being pushed by the administration summarily nullifies the intent of Public Law 95-507.

We stand by our initial impression. We believe that the trade pact as presently constructed will do irreparable harm to minority business.

Currently, the most worrisome trend working against the United States in trade is the wage-price spiral, which may be undermining the ability of U.S. products to compete in world markets. This is hard to prove, but it is even harder to find a black manufacturer who doubts it.

Although under the terms of the trade agreement, American firms will be allowed to bid on Government procurements of the signatories, we do not believe that such an arrangement would be of significant benefit to the minority firms—which, for the most part, are already undercapitalized and, as such, cannot take full advantage of American markets.

Moreover, it is conceivable that the only American firms which might be able to take immediate advantage of the trade agreement are the multinationals whose share of international markets is already well-established.

We are also deeply concerned with the established threshold level of \$190,000, which would definitely have a disproportionate impact on MBE's, particularly those in the section 8(a) program.

During 1978, a total of 1,192 such firms received 3,365 contracts through the program, with a total value of \$748.2 million. The average size of these contracts was \$223,357.

Of the 1,192 firms participating, 127 were manufacturing concerns which received 327 contracts with an average value slightly in excess of \$500,000.

Further, the Carter administration, in its effort to slow inflation, has targeted the social programs for budget cutting.

This action, combined with proposal for trade liberalization involving the opening of Federal procurements to the signatory countries, would result in a relatively small reduction in the overall employment rate, but a staggering increase in the number of unemployed minorities currently residing in our Nation's urban areas.

It cannot be stated emphatically enough, no matter how many efforts are made to verbally soften the effects of the trade pact, that minority firms will bear the brunt of this impact.

In previous appearances before this subcommittee, we have related many times the uncooperative attitudes that prevail toward the 8(a) program and the minority firms it is supposed to help—in some SBA regional offices and in many procuring agencies throughout the Federal structure.

The recent months, these same "uncooperative persons" have spent considerable efforts to circumvent many of the requirements of Public Law 95-507. We submit that the multi-lateral trade pact represents yet another opportunity for those persons within the Government, who view the 8(a) program with much disfavor, to further limit the amount of Federal contract awards going to minority firms.

In conclusion, Mr. Chairman, this Geneva Trade Agreement could provide some desirable results toward the balance of trade for the United States. But the net benefits would be inadequate in the area of solving three of our Nation's most pressing problems: Inflation, minority unemployment, and Federal assistance to the growth and development of minority business.

Further, we urge this subcommittee to again to exert its fine leadership in the interest of minority business and be cognizant of the shortcomings in the trade pact and take the necessary measures at your disposal to correct the inadequacies that affect the growth and development of minority business.

Mr. LAFALCE. Thank you very much.

Our next witness is Jose J. Aceves, executive director of the Latin American Manufacturers Association.

Mr. Aceves?

TESTIMONY OF JOSE J. ACEVES, EXECUTIVE DIRECTOR, LATIN AMERICAN MANUFACTURERS ASSOCIATION

Mr. ACEVES. Thank you, Mr. Chairman.

Thank you for inviting the Latin American Manufacturers Association to present its concerns with regard to the proposed trade agreement and how it will impact on Public Law 95-507.

I am here today to express shock and disbelief over the proposed elimination of the 8(a) set-aside program with respect to procurement of goods by Federal agencies as contemplated in the trade agreement negotiated by Ambassador Robert Strauss. It is quite clear that Ambassador Strauss was unprepared and it is also quite clear to us that he is out of tune with the problems of the minority business community.

Last year, President Carter announced that Federal contracting with minorities would be tripled. Coupled with the passage of Public Law 95-507, it appeared that we could finally see the light at the end of the tunnel. The proposed trade act turns that light at the end of the tunnel into an onrushing train which will decimate the small gains we have made to date, as well as the promising future made possible by Public Law 95-507 and by President Carter's earlier announcement to triple Federal procurement.

We are told by Ambassador Strauss' office that the impact will only affect some \$300 million in small and minority business and that, therefore, the impact is really very small. This is a cruel and deceptive approach which is really saying that the minority community is not getting very much anyway, so it will not be hurt if we take some away.

Even if this policy only affected 25 percent of the 125 Hispanic companies in the 8(a) program, the effect would be devastating because it would put out of business the cream of the crop of the Hispanic manufacturing firms which we have been struggling to develop over the past 10 years.

These are the very companies which form the core of our drive to achieve industrial viability in this country. If the 8(a) contracting mechanism is eliminated, the trade policy will have broken the back of our modest struggle to develop an industrial base.

The impact of this policy cannot be measured against what minority entrepreneurs have, since they do not have much, and that is the very reason for the existence of the 8(a) program. The impact of this policy must be measured against the fair share of procurements which minority enterprise has been denied historically, and, more importantly, against the level of contracting which minority companies could achieve in the future through Public Law 95-507 and President Carter's much heralded policy to triple minority procurement with the Federal agencies.

This trade policy, furthermore, precludes the development of many other Hispanic firms which are on the verge of becoming part of the economic system. Implementation of the proposed trade policy sells short future generations of Hispanic entrepreneurs who deserve an opportunity to participate in Federal procurement activity.

It is impossible for us to understand how two Government policies can be so dramatically opposed. On the one hand, President Carter announced in his urban policy message that the tripling of minority business with the Federal Government is to be achieved principally through the 8(a) program. On the other hand, Ambassador Strauss announces that he has negotiated an international trade agreement which will result in a crippling of the very 8(a) program through which President Carter's policy on minority enterprise is to be accomplished.

It is totally inconceivable that the Government of the United States, in the highest levels of international trade negotiations, would reach down, single out minority enterprise and propose the removal of the one tool which the minority business community has for surviving and for becoming economically viable.

Why should the less fortunate in this country bear the brunt of this policy? Is it because we do not have the resources and high-powered

lobbyists which the steel, textile, food, and shoe industries have through which they have sought and secured exemption from the proposed trade policy?

This trade proposal casts the weak overboard simply because they are weak. This trade proposal lacks any semblance of the statesmanship which has characterized Ambassador Strauss' career in many other arenas. This policy lacks the sense of equity and fair play which typifies the more noble instincts of our national character.

We are told that there will be substitute incentives to mitigate the impact of the trade policy by increasing our participation in the overseas markets. Foreign trade is not a viable substitute for minority firms which will be put out of business if the 8(a) vehicle is not available to them.

How can we possibly participate in foreign markets when we have not achieved economic viability in this country? Ninety-nine percent of our minority companies lack the resources and sophistication to travel to Europe or Japan to secure contracts.

Every Government program carried out to date by SBA and the Department of Commerce has failed to involve minority firms in international trade. Foreign trade is not a viable alternative to the 8(a) program.

Mr. Chairman, I am deeply disturbed by the potential damage which this trade policy would cause to our constituents. It is a bad policy with respect to minority enterprise. I recommend that this committee, under your leadership, Mr. Chairman, urge the administration in the most urgent manner possible to exempt minority enterprise and the 8(a) program from the proposed trade policy.

The proposed trade agreement makes the proper implementation of Public Law 95-507 all the more important. I would like to share with this committee an example of a major failure to properly implement Public Law 95-507 which will illustrate our concern over the administration's support to minority enterprise. This matter involves the implementation of Public Law 95-507 at the Department of Energy.

We are, of course, all familiar with the effort undertaken by Mr. Dale Church and other top officials at the Department of Defense to water down the provision of Public Law 95-507 which relates to the establishment of an Office of Small and Disadvantaged Business Utilization at DOD. The former chairman of this committee, Congressman Addabbo, took strong action on this matter and the documentation of his efforts to correct the situation are a matter of record with this committee.

I am sorry to have to share with you facts which have come to my attention which clearly indicate that the Department of Energy is engaged in a similar effort to violate the intent of the public law with respect to the establishment of Energy's Office of Small and Disadvantaged Business Utilization—OSDBU. I have attached copies of internal DOE memorandums which substantiate my allegation that the Department of Energy is in violation of the public law.

Mr. LaFALCE. Without objection, that will be inserted in the record at this point.

[Memoranda referred to above follow:]

DEPARTMENT OF ENERGY,
Washington, D.C.

ACTION MEMORANDUM

To: Deputy Secretary.
Thru: Under Secretary.
From: Director of Administration.
Subject: Impact of Amendments to the Small Business Act (Public Law 95-507).

ISSUE

Establishment of the Office of Small and Disadvantaged Business Utilization and changes to procurement policy and operations due to Public Law 95-507 (Tab A).

BACKGROUND

On October 24, 1978, the President signed into law, Public Law 95-507 "Amendment to the Small Business Act (SBA)." Various provisions of the amendments to the SBA will have a direct impact on the Department of Energy (DOE). The first major impact concerns procurement policy and operations. Contracts under \$10,000 are largely reserved for small business enterprises. Mandatory subcontracting plans are required in public facility construction over \$1 million or \$500,000 in the case of other contracts. Prior to the award of these contracts, an acceptable contractor plan must be solicited, submitted, and approved by DOE. The plan is to include percentage goals for the utilization of small businesses and small business concerns owned and operated by socially or economically disadvantaged individuals.

The second major impact concerns an organizational change. Public Law 95-507 requires each Federal agency having procurement powers to establish an office to be known as the "Office of Small and Disadvantaged Business Utilization." It further requires that the Director of this Office shall be appointed by the Secretary and will be responsible only to and report to the Secretary or his Deputy. The major functions of this office are set forth in Tab B.

The third major impact will be the greatly increased workload. Over 1,000 major prime solicitations and contracts must undergo increased preparation prior to issue. Goals for these contracts must be set individually and then tracked and reported upon. Approximately 21,000 small purchases may be reserved for small business. Data requirements, SBA interface, and field surveillance increase accordingly.

ALTERNATIVES

Following are two organizational options for the new office and an assessment of their merits:

Option 1.—Establish a new Office of Small and Disadvantaged Business Utilization reporting directly to the Deputy Secretary.

Pro: 1. Clearly meets legislative requirement to establish office reporting to the Secretary or the Deputy Secretary.

2. Provides highest possible visibility to an effort likely to receive attention from numerous special interest groups.

Con: 1. Most costly option in terms of manpower requirements since some overhead structure would have to be established.

2. Offers high potential for confusion over roles and responsibilities of this new office vis-a-vis the Department's central procurement component (PR) which has very closely related responsibilities.

Option 2.—Establish the new Office of Small and Disadvantaged Business Utilization within the Office of Procurement and Contracts Management (PR) by renaming and redescribing the mission of the current Office of Procurement Business Affairs with the understanding that the Director of the new Office reports to the Director of Procurement and Contracts Management for day-to-day activities but has access directly to the Deputy Secretary as needed.

Pro: 1. Eliminates potential need for extensive new overhead required to establish a new office.

2. Builds on established procurement policy organization framework, functions, and activities already in existence in PR.

3. Capitalizes on established PR relationships with small and disadvantaged businesses.

4. Assures best possible coordination among all departmental procurement policies and programs.

Con: 1. May be viewed as inconsistent with intent of Public Law 95-507 with regard to reporting relationships of this Office with the Secretary or the Deputy Secretary.

DISCUSSION

In addressing this issue, an additional consideration is the establishment of the new Office of Minority Economic Impact (OMEI) as mandated by the National Energy Act (NEA). The mission of this office is to advise the Secretary on the effect of energy policies, regulations, and other Departmental actions on minorities and minority business enterprises and on methods to afford an opportunity to minorities to participate fully in DOE's energy programs. An Action Memorandum to the Deputy Secretary on the appropriate organizational placement of the OMEI has been prepared separately and will be circulated to appropriate Secretarial Officers before it is sent to the Deputy Secretary for decision.

Although there is some potential for overlap of functions between the two new offices, the major thrust of the offices is basically different. The Office of Small and Disadvantaged Business Utilization focuses on implementation and execution of prime and subcontracting functions and duties, and plans. The major thrust of the Office of Minority Economic Impact is one of research on the effects of energy policies and programs on the minority community including providing loans to minority business enterprises for bidding on requests for proposals. Although the missions of these two new offices are basically different, certain specific functions related to these missions would likely be closely related.

Some of the functions and responsibilities to be assigned to the new Office of Small and Disadvantaged Business Utilization already exist in part in various entities within DOE, primarily in the Office of Procurement Business Affairs, PR. Some offices are currently performing related functions that could be reassigned along with associated resources to this new office, and this must be reviewed.

The Office of Procurement Business Affairs has been responsible for the functions under the Small Business Act. These activities include establishing goals, monitoring, promoting, and reporting on small, minority, and labor surplus programs. The new law has enlarged these functions, and has changed the reporting lines. It might be observed that in the first year of DOE the PR office increased small business awards from 10.4 percent to 14.9 percent and minority business enterprise awards from \$31 million to \$84 million.

It should be recognized that the best organizational assignment for the new office must provide for the greatest coordination and communication between the office and PR. In this regard, we believe the intent of Congress will be met as well as assuring the most effective management arrangement by housing the new office within PR. This arrangement allows for the new office to build upon the existing relationships PR has built with the small and disadvantaged business community, and its expertise in contracting activities. However, if this relationship is going to meet the intent of Public Law 95-507, specific reporting relationships must be clearly defined and observed. The Director of the new office would report to the Director of Procurement and Contracts Management but would have access directly to the Deputy Secretary as needed. The Director, PR, would provide day-to-day leadership and supervision, and would draw on the other resources of PR as required.

RECOMMENDATION

That you approve the establishment of an Office of Small and Disadvantaged Business Utilization within the Office of Procurement and Contracts Management. Reporting relationships of this new component would be as described above and its functions as described in Tab A.

NEXT STEPS

1. The Secretary shall appoint a Director for the Office.
2. PR develop fully descriptive mission and functions statements for the new office based on Tabs A and B.
3. PR and AD review the organizational structure for the office, as redesignated, to determine any necessary changes.
4. Determine whether additional resources are required to staff office (PR and AD coordination)

5. AD determine functions and resources if any that should be transferred from other DOE organizations.

6. Redefine the functions and duties of other offices and personnel covered by the law. (AD)

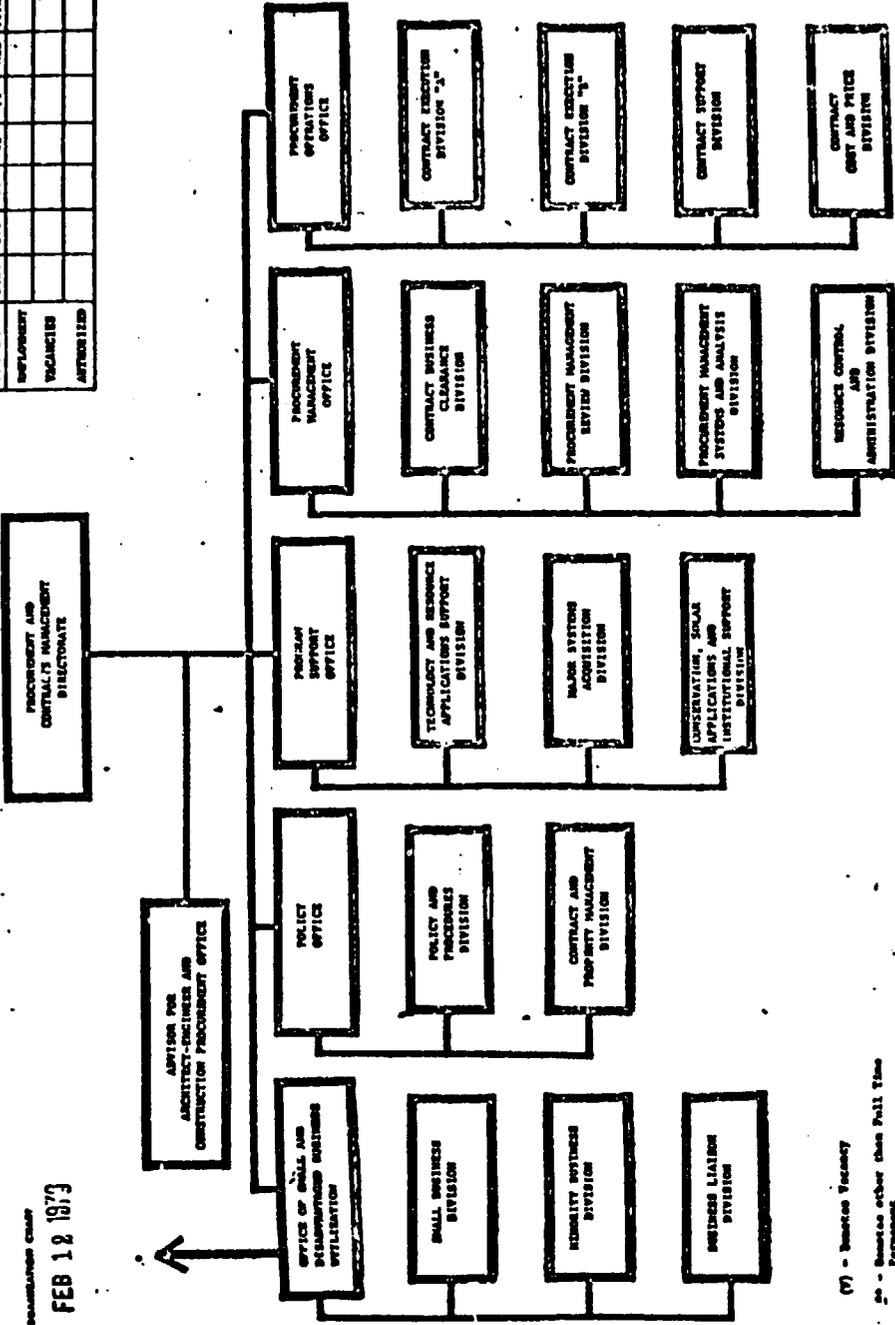
7. Determine the degree of supervisory authority to be exercised over field personnel performing small business and disadvantaged business functions. (PR and AD)

WILLIAM S. HEFFELFINGER.

Attachment.

FUNCTIONAL	STAT	STS	CC	WB	OTHER	TOTAL
EMPLOYMENT						
VACANCIES						
APPROPRIATED						

U. S. DEPARTMENT OF ENERGY



FORMER 5010-10
 (4-73)
 CHANGE 001, MAY 7
 ORGANIZATION CHART
FEB 12 1973

(*) - Source Vacancy
 (v) - Source other than Full Time Permanent
 (v) - SOURCE SECRETARY FOR P.L. 95-507 FUNCTIONS AND RESPONSIBILITIES.

OFFICE OF THE DIRECTOR

Director EES M. J. Tashjian
 Dep. Director EFS H. J. Rauch
 Exec. / st. GS-1102-14 S. R. Morgan
 A&E Advisor EES S. Caputo
 Secretary GS-0318-9 J. Malone
 Sec-Steno GS-0318-8 Y. Poetzman
 Clk-Steno GS-0312-5 C. Jenkins

OFFICE OF SMALL AND DIS-
ADVANTAGED BUSINESS UTILIZATION

Dir. EES C.A. Armstrong

MINORITY BUSINESS DIVISION

Dir. GS-15 L. Miranda

SMALL BUSINESS DIVISION

Dir. GS-15 P. Brda

BUSINESS LIAISON DIVISION

Dir. GS-15 J. Koser

OFFICE OF POLICY

Dir. EES G.J. Koch

POLICY AND
PROCEDURES DIVISION

Dir. EES R.L. VanNess

CONTRACT AND PROPERTY
MANAGEMENT DIVISION

Dir. EES J. Garcia

OFFICE OF PROCUREMENT
MANAGEMENT

Dir. EES J.E. Reid

CONTRACT BUSINESS
CLEARANCE DIVISION

Dir. EES D.J. Ball

PROCUREMENT MANAGEMENT
REVIEW DIVISION

Dir. GS-15 J. Boone

PROCUREMENT MGMT. SYSTEMS
AND ANALYSIS DIVISION

Dir. GS-14 G.D. Conwell

RESOURCE CONTROL AND
ADMINISTRATION DIVISION

Dir. GS-14 G. Williams

OFFICE OF PROGRAM SUPPORT

Dir. EES W.B. Ferguson

TECHNOLOGY AND RESOURCE
APPLICATIONS SUPPORT DIVISION

Dir. GS-15 J. Higgins

MAJOR SYSTEMS ACQUISITION
DIVISION

Dir. GS-15 E. Cumaty

CONSERVATION, SOLAR APPLI-
CATIONS, AND INSTITUTIONAL SUPPORT
DIVISION

Dir. EES T. Anderson

OFFICE OF PROCUREMENT OPERATIONS

Dir. ZFS J.P. Cappello
 Dep. Dir. EFS T.J. Devin
 Assoc. Dir. GS-15 E. Larson

CONTRACT EXECUTION DIVISION "A"

Dir. GS-15 B. Goldman

CONTRACT EXECUTION DIVISION "g"

Dir. GS-15 E. Itnyte

CONTRACT SUPPORT DIVISION

Dir. GS-15 J. Regan

CONTRACT AND PRICE DIVISION

Dir. GS-15 J. Nelson

BEST COPY AVAILABLE

U.S. DEPARTMENT OF ENERGY.

To: Director of Procurement and Contracts Management.

Date: February 26, 1979.

Subject: Office of Small and Disadvantaged Business Utilization.

This is to advise you of approval of the proposed organization structure, mission and functions of the subject office. These actions are in agreement with the decision of the Deputy Secretary January 15, 1979, to establish this office.

Approval of this organization structure should not be construed as approval of any grade levels in your submission. Such determinations will be made by the Office of Personnel Management within the context of the structure, the functional statements for each organizational unit, the interrelationship of positions within each unit, and the duties assigned to each individual position.

Staff in the AD Office of Organization and Management Systems and Personnel Management will assist you as necessary in the implementation of this structure.

WILLIAM S. HEFFELFINGER,
Director of Administration.

Mr. ACEVES. At issue is the level in the agency at which Congress intended OSDBU to be established, the authority which the Director of OSDBU was intended to have, and to whom the Director was to report. The public law states, in relevant part, that the Director of the OSDBU shall—

... be responsible only to, and report directly to, the head of the agency or to his deputy ... have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this act.

The committee of conference in its joint explanatory comment—Report No. 95-1714—stated that the actions of the Director of OSDBU “will be supervised and controlled by the head of its agency or the second ranking person therein, as the case may be.”

In the face of such clear and unequivocal language, I am appalled to find that Energy has established the OSDBU in the Office of Procurement and Contracts Management under the Director, Mr. M. J. Tashjian.

This action was approved by Mr. O’Leary, Deputy Secretary of the Department of Energy, on January 15, 1979, in an action memorandum which, in defining the establishment of the OSDBU, states:

The Director of the new Office (OSDBU) would report to the Director of Procurement and Contracts Management but would have access directly to the Deputy Secretary as needed. The Director, PR (Office of Procurement and Contracts Management) would provide day-to-day leadership and supervision.

This arrangement violates the principal elements of the congressional intent and the specific language of the public law, namely:

One, the Director of OSDBU does not report directly and only to the Secretary or his Deputy;

Two, the activities of the Director of OSDBU are supervised by the Procurement Director and not by the Secretary or his Deputy; and

Three, by being placed under the Procurement Director, the Director of OSDBU clearly does not have supervisory authority over all personnel having functions relating to the Small Business Act.

The authority for this approach was approved by: (1) John F. O’Leary, Deputy Secretary; (2) Eric J. Fugi, General Counsel; (3) M. J. Tashjian, Procurement Director; and (4) William Heffelfinger, Director of Administration.

Implementation of this plan began February 26, 1979. From what we can determine, the implementation of this policy has left the structure intact as it was prior to Public Law 95-507 with the exception of

title changes and other cosmetic alterations. The person who is the Acting Director of OSDBU, Col. C. Armstrong, remains in the same relationship to the Procurement Director as before.

Mr. Chairman, in view of the blatant actions of DOD and DOE to thwart the intent of Public Law 95-507, I recommend the following actions:

(1) That this committee call oversight hearings immediately to review the implementation of the Office of Small and Disadvantaged Business Utilization by Federal agencies;

(2) That this committee take whatever actions may be necessary assure faithful adherence to the public law and, in particular, that the Director of the OSDBU: (a) Report only to the Secretary or his Deputy; (b) be supervised only by the Secretary or his Deputy; and (c) be placed above the Procurement Director to insure proper supervisory authority over procurement with respect to matters related to the Small Business Act;

(3) That this committee inform Senators Jackson and Domenici of the Senate Committee on Energy and Natural Resources of this situation, and request their immediate attention in redressing this failure to implement the law of the land by DOE; and

(4) That the committee insure that whoever is appointed as a Director of an Office of Small and Disadvantaged Business Utilization have the necessary background and demonstrated capacity to function at the level called for in the public law.

Thank you, Mr. Chairman, for the opportunity to appear before you and to present my concerns regarding the trade agreement and the implementation of Public Law 95-507.

Mr. LAFALCE. Thank you very much.

I do want to point out that this subcommittee is extremely concerned with the implementation, proper implementation, of Public Law 95-507.

Because of this, we have created a special task force within this subcommittee. We have asked Mr. Mitchell to chair that task force. He and I have agreed upon the future course of action for that task force.

Its first priority will be hearings regarding the immediate implementation of Public Law 95-507. I have no doubt that that will include any attempted efforts to circumvent the spirit.

This full subcommittee is having hearings today on what we consider actions in violation in both the spirit and the letter of Public Law 95-507 with regard to the Procurement Code.

Mr. Mitchell's task force will have early hearings regarding DOE's actions in this regard.

Mr. Mitchell?

Mr. MITCHELL. May I embellish on what the chairman has said?

I have submitted to the chairman a plan for hearings. It is our intent to go through agency by agency to insure that Public Law 95-507 will be implemented.

I must indicate that the chairman has been totally cooperative in supporting this effort.

Mr. LAFALCE. Our final witness will be Malcolm Corrin, president and chief executive officer of the Interracial Council of Business Opportunities.

Mr. Corrin?

TESTIMONY OF MALCOLM CORRIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERRACIAL COUNCIL OF BUSINESS OPPORTUNITIES

Mr. CORRIN. Thank you, Mr. Chairman.

I am president and chief executive officer for the Interracial Council of Business Opportunities, referred to as ICBO. ICBO is an economic development organization which was conceived 16 years ago, and primarily sponsored by the private sector.

Over the years, ICBO, through its clients and offices around the country, have secured over \$200 million in procurement in financing for minority businesses.

I have been with the organization for 10 years. As I look back and forward, our greatest role is that of the advocacy role, that the free enterprise system is a system upon which this country has prospered and has grown.

The children coming into first grade are told about the free enterprise system. In the seventh grade and in the 10th grade, and in college it is the free enterprise system.

But acts of the nature that are taking place now, in terms of giving foreign corporations an opportunity to do business with the U.S. Government, tells our people there is no hope for them that we have promised them for years and years.

I recall that President Roosevelt called in the black leaders after World War II, or before World War II, and said he could not promise them anything.

As I was riding over here this morning in a cab, the cabdriver said:

My son went into the service. He decided to get out and they gave him a dishonorable discharge. We corrected it.

I was in World War II, but I would not have served in any other war because I do not see too many things changing from what happened when I was 18 or 19 years old and in the European theater of operations.

Mr. Chairman, I do not have a prepared statement. I say this because I believe in the free enterprise system. I am a student of economics.

I want to cite an example of a plant in Flint, Mich., which was a Buick Motor plant. I sold insurance in Michigan for several years.

I recall one of the radicals who was college educated and was always anti-Establishment.

One day General Motors said that they were going to straighten up and fly right, and that they were going to appoint a black foreman. They appointed one black foreman. He did well.

They appointed this fellow that I knew very well by the name of Miller. Miller got the job as line foreman, and at the end of the year General Motors said:

My man, you have done a great job. Not only are we going to pay you the high salary that we pay managers at General Motors, but we will double your salary with a bonus.

From that time on, Miller was one of the leading advocates for the free enterprise system.

If you look at General Motors and the high number of foremen, managers, and even there is a vice president and the general counsel is black. They have made a contribution to General Motors because they had an opportunity to show what their qualifications were and what their commitments were.

They are the greatest examples that we have in this country of the free enterprise system and what it stands for.

It really disturbs me, as I go into hotels nowadays, and find citizens waiting tables, where at one time that was primarily left to the black people. It really bothers me when I go through Harlem, as I do quite frequently, and find men standing on the corners who want to go to work in the free enterprise system, but cannot.

It bothers me because small businesses, as you and I know, are the largest employers of nonskilled unemployed people.

This is another indication that we do not care about our people.

Furthermore, as I understand, as economics has taught me, most foreign governments protect their own. We, in the United States, are continually talking about bringing in other citizens when we have a large group of hard-core citizens here who are not working. This says we really do not care for them.

However, I feel there is some hope somewhere. I would hope that this committee would stick to its guns and it will see to it that if this trade agreement goes through—and, Mr. Mitchell, I will have to agree with you that it probably will go through because there is a whole lot of money in multinational companies that will make it go through—but that you will make sure that significant concessions will be made to small and minority businesses as a tradeoff to offset what they will lose by Mr. Strauss' idea in procurement.

Thank you very much, Mr. Chairman.

Mr. LAFALCE. Thank you very much, Mr. Corrin.

I really do not have any questions because I find myself in such sympathy with the point of view that you have expressed.

I have a comment, however. I think that it is fairly evident that this Government procurement code was fashioned with little consultation with the Congress and with little consultation with other agencies within the executive branch of Government, and, with, in my judgment, no knowledge of Public Law 95-507.

I think that, having done it and having acted, an attempt is now being made in good faith to say: "Well, our actions, although they were blind actions, really will not have that harmful impact."

That is one approach; that is, to minimize the problem and to present objective data to substantiate the efforts to minimize it, and, therefore, to justify past actions that were taken with no knowledge of existing law.

But it would seem to me also that there is another course of action, and perhaps a course of action much more appropriate, and one much more politically astute—having acted with virtual ignorance of existing law, then why not face up to the fact and go about amending it?

I would think if one went back to the negotiation table, not with a request to replay all the cards, but simply with a statement that we did not know what we were doing, and we think it is going to have a minimal impact objectively, but psychologically it is going to have a tremendous impact, and politically it will have a tremendous impact, and, therefore, let us reconsider it.

Then that might be better.

We have created so many exclusions to the procurement code, then why not create another one? I think that would bear fruit.

So, that was the reason I asked the specific question of whether or not the 8(a) program in particular might be excluded in future negotiations that will take place prior to a signing of the agreement.

If Mr. Strauss can go back to the table—and they still are in the process of negotiating—and say: “I did not really know what I was doing, and even though I do not think it is that much and because it is not that much, it is easier for you to accept another small little exception.”

I think if we mustered our resources, or marshaled our resources, and proceeded in that manner, that we might have a much better chance for success than if we proceeded in some other manner, that is, like a more negative manner.

I think the presentation of a constructive alternative by Mr. Strauss would be that the President might make the recommendation to Mr. Strauss that because he is so persuasive that he really could do this. It might make all of our tasks that much easier.

We would certainly be able to support this total MTN much more readily if that were done.

Mr. Mitchell?

Mr. MITCHELL. I have no questions.

We have a vote on the floor. We have 10 minutes left, Mr. Chairman.

I want to thank the Chair for conducting these hearings. Maybe I should not have been quite so pessimistic to say that Mr. Strauss will win.

Armed with the chairman's tenacity and wisdom, maybe we can win this.

Thank you.

Mr. LAFALCE. Thank you, gentlemen.

[The following statements were received for insertion in the hearing record:]

PREPARED STATEMENT OF KENNETH YOUNG, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO welcomes the attention of this subcommittee to the issues in the trade agreements affecting procurement programs for small business and minority enterprise.

The trade agreements are not finished. The implementing legislation is not now before the Congress. The scope of agreements, therefore, need examination before any overall “package” of laws is presented to the Congress to assure that such legislation promotes the well being of all Americans.

There is no requirement that government procurement be part of the overall package.

The Trade Act of 1974 gave a “hunting license” to the negotiators to see whether government procurement could result in a fair deal, but there is no requirement that such a deal be made.

The Administration must present all changes in U.S. law and regulations that are “necessary and appropriate” to carry out these trade agreements.

It can be argued that government procurement changes are neither necessary nor appropriate at this time.

Congress has repeatedly inserted Buy American provisions in many laws because both good government and good economics dictate the use of taxes to improve the economic condition of the taxpayers. Most Americans believe that public money is spent to help American production and employment in the states and cities and towns across this land. The Public Works Act of 1976, the Federal Highway Act, the Urban Mass Transportation Fund and the various housing laws were passed to help meet the needs of this nation. The AFL-CIO has urged that the actual spending of the federal dollar for these and similar laws has not necessarily followed that Congressional intent in the places where the projects have been built. No further weakening of these laws is appropriate.

Under current international trade rules, government procurement is exempt from the “free trade” rules. Article III of the GATT allows that exemption.

A code on government procurement could change U.S. government exemptions from the longstanding view, even of free traders, that the taxes can be used to benefit taxpayers in any nation. This is not appropriate at this time.

Changes could affect directly the Buy American Act 41 U.S.C. 10, and regulations connected with it. It could affect both laws and regulations that direct procurement for minority firms, despite newspaper reports that minority and small business procurement is excluded.

The AFL-CIO believes that such changes need not be included in the overall package presented to the Congress for an "up or down vote." The efforts to work out an international procurement agreement that will allow U.S. firms to bid on foreign contracts predate the Trade Act of 1974. There is no need, therefore, to include them in implementing legislation that authorizes the "MTN".

Foreign governments already enjoy rights in the U.S. that other nations do not grant to U.S. firms. To add new rights for foreign governments on top of the old is not, therefore, a fair bargain. The U.S. should be given rights abroad and see how they work before any changes are made at home.

Government procurement is essentially a taxpayers' issue—not a trade issue. Tax dollars are used to buy the goods. Thus no "free trade" competition can exist.

The United States "Buy American" law is uniquely American. Foreign governments automatically give preference to their own supplies. They need no law to accomplish this goal. "Free-traders" and "protectionists" alike have recognized that the use of tax dollars to benefit the taxing jurisdictions is an appropriate function of government. The General Agreement on Tariffs and Trade specifically exempts government procurement from its trade liberalizing provisions in Article III and Article XVII.

The AFL-CIO supported the laws that created preference for U.S. taxpayers in need of help—small business, minorities, those in areas of high unemployment—41 U.S.C. 10-a-d-150 S.C. 637(d); 15 U.S.C. 64(4a), small business set-asides and 15 U.S.C. 644(d) for labor surplus areas.

The AFL-CIO share the committee's concern that a new agreement based on a pledge by foreign governments, could weaken these social and economic gains.

Furthermore, the preference for U.S. bidders can bring greater benefits than opening U.S. markets even more because tax dollars spent in the U.S. add to jobs, business and technology development at home. These create new tax returns and additional benefits to the U.S. budget as well as potentials for more jobs, production, profits, and revenues in the future.

The problem of small business has already been compounded by the failure to carry out U.S. laws as Congress intended. Thus an effort to assure preference for Americans on purchases of mass transit equipment is undercut by regulation. Small business and minorities are affected by these regulations. The removal of U.S. "Buy American" preference would further undermine Congressional intent.

The AFL-CIO has urged improvement in U.S. domestic preference laws to avoid these loopholes.

Any change in law should require clear proof of origin of products. Otherwise the U.S. small business can be undermined and minority preferences voided.

We urge this subcommittee to continue to examine the proposals that will affect hard-won economic and social gains of U.S. taxpayers.

PREPARED STATEMENT OF EDISON R. ZAYAS, ECONOMIST, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

NFIB, on behalf of its 565,000 small and independent member firms, appreciate^s the opportunity to present our views on the Multi-Lateral Trade Negotiations and possible contents of its implementing legislation. We applaud the Chairman, interested Members of the Committee and Subcommittee, and the staff for their prompt response to published reports regarding the content of this Agreement.

From the outset, Mr. Chairman, I believe it is only fair to say that we really don't know what the impact of the International Government Procurement Code will be on American small business. At this point in time, we can only make educated observations based on small business' historical role in world trade and in domestic federal procurement.

As we understand it, existing government programs that set aside U.S. procurement contracts for small businesses will not now be affected by the proposed international procurement code. Similarly, it is our understanding that set-aside programs for minority businesses will also be preserved. Given that so many small and minority-owned businesses are dependent on those government contracts for sustenance, we are pleased to see that these programs will remain in place.

FOREIGN COMPETITION FOR U.S. PROCUREMENT

Foreign companies of the signatory countries, however, will be allowed to openly compete for federal contracts that lie outside of the set-aside programs. Given that American small businesses already compete with large American businesses for those contracts, competition with foreign companies should, theoretically, not prove to be unfair or a major hardship. This would hold true, however, only to the extent that the bids of foreign companies (small or large companies) truly reflect their real operating costs. But, many foreign firms are either heavily supported by their governments through export subsidies or are actually state operated and owned. These firms, in contrast to privately-held and non-subsidized firms, do not necessarily operate in a manner that maximizes company profits. Almost by definition, the objective of state-owned or heavily-subsidized companies is to maximize national employment, create a specified social climate, etc. It is of minor concern to the government authorities if these companies operate at a loss, so long as they can penetrate new markets to provide additional export-led economic growth. In support of this contention is a recent article in *Fortune Magazine* (April 9, 1979), which showed that out of the twenty largest government-owned industrial corporations, ten operated at a loss in 1977.¹ Four other government-owned companies had return on sales of less than 1 percent (See table 1). In the face of such competition, American small businesses would be hard-pressed to come up with equally competitive bids. To the extent that these types of firms enter the bidding process, American small businesses (and large businesses as well) would be placed at a severe competitive disadvantage.

In addition, it is important to recognize that most European and less-developed countries have export-led economies. Consequently, their respective governments are geared administratively and organizationally towards assisting their companies in promoting export growth. Therefore, these governments already have in place worldwide international networks that provide the necessary market intelligence required to promote successful export growth. Given this background, it is entirely possible that foreign companies may be better equipped to compete for U.S. Federal contracts than American small businesses.

Although there may be language in the Code prohibiting unfair trade practices, it is doubtful that the Code can be adequately enforced. Our inability to stop the Japanese government from subsidizing their exports should serve as a reminder that enforcement is easier said than done.

Then, there is a major question of procedure. What is a small business owner to do if he/she suspects a government contract was lost to a foreign competitor as a direct result of predatory pricing tactics or foreign government subsidization? How can small business owners prove that foreign competition is in fact engaging in unfair trade practices, and who do they report to? What can a government procurement officer do once such a complaint is filed? Can small business owners expect prompt action and how will this action affect the bidding process? More importantly, what will be done to help the small business after the contract has been lost and the damage is done?

These procedural questions are of great concern to NFIB, for a small business owner cannot afford any costly litigation or the time lost spent in addressing these grievances. As a practical matter, it seems clear that if unfair trade practices do occur, it is the small businesses that will be hurt the most. One or two government contracts lost could lead to the ultimate bankruptcy of a small business. At that point, there is little the U.S. Government could do to be of any help. We are really concerned with the ex post ramifications of a violation of this proposed International Procurement Code.

FOREIGN GOVERNMENT PROCUREMENT OF U.S. SMALL BUSINESS GOODS AND SERVICES

So far, we have discussed the impact of the International Procurement Code in terms of competition for U.S. federal contracts, and the outlook does not appear encouraging. Unfortunately, we cannot say anything differently regarding American small business contracting with foreign governments.

The foremost problem likely to be encountered by U.S. small firms seeking to obtain contracts from foreign governments is political in nature. One must recognize that government entities, especially those that are socialist, are not usually concerned about maximizing profits or minimizing costs when purchasing goods and services from the private sector. The primary concern among these foreign government entities is to maximize domestic employment and redistribute wealth

¹ "U.S. Companies in Unequal Combat," *Fortune magazine*, Apr. 9, 1979.

and employment, etc. This is not done through reliance on the free market, but rather through direct participation in the market place. Illustration 1 demonstrates the degree to which this is true. This illustration indicates that the governments of U.S. trading partner countries, own most of the major industry in their countries. The distinction between industry and government is quite blurred. Against this backdrop, it is easy to see that these foreign governments have a major stake in their industries, and are unlikely to abide by international agreements that don't benefit their domestic firms. American small businesses seeking contracts from these governments would not stand much of a chance. It is highly unlikely that these governments will change the rules of their games to do business with a few American small businesses and risk political suicide.

Perhaps more importantly, what legal recourse would an American small business have if it was found that a government entity was not playing by the rules of the international procurement code? What prompt, remedial actions could be taken if it were believed that a foreign government was favoring domestic firms, regardless of the competitiveness of American bids? Is it politically realistic to expect the U.S. State Department to risk diplomatic strife over the complaints of a handful of American small business owners?

For example, in 1975, Pan American World Airways approached the Congress for the purpose of granting the Post Office authority to reimburse Pan Am for money owed the company by foreign governments for carrying mail. Several countries owed Pan Am millions of dollars and some were a considerable period behind. Both the Post Office and the State Department had, without much success, attempted to intervene for the company. The point of this story is— if the American government cannot or will not bring enough pressure to bear on behalf of a large American company that was in desperate financial straits, can a small American entrepreneur reasonably expect any effective government support in competing for foreign procurement? Obviously, it is highly doubtful.

SMALL BUSINESS EXPORTING

Even if foreign governments followed an International Procurement Code scrupulously, American small business still has inherent exporting problems. The first problem is awareness of the possibilities for export. In a 1974-1975 survey of small manufacturers, wholesalers, and non-professional services conducted by NFIB and SBA,² it was learned that the vast majority of non-exporters knew practically nothing about exporting and had probably never investigated the possibility. For example, 90 percent were unaware of DISC (85 percent of manufacturers); 88 percent were unaware of Export-Import Bank programs (84 percent of manufacturers); and, 78 percent were unaware of Department of Commerce programs (69 percent of manufacturers). That, of course, is a problem one frequently encounters in dealing with small businesses.

The foregoing is reinforced when non-exporting manufacturing respondents were asked to list the reasons from a series presented for not exporting. Of the twelve listed reasons, "No Answer" was far more frequently cited than either "Yes" or "No." (See table 2). The most frequent "Yes" answers are rank ordered as follows: (1) Think you lack the required knowledge, (2) Don't know where a good market exists, (3) Concerned with developing domestic markets, (4) Don't have the productive capacity, (5) Don't have the necessary capital, (6) Financial aspects are too complicated, (7) Not interested in export sales, (8) Transportation too costly, (9) Believe too much risk involved, (10) Profitability too low, (11) Too much competition, and (12) Unable to obtain banking assistance.

Not surprisingly, there is a direct relationship between firm size and exporting. The larger "smalls" have a much greater propensity. That is not surprising. One should expect certain economies of scale to be inherent in exporting, particularly if the sales operation is left to the individual firm. This, of course, raises the final point with respect to the International Procurement Agreement. Even assuming a balance between lost domestic markets and expanded international markets, are we really not speaking of a gain for a few very large "smalls" and a loss for a large number of small "smalls"?

In concluding, Mr. Chairman, we feel that American small businesses have little to gain and a lot to lose from the proposed International Government Procurement Code.

² Export Information Survey, unpublished paper, joint project by NFIB and SBA, March 1976.

TABLE 1.—The 20 largest government-owned industrial corporations

	Net income as percent of sales (1977)
Renault (France), motor vehicles.....	0. 04
British Steel, metal refining—steel.....	Loss
British Leyland, motor vehicles.....	Loss
National Coal Board (Britain), mining—coal.....	1. 11
Salzgitter (Germany), metal refining—steel; ship building.....	Loss
Italsider (Italy), metal refining—steel.....	Loss
Charbonnages de France, mining—coal; chemicals.....	Loss
Statsföretag Group (Sweden), paper and wood products; mining—iron.....	Loss
Zambia Industrial & Mining, mining and metal refining—copper.....	. 22
Aérospatiale (France), aerospace.....	Loss
VIAG (Germany), metal refining—aluminum.....	. 93
British Aerospace, aerospace.....	3. 40
Saarbergwerke (Germany), mining—coal; petroleum.....	. 81
Steel Authority of India, metal refining—steel.....	5. 94
Tabacalera (Spain), tobacco.....	. 36
CODELCO-CHILE, mining and metal refining—copper.....	12. 92
Rolls-Royce (Britain), aerospace.....	2. 12
Alfa Romeo (Italy), motor vehicles.....	Loss
ENSIDESA (Spain), metal refining—steel.....	Loss
South African Iron & Steel, metal refining—steel, iron; coal.....	Loss
Average return on sales of the 500 largest industrials outside the United States.....	4. 10

Source: "U.S. Companies in Unequal Combat," Fortune magazine, Apr. 9, 1979.

TABLE 2.—SMALL MANUFACTURER REASONS FOR NOT EXPORTING, 1974

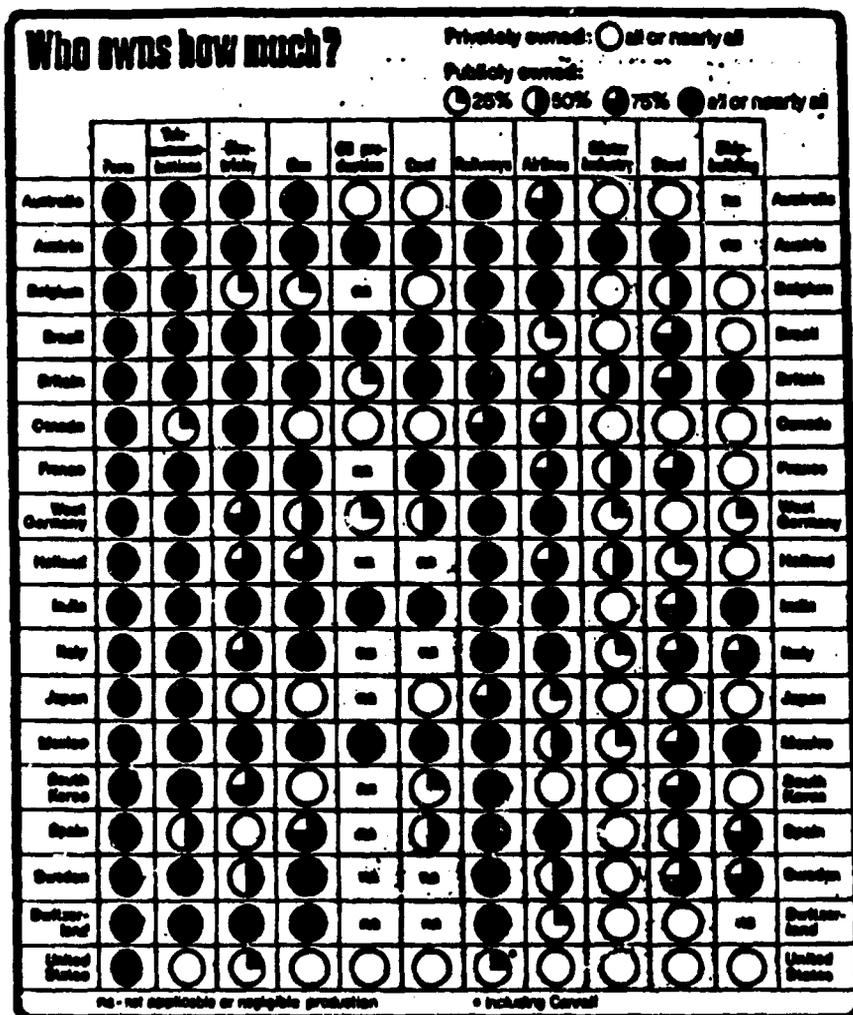
(In percent)

	Yes	No	No answers
1. Think you lack required knowledge.....	26	17	57
2. Not interested in export sales.....	18	25	56
3. Concerned with developing domestic markets.....	23	15	62
4. Believe too much risk involved.....	12	22	66
5. Don't know where a good market exists.....	25	13	62
6. Don't have the productive capacity.....	20	17	62
7. Don't have the necessary capital.....	19	16	64
8. Financial aspects too complicated.....	19	14	67
9. Unable to obtain banking assistance.....	5	21	74
10. Too much competition.....	9	20	71
11. Profitability too low.....	11	16	73
12. Transportation too costly.....	17	15	68

¹ Rows may not add to 100 percent due to rounding.

Source: Export Information Survey.

Illustration 1



Source: "Public Sector Enterprise", The Economist Magazine, Dec. 30, 1978

Mr. LaFALCE. The subcommittee is adjourned.
[Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

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MULTINATIONAL TRADE NEGOTIATIONS

WEDNESDAY, APRIL 4, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND MINORITY ENTERPRISE OF THE
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 2362, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN LaFALCE

Mr. LaFALCE. The Subcommittee on General Oversight and Minority Enterprise will come to order.

Our last hearing, which focused on the effects for the proposed procurement code resulting from the multilateral trade negotiations, produced some dramatic turnabouts. As a result of Tuesday's hearing, Ambassador Strauss successfully negotiated the continued exemption of the small business set-aside program and the minority business set-aside program from the code's application. This he did within a 2-day period, calling me the Thursday after the Tuesday.

While I was very pleased with these results, this was only two-thirds of what we were seeking. Despite these new revisions, the proposed procurement code would appear to devastate the labor surplus set-aside program.

Through labor surplus set-asides, Government procurement dollars can be directed to those areas of our country with the highest unemployment. This committee has, for the last 2 years, evinced a continued interest in the utilization of this program. First, in Public Law 95-89, we provided this program with a legislative predicate. During the last Congress, the subcommittee which I then chaired held 5 days of hearings on the implementation of this program. This subcommittee, then chaired by Congressman Addabbo, also held a number of hearings at which the vigorous use of this program by DOD was urged.

Most recently, as a result of a meeting with Jim McIntyre of OMB and Stu Eizenstat of the Domestic Council, representing the administration, and Representative Jim Oberstar of the Northeast-Midwest Coalition and myself, I was advised earlier this week that a goal of \$1.3 billion has been established for the program's usage in fiscal year 1979.

Nevertheless, despite the progress we have made and are continuing to make, the proposed procurement code threatens to vitiate virtually all that we have accomplished. As Congressman Robert Edgar testified at our hearing on March 20, generally civilian procurements, not defense procurements, will be affected under the proposed code. However, as a result of the Maybank amendment, virtually all labor surplus set-asides must come from the civilian sector.

Furthermore, over 1 year ago, the President included increased utilization of the labor surplus set-aside program as part of his urban policy message. Thus, since the threatened procurement code prohibits these set-asides in most cases, it represents a major reversal in policy by the administration.

Accordingly, we have with us today Mr. Lester Fettig, the Administrator of the Office of Federal Procurement Policy, which is part of OMB, who I hope will explain the effects of the procurement code on the labor surplus set-aside program as well as the administration's ostensible shift in policy.

Please proceed, Mr. Fettig.

**TESTIMONY OF LESTER FETTIG, ADMINISTRATOR, OFFICE OF
FEDERAL PROCUREMENT POLICY, OMB**

Mr. FETTIG. Mr. Chairman, I do not have a prepared statement this morning, given the short notice of the hearing. What I would like to do is outline some basic points and report to you first on the status of the labor surplus program and then examine at this point in time our best estimates of the potential impact that the international procurement code might have on set-asides under the program.

By way of introduction I should say that I am not speaking, and cannot speak, for Ambassador Strauss with respect to the details of the Geneva negotiations. I have been in touch with the Ambassador regularly, as recently as yesterday afternoon, but I do not want to imply that I am representing the Office of Special Trade Representative.

Also by way of introduction, I would like to compliment you personally and the committee. The system of government we have and the demands that are placed on Government mean that if there are going to be any accomplishments in any area, it is going to require pressure and persistent interest. You certainly exhibited both, and I was certainly grateful for it because the President does share the commitment, as you mentioned, in the urban policy.

By way of background, I want to relate that we have gotten off to a slow and difficult start on the program. I will not go into the details of Public Law 95-89, the renewal. However, I will stress again that just last year we did do a special direct training package with videotape and training materials for all contracting officers. We trained 30,000 people in 3 months on the requirements of the program. We were coming from a very low and quite miserable level. The best GAO statistics show that we were getting about a quarter of 1 percent under the labor surplus program before your intervention.

In the transition, for fiscal year 1978 we set a 2-percent goal. We did not meet that goal. We achieved 1 percent. Depending on your

viewpoint, we only achieved half our goal. On the other hand, we did achieve a quadrupling up to \$228 million for fiscal year 1978, roughly.

I am very happy to announce today the first statistics that we have from fiscal 1979. By way of your background, one of the things we have done at OFPP is establish for the first time a centralized contract data system. That data system, although it is being debugged now, does give us the capability to get much better and much more contemporary information.

Although for the first quarter of 1979 we have only about 75 percent of the contract actions processed through, we have already in the first quarter of 1979 achieved \$205 million of labor surplus set-asides. Extrapolating that to a full first quarter, I am content to say that in the first quarter alone of fiscal 1979 we have exceeded the results of the entire fiscal year 1978.

Because there is a lack of uniformity—

Mr. LAFALCE. What would that be on a percentage basis?

Mr. FETTIG. I am going to try to link that now to our overall goal of \$1.3 billion.

Procurement contract actions are not uniform quarter to quarter. The general pattern is that you have a relatively strong quarter of contracting, the middle two are generally weak, and the fourth is by far the strongest. Therefore, if the first quarter were typical—and that is a rough estimate—we are running at a \$1 billion rate now for fiscal 1979. That makes me very optimistic, particularly since we have the heavy fourth quarter to look forward to, that we will achieve that \$1.27 billion goal.

I might say that the international procurement code, whether modified or whether approved, will not affect that. Even if approved, it only goes into effect in fiscal 1981. Therefore, I feel very good about these very early statistics. They are the first indication that we are seeing some fruits from the pressure that this committee and our office have put on this program.

As I said, those are first quarter data. We are running at roughly a \$1 billion rate. I am optimistic that we will achieve those goals.

I will ask that my letter to you, Mr. Chairman, be submitted for the record. That does articulate the detailed breakdown of the Agency goals.

Mr. LAFALCE. Without objection, the letter of Mr. Fettig to myself dated March 27, 1979, will be made a part of the record.

[Letter referred to above follows:]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
OFFICE OF FEDERAL PROCUREMENT POLICY,
Washington, D.C., March 27, 1979.

Hon. JOHN LAFALCE,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN LAFALCE: I appreciated the opportunity to meet with you, Representative Oberstar, Jim McIntyre and Stu Eizenstat on February 28 to discuss the Labor Surplus Area Program.

This letter sets forth the target goals established for the 15 top civilian agencies. Together, they account for more than 90 percent of the total civilian agency contract obligations. Other civilian agencies with estimated fiscal year 1979 procurement obligations in excess of \$10 million have been asked to meet or exceed a 10 percent set-aside goal.

The goals for the 15 top agencies for fiscal year 1979 are as follows:

Agency:	Millions
Energy-----	\$200.0
TVA-----	200.0
NASA-----	90.0
GSA-----	140.0
HEW-----	100.0
VA-----	160.0
Interior-----	130.0
Transportation-----	45.0
Agriculture-----	62.3
AID-----	25.0
Commerce-----	18.0
HUD-----	60.3
Treasury-----	3.3
EPA-----	20.0
Justice-----	3.0
Total (billions)-----	1.27

These targets total \$1.3 billion (including agencies not listed in the top fifteen) which would represent a five-fold increase over the poor showing achieved during fiscal year 1973. This represents an overall 13.4 percent target for those acquisition dollars the agencies have identified as susceptible to LSA set-asides but only a little better than 5 percent of the total dollars, the key being the Department of Energy which accounts for nearly half of all civil agency contracts (\$10 billion) but which has the vast bulk of those actions tied up with purchases of oil, utilities and fixed-plant operations.

As you know, we needed to enter into protracted and difficult negotiations with the agencies because their proposed goals, forwarded to you independently, were not satisfactory. We therefore have spent the time needed to tear down each agency's contracting agenda to examine the content and question why more couldn't be done.

You will see on the attached charts specific break outs of those portions of the acquisition budgets which are and are not susceptible to labor surplus set-asides. Overall, the agencies have identified only \$7.8 billion easily susceptible to LSA preferences. If that is correct, then, the net effective goals is 18.4 percent of contracts eligible for set-aside.

We believe these caveats are, for the most part, legitimate; but we will join with you in further examinations with the agencies in conjunction with your upcoming hearings.

Mr. McIntyre has under review how we might treat the grants issue. Also, as promised, we will recommend the President express again his direct support for this program to those agencies responsible for meeting new goals.

Thank you for your continued patience and cooperation in striving to make this program meet the high expectations you and the President hold out. We will continue to try to be responsive and translate our plans into programs.

With best personal regards.

Sincerely,

LESTER A. FETTIG,
Administrator.

Attachment.

PORTIONS OF AGENCY ACQUISITION BUDGETS WHICH ARE AND ARE NOT SUSCEPTIBLE TO LSA SET ASIDE

(Dollar amounts in millions)

Agency	Total procurement area set-aside	Available for labor surplus area set-aside	Amount not available for labor surplus area set-aside	Fiscal year 1979 goal		Explanation
				Amount	Percent	
DOE.....	\$10,800	\$900	\$9,900	\$200.0	22.0	9.9 billion not susceptible to LSA set-asides as follows: Interagency agreements, 3 billions; rents and utilities, 0.9 billion; unadvised proposals, 0.1 billion; universities, 0.4 billion; follow-on contracts including earlier contracts, 1.2 billion; sole source contracts, 0.3 billion; GOCO (Government-owned, contractor operated) contracts, 4 billion.
NASA.....	3,100	180	2,920	90.0	50.0	2.92 billion not susceptible to LSA set-asides as follows: 2.2 billion is for follow-on funding of existing contracts; 720 million is for R. & D. which NASA states is difficult to set-aside.
TVA.....	2,000	2,000	0	200.0	10.0	Over 1/4 of TVA procurement is purchase of fuel (coal). TVA will set-aside some of these coal procurements. Some cannot be set-aside which would make the 10 percent figure higher.
HEW.....	1,600	800	800	100.0	12.5	800 million not susceptible to LSA set-asides as follows: "statutorily mandated" procurements from universities, educational institutions, hospitals, etc., 222 million; follow-on funding of earlier contracts, 480 million; GSA schedule and other interagency buys, 53.2 million; 8(a) procurements, 49 million; sole source 1.2 million.
Department of Interior.....	1,600	280	1,320	130.0	46.0	1.32 billion not susceptible to LSA set-asides as follows: sole source, 406 million; Indian Self-Determination Act, 170 million; small purchases, 413 million; GSA schedule procurements 2.8 million; State and local governments 89.2 million; National Petroleum Reserve Act mandated procurement, 98 million; non-aid not for profit, 52.8 million; services and studies, 84.7 million.
VA.....	1,300	500	800	160.0	32.0	800 million not susceptible to LSA set-asides as follows: utility contracts, 99 million; contract hospitals, 65 million; nursing homes, 82 million; agreements with hospitals, 14 million; sole source, proprietary drugs, 75 million; medical personnel, 12 million; GSA schedule procurements, 260 million; loan guarantee programs, 100 million; small purchases, 100 million.
GSA.....	1,400	1,360	40	140.0	10.3	40 million not susceptible to LSA set-asides as follows: 40 million, ADP hardware (no sources in LSA).
DOT.....	1,000	350	650	45.0	13.0	650 million not susceptible to LSA set-asides as follows: 500 million, follow-on funding of earlier contracts; 150 million, GSA schedule procurements and sole source.
Department of Agriculture.....	623	518	105	62.3	12.0	105 million not susceptible to LSA set-asides as follows: 105 million for GSA schedule procurements.
HUD.....	345	267	78	60.3	22.0	78 million not susceptible to LSA set-asides as follows: 65 million, sole source; 10 million, interagency agreements and GSA schedule procurements; if portion of HUD's consulting contracts are considered as non-susceptible, the 22 percent goal is even higher.

PORTIONS OF AGENCY ACQUISITION BUDGETS WHICH ARE AND ARE NOT SUSCEPTIBLE TO LSA SET-ASIDE—Continued
 [Dollar amounts in millions]

Agency	Total procurement	Available for labor surplus area set-aside	Amount not available for labor surplus area set-aside	Fiscal year 1979 goal		Explanation
				Amount	Percent	
Department of Treasury.....	330	76	254	3.3	4.3	254 million not susceptible to LSA set-asides as follows: 85 million GSA schedule procurements; 50 million, ADP lease arrangements and maintenance; 69 million, highly restricted sources for coin materials and presses; 52 million, stamps, inks, papers for Bureau of Engraving and Printing.
Department of Justice.....	300	170	141	3.0	1.7	141 million not susceptible to LSA set-asides as follows: 66 million, GSA schedule procurements and from other agencies; 75 million purchased locally by Federal prisons.
AID.....	250	25.0	AID claims almost all of its total procurement budget is for services performed in other countries. While these procurements could possibly be set aside for LSA areas, the work would be performed outside the United States. None, however, GSA has assigned AID a goal of 25 million.
EPA.....	250	70	180	20.0	23.0	180 million not susceptible to LSA set-asides as follows: 150 million, follow-on funding of earlier contracts; 30 million sole source.
Department of Commerce.....	180	70	110	18.0	26.0	110 million not susceptible to LSA set-asides as follows: 76 million, sole source; 10 million, 8(a) procurements; 25 million, follow-on funding of earlier contracts.

Mr. FETTING. Let me move now to our best estimates of the potential impact of the international procurement code on this program. It would probably be advisable if you would follow through with me as I break down the numbers. I am working off the first and best full-year data we have, which is fiscal 1977.

Starting with the total of \$81.5 billion, as you properly pointed out, we have to subtract \$57.2 billion, which is defense and debilitated by the Maybank amendment, leaving us with an initial target pool for labor surplus of approximately \$24.3 billion.

Now let me begin to deduct the exclusions that are also in the code. The international procurement code exempts the Department of Energy, the largest civilian procurement agency, \$7.6 billion. It excludes the Department of Transportation, another \$1.1 billion. It excludes the Tennessee Valley Authority, another \$3.2 billion. So as a category the agency exclusions which are provided in the code reduce that \$24.3 billion down to \$12.4 billion potential disruption.

Next the code has just recently—

Mr. LAFALCE. Does it exclude NASA?

Mr. FETTING. No, it does not, not as an agency.

As part of the renegotiation in Geneva, in return for taking back the small and minority business preferences, NASA was now put in as an agency which will be covered by the code.

Mr. LAFALCE. What about the Army Corps of Engineers?

Mr. FETTING. They remain excluded.

Mr. LAFALCE. They do?

Mr. FETTING. Yes, sir.

Mr. LAFALCE. What about Amtrak?

Mr. FETTING. They remain excluded.

Mr. LAFALCE. What about ConRail?

Mr. FETTING. They remain excluded. The only change was with NASA.

Mr. LAFALCE. That is the only change?

Mr. FETTING. Yes, sir.

The agency exclusions bring us down to an impact size of \$12.4 billion. Another deduction, labor surplus, which will not be affected is small business combined preferences, our No. 1 priority. We will continue to have small business labor surplus preferences because Mr. Strauss did take back the small business preference. Our best estimate is that will additionally protect another \$1.3 billion, leaving us with an \$11.1 billion exposure, if you will.

Next I have to apply some aggregate factors of estimates. As you also know, the procurement code will apply only to contract actions over 150,000 special drawing rights, which equates to 190,000 American dollars.

Our first quarter data indicates that 90 percent of our dollar value is over \$190,000. Nevertheless, there is another 10 percent three for potential labor surplus set-asides which will not be impacted on the code, leaving us then with an exposure of \$10 billion.

As a final factor, the procurement code also provides for exclusion of R. & D.—and this is most pertinent to NASA—construction, and services. Our most recent aggregate estimate in a uniform Federal market basket is that 28.3 percent of the agencies' contracts are for R. & D., construction, or services. Applying that factor, we are left with a total of \$7.2 billion which is newly exposed by the procurement

code. In other words, that is \$7.2 billion of the \$24.3 billion which the code will impact by the removal of the labor surplus preferences.

Viewed in terms of our total procurement, that is only a 9-percent exposure. However, viewed in terms of the fact that the labor surplus area depends on the civil sector, that is a 30-percent exposure. Those are our best estimates of the potential impact of the code on the labor surplus area program.

Mr. LAFALCE. So you are suggesting the code will effectively eliminate 30 percent of the potential contracts from the purview of the labor surplus set-aside program.

Mr. FETTIG. That is correct. In light of that, we have had rather intense negotiations, up until a few minutes ago, to see how we can compensate. There is no reversal. There is no policy change on the part of the administration. The President remains as firmly and strongly committed to his urban policy and to this labor surplus area program as he did in March of 1977.

We have competing demands here. As Mr. Strauss will be the first to tell you, we do not get something without giving something. We are getting a great deal in terms of the ability of the American economy, which is tremendously dependent on exports, to penetrate foreign markets and particularly other governments' markets.

So we do have the code, and Mr. Strauss' position is that the exemption of labor surplus will stand. My best estimate is that we have given up perhaps 30 percent of our potential working leverage.

Therefore, I am also happy to say that in order to compensate we have decided to include grants as a potential area, where appropriate. As you understand, we cannot make a blanket commitment because so many grants are mandated by statute, are nondiscretionary—

Mr. LAFALCE. This then is a double reversal. Initially it included grants; then the administration reversed itself and excluded that. I should not say it is double but it is one and three quarters because now we are going to include them where appropriate.

Mr. FETTIG. Yes, sir.

We will have a study group to review in great detail each and every grant program, both block and categorical, to identify precisely which grants are appropriate. We have made a commitment to include grants.

Mr. LAFALCE. What is the total universe within the civilian world involving grants?

Mr. FETTIG. My best estimate is on the order of \$100 to \$120 billion. I will be that gross about it because we do not have a well-matured assistance system.

Mr. LAFALCE. That is in the civilian sector?

Mr. FETTIG. Yes, sir.

Mr. LAFALCE. How much of that might be deemed appropriate for labor surplus set-aside treatment?

Mr. FETTIG. That is difficult to say because the bulk—I would say more than half—of the grant money is block money without discretion. For example, revenue sharing.

Mr. LAFALCE. You are talking about revenue sharing, community development money that goes to entitlement cities, UDAG money which goes to cities that are deemed to be eligible and that must compete with other cities. Of that \$100 or \$120 billion, how much? Do you have any idea?

Mr. FETTING. I cannot give you a good estimate at this time. My personal opinion would be on the order of \$15 to \$20 billion I would guess at this point—and it is purely a guess—we might identify as discretionary and subject to some manipulation for labor surplus purposes.

Mr. LAFALCE. What is the dollar amount that equates to that 30 percent that we are excluding because of the code?

Mr. FETTING. \$7.2 billion.

If I might, Mr. Chairman, I would also like to add to the record for clarification that we have not had a reversal on this score. We have had an intense internal deliberation over whether or not grants should be included under the program. As you know, there have been some longstanding feelings on both sides of the issue. As Mr. McIntyre and Mr. Eizenstat promised you at your last meeting, they have now reviewed that issue quite carefully and decided that where appropriate, taking that into account, and in light of the fact that we are gaining much in the international procurement code but sacrificing a portion of the labor surplus area program, it is in order for us to look at the grants area as an effective tool to keep the commitment.

Mr. LAFALCE. Are you now speaking officially for the administration?

Mr. FETTING. Yes, sir.

Mr. LAFALCE. When will we get something in writing from Mr. McIntyre's office regarding this?

Mr. FETTING. I will certainly try to have Mr. McIntyre send you something this week. As I said, we have had up-to-the-last-minute discussions.

Mr. LAFALCE. I would appreciate that.

Mr. FETTING. Just to summarize, as far as the labor surplus area program as a whole is concerned, the committee and the President should be quite proud over what has transpired over the past 2 years, since the first impetus of Public Law 95-89. We have come from virtually a standing start of one-quarter of 1 percent to the point now where in the first quarter of 1979 one-quarter of \$1 billion was set aside for the program.

Mr. LAFALCE. What is that on a percentage basis?

Mr. FETTING. The percentages with which I am acquainted equate to our goal of \$1.3 billion, which, as I said, we are now running in an achievable fashion. That equates to 5-percent aggregate of the civilian agency procurement.

Mr. LAFALCE. That is right. It was my understanding that we were going to have a 10-percent goal. So, as you say, we are exceeding our goal of last year. Last year was the startup year. It was my understanding that our goal for fiscal year 1979 was going to be in the vicinity of 10 percent overall, not on an individual agency-by-agency basis but an average.

However, now it looks as though we are saying we will not meet it by at least half, but we are going to try to make that look good by comparing what we expect we will achieve this year with what we achieved last year, rather than comparing what we expect to achieve this year with what we hoped to achieve as our goal at the beginning of fiscal 1979.

Mr. FETTING. Let me respond with a few points, Mr. Chairman. We never did set a 10-percent goal. You and I had conversations and hoped that might be achievable and realistic.

Mr. LaFALCE. Then representatives from GSA came into my office and we agreed that this would be a realistic goal so long as we were dealing in average terms. I remember Mr. Babione, shortly after he switched over from DOD to GSA, came in. I think it was the reasonable expectation of everyone that was going to be the goal. We were trying to get each and every individual agency to come in with individual goals, which we were not able to do and which required a meeting at the White House. I really did not get the goals specifically for the top 15 agencies until your March 27 letter, which I received Friday of last week, roughly.

Even your sentence in that letter states that all the agencies were asked to meet or exceed a 10-percent set-aside goal. That is what you told the agencies you wanted them to achieve, in your words. They were asked to meet or exceed a 10-percent set-aside goal.

Mr. FERRIG. You are referring to the minor agencies, not the top 15 where we have had protracted negotiations. I would like to get to that point, too, as a matter of explanation.

Let me say in most general terms that these goal-setting exercises are a very important game. You run the risk of establishing goals that will lose confidence and credibility in the program if set too high. We have had this in every preference program.

Most recently we have been deeply involved with women business owners. I served as a member of the President's Commission on Women's Business Enterprises. There, too, their preference was set high. It was a 5-percent goal, as a matter of fact. In light of the base they were working from—I believe it was one-tenth of 1 percent, even worse than our initial status on the labor surplus area program—you have to ask yourself what is realistic.

We have 130,000 people that administer Federal contracts. The worst thing for you, for the President, for women, and for labor surplus areas is to levy on them unrealistic expectations. The fine balance you have to strike is enormous strides forward but not so far that you create a mood and a climate of lack of credibility.

We have intensely negotiated, and I was quite embarrassed, as a matter of fact, that you elicited and received from the agencies, independently without our consultation, ridiculously low goals—1 percent, 0.5 percent. That was offensive to you, I am sure, and it was offensive to me.

We have had protracted negotiations with the agencies. As you learned in my letter, we have torn down the content of each of their procurement budgets. We did not simply say, "What's the best you can do? If you say 1 percent, so be it." We have examined the content of the program.

I am content, Mr. Chairman, taking into account that of the \$24 billion a large part of that, all those grants, is not susceptible to manipulation, such as DOE oil contracts. DOE is the largest. Oil contracts alone run \$3 billion. We have set very difficult goals.

Let me put it in other terms. You referred to 5 percent. I think it is proper to look at it in relative terms as to where we have come from because that is how you have to measure credibility of achievement. We are shooting for—and I am confident we will achieve now after seeing the first-quarter data—a fivefold increase from fiscal 1978 to fiscal 1979.

Measured in terms of the dollars that they can manipulate—not oil agreements or rents and utilities that you have to buy from a given, fixed location—our effective goal is 18.4 percent. It is not 18.4 percent of the aggregate. It is 18.4 percent of those dollars that they can manipulate. That is asking them to do a substantial job.

Viewed in that light, I hope you would be considerate of the fact that the goals I presented to you are realistic. I think they will serve you, the program, and the President very well. We would certainly be delighted to try to do more.

As the data develops and as we gain experience, I would be hopeful we could do more. However, I do feel strongly that our current positions are credible.

Mr. LAFALCE. When do you expect to announce to the world that grants will be included within the labor surplus set-aside program?

Mr. FETTIG. I would think you would want to take advantage of that opportunity.

Mr. LAFALCE. I would like a letter from Mr. McIntyre. When I speak about the world, I mean contracting officers, not the press. I am talking about educating contracting officers, which is such an important task if you are going to implement the program properly.

Mr. FETTIG. Mr. Chairman, as I said earlier, there was never a complete reversal. There were some second thoughts and some exclusions. The President's Executive order itself did not mention grants, but we do not have to do anything more than we have for two reasons:

DMP-4a as originally written included grants where appropriate.

Mr. LAFALCE. I know. That is why it was like a double reversal.

Mr. FETTIG. On tape No. 1, the detailed training for the contract officers, they are given and have been given guidance on how to look for discretionary grants. So they have received instructions. Had we made a decision not to include grants, then we would have had to reinstruct the contracting people.

Mr. LAFALCE. Let me make it clear then. The fiscal 1978 figures included grants?

Mr. FETTIG. As a practical matter, there was very little exercise in the area.

Mr. LAFALCE. There was very little exercise in the entire labor surplus area.

Mr. FETTIG. That is right. We only made 1 percent, a quarter billion.

Mr. LAFALCE. That is because you only made 1 percent. When you speak of tripling or quadrupling it or doing five times better, that does not mean very much when you have only achieved 1 percent.

Mr. FETTIG. A quarter billion dollars going into urban areas is a significant amount. We have achieved that in the first quarter. Again, I do not mean to be contentious, but I do think that is a commendable record.

Mr. LAFALCE. We differ.

Your 5-percent figure also encompasses grants, does it not?

Mr. FETTIG. No; it does not. I speak only for our procurement goals.

Mr. LAFALCE. That is absent grants?

Mr. FETTIG. That is correct.

Mr. LAFALCE. What do you think it might be if you were to include grants within it?

Mr. FETTIG. It is difficult to speculate at this point. We have only received the final decision to go ahead today. Our next chore is probably to start with the Catalog of Federal Domestic Assistance Programs, some 1,000-some-odd programs, and identify which are meaningful to labor surplus manipulation.

Having compiled such a list, we undoubtedly will have to take in other factors, not the least of which will be political inputs. We would be most happy to work with the subcommittee in arriving at target population in the assistance area that we might agree upon can be used as a tool for the labor surplus program and the President's urban policy.

Mr. LAFALCE. When we met at the White House in early March, I was seeking to maintain grants within the labor surplus program. I was very upset at what I considered the prospects for its removal because of the revision in DMP-4a. Now it appears that we will be successful in keeping that in, at least when appropriate.

Mr. FETTIG. That is correct.

Mr. LAFALCE. Were the words "when appropriate" also in DMP-4?

Mr. FETTIG. Yes, I believe they were. If they were not, there should have been a simple recognition that many grants are mandated geographically by statute.

Mr. LAFALCE. If it was not, it was at least implicit.

We also sought at that time administration backing for repeal of the Maybank amendment, which does make the implementation of labor surplus set-aside program for defense contracts extremely difficult, if not impossible. Because we are going to eliminate 30 percent of the total possible exposure of Government procurement, civilian procurement, for the labor surplus program because of the Government procurement code negotiated by Mr. Strauss, it would seem to me that we cannot look upon continuation of grants when appropriate in the labor surplus set-aside program as an offset, as the quid pro quo, for acceptance by Congress of the Government procurement code.

However, we could consider administration support for repeal of Maybank as a more adequate trade-off. I am suggesting to you that were the administration to come forth and say, "We agree with the Small Business Committee that statutorily created labor surplus programs. We agree with the chairman of the Defense Appropriations Subcommittee. We agree with the Northeast-Midwest Coalition that the Maybank amendment should be repealed, and we hereby support such a repeal," then that would be more in the nature of an equal trade-off permitting us to support the Government procurement code even though it would impact the labor surplus set-aside program.

Have these deliberations been taking place within administration circles?

Mr. FETTIG. Mr. Chairman, the Maybank repeal issue has received very strong and quite long and extensive deliberations within the White House.

Mr. LAFALCE. Certainly prior to the MTN Government procurement code, but what about subsequent to that?

Mr. FETTIG. I have not participated in any conversations on that point. My judgment is that—

Mr. LAFALCE. Mr. Fettig, I think we were going to get grants, where appropriate, put back into DMP-4a even if the administration had never heard of the Government procurement code. Therefore, I

do not think we are getting anything that we would not have gotten if Mr. Strauss had never been to Geneva or Tokyo. Let's not kid ourselves about it.

Mr. FETTING. You have great confidence in certain parties and their persuasiveness.

Mr. Chairman, the interested parties that you mentioned are not a complete list. There are other interested parties that include the Senate Armed Services Committee, the House Armed Services Committee, and the body of the House Appropriations Committee.

You are fully cognizant of the difficulty that you and Mr. Addabbo and others have had even with Congress on repeal of Maybank. Within the administration Secretary Brown also feels very strongly on the point.

On balance, what I would like to represent to you that I feel we certainly have is a reasonable posture that allows the labor surplus program to be vital and effective, enormously more effective than has been the case. Even with the 30-percent exclusion, although I cannot guarantee it, I would be very surprised if the inclusion of grants did not more than compensate for the \$7.2 billion which is exposed by the procurement code.

We have a strong program. The President has a strong program. You have a strong program.

I do not view the Maybank amendment as part of a package to deal, an equivalent card to be played. It elicits some very different and very separate arguments within armed services circles that on balance we have not been able to surmount.

Mr. LAFALCE. Those are the cards I am now choosing to play. Those are the cards the Northeast-Midwest coalition is choosing to play.

I think your assessment is correct about the divergent points of view within the House and within the Senate. However, there are also divergent points of view within the House and within the Senate about MTN generally.

Those of us who espouse the repeal of Maybank are also those most likely to espouse approval of MTN. Those who oppose repeal of Maybank—in other words, those who favor Maybank—are those most likely to oppose MTN in any form. I just suggest the administration factor that into the deliberations and calculations.

There is something else about which I am concerned, Mr. Fetting. That is the fact that you are the Administrator of the Office of Federal Procurement Policy. I would like you as the Administrator of the Office of Federal Procurement Policy to explain in some detail to me all those discussions that you had with Mr. Strauss or his representatives prior to March 5, 1979, regarding the Government procurement code that he was negotiating with specific reference to: (a) The Buy American Act; (b) the small business set-asides; (c) the minority set-aside program; and (d) the labor surplus set-aside program.

Mr. FETTING. Mr. Chairman, in a public hearing I do not think it would be appropriate to describe in detail the conversations that were exchanged between the Special Trade Representative and OFPP. In broadest, and I believe legally correct terms, Mr. Strauss and I both were functioning as the President's advisers in formulating a package of administration proposals on the MTN.

As I am sure you realize, the negotiations with our trading partners in Geneva have been difficult and most sensitive. Therefore, I feel it would be inappropriate to respond fully on that point.

Mr. LAFALCE. Well, I think it would be appropriate. Let me phrase the question a little differently.

Did you in fact have conversations with Mr. Strauss regarding the impact that the Government procurement code he was negotiating would have on the three set-aside programs that are within the jurisdiction of this subcommittee—the small business set-aside program, the minority set-aside program, and the labor surplus set-aside program—before the tentative agreement regarding the Government procurement code had been reached?

Mr. FETTIG. We did have extensive staff interchange. One of my staff members, as a matter of fact, participated as an adviser in Geneva on several occasions.

Mr. LAFALCE. You had "extensive staff interchange" and one of your staff participated in Geneva as an adviser. I remember when I went to Vienna as a congressional adviser. I could tell the world what that meant but in reality it did not mean a damned thing.

"Interchange" is a nice word but it does not tell me too much. What I want to know is this: Did you or your staff know that there was going to be a negotiation in Geneva or in Tokyo for the virtual devastation of the small business set-aside, labor surplus set-aside, and minority set-aside programs before it was done?

Mr. FETTIG. Mr. Chairman, the negotiations are not done now. They have been sequential. They have been tentative. There are open issues now.

Mr. LAFALCE. What about before March 5, 1979?

Mr. FETTIG. There was a variety of stages of negotiation before that time and after that time and up to this time.

Mr. LAFALCE. Did you ever prepare any documentation for Mr. Strauss regarding the effect his tentative negotiations would have on those set-aside programs?

Mr. FETTIG. The staff did exchange documents, certainly.

Mr. LAFALCE. Regarding the impact that Government procurement code would have on those three set-aside programs?

Mr. FETTIG. We had exchanges, yes.

Mr. LAFALCE. Of documents?

Mr. FETTIG. Yes, sir.

Mr. LAFALCE. That gave information to Mr. Strauss regarding the impact of the Government procurement code on those three set-aside programs?

Mr. FETTIG. Again, I am reluctant to go any further on the specifics of the advice and the information that was exchanged. As I will repeat, they were delicate negotiations.

Mr. LAFALCE. As I interpret your testimony, Mr. Fettig, it seems to me you are saying that you did not know very much, if anything at all, about the effect of the Government procurement code on the three set-aside programs until it became public knowledge in early March 1979. Do you wish to contradict me?

Mr. FETTIG. No; just to elaborate, Mr. Chairman. Mr. Strauss has responsibility as the President's Special Trade Representative to conduct negotiations. You and I probably could not compile a list of all the interest groups and special Government bodies that are

and will be affected by Mr. Strauss' negotiations: Textiles; construction; the individual agencies; not just Government procurement—

Mr. LAFALCE. Mr. Fettig, there is a big difference between industry groups that might be affected and laws of the United States that would be virtually repealed. I can understand why one could not conceivably come up with all the industry groups and types of jobs that might be impacted, although one would want to try, but it is inconceivable to me that one would negotiate a Government procurement code without attempting to see the very laws that have been passed by the Congress of the United States of America and signed by the President which he would be repealing.

Mr. FETTIG. Mr. Chairman, that point is a strong point except for the fact you overlook: We do not even have a procurement code yet. We are still in negotiations.

Mr. LAFALCE. I do not overlook that fact.

Mr. FETTIG. Your hearings several weeks ago and your hearing today are emphasis of the fact that these are continuing negotiations. We have certainly been involved. The code has yet to be finalized.

Mr. LAFALCE. I do not overlook that fact at all. I am well aware of that fact. That is how we were able to get a reversal on the small business and minority set-aside programs. That is how we might be able to get a reversal on the labor surplus program.

I made a suggestion at the end of my Tuesday hearing 2 or 3 weeks ago. I said, "Mr. Strauss, since your comments seem to be stating strongly that the impact of your procurement code on the small business set-aside and on the minority set-aside would indeed be minimal, if it is so minimal it ought to be easy to go back to the bargaining table and get an exclusion for those programs, also." That argument seemed to prevail.

Now I am saying, Mr. Fettig, that the success of the labor surplus set-aside program—to my regret and your regret—has been so minimal that it probably was not even heard of by the negotiators from the other countries, maybe not even the negotiators from our country. It ought to be equally easy to get that excluded also, if the administration has the desire to do so. I do not think the administration has the desire to do so, and I think it is purely political that they don't. There is a large vested interest in the small business community that has become vocal. There is a large vested interest in the minority community that has become extremely vocal. They were intent on satisfying and quieting the voices.

However, we do not have that many voices speaking out about the labor surplus program because it has not really gotten off the ground yet. People are unaware of it. There are no organizations that are strongly supportive of it. Yet it is ostensibly part of the President's administrative policy.

I am wondering if as Administrator of the Office of Federal Procurement Policy you could work harder with the Domestic Council and with Ambassador Strauss to try to get this excluded also.

Mr. FETTIG. If I might just respond on a few points. As you know, my office and I personally have worked hard to bring this program to life. I am pleased with the results of the first quarter. Achieving a year's worth of effort in the first quarter and coming in the ball park of achieving a fivefold increase, which is I think a realistic goal, demonstrates that we have worked hard. We have pushed hard and we have

made our views forcefully known, as you know, within the administration.

Beyond that, though, I want to make a second point. The term "administration" is an amorphous word. We are certainly impacted by the procurement code in the Federal acquisition area. Ambassador Strauss has responsibility for the Geneva negotiations. We have made—and will continue to make—our views known on what we would prefer to see in the package. That responsibility does not unilaterally rest with me but you can be assured, as you suggest, we will continue to discuss the program.

The final point I want to make is that, viewed in light of what is to be gained by an effective breaking down of other governments' trade barriers, viewed in light of the fact that my best estimate at this time is perhaps \$7.2 billion of civilian procurement is newly exposed, and in light of the fact that the inclusion of grants I believe will more than compensate for that, I think we have done two good things at the same time. We have had our cake and eaten it, too, provided that the code and the negotiations continue as currently.

We have a strong labor surplus area program. Although Ambassador Strauss has to speak to it, I suspect that he will have a strong procurement code ultimately put in final form for the Congress deliberations.

Mr. LAFALCE. The labor surplus program also applies to subcontracts, does it not?

Mr. FETTIG. There is a best efforts provision.

Mr. LAFALCE. What monitoring efforts does your office or do the individual agencies have regarding the best efforts provision?

Mr. FETTIG. Right now we have very, very limited capability on a spot agency basis. Our first chore was to construct a Government-wide data system for prime contracts, which we have never had. We are now in the process, because of a variety of demands including the President's anti-inflation program, small business preferences, minority business preferences, and women business preferences, of exploring the reasonable management burden to place on our contractors to give us the capability to also monitor the subcontract performance. Our plans for that data system, I will tell you right now, are in the formative stages. We recognize the need for it for a variety of demands, but I am not in a position today to give you good Government-wide numbers as I am for primes.

Mr. LAFALCE. Will these best efforts have to be carried out only on those contracts that are awarded under the set-aside program or do they have to be carried out under all Government contracts?

Mr. FETTIG. It is a standard clause, Mr. Chairman, for all contracts.

Mr. LAFALCE. Is there any way of evaluating the total amount of awards that might go out to labor surplus areas either under the prime contractor set-aside program or under the best efforts clause of the contracts?

Mr. FETTIG. Today we have no system. Yes, there are ways, but I want to be very cautious here.

Mr. LAFALCE. Would it be worth the bookkeeping and auditing?

Mr. FETTIG. That is the issue, Mr. Chairman. It has become almost a punishment in many respects, particularly for small business, to have a Federal contract. I get letters all the time. I got one recently from a small firm in Chicago that said, "I used to sign all this boilerplate and all these clauses, but I notice you've added a new page now."

I cannot afford a lawyer. I cannot afford to bid." He sent me back his bid. So I want to be very cautious on that score.

Mr. LAFALCE. I would like to play the devil's advocate against myself. Do we have too many preferential programs? You spoke of a great many. Tick off all the preferential programs with which you have to deal as Administrator of Federal Procurement.

Mr. FETTIG. There are over 40, Mr. Chairman. If you will permit me, I would like to submit for the record a comprehensive list.

Mr. LAFALCE. I would like that very much.

[List of social and economic programs follows:]

TABLE 1.—SOCIAL AND ECONOMIC PROGRAMS

Program	Authority	Purpose
Buy American Act ¹	41 U.S.C. 10a-10d	To provide preference for domestic materials over foreign materials.
Preference for U.S. manufacturers	22 U.S.C. 295a	To provide preference for domestic manufacturers in construction of diplomatic and consular establishments.
Do	16 U.S.C. 560a	To restrict U.S. Forest Service from purchasing twine manufactured from materials of foreign origin.
Preference for U.S. products (military assistance programs) ¹	22 U.S.C. 2354(a)	To require the purchase of U.S. end products for the military assistance program.
Preference for U.S. food, clothing, and fibers (Berry amendment) ¹	Public Law 91-171, sec. 624	To restrict the Department of Defense from purchasing specified classes of commodities of foreign origin.
Officials not to benefit ¹	41 U.S.C. 22	To prohibit members of Congress from benefiting from any Government contract.
Clean Air Act of 1970	42 U.S.C. 1857h-4	To prohibit contracting with a company convicted of criminal violation of air pollution standards.
Equal employment opportunity ¹	Executive Orders 11246 and 11375	To prohibit discrimination in Government contracting.
Copeland "Anti-Kickback" Act ¹	18 U.S.C. 874, 40 U.S.C. 276c	To prohibit kickbacks from employees on public works.
Walsh-Healey Act ¹	41 U.S.C. 35-45	To prescribe minimum wage, hours, age, and working conditions for supply contracts.
Davis-Bacon Act ¹	40 U.S.C. 276a-1-5	To prescribe minimum wages, benefits, and work conditions on construction contracts in excess of \$2,000.
Service Contract Act of 1965 ¹	41 U.S.C. 351-357	To prescribe wages, fringe benefits, and work conditions for service contracts.
Contract Work Hours and Safety Standards Act ¹	40 U.S.C. 328-332	To prescribe 8-hour day, 40-hour week, and health and safety standards for laborers and mechanics on public works.
Fair Labor Standards Act of 1938	29 U.S.C. 201-219	To establish minimum wage and maximum hours standards for employees engaged in commerce or the production of goods for commerce.
Prohibition of construction of naval vessels in foreign shipyards.	Public Law 91-171 (DOD Appropriation Act of 1970), title IV.	To prohibit use of appropriated funds for the construction of any Navy vessel in foreign shipyards.
Acquisition of foreign buses	Public Law 90-500, (DOD Appropriation Act of 1969), sec. 404.	To restrict use of appropriated funds to purchase, lease, rent, or otherwise acquire foreign-manufactured buses.
Release of product information to consumers.	Executive Order 11566	To encourage dissemination of Government documents containing product information of possible use to consumers.
Prohibition of price differential	Public Law 83-179, sec. 644	To prohibit use of appropriated funds for payment of price differential on contracts made to relieve economic dislocation.
Required source for jewel bearings ¹	ASPR 7-104.37	To preserve a mobilization base for manufacture of jewel bearings.
Employment openings for veterans ¹	Executive Order 11598, 41 CFR 50-250, ASPR 12-1102.	To require contractors to list suitable employment openings with State employment system to assist veterans in obtaining jobs.
Covenant against contingent fees ¹	41 CFR 1-1.500-509	To void contract obtained by broker for a contingent fee.
Gratuities ¹	32 CFR 7.104-16	To provide Government with right to terminate if gratuity is given to a Government employee to obtain contract or favorable treatment.
International balance of payment ¹	ASPR 6-805.2, FPR 1-8	To limit purchase of foreign and products and services for use abroad.
Prison-made supplies	18 U.S.C. 4124	To require mandatory purchase of specific supplies from Federal Prison Industries, Inc.

See footnote at end of table.

TABLE 1.—SOCIAL AND ECONOMIC PROGRAMS—Continued

Program	Authority	Purpose
Preference to U.S. vessels ¹	10 U.S.C. 2631, 46 U.S.C. 1241	To require the shipment of all military and at least half of other goods in U.S. vessels.
Care of laboratory animals ¹	ASPR 7-303.44	To require humane treatment in use of experimental or laboratory animals.
Required source for aluminum ingot ¹	ASPR 1-327, FPR subpart 1-5.10.	To eliminate excess quantity of aluminum in the national stockpile.
Small Business Act ¹	15 U.S.C. 631-647; see also 41 U.S.C. 252(b) and 10 U.S.C. 2301.	To place fair portion of Government purchases and contracts with small business concerns.
Blind-made products	41 U.S.C. 46-48	To make mandatory purchase of products made by blind and other handicapped persons.
Duty-free entry of Canadian supplies ¹	ASPR 6-605	To further economic cooperation with Canada and continental defense.
Use of excess and near excess currency ¹	ASPR 6-000 et seq., FPR 1-6,804-806.	To provide preference in award to bidders willing to be paid in excess or near-excess foreign currency.
Purchases in Communist areas ¹	ASPR 6-4C1 et seq.	To prohibit acquisition of supplies from sources within Communist areas.
Nonuse of foreign flag vessels engaged in Cuban and North Vietnam trade. ¹	ASPR 1-1410	To prohibit contractor from shipping any supplies on foreign flag vessel that has called on Cuban or North Vietnamese port after specific dates.
Labor surplus area concerns ¹	Defense Manpower Policy No. 4, 32A CFR 33 (supp. 1972).	To provide preference to concerns performing in areas of concentrated unemployment or underemployment.
Economic Stabilization Act of 1970	12 U.S.C. 1904 note	To stabilize prices, rents, wages, salaries, dividends, and interest.
Humane Slaughter Act ¹	7 U.S.C. 1901-1906	To purchase meat only from suppliers who conform to humane slaughter standards.
Miller Act ¹	40 U.S.C. 270a-d	To require contractor to provide payment and performance bonds on Government construction contracts.
Convict Labor Act ¹	Executive Order 325A, ASPR 12-201 et seq.	To prohibit employment on Government contracts of persons imprisoned at hard labor.
Vietnam Veterans Readjustment Act	Public Law 92-540	To give employment preference to disabled veterans and veterans of the Vietnam era.

¹ Indicates that the program has resulted in the issuance of a standard contract clause.

Source: Commission studies program.

Mr. FETTIG. I would also like to submit, with the committee's permission, at least in part, the recent testimony I gave before the Senate Governmental Affairs Committee on the issue of socioeconomic programs implemented through Federal contracts.

[Statement referred to above follows:]

SUPPLEMENT TO STATEMENT OF
MARCH 2, 1979
BY THE HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

OTHER SIGNIFICANT OFPP PROJECTS

THE COMMERCE BUSINESS DAILY

OFPP has an on-going project working with the Director of the Commerce Business Daily (CBD) in the Domestic and International Business Administration, Department of Commerce, to look into ways to make the Daily a more useful tool for the small business entrepreneur in seeking Government work -- either direct prime contracts or subcontract work with larger firms.

Among early actions taken by OFPP was the emphasis to procuring agencies to provide sufficient lead-times for the preparation of bids. In addition, agencies were urged to ensure that the descriptive data in synopses serves as a meaningful source for potential bidders.

Use of automation and modernization techniques both for compilation and printing of the Daily have been encouraged, with the result that since January 1, 1978, it has been composed electronically by computer. An Interagency Working Group was

established in late 1977 to review the CBD and to make recommendations for its improvement. Some of these have been implemented by both the DAR/FPR and others will be included in the FAR. These include:

- 30-day normal bid time;
- maintaining award publicizing at a \$25,000 threshold for subcontracting opportunities;
- requiring that all sole source awards in excess of \$10,000 be published.

LABOR SURPLUS AREA PROGRAM

This socio-economic program commands an increasing amount of OFPP's attention.

Title V, Procurement Assistance, of Public Law 95-89 signed in August, 1977, contains precedent-setting provisions designed to assist labor surplus areas obtain a larger share of Government contracts. That law amends the Small Business Act to add a new section 15(a) which states that "for purposes of this section priority shall be given to the awarding of contracts and placement of subcontracts to concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment

of under-employment or within labor surplus areas." Section 502 goes on to authorize specifically "notwithstanding any other provision of law" total labor surplus area set-asides, if awarded, may be made at "reasonable prices."

Finally, section 502 directed a redefinition of labor surplus areas and established a priority for award of contracts pursuant to that section, with small businesses in labor surplus areas accorded top priority.

The importance of this program was underscored by the issuance of President Carter's Urban Policy. An important part of that policy to create a "New Partnership" to revitalize and restore the Nation's urban areas is the Labor Surplus Area Program, designed to channel Federal contracts in to areas of labor surplus. These, of course, are generally urban areas.

The Director, OMB, on May 15, 1978, designated the Office of Federal Procurement Policy to take direct oversight responsibility for the program with the General Services Administration operating as lead agency for implementation.

Since that time, we have made considerable progress, but much remains to be done. Specifically, we have moved to make progress on four fronts:

- (1) Training of agency contract personnel;
- (2) Government-wide Coordination of program implementation and procurement regulations;

- (3) Setting Targets for levels of agency set-asides; and
- (4) Establishing a Reporting System.

Because of the late start in 1978, results so far have been modest in terms of actual set-asides made under the program. We believe, however, that the training accomplished during 1978 and the experience gained under the program will, together with OFPP leadership, result in significant improvements in the program this year.

NATIONAL SUPPLY SYSTEM

For over two decades, the need for a single integrated system for procurement and supply of common items used by the Government has been recognized and discussed within the legislative and executive branches. Yet, unnecessary overlap and duplication continue to burden Government procurement and supply operations. To remedy this condition, OFPP has initiated a program to establish a workable National Supply System.

The objective of the System is to establish an integrated Government-wide system for the acquisition and supply of items used by Federal agencies. By so doing, we will eliminate existing duplication, overlap, and waste, and enhance the supply system's responsiveness to its users. A National Supply System Advisory Board was established in October 1976 to serve as the principal interagency mechanism for advising and assisting the Administrator in developing the system. The conceptual definition of the System and an

overall plan were approved in July 1978. This project was closely coordinated with the President's Reorganization Project and will be submitted to the President for review and approval.

ANTI-INFLATION PROGRAM

When the President launched his anti-inflation program in the Spring of 1978, he stated that the Government, in its own buying, would act like any prudent consumer. He gave OFPP the responsibility for implementing procedures to ensure that executive branch agencies carried out this directive. We established an Anti-Inflation Council in May 1978, comprised of the twelve largest purchasing agencies. The Council meets approximately every six weeks to report on such things as finding lower priced substitutes for goods whose prices are rising rapidly, and to exchange ideas on cost cutting measures.

The initial target goods, identified by the Council on Wage and Price Stability, were meat (principally beef), building products (principally lumber and gypsum), fats and edible oils, and leather products.

Agency actions and savings to date as a result of this program are as follows:

- Agriculture has a major program to reduce beef acquisition. For the first 20 weeks of 1978-79 school year, weekly rate of ground beef acquisition averaged 3 million pounds — down 27% from prior year.

- VA reduced consumption of beef at VA hospitals by reducing servings from 10 to 7 times weekly for normal diets and from 14 to 10 times weekly for selective diets. VA reduced annual consumption of beef by a 1/2 million pounds, valued at \$750,000.

- DOD reduced purchases of beef in FY 1978 by 16.5% as compared to FY 1977.

- TVA postponed construction of Mobile Health Clinic and some maintenance additions to Power Service Centers for one year. (Estimated postponed cost \$600,000). TVA also developed many ways to reduce use of lumber and made suggestions to other agencies.

- GSA's Public Building Service has taken a number of actions to reduce use of lumber and gypsum and estimates annual savings of \$1.5 million.

- GSA discontinued acquisition of leather briefcases costing approximately \$1.5 million annually. Annual savings by purchasing plastic and other types of briefcases will be \$175,000.

- NASA established an anti-inflation program estimated to save \$1.6 million.

The President also directed that the principle of deceleration be reflected in new contracts which contain price escalation clauses. OFPP issued a directive on October 31, 1978, that all new contracts executed in 1979 or revisions of existing contracts in 1979 which contained economic adjustment clauses would provide that the Government would only pay 80% of the escalation generated in 1979.

Phase II of President Carter's anti-inflation program was announced on October 24, 1978. Executive Order 12092, signed on November 1, 1978, directed OFPP to develop and promulgate regulations to apply the wage and price standards in the procurement process after January 1, 1979. We published proposed regulations in the Federal Register for a 30 day public comment period on November 8, 1978. Final procurement regulations, in the form of an OFPP Policy Letter were sent to the Federal Register on December 27, 1978 and the requirements went into effect on February 15, 1979. The regulations require compliance certification by contractors in connection with all awards over \$5 million; provide that firms which are not in compliance are ineligible for Government contracts; and authorize agency heads to waive the certification requirement under certain circumstances. This program will continue to demand a good bit of staff time and attention on our part. Once it is operating smoothly, we plan to revise our regulations to lower the threshold from \$5 million to perhaps \$1 million.

BUY AMERICAN ACT

The Buy American Act became law in 1933. The Act requires purchase of domestic products, with four exceptions:

- Nonavailability
- Unreasonable price
- Use outside the U.S.
- Inconsistent with public interest

A product, to qualify as domestic, must have at least 50% domestic component content, and must be manufactured in the U.S. A price differential of 6% (12% for small business and labor surplus firms) is applied in evaluating bids. However, the Department of Defense has applied a 50% differential since 1963 - originally to ease balance of payments problems.

There have been several legislative proposals to increase the required domestic content and price differentials in favor of domestic products. OFPP testified at three hearings on such proposals last year.

The regulations which implement the Act stem largely from Executive Order 10582 of December 1954. It is clear that these regulations need to be simplified and made uniform. OFPP conducted an extensive study on this matter and drafted a proposed revision to E.O. 10582 in 1977, but postponed further action until action is complete on the International Government Procurement Code. This Code was negotiated as part of the so-called Tokyo round of the Multi-Lateral Trade

Negotiations (MTN) in Geneva, over the past 2-1/2 years. We expect to resume our efforts to improve the Buy American implementation later this year.

INTERNATIONAL GOVERNMENT PROCUREMENT CODE

Closely related to the Buy American problem is the International Procurement Code which I mentioned above. OFPP has participated in the development of this Code by furnishing technical assistance to the Trade Policy Staff Committee in the Office of the Special Trade Representative and to the negotiators in Geneva.

The purpose and status of the Code can be summarized briefly:

- o It would open Government procurement, with certain exceptions, to international competition.
- o It is related to Administration's free trade policy.
- o Buy-National policies in Government purchasing are considered a nontariff barrier to free trade.
- o The Code was negotiated by the U.S. MTN delegation in Geneva.
- o Details of coverage are still being worked out bilaterally -- i.e., what purchasing entities and dollar amounts will be subject to the Code in each signatory country.
- o The threshold for application is 150,000 SDRs (Special Drawing Rights) -approximately \$190,000.
- o Services and National Security purchases are not covered by the Code.
- o Below the threshold, current procedures would apply - e.g., small business set-asides, Buy American differentials, etc.

- o Some changes in current U.S. statutes and regulations would be necessary to accommodate purchasing under the Code.
- o A legislative proposal is being prepared by the Special Trade Representative (STR) and the Department of Commerce, to be presented to Congress in April 1979.

CONTRACT DISPUTES ACT

Another important law passed in the last days of the 95th Congress was the Contract Disputes Act of 1978 (Public Law 95-563). OFPP worked closely with the Congress in developing this legislation, which effectively implemented most of the recommendations of the Commission on Government Procurement in the contract disputes and remedies area. The major provisions of the Act include

- An option for contractors to appeal directly to court, by-passing the Boards of Contract Appeals;
- An "all disputes" provision, which eliminates the sometimes confusing distinction between disputes arising "under" the contract and those in "breach" of contract;
- New improved procedures to facilitate handling small claims within the Boards; and,
- A requirement to pay interest on claims.

The Government's right to seek judicial review of adverse Board decisions was recognized, and the procuring agencies were given more flexibility in negotiating and settling contract disputes. The Boards of Contract Appeals were strengthened by the clear grant of subpoena, discovery, and disposition powers, and their ability

to attract and retain competent and experienced members was enhanced by raising the grades of the Board members to the supergrade level.

Finally, the judicial process benefited with added flexibility in the Court of Claims either to take new evidence necessary to dispose of a case on appeal, or to remand the case to the Board.

OFPP issued proposed regulations implementing the Act, including uniform Rules for the Agency Boards of Contract Appeals, on January 25, 1979. After evaluation of the public comments, interim final regulations were issued by OFPP on February 26, 1979, and they became effective on March 1, 1979.

ORGANIZATIONAL CONFLICTS OF INTEREST

The development of uniform Government-wide policy on avoidance of organizational conflicts in contracting typifies the overall direction that OFPP can and does provide to the acquisition community.

At present, different agencies have different policies on this subject -- some have none. In September 1977, OFPP published a proposed policy for comment. The policy was revised and republished for new comments in October 1978. The policy would require contractors to:

- Disclose existing or potential conflicts of interest when submitting proposals.

- Stay free of conflicts of interest during contract performance or be terminated.

OFPP received 158 written comments, held numerous meetings with interested parties and conducted a public hearing November 17, 1978. We expect to issue final policy on this subject during April 1979.

PROCUREMENT BY GRANTEES

OFPP's authority under P.L. 93-400 extends to procurement by recipients of Federal grants or other assistance.

OFPP is pursuing a number of initiatives to improve the procedures used by grantees in the award and administration of contracts using Federal funds, while at the same time reducing Federal intrusion and unnecessary controls on grantees. These initiatives include:

- Grantee Procurement System Certification: The object is to reduce need for agency preaward review of grantee contracts. Procedures have been developed and a pilot program is underway in three agencies. The first pilot review has been completed and a Government-wide program is to follow the pilot test.
- Grantee Procurement Management Improvement: The object is to improve grantees' general procurement procedures, so as to reduce the need for Federal oversight and intrusion. The main vehicle for accomplishing this is a model state and local procurement code developed

by ABA with active OFPP oversight. While we have some reservations about specific provisions, the Code does represent a common standard and has been approved by the ABA House of Delegates (Feb. 13) and is being implemented in 5 states and 4 cities. One state and one city have partially adopted the code.

- Revision of Grantee Procurement Regulations: Existing procurement standards for application to grantees (Attachment O to OMB Circular A-102) are being revised to provide for maximum reliance on grantees' procurement systems and to prevent grantor agencies from imposing their own requirements and controls beyond standardized Federal controls. Input from state and local governments, Federal agencies, and vendors were solicited and 117 written comments were received. Numerous meetings were held with interested parties and a public hearing was held on January 16, 1979. A final version should be issued in April, 1979.

CONTRACT WAGE LAWS: WAGE BUSTING

OFPP has an important coordinating role in the implementation of socio-economic programs. This has been easier in some programs, such as small business and labor surplus area contracting, than in the application of contract wage laws. However, I feel that considerable progress has been made in the past year even in this area.

We convened an interagency task force, which I chair, to address labor-related procurement issues. Particular emphasis has been placed on reviewing the Davis-Bacon Act and Service Contract Act. Members include Department of Labor,

National Aeronautics and Space Administration, Department of Defense, Department of Energy, and General Services Administration.

In a closely related matter, OFPP actions directly supported the Department of Labor on the issue of professional "wage busting."

The object was to develop administrative -- rather than legislative -- means of preventing "wage-busting" of professional employees' salaries; i.e., unwarranted reductions in salaries and fringe benefits during competition for Government services contracts. Blue collar and some white collar workers are protected from wage-busting by the Service Contract Act.

OFPP testified on the matter in March 1978 before the House Government Operations Committee's Subcommittee on Legislation and National Security. We made a commitment to develop and promulgate effective administrative regulations.

An OFPP directive (Policy Letter 78-2), establishing policy and procedures to prevent professional salary "wage-busting", was issued to all executive agencies March 29, 1978. It has proven effective in avoiding wage-busting in recent NASA and DOD procurements.

Agencies will be reporting shortly on results and examples as to effectiveness of regulations and need, if any, for revision.

**GUIDELINES FOR THE USE OF CONSULTING SERVICES (OMB
BULLETIN 78-11)**

In May 1977, the President expressed concern over the misuse of consultants, and requested data from agencies. OFPP analyzed the data submitted by agencies and developed, coordinated and arranged for OMB Bulletin 78-11 to be issued in May 1978.

Agencies are required to implement the policy in Bulletin 78-11 and to effect management controls immediately, and are reporting the number of consulting service arrangements in effect as of June 1, 1978. There has been an overall reduction in the number of such arrangements.

More accurate data will be available in May when the Federal Procurement Data System and the Central Personnel Data File will provide information on the agencies' use of consulting service arrangements for the first quarter of FY 1979.

RESOURCE CONSERVATION AND RECOVERY

Public Law 94-580 requires the use of reclaimed material in the acquisition of products and services by the Government.

OFPP issued Policy Letter 77-1 in 1977 directing specification scrubdown and maximized use of reclaimed materials. This has been implemented in the Defense Acquisition Regulation and the Federal Procurement Regulations.

OFPP is working with the Environmental Protection Agency (EPA) as a member of a working group to develop further specific guidelines for the agencies, and is maintaining necessary liaison with the Congress, agencies and industry.

The first annual report on implementation of the policy was sent to the cognizant Senate and House Committees on August 9, 1978. The next report, detailing CY 1978 results is being compiled for submission during June, 1979.

FIELD CONTRACT SUPPORT CROSS-SERVICING PROGRAM

This program was established by OFPP in August 1978. Its purpose is to have a single Federal agency oversee the Government's interest at facilities where several agencies have dealings with the same contractor. The program encompasses such functions as: (1) pre-award surveys, (2) audits of proposed and incurred costs, (3) quality assurance and inspection of goods being manufactured to Government specifications, and (4) other contract administration matters requiring access to contractors' facilities or their books and records.

Such arrangements result in the avoidance of overlap and duplication of efforts which saves both the Government and its contractors time and money. The merits of cross-servicing were proven through voluntary arrangements. OFPP's program makes cross-servicing mandatory at contractors' locations where overlap and duplication would otherwise result.

Through the use of cross-servicing, NASA, and now DOE, have avoided having to establish a comprehensive field contract administration and audit capability. Other agencies making good use of cross-servicing include Department of Transportation, United States Postal Service, Veterans Administration, General Services Administration, and Department of Agriculture.

GOVERNMENT-WIDE PROFIT POLICY

OFPP is seeking to develop uniform policies and procedures for determining equitable profit objectives in negotiated procurements, as recommended by the Commission on Government Procurement.

The object is to harness the profit motive to stimulate efficient contract performance. Existing profit policies and practices, which are largely cost based and which vary among agencies, may sometimes promote the opposite effect.

A zero-based approach is being taken in an effort to develop a meaningful profit policy which will overcome the inadequacies and inequities of existing policies and practices.

One suggested policy published for public comment on March 6, 1979 would afford Government contractors the opportunity to earn profits comparable to commercial work involving a similar mix of resources, risk and know-how. We are open to suggestions as to other approaches.

Mr. LAFALCE. Do you have some overall conclusions regarding the general effect, good and bad, of the totality of the preferential programs?

Mr. FETTIG. I have some very strong feelings on that point, Mr. Chairman.

Mr. LAFALCE. I offer you the opportunity to share your strong feelings with me.

Mr. FETTIG. Thank you. I appreciate that.

Federal contracts are running probably at \$110 billion now. Our earlier estimates have proven to be low because we now have a good system. One hundred and thirty thousand people, Federal workers, manage those contracts. It is a big enough job and an important enough job for the taxpayers just for those folks to make sure that that \$110 billion buys the best goods at the most reasonable prices.

Mr. LAFALCE. I am surely not convinced that that is being done. I say that only because of some limited personal experience.

In order for me to buy furniture for my office, I have to work with GSA. It probably costs me two or three times as much money to get one-third of the quality of furniture that I would like to get. If I were given a flat dollar amount, I probably could get twice as much furniture at three or four times the quality.

Why? I don't know. I have not investigated it, but I surely will.

Mr. FETTIG. I did not mean to digress into the efficacy of the current system. I would be the first to admit that there are substantial improvements which can be made and are being made in the commercial products area alone, in furniture such as you mentioned. Through improvements that we have implemented through OFPP we have saved over \$10 million just on meat buying and \$5 million on fish buying. We have saved \$800,000 on boxer shorts. We are involved in furniture as well but the improvements will come.

My main point, though, is to set a stage.

Mr. LAFALCE. I remember before I was a Congressman when I was practicing law I had to represent a client negotiating with a Government agency that wanted to lease some property that he had. He wanted me to get him \$500-a-month rent. I negotiated \$2,500-a-month rent for a 5-year period. He couldn't believe it. I couldn't believe it. I was only charging him on an hourly rate, too, so I got about \$200 for it. It was very interesting.

Mr. FETTIG. Mr. Chairman, I hope on the strength of your personal experience you will be a cosponsor of some very important and needed reform legislation that will put new emphasis at the statutory level that we have been putting at the regulatory level.

Mr. LAFALCE. I will be glad to take a look. I hope you will forward it to me.

Mr. FETTIG. It is in the Senate. It is S. 5, the Federal Acquisition Reform Act, sponsored by Senator Chiles.

Mr. LAFALCE. Send it down.

Mr. FETTIG. I say that to set a stage to introduce the complexities of the socioeconomic programs.

Mr. LAFALCE. I will say this. After 5 years when his lease had expired, he then negotiated a lease, despite the inflation that had taken place, at approximately \$500 a month.

Mr. FETTIG. Undoubtedly, we failed to exercise some good market-place competition in that case, as in others. One of our main themes

for reform—and we have shown improvement on it and I have mentioned some examples—is to get more competition.

Let me get to the subject of the socioeconomic programs. The tradition has been that the community as a whole, the procuring agencies, and the work force have not been enthusiastic supporters of socioeconomic burdens or encumbrances, as they view them, things that prevent them from doing what they feel is, and in the vast majority of cases is, an effective job of getting the taxpayers the goods for their money.

I would like to think that we have reached a new perspective. I would like to think it has certainly come under the Carter administration. We should have learned by now from history that neither the Congress nor the President can afford to turn their backs on this \$100 billion tool to in addition work on the Nation's critical social and economic problems.

We have a list of 40. They date back many, many years in statute and Executive order. The political leadership of our country always has looked to Federal contracts to help with our critical problems. I think there is a new attitude and a new commitment to realize—and this is not a pleasant realization—that the business of buying good quality goods at reasonable prices is now certainly not secondary but it is ranked with, of equal importance with, these people also being effective agents of social and economic change.

We cannot turn our back on those tools. They are important and they can be made to work right.

As President Carter has said, the American public is concerned about austerity. We do not have the latitude or luxury or the liberty to create new programs commanding new resources within the fiscal realities that we have.

For that reason, all the more reason we have to make the Federal contracting dollars serve two masters. Yes, they have to be an effective buying function but, yes, also to being an agent of social and economic change. As I said, that is not a difficult proposition because nowhere do you see more blatant contradictions.

I am sure other committee members could add on the spot to the list of anecdotes that you just repeated. In every case we could probably all agree that the solution to those problems rested in getting more competition and getting a broader base of suppliers. Socioeconomic programs go in exactly the opposite direction. Invariably they lead to constricted competition and preferences of one kind or another. Invariably they lead to increased costs as a result of lessened competition.

The final judgment you have to make—and this is one that I do feel strongly about—is that modern Federal contract management has to face up to the duality. It is a difficult contradiction but, if you think about it, it is no different than the role you play and Presidents play. Those contracting people have to make some difficult judgments against competing demands.

Mr. LAFALCE. Mr. Fetting, our present discussion is peripheral to the central issue for which this hearing was called. However, I find it extremely interesting and extremely important.

Has any written study been made of the conflicts inherent in these competing goals about which you spoke? Has there been a study made?

Mr. FETTING. Not in any comprehensive fashion of which I am aware.

Mr. LAFALCE. It seems to me that one ought to be made.

I do not think I am letting the cat out of the bag when I say that you have decided to depart from OFPP shortly. I wonder if it would be possible for you, prior to your departure, to come up with the format for a suggested study that I might ask the GAO to take regarding the wisdom of all these 40 preferential programs given the other competing considerations within society. I do think there is a requirement.

I am sure that any reasonable, objective study will say some preferential programs are more important than others. It depends upon the degree of the inequity within society or the problem within society that is attempting to be addressed.

Therefore, I do not think any present beneficiary of the preferential programs should be fearful of such a study. I do think that the public good would well be served by having such a study.

I would ask your assistance in formulating a suggested agenda for such a study that I might forward to GAO.

Mr. FERRIG. I would be more than happy to do that. Let me thank you for taking a higher perspective of the issue. It is rare that you even get a chance to raise it because invariably—and I would like to correct you on this point—the special interest that has sponsored the special program does not view the realm of Federal contracts as even susceptible to a list of more higher or lower or less priority programs. They will be fearful of such a study.

Most of them are grounded in statute. They are permanent. They range everything from prison inmates supplies to handicapped, to preferential veterans' hiring programs, to equal employment opportunity, to humane slaughter of animals, to preferences for domestically made twine, specialty metals, jewel bearings from Indian reservations. Taken as a whole, and I hope I have communicated this to you, it presents probably the most difficult management challenge that I can think of in Government, particularly because they are contradictory.

I also want to point out that each of the sponsors of those pieces of legislation and each of the interest groups that have developed an Executive order or a permanent regulatory provision do feel strongly about those provisions.

Mr. LAFALCE. I know. I feel strongly about labor surplus. That has been my baby. I feel equally strongly about small business and minority set-asides. I feel more strongly, in fact, about small business and minority set-asides than I do about labor surplus, if I may say so.

I am sure that the Congressmen who are chief sponsors of these feel strongly, too. We have to represent particular interests, but then we also must represent total interests, the public. That presents conflicts within our own minds and our own judgmental processes, but we have to resolve them.

A study of the nature that you and I have just discussed would probably help me and help the other Congressmen resolve positions in a more balanced, objective manner.

You talk about management difficulties. Let's go back to that issue.

Under Public Law 95-89 and DMP-4a, we attempted to categorize for you the various priorities in which contracts should be awarded. We broke them down into four parts, with which you are very familiar: Concerns which are located in labor surplus areas which are also

small business concerns on the basis of the total set-aside. They are listed one, two, three, four. You know them backwards and forwards.

I am concerned about the impact of the Government procurement code upon those four priorities. Are you concerned about that insofar as effectively implementing the program?

Mr. FETTIG. Certainly.

Mr. LAFALCE. What are the difficulties this Government procurement code is going to place upon you in effectively implementing the program to the extent it can be implemented?

Mr. FETTIG. As a minimum, we will have to go through a transition and restructure our own regulatory system and the four priorities you just mentioned to conform to whatever code is finally approved by the Congress. That will be a transition problem.

Just as an elementary point, we will have to issue differing instructions and differing regulations with respect to contracts that are either over or under \$190,000. That is just the beginning.

As with any new law, the new code will——

Mr. LAFALCE. Do we have the percentage of the contracts that are under \$190,000, Mr. Fettig?

Mr. FETTIG. I think good data which I have gotten out of the first quarter of 1979 is a break point of about 90 percent over and 10 percent under. That is in terms of dollar value now. The vast preponderance of actions, if you measure number in terms of contract actions, is under \$190,000. In other words, that tells you that the Federal Government typically has a smaller number of larger contracts.

Mr. LAFALCE. Could you supply for the record the figures both on the basis of dollars and on the basis of action?

Mr. FETTIG. Certainly.

Mr. LAFALCE. While I am thinking about it, would you also supply for the record a written summary of your remarks, perhaps in a little bit more coherent fashion than you were able to provide just speaking from notes? Do you think that would be possible before you leave? Perhaps some assistant could do it.

Mr. FETTIG. I could certainly do that.

Mr. LAFALCE. We would appreciate that.

[Mr. Fettig's prepared statement follows:]

**PREPARED STATEMENT OF LESTER FETTIG, ADMINISTRATOR, OFFICE
OF FEDERAL PROCUREMENT POLICY**

I appreciate the opportunity to come here today to discuss the Labor Surplus Area set-aside program. I want to compliment you, Mr. Chairman, and the Northeast/Midwest Coalition for your continued interest and efforts to increase the amount of Government business going to areas of high unemployment.

I also want to make clear at the outset, Mr. Chairman, that I am not speaking for Mr. Strauss, the President's Special Trade Representative.

By way of background, I would like to make some general observations about our performance to date on the Labor Surplus area set-aside program, and on the potential impact that the Government Procurement Code might have on the program.

The data for the first quarter of FY 79, while still incomplete, shows set-aside awards to Labor Surplus area firms of over \$205 million. Our data for this quarter is still only about 75% complete. Extending this \$205 million to include the remaining 25%, we come up with over \$250 million. This is more than we achieved in the entire fiscal year 1978. We did not meet our goal in FY 78, but the \$228 million in set-asides that year more than quadrupled prior year's experience.

Historically, the fourth quarter of the fiscal year is the heaviest for contract awards. With over a quarter billion in the first quarter of FY 79, I am confident that we will meet our goal of \$1.27 billion for the year.

As to the procurement dollar base we will be working from to meet this goal, we estimate that total Federal purchasing in FY 79 may exceed \$100 billion. However, for purposes of the LSA set-aside goal, we have agreed that Defense opportunities are limited because of the Maybank amendment. Civil Agency procurement in FY 79 is expected to be approximately \$30 billion. Even if the Government Procurement Code were in effect now, it would not impact more than 30% of this amount, leaving a base of more than \$20 billion from which to meet our LSA goals.

We arrived at this 30% figure by taking the data for FY 77, the latest year for which we have complete data, and subtracting all the agencies and types of purchases that are excluded from the Code's coverage. The following table shows this calculation:

Analysis of FY 1977 Procurement Data

	(\$ in billions)
Total Federal Procurement	\$81.5
Less Defense	57.2
Civil Agencies	<u>\$24.3</u>
Less Agencies not subject to Code:	
Dept. of Energy	\$7.6
Dept. of Transportation	1.1
TVA	<u>3.2</u>
Subtotal	-11.9
	<u>\$12.4</u>
Less Small Business and minority set-asides from agencies subject to Code	-1.3
Subtotal	\$11.1
Less Procurement under \$190,000 threshold	-1.1
	<u>\$10.0</u>
Less R&D, Construction & Services	-2.8
Net subject to Code	\$ 7.2
29.5% of Civil Agency Total	

Another factor that I think will have a significant and favorable impact, is the decision just made today to include grants in the base for LSA set-asides. We do not know how much in the grants area is susceptible to such set-asides, but feel quite certain that there is more than enough to offset whatever may be lost under the International Procurement Code.

Finally, I would like to point out that the Code will not become effective until 1981. We will have much better data by the end of FY 79, when our Federal Procurement Data System produces its first full year of Government-wide statistics. We will be able to see what particular Federal Supply Class categories of goods and services are most susceptible to LSA award, and what agencies are the most successful. Armed with this data, we can more precisely predict what the impact of the Code might be, and where we can most effectively act to offset this impact. We have already trained over 30,000 procurement personnel in this program, using video tapes prepared by our own people. We can redirect this training effort and adjust agency targets as necessary to make sure that the LSA goals are met notwithstanding the Code's impact.

Mr. LAFALCE. Please continue.

Mr. FETTING. You were addressing the management implementation difficulties under the international procurement code. As I said, clearly, as with any new law, we will have to conform the regulatory structure to the new provisions of the code, as will be submitted and has not been submitted to the Congress yet and as finally either approved or disapproved.

Beyond that, the transition, the adaptation, I do not foresee that in kind the international procurement code will present any greater degree of difficulty than we face with new laws and new Executive orders.

The President's anti-inflation program was a new and important and somewhat disruptive requirement. We have tried to handle that in a clean, effective fashion. All the regulations are in plain English on four pages. I hope we will be able to do that with the international code as well.

Mr. LAFALCE. Speaking of the President's anti-inflation program and Government procurement, you are the Administrator of the Office of Federal Procurement Policy. I would like to ask you a few questions on that.

There seems to be conflicting legal opinion regarding the ability of the Government to withhold Government contracts from companies not complying in good faith with the voluntary guidelines of the President. Apparently someone has advised the President that it is arguably legal—and I think that is the Justice Department—while others vehemently contend that it is beyond argument unconstitutional. Those entities include the traditional friends of the President such as the AFL-CIO and such traditionally neutral entities as the General Accounting Office.

Does OFPP have an opinion on that?

Mr. FETTING. Absolutely. You are correct that there are differing legal opinions. You are correct that some of them are vehemently held.

I would submit that the first thing to bring to your attention is that is not unusual at all. Every time we have had a major new socio-economic program added to Federal contracts there have been differing legal opinions and many of them vehemently held.

I will include among recent examples even a law passed by the Congress which mandated a 10-percent set-aside for minority firms under the public works program. There, too, the Supreme Court will reconsider it. The Associated General Contractors brought several suits. Two were upheld in circuit courts. This is not unusual. Let me give you more pertinent examples.

President Johnson issued an Executive order in 1965 or 1968, I believe, doing the very same thing; namely, prohibiting effective bidding by contractors if they did not comply with adequate affirmative action programs. That, too, went to court. Two separate circuit courts upheld President Johnson's authority in Philadelphia and New Orleans, with rather expansive justifications, if I might say.

President Eisenhower in 1958 put into effect a very similar program. At that time President Eisenhower had what he called a voluntary oil import quota program. Federal contractors were required to certify as part of their bid that they would comply with the administration's oil import quota program. That, too, was challenged. It went to court, the D.C. District Court. The President was upheld.

Mr. LAFALCE. Your point is well made. Let me proceed to a second point.

Has there been an instance since the President's announcement of the sanctions for noncompliance with voluntary programs where the sanctions have, in fact, been imposed?

Mr. FETTIG. No, and let me explain why. There has been somewhat of a misconception.

Mr. LAFALCE. So we have a sword of Damocles, but it will never be exercised?

Mr. FETTIG. We hope not. Particularly in the media they have been anxious and waiting for contracts to be torn up. We did not design the program that way. If the program is effective, it will not operate that way. The program is designed to be preventive. The program is designed to give the bidders a choice. They can come and bid provided they are in compliance or they can choose not to bid.

Mr. LAFALCE. The problem with the deterrent is that it is only effective so long as there is a reasonable expectation that it will be used. So long as there is no reasonable expectation that it will be used, it becomes ineffective.

Let's go on.

Mr. FETTIG, in your remaining days in office I would be very interested in what are those principal factors with which you have to contend as Administrator of the Federal procurement policy that in your judgment tend to add to the inflationary cycle within society through Government procurement—add to the increase of the Federal procurement costs. Congress might want to address its attention to this in the weeks, days, months, and years ahead.

Mr. FETTIG. Do you mean the factors which inflate the costs to us as buyers, Government buyers?

Mr. LAFALCE. Yes, precisely.

Mr. FETTIG. I can give you some elementary points now. First and foremost is the failure to capitalize on and generate competition.

Mr. LAFALCE. Have you testified on this issue?

Mr. FETTIG. Many times.

Mr. LAFALCE. You have?

Mr. FETTIG. Yes, sir.

Mr. LAFALCE. Would you please send me copies of some of your more recent testimony and your most comprehensive testimony?

Mr. FETTIG. I would be happy to do so.

[Statements requested above follow.]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

HOLD FOR RELEASE UNTIL DELIVERY
Expected at 10:00 a.m.
Friday, March 2, 1979

STATEMENT BY THE
HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
MARCH 2, 1979

Mr. Chairman and Members of the Subcommittee.

I appreciate the opportunity to come here this morning to review the performance of the Office of Federal Procurement Policy (OFPP).

STATUTORY BASE

OFPP was established by P.L. 93-400, signed by President Ford on August 31, 1974, with a five-year life. The statute placed OFPP in the Office of Management and Budget (OMB) with directive authority over Federal procurement policies, regulations, procedures and forms. The statute enumerated specific tasks for OFPP, as well as a broad charter, expressed in Section 2 "Declaration of Policy", for promoting economy, efficiency, and effectiveness in Government procurement organizations and operations. The authority given to the Administrator to "provide overall direction of procurement policy" indicates the breadth of the charter given to OFPP. OFPP's authority impacts one out of every five dollars expended by the Federal Government.

Along with this broad charter of responsibility, Congress also expressed its intent that OFPP should not be a large office. The statute does not contain any specific restrictions. However, the legislative history speaks in terms of an initial staff of perhaps 40 or so. The statute did direct the Executive agencies to assist OFPP by furnishing services, personnel and facilities. This very wise provision enables the Office to remain small, but still pursue its objectives, drawing on outside resources as workload and priorities dictate. Agencies also become more directly involved in the development of policies, regulations, procedures and forms.

I would like to begin my remarks by noting that OFPP has indeed remained very small. Our authorized ceiling for FY 79 is 25, including both professional and clerical personnel. We have augmented that staff with personnel detailed to us from the agencies for special projects, as envisioned by P.L. 93-400, to a total direct complement of 32 people.

REVIEW OF ACTIVITIES AND ACCOMPLISHMENTS

Needless to say, that small staff has been and is a busy one. I am impressed with the dedication and professionalism of the staff and I am proud of the role OFPP has played -- particularly in the past two years -- in charting the course

for Federal acquisition. Our recent report to the Congress covering the period from January 1977 through September 1978 includes the status of all the major projects. I will not repeat them all here, but I would like to touch on the most significant ones and those which relate to the specific requirements set forth in P.L. 93-406.

FEDERAL ACQUISITION REGULATION

Section 6(d) of P.L. 93-400 enumerates six functions which Congress specifically directed the Administrator to undertake.

The first was to establish "a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies." It is no simple task to introduce such changes into a system that has been built incrementally for over 30 years. But I am happy to report that we made a major step forward toward uniform simplified regulations early in 1978, when we launched the Federal Acquisition Regulation (FAR) project. P.L. 93-400 requires a system of regulations. However, S. 1264, the proposed Federal Acquisition Act in the 95th Congress, and S. 5, its successor in this Congress would require a single regulation. In anticipation of such a legislative requirement we established a top priority project to promulgate a single regulation for all agencies by August 1979.

Such a legislative requirement was recently included in P.L. 95-507, which amended the Small Business Act.

The FAR will replace the Federal Procurement Regulations (FPR), the Defense Acquisition Regulation (DAR) and other agency procurement regulations. The goal of the FAR is to replace the present proliferation of redundant and sometimes conflicting regulations with a single regulation which is uniform, clear, and understandable. This will be the sole primary regulation for \$100 billion in annual Federal acquisitions. The FAR is not a plan or a promise. It is a reality and we have achieved some important milestones already:

- o All agencies agreed to cooperate in January 1978.
- o Drafting is being done by 40 Defense, 16 GSA and several other agency people -- full time since March 1978 -- along with a core OFPP staff of 9.
- o First rank, talented people were committed, as exemplified by DOD's project directors, Air Force Col. John Slinkard and Navy Captain Vince Pistolessi; GSA's Director, Phil Read; and OFPP's Project Director, Bill Thybony.
- o All writers were first sent to school to learn how to write in plain, simple English.
- o A single, common outline was agreed to conform to the Code of Federal Regulations (for the first time), and initial writing assignments were parceled out.
- o The most advanced information processing technology was applied. All drafts are on a central computer, can be directly exchanged between

writing teams, and can go directly from tape to print at the Government Printing Office (GPO).

- o Draft segments have been exchanged between writing groups and then go to OFPP for final review.
- o Of the 45 major segments, 11 have been issued for public comment in the Federal Register beginning in January, 1979. The remainder are scheduled to be published for comment by March 31, 1979. Each part has a 60-day comment period.

After thorough review of all public comments, a final FAR, ready for publication, is targeted for August 31, 1979, OFPP's "sunset" date. Following, of course, congressional review, the new system could become effective in the Spring of 1980.

OFPP recently completed a thorough survey of acquisition regulations in 19 executive branch agencies. The survey found:

- o 485 offices regularly issuing procurement regulations;
- o 877 different sets of regulatory issuances: bulletins, instructions, regulations, etc;
- o 64,600 pages in effect;
- o 21,900 new or revised regulation pages being issued each year (1 page for each 3 in effect);

- o 11 of 19 agencies accounting for 97% of regulations identified;
- o Proliferation concentrated in large agencies with multiple levels of regulatory authority (services, bureaus, administrations, etc.);
- o DOD with over 30,000 pages (48% of total), not including issuances below major command level; and
- o 83% of all regulations being issued at levels below agency or department headquarters.

These figures represent only part of the picture since the survey, in most cases, did not reach the lowest levels within the agencies, which issue local regulations. The cause of this paperwork explosion appears to be a combination of complex organizational structures, multiple levels of regulatory authority, and a total absence of effective regulatory management. Nowhere in the executive branch is there any mechanism to control, or even oversee, procurement regulations issued at successive levels below the agency or department headquarters.

The new FAR system will remedy the proliferation problem through strict limitations on what the agencies may issue to implement or supplement the FAR, combined with active oversight and enforcement by a FAR executive staff. Proliferation of regulations will be controlled by:

- o Publishing in the Federal Register and in the Code of Federal Regulations, Title 48, all implementing regulations
- o Requiring all agency acquisition regulations to follow FAR format and numbering system.

- o Authorizing and approving all agency acquisition regulations at agency headquarters level.
- o Consolidating necessary regulatory coverage at highest practicable level within FAR System.
- o Prohibiting restatement or paraphrasing of higher level coverage in agency acquisition regulations.
- o Prohibiting issuance within agencies of acquisition policies or procedures in any form other than agency acquisition regulations.
- o Directly distributing loose-leaf changes to agencies through publication in Federal Register.
- o Requiring the FAR Executive Staff to oversee agency acquisition regulations including periodic reviews.

We believe that the regulation proliferation problem can be controlled while, at the same time, providing sufficient flexibility to accommodate unique agency needs. By raising internal regulatory directives to the level of published regulations, we can readily oversee the extent of compliance or non-compliance with FAR requirements, including those designed to limit proliferation. An additional benefit of the FAR System will come from increased public visibility. Since the CFR is available in libraries throughout the country, any potential contractor will have access to all regulations governing Federal acquisition, regardless of the particular agency or bureau involved — written in understandable, plain English.

Before I leave this subject, I would be remiss if I did not acknowledge and express my appreciation for the cooperation of DOD and GSA and the resources they have dedicated to this project. Almost 60 professional and clerical personnel from these two agencies have been given training in clear writing and are working full time on the FAR. This heavy application of resources now will pay dividends when the FAR becomes the single "bible" for Federal acquisition.

PUBLIC PARTICIPATION

Section 6(d)(2) of P.L. 93-400 sets forth the function of "establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms". Section 14(b) requires formal public meetings of OFPP for the purpose of establishing significant procurement policies and regulations.

Implementation of these separate requirements has been closely linked. Two OFPP Regulations were published for comment in the Federal Register in August 1976. The first was intended to establish the Federal Procurement Regulatory System and the second to establish the procedures for public hearings in connection with OFPP policy development. These regulations themselves were the subject of a public hearing in September 1976.

From the very outset, OFPP has published all proposed policies in the Federal Register, allowing a minimum of 30 days, and in most cases 60 days, for public comment. Some subjects, such as Organizational Conflicts of Interest and Reliance on the Private Sector have been published two or three times before a policy was finally evolved.

Public hearings have been held on all major policy matters whenever requested by even one interested party.

In addition to the Federal Register publication, OFPP maintains a mailing list of agencies, associations and interested public parties which receive direct notice.

As I noted above, the draft Federal Procurement Regulatory System will be superseded by the single regulation. Compliance with statutory requirements will be formalized in the FAR, which directs that all substantial policies, regulations, procedures, forms, and revisions must be published for public comment for 60 days. This will be done simultaneously with agency comments, so that the public will have an opportunity to submit its viewpoints before regulations are "carved in stone," as has so often been the case in the past. The FAR will also include a requirement for public hearings prior to finalizing significant policies or regulations.

RELIANCE ON THE PRIVATE SECTOR

Section 6(d)(3) of P.L. 93-400 gives the Administrator the responsibility for "monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services". This policy of reliance on the private sector is expressed in OMB Circular A-76.

In March 1977, the then Deputy Director of OMB, Jim McIntyre, made a commitment to Congress to conduct a complete review of Circular A-76 and its implementation. A comprehensive review was initiated in June by OFPP and all interested parties were invited to submit comments and recommendations. The new policy will build on three principles:

- (1) Rely on the private sector. The Government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the Government to act on the public's behalf.
- (2) Retain certain governmental functions in-house. Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees.

(3) Aim for economy; cost comparisons. When private performance is feasible and no overriding factors require in-house performance, the taxpayer deserves and expects the most economical performance and, therefore, rigorous comparison of contract costs versus in-house costs should be used when appropriate to decide how the work will be done.

Thirty-seven specific changes were proposed for public comment in November 1977. A draft Circular was published in August 1978. A new Circular and Cost Handbook will be issued shortly.

FEDERAL ACQUISITION INSTITUTE

Sections 6(d)(4) and (6) of P.L. 93-400 give the Administrator responsibility for "promoting and conducting research in procurement policies, regulations, procedures, and forms," and "recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel."

In July 1976 OFPP established the Federal Acquisition Institute (FAI), to:

- Improve business management in the Government through upgrading and professionalizing the acquisition workforce.

- Serve as the central point for Government-wide planning, development, implementation and evaluation of acquisition research, education, and training.
- Develop and establish acquisition career development programs.

The need for such an organization was recognized by the Commission on Government Procurement, and is the focal point for complying with the statutory responsibilities enumerated above.

Since starting in July, 1976, the FAI has gone through a major management review to focus and accelerate its attention on career development, one of the most critical problems facing the Government's 130,000-person contracting workforce. Nearly half of that workforce will be eligible for retirement within 10 years.

In order to seize control of these critical workforce problems, a new, central information system will be on-line by April, 1979, to give us the demographics of the problem. For example, we already know that 28% of the workforce on Long Island is eligible to retire now, compared to, for example, 8% in Dayton, Ohio. This Government-wide system will give us, as managers, the ability to forecast trends in retirement, training, grade levels, employee mobility and speciality requirements before they undermine the effectiveness of our contracting system.

Other FAI initiatives in career development include:

- o Task Analysis Project (the first conducted in any career field)
 - Constructed task inventory of 1480 tasks
 - Administered to 22,600 people
 - First results - 15 April 1979
 - Purpose:
 - Revise job standards (Sep 79)
 - Identify Government-wide needs for training
 - Develop career master plans (management of workforce) for each major specialty.

- o Classification and Qualification Program
 - Clarify role of contracting officer - identify duties, responsibilities
 - Assess impact of new legislation and policies on that role
 - FAI, functional managers, and the Office of Personnel Management (OPM) jointly will prepare new job standards (the last major revision was in 1969)

- o Career Development Objectives
 - Unify career development practices across Government
 - Skills and knowledge required
 - Training toward tasks
 - Performance evaluation

- Establish career patterns
 - Personnel intake
 - Executive development
 - Upward mobility
 - Job referral, personnel inventory

- Establish goals to upgrade personnel
 - Training - education
 - Counseling
 - Job appraisal
 - Equivalency testing
 - Certification

FAI has also mounted an aggressive training program.

- o OMB Circular A-109 (Major Systems Acquisitions Policy)
 - Coordinating all agency (civil and DOD) training efforts related to A-109.
 - Initiated training of over 2,000 Federal executives
 - agency-head orientation
 - senior executive seminars
 - senior manager seminars
 - world-wide distribution of A-109 videotape

o Sponsored development of following additional courses

<u>Course Title</u>	<u>Developer</u>	<u>Location</u>	<u># Trained</u>
<u>Attendees</u>			
Seminar on OMB Circular A-109	DSMC	Ft. Belvoir, Va.	100
Seminar on OMB Circular A-109	Middlesex Rsch Ctr, Inc.	Ft. Belvoir, Va.	60
Federal Acquisition Management	DSMC	Ft. Belvoir, Va.	25
Fundamentals of Systems Acquisition	DSMC	Ft. Belvoir, Va.	25
Principles of Acquisition Contracting	ALMC, Ft. Lee, Va.	Washington, D.C.	30
Seminar in Acquisition Asst Secy Level	Sterling Institute	Washington, D.C.	25
Seminar in Acquisition Sr. Managers	Sterling Institute	Andrews AFB, MD	50

- o Focused large training effort on 7 other OFPP priorities, using videotapes, instructor text materials and student handouts:
- A-109
 - Anti-inflation Policy
 - Amendments to Small Business Act (P.L. 95-507)
 - Use of Contracts Under Grants and Cooperative Agreements Act (P.L. 95-224)

- Ethics: Prevention of Fraud & Corruption
- Transition to the Federal Acquisition Regulations
- Implementation of A-76 - Contracting Out

FAI does not duplicate other Government training facilities or programs: it serves to consolidate and give central direction to these scattered efforts. For example, in order to implement the Labor Surplus Area set-aside policy, FAI training materials were directly given to 30,000 people; \$300,000 in cost was avoided; one and one-half years of training time was saved; and contract awards under the program doubled.

FAI has also concentrated on education. The Procurement Commission reported a generally low average procurement workforce education level -- high school plus three months.

At the Graduate level, FAI is:

- Working with 20 universities to design new curricula;
- Promoting a model MPA program endorsed by National Association of Schools of Public Affairs and Administration and announced to almost 300 universities.
- Promoting a model MBA to be presented to American Assembly of Collegiate Schools of Business on May 1.

At the Undergraduate level, FAI is:

- Sponsoring a model program at American University which has enrolled 104 students;
- Developing curricula guides, lesson plans, up-to-date materials sent to other universities;
- Establishing three regional faculty seminars scheduled for this summer.

To upgrade and give credit for existing workforce talents, FAI has arranged associate level degree credentialing, including arrangements for

- Granting an associate degree in procurement, available without time limit anywhere in the world by the University of the State of New York;
- Already having the first graduate of the credentialing program receive a BA degree two years ahead of normal schedule; and
- Prompting other colleges, universities, and two-year institutions to agree to establish new education programs near major work force centers: Los Angeles, Dayton, Seattle, Minneapolis and other cities.

Overall, FAI education goals are as follows:

STUDENT ENROLLMENT GOALS

	Fall 1979	Winter 1979	Fall 1980
Associate	200	500	800
BA	500		1,000
Grad MPA	100		100
MPA	100		100

In the research area, FAI has conducted an in-house study of Acquisition Research Needs (300 interviews in eight civil agencies). The study identified 10 major problem areas:

1. Manning
2. Personal Attitudes
3. Role of Contracting/Procurement
4. Training
5. Socio-Economic Objectives
6. Acquisition Process - Complexity
7. Acquisition Process - Efficiency
8. Authority
9. Acquisition Process - Length
10. Accountability

These problem areas will form the basis for future FAI work.

The FAI also established interagency Research Councils to disseminate information and coordinate efforts; will conduct a research symposium (May 1979); will conduct an acquisition conference (August 1979); and finally, maintains the FAI Library, containing the most extensive collection of material on acquisition in the United States. The library began as the library of the Commission on Government Procurement.

FEDERAL PROCUREMENT DATA SYSTEM

Section 6(d)(5) of P.L. 93-400 requires the Administrator to establish "a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector."

After an extensive period of study of development and design, the Federal Procurement Data System (FPDS) was established by OFPP in February 1978. A Federal Procurement Data Center has been established in the Defense Department to run the system. The following points illustrate the scope of the system:

- o Reporting began October 1, 1978 (1st quarter FY 1979).
- o Acquisitions by 143 agencies are being reported.
- o First quarterly reports are now being produced
- o FPDS, for the first time ever, will provide total, uniform information on executive branch contracts - a tremendous analytical and management tool for the Congress, executive agencies and the private sector.

- o The FPDS will produce individual transaction reports on all actions over \$10,000. The reports will contain the following information in addition to other important data:
 - Contracting agency and specific office
 - Date of action
 - Contractor
 - Place of performance
 - Dollars obligated
 - Product or service acquired
 - Type of contract (for example, fixed price, or cost-type)
 - Type of business (small, large, minority, woman-owned, non-profit)
 - Estimated completion date
 - Information regarding:
 - Affirmative Action Programs
 - Consultant Services
 - Walsh-Healey Act
 - Davis Bacon Act
 - Labor Surplus Areas
 - Extent of Competition
 - Estimated percent of foreign content

In summary, the FPDS, when fully operational, will for the first time provide a clear picture, in one centralized location, of the data needed to access the workings of our acquisition systems. This capability will lead to more improvements in the acquisition process as well as more effective implementation of Acquisitions laws.

- a formal mission-oriented structure for the front end;
- Encouraging innovative solutions to agency needs; and
- an extended use of competition beginning early and continuing on through the system acquisition process.

Seventeen departments and agencies have been identified to implement A-109:

- Departments of Agriculture, Commerce, Defense, Energy, Health, Education, and Welfare, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Treasury; and
- General Services Administration, Environmental Protection Agency, National Aeronautics and Space Administration, Veterans Administration, and the Corps of Engineers.

Through the Federal Acquisition Institute, OFPP is developing orientation and training courses for all levels of management in the Federal agencies. A-109 orientation and training to date and planned include:

- Over 700 personnel have completed formal training courses.
- Over 1800 agency personnel have been identified to receive formal training this year.
- Over 5,000 industry and agency personnel have received indoctrination orientation briefings.
- More than 25,000 circulars and pamphlets have been distributed throughout the Government and industry.

Five departments and agencies (DOD, HEW, Energy, EPA, and NASA) have implemented A-109 in actual program application. We will continue to work with the agencies and emphasize the benefits of the A-109 procedures until the Circular is fully implemented.

SMALL AND MINORITY BUSINESS

Several recommendations of the Commission on Government Procurement relate to the most effective implementation of numerous socio-economic objectives in the acquisition process. Of the more than 40 socio-economic policies, small and minority business participation commands the greatest attention. I will only mention the implementation of Public Law 95-507 to illustrate OFPP's involvement.

On October 24, 1978 the President signed P.L. 95-507 amending the Small Business Investment Act and the Small Business Act. Section 211 of P.L. 95-507 requires the submission by major prime contractors (\$1,000,000 for construction contracts; \$500,000 all other contracts) of pre-award plans regarding subcontracting to (1) small business concerns and (2) small "disadvantaged" concerns. The plans must contain percentage goals and are to be incorporated into the contract.

OFPP implementation was published in the Federal Register on January 16, 1979. Approximately 80 comments have been received to date, and we expect that final regulations implementing this law will be issued in March, 1979.

COMMERCIAL BUYING PRACTICES

A policy of acquisition and distribution of commercial products (ADCoP) has already produced significant savings.

The policy emphasizes use of commercial, off-the-shelf, products and commercial distribution channels instead of products acquired via detailed specs for distribution through the Government depot system. ADCoP emphasizes that the Government should be able to use off-the-shelf products in the same manner as other consumers or industrial users.

Following are some examples of how ADCoP has been applied for specific products:

- o A 20 page specification for military undershirts was replaced with a half page purchase description, resulting in savings of \$797,000 in July 1978, compared to the price paid two months earlier.
- o Lengthy specifications for military boxer shorts and bed sheets were scrapped in favor of short purchase descriptions for a savings of \$65,000.
- o Using a three-line purchase description for x-ray film and buying in large quantities under master contracts, \$2 million was saved.
- o A commercial specification was used for test buy of 51 million gallons of gasoline at a cost of about \$25 million. If the gasoline meets test requirements, DOD will apply the commercial standard to annual purchases of more than 375 million gallons.

- o Simplified purchase descriptions have been used for ice cream makers, electrical fuses, bath towels, plumbing fixtures, Worcestershire sauce, salad dressing, salt, chain saws, and cotter pins.

ADCoP is being incorporated in the Federal Acquisition Regulation (FAR). Draft part 10 is expected to be completed by March 30, 1979. Part 10 will serve as interim guidance to agencies pending issuance of the FAR.

SPECIFICATIONS AND STANDARDS ACCOMPLISHMENTS

- o In December 1977, OFPP directed DOD and GSA (the two major spec preparing activities) to develop a Government-wide management system favoring functional over detailed specifications.
- o GSA manages approximately 5,000 Federal specifications; DOD, about 40,000 Federal and military specifications.
- o GSA has achieved a net reduction of approximately 696 Federal specifications and standards with an additional 875 in coordination for possible cancellation.
- o Department of Defense has tentatively identified some 8,000 to 10,000 detailed specifications for possible cancellation or conversion to CID's. Program in DOD is just getting underway and, although few specifications have actually been cancelled thus far, it presents a large saving potential.

Another important effort in connection with commercial products has been the improvement of food quality assurance and specifications management. Working with the Departments of Agriculture and Defense, OFPP has been instrumental in the following accomplishments:

- o 101 new meat graders trained at California State University - Chico, with additional 100 by October 1, 1979.
- o Guidelines are in process for USDA's management of Government's food specifications.
- o USDA assumed 70 percent of responsibility for meat inspection; balance to be accomplished by October 1979. U.S. Department of Commerce (USDC), National Marine Fisheries Service (NMFS), is totally performing its assigned inspection role for seafood.
- o USDC inspections to U.S. grade standards for seafood have resulted in \$5 million saving during 1977 and 1978 over previous DOD procurements.
- o Meat inspections for DOD from April 3, 1978, to December 31, 1978, reflect less than 7/100 of one percent product-related deficiencies; seafood, no deficiencies.

- o "Going commercial" resulted in 90 percent of DOD food acquisitions delivered through commercial distribution channels bypassing Government depots (\$3.3 billion of a total annual volume of \$4 billion).

Finally, in the commercial products area, OFPP has worked with the Department of Defense and Veterans Administration to improve management of the acquisition of drugs and medical devices. DOD and VA signed an agreement in mid 1978 to share acquisition of drugs and medical devices. Thirty manufacturers of single offeror drugs have been assigned to DOD and VA for acquisition without duplication; accounts for 75 percent of \$400 million annual volume of all drugs acquired.

UNDERLYING THEMES: COMPETITION; TECHNOLOGY; THE MARKETPLACE

Now, Mr. Chairman, I would like to turn from OFPP's accomplishments to discuss some underlying themes which I think are significant and will be more so for OFPP's future.

OFPP listed over 29 separate, active projects in its last annual report to Congress. Each has commanded our attention for a variety of reasons: new laws, new Executive Orders as well as self-initiated efforts. Each is important in its own right and, taken together, I believe, they paint a broad picture of responsible and aggressive management in the many diverse areas which impinge on the Federal acquisition process.

But because OFPP, by its character, must be both active and reactive, there's a real danger that now and even more so in the future, we may lose sight of some of the underlying directions we wish to take Federal acquisition as a system.

This is an ideal opportunity to restate what have been -- and will continue to be -- three underlying themes for our efforts, the common touchstones and measures of direction in the process of reconstituting Federal acquisition practice.

They are:

- (1) To substitute effective competition for burdensome and artificial forms of regulatory controls.
- (2) To redesign Federal practice to stimulate and encourage new technology.
- (3) To redesign Federal practice to better interface with the American commercial marketplace.

Clearly, these three themes are related and mutually supportive. We deny the taxpayers full benefit of competition if we do not tap the full potential of the marketplace. The marketplace derives its energy and dynamism largely from new product and management innovation. Competition sharpens in the face of innovative solutions to Government needs.

The important point to keep in mind is that OFPP needs to do more than manage a skelter of apparently unrelated projects. It has a higher responsibility to direct Federal acquisition practice along some clearly understood lines which tell where we are going and can command broad confidence that these directions are correct.

Some people still fail to see, for example, the common thrusts in both OMB Circular A-109 governing major systems acquisition and our commercial products policy. What could be more disparate, it seems, than buying a weapon and underwear?

The themes are there, even if couched in different terminology. To begin new weapon programs with a broad agreement on mission needs, or to reduce 20 pages of specifications for boxer shorts to a half-page purchase description are equivalent reforms. Why? Because they open the door to more effective competition, widen the opportunity for broader product innovation and allow for fuller participation of all members of the marketplace.

Likewise, with small and minority business efforts. When we rebuild efforts to enhance the role of small and disadvantaged business under the new law, when we simplify the Federal Acquisition Regulations, we do so not just because small and minority firms somehow "deserve" special treatment in some abstract sense. We do so because we broaden the base of competition. We do so because smaller firms have always been the disproportionately larger source of innovation. We do so because 97% of the American marketplace is small business and account for over half the total employment.

It is important to keep these underlying concerns constantly in mind as an organization like OFPP goes about its business. OFPP always needs to be a rudder as well as a keel.

THE HEISENBERG PRINCIPLE

This leads to one other important observation that bears mention, again not because it's difficult to understand but because it's too easily overlooked.

The Heisenberg principle in physics has its equivalent principle in acquisition. What we observe in nature changes just because we are observing it. Likewise, how we go about buying materially changes those we buy from.

The decade-long practice of making key system design decisions in Washington has literally served to untrain engineers from creative innovation in the defense industry. Emphasis has tended to shift from engineering to marketing and lobbying skills in corporate behavior. A-109 has much to say about rebalancing these trends — indeed, it was consciously designed to do so.

Our decades-long accretion of regulations and controls, all seen as valid protections for a prudent buyer, nevertheless change the sellers, by adding increased overhead burdens and stifling innovation and the entrance of small and minority firms into the Federal marketplace.

It will never be sufficient for OFPP to look upon its role simply as the custodian of Federal practices. The higher order responsibility to the taxpayer requires that OFPP manage the relationship between buyer and seller for the long-term health and protection of Federal acquisition.

As in the case of meat procurement, when we overload detailed specifications, require special equipment, rely on armies of inspectors, all these moves viewed just from the Government's standpoint might seem acceptable or even necessary. But look what we did to our marketplace: we killed it. Competition went away, we became inordinately dependent on a few suppliers, prices went up and fraud set in.

We will never serve the best interest of the taxpayers by failing to concern ourselves with the effects on the sellers which arise from our actions as buyers.

One final point on this matter. The passage of S 5, the "Federal Acquisition Reform Act" would go a long way towards achieving optimum use of the marketplace. I would like to stress the importance of avoiding restrictions in other legislation which inhibit competitive acquisition.

RESHAPING THE BUYING BUSINESS: ACQUISITION VERSUS PROCUREMENT

OFPP is both the product and promoter of the most far-reaching reforms ever in Federal contracting. With the original catalyst of the Procurement Commission in 1972, momentum has built, achievements have accelerated and a reexamination of methods and precepts has touched virtually every facet of the business of buying.

Perhaps the most significant yet apparently superficial sign of this reform scope is our effort to replace the word "procurement" with the word "acquisition."

We no longer have the Armed Services Procurement Regulation; we have the Defense Acquisition Regulation. These, in turn, will yield to a government-wide set of Federal Acquisition Regulations.

The Federal Procurement Institute is now the Federal Acquisition Institute.

In every key agency, we now have an Acquisition Executive. In the Defense Department, for example, the Undersecretary for Research and Engineering carries that title and the key staff position is the Deputy for Acquisition, which now embodies the former procurement function located elsewhere before the Carter Administration.

The landmark legislation to build a new statutory foundation, S. 5, carries the title Federal Acquisition Reform Act.

What's behind this semantic purge is far more than novelty or sloganeering.

Our perception of this business of buying has changed dramatically. Our understanding of what's right and what's wrong, where the problems lie and where the solutions can be found has literally outgrown the conventional use and meaning of the work "procurement." Both mentally and organizationally, we need to recast our notions beyond the narrowly understood "procurement" connotations.

Why? Put simply, we have found Federal buying traditions increasingly cast in three separate sets of specialities:

- o Requirements — expressing the Government needs
- o Procurement — the business of contracting for those needs
- o Logistics — the business of using and managing what's bought.

Problems arising in each arena have been treated in that arena. The most profound, yet easy to understand, change in our thinking is that we need to manage these special functions together, to manage the acquisition process.

Problems in logistics — spare parts and supply and warehousing — have their roots in the way we set requirements and do our contracting. You cannot have an efficient National Supply System unless you address the front-end issues of who's specifying which items and who's procuring those items.

Problems in procurement — in competition and overruns and prices — have their roots in the way requirements have been set. You cannot generate effective competition without properly matching the Government's expression of need with the ability of the marketplace to respond. This is true whether we talk of overly detailed specifications for mousetraps and meat or constrained requirements for particular types of weapon systems.

This is why major improvements in buying, whether for major systems or commercial products, rest on a new intellectual appreciation for an acquisition process which must embrace requirements and contracting (procurement) and logistics. They must be viewed and managed in concert in order to make the major improvements we are seeking.

SOCIO-ECONOMIC PROGRAMS

Nowhere has more controversy and difficulty arisen than in applying Federal acquisition to meet social and economic objectives. Many of these programs - small business preferences, "Buy American" protections — are time-worn and familiar.

Yet there are others, unfamiliar or forgotten, which taken together present probably the largest single challenge to effective management of the Federal contract process. Attached to my statement is a compilation of 39 separate socio-economic requirements compiled by the Procurement Commission, ranging over air standards, foreign twine, prison-made supplies, humane slaughter of animals and convict labor.

To that list we must add recent anti-inflation conditions under President Carter's executive order; new statutory preferences for small and disadvantaged business under P.L. 95-507; and preferences for firms located in Labor Surplus Areas under P.L. 95-89, P.L. 95-507 and President Carter's Urban Policy.

To put it most bluntly, nowhere is there a more blatant contradiction between the fundamental mission of buying the best goods at most reasonable prices and distorting that goal with socio-economic objectives which likely add short-run costs, limit competition, distort the marketplace and even conflict with each other.

Clearly, it is argued, the Federal job of buying economically would be far more pure and simple without these requirements.

Reaction of the acquisition community in the past has been understandable and well-founded on its concern for the most efficient purchasing. Few new socio-economic programs have enjoyed full support and they have been regarded as enforced encumbrances which need to be endured.

I believe we have reached the point where a new attitude can and should take hold. A new perspective.

History has taught us we have had and will have continued demands through Congress and the President to use Federal contracts to serve in social and economic pursuits. The reason is quite simple: this country's leadership has not, cannot and will not turn its back on a \$100 billion-a-year tool to work on the nation's critical problems.

As difficult as it may seem to recognize, socio-economic programs now rank as important as the basic business of buying in the regimen for acquisition managers. And for good reason.

When we tend to small business preferences, we build a more vital economic fabric for the country which, in the long run, benefits the Federal Government as a buyer.

When we tend to the special needs of minority business, we build a stronger economic and, more importantly, a stronger social fabric for the country which far transcends the returns from a diversified base of suppliers.

When we tend to the preference for firms located in labor surplus areas, we build hope and health into the country's urban communities—even through just one contract.

We could go on with specific programs but, for all, we make limited Federal dollars work harder to achieve several purposes at once.

Where does that leave us? With some of the most difficult jobs in government. The 130,000 people who administer Federal contracts must serve two masters, play two roles as economical buyers, custodians for the taxpayers' money and as agents of social and economic change, contributors to the national well-being.

That is not easy. We would all wish for a simpler world. Instead we are left with some of the most difficult management decisions reflecting the essence of government: difficult choices between competing demands.

Realizing these things should permit us to take a forthright posture as supporters and constructive critics in fashioning and executing socio-economic programs. OFPP has tried to serve as a positive and responsible spokesman for the acquisition community which, more than any other, can best say how to go about these efforts, what will cause them to fail and how to make them work.

THE SCOPE OF OFPP'S AUTHORITY

Without a doubt, Congress intended and created a strong Office. Within the overall thrust of P.L. 93-400, several particular provisions have proved to be prominent in framing that strength:

o Section 6(a) — Authority — "The Administrator shall provide overall direction of procurement policy ... he shall prescribe policies, regulations, procedures, which shall be in accordance with applicable laws and shall be followed by executive agencies ..."

o Section 7 — Administrative Powers — "Upon request of the Administrator, each executive agency is directed to make its services, personnel and facilities available to the Office to the greatest practicable extent ..."

o Section 9 — Effect on Existing Laws — "The authority of an executive agency under any other law to prescribe policies, regulations, procedures and forms for procurement is subject to the authority conferred (to the Administrator) in Section 6 of this Act."

These are strong provisions. They reflect the Congress' decision that OFPP must have directive -- not advisory -- authority if OFPP was to be able to tackle the reforms needed in the face of a complicated and fragmented scheme of existing procurement authorities.

P.L. 93-400 also, however, crafted checks and balances on that strong authority --

- o Requiring "due regard to the program activities of the executive agencies" (Section 6(a));
- o Restricting the authority "to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance." (Section 6(b)(1));
- o Requiring that "the Administrator shall consult with the executive agencies affected, including the Small Business Administration . ." (Section 6(e));
- o Limiting interference with the agencies' "need for, or use of, specific property, services, or construction" (Section 6(f)(1));
- o Limiting interference in "specific actions in the award or administration of procurement contracts";

- o Requiring that "the Administrator shall keep the Congress and its duly authorized committees fully and currently informed ...", including an annual report (Section 2(a));
- o Requiring that "at least 30 days prior to the effective date of any major policy or regulation ... the Administrator shall transmit ... a detailed report ..." (Section 8(b));
- o Requiring the Administrator to give the General Accounting Office "access to all books, documents, papers and records of the Office" (Section 14(a)); and
- o Requiring public notice and open meetings "for the purpose of establishing procurement policies and regulations" (Section 14(b)).

Taken together, the law's provisions circumscribe the limits of OFPP authority, broadly beneath the law but short of individual agency transactions. In between, the exercise of authority is balanced by prior reporting provisions and public participation.

To have authority, though, is not to use it. The basic authority grant to prescribe in Section 6 is conditioned with the phrase, "To the extent he considers appropriate ..." OFPP's authority can be used aggressively or timidly.

As a conscious matter, I have tried to use OFPP's authority aggressively since assuming the post of Administrator for several reasons.

- (1) The very discipline of this "sunset" review lends an immediate incentive to either produce or pack up. The public, as a general matter, is thoroughly disenchanted with the overall pace and productivity of the bureaucracy they pay for.
- (2) The legislative history and Procurement Commission report clearly envisioned OFPP as a positive force for reform, not just an overseer of current practice.
- (3) The scope of needed change is enormous. Our contracting system today represents the accretion of literally forty years of 4,000 statutory provisions, 877 sets of regulations filling 65,000 pages and — more importantly — has attempted to operate on precepts which have been overtaken by the modern character of the marketplace.
- (4) OFPP represents an experiment which must produce dividends in order to demonstrate that
 - multi-million dollar Government commission studies can produce hard results beyond edification of graduate student theses.
 - a small, high-level bureaucracy, well placed and well supported, can produce net benefits beyond the apparent and distasteful costs of adding yet another layer on the Government's organization chart.

— This Government can be effectively managed and modernized, as President Carter seeks to do on a broad scale.

An aggressive posture carries with it, however, a commitment to tackle the tough issues. It also necessitates facing up to many political sensitivities which otherwise might rest undisturbed with a more reticent use of authority. And this, too, has been the case.

Probably the two most difficult, sensitive and longstanding problems in Federal acquisition have been contracting out — OMB Circular A-76 — and contract wage laws, in particular the Service Contract and Davis-Bacon Acts.

In both cases, OFPP has sought to confront the longstanding difficulties in a fair, objective, even-handed manner, being responsive and attentive to the Congress, Government agencies, industry and both public and private labor groups. Our doors have been open to all.

We will have a new contracting out package shortly.

We have underway the most comprehensive review ever of contract wage law administration.

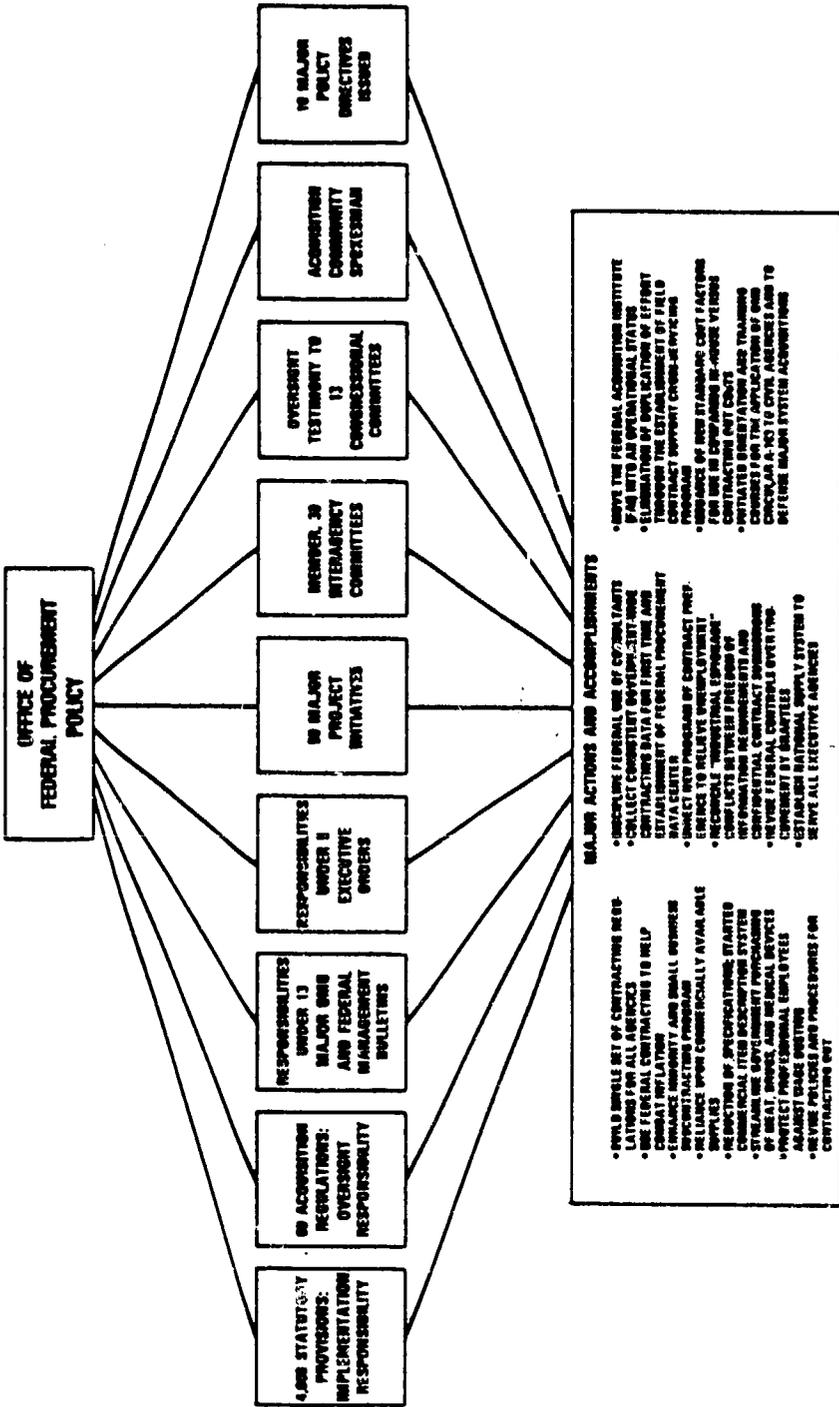
When complete, I suppose the affected parties — public employees, private unions, industry, agencies and congressional bodies — each will remain somewhat dissatisfied with one feature or another, one key decision or another. Yet none, either, have been completely satisfied with the stagnant status quo.

I hope and expect that beyond the legitimate special interests of each, there will be recognition that we have improved Government management for all.

I will argue as forcefully to Congressman Thompson and Ken Blaylock, to Tom Donohue and Bob Georgine, to industry leaders and agency heads alike that it is in their interest to have a strong and accountable OFPP to deal with the gnawing problems which frustrate their responsibilities to members and missions, stockholders and constituents. Without it, problems will be left to fester, the price paid in inefficiency and unfairness will rise, and, collectively, we will frustrate our responsibilities to the public at large.

In conclusion, Mr. Chairman, let me say I would support reauthorization of OFPP for another limited span, not because so much has been accomplished thus far but because so much more needs to be done.

OFPP INTERFACE WITH ACQUISITION PROCESS 1974 - 1979



**ATTACHMENT
OFPP INTERFACE WITH THE ACQUISITION PROCESS**

I. MAJOR LAWS FOR WHICH OFPP HAS IMPLEMENTATION RESPONSIBILITIES:

- Armed Services Procurement Act
- Federal Property and Administrative Services Act
- OFPP Act
- Buy American Act
- Rehabilitation Act of 1973
- Energy Policy and Conservation Act
- Resources Conservation and Recovery Act of 1976
- Small Business Act as Amended
- Contract Disputes Act
- Federal Grants and Cooperative Agreements Act
- Prevailing Wage Laws

II. MAJOR ACQUISITION REGULATIONS FOR WHICH OFPP HAS OVERSIGHT RESPONSIBILITIES:

- Federal Acquisition Regulation (FAR)
- Federal Procurement Regulations (FPR)
- Defense Acquisition Regulation (DAR)
- Federal Property Management Regulations (FPMR)
- Agency Implementations of Primary Regulations

III. MAJOR OMB AND FEDERAL MANAGEMENT BULLETINS UNDER WHICH OFPP HAS RESPONSIBILITIES:

- OMB Circular A-109 (Major Systems Acquisition)
- OMB Circular A-76 (Contracting Out)
- OMB Circular A-102 (Attachment O)
- OMB Circular A-110 (Attachment O)
- OMB Circular A-114 (Management of Federal Audiovisual Activities)
- OMB Bulletin 78-11 (Guidelines for Consulting Services)
- OMB Circular A-18 (Policies on Construction of Family Housing)

- OMB Circular A-45 (Rental Quarters)
- Federal Management Circular 74-3 (Government-wide procedures for processing pre-award protests against contract award)
- Federal Management Circular 75-1 (Ensuring consideration of user's experience with Federal agency supply support systems)
- OMB Circular A-104 (Comparative cost analysis for decisions to lease or purchase general purpose real property)
- OMB Circular A-49 (Use of management and operating contracts)
- Section 55 of OMB Circular A-11 (R&D mission budget submittal)

IV. PRIMARY EXECUTIVE ORDERS UNDER WHICH OFPP HAS RESPONSIBILITIES:

- Executive Order 11912 (Implementation of P.L. 94-163)
- Executive Order 10582 (Implementation of Buy American Act)
- Executive Order 11893 (Transfer of Functions from GSA to OMB)
- Executive Order 11246 (Equal Employment Opportunity)
- Executive Order 12092 (Anti-inflation)

V. MAJOR PROJECT INITIATIVES:

- Federal Acquisition Regulation System
- Socio-Economic Programs
- Acquisition and Distribution of Commercial Products
- Food Quality Assurance and Specification Management
- Quality Assurance for Drugs and Medical Devices
- Acquisition Management System for Drugs and Medical Devices
- Market Research and Analysis
- Service Contract Act
- Government Reliance on Private Sector for Goods and Services
- Guidelines for Use of Consultant Services
- Federal Procurement Data System
- Real Property Assignments
- Procurement by Grantees
- National Supply System
- Federal Acquisition Institute (FAI)
- Major Systems Acquisition Policy Implementation
- Organizational Conflicts of Interest
- Government-Wide Profit Policy
- Contract Disputes and Remedies
- Patent Policy

- Debarment and Suspension of Contractors
- Liability for Catastrophic Accidents
- Construction Contracting Policy
- Policy on Management Systems and Contractor Data Requirements
- Federal Interaction with Voluntary Standards Bodies
- Research and Development Acquisition Policy
- Prompt Payment Under Government Contracts
- Modern Cost Estimating and Analysis Techniques
- Buy American Act
- Resource Conservation and Recovery
- Energy Conservation
- International Procurement Code
- Study of Small Purchase Procedures and Regulations
- Procurement Organizational Structures and Flow of Procurement Authority
- Small Business Programs
- Audiovisual Management
- Nonappropriated Fund Study
- Model State and Local Procurement Code
- International Shipment of Household Goods
- Competition in Procurement
- Cost Accounting Standards
- Anti-inflation
- Inter-agency Contract Administration (Cross Servicing)
- Ethical Standards for Contracting Personnel
- R&D Mission Budget Reports to Congress
- IR&D/B&P Cost Principles and Policies
- Reduction in Costs of Conferences and Symposia
- Increased Use of Small, High Technology Firms
- Reduction of Costs of Contractual Management Systems and Data

VI. INTERAGENCY COMMITTEE MEMBERSHIPS:

- Interagency Council on Minority Business Enterprise (Member)
- Surplus Manpower Committee (Member)
- Policy and Regulation Subcommittee, Interagency Council on Minority Business Enterprise (Chairman)
- 8(a) Subcommittee on Procurement Policy, Interagency Council on Minority Business Enterprise (Member)
- Executive Steering Group for the Labor Surplus Area Program, Interagency

- Coordinating Committee for the Urban Policy (Member)
- Interagency Committee to Study Improvements in the Commerce Business Daily (Member)
- interagency Working Group on Recycled Materials (Member)
- Interagency Steering Group for Acquisition and Distribution of Commercial Products (DOD, VA, GSA, Commerce, USDA, HEW) (Chairman)
- Interagency Committee on Specifications Management (Member)
- Logistics Career Management Council (Member)
- Medical/Nonperishable Subsistence Supply Management Committee (DOD, VA, GSA, FDA) (Chairman)
- Food Quality Assurance Committee (USDA, DOD, VA, HEW, Commerce, GSA) (Member)
- Board of Visitors, American University Model Undergraduate Program for Procurement (Member)
- Federal Acquisition Institute Policy Board (Chairman)
- Interagency Committee on Training, Applications Task Team (Member)
- Women in Acquisition: Interagency Specialized Work Group (Chairman)
- National Supply System Advisory Board (Chairman)
- Federal Audiovisual Committee (Chairman)
- Administrative Services Reorganization Project (Member)
- Interagency Committee on Labor-Related Procurement Issues (Chairman)
- Subcommittee on Government Procurement of Trade Policy Staff Committee (Member)
- Anti-inflation Procurement Council (Chairman)
- Standing Committee on Procurement Policy of the Federal Construction Council (Member)
- Cost Accounting Standards Steering Group (Member)
- Federal Procurement Data System Advisory Board (Chairman)
- Department of Energy Patent Policy Committee (Member)
- Committee on Intellectual Property and Information of the Federal Coordinating Council for Science and Technology (Member)
- Industrial Innovation - Domestic Presidential Review Memorandum (Member)
- A-E Committee on Federal Construction (Member)
- Interagency Committee on A-E (Member)
- Task Force on Industrial Innovation (Member)

VII. OVERSIGHT AND REPORTING RESPONSIBILITY - FORMAL CONGRESSIONAL INTERACTIONS

U.S. Senate

- Appropriations Committee
- Armed Services Committee
- Governmental Affairs Committee
- Select Committee on Small Business
- Human Resources Committee
- Judiciary Committee

U.S. House of Representatives

- Appropriations Committee
- Armed Services Committee
- Government Operations Committee
- Public Works Committee
- Small Business Committee
- Transportation and Commerce Committee

Joint Senate and House

- Senate Select Committee on Small Business and House Small Business Subcommittee on Antitrust, Consumers and Employment

VIII. SPOKESMAN FOR PROCUREMENT COMMUNITY

Administrator delivered 80 speeches in one-year period from March 1978-February 1979. Professional associations, schools, committees, and other groups addressed included:

- HEW Procurement Conference
- Defense Systems Management College
- National Contract Management Association
- Association of Government Accountants
- George Washington University
- National Security Industrial Association
- Naval War College
- National Construction Industry Council
- American Surgical Trade Association
- Practicing Law Institute
- Michigan State University

- Conference on Wage and Price Guidelines
- American Institute of Industrial Engineers
- Governor's Conference on Fighting Inflation
- Industrial College of Armed Forces

IX. MAJOR POLICY DIRECTIVES

- Policy Letter No. 76-1 (Procurement Policy Concerning Energy Conservation)
- Policy Letter No. 77-1 (Procurement of Recycled Material)
- Policy Letter No. 78-1 (Minority Business Participation)
- Policy Letter No. 78-2 (Prevention of "Wage Busting")
- Policy Letter No. 78-3 (Disclosure of Contractor Information)
- Policy Letter No. 78-4 (Cross Servicing Program)
- Policy Letter No. 78-5 (Motion Picture Contracting)
- Policy Letter No. 78-6 (Anti-inflation Regulations)
- Policy Letter of October 31, 1978 (Deceleration of Economic Price Adjustment Clauses)
- Program Directive (ADCoP)

X. MAJOR ACTIONS AND ACCOMPLISHMENTS

- Build single set of contracting regulations for all agencies
- Use Federal contracting to help combat inflation
- Enhance minority and small business subcontracting program
- Reliance upon commercially available supplies
- Reduction of specifications; started commercial item description system
- Streamline Government purchasing of meat, drugs and medical devices
- Overhaul Government contracting for production of films
- Protect professional employees against wage busting
- Revise policies and procedures for contracting out
- Discipline Federal use of consultants
- Collect consistent Government-wide contracting data for first time and establishment of Federal Procurement Data Center
- Direct new program of contract preference to relieve unemployment
- Resolve conflict over application of Service Contract Act labor standards to Defense contracts
- Reconcile "industrial espionage" conflicts between Freedom of Information requirements and confidential contract submissions

- Revise Federal charges for space rental
- Revise Federal controls over procurement by grantees
- Establish National Supply System to serve all executive agencies
- Improve Commerce Business Daily to aid small business entrepreneur
- Preclude placing nonessential reporting procedures and paperwork requirements on contractors
- Move the Federal Acquisition Institute (FAI) into an operational status
- Elimination of duplication of effort through the establishment of Field Contract Support Cross-Servicing Program
- Issuance of new standard cost factors for use in comparing in-house versus contracting out costs
- Develop standard R&D definitions and formats for mission budget displays
- Initiate orientation and training courses for the application of OMB Circular A-109 to Civil Agencies and to Defense major system acquisitions
- OMB/OFPP joint issuance of OMB Circular A-109, regarding Major System Acquisition



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Monday, July 18, 1977

STATEMENT OF HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear this morning to discuss S. 1264, the proposed "Federal Acquisition Act of 1977." The major objectives of the bill are to consolidate and modernize the basic laws governing Federal procurement, to stimulate effective competition while encouraging innovation, and to reduce regulatory controls and specifications.

The bill incorporates a number of recommendations made by the Commission on Government Procurement in its 1972 report. These include:

Recommendation No. A-2, that legislation be enacted to eliminate inconsistencies in the two primary procurement statutes, the Federal Property and Administrative Services Act and the Armed Services Procurement Act.

Recommendation No. A-3, that the use of formal advertising be required in circumstances appropriate for its use, but that competitive negotiations be authorized as a legitimate alternative.

Recommendation No. A-4, dealing with the conduct of competitive negotiations and the publication of evaluation criteria.

Recommendation No. A-5, that unsuccessful competitors be told, upon request, the reasons for selection of another firm's proposal.

Recommendation No. A-6, that sole-source procurements be authorized only when competitive procedures cannot be utilized.

Recommendation No. A-7, that the Office of Federal Procurement Policy be authorized to review and change the \$10,000 ceiling for small purchase procedures when justified by significant changes in labor and materials costs.

Recommendation No. A-8, that all agencies be authorized to enter into multi-year contracts with annual appropriations.

Recommendation No. A-9, that current statutory requirements for advance notification by contractors of certain cost-reimbursement type sub-contracts be repealed.

Recommendation No. A-10, that a system of uniform procurement regulations be established under the direction of OFPP. The bill would do this by requiring that a single regulation for all agencies be promulgated by OFPP.

Recommendation No. E-4, that the statutory 6% limitation on Architect-Engineer fees be repealed.

Recommendation No. G-14, that the GAO be continued as a protest-resolving forum.

Recommendation No. J-2, that the requirements of the Truth-in-Negotiations Act be extended to all procurement agencies.

I believe this type of legislation would bring about long overdue improvements in the methods by which the Federal Government acquires materials and services to meet its needs.

In the few months I have served as Administrator for Federal Procurement Policy, I have become even more aware than I was previously of the need for fundamental reform of the Government's procurement process.

As I struggle with the thousands of pages of duplicative or inconsistent procurement regulations now in being, I recognize more keenly the need for a single procurement regulation for all agencies, as mandated by S. 1264.

The Department of Defense Inventory of Specifications and Standards lists 43,563 current specifications and standards. Included in this figure are 6,100 Federal specifications and standards developed by the General Services Administration which are mandatory for all agencies. Not included are the several hundred classified specifications in each military department, for which no accurate figures are available. GSA's budget for FY 1977 for Federal specifications and standards (development and issuance of new ones and review and update of existing ones) was close to \$5 million. Because of the many DOD activities involved, no budget figure for the totality of military specifications and standards is readily available, but it stands to reason, based on numbers, that DOD's costs would be 5 to 6 times GSA's. These data underline the need to reduce these specifications, most of which are mandatory for one or more agencies, when not mandatory for all.

Of the total procurements of the major procuring agencies, more than half were non-competitive (i.e., negotiated with a single source) during FY 1976. The bill's tightening of controls on such procurements is sorely needed, in the interests of economy and integrity of the procurement process.

Another significant provision of the bill is the limitation on discussions in negotiated procurements, which is designed

to put a stop to unfair transfusion of innovative concepts from one proposal to another, and to prevent the use of auction techniques.

Overall, the bill is a constructive approach to all of these problems. There is room, however, as you yourself have recognized, Mr. Chairman, for improvement in the detailed language of the bill. As a result of in-depth discussions I have had with the principal procuring agencies, I believe that the bill would benefit from clarifying language and other improvements in the following general areas:

- ° A clear statement that a fair share of Government contracts should be awarded to small business firms.

- ° A definition of "functional specification" which will permit agencies to describe their minimum requirements, while at the same time encouraging a variety of approaches or products to be offered in response.

- ° An easing of the requirement that competition be sought in all cases before negotiation of a contract with a single source. There are cases where the absence of competition is manifest at the outset, and it would be a true waste of time and resources to go through the motions of seeking competition. There should certainly be advance notice published, where time permits, but not necessarily a solicitation of bids or proposals.

There should also be a means for negotiating with a single source in the case of a unique or innovative unsolicited proposal.

° Instead of delegating certain authorities to "Heads of Procuring Activities," which is not a term consistently used by the procuring agencies, it might be well to establish different levels of delegation within an agency for different actions and different dollar thresholds, enabling effective management control of significant actions, without unduly burdening higher management with more routine actions. The desired combination of restraint and flexibility might best be achieved by making the matter subject to OFPP regulations.

° With the vast array of regulatory differences in current military and civilian systems, the requirement for the Office of Federal Procurement Policy to promulgate a single regulation within two years also might not be realistic.

° It would be well to provide coverage for the problems the Defense Department, NASA, ERDA, and some other agencies have with regard to procurements from foreign governments or entities, particularly if those procurements are in furtherance of treaties, other international agreements, or other national policies relating to intergovernmental cooperation in such areas as common defense.

° There appears to be uncertainty in some quarters as to whether grants are covered by the bill. This could be made clear by excluding grants and similar instruments in the "definitions" section.

° Government corporations, with possible exceptions, such as TVA, should be included in the bill's coverage. Otherwise, they will have no adequate statutory basis for their procurements.

° There should also be clarification of requirements for total cost analyses (section 302(b)(1)), certification of cost and pricing data (section 305), and reprocurement data packages (section 304(b)) to prevent any overreading of the requirements in these areas.

° The restrictions on disclosure of award information (section 303(c)) are well intended to stop unwarranted interference in award deliberations but also could be clarified so as not to inadvertently interfere with internal agency deliberations.

° Finally, we would recommend deletion of Title VII, dealing with bid protests.

A detailed rationale for this is attached to my written submission for the record and the Justice Department will address this area in their testimony.

I am drafting suggestions in these areas which I will forward to you shortly, and I expect to be working closely with the agencies and your staff to integrate these suggestions with others you might wish made as a result of these hearings. While some essential changes still need to be made in the bill, we have an opportunity here to develop a bill which will be truly beneficial to both the Government and the public, and I intend to do everything I can to make sure we take full advantage of this opportunity.

In addition to the agencies testifying orally before the Subcommittee, many other agencies have been asked to submit written comments on the bill. I have had the opportunity to review a number of these comments, and am pleased to see that there is a consensus of support for this type of legislation and that they make constructive suggestions for improvement of the bill's language. The suggestions I have made in my testimony reflect many of the concerns expressed in the agencies' comments.

This concludes my prepared testimony. I would be happy to respond to any questions you might have.

TITLE VII: BID PROTESTS

In connection with the new Title VII to deal with the handling of bid protests by the Comptroller General, I am mindful that in introducing the bill, Mr. Chairman, you said that you were not necessarily wedded to the new approach but that the problems needed to be addressed and the bill would provide an appropriate vehicle for this purpose. I agree that the problems should be aired and these hearings will be helpful.

As noted in the report of the Commission on Government Procurement, current problems relate to a series of issues:

- ° the need for bidders to be better informed as to the means available to them to obtain a review of a contracting officer's decision;
- ° the need to provide an independent review forum;
- ° the length of time it takes to process a bid protest, often to the point where effective corrective action is no longer practicable;
- ° the costs entailed to all parties including bidders, the agency, and the general public and taxpayers;
- ° the inability of the General Accounting Office to obtain evidence and expert opinion;

- ° the weight it attaches to the technical judgments of the agencies;
- ° the possibilities of ex parte communications;
- ° the unavailability of conference or hearing procedures with the opportunity for subpoenas, discovery, and examination and cross-examination of witnesses;
- ° the inadequacy of bid preparation costs, as compensation for loss of a contract; and, finally,
- ° the constitutionality of giving the General Accounting Office a binding decision-making role in the bid protest process.

The Commission on Government Procurement gave extended consideration to these problems. It recognized that "complex problems underlie any analysis of the present award protest system." That system offers a bidder a choice of one or all of three procedures: (1) review within the agency; (2) review by GAO; and, ultimately, (3) review by the courts under the Administrative Procedure Act. Each accommodates in different ways the need for maintaining the integrity of contract procedures with due regard for economy, speed, efficiency, effectiveness, independence, due process and fairness in the disposition of bid protests.

Particularly significant with respect to proposed Title VII is the overall finding of the Commission as follows:

"While we have not found that the present institutional structure of the award protest system is in need of fundamental modification, we do recommend that certain procedural changes be made in order for the system to operate with the greatest fairness and effectiveness."

Since the Commission report, the executive branch has concurred in the specific recommendations of the Commission for certain procedural changes; the General Accounting Office has revised its procedures, reducing somewhat the time for processing bid protests; and we have been coordinating with the agencies and GAO proposed new regulations to carry out the Commission recommendations for the handling of bid protests by the agencies.

To the extent consistent with constitutional constraints, I am inclined to concur in the recommendation of the Commission to continue the General Accounting Office as an award protest-resolving forum.

The crux of the problem, however, is that the GAO role in protests must apparently remain at most advisory, and not binding, as Title VII would propose.

Recently, the Attorney General reiterated his view as to the unconstitutionality of giving GAO final decision-making authority on bid protests. The Justice Department representative will be a witness on this issue before you later in these hearings.

I have discussed this matter at length with the agencies and others. Wholly apart from the constitutional question, I am inclined to think we should as a minimum explore improvements to the current bid protest procedures. Mandatory scheduling to insure timeliness and high-level approvals before overriding GAO rulings are two areas where improvements could be considered.

Beyond these improvements, however, now is the time to consider and then either adopt or dismiss more substantive revisions to protest forums and procedures.



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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

FOR RELEASE ON DELIVERY

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Tuesday, March 25, 1979

26

STATEMENT OF HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
MARCH 25, 1979

26

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear this morning to discuss S. 5, the proposed "Federal Acquisition Reform Act". The major objectives of the bill are to consolidate and modernize the basic laws governing Federal procurement, to stimulate effective competition while encouraging innovation, and to reduce regulatory controls and specifications. These remain unchanged from S. 1264 which the Administration supported in the 95th Congress.

Overall, the bill continues to be a much needed and constructive approach to dealing with the problems of too many detailed specifications, and the lack of competition which results therefrom. Although there is still room for improvement in the language of the bill, as you yourself have indicated, Mr. Chairman, and although we would expect changes to address some concerns, the Administration supports S. 5.

My previous statement in July 1977 is a matter of record. However, I would like to repeat our major concerns, and also touch on some features of the bill which still cause problems for one or more major procuring agencies

Functional Specifications:

The bill's strict controls on the use of detailed specifications and its requirement for functional specifications has been discussed at great length. I fully concur and support those provisions. Some of the major procuring agencies have expressed the concern that we cannot simply legislate away the requirement for all detailed specifications. Many major defense and space systems must rely on detailed specifications when we buy components and spare parts, to ensure proper maintenance and readiness, and to minimize supply costs. The Committee acknowledged these necessary exceptions in its report on S. 1264, and recognized that class waivers for the use of detailed specifications would be necessary in some cases. We would like to continue to see that recognition given in the legislative history.

In implementing S. 5, I would want to ensure that detailed specifications are used in an absolute minimum number of occasions but at the same time facilitate their use when there is a reasonable need. We would not want to create an unnecessary paperwork burden of several levels of review in order to use detailed specifications when they are needed. Thus, the Committee should expect OFPP to give full consideration to agency needs, and in some cases permit approval at a relatively low level.

Sole-Source Exceptions:

Another area of major concern for some procuring agencies is noncompetitive exceptions. The only exceptions explicitly noted in the bill are for unsolicited proposals. The general exception is "if the agency head determines that it is in the best interest of the Government" with stringent checks and balances.

The Committee report on S. 1264 cites mobilization base and standardization requirements as examples of justified noncompetitive acquisition. However, some agencies still expressed concern that a conflict could arise because of the requirement to publicize proposed noncompetitive solicitations. Other sources might come forward as a result of publicizing and "demonstrate an ability to meet the requirements for the work to be performed" as stated in Section 304(a)(2)(A). So long as we understand that the "requirements of the work" include the attributes needed to be a mobilization base producer, or to ensure standardization, there should be no problems in implementation. The Committee report should continue to include clear guidance on these matters.

Bid Protest Authorities:

The other significant area that we addressed in our testimony on S. 1264 is Title VII, Bid Protests. This Title was revised to some extent before the Committee report was issued, but still is very troublesome on the question of whether decisions of the Comptroller General on bid protests are advisory or binding. The provision for Judicial review included in Title VII suggests that they might be binding. However, if the Committee's intent is that they are not

binding, Title VII adds nothing to the role that the Comptroller General has in this matter today. The Administration strongly recommends that Title VII be deleted. At the very least, it should be revised to make clear that such decisions are advisory.

On a related matter, if Section VII is modified but not deleted, Section 601 should be revised to delete the last sentence. This sentence provides that "The authority in Section 702(b) to authorize the award of a contract notwithstanding a protest pending before the Comptroller General may not be delegated below the level of Assistant Secretary or comparable level." I am not aware that there has been any significant abuse in this matter. By deleting the sentence, OFPP would have flexibility to establish the level of delegation to accommodate the different structure and needs of each agency and still insure higher level review.

Now I want to discuss those aspects of S. 5 which differ from S. 1264, and the regulatory impact this bill would have if enacted.

Market Research:

The bill now includes a reference to Market Analysis in its statement of policy. We strongly endorse this recognition. This is intended to further facilitate the use of available marketplace solutions in filling the Government's requirements. I think the acquisition of commercial products could be further enhanced by adding the following definitions in Section 3.

(h) - change to (j)

New (h) -- The term "commercial product" means a commercially developed product in regular production sold in substantial quantities to the general public and/or industry at an established market or catalog price.

- . New (i) -- The term "market research and analysis" means the techniques used in formalizing an acquisition strategy to meet the minimum essential needs of the Government through effective competition, determination of product and source availability, appropriate methods of acquisition and distribution, and user satisfaction.

The following language should be added to Title I, Section 102, Regulatory Compliance:

- (a)(1)(E) To establish and oversee a program to use market research and analysis in the acquisition process.

Regulatory Implementation:

Under this same Section 102(2), I concur in the change that would require OFPP to report to the Committees on Armed Services, in promulgating and revising regulations implementing the bill. However, I believe the added requirement in (2)(B) to "utilize the procedures established under Section 14(G) of such Act (P.L. 93-400) to provide open public meetings," is unnecessary. P.L. 93-400 requires OFPP to hold public meetings in connection with major policy matters. This language in the context of S. 5 could be misconstrued to require public meetings for every revision of the regulations, which can be quite minor and numerous. I should say that even for the most minor changes, however, we have provided for public comment and appeals under our published proposals to establish the new Federal Acquisition Regulation (FAR) system. Hearings in all cases would not be necessary or desirable in all cases, however.

Code of Conduct:

We concur in the inclusion of Section 103 dealing with a Contracting Officer's compliance code. However, there are two points I would like to raise for the Committee's consideration. First, "contracting officer", by definition in S. 5, only covers warranted contract types and their representatives. It would not cover the rest of the 150,000 Federal personnel who have major input and control over the acquisition process, including project managers, technical specialists, quality assurance experts and others. A code of conduct should extend equally to these people. Second, I do not know whether there would be any problems with OFPP setting standards of conduct for military personnel, who are already covered by the Uniform Code of Military Justice, but we could certainly embrace and accommodate other standing codes.

Written and Oral Discussions:

The coverage of discussions with offerors in Section 303(a) has been modified to accommodate the need for full and meaningful discussions, while still prohibiting abuses such as auction techniques or multiple best and final offers. We concur with the modifications. However, as a minor point, I would suggest transposing the first two sentences of this section. As it reads now, the first sentence can be taken as a mandate in every case to first have discussions with all offerors in a competitive range. The second sentence implicitly modifies this by allowing award without any discussions under certain circumstances. It would be clearer if the section were restated as follows:

"An initial offer may be accepted without discussion when it is clear that the agency need would be satisfied on fair and reasonable terms without such discussions, and the solicitation has advised all offerors that award may be made without discussions. When award cannot be

made without discussions, written or oral discussions shall be conducted with all offerors who submit proposals in a competitive range. Discussions shall not disclose the strengths or weaknesses of competing offerors, or disclose any information from an offeror's proposal which would enable another offeror to improve his proposal as a result thereof. Auction techniques are strictly prohibited. Auction techniques include, but are not limited to, indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror, or making multiple requests for best and final offers."

Multiple Awards:

I understand that the General Services Administration will address the problem of multiple award schedules, so I will not go into detail. I agree with the new language that has been added to Section 303(e). It is important that we retain sufficient flexibility to use multiple awards when that is the most effective way to fill the Government's requirements. We, like you, are convinced that the Government has not always chosen the most economical method of supply. We have and will continue to support GSA efforts to improve their choice and implementation of the most effective acquisition methods.

True and Free Audit Penalties:

Section 306(e) provides penalties for a contractor who, by collusion, understanding, or arrangement, deprives or attempts to deprive the United States of the benefit of a true and free audit of its books. Several agencies believe this section does not enlarge the Government's current rights with respect to auditing of contractors, or the

penalties which may now be assessed against a contractor. We would recommend that the legislative history make clear the circumstances envisioned for operation of these penalties.

Real Property:

You asked specifically for my views on expanding the scope of S. 5 to include leasing of real property.

The acquisition of real property is included in the Federal Property and Administrative Services Act of 1949. There are numerous statutes authorizing agencies to acquire real property. In January 1971, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 was enacted, placing restraints on agencies in their dealings with individuals, businesses, and farm operations affected by the acquisition of real property. However, there is no single statute applicable to all agencies, and therefore no Government-wide policy or uniform procedures to ensure the most efficient and economical acquisition of real property.

There is a mystique in Government with respect to real property that "each parcel of real property is unique and must be uniquely acquired". This philosophy fails to recognize that the Government's requirements are not necessarily unique, or at least not so unique that in general only a specific parcel of real property will do. The Government's requirement is for a commodity to fulfill a mission need. It is no different in principle than requirements for other than real property. In many cases, there are alternative solutions. In the case of real property, the alternatives might be leasehold space, new construction, existing structures, or land. We might acquire the

selected alternative by advertising, by negotiation, or as a last resort by condemnation. (It is the policy of the Congress and the Executive Branch not to condemn unless absolutely necessary, as stated in the Uniform Act of 1970).

We already consider the acquisition of space as a major acquisition and have been moving aggressively to apply the procedures of OMB Circular A-109. Space requirements frequently could result in the acquisition of land and buildings, a leasehold, or other forms of "real property in being". Construction is already covered by OFPP's statutory authority. But there is no uniform act providing the most efficient procedures for the acquisition of real property and there are no uniform regulations governing the agencies' acquisition of real property.

It must be realized that in real property acquisition, statutes such as the Uniform Act of 1970 will have to be considered in addition to the normal concern for economy and efficiency -- but this is no different from some of the socio-economic provisions which now overlay the acquisition process in general. The various socio-economic restraints applying to procurement generally can also be applied to the acquisition of real property in being.

Having said all that, I must add that there is still too much we do not know about real property acquisition to simply add real property to the scope of S. 5 at this time. I would urge the Committee to explore this matter further with a view to eventually including real property in the scope of this bill.

Regulatory Impact:

Finally, Mr. Chairman, you asked for an assessment of the regulatory impact of S. 5.

This bill would affect virtually every one working in the field of acquisition in the Government, including contracting officers, negotiators, pricing specialists, auditors, field contract administration personnel, and those responsible for specifying the Government's requirements. Because of its emphasis on more effective competition, elimination of detailed specifications, use of functional descriptions and reliance on the marketplace, it will require a broader knowledge of the marketplace. It challenges almost everyone in the contracting discipline to effectively match functional requirements with marketplace solutions in order to achieve optimum competition.

Not everyone will be affected to the same degree, of course. Those dealing with major systems or components of major systems and those procuring commercial off-the-shelf products will be affected more perhaps than those engaged in buying replacement parts at a depot. However, the bill does have potential impact on over 150,000 Government personnel and as many as 250,000 business firms.

It is not possible to estimate what the positive economic impact would be in dollars and cents. More effective competition, a broader base of suppliers, and limited use of detailed specifications will undoubtedly result in savings in the

procurement budget. Any estimate of savings would be pure speculation at this point, but we do have examples of what can be achieved already:

- . We estimate saving \$9.3 million by having converted military meat procurement to simplified commercial specifications;
- . We have saved hundreds of thousands of dollars on just the initial buys of other foodstuffs, towels, and underwear by simplifying the specifications;
- . We have knocked a full dollar per pound off the price of fish by moving to commercial standards;
- . In all cases, the number of bidders -- competition -- has risen dramatically.

This is just a sample of the promise S. 5 holds open to us.

As for regulatory simplification, it is difficult to underestimate how important S. 5 will be for streamlining the statutory and regulatory base which today intimidates especially small business from coming to compete. This is the promise S. 5 holds open to us.

The reduced paperwork burdens will be among the most immediately visible benefits of S. 5. The bill would eliminate the detailed determinations and findings now required by both the Armed Services Procurement Act and the

Federal Property Act for most negotiated contracts. Written justification would only be required for non-competitive contracts. Detailed specifications would be reduced. The requirement for a review of such specifications every five years would be an added burden to some, but a very necessary one if we are to purge the system of outdated or unneeded specifications. The gains in more effective competition will more than offset any burden associated with specification review.

As to the question of personal privacy, I do not anticipate that S. 5 would have any significant adverse impact on Government personnel or on firms with which the Government contracts.

In sum, Mr. Chairman, the Administration continues to support the Federal Acquisition Reform Act, with some changes and we look forward to working with you on this landmark legislation.

Mr. Chairman, this concludes my prepared remarks. I shall be glad to answer any questions you may have.

Mr. FETTIG. This does not apply just to general contracting, but it applies to the economy as a whole. First and foremost has been the stagnation of competitive forces. Long-term improvements and permanent improvements in efficiency and economy will come by learning that we have been blessed with a very active commercial marketplace out there that, unfortunately, we have either left to atrophy or taken Government actions to help atrophy.

Mr. LAFALCE. Would you expatiate on that?

Mr. FETTIG. I was going to give you some examples. In a broad sense you have seen the impact of the President's deregulation on the airlines. Competition, and fair competition, has increased dramatically. At least one element of the consumer price index, air fares, has not contributed to inflation.

I will use the meat example because it was a long and arduous process to convert just our billion dollars a year of buying meat into a commercial marketplace-oriented strategy. The situation we inherited 2 years ago looked as follows:

Rigid, detailed specifications intimidated most sellers, large and small, from even wanting to do business with us. Competition went away. As a matter of fact, fraud set in. That is an invite to a breakdown in your regulatory controls. We were paying over \$4 a pound—actually we were paying \$2.42 a pound for hamburger. We have converted the system now with the main thrust of getting competition in the marketplace back to work. We have thrown out those detailed specifications. We have gotten the Army Veterinary Corps out of the cumbersome inspection role. We have simplified institutional meat purchase specifications which restaurants use. We have the same USDA inspectors to work inspecting that meat in simplified fashion. That \$2.42 is down to \$1.49 now. That is taking account of the dramatic rise in meat prices, in addition to that.

There is no magic. It is just learning to appreciate again some of the strengths of the economic system we have had. That has been competition.

The second point is this. In addition to competition, the wellspring of our standard of living and also the roots of our problems of inflation go to our productivity and our technology.

In Government purchases of standard tape cassettes, such as the court reporter is probably using here right now, we got ourselves in a position of writing detailed Government specifications that prescribed everything down to the type of oxide coating on the magnetic tape. Technology marches on. The products in the commercial industry have gotten better and cheaper by all measures—noise levels, durability, and so forth. We got ourselves in the position where there was only one bidder making tapes, and then only for the Government market. If I am correct, he set up a plant in Haiti to do it. We did not take advantage of our marketplace and our technology and innovation.

So the second major thrust if you want to see improvements in the economy and efficiency of Federal purchasing and in the economy at large, I would be an ardent subscriber to the President's thrust on R. & D. and industrial innovation.

You may not know that the President personally directed a thorough domestic policy review on industrial innovation. It has been a privilege for me to serve on that group.

There is the long-term strength of our economy. There is the long-term answer to inflation.

You may also know that, despite the stringency of the President's fiscal 1980 budget submission, R. & D. expenditures were protected at real growth levels. These are the long-term solutions. The only thing that disappoints me is our political time constraints do not seem to give us the opportunity to appreciate those things. We are more interested in near-term band-aid solutions that do not go to the heart of the problem. They may vitiate a political confrontation but leave these root problems unaddressed.

Mr. LAFALCE. Is there anything else?

Mr. FETTIG. Those are the two I mention now. I will supplement the record.

Mr. LAFALCE. In the recent issue of National Journal there was an article indicating that you had lost out and the Department of Labor had won out regarding the definition and implementation of the Davis-Bacon Act as they apply to Government procurement. That is point No. 1. I want you to comment about that.

Point No. 2, there has recently been a study by GAO in which they called for repeal of Davis-Bacon or drastic alteration of it. That study has been hotly, vehemently, contested by the Department of Labor, among others.

Would you comment on both of those issues?

Mr. FETTIG. I would be happy to do so. However, because it is a complex subject, I will take a few minutes to give some necessary background first.

The National Journal article was correct in the sense that there was a contest, if you want to put it in that sense—that we lost out to the Labor Department. I do not view it that way.

As a matter of background, when the Congress passed the law which created my office, the Office of Federal Procurement Policy, it was a unique action. We are the only part of OMB that has a separate statutory charter. Our powers are very strong and very broad. I have interpreted them in that light, as the Congress desiring a strong office with some strong leadership.

We were only created in 1974.

Mr. LAFALCE. Before we finish, Mr. Fettig, I would also like you to comment on the present jurisdiction of OFPP, the future jurisdiction of OFPP under the President's reorganization scheme of things, and then the ideal place in Government for OFPP.

However, please continue with our two-pronged question on Davis-Bacon first.

We always have to take benefit of the wisdom of individuals who are departing the Government.

Mr. FETTIG. I appreciate that. It seems to be the only ideal time to do it.

As I was saying, as a matter of introduction I do not view it as a contest with a winner and a loser. The simple fact of the matter is we are a young office with very general and strong powers which as Administrator I have sought to exercise. We have a morass out there of 4,000 laws on the books and 877 different sets of regulations, which I am happy to say is now half written into one separate one.

At any rate, among the contentious or—

Mr. LAFALCE. What is that called?

Mr. FETTIG. It is called the Federal Acquisition Regulation. About half of the pieces have already been out for public comment. It is targeted for completion in August of this year.

Mr. LAFALCE. Is it effective yet?

Mr. FETTIG. No. It will have to become effective en masse. Because of the interconnection, we have had to clean out the whole structure.

Mr. LAFALCE. Does that replace the ASPR's?

Mr. FETTIG. Not only the ASPR's but the FPR's, the UPR's and all the rest; yes, sir.

It was only a contest in the sense that we needed to clarify the limits of that authority. In many areas the overlap between the recent law empowering OFPP and older laws had never been examined carefully before.

Mr. LAFALCE. Of course the test of that is whether or not it is going to eliminate some of the Government contract lawyers in Washington or whether it is going to double or triple the number that are here.

Mr. FETTIG. I wish that were the only criteria used but it certainly is not.

Among the most contentious areas in the purview of the Office of Federal Procurement Policy I would name two: Contracting out, which I am very pleased to say Congress now has before it a brand new package, and contract labor laws and contract wage laws. There are three, not just Davis-Bacon.

Davis-Bacon in simple terms gives the Secretary of Labor since 1931 the power to tell Federal contractors what to pay their construction workers. Since 1965 the Service Contract Act has empowered the Secretary of Labor to tell Federal contractors what to pay their service employees, both blue collar and white collar.

The Walsh-Healey Act is on the books. That empowers the Secretary of Labor to tell manufacturers what to pay their employees.

In the interest of comprehensiveness I should note Walsh-Healey is not an issue. It is a dead letter because of a legal complication. No wage determinations have been issued for years now by the Secretary of Labor.

Mr. LAFALCE. What is the reason for that?

Mr. FETTIG. Basically the Walsh-Healey Act itself required public hearings, Administrative Procedures Act-type proceedings, to apply to wage determinations. Because of that, the Labor Department, in order to judge what is a prevailing wage, needed to collect data from private companies. The law says that has to be public information. They cannot get it from the companies if they make it public information. Hence, it is dead in the water.

I should point out that has put a lot of pressure on the Labor Department to be liberal in their interpretations of what is a service contract. That was the instant issue that drove this Attorney General opinion.

The Labor Department had contended that the rework and rebuilding of military engines was not a Walsh-Healey manufacturing activity but rather should be a service contract. Therefore, they could

issue wage determinations uninhibited by public disclosure and set wages for those manufacturers. Again, we are talking about—

Mr. LAFALCE. Is this DOL?

Mr. FETTIG. This was the Defense Department and the Labor Department. That is correct.

It meant an immediate increase of about \$110 million to the Defense Department had they had to shift to service contract-dictated wages.

I was not anxious to join the fray, but we are there to be strong and a focal point moderator for these interagency contract disputes. Secretary Brown contacted the President. We were asked to look into it.

After a month-long review on our part, I judged that on the merit as a matter of procurement policy the content of these contracts did not warrant coverage as service activities but rather as manufacturing. I overruled the Secretary of Labor on that point.

The issue over whether my generic law was sufficiently powerful—and we have no precedent—to override the Secretary's earlier statutory authority was—

Mr. LAFALCE. What generic law do you live under?

Mr. FETTIG. The Office of Federal Procurement Policy Act, Public Law 93-400, 1974. Pertinent provisions give the Administrator directive authority over all Federal procurement policies, procedures, regulations, and forums. They state that each executive agency shall follow those dictates from the Administrator. Therefore, at least on a general reading the authority is strong. I exercise it in that fashion.

However, it was unclear. We had no precedents as to how the Congress intended this very powerful authority to interact with a wide variety of generic statutes. In this case it was the contract labor statutes.

As a matter of fairness, not as a matter of a contest, we thought it proper and Mr. Lipshutz, the President's counsel, asked that the Attorney General look at these statutes and look at the congressional history and decide whether Congress did intend that strong an office.

The Attorney General's opinion to the President—and I would be pleased to submit it for the record—was that, no, Congress did not intend our authority to extend into, as he termed it, "the substantive provisions of the basic socioeconomic laws." Yes, we did have a say in central direction over the procurement aspects. The dividing line, which had not been established, is somewhat more clear now. It will get further refinement as the office continues, which I expect it will.

Mr. LAFALCE. We will include the Attorney General's letter at this point in the record.

[Letter referred to follows:]



Office of the Attorney General
Washington, D. C. 20530

The President,
The White House.

Dear Mr. President,

I have the honor to comply with your request of October 30, 1978 for my opinion on the following question:

Does the Office of Federal Procurement Policy have the final statutory authority within the Executive Branch on the question of whether the Service Contract Act, the Walsh-Healey Act, or the Davis-Bacon Act where relevant, apply to particular classes of Federal contracts? For example, would the Secretary of Defense in the procurement of engine overhaul contracts be required to follow the direction of the Administrator of Federal Procurement Policy that such contracts be awarded pursuant to the Walsh-Healey Act notwithstanding the interpretation of the Secretary of Labor that such contracts are subject to the Service Contract Act?

I have concluded that the powers of the Administrator of OFPP were not intended by Congress to extend to the construction of the substantive provisions, including questions of coverage, of the three statutes to which you refer. 1/

1/ My opinion was not requested on the underlying question whether the Walsh-Healey or Service Contract Act applies to the engine overhaul contracts, and this opinion accordingly expresses no view of that issue.

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Your request has arisen from a conflict between the Department of Labor and the Department of the Air Force, regarding the proper interpretation of the Walsh-Healey Act, 41 U.S.C. § 35 et seq., and the Service Contract Act, 41 U.S.C. § 351 et seq. The underlying facts I understand to be as follows. The Air Force uses private contractors to overhaul and rebuild used jet engines. Either the Walsh-Healey Act or the Service Contract Act governs the terms of these contracts relating to the compensation of the contractors' employees. Both statutes would require the contract to stipulate a minimum wage level. However, the Service Contract Act would require the contractor to pay substantially higher wages and would correspondingly increase the cost of the contracts to the Government. 2/ The Air Force has contended that . . . engine overhaul

2/ Briefly, the Walsh-Healey Act requires the contract to stipulate for payment of the "prevailing minimum wage" of the industry concerned at the place where the goods covered by the contract are to be manufactured or furnished. 41 U.S.C. § 35(b). The Service Contract Act requires a contract provision specifying minimum wages in accord with "prevailing rates in the locality;" and fringe benefits "prevailing . . . in the locality." 41 U.S.C. § 351(a)(1)-(2). Prevailing wages are determined by the Secretary of Labor under both statutes. Except for the bituminous coal industry, however, the Labor Department has not made a minimum wage determination under the Walsh-Healey Act since the decision in Wirtz v. Baldor Electric Co., 337 F.2d 518 (D.C. Cir. 1964), held that it would have to disclose the raw statistical data on which it relied. See also 41 U.S.C. § 43a. At present, the Walsh-Healey minimum wage is \$2.30 per hour, the statutory minimum. 41 CFR § 50-202.2. In contrast, wages and fringe benefits under the Service Contract Act are determined for different classes of employees in the light of actual practice, including

[Footnote continued on next page]

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contracts are subject to the Walsh-Healey Act. The Secretary of Labor has interpreted the two statutes and concluded that the wages of certain employees on the contracts are to be set under the Service Contract Act. The Comptroller General 3/ and one district court 4/ have held that the Secretary's interpretation binds the Air Force. If the Office of Federal Procurement Policy (hereafter "OFPP") has authority to do so, it intends to supercede the ruling of the Secretary of Labor by issuing an authoritative interpretation of the Walsh-Healey and Service Contract Acts that will determine which one governs wages under the engine overhaul contracts. The Department of Labor contends that OFPP lacks this authority.

As a preliminary matter, it is necessary to discuss the role of the Department of Labor in the implementation of the

[Footnote continued from preceding page]

collective bargaining agreements. See 29 CFR § 4.164. Successor service contractors are bound by the minimum wages and benefits in collective bargaining agreements of their predecessors. 29 CFR § 4.1c.

3/ See 53 Comp. Gen. 412 (1973); B.B. Saxon Co., Inc., No. B-190505 (June 1, 1978) (unpublished decision).

4/ Curtiss-Wright Corp. v. McLucas, 381 F. Supp. 657, 663-66 (D.N.J. 1974); Curtiss-Wright Corp. v. McLucas, 364 F. Supp. 750, 769-72 (D.N.J. 1974).

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Davis-Bacon Act, 5/ Walsh-Healey Act, 6/ and Service Contract Act 7/ (hereafter the "contract labor standards statutes"). Enacted between 1931 and 1965, these statutes differ in details of coverage, 8/ administration, and remedy, but their purpose and basic mechanism is the same. Each was enacted against the background of the Comptroller General's consistent rule that an executive agency may not, without statutory authority, require a minimum level of wages under a contract when a qualified contractor is willing to lower the cost to the government by paying his employees less. 9/ Each serves the related goals of maintaining

5/ 46 Stat. 1494, as amended, 40 U.S.C. § 276 et seq.

6/ 49 Stat. 2036, as amended, 41 U.S.C. § 35 et seq.

7/ 79 Stat. 1034, 41 U.S.C. § 351 et seq.

8/ The Davis-Bacon Act applies to "laborers and mechanics" employed on the construction, alteration, or repair of public buildings or works of the United States or District of Columbia. 40 U.S.C. § 276a. The Walsh-Healey Act applies to "persons employed by the contractor" in manufacturing or furnishing the "materials, supplies, or equipment" to be provided under a contract with the United States or the District of Columbia. 41 U.S.C. § 35(a)-(b). The Service Contract Act applies to "service employees" under any contract "the principal purpose of which is to furnish services" to the United States or District of Columbia, 41 U.S.C. § 351(a), but excludes work regulated by the Davis-Bacon or Walsh-Healey Acts. 41 U.S.C. § 356(1)-(2).

9/ See generally 10 Comp. Gen. 204, 300-01 (1931); 15 Comp. Gen. 2, 4 (1935); 18 Comp. Gen. 285, 295 (1938); 42 Comp. Gen. 1, 2-5 (1962); 50 Comp. Gen. 592, 598-600 (1971).

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wages at a given level and preventing the competitive aspects of government procurement from depressing them. As stated in the legislative history of the Walsh-Healey Act, the statutes "end the present paradoxical and unfair situation in which the Government, on the one hand, urges employers to maintain and uphold fair wage standards and, on the other, gives vast orders for supply and construction to the lowest bidder." 10/ They tend to remove the element of labor costs from the competition to be low bidder on a government contract.

With differences of detail, each statute uses the same mechanism. 11/ The Secretary of Labor determines the "prevailing rate" of wages in the "locality" for employees covered by the statute, and the contract must contain a provision requiring that those employees will be paid at least that rate. 12/ All

10/ S. Rept. 1157, 74th Cong., 1st Sess., at 2. Similar explanations appear in H. Rept. 1162, 71st Cong., 2nd Sess., at 2 (Davis-Bacon Act) and H.R. Rept. 948, 89th Cong., 1st Sess., at 2-3 (Service Contract Act).

11/ The differences between the Walsh-Healey and Service Contract Act, as they affect the dispute underlying this opinion, are discussed at note 2, supra.

12/ 40 U.S.C. § 276a; 41 U.S.C. § 35(b); 41 U.S.C. § 351(a).

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of the contract labor standards statutes give the Secretary power to interpret them through regulations. 13/ Before the enactment of Pub. L. 93-400, it was well settled that the Secretary had authority under the contract labor standards statutes to interpret their substantive provisions, including those dealing with coverage, and the courts and Comptroller General deferred to any interpretation not clearly contrary to law. 14/

Once the Secretary of Labor has made a wage determination, the contracting agency is responsible for notifying bidders of the wages that must be paid and for incorporating the wage determination into the contract. 15/ In addition, the contracting agencies are given the power to enforce the statutes both by withholding payments from contractors equivalent to underpayment of wages 16/ and by terminating the contract in the case of a violation. 17/ Reorganization Plan No. 14 of 1950 gave the

13/ 40 U.S.C. § 276c; 41 U.S.C. § 38; 41 U.S.C. § 353(a).

14/ See Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 507-09 (1943); Nello L. Teer Co. v. United States, 348 F.2d 533, 539-40 (Ct. Cl. 1965); Curtiss-Wright Corp. v. McLucas, 364 F. Supp. 750, 762 (D.N.J. 1973). 53 Comp. Gen. 647, 649-51 (1974); 53 Comp. Gen. 370, 376 (1973).

15/ 40 U.S.C. § 276a; 41 U.S.C. 35; 41 U.S.C. § 351(a).

16/ 40 U.S.C. § 276a; 41 U.S.C. § 36; 41 U.S.C. § 352(a). Withheld sums are deposited in a special account and paid to employees on order of the Secretary of Labor.

17/ 40 U.S.C. § 276a-1; 41 U.S.C. § 36; 41 U.S.C. § 352(c).

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Secretary the power to coordinate the administration of the contract labor standards statutes by the contracting agencies and to prescribe "appropriate standards, regulations, and procedures" for their enforcement. 18/ Under this authority, the Secretary has promulgated regulations governing the form of contract stipulations required by the contract labor standards statutes; 19/ detailing the reporting and auditing requirements of the contracting agencies, 20/ and allocating the handling of complaints between the Labor Department and the contracting agency. 21/ The regulations of the procurement agencies themselves govern the withholding of payments and the termination of contracts. 22/

16/ 15 F.R. 3176, 64 Stat. 1267.

19/ 29 CFR §§ 4.6-7; 29 CFR § 5.5; 41 CFR § 50.201.1.

20/ 29 CFR §§ 3.3-4; 29 CFR § 5.6.

21/ 29 CFR § 4.187; 29 CFR §§ 5.6-5.7; 41 CFR § 50-201.1201.

22/ See Armed Services Procurement Regulations (ASPR) §§ 12-1005.9, 18-704.13; 41 CFR §§ 1-12.907. I would note that these regulations are by no means uniform. For example, the ASPRs for the Service Contract Act authorize withholding only when requested by the Labor Department, while the Federal Procurement Regulations (FPRs) for the Service Contract Act and both sets for the Davis-Bacon Act permit withholding on the agency's initiative. Compare ASPR § 12-1005.9(a) with ASPR § 18-704.13(a); 41 CFR §§ 1-12.907(a); 1-18.705-9. The ASPRs also prescribe audit procedure under the Davis-Bacon Act in great detail which has no counterpart in the FPRs. ASPR §§ 18-704.8-704.12. Finally, the ASPRs and FPRs apply the disputes clause of the contract to Davis-Bacon Act disagreements with the contract in different ways. Compare ASPR § 18-706 with 41 CFR § 1-18.706. Neither uses it where the Service Contract Act is involved.

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In 1974 Pub. L. 93-400 established OFPP "to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws." 23/ To achieve this purpose, 41 U.S.C. § 405(a) authorizes the Administrator of OFPP to:

. . . provide overall direction of procurement policy. To the extent he considers appropriate, and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies (1) in the procurement of -- (A) property other than real property in being; (B) services, including research and development; and (C) construction, alteration, repair, or maintenance of real property;

The authority of an executive agency under any other law to prescribe "policies, regulations, procedures, and forms of procurement" is expressly made subordinate to OFPP's authority under this section by 41 U.S.C. §408. As a general matter, it was the intent of Congress to confer upon OFPP the central responsibility for procurement policy and for developing regulations

23/ The Administrator may only make general determinations and cannot decide "specific actions in the award or administration of procurement contracts." 41 U.S.C. § 405(f)(2). In addition, the procurement policies and regulations of the other executive agencies remain in force until he has acted. 41 U.S.C. § 409. Thus, the Administrator's role is prospective; he cannot act as an administrative court of appeal from procurement actions already taken. See generally H.R. Rept. 93-1176, 93rd Cong., 2nd Sess., at 10-11.

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within the Executive branch, able to act with the force of law, but subject to existing statutory procurement policies. ^{24/}

Thus far the Department of Labor and OFPP agree. They dispute whether the interpretation of the contract labor standards statutes to determine which, if any, applies to a particular class of contracts, is a matter of procurement policy within the meaning of 41 U.S.C. §§ 405(a), 408. The Department of Labor argues that the purpose of the contract labor standards statutes is to use the procurement process in furtherance of the socio-economic goal of supporting adequate wages, hours, and working conditions, that the interpretation of the statutes in pursuit of that goal is not a procurement matter, and that OFPP's authority over the labor standards statutes is therefore limited to regulating the mechanism by which the Department's socio-economic decisions are implemented through the procurement process. OFPP contends, on the other hand, that the contract labor standards laws are implemented only through the procurement process, that their substantive provisions are congressional declarations of procurement policy, that interpreting these provisions significantly affects the procurement process, and that OFPP therefore has authority to make binding interpretations of the coverage of the statutes.

^{24/} See generally S. Rept. 93-692, 93rd Cong., 2nd Sess., at 17, 18; H.R. Rept. 93-1176, 93rd Cong., 2nd Sess., at 14.

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Pub. L. 93-400 does not define "procurement" or "procurement policy." Its legislative history makes only one explicit reference to the contract labor standards laws. In discussing OFPP's authority under 41 U.S.C. § 405(a), the Senate committee report states that its "cognizance of procurement policy would extend to the procurement aspects of regulations issued by the social and economic agencies such as the Small Business Administration, the Environmental Protection Agency, and the Department of Labor ("Davis-Bacon, Walsh-Healey, contract safety standards, equal employment opportunity) . . ." 25/ Plainly OFPP was intended to have authority over some, but not all, aspects of the contract labor standards statutes. However, neither the Senate nor the House reports delineate the "procurement aspects" of these statutes. Instead, Congress' understanding of the subject is to be found in the background information that led to the passage of Pub. L. 93-400.

In 1969, the Commission on Government Procurement was established by statute to examine the entire federal procurement system and recommend measures that would increase its economy

25/ S. Rept. 93-692, 93rd Cong., 2nd Sess., at 18. (Emphasis added.)

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and efficiency. 26/ The Commission's activities were to be focused on three areas: existing statutes, executive procedures, and procurement organization. 27/ Both houses of Congress took the view that the principal procurement statutes were the Armed Services Procurement Act 28/ and the Federal Procurement Act, 29/ which govern authority to procure property and services and the methods used in entering and administering procurement contracts. 30/ They considered that one of the Commission's principal tasks would be to consider the possibility of attaining uniformity in the Executive branch regulations and procedures implementing these two statutes. 31/ In contrast, Congress considered the contract labor standards statutes to be among the "ancillary" statutes which affect procurement. 32/ The Commission was expected to study legislative changes in the contract labor standards statutes "in the interest of

26/ See Pub. L. 91-129, §§ 1, 5(a), 83 Stat. 269.

27/ See S. Rept. 91-427, 91st Cong., 2nd Sess., at 2.

28/ 10 U.S.C. § 2301, et seq.

29/ 41 U.S.C. § 251, et seq.

30/ S. Rept. 91-427, 91st Cong., 1st Sess., at 4; H.R. Rept. 91-468, 91st Cong., 1st Sess., at 15.

31/ S. Rept. 91-427, 91st Cong., 1st Sess., at 4-5; H.R. Rept. 91-468, 91st Cong., 1st Sess., at 16.

32/ S. Rept. 91-427, 91st Cong., 1st Sess., at 6, 13-14; H.R. Rept. 91-468, 91st Cong., 1st Sess., at 15.

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minimizing differences of interpretation and of striking a proper balance among the statutory objectives, which seek to protect workers on the one hand, and to achieve efficient and economical procurement on the other." 33/

The Commission on Government Procurement submitted its final report to Congress in 1972. 34/ Its first and principal recommendation was the establishment of an OFPP with authority to direct procurement policy throughout the Executive branch. 35/ The Commission regarded OFPP as the device through which many, though not all, of its 149 recommendations would be implemented. 36/ Both the House and Senate legislative histories state unequivocally that the purpose of Pub. L. 93-400 was, with exceptions not relevant here, to create an OFPP with the powers and functions recommended by the Commission. 37/ The Commission's views

33/ H.R. Rept. 91-468, 91st Cong., 1st Sess., at 15, 28.

34/ Report of The Commission on Government Procurement (1972) (hereafter "CGP Report").

35/ CGP Report, vol. 1, at 9; see H.R. Rept. 93-1176, 93rd Cong., 2nd Sess., at 4; S. Rept. 93-692, 93rd Cong., 2nd Sess., at 15; "Office of Federal Procurement Policy," Hearings Before a Subcommittee of the House Committee on Government Operations, 93rd Cong., 1st Sess. (hereafter "House Hearings"), at 318.

36/ CGP Report, vol. 1, at 12-14; H.R. Rept. 93-1176, 93rd Cong., 2nd Sess., at 26-28; S. Rept. 93-692, 93rd Cong., 2nd Sess., at 15.

37/ H.R. Rept. 93-1176, 93rd Cong., 2nd Sess., at 3, 4; S. Rept. 93-692, 93rd Cong., 2nd Sess., at 13.

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on the relations between OFPP and the contract labor standards statutes are therefore the principal indication of Congressional intent on the subject. 38/

The Commission was aware that numerous social and economic programs were implemented through the procurement process, including the contract labor standards statutes. 39/ It took the view that these programs were contrary to the general procurement policy of buying from the lowest responsible bidder, imposed substantial cost and administrative burdens on the government, and imposed serious burdens on contractors. 40/ The Commission believed that the lack of a single administrative authority above the program and procuring agencies 41/ was in part the cause of these problems. It considered the interpretation of the contract wage-hour statutes, particularly the Davis-Bacon

38/ See, e.g., Doherty v. United States, 404 U.S. 28, 34-36 (1971) (Douglas, J. concurring); Bindczyck v. Finucane, 342 U.S. 76, 80-83 (1951). See generally ZA Sutherland, Statutory Construction § 48.11, at 212.

39/ See CGP Report, vol. 1, at 11, 33, 114-15. Among the socio-economic goals, the Commission listed preferences for domestic contractors, abatement of pollution, prohibiting racial discrimination by contractors, favoring small business, maintenance of labor standards, and prevention of corruption. Id. at 114-15.

40/ Id. at 111-12, 121-22.

41/ Id. at 11, 119.

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and Service Contract Acts, as one of the major socio-economic burdens on the procurement process. 42/

However, the Commission did not recommend that OFPP be given power to interpret the statutes governing socio-economic programs. It recommended instead that the Congress and the Executive branch reexamine the socio-economic programs applied to the procurement process and their application, that their dollar threshold be raised, and that their cost be made more visible. These recommendations did not name OFPP as the implementing agency, in contrast to several other Commission recommendations. 43/ The Commission's comments on the contract labor standards laws are thus consistent with the legislative history of its establishing statute; they point out possible faults in the substantive aspects of these programs but consider them a matter for further Congressional action.

42/ Id. at 33, 116-17, 120.

43/ Id. at 118-22 (Recommendations 43-45). The Commission's Recommendation 10 was that OFPP develop, as far as feasible, a uniform system of procurement regulations. The discussion of that recommendation, however, considers regulations implementing the contract labor standards laws to be "collateral" rather than "procurement" regulations. Id. at 31-35. Procurement regulations are limited, in the Commission's view, to the Armed Forces Procurement Regulations, the Federal Procurement Regulations, and their equivalents in several semi-autonomous procuring agencies.

Congressional consideration of the Commission's report supports this view of the Commission's recommendations. I find particularly significant the testimony of Comptroller General Staats, a member of the Commission, who testified in both House and Senate hearings on OFPP's authority over socio-economic programs implemented through procurement. Before the House subcommittee, he stated that he construed the section of the bill which became 41 U.S.C. § 408 not to affect the specific statutory authority of the Department of Labor to make wage determinations under the Davis-Bacon or Service Contract Acts. 44/ Congressman Hollifield, Chairman of the subcommittee and Vice-chairman of the Commission, did not disagree. 45/ In the Senate hearings, Senator Roth asked the Comptroller General whether OFPP would have authority to determine whether procurement should be used to pursue socio-

44 House Hearings, supra, n. 35, at 366.

45/ House Hearings, supra, n. 35, at 355. In subsequent written questions, the subcommittee suggested that additional language "may be necessary" to clearly incorporate the Comptroller General's construction and asked him to submit a proposed modification. Although the Comptroller General did so, the subcommittee took no further action. Id. at 364.

economic goals. Mr. Staats replied:

These provisions of law today which the Commission described as having social objectives as well as procurement objectives are for the most part -- if not exclusively -- in the statute. It would require a statutory action to modify them.

The Commission has debated this general subject at great length and, subject to correction from my colleagues or from the Chairman, who was also a member, it was our view, I believe, that the OFPP would not be concerned with these kinds of issues; that these should be matters for the Congress to pass upon in the form of modifications and legislation, rather than wiping the slate clean and delegating that kind of role to OFPP itself.

This gets back, in part, to what we were talking about a few minutes ago. There must be an initiative somewhere in the executive branch in a great many of these cases before Congress itself can act objectively. The social objectives are written through a great many statutes. The list is very long. But the initiative could come from a central point, and a coordinated executive branch position could be developed as a way of raising the question in the Congress on both existing procurement legislation and new procurement legislation. 46/

Senator Chiles, Chairman of the subcommittee, former member of the Commission, and Senate sponsor of the OFPP legislation, ended the discussion by saying that the bill would give OFPP

46/ "Establishing Office of Federal Procurement Policy," Hearings Before an Ad Hoc Subcommittee of the Senate Government Operations Committee on S. 2198 and S. 2510, 93rd Cong., 1st Sess. (hereafter "Senate Hearings") at 223. Senator Chiles, Chairman of the Senate subcommittee, had been a member of the Commission.

authority to insure that the procurement agencies pursued statutory socio-economic goals in a uniform manner but would not give it "any authority by rule or regulation-making powers to go forward on their own on social objectives." 47/ Both he and Senator Roth concurred with the Comptroller General's view that OFPP's only substantive role in this area was to make recommendations to Congress. 48/ This is the whole of congressional consideration of the problem.

These materials lead me to the conclusion that neither the Commission nor Congress intended to give OFPP authority to overrule the program agencies in their interpretation of the substantive aspects of statutory socio-economic programs implemented through the procurement process. In creating the Commission, Congress intended it to recommend changes in "ancillary" statutes affecting procurement, including the contract labor standards statutes. The Commission, however, did not consider these programs as "procurement;" instead it viewed them as extraneous burdens on the procurement system. 49/ While

47/ Senate Hearings, supra, n. 46, at 224.

48/ Senate Hearings, supra, n. 46, at 224-25.

49/ See CGP Report, vol. 1, at 111-18. The report refers to the Labor Department's wage-hour regulations as "collateral" ones that "affect" procurement. Id. at 33.

the tone of the Commission's report is unsympathetic to this use of procurement, it does not recommend that OFPP be empowered to lessen the burden by modifying the substance of the programs. Instead, it recommends further study of the socio-economic programs and a more realistic assessment of their cost to the government. 50/ The Commission also recommended that legislation to consolidate and clarify the contract wage-hour statutes be studied. 51/ To the extent that Congress considered the matter, the sponsors of Pub. L. 93-400, who had been members of the Commission, appear from the legislative history to have accepted the view that OFPP could not alter the substantive aspects of statutory socio-economic programs. One important substantive aspect of those programs was the Secretary of Labor's statutory power to make the substantive determination as to which statute applied to a particular contract.

In addition, the lack of Congressional attention to OFPP power over the substance of these programs is strong evidence that Congress did not intend to give it that power. As the Commission report points out, these programs serve a broad variety of interests: labor, environment, small business,

50/ CGP Report, vol. 1, at 189 (Recommendations 43-45).

51/ CGP Report, vol. 4, at 169, 179-84.

anti-discrimination, protection of domestic industry, and others. These interests have been represented by active and zealous partisans who have received the considered attention of Congress. The contract wage-hour statutes in particular are the result of a strong legislative concern that the government's general interest in efficient, economical procurement will not be satisfied at the expense of contractors' employees. ^{52/} While the Commission recommended that the substantive socio-economic statutes be reviewed and modified, it concluded that task should be left for another day. Public Law 93-400 was not intended itself to modify these statutes, and did not have that effect. In the light of the legislative history of the statute establishing the Commission on Government Procurement, the conspicuous absence of Commission or Congressional comment on OFPP's effect on the substantive aspects of these programs is persuasive evidence that Congress did not intend to interfere with existing agency power to make policy in these areas that would affect procurement. See generally NLKB v. Robbins Tire & Rubber Co., ___ U.S. ___, 98 S.Ct. 2311, 2324-25 (1978).

Thus, the legislative history of Public Law 93-400 recognizes a distinction between the "procurement aspects" of the

^{52/} See H.R. Rept. 1162, 74th Cong., 2nd Sess., at 2 (Davis-Bacon Act); S. Rept. 1157, 74th Cong., 1st Sess., at 4 (Walsh-Healey Act); H.R. Rept. 948, 89th Cong., 1st Sess., at 3 (Service Contracting Act).

contract labor standards statutes and the substantive enforcement of those statutes. OFPP was given authority to set policy over the procurement aspects in the interest of uniformity but it was not given substantive authority over the achievement of socio-economic objectives. This division of responsibility corresponds with that originally recognized under the contract labor standards statutes -- the Department of Labor sets the basic interpretation of the Acts and establishes the wage rates, and the individual contracting agencies implement the Acts through the exercise of their procurement functions. This division of responsibility was altered somewhat by Reorganization Plan No. 14 of 1950 which empowered the Secretary of Labor to prescribe uniform implementing regulations binding on the procurement agencies. This latter function of the Secretary corresponds with the authority now conferred on OFPP in the interest of achieving uniformity in the implementation of the "procurement aspects" of the contract labor standards statutes. The quite separate responsibility of interpreting and enforcing the socio-economic purposes of the contract labor standards statutes was not conferred on OFPP.

In conclusion, the question whether a particular class of contracts is covered by the Walsh-Healey or Service Contract Acts is one for the decision of the Secretary of Labor, notwithstanding Pub. L. 93-400. In making that decision, the

Secretary must exercise discretion within the broad limits of the language of the two statutes. The exercise of this power by the Secretary is subject, of course, to your supervision and direction as Chief Executive.

I have the honor to be

Respectfully,
Griffin B. Bell

Griffin B. Bell

Griffin B. Bell
Attorney General

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Mr. FETTIG. I am going to get to the GAO report in a minute.

You may not know but when we passed the CFPP law we were among the first to put a sunset provision in it, which is being widely touted now for general applicability. I think it is a good provision.

The first 5 years run out for this office this year. I have every confidence it will be reauthorized.

Mr. LAFALCE. What is your reauthorizing committee?

Mr. FETTIG. Government Operations, chaired by Mr. Brooks.

The Senate has already held hearings—

Mr. LAFALCE. Which subcommittee?

Mr. FETTIG. I imagine it would be handled out of the Legislation and National Security Subcommittee.

Even the labor unions, which as you may know or at least expect were very incensed over my intrusion in the labor matters, have testified in support of continuing this office.

This is the main point I want to make in getting to the GAO ruling. Even without directive authority—and that is appropriate—in many of these matters, an office such as mine at this level, at the White House level, is an invaluable service in bringing to the fore an accountable forum for tackling these tough issues. This fight between the Defense Department, NASA, and the Labor Department has gone on for years and years. It has done nothing but fester.

We have more court cases, and as you say generally, more income for lawyers for want of an effective high-level forum. That is not saying there has not been any, but in terms of accountability try to track down at any given time or year which OMB budget examiner, which White House staff member, or which domestic policy staff member is the resident arbitrator, and you cannot find them.

OFPP did offer—and I have used it as an effective forum—to be an accountable arbitrator. In that vein we have not simply walked away from these difficult issues.

Immediately after my action on the aircraft overhaul contracts, I asked that we convene under my chairmanship an interagency group to look at the gamut of these issues. I will not even give you a headache with some of the technicalities but there have been festering problems.

Mr. LAFALCE. Do you include Davis-Bacon and those provisions within your list of 40 preferential programs?

Mr. FETTIG. That is correct.

Mr. LAFALCE. That would be included?

Mr. FETTIG. These are socioeconomic requirements implemented through Federal contracts—in this case wages to be paid to the workers.

The issues on all these wage laws are deeply held by the agencies, but I want to say this: Congress has given us those laws for good reason. We do not want competition to run to the point where we squeeze blood out of the workers. Those laws are there for good reason. Nevertheless, there is plenty of room for improvement for administrative reform.

We have now completed an options paper that lays out in very fine and clear fashion what administrative reforms are possible. They are contested, of course, for the most part. That options paper has been provided to the Cabinet officers. They will use the appropriate forum to decide.

That is a service that I think OFPP has played in spite of or even in light of the Attorney General's ruling. Even if we are not to be the unilateral implementers of any change, that focal point has been very important.

In regard to the GAO report, the administration does not support repeal of Davis-Bacon or the other contract wage statutes. They are important and they can be administered effectively. They can serve a very important social purpose. That may seem odd to say with inflation as rampant as it is and labor costs being of concern.

However, I have conducted hearings in county courthouses where workers, through repetitive competition, have had their wages busted down to minimums. They have kids in school. They have mortgages to pay. There are moderating requirements here to protect the workers' interest. Those laws do that. We do it much better administratively.

The Labor Department has provided a very strong rebuttal to the GAO report, which I will note for the record was only in draft form. They have not issued a final report, not yet had the benefit of laying their analysis side by side with the Labor Department's.

I would be pleased to submit that for the record, too.

Mr. LAFALCE. That would be too voluminous.

At this time I would like to introduce into the record a letter from the ranking minority member of the full Small Business Committee, Representative Joseph M. McDade, a Republican from Scranton, Pa. It regards the impact of the President's trade agreement on America's labor surplus areas.

[Mr. McDade's letter follows:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 4, 1979.

HON. JOHN J. LAFALCE,
Chairman, Subcommittee on General Oversight and Minority Enterprise, Committee
on Small Business, Cannon House Office Building, Washington, D.C.

DEAR JOHN: Thank you, Mr. Chairman, for giving me the opportunity to present my views on the impact of the President's Trade Agreements on America's Labor Surplus Areas. Because of an unavoidable conflict with an Appropriation's Subcommittee Hearings, I am unable to attend your hearing today.

I was pleased to see that the President has rescinded his plan to void small and minority business set asides on applicable Federal contracts over \$190,000. I am, however, deeply concerned by current unwillingness to accept labor surplus area set aside programs for small businesses. In light of President Carter's Executive Order, that strongly supported labor surplus area programs, I am surprised that the President's Trade Negotiator has not found some way to deal with the problems of unemployed Americans, other than offering new sales opportunities to big business.

It appears to me that Federal employment programs, like the labor surplus area set asides which are carefully targeted, would go a long way toward helping unemployed workers find stable private sector jobs and would substantially reduce continuing pressure for the more broadbased programs, that create public sector jobs with only a potential for private sector placement. Labor surplus area set asides can be carefully calibrated to the needs of communities that have skilled and willing workers, but little in the way of job openings. This program helps to avoid dislocations of workers that leave federally funded schools and hospitals vacant. In addition, this program also helps to prevent the expenditure of substantial sums of federal money to build new schools, hospitals, roads and sewer systems in the areas where workers move to find new jobs.

The labor surplus area programs are the kind of targeted programs that we should be supporting, not dismantling. I urge the administration to very carefully consider who, the real beneficiaries of this trade plan are; and, what benefit they will provide in relation to the system the administration seems so eager to abandon.

Sincerely,

JOSEPH M. McDADE,
Member of Congress.

Mr. LAFALCE. Mr. Fettig, the hearing this morning has been wide-ranging in its scope. All the issues have been extremely important. Let us not forget that the primary focus of this morning's hearing was and remains the impact of the international procurement code upon the labor surplus set-aside program. Let us not forget that the final agreement has not been reached yet between the United States and the other countries.

In my judgment, prudence on the part of the President and the administration dictates equally to zealous efforts to exclude labor surplus programs from the provisions of the international code as prudence dictated exclusion of the small business and minority set-aside programs.

I repeat that the individuals within Congress most interested in the labor surplus set-aside program are the same individuals who are interested in repeal of the Maybank amendment and are the same individuals who are the most natural allies of the President for final approval and ratification of the ultimate MTN agreement.

Mr. FETTIG. That is a cogent analysis, and I will be sure to communicate that another card has been played.

Mr. LAFALCE. Thank you very much.

[Whereupon, at 11:46 a.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

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