

**SERVICE INDUSTRIES COMMERCE
DEVELOPMENT ACT OF 1982**

DEPOSITORY

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMMERCE, TRANSPORTATION, AND TOURISM
OF THE
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 5519

A BILL TO GIVE TRADE NEGOTIATING PRIORITY TO SERVICE SECTOR ISSUES, TO EXPAND AND CLARIFY EXISTING LAWS GOVERNING INTERSTATE AND FOREIGN COMMERCE TO BETTER DEAL WITH SERVICE TRADE PROBLEMS, AND FOR OTHER PURPOSES

MARCH 11, 1982

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CONTENTS

	Page
Text of H.R. 5519.....	3
Report of Congressional Budget Office on H.R. 5519.....	21
Statement of:	
Cloney, Gordon J., II, director, Special Policy Development, International Division, and executive secretary of the International Services and Investment Subcommittee, Chamber of Commerce of the United States..	69
Donaghue, Hugh P., on behalf of U.S. Council for International Business..	83
Feketekuty, Geza, Assistant U.S. Trade Representative for Policy Devel- opment and Services, Office of the U.S. Trade Representative, Execu- tive Office of the President.....	32
Greenwald, John, member, Trade Law Task Force, Chamber of Com- merce of the United States.....	69
Morris, William H., Jr., Assistant Secretary of Commerce for Trade De- velopment, Department of Commerce.....	22
Rivers, Richard, counsel, Coalition of Service Industries.....	109
Travel Industry Association of America.....	126

SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1982

THURSDAY, MARCH 11, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION, AND TOURISM,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2218, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. FLORIO. The subcommittee will come to order.

I would like to welcome all of our witnesses and members of the audience to this very important hearing on H.R. 5519, the Service Industries Commerce Development Act of 1982.

During the last 20 years, services have become a more and more important part of the U.S. economy as well as part of world trade. Since 1971, the United States has had a deficit in merchandise exports in all but 2 years. On the other hand, the U.S. trade surplus in services has grown in the last 10 years from \$355 million to \$7.3 billion, an increase of nearly 1,300 percent. This dramatic increase in the service industries' exports has offset the deficit in merchandise exports.

Despite these astounding rates of growth, the U.S. service industries today face some rather dangerous and uncertain components in future operations. More and more, other nations are closing their markets to the United States in an effort to protect their own service sectors. At the same time, the United States continues to adhere to a policy of free trade in services.

The bill we are considering today is designed to restructure with some degree of fairness international trade in services. Under this legislation, the United States could take steps necessary to insure that U.S. and foreign service firms receive fair and equal treatment here and abroad.

This hearing is the first time, as I understand it, that the administration and others have been called to testify on any of the trade in services bills introduced in this Congress. I am looking forward to the testimony of our witnesses, and I am looking forward to expeditious consideration of this matter by the subcommittee and by the full committee.

I am committed and convinced that there is need for legislation in this session of the Congress. I think I speak for the other members of the subcommittee in saying that it is our intention to go

forward in an expeditious way so as to insure that the legislation is enacted in this Congress on this very vital subject.

The text of H.R. 5519 and any agency reports thereon will be printed at this point in the record.

[Testimony resumes on p. 22.]

[The text of H.R. 5519 and agency report follow:]

97TH CONGRESS
2D SESSION

H. R. 5519

To give trade negotiating priority to service sector issues, to expand and clarify existing laws governing interstate and foreign commerce to better deal with service trade problems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1982

Mr. FLORIO (for himself and Mr. DINGELL) introduced the following bill; which was referred jointly to the Committees on Ways and Means, Energy and Commerce, and Foreign Affairs

A BILL

To give trade negotiating priority to service sector issues, to expand and clarify existing laws governing interstate and foreign commerce to better deal with service trade problems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Service Industries Com-
4 merce Development Act of 1982".

5

FINDINGS

6

SEC. 2. The Congress finds that—

7

(1) United States service industries engaged in in-

8

terstate and foreign commerce account for a substantial

1 part of the labor force and the gross national product
2 of the United States economy;

3 (2) many service industries require highly skilled
4 and trained workers and employ advanced technology
5 that enhances the international competitiveness of the
6 United States economy;

7 (3) productivity in the service sector increased by
8 20 per centum from 1967 to 1979, and in 1980, ac-
9 cording to official United States balance of payments
10 statistics, the United States earned a surplus of more
11 than \$34,000,000,000 in the services account;

12 (4) the United States is the world's largest provid-
13 er of foreign commerce in services, accounting for ap-
14 proximately 20 per centum of the world total in 1980;

15 (5) barriers to and other distortions of the interna-
16 tional trade in services, including barriers to the estab-
17 lishment and operation of United States companies in
18 foreign markets, have had a serious and negative
19 impact on the growth of United States services ex-
20 ports:

21 (6) such barriers are likely to continue to harm
22 the United States service economy unless prompt
23 action to negotiate their reduction or elimination is
24 taken and effective and rational international rules gov-
25 erning trade in services are implemented; and

1 (4) to require the Department of Commerce, in
2 coordination with other appropriate agencies, to take
3 lead responsibility in the executive branch for develop-
4 ing and implementing policies to enhance the competi-
5 tiveness of American service industries and for achiev-
6 ing the objectives of this Act;

7 (5) to require the Department of Commerce to
8 promote foreign commerce in services and to develop
9 for other Federal agencies policies which promote
10 equality in commercial relations between the United
11 States and foreign countries;

12 (6) to integrate fully service sector trade issues
13 into overall United States economic and trade policy;

14 (7) to provide for effective coordination of services
15 sector trade policy within the Federal Government;

16 (8) to encourage consultation and cooperation
17 among the agencies of the Federal Government, be-
18 tween the Federal Government and State and local
19 governments, and between the Federal Government
20 and the private sector;

21 (9) to clarify the application of provisions of
22 United States trade laws to trade in services.

1 NEGOTIATION OF INTERNATIONAL AGREEMENTS

2 CONCERNING TRADE IN SERVICES

3 SEC. 4. (a) A principal United States negotiating objec-
4 tive under section 102 of the Trade Act of 1974 shall be to
5 develop agreements, under auspices of the General Agree-
6 ment on Tariffs and Trade, which—

7 (1) reduce or eliminate barriers to United States
8 service sector trade in foreign markets, including the
9 right of establishment and operation in such markets;

10 (2) modify or eliminate practices which distort in-
11 ternational trade in services; and

12 (3) develop internationally agreed rules, including
13 dispute settlement procedures, that are consistent with
14 the commercial policies of the United States and that
15 will help ensure open international trade in services.

16 (b)(1) In any negotiation under section 102 of the Trade
17 Act of 1974 concerning barriers to, or other distortions of,
18 international trade in services, the United States Trade Rep-
19 resentative (USTR) shall pay particular attention to the in-
20 terests that the States may have in such a negotiation.

21 (2) The USTR shall not enter into any negotiation in-
22 volving a service sector over which the States have regula-
23 tory responsibility unless he has developed negotiating objec-
24 tives for such negotiation in consultation with representatives
25 of State governments: *Provided further*, That during the

1 course of any negotiation, the USTR shall consult regularly
2 with representatives of State governments concerning negoti-
3 ating developments and the manner in which any agreement
4 reached may be implemented.

5 (c) The USTR shall inform the service sector advisory
6 committees established under subsections 135(b) and 135(c)
7 of the Trade Act of 1974 of prospective trade negotiations
8 under section 102 of the Trade Act of 1974 and, prior to
9 entering into such negotiations, shall, in consultation with the
10 appropriate service sector committees, develop negotiating
11 objectives concerning trade in services: *And provided further,*
12 That during the course of any such negotiations the USTR
13 shall consult with the committees concerning negotiating de-
14 velopments.

15 (d)(1) The USTR shall consult with the Senate Finance
16 Committee, the Ways and Means Committee of the House of
17 Representatives, and other interested committees of the Con-
18 gress concerning efforts to promote international negotiations
19 on trade in services, the strategies and specific negotiating
20 objectives of the United States in such negotiations, develop-
21 ments in the course of such negotiations, and the manner in
22 which any agreements concluded are to be implemented.

23 (2) No later than forty-five days after this bill is enacted
24 into law, the USTR shall present to the Senate Finance
25 Committee, the Ways and Means Committee of the House of

1 Representatives, and other interested committees of the Con-
2 gress—

3 (A) a proposed work program concerning interna-
4 tional negotiations on services for the following twelve-
5 month period; and

6 (B) a detailed analysis of the negotiating interests
7 of the United States in specific service sectors.

8 SERVICE INDUSTRIES DEVELOPMENT PROGRAM AND
9 REPORTS

10 SEC. 5. (a) The Secretary of Commerce (hereinafter in
11 this Act referred to as the "Secretary") shall establish in the
12 Department of Commerce a service industries development
13 program designed to—

14 (1) promote the competitiveness of United States
15 service firms and American employees through appro-
16 priate economic policies;

17 (2) promote actively the use and sale of United
18 States services abroad and develop trade opportunities
19 for United States service firms;

20 (3) develop a data base for policymaking pertain-
21 ing to services;

22 (4) collect and analyze information pertaining to
23 the international operations and competitiveness of
24 United States service industries;

- 1 (5) analyze United States regulation and taxation
2 of service industries, with particular emphasis on the
3 effect of United States taxation on the international
4 competitiveness of United States firms and exports;
- 5 (6) collect such statistical information on the do-
6 mestic service sectors as may be necessary for the de-
7 velopment of governmental policies toward these sec-
8 tors;
- 9 (7) conduct sectoral studies of domestic service in-
10 dustries, including assessments of their present and
11 future capital needs and their ability to compete in in-
12 terstate and foreign commerce with foreign service in-
13 dustries;
- 14 (8) collect comparative international information
15 on service industries and policies of foreign govern-
16 ments toward services;
- 17 (9) develop policies to strengthen the competitive-
18 ness of domestic service industries relative to foreign
19 firms;
- 20 (10) conduct a program of research and analysis
21 of service-related issues and problems, including fore-
22 casts and industrial strategies; and
- 23 (11) provide statistical, analytical, and policy in-
24 formation to State and local governments and service
25 industries.

1 (b) The United States Trade Representative and the
2 Secretary shall provide to State and local governments, upon
3 their request, advice, assistance, and (except as may be oth-
4 erwise prohibited by law) information concerning United
5 States policies on international trade in services.

6 (c) The Secretary shall prepare, and submit to Congress,
7 not later than April 1, 1983, a recommended comprehensive
8 national policy, applicable at all levels of government and to
9 all aspects of interstate commerce, to promote equality in
10 commercial relations between the United States and foreign
11 countries with respect to services. Such policy shall be ac-
12 companied by—

13 (1) an analysis of the activities of foreign suppliers
14 within the various service sectors in the United States;

15 (2) an analysis of Federal, State, and local regula-
16 tion of such foreign suppliers and recommendations as
17 to how such regulation can be modified, coordinated,
18 and implemented in order to promote such equality;

19 (3) an analysis of the activities of United States
20 suppliers of services in foreign countries, including the
21 types of services provided, the value of investment
22 made in such services, and the income resulting from
23 their provision; and

1 (4) an analysis of foreign treatment (including, but
2 not limited to, the use of barriers to trade) of United
3 States firms engaged in trade in services abroad.

4 (d) No foreign person may engage in the provision of
5 services within the United States unless that person registers
6 with the Secretary as provided in this subsection; except that
7 any foreign person engaging in the provision of services
8 within the United States on the day before the date of the
9 enactment of this Act may continue to engage in providing
10 services if such person so registers with the Secretary before
11 the close of the one hundred and eightieth day after such date
12 of enactment. Registration shall be made in such manner,
13 and contain such information, as shall be required by the Sec-
14 retary including, but not limited to—

15 (1) the identification and location of the parent of,
16 and each subsidiary, if any, of, the foreign supplier;

17 (2) the business or other activities engaged in by
18 the parent and subsidiaries, if any, and the revenues
19 accruing therefrom;

20 (3) actual or expected income deriving from the
21 provision of the services concerned in the United
22 States; and

23 (4) the location within the United States where
24 such services will be, or are being, provided.

1 SUBSIDIZATION AND UNFAIR PRICING

2 SEC. 6. Chapter 1 of title III of the Trade Act of 1974
3 (19 U.S.C. 2411) is amended by adding at the end thereof
4 the following new section:

5 “SEC. 307. SUBSIDIZATION AND UNFAIR PRICING INVOLVING
6 SERVICE SECTOR INDUSTRIES.

7 “(a) SUBSIDIZATION AND UNFAIR PRICING TO PRO-
8 VIDE A BASIS FOR ACTION UNDER SECTION 301.—When-
9 ever the United States Trade Representative (USTR) deter-
10 mines, after an investigation initiated under this section,
11 that—

12 “(1) services sold by a foreign supplier to the
13 United States market benefit from a subsidy provided,
14 directly or indirectly, to the supplier by a foreign gov-
15 ernment or instrumentality, or are sold at prices that
16 are below cost or are otherwise unfair, and

17 “(2) a competing service sector industry in the
18 United States is injured or threatened with injury by
19 reason of such sales,

20 such subsidization or unfair pricing shall, for purposes of sec-
21 tion 301, be considered an unreasonable practice which bur-
22 dens United States commerce and the President shall take
23 appropriate action under section 301(b) with regard to the
24 products, services, or suppliers of services of foreign coun-
25 tries or instrumentalities involved.

1 “(b) FILING OF PETITION WITH THE UNITED STATES
2 TRADE REPRESENTATIVE.—Any interested person may file
3 a petition with the United States Trade Representative
4 (USTR) requesting the President to initiate an investigation
5 into subsidization or unfair prices of services setting forth
6 facts upon which the allegations of subsidization or unfair
7 pricing, and allegations of injury to a competing domestic
8 service sector industry, are based. The USTR shall review
9 the request and, not later than forty-five days after the date
10 on which he received the petition, shall determine whether to
11 initiate an investigation.

12 “(c) DETERMINATION REGARDING PETITIONS.—

13 “(1) DECISION NOT TO INITIATE.—If the USTR
14 determines not to initiate an investigation, he shall
15 inform the petitioner of his reasons therefor and shall
16 publish notice of the determination, together with a
17 summary of such reasons, in the Federal Register.

18 “(2) DECISION TO INITIATE.—If the USTR de-
19 termines to initiate an investigation regarding the
20 issues raised, he shall publish the text of the petition in
21 the Federal Register and shall, as soon as possible,
22 provide an opportunity for the presentation of views
23 concerning the issues, including a public hearing.

24 “(d) DETERMINATION OF SUBSIDY OR UNFAIR PRIC-
25 ING: TERMINATION/SUSPENSION OF INVESTIGATIONS.—

1 “(1) In each investigation initiated under this sub-
2 section, the USTR shall, no later than six months after
3 the date on which the investigation was initiated, de-
4 termine whether—

5 “(i) the services in question are benefiting
6 from a subsidy provided, directly or indirectly, to
7 the supplier by a foreign government or instru-
8 mentality or are being sold at prices that are
9 below cost or are otherwise unfair; and

10 “(ii) a competing service sector industry in
11 the United States is being injured, or is threat-
12 ened with injury, by reason of such sales:

13 *Provided, however,* That an investigation may be ter-
14 minated or suspended at any time, in whole or in part,
15 upon withdrawal of the petition, or conclusion of a ter-
16 mination or suspension agreement with any foreign
17 country or instrumentality or the foreign supplier in-
18 volved in the investigation.

19 “(2) Whenever an investigation is terminated or
20 suspended, the USTR shall publish in the Federal
21 Register a notice of termination or suspension, which
22 shall include a full statement of reasons for the action
23 taken.”.

1 UNFAIR TRADE PRACTICES IN SERVICE SECTOR TRADE

2 SEC. 7. (a) Section 301(b) of the Trade Act of 1974 is
3 amended by adding after the word "services" the phrase "or
4 suppliers of services".

5 (b) Before the President takes action under section
6 301(b) of the Trade Act of 1974 involving the imposition of
7 fees or other restrictions on the services, or on suppliers of
8 services, of a foreign country, the USTR shall, if the services
9 involved are subject to regulation by any agency of the Fed-
10 eral Government or of any State, consult with the head of the
11 agency concerned.

12 (c) Fees or restrictions imposed under section 301(b) of
13 the Trade Act of 1974 on the services, or suppliers of serv-
14 ices, of a foreign country may be in any amount or of any
15 kind determined by the President to be appropriate, including
16 full or partial exclusion of a foreign supplier from the United
17 States market, or the imposition of any condition upon the
18 access of a foreign supplier to the United States market, and
19 may be implemented through Executive order.

20 CONSIDERATION BY UNITED STATES REGULATORY AU-
21 THORITIES OF MARKET ACCESS ACCORDED BY FOR-
22 EIGN COUNTRIES TO UNITED STATES SERVICE
23 SECTOR INDUSTRIES

24 SEC. 8. (a) It is the sense of the Congress that, in devel-
25 oping their policies concerning access of foreign suppliers to

1 the United States market, regulatory authorities in the
2 United States with responsibility for regulation of a service
3 sector should, in consultation with the Secretary of Com-
4 merce, take into account the extent to which the United
5 States suppliers are accorded access to foreign markets in
6 such service sector.

7 (b)(1) For purposes of this section, the term “service
8 sector access authorization” means any license, permit,
9 order, or other authorization, issued under the authority of
10 Federal law, that allows a foreign supplier access to the
11 United States market in a service sector.

12 (2) At least sixty days before a foreign supplier applies
13 to any Federal agency for a service sector access authoriza-
14 tion, the supplier must request the Secretary to issue an advi-
15 sory opinion on the extent to which United States suppliers
16 are accorded access to the service sector in the supplier’s
17 home country and to which such authorization, if granted,
18 would promote equality in foreign commerce within such
19 service sector. The foreign supplier must, on a timely basis,
20 provide the Secretary with such information as the Secretary
21 may require for purposes of formulating the advisory opinion.
22 The Secretary shall issue an advisory opinion within sixty
23 days after receiving a request therefor.

24 (3) No foreign supplier may make application to a Fed-
25 eral agency for a service sector access authorization before

1 the Secretary issues the advisory opinion required under
2 paragraph (2) with respect to the application.

3 (c) Whenever any Federal agency that is required to
4 regulate a service sector undertakes to promulgate or amend
5 a rule or regulation, or to consider any decision, that may
6 affect the access of any foreign supplier to the United States
7 market in that sector, the Secretary shall—

8 (1) provide any interested party opportunity to
9 provide information to the Secretary regarding the
10 probable effect of the rule, regulation, or decision on
11 the market access that United States suppliers of such
12 services to both the domestic market and the foreign
13 market concerned; and

14 (2) make appropriate representations, including
15 recommended restrictions, to the Federal agency if the
16 Secretary, on the basis of information acquired under
17 paragraph (1), considers that foreign suppliers of the
18 services concerned should be restricted in order to pro-
19 mote equality in foreign commerce in such services.

20 (d) The Secretary shall report annually to the Congress
21 on its implementation of subsections (a) and (b). The report
22 shall—

23 (1) specify those rules and regulations made, and
24 other administrative actions taken, by Federal agencies

1 which the Secretary considers not to promote equality
2 in foreign commerce in the service sectors;

3 (2) contains a summary of the advisory opinions
4 prepared by the Secretary under subsection (a) and the
5 extent to which such opinions were taken into account
6 by, or otherwise affected, Federal agency action on ap-
7 plications for service sector access authorizations; and

8 (3) identify the problems that the Secretary has
9 encountered in implementing this section.

10 AUTHORIZATION OF APPROPRIATIONS

11 SEC. 9. There are authorized to be appropriated
12 \$20,000,000 to carry out the activities authorized by this
13 Act.

14 DEFINITIONS

15 SEC. 10. (a) "Services" means economic outputs which
16 are not tangible goods or structures, including, but not limit-
17 ed to, transportation, communications, retail and wholesale
18 trade, advertising, construction, design and engineering, utili-
19 ties, finance, insurance, real estate, professional services, en-
20 tertainment, and tourism, and overseas investments which
21 are necessary for the export and sale of such services.

22 (b) Barriers to, or other distortions of, international
23 trade in service includes—

24 (1) barriers to the right of establishment in foreign
25 markets, and

1 (2) restrictions on the operation of enterprises in
2 foreign markets, including direct or indirect restrictions
3 on the transfer of information into, or out of, the coun-
4 try or instrumentality concerned and restrictions on the
5 use of data processing facilities within or outside of
6 such country or instrumentality.



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

August 18, 1982

Alice M. Rivlin
Director

Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5519, the Services Industries Commerce Development Act of 1982, as ordered reported by the House Committee on Energy and Commerce, June 24, 1982.

H.R. 5519 affirms and expands existing federal programs for assisting U.S. service industries in international and interstate commerce. It designates service industry issues as a principal negotiating objective of trade agreements, and directs the U.S. Trade Representative (USTR) to develop a work program for such negotiations. The bill requires the Department of Commerce to establish a service industries program to collect and analyze data, to conduct research on services issues, and to develop policy recommendations. Major findings are to be reported to the Congress for each year after 1982. The bill also confirms that the enforcement procedures and sanctions under the 1974 Trade Act regarding unfair pricing, subsidization, and access authorizations are applicable to foreign suppliers of services. H.R. 5519 authorizes the appropriation of \$20 million to carry out the provisions of the bill.

CBO estimates that the enactment of H.R. 5519 will result in outlays of at least \$1 million in each of the fiscal years 1983 through 1987. An additional \$4 to \$8 million could be disbursed over the 1983 through 1987 period if the Department of Commerce undertakes special studies of the service industries to support policy development and negotiations.

This estimate assumes that the new data collection activities required under Section 5 would cost approximately \$1 million a year. The costs of implementing the administrative, negotiation, and enforcement provisions are not expected to be substantial because the Department of Commerce and the USTR currently perform many of these functions. The costs associated with the research and other discretionary activities are uncertain because the bill does not specify the extent of such efforts. Prior departmental experience suggests, however, that trade-related studies may cost another \$4 to \$8 million.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin
Director

Mr. FLORIO. I would like now to recognize the effective and supportive ranking member of the minority, Congressman Lent.

Mr. LENT. Thank you very much, Mr. Chairman. I am going to be on my guard now with those kind words.

I would like to start by commending the chairman for expediting the subcommittee's consideration of U.S. trade policy in services, and specifically H.R. 5519, the Service Industries Commerce Development Act of 1982.

Any review of the available statistics underscores the importance of the services sector within our economy. This is reinforced by the independence between trade in services and trade in goods.

I concur completely with Ambassador Brock's statement that:

The cultivation of foreign markets by U.S. service industries is as critical to our economic recovery as is increased export of goods.

For these reasons, I would like to commend the administration for committing to the elimination of barriers to trade in services. I particularly applaud this commitment since it represents the first overall strategy for services in the history of U.S. trade policy. In light of this initiative, I believe that our consideration of this legislation is very timely.

With that in mind, I welcome our witnesses and look forward to their comments on H.R. 5519. I would hope to work very closely with the administration and other interested parties as we proceed with this bill.

Thank you, Mr. Chairman.

Mr. FLORIO. Thank you very much.

Our first witness, and we are very pleased to have him here, is William H. Morris, the Assistant Secretary of Commerce for Trade Development, the Department of Commerce.

As with all our witnesses, the statements will be entered into the record in their entirety, and they may feel free to proceed as they see fit.

Mr. Morris, welcome. For the record, we ask that you introduce your colleague.

STATEMENT OF WILLIAM H. MORRIS, JR., ASSISTANT SECRETARY OF COMMERCE FOR TRADE DEVELOPMENT, DEPARTMENT OF COMMERCE

Mr. MORRIS. Thank you, Mr. Chairman.

My colleague is Brant Free, who is the Acting Director of the Office of International Services in the International Trade Administration of the Department of Commerce.

I am pleased to appear before the committee to give the Department of Commerce's views on H.R. 5519, the Service Industries Commerce Development Act of 1982.

The bill reflects the growing awareness on the part of business, labor, Congress, and the administration of the critical importance of service industries to our domestic economy and to our balance of payments.

It is estimated that 7 out of 10 Americans are employed in service-related jobs. These industries are often on the leading edge of international competitiveness. Of course, not all services are normally exportable, but many services are. For example, construc-

tion, franchising, professional services, tourist services, banking, insurance, and transportation services, just to name a few. These exportable services warrant encouragement through alert Government policies and export programs.

Based on data collected by Commerce's Bureau of Economic Analysis, we recently estimated that international activities in services—exports and income from overseas affiliates—amounted to \$128 billion in 1980, and that does not include services performed by companies known primarily as goods producers.

Thus, services are big business internationally. Service exports have a substantial, positive impact on our balance of payments. In recent years, receipts from invisibles, including investment income, have largely balanced our troublesome deficits in merchandise trade.

This bill, which recognizes the importance of the service sector, is both timely and relevant. While the Department does not agree with all aspects of H.R. 5519, the Department does support its general aims and objectives. We, in the Department of Commerce, want and intend to do more to promote the international activities of U.S. service firms and we welcome congressional support for these efforts.

U.S. service firms face numerous impediments abroad which restrict their direct sales, establishment, and operation. The kinds of restrictions and the severity of their impact vary from sector to sector. They range from arbitrary and discriminatory licensing procedures, damaging to our insurance companies, to foreign government regulations controlling international information flows, which may seriously affect the competitive position of our telecommunications and information industries. Such impediments reduce the potential benefits available to American firms overseas in both developed and less developed countries.

Current issues in services trade are complex and trends not always consistent. Our services with Japan is a good example.

A recent analysis by the Department's Office of International Services on United States-Japan services trade showed some bright spots as well as some problem areas. Services trade with Japan differs from our merchandise trade in that the United States enjoys a surplus. However, this surplus is quite small when compared to our large merchandise trade deficit.

According to 1980 U.S. balance-of-payments data, U.S. exports of business services to Japan—travel, transportation, fees and royalties, private services—totaled \$3.6 billion while imports reached \$2.5 billion for a net positive balance of \$1.1 billion. We estimate that services exports to Japan represent about 5 percent of the U.S. total, which makes Japan a significant current market for services. Also, major prospects for export growth exist if impediments can be reduced.

Sector-by-sector analysis of this trade reveals that the treatment of service industries in Japan varies widely. Industries, like tourism and motion pictures, that are not dependent on the establishment of branches or subsidiaries enjoy good market penetration. But industries, such as insurance, banking, accounting, stock brokerage, and legal services, where establishment is crucial, usually face a number of hurdles. These include administrative delays in

securing necessary approvals, limitations on the type and range of services offered, and onerous standards for professional certification.

A third category includes industries for which there are few overt impediments, but where traditional market structure or conditions retard penetration, such as leasing, franchising, and advertising.

Overall, it appears that administrative restrictions or guidance, "buy Japan" traditions, and unique marketing practices combine to keep U.S. service firms' share of the market below its potential.

The Japanese example is not unique. My purpose in using it here is to give you a sense of the diverse nature of services trade and the complexity of the issues involved. Also, because of its importance as a major trading partner in goods and services, Japan is a country in which the administration has a particular interest in reducing services trade barriers.

We strongly support the provisions of H.R. 5519 which explicitly enhance executive branch efforts to encourage international cooperation and negotiations in trade in services. One of the major weaknesses in the current international trading system is that there are no specific multilateral rules and established discipline to resolve services trade problems.

When nations take up multilateral discussions on trade problems, services trade must be given high priority. Over the years, the United States has been instrumental in setting up a useful and wide-ranging structure of internationally agreed rules on trade in goods through the General Agreement on Tariffs and Trade (GATT) and the Organization for Economic Cooperation and Development (OECD) but services have been largely ignored and this must change.

In general, our trading partners have been unwilling to undertake work on this issue with the same sense of urgency which we have afforded it. However, progress is being made and groundwork is being laid for multilateral resolution of the services trade problems. Over the past 3 years, the United States, in the OECD, has pressed for studies of trade in services. The aim is to identify problems in common and to consider means to eliminate or reduce barriers.

As a result, the OECD has launched studies in the four principal sectors of construction/engineering, shipping, banking, and insurance. Increasingly, transborder data flow issues affecting both the providers and users of telecommunications and information services are being examined. At its meeting on February 18 and 19, the OECD Tourism Committee agreed to pursue an examination of barriers to international travel.

With such momentum building, the United States is trying to have services included on the agenda of the GATT Ministerial in November of 1982. This will be the first such meeting of GATT Ministers since 1973, and this provides the opportunity to secure a major political commitment to work toward liberalizing trade in services in both industrialized and developing countries.

The issues are highly complex, requiring attention over the long term. However, we must begin now to address these issues if we are to have solutions in the foreseeable future.

Thus far, we have made a solid start in building liaison with the private sector, addressing specific country problems affecting services, reviewing USG export policies with an impact on service industries, carrying out special reports and analyses, and improving data availability.

We shall continue to build on these activities and to improve them qualitatively. Additionally, we will assess how services industries can benefit from our trade promotion programs. Although these programs have traditionally been oriented toward products, we are increasing our emphasis on services. Also, we are taking steps to integrate services more fully into the program of the Foreign Commercial Service and the U.S. Commercial Service.

At the end of this month, we will distribute a special issue of Commercial News USA which is devoted to only services exports. Commercial News USA is distributed monthly to 240 American embassies and consulates worldwide, and it is the source magazine for embassy commercial newsletters reaching more than 200,000 foreign government and business officials.

This special issue is a first because up to this time the monthly issues of this important trade promotion vehicle were open only to products exporters. This pilot issue has received an enthusiastic response from U.S. service suppliers, and we plan to make it a regular part of our publications schedule.

The key to success in our services trade development efforts is good liaison with our customers, the business community, and the cooperation we receive from individual firms and business groups in the private sector is excellent.

The keystone to this is our 43 member Industry Sector Advisory Committee on Services, which was set up following enactment of the Trade Agreements Act of 1979. The Services ISAC is currently wrapping up a paper which profiles the problems of concern to service industries in doing business internationally.

A number of areas are cited in this profile paper where the administration and Congress have already done a lot of work but which require continuing attention, for example, taxation on expatriates, foreign corrupt practices legislation, antiboycott regulations, and export trading companies. It also points out the necessity for good trade facilitation and export financing assistance for services, and the desirability of extending the GATT codes to services where feasible.

The profile paper will be valuable to the Department of Commerce and other agencies in mapping future actions to assist services. We shall be glad to make copies available to this committee.

In addition to the ISAC, we are in close touch with individual service trade associations and with the international services committees of the U.S. Chamber of Commerce, the U.S. Council for International Business, and the Business Roundtable.

Moreover, the recently reconstituted President's Export Council has established a subcommittee on services. For insurance, a cooperative channel has been set up with the National Association of Insurance Commissioners to bring State regulatory expertise into solving international problems.

In carrying out international business, we favor a liberal and open trade stance for the United States. At the same time, we

should use whatever leverage we have to assure that U.S. firms receive equality in our commercial relations abroad.

The question of the best way to achieve equality in commercial relations is one of high priority for the administration. We are in the process of determining what our position should be on reciprocity in services, as well as in other areas. We welcome consultations with you and your staff.

Before concluding, I would like to comment on a particular provision of H.R. 5519 which we do not see as practical. Section 6 of the bill would bring subsidization and unfair pricing cases under section 301 of the Trade Act of 1974. The intent of this section, to counter the dumping and subsidization of foreign services coming into the U.S. market, is laudable.

Nevertheless, I must express my reservations on this portion of the bill because of the serious practical difficulties of administration. For most services, there are not reliable means to measure or to establish that an unfair trade practice occurred. Concepts of antidumping and countervailing duties applicable to tangible goods are not easily transferable to services.

Lastly, section 5(d), which requires every foreign person engaged in the provision of services within the United States to register with the Secretary of Commerce, may be troublesome. Registration by the foreign person would require filing a range of information including identification of parent company and each subsidiary, description of business activities, actual or expected income deriving from service activities in the United States, and so forth.

We believe such a registration requirement to be overly bureaucratic. Moreover, it could invite retaliation by trading partners or, at a minimum, provide an excuse for restrictions on U.S. firms abroad.

Foreign service firms range from small professional services and consulting firms to large industries such as transportation, banking, insurance, and telecommunications, which are customarily regulated either by the States or by Federal agencies now. Regulation of insurance, moreover, is reserved by law to the States. In the absence of clear benefit, the task of registration of these firms would be expensive and onerous to administer, particularly at a time of budgetary constraints.

I want to take this opportunity to thank this committee for its efforts to focus attention on the importance of services and in proposing means to deal with some of the difficult issues. I look forward to working with you.

This concludes my written statement. I would be pleased to answer any questions you might have. Thank you.

Mr. FLORIO. Thank you very much.

I would like to start by asking if the administration intends to submit a proposal to deal with this whole matter and, if so, when can we look forward to receiving the administration's suggested piece of legislation?

Certainly the thoughts that you have enunciated, and others from the administration have enunciated, are all deserving of very serious consideration, and this Congress will provide serious consideration. If those thoughts could be reduced to a legislative proposal

that would help us and guide us in taking into account some of the administration's concerns.

Is there a timetable that has been set yet?

Mr. MORRIS. No, there has not, although we would be happy to work with you on this particular piece of legislation, which we think is a very good piece of legislation, with the two exceptions that I noted in my opening remarks.

Mr. FLORIO. What would be the alternative to the registration system that has been provided here, just so someone can keep account?

If we don't know who it is that is operating, whether it be the insurance field, or whatever it is, how is it that someone starts to get a handle?

Have you developed an alternative method for allowing whoever it is, whether it be the Secretary of Commerce or the Trade Representative, to keep account as to what is going on?

Mr. MORRIS. Several months ago, we, along with the State Department and the Special Trade Representative, commissioned two studies, but one of the things we do not have, and I think you are alluding to it, is sufficient data to come up with the kind of information we need on trade in services before we can come up with a recommendation as to how we catalog or how we monitor what is taking place.

Of these two reports, the last one came in about the middle of February. We are in the process now of setting up a task force within the Department to analyze these reports. As soon as that is completed, and I think it will be completed around the 15th of April or the 1st of May, I would like to sit down with the committee and share with you what we have determined are the problems in data collection. Do we have sufficient data? Can we take that data, the data that we have, and then come up with a suggestion to you as to how we might solve this problem, working with the various regulatory agencies.

Mr. FLORIO. I will give you two examples, and then I would ask if you think that these studies address the type of problem that is exhibited by these examples.

One that has been called to my attention, communications equipment built here and sold to a foreign country, will be counted as a merchandise export. However, the U.S. subsidiary produces communications equipment in a foreign country and then sells it to another foreign country, the income from that sale will be counted as earnings of a foreign communications affiliate and will be attributed to the service sector.

In both cases, it is not really services that are being exported, it happens to be goods. On the one hand, the earnings would be attributed to the goods sector, and the other will be attributed to the services sector.

Mr. MORRIS. That is the type of information that we honed in on and, after compiling the information from these two studies, we will be able to give you that kind of information.

Mr. FLORIO. The other example that has been called to my attention is the basic computation of the value of services overseas. I am sure you are aware of the fact that in 1977, which is the benchmark year that apparently this information was collected from, \$69

billion was attributed to service earnings from overseas affiliates. But as it works out, apparently it is \$7 billion in net earnings, the bigger figure being something comparable to gross. Yet, when we talk about domestic exports of services, a figure of some \$29 or \$30 billion is used, and that is a gross figure.

So we are using net figures for overseas affiliates, and gross figures for domestic, and that is just not conducive to an orderly understanding of what we are talking about.

Mr. MORRIS. Along that line, in 1980 the direct export of business services was some \$36 billion, but if you take into consideration the overseas affiliates, which actually produce the product and export it overseas, you come up with a figure of \$128 billion, which is treating what you are discussing.

Mr. FLORIO. Which is the gross figure.

Mr. MORRIS. That is right.

Mr. FLORIO. When we talk about the balance of trade, my understanding is that the Department of Commerce does not use the gross figure for overseas affiliates.

Mr. MORRIS. That is correct.

Mr. FLORIO. You use the net figure.

Mr. MORRIS. That is right.

Mr. FLORIO. I think it is important to understand why one and not the other because the gross figure is used for domestic exports of services. Have you got a ready answer for this picture?

Mr. MORRIS. One of the problems with that is the interpolation in the data that we now have available from overseas affiliates to be able to come up with an accurate figure, because we do have to interpolate.

In this study that we commissioned, that we now have the results of, they look into that particular area. I have not gone through the study completely because it is so new, but I think we will be able to give you a rationale for what we are going to do to change the figures that we will begin to use.

Mr. FLORIO. I know that industry in general, the chamber of commerce, everyone that I have had any contact with, has been supportive of this legislation, or the concept of this legislation.

Mr. MORRIS. That is correct.

Mr. FLORIO. Do you anticipate any difficulties if the legislation starts to emphasize on the adequacy and accuracy of reporting information particularly from overseas affiliates?

If one is not totally satisfied with the information, a system has to be initiated to provide for greater accuracy of information. I can conceive of some not being as enthusiastic as they could be about enhanced accuracy of reporting. Do you anticipate any difficulties in that area?

Mr. MORRIS. I think I can give you a better answer for that in about 30 to 45 days.

One of the things that we are doing in this task force is figuring out exactly what information to ask from the corporations, either here or overseas, and what economic cost it would be to them to fill out these particular forms. So I would like to reserve the answer to that for about 30 days, if I might.

But you treat the real question and that is, we do not have sufficient data today in the U.S. Government on the service industries,

and that is what we in the Departments of Commerce, State, and STR are paying particular attention to because you cannot treat the problem if you don't have all the symptoms.

Mr. FLORIO. This bill gives to the Commerce Department the major responsibility for taking action to restrict foreign access to the U.S. service markets. Other bills that have been introduced provide that responsibility to the Trade Representative. I would like your thoughts on the relative merits of one agency versus another.

In large measure, this bill was prompted by the feeling that the Trade Representative, having responsibility for negotiating international matters, might have some inhibitions about acting in a way that would cut off access to the domestic markets when, in fact, he is charged with the major responsibility of negotiating with those countries.

In a sense, it is not a conflict of interest, but divergent goals that might be mutually exclusive. Hence, we came down on the side, in this legislation, of giving that primary responsibility to your Department. I wonder if you have any thoughts as to the desirability of one approach versus the other?

Mr. MORRIS. I think that the approach of placing it in Commerce is more appropriate but for a different reason. We have the capability of compiling the data which would be necessary to make the decisions that are carried out in this bill with our Bureau of Economic Analysis, and with our Foreign Commercial Service Overseas, and with our U.S. Commercial Service in the United States.

So if we are going to be the repository for the data, then it would be more logical for the licensing procedure to be in Commerce.

Mr. FLORIO. Is there any validity to the idea that the Commerce Department is clearly charged with the responsibility of being the advocate for business interests overseas as well as domestically, and that that advocacy role might not be appropriate for the Trade Representative who is in the process of trying to negotiate and, therefore, unfettered advocacy sometimes might very well be incompatible with the responsibilities of negotiations that are part of the Trade Representatives functions as well.

Mr. MORRIS. Knowing the present Trade Representative as well as I do, and knowing what an advocate for business he is, this would not be a problem even by placing it in the USTR.

Mr. FLORIO. We will hear from the Trade Representative's representative this morning.

This bill also does not require the independent agencies to follow the recommendations of the Commerce Department.

I would like, first of all, your thoughts as to whether they should be required to follow recommendations and, second, whether we should permit agencies to have more autonomy in making some of these decisions than this bill provides.

I will tell you what my thoughts are, but I will let you tell me what your thoughts are first.

Mr. MORRIS. One of the major problems with that, and our staff is in the process of giving me the answer that you just raised, is what would happen to us in the foreign market. What kind of restrictions they are going to counter with will depend on what we

put here, in this particular bill, and what kind of restrictions we place on them.

I guess, before I could give you a definitive answer, I have got to get a pretty good feel for how this restriction or procedure would be seen by our customers overseas or by our competitors when our companies were trying to penetrate their markets.

Mr. FLORIO. I am going to ask you specifically on the one point. When, under this statutory scheme, the Commerce Department makes a recommendation to the ICC on the Mexican carriers, which is a good example.

Mr. MORRIS. Yes; it is.

Mr. FLORIO. Under this proposal, as it is presently drawn, the ICC is free to act or not act. In the interest of a uniform national policy, is there any desirability in charging that the agencies, the ICC in this case, must implement the recommendation of the Commerce Department.

In this particular instance where Mexico is not permitting our trucking carriers to enter their market, a determination might be made by the Commerce Department, in the interest of reciprocity, the same approach should prevail here.

Do you feel that in the interest of uniformity, and not having the agencies formulate their own foreign policy, that we should make it mandatory that those agencies follow the recommendations of the key lead agency, whether it be the Trade Representative or the Commerce Department, or whatever agency?

Mr. MORRIS. We, as an administration, have not taken a position on that part of the bill, but personally, I would not be in favor of that.

Mr. FLORIO. Therefore, recommendations would be submitted to the independent agencies, and they may be permitted to deal with them.

Mr. MORRIS. One of the problems that you run into, particularly in insurance, is that each State really controls the insurance situation, and you would run into a real problem to try to enforce the Federal will upon the States in that particular area.

Mr. FLORIO. Let's put that aside for a moment because that is almost a secondary problem area. But in those areas like the ICC, or the FCC, where you don't have that multiple set of problems as well, is your thought the same with regard to recommendations?

Mr. MORRIS. Yes, sir, because in one place in the bill it gives the President the leeway, I believe, to take action if, in fact, we were having a problem in the area that you are discussing, not with the independent agency but with the countries involved.

Mr. FLORIO. Assuming that the recommendation that came out of the Department of Commerce or the Trade Representative would be well thought out, and then after one goes through that evaluation process makes the recommendation.

Then you say to the ICC, "We think that this is in the national interest in terms of our export opportunities for trucking into Mexico." And the ICC, for whatever reason, assuming again that they have valid reasons, decides not to recommend. Aren't we then undermining the whole thrust of this legislation by creating a whole batch of independent agencies that are setting foreign trade policy?

Mr. MORRIS. Yes; we are, I guess, but the same system prevails today in the Trade Administration Act of 1979, where upon selling products overseas, you have an agreement between Commerce, State, and Defense, et al. There are times when we take one position, and one or two of the other agencies take another position, but in almost all cases we have been able to work out an agreement. I think that that is the better course of action.

Mr. FLORIO. Let me ask one last point on the insurance type of question, likewise banking, and the legal profession. Those items, as you have pointed out, are highly regulated industries, I suspect, in other nations in the same way that they are regulated in this Nation. Are we, therefore, almost wiping away the ability to have nontariff barriers?

Obviously, the regulatory system that is in existence in this country, and I suspect in others, was not put together for the purpose of inhibiting people from coming into nations and practicing law or offering legal services. It was done for what might be perceived as valid national purposes.

Are we in a sense not going to be able to remove those barriers, without changing some national policies that may have independent validity over and above the question of export inhibitions?

It is the feeling in our Nation that insurance should be regulated at the State level, whether that is good or bad that is the law at this point. I am sure that system was not put into effect to provide an opportunity to obstruct Japanese insurance companies from coming into this Nation.

All I am suggesting is that in those highly regulated areas, I have not been convinced that those actions have been taken specifically for the purpose of causing our service industries in those areas difficulty from going to other nations. There are other independent reasons for those systems.

Have you given any thought to that concern, to how we, in this Nation, are going to have to react and modify some basic structures and basic systems for regulating these types of industries?

If we are going to call upon other nations to do the same thing, are we prepared to do those types of things, many of which will be major modifications of existing modes of regulation of some of these areas?

Mr. MORRIS. We are just now grappling with this and have been for several months. Your knowledge of this is tremendous. It is so complex that I think we are quite a way from having even a recommendation.

A case in point is Japan. An American lawyer cannot take the bar examination in Japan but, conversely, a Japanese lawyer can take a bar examination in the United States, and hundreds of them practice in the United States. We do not have a solution, or even a recommendation, it is too early in our study.

Mr. FLORIO. I would hope, though, that the difficulties inherent in that type of an area would not inhibit us from going forward in those areas that are less complex. Certainly there are a lot of areas that are not as complex.

Mr. MORRIS. That is what we would hope to do in the GATT ministerial meeting when we bring the services area into the GATT, hopefully at the November meeting. That is our plan.

Mr. FLORIO. Is it the case that if the Congress would go forward, hopefully in a reasonable and thought-out way, in enacting legislation of this sort, conceivably before November, it might induce others at the GATT meeting to think or to know that we are serious about this matter. Wouldn't that enhance the negotiating posture of the Trade Representative to call to everyone's attention that this is an item that should be placed high on the agenda, and facilitate more rapid consideration of these types of programs, rather than failure to act?

Mr. MORRIS. Possibly so.

One of the problems we are having with the calling of the Ministerial meeting in November is that most of the members of the GATT perceive that this is a meeting primarily for the United States, and primarily to have the service industries brought into the GATT. We are having difficulty along that line.

So I am not sure that if we took the other approach that it might keep us from having success at the GATT Ministerial in November.

Mr. FLORIO. I am not sure I follow the logic of that, only in the sense that if other members perceive that the United States is inclined to move unilaterally, or bilaterally in some instances, there I think the traditional wisdom is that it is probably much more in the interest of international trade to move on a multilateral basis.

Mr. MORRIS. That is right.

Mr. FLORIO. If someone perceives that there is going to be action, then there may be more inducement to move in a more multilateral way.

Mr. MORRIS. I think it would be worth a gamble and in our best interest to do that.

Mr. FLORIO. Mr. Morris, thank you very much.

The committee, in a bipartisan way, is looking forward to cooperating with your office, and we look forward to receiving any recommendations and observations that the Department is going to share with us.

Mr. MORRIS. Thank you, and we compliment you on this interest in the services field.

Mr. FLORIO. Thank you very much.

Our next witness is Mr. Geza Feketekuty, Assistant U.S. Trade Representative for Trade Development and Studies, the Office of the U.S. Trade Representative.

Welcome to the committee. As with all our witnesses, your statement will be made a part of the record in its entirety.

We are very pleased to have an individual of your prominence, acknowledged as one of the foremost experts in the field, to come and share your thoughts with us. We thank you very much for your appearance this morning.

STATEMENT OF GEZA FEKETEKUTY, ASSISTANT U.S. TRADE REPRESENTATIVE FOR POLICY DEVELOPMENT AND SERVICES, OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT

Mr. FEKETEKUTY. If I may, I would like to omit in my oral statement some of the details I have listed in my written testimony, and I would like to make some additional comments as I go along.

Mr. Chairman, I am Geza Feketekuty, Assistant U.S. Trade Representative for Services and Policy Development.

I thank you and members of this subcommittee for the opportunity to appear on behalf of Ambassador Brock to discuss U.S. trade policy in services. I would like to commend you and Mr. Dingell for the leadership you have displayed in introducing legislation that addresses some of the important issues facing services trade today.

Mr. Chairman, in my view, you have put together a very thoughtful and thought provoking bill that deserves careful consideration by the Congress and the administration.

In my testimony, I discuss the importance of trade in services for the U.S. commerce, the foreign trade barriers that impede that commerce, and the need to tackle such barriers. With your permission, I will not go into the details here.

I have accumulated a 300-page inventory of barriers to trade in services, and we have made considerable progress in analyzing those barriers. I have attached an appendix to my written testimony which provides a general analysis of the kinds of barriers that we face. I note that Mr. Morris went through some of those in some detail, so I think perhaps we could go into it later on, if you choose, but I will skip over that right now.

Mr. Chairman, in recognition of the growing importance of U.S. trade in services, Congress in its wisdom included services under various provisions of the Trade Act of 1974. In the intervening years, we have been able to greatly expand our understanding of the issues, and to gain some experience in applying the provisions of the 1974 Trade Act. In my view, your legislation takes us a step further in fully incorporating services into U.S. trade policy.

We have not been able to complete our analysis of your bill, as Mr. Morris has indicated, and to thoroughly review the provisions with our colleagues in the administration. My comments, therefore, have to be rather general. I will try to focus on the general thrust of your provisions rather than the details.

Mr. Chairman, Ambassador Brock has gone on the record, both here and abroad, on his commitment and determination to eliminate barriers to trade in services, and he is leading a major effort by the administration to improve the domestic and international framework for U.S. service exports.

A year ago, the Trade Policy Committee approved a far-reaching work program for services. It provided for the first time a comprehensive strategy for dealing with service trade issues.

The work program provides for: Full use of bilateral arrangements with other governments to resolve current trade problems brought to the Government's attention by the private sector; inclusion of services in the review of export disincentives; domestic and international preparations for future multilateral negotiations on services; review of domestic legislative provisions relating to the achievement of reciprocity for U.S. service industries, and your bill represents a great addition to this effort; and review of the adequacy of U.S. statistics on trade in services.

This work program has already resulted in significant progress in a number of important areas. With respect to current issues on trade in services, bilateral consultations have resulted in the suc-

cessful resolution of a number of trade problems involving service industries, and inroads are being made into others.

What is even more important, the publicity surrounding U.S. efforts in services and the greater political consensus that has been created on the importance of issues in these areas, has led to greater willingness on the part of foreign officials to resolve issues with individual companies before they are formally raised between governments. It seems to me that is a more important achievement.

Of course, the successes we have had in resolving individual bilateral issues have made only a modest dent into the full range of trade barriers affecting our exporters of services.

A fundamental impediment to our efforts to reduce, modify, or eliminate services trade barriers is the absence of a multilateral process for addressing key services trade issues. There presently does not exist a set of multilateral rules, principles, and procedures governing international trade in services.

Each case must, therefore, be argued as an isolated issue, and the successful resolution of issues depends entirely on an individual country's own perception of what is fair and the commercial leverage the United States can exert in an individual situation.

Agreement on some common rules and principles could substantially facilitate the resolution of issues by providing commonly accepted criteria for evaluating individual issues. Agreement on a commonly accepted framework can speed the process of sorting out who should discuss what issue with whom, when, and where.

A multilateral negotiating process would also be a far more efficient approach to issues that arise with respect to a large number of countries, or issues which are common to a number of different service industries. As a practical matter, neither the USTR, the Department of Commerce, the State Department, or any other agency has sufficient staff to tackle each of the trade barriers faced by U.S. service industries on a case-by-case basis.

We have made substantial progress in identifying the issues that should be addressed in future multilateral negotiations in services and in developing the necessary international consensus for addressing these issues. Discussion of services in the OECD has been progressing well, and has resulted in a growing recognition by other OECD countries of the importance of trade in services and the need to tackle barriers to such trade.

Considerable progress has also been made in achieving a common understanding of the kind of issues that could be addressed in future negotiations covering trade in services, though considerable progress still needs to be made.

The OECD reached a milestone last June with the adoption of a resolution by Ministers that endorsed the increased attention to the services area and established a political level commitment. This is really the first political level commitment that has been made, to a multilateral effort to establish rules in services trade.

We expect to build on that progress at the OECD Ministerial this May with a statement by Ministers that hopefully will reinforce their political commitment and give recognition to the progress that we have made in the past year in building a consensus on the issues involved.

The November GATT Ministerial provides an important opportunity to launch a work program that would prepare for future negotiations in this area. The United States has proposed that such a work program include documentation and analysis of the barriers to international services trade, including problems of market access, as well as difficulties in doing business in foreign countries once firms have been established in that country.

The work, in our view, should also include an examination of the potential applicability of GATT provisions to services, including the basic principles and negotiating procedures contained in the articles of the GATT and in the Nontariff Codes associated with the GATT.

We expect that at the conclusion of the work program, the signatories will see the need to launch a round of trade negotiations in the services area.

The OECD and GATT Ministerials, as well as the Versailles Economic Summit in June, will be major opportunities for us to broaden the political base for a serious multilateral undertaking to address trade issues in services.

The United States has provided the initiative internationally for all previous efforts in services, and I expect that role to continue for the near future. Our efforts to convince our trading partners of the seriousness of this issue will be greatly enhanced by the enactment of legislation, such as yours, that would reflect the broad political commitment of the United States to this endeavor.

We need to examine how we can strengthen the hand of the President in dealing with international trade problems in services. I have noted with great interest your questioning of the previous witness.

The examination and clarification of section 301 authority, as well as the role of the regulatory process in services trade is central to this exercise. We in USTR have been concerned about some of the ambiguities that exist in the present language of section 301, as it applies to services. It is particularly useful in the services context to clarify 301 language; denial of access should be one of the remedies available to the President when taking action under that provision.

Your bill addresses an important question regarding the role of regulatory agency decisions in trade issues. The anomaly we now face in services is that while the President needs to accelerate international efforts in this area, he has relatively few administrative responsibilities and authorities for Government regulatory actions affecting market access of foreign service firms to the United States market. Most of these powers rest with agencies such as the FCC, the ICC, and FMC, as you have noted earlier.

We must address this issue in a way that takes into account agency sovereignty but also the principles of keeping trade policy decisions in the hands of the President.

Trade officials must also inaugurate discussions with State regulatory bodies to identify mutual interests and map out strategies for seeing that these interests are fully factored into any future negotiations in this area. In this connection, I strongly commend the language contained in several sections of your bill that encourage a consultative process with the States.

We must also get our own house in order. One of our first priority tasks in this respect should be the improvement of data on our international trade in services. While official U.S. data for 1980 shows U.S. exports of services of \$30 billion, it is likely that actual exports of U.S. services in 1980 were well above that figure, and in fact could have been more than twice that number.

Our office, together with a number of other agencies, Commerce and State, as Mr. Morris has mentioned, funded two separate studies of U.S. data on international trade in services.

The first study, by Economic Consulting Services, was designed to establish an estimate of U.S. service exports by canvassing all the available private sources of data. While the data available from such alternative sources is naturally limited, there was enough data for Economic Consulting Services to conclude that U.S. exports in 1980 were probably well in excess of \$60 billion.

The second study, by Walther and Evelyn Lederer and Bob Sammons, examined the methods currently employed to measure trade in services, and they made a number of recommendations for improving our data in this area. Their recommendations have particular weight, Mr. Chairman, since these three individuals were three successive heads of the Office of Balance of Payments.

Mr. FLORIO. Was the \$60 billion figure U.S. exporting? You are not talking about foreign exporting.

Mr. FEKETEKUTY. Yes.

Mr. FLORIO. These are gross figures as opposed to net figures?

Mr. FEKETEKUTY. Yes.

I am pleased that H.R. 5519 addresses the need to improve official services trade data and I strongly endorse this provision.

I also want to commend the provisions of your bill entitled "Services Industries Development Program," which calls for a comprehensive analysis of all the factors related to our increased export competitiveness in the services sectors. We need to develop a better understanding of policies that will help our service industries remain competitive in the world market.

We must continue to be more aggressive in pursuing individual services trade problems that arise bilaterally with other countries. I think while we proceed on the course of seeking multilateral negotiations, we must not neglect the solution of current issues.

This week, Deputy U.S. Trade Representative David Macdonald is in Tokyo for a meeting with senior-level Japanese Government officials to address the market access difficulties we have with Japan. I should add here that one of the issues he is raising is the issue of lawyers that was mentioned earlier by Mr. Morris. A considerable part of his agenda includes difficulties some of our service industries are having in obtaining access to the Japanese market. You can expect similar initiatives by Ambassador Brock in his upcoming visit to Latin America, and other countries.

In short, we will not ask our service industries to hold their breath while we attempt to establish international rules in this area. A bilateral process, using existing statutory and regulatory mechanisms, will be continued, and to the extent that they can be effective, we will certainly want to use them.

I believe H.R. 5519 contains a health balance of provisions that approach our objectives domestically and internationally. One the

one hand, it calls for the acceleration of efforts to achieve international agreements under section 102 of the 1974 Trade Act. On the other hand, it establishes certain tools to deal with the problems facing U.S. service industries in the absence of any international understandings.

While I have reservations about some of the proposals, specifically the application of antidumping and countervailing duty rules to services and the requirement that foreign service firms receive a license before doing business here, I believe our unfair trade laws deserve clarification and strengthening with respect to services. Once the administration develops a position on this and other services bills pending before the Congress, we can address these issues more specifically.

Mr. Chairman, we are very actively engaged in the process of discussing these issues in the administration. In fact, we plan to have an interagency meeting Monday morning, and we will be working quite hard on these issues in the weeks ahead.

While I cannot give you an exact date for when the administration may have a position, we are certainly giving it a high priority.

Mr. FLORIO. When you talk about position, does that contemplate a legislative proposal?

Mr. FEKETEKUTY. I think that this possibility cannot be ruled out.

In conclusion, Mr. Chairman, I think we have come a long way in the last 2 years from a process of identifying specific barriers to our service industries to a detailed analysis of how we could deal with these problems.

Our task has hardly begun and we continue to encounter a number of trading partners who view this exercise with skepticism. At the same time, the American public in general and service industries in particular have come to realize how much is at stake in seeing that there are open markets abroad to such vital segments of our economy.

Your bill is a positive response to that realization. We at the U.S. Trade Representative's office look forward to working very closely with you and with your committee on this important piece of legislation. I note in this regard your own statement on the desirability of working together closely, and we certainly want to on that.

Thank you very much.

[Testimony resumes on p. 63.]

[Mr. Feketekuty's prepared statement follows:]

Statement of
Geza Feketekuty
Assistant U.S. Trade Representative
for
Policy Development and Services

Mr. Chairman:

I am Geza Feketekuty, Assistant U.S. Trade Representative for Services and Policy Development. I thank you and the members of this Subcommittee for the opportunity to appear on behalf of Ambassador Brock to discuss U.S. trade policy in services. I would like to commend you for the leadership and initiative you and Mr. Dingell have displayed in introducing legislation that addresses some of the important issues facing services trade today.

The services sector of the U.S. economy has become the primary source of economic activity, economic growth, and employment in the United States today. Approximately 65 percent of the U.S. GNP is service generated and roughly 7 of 10 American workers are employed in the services sector. In the past 10 years alone, the services sector has created almost 18 million new jobs, compared with 2.5 million jobs by the goods producing sector of the economy.

The growing importance of services to the U.S. economy is not confined to domestic economic activity. Exports of services have become a major source of export earnings and have helped to offset the deficit in U.S. merchandise trade.

We have every reason to believe that U.S. exports of services will be of growing importance to the U.S. in the years to come. Many of our service industries involved in international commerce are among the most dynamic industries

in the U.S. economy and are highly competitive in foreign markets. This, coupled with the major expansion of the world market for services in the years ahead should create a very considerable potential for U.S. exporters of services. World trade in services has grown by 17 percent a year in the past decade, compared with an average growth of 6 percent for world trade as a whole. The gross value of services trade rose from about \$80 billion in 1967 to close to \$650 billion in 1980. I expect these trends to accelerate in the years ahead.

Trade in services is of added importance to the U.S. economy because of the increasingly close link to trade in goods, particularly trade in high-technology items. Exports of computer software and exports of computers have a close relationship. Exports of construction and engineering services have a close relationship to exports of construction equipment and capital equipment. Exports of telecommunication services and telecommunications equipment are closely linked. For example, U.S. construction/engineering contracts grew by 90 percent from 1974 to 1979, while during that same period U.S. exports of construction and mining machinery were up 106 percent. A comparable situation exists in the computer field. U.S. exports of computer services rose by 50 percent from 1974 to 1979. At the same time, U.S. exports of computers and parts grew by 64 percent.

Ambassador Brock has called services the "frontier for the expansion of U.S. export sales." He has also made it clear that in order for the U.S. to realize its export potential for services, we will need to tackle the wide array of barriers which currently hamper services trade. These barriers are numerous and include both restriction on the entry of U.S. service firms into foreign markets and discriminatory treatment of U.S. service firms that have been able to enter foreign markets. (I have attached, as an appendix to my written testimony, an analysis of the kinds of barriers which limit U.S. exports of services.)

Many barriers to services trade have been well entrenched, others have been instituted more recently, reflecting a growing tendency to shield key service industries from foreign competition. The proliferation of barriers to trade in services has adversely affected our export position, and in part has contributed to the decline of the U.S. percentage share of international trade in services from approximately 20 percent in 1972 to 15 percent in 1980. While U.S. service exports have been increasing, they have not kept pace with the growth of the world market.

Ambassador Brock has gone on record both here and abroad on his commitment and determination to eliminate barriers to trade in services, and he is leading a major

effort by the Administration to improve the domestic and international framework for U.S. service exports.

A year ago the Trade Policy Committee approved a far reaching work program for services. It provided, for the first time, a comprehensive strategy for dealing with service trade issues. The work program provides for:

- full use of existing bilateral arrangements with other governments to resolve current trade problems brought to the government's attention by the private sector;
- inclusion of services in the review of export disincentives;
- domestic and international preparations for future multilateral negotiations on services;
- review of domestic legislative provisions relating to the achievement of reciprocity for U.S. service industries; and
- review of the adequacy of U.S. statistics on trade in services.

This work program has already resulted in significant progress in a number of important areas.

With respect to current trade issues in services, bilateral consultations have resulted in the successful resolution of a number of trade problems involving service industries, and inroads are being made into others. What is even more

important, the publicity surrounding U.S. efforts in services and the greater political consensus that has been created on issues in these areas, has led to a greater willingness on part of foreign officials to resolve issues before they are formally raised between governments.

Of course, the successes we have had in resolving individual bilateral issues have made only a modest dent into the full range of trade barriers affecting our exporters of services.

A fundamental impediment to our efforts to reduce, modify, or eliminate services trade barriers is the absence of a multilateral process for addressing key services trade issues. There presently does not exist a set of multilateral rules, principles, and procedures governing international trade in services.

Each case must therefore be argued as an isolated issue, and the successful resolution of issues depends entirely on an individual country's own perception of what is fair and the commercial leverage the United States can exert in an individual situation. Agreement on some common rules and principles can substantially facilitate the resolution of issues by providing a commonly accepted criteria for evaluating individual issues. Agreement on a commonly accepted framework can speed the process of sorting out who should discuss what issue with whom, when and where.

A multilateral negotiating process would also be a far more efficient approach to issues that arise with respect to a large number of countries, or issues which are common to a number of different service industries. As a practical matter, neither the USTR, the Commerce Department, or the State Department has a sufficient staff to tackle each of the trade barriers faced by U.S. service industries on a case by case basis.

We have made substantial progress in identifying the issues that should be addressed in future multilateral negotiations in services and in developing the necessary international consensus for addressing these issues. Discussion of services in the OECD has been progressing well, and has resulted in a growing recognition by the other OECD countries of the importance of trade in services and the need to tackle barriers to such trade. Considerable progress has also been made in achieving a common understanding of the kind of issues that could be addressed in future negotiations covering trade in services.

The OECD reached a milestone last June with the adoption of a resolution at the Ministerial level that endorsed the increased attention to the services area and established a political level commitment to a multilateral effort to establish rules in services trade. We expect to build on that progress at the May OECD Ministerial with a statement

by the Ministers that reinforces their political commitment and gives recognition to the progress that has been made over the past year in building a consensus on the issues in the OECD.

The November GATT Ministerial provides an important opportunity to launch a work program that would prepare for future negotiations in this area. The United States has proposed that such a work program include documentation and analysis of barriers to international services trade including problems of market access as well as difficulties in doing business in foreign countries once access has been established and an examination of the potential applicability of GATT provisions to services, including the basic principles and negotiating procedures contained in the articles of the GATT and in the non-tariff codes associated with the GATT.

We expect that at the conclusion of the work program the signatories will see the need to launch a round of trade negotiations in the services area.

The OECD and GATT Ministerials, as well as the Versailles Economic Summit in June, will be major opportunities for broadening the political base for a serious multilateral undertaking to address trade barriers in services.

The U.S. has provided the initiative internationally for all our previous efforts in services, and I expect that role to continue for the near future. Our efforts to convince

trading partners of the seriousness with which we take this issue will be greatly enhanced by the enactment of services legislation that would reflect a broad political commitment in the U.S. to this endeavor.

We also need to examine how we can strengthen the hand of the President in dealing with international trade problems in services. The examination and clarification of Section 301 authority as well as the role of the regulatory process in services trade is central to this exercise. We in USTR have been concerned about some of the ambiguities that exist in the present language of Section 301, which under present law applies to services. It is particularly useful in the services context to clarify 301 language in a way that allows the denial of access to be one of the remedies available to the President when taking action under that provision.

Your bill addresses an important question as to the role of regulatory agency decisions in the trade picture. The anomaly we now face in services is that while the President needs to accelerate international efforts in this area, he has relatively few administrative responsibilities for government regulatory actions affecting services industries. Most of these powers rest with agencies such as the FCC, the ICC and the FMA. We must address this issue in a way that takes into account agency sovereignty but also the principles of keeping trade policy decisions in the hands of the President.

Trade officials must also inaugurate discussions with state regulatory bodies to identify mutual interests and map out strategies for seeing that these interests are fully factored into any future negotiations in this area. In this connection, I strongly commend the language contained in several sections of your bill that encourages a consultative process with the states.

We must also get our own house in order. One of our priority tasks in this respect should be to improve our data on our international trade in services. While official U.S. data for 1980 shows U.S. exports of services of \$30 billion, it is likely that actual exports of U.S. services in 1980 were well above that figure, and in fact could have been more than twice that number. Our office, together with a number of other agencies, funded two separate studies of U.S. data on international trade in services. The first study, by Economic Consulting Services, was designed to establish an estimate of U.S. service exports by canvassing all the available private sources of data. While the data available from such alternative services was sketchy at best, they came to the conclusion that U.S. exports in 1980 were probably in excess of \$60 billion. The second study by Walther and Evelyn Lederer and Bob Sammons, examined the methods currently employed to measure trade of services, and they made a number of recommendations for improving our data in this area.

I am pleased that H.R. 5519 addresses the need to improve official services trade data and I strongly endorse this provision.

I also want to commend the provisions of your bill entitled "Services Industries Development Program" which calls for a comprehensive analysis of all the factors related to our increased export competitiveness in the services sectors. We need to develop a better understanding of policies that will help our services industries remain competitive in the world market.

We must continue to be more aggressive in pursuing individual services trade problems that arise bilaterally with other countries. This week Deputy U.S. Trade Representative David Macdonald is in Tokyo for a meeting with senior-level Japanese Government officials to address the market access difficulties we have with Japan. A considerable part of his agenda includes difficulties some of our service industries are having in obtaining access to the Japanese market. You can expect similar initiatives by Ambassador Brock in his upcoming visit to Latin America. In short, we will not ask our services industries to "hold their breath" while we attempt to establish international rules in this area. A bilateral process using existing statutory and regulatory mechanisms will be continued.

I believe H.R. 5519 contains a healthy balance of provisions that approach our objectives domestically and internationally. On the one hand, it calls for the acceleration of efforts to achieve international agreements under Section 102 of the 1974 Trade Act. On the other hand, it establishes certain tools to deal with the problems facing U.S. service industries in the absence of any international understandings. While I have reservations about some of the proposals, specifically the application of anti-dumping and countervailing duty rules to services and the requirement that foreign service firms receive a license before doing business here, I believe our unfair trade laws deserve clarification and strengthening with respect to services. Once the Administration develops a position on this and other services bills pending before Congress, we can address these issues more specifically.

In conclusion, Mr. Chairman, I believe we have come a long way in the last two years from a process of identifying specific barriers to some of our services industries that deal with these problems. Our task has hardly begun and we continue to encounter a number of trading partners who view this exercise with skepticism. At the same time, the American public in general and its services industries in particular have come to realize how much is at stake in seeing that there are open markets abroad to such vital segments of our economy. Your bill is a positive response to that realization. We at the U.S. Trade Representative look forward to working closely with your Committee on this important piece of legislation.

APPENDIX

Analysis of Barriers to Trade in Services

Service industries encounter many of the same kinds of trade impediments in international commerce as exporters of goods. The increasing recognition of these problems has prompted governments to begin to identify the major trade issues faced by various service industries. The U.S. government has surveyed its service industries regarding their major concerns and although this exercise has not been completed, an extensive inventory of such issues has been compiled. The following reflect some initial observations based on the current U.S. Inventory of Impediments to Trade in Services.

Service industries operating internationally encounter a wide variety of trade problems ranging from arbitrary customs practices which hinder construction companies from moving their heavy equipment from country to country or prevent accounting firms from bringing their computer tapes into a country to outright prohibitions such as laws which prevent the use of foreign computer centers for data processing or information retrieval. Some impediments to trade in services are clearly intertwined with the administration of domestic regulations, such as rules which restrict the data which can be transmitted through the telephone system or the type

of equipment that can be connected to a telephone line. Other impediments are the result of practices by national monopolies which provide intermediate services such as ticket sales, catering, warehouse services and brokerage services. In some cases, such public monopolies intentionally discriminate against foreign shipping companies, airlines, and tourist organizations and in other cases they unintentionally impede trade by providing poor or inefficient service.

A number of trade impediments reported by service industries are not caused by specific trade measures, but are the result of government policies; e.g., investment regulations that prevent service companies from establishing local agencies or support facilities; immigration laws which prohibit the firing of undesirable employees; local personnel regulations which do not allow hotels to bring in management staff for training purposes; or foreign exchange regulations which prohibit or limit repatriation of profits from foreign operations.

Industry by Industry Analysis

The following is an industry by industry review of the issues. It permits an evaluation of the unique elements or problems faced by individual industries.

Construction: In the construction industry the major trade impediment concerns the competitive subsidization of projects in developing countries, a practice which puts the companies of non-subsidizing countries at a competitive disadvantage. Other important trade barriers are created by customs practices which arbitrarily delay or restrict the importation of construction equipment into foreign countries, technical standards which are applied in a discretionary manner and government purchasing practices which exclude foreign suppliers. The ability of construction companies to operate abroad can also be adversely affected by non trade measures concerning work permits, visas and taxes.

Telecommunications: In the communications, data processing, and information industries the major trade issues are primarily the result of different regulatory responses of governments to major technological changes that have taken place in these areas. While some governments have encouraged innovation and increased competition by encouraging the application of new technology, other governments have taken steps to limit technological internationalization and competition of communication, data processing, and information services. Measures affecting international trade include discriminatory taxation of international data transmissions, restrictions on the use of foreign data processing or information services, prohibition of certain transborder data flows, restrictions on the kind of equipment that can be connected to the communications network at either the receiving or transmitting end, and restrictions on the kind of communications, data processing or information services that can be provided by commercial vendors through a public communications network.

Airline: The major trade issues in the air transport industry concern discriminatory practices affecting the use of ground facilities. In some countries governments have established ground monopolies for services such as catering, ticketing and reservation systems, and cargo and luggage handling. In some cases, these ground monopolies charge monopoly prices, provide bad service or discriminate against foreign carriers. For example, in certain instances a monopoly ground handling facility delays freight or baggage carried by foreign

air carriers, in another case a ground monopoly operating a national flight reservation system limits the opportunities of foreign carriers by listing only the flights of domestic carriers. Excess revenues earned by monopolies are frequently used to subsidize the operation of national air carriers, thus giving these carriers an unfair competitive advantage; in effect foreign carriers end up subsidizing their competition. In some countries, excess airport user charges adversely affect foreign carriers by the imposition of excessive and unnecessary costs. Other restrictions limit the ability of foreign carriers to sell charter packages or limit their use of certain airports. This list of issues does not include the traditional problems related to reciprocal access to air routes which are negotiated through bilateral aviation agreements. A whole different set of issues is raised by problems relating to this area.

Ocean Shipping: The major issues confronting ocean shipping concern distortive anticompetitive practices condoned by some countries. All countries permit their shipping companies to form associations called conferences which are permitted to set common freight rates for liner ships which operate on a regularly scheduled basis. In some countries, however, these conferences are permitted to engage in other anticompetitive practices which limit the market opportunities of foreign shipping companies. Similar anticompetitive practices limit the ability of companies operating bulk ships to compete on an equal basis in certain areas. Other anticompetitive practices in bulk and liner shipping include pooling agreements and sweetheart cargo

arrangements. Another trade issue in shipping concerns government purchasing practices which limit the extent to which government cargo can be carried in foreign flag vessels.

Insurance: Most countries limit, in one way or another, the ability of foreign non-resident insurance companies to sell insurance. Restrictive regulatory measures include large deposit requirements, burdensome administrative requirements, and outright prohibitions. These restrictions have the most distortive impact on certain types of insurance services that are basically international in character, including reinsurance, insurance brokerage services, transport insurance, and liability insurance against major risks such as oil spills, etc. The more common forms of impediments include limitations on the amount of reinsurance that can be placed abroad, restrictions on the reinsurance business that can be handled by foreign insurance brokers, compulsory use of local insurance companies for marine insurance or for insurance of government cargoes. Most forms of domestic liability insurance require an extensive local presence to service clients. For these types of insurance, the most distortive restrictions are those which limit the ability of foreign insurance companies to establish themselves locally, and to operate their local insurance entities on a non-discriminatory basis.

Films: In the motion picture industry there are three main problems related to international trade in films. The first is an import tax levied on imported films to discourage their use;

alternatively tax rebates are given to theaters for the showing of domestic films. Another concern is dubbing requirements. In some cases local laboratories are required to do dubbing work. In some cases dubbing into local language is prohibited to reduce competitiveness of foreign films. Finally, some countries impose quantitative restrictions on the number of days or number of foreign films which can be shown in domestic theaters.

Banking: The international banking industry can be divided into three main service sectors. First, financial consulting and portfolio management. In this area the primary problem in international trade is domestic restrictions to the sale of these services by foreign companies. The second area is service activities which are international in nature. These include credit card services and international bank checks. The foremost problems to trade in these services are restrictions on the right to sell or the right to use the service locally; limitation or selective prohibition reduces the attractiveness of the financial instruments. The third banking activity involves national branches of international banks which perform the "everyday" functions such as lending, checking and savings services. In this area restrictions on work permits, licenses, and regulatory frameworks impede operations. These problems are encountered both in the form of intentional restrictive practices as well as non-international practices resulting from the enforcement of local rules and regulations.

Professional Services: This area includes accounting,

legal services, management consulting and modeling. Problems in these services fall into two primary areas. First the right to establish or engage in business locally. The primary impediments are legal or regulatory requirements that work be done by domestic firms or limitations on the amount or type work foreign firms can do. The second issue involves barriers to the movement of personnel across national borders because of visa, professional licensing, work permits and profession qualification problems.

Tourism: The tourism services involve companies selling or providing travel assistance. The main restriction in this trade is local or national regulations or laws prohibiting the right to sell travel packages. As this is one of the central services the industry performs, prohibition greatly reduces a firm's international competitiveness.

General Types of Trade Barriers in Services

An industry by industry review of the issues reveals that certain discriminatory practices are common to a number of service sectors. Some of these are intentionally imposed by countries, others are the unintentional result of differences in rules between countries.

Customs: An impediment which is common to many industries involves customs practices which restrict the importation of goods essential to the performance of services. - For example

arbitrary implementation of customs regulations can limit or prohibit the importation of equipment and materials used by construction firms. They can also bar or hamper the importation of computer data tapes needed by accounting firms. Similar problems can affect service industries such as hotels, telecommunications and airlines.

Standards: The arbitrary application of standards of a general or technical nature is another source of trade problems in many service industries. In ocean shipping, for example, cargo containers come in a variety of lengths, 20, 30, and 40 feet. Some countries have standard regulations which specify that only specific sizes can be used, thereby, limiting the degree to which certain shipping companies can trade. Standards of a technical nature impact on industries utilizing sophisticated equipment in the performance of their service. In the telecommunications trade, arbitrary application of technical requirements can prevent or limit communications companies from operating in the international market by restricting the use of compatible equipment in different countries. Similar problems can arise in aviation and other service industries.

Regulations: Some of these common types of impediments are not the result of intentional discriminatory action or policy by nations. Occasionally impediments are created because the laws, regulations or policies of one country are different from that of another country. For instance, in some cases environmental standards which are different from those of other countries

unintentionally restrict the use of foreign aircraft or ships. Difference in the regulatory policies of national telecommunication authorities in some cases limit international trade in data processing and information services. Similar problems arise to varying degrees in the shipping, and aviation industries.

Subsidies: Another common trade problem arises from the application of subsidies. Trade distortions are created when subsidies are provided by some countries and not by others. In the airline industry some countries provide their national carriers with extensive subsidy support including loan guarantees, operating subsidies, tax rebates, etc. Other countries provide virtually no subsidization to their airline industry, thus making it difficult for them to compete. International construction and shipping also receive widely varying amounts of subsidy support from country to country, adversely affecting trade in those industries of other countries.

Tax: Other trade problems affecting services arise from discriminatory tax policy. In the motion picture industry, for example, many countries rebate the admission tax on locally made films, enabling theaters to charge lower prices for domestic productions than for imported films. In the insurance trade some countries charge branch offices of foreign companies higher taxes on premiums than they charge local companies.

Quantitative & Qualitative: Many countries impose

quantitative or qualitative restrictions to keep out or limit imports of foreign services. Some nations, for example, limit the number of times foreign films can be shown or the number of foreign films which can be shown in a given year. In the airline industry, some countries require foreign charter air lines to use remote airports or airports with poor facilities, while the national carrier uses the more modern airports or airports closer to the center of the city.

Government Procurement: Restrictions in government procurement laws are a concern common to many service industries. In the construction industry for example some countries select the bids of domestic firms over those of other countries even though the foreign company may have been cheaper or presented better project plans. In the shipping and aviation industries some countries require all official exports or imports to be carried by national flag lines.

Non-Trade Problems

In addition to these general categories of trade issues, there are other types of issues that are not trade measures in themselves, but measures in other policy areas that can have a major impact on trade. These measures can affect most service companies in one way or another. For example, visa policy regulations or limitations on work permits can restrict trade by limiting the ability of service companies in moving any personnel in and out of a country. Foreign exchange laws can

prohibit foreign companies from repatriating local earnings. In other cases insufficient local currency is made available to foreign companies thereby hindering their ability to operate locally. Rules limiting or prohibiting the establishment of branch offices by foreign companies also discriminate against foreign companies. Related to this issue are disruptive regulations which hamper or restrict operations of branch offices.

Broad Analytical Categories of Trade Issues in Services

In thinking through all the issues that are raised, both from the point of view of understanding them fully and from the point of view of formulating possible solutions, it is useful to categorize the issues on the basis of certain characteristics. For example, one can make a distinction between measures which restrict the movement of goods used by service companies, and measures which restrict the transfer of the service itself. Examples of restrictions on the movement of goods used by service companies include customs practices which restrict the importation of equipment used by construction companies, discriminatory standards that restrict the use of certain size containers used by shipping companies or airlines, or regulations that restrict peripheral data equipment used by foreign telecommunications companies. Examples of restrictions on the services themselves include regulations which restrict the use of copy provided by foreign advertising agencies and regulations which restrict the placement of maritime insurance with foreign

companies.

Another distinction can be made between unfair practices which limit the importation of a service produced abroad and practices which limit the sale of services performed locally by a foreign service company. Examples of measures which restrict imports of services being performed entirely abroad include limitations on the importation of advertising copy produced abroad or restrictions which prohibit the processing of data in foreign computer centers. Examples of measures which restrict the sale of locally performed services by foreign companies include measures which limit the ability of foreign construction companies to bid for projects or to perform their services. In some cases, a service is provided partially in the importing country, and partly elsewhere. Imports of such services can be limited either through restrictions placed on the sale of the service itself, or through restrictions placed on local facilities such as warehouses, ticket offices, etc.

One could also distinguish among a) practices that affect services sold by service companies, b) practices that affect the internal transfer of services within international corporations, and c) practices that affect the sale of complementary services by foreign exporters of goods. For example, certain restrictions limit the commercial sale of information by foreign data processing companies, other restrictions limit the ability of multinational companies to provide information services to subsidiaries located elsewhere, and still other restrictions

limit the ability of foreign exporters of computer equipment to provide maintenance services as part of an equipment package. Similar situations arise in other service industries as diverse as insurance and accounting.

Conclusion

It can be seen from this preliminary assessment that a wide assortment of substantive issues exist in each of the service industries. Some of these issues are unique to individual industries and will need to be addressed within a sectoral context. Other issues are of a generic character, and are common to a number of different industries; these issues could lend themselves either to industry specific solutions or more general solutions which are capable of addressing a number of individual problems. Finally, there are trade related problems which have an impact on trade in services, but which are not within the traditional purview of trade policy and, therefore, will need to be examined in the context of the appropriate policy areas.

Other observations will no doubt be made as issues are further defined and cataloged; with this additional information will come additional approaches for finding solutions. The overall result of this effort should be a generalized body of knowledge which will facilitate the establishment of a framework for achieving improved and expanded trade in services.

Mr. FLORIO. Thank you very much. I appreciate your very helpful set of comments.

I would like to ask a few questions particularly with regard to your enthusiasm for the services industry program, which includes a registration requirement. The previous was not enthusiastic about it.

First of all, you make a differentiation, I assume, between registration and licensing because you expressed some apprehension about licensing. With regard to the registration component of the services industry program, do I take it that you see that as not being a difficult portion?

Mr. FEKETEKUTY. I suspect that that would be a difficulty. I would think that would be rather draconian at this stage. Perhaps, if we had no other way, eventually one might come to that point.

Mr. FLORIO. What would be an alternative approach? Can you provide us with any thoughts as to an alternative approach versus accountability?

Mr. FEKETEKUTY. The question is, what are we trying to accomplish with this provision.

I fully agree with you that we need to examine closely how we can take effective steps to accomplish reciprocity in this area, but the question is, how can we best establish that. There are a lot of factors that have to be weighed in this process.

I would fully agree with Mr. Morris' comment to you this morning in that respect.

Mr. FLORIO. But in terms of just keeping track of who is where, the minimum thought for minimal accountability was a registration requirement. Not making an evaluation as to the merits, but just in terms of accountability, I am at a loss as to how the whole program could go forward without that minimum degree of awareness as to who is doing what, that is foreign services exporting companies in this Nation. I am not sure how we would even start the whole program in terms of reciprocity if we don't know who is doing what.

Mr. FEKETEKUTY. I think you have a provision in another section of the bill which tasks the Commerce Department with a thorough analysis of the industry and the Foreign participation in that industry. It seems to me that to the extent that our factual knowledge can be improved in this area, it can be done through that kind of a process.

I am not sure you need to go to the step of registration which raises all kinds of fears and creates unnecessary bureaucratic problems as well. We are trying to get away from redtape, and I am not sure that would help us here.

On the other hand, the thrust of your argument is a good one and that is, we ought to have a better understanding of what is going on.

Mr. FLORIO. Ambassador Brock testified a few days ago before the Telecommunications Subcommittee of this committee, and as I read the newspaper versions, at least, of what he indicated, he is opposed to the reciprocity provisions of the telecommunications bill.

Inasmuch as he is on record as supporting the overall approach of reciprocity for services, is it correct to assume that he is opposed

to an industry by industry approach, and that was what prompted his opposition to those provisions of that bill?

Mr. FEKETEKUTY. That is right.

Mr. FLORIO. My motivation in providing the lead responsibility to the Department of Commerce was that the Trade Representative's responsibilities are principally for international negotiations. We are concerned that he might be reluctant to advocate limiting access to U.S. service markets, when in fact he is going to have to deliberate with these nations on a broader base.

First of all, is there any validity to that apprehension? Then, a more broad-based question, who do you feel should have the lead responsibility?

Mr. FEKETEKUTY. You would be surprised if I agreed that there was an apprehension that was justified. I can point out that the USTR does have responsibility for implementation of section 301, which is basically the same kind of issue.

I am not sure that I want to get into a debate as to whether it should be the USTR or Commerce. I think we have to weigh the various factors that need to go into this kind of decision. It seems to me the responsibility ought to be ultimately with the President of the United States, and how it is to be carried out within the administration is something we can all discuss. One fact we need to consider is what will best accomplish the objectives of a unified trade policy.

On the other hand, how can you best utilize the talents of the various agencies and the resources they have available, and how do you take into account the division of operational responsibility among agencies.

It seems to me that we have to factor all these things into a final decision.

Mr. FLORIO. Mr. Morris indicated that he was inclined to think that Commerce was the appropriate agency because it had access to data. Is that at all persuasive to you?

Mr. FEKETEKUTY. That in itself is not, and I would certainly not want to foreclose any outcome on this.

Mr. FLORIO. I would hope that when the ultimate position paper or legislation is presented to the Congress with regard to the administration's thoughts, that question will have to be addressed because it is fundamental to everything else.

Of course, the President has the ultimate authority. But who is going to be the lead agency to carry out the President's decision on those matters would certainly be a question that will be addressed.

Mr. FEKETEKUTY. I certainly would hope so.

Mr. FLORIO. You were here and you heard the discussion about the independent agencies. What should be the responsibilities and the relationships between the lead agency, whoever it is, and the independent agencies.

The first question being whether, when the determination was made as to access of a foreign exporting to our market, the recommendation to the agency, whether it be the ICC or the FCC, or whatever, should be mandatory on the agency or a recommendation within the discretion of the independent agency.

Do you have any thoughts as to what is the more desirable approach?

Mr. FEKETEKUTY. If I first can talk about this issue a little bit before trying to give you an answer.

It seems to me that what we clearly have to do here is to establish a dividing line between the responsibilities of the President for the conduct of foreign trade policy and the responsibilities of the regulatory agencies for the domestic regulation of individual sectors. I think you basically followed, to some extent, this line of reasoning yourself in your earlier questions.

I think it is fundamental. Either we are going to have a foreign trade policy in services, or we are not. Then we have to find a way of giving our President the power and responsibilities and authorities which allow him to carry it out.

Mr. FLORIO. As soon as we get over that hurdle, the next question is whether it is compatible to have the policy enunciated by the President, and then to provide to the regulatory agencies the ability to vary from that policy.

Mr. FEKETEKUTY. In my mind, that question has to revolve around what meaning you give to section 7(c) in your bill, which amends section 301 and makes it clear that it would give the President the authority to impose fees or restrictions imposed under section 301 of the Trade Act of 1974.

I will just read the provision:

Fees or restrictions imposed under Section 301 of the Trade Act of 1974 on the supply of services of a foreign country may be in any amount or any kind determined by the President to be appropriate, including full or partial exclusion of a foreign supplier from a United States market or the imposition of any condition upon the acts of foreign suppliers to United States markets, and may be implemented through an Executive Order.

The question is, what do we mean by this provision in areas where regulatory agencies have authority? If we go and say, the President can act here, independent of what a regulatory agency does, then it seems to me I can easily live with the kind of language, which leaves it a little more open.

On the other hand, if we are going to say, this language in itself does not grant the authority to the President to act independently, then I would probably come out with a different conclusion.

Mr. FLORIO. I think the purpose of our hearing is to get unambiguous, clear language that almost has to be down to a simple declarative statement that the agency shall abide by recommendations with regard to access coming from the lead agency.

To use the example that we used earlier, the question about the Mexican carriers is a fairly easy thing to comprehend. The determination was made by the Trade Representative and the Department of Commerce that there are nontariff barriers that are inhibiting U.S. carriers from operating in Mexican markets.

It seems to me that under the concept of reciprocity that the agency in our country, which is the ICC, if the policy decision is made that reciprocity demands that there be no access to our markets, then to make that merely a recommendation that the ICC, for whatever reason, could decide not to implement, is undermining the whole thrust of what it is we are talking about.

Mr. FEKETEKUTY. Unless this is a separate avenue.

Mr. FLORIO. Then the question is, should it be a separate avenue?

Mr. FEKETEKUTY. I think these are questions that we have to examine very carefully, and we have not come up with any conclusions. Certainly, we do not have a consensus in the administration.

Mr. FLORIO. We are talking about an awful lot of obvious litigation. If this provides separate authority, and the ICC under its legislative charter takes a different position, what we are talking about is law suits, which I am not sure is in the best interest.

Mr. FEKETEKUTY. There is a question in my own mind, Mr. Chairman, of whether one section implements the other, or they have separate validity. I think that is something we would have to clarify in discussions.

Mr. FLORIO. When we clarify it, it should be written in fairly clear language as to what the result is.

Mr. FEKETEKUTY. You are absolutely right, particularly since we have found that the ambiguities in section 301 now have made it difficult in many cases to try to come up with an effective response.

Mr. FLORIO. Mr. Morris, in his presentation, talked about the November GATT meeting. He said that the perception was that the United States was trying to convene that meeting specifically to deal with service industry questions. He did not say this, but the implication was that no one else was too enthused about convening the meeting to deal with that particular problem.

Is my understanding correct, or do we have other trading partners who are enthusiastic about convening the meeting for the purpose of dealing with this problem?

Mr. FEKETEKUTY. I think we have made a very considerable degree of progress in discussions with other countries in having many of these other countries recognize their own interests in this area. I would not want to give you an excessively gloomy assessment in this respect. At the same time, there are still countries that are resisting.

To respond more specifically to your question, there are countries that are quite interested, who recognize that they have a very strong interest, and some of these countries are both in developed and developing areas of the world.

Mr. FLORIO. Can you give us a couple of examples of countries, and the particular thing that they are most interested in? I assume that if a country is exporting a particular type of service, they would be more inclined to be supportive of this type of meeting.

Mr. FEKETEKUTY. For example, it will come as no great surprise that the United Kingdom probably is more enthusiastic than other countries, given their premier position as an exporter of services. In fact, they are the only other country so far that has established a private sector committee to advise the Government on progress toward multilateral negotiations in services.

The Scandinavian countries are taking a very great interest in this. Germany certainly has been a very strong supporter.

Mr. FLORIO. One of the other areas of this committee's jurisdiction is tourism. Is there interest on the part of other nations, those that regard themselves as exporters, to address the landing fee question?

Are we the only nation that feels strongly about discriminatory landing fees that inhibit travel by our citizens?

Mr. FEKETEKUTY. In one recent case that has been a celebrated issue airlines and governments from a number of countries have joined together to deal with that issue. So I think it is undoubtedly an issue that is shared among a number of countries.

Mr. FLORIO. Given the fact that many countries have national airlines, and we, of course, do not, does that leave us isolated from the vast majority of nations?

Mr. FEKETEKUTY. Not on this issue, Mr. Chairman. There may be other issues, but not on this issue.

I should add, however, as Mr. Morris has indicated earlier, that many of the other countries have not done quite as thorough a job yet in identifying their own interests and problems. This kind of process is right now going on, and I would expect a greater and greater recognition of interest in many of these issues.

Mr. FLORIO. You heard the discussion between Mr. Morris and myself on the regulated industries—insurance, and banking—and the unique problems that are there, and the perception that the regulatory schemes that exist in many nations, including our own, were there for other public purposes that were perceived as being desirable, and that may have a secondary impact of serving as inhibiting factors in letting our industries go there.

Do you have any thoughts as to an appropriate way of addressing those regulated industries from the standpoint of not only allowing the service industries into other nations, but some way to address the legitimate national concerns that people have as to the need for extraordinary regulation of certain types of industries?

Mr. FEKETEKUTY. Absolutely, Mr. Chairman. We faced a somewhat similar problem in the Tokyo round of negotiations in seeking to address issues related to technical standards, environmental standards, safety standards.

Basically, the approach that was taken there was to say, every country has the right to set its own social objectives, and to develop its own approach to the implementation of those social objectives, while at the same time all countries should agree that they would design their programs in a manner that would not unnecessarily discriminate against foreign countries, and that they would implement their programs in a nondiscriminatory fashion.

There is a very careful balance between those two sets of objectives. The standards code sets up a process for trying to sort through the issues when individual cases arise. An international panel can be established to examine the relative merits of the social or regulatory programs, and the legitimacy of the social objectives and the rights of a country to design its own programs on one hand and, on the other hand, the extent to which the particular design of that program or the implementation of that program creates an unnecessary barrier or discrimination for foreign firms.

Mr. FLORIO. The fact is that discrimination permitted under an insurance scheme in this Nation from State to State, as long as this discrimination is equal between domestic applicants and foreign applicants, there is nothing per se wrong with that type of regulatory system.

For example, the suggestion you made before about taking the bar exam, there are some States that don't allow people from other States to take the bar exam. Certainly, there is nothing inherently

wrong with that, except the basic premise of residency in the State being a prerequisite before someone from a foreign country can take the State bar exam.

Mr. FEKETEKUTY. I think you have hit a difficult area. I cannot imagine that other countries would be prepared to give us access if the States were allowed to exclude them, even if it applies to residents of other States.

I think we have a very careful road to tread here between, obviously, the sovereignty of the States and what we can effectively negotiate.

Mr. FLORIO. For example, West Germany is a Federation, and I assume they have subdivisions. Is there any other nation that has a comparable system to ours, as Canada does, that has provincial regulatory systems over and above the national regulatory system?

Mr. FEKETEKUTY. I would make a differentiation between a State regulatory system and a State regulatory system which completely keeps out outsiders. I think you can have a very legitimate domestic regulatory program, but one that excludes outsiders raises an issue we are not going to be able to escape.

It may be that we will have to grandfather things, and in exchange other countries will impose restrictions on us that they consider equivalent.

Whatever comes out will have to come out of the process of discussion. But I don't think we should be under any illusion that other countries will drop their barriers, if we have our barriers at the State level.

Mr. FLORIO. This is a particularly difficult question in the insurance industry. I know the insurance spokesmen I have spoken to have a very great interest in trying to penetrate into overseas markets that they regard as having great economic opportunities for them.

Yet, at the same time, we can expect that the argument will be raised that the nature of our insurance regulation systems in many respects might effectively preclude foreign countries from breaking into that area when they have to go on a 50-State trek to be chartered in a national way.

Mr. FEKETEKUTY. Mr. Chairman, the Commerce Department has done a thorough analysis of the insurance regulations of all individual States. We have submitted the result of that analysis to the other countries in the OECD. I would say that the overall judgment I would make is that while there are undoubtedly some areas of difficulty, as a whole the State regulatory provisions are not restrictive. There are a few exceptions.

Mr. FLORIO. Let me ask one last question, particularly on this regulated industry segment of trade.

In the last 2 years, we have seen an awful lot of deregulation taking place in many of those regulated areas. Does this in any way complicate matters because we are now changing the system of economic decisions and regulated actions? I am just wondering if we are going to be addressing these problems, when in fact the circumstances are already modifying them rather substantially. I am thinking in particular of the ICC, railroads and trucking.

How is this new factor rolled into the computations that are going on, particularly with regard to the studies that you are doing now?

Mr. FEKETEKUTY. I would think that one issue clearly would be, how we design the appropriate reciprocity measures, recognizing that we are going to be deregulating a number of areas. We have to factor that in the equation as far as that might affect the market balance, and that is the sort of thing that we will depend on private sector advisors to tell us.

As you know, we have established private sector advisory committees. We certainly expect to follow the pattern of the multilateral trade negotiations, in working very closely with these committees. They are by far the best sources of information about the results of changes, such as deregulation, and how that affects our interests.

Mr. FLORIO. For example, I am thinking of some of my friends in the trucking industry who are not as happy as they could be over deregulation with ease of access to the markets. I can conceive of them getting very unhappy with a Japanese subsidiary being opened and getting a charter running a truck line through the area. Yet, to the degree that it is able to be done by the domestic companies in a much more easy way than it was prior to deregulation, it is going to be a very difficult thing trying to inhibit a foreign country from coming and conduct a trucking operation in this country.

Mr. FEKETEKUTY. You will have to go back to the provisions of the bill.

Mr. FLORIO. Your testimony has been very, very helpful and we appreciate your offer of assistance to the committee in terms of cooperating and helping to form legislation that will gain national support. We hope for the enactment of the law in this session.

Mr. FEKETEKUTY. Thank you very much. I admire your contribution.

Mr. FLORIO. Our next witness is Mr. Gordon Cloney, director of international service industry policy, International Division of the U.S. Chamber of Commerce.

Mr. Cloney, we welcome you to the committee. I would ask, for the record, that you introduce your colleague.

STATEMENT OF GORDON J. CLONEY II, DIRECTOR, SPECIAL POLICY DEVELOPMENT, INTERNATIONAL DIVISION, AND EXECUTIVE SECRETARY OF THE INTERNATIONAL SERVICES AND INVESTMENT SUBCOMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY JOHN GREENWALD, MEMBER, TRADE LAW TASK FORCE

Mr. CLONEY. Thank you, Mr. Chairman.

I am Gordon J. Cloney, director, special policy development in the International Division of the U.S. Chamber of Commerce.

Accompanying me this morning is Mr. John Greenwald of Verner, Liipfert, Bernhard & McPherson, a law firm in Washington, and a member of the chamber's subcommittee's trade law task force. Mr. Greenwald is somewhat of an expert in many of the

areas we are dealing with this morning, and we are very pleased that he can be with us at this time.

What I would like to do is to summarize some of the key points from the testimony, which you already have.

First, I should say that we are appearing on behalf of more than 225,000 chamber members, which includes 221,000 businesses, 1,347 trade and professional associations, and 2,777 State and local chambers of commerce and 44 American chamber of commerce overseas.

The chamber, historically, has been a supporter of liberal trade, the free flow of goods and services, and the orderly reduction of barriers to that process. Since 1974, in particular following the legislation that was passed at that time, we devoted a great deal of time and attention to problems in this area, and we were certainly among the very first to do this.

We are very pleased to see that at this time there is not only interest on the Hill, and various committees, but there is also a rather substantial, and well-prepared Government constituency for dealing with trade in services problems.

In that context, we feel that at this particular point in time, Congress, industry, and the administration must continue to carry forward a single-minded effort to bring services trade barriers to the multilateral negotiating table.

The General Agreement on Tariffs and Trade, or the GATT, must undertake a work program, as Mr. Feketekuty suggested, that will set the stage for a round of multilateral negotiations under the GATT. We feel that these should begin during the second half of this decade.

The process itself, getting it started and moving forward, is not going to be rapid or simple, and we feel that it is important to move from what has been to date a largely analytic, to a negotiating, stage. In this regard, we feel that Congress, industry, and others must give the administration and the U.S. trade negotiators a stronger mandate to enable them to bring about such negotiations.

The chamber shares, therefore, the general objectives of H.R. 5519. We agree that service sector issues must be a negotiating priority in U.S. trade policy, and that existing legislation should be clarified and strengthened to help bring this about.

We very much compliment you, Mr. Chairman, and the subcommittee, for considering legislation which would seek to do this, and also for holding hearings in a timely and prompt way because this is a matter of great current importance.

Commenting more specifically on issues that would be of interest here this morning, during 1981, the adequacy of U.S. trade legislation with regard to service trade problems was reviewed by a task force of the U.S. Chamber's Subcommittee on Services and Investment Policy. The task force was chaired by Ambassador Alan Wolff who, as you know, is the former Deputy U.S. Trade Representative, and its members were representatives of a spectrum of industry.

In general, the task force concluded that legislative coverage relating to success was incomplete and, consequently, it offered certain recommendations to remedy the deficiencies that were noted. I might add that it was not felt that radical surgery in any particular area was needed. After review by policy groups in the chamber,

these were adopted earlier this year. I would like to review the principal recommendations briefly.

The first recommendation is that reducing service trade barriers should have a priority equivalent to that given goods and commodities barrier reduction under section 102 of the Trade Act.

The second point is that barriers relating to the establishment of service firms abroad should be included within the meaning of "barriers to international trade" in section 102.

The third point is that the U.S. Trade Representative, when developing negotiating objectives, should consult with State regulatory authorities, when the service is State regulated, and consult with the service sector advisory committees that have been created as a routine matter during the process.

I should point out that the first three points I have mentioned are addressed quite adequately in section 4 of H.R. 5519.

The fourth point is that the USTR should be responsible for strengthened interagency coordination of Federal trade policy in services, including consulting with Federal regulatory agencies when developing trade policy or strategies affecting a regulated service. Agencies should, conversely, keep USTR informed of developments affecting international trade in the service they regulate when these matters arise.

The fifth recommendation is that the accountability of the Department of Commerce to carry forward a program to support trade negotiations in services, and for service trade promotion, a somewhat separate very important subject, should be set out in legislation. Section 5 of H.R. 5519 under consideration this morning does this. We do have one reservation which I will touch upon farther along.

The sixth point is that remedies to provide U.S. service industries with relief from subsidized competition and below market pricing by competitors should be provided by appropriate amendment to section 301 of the Trade Act of 1974. Section 301 should also be clarified to apply to suppliers of services. H.R. 5519, again, addresses this very adequately in sections 6 and 7.

The last recommendation is that Federal service regulating agencies should, in consultation with the USTR, be enabled to consider foreign market access together with the other criteria they now use when considering application for access to the U.S. market by suppliers of a service from a foreign country. The last section of H.R. 5519 recognizes this need, but we do have some problems with the procedures it proposes.

In general, as you can see, the recommendations or conclusions that the chamber reached coincide with many of the provisions set out in H.R. 5519.

As I mentioned, there are aspects of H.R. 5519 which we do not support. Section 5(d) and sections 8(b)(2) and 8(b)(3) would impose different reporting, disclosure, and procedural burdens on foreign service companies than are imposed upon U.S. service companies in the U.S. market. We feel these provisions, if enacted, would create in the United States the type of procedure which the chamber would like to see eliminated in foreign markets through multilateral negotiations.

U.S. provisions of this kind could have the effect of appearing to sanction objectionable discriminatory practices where they exist overseas. This, we feel, would reduce the U.S. ability to bring about negotiations in the area, and perhaps might induce other trading partners, who do not now use those practices, to begin to adopt them.

In regard to section 8(c), we feel that the best channel for U.S. service companies who wish to raise concerns about denial of foreign market access with regulatory agencies, should be direct with the agency. For trade policy coordination purposes in such cases, the USTR should be informed and have to concur beforehand if an agency were to wish to impose any restrictions on a foreign supplier as a consequence of such market access considerations.

Mr. Chairman, as I stated at onset, we are grateful for the opportunity to present these views. We feel trade in services is an area of major current importance to U.S. trade policy. We compliment you and the subcommittee for calling these hearings and for preparing H.R. 5519 as a means to help move forward and help strengthen U.S. trade policy in this area.

We will be pleased to answer any questions you may have now or in writing.

[Mr. Cloney's prepared statement follows:]

STATEMENT
on
H.R. 5519
before the
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
of the
HOUSE COMMITTEE ON ENERGY AND COMMERCE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Gordon J. Cloney II
March 11, 1982

I am Gordon J. Cloney, director, special policy development in the International Division, Chamber of Commerce of the United States, and executive secretary of the Chamber's International Services and Investment Subcommittee. Accompanying me is Mr. John Greenwald of Verner, Liipfert, Bernhard & McPherson and a member of the Subcommittee's trade law task force.

We are appearing on behalf of more than 225,000 Chamber members, which includes over 221,000 businesses, 1,347 trade and professional associations, 2,777 state and local chambers of commerce and 44 American chambers of commerce abroad.

The Chamber shares the general objective of H.R. 5519. We agree that service sector issues must be a negotiating priority in U.S. trade policy and existing legislation can be clarified and strengthened to achieve this end.

There are aspects of H.R. 5519 which we do not support. Section 5(d) and Section 8(b)(2) and (3) would impose different reporting, disclosure and procedural burdens on foreign service companies than are imposed on U.S. service companies. We feel that such provisions, if enacted, would create in the United States a type of procedure which the Chamber would like to see eliminated in foreign markets through multilateral negotiation. U.S. provisions of this kind could have the effect of appearing to sanction objectionable, discriminatory practices where they exist overseas, thus reducing U.S. ability to bring about such negotiations and perhaps inducing other trading partners who do not now use such practices to adopt them.

Also, in regard to Section 8(c), we feel that any channel for U.S. service companies who wish to raise concerns about denial of foreign market access with regulatory agencies should be direct with the agency. For trade policy coordination purposes in such cases, the USTR should be informed and have to concur beforehand if an agency were to wish to impose any restriction on a foreign supplier as a consequence of such market access considerations.

BARRIERS TO TRADE IN SERVICES

Service industries are a heterogeneous lot. They deal in invisible products such as advertising, accounting, architecture, banking, insurance, air transport, lodging, licensing, education, entertainment, leasing, franchising, investment and finance, legal services, construction, communications, data transmission, information services, shipping, motion pictures, tourism and others.

The diversity of service "products" and the widely differing processes which create them may suggest that barriers to trade in services are equally diverse and, therefore, a multilateral, multi-industry approach to the trade barriers affecting services may not be workable. However, study by industry and government confirms that different services, as varied as they are, do face common, and in many cases identical, trade barriers. These barriers amount to unfair trade practices which are used by a service importing economy to protect the country's local service industries and market.

Defining service trade barriers requires a broader conceptual framework than is the case with goods trade. Some barriers affect services provided through international trade, that is, when the service is provided from a source in the exporting country to a consumer or client located in the importing country. However, many barriers also affect trade carried out through local "establishment;" they impact on the setting up and operation of a local branch or subsidiary which may be essential to doing business in a particular service industry. Also, governments may require establishment by the foreign service firm for ease of regulation even though the firm's service could be provided on an "international trade" basis.

Major types of barriers to trade in services, both barriers to "international trade" and to "establishment" can be grouped as follows:

Interference with access to market - The provision of a service may be blocked by a country prohibiting across-the-border importation of a service and/or by denying the foreign service enterprise the right of establishment. Other less blatant protectionist practices -- for example, discriminatory licensing and registry of foreign service firms -- can have the same effect of blocking market access.

Interference with transactions and financial structure - Regulatory practices can be used to slow or block international transactions by foreign service firms. Discriminatory taxation or tariffs may create barriers. Issuance of foreign exchange can be denied both to service firms and to clients purchasing a service. Unreasonable discriminatory requirements may be applied to capital structure, ownership and financial management of establishments.

Interference with access to production inputs - Foreign service firms may be denied access to necessary equipment; visa restriction may limit access to foreign personnel or access to producer services sourced outside the importing economy may be denied. Or, access may be restricted by local content requirements, performance requirements, or employment quotas. Proprietary information, processes, or know-how used by a service firm may not be protected.

Interference with marketing - Sales by foreign service enterprises may be subject to quotas or restrictions which limit their range of commercial activity. Technical or other standards may be used to block foreign services sales. Marketing practices by foreign service firms may be curtailed or prohibited. Government procurement opportunities may be denied. Contract arrangements with local customers may be unenforceable. Monopolistic arrangements by local private sector companies may, with official cognizance, close a service market to foreign competitors or official policies may also restrict sales to national or other selected companies.

Trade-distorting government behavior - The provision of most services is heavily regulated and this offers great opportunity for interference with the trade of foreign service companies through discriminatory, protectionist behavior by regulators. Protectionist

regulatory behavior may be formal, based upon law or written regulation, or it may be achieved indirectly through pettifogging, delay or other arbitrary practices by officials. Also, government-controlled services or other government facilities that are made available to local competitors may be denied to foreign firms or made available on less favorable terms. Subsidization of national service firms can skew competition in domestic markets and in third country markets. Such subsidization may make it possible for the national firm to offer its services at prices that would otherwise be uneconomic and to sustain the operating loss for indefinite periods of time.

TOWARD ACTUAL REDUCTION IN BARRIERS TO TRADE IN SERVICES

The widespread distribution of barriers to trade in services clearly justifies the authorities to negotiate reductions in such barriers provided by the Congress in 1974, authorities that were restated and strengthened in the Trade Agreements Act of 1979. The Chamber believes that legislation that will further strengthen U.S. policy directed toward multilateral negotiation to reduce barriers to trade in services is needed. In our view, it is crucial that our trading partners know the Congressional intent remains firm.

The adequacy of U.S. trade legislation was reviewed in light of service industry problems by a task force of the U.S. Chamber's Subcommittee on Services and Investment Policy during 1981. In general, such coverage was felt to be incomplete and the task force offered recommendations to remedy the deficiencies encountered. After review by policy groups in the Chamber, these were adopted early this year. The recommendations follow:

- a) Reducing service trade barriers should have a priority equivalent to that given goods and commodities under Section 102 of the Trade Act of 1974 as amended.
- b) Barriers relating to the establishments of service firms abroad should be included within the meaning of "barriers to international trade" in Section 102.
- c) The United States Trade Representative (USTR), when developing negotiating objectives, should consult with state regulatory authorities (when the service is state regulated) and consult with the service sector advisory committees.

- d) The USTR should be responsible for strengthening interagency coordination of federal trade policy in services including consulting with federal regulatory agencies when developing trade policy or strategies affecting a regulated service and agencies should keep USTR informed of developments affecting international trade in services.
- e) The accountability of the Department of Commerce to carry forward a program of work to support trade negotiations in services and for service trade promotion should be set out in legislation.
- f) Remedies to provide U.S. service industries relief from subsidized competition and below market pricing by competitors should be provided by appropriate amendment to Section 301 of the Trade Act of 1974. Section 301 should also be clarified to apply to "suppliers" of services.
- g) Federal service regulating agencies should, in consultation with the USTR, be enabled to consider foreign market access together with the other criteria they now use when considering application for access to the U.S. market by suppliers of a service from a foreign country.

We feel that Congress, U.S. industry, and the Administration must continue a single-minded effort to bring service trade barriers to the multilateral negotiating table. The General Agreement on Tariffs and Trade (GATT) must undertake a work program that will set the stage for a round of multilateral negotiations under the GATT. During the second half of this decade such negotiations should begin the process of subjecting barriers to trade in services to rules and constraining procedures just as was done to merchandise trade barriers. The barriers to services will be no easier to subject to rules for foreign trade than were the tariff and the nontariff barriers to trade in merchandise and in commodities. Precisely because the process cannot be seen as rapid or simple, we must move from the analytic to the negotiating stage.

We are grateful for the opportunity to present these views. Trade in services is an area of great current importance and we compliment this Subcommittee and the authors of H.R. 5519 for considering means to enhance related U.S. policy.

Mr. FLORIO. Thank you very much.

Do I understand you to say that the antidumping remedies or sanctions are something that you will be supportive of?

Mr. CLONEY. That is correct. The conclusion of our task force was that there are instances in services trade where below market pricing can be practiced, and it would seem reasonable that U.S. service industries who are facing competition of that sort should have a remedy as is true in the goods area.

Mr. FLORIO. The previous witnesses seemed to say that it was extremely difficult, if not impossible, to make those determinations. Therefore, they were not supportive of the antidumping remedies, I assume, because they did not think that it was desirable. They implied that it is difficult, if not impossible, to calculate the service area as contrasted with the goods area.

Mr. CLONEY. I think you have an important distinction there between impossible and difficult. If it is impossible, it should not be in the legislation. I would not feel that this is the case, but I would not presume to be an expert. I don't think there is an expert in this particular area at this time.

The chamber feels that there should be remedial provisions where practices of this sort could be addressed. The question of how precisely they go about identifying below market pricing is never an easy thing, of course, but there are situations where this is believed to occur, and to that extent there should be a flexible remedy that would make it possible to address this practice.

If I understand correctly the sense of these provisions in your legislation, these are not of a nature that locks the Government into reaching a conclusion based on an imperfect allegation. So we believe that these provisions should be provided. If over time these are not used, that would answer the basic question.

Mr. FLORIO. The need for better information, more basic data and the definition of terms has been alluded now on a couple of occasions this morning.

First, do you acknowledge that there is a need for information? If you do, have you any thoughts as to how we can go forward to achieve that information without being awfully burdensome upon industry in terms of gaining the types of information that everyone seems to feel is needed?

Mr. CLONEY. There is a need. How to approach it depends on what sort of information we are talking about. If you are speaking in terms of statistical data, market information, and other trade information, there have been some studies that the Government has commissioned recently in the area. The data collecting procedures need to be improved. There is a Federal process for bringing this about, and we certainly urge continued progress in that direction.

We would also suggest that industries have a responsibility to help if they are particularly grieved, let us say, by discriminatory treatment abroad. There is some obligation on the part of industry individually as companies or collectively as trade groups to attempt to meet these needs when their interests are involved. So we think that this is another solution to at least part of the informational needs problem.

Also, there are some ongoing processes at present, as I believe you are aware, that have been carried out by the USTR and the

Commerce Department going back over quite a number of years where industry groups have been brought together on a sector basis to talk about information. That sort of a process could continue to be used as well.

I think a universal cataloging is a rather difficult thing to undertake, and probably very costly as well.

Mr. FLORIO. Can you explain to us what your thoughts are as to the validity for treating foreign affiliates' income differently than the actual income from domestic exporting services?

Apparently, what we discovered and what was verified this morning was that gross sales are regarded as earnings for purposes of evaluating the trade deficit, in this case the trade surplus on these services, but net sales are used in determining what contribution foreign affiliates' income is.

Mr. CLONEY. I am not sure I can completely understand the problem, but I can give you what I think would be an appropriate response.

It seems to me what we are really talking about is, two distinct concepts that the question would attempt to equate. One is balance of payment return, that is moneys that are remitted back to the United States and come in as a balance of payments figure. The other is revenues to a particular U.S. service industry which, if you took them on a fully international basis, would include revenues earned in a foreign market. Obviously, all of that does not come back into the United States and there is always going to be a difference between balance of payment flows and gross international revenues to a service sector.

For purposes of balance of payments, you want to know what comes back in. For purposes of the economic health and competitive position, of the industry involved, you need the broader revenue figure. I am not sure that those two need to be brought together. They are different statistical concepts.

Mr. FLORIO. That is very plausible.

I just wonder, if we are talking about a domestic service exporting firm, and they buy Toyota automobiles in the United States, if it is therefore—I admitting that I am stretching things—appropriate to include net or gross earnings as factors in determining the export or the balance of trade services.

The simplifications that have been made, I think, deserve a little more scrutiny. I am sure this is what the studies are dealing with that are being conducted on this point. I am sure that the gross numbers in the rather simplistic formulas that are currently being followed are really reflective of the economic reality.

Mr. CLONEY. That is correct. The balance-of-payments information as presently calculated is very general and probably understates the actual service flows both ways. There is a position, and we certainly share it, that to the extent it can be done, there should be correction, and the system should be improved.

I am not sufficiently expert to attempt to suggest how the statistical knot here should be untied, but it is true that you can have a hard time breaking out the individual industry flows from what is presently the overall service figures that appear in the balance of payments. This is a recognized problem that needs to be addressed.

Mr. FLORIO. You heard the discussion this morning on banking and insurance industries as examples of industries that are particularly difficult to regulate in terms of general reciprocity because of the complicated regulatory scheme.

I am just wondering if you have any thoughts as to how this particular area should be dealt with in a different way, or in fact should it be dealt with in a different way from those nonregulated industries that I suspect would incorporate principles of reciprocity in a less complicated fashion?

Mr. CLONEY. I would not want to talk for the banking people. I have a little more exposure to some of the principal international underwriting groups. I know in testimony before other committees here on the hill, when addressing the question of what should be the norm for determining treatment in a foreign market, it is the consensus on the underwriting side of the insurance industry that the principle of national treatment is the one that should be applied, instead of pursuing a concept of mutual reciprocity in terms of regulatory treatment.

What that means is, some principles that would call for nondiscriminatory regulatory treatment would be desirable. It is a concept that needs to be worked on. Perhaps the GATT should have a code that would outline certain principles for regulatory treatment of service industries, and these would include concepts such as transparency, so that one could find out what the rules are, due process, making available information on regulatory decisions within a prompt time, nondiscrimination in terms of the kinds of regulations or procedures that are put in place.

Mr. FLORIO. If someone doesn't act within a reasonable period of time, approval is a sanction that would be appropriate.

There are some schemes that we have that would be rather radical departure from traditional approaches in this country at this point, although that is changing, too.

Mr. CLONEY. If you are saying that there is no Federal law in insurance area that would make it easily possible to put some sort of restriction on the foreign insurance business here, this is correct.

Mr. FLORIO. Would it be your suggestion that if we really have an interest in increasing access for our insurance to overseas markets, there may be a need to restructure the way that we deal with domestic problems in this Nation?

Mr. CLONEY. I think not. I think if you had an insurance witness here, they would probably make that statement far more vehemently than I.

Within the existing system of regulations there could be a process of international consultation, reasoned dialog, and a certain sense of international obligation created that might be able to bend backward the restrictions.

Mr. FLORIO. Do you have any thoughts on the discussion we had this morning on the role of the independent agencies? I thought I heard you in your testimony talk about consulting, and consulting is always preferable with the assumption that rational people after consulting will arrive at a good conclusion. But that is not always the case, so ultimately it means that someone has to have responsibilities, someone has to have the final say.

In the interest of clarifying what that final say would be, we would not like to have legislation come forward that is ambiguous, that results in law suits rather than a definite statement of who is in charge of the question to a question of access to a market as far as the whole reciprocity question.

Do you have any thoughts on this?

Mr. CLONEY. Let me offer a couple of thoughts, and then with your permission Mr. Greenwald may have some thoughts that he could add. He is very knowledgeable in this particular area.

In general, our feeling is that regulatory agencies should be enabled to consider market access questions together with other criteria they now have and apply in making their regulatory decision. It should not be a superior criteria, it should be one of the criteria. If you had an agency with 19 criteria present, the 20th would be market access and it comes a 5 percent factor.

We believe that U.S. companies who feel they have a foreign market access grievance should be able to raise it with their regulatory agency if they wish, and the agency should consider this concern in the context I was just describing.

If the agency were to decide, based on the foreign market access concern, that they were going to deny market access to a foreign supplier, we feel that decision should be subject to an override or concurrence by the USTR acting on behalf of the President.

Certainly the USTR, should throughout the process, be informed about the developments in the particular case. In other words, there should be a close coordination.

Now, with regard to section 301, remedies that would obviously be an overriding provision.

Mr. FLORIO. I am more concerned about the opposite type of an example, where when the agency, the ICC on balance, taking into account all the criteria, determined that it was desirable for the Mexican trucker, because he can provide better rates or whatever.

In the instance where the ICC goes forward and, after having consulted, makes a decision to provide access, when in fact the foreign country denies access to our carriers. In the interest of international trade it may very well be the decision of the Trade Representative or the Commerce Department or the President, as the case may be, that it is in the big picture's interest, for example, to deny access. The ICC, evaluating all the considerations, decided that was not in the interest of its mandate, which is not primarily international trade, to deny access.

I am wondering about those countervailing policy views because one agency is not primarily concerned about international trade, whereas in this context the U.S. Trade Representative is. In that hard case where we have conflicting values and conflicting mandates, have you any thought as to how to work out those types of decisions, and which should ultimately prevail?

Mr. CLONEY. Resolving the problem depends on understanding the channel through which the complaint arose. If it arose as a regulatory question through a direct-to-the-agency channel of the type I was discussing and the agency based on the other 19 criteria, decided that the foreign market compliment is not a sufficient reason to deny the foreign suppliers U.S. access, that would be one situation—a regulatory procedure. Here the USTR would have some

input because there is a need for coordination and the issue does have a trade dimension but the regulatory agency has the ultimate decision subject to USTR concurrence if it is a decision to deny U.S. access.

If a compliance came up through a section 301 channel, the reverse would be true, but that is a different procedure—a trade procedure.

If you don't mind, I think John Greenwald might have some thoughts on this.

Mr. GREENWALD. If I could take a hypothetical. Let's say that the ICC decides, because of whatever reason of policy, it would be a good idea to let the Mexicans come in, and you don't have a Presidential override because at present the President cannot overrule that decision, the truckers still have the ability, under the way your bill is structured, to come in and raise the trade issue as a single issue under what is called the section 301 process.

So, in a sense, they are not thrown out of court simply because they lost in the ICC regulatory procedure. They can bring their appeal simply on trade grounds through a trade based complaint where the President can restrict the Mexican truckers from the United States.

I think where the chamber would come out would be to oppose any provision that would allow trade policy considerations to dominate a regulatory proceeding because a U.S. trucker, for example, could always take the trade based complaint to deal with the trade policy problem he sees.

Mr. FLORIO. Doesn't that presuppose that the trucker is being detrimented? This particular trucker has tried to gain access to the Mexican market and has been denied.

Mr. GREENWALD. Yes, but the way H.R. 5519 is structured, there are two vehicles for redress. One is in a regulatory proceeding. The second, quite independent from that, is going to the USTR, under section 301 of the Trade Act of 1974, with a petition.

So the trucker could come to the USTR with a petition to exclude as a remedy Mexican truckers from the United States until Mexico is more open to U.S. truckers. In that case, it is very clear that the President has the ultimate say.

I think the problem arises in giving the President the authority to overrule a regulatory agency in a regulatory proceedings where there are several conditions in addition to trade concerns that are relevant.

Mr. FLORIO. I would conclude by expressing my appreciation for your testimony.

I would like for you to provide us with a statement, particularly on the data processing concerns that we have. We would like the chambers' view as to how we can structure an effort to improve data accumulation without being burdensome on the industry.

We would like to see some general and perhaps even some specific suggestion as to how we can improve information gathering opportunities in a nonburdensome way. It would be helpful if you were inclined to provide it to us.

Mr. CLONEY. I will be pleased to do that, Mr. Chairman.

I might also suggest an alternate approach for the last section of the bill which has to do with the regulatory agency question. We

have some different language that might be helpful, and we would be pleased to consult with your staff on that as well.

Mr. FLORIO. Thank you.

Mr. CLONEY. Thank you, sir.

Mr. FLORIO. We appreciate your help.

Our next witness is Mr. Hugh Donaghue, vice president and assistant to the chief executive officer of Control Data Corp. He is also representing the U.S. Council for International Business.

Mr. Donaghue, we welcome you to the committee, and we appreciate your participation.

STATEMENT OF HUGH P. DONAGHUE, ON BEHALF OF U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Mr. DONAGHUE. Thank you, Mr. Chairman.

I have submitted the testimony in full.

Mr. FLORIO. Without objection, it will be made part of the record, and you may proceed in summary fashion.

Mr. DONAGHUE. I am pleased to appear before your subcommittee this morning.

My name is Hugh Donaghue, and I am vice president and assistant to the chief executive officer of Control Data Corp. I am presently serving as chairman of the U.S. Council's Committee on Transborder Data Flows, and chair the State Department's working group on transborder data flows.

I appear today for the U.S. Council for International Business, formerly known as the U.S. Council of the International Chamber. This is our first occasion to appear before the subcommittee under our new name, and we are very pleased to do so in response to your request for the views of the American international business community on an appropriate policy for governing international trade in services.

The U.S. Council is the only major business association that concentrates solely on the international marketplace. As such, we have followed the services debate since its inception, and we are pleased to have the opportunity to share with you our views regarding an appropriate trade policy for governing international trade in services.

Until recently, the service sector has been overlooked whenever an analysis of the American economy was undertaken. In large part, this indifference is due to the heterogeneous nature of the service sector, and a lack of public understanding as to the contributions of the service industries to the U.S. economic performance.

The United States has become a service sector economy, and yet U.S. Government resources devoted to the promotion and the study of the service industries are disproportionately small.

The U.S. Council is encouraged by your leadership in bringing services to the legislative docket. Too long we have ignored the very real problems which beset the international trade in services. Perhaps this is because we tend to view the service industry as an entity totally apart from manufactured goods, but we cannot overlook the important relationship between the service sector and other segments of the economy.

Services make industrial production and international trade possible. Banks, brokers, insurance carriers, shippers, and advertising agencies all facilitate the smooth flow of goods and services.

Service activities abroad also create demand for procurement of manufactured products from the United States. Services have not displaced other factors of production but have rather become an integral element in the production and distribution of goods.

Indeed, the absence of a clear and comprehensive U.S. Government strategy toward the service sector is felt most acutely in the international trade arena. By their very nature, the modern service industries are international in their capability and orientation.

The U.S. Council has been at the fore in generating consensus among our major trading partners of the need to liberalize the global trade in services. Our council played a pivotal role in getting the International Chamber of Commerce to adopt its Statement on The Liberalization of Trade in Services.

In adopting this statement the ICC, with representatives from over 56 countries, has taken an important first step in building consensus within the international business community. For the record, Mr. Chairman, copies have been submitted of the ICC's Statement on Liberalization of Trade in Services.

At the present time there exists no international framework for governing trade in services. Although work continues in various intergovernmental bodies, like the OECD and the GATT, there is cause for concern about the prospects for continued growth in trade in services.

If we do not counter the growing protectionism which characterizes this age of economic nationalism, then we can expect a decline in the U.S. share of global trade in services. In fact, the U.S. share in services has diminished from 25 percent in 1969 to 20 percent in 1976. This decline will likely accelerate if governments are free to erect trade distorting barriers which impede the international flow of services.

To give you some examples of what is happening. There is a Mexican law that prohibits the operation of U.S. motor carriers in Mexico. Norway has not licensed a foreign insurance firm in the past 4 decades.

U.S. banks have not been permitted to establish operations in some countries, such as Australia. In many other countries, such as Brazil, Canada, Egypt, El Salvador, Finland, and Greece, foreign banking operations are severely limited.

I believe you mentioned that U.S. air carriers not only have to compete with subsidized foreign carriers, but they also must contend with discriminatory landing and user fees.

In an area of growing importance in this country is the issue of transborder data flow, and by that I mean the computer transmission of information across national borders. We are witnessing a growing interest on the part of national governments and intergovernmental organizations.

A large part of the worldwide flow of information is conducted by corporations during their daily operations, and these flows are becoming vitally important to international transactions. Relatively unrestricted at present, there are an increasing number of in-

stances where barriers to international information flows have been erected by foreign governments.

Our concern regarding transborder data flows can be placed into four general categories:

First, a concern about the ability to collect and/or to have access to data stored outside the country of origin;

Second, a concern about a corporation's physical ability to transmit information, that is its ability to use national telecommunications networks on a cost-effective basis;

Third, a concern over the ability to introduce state-of-the-art technology into different countries, in computer devices and storage devices; and

Fourth, a concern over the restrictions of the content of corporate data transmissions.

The free flow of information will have far-reaching ramifications not only for U.S. companies but for the entire global trade as well.

Mr. Chairman, let me conclude by saying that we recognize the formidable obstacles, both here and abroad, which make services a most difficult issue. The service sector encompasses everything from advertising to education, to banking and insurance, to transportation and tourism. Only recently have individual service industries begun to perceive themselves as part of a larger unit.

Unlike the agricultural and industrial sectors, there has been little analytical work done on services to define the commonality of interests and develop the data base necessary to pursue international negotiations. Your bill addresses the needs in that area.

Efforts to remove existing trade barriers and to prevent the imposition of new ones will not in themselves insure that U.S. service industries maintain their competitive lead in international markets. We will not, however, be able to hold on to that lead unless these efforts are undertaken.

Thank you, Mr. Chairman, for this chance to testify on an issue of topical concern to the U.S. international business community. If I can answer any questions or supply further information, I would be delighted to do so.

[Testimony resumes on p. 106.]

[Mr. Donaghue's prepared statement follows:]

STATEMENT OF
HUGH P. DONAGHUE

ON BEHALF OF THE
UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
MARCH 11, 1982

Mr. Chairman and distinguished members, I am indeed pleased to appear before this Subcommittee on Commerce, Transportation, and Tourism. My name is Hugh Donaghue and I am Vice President and Assistant to the Chief Executive Officer of Control Data Corporation. I am presently serving as Chairman of the U.S. Council Committee in Transborder Data Flows (TBDF), and the State Department's Working Group on TBDF, a subcommittee of the Department's advisory Committee on International Investment, Technology and Development.

I appear today as a spokesman for the United States Council for International Business, formerly known as the United States Council of the International Chamber of Commerce. This is our first occasion to appear before this subcommittee under our new name, and we are particularly pleased to do so in response to your request for the views of the American international business community on an appropriate policy for governing international trade in services.

The Council is an organization composed of 250 U.S. multinational companies and is the United States national affiliate of the International Chamber of Commerce, recognized throughout the world as the spokesman of international business. The ICC works in an advisory capacity with a wide range of intergovernmental organizations such as the United Nations, the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), the Organization for Economic Development and Cooperation (OECD), and the European Community (EC).

The United States Council is the only major United States business association that concentrates solely on the international marketplace. As such, we have followed the services debate since its inception, and we are pleased to have the opportunity to share our views regarding an appropriate U.S. trade policy for governing international trade in services.

Until recently the service sector has been overlooked whenever analysis of the American economy was undertaken. In large part, this indifference was due to the heterogeneous nature of the service sector, and a lack of public understanding as to the contribution of the service industries to U.S. economic performance. Many Americans, indeed many policy-makers, have traditionally viewed services as a labor-intensive, low paying, and often menial industry. Nothing could be farther from the truth. We delude ourselves if we feel that the service sector is composed of small enterprises with little worldwide impact. Consider the following:

- . The service sector is the largest sector of the U.S. economy, and service industries generate well over half of our nation's gross domestic product.
- . Service industries employ some 54 million Americans - 75% of non-farm private sector labor. In addition, the service sector has been

- the fastest growing in the U.S. economy during the past 3 years.
- . Service sector productivity has grown twice as fast as productivity in the goods-producing sector.
 - . In 1980, services were responsible for the first overall surplus in the balance of payments position of the U.S. since 1976.
 - . The U.S. is the world's most important service economy, accounting for about 15% of world trade in services.

The United States has become a service sector economy, and yet U.S. Government resources devoted to the promotion and study of the service industries are disproportionately small. The United States Council is encouraged by Congressman Florio's leadership in bringing services to the legislative docket. Too long have we ignored the very real problems which beset the international trade in services. Perhaps this is because we have tended to view the service industries as an entity totally apart from manufactured goods. Again, this is folly. We cannot overlook the important relationship between the service sector and other segments of the economy. Services make industrial production and international trade possible. Banks, brokers, insurance carriers, shippers, and advertising agencies all facilitate the smooth flow of goods and other services.

Service activities abroad also create demand for procurement of manufactured products from the United States. Services have not displaced other factors of production but have rather become an integral element in the production and distribution of goods. Indeed, the absence of a clear and comprehensive U.S. Government strategy toward the service sector is felt most acutely in the international trade arena. By their very nature, the modern service industries are international in their capability and orientation.

The United States Council has been at the fore in generating consensus among our major trading partners of the need to liberalize the global trade in services. The Council played a pivotal role in getting the International Chamber of Commerce to adopt its Statement on the Liberalization of Trade in Services. In adopting this statement the ICC, with representatives from over 56 countries, has taken an important first step in building consensus within the international business community. For the record, Mr. Chairman, I want to submit at this time a copy of the ICC Statement on the Liberalization of Trade in Services.

We must strengthen and consolidate our efforts if we expect services to receive the attention it justifiably warrants. Thus, we commend Congressmen Florio and Dingle for their important legislative initiative. The disastrous inattention to international competition which has led to the crippling of many of our manufacturing industries must not be allowed to dissipate our lead in the services trade.

Mr. Chairman, at present there exists no international framework for governing trade in services. Although work continues in various intergovernmental bodies like the OECD and GATT, there is cause for concern about the prospects for continued growth in the services trade.

The United States Council has testified on several occasions on the need to develop a cooperative system of principles and procedures for governing international trade in services. Mr. William Walker, former Head of the U.S. Delegation to the Tokyo Round of Multilateral Trade Negotiations, testified on our behalf at another hearing, urging the GATT Ministers to begin an active work program to expand GATT authority over international trade in services. It is our hope that when the world trade ministers meet

in November at the GATT ministerial meeting, services will be prominently placed on the agenda.

If we do not counter the growing protectionism which characterizes this age of economic nationalism, then we can expect a decline in the U.S. share of the global trade in services. In fact, the U.S. share in the services trade has diminished from 25 percent in 1969 to 20 percent in 1976. This decline will likely accelerate if governments are free to erect trade-distorting barriers which impede the international flow of services.

These barriers come in many forms including: discriminatory foreign exchange restrictions, personnel restrictions, discriminatory taxation and licensing procedures, discriminatory tariff and customs procedures, and denial of entry into domestic markets.

Foreign barriers to U.S. service sector exports are numerous, and will likely grow as the importance of services becomes more apparent. For example:

- . Mexican law prohibits the operations of U.S. motor carriers in Mexico.
- . Norway has not licensed a foreign insurance firm in the past four decades.
- . U.S. banks have not been permitted to establish operations in some countries; (e.g. Australia). In many countries including Brazil, Canada, Egypt, El Salvador, Finland and Greece, foreign bank operations are severely limited.
- . U.S. air carriers not only have to compete with subsidized foreign carriers, they also must contend with discriminatory landing and user fees (e.g. England and Italy), government pressures for agencies to use national carriers, foreign exchange and remittance restrictions, and denial of access to airline reservation systems (e.g. France and Germany).

In the area of transborder data flows - that is, computer transmission of information across national borders - we are witnessing a growing interest on the part of national governments and intergovernmental organizations. A large portion of the worldwide flow of information is conducted by corporations during their daily operations, and these flows are becoming vitally important to international transactions. Relatively unrestricted at present, there are an increasing number of instances where barriers to international information flows have been erected by foreign governments.

Multinational corporations are increasingly dependent on the rapid, unrestricted flow of information to manage their worldwide operations. This is not only true in obvious cases - banks, travel agencies and transportation companies - it is also true for manufacturing industries who rely on data transmitted from abroad in order to make inventory and production decisions. In many cases, the ability of a firm to manage corporate information is equally as important as its ability to manage corporate assets. While this is particularly true for firms in the service sector, it is not limited to those firms.

Our concerns regarding transborder data flows can be placed into four general categories: (1) concerns about the ability to collect and/or have access to data stored outside the country of origin (2) concerns about a corporation's physical ability to transmit information, i.e., its ability to use national communications networks on a cost-effective basis (3) concerns over the ability to introduce state-of-the-art technology (4) concerns over the restrictions on the content of corporate data transmissions. The free flow of information will have far-reaching ramifications

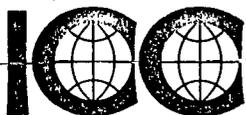
not only for U.S. companies but for the entire global trade as well.

Mr. Chairman, let me conclude by saying that we recognize the formidable obstacles, both here and abroad, which make services a most difficult issue. The service sector encompasses everything from advertising to education, to banking and insurance, to transportation and tourism. Only recently have individual service industries begun to perceive themselves as part of a larger unit. Unlike the agricultural and industrial sectors, there has been little analytical work done on services to define the commonality of interests and develop the data base necessary to pursue international negotiations.

The growing importance of U.S. service exports must be taken into account in U.S. trade policy. In the past, trade policy has focused exclusively on promoting the export of U.S. goods and on the problems of foreign goods flowing into the domestic market -- on cars, steel and shoes, for example. This perspective must now shift to include barriers confronting U.S. exports of services. We cannot drop the traditional sectors such as - steel, shoes and textiles. But we cannot afford to ignore our total future. Both are essential. Growth of services and manufactured goods, particularly high technology, go hand in hand.

Efforts to remove existing trade barriers and to prevent the imposition of new ones will not, in themselves, ensure that U.S. service industries maintain their competitive lead in international markets. We will not be able to hold on to that lead, however, unless those efforts are undertaken.

Thank you, Mr. Chairman, for this chance to testify on an issue of topical concern to the U.S. international business community. If I can answer any questions or supply further information, I would be delighted to do so.



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COMMISSION ON INTERNATIONAL TRADE POLICY AND TRADE-RELATED MATTERS

POSITION PAPER ON LIBERALISATION OF TRADE IN SERVICES

Statement adopted by the Commission. At its meeting on 30 September, the Executive Board of the ICC granted the Secretary General advance authorisation for the immediate release of this document.

1. In almost all industrial countries and in much of the developing world the service sector has significantly increased in importance over the last thirty years. By 1978 the contribution of the service sector to Gross Domestic Product was at least as important as that of the industrial sector for nearly all GATT contracting parties, and its importance as a source of employment increased accordingly. As with merchandise, a large part of this service activity does not give rise to international transactions, but in many industries international business has also greatly expanded, and now represents a considerable share in trade flows. Between 1967 and 1975 world trade in services increased by about 6 per cent per annum in real terms, and by 1975, exports of services represented over 20 per cent of total exports of goods and services for all countries.

2. Much of this service activity is not conducted purely for its own sake, but is also an essential adjunct to international trade in raw materials and manufactured goods. Though many of the impediments to a free flow of goods have been removed or significantly reduced by the rounds of multilateral negotiations under the auspices of the GATT, many service industries, including, for example, not only the more traditional areas of construction and engineering services, insurance, banking and financial services, legal and medical services and transport,

but also tourism, franchising, information and data services, leasing and consultancy, still confront severe government-imposed obstacles to their international operations. These restrictions not only reduce the efficiency of services trade, but also produce unfair competition among the service industries of different nations, and introduce cost distortions into trade flows of goods. At present these restrictions cannot always be identified or remedied. This is partly because as yet there does not exist an agreed international standard for the treatment of services, which makes it difficult to define the remedies appropriate to resolving problems of unfair competition.

3. A progressive and comprehensive liberalisation of international trade in services is now therefore timely and necessary to reduce the present distortions in such trade. Liberalisation of services trade, permitting greater access for service industries to exercise their activities in foreign markets would act as a stimulus to international trade, and would also often have an innovative effect in local service industries and thus contribute to economic development. The International Chamber of Commerce, with members in over one hundred countries, therefore urges governments of both developed and developing countries to respect and fully implement existing agreements providing for the liberalisation of services trade, and to begin the preparations necessary for mutually advantageous negotiations to reduce impediments to international trade in services on a multilateral and, wherever possible, reciprocal basis.

4. Circumstances in individual countries and existing arrangements in some service markets will influence the pace at which liberalisation can be pursued. At least initially, therefore, the liberalisation of services trade implies:

- i) that all such trade be conducted according to the principles of fair and open international competition;
- ii) that internationally traded services originating from any country be subject to equal treatment by the recipient nation (the most-favoured nation principle);

- iii) that, where they are not in the wider interests of the service user, restrictions on the ability to purchase services across national borders be reduced in as far-reaching and as reciprocal a manner as possible;
- iv) that the above principles, and any departures from these principles which are deemed necessary during the transition to a fully liberal services trade system be subject to periodic review and negotiation; and
- v) that new limitations to the international free movement of services be avoided as far as possible, and that if a situation were to arise calling for further restrictions, such restrictions be temporary and subject to prior consultation and negotiation.

5. The ICC welcomes the efforts made in a number of circles to compile information on the trade effects of restrictions on international service transactions, and on specific problems faced by individual industries. It hopes that such efforts will continue. However, the ICC believes that, in addition, it is now necessary to develop practical methods and procedures to eliminate the major impediments to international trade in services, or, at least, to greatly reduce their effect.

6. In spite of the differences in activity among the different service industries with international interests, the ICC believes that the underlying principles of liberal trade and fair competition are common to all. Thus, although the impediments to liberal trade in individual service industries might appear different in their detailed application, it is possible to classify them as departures from these underlying principles, in terms of major non-tariff barriers to trade applying to all industries. The ICC therefore puts forward such a classification, which is not exhaustive, which might profitably be used in conjunction with the data at present being compiled in several quarters to develop a framework of obstacles to trade in services which would then serve as a basis for a negotiated liberalisation of this field. (This classification is included as an annex to this document).

Recommendations for Action

7. In the long term, any effective and comprehensive liberalisation of international trade in services must be conducted on a multilateral basis. The extension of the GATT to include trade in services represents the most effective method of achieving this liberalisation for the following reasons:

- i) International trade in goods - which is already covered by the GATT - and international trade in services are governed by the same underlying economic principles, and in many cases the impediments involved - subsidy and regulatory practices, government procurement procedures, technical standards and licences - are similar. The impediments which are more specifically related to trade in services can still be regarded as non-tariff barriers, and should be tackled in a similar manner to the non-tariff barriers discussed during the Tokyo Round.
- ii) The application of the most-favoured nation principle espoused in the GATT ensures that the benefits from liberalisation will accrue to all nations.

8. The ICC therefore calls upon all governments to accept that the principles espoused in the GATT system for the regulation of world trade be extended to cover trade in services, and urges them to begin preparations towards multilateral negotiations to reduce existing impediments to international trade in services and to create an accepted framework for the conduct of liberal trade in services. There have been proposals for a Special Session of the GATT Contracting Parties in 1982, at which trade in services would be one of the items for discussion, and this initiative is welcomed by the ICC. The classification of non-tariff barriers to trade in services set out in the annex demonstrates that many of the obstacles to services trade are similar in principle for many industries (eg. the existence of subsidies which distort competition, administrative impediments to operation, etc.) and it is therefore possible for the principles of a liberal framework for services trade to be negotiated on an overall multilateral basis, in a similar fashion to the negotiation of the principles espoused in the Codes on non-tariff barriers agreed during the Tokyo Round. This is but a first stage, however.

and does not imply that the application in practice of the regulatory measures required for liberalisation will be necessarily of an across-the-board character, as in certain instances the regulation resulting from negotiated agreement on the basic principles for liberalisation will have to be tailored to meet the specific operating characteristics of the different industries involved.

9. However, the acceptance that the principles espoused in the GATT should be extended to cover trade in services does not imply the exclusion of other fora from this process of liberalisation in the short-term. Important work for trade in services has already been undertaken in other circles, notably the Declaration and Decisions on International Investment and Multinational Enterprises adopted by the Governments of the OECD countries in 1976, and the contribution of agreements in such fora to the liberalisation of trade in services should not be underestimated or ignored. The ICC welcomes the initiative taken in the meeting of the Ministerial Council of the OECD of June 1981, where

"Ministers expressed the wish that the ongoing OECD activities in the field of services be carried forward expeditiously. They agreed that, in the light of the results of these activities, efforts should be undertaken to examine ways and means for reducing or eliminating identified problems and to improve international co-operation in this area".

In addition, in the absence of overall multilateral agreements, a large measure of liberalisation could also be achieved in the shorter term through a series of industry-specific negotiations. Certain governments are already committed to a liberalisation of trade in services, and the ICC encourages them to enter and expand negotiations with other governments. In addition, certain industries are already regulated by inter-governmental or inter-industry agreement, and initial liberalisation measures might be negotiated using the existing regulatory institutions.

10. The ICC fully recognises that an overall multilateral agreement will require a lengthy period of comprehensive preparation. Therefore, it recommends two specific issues which might be tackled immediately to produce solutions in the near future as a first stage in the progressive liberalisation of services trade. These recommendations do

not imply, however, that other obstacles to services trade are not of equal importance to certain industries, and the ICC hopes that, wherever possible, advances in the liberalisation process might also be made in these other areas at the same time.

i) Government procurement

An Agreement on Government Procurement was negotiated during the Tokyo Round of Multilateral Trade Negotiations under the auspices of the GATT. The Agreement, which entered into force on 1 January 1981, contains detailed rules on the way in which tenders for government purchasing contracts should be invited and awarded. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers, or discriminate among foreign products or suppliers.

At present the Agreement applies primarily to trade in goods, as services are only included to the extent that they are incidental to the supply of products and cost less than the products themselves. However, the Agreement specifically mentions the possibility of extending its coverage to services contracts at an early date.

The ICC therefore urges all governments to respect and apply fully the existing Agreement, and calls upon contracting parties concerned to prepare negotiations, taking into account the experience of the present Agreement, with a view to including services procurement in the Agreement, and to make the list of government entities which would be covered by the Agreement as wide as possible.

ii) Legal establishment and access to markets

The rights of legal establishment and of access to foreign markets concern firms trading in goods and services alike, but are of particular importance to many service industries, owing to the nature of their business. As a first step in liberalising services trade, therefore, it is important that governments extend national treatment for establishment and market access to all firms wishing to establish an operation within their national boundaries. This would best be achieved by means of an agreement including provisions that

1. Where the applicant firm meets the local legal requirements for the establishment of a company in the host country (reasonable allowance being made for the different legal forms under which enterprises may exist), such establishment should be freely granted.
2. The legal requirements for establishment apply equally to domestic and foreign applicants.
3. Information on such legal requirements be freely available.
4. The application procedures be implemented in a non-prejudicial manner.
5. Access to the domestic market for any firm should not be impeded by the imposition of discriminatory restrictions on the size of the firm or the level of sales.

The ICC therefore urges all governments to take up this issue and enter into negotiations to develop an international agreement based upon the principles outlined above, to permit the unimpeded establishment and participation of international service industries wishing to operate internationally.

A GLOBAL FRAMEWORK OF IMPEDIMENTS TO TRADE IN SERVICES

The following classification of barriers to services trade is based on the premise that, notwithstanding the differences in activity among the different service industries covered, the underlying principles of liberal trade and fair competition are common to all. It attempts to draw together data on obstacles to trade in services experienced in specific industries and to classify it in terms of these underlying economic principles. This classification then offers a manageable framework of non-tariff barriers to trade which can be used as a model for a negotiated liberalisation to international trade in services.

1. Rights of Establishment and Access to Markets

Establishment in third countries is, in general, more important for many service industries who wish to conduct international transactions than it is for manufacturing industries, as in many cases the provision of the service relies on the existence of a local office or outlet.

However, an additional factor in the successful establishment of a local office is the ability of a firm to gain realistic access to the market in which it wishes to operate. For transport services, for instance, the ability of a vessel to put down and pick up passengers or freight in a particular area is of greater importance when considering market access than is the establishment of a local agency. Any discussion of establishment questions, therefore, should cover equally both establishment legislation - "the bricks and mortar" - and freedom of access to markets. Restrictions on establishment and market access for service industries appear to be some of the most important deterrents to international trade in services for all industries.

Impediments in this category arise from the complete or partial denial of access to a market as a result of:

- 1) prohibition upon the establishment of local operations or upon the importation of a service by a foreign firm.
- 2) the operation of a system of licences, required by foreign firms before establishment or import of the services is permitted, which act as a quota upon the number or type of foreign firms granted access.

- 3) legislation which obliges foreign firms to operate under significantly different conditions to domestic firms, thus increasing the cost or decreasing the attractiveness of the service offered in a discriminatory manner.

Examples

- Under section 1
above
- a) legal prohibition of the establishment of firms.
 - b) the prohibition upon foreign investment in an existing domestic industry.
 - c) cabotage, i.e. the reservation of a country's domestic operations to its national flag carriers.
 - d) limitations on the freedom to pick up or put down passengers/freight in the country concerned, or to proceed through national territory.
 - e) the prohibition or limitation upon the activities of brokers of services to conduct their business on international markets.
- Under section 2
above
- a) procedural impediments in the granting of the licence.
 - b) the requirement that the foreign firm be able to offer a service materially different from those offered by domestic firms before the licence is granted.
 - c) licences may only cover limited activities, and those activities not included in the licence may not be practised.
 - d) non-recognition of professional licences to practice awarded in other countries.
- Under section 3
above
- a) the imposition of cargo-sharing or cargo-allocating agreements, either in national legislation or through the forced use of certain contract clauses.

- b) limitations in foreign equity holdings or on the amount of capital required for initial investment.
- c) discriminatory restrictions upon the level of sales of a foreign firm.
- d) discriminatory restrictions upon the level of advertising of a foreign firm.

2. Government Economic Policy and Regulation

Although legislation is necessary to regulate certain aspects of commerce, and to further government macro-economic policies, such legislation often results in practice in barriers to international trade, as its application to domestic and to foreign firms is, in many cases, inconsistent. The legislative measures included in this category are diverse, but when brought together, they represent one of the most common and most effective impediments to international trade in services, in both the industrialised and the developing nations.

Impediments in this category arise where local government economic policy measures discriminate between the operations of domestic and foreign firms, thus providing significantly different operating conditions for the two competing groups.

- 1) national treatment is not extended to foreign firms.
- 2) government legislation effectively impedes the export of the service.
- 3) the application in practice of legislation in the host country is undertaken in an effectively discriminatory manner.

Examples

- Under 1 above
- a) Foreign firms often face different tax regimes to those faced by domestic firms.
 - i) Corporation tax is levied at a higher level on foreign firms than on domestic ones.
 - ii) The purchase tax on the service can be set off against the buyer's own corporation tax

when domestic services are purchased, but this practice is not extended to the services of foreign firms.

- iii) In countries which have no bilateral agreements, or which do not recognise the OECD Convention on Income and Capital, the problem of double taxation arises.
- b) Credit facilities extended by governments are often unavailable to foreign suppliers, and private credit sources are often limited in their provision.
- c) Exchange control regulations which hamper the repatriation of profits or the movement of remittances, and influence the location of the service transaction.
- d) Discriminatory regulations between foreign and domestic firms with regard to contracts, documents required, etc.

Under 2 above

- a) taxation practices applying to citizens working abroad act as a disincentive to trade and personnel movement.
- b) the extraterritorial application of domestic laws brings the service industry into conflict with the laws of foreign governments when conducting international operations.

Under 3 above

- a) The lack of easily obtainable information on local government regulations and policy measures.
- b) Problems in gaining access to officials, courts, etc., to file disputes or resolve problems, or the existence of biased procedures once access has been obtained.
- c) The use of technical regulations, standards, certification systems on safety, health and

maning levels, etc. to discriminate against foreign firms.

3. Direct Government Intervention

In addition to their legislative role in providing a stable legal framework for commerce and in furthering macro-economic policy, governments in many cases directly intervene in the functioning of the market mechanism to influence market-based decisions, and to further regional, social and industrial policies.

Impediments in this category arise where the competitive position of firms operating in a market is distorted by direct government micro-economic intervention. Such intervention may be by the government itself, by government agencies, or government-controlled corporations.

Such impediments can be split into two categories:

- 1) government intervention which attempts to favour or improve the competitive position of certain individual firms.
- 2) intervention which specifically hampers the competitive conditions of foreign firms.

Examples

- | | |
|---------------|---|
| Under 1 above | <ol style="list-style-type: none"> a) Government grant and loan facilities offered to industry to further regional and social policies which are not available to foreign firms. b) Requirements that ancilliary activities be provided by local firms and sales organisations. c) The selling below cost of competitive services by local government-owned firms. |
| Under 2 above | <ol style="list-style-type: none"> a) Restrictions on contractual freedom and the setting of prices and charges. b) Restrictions or delays in the importation of or access to equipment and utilities necessary for the operation of the service activity. |

- c) Requirement that factors of production (land and equipment) be leased rather than pursued by foreign firms.
- d) Restrictions on the employment of expatriate staff required for the operation of a local office.

4. Government Procurement

A further source of government-imposed barriers to trade in services arises in the field of government procurement, in which the government participates directly in the market as a purchaser of services or in the tendering of government contracts.

Impediments in this category arise where governments discriminate between domestic and foreign firms when undertaking their own activity.

- 1) government procurement procedures limit government purchases or the tendering of government contracts to local firms.
- 2) there is an absence of explicit procedures and regulations concerning government procurement, or existing regulations concerning procurement are not applied, allowing discretion and discrimination in procurement issues.

Examples

Under 1 above

- a) Specific regulations limit purchases by government departments, local governments and state-owned corporations to certain designated firms.
- b) Government tenders are only offered to specific firms.
- c) Contract clauses effectively control the allocation of the services (the use of FOB purchase and CIF sale clauses to regulate shipping).

Under 2 above

- a) The lack of specific regulations allows an element of preference to be introduced in awarding government contracts.
- b) Tenders are not openly announced, which restricts the ability of all firms to compete.
- c) The results of tendering are not published to verify the final award of the contract.

Mr. FLORIO. Thank you very much. We appreciate your testimony this morning.

I note that your organization is on record as opposing what it speaks of as retaliatory reciprocity. I am just not sure what that means because reciprocity involves one country's reaction to the market access situation in another country, and it would almost appear to be redundant.

Reciprocity is almost retaliating, in a sense, by definition. I am just wondering how you define this term.

Mr. DONAGHUE. One of the things that we are concerned about and have urged caution in adopting trade policies based on the concept of reciprocity, is the fact that reciprocity could be a two-way sword.

The companies that we represent are all multinational and are all involved in international trade. For example, we may want reciprocity in the case of Japan. As a matter of fact, Japan seems to be the country where our trade relations have got to the point where reciprocity has arisen as a large issue.

However, do we want it with the European Community, where we have had a trade surplus nearly every year since the European Community was formed in 1958, and where last year we had a \$14 billion surplus. Do we want reciprocity to come into play when we are talking about the less developed countries where we have the trade advantage?

Mr. FLORIO. Don't you have to go to the point of the actual reciprocal practice that you are trying to inhibit. To state that you want reciprocity for one nation, or one area, and not another, really almost begs the question as to what that entails.

If there are offensive practices that are being performed, regardless of where they are being performed, that are inhibiting access to a market, the answer is that there should be uniform policies to induce the removal of those practices, regardless of where they are.

Mr. DONAGHUE. You admitted yourself, Mr. Chairman, that many State practices are very inhibiting to a number of international companies who would like to do business but are prohibited because of State laws or regulations. So it is just not a clear-cut issue.

Mr. FLORIO. I appreciate that it is not a clear-cut issue, but using the example that you gave just means that we are going to have to pay the price. We certainly cannot demand access to a market overseas if we, in fact, have a system, whatever the system is, that inhibits their ability to break into our markets. The essence of reciprocity is that we will pay a price for this system.

Mr. DONAGHUE. And it will be a big price.

Mr. FLORIO. What is the alternative?

Mr. DONAGHUE. The alternative is to use other trade mechanisms such as the GATT, and such as better use of the USTR. Let me give you an example, and I am talking now not as a member of the U.S. Council but for Control Data.

Control Data probably was the first company that tried to use the concept of reciprocity. We had been trying for 5 years to offer data services to Japan, but we ran up against barrier after barrier in our dealings with the Japanese Government to the point where

we felt that we had really gotten the runaround. We appealed to several different parts of our own Government for assistance.

At about the time that we were discussing this with our Government, the Japanese Government itself applied to the FCC to offer a service called Venus, which in essence would provide a similar service that we were being denied in Japan.

We protested that action on the basis of reciprocity. It was probably the first time that reciprocity was introduced, except in a few other minor areas, here in the United States. The FCC decided that it could not base its decision on reciprocity and, indeed, allowed the Japanese to offer this service.

We had been working with the USTR and with the Department of Commerce. We redoubled our efforts, and the USTR, through the normal trade mechanism, actually came up with the final solution.

The Japanese finally gave up on their technical restrictions, and then allowed us our full offering of data services which had been prohibited under a previous ruling. That came about by using the trade mechanisms that are already in place, and getting the support of our Government. So what we were really looking for was the support of our Government to take on an issue, and I think the USTR deserves a great deal of credit for solving it.

Reflecting upon it now, I don't know whether we would have been able to resolve that if, indeed, the FCC had initiated a reciprocity solution. I cannot say that it would not have worked, but certainly it is apparent to me, upon reflection, that we took the better course of action.

Mr. FLORIO. Isn't that just a glorified retaliatory reciprocity approach?

I assume that whatever the Trade Representative conveyed to the Japanese had something to do with an ultimate sanction.

Mr. DONAGHUE. It was done in an overall trade environment, but using the mechanisms that are available today. If that is retaliatory, if that is reciprocity, then the USTR certainly did not need any legislation that made it mandatory.

Mr. FLORIO. Are you of the opinion that there are sufficient institutional mechanisms in place now so that the legislation is not needed?

Mr. DONAGHUE. Probably not across the board, but hopefully through introducing the services sector into the GATT, and maybe defining some new mechanisms, by dealing with the international business community, as we have done through the International Chamber of Commerce, and getting concurrence of the international business community.

This is another thing we never had before. To talk about services to Europeans 2 years ago, was meaningless. They did not want to talk to you about it. Now there is a better understanding, at least, of how important services are not only here in the United States but to the growing economies in Europe.

Mr. FLORIO. Do you attribute any of that new awareness to the fact that there is discussion of legislative action, and a new sense of awareness of the belief for some degree of equity in terms of access to markets that might be prompting people to be more aware of the price that someone would pay?

Mr. DONAGHUE. Probably so. I would certainly say that the reciprocity issue got the attention of the Japanese very quickly over the last few weeks.

Mr. FLORIO. Do you think private parties that have affected domestic businesses or the Government should have the responsibility for initiating actions which limit foreign access to U.S. markets?

Mr. DONAGHUE. My personal belief, again, is that it ought to be initiated by the private sector. They are the first ones to recognize it, but they ought to have someone that they can go to who is going to be willing to listen. If it is dealing with other governments, then naturally it has to be a governmental function to deal directly with other governments.

Mr. FLORIO. Do you identify with the previous speaker who said that in the instance of not getting satisfaction at the FCC or ICC in terms of equal treatment, the 301 approach would be appropriate, and that your approach would be to exhaust your remedies at the independent agency.

Then, if one did not prevail on the reciprocity concern, the 301 approach might be successful to induce the administration to go forward and to make some determinations as to the fairness of the treatment, to the point where the trade representative or the Department of Commerce, whatever the case may be, then could intervene in the administrative proceeding, or would you just exclude them from even dealing with the administrative proceeding?

In your instance, you talked about how everything worked out. Let's assume for a moment that things didn't work out and the trade representative went to the Japanese, and the Japanese just continued to pursue their policy of denying your company access to their market.

What would you suggest would be an approach beyond that, beyond just negotiations and consultation and hoping that someone changes their ways.

Mr. DONAGHUE. To be quite honest, we did take a different business approach along the very lines. This particular offering was one that involved offering data services from the United States to Japan, but the computers were here in Cleveland, Ohio.

What we did, as a matter of sound business practice, because we saw a very large data services market, once we had won the right to do business through MITI and, the right of access through the local public telephone network, through NTT, in Japan, we then worked with the KDD, the international record carrier, in order to transmit our data back here to the United States, process it, and return the results.

When it did not appear at one point in time, about 4 years after the negotiations began, that we were going to satisfy ourselves on that basis, we then made a move to put a very large data service activity in Japan as a business decision.

Mr. FLORIO. In what form?

Mr. DONAGHUE. By taking a computer and setting up a service bureau in in Tokyo.

Mr. FLORIO. What form of structure?

Mr. DONAGHUE. A wholly owned subsidiary.

Mr. FLORIO. Were there any fees imposed upon the nature of FCC?

Mr. DONAGHUE. No; because that was an agreement negotiated back in the Ha Hone Conference that would allow direct investment there in 1976.

As I said, it was probably not a very satisfactory solution, but it was one that, because of business reasons, we took. I don't think, at the same time, that this was the influencing factor on the Japanese in eventually allowing us to offer similar services out of Cleveland, and we do both at the moment.

Mr. FLORIO. Thank you very much. We appreciate your testimony.

Our last witness is Mr. Richard Rivers of the firm of Akin, Gump, Strauss, Hauer & Feld, representing the Coalition of Service Industries.

We appreciate your participation, Mr. Rivers. Your statement will be made part of the record in its entirety, and you may feel free to proceed in summary fashion.

STATEMENT OF RICHARD RIVERS, COUNSEL, COALITION OF SERVICE INDUSTRIES

Mr. RIVERS. Thank you, Mr. Chairman. I was going to suggest that in view of the testimony that you have already heard and the lateness of the morning, that I would speak informally and briefly.

I am Richard Rivers, and I am a partner in the law firm of Akin, Gump, Strauss, Hauer & Feld. I am, in addition, counsel to an organization which is now in the process of being organized, an organization which will be known as the Coalition of Service Industries.

Mr. FLORIO. Are the the banking industry and the insurance industry represented in that coalition?

Mr. RIVERS. I was about to say that the service industry issue has outdistanced the District of Columbia recorder of deeds where our articles of incorporation are. So we do not yet have a formal incorporation.

The organization will include all major sectors of U.S. service industries, including major banks, major insurance companies, all the way through data processing, tourism, travel, engineering/construction, a very representative group of major companies doing business in the United States and abroad, including banking and insurance, to answer your question.

It is, however, because the group is now being organized that I cannot tell you that I am testifying in a formal capacity as a representative of CSI. It would be unfair to the members of that group who will meet next week in New York and adopt their policy positions.

Having said that, however, I can tell you, knowing these people as I do, that they would warmly endorse these hearings and look with a good deal of favor on H.R. 5519, and many of the other proposals which have been introduced in the Congress.

We agree that this is a very important subject, and one that has been neglected too long. It deserves a great deal more attention in the U.S. Government, both in the executive branch and in Congress, as well as in international discussions, including the OECD, and the General Agreement on Tariffs and Trade. It is an important subject. It is an important part of the U.S. economy, a growing

and competitive part of the U.S. economy. It is an important part of the global economy and the global trading system as well.

There are some fundamental problems. We do need more data. We do need better ways of thinking about services and defining our terms. Many of these are issues that you have raised here this morning in the hearings. Then, there are some difficult questions that are going to require a great deal of care as we proceed. These, too, have been discussed in the testimony you heard this morning, such questions as traditional notions of the GATT and the traditional U.S. trade law.

For example, the imposition of antidumping duties or countervailing duties: whether these principles really have application in the area of services, I cannot tell you this morning what my own views are, let alone what the position of this group would be.

I think it is a subject that is certainly worthy of very careful consideration and public debate. There certainly exists the possibility that subsidized or unfairly benefited service companies could be doing business in the United States at some point in the future and could pose the kinds of problems that one reads about so often in the area of trade in goods.

At the present time, however, we are not in a position to say that a particular application of antidumping or countervailing duty provisions of U.S. law ought to be simply transferred over into the area of services.

Similarly, we have strong reservations about what I would characterize as "tit-for-tat" sectoral reciprocity. Regarding the term reciprocity, I think one should take a step back and take a long, hard look at exactly what it is we are talking about and define our terms.

We have had in this country, since 1934, at the time of Cordell Hull, the reciprocal trade agreements program. In that sense, there is nothing new with the notion of reciprocity. The GATT itself contains a notion, which is well established in international law and the GATT, which is known as the balance of concessions.

I believe that the notion of parity, that there is equal access among the major industrialized trading countries to one another's markets, in the aggregate, is not a protectionist notion. It is in fact bedrock and the foundation of a liberal trading system. However, there are grave difficulties when you undertake to try and transfer notions of reciprocity into alternative contexts.

It is one thing to speak of the balance of concessions or reciprocity or reciprocal trade agreements programs in the broadest aggregate sense, that is equity and fairness, and we are all in favor of that.

However, when you start speaking in terms of reciprocity in terms of specific products, or specific sectors, as appealing as it may be at the moment to a particular type of manufacturer or provider of services, we are deeply concerned that it is fraught with a great deal of difficulty, not only here in the United States in terms of our own trade policy but for the trading system as a whole. So we would caution against what I can only characterize as specific "tit-for-tat" reciprocity in a particular sector, be it manufacturing or services.

The problems of regulatory agencies that you have inquired about this morning, this I regard as probably one of the most complicated and difficult areas that we are going to have to address in this.

Congress has created independent regulatory agencies for various historical purposes concerning particular sectors, including communications, securities and exchange, interstate trucking, but they were not traditionally created for the purpose of regulating access to U.S. markets. At the time that these agencies were typically created no one was thinking in terms of foreign providers of services doing business in the United States.

However, my own view is that we need to be very, very careful, and there needs to be a centralized focus for the conduct of trade policy in the United States. In connection with what Mr. Greenwald and Mr. Cloney of the chamber said, I would tend to agree.

However, my view is that the independent regulatory agencies should be principally concerned with the traditional agenda for those agencies, and that the question of access to particular sectors of the U.S. economy should be specifically reserved for some central agency and should be part and parcel of a comprehensive national trade policy. The link with independent regulatory agencies should be a very slight one, and not hard and fast in all matters.

These are just touching upon a few of the issues that I heard here this morning in these very interesting hearings. Having spoken long enough, I will wind up my remarks and invite any questions that I might be able to respond to.

[Mr. Rivers' prepared statement follows:]

TESTIMONY OF RICHARD R. RIVERS
BEFORE THE COMMERCE, TRANSPORTATION AND
TOURISM SUBCOMMITTEE OF THE HOUSE
ENERGY AND COMMERCE COMMITTEE
MARCH 11, 1982

MR. CHAIRMAN:

GOOD MORNING. I AM RICHARD R. RIVERS, AN ATTORNEY AND PARTNER WITH THE LAW FIRM OF AKIN, GUMP, STRAUSS, HAUER & FELD. IT IS A PRIVILEGE TO BE INVITED TO TESTIFY BEFORE THIS SUBCOMMITTEE ON THE SUBJECT OF THE SERVICES INDUSTRY AND PENDING LEGISLATION TO AMEND U.S. TRADE LAWS TO STRENGTHEN THE TREATMENT OF THE SERVICE SECTOR UNDER THOSE LAWS. THIS IS AN IMPORTANT SUBJECT AND ONE OF PARTICULAR INTEREST TO ME, FOR I HAVE BEEN INVOLVED IN SERVICE AND TRADE ISSUES FOR NEARLY TEN YEARS AND FROM THREE VANTAGE POINTS: FIRST, AS A PROFESSIONAL STAFF MEMBER OF THE SENATE FINANCE COMMITTEE FROM 1973 TO 1977, DURING WHICH TIME I HELPED DRAFT THE TRADE ACT OF 1974; SECOND, AS GENERAL COUNSEL TO THE OFFICE OF THE U.S. TRADE REPRESENTATIVE FROM 1977 TO 1979, WHERE I WORKED THROUGH THE CONCLUSION OF THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS AND HAD GENERAL RESPONSIBILITY FOR TWO SECTION 301 CASES CONCERNING SERVICE ISSUES; AND FINALLY, AS A PRIVATE PRACTITIONER DURING THESE PAST THREE YEARS, DURING WHICH TIME I HAVE REPRESENTED THE U.S. COMPANY INVOLVED IN THE SECTION 301 KOREAN INSURANCE CASE AND AM NOW ACTING AS COUNSEL TO THE COALITION OF SERVICE INDUSTRIES, WHICH IS NOW BEING ORGANIZED

THE RECENT EXPLOSION OF INTEREST IN THE SERVICE SECTOR MIGHT AT FIRST AMAZE THE OBSERVER. SUDDENLY SERVICES IS THE HOT ITEM OF TRADE POLICY, WITH BOTH HOUSES OF CONGRESS ESPOUSING NUMEROUS BILLS TO HIGHLIGHT SERVICES' IMPORTANCE, AND INTERNATIONAL ORGANIZATIONS -- SUCH AS THE INTERNATIONAL CHAMBER OF COMMERCE, THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE -- INITIATING SERVICES STUDIES OR ISSUING RESOLUTIONS CONCERNING THE IMPORTANCE OF SERVICES IN WORLD TRADE. MUCH CREDIT MUST BE GIVEN TO THE CURRENT U.S. TRADE REPRESENTATIVE, AMBASSADOR BILL BROCK, AND THE PATIENT WORK OF HIS STAFF, IN AIDING THIS FLOWERING OF AWARENESS IN THE TRADE POLICY COMMUNITY.

LIKE MOST IDEAS WHOSE TIME HAS COME, HOWEVER, THE SUDDEN PREMINENCE OF SERVICES AS A TRADE ISSUE IS ROOTED IN A LONG HISTORY. THAT HISTORY IS PRIMARILY AN ECONOMIC ONE, AND IT IS AN AMERICAN SUCCESS STORY. U.S. SERVICE INDUSTRIES NOW EMPLOY SEVEN OUT OF TEN AMERICANS, COMPARED TO FIVE OUT OF TEN SIXTY YEARS AGO, AND PRODUCE 65% OF THE GNP. U.S. SERVICE EXPORTS AMOUNTED TO ABOUT \$60 BILLION IN 1980 AND WERE RESPONSIBLE FOR THE FIRST OVER-ALL SURPLUS IN THE U.S. BALANCE OF PAYMENTS SINCE 1976. LEADING U.S. SERVICE SECTORS IN 1980 WERE: TRANSPORTATION (\$13.9 BILLION ESTIMATED FOREIGN REVENUES); BANKING (\$9.1 BILLION); INSURANCE (\$6 BILLION); CONSTRUCTION AND ENGINEERING (\$5.4 BILLION); LODGING (\$4.6 BILLION); TOURISM (\$4.2 BILLION); ACCOUNTING (\$2.4 BILLION); AND LEASING (\$2.4 BILLION), ACCORDING TO A

RECENT STUDY FOR THE U.S. GOVERNMENT BY THE ECONOMIC CONSULTING SERVICES, INC. TOTAL WORLD TRADE IN SERVICES NOW AMOUNTS TO AROUND \$400 BILLION PER YEAR, OVER 20% OF WORLD TRADE. OTHER STATISTICS COULD BE CITED TO SHOW WHAT THE SUBCOMMITTEE ALREADY KNOWS: THE U.S. HAS BECOME PRIMARILY A SERVICE ECONOMY AND THE U.S. ENJOYS A COMPARATIVE ADVANTAGE IN WORLD SERVICES TRADE.

SECONDARY REASONS FOR THE HEIGHTENED AWARENESS OF THE SERVICES SECTOR EXIST IN ADDITION TO THE PRIMARY ECONOMIC ONE. HISTORICALLY IN U.S. TRADE POLICY, SERVICES HAVE BEEN IGNORED. THE GATT DEALS WITH TRADE IN GOODS AND HAS PROVED MOST SUCCESSFUL THROUGHOUT ITS POST-WAR HISTORY IN MAINTAINING A RELIABLE, NONDISCRIMINATORY, AND STEADILY DECLINING (THROUGH TARIFF NEGOTIATIONS) LEVEL OF WORLDWIDE DUTIES. IN THE TOKYO ROUND OF TRADE NEGOTIATIONS WE EXERTED OUR BEST EFFORTS TO STRENGTHEN THE GATT, THROUGH NEGOTIATION OF VARIOUS MULTILATERAL CODES, TO CONTAIN THE RECENT PROLIFERATION OF NONTARIFF BARRIERS TO TRADE AND TO PROVIDE AGGRIEVED COUNTRIES A MECHANISM FOR SETTLING DISPUTES CONCERNING THESE BARRIERS. MUCH WORK AND CONTINUED VIGILANCE REMAINS TO BE DONE IN THIS AREA, AS WE ALL KNOW. IN THE SERVICE SECTOR, HOWEVER, ALTHOUGH SECTION 102 OF THE TRADE ACT OF 1974 AUTHORIZED US TO NEGOTIATE SERVICES, WE FRANKLY ACHIEVED LITTLE IN THE TOKYO ROUND. IT IS THEREFORE NOT SURPRISING THAT WITH THE TOKYO ROUND BEHIND US, WE SHOULD BE TURNING TO THE SECTOR LEFT OUT, SERVICES. FINALLY, I BELIEVE THAT THE PRESENT BELEAGUERED STATE OF SEVERAL OF OUR MAJOR MANUFACTURING

INDUSTRIES IS A REASON FOR SUCH A SURGE IN INTEREST IN SERVICES. IT IS NATURAL TO TURN WITH ENTHUSIASM TO A SUCCESSFUL SECTOR WHERE AMERICA IS STILL PREDOMINANT, WHEN OUR ECONOMIC SELF-ESTEEM HAS BEEN SO BATTERED THE PAST DECADE IN BASIC MANUFACTURING. THIS MUST NOT MEAN, OF COURSE, THAT WE TURN FROM THE PROBLEMS OF THOSE INDUSTRIES AND THE NECESSITY FOR THEIR REVITALIZATION. IT DOES MEAN, HOWEVER, THAT WE CAN APPLY LESSONS LEARNED FROM THE TRADE PROBLEMS OF THE MANUFACTURING SECTOR TO THE PRESENT AND FUTURE TRADE PROBLEMS OF THE SERVICE SECTOR AND THE MAINTENANCE AND ENHANCEMENT OF ITS ECONOMIC STRENGTH. THIS IS THE AIM, AS I SEE IT, OF THE VARIOUS SERVICE BILLS NOW PENDING, INCLUDING H.R. 5519 WHICH IS BEFORE THIS SUBCOMMITTEE.

BEFORE TURNING TO A DISCUSSION OF THE PROVISIONS OF H.R. 5519, HOWEVER, I WISH TO MAKE TWO ADDITIONAL POINTS. FIRST, I WOULD HOPE THAT THE PRESENT POPULARITY OF THE SERVICE ISSUE NOT BE CONFUSED WITH ANOTHER EQUALLY POPULAR ISSUE AT THIS TIME, RECIPROCITY. WHILE THERE IS SOME OVERLAP IN THAT THE VARIOUS RECIPROCITY BILLS NOW PENDING INCLUDE TRADE IN SERVICES AS WELL AS IN GOODS, AND THE SERVICE BILLS NOW PENDING PROVIDE FOR CONSIDERATION OF RECIPROCAL ACCESS IN SERVICES, THE FUNDAMENTAL CONCERN OF THE RECIPROCITY LEGISLATION IS, I BELIEVE, OUR LARGE TRADE DEFICIT WITH JAPAN AND OUR FRUSTRATION IN PENETRATING THE JAPANESE MARKET. BY CONTRAST, THE SERVICE BILLS PROCEED FROM THE POSITION OF A LARGE U.S. TRADE SURPLUS IN SERVICES AND CONCERN THAT THAT SURPLUS BE ALLOWED TO GROW, UNFETTERED BY FOREIGN RESTRICTIONS. IN SHORT, IN NO WAY CAN "SERVICES" BE CONSIDERED A CODE WORD FOR

PROTECTIONISM, AS SOME HAVE PERHAPS UNFAIRLY ACCUSED "RECIPROCITY," SINCE IN SERVICES THE U.S. MARKET IS LARGELY OPEN AND HIGHLY COMPETITIVE. IF MOST U.S. SERVICE INDUSTRIES ARE SEEKING PROTECTION, IT IS PROTECTION FROM TRADE BARRIERS ABROAD, NOT FROM FOREIGN COMPETITION WITHIN THE U.S. MARKET.

SECONDLY, WHILE WE HAVE BEEN TALKING THIS MORNING ABOUT "SERVICES" AS IF IT WERE A MONOLITHIC GOLIATH, IN REALITY THE AREA IS HIGHLY COMPLEX AND WILL BE FRAUGHT WITH NEGOTIATING DIFFICULTIES IN THE YEARS AHEAD. I HOPE THAT THE PRESENT ENTHUSIASM FOR SERVICE NEGOTIATIONS DOES NOT WILT AS THESE PROBLEMS BECOME APPARENT. A PRIMARY ONE WILL BE, OF COURSE, OUR VERY SUCCESS IN THE AREA -- OUR LARGE TRADE SURPLUS. WE HAVE EVERYTHING TO GAIN AND LITTLE TO GIVE IN THE SERVICE SECTOR, A PROBLEM WITH WHICH ANY TRADE NEGOTIATOR IS FAMILIAR. EVEN IF WE TRY TO GET "SOMETHING FOR NOTHING" BY ARGUING THAT OTHER COUNTRIES' SERVICE RESTRICTIONS ARE UNFAIR OR ILLEGAL AND BY THREATENING RETALIATION IF THESE RESTRICTIONS ARE NOT LIBERALIZED, WE WILL BE CONFRONTING DEEP-SEATED NATIONAL NOTIONS ABOUT SOVEREIGNTY, SOCIAL POLICY, AND MACROECONOMIC DEVELOPMENT. THESE ARE THORNY ISSUES INDEED, FAR MORE COMPLEX THAN MERELY ASKING FOR A TARIFF CUT, AS OUR EXPERIENCE WITH NTB'S IN THE TOKYO ROUND SHOWS. IN ADDITION, WE WILL CONFRONT CERTAIN HOUSEKEEPING PROBLEMS OF OUR OWN AS, FOR EXAMPLE, IN THE BANKING OR INSURANCE SECTORS WHERE WE MUST DEAL WITH THE LAWS AND POLICIES OF FIFTY DIFFERENT STATES. FINALLY, THE TERRIFIC DEVELOPMENTAL PACE IN ADVANCED TECHNOLOGICAL AREAS SUCH AS

COMMUNICATIONS WILL CONSTANTLY BE DOGGING THE TRADE POLICY COMMUNITY -- NOT ALWAYS NOTED FOR ITS ABILITY TO MOVE QUICKLY OR STAY ABREAST OF RAPIDLY ADVANCING TECHNOLOGY. THE FRUSTRATION OF A GOVERNMENT LABORIOUSLY STUDYING AN ISSUE AND ARRIVING AT A RECOMMENDATION, ONLY TO FIND THAT THE ISSUE STUDIED HAS COME AND GONE, IS TOO FAMILIAR TO BUSINESS PEOPLE AND ENTREPRENEURS.

I STRONGLY SUPPORT THE OBJECTIVES OF THE SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1982, H.R. 5519, NOW PENDING BEFORE THIS SUBCOMMITTEE. THE "FINDINGS" AND "PURPOSES" SECTIONS OF THIS BILL MAKE IT CRYSTAL CLEAR THAT THE SERVICE SECTOR IS A PRIORITY AREA AND THAT FOREIGN TRADE BARRIERS TO OUR SERVICE EXPORTS MUST BE REDUCED OR ELIMINATED. IF ENACTED, THIS BILL WILL ERASE ANY DOUBT OFFICIALS IN THE TRADE POLICY COMMUNITY MAY HAVE HAD CONCERNING THE IMPORTANCE OF SERVICES IN OUR NEGOTIATING EFFORTS AND WILL IMPRESS UPON OUR TRADING PARTNERS THE SERIOUSNESS WITH WHICH WE VIEW THEIR SERVICE TRADE RESTRICTIONS. THESE RESTRICTIONS ARE IN SOME CASES DEEPLY ENTRENCHED, SUCH AS IN THE INSURANCE AND SHIPPING SECTORS, AND IN OTHER CASES JUST EMERGING. FOR EXAMPLE, THE FAST-PACED DEVELOPMENTS IN THE DATA-PROCESSING AND COMPUTER SOFTWARE INDUSTRIES ARE CAUSING GOVERNMENTS TO DEVISE IMAGINATIVE METHODS TO PROTECT THEIR DEVELOPING INDUSTRIES. WE MUST CURTAIL THESE RESTRICTIONS IN THEIR INCIPIENCY BEFORE THEY GAIN A MOMENTUM OF THEIR OWN.

H.R. 5519 WOULD ALSO REQUIRE USTR TO PRESENT CONGRESS WITH A WORK PROGRAM CONCERNING INTERNATIONAL NEGOTIATIONS ON SERVICES AND TO PROVIDE A DETAILED SECTOR-SPECIFIC ANALYSIS OF OUR SERVICE NEGOTIATING OBJECTIVES. SECTION 102 OF THE TRADE ACT OF 1974 WOULD BE AMENDED TO MAKE SERVICE NEGOTIATIONS UNDER THE GATT A PRINCIPAL U.S. NEGOTIATING OBJECTIVE. I STRONGLY SUPPORT BOTH OF THESE GOALS AND URGE THAT THEY BE WHOLEHEARTEDLY UNDERTAKEN, WITH THE REALIZATION, AS I HAVE DISCUSSED ABOVE, THAT THE ROAD AHEAD WILL BE LONG AND SOMETIMES ARDUOUS.

IN ADDITION, H.R. 5519 ESTABLISHES IMPROVED INFORMATION AND DATA-GATHERING CAPABILITIES IN THE DEPARTMENT OF COMMERCE, AS WELL AS A PROGRAM TO PROMOTE U.S. SERVICE INDUSTRIES ABROAD. OUR ECONOMIC STATISTICAL BASE HAS FOR TOO LONG BEEN SKEWED IN FAVOR OF MANUFACTURING INDUSTRIES, AS HAVE OUR TRADE DEVELOPMENT PROGRAMS. I HEARTILY SUPPORT THIS ASPECT OF THE BILL.

PERHAPS MOST IMPORTANTLY, H.R. 5519 WOULD STRENGTHEN SECTION 301 AS A NEGOTIATING TOOL FOR THE SERVICE INDUSTRY. SECTION 301 HAS ALREADY PROVEN ITS USEFULNESS IN THIS REGARD AND SHOULD BE USED IN THE FUTURE WITH EVEN GREATER EFFECTIVENESS IN ISOLATING AND REMOVING SPECIFIC SERVICE TRADE BARRIERS.

IN SUM, MR. CHAIRMAN, I SUPPORT AND ENCOURAGE YOUR COMMITTEE'S EFFORTS IN THE VITAL SERVICE SECTOR AND WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. FLORIO. I just have two questions. I thank you for your testimony and participation this morning.

You have heard the previous witness, I think, suggest that, in his opinion, and in his organization's opinion, action should be initiated for the most part by the private parties, rather than governmental parties. It has been called to our attention that many businesses are reluctant to initiate such action because of concern about bad relations with the country that they are, in fact, complaining about.

Is this a legitimate concern that might dictate that there be greater governmental involvement in the initiation of actions, rather than to wait for a private company to initiate an action?

Mr. RIVERS. I think you have put your finger on the real issue here. The real issue has surfaced here in the hearings.

I can tell you of my own experience. I was formerly General Counsel in the Office of the Special Trade Representative during the Tokyo round and had intimate experience for a period of over 3 years with the administration of section 301 of the Trade Act of 1974.

I can tell you that in many instances, section 301 is a court of last resort for a company. They only file their petition under section 301 when they have had their local visa yanked and they have been given their plane ticket in the country where they are trying to do business. It is a last ditch kind of thing in many instances.

In addition, I should tell you that the administration of section 301, within the U.S. Government, is a nightmare. There is a process in the U.S. Government which is euphemistically referred to as an interagency process, which requires the acquiescence or consent of some 12 U.S. agencies before it is possible for the U.S. Government to do anything.

I can recall at least one instance when an official of one agency of the U.S. Government blocked the Federal Register notice that had been sent to the Government Printing Office. It is a dismal process.

Section 301 only works when the U.S. Government takes it seriously. When you can convince the U.S. Government to take an issue seriously, and you can convince all those agencies to take an issue seriously, then you find that it tends to be a fairly useful tool.

I was counsel to the American International Group in the matter involving the Korean insurance industry. Our initial assignment was to get the U.S. Government to take that issue seriously. When we got the U.S. Government to take the issue seriously, we began to make progress with the Korean Government.

There is something to be said for a government being able to initiate cases. It is not something I am particularly optimistic about, having some familiarity with the interagency process. The instances where the U.S. Government is going to self-initiate a case are going to be few and far between. Simply, as a practical matter, it doesn't happen.

Mr. FLORIO. Why not?

Mr. RIVERS. Foreign policy process, national security considerations, competing sector security. Some particular group says, "You know, country X is causing a great deal of problems in the data processing industry." The Department of Agriculture comes for-

ward and says, "Yes, but they buy \$5 billion worth of soybeans, and we certainly don't want to cause them any grief because of soybeans."

Many of these, oftentimes, are very legitimate considerations. In the interagency process, frequently the easiest thing to do for the bureaucracy is simply not to make a decision and to duck the issue altogether, and it is only when this thing is forced upon by a private petitioner that anything happens.

It has been the trend in the redrafting of these provisions to allow less and less discretion and require, particularly in the case of 301, more and more automaticity in the administration of the statute, since the natural propensity of government is to avoid difficult issues and controversy and confrontation.

Mr. FLORIO. Let me ask one last question, which perhaps I should have asked of the other witnesses as well, but which just occurred to me.

The DISC system that we have, would that be regarded as compatible with our effort to open access? Wouldn't that be regarded as a nontariff barrier by virtue of its providing for subsidization of foreign affiliates, but I am not sure if there are any service affiliates that participate in DISC.

Mr. RIVERS. DISC is, by and large, not available to the service industries, with two minor exceptions and I don't even recall what they are, but they are not significant.

Mr. FLORIO. Let me ask you for your general observation, then, on goods, even though that is not the subject of today's hearings. Has there been discussion that DISC, in fact, is governmental subsidization of overseas affiliates in a way that is a nontariff barrier?

Mr. RIVERS. There has been discussion extending over a period of 12 years to that effect, Congressman. I have some intimate experience with that. I lived with that issue for a long time when I negotiated the code on subsidies and countervailing duties during the Tokyo round.

Congress enacted DISC in 1971 out of a number of concerns—balance of trade deficits, a concern that the border tax adjustment, value-added tax, particularly in Europe, operates to the disadvantage of U.S. producers.

The Congress enacted DISC upon notice having been delivered to the U.S. Government by our trading partners that it would be their view that that provision would violate article 16 of the GATT.

As is our sovereign right, we went ahead and enacted that provision and made it part of our Internal Revenue Code. As is their sovereign right, and right under the GATT, they, being men of their word, filed an article 22 and later an article 23 complaint to the GATT alleging that the DISC is a violation of our international obligations under the GATT and that it constitutes a prohibited subsidy of nonprimary products.

We counterclaimed, alleging that their nonenforcement of arms-length pricing rules through tax havens, particularly in the Caribbean, also constituted a violation of the GATT, and we were in a deadlock with the European over a period of 10 years.

So the short answer to your question is, yes, in the view of our trading partners, and I might tell you in the view of the GATT

panel, the DISC is a violation of our obligations under the GATT and a nontariff barrier.

Mr. FLORIO. Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

First of all, I want to apologize to everyone for being called away from the hearings.

Mr. Rivers, the Assistant U.S. Trade Representative testified earlier that they will continue to aggressively pursue individual service trade problems that arise bilaterally with other countries. However, as he also indicated in his testimony, those efforts have made only a modest dent in the whole range of trade barriers affecting our exporters of services. Do you have any comment on this?

Mr. RIVERS. First let me say, because I am not sure you were here, I represented a client in a matter involving the insurance industry in Korea which was brought under section 301 of the Trade Act. It is really the first instance in which section 301 was effectively pressed to a settlement, and the liberalization of the Korean insurance market is now underway with a new program by which American companies will be given a greater opportunity to do business in the Korean insurance market.

I can tell you that the support that we received from the Office of the Special Trade Representative was unwaivering and exceedingly helpful. I am an alumnus of that organization, and I can tell you that it is a very small boat in the executive branch, and that is sometimes an advantage and sometimes a disadvantage. The people down there are determined, I think, and by and large very helpful, but we have just begun to make progress on services at this point in time.

Mr. LENT. In view of your experience in representing U.S. private companies under section 301, do you have any recommendations as to how section 301 may be strengthened so as to assure its effectiveness in isolating or removing specific service trade barriers?

Mr. RIVERS. Congress, over the past 10 years, has amended section 301 on a number of occasions to improve it. On a number of occasions, it was spelled out by the Congress in a way that was satisfactory, in my opinion, that section 301 covered services. There is some language in the statute that refers to services associated with international trade.

People in the executive branch who oppose doing anything about this frequently find ambiguity in the statute as a reason for not doing something. In our case, it was argued that our case was not really a trade services case, it was a right of establishment case. I think Congress should again make it very clear that section 301 is intended to cover service industries.

There is another problem having to do with what is within the President's authority in terms of recommending retaliation, if you will, in the event that negotiations completely collapse and that there is no satisfactory resolution in sight.

In our case, reciprocity, I might tell you, was not appropriate because to the extent that the Korean insurance industry had any presence at all in the United States, it was attributable to my clients having assisted them in opening up a representational office

in New York. So to exclude the Korean insurance industry from the United States would have been to no avail.

There was a great deal of difficulty in fashioning an appropriate remedy, noninsurance related, that was within the President's authority. That area needs some work on and needs to be improved in section 301.

Mr. FLORIO. If the gentleman would yield.

Mr. LENT. Thank you, Mr. Chairman. I have no further questions.

Mr. FLORIO. Are you advocating that there should be sufficient discretion so that the ability is within whoever is the President, in a sense, to look beyond the direct service industry that is affected, so as to be able to fashion an appropriate remedy?

Mr. RIVERS. I think the President should have full discretion, or his central agent should have full discretion.

Mr. FLORIO. Would you restrict it only to the service industries?

Mr. RIVERS. No. You do run into kinds of problems where you start crossing between goods and services in fashioning retaliation. If you are dealing with a service industry problem, and you retaliate on goods, you quickly find yourself in the GATT and in violation of your GATT obligations. So it is tricky, and I think, frankly, this is an area where you have to have a high degree of discretion in the President's hands.

My own philosophical objections to this sort of sectoral reciprocity is that I believe these nontariff barriers that are affecting American service industries, and manufacturing industries in this context, but particularly service industries—these nontariff barriers which we find in foreign systems are there to protect an industry which is not as competitive as our own. That is by and large why they come into existence.

When we undertake to act or erect a mirror image kind of reciprocal NTB in our own law, we are not really gaining anything for ourselves. The reason they have the NTB to begin with is that we are more competitive than they are in that particular sector. We don't have any leverage on them because what we really do by our example is to justify their nontariff barrier.

That is one of my major concerns about what I would call the tit-for-tat sectoral reciprocity. However, the notion of general reciprocal trade agreement programs, maintaining the balance of concessions among countries, those are principles well established and which I wholeheartedly endorse.

Mr. FLORIO. We had hearings last week on a proposal of Mr. Ottinger to require local content in automobiles. Of course, in that area one of the arguments that is made is that the Japanese have the major focus of the furor. The point is made that the Japanese have nontariff barrier mechanisms that inhibit our ability to break into their markets, assuming that it was economically feasible, particularly in the parts area.

So the point you made about it not being feasible because we were not competitive, the automobile people in this country, who are not totally disinterested, would make the argument that the practices, and perhaps the certification of domestic parts for U.S. automobiles that were able to make it into the market, is a nontariff barrier that precludes us getting into the Japanese market.

Mr. RIVERS. What I am saying is that when a nontariff barrier crops up in a foreign country, more often than not it has come into existence to protect an industry which is really not competitive.

Mr. FLORIO. With the Japanese automobile industry, I think we are beyond the point of thinking of that.

Mr. RIVERS. The Japanese are a special case, and I fully understand what is happening in the automobile and the automobile parts industries. The fact of the matter is, we are not going to sell a lot of automobiles to Japan.

On the other hand, there is very compatible relationship between the Japanese automobile manufacturers and our parts suppliers, and there quite well is a market for U.S. parts in Japan, and there are nontariff barriers there that protect many of those people with whom we cannot compete very effectively, and those nontariff barriers have got to be removed. We are running out of leverage with Japan. Our market is, by and large, open vis-a-vis Japan, and their market is not.

Mr. FLORIO. Japanese automobiles that come here, domestic part manufacturers in not being able to be approved and certified by Japanese manufacturers so as to have after-part certified for purposes of inclusion, there is a proposal in this legislation that the FTC have the authority to designate as an unfair practice failure to certify by Japanese firms on parts that are acceptable for inclusion in Japanese automobiles.

Mr. RIVERS. There is already a remedy in law which was part of the trade agreements that were negotiated in the Tokyo round dealing with that kind of technical barrier to trade. If the Japanese have erected a standard test for automobile parts which creates an unnecessary obstacle to the U.S. parts industry, then there is a section 301 complaint therefor.

I think that is the avenue they ought to proceed. I don't think we ought to be amending the Federal Trade Commission statute.

Mr. FLORIO. The certification is not particularly established, it is just not happening. The failure to certify is inhibiting the ability.

Mr. RIVERS. Certification is part of the standard code that was negotiated.

Mr. FLORIO. I have been very impressed with your expertise this morning, and I just want to take advantage of that expertise and ask you a question that has nothing to do with today's hearings, and I will terminate with that last question.

This committee also has jurisdiction over the Toxic Substances Control Act, TOSCA, and it has been brought to my attention that the Common Market is in the process now of increasing requirements for pretesting certification of toxic substances in the marketplace at the same time that our agency, the EPA, is in the process of eliminating or at least not dealing with the whole question of precertification testing to allow new items to go into the market.

So we have the unusual situation of American chemical companies being able to get into the marketplace easier in the United States than they are able to get into the marketplace overseas.

Mr. RIVERS. With particular new substances?

Mr. FLORIO. That is right.

I am just wondering, or just sort of boggles the mind, we have had this sort of chauvinistic approach over the years where we

hold higher standards for items going to our market than we do overseas. As a matter of fact, we have been criticized on occasion for directing things overseas that have not been tested, and now we have the ironic situation where our chemicals are able to get into our markets easier than they can get into the Common Market markets.

I am just wondering, are you familiar with all of this?

Mr. RIVERS. I am not familiar with the specifics that you have mentioned, but I can tell you that this kind of problem is precisely the kind of problem that people spent 12 years negotiating an international code, the so-called technical barriers to trade.

The Standards Code that was being negotiated in the Tokyo round was specifically designed to deal with this kind of problem of standards and certification procedures. That was one of the most difficult and technical codes negotiated in the Tokyo round.

It is the perfect example, as Mr. Feketekuty pointed out, of an instance in which we are really breaking new ground in the global trading system, in that we are negotiating international rules which increasingly walk up against entirely legitimate objectives of domestic policy, such as your question regarding State regulation of insurance and banking.

What the standards code basically says is that any country may erect any standard of health as an objective that it wants. You can say, we are only going to have one part per trillion of DDT in our public water supply, or whatever, and that is entirely legitimate.

What you may not do, however, in achieving that goal is set up a series of standards which unnecessarily work against foreign suppliers or discriminate against foreign suppliers.

So in this instance what the manufacturers have to do, what the chemicals industry has to do is to take a good, long, hard look at exactly what the European practice is, and determine whether the Europeans have done something here which violates the obligations that they assumed under the standards code which was negotiated in the Tokyo round. If all they have said, "We want a cleaner environment than they are prepared to settle for in the United States," we really don't have a good case against them.

Mr. FLORIO. Let me ask you from the opposite perspective. Let's assume a European chemical producer and an American chemical company is able to take advantage of the failure of the American governmental system, in this case the failure of EPA to have minimal standards in the U.S. markets for preclearance testing results in a benefit to the American chemical producers such that they can compete more effectively in the European market because they don't have the costs. Since you talk about a subsidy to the American producer because he is not required to get preclearance testing, would that be the basis for a complaint?

Mr. RIVERS. That is very tenuous. There has been a lot of talk on the part of the European Community that the U.S. industry was receiving one kind of benefit or another. The one I most often heard was price controls. This is a new one, and I am simply not familiar enough with the specifics to answer your question.

Now, having offered that caveat, I would offer an opinion that it sounds fairly tenuous to me as a complaint against U.S. producers. It is more likely you have an industry in Europe that is grasping

around for reasons to explain why the American producers are doing so well in the European market in the chemical sector. It does not sound to me like a very plausible case on the part of the European producers, but I don't know enough about it to be able to tell.

Mr. FLORIO. We thank you very much for your testimony. You have been very helpful.

The subcommittee stands adjourned.

[The following statement was received for the record:]

Testimony Submitted by

William D. Toohy
President
Travel Industry Association of America

My name is William D. Toohy and I am President of the Travel Industry Association of America or TIA. I am pleased to submit this statement today in support of Service Industries Development legislation such as H.R. 5519, and to share with you the interest and concerns of the travel industry.

Tourism in America is served by nearly a million different businesses offering a wide range of services to the business or pleasure traveler. Most of these businesses are organized nationally by industry component and are represented by trade associations to promote and protect their specialized interest: To represent the broad base of tourism, however, the Travel Industry Association of American addresses matters of interest and concern common to the travel industry as a whole. Few of these concerns are more critical or affect the travel industry more broadly, than service trade policy.

Yet among some of the most sophisticated observers of the service sector, the role and dominance of tourism is consistently and vastly underestimated. Travel and tourism is, in a very real sense, the ultimate service industry. While travel is often fallaciously represented as one of many individual service enterprises, it acutally makes up a significant portion of food services, lodging, transportation, advertising and entertainment. Tourism also enjoys a symbiotic relationship with services such as telecommunication, banking, insurance and high technology such as data processing and computer services.

The United States has been primarily a service economy since the end of World War II. Today the service sector accounts for 65% of the gross national product and just over 40% of trade in goods.

Seven out of 10 American workers are employed in a service industry. Ten percent or nearly 7 million of these workers held tourism jobs. While services are normally labor-intensive, few and perhaps none, are more so than travel.

Tourism creates more new jobs than virtually any other industry, service or otherwise. In 1980, the industry was responsible for 35% of all new employment. The majority of the tourism workforce is comprised of women (53.3%) and minorities (14%) and one third of all youths aged 16-21 in the U.S. labor force are employed in the tourism industry. These are obviously the groups that encounter the most difficulty in finding employment and traditionally as well as currently bear the brunt of high unemployment.

Ninety-nine percent of the industry is represented by small business as defined by the Small Business Administration. In the past decade, 98% of all new jobs were created within the small business community. Clearly, in view of rising jobless rates, services, and particularly tourism is a force to be reckoned with and nurtured.

Service sector productivity is growing twice as fast as productivity in the goods producing sector. Total labor and productivity in manufacturing increased only 10% in the period from 1967 to 1979.

World trade in services has grown by 17% each year in the past decade to a total of about \$400 billion per year or 20% of world trade. The exceptional performance of the service sector resulted in a balance of payments surplus of \$34 billion in 1980. Combined with a merchandise trade deficit of more than \$27 billion, a net gain of \$7 billion was achieved. The prospects for merchandise trade growth are not expected to improve; Secretary of Commerce Malcolm Baldrige recently predicted that the merchandise trade deficit could reach \$35 billion this year.

If, as the Secretary suggests, trade in goods continues to stagnate, the importance of service trade development becomes all too clear. While the U.S. may have, until recently, failed to recognize the effect of services on our economy and international balance of payments, the subtlety has not been lost on the rest of the world. International attention to the potential of services has burgeoned in the last few years. Nearly all of our trading partners have been devoting substantial resources to development of service trade. Developing countries in particular have noticed that service provision generally requires less initial capitalization than manufacturing, seems less vulnerable to inflation and recession and strengthens currency.

The result of this awareness has been ever intensifying efforts to capture a larger share of the world services market, with whatever economic device might be available and frequently at our expense.

Non tariff trade barriers and discriminatory trade practices are multiplying, adversely affecting our export position and promising to grow worse if left unchecked. The major objective of trade barrier imposition is to produce a competitive disadvantage for foreign enterprise, thereby protecting fledgling domestic service companies. Since many of these companies are publicly owned, American businesses end up subsidizing their own competitors while gradually losing market access and viability.

The presence of U.S. flag carriers, for example, has been receding in almost every international market. In addition to competing with each other, American airlines face an ever-widening range of mandatory and frequently crippling trade restrictions. It is important to recognize, however, that trade barriers are in no way unique to air transport. If airlines are frequently used for illustrative purposes, it is because they are among the "pioneers" of international service trade and throughout the past 35 years have experience with a broad spectrum of such barriers.

1) Excessive and discriminatory landing fees. In the United Kingdom, carriers are assessed landing fees on the basis of aircraft weight. Transatlantic aircraft are of course heavier and thus pay the highest fees. Ironically, it actually costs the U.K. less to provide larger and heavier aircraft with landing services than to provide these services for their own smaller, domestic carriers.

2) Ground handling monopolies. Such services include catering, ticketing, fuel, cargo and luggage handling. These monopolies and attendant monopoly pricing produce bad food, hit-or-miss ticketing, delayed or damaged baggage and cargo, limited or denied access to reservations systems and fuel prices up to 130% above those charged the domestic carrier.

3) Denied access to basic facilities. In many countries American carriers are denied the use of ticket desks and baggage claim areas in airports. National automated reservations systems in France and Scandinavia and Germany's START are inaccessible or available to our carriers only at prohibitively high rates -- far above those charged the national flag carrier. Some airports provide superior facilities for passengers flying on the national carrier. In Rome for example, passengers on the Italian national carrier Alitalia are routed to gates by enclosed corridors while foreign carrier passengers are routed outside, transporting their own baggage on foot or by taxi. These services justifiably make a difference to potential passengers and have a predictably negative affect on traffic.

4) Dumping and carrier subsidy. Agressive competition among privately owned airlines is largely peculiar to the United States. Elsewhere, nationalized industry, including civil aviation is the norm. It is far from unusual for a country to provide its carrier with some form of subsidy, direct or indirect through low or no interest loans. With an arrangement of this kind, a carrier can

afford to lose money indefinitely, setting fares at low levels and eventually building a virtual monopoly on any route.

This is, to some degree, unavoidable. Whenever there is differing economic philosophy and nationalized industry, competitive life is made fundamentally unfair. Ultimately, in the absence of a freemarket economy worldwide, our carriers will inevitably be competitively disadvantaged. Nonetheless our knowledge of these incongruities should underscore an obligation to pursue redress in areas where there is some prospect for success. We believe that with respect to tourism, there exist a number of such areas.

Although aviation offers a myriad of long standing and pervasive examples of trade barriers, all components of the tourism industry are confronted in similar ways. In many cases tour operators encounter regulations which impede or prohibit the sale of travel packages or chartered tours. American bus charters are virtually prohibited by the Mexican government. American hotel chains must set their prices at government specified rates which are, not coincidentally, above those charged by domestic hotels.

Barriers which affect other service industries have a profound impact on travel as well. Restrictions governing the construction industry continue to frustrate the attempts of American companies to build new hotels or other travel facilities. Discriminatory telecommunications regulations have a broad and negative impact on the establishment and use of reservations systems. Banking restrictions often make it very difficult to exchange currency.

We would caution the committee, however, that while services have some common interests which can and should be pursued, trade barriers affect individual industries in different ways. Multi-lateral negotiations should generally be approached on an industry-by-industry basis, thus avoiding the possibility that one service might become pitted against another. Trading air routes for reciprocal banking rights will not enhance the competitive position of our service industries and inevitably will exacerbate the existing problem.

While all appropriate examples are too numerous to individually cite, suffice it to say that trade barriers and discriminatory practices have indisputedly contributed to the decline of the U.S. percentage share of international trade in services from approximately 20 percent in 1972 to 15 percent in 1980. While it is true that U.S. service exports have been increasing, they have not kept pace with world market growth.

What is ultimately most exasperating, however, is our inability to ameliorate these problems. Trade in services is now governed by a complex mosaic of bilateral agreements. Unfortunately, these agreements are nearly impossible to enforce even when their language provides for enforcement. When they are violated, in letter or spirit, there are few appropriate mechanisms with which to resolve these disputes.

The problem is further complicated by the fact that there really is no specific government entity with sole jurisdiction over these matters. Agencies with some jurisdiction over service

trade include the United States Trade Representative (USTR), the Office of Finance, Investment and Services (FINS) in the International Trade Administration and the State Department's Office of International Trade. The combined authority represented by these agencies is in many cases duplicative, and in others leaves significant gaps.

The present proposal would, for the travel industry, address many of these problems. It represents that important first step in finally recognizing the place service trade has come to occupy in the economy and its massive growth potential. It acknowledges the myriad of international service agreements and proposes to simplify this process through greater multilateral negotiation, and the bill would more effectively coordinate government policy with respect to enforcement and agency role. The Service Industries Commerce Development Act seeks to finally promote service trade internationally in keeping with its stature as our major export.

We are also pleased that this legislation recognizes a growing and increasingly unfulfilled need for service industry data. This has been a persistent problem for the travel industry and all indications point to a growing information gap.

The National Travel Survey (NTS), for example, published every five years by the Census Bureau, was eliminated from the F. Y. 1983 Administration budget proposal. The NTS was the only

official government source of comprehensive tourism statistics. Of the \$2.4 million required to publish the survey, \$1 million was contributed by the Department of Transportation and \$1.4 million was supplied by the Department of Commerce itself. Further, the Monthly Selected Service Receipts report, which required approximately \$1 million to produce, has also been eliminated.

Also targeted for cutback is the Census of Service Industries in Retail Trade. Its publication coincided with the National Travel Survey, and production costs were reduced by \$1.2 million for FY 1983 from \$2.1 million in FY 1982. These cuts will in essence destroy the federal government's tourism data base, and increased funding to restore it will be required if publication of these reports is ever to be resumed.

Finally, Mr. Chairman, we are fully aware that the concept of reciprocity is the subject of some philosophical debate. Most of this controversy stems from the notion that reciprocity is protectionism made palatable. Whatever the merits of this argument with respect to trade in goods, it cannot credibly be applied to services. In contrast with many of our service trade partners, the U.S. market is largely open and vigorously competitive. No legislation would be needed, nor advocated by us, were this true of foreign markets. We do not surreptitiously support reciprocity for the purpose of denying market access to aggressive and effective foreign competitors. It is ludicrous, however, to vainly hope that nations which rely on non tariff barriers will eliminate or modify them without significant incentive.

We appreciate and support the efforts of you and your committee, Mr. Chairman, and we hope that your legislation will provide such incentive.

[Whereupon, at 12:35 p.m., the hearing adjourned.]

