100TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 100-40 Part 2

TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

APRIL 6, 1987.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL, DISSENTING AND SUPPLEMENTAL VIEWS

[To accompany H.R. 3, which on January 6, 1987, was referred jointly to the Committees on Ways and Means, Agriculture, Banking, Finance and Urban Affairs, Education and Labor, Energy and Commerce, and Foreign Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

71-486

The amendments are as follows:

Strike out title II and insert in lieu thereof the following:

TITLE II—INTERNATIONAL TRADE IN TELECOMMUNICATIONS PRODUCTS AND SERVICES

SEC. 201. SHORT TITLE.

This title may be cited as the "Telecommunications Trade Act of 1986".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services will continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) unfair and discriminatory trade practices in foreign countries have resulted in, and continue to threaten, the loss of jobs in the United States telecommunications industry;

(5) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has resulted, and will continue to result, in a dramatic increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications; and

(6) unless this imbalance is corrected through the achievement of fully competitive market opportunities for United States telecommunications products and services in foreign markets, the United States should avoid granting continued open access to the telecommunications products and services, and other products and services, of such foreign countries in the United States market.

(b) PURPOSES.—The purposes of this title are—

(1) to foster the economic and technological growth of and employment in the United States telecommunications industry and all United States persons who benefit from a high quality telecommunications network;

(2) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(3) to achieve a more open world trading system for telecommunications products and services through negotiation and achievement of fully competitive market opportunities for United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

SEC. 203. NEGOTIATING OBJECTIVES.

(a) PRIMARY OBJECTIVES.—The primary negotiating objectives of the United States under this title regarding telecommunications products and services are to provide for—

(1) the nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services which are owned, regulated, or controlled by foreign governments;

(2) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel;

(3) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(4) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(5) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers; and

(6) monitoring and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

(b) SECONDARY OBJECTIVES.—The secondary negotiating objectives of the United States under this title regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, dumping, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services; and

(7) monitoring and dispute settlement mechanisms to facilitate compliance with telecommunications trade agreements.

SEC. 204. INVESTIGATIONS OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(a) REQUIRED INITIAL INVESTIGATIONS.—

(1) The United States Trade Representative (hereinafter in this title referred to as the "Trade Representative"), in consultation with the Secretary of Commerce and the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C 1872), shall undertake an investigation with respect to each foreign country for the purposes of—

(A) identifying and analyzing those acts, policies, and practices in the markets of that foreign country that deny fully competitive market opportunities to telecommunications products and services of United States firms; and

(B) establishing, on the basis of the analysis under subparagraph (A) and after taking into consideration—

(i) the needs of the affected United States industries,

(ii) the competitiveness of United States industries in domestic and world markets,

(iii) the progress being made to expand market opportunities under existing agreements or ongoing negotiations, and

(iv) the availability of appropriate incentives and effective remedies,

the specific primary and secondary negotiating objectives specified in section 203 that should be pursued in negotiations under section 205 in order to obtain fully competitive market opportunities in that foreign country for telecommunications products and services of United States firms.

(2) The Trade Representative may exclude any foreign country from the investigations required to be conducted under para-

graph (1) if the Trade Representative determines that the potential market in that country for United States telecommunications products and services is not substantial.

(3) The Trade Representative shall complete each investigation required to be undertaken under paragraph (1) by no later than the 180th day after the date of the enactment of this Act.

(b) OTHER INVESTIGATIONS.—If at any time after the investigations required under subsection (a) are completed the Trade Representative—

(1) on his own motion, considers that there is reason to believe that any act, policy, or practice in the market of a foreign country is such as to deny fully competitive market opportunities to telecommunications products or services of United States firms; or

(2) accepts a petition filed by an interested party alleging that any act, policy, or practice described in paragraph (1) exists;

the Trade Representative may undertake an investigation with respect to the foreign country concerned for the purposes described in subparagraphs (A) and (B) of subsection (a)(1). An investigation undertaken under this subsection shall be completed within 180 days after the date on which the Trade Representative commences the investigation under paragraph (1) or the petition is filed under paragraph (2).

(c) REVIEW OF MARKETS OF COUNTRIES INITIALLY EXCLUDED FROM INVESTIGATION.—The Trade Representative shall—

(1) at least annually, review the potential market for United States telecommunications products and services in countries that were excluded from investigation under subsection (a) and with respect to which no investigation has been initiated under subsection (b); and

(2) if he considers any such country to have a market for United States telecommunications products and services which is substantial, undertake, and complete within 180 days, an investigation for the purposes described in subparagraphs (A) and (B) of subsection (a)(1) regarding that country.

(d) REPORT TO CONGRESS.—The Trade Representative shall submit to the Congress a report on the investigations undertaken under subsections (a), (b), and (c). Each report shall be submitted within 30 days after the investigation is completed.

SEC. 205. ACTION BY THE PRESIDENT IN RESPONSE TO INVESTIGATIONS BY TRADE REPRESENTATIVE.

(a) IN GENERAL.—After—

(1) all investigations required under section 204(a) are completed (and in no case later than the 180th day after the date of the enactment of this Act); and

(2) each investigation undertaken under section 204(b) or (c) is completed;

the President shall enter into negotiations with the foreign country or countries subject to investigation for the purpose of entering into bilateral or multilateral trade agreements, as appropriate, under section 208 which achieve the specific primary and secondary negotiating objectives that were established under section 204(a)(1)(B) with regard to such countries.

(b) ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.—

(1) If the President is unable during the negotiating period to enter into a trade agreement or agreements under section 208 with a foreign country which achieve the specific primary and secondary negotiating objectives established for that country under section 204(a)(1)(B), the President, by no later than the close of the negotiating period—

(A) shall take whatever actions are authorized under paragraph (3) that are necessary and appropriate to achieve the purposes of the primary objectives not covered by agreement; and

(B) may take whatever actions are authorized under paragraph (3) that are necessary to achieve the secondary objectives not covered by agreement.

(2) In taking action under paragraph (1)(A) and (B), the President shall first take those actions which most directly affect trade in telecommunications products and services with the country concerned.

(3) The President is authorized to take any of the following actions under paragraph (1)(A) and (B):

(A) Terminate, withdraw, or suspend any portion of any trade agreement entered into under—

(i) the Trade Act of 1974;

(ii) section 201 of the Trade Expansion Act of 1962; or

(iii) section 350 of the Tariff Act of 1930;

with respect to any duty or import restriction imposed by the United States on any telecommunications product.

(B) Take any action described in section 301 of the Trade Act of 1974.

(C) Prohibit the Federal Government from purchasing specified telecommunications products.

(D) Increase domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of specified telecommunications products.

(E) Suspend any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products.

(F) Order the appropriate Federal officials to deny Federal funds or Federal credits for purchases of specified telecommunications products of any specified foreign country.

(G) Suspend, in whole or in part, benefits accorded articles from specified foreign countries under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(4) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (3)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States, the rate of such duty determined by the President up to the rate provided for in rate column number 2 of the Tariff Schedules of the United States shall apply to such

products after the date on which such termination, withdrawal, or suspension takes effect.

(5) No action taken under paragraph (1) shall affect any binding obligations under any written contract entered into before the date of the enactment of this Act, to which any citizen or national of the United States is a party.

(6) Any action the President decides to take under subparagraph (3) of this subsection shall be treated as an action necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974.

(c) NEGOTIATING PERIOD.—

(1) For purposes of subsection (b), the term "negotiating period" means—

(A) with respect to a foreign country investigated under section 204(a), the 18-month period beginning on the date of the enactment of this Act; and

(B) with respect to a foreign country investigated under section 204 (b) or (c), the 12-month period beginning on the date the investigation was completed.

(2) The negotiating period with respect to a foreign country may be extended by not more than two 12-month periods. An extension of the negotiating period shall take effect if (and only if)—

(A) the President, not less than 90 days before the negotiating period expires (or if extended previously, before the first extension period expires), submits to the House of Representatives and the Senate—

(i) a draft of a negotiating period extension bill, and

(ii) a statement that—

(I) substantial progress is being made in negotiations with the foreign country concerned, and

(II) further negotiations are necessary to reach an agreement which meets the specific primary and secondary negotiating objectives established under section 204(a)(1)(B) with regard to that country; and

(B) before the expiration of the negotiating period (or the first extension thereof), a negotiating period extension bill is enacted into law.

(3) For purposes of this subsection, the term "negotiating period extension bill" means a bill of either House of Congress the matter after the enacting clause of which is as follows: "That the Congress approves the extension for 12 months of the negotiating period with   that was requested by the President on   .", the first blank space being filled with the name of the foreign country concerned, and the second blank space being filled with the date on which the submissions to Congress under paragraph (2)(A) regarding the extension were made.

(4) On the day on which submissions to Congress under paragraph (2)(A) regarding an extension are made, the negotiating period extension bill submitted by the President shall be introduced (by request) in the House by the majority leader of the

House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officer of the respective Houses to the appropriate committees.

(5) Subsections (d) through (g) of section 151 of the Trade Act of 1974 apply to any agreement period extension bill. Any reference in such subsections to an implementing bill shall be treated as a reference to a negotiating period extension bill.

(d) MODIFICATION AND TERMINATION AUTHORITY.—The President may modify or terminate any action taken under subsection (b) if, and only if, the foreign country concerned enters into a trade agreement under section 208 which achieves the specific negotiating objective regarding which such action was taken.

(e) REPORT.—The President shall promptly inform the appropriate committees of the House and Senate of any action taken under subsection (b) or of the modification or termination of any such action under subsection (d).

SEC. 206. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) DEFINITION.—For purposes of this section, the term "trade agreement" means—

(1) a trade agreement entered into under section 208 that is in force with respect to the United States; and

(2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of the enactment of this Act.

(b) PERIODIC REVIEW.—

(1) The Trade Representative shall review each trade agreement to determine whether any act, policy, or practice of the foreign country—

(A) is not in compliance with the terms of the agreement; or

(B) otherwise denies, within the context of the terms of the trade agreement, to telecommunications products and services of United States firms fully competitive market opportunities in that foreign country.

(2) The Trade Representative shall carry out the reviews required under paragraph (1)—

(A) with respect to each trade agreement described in subsection (a)(1), within 6 months after the agreement enters into force with respect to the United States, and annually thereafter; and

(B) with respect to each trade agreement described in subsection (a)(2), within 18 months after the date of the enactment of this Act, and annually thereafter.

(c) REVIEW FACTORS.—

(1) In undertaking reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission in regard to the actual patterns of trade described in paragraph (1).

(d) ACTION IN RESPONSE TO AFFIRMATIVE DETERMINATION.—If the Trade Representative makes an affirmative determination under subsection (b) with respect to any act, policy, or practice of a foreign country, the Trade Representative shall take whatever action authorized under paragraph (e) that is necessary—

(1) to offset fully such act, policy, or practice, and

(2) to restore the balance of concessions in telecommunications products and services trade between the United States and such foreign country;

except that the Trade Representative may not take any action under subsection (e) on the basis of a review under subsection (b) regarding a trade agreement described in subsection (a)(2) before the President takes action under section 205(b)(3) with respect to any country.

(e) AUTHORIZED ACTIONS.—

(1) The Trade Representative is authorized to take the following actions under subsection (d):

(A) Terminate, withdraw, or suspend any portion of any trade agreement entered into under—

(i) the Trade Act of 1974,

(ii) section 201 of the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product.

(B) Take any action under section 301 of the Trade Act of 1974.

(2) Actions described in paragraph (1) may be taken under subsection (d) with respect to other than telecommunications products and services only if—

(A) the Trade Representative has taken all feasible actions described in subparagraphs (A) and (B) of paragraph (1) with respect to telecommunications products and services; and

(B) the applicable objectives established in section 204(a)(1)(B) have not been achieved.

(3) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement is terminated, withdrawn, or suspended under paragraph (1)(A) with respect to any duty imposed by the United States on any product, the rate of such duty determined by the United States Trade Representative up to the rate provided for in rate column

number 2 of the Tariff Schedules of the United States shall apply to such products after the date on which such termination, withdrawal, or suspension takes effect.

(4) Any action the Trade Representative decides to take under paragraph (1) shall be treated as necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f) and (g) of section 102 of the Trade Act of 1974.

(f) ACTIONS NOT TO AFFECT CERTAIN CONTRACTUAL OBLIGATIONS.—No action taken under this section shall affect any binding obligations under any written contract entered into before the date of the enactment of this Act, to which any citizen or national of the United States is a party.

(g) MODIFICATION AND TERMINATION AUTHORITY.—The Trade Representative may modify or terminate any action taken under subsection (e) if, and only if, he determines that the foreign country has taken appropriate remedial action regarding the act, policy, or practice concerned.

(h) REPORT.—The Trade Representative shall promptly inform the appropriate committees of the House and Senate of any actions taken under subsection (c) or of the modification or termination of any such action under subsection (g).

SEC. 207. CONSULTATIONS.

(a) ADVICE FROM DEPARTMENTS AND AGENCIES.—For purposes of determining appropriate action under section 205(b) or 206(d), the President and the Trade Representative shall consult with the Secretary of Commerce and the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872).

(b) ADVICE FROM THE PRIVATE SECTOR.—The—

(1) Trade Representative, in conducting investigations and establishing negotiating objectives under section 204, and for purposes of determining appropriate action under section 206(d); and

(2) President, for purposes of determining appropriate action under section 205(b);

shall provide the opportunity for presentation of views by any interested party, including appropriate committees established under section 135 of the Trade Act of 1974.

(c) CONSULTATIONS WITH CONGRESS AND OFFICIAL ADVISORS.—For purposes of conducting negotiations under section 205(a), the President shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, currently informed with respect to—

(1) the negotiating priorities and objectives for each country involved;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in section 205.

SEC. 208. GENERAL TRADE AGREEMENT AUTHORITY.

(a) IN GENERAL.—During the 42-month period beginning on the date of enactment of this Act, the President may enter into trade agreements, for purposes of achieving the primary and secondary ne-

gotiating objectives established under section 204(a)(1)(B), with foreign countries. The trade agreements may provide for—

(1) the harmonization, reduction, or elimination of—

(A) duties, or

(B) restrictions on, barriers to, or other distortions of international trade, or

(2) the prohibition of, or limitations on the imposition of—

(A) duties, or

(B) restrictions on, barriers to, or other distortions of international trade.

(b) AGREEMENT TREATED IN SAME MANNER AS AGREEMENT UNDER SECTION 102 OF THE TRADE ACT OF 1974.—

(1) For purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974, any trade agreement entered into under subsection (a) (other than a trade agreement provided for under paragraph (2)) shall be treated as a trade agreement entered into under section 102 of the Trade Act of 1974.

(2) The President may by proclamation implement any trade agreement entered into under subsection (a) that provides solely for unilateral concessions by a foreign country to the United States.

(c) APPLICATION OF AGREEMENT BENEFITS.—Notwithstanding any other provision of law, any agreement entered into under this section may provide that the benefits and obligations of such agreement—

(1) apply solely to the parties to the agreement, or

(2) not apply uniformly to all parties to such agreement.

SEC. 209. COMPENSATION AUTHORITY.

(a) IN GENERAL.—If—

(1) the President takes action under section 205(b); or

(2) the Trade Representative takes action under section 206(d); and

(3) such action is found to be inconsistent with the international obligations of the United States, including the obligations under the General Agreement on Tariffs and Trade;

the President may enter into trade agreements with the foreign country concerned for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

(b) AGREEMENT TREATED IN SAME MANNER AS AGREEMENT UNDER SECTION 102 OF THE TRADE ACT OF 1974.—For purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974, any trade agreement entered into under subsection (a) shall be treated as a trade agreement entered into under section 102 of the Trade Act of 1974.

SEC. 210. DEFINITION OF TELECOMMUNICATIONS PRODUCT.

For purposes of this title, the term "telecommunications product" means any paging alerting device provided for in item 685.70 of the Tariff Schedules of the United States (19 U.S.C. 1202), as in effect *on November 14, 1985, and any article that is classified under the following item numbers of such Schedules:*

684.57	*684.67*	*685.28*	*688.17*
684.58	*684.80*	*685.30*	*688.41*
684.59	*685.16*	*685.32*	*707.90*
684.65	*685.24*	*685.34*	
684.66	*685.25*	*685.48*	

SEC. 211. INTERNATIONAL OBLIGATIONS.

Nothing in this title may be construed to require the President and the United States Congress to act in a manner inconsistent with the legal obligations of the United States, including the General Agreement on Tariffs and Trade.

SEC. 212. FEDERAL COMMUNICATIONS COMMISSION.

(a) CLARIFICATION OF FACTORS FCC REQUIRED TO CONSIDER.—The Communications Act of 1934 is amended by adding at the end of title II (relating to common carriers) the following new section:

"CONSIDERATION OF INTERNATIONAL TRADE FACTORS

"SEC. 225. The Congress finds that international telecommunications trade has significant impact with regard to telecommunications policymaking in the United States. It is therefore the policy of the United States that the Commission, in order to fulfill its duties and obligation to make decisions on the basis of the public interest, convenience, and necessity under this title should, in making its determinations, take into account, where appropriate, the impact of international trade on the ability of the United States telecommunications industry to be competitive in the international marketplace and on the ability of the American public to obtain, on a continuing basis, quality services and equipment.".

(b) REPORT TO CONGRESS.—On or before November 1, 1987, the Federal Communications Commission (hereafter referred to in this section as the "Commission") shall report to the Congress its findings and conclusions based on the Notice of Inquiry and Proposed Rulemaking, CC Docket No. 86-494, adopted on December 23, 1986. If further rulemaking action is considered appropriate based on such inquiry, the Commission shall commence a rulemaking based on such findings and conclusions not later than December 1, 1987.

(c) TELECOMMUNICATIONS COMPETITIVENESS IN THE UNITED STATES.—

(1)(A) The Secretary of Commerce, acting with the Federal Communications Commission and the National Telecommunications and Information Administration, shall conduct a study of the competitiveness of the United States domestic telecommunications industry and the effects of foreign telecommunications policies and practices thereon in order to assist the Congress and the President in determining what actions might be necessary to preserve the competitiveness of the American telecommunications industry.

(B) The study provided for by subparagraph (A) shall be carried out within available appropriations.

(2)(A) Within 45 days of the date of the enactment of this Act, the Secretary of Commerce and the Chairman of the Federal Communications Commission, or their designees, shall begin

consultation and coordination on the study under paragraph (1)(A).

(B) The Commission shall provide notice and reasonable opportunity for public comment within 90 days of the date of the enactment of this Act.

(3) The Commission shall, within 120 days of the date of the issuance of public notice of the study, transmit to the Congress and the President a copy of the findings and recommendations. Such findings and recommendations shall be referred to the Committee on Energy and Commerce of the House of Representatives and appropriate authorization committees of the Senate.

TITLE VII—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS AND OTHER REQUIREMENTS

SEC. 701. FOREIGN CORRUPT PRACTICES ACT AMENDMENTS.

(a) PROHIBITED TRADE PRACTICES BY ISSUERS.—Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) is amended to read as follows:

"PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS

"SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

"(1) any foreign official for purposes of—

"(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

"(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

"(b)(1) It shall be a defense to actions under subsection (a) that—

"(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

"(B) the payment, gift, offer, or promise of anything of value that was made, was expressly permitted under a law or regulation of the government of the country involved.

"(2) For purposes of paragraph (1)(A), the term 'routine governmental action' means an action which is ordinarily and commonly performed by a foreign official and includes—

"(A) processing governmental papers, such as visas and work orders;

"(B) loading and unloading cargoes; and

"(C) scheduling inspections associated with contract performance,

and actions of a similar nature. 'Routine governmental action' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

"(c) An issuer may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

"(1) such issuer has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

"(2) the officer and employee of the issuer with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such issuer shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2).

"(d) Not later than one year after the date of the enactment of the Trade and International Economic Policy Reform Act of 1987, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

"(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

"(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

"(e)(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the con-

duct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

"(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

"(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

"(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(f) For purposes of this section—

"(1) the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

"(2) a person meets the 'knowing' standard for purposes of subsection (a)(3) if—

"(A) that person is aware or substantially certain, or

"(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

"(3) a person meets the 'recklessly disregarding' standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

"(4) the term 'substantial risk' means a risk that is of such a nature and degree that to disregard it constitutes a substantial

deviation from the standard of care that a reasonable person would exercise in such a situation.".

(b) VIOLATIONS.—Section 32(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended to read as follows:

"(c)(1)(A) Any issuer that—

"(i) violates section 30A(a)(1) or (2); or

"(ii) violates section 30A(a)(3) and meets the 'knowing' standards of that section (as defined by section 30A(f)(2)),

shall be fined not more than $2,000,000.

"(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who—

"(i) willfully violates section 30A(a)(1) or (2); or

"(ii) willfully violates section 30A(a)(3) and meets the 'knowing' standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who—

"(i) willfully violates section 30A(a)(1) or (2); or

"(ii) willfully violates section 30A(a)(3) and meets the 'knowing' standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.".

(c) PROHIBITED TRADE PRACTICES BY DOMESTIC CONCERNS.—Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended to read as follows:

"PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

"SEC. 104. (a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

"(1) any foreign official for purposes of—

"(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

"(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

"(b) DEFENSES.—(1) It shall be a defense to actions under subsection (a) that—

"(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

"(B) the payment, gift, offer, or promise of anything of value that was made was expressly permitted under any law or regulation of the government of the country involved.

"(2) For purposes of paragraph (1)(A), the term 'routine governmental action' means an action which is ordinarily and commonly performed by a foreign official and includes—

"(A) processing governmental papers, such as visas and work orders;

"(B) loading and unloading cargoes; and

"(C) scheduling inspections associated with contract performance,

and actions of a similar nature. 'Routine governmental action' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

"(c) DUE DILIGENCE.—A domestic concern which is not an individual may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

"(1) such domestic concern has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

"(2) the officer and employee of the domestic concern with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such domestic concern shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2). The first sentence of this subsection shall be considered an affirmative defense to actions under subsection (a).

"(d) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than 6 months after the date of the enactment of the Trade and International Economic Policy Reform Act of 1987, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

"(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

"(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

"(e) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies

of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

"(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

"(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

"(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(f) VIOLATIONS.—(1)(A) Any domestic concern that—

"(i) violates subsection (a) (1) or (2); or

"(ii) violates subsection (a)(3) and meets the 'knowing' standards of that subsection (as defined by subsection (h)(4)),

shall be fined not more than $2,000,000.

"(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who—

"(i) willfully violates subsection (a) (1) or (2); or

"(ii) willfully violates subsection (a)(3) and meets the 'knowing' standard of that subsection,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who—

"(i) willfully violates subsection (a) (1) or (2); or

"(ii) willfully violates subsection (a)(3) and meets the 'knowing' standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

"(g) INJUNCTIONS.—Whenever it appears to the Attorney General that any domestic concern or officer, director, employee, agent, or stockholder thereof is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a), the Attorney General may bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

"(h) DEFINITIONS.—As used in this section—

"(1) the term 'domestic concern' means—

"(A) any individual who is a citizen, national, or resident of the United States; and

"(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States;

"(2) the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity

for or on behalf of any such government or department, agency, or instrumentality;

"(3) the term 'interstate commerce' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

"(A) a telephone or other interstate means of communication, or

"(B) any other interstate instrumentality;

"(4) a person meets the 'knowing' standard for purposes of subsection (a)(3) if—

"(A) that person is aware or substantially certain, or

"(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

"(5) a person meets the 'recklessly disregarding' standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

"(6) the term 'substantial risk' means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation.".

(d) INTERNATIONAL AGREEMENT.—

(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the largest possible number of countries, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act, the President shall submit to the Congress a report on—

(i) the progress of the negotiations referred to in paragraph (1),

(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate the competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent

bribery of foreign officials, candidates, or parties in third countries.

(B) The President shall include in the report submitted under subparagraph (A)—

(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

(iii) an assessment of the current and future role of private initiatives in curtailing such acts.

SEC. 702. FINANCIAL SERVICES STUDY.

(a) STUDY REQUIRED.—

(1) The Secretary of Commerce, in consultation and coordination with the United States Trade Representative and the Securities and Exchange Commission, shall conduct an investigation to determine—

(A) the foreign countries from which foreign financial services institutions have entered, directly or indirectly, into the business of providing financial services in the United States,

(B) the kinds of financial services which are being offered, and

(C) the extent to which United States financial services institutions are permitted to offer the same services in each of those foreign countries.

(2) The Secretary of Commerce shall transmit a report on the results of the investigation under paragraph (1) within 120 days after the date of enactment of this Act to the President, the Congress, the United States Trade Representative, and the Securities and Exchange Commission.

(b) DEFINITIONS.—As used in this section—

(1) The term "foreign country" means a foreign country or a political subdivision, a dependent territory, or a possession of a foreign country, and includes an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries forming a customs union outside the United States.

(2) The term "foreign financial services institution" means—

(A) any legal entity the headquarters, or the primary control or operations, of which are located or based in a foreign country,

(B) any citizen or national of a foreign country, or

(C) any department, agency, or other government-operated or government-controlled organization of a foreign country,

that is directly or indirectly engaged, in whole or part, in business as a financial services institution.

(3) The term "United States financial services institution" mean a financial services institution—

(A) the headquarters, and the primary control and operations of which, are located in the United States, and

(B) that is not owned or controlled, directly or indirectly, by any company whose headquarters, or primary control or operations, are located outside the United States.

(4) The term "financial services institution" means—

(A) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities,

(B) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial service provider, and

(C) any other entity providing financial services.

SEC. 703. ADJUSTMENT PLAN REVIEW.

(a) IN GENERAL.—If—

(1) an industry adjustment plan is prepared for a domestic industry under section 203 of the Trade Act of 1974 (hereinafter referred to as the "Act") incident to an investigation under section 204 of the Act; and

(2) import relief is provided to that industry under section 205 of the Act as a result of that investigation;

a review committee, consisting of the United States Trade Representative, the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce (who shall chair the committee) shall—

(A) monitor, on a continuing basis, actions taken by the workers and firms in the industry to improve the competitive position of the industry, including actions mentioned in information obtained under section 203(d) of the Act;

(B) make such recommendations for administrative action under existing statutory authority as may be necessary to achieve the objectives and steps that are specified in the plan; and

(C) after consultation with the industry adjustment advisory group that prepared the plan and with other appropriate industry advisory groups, submit to Congress such recommended legislation as the review committee considers necessary or appropriate for the purpose of achieving such objectives and steps.

(b) CONSULTATION AFTER REVIEW.—If the review committee determines under subsection (a) with respect to an industry adjustment plan that the firms or workers in the domestic industry are not implementing, or are implementing in an unsatisfactory manner, the objectives, steps, and actions specified in the plan (including actions mentioned in the information obtained under section 203(d) of the Act), the review committee shall consult with the firms and workers in the industry on an individual or joint basis, as appropriate.

(c) ACTION AFTER CONSULTATION.—

(1) If, after consultation under subsection (b) and after taking into account such other relevant information as may be available, the review committee determines that the failure to implement, or failure to implement satisfactorily, the objectives, steps, and actions referred to in subsection (b)—

(A) is not justified by changed circumstances; and

(B) has adversely affected overall implementation of the objectives and steps specified in the industry adjustment plan;

the Secretary of Commerce shall inform the United States Trade Representative of the determination and the United States Trade Representative shall then request the United States International Trade Commission to issue a report under section 207(b) of the Act within 60 days of the date of such request.

(2) After taking the report prepared by the Commission under paragraph (1) and the determination of the review committee into account, the United States Trade Representative shall—

(A) determine whether the import relief provided to the industry under section 205 of the Act should be terminated or modified; and

(B) may provide for the termination of the relief or for such modification of the relief as he considers necessary or appropriate.

SEC. 704. REGISTRATION OF FOREIGN-CONTROLLED INTERESTS IN UNITED STATES PERSONS.

(a) INTERESTS ACQUIRED AFTER ENACTMENT.—Within 30 days after a foreign person acquires, directly or through any subsidiary or affiliate—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise,

the foreign person shall register that interest with the Secretary.

(b) INTERESTS ACQUIRED BEFORE ENACTMENT.—Any foreign person who, on the date of enactment of this Act, has acquired and continues to hold—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise,

shall register that interest with the Secretary within 180 days after the date on which regulations are prescribed pursuant to subsection (h) of this section.

(c) CONTENTS OF REGISTRATION.—Each registration required under subsection (a) or (b) of this section shall be in such form and in accordance with such procedures as the Secretary may require by regulation and shall contain the following:

(1) The identity, address, legal nature, and nationality of the foreign person.

(2) The date on which the foreign person acquired the interest.

(3) The relation of the foreign person to the United States property.

(4) The name, location, and industry of the United States property.

(5) The size of the interest acquired in the United States property and the price paid for the interest.

(6) Such other information as the Secretary may require by regulation in furtherance of the purposes of this Act.

(d) ADDITIONAL CONTENTS REQUIRED IN ACQUISITIONS OF CONTROLLING INTERESTS.—If the interest being registered under subsection (a)(2) or (b)(2) is a controlling interest in a business enterprise, the registration shall also contain—

(1) with respect to the foreign person, an English translation of any public financial disclosures filed in the home country of the foreign person;

(2) with respect to the United States business enterprise—

(A) a balance sheet and income statement, and a statement of sales, assets, operating income, changes in financial condition, and depreciation by industrial segment, prepared in accordance with generally accepted accounting procedures and accompanied by an auditor's statement and explanatory notes;

(B) the location of all facilities within the United States;

(C) the identity and nationality of the directors and executive officers, the compensation of the executive officers, and any related business transactions of any director; and

(D) a description of any significant civil litigation in which the business enterprise has been involved within the past year.

(e) ANNUAL REPORTS.—Within 90 days after the beginning of each calendar year, a foreign person who has registered an interest under this section shall report to the Secretary any changes in the information required under subsections (c) and (d) that have occurred since the registration or previous report. The report shall be in such form and in accordance with such procedures as the Secretary may require by regulation.

(f) CIVIL PENALTY.—Any foreign person who is late in registering an interest or reporting changes with respect to an interest in accordance with subsections (a) through (d) of this section shall be subject to a civil penalty of not more than $10,000 for each week the registration or report is late.

(g) CRIMINAL PENALTIES.—Any foreign person who willfully fails to register an interest or submit a report in accordance with subsections (a) through (d) of this section, or who willfully submits false or misleading information in the registration or report shall be fined not more than $10,000, be imprisoned not more than 1 year, or both.

(h) INVESTIGATIVE ACTIONS.—The Secretary may undertake such investigative actions as the Secretary considers necessary to monitor compliance with this section. For the purposes of conducting such investigations the Secretary of Commerce shall have the same powers and authorities as the Federal Trade Commission under sections 9 and 10 of the Federal Trade Commission Act.

(i) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish for notice and public comment regulations to carry out this section. The Secretary shall prescribe final regulations to carry out this section not later than 180 days after such date of enactment. Such regulations shall—

(1) establish forms and procedures for making such disclosures required by this section; and

(2) establish procedures for appropriately indexing, and providing public access to, the information disclosed under this section.

(j) Reports to Congress and the President.—The Secretary shall transmit in January of each year, beginning in 1989, a report to the President and to the Congress describing—

(1) the extent to which foreign persons hold significant or controlling interests in United States properties, the nationality of those foreign persons, the industries in which those interests are concentrated, and the social, economic, and other effects in the United States of such foreign interests;

(2) the effectiveness and efficiency of the registration and reporting requirements contained in this section in providing the information required under this section and the extent to which the information provides a comprehensive description of the presence of foreign capital in the United States economy;

(3) the existence of other Federal data collection activities that overlap with, duplicate, or complement the registration and reporting requirements established under this section and that could be consolidated or eliminated without compromising the quality of data collected; and

(4) in the case of the first annual report, an analysis of the feasibility of establishing a system to track individual transactions representing other capital flows into the United States.

(k) Inventory of Foreign Controlled Interests.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall compile an inventory of interests registered or reported under this section. The inventory shall be made available for public access and shall index the information for retrieval by—

(1) the name and nationality of any foreign person who registers or reports an interest under subsection (a) through (e) of this section and of the standard industrial classification number or numbers (as issued by the Director of the Office of Management and Budget);

(2) the name of the United States property in which any interest registered or reported under this section is held, the standard industrial classification number or numbers of any such United States property, and the State in which any such United States property is located.

(l) Definitions.—As used in this section:

(1) Secretary.—The term "Secretary" means the Secretary of Commerce.

(2) United states.—The term "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(3) Business enterprise.—The term "business enterprise" means—

(A) any sole proprietorship, branch, partnership, associated group, association, estate, trust, corporation, or other organization; and

(B) any group of business enterprises described in subparagraph (A) who are acting in concert.

(4) UNITED STATES PROPERTY.—The term "United States property" means—

(A) any business enterprise organized under the laws of the United States or of a State or that has its principal place of business in the United States; and

(B) any real property located in the United States, including any mineral rights therein.

(5) FOREIGN PERSON.—The term "foreign person" means—

(A) any individual who is not a citizen of the United States;

(B) any business enterprise that is organized under the laws of a foreign government or which has its principal place of business outside of the United States;

(C) any foreign government or any agency or instrumentality of a foreign government; and

(D) any group of persons acting in concert which includes a foreign person described in subparagraph (A), (B), or (C), and each person in such a group.

(6) SIGNIFICANT INTEREST.—The term "significant interest" means—

(A) any equity or ownership interest that equals or exceeds 5 percent of the total equity or ownership interests in—

(i) a United States property that (i) has assets with a market value in excess of $3,000,000; or (ii) had gross sales in the most recent fiscal year in excess of $10,000,000; or

(ii) any two or more United States properties if the properties, in the aggregate (i) have assets with a market value in excess of $12,000,000; or (ii) had gross sales in the most recent fiscal year in excess of $40,000,000; or

(B) any equity or ownership interest with a market value in excess of $10,000,000 in a United States property, regardless of the value of the United States property, excluding any interests which are determined in accordance with regulations prescribed by the Secretary to be transitory and temporary speculative holdings.

(7) CONTROLLING INTEREST.—The term "controlling interest" means an equity or ownership interest that equals or exceeds 25 percent of the total equity or ownership interests in a business enterprise that—

(A) has assets with a market value in excess of $3,000,000; or

(B) has gross sales in the most recent fiscal year in excess of $12,000,000.

(8) ACQUIRE; HOLD.—The terms "acquire" and "hold", when used with respect to an interest, refer to the acquistion or holding of a beneficial ownership of that interest, regardless of whether such interest is held directly or through a nominee account or other financial intermediary.

(9) STATE.—The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(10) BRANCH.—The term "branch" means the operations or activities carried out by a person in a different location in its own name, rather than through a separately incorporated entity.

(m) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), this section shall take effect 90 days after the date on which regulations are prescribed under subsection (h).

(2) EFFECTIVE DATE FOR REGULATION REQUIREMENT.—Subsection (h) of this section shall take effect on the date of the enactment of this Act.

SEC. 705. ENTRY PROCESSING FOR TEXTILES AND APPAREL.

The Congress determines that it is vital to the purposes of the Multi-Fiber Arrangement that bilateral limitations on shipments of textiles and apparel, and periodic adjustments to those limitations, be carried out on a timely basis in order to respond to the changing United States market for textiles and apparel. The Secretary of Commerce shall, within 90 days after the date of the enactment of this Act, institute procedures to expedite the interagency process for recommending and approving the issuance of notices requesting consultations and negotiations on such limitations and periodic adjustments.

At the end of the bill insert the following new title:

TITLE IX—ENERGY AND COMMERCE PROVISIONS

SEC. 901. TRADE IN DIGITAL AUDIO RECORDERS.

(a) FINDINGS.—The Congress finds that international trade in digital audio recorders without appropriate protection from unauthorized copying by such recorders of creative works will harm the competitiveness of American industry.

(b) DEFINITIONS.—As used in this section:

(1) The term "commerce" means commerce among the several States of the United States or with foreign nations, or in any territory or possession of the United States or in the District of Columbia, or among the territories or possessions or between any territory, possession, State, foreign nation, or between the District of Columbia and any State, territory, possession, or foreign nation.

(2) The term "copy-code scanner" is an electronic circuit or comparable system of circuitry (A) which is built into the recording mechanism of an audio recording device, (B) which, if removed, bypassed, or deactivated, would render inoperative the recording capability of the audio recording device, (C) which continually detects, within the audio frequency range of three thousand five hundred to four thousand one hundred hertz, a notch in an encoded phonorecord, and (D) which, upon detecting a notch, prevents the audio recording device from recording the sounds embodied in the encoded phonorecord by causing the recording mechanism of the device to stop recording for at least twenty-five seconds.

(3) The term "digital audio recording device" is any machine or device, now known or hereafter developed, which can be used for making audio recordings in a digital format. The term "dig-

ital audio recording device" includes any machine or device which incorporates a digital audio recording device as part thereof.

(4) The term "encoded phonorecord" is a phonorecord which has a notch within the audio frequency range of three thousand seven hundred to three thousand nine hundred hertz.

(5) The term "notch" is an absence of sound resulting from the removal of sound signals at a certain frequency.

(6) The term "phonorecord" is a material object in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be received, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecord" includes the material object in which the sounds are first fixed.

(c) TRADE IN DIGITAL AUDIO RECORDING DEVICES.—

(1) No person shall manufacture, assemble, or offer for sale, resale, lease, or distribution in commerce—

(A) any digital audio recording device which does not contain a copy-code scanner, or

(B) any device, product, or service, the primary purpose or effect of which is to bypass, remove, or deactivate a copy-code scanner,

if any patent, technical know-how, or proprietary rights necessary for manufacturing a copy-code scanner have been made available by means of a royalty-free license.

(2) No person shall bypass, remove, or deactivate a copy-code scanner.

(d) REMEDIES.—

(1) Any person aggrieved by any violation of subsection (c), or any appropriate officer or agency of the United States, may bring a civil action in any appropriate district court of the United States. Such court may (A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (c), (B) grant such other equitable relief as it may deem reasonable, and (C) direct the recovery of full costs, including reasonable attorneys' fees, by an aggrieved party, other than the United States or an officer or agency thereof, who prevails.

(2) An aggrieved party shall be entitled to recover damages in accordance with established principles of law.

(3) At any time while an action is pending, the court may order the impounding, on such terms as it may deem reasonable, of any digital audio recording device which does not contain a copy-code scanner, or any device or product the primary purpose or effect of which is to bypass or deactivate a copy-code scanner, that is in the custody or control of the alleged violator.

(4) As part of a final judgment or decree, the court may order the destruction, modification, or other disposition of any digital audio recording device which does not contain a copy-code scanner, or any device or product the primary purpose or effect of which is to bypass or deactivate a copy-code scanner, that is in the custody or control of the violator.

(5) Any person who knowingly, willfully, and for purposes of direct or indirect commercial advantage or private financial gain violates subsection (c)(1) shall be subject to criminal prosecution and may be fined, or imprisoned for not more than 2 years, or both. Fines shall be computed at 5 times the retail value of the devices, products, or services involved or $50,000, whichever is greater.

(e) EXEMPTIONS.—The Secretary of Commerce may issue such rules and regulations as may be necessary to exempt from the requirements of subsection (c) certain digital audio recording devices used exclusively for legitimate business purposes.

(f) EFFECTIVE DATE.—On and after one year after the date of the enactment of this Act, this section shall be considered to have terminated and to be of no effect.

SEC. 902. COMPETITIVENESS IMPACT STATEMENTS.

The head of each department and agency of the Federal Government shall include with any reports, statements of position, or recommendations made to the Congress regarding proposed legislation, a detailed statement of the impact of such legislation on—

(1) the international trade of the United States, and

(2) the ability of United States firms engaged in the manufacture, sale, distribution, or providing of goods or services to compete in foreign or domestic markets.

SEC. 903. NATIONAL TRADE DATA BANK.

(a) TRADE DATA FUNCTIONS.—

(1) The Secretary of Commerce shall—

(A) establish and maintain a National Trade Data Bank,

(B) provide for the analysis of information in the National Trade Data Bank,

(C) disseminate such information in a timely manner to business firms in the private sector that are engaged in export related activities, and

(D) coordinate the gathering and dissemination of commercial information relating to international trade by the Federal Government.

(2) The National Trade Data Bank which is required to be established under paragraph (1) may consist of economic and trade data collected by the Federal Government, including—

(A) information on each foreign country such as—

(i) the general economic conditions and demographics,

(ii) common business practices,

(iii) tariff and non-tariff trade barriers, and

(iv) other laws and regulations regarding imports and licensing,

(B) information on specific industrial sectors within each foreign country such as—

(i) size of the market,

(ii) distribution of products,

(iii) competition,

(iv) applicable laws, regulations, specifications, and standards,

(v) consultants,

(vi) appropriate government officials, and
(vii) trade associations,
(C) information on specific business opportunities in each foreign country,
(D) general import and export data for the United States and for each foreign country,
(E) industry specific import and export data for each foreign country,
(F) product and service specific import and export data for the United States,
(G) market penetration ratios for imports to the United States and country of origin for imports to the United States,
(H) rank ordered national destinations for exports of the United States,
(I) exchange rates of all foreign currencies,
(J) market research, including industry and demographic trends for each foreign country with lists of marketing contacts and lists of foreign firms,
(K) product and process patent, copyright, trademark, and mask work (within the meaning of section 901 of title 17, United States Code) information for each nation for at least the 2 most recent years,
(L) general labor market information,
(M) internationally comparable wage rates,
(N) foreign and domestic—
(i) unemployment rates,
(ii) availability of skilled and professional workers,
(iii) hiring and firing restrictions, and
(iv) labor productivity trends,
(O) comparative international tax rate information,
(P) export financing information, including the availability of funds for United States exporters and foreign competitors,
(Q) information regarding the trade actions of foreign governments,
(R) information concerning capital markets, interest rates, and the cost and availability of capital,
(S) National Input and Output Tables compiled by the Department of Commerce for the United States and other nations, and
(T) any other information that the Secretary of Commerce determines to be useful in carrying out the purposes of this section.
(3) The National Trade Data Bank which is required to be established under paragraph (1) shall—
(A) be designed to utilize state-of-the-art data processing and retrieval equipment in monitoring, organizing, analyzing, and disseminating the information described in paragraph (2),
(B) use the most effective and meaningful means of organizing and making such information available to—
(i) United States business firms,
(ii) United States workers,

(iii) United States industry associations,

(iv) United States agricultural interests,

(v) State and local economic development agencies, and

(vi) other interested United States persons who could benefit from such information, and

(C) be of such quality and in such form as to assist coordinated trade strategies for the United States.

(4) The National Trade Data Bank established pursuant to paragraph (1) shall—

(A) collect and disseminate—

(i) information on service sector economic activity that is at least as complete and timely as information on economic activity in the merchandise sector, and

(ii) a broad base of monthly information on the service sector of the economy, and

(B) provide—

(i) a new benchmark survey of unaffiliated service transactions, including—

(I) banking services,

(II) computer software services,

(III) brokerage services,

(IV) transportation services,

(V) travel services,

(VI) engineering services,

(VII) health services, and

(VIII) construction services, and

(ii) an index of leading indicators which includes measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

(5) The National Trade Data Bank established pursuant to paragraph (1) shall not include any information—

(A) which is collected by the Federal Government in connection with any investigation, and

(B) the disclosure of which to the public is prohibited under any other provision of law.

(6) In carrying out this section, the Secretary of Commerce shall consult with—

(A) advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), and

(B) other representatives of the private sector.

(7) The Secretary of Commerce shall (A) ensure that information systems created or developed pursuant to this subsection do not unnecessarily duplicate information systems available from other agencies of the Government or from the private sector, and (B) disseminate information in the manner most cost effective for the Government.

(b) COOPERATION.—Each Federal department and agency shall cooperate with the Secretary of Commerce by making information available for assimilation into the National Trade Data Bank.

(c) REPORTS.—By no later than December 31 of each calendar year, the Secretary of Commerce shall submit a report to Congress—

71-486 0 - 87 -- 2

(A) assessing the current quality, comprehensiveness, and public and private accessibility of trade data,

(B) describing actions taken pursuant to this section, particularly—

(i) actions taken during the 3-month period beginning on the date of enactment of this Act to provide the new benchmark survey described in subsection (a)(4)(B)(i), and

(ii) action taken during the 1-year period beginning on the date of enactment of this Act to provide the information on services described in subparagraphs (A) and (B)(ii) of subsection (a)(4).

(C) describing actions planned to be taken pursuant to this section,

(D) recommending executive and legislative actions which would ensure that United States citizens and firms obtain access to the data banks of foreign countries that is similar to the access provided foreign citizens and firms to the National Trade Data Bank established pursuant to subsection (a)(1), and

(E) recommending other legislative actions which further the purposes of this section.

SEC. 904. FOREIGN COMMERCE DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Commerce (hereinafter in this Act referred to as the "Secretary") shall establish, using existing personnel, in the Department of Commerce the Foreign Commerce Development Program which shall, on a continuous basis—

(1) undertake an analysis of Federal, State, and local regulations of both foreign industries and United States industries and their actual or potential effect on interstate and foreign commerce,

(2) evaluate and propose responses to the trade barriers identified in the report pursuant to section 181 of the Trade Act of 1974,

(3) compile a comprehensive inventory of acts, policies, and practices of foreign countries which may constitute barriers to (or other distortions of) international trade or which may limit the access of United States industries to such foreign countries, which inventory shall include, but not be limited to—

(A) a description of each act, policy, or practice and of its operation in the particular country,

(B) an identification of the goods, services, or investment affected,

(C) an identification of the legal basis for such act, policy, or practice in the particular country, and

(D) an assessment of the impact, or potential effects, of such acts, policies, or practices on United States industries,

(4) identify and analyze all programs of foreign governments that direct resources to a particular foreign industry or industries to create international competitive advantage, and evaluate the impact, or potential effects, of such programs on the international competitiveness of United States industries, and such identification and analysis shall include a description of the nature and extent of such intervention, including—

(A) direct or indirect subsidies to a foreign industry or industries,

(B) special protection of the foreign home market, whether through formal government action, including tariffs, quotas, licensing requirements, or investment restrictions, or informal government action, including preferential procurement, administrative guidance to the industry, or waiver of generally applicable antitrust laws,

(C) support of research and development programs,

(D) programs designed to encourage the provision of capital to a particular enterprise or group of enterprises or industry or group of industries,

(E) the promotion, support, or tolerance of, an industry cartel or cartels,

(F) the provision of conditional loans where the conditions for repayment are not likely to occur within twelve months of the date of the initiation of the investigation,

(G) the provision of capital, loans or loan guarantees which would not otherwise be available from commercial sources,

(H) information concerning the likelihood of goods or services of foreign industries being sold in the United States at less than fair value as a result of such acts, policies, or practices, and

(I) any information needed to complete the report described in subsection (c)(1).

(5) The Secretary shall undertake a comprehensive and continuing evaluation of the potential competitiveness of United States goods and services in markets within the United States (hereinafter referred to as the "domestic markets"), based upon—

(A) an inventory of those domestic market conditions, opportunities, structures and factors which offer potential for growth and development,

(B) an analysis of those factors which significantly affect the competitiveness of those domestic industries that have a high potential for growth, including applicable Federal and State policies and practices (particularly macroeconomic, regulatory, and sectoral policies) and the conditions in, and the structure of, the markets that supply, or distribute the products or services of, such industries, and

(C) an evaluation, on a country-by-country basis, of foreign plans for the penetration of domestic markets.

(b) STRATEGIES AND POLICIES.—On the basis of the analyses, studies, information, and inventory described in the preceding subsection, the Secretary shall formulate strategies and policies designed to increase the competitiveness of United States industries in interstate and foreign commerce. The Secretary shall take such action as may be necessary or appropriate consistent with such powers as are granted to the Secretary under law to implement the trade and competitiveness strategies and other recommendations developed under this section and section 905.

(c) REPORTS. On an annual basis commencing with 1988, the Secretary shall prepare a report (which shall be submitted to the

Energy and Commerce Committee of the House of Representatives and the Commerce, Science, and Transportation Committee of the Senate and to the President no later than 120 days after the close of the period covered by the report) containing—

(1) a summary of the analyses and studies described in paragraphs (1), (2), and (5) of subsection (a) and the inventory described in paragraph (3) of such subsection,

(2) a description of all strategies and policies developed pursuant to subsection (b) and recommendations for legislation, based on such analyses and information, designed to increase the international competitiveness of United States industries in interstate and foreign commerce, to respond to the trade practices of foreign countries, and to ensure full reciprocity for United States products, services, and investment in foreign markets,

(3) assessments of the effects of foreign industrial and trade policies on specific United States industries, trade, and employment, and an evaluation of actual or foreseeable economic and technological developments, in the United States and abroad, which have affected or will affect the competitive position of United States industry or of particular United States industry sectors,

(4) an identification and description, with particularity, of actual or foreseeable developments in the United States and abroad which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry,

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets or to expand their position in established markets, or

(C) create a significant risk that United States industries will be unable to compete successfully in significant future markets, and

(5) a specification, with particularity, of the industry sectors affected by the developments described in clause (i).

(d) PROGRAM PRIORITIES.—In implementing the program described in subsection (a), the Secretary shall give priority to those foreign countries and product sectors in which the United States has significant economic and commercial interests. The Secretary shall consult with appropriate Federal agencies and private sector advisory groups in determining such priorities.

(e) COLLECTION.—The Secretary may collect such information, and seek the advice of such persons representing United States industries, labor, consumers, and members of the academic community, as the Secretary considers necessary to carry out this section.

SEC. 905. RELATED INITIATIVES TO SUPPORT THE PROGRAM OF ENHANCED COMPETITIVENESS.

In connection with the functions specified in section 904, the Secretary shall carry out the following actions in order to achieve the purposes of this section and section 904:

(1) ASSISTANCE REGARDING RESEARCH AND DEVELOPMENT.—After taking into account all relevant information obtained in carrying out section 904(a) (1) and (2), and other available appropriate data, regarding the research and development needs (including commercialization of research and development) of United States industries, the Secretary shall prepare, and thereafter periodically revise—

(A) an inventory of the research and development that (i) is relevant to the maintenance or expansion of the competitiveness of United States industry, and (ii) is being, or is planned to be, undertaken by United States producers, and

(B) a listing of those new areas of research and development not covered under subparagraph (A) that should be engaged in if such competitiveness is to be maintained or expanded.

(2) IMPROVEMENTS IN TRAINING AND EDUCATION.—On the basis of the most recent information derived under section 904, and from other available appropriate data regarding the labor needs of United States industries, the Secretary shall periodically consult with the Secretary of Labor, the Secretary of Education, and the heads of appropriate State agencies regarding actions that may be taken within their respective jurisdictions to improve the quality and availability of labor market information, training (including teacher training), retraining, and education, in those skills and disciplines which will be required by United States industries for purposes of maintaining or expanding their competitiveness.

(3) REDUCTION AND ELIMINATION OF REGULATORY AND BUREAUCRATIC OBSTACLES.—The Secretary shall undertake periodic consultation with appropriate Federal and State officials and representatives of United States industry and business for purposes of identifying those regulations, policies, and procedures that inhibit or delay the development, commercialization, or marketing of goods or services and shall, giving due consideration to the various purposes of such regulations, policies and procedures, make recommendations to the Congress, and to the appropriate Federal and State agencies, regarding those statutory and administrative changes that would, if implemented, eliminate or reduce such obstacles.

(4) COMPETITION.—The Secretary shall consult with the Department of Justice and the Federal Trade Commission for purposes of—

(A) ensuring appropriate emphasis in antitrust enforcement to encourage the development through market forces of those industries considered by the Secretary to be important to the maintenance or expansion of United States competitiveness, and

(B) considering means by which the Department of Justice and the Federal Trade Commission could expedite current procedures under which the Department of Justice and the Federal Trade Commission provide advice as to whether business proposals regarding goods, services, projects (including joint research and development ventures), or practices, that are considered by the Secretary to be important

to the maintenance or expansion of United States competitiveness, comply with the laws relating to antitrust and consumer protection that are administered by the Department of Justice and the Federal Trade Commission. The Secretary shall develop, in consultation with these and other Federal agencies concerned with consumer protection, programs to enhance the confidence of United States consumers in domestically-produced products and the competitive position of such products in world markets.

(5) FEDERAL PROCUREMENT.—The Secretary shall periodically review Federal procurement policies and practices and make recommendations for such changes in those policies and practices as may be appropriate for purposes of assisting in the maintenance and expansion of United States competitiveness.

SEC. 906. ORGANIZATION OF TRADE AND COMPETITIVENESS FUNCTIONS.

Within 180 days of the date of the enactment of this Act the President shall report to the Congress recommendations for legislation to establish an agency in the Executive Branch to promote the competitiveness of United States industries in domestic and foreign commerce and to perform trade functions under existing law and the functions under sections 903, 904, and 905. Such an agency shall be headed by an individual with the same status as the head of an Executive department.

SEC. 907. NATIONAL SECURITY AND ESSENTIAL COMMERCE.

(a) INVESTIGATIONS BY SECRETARY OF COMMERCE.—Upon request of the head of any department or agency or upon the motion of the Secretary of Commerce (hereinafter in this section referred to as the "Secretary"), the Secretary shall immediately make an appropriate investigation to determine the effects on national security, essential commerce, and economic welfare of mergers, acquisitions, joint ventures, licensing, and takeovers by or with foreign persons which involve persons engaged in interstate commerce in the United States and of efforts by or with foreign persons to gain control of persons engaged in interstate commerce in the United States. In the course of the investigation, the Secretary shall seek information and advice from, and shall consult with, the Secretary of Defense and other appropriate officers of the United States. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report—

(1) the findings of the investigation under this subsection with respect to the effect of the control of such persons by foreign persons upon the national security and essential commerce, and

(2) based on such findings, the recommendation of the Secretary for action or inaction under this section to the President within 45 days after beginning an investigation under this subsection.

If the Secretary finds that the control of such persons by foreign persons threatens to impair the national security and essential commerce, the Secretary shall so advise the President. The President shall take such action, and for such time, as the President deems *appropriate to restrict, suspend, or prohibit any effort made by a foreign citizen to merge, acquire, take over, or otherwise gain control of a person engaged in interstate commerce in the United States so that such control will not threaten to impair the national security and essential commerce unless the President determines that such effort by foreign citizens do not threaten to impair the national security and essential commerce.*

(b) DOMESTIC PRODUCTION FOR NATIONAL DEFENSE.—For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and essential commerce and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense and essential commerce, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the control of such industries by foreign citizens as it affects such industries and the capacity of the United States to meet requirements of national security and essential commerce. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security and essential commerce, and shall take into consideration the impact of foreign control on the economic welfare of individual domestic industries, and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the control of such industries by foreign citizens shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security and essential commerce.

SEC. 908. ACTION UNDER SECTION 301(c) OF THE TRADE ACT OF 1974.

The President shall immediately take all appropriate and feasible action under section 301(c) of the Trade Act of 1974—

(1) to remedy and prevent violations of the agreement entered into on September 2, 1986, between the United States and Japan concerning trade in semiconductors,

(2) to serve as an incentive for compliance with such agreement,

(3) to compensate the United States for the harm suffered on account of noncompliance by Japan with such agreement, and

(4) to prevent further injury to the United States from such noncompliance.

SEC. 909. DISCRIMINATION.

Section 301(e)(5) of the Trade Act of 1974 (19 U.S.C. 2411(e)(5)) is amended by inserting before the period "or which denies access to foreign technology, research, or development".

SEC. 910. MARKING OF CERTAIN ITEMS IN INTERSTATE COMMERCE.

Items imported under item 740.05 of the Tariff Schedules of the United States may not be sold or distributed in interstate commerce *unless such items have an indelible and permanent marking identifying the country of origin.*

SEC. 911. BILATERAL TRADE BETWEEN THE UNITED STATES AND MEXICO.

The Secretary of Commerce shall prepare and submit to the Congress, within 1 year after the date of the enactment of this Act, a report on bilateral trade issues between the United States and Mexico. In the report, the Secretary shall—

(1) identify and analyze the tariff and nontariff barriers that inhibit trade between the United States and Mexico,

(2) recommend unilateral and bilateral actions that may be taken by the Governments of the United States and Mexico to reduce or eliminate such trade barriers, including—

(A) the stimulation of joint investment and coproduction by United States and Mexico joint ventures in those areas in both countries that are adjacent to the international border and the provision of duty-free treatment to articles produced by such ventures, and

(B) the eventual establishment of a free trade area between the United States and Mexico, and

(3) identify and analyze the potential effects on bilateral trade of a United States-Mexico development bank the purpose of which would be to encourage and coordinate economic development between the two countries.

SEC. 912. INVESTIGATION OF MARKET DISTORTING PRACTICES AFFECTING INTERSTATE COMMERCE IN URANIUM.

(a) COMMERCE IN URANIUM.—The Secretary of Commerce shall investigate foreign government trade practices resulting in market distortions in interstate and foreign commerce in uranium. In conducting the investigation, the Secretary of Commerce shall take comment and evidence from interested parties, may send questionnaires to foreign producers or other entities and take appropriate account of failures to respond, and shall rely on the best available evidence concerning foreign government trade practices resulting in market distortions. On the basis of the investigation, the Secretary shall issue a preliminary report within 6 months of the date of enactment of this section. The Secretary shall afford an additional 45 days for comment on the preliminary report and shall issue a final report no later than 75 days after issuance of the preliminary report.

(b) REPORTS.—The preliminary and final reports required by subsection (a) shall—

(1) describe any foreign government trade practices and policies regarding uranium and provide the basis for that description,

(2) specifically identify to the best extent possible any evidence of differential pricing, market exclusion, contract review, product or service tie-ins, or similar practices having actual or potential adverse impact on the United States uranium mining and milling industry, and

(3) identify appropriate remedial action by the Secretary of Energy, the Secretary of Commerce, or the President.

Within 30 days of issuance of the final report, the Secretary of Commerce, on the basis of the final report and the existing determinations of the Secretary of Energy that the domestic uranium industry *is not viable, shall make a recommendation to the President or other appropriate authorities on any action or combination of actions which may be taken to rectify any impact of any foreign government trade practices affecting interstate and foreign commerce in uranium.*

(c) SUMMARY.—A summary of the preliminary report and the final report and appropriate remedial action required by subsection (a) shall be published in the Federal Register.

(d) DATA COLLECTION.—The Secretary of Energy, with the cooperation as appropriate of the Secretary of Commerce and the Secretary of the Treasury, shall collect data and publish on at least a semiannual basis statistics providing the amount of uranium in any form imported into the United States for domestic consumption or other use. The statistics shall specifically identify the country of origin of the imported uranium. The Secretary shall not take into account fictitious alterations in the country of origin of the uranium for purposes of compiling such statistics.

(e) CONSTRUCTION.—Nothing in this section shall be construed to modify any obligation under the Atomic Energy Act of 1954 on the part of the Secretary of Energy to assure the maintenance of a viable domestic uranium industry and nothing in this section shall be construed to modify any remedy otherwise available to the domestic uranium industry under existing law.

SEC. 913. INVESTIGATION OF CERTAIN BARRIERS PERTAINING TO TRADE AND SERVICES.

The United States Trade Representative shall, within 90 days of the date of the enactment of this Act, initiate an investigation under section 302 of the Trade Act of 1974 regarding the acts, policies, and practices of the Government of Japan and of entities which are owned, financed, or otherwise controlled by the Government of Japan with respect to barriers in Japan to the offering by United States persons of architectural, engineering, construction, and consulting services in such country.

SEC. 914. EFFECT OF IMPORTS ON CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

The Secretary of Energy shall send to the Secretary of Commerce the results of the study conducted under section 3102 of the Omnibus Budget Reconciliation Act of 1986. Within 180 days of the receipt of the results of such study, the Secretary of Commerce shall report to the President and the Congress recommendations for actions which may be appropriate to address any impact of imports of crude oil and petroleum products on domestic crude oil exploration and production and the domestic petroleum refining capacity.

SEC. 915. INVESTMENTS.

Within 6 months of the date of the enactment of this Act, the Secretary of Commerce shall—

(1) review the investment restrictions placed on citizens of the United States and persons which have their principal office in the United States by foreign countries, and

(2) report to Congress recommendations for legislation for appropriate actions to remove such restrictions.

SEC. 916. REPORT ON SECRETARY OF COMMERCE PROCEDURES.

Within 180 days of the date of the enactment of this Act the Secretary of Commerce shall report to the Congress on the legal basis for the trade impact of and alternative approaches to—

(1) the lack of any provision for deducting a reasonable profit earned by related party importers in calculating "Exporter's Sales Price", and

(2) the deduction of and amount of indirect selling expenses included in the home market from the home market price, when calculating "Foreign Market Value",

in connection with actions and investigations by the Secretary.

SEC. 917. IMPACT OF NATIONAL DEFENSE EXPENDITURES ON INTERNATIONAL COMPETITIVENESS.

(a) FINDINGS.—The Congress finds that the ability of United States industries to compete in world markets may be adversely affected by the following factors:

(1) The allocation of intellectual resources between the private and public sectors.

(2) The distribution of innovative research and development between commercial and non-commercial applications.

(3) The number of scientific advances which are ultimately commercialized.

(4) The cost of capital which is affected by many factors including the budget deficit and defense spending.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should evaluate the impact on United States competitiveness of—

(1) the defense spending by foreign countries, particularly Japan's expenditure of 1 percent of its gross national product for defense compared to the expenditure of the United States of 6 percent of its gross national product, and

(2) the other factors listed in subsection (a).

SEC. 918. INVESTIGATIONS AND REPORTS CONCERNING PERISHABLE PRODUCTS INDUSTRY.

(a) REQUESTS FOR INVESTIGATIONS AND REPORTS.—If, upon request from a domestic industry producing a perishable product, the Secretary of Commerce determines that there is a reasonable indication that such industry is vulnerable to serious and irreparable injury as a result of surges in quantities of a like or directly competitive product in interstate commerce, the Secretary shall investigate and monitor such surges for a period not to exceed 180 days. The Secretary, on the basis of the Secretary's investigation, shall make recommendations to the President to take such appropriate action as may be necessary to assure that such surges will not recur.

(b) DEFINITION OF PERISHABLE PRODUCT.—For purposes of subsection (a), the term "perishable product" includes—

(1) all articles that are treated as perishable products under section 404(e) of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note), and

(2) live animals provided for in items 100.40 through 100.55, inclusive, of the Tariff Schedules of the United States.

SEC. 919. DEVELOPMENT OF SEMICONDUCTOR MANUFACTURING TECHNOLOGY.

(a) AUTHORIZATION.—There is authorized to be appropriated $100,000,000 for each of the fiscal years 1988, 1989, 1990, 1991, and 1992 to enable the Secretary of Commerce, in order to preserve essential commerce, to make grants to a consortium of United States persons engaged in the manufacture in the United States of semiconductors to pay not more than one-half the cost of undertaking projects to stimulate the development of semiconductor manufacturing technology and its application in a variety of industries.

(b) GRANT AUTHORITY.—

(1) Not later than 60 days after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan which will specify what consortium will be established to receive grants under subsection (a) and what will be the function of such consortium.

(2) No grant may be made under subsection (a) unless a law specifically authorizing such grants is enacted after the date of enactment of this Act.

(c) REPORTS.—The Secretary of Commerce shall report annually to the Congress on the activities undertaken under grants made under subsection (a).

SEC. 920. REPORTS ON COUNTERTRADE AND OFFSETS.

(a) GENERAL RULE.—Each United States person shall report to the Secretary of Commerce on each contract to export United States goods or services which was entered into by such person with a foreign person and which—

(1) involves at least $2,000,000

(2) requires countertrade or offsets as a condition to such contract, and

(3) is entered into with the government of a foreign country or otherwise could not be entered into without the authorization or approval of a government other than the United States Government.

(b) REPORT CONTENT.—Each report required by subsection (a) shall identify—

(1) the United States and foreign persons involved in the contract reported on,

(2) the goods or services to be provided by the United States person under the contract,

(3) the countertrade or offset referred to in subsection (a)(2) which was imposed on the contract, and

(4) the government of the foreign country with which such contract was entered into or the requirement for government authorization or approval otherwise required before such contract could be entered into.

An identification of a countertrade or offset under paragraph (3) shall include (if a part of the countertrade or offset) the technology to be transferred, the goods or services to be purchased, the amount of goods or services to originate outside the United States, and the persons involved.

(c) DISCLOSURE.—

(1) The Secretary shall make a public report to Congress beginning March 1, 1989, and March 1 of each succeeding year on the reports filed under subsection (a) in the preceding calendar year. Each report shall include—

(A) a summary of the transactions included in the reports filed with the Secretary,

(B) an analysis of such transactions, including an analysis of the levels of goods and services imported and exported under such transactions, the effect of such transactions on industries and employment in the United States, and such other factors as the Secretary determines are significant,

(C) an identification of the countries which impose countertrades or offsets described in subsection (a)(2) and an identification of the countertrades or offsets imposed, and

(D) the status of negotiations between the United States and other countries to remove such countertrades or offsets.

(2) Except as provided in paragraph (1), the public disclosure of information filed with the Secretary under subsection (a) shall be subject to section 552 of title 5, United States Code.

(d) REPORTING REQUIREMENTS.—Reports required by subsection (a) shall be filed—

(1) in accordance with regulations of the Secretary promulgated under subsection (e), and

(2) at such time as the Secretary may prescribe in such regulations but not less often than annually.

(e) REGULATIONS.—The Secretary shall promulgate regulations to implement this section not later than the expiration of 270 days after the date of the enactment of this Act.

(f) PENALTIES.—Any person who—

(1) fails to file, in accordance with subsection (d), a report required by subsection (a), or

(2) willfully files a report that includes an untrue statement of a material fact or omits to state a material fact necessary to prevent the report from being false or misleading,

shall be subject to a civil penalty of $10,000 for each week during which such person takes the action described in paragraph (1) or (2).

(g) DEFINITIONS.—For purposes of this section:

(1) UNITED STATES PERSON.—The term "United States person" means any person which is organized under the laws of the United States or of a State or which has its principal place of business in the United States.

(2) FOREIGN PERSON.—The term "foreign person" means—

(A) any individual other than an individual who is a citizen only of the United States,

(B) any person, other than an individual or a government, that is organized under the laws of a foreign government or which has its principal place of business outside of the United States, and

(C) any foreign government or any agency or instrumentality of a foreign government.

(3) SECRETARY.—*The term "Secretary" means the Secretary of Commerce.*
that—

(4) COUNTERTRADE OR OFFSET.—*The term "countertrade or offset" when used to describe a condition for an export contract entered into by a United States person means—*

(A) a condition under which the United States person will transfer technology to a foreign person,

(B) a condition under which the United States person will, as a condition to the contract, purchase or arrange for the purchase of goods or services from a foreign person,

(C) a condition under which a percentage of the goods or services to be provided by the United States person will be produced outside the United States or be provided by foreign persons, or

(D) a condition under which the United States person will be required to make investments in a foreign country.

PURPOSE AND SUMMARY

H.R. 3 is a comprehensive trade bill which makes extensive changes in U.S. trade law. It is a response to the deteriorating trade position of the United States, a pattern of unwarranted and unfair trade practices by some of our trading partners, and the need to establish a climate where U.S. industries will become more competitive.

This bill includes changes in section 301 of the Trade Act of 1974 dealing with unfair foreign trade practices, changes in Section 201 of the Trade Act dealing with import injuries to U.S. firms, and changes to the Tariff Act of 1930, which provides for the imposition of antidumping and countervailing duties.

The bill also provides for specific negotiations over access of telecommunications equipment and services into foreign markets. If negotiations fail, the President is required to take reciprocal action.

The reported bill also has provisions designed to deal with the specific problems of the U.S. semiconductor and the U.S. construction and engineering industries, as well as provisions designed to improve coordination of trade functions at the Federal level.

BACKGROUND AND NEED FOR LEGISLATION

The Committee is alarmed that the U.S. trade deficit continues to grow larger and larger. Trade problems are becoming the most immediate threat to our nation's security and well-being. The trade deficit must be brought down, sharply and quickly.

Strong leadership is needed to respond forcefully to those foreign practices that have resulted in certain countries running huge and unwarranted trade surpluses with the United States due to unfair and unwarranted trade practices. But strong leadership is also needed to implement policies that will enable American firms once again to become leaders, not followers, in the world market place.

Trade statistics show that for the first two months of 1987, the U.S. trade deficit is running well ahead of last year's record-breaking deficit of $169.8 billion. 1986 was the fifth straight year in which the trade deficit broke all previous records. During 1986 imports into the U.S. increased by 7.1 percent to $387.1 billion, while exports increased only 2 percent to $217.3 billion.

Bilateral trade deficits with our largest trading partners also increasing during 1986: Japan—$58.6 billion; Western Europe—$32.7 billion; Canada—$23.3 billion; Taiwan—$15.7 billion; OPEC—$10.7 billion; Republic of Korea—$7.1 billion; and Hong Kong—$6.4 billion.

Clearly, U.S. trade policy has not begun to reverse, nor even to slow down, the tailspin decline. H.R. 3 makes extensive changes in U.S. trade law that can, if properly implemented and enforced, begin to restore U.S. competitiveness.

During Committee hearings on the bill, witnesses testified about macro problems—the cost of capital, the budget deficit, and American industry's focus on short-term profits to our long-term detriment. But many witnesses also testified about specific problems—in telecommunications with some of our European trading partners, in construction with Japan, in semiconductors with Japan, and many others.

The Committee bill attempts to provide the Administration with the tools to respond to these problems. The Congress cannot make these problems disappear, but it can ensure that our trading partners understand that the United States is serious in addressing them and ensure that the Executive Branch has the authority to deal with them quickly and effectively.

The bill contains a number of provisions that are designed to make action under U.S. trade law more certain. The bill requires the President to take action when it is determined under section 301 of the Trade Act of 1974 that a foreign country is in violation of a trade agreement or that a country is engaging in "foreign export targeting." In addition, the reported bill transfers to the U.S. Trade Representative (USTR) authority the President now has under the Trade Act of 1974, to determine when a country is guilty of engaging in unfair foreign trade practices under section 301 and to retaliate for those practices. The reported bill also gives the USTR authority the President has under existing law to determine what, if any, action to take in response to a determination that a U.S. industry has been injured by import competition.

The reported bill contains new provisions designed to cut by 10 percent this year, and in each of the next four years, the trade surpluses of countries that are determined to have an excessive and unwarranted trade surplus with the U.S. This would apply sanctions only against countries that have an "unwarranted" surplus—which means countries with a demonstrated pattern of illegal and unfair trade practices. Negotiations to determine corrective actions would focus on the full range of factors that might be responsible for the excessive surplus. Most importantly, this provision would mandate that there actually be an improvement in the balance of trade between the U.S. and an offending country. For too long the bottom line on U.S. trade negotiations with a number of our trading partners has been empty promises and unfulfilled expectations. Piecemeal negotiations have failed to address the larger reality: that new and more sophisticated barriers are being erected by our trading partners as fast as the old ones are torn down. This provision of the reported bill will result in direct and forceful action to reduce these surpluses.

The reported bill also provides for specific negotiations over access of U.S. telecommunications equipment and services into foreign markets. If negotiations fail, the President is required to take action. The reported bill also requires action to be taken on behalf of other U.S. industries, including the U.S. semiconductor industry.

The Committee believes that, although very important, trade law changes alone should not be considered a complete response to our trade problems. Instead the U.S. must do a better job of recognizing and defending its national economic interests.

Two provisions of the reported bill are especially designed to better enable our government to recognize and respond to threats to our economic security. First, the reported bill requires foreign investors who gain a controlling or significant interest in a U.S. asset (debt is excluded) to report certain information regarding their U.S. operations to the Commerce Department.

In the last five years, known foreign investment in the United States, as measured by international capital flows (the most accurate available measurement) has more than doubled, reaching $1.2 trillion. The United States has moved in that period from being the world's greatest net international creditor nation to being its largest net debtor nation, owing more to the rest of the world than the second and third largest debtors, Brazil and Mexico, combined.

Yet there is only a limited picture of where this foreign capital is coming from and where it is going. Despite data-collection by several U.S. agencies, there is no comprehensive, accessible source for identifying foreign investors who hold major interests in U.S. businesses and real estate or for identifying their holdings.

The Bureau of Economic Analysis (BEA) at the Department of Commerce, which collects extensive information on large foreign interests in U.S. businesses, keeps its individualized information confidential, even from other agencies and from the Congress. BEA releases only aggregate statistical information, useful for discerning general trends but not for reaching informed public policy judgments.

The Department of Agriculture collects information on foreign owners of U.S. agricultural land and publishes the names of the registered investors. But the registered investors are often foreign corporations holding the interests on behalf of anonymous owners. And there is no current reporting system for foreign interests in non-agricultural real estate. Other disclosure systems have similar shortcomings: they are either disorganized, secret, or incomplete.

Historically foreign investment brought many benefits to the United States economy. But the influence provided by foreign ownership—and the potential that decisions of major importance to our society could be made outside the United States—raises long-range concerns regarding economic and political independence and, ultimately, national security. While the U.S. should remain receptive to foreign investment and encourage open international investment policies around the world, it is prudent to ensure that the data necessary to make informed policy judgments about this investment be available.

Second, the reported bill gives the President the authority to block takeovers, mergers, acquisitions, joint ventures, and licensing of U.S. companies by or with foreign companies, if he determines that such arrangement would both threaten national security and impair essential commerce.

With the rapid decline in the dollar, the purchase of American companies and assets has become much more attractive to foreign investors. As a result, American technology, knowledge and other trade secrets that are the real source of our national competitive strength, are fast being transferred to foreign firms.

While foreign investment in this country is to be encouraged, there may be instances in which foreign ownership would threaten our nation's security and essential commerce. Government needs the information available to deal with such situations when they arise, and the legal authority to stop foreign takeovers that threaten U.S. industries essential to our nation's security.

The U.S. semiconductor industry is one example of why such authority is needed. Fujitsu Corporation of Japan abandoned a recent effort to purchase Fairchild Semiconductor in the face of adamant opposition by the Administration, based on national security concerns. However, had Fujitsu not backed down, the Administration would have had no legal authority to stop the takeover of Fairchild.

Loss of significant capacity in the U.S. semiconductor industry would be tantamount to loss of the ability to produce airplanes during World War II. Semiconductors are the key to the vital information industry on which future U.S. security and economic strength so greatly depend. They are the building blocks of the huge electronics industry which now employs 2.5 million Americans—more than the automobile, steel and aerospace industries combined. Semiconductors are found in almost every product on the market today—everything from appliance and automobiles to computers, industrial robots and missiles.

Yet, in 1986 Japan overtook the U.S. as the world's leading manufacturer of semiconductors. Predictions are that the U.S. industry may soon become dependent on Japan for the manufacturing skill and equipment needed to produce semiconductors.

DOD experts have characterized as awesome the potential for the complete decline of the U.S. semiconductor industry. Recent Department reports make it clear that America's national security depends heavily on a strong, viable U.S. semiconductor industry.

Other provisions of the bill would impose new duties on agencies in the Executive Branch, in order to make it easier to recognize and defend America's trade interests. For example, the bill requires heads of agencies and departments to include a statement identifying trade impact in their comments to Congress on legislation.

In addition, the reported bill provides for the establishment of a National Trade Data Bank in the Commerce Department. The purpose of the Data Bank would be to improve both the quality and public availability of trade data, and in particular data on market opportunities abroad. The Data Bank would also be required to undertake a new national benchmark survey of services transactions. This information is currently badly needed to get an accurate assessment of service industry trade. The last such survey was done almost ten years ago.

The reported bill also would give new responsibilities to the Secretary of Commerce to identify trade barriers and opportunities and to develop strategies to increase U.S. competitiveness in domestic and foreign markets. The bill provides for the establishment of the Foreign Commerce Development Program in the Commerce Department.

Under this program the Secretary of Commerce would analyze the trade impact of Federal, state and local regulations. The Secretary would also compile and maintain a comprehensive inventory of foreign trade barriers and identify and analyze industrial targeting practices of other countries. The Secretary would also conduct an investigation to determine the potential competitiveness of U.S. goods and services in the U.S. market.

On the basis of these investigations, the Secretary would be required to develop strategies to increase U.S. competitiveness. Begining in 1988, the reported bill requires the Secretary to submit a report annually to the Committee on Energy and Commerce of the House and the Committee on Commerce, Science and Transportation of the Senate regarding the investigations conducted, strategies developed, actions taken, recommendations for action by Congress.

Finally, the reported bill also provides that the President report back to Congress within six months a plan to develop a new cabinet-level department or agency for trade. This new department or agency would conduct all trade functions now being performed by various agencies under existing law, as well as the new responsibilities the reported bill gives the Commerce Secretary for promoting U.S. competitiveness in domestic and foreign markets.

These changes will enable our government to better identify U.S. trade interests and to defend those interests in world markets.

During the Committee's consideration of the bill, trade problems involving several U.S. industries were identified. Also identified were several new unfair forms of trade which adversely affect the U.S. economy, and problems with an existing statute which influences the manner in which U.S. businessmen do business overseas, the Foreign Corrupt Practices Act. The following sections discuss provisions of the reported bill that address these problems.

TELECOMMUNICATIONS

The telecommunications equipment and services industry is among the fastest growing areas of the international economy. In 1984 the world market for telecommunications and information-processing activities was about $450 billion and is estimated to reach $830 billion by 1990; the market for telecommunications equipment and services in the U.S. alone will be close to $200 billion. Nevertheless, the United States balance of trade in telecommunications has significantly deteriorated in recent years—from a surplus of almost $1 billion in 1980 to a deficit of almost $2 billion in 1986.

As a result of a number of deregulatory decisions, foreign businesses are now able to compete vigorously in the U.S. telecommunications market—by far the largest in the world, constituting almost half of the global market in telecommunications. Foreign corporations have seized this opportunity and quickly penetrated the U.S. market. This rapid increase of foreign suppliers in the American market starkly contrasts with the very slow progress of U.S. companies abroad. U.S. telecommunications suppliers have found themselves at a serious competitive disadvantage in large telecommunications exports.

Privatization and deregulatory initiatives have resulted in some progress towards providing access for U.S. telecommunications suppliers to markets in countries such as Britian and Japan. Yet these measures have not yet resulted in fully open and competitive markets. The incremental progress of American companies entering foreign markets, coupled with the rapid influx of foreign products into the U.S. market, has produced a record U.S. trade deficit in telecommunications. This imbalance threatens the trade competitiveness of the U.S. telecommunications industry.

Between 1980 and 1986, for example, telecommunications imports to the U.S. rose almost 500 percent, while American exports between 1981 and 1986 increased just over 40 percent. Specifically, telecommunication equipment imports from Japan increased to almost $2 billion, while comparable U.S. exports to that country increased to only about $140 million. Such imports from Europe increased by 425 percent, while American exports to those nations only increased by 45 percent.

Moreover, for the first time in history, Japan recently became the leading exporter of telecommunications equipment, capturing almost 28 percent of the world export market. The United States fell to fourth place, with less than 12 percent of the market.

In addition to losing our position as dominant exporter in this area, the U.S. has experienced a higher rate of telecommunications imports than many other nations. Imports accounted for about 10.5 percent of American telecommunications consumption in 1983, while Japan imported only 1.4 percent of its equipment. Similarly, Canada and Europe imported just 8 and 6 percent, respectively.

The East Asian countries are now the leading exporters of the world's telecommunications equipment. In 1986 75 percent of telecommunications imports to the United States came from the Far East—43 percent from Japan, 12 percent from Taiwan, 7 percent from Hong Kong, 6 percent from Singapore, 2 percent from Malaysia, and 7 percent from Korea.

While the telecommunications industry has experienced trade deficits on a par with other sectors of the economy, observers note that this industry is unique for several reasons. First, the international telecommunications market is largely dominated by government procurements through government-owned and operated Post, Telephone and Telegraph companies, which accounted for almost 60 percent of the $34 billion equipment market outside of the U.S. Consequently, foreign governments have an unusual ability to favor their national telecommunications industries to the exclusion of foreign competitors, such as those from the United States.

Second, a number of deregulatory decisions have opened the United States telecommunications market to foreign multinational corporations, which now can operate in the U.S. market with virtually no restraints. At the same time, many foreign telecommunications markets are still largely characterized by pervasive government regulation.

Finally, the American telecommunications industry is technologically the leader in this sector of the international market, producing equipment and services of extremely high quality. Yet, despite this dominance, the United States exports only about 10 percent of its production, while accounting for almost 40 percent of global consumption in telecommunications. Japan, on the other hand, with less than 10 percent of the global consumption, exports about 22 percent of its production. Canada and Europe export about 21 and 19 percent, respectively. Consequently, the American telecommunications industry itself stresses that it is not in need of, nor is it seeking, protectionist measures, but rather requires a mechanism by which to gain access to foreign telecommunications markets. Many industry leaders state that once this access is accomplished, the balance of trade in this sector will soon be restored.

The fundamental objective of Title II of the bill is to obtain open and unrestricted access to foreign markets in telecommunications equipment and services through negotiation whenever possible. Should foreign markets remain closed to U.S. telecommunications equipment and services after an extensive negotiating period has expired (up to 3½ years), the reported bill requires the President to take certain actions. Among those actions is utilization of his authority under Section 301 of the Trade Act of 1974 to direct an agency to impose a regulatory sanction.

The reported bill also clarifies that the Federal Communications Commission (FCC) has the authority to take into account, where appropriate, the impact of international trade on the competitiveness of the U.S. telecommunications industry when making its basic regulatory decisions. This simply acknowledges the obvious—telecommunications trade has major effects on the domestic telecommunications market. The bill is intended to remove any doubt that the FCC's existing authority provides a sufficient basis for considering telecommunications trade under Title II of the Communications Act of 1934.

The Commission cannot perform its domestic telecommunications responsibilities in a vacuum that ignores trade implications. However, if the Commission should address the trade concerns associated with any category of telecommunications equipment or service or the trade concerns created by foreign barriers to direct U.S. investment in other countries, it must also take into account the impact of any action on the domestic market in order to further the overall interests of the American public.

In exercising its authority, the Committee believes that the FCC should, to the greatest extent possible, coordinate any action it takes with U.S. trade officials in the Executive branch. It is the Committee's intent that the FCC consult with appropriate officials in the Department of Commerce, the Department of State, and the Office of the USTR in determining and taking into account the impact of international trade.

In this regard, the Committee would like to take note of recent FCC actions. On January 30, 1987, the FCC issued a "Notice of Inquiry and Proposed Rulemaking" to determine whether the Commission should begin considering the telecommunications policies of foreign governments in the formulation of U.S. regulatory policies concerning the provisions of telecommunications goods and services within the U.S. and the provision of telecommunications services between the U.S. and foreign countries.

Authority for the actions described in the Notice derives from the Communications Act of 1934, which gives the Commission authority to regulate interstate and foreign telecommunications, and the responsibility to provide for "efficiency, equity and national security" in our nation's telecommunications system. Since unfair foreign trade restrictions hurt the competitiveness of our telecommunications firms, the Commission reasons that trade impacts, therefore, may impair the ability of our firms to provide efficiency, equity, and national security in our telecommunications system.

The Notice seeks specific comment on whether the Commission "can, and should, consider proposing actions that might include, among other things, limitation on access to U.S. markets for foreign-owned carriers, enhanced service providers, terminal equipment manufacturers from jurisdictions that are 'closed' to U.S. telecommunications service providers and equipment manufacturers."

In addition, the Notice seeks information on the development of an international regulatory model that would be a benchmark against which national and international policies may be measured. The model would reflect four goals: open entry; non-discrimination; technological innovation; and international comity. The Notice also seeks information on the extent to which foreign-owned telecommunication firms now participate in the U.S. market.

The comment period on this proceeding will end in June, and a final decision by the Commission could occur any time thereafter. The reported bill, however, requires that the FCC complete this proceeding by November 1, 1987.

The Committee believes the FCC's rulemaking is helpful, timely and important. The FCC's actions are consistent with the approach of the reported bill, which clarifies FCC authority to take international trade into consideration in making its decisions. The Committee believes that, in coordination with the Executive Branch, the FCC can play an important part in U.S. telecommunications trade policy.

FOREIGN CORRUPT PRACTICES ACT (FCPA) AMENDMENTS

The bill also clarifies the FCPA's meaning and Congressional intent. It is the intent of the legislation that the vast majority of honest businesses be given clear guidance about the scope of the law, while the small minority of unscrupulous businesses are constrained by the law. This is accomplished through narrowly-drawn amendments to current law with clearly-defined terms. The legislation will enhance compliance with the law, will provide incentives for self-policing by businesses affected by the law, and will strengthen law enforcement under the Act.

The bill clarifies standards of liability for illegal payments to foreign officials made through third parties by substituting for the current "reason to know" standard a "recklessly disregarding" standard for civil liability and a "knowing" standard for criminal liability. This essentially reflects current enforcement policies of the Securities and Exchange Commission and the Department of Justice.

The bill makes clear that the prohibition under current law against payments to foreign officials for the purpose of obtaining or retaining business includes payments made to influence legislative, judicial, regulatory or other action.

The bill makes clear that certain kinds of payments are not intended to be within the scope of the general prohibitions under the FCPA. These payments include those that are expressly legal by statute or regulation in foreign countries and payments for certain kinds of routine actions, such as processing work orders and loading and unloading cargoes.

The bill also provides incentives for self-policing by business, by setting forth standards of due diligence to prevent and detect violations of the law by employees and agents.

Criminal fines for violations are increased under the bill, and new civil penalties are created. In addition, the bill establishes procedures for the issuance of guidelines and statements of enforcement intention by the Department of Justice to further enhance compliance with the Act and to assist small exporters who are unable to obtain specialized legal counsel.

SEMICONDUCTORS—TECHNOLOGY

The problems of U.S. companies in competing in today's world market can be related to the aggressive approach of our major trading partners with respect to investment in the development of commercially applicable technology, and to their tight restrictions on the dissemination of that technology. Although the U.S. investment in research and development is considerably larger than that of any of our trading partners, investment in research by all of our major trading partners is growing far faster than in our own country. In addition, to greater share of our investment is military-related and does not have commercial applicability.

This situation has created new challenges to a broad range of our cutting-edge industries—telecommunications, electronics, computers, and many others. It has had a devastating effect on the U.S. semiconductor industry, which in 1986 lost its dominant position in the world market. Perhaps as importantly, our U.S. semiconductor firms, as well as other industries, are falling behind in manufacturing technology, which increasingly has become a major factor affecting competitiveness.

Foreign firms have far greater access to research done within the United States than U.S. firms have to research done abroad. Part of the answer to the complex problems of these industries must be greater access for U.S. firms to the results of research conducted by our trading partners.

Recognizing the trade impact of the control of technology, the National Research Council (NRC) recently called for "symmetrical access" for U.S. firms to the results of foreign research and development. By "symmetrical access" the NRC means that if Japanese firms have access to the results of R&D being done in the United

States, U.S. firms should have access to the same type of R&D if done in Japan. That is not currently the case because much of the Japanese R&D is conducted by government industry laboratories that restrict the publication of their results.

Last fall the head of the NRC, Frank Press, and former Secretary of Defense and Chairman of the Foreign Policy Institute of Johns Hopkins University, Harold Brown, led a delegation of academics to Japan. Both American and Japanese academics urged their governments to adopt this new principle of symmetrical access rather than engaging in a trade war over technology. In a recent article published by the National Research Council, Brown said:

> We believe this concept of symmetrical rather than identical access to a broad range of high technology resources is what has been missing in previous discussions of U.S.-Japan trade matters, which have concentrated heavily on markets. For example, the best Japanese scientific and technological research takes place in federally supported institutes and industrial cooperative ventures that have not, in the past, been readily accessible to American researchers. In contrast, much of our forefront high technology research takes place in association with open research universities and is published in widely read journals. The answer is not to limit access at U.S. facilities, but to get symmetrical access to the best Japanese research results.

The National Science Foundation (NSF) estimates that technological innovation created through research has been responsible for almost half of all productivity gains since World War II. According to NSF, research has been more important than economies of scale to increasing productivity.

As a result, investment in, and control of access to, R&D have become important components of national policies designed to promote international competitiveness.

U.S. R&D expenditures are substantially higher than those of any of our major trading partners—larger than the combined R&D budgets of Japan, West Germany and the United Kingdom. But all of those countries, except the U.K., have had higher rates of growth in R&D funding since 1970.

Similarly, the R&D/GNP ratio was higher in the U.S. after W.W. II until 1978, when both the U.K. and West Germany surpassed the U.S. Since 1978, however, the U.S. ratio has been higher than that of either country.

The following chart shows how the U.S. and its major trading partners finance their R&D budgets (1983 data):

[In percent]

	Government	Business enterprises	Universities and nonprofit institutions
U.S.	47	50	3
Japan	27	62	11
France	38	41	21

[In percent]

	Government	Business enterprises	Universities and nonprofit institutions
West Germany	42	57	1
United Kingdom	50	42	8

According to the Commerce Department, the U.S. semiconductor industry contributes $17 billion annually to the GNP and employs almost 200,000 people. But the industry has a far greater impact on the U.S. economy. Semiconductors are key elements in computers, telecommunications equipment, instruments and many other electronic products, which represent $230 billion in sales and 2.5 million jobs.

The U.S. semiconductor industry is an example of an industry that has faced major competitive challenges from Japan. The U.S. share of the world semiconductor market has fallen from 60 percent in 1975 to 42 percent in 1986. The Japanese share of the world semiconductor market has risen from 20 percent in 1975 to 44 percent in 1986. In 1986 the U.S. lost its lead in the world semiconductor market to Japan.

The rise of Japan's semiconductor industry has been no accident. Beginning in the late 1970s, the Japanese Ministry of Trade and Industry (MITI) provided strategic guidance and financial assistance to industry and jointly participated with Japanese companies in R&D for commercial applications in joint government-industry laboratories. These efforts focused primarily on memory chips—particularly DRAM (Dynamic Random Access Memory) technology. In fact, the U.S. is one of the few advanced countries which has not organized a government program for the development of semiconductor technology for commercial application.

Last September the U.S. and Japan entered into an agreement on semiconductor trade which resulted in U.S. suspension of a Section 301 case and two dumping cases against Japan. As part of this agreement, Japan agreed to stop U.S. and third-market dumping and to provide access in Japan for U.S. producers. However, U.S. companies have seen no improvement in their access to the Japanese market, and dumping continues. As a result, the Committee bill calls for action against Japan under section 301 of the Trade Act of 1974.

The Semiconductor Industry Association has officially endorsed a project to establish an industry-wide consortium to develop and demonstrate semiconductor manufacturing technologies called the "Sematech" project ("Semiconductor Manufacturing Technology"). In a related proposal, the Defense Science Board (DSB) recently recommended the establishment of a Semiconductor Manufacturing Institute, to be funded jointly by industry and the DOD. In his letter forwarding the DSB report to the Secretary of Defense, Under Secretary Charles Fowler said "The implications of the loss of semiconductor technology and manufacturing expertise, for our country in general and our national security in particular, are awesome indeed."

The DSB proposal calls on industry to advance $250 million as initial funding for the proposed institute and calls on the Defense Department (DOD) to fund the institute with $200 million annually for five years. The DSB also proposes increasing DOD spending for R&D in semiconductor materials, devices and manufacturing infrastructure by 25 percent per year for four years, at a cost of $60 million in the first year, increasing to $250 million in the fourth year. The proposal also calls for the establishment under DOD of a government/industry/university forum on semiconductor competitiveness.

The DSB report provides the following description of the critical nature of the problems facing the semiconductor industry: "The pace of advancement of semiconductor technology is such that an entire new generation of key devices is introduced every two to three years. The current position of the overall U.S. merchant semiconductor industry is concluded to be very tenuous in terms of present manufacturing capability. Steps to preserve its viability must be taken with dispatch."

The Committee bill includes an authorization of $100 million for each fiscal year 1988, 1989, 1990, 1991 and 1992 to provide matching grants to the semiconductor industry to develop new and advanced manufacturing technologies responding to the needs identified by the Defense Department and U.S. semiconductor industry. The Department of Commerce must develop and submit to the Committee a plan for the provision of these funds to an industry consortium. No grants may be made under this authorization, however, unless a law is passed subsequent to the date of enactment of this Act so that Congress may receive and review the proposed plan. The Committee will work with the Commerce Department to develop a program that will ensure the appropriate use of these funds.

Grants should be used by industry to develop advanced manufacturing processes, materials and manufacturing equipment. The Committee does not intend that industry be precluded from using these grants to invest in research and development that the industry itself would otherwise be undertaking, if Japanese dumping and denial of access to the Japanese market had not destroyed the profitability of the U.S. industry.

SERVICES

Over the last 30 years the service sector has become steadily more important in the U.S. and most other industrial countries. Since 1978 "services" have accounted for at least as much of the Gross Domestic Product of almost all General Agreement on Tariffs and Trade (GATT) member countries as "goods."

The U.S. has been a leader in the development of service industries and trade. Services now account for 25 percent of all world trade. But in the absence of an international trade agreement on services, many countries are arbitrarily establishing "protectionist" barriers which limit trade in services. As a result, the U.S. share of total world trade in services has fallen from 25 percent in 1969 to 21 percent in 1983.

To address the problem, the nations of the world need to negotiate an agreement on trade in services. U.S. efforts to initiate the negotiating process at the GATT level have had very limited success so far, although services are on the agenda to be negotiated in the Uruguay Round of GATT talks.

Once negotiations begin, however, it will be a long time before a services agreement can be reached and implemented. To deal with the short-term problem, in 1984 legislation was enacted that for the first time brought services trade problems under Section 301 of the Trade Act. Under this provision, the President is permitted to limit foreign access to the domestic service market if appropriate, in order to promote reciprocity.

The Commerce Department estimates that almost 70 percent of the U.S. GNP is attributable ot the services sector (service in this context includes government) and that about 75 percent of the non-farm work force in the U.S. is employed by the services sector. Manufacturing accounts for only about 20 percent of U.S. GNP.

Total world trade in services grew 150 percent between 1975 and 1980. During this time the U.S. has remained the world's leading service exporter, although the U.S. share of the world service market has declined.

The U.S. Commerce Department has estimated that foreign revenue of U.S. service industries operating abroad (business services, plus investment returns) would total $148.6 billion for 1986, up from $89.4 billion in 1980, representing a 66 percent increase during this period. The International Trade Commission has found that the four service industries with the highest overseas earnings are: financial services, equipment leasing and rental, insurance, and air transportation.

This surplus, however, was almost totally due to investment returns. The $46.5 billion in exports of business services estimated for 1985 produced a surplus of about $2.6 billion. This amounts to only 25 percent of the $9.6 billion surplus recorded in 1981, but considerable recovery from the $338 billion surplus recorded in 1985.

One consequence of the huge and growing U.S. merchandise trade deficit has been a rapid increase in the dollar-denominated holdings of foreign persons. During the high dollar, high interest rate period of the recent past, foreign investors realized a very good return by investing these dollar-denominated holdings in U.S. financial assets—bonds, securities, etc.

The investments by foreigners has contributed to an increase in competition in the U.S. between foreign and U.S. financial service firms. Even now, when U.S. interest rates have fallen sharply, U.S. rates are still higher than in Japan and West Germany and, therefore, the U.S. is still attracting foreign investment and foreign financial service firms.

An indication of how competition in both the world and U.S. financial markets has changed is the fact that in 1976 Bank of America and Citicorp were the two largest banks in the world. In 1986 nine of the top ten banks in the world were Japanese. Citicorp ranked 29th in the world in 1986, and Bank of America ranked 58th.

In the U.S. the share of total financial assets held by foreign banks jumped from 4 percent in 1975 to 16.1 percent in 1985. An estimated 25 percent of all lending to business is now attributable to foreign banks operating in our market. Foreign-owned bank organizations also conduct non-bank activities within the United States. In California there are 24 foreign banking organizations that own or control about 50 companies engaged in non-banking activities.

In this regard, the reported bill contains provisions which require the Commerce Department to conduct a study to determine the extent to which U.S. financial services firms are permitted to engage in the same kinds of activities abroad that foreign financial service firms engage in the United States.

Construction and engineering is another service industry in which barriers have recently hurt U.S. firms. The Government of Japan is currently building an island in Osaka Bay as the site of the huge Kansai airport, which will serve the Osaka region. The airport project consists of three phases, with an estimated total cost of $6.5 to $8 billion. U.S. construction and engineering industries, with the assistance of the U.S. Government, have negotiating with the Japanese to obtain access to the bidding process on that project. However, to date only insubstantial contracts have have awarded to U.S. firms. American and other foreign companies are effectively barred from any of the major construction work.

The lack of U.S. industries' success in obtaining access to the Kansai airport contrasts sharply with Japanese success in the open U.S. construction market. In 1981 their business in the United States was less than $50 million. In 1985 it was almost $2 billion, and 1986 figures are expected to be about $3 billion. The Committee is particularly concerned that the U.S. ability, or lack thereof, in obtaining access to the Kansai airport project could be precedent-setting for the roughly $47.9 billion in major Japanese public works projects that will be completed by 1990. Therefore, under Section 301 of the Trade Act of 1974, the reported bill requires that the USTR initiate an investigation of barriers to construction, architectural, consulting and engineering services trade with Japan.

DIGITAL AUDIO TAPE RECORDERS (DAT)

The Committee bill includes a temporary provision, lasting one year from date of enactment, requiring the inclusion of copy-code scanners in digital audio tape recording devices. This provision will temporarily maintain the status quo while the Committee considers what action may be needed in the longer term.

For several years, the American music industry has been concerned about "home taping" of musical recording. The industry believes that this copying displaces sales and deprives the creative community of royalties that would be paid if the creative works were purchased instead of taped.

The introduction of digital audio recorders into the U.S. market is a potential threat to the American music industry. DAT recorders record audio sound digitally, as opposed to the normal analog method. Recordings made with digital audio tape recorders would be comparable, although not necessarily identical, in sound quality to digital compact discs. The new recorders will be used to make high-quality copies of compact discs and pre-recorded digital tapes—copies of a quality not currently achievable with normal analog recorders—and may limit the sales of compact discs or other prerecorded sources. Since prerecorded digital tapes are not yet available, the prime purpose of the new recorders would be home taping.

The technology is available to provide that digital audio recorders contain special copy-code scanner chips, which can scan prerecorded discs (or other recording media, such as records) for a special copy code. This code would consist basically of the removal of a "notch" of inaudible sound. If the code were encountered by a scanner, the recording device would be temporarily disabled. It has been suggested that this would lead to the sale of two types of prerecorded sources—one that can't be used to duplicate encoded discs and one, costing more, that can.

The Committee is concerned that once Japanese digital audio tape recorders enter the United States without copy protection, it will be too late for Congress to take effective action. To ensure that Congress' options for legislative action are protected, the Committee has included a temporary requirement that DAT machines include a semiconductor which will prevent the taping of prerecorded sources that have the special copy code. This requirement will last for one year from date of enactment. The Committee expects to hold a hearing in the near future on this issue, to examine what legislative action, if any, is needed.

It is anticipated that DAT recorders could enter the U.S. market as early as this summer. Trade in DAT machines without copy code protection could harm gravely the competitiveness of an American industry. To preserve Congress' options to legislate in this area, quick action is needed to retain the status quo before machines without copy protection enter the country. For these reasons, this legislation is an appropriate vehicle for this temporary provision.

The Committee notes that its provision is scaled down drastically from the Administration proposal on this issue. President Reagan proposed a permanent requirement that DAT recorders have copy protection. Subsequently, legislation was introduced in both Houses of Congress providing that such a requirement be instituted for three years. The Committee bill includes only a one-year requirement.

COUNTERTRADE AND OFFSETS

Countertrade and offsets have become an increasingly popular form of trade transaction. Non-market economies (NMEs) have long used countertrade to compensate for their lack of access to hard currency and difficulties in obtaining financing. However, countertrade is no longer confined to NMES and is becoming prevalent in Less Developed Countries (LDCs), particularly as debt problems become aggravated. In addition, some industrialized countries have also begun to require countertrade and offset arrangements, not only for sales of military equipment, but the civilian and public sector contracts as well. According to some estimates, countertrade now accounts for between 20 and 30 percent of world trade and is likely to become more prevalent. Countertrade undoubtedly constitutes a significant and growing factor in world commerce.

Many foreign governments have become adept at using countertrade to further their own long-term development goals and trade interests. Countertrade will provide countries which have little access to currency with a means to continue importing needed goods. Lucrative countertrade and offset arrangements can bring cutting-edge technology and production know-how to countries that would have difficulty developing them on their own. Some countries use countertrade obligations to expand their civilian industries, to expand employment, and to market goods which are in low demand, in surplus, or uncompetitively priced. Many countries have established offices or agencies that deal exclusively with countertrade policy and planning, and some have mandated that foreign countries wishing to export goods engage in countertrade.

The Committee, therefore, adopted an amendment that will provide an information-base on countertrade and that will help to establish the effects of countertrade and offsets on the U.S. economy. Unlike many of its competitors, the United States lacks a coherent or comprehensive approach to managing or containing offsets and countertrade. One major problem is the scarcity of information available for analysis and the lack of a central agency responsible for data collection.

The Committee is concerned that countertrade is market-distorting and anti-competitive. Undesirable goods which the importing country cannot sell become the responsibility of private firms which must subsidize the goods by absorbing the costs of marketing and dispensing them. Also, contracts are not awarded solely on the basis of product price and quality but on the benefits conferred by an offset package. In addition, countertrade may lead to the dumping of unwanted products in the U.S. and may have a corrosive effect on the U.S. industrial base. The Committee is also concerned that countertrade has negative effects on employment of subcontractors and in industries that must compete with goods imported as a condition of the countertrade agreement. Finally, concerns have been raised that the high rate of technology transfer involved in offsets and countertrade leads to deindustrialization, displacement of U.S. producers, and a weakened defense and national security position.

The bill addresses the scarcity of available data on countertrade by requiring U.S. businesses which have entered into an agreement with a foreign government, ministry, or busineess to file specified reports. The bill requires reporting only on countertrade deals that are mandated by foreign goverments, so that U.S. businesses must choose between not exporting their goods at all or accepting countertrade or offset requirements. Countertrade deals that are entered into freely by private firms will not be covered by a reporting requirement.

The Committee bill would require the Commerce Department to report annually to Congress on the levels of goods and services imported and exported under commercial and military countertrade transactions, and to analyze the effects of such transactions on industries and employment in the United States and on U.S. trade in general.

HEARINGS

The Committee's Subcommittee on Commerce, Consumer Protection and Competitiveness held 4 days of hearings on H.R. 3 and related bills on March 3, March 5, March 10 and March 11, 1987. Testimony was received from the following witnesses:

Bruce Smart, Under Secretary for International Trade, Department of Commerce; Pat Choate, Office of Policy Analysis, TRW; William Lilley, III, President, American Business Conference; Robert McNeill, Executive Vice Chairman, Emergency Committee for American Trade; Julius Katz, The Consultants International Group, Inc.; John M. Andrews, President and Chief Executive Officer, American Soda Ash Corporation; Kenneth Y. Millian, Vice President and Director of Government Relations, W.R. Grace and Company (representing the Labor-Industry Coalition for International Trade); Brian Turner, Director of Legislation and Economic Policy, Industrial Union Department, AFL-CIO (representing the Labor-Industry Coalition for International Trade); Doreen Brown, President, Consumers for World Trade; Rudy Oswald, Chief Economist, AFL-CIO; Mark Fowler, Chairman, Federal Communications Commission; Bruce Wilson, Assistant U.S. Trade Representative; Edward D. McKeever, Vice President, Asia, Pacific and the Americas, AT&T International; John T. McDonnell, Group Vice President, Information and Telecommunication Technologies Group, Electronic Industries Association; Morton Bahr, President, Communications Workers of America; Ronald Stowe, Vice President for Washington Operations, Pacific Telesis; John Thorne, Office of General Counsel, Ameritech; Edwin B. Spievak, President, North American Telecommunications Association; Norman R. Augustine, President and Chief Operating Officer, Martin Marietta Corporation; Dr. Ronald L. Kerber, Deputy Under Secretary of Defense for Research and Advanced Technology; Dr. Alexander Lidow, Executive Vice President for Manufacturing and Technology, International Rectifier Corporation (representing the Semiconductor Industry Association); Dr. Frank Press, President, National Academy of Sciences; Eric Garfinkel, Partner, Anderson, Hibey, Nauheim and Blair (representing the Communications Industry Association of Japan); Senator Frank H. Murkowski; Harry L. Freeman, Executive Vice President, American Express Company; H.P. Goldfield, Assistant Secretary for Trade Development, Department of Commerce; Lamar Smith, Chief Economist and Director of Policy Development, American Bankers Association; Clyde V. Prestowitz, Former Counsel to the Secretary of Commerce, Fellow, Wilson Center, Smithsonian Institute; Dr. Joseph A. Boyd, Chairman, Harris Corporation; Richard R. Rivers, Akin, Gump, Strauss, Hauer and Feld (representing the Coalition for Services Industries).

The Committee's Subcommittee on Telecommunications and Finance held one hearing on Title 2 of H.R. 3 on March 10, 1987. Testimony was received from the following witnesses:

Mr. Mark Fowler, Chairman, Federal Communications Commission; Mr. Alfred Sikes, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, U.S. Department of Commerce; Mr. Bruce Wilson, Assistant U.S. Trade Representative for Industry and Services; Mr.

Edward D. McKeever, Vice President, Asia, Pacific, and the Americas, AT&T International; Mr. Jack McDonnell, Group Vice President, Information and Telecommunications Technology Group, Electronic Industries Association; Mr. Edwin Spievak, President, North America Telecommunications Association; Mr. John J. Barry, International President, International Brotherhood of Electrical Workers; Mr. James E. Irvine, Vice President—ATTCOM, Communication Workers of America.

COMMITTEE CONSIDERATION

On March 17, the Subcommittee on Telecommunications and Finance met in open session and ordered reported Titles II and VII of H.R. 3, as amended, by voice vote, a quorum being present. On March 18, 1987, the Subcommittee on Commerce, Consumer Protection and Competitiveness met in open session and ordered reported the bill H.R. 3, as amended, by a recorded vote of 8 to 5, a quorum being present. On March 25, 1987, the Committee met in open session and ordered reported the bill H.R. 3, with amendments, by a recorded vote of 26 to 15, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the largest cost would be for grants to stimulate the development of semiconductor manufacturing technology and applications, authorized at a level of $100 million annually from 1988–1992. Outlays are estimated to be $50 million in 1988, $90 million in 1989, and $100 million in each of the fiscal years 1990–1992, assuming appropriation of the authorized amounts. In addition, establishment of a trade data bank and other activities mandated in these titles would cost about $6 million per year. All potential costs of these titles are subject to appropriation action, and no grant for the development of semiconductor manufacturing technology and applications can be made unless a law specifically authorizing such grants is enacted after the date of enactment of this act.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 1987.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed Titles II, VII, and IX of H.R. 3, the Trade and International Economics Policy Reform Act of 1987, as ordered reported by the House Committee on Energy and Commerce, March 25, 1987.

All potential costs of these titles are subject to appropriation action. The largest cost would be for grants to stimulate the development of semiconductor manufacturing technology and applications, authorized at a level of $100 million annually from 1988–1992. Outlays are estimated to be $50 million in 1988, $90 million in 1989, and $100 million in each of the fiscal years 1990–1992, assuming appropriation of the authorized amounts. In addition, establishment of a trade data bank and other activities mandated in these titles would cost about $6 million per year.

TITLE II

Title II of the bill, the Telecommunications Trade Act of 1986, would require the United States Trade Representatives (USTR) to investigate and report to the Congress on foreign barriers to competitive opportunities for U.S. firms in telecommunications markets. Once the investigation is completed, within six months after enactment of the bill, the President would have until 18 months following enactment to negotiate trade agreements that meet the USTR's objectives for fair markets for telecommunications products and services. Title II also authorizes the President to request two one-year extensions of this negotiating period. If no agreements are obtained, the President would be required to implement retaliatory trade actions authorized by the bill. Further Congressional action, however, would be required for any actions the President takes against imports. The USTR would also be authorized to take actions to restore the balance of concessions between the United States and a foreign country. CBO estimates that these provisions would result in no significant additional cost to the federal government because the USTR already performs most of the duties required by the bill.

To the extent that the response of the President or the USTR would affect dutiable imports of telecommunications products, it would cause an increase or decrease in customs duties collections. Because it is uncertain what measures would be taken, CBO is unable at this time to estimate the revenue effect of Title II. Title II would also require the Secretary of Commerce to study the competitiveness of the U.S. domestic telecommunications industry. Based on information from the Department of Commerce, CBO estimates that the study would cost about $130,000.

TITLE VII

Title VII would amend the Foreign Corrupt Practices Act and mandate certain actions by the Secretary of Commerce. Although this title contains no specific authorizations or appropriations, CBO estimates that enacting it would result in increased costs to the federal government of about $0.2 million in 1987, and $1.2 million annually thereafter.

The costs of Title VII would result largely from the provisions requiring foreigners who acquire a controlling interest in a domestic business or property to register with the Secretary of Commerce. This would be an entirely new activity in the Department of Commerce and would require continuous oversight. Based on information provided by the Department of Commerce, CBO estimates that this program would cost approximately $1.2 million annually; this figure includes the cost of an annual report to the Congress on foreigners with interests in domestic enterprises. Title VII would also require the Secretary of Commerce to study the financial services industry; based on information provided by the Department of Commerce, CBO estimates this study would cost roughly $250,000, mostly in fiscal year 1987. We estimate that other provisions of Title VII would not result in increased costs to the federal government.

TITLE IX

Title VII contains numerous provisions requiring the Secretary of Commerce or the President to take steps designed to increase competitiveness and trade opportunities for U.S. industry. Many of these provisions are estimated to involve no significant cost to the federal government; those with potentially significant cost impacts are discussed below.

Section 919 authorizes the appropriation of $100 million for each of fiscal years 1988–1992 for grants to stimulate the development of semiconductor manufacturing technology and applications. Assuming appropriation of these amounts, we estimate the resulting outlays would be $50 million in fiscal year 1988, $90 million in 1989, and $100 million in each of fiscal years 1990, 1991, and 1992. These outlay estimates are based on information from the Department of Commerce and historical experience in similar grant programs.

This title would also require the Secretary of Commerce to establish and maintain a national data bank of trade information, and to analyze and disseminate such information. Based on information provided by the Department of Commerce, CBO estimates that development and maintenance of this trade data bank could cost up to $3 million per year, depending on the extent of the information included. The bill also requires the establishment of a new Foreign Commerce Development Program in the Department of Commerce, which would identify, analyze, and evaluate trade barriers and strategies to increase competitiveness of U.S. industries. Whether or not this program is accomplished using existing personnel, as the bill specifies, it is estimated to cost $750,000 annually to implement. The title also requires the Secretary of Energy to collect and publish data on uranium imported into the United States. Based on information provided by the Department of Energy, CBO estimates that these activities would cost approximately $250,000 annually.

In addition, Title IX requires a number of investigations and studies. Investigations are required into the effects of mergers, acquisitions, takeovers, and other efforts by foreigners to gain control of persons engaged in domestic commerce; foreign government trade practices regarding uranium; Japanese barriers to architectural, engineering and related services offered by U.S. persons; restrictions on investments by other countries; and surges in perishable products. Besides reports that may be required to accompany such investigations, Title IX requires reports on bilateral trade issues between the United States and Mexico, on the calculation of "exporter's sale price" and "foreign market value," and on countertrade information obtained through reporting requirements on exporters to be prepared by the Department of Commerce, and a report recommending legislation to establish an executive agency to promote competitiveness and trade from the President. These investigators, studies, and reports are estimated to cost, in total, about $1 million in the first year after enactment, and smaller amounts in subsequent years.

Title IX also requires the head of each department and agency of the federal government to include with any report, statement of position, or recommendations to the Congress regarding proposed legislation or administrative action a statement of the impact of such legislation or action on the international trade of the United States and the competitiveness of U.S. firms. To the extent that federal departments and agencies already examine the impact of proposals on international trade, the further requirement of stating the results of the examination to the Congress is not likely to result in significant additional costs.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates there will be no impact on inflation.

SECTION-BY-SECTION ANALYSIS

TITLE I—TRADE LAW AMENDMENTS

Subtitle A—Enforcement of U.S. Trade Agreement Rights and Response to Foreign Trade Practices

Section 111.—Provides that unless otherwise specified, all references in this chapter are to the Trade Act of 1974.

Section 112.—Requires the President to impose sanctions under Section 301 in response to foreign violations of trade agreements, in order to eliminate fully the foreign restriction or burden. Presidential action would not be required if: the General Agreement on Tariffs and Trade (GATT) determines that U.S. rights have not been violated; the foreign government agrees to change its practices; the foreign country agrees to provide satisfactory, full compensatory benefits; or the President determines that position of sanctions is not in the national economic interest.

This section also makes the denial of internationally recognized worker rights and the toleration of cartels actionable under Section 301.

Section 113.—Mandates Presidential action under Section 301 when the U.S. Trade Representative (USTR) determines that U.S. industries are, or will be, materially injured by imports from industries that have benefitted from "foreign export targeting." The President may choose what actions to take, but actions must be designed to eliminate the foreign targeting practices or offset fully effects of targeting.

Section 114.—Adds procedures to be followed by the USTR in a section 301 investigations for obtaining and using information from foreign countries. Provides for USTR consultation with domestic interests (labor, firms, etc.) prior to consultation with foreign parties.

Section 115.—Requires USTR to self-initiate an investigation within 90 days when a foreign act, policy or practice is identified in the annual trade barrier report as having a significant adverse impact on U.S. exports and likely violating U.S. rights, if (1) it is determined that Section 301 negotiations would produce expanded export opportunities for U.S. exports; (2) U.S. exports would not suffer significant adverse effects from displacement; and (3) self-initiation is in the U.S. economic interest.

Section 116.—Transfers from the President to the USTR decision-making authority to make determinations regarding practices that fit Section 301's definition of unfair foreign trade practices; however, the President would retain authority to decide what action to take, based on USTR recommendations.

Reduces to 9 months, or 11 months (time may be extended up to 3 months) in the case of injurious export targeting, maximum time the USTR has to determine if an act, policy or practice is actionable under Section 301. Requires the President to decide and implement any action within 30 days thereafter (with a possible 3-month extension).

Section 117.—Allows the President to modify or terminate Section 301 sanctions if the GATT subsequently finds the practice is not illegal. Authorizes President to pay compensation to foreign countries if GATT determines Section 301 retaliation is in violation of the GATT agreement.

Section 118.—Requires that certain reports on foreign trade barriers be submitted to the Committee on Foreign Affairs and the Committee on Ways and Means and that such reports identity barriers that had significantly deterred U.S. exports.

Section 119.—Creates a new section designed to cut by 10 percent this year and in each of the next four years, the trade surpluses of countries that are determined to have an excessive and unwarranted trade surplus with the U.S. This so-called "deficit reduction" provision initially would affect three countries: Japan; Taiwan; and

West Germany. Under the deficit reduction proposal, the following would happen:

—Each year the International Trade Commission (ITC) is required to report to USTR with a list designating those countries that have an "excessive trade surplus" with the U.S.

—Within two months the USTR must designate those countries on the ITC list that have an "unwarranted trade surplus" as a result of engaging in unfair trade practices that harm our economy and contribute significantly to our trade deficit.

—60 days are allotted for the USTR to enter into bilateral negotiations with countries designated as having an "excessive and unwarranted trade surplus" with the U.S. to obtain agreements that would result in the following "surplus reduction goals": for 1987—a 10 percent reduction below the 1985 surplus; for 1988—a 10 percent reduction below the 1987 surplus; for each subsequent year through 1990, an additional 10 percent reduction.

—If negotiations fail to result in agreements, the President is required to take action: impose duties, suspend tariff concessions, negotiate orderly marketing agreements, etc. The President is permitted to reduce the surplus reduction goals for a country with balance of payments difficulties and to waive all action if he determines that taking action would cause substantial harm to the U.S. economy.

Section 120.—Contains conforming amendments and effective dates for provisions in this chapter.

Subtitle B—Relief From Injury Caused by Import Competition, Subsidies, Damaging and Unfair Trade Practices

Chapter 1—Relief From Injury Caused by Import Competition:

Section 121.—Transfers ultimate decision-making authority from the President to the USTR.

Provides for the establishment of "Industry Adjustment Advisory Groups"—composed of representatives of labor, management, consumers, communities, and appropriate Federal Government officials—to prepare an adjustment plan for the industry as a whole. Such plan would assess the industry's problems and propose a strategy for increasing its long-term international competitiveness. The plan is to be submitted to the ITC within 120 days of initiation of a Section 201 investigation.

In determining the appropriate remedy for the import injury, the ITC shall take into account the adjustment plan, if such a plan has been submitted. In determining whether to provide import relief, the USTR may condition a grant of relief on compliance with the adjustment plan, in whole or in part.

Failure to submit an adjustment plan or failure to request the establishment of an industry adjustment advisory group shall not be a factor in any determination by the ITC or the USTR.

Also provides that the ITC should estimate impact of recommended relief on consumers and on domestic competition and that the USTR consider effect of recommended relief on U.S. agricultural exports in determining what, if any, relief should be provided.

Section 122.—Provides for the establishment of an Adjustment Assistance Trust Fund, to be used for the trade adjustment assistance program, which would be funded by duties generated by import relief granted under Section 201, and by auctioning import licenses (as permitted under current law).

Section 123.—Provides that an affirmative determination of injury by the ITC shall trigger expedited consideration of trade adjustment assistance for workers and firms in the injured industry, for up to three years following the injury determination.

Section 124.—Amends section 406 of the Trade Act of 1974 to allow for consideration of dumping and subsidy practices with respect to products from non-market economies (for example, communist countries).

Allows the USTR to deny import relief in non-market economy cases only if such relief would have a serious negative impact on the domestic economy.

Chapter 2—Amendments to the Countervailing and Antidumping Duty Laws:

Section 131.—Provides that all references in this chapter are to the Tariff Act of 1930.

Section 132.—Provides special factors for the ITC to consider in cases involving imports of processed agricultural products.

Section 133.—States that list of actionable "domestic subsidies" shall include capital, loans, loan guarantees, goods or services at preferential rates or on terms inconsistent with commercial considerations.

Section 134.—Requires the ITC, in determining material injury and threat of material injury, to add the impact of imports from two or more countries, if such imports were subject to either countervailing duty or antidumping investigations within the past 12 months.

Provides that the ITC shall consider foreign export targeting, diversion of exports to the U.S. market, and repeated dumping in world markets, when determining whether there is a threat of material injury by reason of dumped or subsidized imports.

Section 135.—Prohibits under the countervailing duty laws the practice whereby foreign governments sell a natural resource "input product" or the right to remove or extract an input product to domestic industries at a price that is below fair market value. The difference between the domestic price and the fair market value of the input product or removal right would be treated as a subsidy.

Section 136.—Adds a "diversionary dumping" provision to the antidumping law which requires the Secretary of Commerce, in determining the foreign value of dumped goods, to add in an amount equal to the full value of the benefit bestowed on the foreign merchandise subject to the antidumping investigation—i.e., the benefit bestowed on the merchandise being imported into the U.S. which contains the dumped components.

Section 137.—Creates new procedures for monitoring the diversionary effect of antidumping and countervailing duties on component products or imports of downstream products. The Commerce

Department would identify which downstream products should be monitored, and the ITC would monitor trade in these products.

Section 138.—Gives injured U.S. parties the right to bring suit in the Court of International Trade for economic damages realized by the importation and sale of merchandise which has been the subject of a final dumping order at less than fair value.

Section 139.—Contains miscellaneous amendments, including prohibition against exemption from antidumping or countervailing duties of any U.S. Government purchase of dumped or subsidized merchanise.

Chapter 3—Intellectual Property Rights:

Section 141.—Contains findings and purpose with respect to intellectual property rights.

Section 142.—Improves the effectiveness of intellectual property protection under section 337 of Tariff Act of 1930. Eliminates the requirement that petitioners demonstrate injury in cases involving intellectual property right violations. Shortens time period for issuance of temporary exclusion orders on foreign producers determined to be in violation of intellectual property rights.

Section 143.—Establishes a procedure to provide fair market access to foreign markets for products protected by U.S. intellectual property rights.

Section 144.—Establishes as principal negotiating objectives for trade agreements the enhancement of foreign protection and enforcement of intellectual property rights.

Subtitle C—Trade Negotiating Objectives and Authority

Section 151.—Provides that all references in this subtitle are to the Trade Act of 1974.

Section 152.—Establishes general and specific U.S. objectives for trade negotiations which fall into three principal categories: fair and open trade, reciprocity, and GATT reform. This section states that these objectives should be achieved by multilateral agreements; but if such agreements are not possible, through the negotaition of bilateral or other agreements.

Section 153.—The President's negotiating authority is extended for one year (until January 3, 1989). The Presidential authority may be automatically extended until January 3, 1991, if the USTR certifies to both the Committee on Ways and Means and the Committee on Finance that sufficient progress in negotiations has been made to warrant further extension of the President's negotiating authority.

Section 154.—Conditions the availability of the "fast track" procedure for implementing non-tariff barrier agreements on Presidential action to request an international monetary conference.

Requires a Presidential determination that an agreement achieves general and specific negotiating objectives and a statement explaining what objectives it does or does not achieve. Requires consultations with Congress and private sector reports on the achievement of objectives. Requires the Commissioner of Customs to promulgate rules and regulations for any bilateral trade agreements to prevent transshipments of products subject to quantitative restrictions.

Section 155.—Provides the President with compensation authority, if required by international agreements, for section 301 actions, import restrictions imposed by legislation, or tariff reclassification.

Section 156.—Gives the President 5-year authority to enter into and to proclaim tariff agreements with Canada that would reduce or eliminate duties on a specific list of tariff items.

Section 157.—Requires that reports from the advisory committees comment on the extent to which negotiating objectives are being achieved.

Section 158.—Provides specific negotiating objectives concerning access for high-technology products.

Subtitle D—Functions of the U.S. Trade Representative

Section 161.—Provides that the USTR has primary responsibility for developing and implementing U.S. trade policy.

Section 162.—Creates a "Fair Trade Advocates Branch" in the USTR to help any industry prepare cases, act as an advocate in proceedings, and pursue appeals under section 337 or the antidumping or countervailing duty laws.

Section 163.—Directs the USTR to provide an annual report to the Committee on Ways and Means and the Committee on Finance, setting out further trade policy objectives and the policy initiatives designed to achieve them.

Subtitle E—Miscellaneous Trade Law Provisions

Section 171.—Imposes a 90-day time limit (with up to a 3-month extension possible) for the Secretary of Commerce to investigate (Section 232 relief) imports that threaten national security. The President would then have 30 days to decide whether to restrict imports that threaten national security.

Section 172.—Provides for reallocation of GSP benefits to Latin American debtor countries by waiving product "competitive need" ceilings under Section 504 of the Trade Act of 1974.

Section 173.—Gives the USTR authority that the President has under existing law to make decisions under the GSP program.

Section 174.—Requires the President to submit nominees for the Chairman and Vice Chairman of the ITC to the Senate for advice and consent.

Section 175.—Creates scofflaw penalties for repeated unfair foreign trade practices.

This section directs the Secretary of the Treasury by order to prohibit any person who is a multiple customs law offender from introducing, or attempting to introduce, foreign goods or services into the commerce of the United States and engaging, or attempting to engage, any other person for the purpose of introducing, on behalf of the multiple customs law offender, foreign goods or services into U.S. commerce. Each Federal agency shall notify the Secretary of the Treasury when qualifying violations have occurred, and the Secretary of the Treasury shall prohibit the customs entry of any goods or services by the violating person. Such a prohibition by the Secretary shall apply during the period which begins on the 60th day after the date on which the order is issued and ends on the third anniversary of the 60th day. Violation of the Secretary's order may result in the imposition of a fine of not more than

$250,000, imprisonment for not more than 10 years, or both. A multiple customs law offender is defined as a person who has been convicted of or assessed a civil penalty for three separate violations of one or more customs laws during any period of seven consecutive years beginning after the date of enactment. If the violator is a corporate person, the prohibition would apply to the officers and principals of the corporation. The bill defines the term "customs law" broadly to include civil and criminal statues that govern the introduction or attempted introduction of foreign goods or services into States commerce. The Secretary must specify the applicable laws in the implementing rules.

It is intended that this section shall apply to both exporters of goods to the United States and importers of goods into the United States. For example, if a foreign corporation, with or without the use of an American subsidiary, conspires with a United States firm to enter goods into the United States by means of a false declaration to conceal their true value, country of origin, physical condition, etc., both the foreign firm and its domestic coconspirator are at risk if such an entry is found to be in violation of the criminal or civil statutes cited in this section. In cases of multiple criminal counts, the Committee intends that a conviction on each count shall be considered a separate violation for the purposes of this section. However, if the violation involves only one customs entry, then the Committee intends that it should be considered only one violation for the purposes of this section, even though the entry may technically violate several customs laws.

Furthermore, this section is not intended to apply to civil violations involving clerical errors or inadvertent misstatements of fact unless they are part of a pattern of negligent conduct. For a person to qualify as a multiple customs law offender, the customs law violations must involve gross negligence, fraud or criminal culpability. The exception language of this section is the same as that provided in 19 U.S.C. 1972(a)(92) for inadvertent errors.

Each Federal agency shall notify the Secretary of the customs laws under the jurisdiction of that agency.

Section 176.—Urges the President to direct the USTR to negotiate an agreement under which Japan would import U.S. metallurgical coal in quantities equivalent to that used in the production of Japanese steel products exported to the U.S.

Section 177.—Provides specific enforcement authority to prevent circumvention of negotiated quantitative restraints on steel imports.

Section 178.—Establishes an import monitoring system in the ITC.

Section 179.—Directs the President to take all appropriate and feasbile action to open Japan's semiconductor market for U.S. semiconductor manufacturers. Also directs the President to determine whether a Section 301 action against Japan would be warranted.

TITLE II—INTERNATIONAL TRADE IN TELECOMMUNICATIONS PRODUCTS AND SERVICES

Section 201.—Provides that the short title of this bill is the "Telecommunications Trade Act of 1986."

Section 202.—Contains findings and purposes regarding trade in telecommunications products and services.

Section 203.—Establishes primary and secondary negotiating objectives for purposes of Section 204.

Section 204.—Mandates a USTR investigation of foreign trade barriers to U.S. telecommunications firms and a determination within six months as to whether identified barriers deny "fully competitive foreign market opportunities" to U.S. firms. The USTR may exclude countries if their markets are not substantial.

Section 205.—Requires the President to negotiate with countries identified under Section 204 and states objectives of negotiations. If agreement is not reached, the President is required to take certain countermeasures within a definite period of time (from 18 months to 3½ years, depending upon subsequent Presidential decision and Congressional action) in order to achieve the objectives. The President is given a broad range of options for such action.

Section 206.—On the basis of annual reviews, if the USTR determines a country is not in compliance with its telecommunications agreement or otherwise denies fully competitive market opportunities under the agreement, he is required to take action to offset the violation and restore the balance of concessions.

Section 207.—Requires the President and the USTR to consult with Congress, the private sector, and various departments and agencies.

Section 208.—Gives the President 3½ years negotiating authority subject to "fast-track" Congressional implementation of agreements for purposes of achieving primary and secondary negotiating objectives set forth in Section 203.

Section 209.—Provides compensation authority for the President if action taken under Section 205 or Section 206 is determined to be in violation of international agreements.

Section 210.—Defines telecommunications products by tariff schedule numbers.

Section 211.—Specifies that nothing in this Act shall be construed to require the President and the U.S. Congress to act in a manner inconsistent with our GATT obligations.

Section 212.—Clarifies Congressional intent that when appropriate in fulfilling its basic regulatory duties, the Federal Communications Commission (FCC) consider the impact of international trade on the competitiveness of the U.S. telecommunications industry; requires the FCC to complete ongoing trade inquiry by November 1, 1987, and to commence any appropriate rulemaking by December 1, 1987; requires the Secretary of Commerce to conduct a study of the effects of foreign telecommunications policies and practices on U.S. competitiveness.

TITLE III—EXPORT ENHANCEMENT

Title III contains provisions designed to strengthen the export promotion activities of the Commerce Department, including:

—A two-year authorization ($123.9 million each year) for U.S. export-promotion functions;
—New authority for the U.S. and Foreign Commercial Service in the Commerce Department; and
—Changes in current export control policies intended to speed the decontrol of technologies and goods no longer critical to national security.

TITLE IV—BANKING COMMITTEE PROVISIONS

Subtitle A—Competitive Exchange Rate Act of 1986

Subtitle A contains provisions designed to stabilize international currency markets and to make the U.S. dollar more competitive internationally, including:
—Requirement that the Treasury Department identify competitive exchange rates for each of the major currencies, setting targets to guide U.S. economic policy and intervention in international currency markets.
—Convening of an international conference on exchange rate reform.
—Creation of a "strategic currency reserve" in the Treasury Department.

Substitle B—International Debt, Trade and Financial Stabilization Act

Provisions in Subtitle B include:
—Requirement that U.S. Executive Directors of the World Bank pursue a policy designed to increase lending resources of World Bank and to promote trade liberalization among the developing countries.
—Requirement that the Treasury Secretary enter into negotiations with other World Bank member countries to create a new World Bank affiliate organization with less strict lending requirements.
—Requirement that U.S. Executive Directors of the World Bank, and the Inter-American, African and Asian Development Banks, propose that loans be conditioned on the removal of existing trade and investment barriers.

Subtitle C—Competitive Tied-Aid Fund Act

Contains provisions which encourage the continued use of tied-aid credit, based on existing Federal resources, until an international agreement has been reached to end abuse of tied-aid credits for foreign governments.

Subtitle D—Council on Industrial Competitiveness Act

Section 461.—Provides that this subtitle may be cited as the "Council on Industrial Competitiveness Act."
Section 462.—States findings and purposes relative to U.S. international competitiveness.
Section 463.—Provides that an independent agency to be know as the Council on Industrial Competitiveness shall be established in the executive branch of the Government.

Section 464.—States the duties of the Council, which include the development and promotion of policies to enhance the productivity and international competitiveness of U.S. industries.

Section 465.—Provides that the Council shall be composed of sixteen members appointed by the President from government, business, labor and individuals who have a broad understanding of the U.S. position in the world economy.

Section 466.—Provides that the Council shall appoint an executive director who shall be the principal administrative officer of the Council.

Section 467.—Establishes the powers of the Council, which include the power to hold hearings.

Section 468.—Requires the Council to evaluate and make public its views concerning the effect of imports on U.S. industries.

Section 469.—Provides that the Council shall submit a report, within one year from the date of enactment, to the Congress and the President in which it shall identify recommendations for changes in policy to enhance U.S. competitiveness.

Section 470.—Authorizes $25 million in fiscal year 1987 to carry out the provision of this subtitle.

Section 471.—Contains definitions of terms.

TITLE V—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

Title V authorizes new programs for education and training designed to enhance U.S. international competitiveness. These programs are designed to supplement existing Federal employment and training and education programs.

TITLE VI—AGRICULTURAL TRADE

Title VI contains provisions designed to strengthen the trade promotion activities of the Agriculture Department, take stronger action against foreign barriers to U.S. agricultural exports, and develop a long-term agricultural strategy.

TITLE VII—FOREIGN CORRUPT PRACTICES AMENDMENTS AND OTHER REQUIREMENTS

Section 701.—Amends Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) with respect to foreign corrupt practices by issuers, and makes parallel amendments to Section 104 of the Foreign Corrupt Practices Act (FCPA) of 1977 (15 U.S.C. 78dd-2).

Liability Provisions:

Payments for the procurement of favorable legislative, judicial, regulatory or other action by a foreign government.—The FCPA currently prohibits payments made by firms (issuers and domestic concerns) and individuals (officers, directors, employees, or agents, or stockholders acting on behalf of issuers and domestic concerns) to foreign official and certain official acts or decisions, in order to assist the firm or individual making the payment in "obtaining or retaining business for or with, or directing business to, any person".

Section 701 adds new language to make it clear that the prohibitions under current law against payments to obtain or retain business includes payments made to assist in the "procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government." Payments of this nature are prohibited by current law; the language of H.R. 3 makes this clear and will strengthen law enforcement and business compliance in this area.

Standard of liability for payments made through third parties.— The FCPA currently prohibits improper payments made to (1) any foreign official, (2) any foreign political party or official thereof or any candidate for foreign political office, and (3) "any person, while knowing or having reason to know" that the payment would be offered or given to either (1) or (2).

Foreign payments scandals of the 1970s demonstrated a clear need for provision (3), above, barring bribes paid through third parties. Numerous cases involved companies that used agents as conduits for illegal payments. In adopting the FCPA, Congress determined that it would not permit companies to do through agents what they could not do directly or otherwise to take a "head in the sand" approach and attempt to remain free from liability.

However, the "reason to know" standard under the current law has been criticized as unclear. Although this formulation is found in other Federal statutes, the meaning of the language under the FCPA is not defined in the statute, and there have been no judicial interpretations of the language under the FCPA. Some businesses interpret the standard as tantamount to "reason to suspect" that an agent will pass on a bribe, or a negligence standard, and may consequently withdraw from legitimate activity. Clearly such an interpretation was not intended by Congress in adopting the language and does not reflect the current enforcement policies of the Securities and Exchange Commission (SEC) and the Department of Justice (Department). Accordingly, the bill clarifies the standards for third-party liability in keeping with the original intent of the Act and current and appropriate enforcement policies.

The legislation does not change the standard of liability for payments made to (1) foreign officials or (2) foreign political party officials or candidates. With respect to payments made through third parties, H.R. 3 clarifies the standard of liability by setting forth specific standards for civil and criminal liability under the Act. A firm or individual is subject to civil liability if it makes a payment to any person "while knowing, or recklessly disregarding" that all or a portion of the payment will be passed on to a foreign official or to a foreign political party, official or candidate for the purposes stated in the bill. A firm or individual is subject to criminal liability if it makes a payment to any person while "knowing" that all or a portion of the payment will be passed on to a foreign official or foreign political party, official or candidate for purposes stated in the bill. The terms "knowing" and "recklessly disregarding" are defined in the bill.

The statutory change makes it clear that mere negligence will not give rise to a civil prosecution under the FCPA. There must be a showing of reckless disregard or knowledge. This reflects current enforcement policies of the SEC and the Department of Justice.

The statutory change also makes it clear that neither mere neglience nor reckless disregard will give rise to a criminal prosecution under the FCPA. In order to bring a criminal prosecution for violation of the third party payments provision, a showing of knowledge as defined in the Act would be required. This also reflects current enforcement policies and interpretations of the SEC and the Department of Justice.

Definitions of Knowing and Recklessly Disregarding:

Knowing.—The definition of "knowing" is intended to make it clear that a "head in the sand" approach to the payment of bribes through third parties will not be tolerated. Knowing is therefore defined to include conscious disregard of a high probability that a payment to a third party will be transmitted by that party to a foreign official or to a foreign political party, official or candidate for a prohibited purpose.

Reckelelessly disregarding.—In addition, the definition of "recklessly disregarding" is intended to encourage self-policing by business. Recklessly disregarding is therefore defined to include awareness of a substantial risk that a third party will transmit a prohibited payment, and disregard of that risk.

Defenses:

Payments for expediting or securing the performance of a routine governmental action, not including the award or continuance of business, or the procurement of favorable legislative, judicial, regulatory or other action.—The legislative history of the FCPA states that certain kinds of foreign payments are not intended to be covered by its prohibitions. The legislative history states that the Act "does not * * * cover so-called 'grease payments' such as payments for expediting shipments through customs or placing a trans-atlantic telephone call, securing required permits, or obtaining adequate police protections, transactions which may involve even the proper performance of duties."

As the 1977 House Report made clear, although such "grease payments" may be reprehensible in the United States, they may be a way of life in other parts of the world. In some cases, small payments may be demanded by relatively low-level foreign government employees before they will even properly perform the duties for which they are responsible, such as processing applications.

The definition of "foreign official" under the FCPA was intended to further distinguish payments of this nature. The FCPA explicitly states that the term "foreign official" does not include "any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical." The legislative history notes that "in defining 'foreign official', the Committee emphasizes this crucial distinction (between prohibited payments and 'grease' payments) by excluding frm the definition of foreign official government employees whose duties are essentially ministerial or clerical."

The policy adopted by Congress in 1977 remains valid, in terms of both U.S. law enforcement and foreign relations considerations. Any prohibition under U.S. law against this type of petty corruption would be exceedingly difficult to enforce, not only by U.S.

prosecutors but by company officials themselves. Thus while such payments should not be condoned, they may appropriately be excluded from the reach of the FCPA. U.S. enforcement resources should be devoted to activities having much greater impact on foreign policy. Thus, payments for activities such as the awarding of contracts and procurement of favorable legislation or favorable judicial or regulatory treatment should be proscribed, as the FCPA now provides.

However, there has been some criticism that the current statutory language does not clearly reflect Congressional intent and the boundaries of prohibited conduct. Critics have complained that "grease" payments are not clearly excluded, because the payments are defined primarily in terms of the official receiving the payments (one whose duties are "essentially ministerial or clerical"), instead of the purpose of the payment. The statutory change that would be accomplished by the bill will reflect current law and Congressional intent more clearly.

Section 701 states that it shall be a "defense" to actions brought under the FCPA that a payment was made "for the purpose of expediting or securing the performance of a routine governmental action by a foreign official." The bill would further provide is Section 701 that the term "routine governmental action" means an action which is ordinarily and commonly performed by a foreign official, including processing governmental papers, loading and unloading cargoes and scheduling inspections and actions of a similar nature. The bill further makes it clear that the term does not include "any dicision by a foreign official on the question of whether, or on what terms, to award new business to or to continue business with a particular party, or the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government."

By describing the type of conduct that falls within the FCPA prohibitions as well as the type of conduct that is outside the scope of the FCPA, the law will give business greater guidance so that responsible businesses will be better able to police their own activities.

In determining whether the defense provided under this paragraph is met, a court may consider whether payments ostensibly for "routine governmental action" are a subterfuge for other prohibited payments. Thus, it may determine that a payment which is unusually large in relation to the "governmental action" performed may not fall within this defense. It may also consider whether the foreign official receiving the payment is in a position to influence substantially the question of whether, or on what terms, to award new business to or continue business with a paticular party, or to influence legislative, judicial, regulatory, or other action.

Payments expressly permitted under a law or regulation.—The bill also provides that it will be a defense to actions under the FCPA that a payment is expressly permitted under a law or regulation. Section 701 also clarifies the intent of the law and current enforcement policies. The term "expressly permitted" means that the propriety of the payment must be reflected under some written law or regulation. It is intended that the specific law or regulation permitting the payment and its applicability to defendant's actions must be shown by the defendant.

In determining whether the defense provided under this paragraph is met, a court may consider whether a payment which is "expressly permitted" under a law or regulation for a certain purpose is, in fact, made for different, prohibited purpose. For example, while it may be legal in some countries to hire and pay a salary to a foreign official serving as an agent, a court may determine that a salary which is unusally large in relation to the service performed may not fall within this defense.

Vicarious Liability: Due Diligence Defense:

Under current law, in appropriate circumstances, a firm may be held vicariously liable for violations of the FCPA by employees or agents. This is the proper result, because firms should be responsible for taking appropriate steps to prevent violations.

The lack of enforcement resources at the SEC and the Department of Justice make it clear that the enforcement agencies are able to detect and pursue only a small number of violations of the FCPA, as is true of violations of many other statutes. Consequently, enforcement agencies under this status, as well as many others, must depend upon the deterrent effect of the law, and, more important, self-policing by responsible businesses.

The bill establishes in Section 701 a new, "due diligence" defense for civil and criminal liability of issuers and domestic concerns for violations of the FCPA by employees and agents. It provides that if the issuer or domestic concern has established procedures for detecting violations, and if the officers and employees with supervisory responsibility for the employees or agent violating the law have exercised due diligence to prevent the violation, then no vicarious liability will apply. Of course, supervisory responsibility for the actions of a particular employee or agent may be exercised by many officials in an organization and can include, for example, the general supervisory authority of high level corporate officials. The requirements must be established by a preponderance of the evidence.

Although "due diligence" is a familiar concept under the Federal securities laws, the bill does not specifically define the term. It is intended that what would constitute "due diligence" would be factual determination by the trier of fact and would vary depending upon the particular circumstances of the transaction at issue. Due diligence might include many of the steps currently employed by firms seeking to comply with current law: regular training and updating of all levels of involved corporate personnel; independent investigation of the background and reputation of agents and other participants in the transaction; contract provisions obligating the parties not to violate the Act and voiding the contract if the Act is violated; a right to perform a full or partial audit of the books of agents or other transaction participants; disclosure of the existence and terms of agency relationships to the foreign government purchase; periodic compliance certifications by corporate personnel and participants; and independent opinions of local counsel that local law will not be violated by any part of the transaction.

The scope of due diligence may also vary according to the circumstances of the transaction. Many companies seeking to comply with current law, for example, have indicated that certain factors, such as those set forth below, may indicate the need to undertake additional inquiry on the part of corporate officials:

—Any unusual proposal relating to the method of payment to any participants in the transaction, particularly through third countries or in currency;

—Any known or suspected family relationships between any participants in the transaction and any foreign government official;

—Refusal by any participants in the transaction to sign affidavits or make representations that they will not violate the FCPA;

—The size of the commission paid to the agent in relationship to the services performed;

—Any known or suspected misrepresentations by the agent or others in connection with the proposed transaction;

—Requests by any participant in the transaction that the company prepare false invoices or any other type of false documentation; and

—Any negative information developed as part of the independent investigation into the activities and reputation of the agent or other participants in the transaction, including any information developed regarding the financial interests of any foreign government officials in any companies participating directly or indirectly in the transaction.

The size of the company and the resources available to it may also be considered in determining the scope of the due diligence steps. For example, many large multinational companies have the capacity to place corporate officials in foreign countries, while many smaller exporters must rely almost exclusively on foreign agents. In many cases, it may be impossible for an exporter to determine with absolute certainty that an agent will abide by the law. In meeting the defense under this section, it must be shown that reasonable steps were taken.

It is perhaps most important that firms create an environment which fosters good business practice and compliance with the law. In this connection, employees and agents should be encouraged to comply with the law and to report factors that may indicate improper behavior.

Guidelines and Opinions:

In order to enhance compliance with the provisions of the FCPA, the bill establishes in Section 701 a procedure for the Department of Justice to issue guidelines and opinions.

In 1980, and pursuant to the general powers given the Attorney General to enforce the criminal laws of the United States, 28 U.S.C. sec. 509–10, the Attorney General promulgated regulations to clarify the then "informal" procedures of the Department of Justice in reviewing prospective conduct under sections 103 and 104 of the FCPA, 15 U.S.C. sec. 78dd–1, 78dd–2. H.R. 3 contains provisions that establish a statutory scheme based on many of the same features of the business review program set up by the 1980 regulations. To the extent that the statutory scheme conflicts with the procedures set up by the 1980 regulations, the statutory language takes precedence.

Issuers and domestic concerns may submit information on prospective conduct to the Attorney General, who within 30 days must issue an advisory opinion as to whether the disclosed conduct is in conformance with the Department's present enforcement policy regarding compliance with the FCPA. The Attorney General's determination that disclosed conduct comports with Departmental enforcement policy creates a rebuttable presumption of compliance with the statute which can only be overcome by a preponderance of the evidence.

Much attention was given to the function of the Department in issuing opinions to private parties submitting information on prospective conduct. The language is drafted to avoid an inference that the opinion of the Attorney General is "final or binding" on the Department or that disclosed conduct receiving an initial 30-day approval is exempt from later challenge based on other information. The FCPA disclosure system thus comports with other business review programs at the Department in establishing a procedure that may be of assistance to business planning without constricting the Department's ability to take any enforcement action that it deems necessary.

Businesses submitting information for review may rely on the Attorney General's determination to the extent that their future conduct falls within the scope of the disclosed information. Additional disclosures for new or different business activities may further widen the scope of conduct deemed presumptively valid if later challenged. But it is the submitting business, and not the Attorney General, that possesses the knowledge of whether its prospective conduct comports in fact with the disclosure made to the Attorney General. All that the Attorney General may do in these circumstances is to state whether the disclosed conduct, as provided by the submitting parties, comports with the Department's present enforcement intention. Should evidence of noncompliance with the FCPA later arise, the enforcement agency could then gauge whether disclosure was sufficiently accurate and complete to warrant further measures. If so, the Federal courts will be the final arbiter of whether the statute was violated.

It is intended that the opinion process will further clarify the Department's enforcement intention under the FCPA with respect to specific business transactions. It is not intended that this process be used to seek exemptions inconsistent with the fundamental purpose of this Act. The bill further provides that the Department will establish procedures to maintain the confidentiality of documents submitted under this procedure. As with other business review programs at the Department involving export trading companies and joint research and development activities, these safeguards include protection against the release of disclosed proprietary information to private parties under the Freedom of Information Act and protection against any form of public disclosure by executive branch officials.

In order to enhance compliance with the provisions of the FCPA, the bill establishes a procedure for the Department to issue guidelines describing example of activities that would or would not conform with the Department's present enforcement policy regarding FCPA violations. As with other guidelines issued by the Department, the language makes clear that the guidelines do not by themselves establish the statutory standards by which courts, as the ultimate arbiters of the Act, might judge conduct under the FCPA.

The bill provides that the Department and the SEC shall provide timely guidance to exporters and small businesses who are unable to obtain specialized counsel with respect to compliance with the FCPA. It is intended that the SEC will make its views known as to whether it will be bound by the Department's enforcement intentions, as is its current practice.

Violations:

Section 701 doubles the criminal fines for violations of the FCPA (from $1 million currently to $2 million). H.R. 3 also creates a new civil penalty of up to $10,000 for firms and individuals.

The violations provisions of the statute make it clear that the "knowing" standard for third-party payments must be met before a criminal penalty can be imposed.

In addition, the bill removes the implication under current law that a violation by an issuer or domestic concern must be found prior to imposing criminal penalties on employees or agents. This is particularly important in view of the due diligence requirements, which would prevent a finding of a violation by an issuer or domestic concern under certain circumstances where the employee or agency violated the law.

Section 702.—Requires the Secretary of Commerce to conduct an investigation of the foreign countries from which foreign financial services institutions are operating in the U.S., the kinds of services offered, and the extent to which U.S. financial services institutions are permitted to offer the same services in those foreign countries. The Secretary must transmit findings and recommendations to Congress and the Committee within 120 days of enactment.

Section 703.—Establishes an interagency adjustment plan review committee to monitor compliance with any adjustment plan submitted in conjunction with an import relief investigation under Section 201 of the Trade Act of 1974. Such committee is authorized to submit reports of noncompliance and recommendations for modification or termination of import relief to the USTR for final action.

Section 704.—Establishes a registration system in the Department of Commerce for significant foreign-owned interests in U.S. business enterprises and real estate. Subsections (a) and (b) describe the interests that foreign persons are required to register. Subsection (a) requires that significant interests in a U.S. property acquired after enactment of the bill be registered within 30 days after regulations become effective; subsection (b) requires that all significant interest acquired before enactment and still held be registered within 180 days after regulations becomes effective.

A significant interest is defined to include interests of 5 percent or more in any "United States property"—defined to include United States businesses and real property with assets exceeding

$3 million or annual sales in the most recent fiscal year exceeding $12 million; 5 percent or more in any two or more U.S. properties with total assets exceeding $10 million or total annual sales in the most recent fiscal year exceeding $40 million; or interests of $10 million or more in value in any U.S. property regardless of its percentage.

The $3 million threshold is the same as the assets threshold at which a publicly traded corporation must file public financial disclosure statements with the SEC under current law.

Registration requirements apply only to equity or ownership interests. Debt interests are excluded. This would exclude from the reporting requirements any debt security, which includes any note, bond, debenture, or evidence of indebtedness; any marketable long-term corporate debt instrument; any marketable long-term debt obligation of the United States Treasury, a Federal financing institution, a United States government corporation or Federally-sponsored agency; any marketable long-term debt obligations of a state or local government, including any agency, corporation, financing institution, or other instrumentality thereof; any put, call, straddle, option, or privilege on any debt security; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any debt security.

A holding period threshold is established for these interests. This holding period is to be set by the Secretary of Commerce after a notice-and-comment rulemaking procedure, to exempt transitory, speculative holdings from the registration requirements. No interest under 5 percent will be required to be registered unless it meets both the $10 million threshold and the holding period threshold.

The Secretary of Commerce is to determine the most appropriate method of measuring indirect control, by reference to regulations under current laws such as the International Investment Survey Act, 22 U.S.C. 3101 et seq.

Subsection (c) describes the information required to be disclosed in the registration. Included are the identity, address, legal nature and nationality of the foreign person; the date the interest was acquired; the name, location and industry of the United States property and how it is related to the foreign person; and the size and price of the interest acquired.

Subsection (d) establishes additional information requirements for these "controlling interest" of 25 percent or more in a U.S. business enterprise with assets exceeding $3 million or annual sales in the most recent fiscal year exceeding $12 million. For these interests, the foreign investor is required to provide an English translation of whatever public financial disclosures are filed in the investor's home country. With respect to the U.S. business enterprise, the foreign investor is required to provide a balance sheet and income statement; a statement of sales, assets, operating income, changes in financial condition, and depreciation by industrial segment; the location of all U.S. facilities; information concerning the directors and executive officers; and a description of significant litigation in which the business enterprise has been involved within the past year. This requirement is a subset of the information required of publicly traded companies in the "Form 10-k" filed annually with the SEC.

Subsection (e) requires foreign investors to file annual reports in the event there have been any changes in the information filed in the registration or previous annual report.

Subsection (f) establishes a civil penalty for failure to register or report of up to $10,000 per week late.

Subsection (g) establishes criminal penalties, for willful failure to register or report or for willfully furnishing false or misleading information, of not more than $10,000, not more than a year in prison, or both. These penalties are the same as those in the International Investment Survey Act, 22 U.S.C. 3101 et seq.

Subsection (h) authorizes the Secretary to undertake investigative actions to monitor compliance with the registration and reporting requirements and clarifies the Secretary's subpoena power as that given the Federal Trade Commission (FTC) under the Federal Trade Commission Act.

Subsection (i) requires the Secretary to prescribe regulations to carry out section 704. Once the Act is enacted into law, the Secretary is required to publish preliminary regulations for notice and comment within 90 days and to prescibe the final regulations within 180 days.

Subsection (j) requires the Secretary to report annually to Congress and the President. The reports are to decribe the extent, character, and effects of foreign-held interests in United States properties; the effectiveness, efficiency, and comprehensiveness of the registration and reporting requirements; the existence of overlapping data collection systems that can be eliminated or merged without reducing the information available; and, in the first report, the feasibility of a system to track individual transactions representing other capital flows into the United States from aborad which are not covered by the registration and reporting requirements established in this section.

Subsection (k) requires the Secretary to compile an inventory of interests registered or reported under the requirements of section 704 and the information contained in those registrations or reports. The inventory is to be available for public access and is to index the information by name, nationality, and standard industrial classification number (SIC) of the foreign investor and by name, state in which located, and SIC of the U.S. property.

Subsection (l) defines several terms used elsewhere in section 704. "Business enterprise" is defined to include all forms of associations, as well as any group of associations acting in concert. "United States property" is defined to include business enterprises and real property, including mineral rights. "Foreign person" is defined to include foreign persons, foreign businesses, and foreign governments, as well as any group acting in concert which includes a foreign person. "Significant interest" and "controlling interest" are defined as described above in the discussion of subsections (a) and (b). "Acquire" and "hold" are defined to clarify that the beneficial owner of the interest is required to register and discloser, whether holding the interest directly or through a nominee account or other financial intermediary.

Subsection (m) establishes effective dates. The rulemaking process leading to regulations, in subsection (h), takes effect immediately upon enactment. The rest of the section takes effect when the final regulations are prescribed.

Section 705.—Requires the Secretary of Commerce, within 90 days of enactment, to institute procedures to expedite the interagency process for recommending and approving calls for consultations on textile import quotas.

TITLE VIII—TARIFF AND CUSTOMS PROVISIONS

Title VIII contains miscellaneous, mostly product-specific tariff and customs law changes.

TITLE IX—ENERGY AND COMMERCE PROVISIONS

Section 901—Trade in Digital Audio Recorders.—Section 901 generally requires the inclusion of copy-code scanners in digital audio recording devices.

Subsection (a) provides a Congressional finding.

Subsection (b) provides definitions.

Subsection (c)(1) makes it unlawful to manufacture, assemble or offer for sale, resale, lease or distribution in commerce (1) a digital audio recording device that does not contain a copy-code scanner or (2) any device or service that renders inoperative a copy-code scanner. Subsection (c)(2) makes it unlawful to render inoperative a copy-code scanner. A copy-code scanner is an electronic circuit built into the recording mechanism of an audio recording device which cause the device to stop taping when it detects a certain signal encoded in recordings.

Subsection (d) provides remedies for violation of this section. Under subsection (d), any person aggrieved by a violation of this section, or an appropriate officer or agency of the United States, may bring a civil action in district court. The language is a typical "standing" provision intended to provide a remedy for anyone harmed by a violation, including songwriters, artists, music publishers, record companies and competing manufacturers of digital audio recording machines. Under this subsection, an aggrieved party shall be entitled to recover damages in accordance with established principles of law.

Subsection (d)(5) allows criminal prosecution for violations of subsection (c)(1) that are committed knowingly, willfully, and for purposes of direct or indirect commercial advantage or private financial gain. No criminal liability attaches to the individual who bypasses, removes, or deactivates a copy-code scanner.

Subsection (e) authorizes the Secretary of Commerce to exempt certain DAT recording devices from the requirements of subsection (c) because the Committee recognizes that DAT recording equipment is also used for legitimate business purposes. For instance, DAT recording equipment used in professional music recording studios, radio stations, and in the manufacture of prerecorded DAT cassettes should not be subject to the requirements of subsection (c). The Committee wishes to avoid any disruption of legitimate business operations of the manufacturers, sellers, and users of such professional equipment. Accordingly, the Committee expects the

Secretary to act expeditiously to promulgate appropriate regulations and take all other appropriate action to avoid the disruption of businesses engaged in the legitimate manufacture, entering into commerce in the United States, sale and use of DAT recording equipment.

Subsection (f) is a sunset provision and provides that this section shall terminate one year after the date of enactment.

Section 902—Competitiveness Impact Statements.—Requires agency and department heads to include a trade and competitiveness impact statement in any reports, statements of position or recommendations made to Congress regarding proposed legislation. This requirement is designed to assure that the Executive branch will consider the impact of proposed legislation on the ability of U.S. firms to compete in international commerce. The Committee does not intend to create a new analytical requirement on Federal departments and agencies. Specifically, the provision does not authorize or permit the establishment of any new procedural requirement or restriction on agency action by the Office of Management and Budget or any other authority.

Section 903—National Trade Data Bank.—Establishes a National Trade Data Bank in the Department of Commerce, headed by the Secretary of Commerce. The Secretary is to coordinate data collection with other agencies.

A key function given to the Data Bank is the development of a comprehensive and accurate data base on services trade. Among the items which the Secretary has the discretion to include in the data bank are market opportunities abroad and a broad range of factors listed in paragraph (a)(2) affecting U.S. competitiveness in foreign and domestic markets.

The Data Bank is also required to make information available, in the most meaningful and effective way, to: U.S. business; U.S. labor; U.S. industry associations; U.S. agricultural interests; State and local economic development agencies; and other interested U.S. persons. This section requires the Secretary of Commerce to report to Congress by the end of each year assessing the quality, comprehensiveness, and public and private accessibility of trade data. The Secretary's report is also to include recommendations for executive and legislative actions which would ensure that U.S. citizens and firms obtain access to the banks of foreign countries that is similar to the access provided foreign citizens and firms to the National Trade Data Bank.

Section 904—Foreign Commerce Development Program.—Requires the Secretary of Commerce to establish the Foreign Commerce Development Program which shall conduct a comprehensive and continuing evaluation of U.S. competitiveness in foreign and domestic markets, and which, on the basis of these evaluations, shall be responsible for developing strategies to enhance trade and competitiveness opportunities.

Requests the Secretary to implement trade and competitiveness strategies he identifies, using existing authority. Requires Secretary to report annually to Congress and to the President with legislative recommendations for improving U.S. competitiveness.

Section 905—Related Initiatives to Support the Program of Enhanced Competitiveness.—On basis of evaluations conducted and information collected under section 904 as well as other appropriate data, section 905 requires the Secretary of Commerce to identify needs of U.S. industry in a number of different areas: assistance regarding research and development; improvements in education and training; and reduction of regulatory and bureaucratic burdens.

Requires the Secretary of Commerce to consult with the Justice Department and the FTC: to ensure appropriate emphasis on antitrust enforcement; and the development of programs to enhance the confidence of U.S. consumers in domestically-produced products and the competitive position of such products in world markets. Requires the Secretary to periodically review Federal procurement practices and to make recommendations for changes in such practices as may be appropriate to assist in the maintenance and expansion of U.S. competitiveness.

Section 906—Organization of Trade and Competitiveness Functions.—Gives the President 180 days to submit legislation to Congress to establish an agency in the Executive Branch to promote the competitiveness of U.S. industries in domestic and foreign commerce and to perform existing trade functions. Such agency would be headed by a Cabinet Officer and perform the new functions that earlier sections give to the Secretary of Commerce.

Section 907—National Security and Essential Commerce.—The Secretary of Commerce shall investigate, if requested to do so by an agency head or on the Secretary's own initiative, to determine the effects on national security, essential commerce, and economic welfare of mergers, acquisitions, joint ventures, licensing and takeovers by or with foreign companies which involve U.S. companies engaged in interstate commerce.

The Secretary has 45 days to make a determination regarding his investigation, and if appropriate, to make recommendations to the President for restricting the foreign effort involving the firm engaged in interstate commerce. If the Secretary determines that the foreign control of firms engaged in interstate commerce would threaten national security and impair essential commerce, the President must take the recommended action, unless he makes a separate determination that there is no threat to national security or essential commerce.

Section 908—Action under Section 301(c) of the Trade Act of 1974.—Requires the President to immediately take all appropriate and feasible action under Section 301(c) of the Trade Act of 1974 (which authorizes the President to direct agencies to impose regulatory sanctions): to respond to Japan's violations of the U.S.-Japan semiconductor agreement entered into on September 2, 1986; as an incentive for Japan to comply with the semiconductor agreement; as compensation to the U.S. for the harm suffered due to Japan's non-compliance with the semiconductor agreement; and in prevention of further injury.

Section 909—Discrimination.—Redefines the term "discriminatory" in order to make the denial of access for U.S. firms to foreign technology, research or development, actionable as an unfair trade practice under section 301 of the Trade Act of 1974.

Section 910—Marking of Certain Items in Interstate Commerce.—Prohibits the sale in interstate commerce of certain imported silver jewelry unless it has a permanent marking identifying the country of origin. Designed to require marking of each piece of silver jewelry rather than the container the items arrive in, in order to deal with the problem of imported jewelry that is improperly being sold as native American jewelry.

Section 911—Bilateral Trade Between the U.S. and Mexico.—Requires the Secretary of Commerce to report to Congress within one year on bilateral trade issues between the U.S. and Mexico and to recommend ways of increasing trade, including the eventual establishment of a free trade area between the U.S. and Mexico.

Section 912—Investigation of Market Distorting Practices Affecting Interstate Commerce in Uranium.—Requires the Secretary of Commerce to investigate foreign trade practices resulting in market distortions in interstate and foreign commerce in uranium. On the basis of the investigation, the section requires the Secretary to issue a final report containing specified provisions. Within 30 days of the issuance of the final report, on the basis of the final report and the existing determination of the Secretary of Energy, the Secretary shall make recommendations to the President on actions he may take to rectify the impact on the domestic industry. This is not, however, a grant of new authority to the President as to options available to address the problem.

Section 913—Investigation of Certain Barriers Pertaining to Trade and Services.—Requires the USTR to initiate a Section 301 investigation involving construction, engineering, and consulting services trade with Japan. The provision is designed to deal with the Kansai Airport problem, and the general issue of Japanese barriers to trade in these services. The airport is an $8 billion construction project in Japan in which U.S. construction and construction-related firms are not being allowed to compete equally with Japanese firms.

Section 914—Effect of Imports on Crude Oil Production and Refining Capacity in the U.S.—Requires the Secretary of Energy to refer a recently completed study on the effects of oil imports on the national security of the United States to the Secretary of Commerce for review. Within 180 days of receipt, the Secretary of Commerce, based on the study, is required to recommend to Congress and the President appropriate actions to address any impacts of petroleum imports on U.S. petroleum exploration, production, and refining capacity. These recommendations could include, for example, an oil import fee, deregulation of oil pipeline rates, or energy conservation measures.

Section 915—Investments.—Directs the Secretary of Commerce, within six months of the date of enactment, to review restrictions placed on investments by U.S. persons in foreign countries and to report to Congress recommendations to remove such restrictions.

Section 916—Report on Secretary of Commerce Procedures.—Within 180 days of the date of enactment, requires the Secretary to report on the legal basis for, the trade impact of, and alternative approaches to current procedures for calculating "exporter's sales price" and "foreign market value" in connection with investigations conducted by the Secretary.

Section 917—Impact of National Defense Expenditures on International Competitiveness.—Expresses the sense of Congress that the President should evaluate the impact on U.S. competitiveness of foreign countries' expenditures on defense, including Japan's expenditure of 1 percent of its GNP on defense as compared to the U.S. expenditure of 6 percent of its GNP.

Section 918—Investigations and Reports Concerning Perishable Products Industry.—Upon request of an interested party, the Secretary of Commerce shall determine whether U.S. producers of perishable products (includes certain live animals) have been injured by sharp increases in like or competitive foreign products in interstate commerce. The Secretary has 180 days to conduct the investigation and make recommendations that the President take appropriate action.

Section 919—Development of Semiconductor Manufacturing Technology.—In order to preserve essential commerce, this section authorizes $100 million for fiscal years 1988, 1989, 1990, 1991 and 1992 to the Secretary of Commerce to make grants to a consortium of U.S. companies engaged in the manufacture of semiconductors in the U.S. These grants could not be for more than one half the cost of undertaking projects to stimulate the development of semiconductor manufacturing technology.

This section requires the Secretary to submit a plan, within 60 days after the date of enactment of this Act, to the Committee on Energy and Commerce of the House and the Committee on Commerce, Science and Transportation of the Senate. The plan shall specify the consortium of U.S. semiconductor manufacturers that shall receive the grants, and how the consortium shall use these grants.

This section further provides that no grants may be made under this section unless, subsequent to the date of enactment of this Act, a law authorizing such grants is enacted. This section also requires the Secretary of Commerce to report annually to the Congress on activities he undertakes under the authority of this subsection.

Section 920—Reports on Countertrade and Offsets.—Requires that U.S. exporters report to the Commerce Department each contract (over $2,000,000) for a sale to a foreign person which, pursuant to the authority of the foreign government involved, requires countertrade or offsets as a condition for the sale.

The Committee is aware that some information on countertrade deals may be of a sensitive or confidential nature. Therefore, while the report filed by the Commerce Department will be publicly available, and Congress will retain its right to view such documents as it deems necessary, the Commerce Department is directed to keep information confidential which constitutes a trade secret or proprietary information.

This section requires the Secretary of Commerce to make a public report to Congress, beginning in March, 1989, and each year thereafter, setting forth a summary of the transactions included in the reports filed with the Secretary; an analysis of such transactions; an identification of the countries that impose countertrade requirements; and certain additional information.

The report may consist of two sections, one devoted to the analysis of offsets and countertrade related to military sales, and the second, an examination of commercial countertrade transactions. In addition, the report should include a discussion of countries whose laws, regulations, or policies mandate countertrade. The

Committee would encourage the Commerce Department to consult with other agencies and departments, such as the Treasury Department, whose expertise would contribute to an analysis.

Failure to file or willful filing of an untrue report or one that omits a significant fact would be subject to a civil penalty of $10,000 each week the report is late or filed in an untrue or otherwise deficient form.

As used in this section, countertrade or offset means:

—a condition which the United States person will transfer technology to a foreign person,

—a condition under which the United States person will, as a condition to the contract, purchase or arrange for the purchase of goods or services from a foreign person,

—a condition under which a percentage of the goods or services to be provided by the United States person will be produced outside the United States or be provided by foreign person, or

—a condition under which the United States person will be required to make investments in a foreign country.

In general, the types of transactions covered by the legislation are those in which two parties link an import and an export transaction in a reciprocal fashion. In a typical transaction, a foreign country or ministry will purchase goods from a private firm in another country on condition that the firm purchase certain goods or services from, or confer some nonmonetary benefit on, the purchasing nation in a parallel transaction. More specifically, the legislation covers compensation deals in which a private firm will typically sell equipment, technology, or an entire plant with a contractual commitment on the part of the seller to purchase a quantity of products that are produced or derived from the original sale. Also covered are counterpurchase agreements whereby a private firm selling goods or devices to a foreign trade organization will be required to purchase goods that have no relation to the original sale, but are chosen from a list of products. The definition also applies to other nonmonetary benefits, including subcontractor production, licensed production, technology transfer, and foreign investment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 225 OF THE COMMUNICATIONS ACT OF 1934

TITLE II—COMMON CARRIERS

* * * * * * *

CONSIDERATION OF INTERNATIONAL TRADE FACTORS

SEC. 225. The Congress finds that international telecommunications trade has significant impact with regard to telecommunications policymaking in the United States. It is therefore the policy of the United States that the Commission, in order to fulfill its duties

71-486 0 - 87 -- 4

and obligation to make decisions on the basis of the public interest, convenience, and necessity under this title should, in making its determinations, take into account, where appropriate, the impact of international trade on the ability of the United States telecommunications industry to be competitive in the international marketplace and on the ability of the American public to obtain, on a continuing basis, quality services and equipment.

SECURITIES EXCHANGE ACT OF 1934

* * * * * * *

[FOREIGN CORRUPT PRACTICES BY ISSUERS

[SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

[(1) any foreign official for purposes of—

[(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

[(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

[(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

[(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

[(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

[(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

[(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

[(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

[(b) As used in this section, the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.]

PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS

SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered,

given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(b)(1) It shall be a defense to actions under subsection (a) that—

(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

(B) the payment, gift, offer, or promise of anything of value that was made, was expressly permitted under a law or regulation of the government of the country involved.

(2) For purposes of paragraph (1)(A), the term "routine governmental action" means an action which is ordinarily and commonly performed by a foreign official and includes—

(A) processing governmental papers, such as visas and work orders;

(B) loading and unloading cargoes; and

(C) scheduling inspections associated with contract performance,

and actions of a similar nature. "Routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(c) An issuer may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

(1) such issuer has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

(2) the officer and employee of the issuer with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such issuer shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2).

(d) Not later than one year after the date of the enactment of the Trade and International Economic Policy Reform Act of 1987, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the

Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e)(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other depart-

ment or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) For purposes of this section—

(1) the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

(2) a person meets the "knowing" standard for purposes of subsection (a)(3) if—

(A) that person is aware or substantially certain, or

(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

(3) a person meets the "recklessly disregarding" standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

(4) the term "substantial risk" means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation.

* * * * * * *

PENALTIES

SEC. 32. (a) * * *

* * * * * * *

[(c)(1) Any issuer which violates section 30A(a) of this title shall, upon conviction, be fined not more than $1,000,000.

[(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 30A(a) of this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

[(3) Whenever an issuer is found to have violated section 30A(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

[(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.]

(c)(1)(A) Any issuer that—

(i) violates section 30A(a)(1) or (2); or

(ii) violates section 30A(a)(3) and meets the "knowing" standards of that section (as defined by section 30A(f)(2)),

shall be fined not more than $2,000,000.

(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who—

(i) willfully violates section 30A(a)(1) or (2); or

(ii) willfully violates section 30A(a)(3) and meets the "knowing" standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who—

(i) willfully violates section 30A(a)(1) or (2); or

(ii) willfully violates section 30A(a)(3) and meets the "knowing" standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

SECTION 104 OF THE FOREIGN CORRUPT PRACTICES ACT OF 1977

* * * * * * *

[FOREIGN CORRUPT PRACTICES BY DOMESTIC CONCERNS

[SEC. 104. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

[(1) any foreign official for purposes of—

[(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

[(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

[(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

[(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

[(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

[(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

[(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

[(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

[(b)(1)(A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) shall, upon conviction, be fined not more than $1,000,000.

[(B) Any individual who is a domestic concern and who willfully violates subsection (a) shall, upon conviction, be fined not more than $1,000,000, or imprisoned not more than five years, or both.

[(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

[(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

[(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

[(c) Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(d) As used in this section:

[(1) The term "domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B), any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

[(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

[(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.]

PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

SEC. 104. (a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or in-

fluence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(b) DEFENSES.—(1) It shall be a defense to actions under subsection (a) that—

(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

(B) the payment, gift, offer, or promise of anything of value that was made was expressly permitted under any law or regulation of the government of the country involved.

(2) For purposes of paragraph (1)(A), the term "routine governmental action" means an action which is ordinarily and commonly performed by a foreign official and includes—

(A) processing governmental papers, such as visas and work orders;

(B) loading and unloading cargoes; and

(C) scheduling inspections associated with contract performance,

and actions of a similar nature. "Routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(c) DUE DILIGENCE.—A domestic concern which is not an individual may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

(1) such domestic concern has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

(2) the officer and employee of the domestic concern with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such domestic concern shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2). The first sentence of this subsection shall be considered an affirmative defense to actions under subsection (a).

(d) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than 6 months after the date of the enactment of the Trade and International Economic Policy Reform Act of 1987, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions

of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, re-

gardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) VIOLATIONS.—(1)(A) Any domestic concern that—

(i) violates subsection (a) (1) or (2); or

(ii) violates subsection (a)(3) and meets the "knowing" standards of that subsection (as defined by subsection (h)(4)),

shall be fined not more than $2,000,000.

(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who—

(i) willfully violates subsection (a) (1) or (2); or

(ii) willfully violates subsection (a)(3) and meets the "knowing" standard of that subsection,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who—

(i) willfully violates subsection (a) (1) or (2); or

(ii) willfully violates subsection (a)(3) and meets the "knowing" standard of that section,

shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(g) INJUNCTIONS.—Whenever it appears to the Attorney General that any domestic concern or officer, director, employee, agent, or stockholder thereof is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a), the Attorney Gen-

eral may bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(h) DEFINITIONS.—As used in this section—

(1) the term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States;

(2) the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

(3) the term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality;

(4) a person meets the "knowing" standard for purposes of subsection (a)(3) if—

(A) that person is aware or substantially certain, or

(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

(5) a person meets the "recklessly disregarding" standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

(6) the term "substantial risk" means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation.

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) * * *

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section—

(1) * * *

* * * * * * *

(5) DEFINITION OF DISCRIMINATORY.—The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment *or which denies access to foreign technology, research, or development.*

ADDITIONAL VIEWS ON H.R. 3—TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

Gold Bond Amendment

In my view, H.R. 3 does not adequately address the root causes of our trade problems: (1) the huge federal budget deficit; and (2) the instability of foreign exchange and interest rates. I offered an amendment during the Energy and Commerce Committee's consideration of H.R. 3 which would have addressed these problems. Although the Committee sustained a point of order against H.R. 3 because of germaneness, I wish to comment on the approach that I presented.

In 1984-85 it was fashionable to talk about the "strong dollar." But that "strength", such as it was, rested on the weakest foundation: the negative interest rate differential undermining the competitiveness of our industry and agriculture. Indeed, the debasement of the dollar might have actually hurt, rather than helped our manufacturing sector. The market share of American automakers actually fell with the falling dollar, while that of the Germans and Japanese grew even faster than the value of the mark and the yen. This flies in the face of conventional wisdom which has predicted that the cheaper dollar would in due course boost exports and inhibit imports. The right tool to put into the hands of exporters is not an unstable and depreciating dollar. Rather, the right tool is a strong and stable currency, which manufacturers can and do use to fend for themselves in world markets.

If the lower dollar is not the cure for our twin deficits, then what is? In order to answer this question, we have to look at interest rate differentials, and how they have moved since 1971, the year the dollar was cut adrift from its gold moorings. When the dollar went into a free-fall in 1974 and again in 1979, America still had a competitive edge in the world's markets as the interest rate differentials were still positive. That is to say, our interest rates were still lower than those of our competitors. Therefore, the capital costs of our producers to expand production and to improve quality, as well as the costs of carrying inventory by our distributors, were lower than the corresponding costs of our competitors. This situation appears to have changed permanently with the advent of the Volcker Fed in the closing days of the last decade. Interest rates shot up world-wide but, for the first time, our interest rates surpassed those of our main competitors, Germany and Japan. America has maneuvered itself into an uncompetitive trading position.

The record high U.S. interest rate started their long descent in 1984, but this brought no relief to our producers as the differentials remained negative. In particular, German and Japanese rates declined even faster than ours. In spite of the dramatic fall of 9 percent in the rate of interest from 16 to 7 percent in this country, the rate of interest in Japan is still about half of ours. Interest is the price of capital. Our cost of capital is almost twice that of our main competitor, Japan. Here we find the reason why capital is being formed in Japan, rather than in the United States. During the hearings on H.R. 3 which were held by the Energy and Commerce Subcommittee on Commerce, Consumer Protection and Competitiveness, a witness from the business community testified to the fact that the cost of capital is a more important factor in determining a business's costs than the cost of labor. Clearly, an effort to reduce the cost and increase the availability of capital is vital to our economic productivity and growth.

But why are interest rates lower in Japan than in the United States? Because while we are doing our best to undermine confidence in the value of the dollar, Japan has encouraged a strong and stable currency. The prescription for our economic ills is not a lower dollar, but a lower dollar-rate of interest. If this analysis is correct, then the answer to our trade problems is clear. The road back to competitiveness and adequate capital formation leads through monetary reform which must achieve two fundamental objectives: (1) it must stabilize the dollar; and (2) it must bring down the rate of interest at once to the 2–3 percent range, where the interest rate differentials between the United States and its competitors would disappear.

We are now in a very precarious situation. The dollar is finally "weak." However, if the dollar is consequently going into another free-fall, this will not be a simple replay of previous episodes. We no longer have the cushion of positive interest rate differentials, nor the competitive edge they imply. The Federal Reserve could try to make the interest rate differentials positive again only by massive open market purchases of government securities, in order to bring down interest rates more. But such a policy would make the ballooning money supply explode and runaway inflation would be reignited. We must remember that our current interest rates are maintained at the cost of a break-neck growth of the money supply (M1) which is already fueling a stock and bond market boom. If foreign holders get tired of holding our depreciating currency, the next run on the dollar would find our defenses in shambles.

The amendment that was presented to the Committee would have reduced the trade deficit by reducing the budget deficit through the refinancing of high-interest short-term debt with long-term low-interest gold-backed bonds. The main provision of the amendment is the replacement of $100 billion worth of maturing short-term debt with an equivalent amount of long-term gold bonds paying interest in gold at a rate not exceeding one and three-quarters percent per annum. The effect is that foreigners would be forced to ship gold rather than finished goods to our shores if they wanted to participate in the U.S. investment markets. In addition, the interest cost on the public debt would be decreased by at least 4 percentage points. In consequence, the trade deficit would be reduced by the amount of new foreign purchases of U.S. investments plus the amount of interest-savings due to the lower yield on gold bonds.

My amendment would authorize the U.S. Treasury to issue a new series of gold bonds in the amount of $100 billion, or 250 million gold ounces, whichever is larger, to mature in 40 years, and paying interest at an annual rate not exceeding one and three-quarters percent, while withdrawing authority to issue an equal amount of T-bills with 3-6 months of maturity. If this issuance is successful, the U.S. Treasury would be authorized to issue additional gold bonds. If successful, the entire short-term debt—currently about $625 billion which "roll over" within one year—will be refinanced with low-interest, long-term bonds.

The new issue is not to be made available for purchase by the Federal Reserve Banks or by U.S. commercial banks. Foreign central banks, foreign commercial banks and individuals may acquire gold bonds of the new issue by depositing gold bullion with central banks which hold earmarked gold at the Federal Reserve Bank of New York. Central banks receiving the bullion would release an equivalent amount of gold held under earmark at the Federal Reserve Bank of New York to the U.S. Treasury, which would mint the released gold into Eagle coinage. The Treasury would then retire the maturing short term debt of the federal government by paying out the proceeds from the sale of the Eagle coinage distributed world-wide.

This amendment is not a scheme to fix the rate of interest. Rather, it should be seen as a plan to take advantage of the low rate of interest available to borrowers on gold-denominated obligations. It should be noted that the rate of interest on short-term gold-denominated obligations is less than one percent per annum today, as opposed to five and two-thirds percent on dollar-denominated obligations. No one knows what the interest rate on long-term gold-denominated obligations is today because there is no market in such instruments, mainly because of past U.S. government policies. Suppose the U.S. Treasury issued the gold bonds with one and a one-quarter percent coupon rate. If the market rate is lower than one and one-quarter percent, then the gold bonds will be exchanged for more gold than their face value; otherwise they will exchange for less. On the next issue, the Treasury will be able to adjust the coupon rate to the actual market rate of interest. The marketing of gold bonds will be on a competitive basis, just as the marketing of other bonds.

This proposal is the only effort to link the twin deficits that we face. These are not identical "twins", rather, the budget deficit is the leader and the trade deficit is the follower. If Congress is to truly address the competitive position of the United States, it must reduce the federal budget deficit. Reducing the budget deficit will allow the trade deficit to be reduced without causing a recurrence of the record high interest rates of the late seventies. In addition to reducing the budget deficit by reducing the interest cost on the federal debt, this proposal will address the other competitive problem: negative interest rate differentials. Congress must act if we are to avoid an inevitable collapse of our banking system. I urge my colleagues to seriously consider this proposal when H.R. 3 is debated on the House Floor.

BILL DANNEMEYER.

DISSENTING VIEWS ON H.R. 3—TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

We feel compelled to share with our colleagues the serious concerns we have with H.R. 3, the Trade and International Economic Policy Reform Act of 1987. We simply cannot support the bill in its current form. H.R. 3, as referred to the Committee, is the trade bill (H.R. 4800) that the House passed last Congress. Last Congress, H.R. 4800 became a partisan and jurisdictional battleground that was burdened with bad provisions. Although recent Committee action resulted in the adoption of several amendments that make substantial improvements in H.R. 3, the Committee had jurisdiction over only certain parts of the bill. As a result, there are many provisions in H.R. 3, as reported by the Committee, that are not within our jurisdiction and that make the bill unacceptable in its current form.

It appears that other Committees are presently working in a bipartisan manner to improve H.R. 3. When all those various versions of the bill are melded together, we hope that Congress will have successfully structured trade legislation that effectively addresses U.S. trade problems. We look forward to voting in favor of such legislation on the Floor. Until that time, we are compelled to oppose legislation that is blatantly protectionist, and that will cost U.S. jobs rather than create them.

The United States needs effective, strong trade legislation. The free flow of goods and services in international commerce, the lifeblood of a healthy U.S. and world economy, is in danger today. U.S. industries are faced with closed markets overseas, while many imports enter U.S. markets unfairly. As a result, the U.S. faced a $164 billion trade deficit last year. This situation shows no sign of improvement. Almost every month the U.S. sets a new record trade deficit. These figures are not abstract—they represent industries which are stagnating or shrinking, jobs which are lost, and investments in new plants and equipment which are made overseas rather than at home.

Congress can no longer stand by and watch American jobs being lost as U.S. manfacturers move overseas or go out of business. Effective action must be taken. That is why we joined both last Congress and this Congress in the bipartisan effort by the Energy and Commerce Committee in reporting effective legislation. Last Congress the Committee reported H.R. 3777—the Trade Law Modernization Act, and H.R. 3131—the Telecommunications Trade Act of 1986. Those bipartisan bills represented well-balanced legislation that would have updated our trade laws to address the unfair trade practices U.S. industries face, without being protectionist. However, last Congress other Committees did not act in the same manner and the result was no meaningful assistance to struggling U.S. industries and workers. We are hopeful that history will not repeat itself.

This year we again joined in a bipartisan effort by the Energy and Commerce Committee to write effective trade legislation. We are pleased that the great majority of amendments adopted by the Committee were improvements to H.R. 3 that address the trade problems our nation faces, and were supported by most Republicans and Democrat Members of the Committee. These provisions include one dealing with telecommunications trade issues, collecting and disseminating trade data, assessing the competitive impact of legislation and legislative proposals, assisting U.S. industries in becoming more competitive and in doing business overseas, reorganizing U.S. trade functions, assessing the national security impacts of foreign mergers and takeovers of U.S. firms, dealing with specific and general foreign unfair trade practices, assessing the nature of foreign offset and countertrade requirements, reviewing foreign restrictions on investment and financial services and foreign defense expenditures, and establishing government-industry cooperation on semiconductor research and development. The fact that the Commerce, Consumer Protection, and Competitiveness Subcommittee, the Telecommunications and Finance Subcommittee, and the Full Committee took separate votes on the amendments proposed by each, and that many of us voted for those "packages" is an indication of our strong support for sound trade law.

Our votes against reporting H.R. 3 in its entirety are indicative of our vigorous objection to the provisions of H.R. 3 we were unable to change. As we have noted, we expect those sections to be improved significantly before the bill reaches the House Floor. Yet there are those who have expressed dissatisfaction that such improvements may be made, and who are resisting them. We would regard a failure to adopt those more acceptable items before the bill goes to the Floor as a signal that the heavily touted desire and commitment to bipartisanship was not sincere, and we would be forced to oppose the bill and to recommend to our colleagues on both sides that they do the same.

Specifically, the most objectionable parts of H.R. 3 which are outside this Committee's jurisdiction but which must be modified if the bill is to have the support it needs to avoid a partisan debate and the ultimate risk of failure include the following:

—The requirement that tariffs or quotas be imposed on countries which maintain large trade surpluses with the United States without regard as to whether such surpluses result from unfair trading practices. This provision is likely to result in "mirror" legislation being enacted by other nations. In both the long and short term, the result would be detrimental to the U.S. In the few countries where the U.S. has a trade surplus with other nations, such as Australia, U.S. products sold in those countries could easily have tariffs and quotas levied against them. The same would be true in the future if the U.S. regained its lead in other markets or established leads in new markets. This provision puts us in mind of the tale of the doctor who amputated the leg of a patient who had a broken bone. He took care of the broken bone all right, but it was a rotten way to practice medicine.

—The requirement for adherence to world labor standards. The United States does not impose such standards on its own industries. It will not help our trade situation to legislate compliance with those standards by other nations.
—The requirement for a private damages remedy in dumping cases. This section, as originally adopted, creates a new and burdensome problem for importers, and invites similar actions by other countries where may U.S. firms must respond to dumping complaints.
—The imposition of unrealistic requirements for reducing the list of export controlled items. Such as unstudied and nonstructured cut in exports could be a national security disaster.

We are aware that the Ways and Means Committee has modified the provision on responding to trade surpluses with other nations to require the United States Trade Representative [USTR] to take action against unfair trade practices of countries with "unwarranted and excessive bilateral trade surpluses" with the U.S. Under the Ways and Means modification, this requirement is waived if the USTR obtains an agreement restoring a more balanced, reciprocal bilateral trade relationship through a substantial reduction of either the "unwarranted" practices or their effects on U.S. commerce. This is a substantial improvement to the original provision. It modifies the provision so that it addresses the problems which need to be addressed—unfair trade practices. American industries are not asking for an unfair advantage in the United States or abroad, but for simple competitive equity. With the changes made by the Ways and Means Committee, this provision directs the USTR to negotiate to achieve that goal.

The Ways and Means Committee has also modified the provision concerning workers' rights so that it is consistent with the standard contained in the law on the General Systems of Preferences. Therefore, action may be taken under section 301 of the Trade Act of 1974 if a country has not taken or is not taking steps to afford adequate worker rights, and application would be commensurate with the country's level of economic development.

There is one amendment added to H.R. 3 by our Committee which we find objectionable and unacceptable as a matter of national policy. That is section 704, imposing burdensome and unjustifiable reporting requirements for foreign investors in the United States. The amendment was adopted by a vote of 21–20, after extended debate and strong criticism from many Members. In its present form, the provision sends a clear signal to foreign investors that their participation in the United States equity and other financial markets is no longer welcome. This situation will, in our view, have an immediate, and possibly disastrous effect, on the current and future levels of foreign investment in the United States. In short, billions of dollars in foreign capital will leave the United States if this kind of discriminatory and unfair reporting burden is imposed on foreign investors.

We are confident that when the negative potential of section 704 becomes clear, it will be eliminated or totally rewritten to remove that potential. We intend to seek such action at each step of the legislative process, and we believe the same bipartisan spirit that has led to the improvement of other sections of H.R. 3 will prevail here. We emphasize, however, that without such action on section 704, we will oppose H.R. 3, despite positive changes in the rest of the bill. We will ask Republicans in the full House and the Senate, and thoughtful Democrats as well, to vote against the bill, and we will recommend that the President veto it. Whatever our commitment to improve trade law, we will not risk the future of our financial markets to achieve that result.

But we are hopeful that this bipartisan effort will continue, and, therefore, we anticipate that Congress will produce legislation that we can support and that the President can sign. We urge that the pattern set by the Ways and Means Committee be followed. Our industries do not need bluster—they need stronger trade laws to help them deal with unfair trade practices. Our unemployed workers do not need partisanship—they need jobs. The only way Congress can enact strong trade legislation to help our industries compete and to provide jobs for U.S. workers is to work together. We look forward to working with our colleagues as the legislation moves through the final stages of the legislative process and on to the President's desk.

NORMAN F. LENT.
ED MADIGAN.
CARLOS J. MOORHEAD.
BILL DANNEMEYER.
BOB WHITTAKER.
TOM TAUKE.
THOMAS J. BLILEY.
JACK FIELDS.
MICHAEL G. OXLEY.
MICHAEL BILIRAKIS.
DAN SCHAEFER.
JOE BARTON.
S. CALLAHAN.

DISSENTING VIEWS ON SECTION 704 OF H.R. 3—TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

FOREIGN INVESTMENT DISCLOSURE REQUIREMENTS

We wish to express our strong opposition to section 704 of the reported bill, which imposes unreasonable and unjustified reporting burdens on foreign investors in the United States. Wise legislation addresses an identified problem through means calculated to solve the problem without creating others. Section 704 fails this test.

Some variation of this provision has been pending before the Congress for over a year; it was subject to extensive hearings; and it was debated at length during the Full Committee markup of H.R. 3—yet the need for the requirements it imposes remains a mystery. We are unable to discern even a flimsy excuse for requiring investors who are not U.S. citizens to make extensive disclosures which U.S. investors need not make. Vague expressions to the effect that "we should know" what investments foreigners are making in this country do not constitute an answer to the question of why this legislation is needed—they merely beg it.

If the amendment simply addressed a problem that does not exist, it might be useless but harmless. Unfortunately, in its zeal to fix something which is not broken, section 704 could seriously damage our Nation's economy.

The amendment's registration provisions will discourage foreigners from investing in United States' businesses and assets. By deterring this investment, the amendment will damage the American economy as a whole. Investment funds are critical to the operation of our economy. Any country that discourages investment will force its citizens to accept a lower standard of living. The United States always has attracted investment from foreigners. These investment flows have helped our economy develop, attracting still more investment. Accordingly, we have a "chicken-and-egg" situation—investment is attractive here because the economy is healthy, and the economy is healthy because there is substantial investment.

There is a long history of foreign investment in the United States, and these investors have helped fuel our economic development since this Nation was founded. Foreign investors have brought their money here for many legitimate reasons:

(a) the United States has a long history of respecting private property rights, including foreign-owned property;

(b) the United States is economically and politically stable;

(c) the American economy operates more freely than other countries' economies do and offers more attractive investment opportunities.

In addition, the United States traditionally has afforded all investors—foreign and domestic—basic rights to financial privacy.

In our view, the amendment's disclosure provisions will discourage foreigners from investing in the United States, upsetting the "chicken-and-egg" balance of investment and undermining foreigners' confidence in America as a safe investment haven. As a result, the amendment will impede the economic development of the United States, imposing real penalties on the American people.

The amendment will injure markets for all assets it covers. Investors who do not wish to comply with the amendment's disclosure provisions simply will take their capital elsewhere. For example, a West German pension fund that purchases $10 million worth of American Telephone and Telegraph Company common stock on the New York Stock Exchange would be forced to file a detailed disclosure statement with the Secretary of Commerce. However, if that pension fund purchases those securities on the London Stock Exchange, the disclosure provisions may not apply, or if they do, they will be impossible to enforce. Accordingly, foreign investors may choose to purchase the securities of American companies on foreign exchanges. As a result, the American securities markets, which are envied around the world for their liquidity and depth, will be impaired; or even worse, the West German pension fund may decide to buy the securities of a foreign communications company, rather than AT&T. As a result, capital will flow to foreign companies, as well as foreign securities exchanges.

The proponents of this measure claim that we lack adequate information on foreign investment. This argument is subject to serious dispute. We have a great deal of information on the overall amount of foreign investment—enough information to assess the impact on our economy or on particular sectors of it.

What this amendment is really seeking is extensive details about individual foreign investors. Beyond seeking to determine "who bought what", it asks for names, places, dates, financial data, nationalities, salaries, and even pending litigation. We do not need this kind of information to evaluate that impact of foreign investment in our economy. This kind of detailed, individual data would be useful to competitors, or to those who wish to discourage foreigners from coming into our markets. If these are goals which the amendment's proponents wish to accomplish, they should say so clearly—not hide behind rhetoric claiming their intent is merely disclosure for disclosure's sake.

This measure is defended, in part, on the basis that it merely seeks to disclose information. It is clear, however, that disclosure itself may have profound substantive impacts. We have already mentioned the obvious chilling impact which a general disclosure could work on certain investors. But there is another equally insidious substantive impact contained in this legislation—discrimination. The amendment would require a privately held U.S. company in which a foreigner has acquired a "controlling" interest to report financial data, the location of all facilities in the U.S., the identity and nationality of directors and officers (and their compensation!), related business transactions of officers, and "significant" civil litigation. This is information which privately held U.S. companies are not otherwise required to disclose. Thus, what this amendment does is to treat privately held companies controlled by foreigners differently than privately held companies controlled by U.S. citizens. That is discriminatory; and it is wrong.

Finally, the element of retroactivity in this amendment is extremely dangerous. Under section 704(b), a foreign person who acquired an interest in a U.S. person or property prior to enactment and continues to hold such interest is subject to the registration requirement. Thus, persons who did not, and could not, know that their economic investment in this country would be disclosed in detail for public inspection will be in for an unpleasant surprise. Many may well liquidate their interests rather than be forced to discourage foreigners from coming into our markets. If these are goals which the amendment's proponents wish to accomplish, they should say so clearly—not hide behind rhetoric claiming their intent is merely disclosure for disclosure's sake.

This measure is defended, in part, on the basis that it merely seeks to disclose information. It is clear, however, that disclosure itself may have profound substantive impacts. We have already mentioned the obvious chilling impact which a general disclosure could work on certain investors. But there is another equally insidious substantive impact contained in this legislation—discrimination. The amendment would require a privately held U.S. company in which a foreigner has acquired a "controlling" interest to report financial data, the location of all facilities in the U.S., the identity and nationality of directors and officers (and their compensation!), related business transactions of officers, and "significant"civil litigation. This is information which privately held U.S. companies are not otherwise required to disclose. Thus, what this amendment does is to treat privately held companies controlled by foreigners differently than privately held companies controlled by U.S. citizens. That is discriminatory; and it is wrong.

Section 704 would destroy the financial privacy of foreign individuals and corporate investors and would undermine the competitiveness of foreign-owned businesses in the United States, resulting in damage to the U.S. economy. Currently, a labor union has only limited access to financial information on a privately held business in the United States, whatever the nationality of its owner. By requiring a foreign-held private corporation to make more extensive disclosures than its American-owned competitor, the legislation would automatically place the foreign-held company at a tremendous financial disadvantage. Disclosure of heretofore private information would "stack the deck" in favor of labor. In such a situation, labor costs could be forced up and productivity forced down. It is likely that as a result of financial disclosure requirements in the legislation, foreign investors would choose to relocate or maintain their investments in plants and other production facilities offshore, resulting in a loss of U.S. jobs and a reduction in the competitive pressures that help lower American costs, increase product innovation, and keep U.S. industry competitive.

Finally, the element of retroactivity in this amendment is extremely dangerous. Under section 704(b), a foreign person who acquired an interest in a U.S. person or property prior to enactment and continues to hold such interest is subject to the registration requirement. Thus, persons who did not, and could not, know that their economic investment in this country would be disclosed in

detail for public inspection will be in for an unpleasant surprise. Many may well liquidate their interests rather than be forced to comply with this new requirement. We cannot predict how much existing foreign investment in our economy will be so liquidated, but to the extent such liquidation does occur, it may cause hardship for Americans whose jobs and investments were dependent on this foreign capital. In addition, this liquidation could depress severely the markets for American securities. These results would be unfair for the foreign investors and for U.S. citizens who profited from their interest and confidence in America.

For all of these reasons, we must register our disagreement with the inclusion of this legislation in H.R. 3.

NORMAN F. LENT.
ED MADIGAN.
CARLOS J. MOORHEAD.
MATTHEW J. RINALDO.
BILL DANNEMEYER.
BOB WHITTAKER.
TOM TAUKE.
DON RITTER.
DAN COATS.
THOMAS J. BLILEY.
JACK FIELDS.
MICHAEL G. OXLEY.
HOWARD C. NIELSON.
MICHAEL BILIRAKIS.
DAN SCHAEFER.
JOE BARTON.
S. CALLAHAN.

DISSENTING VIEWS ON SECTION 901 OF H.R. 3—THE TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

Digital Audio Tape Recorders

We oppose the inclusion of section 901 concerning Digital Audio Tape recorders in H.R. 3. This provision would require all Digital Audio Tape recorders sold in the United States during the twelve months after enactment of the legislation to be equipped with a device to prevent copying of prerecorded cassettes. This is a controversial issue which the Committee has chosen to incorporate into H.R. 3 without a hearing or debate on the merits of the issue. Congress has time to consider this issue thoroughly. There is no reason to rush into this issue by attaching it to the trade bill before the issue has been thoroughly analyzed.

A Digital Audio Tape recorder records information in digital form, similar to a compact disc. The advantage of this recording method is that the dynamic range of the music and the signal to noise ratio are superior to current analog methods. The concern that has resulted in section 901 is that by using the Digital Audio Tape recorder to tape from compact discs consumers will be able to obtain a recording that is as good as a prerecorded compact disc. it is alleged that this will deprive copyright owners of their intellectual property rights and result in an enormous loss to the American music community. However, as we understand it, although the Digital Audio Tape will produce a copy superior to that which is now available on analog tapes, the recorders will be designed to prevent the creation of multiple master copies. Copyrights will, therefore, be protected from commercial exploitation, without interfering with the ability of consumers to make copies for home use. However, the capabilities and limits on this new technology will be better understood once hearings can be held on the issue.

The real issue appears to be whether consumers have the right to tape, for personal use, materials they have bought in another form, such as compact discs. Today people tape for portability or to edit selections from albums they have already bought. Congress established a limited copyright in sound recordings—records, tapes, or discs containing copyrighted material—in 1971. The legislative history accompanying the Sound Recording Amendment of 1971 stated that: "Specifically, it is not the intention of the Committee to restrain the home recording, from broadcasts or from tapes or records, of recorded performances, where the home recording is for private use and with no purpose of reproducing or otherwise capitalizing commercially on it." (H.R. Rep. No. 487, 92d Cong. 1st Sess. at 7)

If this general policy is to be changed, Congress needs to do so in a careful, deliberate fashion—not as an amendment to "generic" trade legislation.

There is no need to rush ahead at this time to include section 901 in H.R. 3. Digital Audio Tape recorders are not expected to be introduced into the United States until this fall. The Subcommittee on Commerce, Consumer Protection, and Competitiveness has announced that it will hold hearings on this issue during May or June of 1987. Additionally, the Judiciary Committees of the House and the Senate have conducted a joint hearing on Digital Audio Tape recorder issues. There is adequate time for Congress to act in a rational, careful manner.

In conclusion, before we begin prohibiting new technology from freely entering the U.S. and barring the legitimate freedom of American consumers to make home recordings, we should examine this complex issue thoughtfully and deliberatively. By including section 901 in H.R. 3, we are jumping the gun. We urge the Members of the House to resist including a specific import ban and a dramatic change in copyright policy, such as section 901, in the trade bill until the issue has been thoroughly investigated.

NORMAN F. LENT.
ED MADIGAN.
BILL DANNEMEYER.
BOB WHITTAKER.
TOM TAUKE.
DAN COATS.
THOMAS J. BLILEY.
JACK FIELDS.
MICHAEL G. OXLEY.
HOWARD C. NIELSON.
MICHAEL BILIRAKIS.
DAN SCHAEFER.
JOE BARTON.
S. CALLAHAN.

SUPPLEMENTAL VIEWS TO H.R. 3 OF THE HONORABLE MATTHEW J. RINALDO

As the Ranking Republican Member of the Subcommittee on Telecommunications and Finance and as a Member of the Subcommittee on Commerce, Consumer Protection and Competitiveness, I join my colleagues in urging swift passage of tough, but fair omnibus trade legislation.

The Energy and Commerce Committee component of this legislation contains important provisions addressing the telecommunications trade problem. During the past several Congresses, I have studied trade disparities and the resulting harm on the American public. The continued trend toward ever increasing deficits in our telecommunications trade balance led to my decision to be an early advocate for telecommunications trade legislation in 1985, and to work in this Congress toward stronger telecommunications trade provisions in H.R. 3.

Both Subcommittees considering H.R. 3 unanimously agreed to accept an amendment I offered to clarify the role that trade issues play within the jurisdiction of the Federal Communications Commission. The amendment restates Congressional intent that the FCC, in making its decisions on the basis of the public interest, should take into account, where appropriate, the impact of international trade. The purpose of this amendment is to ensure that all of the tools available to the Administration are considered and used to open all world markets to fair competition for American products.

My amendment does not require a specific trade response by the Commission. It merely reaffirms congressional belief that the FCC cannot adequately regulate domestic telecommunications in a vacuum that fails to consider the impact of the trade problem when taking official actions. My amendment does not, however, vest any new authority in the Commission, nor does it permit the Commission to abdicate its other duties and responsibilities in any tunnel-vision response to the trade problem.

For example, my amendment would not justify placing Bell Operating Companies in an uneconomic position by prohibiting them from purchasing any foreign equipment and thereby limiting them to equipment manufactured by one or two local suppliers. It is not my intent to create such a situation, I would not support such an interpretation of the amendment, and I don't believe a fair reading of the language supports that interpretation.

The amendment states that the Commission should take foreign trade into account where appropriate. This amendment, therefore, clarifies the existence of a tool in our effort to eliminate the foreign market barriers to American made telecommunications equipment—a tool to be used consistently with the Commission's duty to regulate the domestic market in a manner reflecting the public's interest.

My telecommunications trade amendment also includes a requirement that the FCC report to Congress by November 1, 1987 regarding the findings and conclusions it reaches as a result of its notice of inquiry and proposed rule making on the role of the Commission in the telecommunications trade area. My amendment also requires the Department of Commerce, with the FCC, to study the competitiveness of the U.S. domestic telecommunications industry and the effects of foreign telecommunications policies and practices on the domestic telecommunications industry.

I deeply regret the length of time it is taking for the Congress to respond to the problem. As late as 1982, the United States had a $275 million trade surplus in telecommunications equipment. Yet just one year later—after the divestiture of AT&T—the U.S. imported $520 million more in equipment from abroad than it exported; by 1984, this deficit had surpassed $600 million. Now, just one Congress later, that U.S. telecommunications trade deficit has skyrocketed to at least $1.7 billion.

There is, unfortunately, no indication that this trend will halt or reverse itself. Congressional action is desperately needed, and any further delay in that action could have predictably disastrous results. This trade bill, with the Rinaldo telecommunications amendment, provides an effective, reasonable approach to ensuring that trade in telecommunications will be fair and even-handed.

MATTHEW J. RINALDO.

O