

FOREIGN TRADE AND TARIFF PROPOSALS

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HEARINGS
BEFORE THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS
SECOND SESSION
ON
TARIFF AND TRADE PROPOSALS

JUNE 4, 5, 10, 11, 12, 13, 14, 17, 18, 19, 21, 24, 25, 26, 27, 28;
JULY 1 AND 2, 1968

PART 10

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FOREIGN TRADE AND TARIFF PROPOSALS

FRIDAY, JUNE 28, 1968

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

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. James A. Burke presiding.

Mr. BURKE. The committee will come to order.

Our first witnesses this morning are on chemicals, the Synthetic Organic Chemical Manufacturers Association.

Mr. Turchan, will you identify yourself and your associates for the record, please, and then you may proceed.

STATEMENTS OF THOMAS P. TURCHAN, PRESIDENT, SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION; ROBERT C. BARNARD, COUNSEL (ALSO SPEAKING FOR DRY COLORS MANUFACTURERS ASSOCIATION); AND CARL GERSTACKER, CHAIRMAN OF THE BOARD, MANUFACTURING CHEMISTS ASSOCIATION; ACCOMPANIED BY GEORGE V. EGGE, JR., ASSISTANT COUNSEL; AND RICHARD DAVIES, CONSULTANT, SOCMA

Mr. TURCHAN. Mr. Chairman and members of the committee, my name is Thomas P. Turchan. I am vice president of American Cyanamid Co. I appear here today as president of the Synthetic Organic Chemical Manufacturers Association—usually abbreviated as SOCMA.

I am accompanied by our counsel, Mr. Robert C. Barnard of Washington, D.C.

I will summarize our position and will ask Mr. Barnard to present the factual information in support of our position. I am also accompanied by Dr. Richard Davies, president of Klein & Saks, a firm of consulting economists, which has prepared an economic analysis of the foreign trade picture. He will describe his study and present his conclusions to you after Mr. Barnard's statement. And by George Egge, assistant counsel.

Originally we had on our schedule that I would appear first, sir, but with the arrival of Mr. Gerstacker, who is president of MCA, we would like to request your permission to have him appear first and I will follow him.

In the meantime I would also like to respectfully suggest to you, sir; that you allow the three associations who are represented here today to complete our testimony before you ask your questions, and I

believe in this way we will make more efficient use of your time and ours.

I would now like to ask Mr. Gerstacker to proceed, sir.

Mr. BURKE. We want to welcome all of you gentlemen to the committee. You can all testify and then the committee will ask questions.

Mr. TURCHAN. Thank you.

STATEMENT OF CARL GERSTACKER

Mr. GERSTACKER. Mr. Chairman and members of the committee, I am Carl Gerstacker, chairman of the board of the Dow Chemical Co., but today I am speaking on behalf of the Manufacturing Chemists Association, of which I am also the chairman of the board. The Manufacturing Chemists Association is a nonprofit trade organization having 181 United States and 12 Canadian companies as members. The members of this association produce more than 90 percent of the basic chemicals in the United States and Canada.

The industry includes many international companies with plants and sales offices all over the free world. It is affected very much by international business practices and trade policies it encounters every day. We believe, therefore, that the members of MCA are in a unique position to evaluate the effects of H.R. 17551, insofar as chemicals are concerned. A written statement is submitted to you at this time for inclusion in the record of these hearings. To conserve the valuable time of this committee, as the chairman has asked, you will hear from me only a brief summary as to why this committee should:

(1) Approve the extension of the President's tariff negotiating authority in title II with appropriate restrictions.

(2) Approve title III to liberalize the adjustment assistance provisions of the Trade Expansion Act, but with some modification.

(3) Eliminate from the bill, title IV which would eliminate the American selling price system of valuation.

(4) Establish export incentives or border taxes to help correct the U.S. balance-of-payments problem.

It is necessary first to point out to you the relative importance of this industry in the U.S. economy and to compare the strength of this industry with the competition abroad. In 1967, the wages and salaries paid in our industry totaled approximately 6 percent of that paid to employees of all manufacturing industries. Its assets totaled 10 percent of all manufacturing assets in the United States. Shipments of this industry last year totaled \$40.2 billion which, for comparison only, is double the sales of the textile industry and almost double that of the steel industry.

In 1967, employment amounted to 990,000 persons in 14,000 plants. It is a growth industry showing an annual growth rate of 6 percent over the last 10 years. During that same time, \$19 billion was invested in new plants. The chemical industry is truly international and is a large importer and exporter.

Exports last year, \$2.8 billion, exceeded imports by \$1.8 billion. This is essentially one-half of the total U.S. trade surplus and clearly very important to the U.S. balance-of-payments. While domestic shipments were \$40.2 billion, as already mentioned, sales of subsidiaries abroad amounted to approximately \$9 billion last year.

Although the U.S. chemical industry is larger than that of any other single nation, it is extremely important, we think, to point out some disturbing trends and problems which relate directly to the proposed legislation. The growth rate of the industry was 5.8 percent from 1960 to 1966, compared to an impressively larger 9.7 percent for members of the Common Market. Indeed, 1967 sales of chemicals in the United States were only 3.9 percent higher than those in 1966. The growth rate of U.S. exports for the 6-year period was about 7 percent compared to 15.1 percent for Common Market countries. It is interesting to note also this foreign subsidiary sales of U.S. chemical companies increased 16 percent per year, while the export growth rate was only 7 percent per year.

These measurements, plus those made in a multitude of product studies by the industry indicate that, for a number of reasons not within the control of our industry, we are losing its competitive position in world chemical production. The reasons are too numerous and complex to repeat here, but they include such factors as differences in raw materials costs, differences in application of antitrust laws, wage productivity ratios, and the use by other countries of important non-tariff barriers, such as indirect tax systems.

Let me speak now to MCA positions on the proposed legislation.

We support extended tariff negotiating authority of the President as provided in title II, but only for "housekeeping" purposes. This authority should not be used for additional tariff cutting, for any reason. We recognize the need for this authority for international trade problems which will arise.

The MCA strongly opposes title IV of H.R. 17551. This provision would eliminate the American selling price system of customs valuation. It is essential for the health and continued growth of this sector of the chemical industry that this cost equalizing customs system be retained.

To eliminate ASP, the Congress has been asked to approve a supplementary agreement negotiated in the Kennedy round. This agreement will afford the industry little export opportunity to balance the impact of imports. In order to understand fully the lack of reciprocity in the supplementary agreement, it is essential to consider the chemical tariff cutting in the Kennedy round itself. The United States reduced most chemical tariffs by 50 percent in the Kennedy round. In return, the EEC and the United Kingdom reduced chemical tariffs by about 20 percent. Most, but not all, other major nations reduced chemical tariffs by 50 percent. It is said by the Office of the Special Trade Representatives that the United States reduced chemical tariffs by an average of 43 percent and received in return an average reduction of 26 percent.

The chemical industry is convinced that the Kennedy round chemical tariff cutting was far from reciprocal. The effect will be a lesser contribution of the chemical industry to the U.S. trade surplus in the years to come and a considerable impact on the health and the growth of the U.S. chemical industry, particularly in certain segments.

The U.S. share of world chemical exports has declined from 29 percent in 1960, to 23 percent in 1965. U.S. chemical imports since 1961 have increased 14 percent per year, while our exports have increased only 7 percent per year. When you combine these trends

with the studies made by our marketing experts, the Kennedy round tariff cutting is particularly distressing.

Never before has this industry sustained a 50-percent cut in tariffs at a time when foreign production economics are better than those in the United States and when, in fact, U.S. exports will probably be less competitive abroad. Approval of the supplementary agreement eliminating ASP will make tariff cuts over and above the 50-percent cut already effected in the Kennedy round. This move not only goes beyond the 50-percent cut which Congress approved in the Trade Expansion Act of 1962, but more than that, it will have a heavy impact upon a vital segment of the U.S. chemical industry.

This committee is well aware that the American selling price system applies only to benzenoid chemicals. Sales of these products amount to about 8 percent of the total U.S. chemical shipments. Many of the benzenoids are sophisticated and complex products including such things as medicinals and dyes, but including also larger volume and cheaper intermediate products. When a benzenoid product is imported into the United States, it is assessed on the value of a U.S. selling price only if a competitive product is made in the United States. Noncompetitive products are not assessed on the basis of the American selling price. The disadvantage to the importer lies only in the degree to which the selling price in the United States is higher than the price at which he wishes to sell his product in the United States. In the truest sense of the word, the American selling price system tends to equalize costs of products entering a relatively high-cost economy.

In 1966, the Tariff Commission converted benzenoid tariff rates to rates which would give the same duties at the border when they were applied to export values from abroad. The conversion was not equitable due to the sheer complexity of the task and unavailability of foreign prices. The importance of the conversion was essentially eliminated because in the supplementary package you are asked to approve, a ceiling was set on tariff rates for benzenoid chemicals. The ceilings were 30 percent on dyes, 25 to 27 percent on sulfonamides, and 20 percent on other benzenoids. These ceilings were below one-half of the converted rate in most cases.

Now, members of this industry have made extensive studies during and after the Kennedy round on the impact of both the Kennedy round and the elimination of ASP. The Tariff Commission has also made a detailed study of the impact of loss of ASP. We have, repeatedly, Mr. Chairman, asked that the results of this study be made available to us, and our requests have been refused by the Office of the Special Trade Representative. We feel that information which is so vital to the interests of our industry should be made available, particularly to your committee.

Individual companies have made studies to determine the impact of the elimination of the American selling price method of customs valuation. These studies have not been assembled and summarized by the Manufacturing Chemists Association. Many member companies will appear individually before this committee to demonstrate the results reflected by these studies. It is clear to our association, however, that the impact of the elimination of the American selling price

would be great, not only on the chemical industry, but on the U.S. balance of trade as well.

It is claimed by the administration that the United States will receive equal or greater concessions in return for elimination of American selling price. Our membership disagrees. The worth of these concessions are, of course, worthy of the same exhaustive study given to the impact of loss of ASP.

The concession to the United States for elimination of ASP in the separate package is the additional 30-percent tariff cut on chemicals by the EEC countries and the United Kingdom. This would bring the total chemical concessions by the EEC and the United Kingdom to the 50-percent cut made by the United States in the Kennedy round. There are, additionally, three nontariff barrier concessions by other countries in the supplementary agreement. Although we are not qualified to measure the worth of these concessions, they would seem to be minor.

The prospect of giving up ASP to bring EEC and the United Kingdom tariff cutting to the same level of cut already made by the United States is unreciprocal on the face of it. Beyond that, there will be no significant gains in exports as a result of the additional cuts of 30 percent. This is true for a number of reasons including, importantly, the rationalization of the indirect tax system in Europe. To summarize, the impact of the loss of ASP in increased imports to the United States will not be offset by new export gains for our industry.

It is essential, we believe, that the benzenoid sector of our industry be permitted to grow and develop all of the new products which we know are coming. It is certain that, if ASP is eliminated, much of the research and development money which is necessary for this effort will not be available.

The attacks on the ASP system from abroad have been very heavy and consistent. This may be surprising to some of you, but not to those of us who understand the stakes involved. Production facilities exist abroad now to take advantage quickly of the largest market in the world. Many of the leading world chemical industries have designed export capacities into their plants and can participate heavily in the U.S. benzenoid market with the much lower tariffs under the Kennedy round and if ASP is eliminated.

For these and many other reasons, the Manufacturing Chemists Association urges that this committee and the Congress eliminate title IV of H.R. 17551.

Title III of the bill proposes a liberalization of the eligibility provisions for assistance in adjusting to the impact of imports. This proposal would substitute "substantial" cause for "major" cause as the test of degree of injury.

The chemical industry prefers a policy which will prevent major injury by retention of necessary tariff levels, rather than use of adjustment assistance after major injury has occurred. We believe that domestic industries which have suffered such injury should be afforded a form of appropriate relief. This, for those chemical companies, should be tariff adjustment.

Although we agree that the test for determination of injury should be changed from major to substantial, we also urge Congress to provide in the adjustment assistance legislation adequate provision to

keep U.S. chemical production healthy and not just to provide a means of transition to production of other products. It is equitable and reasonable from an economic viewpoint to apply the same adjustment assistance tests to industries as those applied to employees.

Now, there are other issues to which our attention has been directed for these hearings. The one to which I direct your attention next is that relating to balance of trade and proposals for increasing our exports. The spotlight must, of necessity, fall upon the indirect taxation system used by many European countries to excellent advantage both in domestic and foreign markets.

In 1963, this industry described European border taxes to the Department of Commerce as nontariff barriers affecting trade. In February 1966, after a year of survey and study, the industry provided the Office of the Special Trade Representative a detailed study on the effect of the European indirect tax system on U.S. chemical exports. Before the conclusion of the Kennedy round in February 1967, the chemical industry provided another updated report to emphasize the expected impact of rising border taxes in the EEC. It was, Mr. Chairman, unfortunate and a mistake, we believe, that border taxes were not dealt with in the Kennedy round.

Our studies show that the charges, tariffs, and border taxes combined, on U.S. products shipped to the Common Market countries will actually go up as a result of higher border taxes, that will more than offset the tariff cuts generated in the Kennedy round. Further, we must meet in both the United States and third markets exports from these countries which have received tax rebates as an export incentive.

The most striking demonstration of the effect of a change in the indirect tax system is that made by Germany on January 1, 1968. That country changed from a cascade turnover tax system to a value-added system. The rate applied changed from 4 percent on chemicals to 10 percent; and will further increase to 11 percent this year. The price changes in Germany occasioned by this switchover are complex but we are convinced that imports of chemicals into Germany have been disadvantaged in comparison with the domestic producer of the same product in Germany. The net trade effect, therefore, has been negative to the United States. Further, the domestic producer in Germany will gain an additional advantage when he sells in foreign markets including the United States, and his tax rebate increases from 4 percent to 10 percent and to 11 percent.

These internal tax changes have been unilateral, they have reduced the competitive position of U.S. exporters, and there has been no reciprocity through compensating changes in tariff rates. Accordingly, the chemical industry believes that the United States needs to adopt measures affecting both U.S. imports and exports that will tend to restore the balance. As a first step, the United States could impose a border tax equivalent to the sum of indirect taxes imposed on U.S. manufacturers (both Federal and State) and rebate such taxes on exports. Secondly, an attempt should be made to have the GATT rules amended to allow for rebates to U.S. exporters on direct taxes, as well as indirect taxes. The National Expansion Council of the Commerce Department has recommended measures to increase U.S. exports including tax incentives, and I urge you to study these reports.

If these objectives are not achieved, the United States should impose a border tax on goods from nations that assess them against U.S. exports. A possible variation of this action would be to adopt a sliding scale border tax which will vary with the balance of payments of the United States.

Perhaps a temporary surcharge should be placed on imports also. This impediment would be understood by the other countries of the world as a temporary expedient to solve a serious balance-of-payments problem. The same rationale was used by Britain and Canada in the past and accepted by the other trading nations without retaliation. We believe it important that such a surcharge not be applied to essential raw materials in which the United States is not self-sufficient.

Related to these matters and within the purview of these hearings is the question of measures which would improve the U.S. balance-of-payments position. One of the most important of these measures is that relating to direct investment abroad by U.S. companies. Between 1965 and 1968, investments abroad were under a voluntary program designed to diminish the outflow of capital and encourage the inflow of earnings to a degree that the U.S. balance-of-payments position would be strengthened. It is a matter of record that the chemical industry observed completely the spirit of the voluntary program.

With the worsening of the U.S. balance of payments, the President on January 1, 1968, proclaimed a mandatory investment control and earnings repatriation program in an Executive order. This industry believes that these mandatory controls will worsen instead of improve the U.S. balance of payments. The earnings returned to the United States from investment abroad is clearly in excess of the outflow of capital. This committee already has extensive data which documents this fact. That data will not be repeated here.

While we must agree that mandatory controls will hold down outflow at the same time inflow of earnings remains high, this combination of factors will persist for only a short time. The lack of new investment by U.S. firms abroad will in a short time result in a deterioration of a return of earnings which in fact are badly needed to achieve a balance-of-payments surplus.

There are many inequities in the present regulations and controls. We are trying to correct these through representations to the Foreign Investment Control Office of the Department of Commerce.

We believe, however, that it is important for the Congress to know that the mandatory controls will increasingly work to the disadvantage of the United States in achieving a balance-of-payments surplus.

Thank you, Mr. Chairman.

After the other speakers I will be happy to try to answer questions. (Mr. Gerstacker's prepared statement follows:)

STATEMENT OF CARL GERSTACKER, CHAIRMAN OF THE BOARD, MANUFACTURING CHEMISTS ASSOCIATION

I. INTRODUCTION

The Manufacturing Chemists Association is a nonprofit trade association of 181 United States and 12 Canadian company members representing more than 90 percent of the productive capacity of basic industrial chemicals within these countries. These producers serve all the major industry categories listed in the Standard Industrial Classification. Thus, the chemical industry contributes to all industrial progress and to every segment of our society.

II. SUMMARY AND CONCLUSIONS

The \$40 billion U. S. chemical industry, which is fighting intensified competition from foreign chemical manufacturers, now faces the threat of invasion of its domestic market on a large scale.

Although world economic and manufacturing conditions have drastically changed since the U.S. first entered into GATT negotiations, the U.S. Government's policies regarding world trade have remained static. In the past, the thrust of U.S. trade policy has been to assist foreign nations to restore destroyed or worn-out manufacturing facilities and improve their economic status. Today these same nations have the most modern automated plants capable of matching production with the best in the U.S., have labor costs substantially lower than ours, and in many cases access to cheaper raw materials. Our international trade policies have neglected to reflect this changing picture.

The unreciprocal results of the Kennedy Round negotiations have placed the U.S. chemical industry at a serious disadvantage vis-a-vis our trading partners in the world market place. The agreement by the United States negotiators that the U.S. should reduce its import duties 50 percent while the British and European Common Market countries reduce their duties only 20 percent has opened for our trading partners doors to the domestic chemical industry market while gaining little in terms of export opportunities for U.S. companies. For these and other reasons the chemical industry believes:

1. Extension of the President's tariff negotiating authority should be limited to a variety of "housekeeping" activities and should not include provision for further U.S. tariff reduction.
2. In light of increasing pressure from foreign imports in our domestic markets, the need for adequate escape clause procedures to permit tariff adjustment by the President is intensified. Pertinent legislation should liberalize the eligibility criteria for escape clause relief for industries as well as for workers and individual firms.
3. In light of the present imbalance in tariff concessions granted in the Kennedy Round and lack of reciprocity in the Supplemental Agreement, the Congress should reject any efforts to further reduce duties on chemical products and should support retention of the American Selling Price.
4. A foreign trade policy based on the anticipated effects of foreign imports on U.S. trade balance and balance-of-payments should be devised.
5. Action should be taken by the United States to effect removal by our trading partners of border taxes and other non-tariff barriers.
6. Meaningful export incentives should be provided for industry as a step in restoring a favorable balance-of-payments.
7. Restrictions on foreign investments by U.S. industrial corporations should be removed.
8. Adequate funds should be provided the Tariff Commission to carry out its important investigative powers with greater efficiency and dispatch.

III. U.S. CHEMICAL INDUSTRY

The industry includes many international companies with plants and/or sales offices in most countries of the free world. In addition to exports of \$2.8 billion, the chemical sales of the U.S. foreign manufacturing affiliates were estimated at over \$9.0 billion in 1967. As the record will show, this industry has for many years made available to the Government its studies and specific recommendations to assist in the formulation and implementation of a sound U.S. trade policy. We believe our Association is in a unique position to evaluate the effect of the proposed legislation insofar as chemicals are concerned.

A. Importance of the Chemical Industry to the U.S. Economy

The history of the U.S. chemical industry over the past ten years reflects an annual average growth rate of about 6 percent. The value of shipments in 1967 was approximately \$40.2 billion. In that year, the domestic chemical industry employed about 990,000 persons, operated 14,000 plants and and spent for construction nearly \$3 billion in the U.S., and \$1 billion overseas. Also in 1967, chemical industry wages and salaries totaled about \$2 billion, which represents 6 percent of the total paid to all employees of manufacturing industry.

The American chemical industry, although a major contributor to the favorable U.S. trade balance, is encountering sharpening competition in world markets.

This is evidenced by the exports of chemicals of the free-world European countries (OECD), from 1960 to 1966 which increased from \$4.4 billion to \$8.5 billion, or 93 percent, while the U.S. exports increased from \$1.8 billion to \$2.7 billion, only 50 percent. During the same period, total sales of chemicals by the same European countries increased by about 69 percent, while total sales by U.S. chemical companies increased only 40 percent.

COMPARISON OF GROWTH IN CHEMICAL INDUSTRY TURNOVER AND EXPORTS UNITED STATES VERSUS EUROPEAN OECD COUNTRIES

[Dollar amounts in billions]

	Turnover		Exports	
	United States	European OECD	United States	European OECD
1960.....	\$27.6	\$19.7	\$1.8	\$4.4
1966.....	38.7	33.2	2.7	8.5
Increase.....	11.1	13.5	1.2	4.1
Average annual increase (percent).....	5.8	9.1	6.9	11.6

In light of these facts, it will become increasingly difficult for the U.S. chemical industry to continue as a major contributor to the balance of trade.

B. Competitive Position of U.S. Chemical Industry in World Markets

During World War II, much of the foreign chemical industry, particularly in Europe and Japan, where a large part of it was located, was destroyed. Consequently, at the end of the war the U.S. chemical industry had a broad market for its products with little or no competition. This situation has changed in the last 20 years as foreign producers have acquired the latest technology, rebuilt, and made rapid advances in production.

Since the chemical industry is one in which national levels of technology are now substantially equal, there are several other factors which have contributed to the Progress of the foreign chemical industry:

New foreign plants are automated, embody the latest processes and techniques, and increasingly enjoy the advantages of high volume production.

Antitrust laws and practices in other countries permit rationalization of production, cartel selling, and other actions favoring their domestic industry.

Wages in Europe and Japan are well below those of the U.S., and in addition, the productivity of their workers has increased rapidly.

Raw materials are often cheaper abroad.

There is much dispute about relative costs of making products in the U.S. and abroad. We know that in spite of the efficiency and automation of the U.S. chemical industry, many chemicals are made cheaper abroad. The reasons are many and varied. In a recent survey by *Chemical and Engineering News*, it was determined that seven of the largest U.S. chemical producers paid to employees an average of 4.5 percent more in 1967 than the year before. At the same time, sales per employee gained only 2 percent. Also, productivity is simply not keeping pace with rising costs.

Productivity, a key measure of the ability to compete, is sometimes mistakenly demonstrated by the value of production per employee. U.S. chemical output per employee in sales dollars is much higher than that of its trading partners. However, a recent study indicated that a truer index of productivity, when comparing companies or industries in different countries, is measured by calculating the ratio of the dollars of value added to dollars of employee cost. When firms with approximately the same product mix are compared on this basis, the Japanese chemical companies have the highest productivity with a ratio of 3.03, followed by Germany with 2.55; U.S., 2.00; and U.K., 1.70.¹

Since the employee cost makes up an important part of the sales costs, 27.2 percent for the U.S. in 1967, another effective way of demonstrating relative competitive position of chemical industries in different countries is to compare

¹ "Financial Comparison of World Chemical Companies," C. P. Neidig, *Financial Analyst Journal*, January-February 1968.

the dollar of sales per dollar of employee cost. As an example, four¹ large German chemical companies, from 1960 to 1964, sold \$4.93 worth of product for every dollar of employee cost. Five² large U.S. chemical companies having approximately the same product mix had sales of only \$3.30 per dollar of employee cost over the same period. This may understate the problem, because it compares averages, and not the most efficient producers in different countries, which is the key to future competitive positions.

If the domestic chemical industry enjoyed a clear superiority in technology and productivity over their foreign competitors, the economic impact of the disadvantages of U.S. manufacture undoubtedly would not be as severe as is predicted. However, for all practical purposes, such superiority just does not exist. With respect to technology, American chemical producers have long known that whatever gap existed at the close of World War II has virtually been closed. This fact has been recognized by others. As stated by your colleague, Representative Thomas Curtis, in Part IV of his report on the Kennedy Round (Congressional Record-House, p. 8382, July 10, 1967):

*"Chemicals is an industry in which national levels of technology are fairly equal. European, Japanese or American hesitance to cut tariffs cannot very logically be based on claims that technological 'gaps' create disparate competitive situations * * *."* (Emphasis added.)

Some of our members are convinced that to remain competitive in exports to overseas markets, the chemical industry must have access to competitively priced raw materials—which in the case of foreign feedstocks is now substantially denied under the oil import program. They believe that if these low-cost foreign raw materials continue to be unavailable to the domestic chemical industry, it faces potentially destructive competition in its export markets now and in domestic markets as tariffs come down over the next three and one-half years. They feel that some method should be devised to permit adequate access to foreign feedstocks for chemical production.

To meet competition, many U.S. firms participate in the foreign chemical markets through ownership of foreign-based companies. The annual sales of chemical and allied products by American-owned foreign enterprises are estimated at about \$9 billion in 1967. The latest available figures show the total sales of foreign affiliates of U.S. chemical companies increased by about \$3.5 billion from 1960 to 1965, or 16 percent per year, which compares with an average export increase of 6 percent per year for U.S. chemicals over the same period. The sales of American-owned affiliates in Europe increased from about \$1.3 billion in 1960 to \$2.7 billion in 1965, which represents about 6.5 percent and 9.3 percent of the total sales of chemicals in Europe in those years.

IV. U.S. FOREIGN TRADE POLICY

In analyzing the important trends in this industry and speaking to the issues now before the Ways and Means Committee, it is essential to comment on the effect of past U.S. trade policy. During the first three GATT Rounds and perhaps even into the fourth, U.S. foreign economic policy featured importantly the need to encourage the economic strengthening of the war-ravaged nations of Europe and Japan, and to promote the economic development of the more backward nations. In U.S. foreign trade policy, steps were taken to make it easier for nations abroad to share in the very large U.S. market.

Since then, the economic world has undergone substantial change. The reconstruction of Europe and Japan has been completed and the countries of those areas have made remarkable economic recovery. From positions of great weakness, they have moved to strength. Now the U.S. is in serious economic difficulty compared to other major countries with which we must compete. Economic changes have made past trade policies obsolete. It is time to formulate new U.S. trade policies based on reciprocity and anticipated situations.

It is crucial that U.S. trade policy insure the role of the U.S. as a leading member of the family of free nations but simultaneously maintain those conditions in the domestic economy which are conducive to the continued sound growth of American industry. It is essential to provide guidelines and procedures that assure these results.

¹ Bayer, BASF, Hoeschst, Cassella.

² Allied Chemical, Dow, DuPont, Monsanto, and Union Carbide.

A. Reciprocity

During the Kennedy Round and since the agreement was concluded in June 1967, the U.S. trade negotiators have insisted that reciprocity was achieved for the United States and for the chemical industry specifically. Members of this Association have no doubt of the good intentions of the U.S. negotiating team. They believe, however, its effort in GATT bargaining has not resulted in attaining true reciprocity.

In the past, reciprocity has been measured by concessions made on the dollar volume of trade in a selected base year. While this may have been the only measure available in the past, negotiations, to be meaningful, must be related to future trade expectations. Reciprocity must be based on new export opportunities which take into account relative competitive abilities, barriers to trade other than tariffs, export incentives, etc.

It seems to MCA members that item-by-item bargaining may be the only way to obtain reciprocity. The industry has observed the negotiations carried on in six rounds of GATT negotiations. Those in 1961 involved item-by-item bargaining, and those concluded in 1967 were, in contrast, on a linear basis. We believe that linear agreements covering sectors of industry, e.g., chemicals, will be damaging to the U.S. chemical industry if continued. Linear bargaining does not take into account wide variations in competitive abilities. These differences may lie in labor rates on a unit cost basis, on raw material prices, on technology availability, and on other factors. Such variations in ability to compete between major chemical producing nations are substantial. Linear bargaining, or across-the-board tariff decreases, on broad industrial sectors will result in harm to some parts of that industry, in lack of growth in other parts, and shut-down of facilities in extreme cases. The inevitable conclusion is that linear bargaining on sectors must be avoided.

Item-by-item bargaining in the Dillon Round provided better reciprocity than the linear bargaining employed in the Kennedy Round. With tariffs soon to be at the lowest level in recent history, and with the increasing use and effectiveness of incentive tax systems and other non-tariff barriers, the importance of using item-by-item bargaining in chemicals is clear.

As a practical matter, the administrative difficulties of item-by-item bargaining are admittedly great. In the case of chemical products, it is possible to make small groupings or categories of products. Such groupings would aggregate products having the same problems or advantages and would present a logical simplification of item-by-item considerations.

It is extremely important, however, that any bargaining done on other than an item-by-item basis be pursued only after exemptions have been made on the grounds of present or impending damage from imports.

B. Dillon Round

In the Dillon Round of 1961-62, the U.S. is said to have received "concessions" on a far greater dollar volume of trade in chemicals than the dollar volume of chemical trade on which it made concessions. However, a large proportion of the concessions were bindings¹ of existing tariff levels which were not reductions. U.S. exporters to the Common Market countries received no benefit from such concessions.

Also, in the case of the Common Market, the U.S. was bargaining for reductions of the common external tariff. Until 1968, this external tariff was at a level toward which all Common Market countries were proceeding. It had been developed for the six EEC members by an averaging procedure. Hence, negotiated reductions of the common external tariff were often more than offset by the stepwise tariff increases of the low tariff countries within the Common Market. The high tariff members of the EEC were, of course, decreasing tariffs to the EEC common external tariff. These factors made the value of EEC concessions to the U.S. in the Dillon Round of little consequence.

C. Kennedy Round

For the Kennedy Round, the Special Representative for Trade Negotiations (STR) has estimated that based on the chemical trade of the year 1964, the U.S. gave tariff concessions to the EEC on \$175 million worth of chemicals shipped from the EEC to the U.S., and the U.S. received concessions on \$460 million

¹ Binding—commitment that a rate of duty will not be increased on a product, or if free, a duty will not be imposed.

worth of chemicals shipped from the U.S. to the EEC. In terms of overall trade with GATT partners participating in the Kennedy Round, the STR says the U.S. gave concessions on \$400 million worth of chemicals imported from GATT partners and received concessions from these partners on \$1,050 million worth of U.S. chemical exports.

This method of analyzing results gives the impression that the U.S. received far more than it gave in the Kennedy Round. The fact is that such members merely reflect the pattern of past trading positions and have no relationship to the future worth of concession exchanges. The impact such exchanges may have in altering future trade among countries constitutes the only true measure of reciprocity.

During the course of the Kennedy Round negotiations, the U.S. made 50 percent reductions in nearly all chemical tariffs. (Through the rounding-out procedure, many of these reductions are greater than 50 percent.) In contrast, the U.K. and the EEC promised to reduce tariffs only by about 20 percent. Another important trading partner, Japan, committed itself to 50 percent reductions. Chemical concessions from the balance of the GATT membership participating at the Kennedy Round were far less in significance. On the fact of these percentages, the chemical agreement in the Kennedy Round clearly was not reciprocal. The EEC and the U.K. will match in percentage the chemical tariff cuts made by the U.S., only if the United States Congress approves the Separate Package eliminating the American Selling Price system of valuation.

Chemical industry studies on the reciprocity of the Kennedy Round tariff cuts show that chemical imports to the United States will increase faster than U.S. chemical exports. We believe this is true because reciprocity in new export opportunity was not achieved. Some of the difficulty lies in the fact that U.S. production costs are higher than abroad. Also, the decrease in border equalization taxes in all Common Market countries except France will offset most of the tariff cuts made in the common external tariff. In addition, other non-tariff barriers will tend to nullify tariff reductions gained by the U.S. in the Kennedy Round. In the U.S. market, however, product-by-product evaluations show a severe impact by imports on many MCA member companies' products and profits.

Members of the MCA, therefore, believe that the United States must find a way to determine the balance of new export opportunities resulting from trade negotiations. Considering the current difficulties with the U.S. balance-of-payments, these considerations are essential to effective bargaining in the future.

V. TRADE EXPANSION ACT OF 1968

A. Extension of President's Tariff Negotiating Authority—Title II

The Administration seeks tariff negotiating authority of the "housekeeping" variety in Title II of H.R. 17551.

The extension of the authority of the Trade Expansion Act (TEA), Sections 202 and 211, would allow negotiations of duty free treatment for low-rate articles and categories of materials where U.S. and European Economic Community (EEC) account for 80 percent or more of world trade.

It is our view that now is not the time for further reductions in tariffs. Never before have such extensive tariff cuts been made as were negotiated in the Kennedy Round. It will take years to properly evaluate the effect on the U.S. economy of such large reductions. Since further tariff reductions can hardly be needed for "housekeeping" purposes, MCA urges that the authority of TEA Sections 202 and 211 not be extended.

With these modifications, the MCA would support extending the President's negotiating authority.

B. Liberalization of the Adjustment Assistance Provisions of the TEA—Title III

The MCA has stressed the need for adequate escape clause procedures to permit tariff adjustments by the President when trade concessions contribute to increased imports which result in injury to U.S. industry.

Presently the adjustment assistance and escape clause provisions of the Trade Expansion Act provide that a petitioner must prove (1) that as a result of tariff concessions, the article is being imported in such increased quantities as to cause serious injury to the domestic industry, and (2) that such increased imports were the major factor in causing or threatening to cause injury to the petitioner.

This imposes upon the petitioner an almost impossible burden of proof. In the five-year period since 1962, over twenty firms and groups of workers have attempted to obtain adjustment assistance under the TEA, but none was found to meet the criteria for eligibility.

Ambassador Roth summed up the problem succinctly in his statement before the Subcommittee on Foreign Economic Policy (July 11, 1967):

"In the complex environment of our modern economy, a great variety of factors affect the productive capacity and competitiveness of American producers, making it virtually impossible to single out increased imports as the major cause of injury. In fact, it has usually been impossible to prove that tariff concessions were the major cause of imports."

In addition to liberalizing the eligibility criteria for adjustment assistance for firms and workers, MCA believes the proposed legislation should also liberalize to the same extent the eligibility criteria for escape clause relief for industries. Industry faces the same difficulties of proof as firms and workers when suffering injury-warranting tariff adjustments.

C. The Supplemental Agreement Relating Principally to Chemicals—Title IV

Approval of the separate agreement called the "Kennedy Round Agreements Relating Principally to Chemicals Supplementary to the Geneva (1967) Protocol to the General Agreement on Tariffs and Trade" would eliminate the American Selling Price system of valuation and further reduce duties on some other chemical products in return for further reductions and other concessions from EEC countries, U.K., and Switzerland.

The Kennedy Round was the sixth and most ambitious round of tariff reductions under the auspices of the General Agreement on Tariffs and Trade (GATT). In obtaining authority for these negotiations, President Kennedy stated in a Special Message to Congress on Foreign Trade Policy (January 25, 1962):

"I am therefore requesting two basic kinds of authority to be exercised over the next five years: First, a general authority to reduce existing tariffs by fifty percent in *reciprocal* negotiations."

and

"But let me emphasize that we mean to see to it that all reductions are *reciprocal*—and that the access we gain is not limited by use of quotas or other restrictive devices." (Emphasis added.)

It is the considered opinion of the U.S. Chemical industry that the results of the Kennedy Round negotiations, insofar as the chemical sector is concerned, are far from reciprocal. In exchange for reducing the U.S. tariffs on chemicals by an average of 43 percent, the EEC and the United Kingdom, principal overseas trading partners, are reducing their tariffs by an average of about 20 percent. This agreement is clearly not reciprocal because the Congress is asked to make further concessions in order to get the EEC and U.K. to reduce their tariffs to the same level as those already agreed to by the U.S.

The chemical industry has been quite concerned about the adverse trends in trade which have taken place under the tariff levels prevailing before the Kennedy Round. While our industry's exports have increased, the chemical exports of other countries have been growing at a faster rate. U.S. chemical imports in the period 1960-66 have increased an average of 12.2 percent per year, while U.S. chemical exports have increased only 6.9 percent per year. (See Exhibit A.)

Never in our previous history had it been proposed that tariff protection on a broad range of products be reduced by as much as 50 percent. Because of this, Congress was careful to insist that these tariff cuts be made in five annual installments so that the impact on industry would be softened to some extent at least. Yet the Administration now proposes even greater tariff reductions than those authorized by the Trade Expansion Act of 1962.

MCA urges that Congress not further compound the injury by endorsing the Supplemental Agreement Relating Principally to Chemicals. The proposed legislation goes beyond the scope of the Act, and the intent of Congress in authorizing trade negotiations (1) by reducing the tariff rates on some chemical products by more than 50 percent, and (2) by eliminating the American Selling Price (ASP) method of tariff valuation. In addition, the Supplemental Agreement contravenes the wishes of the Senate as expressed during 1966, in Senate Resolution 100, in that it was negotiated without prior authorization of the Congress.

Another unfortunate consequence of approval of the Separate Package is that the tariff rate would be reduced on 69 important, low-duty rate, non-benzenoid

chemicals to the full 50 percent cut from 20 percent and on 9 products by more than 50 percent. As one example, sodium nitrite would be reduced from a tariff of 3.6¢ per lb. to 1¢ per lb., or a cut of 72.2 percent.

The American Selling Price as a system of customs valuation has been best described by Mr. Earl V. Anderson (Senior Associate Editor, *Chemical and Engineering News*) in an article entitled "An American Views American Selling Price" published in February 1967 issue of "European Community" (p. 13):

"What is ASP? Simply stated, it is a system by which duties on certain imports are calculated as a percentage of their domestic wholesale price rather than their foreign, or export, price. These 'certain imports' include canned clams, knit gloves, rubber footwear, and competitive benzenoid chemicals. For all practical purposes, the entire ASP argument revolves around the benzenoid chemicals.

"The uproar attending ASP has set it apart from all other tariff systems in the world. It is thus easy to assume that ASP applies to all U.S. imports. It does not. Nor does it apply to all U.S. chemical imports. In fact, it does not even apply to all U.S. benzenoid imports. It applies only to the benzenoids deemed 'competitive' with domestic products."

1. *Economic Impact on Chemical Industry*

At the request of the STR, the Tariff Commission during 1966 investigated and developed converted rates for ASP items which were reported as an equivalent. These converted rates were computed for each benzenoid product or group of products (using foreign invoice value) which would return to the Government and amount of revenue equivalent to that actually received on these products in 1964. Even though the Tariff Commission was requested to indicate its assessment of the degree of equivalency of protection achieved, the goal before the Commission was equivalence of revenue, not of protection. The procedure actually used was to lump noncompetitive benzenoids in the same basket with competitive ones. Since the American Selling Price applies only to competitive benzenoids, i.e., those made in the United States, the proposed equivalent converted rates actually *increased* the tariff rates on many dyes which are not made here and *decreased* the rates on the dyes made by U.S. industry. This statistical averaging so reduced the rates on some products that some company representatives testified that they would expect losses in meeting foreign competition. Representatives of many benzenoid-producing companies testified during the Tariff Commission hearings that the converted rates, subsequently reduced by 50 percent, would bring import competition that would not merely diminish profits, but actually convert them into losses. By proposing maximum tariff ceilings, the Administration is now asking Congress to ratify tariff cuts on many benzenoid products in excess of 50 percent, the maximum authorized by TEA.

Details of economic impact resulting from tariff reductions on benzenoid chemicals were studied and analyzed by the Tariff Commission after extensive hearings on this subject held in September 1966. The results were published in two volumes which have not as yet been released to the public by the Special Representative for Trade Negotiations on the grounds that both volumes contain confidential information. We feel certain that the Tariff Commission study clearly indicates how seriously the domestic benzenoid chemical industry would be hurt by the elimination of ASP. The chemical industry should have an opportunity to study and consider the conclusions of that study.

Diminished profits and dollar losses, because of lowered duties, are predicted for several very sound reasons. U.S. chemical producers are at a serious disadvantage compared to overseas producers whose wage rates are much lower. Government published data indicate a range of from 70¢ to \$1.38 per hour overseas as compared to \$2.98 per hour for U.S. average (Exhibit B). Companies with plants in Europe know that these averages understate the differences. Also, because of antitrust laws, domestic producers cannot rationalize production as can and is being done by overseas competitors.

2. *Effect of Lowering Duties on Export Opportunities*

The chemical industry being a major exporter and having foreign operations is constantly reviewing the effect on imports of tariff and other controls imposed by foreign countries. The question of the benefit that would be received by the domestic chemical industry from enactment of the Separate Package has been considered.

On the face of it, the domestic industry would get a further 30 percent reduction in foreign chemical tariffs on many chemicals exported to EEC and U.K. In

the Spring of 1963, MCA members were canvassed for their views on whether their exports would be increased if foreign tariffs were reduced 50 percent. Several times after that and before the conclusion of the Kennedy Round, members were again asked about export opportunities in event foreign tariffs were lowered. Each time the result was the same, and with few minor exceptions, members advised that they did not believe that their exports would increase significantly if foreign tariffs were lowered by 50 percent. Under these circumstances, it seems clear there is little or nothing to be gained for the American chemical industry by enactment of the Separate Package because it is not believed that any new export opportunities would accrue.

3. *Effect of Enactment on Employment*

During 1966, many chemical companies filed briefs and gave testimony before the Tariff Commission and the Office of the Special Representative for Trade Negotiations pointing out that lowering of tariffs on benzenoid chemicals and the consequent increase of imports would have a serious economic impact upon this segment of the chemical industry. It was predicted that the lowering of tariffs would force this portion of the industry, which is composed of U.S. companies employing about 116,000 persons, to not only curtail employment, but even to abandon some benzenoid production facilities.

4. *Effect of Enactment on U.S. Defense Establishment*

Benzenoids are the building blocks on which many defense-oriented products are based. The following are only a few of the military uses instantly available as derivatives from one intermediate (aniline) : Dyes for uniforms, depth charge markers, camouflage and smoke pots, sulfa drugs to treat wounds, burns and general infections, accelerators and peptizers for synthetic rubber, as well as insecticides, fungicides, and wood preservatives. Other military products derived from benzenoids include : detonators for ICBM's, napalm, CS tear gas, protective nylon vests, and herbicides for defoliation. Approval of the Separate Package which would lower the duties on benzenoid chemicals would provide unfair competition and even force abandonment of the production of some benzenoid chemicals. Serious consequences may result if a chemical industry that supplies basic defense needs is not maintained.

5. *Effect of Enactment on Research and New Product Development*

Approval of the Separate Package could result in the abandonment of substantial portions of domestic benzenoid facilities, weaken the competitive position of the industry, and reduce profits; the vast amount of research currently being carried on in this field will inevitably be curtailed. The benzenoid industry is only a segment of the total chemical industry, but it has been, and continues to be, the seedbed of many of the chemical industry's new ventures. Man-made fibers are an outstanding example; nylon and polyester fibers are of benzenoid origin. In addition, benzenoid intermediates are converted into polymers for manufacture of film and plastic products which now constitute large industries in themselves.

During the period 1956-1963, U.S. firms introduced 48 new products in the crop protection field;¹ during the period 1959-1965, American dye manufacturers introduced 409 new color index types, each representing a new dye structure, all of which are benzenoid in nature;² and, in the medicinal chemicals field, U.S. firms introduced 133 new benzenoid chemical types during the years 1956-1963.

6. *Effect of Enactment on Benzenoid Segment of the Chemical Industry*

The net result is to make it more difficult to compete, especially in industries where the labor content is high, such as in a large segment of the benzenoid chemical industry. Adequate profits are needed in order to attract expansion capital, support research for innovation, and the development of new products. Even with the ASP, for the years 1963 to 1966 (selected so that effects of the Dillon Round tariff cuts would be shown), imports in the dutiable benzenoid chemical area have increased an average of 34 percent per year. With the tariff on most benzenoids cut by 50 percent in the Kennedy Round, imports can be expected to increase even faster.

If ASP is eliminated and the tariff cut contained in the Separate Package enacted, it is our view that the domestic benzenoid chemical industry will deteriorate.

¹ *Guide to Chemicals Used in Group Protection* 1964 Research Institute, University of Western Ontario.

² *American Association of Textile Chemists and Colorists Yearbooks.*

rate. The abandonment of substantial portions of this particular business to foreign producers would further swell the influx of imports. Deterioration of the benzenoid segment of the industry could lead to a possible shortage of essential war materials.

7. Views of Foreign Countries

To obtain a better perspective on the overall effects of the Kennedy Round and the Supplemental Agreement, it would be appropriate to consider what chemical representatives overseas think of the results of the tariff negotiations at Geneva. Business Week (5/20/67) quoted the comment of a spokesman for a German company: "Germany's big chemical makers are rubbing their hands in anticipation." A representative of Farbenfabriken Bayer AG put it more graphically: "We feel like a little boy," he said, "who has been promised an electric train for Christmas." Desmond Fitzpatrick expressed similar viewpoints in the July 15 issue of *Chemical Age*, a British publication. In bold face type, setting the tone for the rest of the article, it is stated (p. 17) :

"If, however, we assume that Congress agrees to the necessary legislation, the prospects in the U.S. market for British and Continental producers of benzenoid chemicals will be revolutionized. This is true in particular when low cost, high tonnage materials are considered."

in the body of the text we find :

"* * * but when all is said and done, EEC's reductions are a matter of a few percentage points: *they are not likely substantially to affect access to the market.* Britain's reductions are more substantial but they have neither surprised nor shocked the chemical industry.

"*The real difference to world trade is likely to arise from the offers, absolute and provisional made by the U.S.* There is no need to see the details of the U.S. schedule of offers to assess the revolutionary effect of the general undertakings her negotiators have given."

"* * *

"*The U.S. has conceded most by accepting, provisionally, a maximum duty of 20 percent* which, though higher than any proposed final duty of EEC or UK, represents reductions in many cases of as much as 80 percent. If these reductions are completed, there seems little reason why, within a few years, British and Continental manufacturers should not take a profitable share in this vast market * * *." (Emphasis added.)

From the foregoing it is evident that both foreign and domestic chemical producers view the effects of the Kennedy Round negotiations, including the Supplemental Agreement, in the same light. Apparently, our foreign trading partners think that they have a bonanza, and we agree.

VI. CHEMICAL TRADE BALANCE AND THE U.S. BALANCE OF PAYMENTS

The United States is in serious economic difficulty compared to other major countries with which we must compete. Economic changes have made past foreign trade policies obsolete. It is, therefore, time to formulate new U.S. economic policies based on anticipated situations.

During the past decade, the domestic chemical industry has made a major contribution to this country's favorable balance of trade. In 1967, chemical exports were valued at about \$2.8 billion, imports at \$958 million. Thus, the contribution of the industry to a favorable balance of trade was \$1.84 billion.

As shown by Exhibit C, the overall U.S. balance-of-payments has shown a minus figure in every year since 1960. The \$3.6 billion deficit in 1967 is one of the worst in the nation's history, the fourth quarter reaching an alarming equivalent annual rate of \$7.5 billion. The early months of 1968 show a continuing serious level of deficit. The first quarter of 1968 shows imports up 17 percent over 1967 and exports up only 3 percent. The irrefutable facts indicate that a favorable trade balance for the U.S. chemical industry is essential to the solution of balance-of-payments problems.

Our industry believes that actions by our major trading partners have a significant effect on the U.S. balance of trade, and some of these must be countered. One of the most important is the use of the indirect tax system, well established in the Common Market and spreading throughout Europe.

The U.S. Treasury Department predicts that recent changes in import border taxes and rebate of indirect taxes on exports by some European countries will have an adverse impact on the U.S. balance of trade. It is, therefore, necessary to examine tax systems, and to take compensating or countermeasures.

A. Border Taxes

In meetings of chemical industry representatives with the Department of Commerce on non-tariff barriers in 1963, the effect of border taxes was reported. In February 1966 the MCA provided the STR a report on border taxes. In this report prepared by Horace J. De Podwin Associates, Inc., the effect of European border taxes on U.S. chemical exports were detailed.

Early in 1967, the U.S. negotiators in Europe were given an updated summary of the effect of border taxes on U.S. chemical exports. Also, the expected damage to U.S. exports from the expected increase to 14.7 percent of the Common Market border tax was stressed.

The Common Market countries are in the process of harmonizing their border taxes and export rebates, first by shifting from the "cascade" types of turnover tax systems to a uniform value-added turnover tax (TVA) system, and second, by harmonizing at a single rate for the entire EEC. At least one non-Common Market country has already changed to a TVA system (Denmark) and others are seriously studying similar changes (U.K. and Sweden). The adverse effect upon our trade of the adoption of the TVA system is a most immediate problem as demonstrated by the changes recently implemented by Germany.

Before January 1 of this year, Germany had a cascade-type turnover tax system under which each sale of a product in Germany, either domestic or imported, was assessed a tax at the regular rate of 4 percent of the selling price including the tariff. Products of U.S. manufacture imported into Germany were therefore subject to an initial tax of approximately 4 percent at the border and additional tax each time the product was sold in Germany. On January 1, Germany switched to a TVA system under which a tax of 10 percent of the value added is charged instead of the 4 percent tax on the entire value as had been charged under the "cascade" system each time the goods were sold. Products of U.S. manufacture imported into Germany are now burdened with an initial tax of 10 percent at the border. The additional tax burden attracted by subsequent sales in Germany is limited to 10 percent of the value added after importation. On July 1, 1968, the rate will be increased to 11 percent.

France has for years employed a type of TVA system. Ultimately all EEC countries will agree on a uniform TVA tax rate estimated at approximately 15 percent. The German border tax adjustments are used as the reference framework for the comments which follow.

It has been argued that American manufacturers are not disadvantaged by border adjustments under the TVA system. We submit this is not so.

B. Disadvantage of Tax Systems Changes

The switch from the cascade-type turnover tax system to the TVA system in Germany has adversely affected American chemical exporters in several ways. MCA members have found that for many major product exports, the border tax adjustment, under the previous system, was less for both imports and exports than the higher cumulative tax cost reflected in the German producers' domestic price for a given product. Under the new system, the tax is no longer an element of cost to the German producer since he can pass it on in the same way as does an importer. As a consequence, he has been under pressure from German customers to reduce his selling price to reflect the tax saving.

MCA members have reported that, when the switch to TVA was made, the German chemical manufacturers, in many cases, had in fact reduced his selling price. To compete, the American company frequently found it necessary to reduce its selling price to the German customer by a like amount.

When the amount of the price reduction of the German chemical manufacturer exceeds the theoretical turnover tax burden of approximately 4 percent¹ and to the extent the American exporter finds it necessary to match the price reduction, he suffers a loss of profit, the exact amount varying with each product. Many MCA members have confirmed that in Germany, for many products, this is what has happened.²

C. The Theory of Tax Shifting

All turnover taxes, such as value-added taxes, are indirect taxes, and under the GATT it has been assumed that their burden is always shifted completely

¹ Often the tax base for the imported merchandise was the price to the German distributor rather than the distributor's price to its German customer and the sale to the German customer would involve only one transfer. When this was the case, the turnover tax burden of the imported merchandise was less than that of domestically produced merchandise. MCA members report that for some imported chemicals the actual burden was as low as 2 percent.

² See Appendix A for statement by Stanley S. Surrey, Asst. Sec. of Treasury.

forward and absorbed by the consumer. Conversely, the GATT rules assume that direct taxes, such as income taxes, are always and completely borne by the producer. Theoretically this, of course, means that with respect to indirect taxes, each seller would increase the price of its product by the amount of the tax so that the final price of the product to the consumer would include the tax and thus be entirely absorbed by or shifted to the consumer. Conversely, direct taxes would be borne entirely by the seller and that no matter how heavy the income tax, none of it is ever passed on to the buyer in the form of higher prices.

In recent years this classic assumption has been questioned, and it now seems to be recognized that indirect taxes, *such as the TVA*, may be shifted forward only in part with some part of the tax being shifted backward. Likewise, it is now recognized that a considerable portion, if not all, of direct taxes is passed forward to the consumer.¹

The exact extent of such shifting is not known, and shifting itself is difficult to measure. It obviously differs from product to product depending upon the supply, demand and the multiplicity of other factors affecting price. It seems clear, however, that under existing GATT rules American commerce is disadvantaged in international trade to the extent there is backward shifting of indirect taxes or forward shifting of direct taxes.²

D. Proposed U.S. Action on Border Taxes

The chemical industry believes that the U.S. must take certain measures that will affect both U.S. imports and exports. An attempt should be made to have the GATT rules amended to allow for rebates of direct as well as indirect taxes, or to have the nations that impose border taxes remove them. Failing to achieve these objectives, a border tax should be imposed on the nations that assess them against U.S. imports. Those nations which do not apply the import tax should be exempt from this tax. Another possible solution would be to adopt a sliding-scale formula for border taxes which would vary with the balance-of-payment surplus of the nation.

E. Surcharge on Imports

One of the ways to help solve the balance of trade and of payments is to place a temporary surcharge on imports. This method has been used by Britain and Canada in the past. We agree that imports should be temporarily deterred and exports should be increased to improve the balance-of-payments. For that reason, we support the proposal as a temporary measure. It is important that any such surcharge should not be applied to essential raw materials in which the U.S. is not self-sufficient.

F. Other Incentives That Could Lead to an Increase in U.S. Exports

One of the most positive ways to alleviate our persistent balance-of-payments problem is through an increase in exports. The rebate of taxes on exports would be one way to accomplish this. For a number of years, Government and industry have cooperated in this effort through vehicles such as the National Export Expansion Council. Despite a number of positive steps such as improvement of export credit facilities and greater emphasis on commercial functions in U.S. Embassies, the goal of a quantum increase in the trade balance has eluded us. This is all the more frustrating because of the relatively minor increase in exports—in terms of our vast production—needed to solve the problem.

The Government is now exploring the incentives that might be used to bring about this desired result. From a chemical industry point of view we tend to agree that some system of export incentives is necessary to favorably modify the economics of exporting many of our products.

Several studies have been made by the National Export Expansion Council dealing with incentives that could increase exports. It is suggested that the recommendations contained in these studies should be considered during review of U.S. trade policy by the Committee.

The MCA believes that income tax incentives will have more impact and, accordingly, will be more helpful in increasing exports than the rebate of indirect taxes. Under the GATT rules such incentives to domestic companies apparently cannot be provided. However, the foreign sales companies which were so popular before the 1962 Revenue Act were never considered as violations of GATT even though the foreign sales income was not currently taxed by the United States. The export trade corporation provisions in subpart G of the Internal Revenue

¹ *Chemical Engineering News*, page 19, May 20, 1968.

² See Appendix A.

Code retain, on a limited basis, some of the benefits of these foreign sales companies. The rules under which export trade companies qualify for these benefits should be simplified and liberalized in order to make these companies real incentives for additional exports.

If the proposed changes in the GATT rules could be negotiated to enable member countries to allow rebates or reductions in direct taxes on exports, several other tax incentives for exports would be available. These might include extending the Western Hemisphere trade corporation rates to companies dealing in other parts of the world. They could also include additional investment allowances or depreciation on capital equipment used in producing goods for export or allowing companies engaged in export activities to expense more than 100 percent of their actual costs incurred in promoting exports.

G. Foreign Investments as Force for Growth

The rapid growth of international investment has been one of the most dynamic forces at work in developing the world's economy in the two decades following World War II. It has opened up new fields of production, employment, and income. It has increased the flow of technology and trade. It has enhanced the wealth of nations and the prospects for a more durable peace. The United States has been the leader in international investment—particularly the chemical industry as referred to earlier.

Due to the persistent balance-of-payments deficit and the resultant drain on the nation's gold reserves, American companies were asked in 1965 to cooperate in a voluntary program of restraint in direct foreign investment. Nearly 700 companies including chemical companies voluntarily acted to curb the dollar outflow, modifying or postponing overseas projects, financing through foreign borrowing, and taking other measures to meet the short-term need of the United States in its efforts to balance its international accounts.

At the outset, the voluntary program was recognized and described as a stop-gap measure which would only temporarily interrupt the process of direct foreign investments which so successfully served the economic interests of the United States and its free world friends and trading partners. The flow-back income of U.S. subsidiaries and affiliates abroad exceeded \$4 billion, not including more than \$1 billion in royalties and fees, last year while the outflow, after deductions for foreign borrowing, amounted to \$2.9 billion. The positive contribution of direct foreign investment and the export growth it generates is one of the more significant factors in our international transactions. Faced with a worsening balance-of-payments problem, President Johnson announced, on January 1, 1968, a mandatory investment control program. This proves to be even more restrictive and contrary to the best interests of the U.S.

The beneficial force in foreign investment by U.S. companies has now been encumbered with restraints for three years. We urge a review of U.S. policy in this field with a view to ending the investment control program.

About 25 percent of all U.S. manufactured exports are shipped to overseas subsidiaries. The level of U.S. merchandise exports has closely followed the flow of direct foreign investments, conclusively indicating the relationship between export growth and capital investment abroad.

Curtailment of overseas expansion thus adversely affects our trade surplus as well as our competitive position in world markets. For competitive reasons or for reason of restrictive sovereign policies, it is necessary to operate production facilities within the borders of certain countries in order to gain or maintain access to markets. These plants are America's best overseas customer. Direct foreign investment benefits are exports through (1) shipment of capital goods, supplies, and components and (2) opening the door to other product lines.

American international investment exerts a powerful influence on the level and structure of world trade. Continued curtailment of foreign investment will tend to retard world growth and diminish our own prosperity and economic progress at home. U.S. foreign trade policy should therefore encourage direct foreign investment both as an instrument of world economic development and a positive long-term factor in the balance-of-payments.

VII. ROLE OF THE TARIFF COMMISSION

The U.S. Tariff Commission was created by the Congress to assist it in the exercise of Congress' power to regulate commerce with foreign nations. The Tariff Commission is an arm of the Congress, and one of its major functions is to investigate matters pertaining to foreign trade and their effect upon industry

and labor and to submit reports of its investigations. The Tariff Commission has power to investigate such matters as tariff relations between the United States and foreign countries, commercial treaties, economic alliances, the volume of importation compared with domestic production and consumption, and conditions, causes and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

MCA believes that the Tariff Commission should exercise to the fullest possible extent its investigative power. In this way the Congress can be assured of having accurate information concerning foreign trade matters, and this is an indispensable prerequisite to the development of U.S. foreign trade policy. Of course, it follows that MCA believes adequate funds should be appropriated so as to enable the Tariff Commission to carry out this important function efficiently and with dispatch.

EXHIBIT A

U.S. EXPORTS AND IMPORTS OF CHEMICALS AND RELATED PRODUCTS¹

Year	Exports (millions)	Percent change	Imports ² (millions)	Change	Trade surplus
1960.....	\$1,803	-----	\$452	-----	\$1,351
1961.....	1,816	+1.0	456	+1.0	1,360
1962.....	1,883	+3.5	514	+12.0	1,369
1963.....	1,994	+5.7	524	+1.7	1,470
1964.....	2,375	+19.0	596	+14.0	1,779
1965.....	2,402	+1.1	720	+20.5	1,782
1966.....	2,676	+11.4	901	+25.0	1,775
Average annual rate.....		6.9		12.2	

¹ Based on Standard International Trade Classification, revised, United Nations statistical paper, series M, No. 34.

² U₂O₃ not included in sec. 5, imports.

EXHIBIT B

COMPARISON OF HOURLY WAGE RATES (CHEMICAL INDUSTRY)

	United States	United Kingdom	Federal Republic of Germany	France	Italy	Sweden ¹	Japan
1960.....	\$2.50	\$0.92	\$0.68	\$0.60	\$0.39	-----	\$0.42
1961.....	2.58	1.00	.77	.64	.43	-----	.46
1962.....	2.65	1.03	.84	.68	.49	-----	.51
1963.....	2.72	1.10	.92	.74	.56	-----	.56
1964.....	2.80	1.18	1.00	.79	.65	-----	.61
1965.....	2.89	1.28	1.09	.84	.67	-----	.65
1966.....	2.98	1.37	1.16	.87	.71	-----	(¹)

Sources: U.S. Department of Labor; "Year Book of Labor Statistics," ILO Geneva; "Ministry of Labor Gazette," London; "Annual Abstract of Statistics," Central Statistical Office, London; "Statistical Year Book for the Federal Republic of Germany"; Statistical Office of the European Economic Community; Rassegna di Statistiche del Lavoro, Rome; "Wages in Japan and the United States" (U.S. Department of Labor).

¹ Not available.

EXHIBIT C

BALANCE OF PAYMENTS AND BALANCE OF TRADE

[In billions]

Year	Balance of payments ¹	Balance of trade	
		Balance of trade total	U.S. chemical
1960.....	-3.9	+4.4	+1.4
1961.....	-2.4	+5.2	+1.4
1962.....	-2.2	+4.3	+1.4
1963.....	-2.7	+5.0	+1.5
1964.....	-2.8	+6.6	+1.8
1965.....	-1.3	+5.0	+1.8
1966.....	-1.4	+3.7	+1.8
1967 ²	-3.6	+4.1	+1.8

¹ Liquidity basis.
Estimated.

APPENDIX A

Stanley S. Surrey, Assistant Secretary of the Treasury, summed up the impact of the switch to value-added taxes as follows:¹

"In the German situation, the rebates for taxes paid on goods purchased by the exporter and import charges under the value-added tax are turning out to be higher than the averages used under the previous turnover taxes. * * * In effect, it would appear that some German exporters presumably have not been receiving rebates at the level that their tax costs under the turnover taxes appeared to call for. Of course, German exporters presumably had adjusted to that situation * * *. Hence viewed as of today as the starting point in time—which is the proper way to consider the effects of the change—this sudden increase in export rebates under the value-added tax while the internal overall burden of the tax remains unchanged, becomes an advantage to German exporters. And equally, the rise in import charges can be added competitive burden to imports.²

"What is happening in Germany is, and will be, reflected elsewhere in Europe as the countries shift to value-added taxes. * * * As a consequence, European exporters in general will get an added lift in most countries."

Mr. Surrey analyzes the indirect tax aspect of the problem in this fashion:

"The European practice of rebates and import charges for turnover and value-added taxes reflects the basic assumption that such taxes are passed along through channels of trade so that their burden is borne by households buying goods for personal consumption. * * * As a working assumption for domestic legislation and for general judgments on the distribution of the burden of a tax system or of a new excise or sales tax, it is a useful operational device. But the balance-of-payments world of today, with its fixed exchange rates and the attention that must be focused on both the overall balance and its component parts, including the trade portion, requires much more attention to specific than ever before. * * *

"If sales taxes or other indirect taxes—whether they be value-added, however, retail or other tax forms—cannot be fully passed on in price, *then a manufacturer selling in his domestic market must lower his prices and reduce his profits. But if the full rebate of the tax cost and the exemption of exports from the tax make it unnecessary to change his export prices*, then he is not concerned about passing anything along on an export sale, he need not lower his export price, and his export profits would not suffer as would his domestic profits. The business of exporting becomes that much more attractive, and the sales tax system has become an incentive to export activity. *Similarly, on the import side*, the importer to meet the competition of lowered domestic prices must reduce his price, his profits decline and he is less interested in pushing those imports. In essence, one gets to the question of tax incidence and whether these sales taxes are fully shifted forward in price or only partly shifted.

"Put another way, a value-added tax is carefully structured to pass the tax along in an *accounting sense*. Its effect on international trade, however, depends on whether the *economic effects follow* the accounting structure. If the tax is *not fully shifted forward in an economic sense*, then the international trade of the country using the tax will be favored regardless of the accounting structure." (Emphasis ours.)

In Surrey's opinion, it is not the levels of rebates per se and the differentials between them that measure the competitive effects of border tax adjustments.

Surrey concludes his discussion with the following comment:

"The *problem will become more acute* if the Europeans take the next step of harmonizing their indirect tax rates * * *.

"Certainly, to the extent that the generalities are not fully valid, the disparity in indirect tax levels can only be working to the disadvantage of the United States in world trade." (Emphasis ours.)

"The premises and rules of GATT with respect to export subsidies and border tax adjustments rest on the generalities of incidence and shifting that I have described. Under those premises and rules the European countries have almost

¹ Remarks by Surrey before the National Industrial Conference Board on February 15, 1968, "Implications of Tax Harmonization in the European Common Market," pages 28 through 29.

² Surrey points out, parenthetically: "The Germans assert that these trade advantages are offset by transitory tax arrangements outside the value-added tax affecting investments in plant and equipment, and state that in any event any calculations are to a large extent hypothetical."

entirely kept their high sales taxes from increasing their export costs and prices. The shift to value-added taxes will underscore this effort and make it easier of accomplishment. In addition, to the extent that the incidence of these taxes in the actual economic world is at variance with those premises and rules, the European tax systems operate in the direction of providing a trade advantage for the Europeans."

The CHAIRMAN. Thank you, Mr. Gerstacker.
Mr. Turchan.

STATEMENT OF THOMAS P. TURCHAN

Mr. TURCHAN. Thank you very much, Mr. Chairman, and thank you for allowing Mr. Gerstacker to testify first.

SOCMA POSITION

I appreciate the opportunity you have afforded us to appear here this morning to present the reasons why the domestic benzenoid chemical industry opposes title IV of H.R. 17551 which provides for implementation of the so-called separate package agreement on benzenoid chemicals.

This agreement is clearly unreciprocal. I shall discuss the lack of reciprocity in three areas:

- (i) the 50 percent—20 percent deal negotiated in the Kennedy round for chemicals,
- (ii) the "separate" package; and
- (iii) border taxes.

ADJUSTMENT ASSISTANCE AND ESCAPE CLAUSE

However, as a preliminary matter, I would like to agree with the comments made by Mr. Gerstacker on title V of H.R. 17551.

I must clearly and forcefully state at this point, however, that liberalization of adjustment assistance and of the escape clause cannot in any way or in any realistic sense be considered seriously as remedies for the gross lack of reciprocity mentioned.

We are convinced that the results of the Kennedy round negotiations will be loss of jobs and retardation in the creation of new jobs. Adjustment assistance is a mere palliative for this damage, and we wish to make clear that even if adjustment assistance is liberalized, it is no answer to the serious job problem and adverse balance-of-payments impact of these negotiations.

We do not object to the liberalization of this adjustment assistance standard, provided the present "escape clause" standard is accorded the same liberalization. We continue to reject the theory that the taxpayers' money should be used to compensate for injury caused by imports in lieu of using the "escape clause" to remove the cause of the injury. Thus, at a very minimum, any liberalization in the standard for adjustment assistance should be matched by the same liberalization in the "escape clause" standard.

SOCMA

SOCMA is a nonprofit trade association of manufacturers of synthetic organic chemicals. We have 79 member companies. With the

committee's permission, I would like to present a list of our members for the record. (See p. 4510.)

The CHAIRMAN. Without objection, that will be included.

Mr. TURCHAN. These companies manufacture over 80 percent of the benzenoid chemicals produced in the United States. They include benzenoid intermediates, which are used in making finished products, and the following principal classes of finished products: dyes, pigments, pesticides, plastic materials, photographic chemicals, medicinals and pharmaceuticals, and flavor and perfume materials. These chemicals derive their tariff protection from subparts B and C, part 1, Schedule 4 of the Tariff Schedules of the United States—protection which would be further drastically reduced under the "separate package" agreement here under consideration.

THE INDUSTRY

In 1964 the domestic industry produced over 4,000 different benzenoid chemicals, with total sales of almost \$4 billion. I note parenthetically that the Government said there were 750,000 benzenoid chemicals and for that reason administration of ASP is administratively complicated. Someone must have slipped a decimal or two for there are about 4,000 commercial benzenoids and possibly 2,000 other products in research and development. Total capital investment for the production of these chemicals exceeds \$4 billion and the industry employs over 115,000 persons in the production and sale of benzenoid chemicals. The total payroll attributable to benzenoid chemicals is estimated to be in excess of \$700 million per year.

The benzenoid industry is research minded and is notable as a new product industry. Five percent of each sales dollar is spent on research and approximately 100 new benzenoid products are introduced commercially each year. Although they account for only about 10 percent of U.S. chemical production, the benzenoid industry has spawned many new products and some completely new industries. Among the more well-known products of benzenoid research are synthetic fibers, plastics, Corfam, sulfa drugs, and DDT. Benzenoid chemicals are quite rightfully referred to as the "seed bed" of the U.S. chemical industry.

Mr. Gerstacker pointed out the international involvement of the chemical industry. He also pointed out the fine trade balance it has produced. This is indeed a most favorable record and, quite frankly, one of which we are proud.

CHEMICAL INDUSTRY AND INTERNATIONAL TRADE

The chemical industry is very much involved in international trade and investment. It is truly an international industry. U.S. chemical exports are almost three times as much as our chemical imports. The chemical industry balance of trade in 1967 was \$1.8 billion accounting for half of the U.S. balance of trade of \$3.6 billion.

This is indeed a most favorable record and quite frankly one of which the industry is proud. Nevertheless, because the United States is a high-cost country compared to foreign producers, the trade tide is running strongly against us. We find ourselves in an increasingly dis-

advantageous competitive position both abroad and at home. Abroad the U.S. share of world chemical exports has declined markedly in recent years.

The Department of Commerce measures competitiveness in international trade by the share which the United States is able to obtain of world exports. We believe this to be a reasonable standard. Figures just released by the Department show that in the past 6 years the U.S. share of world chemical exports to countries other than the United States has declined from 29.5 to 23.7 percent, almost triple the amount of the decline in the U.S. share of world exports of all manufactures—International Commerce, June 10, 1968.

I would like to digress from my text at this point to remind you that the trade tide is running strongly against the entire U.S. economy as was shown in the morning's report on May's deficit performance in international trade. In my judgment the most important thing that you and we must look at is the direction and the rate of our trade balance. It is no use looking at past performance. We must be conscious of what is transpiring now because that is what is going to have the greatest effect.

In order to attempt to maintain its position in foreign markets, U.S. chemical companies have found it increasingly necessary to seek a lower cost base by investing in production facilities abroad. Table 12 submitted by the Government shows that since the passage of the Trade Expansion Act in 1962 investment abroad in manufacturing generally has risen at an average annual rate of 17 percent per year. However, U.S. investment abroad in chemicals has risen at almost twice that rate—33 percent—and this year will account for almost 30 percent of the total new investments abroad by U.S. manufacturing companies.

Since 1961, U.S. chemical imports have been increasing at more than twice the rate of our chemical exports. The value of domestic shipments has increased annually at a rate of about 7 percent as compared with an increase of almost 14 percent per year in imports. In the benzenoid sector the rise in imports—under pre-Kennedy round duties—has been twice as great. From 1961 to 1966, the last year for which Tariff Commission figures are available, benzenoid imports rose 130 percent—an average of 18 percent a year. From 1964 to 1966 the increase was 80 percent—an average of 34 percent a year.

By 1967, before the Kennedy round, we had reached the point that the basic cost disadvantages of U.S. benzenoid producers was resulting not only in the loss of foreign markets for our exports, but we were facing a loss of a continually greater share of our domestic market. This deterioration of the position of the U.S. industry will now be accelerated. The rapid expansion of foreign chemical production to take advantage of the new situation will further accentuate the downward trend in the U.S. share of world chemical trade and we are going to have to meet rapidly increasing competition from low-cost imports in the United States.

COMPETITIVE POSITION

I want to make clear that I am not suggesting that the domestic chemical industry is inefficient or noncompetitive. On the contrary, it is an efficient competitive minded industry. While the wholesale

price indexes for all commodities has risen more than 8 percent in the last 10 years, the index of chemical prices has actually declined. (Survey of Current Business, May 1968.) Given anywhere near the equivalent conditions—equal costs for labor and raw materials—we can compete favorably with any chemical industry in the world. We have demonstrated this time and time again in the performance of our foreign subsidiaries.

As efficient and competitive as the domestic chemical industry may be, it cannot compete favorably with imports having the benefit of substantially lower raw-material costs and labor costs from one-half to one-fifth of our own. Unless chemical tariffs are maintained at a sufficient level to offset these substantial differences in production costs, large portions of the U.S. chemical industry are going to continue to lose their share of the market unless they seek out lower cost manufacturing bases abroad. This has already been necessary in order to try to salvage what had previously been our export markets. Whether or not we will be able to maintain our share of the domestic market will depend in large part upon the decisions made by this committee and by the Congress.

Let me make it extremely clear, the U.S. chemical industry has no desire to produce any more abroad than it absolutely has to. It has no desire to export capital or the jobs of its workers or to have to export chemicals to the United States from lower cost facilities abroad. Indeed, it is for that reason we are here this morning.

THE CHEMICAL DEALS AND RECIPROCITY

It is in the context of this general economic background that I would like to turn now to the deals negotiated on chemicals in Geneva. Later in our statement we will provide you with specific and detailed analysis of the economic consequences of this deal. I did, however, want to put this in a general economic context at the outset, because the hearings on the separate-package portion of this legislation presents the opportunity for the Congress to review the entire chemical negotiations and to take the steps necessary to provide reciprocity for our industry and its workers and to safeguard our Nation's balance of payments.

RECIPROCITY—THE KEY ISSUE

I need not emphasize to this committee that the underlying requirement of the Trade Expansion Act was reciprocity. The deal negotiated with respect to ASP not only is not authorized under the TEA, but it in no way even begins to provide the reciprocity called for in that act. This lack of reciprocity will have a serious adverse effect upon the domestic industry, its workers and the United States rapidly deteriorating balance of trade and balance of payments.

Reciprocity.—That is the key issue. I would like to summarize the three ways in which the deals negotiated on chemicals in Geneva last year deprived the United States and its chemical industry of reciprocity.

1. *Fifty percent-20 percent deal.*—First, pursuant to their Trade Expansion Act authority, the U.S. negotiators agreed to an unreciprocal bargain—a patently unreciprocal deal. They agreed to reduce

our chemical tariff by 50 percent in return for reductions of 20 percent by our principal European trading partners.

The key issue in determining reciprocity is the effect on future trade. Where costs of production abroad are lower than in the United States, it takes a greater cut in foreign tariffs—assuming tariffs are the only trade barrier, which we know they are not, to generate an equivalent export increase. If there were to be unequal cuts, clearly theirs should have exceeded ours.

Even when judged by the trade negotiators' own obsolete standard of equal percentage tariff reductions by both sides (rather than the future trade effect of the cut) the 50 percent-20 percentage bargain agreed to in Geneva gives away a 30-percent reduction in excess of that which our own negotiators' standard of reciprocity would require.

2. *Separate package.*—Second, our negotiators agreed to the so-called separate-package agreement which it is now submitting to the Congress. Under this agreement the United States would abolish American selling price valuation and reduce still further the tariff on literally hundreds of chemicals in excess of the 50-percent reduction authorized under the Trade Expansion Act. In exchange for this concession, our European trading partners would reduce their tariffs by an additional 30 percent and thereby match the 50-percent reduction we agreed to in the Kennedy round.

We have carefully studied this separate package and the effect it would have upon our industry. There is not the slightest question but that the retention of American selling price valuation and prevention of still further duty reductions on a plethora of U.S. products is of significantly greater trade value to this industry and to the United States than the additional 30-percent reduction in foreign tariffs which the separate package offers. The acceptance of this package will cause a substantial increase in chemical imports which will not be matched by additional exports from the reductions to be made by our trading partners.

3. *Border taxes and export rebates.*—Finally, these unreciprocal chemical deals were made still more unreciprocal by the border tax-export rebate mechanisms employed by most of our principal European trading partners. While we were agreeing to reduce substantially our entire barrier to their exports (tariffs), they were agreeing to lesser reductions in their tariffs, which are only a portion of their barrier to our exports. They made no reduction at all in their border taxes, the other significant part of their overall trade barrier.

As if this were not enough, our negotiators knew at the time they agreed to these deals that most of the Common Market countries would be raising their border taxes by more than they were agreeing to lower their tariffs. The end result was that their total barrier to our trade—tariff plus border taxes—will be higher after the entire Kennedy round reduction than before the Kennedy round began.

What the Common Market was giving with one hand in the form of tariff reductions, it was more than taking away with the other by raising border taxes. Moreover, our trade barrier was not only cut in half, it is still further undermined by increased European export rebates. Simultaneously, their overall trade barrier to imports is higher than it ever was. What kind of reciprocity is that?

The lack of reciprocity in each of these three areas is manifest; combined it is nothing short of disastrous. We welcome the opportunity for this committee to weigh the serious adverse economic effect which this gross lack of reciprocity will have upon our industry, its workers, and the U.S. balance of payments.

FOREIGN REACTION

The lack of reciprocity in these negotiations is underlined by the reaction of our European trading partners to the chemical deal. In announcing the successful conclusion of the negotiations, M. Jean Rey, the Common Market's chief negotiator, commented:

The U.S. finally gave way on chemicals—which we, of course, had to give a few concessions. But all in all we are clearly happy about the outcome in that particular sector.—Washington Post, May 16, 1967.

That same week, Business Week carried a comment giving the reaction of European industry to the deal:

Germany, big chemical makers are rubbing their hands in anticipation. Says spokesman for Farbenfabriken Bayer, AG, "We feel like a little boy who has been promised an electric train for Christmas."—Business Week, May 20, 1967.

The U.S. chemical industry agrees with the European negotiators and their industry representatives that they came out way ahead in the chemical negotiations.

I noted with interest that the Government told this committee, in response to questions, that H.R. 17551 is not part of the administration's balance-of-payments program. It is significant that the Government presented to this committee no meaningful study of the balance-of-payments impact of the chemical deal negotiated in Geneva. Our industry has studied this matter carefully, for it affects us vitally and we are satisfied that because of the lack of reciprocity, our balance of payments will indeed suffer further serious setbacks.

My company and many of our member companies are international companies. We know that plants are being built abroad which will enable our foreign competitors to flood chemicals into the U.S. markets. And we know that Japan and Europe, with the advantages of low-cost production and rationalization, having already taken over a larger share of the world export trade and can and will take over increasing shares of the domestic market and of our own export business.

RECOMMENDED ACTIONS

We say to the committee as seriously as we can that the time has come for the United States to take action in this all-important trade field in its own interest. We welcome and support the views expressed by members of the committee during this hearing and by representatives of industry and labor that the time has come for the United States to take action promptly.

First, we urge the committee to act now by rejecting the separate package.

Second, we urge that the committee deal affirmatively with the border tax issue to eliminate the disadvantages to our trade.

To eliminate these disadvantages we propose the United States act promptly to adopt its own border tax. The Government witnesses recognize that it would be legal for the United States, even under existing interpretations of the GATT, to adopt a border tax. If it is reasonable for imports into Europe to bear the burden of indirect taxes, it is equally reasonable, and indeed imperative, for imports into the United States to bear this burden. Similarly, if it is reasonable for Europeans to rebate or exonerate their producers from these indirect taxes to stimulate exports, it is equally reasonable and again imperative, for the United States to do this too. This first step will not eliminate our entire disadvantage, but it will be a needed first step in the right direction.

We should also continue to press for immediate action in the GATT to remove the remainder of the disadvantage to our trade caused by the discriminatory interpretations currently placed on the GATT rules, letting it be known that if cooperative action is not forthcoming promptly, we will have to take the unilateral action necessary to fully remove the remainder of the disadvantage to our trade.

This summarizes our position. Before asking Mr. Barnard to present to the committee the facts upon which our appraisal is based, I would like to speak briefly as a private citizen, typical, I believe, of millions of my countrymen. I believe that our country's financial condition is in an extremely serious state and that basic and fundamental actions are necessary now to correct the downward spiral we are in. We must return to a sound fiscal policy in our domestic programs and we must adopt a realistic and prudent attitude in our dealings with other nations. The actions of this committee in insisting on realistic cuts in expenditures before agreeing to the tax surcharge has my admiration and support. The tax bill was a necessary step, but it is not the whole answer. Action is needed now to deal positively with our balance of trade and international currency crisis. I urge the committee to provide sound leadership in this area as it did in taxes to find a solution promptly.

Thank you very much.

(The membership list referred to follows:)

LIST OF SOCMA MEMBER COMPANIES

Aceto Industrial Chemical Corporation
 Allied Chemical Corporation
 Althouse Division, Chemicals Group, Crompton & Knowles Corp.
 American Aniline Products, Inc.
 American Cyanamid Company
 American Hoechst Corporation
 Atlantic Chemical Corporation
 BASF Corporation
 Belle Chemical Company, Inc.
 Benzenoid Organics, Inc.
 Berncolors-Poughkeepsie, Inc.
 Celanese Corporation
 Chemagro Corporation
 Ciba Chemical & Dye Company
 Dow Chemical Company
 Dow Corning Corporation

Drake Chemicals, Inc.
 E. I. du Pont de Nemours & Co.
 Dye Specialties, Inc.
 Emery Industries, Inc.
 Evans Chemetics, Inc.
 Fairmount Chemical Co., Inc.
 Federal Color Laboratories
 First Chemical Corporation
 FMC Corporation
 Gane's Chemical Corporation
 Geigy Chemical Corporation
 GAF Corporation
 Givaudan Corporation
 Harshaw Chemical Company, Div. of Kewanee Oil Company
 Hercules Incorporated
 Heterochemical Corporation
 Hilton-Davis Chemical Company
 Hooker Chemical Corporation
 ICI America, Inc.
 Industrial Dyestuff Company
 Interchemical Corporation
 Kaiser Chemicals, Division of Kaiser Aluminum & Chemical Corp.
 H. Kohnstamm & Co., Inc.
 Koppers Company, Inc.
 Lakeway Chemicals, Inc.
 B. L. Lemke & Co., Inc.
 Fred'k H. Levey Company, Div. of Columbian Carbon Co., Inc.
 Otto B. May, Inc.
 Monsanto Company
 National Lead Company
 Nopco Chemical Company, Div. of Diamond Shamrock Corp.
 Nyanza, Inc.
 Olin Mathieson Chemical Corporation
 Parsons-Plymouth Division, S. B. Penick & Company
 Patent Chemicals, Inc.
 Pennsalt Chemicals Corporation
 Pfister Chemical, Inc.
 Chas. Pfizer & Co.
 Pitt-Consol Chemical Company
 P. P. G. Industries
 Publicker Industries, Inc.
 Reilly Tar & Chemical Corporation
 Salsbury Laboratories
 Southern Dyestuff Company, Div. Martin-Marietta Corporation
 Standard Chlorine Chemical Co., Inc.
 Stauffer Chemical Company
 J. P. Stevens & Co., Inc.
 Sun Chemical Corporation
 Synalloy Corporation
 Tenneco Chemicals, Inc.
 Toms River Chemical Corporation
 Trylon Chemicals, Inc.
 Union Carbide Corporation
 Upjohn Company, Carwin Organic Chemicals
 U.S. Industrial Chemicals Company, Div. Nat. Distillers & Chemical Corp.
 USS Chemicals, Division of United States Steel Corporation
 Verona-Pharma Chemical Corporation
 Vulcan Materials Company
 Young Aniline Works, Inc.

The CHAIRMAN. Thank you, Mr. Turchan.
 Mr. Barnard?

STATEMENT OF ROBERT C. BARNARD, COUNSEL

Mr. BARNARD. Thank you, Mr. Chairman.

My name is Robert C. Barnard. I am appearing today as counsel for SOCMA and also as counsel for the Dry Color Manufacturers Association, an association of 23 manufacturers of dry colors used in plastics, inks, rubber, linoleum, paints, and so forth. With the committee's permission I would like to submit a list of members for the record.

The CHAIRMAN. Without objection, the membership list will appear at the end of Mr. Barnard's prepared statement.

Mr. BARNARD. Also in the interest of consolidating statements as the committee has requested my statement will be on behalf of both associations.

At the outset the Chairman was kind enough to say that we could submit our statements for the record and summarize. I should like to take advantage of that opportunity also, with the Chairman's permission, and ask that the whole statement be put into the record and that I be permitted to summarize.

The CHAIRMAN. You may do so, and your prepared statement will appear immediately following your oral statement.

Mr. BARNARD. At the outset of these hearings, Mr. Chairman, members of the committee noted that there were startling differences in the valuation of import problems with respect to particular products as between the Government and as between particular industry representatives.

Indeed, this was referred to as the credibility gap. I would like to suggest, sir; that the differences in valuation, the credibility gap, may be as great or greater in the area of the "separate" package as in any other area, and at the beginning of my statement I would like to refer to a statement by the Government witnesses in the course of their testimony.

You will recall the statement that I am referring to, which appears on page 21 of my copy of their statement, that the Government made a great deal of the competitive strength of the U.S. chemical industry and how its position in international trade is improving and growing.

Indeed, they said that between 1961 and 1967 our exports increased at an annual rate of 7.7 percent while imports in the same period increased at an annual rate of only 4.7 percent, just about half.

This statement was supported by a table, table No. 9, that was submitted by the Government. We have taken a portion of that table, since it is so important in this matter, a portion of table 9. It appears opposite page 4 of our statement, sir.

(The table referred to follows:)

Table 9

U.S. CHEMICAL EXPORTS, IMPORTS, AND TRADE BALANCE
BY PRINCIPAL DESTINATION AND SOURCE, 1961-1967

(Millions of dollars)

		<u>IMPORTS FROM:</u>			
<u>SITC Section</u>		<u>World</u>		<u>Less Uranium Oxide Imports</u>	
5	<u>All Chemicals</u>				
	1961	732	276	456	
	1962	766	252	514	
	1963	714	190	524	
	1964	707	111	596	
	1965	778	58	720	
	1966	942	41	901	
	1967 ^{1/}	963	16	947	

Mr. BARNARD. You can see from the table, the imports as shown on the Government's exhibit. It shows imports growing from \$732 to \$963 million. The first three figures on that table were not the figures as they were published by the Department of Commerce at that time, so we went back to find out what accounted for the discrepancy. I would like to tell you how the Government got their figures and reached the results which this table supposedly supports.

From 1942 to 1960 the imports of radioactive materials were not published in the figures presumably because it would reveal information about our atomic stockpile.

In 1960, for the first time, the figures of uranium oxide imports were revealed and at that time they were classified as minerals and included in the minerals schedules of the statistics.

In September 1963, uranium oxide and some other materials were reclassified and put into the chemical schedule.

What the Government has done in this table is to go back for 1961 and 1963 and include imports of this mineral uranium oxide as though it were a chemical import.

Why do I bother to tell you about this? In 1961, uranium oxide amounted to \$276 million out of the some \$700 million worth of imports according to the Government's table. Almost 40 percent of the chemical imports shown were uranium oxide. In the period from 1961 to 1967 uranium oxide imports declined until in 1967 they were only \$16 million.

By going back and mixing the statistics on imports of a mineral with statistics on imports of chemicals, you end up with a wholly misleading picture as to what the actual story is. Indeed, if the Government were going to do this, I don't know why they didn't go back to 1959 because then the uranium imports were over \$400 million, and if you had taken the 1959 figures including uranium imports, you would have had practically no growth in imports from 1959 to 1967. They did all of this without a single footnote explaining what they had done.

If you exclude uranium imports from the figures, as we have done on our modification of table 9, you will see that chemical imports increased an average of more than 13 percent a year rather than the 4.7 percent suggested by the Government. This means that the imports were increasing at approximately twice the rates of exports rather than the other way around as the Government suggested.

Now, Mr. Chairman, I am not calling this to your attention because we think it is important just to point out uses of misleading statistics. Obviously we do want to call attention to numbers that we think do not present the true picture.

We do this because we think it emphasizes the fact that it is important to understand what the facts are and because we believe the situation here today in this country is serious. As Mr. Turchan pointed out, this morning's paper announced that in May for the second month this year we had a negative balance of trade.

We are here to tell you, with as much seriousness and earnestness as we can, that we believe that the chemical "deals" now before you are unreciprocal and injurious. They are injurious to the chemical industry and its workers. They are injurious to the United States and to its balance of payments.

The issue as it has been presented to you on the American selling price really takes two forms, and I think that they are two separate questions.

First, what is the American selling price and what do its criticisms amount to, and second, the separate package; should it be approved and implemented by the Congress?

I will not go over the history of what the American selling price is. Mr. Gerstacker mentioned what it is. Suffice it to say that we believe that as a method of valuation it has virtues which should be recognized. It is more certain. It is more readily ascertainable by customs officials. It is less subject to manipulation and more consistent with the purposes of the tariff in that the tariff itself does not accentuate cost differences between the United States and abroad and give an advantage to the lowest wage and lowest raw material countries on their imports into the United States.

With the Chairman's permission, rather than discuss this, I would like to submit a memorandum for the record outlining our comments on the American selling price system and ask that it be printed in the record.

The CHAIRMAN. Without objection, it will be included in the record. (The memorandum appears as Exhibit 1 at the end of Mr. Barnard's prepared statement.)

Mr. BARNARD. In the course of the testimony of the Government's witness there were criticisms concerning the administration of the American selling price system. We think these are particularly inappropriate. We have yet to be shown concrete examples of these criticisms, but beginning as early as 1963, this industry met with the Government and suggested changes in the law which would be designed to deal with these criticisms.

However, the Government refused to go along with our efforts to try to change these administrative objections to the American selling price system. For the record I would like to submit our correspondence pointing out our willingness to support amendments to correct these so-called administrative defects and I ask that it be printed also.

The CHAIRMAN. Without objection, that will be included.

(The correspondence appears as Exhibit 2 at the end of Mr. Barnard's prepared statement.)

Mr. BARNARD. There is one criticism that was made by the Special Representative for which we have no answer except to say that it is invalid. It is reported that ASP is sinister and enables the American manufacturer to increase his price thereby increasing the duty and thereby gaining a competitive advantage over imports.

I would like to illustrate to you why this is not true. If you wish to take a pencil and even write this down, if you assume that there is a product with an American selling price of \$1, and let us even assume that we are going to have an ASP duty of 40 percent, which is the highest duty that was on dyes prior to the Kennedy round.

I am assuming a case with an American product sold for a dollar American selling price and the duty was 40 percent. I am assuming that the import is sold in the United States at 99 cents—40 cents of that would be duty, and the import would have a 1-cent competitive advantage.

Now, if the American manufacturer believes these stories, that, if he raises his prices, he gets a competitive advantage, so that he raises his price from \$1 to \$1.10. This increases the duty by 4 cents but, instead of increasing his competitive advantage, that decreases it significantly, for in the beginning the competitive advantage was 1 cent, 99 cents compared to \$1. After he has raised his price, the competitive advantage is 7 cents, \$1.03 to \$1.10.

The reason is obvious. The tariff only takes up a part of the price increase. The rest is the advantage to the import.

We also listened to the statements that the ASP was originally adopted for infant industry and has outgrown its purpose. We went back to the legislative history of the statute to see why the Congress did adopt ASP and found that there were two reasons.

We have set forth extracts from the committee reports and debates in our statement.

There were two principal reasons for the adoption of ASP valuation. These two reasons are reasons that are valid today: First, the uncertainty of foreign prices particularly in this area; and, secondly, the fact that these products were subject to price manipulation and

pricing practices by cartels which the Congress wished to protect against.

These same reasons are valid today, as they were when the Congress first adopted the ASP.

In connection with the Tariff Commission study, since pricing data in the files of the Commission were not available to us, we spent literally hundreds of hours gathering price information from customs records abroad, and we incorporated these into a computer study, and they showed that the price for the same product from the same country will vary as much as 100 percent in a single year.

With your permission, I would like to give the committee for its record a copy of that computer study.

The CHAIRMAN. We appreciate having it.

(This study is in the committee files.)

Mr. BARNARD. In connection with the Tariff Commission hearings, the Department of Commerce asked our embassies abroad to obtain foreign chemical prices and the embassies abroad to obtain foreign chemical prices and the embassies found out what we already knew, that these prices are unavailable, and that there are no published prices, and I would like to submit copies of those dispatches from our embassies for the record, and ask that they be printed.

The CHAIRMAN. Without objection, they will be included in the record.

(The dispatches appear as Exhibit 3 at the end of Mr. Barnard's prepared statement.)

Mr. BARNARD. I should also like to point out to the committee that the Tariff Commission has said that about 56 percent of the value of benzenoid chemical imports are transactions between a foreign parent and its U.S. subsidiary where price considerations are hardly at arm's length.

Now, the cartel situation is still with us. Last year the German cartel authority fined the principal German dye producers, the remainder of the old I.G. Farben trust, for conspiring with the Swiss, the English, and the French producers to fix prices.

Now, the indictment in that case covered only sales in Germany because that is all that was illegal under the German law, but it is interesting to note in the record of the court that the price fixing in Germany was only a miscellaneous item on the cartel's agenda.

I would like to submit for your record a copy of the decision of the German court together with a translation and ask that it be printed in my testimony.

The CHAIRMAN. Without objection, the translation will be printed in the record.

(The translation appears as exhibit 4 at the end of Mr. Barnard's prepared statement.)

Mr. BARNARD. Thank you.

Mr. Chairman, since 1961 also in Japan the Japanese Government has sponsored a program of rationalization of the Japanese industry which, in effect, is an officially sponsored cartel to rationalize production and provide markets.

I would like to submit some press releases on the Japanese Government's program to rationalize its chemical industry.

The CHAIRMAN. Without objection, that will be made a part of the committee files.

Mr. BARNARD. Therefore, the reasons which concerned the Congress when it adopted ASP are the reasons that are still valid today and still support the use of the American Selling Price method.

Now, this is all the comment I want to make about the American Selling Price method, and I would now like to turn to the "separate" package itself which has been presented to this committee for its consideration.

The "separate" package would not only eliminate the American Selling Price system, but would cut by more than 50 percent the duty on hundreds, literally thousands of benzenoid chemicals. In our view it is unreciprocal and provides no offsetting export opportunities. Congressional approval of this agreement would, we believe, have an adverse effect on the domestic industry in the United States and its balance of payments for years to come.

ASP as a bargaining ploy is really quite unique. We have been told that it was an "emotional issue" with Europeans from the beginning, and yet it only affects \$50 million worth of our trade, but it blew itself up into the biggest issue in the whole negotiation.

At the time that this ploy was being used against us, our trading partners ignored the fact that they were disregarding our demands that they change the variable agricultural levies which affected 10 times as much trade as the American Selling Price, and I am sure the committee remembers the American exporter who came here and said that the American Selling Price was "a paragon of virtue" compared to the variable levy.

Prof. Stanley Metzger as he then was—he is now Chairman of the Tariff Commission—examined the ASP negotiations in 1967 and speculated that the ASP issue had been raised to avoid reduction of 50 percent in the tariff in the course of the negotiations in Europe.

As it turned out, he was very shrewd in his speculation, for the deal as finally negotiated was a 50-20-percent deal in which they reduced significantly less than 50 percent.

I would like now to turn to that 50-20-percent deal and comment on it a bit with the committee's permission.

The Trade Expansion Act provided a very sweeping authority to cut tariffs. However, there was no authority to deal with methods of valuation. There was doubt about this at the first, but ultimately the trade negotiators acknowledged they had no authority to go ahead, but in an apparent effort to justify their negotiating an agreement outside their statutory authority, they made a series of promises to the Congress and to the industry, and I would like to recall those promises.

The Congress was told that there would be a "separate" agreement, it would be "a self-contained, self-balancing agreement which the Congress would be free to consider on its own merits without constraint." We were also told that this "separate" package would not be connected with large areas of tariff cuts within the Kennedy round. Because then it would be a fait accompli and then we would be holding a gun at the head of Congress in effect, saying, "if you don't do this, you endanger this great negotiation." The separate package was to be reciprocal. It was also to be supported by separate consideration for the benzenoid industry.

In fact, Mr. Chairman, the negotiators have done precisely the opposite of what they promised. From the outset the Common Market insisted that it was unwilling to make any concessions for the American Selling Price. So it was necessary to put together a deal in which there would be no extra consideration and yet at the same time it would have an appearance of a "separate" package.

This was done by negotiating what Mr. Turchan called a patently unreciprocal 50-20 percent deal on chemicals in the Kennedy round, and this permitted the Europeans to load, to add to the "separate" package the other 30 percent which should have been in the Kennedy round.

This package is in no way separate. It is inextricably tied up with the chemical negotiations in the Kennedy round and not supported by any independent consideration for the benzenoid industry. It merely purports to return to us the 30 percent for which we have already paid in the Kennedy round.

Moreover a part of the actual Kennedy round concessions themselves, apart from the separate package, are tied into this separate package. The concessions of Austria, Finland, Norway, and Sweden partly are tied to the implementation of the separate package.

Thus, to use our negotiators' own words, they have adopted a "gun to the head" approach by presenting to the Congress what we believe is a fait accompli, and we are asked to choose between an unreciprocal 50-20 deal negotiated in the Kennedy round or the separate package, both of which are injurious and unreciprocal.

In order to justify the separate package, our negotiators have come up with a rationalization as to how this could be justified as a balanced deal. To do this they had to discard the linear reduction theory on which the Kennedy round was premised and had to develop a new theory to justify a 50 percent cut for a 20 percent cut.

Their rationalization, the balanced deal theory, is on the principle that because our chemical exports are three times as great as chemical imports, we actually come out ahead when we cut more than the Europeans do because you weigh the cuts by the volume of trade.

The logical extension of this obviously is that if they cut 50 percent, we ought to cut 150 percent, we ought to pay them 50 percent of our percent duty every time they send an import into this country. This is a unique theory and seems to have been invented solely for the EEC and U.K. and applied only to the "separate" package. It doesn't apply across the board in other areas where the trade balance is the other way around. It doesn't even apply to other countries who have a similar chemical trade balance.

Our negotiators balanced deal theory does not take into account the key issue of reciprocity which is what is the effect of the trade of the cuts on our trade in the future. The Government speaks of a fair and balanced deal, but it has presented no figures or meaningful study here to show what the future effect of this trade cut will be.

Now, as if the 50-20 percent were not enough, there is still another reason for European pleasure at the agreement that has been negotiated. The 20 percent cut accepted by the United States in fact means that in four of the Common Market countries duties paid by chemicals will actually be higher after the 20 percent cut than they were before the Kennedy round.

We have taken the figures from the Commerce clearinghouse which reports EEC tariff figures, the table appears on page 25 of our statement, and I would like to give a copy to the reporter.

(The table follows:)

Sectors	Current tariff rates in percent				Common external tariff		
	France	Italy	Benelux	Germany	Now	20 percent Cut ¹	Jan. 1, 1972
Chemicals.....	14.0	14.5	10.3	11.5	13.7	11.7	² 7.1
All industry.....	14.4	13.8	11.2	11.0	12.8	10.7	7.5

¹ The heading "20 percent cut" is misleading. The reduction from the common external tariff (13.7 to 11.7 percent) is only 14.6 percent reduction. The French and Italian reductions are 16.4 and 19.3 percent respectively, and, as stated above the German and Benelux tariffs actually rise by 1.7 and 13.6 respectively.

² The Jan. 1, 1972, rate for chemicals assumes implementation of the "separate package."

Source: CCH Common Market Reporter, vol. II, par. 9227 (April 1968); from data released by the EEC Commission.

Mr. BARNARD. It shows that on July 1 this year, next Monday, the average German chemical tariff after the 20-percent cut will rise from 11.5 percent to 11.7 percent. For the Benelux countries, the chemical duty will actually rise from 10.3 percent to 11.7 percent, an increase of 13.6 percent.

Thus, despite the 20-percent reduction in the common external tariff which will occur on July 1, the duty on U.S. chemicals entering Germany and the Benelux countries will be higher than it was before.

This is particularly significant when you consider that 70 percent of the U.S. chemical exports to the EEC go to these four countries and about one-half of our chemical exports to the EEC and the EFTA countries combined go to these four countries.

I think the question we put to the committee is: What kind of reciprocity is it when we reduce our tariffs 30 percent in return for an actual increase in the duty in our principal markets abroad.

This brings me to the separate package. As has been pointed out, the separate package provides for further reductions in excess of the 50-percent reductions made in the Kennedy round. These reductions result from the adoption of converted rates which were not equivalent and from the adoption of the ceiling rates which Mr. Gerstacker referred to in the chemical area; all this, as Mr. Gerstacker said, without meaningful trade opportunities being created for the American industry.

I would like to discuss the details of conversion with you because it is a matter that requires really very great study, but I will not do so. I will simply say that the conversion was done as a simple arithmetic operation. The Tariff Commission took the amount of duty on American selling price products on imports, calculated what rate of duty would generate the same amount of money, and said that this was the converted rate.

The Commission acknowledged that this was not equivalent protection. Indeed, the Commission said, and I quote:

* * * no schedule of converted rates could be devised which would provide for future imports "protection" equivalent to that afforded by the ASP system.

Now the inequivalence of this conversion has to be considered in two areas; one on individually named products and the other in the baskets.

Just a word on the individually named products. There the conversion was done more accurately because they were individual products

and price data was more accurate. They were equivalent as of 1964, but of course depending on the extent of price erosion the differences in prices and transactions between foreign parent and domestic subsidiary, whatever equivalence there was in 1964 disappears rapidly.

But I want to comment a little bit more on the baskets, for here the conversion was, if I may use a lawyer's word, inequivalent per se. It was just inequivalent in the way it was done.

I would like to emphasize also why these baskets are important and why I am saying this: 95 percent of the benzenoid products produced commercially in the United States depend on the baskets for their protection.

The special trade representative recognized their importance when he said that the baskets were the "key to the future." Yet it is in the basket rates that the conversion was the most inequivalent and it was because the Commission did not distinguish between competitive and noncompetitive products.

A competitive product is one produced in the United States and a noncompetitive product is one not produced in the United States.

Obviously the American selling price evaluation is applicable only to the product produced in the United States and not to the product not produced in the United States. Therefore, in measuring the equivalency of protection, you would look only to the converted rate for the products produced in the United States because that is the area in which the protection is relevant.

Yet the instructions of the special trade representative to the Tariff Commission specifically prevented it from making a distinction between competitive and noncompetitive products in the basket even though the Commission said that this would provide a more equivalent degree of protection.

What happened under these instructions was that in the baskets the competitive and noncompetitive converted rates were averaged together and since the competitive rates were higher and the noncompetitive rates were lower, the net effect was to raise the duty on noncompetitive products and lower the duty significantly on competitive products.

This was so far as competitive products are concerned, products produced in the United States, a significant unilateral tariff reduction, and I would like to give you an example of it from the Tariff Commission's own data.

The Tariff Commission gave us its data which showed that the average converted rates for dyes imported in 1964 in basket 406.50 was 72 percent, while the average converted rate for noncompetitive dyes was 40 percent which was the basic rate under that item.

By averaging the competitive and noncompetitive together, the apples and the oranges, the Commission came up with a weighted average of 48 percent for the basket category; for noncompetitive that meant it would raise from 40 to 48, but for the competitive products which are the ones that concern us it was a unilateral decrease of 33 percent, from 72 percent to 48 percent.

We have taken the Commission's own figures for six of the important baskets—the table appears on page 36—and calculated the amount of unilateral tariff reduction from this method of converting in the baskets. It shows unilateral tariff reductions from 14 to 44 percent.

(The table referred to follows:)

[In percent]

TSUS		Converted ad valorem rate on competitive products based on Tariff Commission data	Tariff Com- mission converted rate	Unilateral tariff reduction
403.60	Intermediates.....	42	36	14
405.15	Pesticides.....	39	25	29
405.40	Plasticizers.....	53	36	32
406.50	Dyes.....	72	48	33
406.70	Pigments.....	77	43	44
408.60	Flavor and perfume materials.....	64	54	16

Mr. BARNARD. These are figures based on the Tariff Commission's own data. The industry data would show even greater reductions. Mr. Gerstacker commented on the impact of the ceiling rates, and I would now like to turn to that because it was the ceiling rates we ended up reducing the tariffs more than 50 percent.

Since I have just commented on the basket rates, I would like to continue on that. Surely the standard to judge what the cut was is what would be a reasonable converted rate on the competitive products.

When the special trade representative says that the baskets were cut less than 50 percent, he is using the inequivalent rate that is the average rate which already incorporates a unilateral tariff cut on American produced products.

Since the special representative prohibited by his instructions the Tariff Commission from taking into account the effect of the distinction between competitive and noncompetitive products, the Government, in arguing that this was less than 50 percent cut, is lifting itself by its own bootstraps and measuring the cut by the inequivalent rate rather than the proper rate which is the rate for competitive products.

If you use that rate, that is, the Tariff Commission's converted rate for competitive products, you will discover that the cuts in the basket are greater than 50 percent.

We have prepared a table that appears on page 38 of our statement showing that, using this standard, the rate baskets were cut from 57 to 69 percent and this is in this area that the special trade representative said was the key to the future.

(The table referred to follows:)

[In percent]

TSUS		Tariff Com- mission converted rate for competi- tive imports	STR table 10 final ad valorem equivalent	Total reduction
403.60	Intermediates.....	146	20	57
405.15	Pesticides.....	145	15	67
405.40	Plasticizers.....	161	20	66
406.50	Dyes.....	72	30	59
406.70	Pigments.....	77	30	61
408.60	Flavor and perfume materials.....	165	20	69

¹ Tariff Commission's converted ad valorem rate for competitive products adjusted for the specific duty in order to reflect the ad valorem equivalent.

We find it hard to understand the rationale which leads to a conclusion where duties on noncompetitive products are raised and those on competitive products are lowered.

Now, may I just say a word about the specifically named products. The Government submitted a table, table 10, which showed the tariff cuts, but it did not show the percentage of cut. We have taken table 10 and have taken the liberty of adding a new section to it, or a new line which calculates the amount of duty cut on named competitive products shown on this schedule, and I would like to submit a copy of that table for the record. It is at the back of the book.

(The table appears as Exhibit 5 at the end of Mr. Barnard's prepared statement.)

The CHAIRMAN. All of the appendices will be included with your statement.

Mr. BARNARD. Thank you, sir.

This table shows that of the 61 TSUS items covering specifically named competitive products, 42 have a total reduction in excess of 50 percent; 23 in excess of 60; nine in excess of 70; and three in excess of 80.

Now, there were three nonchemical concessions incorporated in the separate package, and I would like to say a word about those if I may.

The first related to automobiles. France, Belgium, and Italy agreed to "set in motion the necessary constitutional procedures in order to adjust the modalities" of their automobile taxes so as not to discriminate against U.S. automobiles.

There are two comments to be made on that. The United States has taken the position that this discrimination is illegal and under section 252 of the Trade Expansion Act we are not supposed to negotiate and pay for such illegal concessions.

Secondly, I am not sure what has been agreed to. They have agreed to set in motion the constitutional procedures. Perhaps that means dropping a bill in the hopper.

Third, and this is, this has just come to my attention, as of January 1 this year, I learned from an airgram of the State Department that, the French Government has increased its registration tax on high horsepower cars, making a higher rate on the higher horsepower cars than the lower, and the dividing line happens to be the largest car that is made in France, so that we have the highest tax on the larger cars most of which are the U.S. cars.

The subject of the airgram, dated January 17, 1968, is: "Protectionism: Automobile Registration Tax Revised to Detriment of U.S. Automobiles."

I would like to submit a copy of that for the committee's files, Mr. Chairman, with your permission.

The CHAIRMAN. Without objection, it may be included in the committee's files.

Mr. BARNARD. May I call your attention to the last paragraph in which the wire says:

The introduction of discrimination against larger vehicles in the registration tax is particularly surprising in view of the French promise at the Kennedy Round to eliminate such discrimination in the vignette in return for U.S. action on ASP.

Then he calls for action on this subject.

The second concession is a reduction in the preference of U.S. tobacco by the United Kingdom by 25 percent. U.S. tobacco sells at a price considerably higher than the price of tobacco produced in the Commonwealth, and the U.S. tobacco sells on quality because they need the tobacco to give the right flavor to the cigarettes and cigars. Prior to sanctions we sold on the basis of quality. After the sanctions on Rhodesia came, of course, our exports to the United Kingdom rose rapidly. During the testimony in the first days the Department of Agriculture witness testified that if the sanctions end, we would hardly be able to compete again with Rhodesian tobacco and he would expect that our exports to the United Kingdom would drop to about half of what they were and then we would be back where they would buy on the basis of quality.

The adjustment in the preference in this situation, therefore, really is a concession to the United Kingdom cigarette manufacturers rather than to the U.S. industry.

Finally, the third separate concession related to the agreement by the Swiss not to restrict imports of prepared or preserved fruits which contain corn syrup.

We asked the Department of Agriculture and the National Canners Association whether the Swiss were prohibiting such shipments and were told that they were not. Indeed, last year about \$2 million worth of fruit containing corn syrup was shipped into Switzerland. Maybe what the Swiss are doing is not offering a concession but making a rather unpleasant threat that they will stop these imports unless the "separate" package is approved. At the moment the shipments are still going in.

The government has emphasized that if the separate package is approved, there will be a 30 percent additional cut in the European chemical tariffs. As previous witnesses have said, we believe we have already bought and paid for that 30 percent, but nonetheless we went to the industry and we said:

Assume that the 50-20 is a fait accompli and there is nothing you can do about it. Then face this issue. Is the 30 percent reduction in European chemical tariffs worth the abolition of ASP and the further reductions in excess of 30 percent which are required under the separate package?

They made a study of this, and the answer was, "No, it is not worth it."

Even if you were to regard the separate package as a separate package, which we think it is not, the domestic industry is clear that it would cause more harm not only to the industry and its workers, but to our balance of payments than we would get good out of it.

I am not saying that we would not get something out of the 30-percent cut abroad. Obviously we would, but the benefits would not outweigh the harm suffered. The answer is easy. As Mr. Gerstacker said, because of our inherent cost disadvantage, the further cut by foreign nations would not generate as much trade as the further duty reductions would generate imports into this country.

This brings me to the third point made by Mr. Turchan concerning the reasons why these deals lack reciprocity, that is the border tax, export rebate mechanism. Mr. Gerstacker and Mr. Turchan have already commented on this and the way it works.

I would like to illustrate for you the way this works on the chemical industry, and we have prepared two charts which we hope will illustrate this point for you. The first chart shows the German barriers to U.S. chemical exports.

(Table I, in support of chart I, appears in Mr. Barnard's prepared statement.)

Mr. BARNARD. In the first column it shows the situation as it existed prior to January 1 this year. At that time, taking the figures published

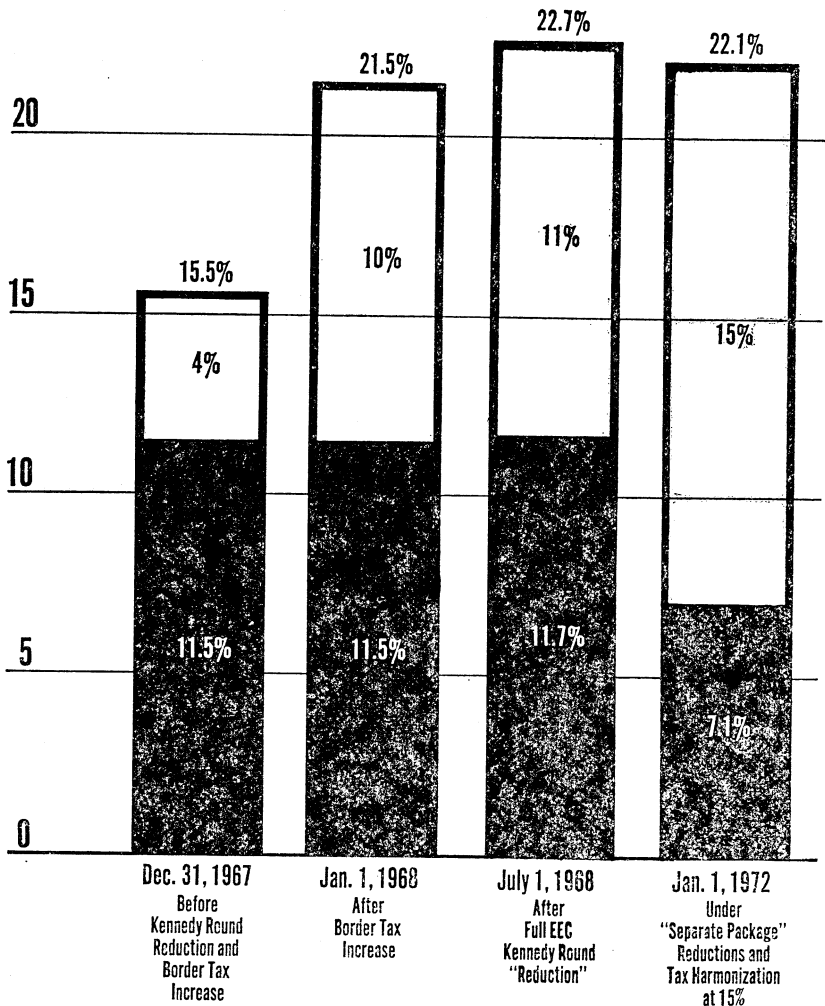
Chart I

German Barriers to U.S. Chemical Exports

% of c.i.f. Value

□ Border Tax

■ Tariff



in the Commerce Clearing House, the German chemical duty was 11.5 percent and the border tax was 4 percent, so that the total barrier into Germany for our exports was 15.5 percent.

As of January 1, 1968, as shown in the second column, the German tariff remained the same. There was no adjustment in tariff but the border tax increased 10 percent so that the total barrier to U.S. exports was 21.5 percent.

On July 1, 1968, the Germans will adjust to the common external tariff and make their full 20 percent Kennedy round reduction on chemicals. As I said earlier, this tariff reduction actually results in an increase in tariff, so that this tariff will go from 11.5 to 11.7 percent, and the border tax will increase to 11 percent with the result that the total barrier is 22.7 percent.

I think it is very important to emphasize here that what has happened in these three columns is that the barrier to our exports has increased significantly. The German Government says that the burden on the domestic industry from the turnover tax remains the same because it generates the same amount of revenue.

We have put in a fourth column on this chart, Mr. Chairman, which assumes that the "separate" package has been approved, and that the Germans have gone ahead and harmonized their turnover taxes as is contemplated by the Common Market. The chemical tariffs would then fall to 7.1 percent. The border tax will rise to 15 percent. The total barrier will be 22.1 percent compared to 15.5 percent before the Kennedy round.

That is only part of the story. We would like you to look at the second chart that we have which shows the U.S. barrier to chemical exports and the impact of the border tax.

(Table II, in support of chart II, appears in Mr. Barnard's prepared statement.)

Mr. BARNARD. The first column on chart II shows the situation on December 31, 1967. Using the Government's figures, the U.S. chemical tariff was about 15.9 percent. At that time the German Government was giving a 4 percent export rebate, or exoneration from tax. This offset to that extent the American tariff. The net result was what we call an effective tariff of 11.9 percent.

As of January 1 we had our first cut in tariff and it dropped to 14.4 percent. The German rebate exoneration went up to 10 percent the effective tariff was 4.4 percent. On July 1 the rebate will rise to 11 percent so that the effective tariff drops to 3.4 percent.

On January 1, 1972, when there is full harmonization and the rebate exoneration equals 15 percent, we will have a negative effective tariff of minus 5.9 percent.

Now, when you think about it the value added tax is probably one of the great fiscal inventions of the last couple of decades. It is very clearly a trade regulating matter but by calling it a tax you do not include it in your tariff negotiations and yet it affects trading, stimulates exports, and bars imports. It is quite an invention. But if you look at this thing the way we believe is the only proper way, and include the impact of border tax, export rebate in tariff, the results are quite startling.

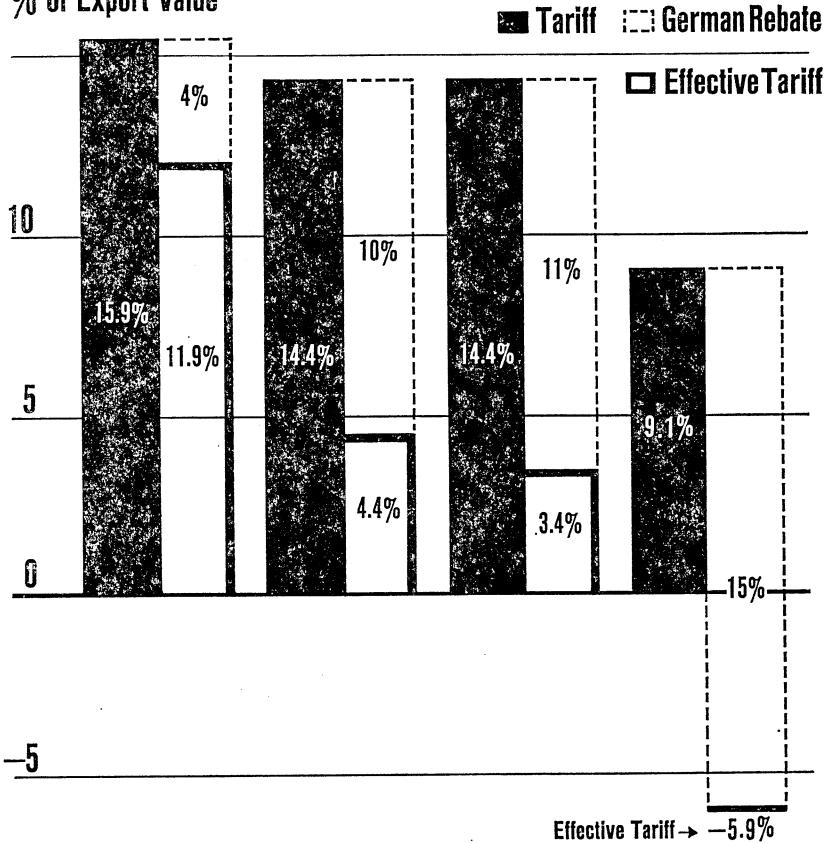
The Government submitted a table, table No. 8, which compared U.S. EEC tariff rates on a number of large volume benzenoid products, pointing out, as they saw it, that our tariffs were much higher than those of the Common Market.

We have taken the liberty of borrowing that table, table 8, and of adding a new column which shows what the impact of the border tax

Chart II

U.S. Barriers to German Chemical Exports

% of Export Value



Dec. 31, 1967
Before
Kennedy Round
Reduction and
Export Rebate
Increase

Jan. 1, 1968
After First U.S.
Tariff Reduction
and Export Rebate
Increase

July 1, 1968
After Further
Export Rebate
Increase

Jan. 1, 1972
After Full U.S.
Kennedy Round
Reductions and
EEC Tax Harmonization
at 15%

Table 8

COMPARISON OF U.S. AND EEC TARIFF RATES FOR
LARGE-VOLUME BENZENOID INTERMEDIATES

TSUS No.	Intermediate	Pre-KR Statutory Rate	ASP Package Rate	Representative unit value, (\$ per lb.)	Ad Valorem Equivalent ASP Package Rate (%)	EEC Tariff Rate under ASP Agreement (%)	After adjustment for 15% Border Tax and Export Rebate	
							Effective U.S. Tariff	Total EEC Trade Barrier
403.08	Phthalic anhydride	2.4¢ per lb. + 14% ad val.	1.2¢ per lb. + 7% ad val.	\$ 0.09	20.3%	9%	5.3%	24.0%
403.10	Styrene	2.8¢ per lb. + 18% ad val.	1.4¢ per lb. + 8% ad val.	0.08	25.5	4	10.5%	19.0%
403.40	Phenol	3.0¢ per lb. + 17% ad val.	1.5¢ per lb. + 12% ad val.	0.10	27.0	2	12.0%	17.0%
403.60	Ethylbenzene	3.5¢ per lb. + 25% ad val.	1.5¢ per lb. + 18% ad val.	0.04	55.5	4	40.5%	19.0%
"	Monochlorobenzene	"	"	0.06	43.0	9	28.0%	24.0%
"	Dodecylbenzene	"	"	0.10	33.0	6.5	18.0%	21.5%
"	Nitrobenzene	"	"	0.09	34.7	8	19.7%	23.0%
"	Dimethyl terephthalate	"	"	0.21	25.1	7	10.1%	22.0%
"	Aniline	"	"	0.12	30.5	8	15.5%	23.0%
403.75	Hexamethylene adipimide	3.0¢ per lb. + 20% ad val.	1.5¢ per lb. + 15% ad val.	0.30	20.0	9	5.0%	24.0%
403.80	1,6-Hexanediamine	3.5¢ per lb. + 25% ad val.	1.5¢ per lb. + 16% ad val.	0.54	19.0	8	4.0%	23.0%
"	Adipic acid	"	"	0.22	23.1	8.5	8.1%	23.5%
"	Cyclohexane	"	"	0.04	53.5	0	38.5%	15.0%

Source: Supplementary Agreement Relating Principally to Chemicals

is. We have added the border tax as a barrier, included it in the barrier abroad, and we have subtracted it from our tariff because it is offset to our tariff.

The results then are startling. Instead of having a table showing the U.S. rates are considerably higher than those of the Common Market, the revised table shows that their barrier averages out about a third higher than ours. Instead of our barrier being 11 percentage

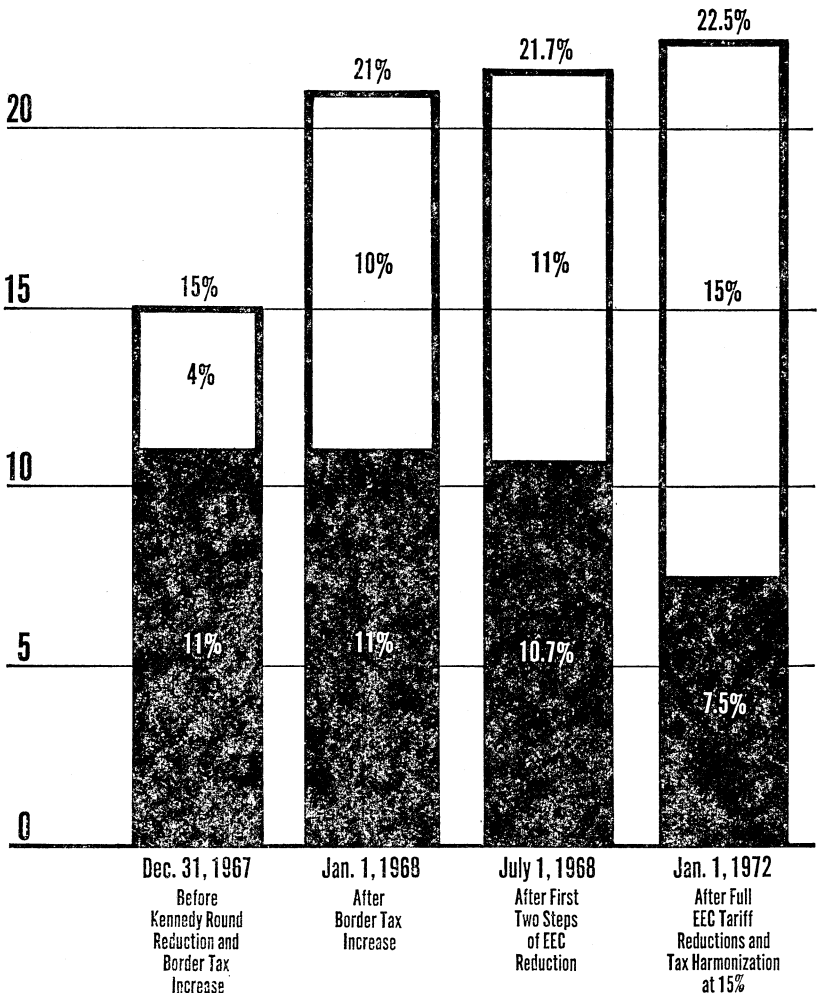
Chart III

German Barriers to U.S. Exports

% of c.i.f. Value

□ Border Tax

■ Tariff



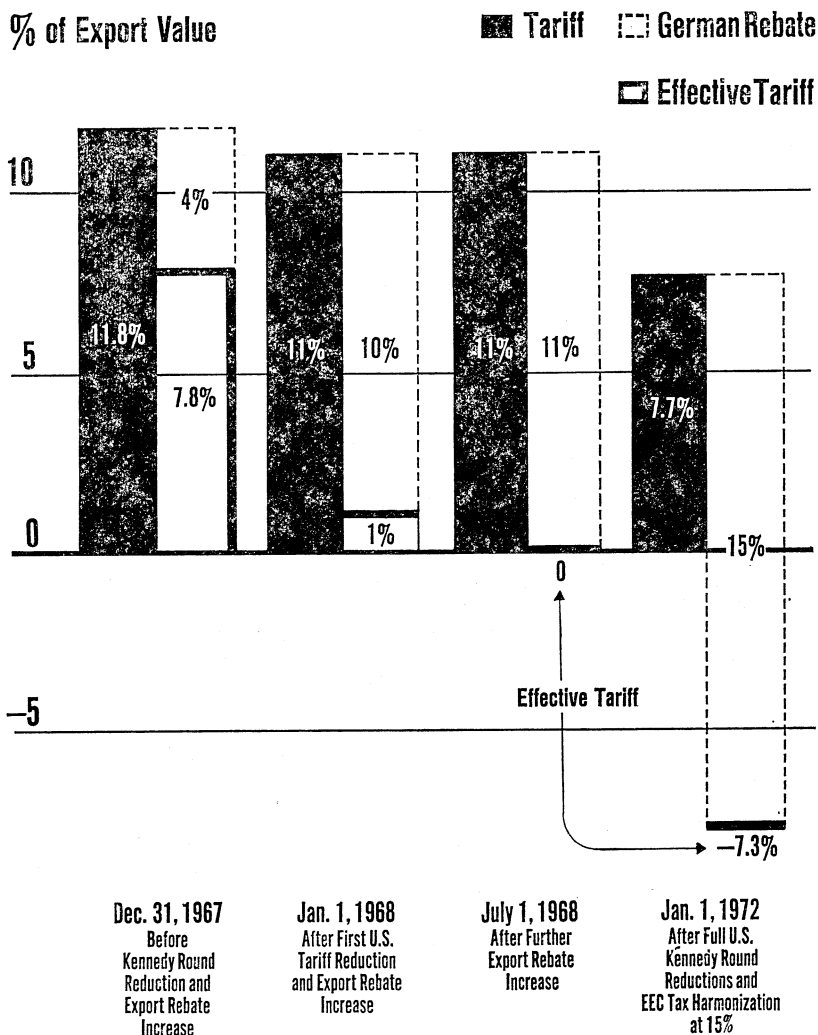
points higher on 13 products as they put it, their barrier is 5 to 19 percentage points higher than ours for 10 of the 13 products.

This is not just happening to the chemical industry, as many witnesses have pointed out before this committee, and we have prepared two charts showing the impact of the border tax on U.S. trade generally.

(Tables III and IV, in support of charts III and IV, appear in Mr. Barnard's prepared statement.)

Chart IV

U.S. Barriers to German Exports



Mr. BARNARD. They appear in our statement following page 57 of the prepared text, Mr. Chairman. The effect of this on our balance of trade has really been pretty startling. I am sure the committee is aware that in the first quarter of 1968 the German exports to the United States rose a phenomenal 50 percent over their exports in the first quarter of 1967 and I have just seen figures which indicate that the chemical exports to the United States from Germany rose almost three times as fast as the chemical exports from Germany to other countries of the world.

I have stressed Germany, but this is not just a German problem. Within a couple of years all of the Common Market countries will have a value-added turnover tax and it will be harmonized at roughly 15 percent. In the meantime Belgium, Netherlands, Italy, and Austria because of the impact of the Germany turnover tax have adopted raises of their own border tax and export rebates because of the effect on their trade.

But this is not just a Common Market matter. Denmark, has adopted a value added tax and the United Kingdom, and Sweden are contemplating adopting a similar turnover tax. We have been negotiating on these turnover taxes since 1963. I guess the only mystery is how we felt we could have a reciprocal agreement without dealing with a disadvantage to our trade caused by these turnover taxes.

We do have a law on our books which would enable us to at least offset part of the effect of these turnover taxes. That's the countervailing duty statute. Section 303 of the act requires countervailing duties to offset export bounties granted by our foreign trading partners.

We have a memorandum on this. We believe that this is applicable to the value added taxes.

The Treasury Department has administratively decided that it is not applicable and has advised this committee there were decisions in support of its position. We know of no such decisions. It was suggested at one time that a memorandum be submitted.

We would urge that such memorandum would be helpful to seek. In our view this statute is applicable to these turnover taxes and should be applied. I ask that that memorandum be included in the committee files.

The CHAIRMAN. Without objection it will be included in the committee files.

Mr. BARNARD. As Mr. Turchan said, we support this committee in its concern over our balance of payments and balance of trade and we were pleased to see the President on January 1 say that our trade is at such a disadvantage as a result of these border tax-export rebate methods that he was calling for immediate high consultations and was preparing proposed legislation.

But this is on the proviso that the Congress impose no border taxes, in 1963. Five years went by and nothing happened. On January 1 the President called for urgent action. Five months have gone by and nothing has happened.

Indeed, our trading partners have persisted in raising their border taxes and export rebates while these talks have been going on. The only offer of assistance that we have received is an offer to accelerate for 1 year certain of the Common Market and United Kingdom tariff cuts.

But this is on the proviso that Congress imposes no border taxes, import surcharges, or quotas and that they approve the "separate" package.

Passing for a moment this effort to dictate to the Congress, I would like to point out to you why we say this acceleration is a mere sop. The acceleration proposed would amount to about 1 percent and would affect approximately 60 percent of the U.S. exports to the Common Market.

The Common Market estimated that this acceleration would increase our exports by about \$80 million. If it is true that a 1-percent cut on 60 percent of our trade would increase it by \$80 million, how much has it been decreased by an increase in the border tax of 7 percent against our trade.

We have read the U.S. delegation's paper to the GATT on these border taxes and we applaud the analysis of the disadvantages to our trade made in that paper. It is obvious that there is no need for further analysis. Now is the time for action and that action certainly should not be a long drawn out negotiation. It is for this reason we propose, as Mr. Turchan has said, that we adopt a border tax which under the existing GATT rules we think could be at least 5 percent and this compares with the Common Market's 15 percent.

Second, we propose that the countervailing duty statute be applied against these export rebates. It would fall only on those countries that grant them and not on our other trading partners.

And, third, if you do adopt a border tax, then it would be proper in negotiation or any agreement to include our countervailing duties, and the border taxes, and export rebates in return for our partners agreeing to eliminate the disadvantages their border taxes, export rebates, and other similar devices impose upon our trade.

This would give us equitable treatment and in the meantime by adopting the statute we would have a bargaining lever to lead to a reasonable reciprocal arrangement to get rid of our trade disadvantage.

I would like now to comment just a minute on the economic effect of the Kennedy round and the "separate" package. The Government has presented you with no real facts on the economic impact. They have given you two things.

One, they have quoted a lot of statistics on the chemical industry, one of which I commented on at the outset. In a very real sense these beg the issue. We acknowledge that we are a competitive, efficient industry. The real issue is what is the probable economic impact of these deals on the industry, its workers, U.S. balance of trade, and U.S. balance of payments.

The Government has given us some expressions of belief. They believe that there would not be a significant adverse impact. They believe that adjustment assistance could take care of it. They believe

that the large companies could shift and reemploy displaced workers. They recognize that smaller firms would be hurt.

This is hardly reassuring. The Government has very little to say about the future effect except to say, "That the trade will be expanded."

However, on questioning from one of the members of this committee the Government said that this bill was not part of the balance-of-payments legislation. This surely is significant for if the Government had thought that trade would be increased significantly in favor of the United States they would have urged that this would help correct the balance-of-payments situation.

I think it is interesting that our European friends analyze this deal just about the same way we do from where they are sitting. We have a couple of quotations in our main statement appearing on 70 and 71. I just want to refer to two of them. I want to refer to Mr. Fitzpatrick in writing in the "Chemical Age." He made a series of points which are very telling.

He says:

"The effects of EEC's cuts will be marginal, of Britain's relatively small . . ."

He goes on to say that the real effect will be on the United States where he says that the effect will be, to use his words, "revolutionary", and he is making these remarks concerning the low cost, capital intensive, high tonnage materials.

When he comes to the area of plastics and resins he says how far the Europeans will be able to take advantage of this will depend on their level of surplus capacity.

Mr. George Hegeman of Arthur D. Little in a seminar in Germany made almost the same remarks. He forecast that if the American selling price were eliminated imports would rise and that the American chemical industry would be driven to further investments abroad to remain competitive, but he said this time it will be not just to supply foreign markets but they will be investing abroad to supply the U.S. markets.

We asked our members to undertake a study in detail so that we could present a reasoned appraisal to the committee of this deal. We asked them all to fill out a form based on price and cost data taken from their books.

We have set forth in our statement, and I give to the reporter a copy, what we call form A which shows the prices, profits, application of duty, the effect of the Kennedy round and the "separate" package. (See p. 4534.)

We made these calculations on two assumptions: first, that the entire duty cut would be passed along by the foreigners in reduced prices, and, second, that the American producers would not lose their share of the market.

In fact these two assumptions are contradictory. If the Europeans do not pass along the full duty cut they will keep the additional amounts in their own pocket for their commercial purposes elsewhere. On the other hand we do not believe that in face of these low prices we would be able to hold our share of the market and, as you will see

from the figures, we would expect products to be disappearing from the American manufacturer's stable of products.

We got this information in three areas from companies where we were able to get it on a reasonably uniform and comparable basis and we got it on sufficient volume of trade that we think that the figures are meaningful to you and we have summarized these figures on our form B, which appears opposite page 78 in our statement and I will give a copy to the reporter. (See p. 4535.)

This form shows for three of the important baskets what the impact would be. On sales in the intermediate area, which is a large area of intermediate products where we had figures for \$125 million worth of sales, the pretax profit as a percent of sales before the Kennedy round was 9 percent.

Under the Kennedy round our members calculate their sales would drop \$9 million and the pretax profit would drop to 2 percent. Under the separate package the total loss of sales revenue would be \$11 million and the pretax profit would drop to a pretax profit of only two-tenths of 1 percent.

In the dye category involving almost the same volume of sales the pretax profit would be 12 percent before the Kennedy round, 0.1 percent under the Kennedy round, and a loss of 6 percent under the "separate" package.

For pigments, where we had \$59 million worth of sales to study, the pretax profits pre-Kennedy round were 15 percent. Under the Kennedy round they fall to 1 percent, under the separate package to a loss of 5 percent. All of this without meaningful increase in export opportunities. Yet we are giving the Europeans the opportunity to either take additional profits or to decide to go for a greater share of the market.

We think that that understates the extent to which these deals will have an adverse impact on our industry.

Let me state it in another way. We have large diversified chemical companies. They will not go out of business. They will be seriously affected and they will have to adjust. They will have to stop the production of some products in the United States. This process has already begun. They will be forced to close some plants. This process has already begun. They will be forced to expand their operations abroad, as Mr. Hegeman said, and this is occurring.

On the smaller companies the effect will be more serious. Some will undoubtedly go out of business. Others will stop manufacturing and will begin importing. This has already begun. Or some will be absorbed by larger competitors.

On labor we are not saying that there will be fewer jobs next year than there are today but there will be far fewer jobs created in the American chemical industry than there have been in the past. We will not be able to make the contribution in the future as we have in the past to the 5 million additional jobs needed in this country every year. There will be workers who lose their jobs and there will be hundreds, and perhaps thousands of jobs exported abroad which would otherwise have been created in the United States.

FORM A—INDIVIDUAL PRODUCT DATA SHEET, YEAR 1964

Company name.....

Product and tariff classification	ASP (\$/lb.)	Export value (\$/lb.)	Insurance and freight (\$/lb.)	Commission (\$/lb.)	Duty per pound (\$/lb.)	Landed value, Commission paid (2+3+4+5) (\$/lb.)	Competitive margin, landed value ASP (6 minus 1)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)

I. PRESENT DUTY

_____ cents/lb. + _____ percent ASP.

II. KENNEDY ROUND REDUCTION

Present Duty Reduced 50 percent

_____ cents/lb. + _____ percent ASP.

III. SEPARATE PACKAGE

_____ cents/lb. + _____ percent of export value.

LOSS OF SALES REVENUE

IV. Kennedy round reduction: Average ASP (I, 1) or present landed value (I, 6), whichever is lower, minus landed value after Kennedy round reduction (II, 6) = _____ cents/lb. $\times$ sales (lbs. — column 2 below) = \$ _____.

V. Separate package: Average ASP (I, 1) or present landed value (I, 6), whichever is lower, minus landed value after separate package (III, 6) = _____ cents/lb. $\times$ sales (lbs. — column 2 below) = \$ _____.

Production (lbs.)	Sales		Cost of sales		Pretax profit		Kennedy round		Separate package	
	(lbs.)	(\$/lb.)	(\$)	(\$/lb.)	(\$)	(%)	Sales revenue (column 3 — IV)	Pretax profit (\$)	Sales revenue (column 3 — V)	Pretax profit (\$)
(1)	(2)	(3)	(4)	(5)	(6)	(7)				

FORM B—SUMMARY OF INDIVIDUAL PRODUCT INFORMATION
[Dollar amounts in millions]

Product group and TSUS No.	Base year				Kennedy round				Separate package			
	Sales revenue	Cost of sales	Pretax profit		Sales revenue	Pretax profit		Sales revenue	Pretax profit			
			Amount	Percent		Amount	Percent		Amount	Percent		
Intermediates, TSUS 403.48-60.....	\$125	\$114	\$11	9	\$116	\$2	2	\$114	\$0.207	0.2		
Dyes, TSUS 406.02-50.....	123	108	15	12	108	.02	.01	102	.16	16.0		
Pigments, TSUS 406.70.....	51	43	8	15	44	.4	1	41	.12	13.0		

¹ Loss.

Now the effect on the balance of payments. The chemical industry will have a balance-of-trade surplus this year, and it will not have a balance-of-trade deficit next year or the year after, but its contribution to the United States balance of trade will be seriously affected. There will be a more rapid rise of benzenoid imports than there has been in the past and the chemical industry will continue to lose its share of exports in the world market. We will be forced to invest more abroad. Exports will expand but at a slower rate and by 1975 we expect, unless something is done, that the chemical industry will be in a trade deficit.

These are not results we want but we are going to have them whether we like it or not unless something is done to correct the current situation.

Mr. Gerstacker referred to the Tariff Commission report. It is not before the committee. We asked and have asked repeatedly that the Tariff Commission conclusions and findings be put before the committee. Initially we were told that the conclusions were not meaningful without access to the confidential data. The Chairman of the Tariff Commission said they were meaningful if you understood the facts of the industry, and we had supplied the facts so we thought we could understand them. In any event, if they are not meaningful what harm is there to let them out?

More recently we have been told that the findings incorporate confidential data. We asked that this data be eliminated, expunged, and that the remainder of the findings and conclusions be released to us and put before this committee. This has not been done. The Government in its testimony described these findings and conclusions in terms that make it clear that they would be meaningful and that they could be put before us and the committee without revealing confidential information.

The Commission, according to the Government statement, gave advice as to "whether particular concessions would have an adverse effect upon domestic producers and would have a significant effect on employment profit levels, use of productive facilities."

We believe these are significant facts which ought to be before you and ought to be before us so we have a chance to comment on them.

Congressman Curtis suggested, if these were to be revealed in the executive session, as the Government has suggested, that we be given an opportunity to be present and comment. We believe this is a sound suggestion and we would certainly support any such proposal that we be given an opportunity to attend and comment.

We do not see how the Government can come here and ask for approval without giving us a chance to comment on these figures which it proposes to use.

May I say in conclusion that in our view there can be no liberalization of trade without reciprocity and there can be no liberalization of trade without requiring our trading partners to eliminate the disadvantage to our trade which comes from the export rebate-border tax mechanism which is now being imposed on us by our trading partners.

Our balance-of-trade and balance-of-payments problems will not permit us to go on trying to compete in world markets with one hand

tied behind our back. The issue which we present to this committee is not one of free trade versus protectionism. The issue which is posed is whether the Kennedy round and the chemical deals are such that we can afford liberalization without reciprocity and without equality of tax treatment for U.S. exports, whether we can afford to liberalize trade when our trading partners are not doing so.

We believe the answer is "No."

We appreciate the opportunity to present this position to the committee.

(Mr. Barnard's prepared statement and exhibits referred to in his oral statement follow:)

STATEMENT OF ROBERT C. BARNARD, COUNSEL, SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION AND DRY COLOR MANUFACTURERS ASSOCIATION

My name is Robert C. Barnard. I am counsel for SOCMA. My firm is also counsel for the Dry Color Manufacturers Association (DCMA), an association of 23 manufacturers of dry colors used in plastics, inks, rubber, linoleum, paints, etc. With the Committee's permission I would like to submit a list of members for the record. In the interest of consolidating statements, as the Committee has requested, my statement is on behalf of both SOCMA and DCMA.

THE "CREDIBILITY GAP"

Before getting into my testimony, I could not help but note during the course of these hearings that a number of members of this Committee have commented upon the differences in the evaluation of import problems with respect to particular products which they got from industry as compared to those that they got from the Government witnesses. It was noted that there is apparently a "credibility gap". I doubt that this "credibility gap" will be more apparent anywhere than in this discussion of American Selling Price (hereinafter referred to as "ASP").

During the course of my testimony I will refer to several of the more salient examples of this "credibility gap". However, I would at the outset like to point out one of them which deserves particular comment and which does not fit in the rest of my testimony.

On page 21, the Government's testimony contains the following statement:

"The competitive strength of the U.S. chemical industry is nowhere better demonstrated than in its large and consistently growing surplus in world trade. United States' exports of chemicals and allied products have increased steadily from \$1.8 billion in 1961 to \$2.8 billion in 1967, an increase of 57 percent or an annual average increase of 7.7 percent. During the same period imports increased from \$732 million to \$963 million, an average annual increase of only 4.7 percent."

This statement is supported by Table 9 submitted by the Government, the relevant portion of which is reproduced facing page 4 with adjustments to reflect the effect of uranium oxide imports. [Table 9 appears in Mr. Barnard's oral presentation.]

The figures contained in Table 9 are extremely misleading. The chemical figure for 1961 as published in the Department of Commerce's *United States Imports of Merchandise for Consumption—1961 Annual*, FT 110, for that year is \$390 million, not \$732 million; the published figure for 1962 is \$417 million, not \$766 million, as stated by the Government; the figure for 1963 is \$558 million, not \$714 million as stated by the Government. The remainder of the figures are the same as the figures reported by the Department of Commerce for those years.

Now we know how the Government got the figures in Table 9. From 1942 to 1960 the substantial U.S. imports of certain radioactive materials such as uranium ore and uranium oxide were confidential—presumably because of their relation to the atomic stockpile. In 1960 these figures were released and these imports were classified as metals. In September 1963, uranium oxide and a number of other products were reclassified and put into the chemical schedule. So what the Government has done is to go back and change the figures from 1961 to 1963 for the amount of duty to be paid by importers.

The interesting thing is that uranium oxide imports in 1961 accounted for \$276 million or almost 40% of the U.S. chemical import figure reported by the Government in Table 9. Since that time uranium oxide imports have declined drastically until in 1967 uranium oxide imports accounted for only \$16 million out of total chemical imports of about \$958 million.

By going back and including uranium oxide in imports for preceding years the Government has presented an extremely distorted view of what would appear to be a very minimal increase in U.S. chemical imports. All of this without a footnote of any kind to indicate what had been done.

If uranium oxide imports are excluded, the picture is changed drastically. The Government's statement would then have had to state that chemical imports increased from \$456 million (not \$732 million) to \$947 million, an average annual increase of more than 13% a year, instead of 4.7%. In other words, instead of indicating that U.S. chemical *exports* were increasing at almost twice the rate of U.S. chemical *imports*, it should have said that U.S. chemical *imports* were increasing at almost twice the rate of our chemical *exports*. When they insist upon using figures like these, and in a manner which creates a misleading impression, is there any wonder that there is a "credibility gap"?

There are a number of similarly misleading materials that have been presented by the Government, some of the more important of which we will deal with in the course of our testimony.

I. ASP AND THE "SEPARATE PACKAGE"

It is important at the outset to clarify what the issue is in view of the comment in the press and elsewhere about "ASP" and the "separate package". ASP is generally described by foreigners, and even by our own negotiators, as an outdated invidious device which the United States applies surreptitiously to raise the duties on chemicals for purposes of protecting its overgrown "infant" chemical industry. Obviously since we do not believe this to be the case, it is important to understand what ASP valuation is and isn't—why it was created and why it is still so important to the benzenoid chemical industry today. Equally important is the necessity of distinguishing ASP from the "separate package" presently before this Committee. It is not just retention of ASP, it is the "separate package" agreement and its impact on the industry and the United States.

First, what is American Selling Price valuation? It is a method of valuation under which the duty is based on a percent of the wholesale price of the comparable domestic product rather than upon the price of the imported goods as in the case of export value, more commonly used by the United States, or Brussels (c.i.f) valuation more commonly used by many of our principal trading partners. If there is no comparable domestic product, ASP valuation does not apply.

ASP vs. other methods of valuation

The principal difference between American Selling Price valuation and these other methods is that the duty is tied to prices and costs in this country rather than those abroad. ASP can be described as a most favored nation tariff—the same amount of duty is paid irrespective of where the product comes from.¹ Unlike "export value" it does not discriminate by providing low-wage countries with a tariff advantage on top of the cost advantage they already enjoy. Unlike Brussels valuation, which uses the c.i.f. value, ASP does not discriminate against a country that is further away or which has to pay discriminatory freight rates.

ASP valuation does not require an imported product to pay any more duty as the price of the import goes up or down. The amount of duty remains the same. But it does not further accentuate the cost disparity between the U.S. and foreign producers by providing imports with a tariff saving on top of the substantial cost advantage they already enjoy.

If you just stop to think about it a moment, "export" and Brussels valuation can be said to "subsidize" price cutting by imports. Under a 25% duty based on export value, the United States is in effect subsidizing 25% of any price cut made by foreign producers. For every dollar they lower their price, the United States collects 25 cents less duty. A dollar price cut costs them only 75 cents.

American Selling Price valuation should be judged on its merits as a method of valuation. Judged by objective standards it is not only an excellent basis of

¹ That rate of duty for Communist Bloc imports is, of course, higher. This is due to the rate of duty which is higher for *all* imports from the Communist Bloc, not just chemicals.

valuation, but a much better method of valuation than either "export value" or the Brussels method—

1. It is more certain;
2. More readily ascertainable by customs officials, importers and domestic industry alike;
3. Less subject to manipulation; and
4. More consistent with the purpose of a tariff in offsetting differences in production costs here and abroad.

I would like at this time to submit a memorandum on this point which evaluates ASP and other methods of valuation based upon these objective standards, and answers the criticisms made in these hearings. [The memorandum appears as Exhibit 1 at the end of this statement.]

Industry Proposed Amendments to Answer Criticisms of ASP

The criticisms of ASP valuation made by the Special Representative for Trade Negotiations seem particularly inappropriate. While we have yet to be shown concrete examples in support of their criticisms, we have responded to them. In meetings several years ago with the Bureau of Customs and the Office of the Special Representative and in subsequent correspondence, we pointed out that to the extent that there were any problems we were willing to support appropriate amendments to remove them. However, they were much more determined to eliminate ASP valuation than to cure any alleged defects in it. I would like to submit our correspondence on these points for the record. [The correspondence appears as Exhibit 2 at the end of this statement.]

But we have no cure for the main criticism of ASP made by the Special Representative—simply because it is invalid! The Special Representative maintains that the most sinister thing about ASP is that by raising the ASP the domestic industry can raise the amount of duty paid by importers and thereby obtain a competitive advantage. I can assure him that the domestic industry would hardly risk fixing prices in violation of the antitrust laws in an effort to raise the amount of duty to be paid by importers.

Even if they did, it would not make the domestic industry competitive with imports—indeed, it would make it less competitive. Assume, for example, a product with an ASP of \$1.00 and a 40% ASP duty (the highest ASP dye duty in effect at the time of the Kennedy Round). If the product sold in the U.S. for 99c, 40c would be duty, but it would still have a 1c competitive advantage over the domestic product. If domestic producers raised the ASP to \$1.10, the import would have to pay 4¢ more duty, thereby raising its price to \$1.03. But, instead of decreasing the competitive advantage of the import, the competitive advantage would actually increase from 1c (99c vs. \$1.00) to 7c (\$1.03 vs. \$1.10). The reason is simple—the tariff only offsets 40% of any increase in the domestic price.

Reasons for adoption of ASP valuation

Contrary to some folklore, ASP valuation was not developed for purposes of protecting the "infant" domestic chemical industry. In 1922, this Committee reported a bill, later to become the Fordney-McCumber Tariff Act, which established American Selling Price valuation for *all* imports. This Committee stated:

"There are two chief considerations which influenced the committee to recommend the adoption of the American valuation basis:

"(1) The assessing of duties on home values will to a large degree eliminate fraudulent undervaluation, a long-continued practice.

"(2) The assessment of ad valorem duties in American values will equalize the amount of duty to be collected on similar articles from various countries, regardless of variation in foreign market values and fluctuations in currency."¹

On the latter point, the Committee pointed out:

"An ad valorem duty assessed on a low foreign value affords little or no protection. Likewise, an ad valorem duty assessed on a high foreign value may make the duty much larger than is necessary. An ad valorem duty assessed upon foreign values affords the largest measure of protection where protection is least needed and gives the smallest degree of protection where protection is needed the most."²

¹ House Committee on Ways and Means, *General Tariff Revision*, H.R. Rep. No. 248, Part I, 67th Cong., 1st Sess. 21 (1921):

² *Id.* at pp. 21–22.

The Senate subsequently limited ASP valuation to benzenoid chemicals and to the flexible tariff provision where "foreign valuation proves to be an uncertain basis for the levying of ad valorem duties."¹ The Congress was intensely aware that foreign prices provided a particularly uncertain basis of valuation for benzenoid chemicals because of the operation of the European chemical cartel, led by the Germans. The Committee reports and debates in 1922 and 1930 are replete with references to this cartel and its predatory pricing practices. In 1930 floor debates, Senator Goff pointed out:

"Under *foreign valuation* the European dye cartel can make selective attack on the American coal-tar chemical industry and eventually drive American manufacturers out of business. *The cartel can fix the foreign valuation on any group of dyes so low that the American manufacturer will be unable to compete, regardless of how high the rates of duty may be.*" 71 Cong. Rec. 3011 (Feb. 4, 1930). [Italic added.]

Thus, the need for a certain and effective basis of valuation to deal with foreign pricing practices led to the establishment of ASP valuation for benzenoid chemicals. These same reasons require the retention of ASP valuation today.

Same reasons require ASP today

Prices uncertain.—The uncertainty inherent in the use of foreign export value as a method of valuation for benzenoid chemicals is manifest. There simply is no single foreign export value—and published lists are virtually non-existent. Foreign producers export at a wide range of prices—rationalization of production abroad allows them to do so and their dependence upon export markets requires it.

In connection with the Tariff Commission hearings on the converted rates, we were denied access to the prices at which foreign producers were selling benzenoid chemicals into the United States. Consequently, we had to obtain foreign export values from customs sources abroad. The result was a computer tabulation covering over 10,000 transactions which fully documented the wide disparity in the prices charged by foreign chemical producers in export sales. Prices for the same product from the same country varied as much as 100% in the same year. I would like to submit a copy of this computer tabulation for the record. [This material has been submitted for the Committee's file.]

In connection with the Tariff Commission's hearings to establish converted rates, the Department of Commerce tried in vain, via our Embassies abroad, to obtain foreign chemical prices. The embassies uniformly reported what we already knew: such prices were simply unavailable; there are no published prices. I would like to submit copies of these Foreign Service dispatches for the record. [The dispatches appear as Exhibit 3 at the end of this statement.]

Considering this lack of reliable information on export values, where will Customs be able to confirm these values, or do they just accept the word of foreign producers who already sell at a wide variety of export prices and who will, in most instances, be selling to their own U.S. subsidiaries? In this connection I should point out that the Tariff Commission found that sales by foreign manufacturers to their U.S. subsidiaries accounted for 56% of the value of all benzenoid imports in 1964.² In such cases, the price charged for the import would simply be a matter of whether the foreign company wanted to take the profit here or abroad—it would all be going into the same pocket anyway.

Cartels.—The European chemical cartel is still with us. Japan not only does not prohibit, but actually requires its chemical producers to rationalize production and divide markets. Neither the EEC nor the German cartel law prohibits rationalization of production, division of markets, or even price fixing in the export sales outside the EEC. Late last year the German Cartel Authority fined the principal German dye producers, the remainder of the old I.G. Farben trust, for conspiring with Swiss, English and French producers to fix prices.

The German Cartel Authority opinion deals only with that portion of the group's actions which related to German prices and therefore illegal under German law. Inasmuch as no issue of illegality under German law would be involved in rationalization of production, price fixing on exports, or other predatory practices affecting the U.S. market, such matters are not dealt with in the opinion—although it is a little difficult to believe these matters were not dealt with in

¹ Senate Committee on Finance, *Tariff Bill*, S. Rep. No. 595, Part I, 67th Cong., 2d Sess. 3 (1922).

² Tariff Commission Publication 181, p. 22 (July, 1966).

the course of the meeting. Indeed, the price fixing in Germany was merely a "Miscellaneous" matter on the meeting's agenda. I would like to submit a copy of the decision of the German Cartel Authority, and a translation, for the record, as well as several articles concerning rationalization of production in Japan. [A translation of the German decision appears as Exhibit 4 at the end of this statement; the articles referred to are in the committee file.]

In the light of these unfair methods of competition used by many of our foreign competitors—the same methods which concerned the Congress in 1922 and 1930—there are the same reasons for retention of ASP valuation now as existed years ago. While ASP will not insulate the domestic industry from the effects of these unfair methods of competition, it will at least assure that U.S. tariff valuation is not undermined by the use of varieties of prices manipulated by a foreign cartel, or by prices which benefit from rationalization of production, market-sharing agreements, and other unfair methods of competition.

The "separate package"

That pretty well sums up what ASP is. The "separate package" before this Committee, however, is really more than whether or not to retain ASP valuation for benzenoid chemicals. The "separate package" agreement would not only eliminate ASP valuation; it would, as we shall show later, further reduce tariffs on hundreds—indeed even thousands—of benzenoid chemicals by considerably more than the 50% reduction authorized by the Trade Expansion Act; it would constitute Congressional approval of a wholly unreciprocal deal that will have a serious adverse economic effect upon the domestic chemical industry, its workers and the United States balance of payments.

You know this ASP issue is really quite unique. We are told it became an "emotional issue" with the Europeans. In fact, ASP became a great negotiating ploy. Our trading partners took ASP valuation, which affects only \$50 million in trade—less than 5% of our chemical imports and less than $\frac{2}{10}$ of 1% of total U.S. imports—and blew it into the biggest issue of the Kennedy Round. Professor Stanley Metzger, since appointed Chairman of the Tariff Commission, analyzed the ASP negotiations in 1967 and speculated that the ASP issue was pressed to reduce the 50% tariff reduction target to a lower figure.¹ This turned out to be a shrewd analysis for in the end we gave in to the pressure and accepted a 50%-20% deal on chemicals, a "heads they win, tails we lose" deal which will harm our chemical industry and benefit theirs for years to come.

At the same time they not only ignored our demands for meaningful concessions on agricultural products but actually extended the application of their variable levies which affect more than \$600 million in U.S. agricultural exports—10 times more trade than is affected by ASP. I am sure you recall the testimony of one of our agricultural exporters who told the Committee that ASP is a "paragon of virtue" compared to the variable levy. The Europeans also carried forward their plans for raising their border taxes and export rebates, which affect *all* U.S. trade by amounts that will more than offset their tariff reductions in the Kennedy Round.

At a time when our balance of payments was steadily worsening, they were not only able to ignore our justifiable demands on billions of dollars of trade, but were able to get us to accede to their demands on ASP.

II. THE 50%-20% DEAL IS UNRECIPROCAL

Having put the ASP issue into context, I would now like to turn to the three areas in which the U.S. and its chemical industry were deprived of reciprocity. The first area is what we call the 50%-20% deal—the deal which laid the basis for the so-called "separate package" presently before this Committee.

In 1962, this Committee approved and the Congress passed the Trade Expansion Act providing our trade negotiators with the broadest grant of tariff-reducing authority in our history. However, the Act provided no authority to negotiate any change in American Selling Price valuation or in any other method of valuation, or to reduce tariffs in excess of 50%. Both Congress and business had every

¹ In testimony before the House Foreign Affairs Committee on February 16, 1967 (Hearings on the Foreign Policy Aspects of the Kennedy Round), Professor Metzger said (p. 34): "As with disparities, while one can never be sure of another's motives, it is probable that the EEC originally raised the ASP issue largely in order to reduce the 50 percent-reduction target figure to a much lower figure, which would eliminate the political consequences and reduce the significance of the economic consequences of the Kennedy Round."

reason to believe, and indeed to expect, that our trade negotiators would not exceed the broad grant of authority accorded to them.

Our negotiators have said that ASP valuation was a major issue "from the beginning of the Kennedy Round". Despite this fact and their admitted lack of authority to negotiate either ASP or reductions in excess of 50% under the Trade Expansion Act, our negotiators, during this 5-year period, did not at any time request from the Congress the authority necessary for them to negotiate.

In June 1966, after our negotiators had made manifest their intent to negotiate away American Selling Price valuation, the Senate expressed its concern by passing Senate Concurrent Resolution 100, which reminded our negotiators that tariff-making is a Congressional function. The Resolution warned them not to negotiate outside of the broad authority contained in the Trade Expansion Act without obtaining the necessary authority from Congress *in advance*. They chose, however, to disregard this clearly expressed view of the Senate.

Promises made.—In an apparent attempt to justify their disregard of Senate Concurrent Resolution 100, our negotiators repeatedly and publicly promised the industry and the Congress that any agreement negotiated with respect to ASP would be "a separate self-contained and self-balancing agreement which the Congress will be free to consider on its merits without constraint."¹

The separate package was to be (1) reciprocal, and (2) supported by separate consideration for the *benzenoid chemical industry*. They told us that "with respect to benzenoid chemicals in particular, any concession by the U.S. on ASP would require significant liberalization of the protection now imposed by the EEC, in particular, upon imports of benzenoid chemicals".² Moreover, they went to great lengths to emphasize that the "separate package" was not to, and I quote, "be connected with large areas of tariff cuts within the Kennedy Round. Because then it would be a *fait accompli*, and then we would be holding a gun at the head of Congress, in effect saying, 'if you don't do this you would endanger this great negotiation'".³

The negotiators have done precisely the opposite of what they promised—and widened further the "credibility gap". They negotiated a deal which is neither "separate, self-contained [nor] self-balancing". From the outset the EEC insisted that they were unwilling to make any concessions for ASP. So it was necessary to put together a deal which would involve no extra consideration by the Europeans and yet at the same time have the appearance of the "separate package" that had been promised. This was done by negotiating a patently unreciprocal 50%-20% deal on chemicals in the Kennedy Round, which permitted the Europeans to "load" the "separate package" with the other 30% of the Kennedy Round cut.

This "package" is in no way "separate"—it is inextricably and purposefully tied to the chemical negotiations in the Kennedy Round. The "package" is not supported by any independent consideration for the benzenoid chemical industry—indeed there is considerable doubt as to whether there is any independent consideration at all. The deal merely purports to return to us the 30% hostage which we have already bought and paid for by our 50% Kennedy Round cut. Moreover, a part of the actual Kennedy Round concessions (as distinguished from "separate package" concessions of the EEC and U.K.), of Austria, Finland, Norway and Sweden are tied to implementation of the separate package.

Since the "separate package" is tied to one of the larger areas of tariff cuts within the Kennedy Round—the cuts made in the chemical sector—they have adopted a "gun to the head" approach by presenting the Congress and this industry with a *fait accompli* under which we are asked to choose—a real Hobson's choice—between the "separate package" deal and the 50%-20% deal negotiated on chemicals in the Kennedy Round, both of which are unreciprocal and injurious.

"Balanced deal" rationalization

Obviously in order to be able to categorize the "separate package" as "separate" our negotiators are now forced to contend that they obtained a "balanced deal" on chemicals in the Kennedy Round and in the "separate package", and indeed that the United States came out far ahead. To do this the negotiators

¹ *Hearings Before the Senate Finance Committee on Trade Policies and the Kennedy Round*, March 10, 1967, p. 35.

² Speech by the General Counsel of the Office of the Special Representative for Trade Negotiations, Nov. 10, 1966.

³ *Hearings Before the Senate Finance Committee on Trade Policies and the Kennedy Round*, March 10, 1967, p. 32.

discarded the linear reduction theory upon which the Kennedy Round was premised, and developed a new theory in an attempt to justify having given a 50% cut in return for a 20% cut.

Their "balanced deal" theory is basically that because the value of our chemical exports is almost three times as high as our imports, we actually come out ahead when the percent of reduction is weighed by the volume of trade. We cut our tariffs by more than twice as much as the Europeans, but this is outweighed by the fact that their cuts applied to almost 3 times as much trade.

The logical extension of this contrived theory is that in return for a 33% cut by them, we should have cut our chemical tariffs by 100% and that in return for the 50% cut they ultimately made under the "separate package", we should have cut our tariffs by 150%, that is, we should have agreed to pay to them 50% of our existing tariff whenever we import chemicals from them.

This unique theory seems to have been invented for, and to apply only to, our chemical deal with the EEC and the U.K. It does not appear to have been applied across the board to other product areas in which we import considerably more than we export. Indeed, it was not even applied on a most-favored-nation basis within the chemical sector. Only the EEC and the U.K. got a 50%-20% deal. Other chemical trading partners, such as Japan, with similar trade balance paid 50% for our 50% cut.

Our trade negotiators' "balanced deal" theory in no way takes into account the key issue in determining reciprocity, which is the effect which tariff cuts will have upon future trade. While the Government speaks of a "fair and balanced exchange of trade opportunities" (Government Statement, p. 61), it has presented no meaningful studies as to what the future trade effect would be.

The EEC's 20% Kennedy Round "Reduction"

As if the 50%-20% deal were not enough, there was still further reason for the European rejoicing referred to by Mr. Turchan in his statement. The 20% cut accepted by the United States meant that in four of the six Common Market countries the duty paid by chemicals would actually be higher after they make their 20% cut on July 1 than it was before. As shown by the following table released by the EEC,¹ on July 1, 1968, the average German chemical tariff will actually rise from 11.5% to 11.7%—a rise of 1.7%—and for the Benelux countries, the duty on chemicals will increase from 10.3% to 11.7%—an increase of 13.6%.

Sectors	Current tariff rates in percent				Common external tariff		
	France	Italy	Benelux	Germany	Now	20 percent cut ¹	Jan. 1, 1972
Chemicals.....	14.0	14.5	10.3	11.5	13.7	11.7	7.1
All industry.....	14.4	13.8	11.2	11.0	12.8	10.7	7.5

¹ The heading "20 percent cut" is misleading. The reduction from the common external tariff (13.7 to 11.7 percent) is only a 14.6 percent reduction. The French and Italian reductions are 16.4 and 19.3 percent respectively, and, as stated above the German and Benelux tariffs actually rise by 1.7 and 13.6 percent respectively.

² The Jan. 1, 1972, rate for chemicals assumes implementation of the "separate package."

Thus, despite their 20% tariff "reduction", the duty on U.S. chemicals entering Germany and the Benelux countries will actually be higher after the cut than before. This is particularly significant when you consider that Germany and the Benelux countries account for over 70% of U.S. chemical exports to the EEC, and about one half of our chemical exports to the EEC and EFTA combined. Indeed, if we use the negotiators' weighted trade theory, the EEC's Kennedy Round "reductions" actually amount to a 2% tariff increase.

Where is the reciprocity when we have reduced our chemical tariffs by 50% in return for foreign tariff concessions which actually result in a rise in the duties applicable to our products?

I believe this analysis pretty clearly demonstrates that the 50%-20% deal made in the Kennedy Round was unreciprocal. Even under the negotiators' own linear standards of equal percentage cuts, the European countries should have been required to pay at least 50 percent in return for our 50 percent cut.

¹ CCH Common Market Reporter, Vol. II, ¶9227 (April 1968); from data released by the EEC Commission.

If reciprocity is measured, as it should be, by the amount of trade which would flow from a given reduction, it is clear that the Common Market's reduction should in fact have been much greater than ours.

The conclusion to be drawn from this is quite clear—there simply is no independent consideration for either the elimination of ASP or for the substantial reductions in excess of 50% which would result from implementation of the "separate package". The "additional" 30 percent which we are being "offered" is already more than due in return for the 50 percent reduction which we agreed to make in the Kennedy Round.

III. THE SO-CALLED "SEPARATE PACKAGE" REDUCES MOST BENZENOID TARIFFS BY MORE THAN 50 PERCENT AND IS UNRECIPROCAL

I would like now to focus upon the second area in which the United States and its chemical industry were deprived of reciprocity—the "separate package." The "separate package" agreement which would be implemented by H.R. 17551, provides for still further reductions in excess of the 50 percent reduction made on all benzenoid chemicals in the Kennedy Round. These further reductions result from (1) the adoption of converted rates of duty which do not provide protection equivalent to the ASP rates and (2) the further reduction of many of these converted rates below certain "ceiling rates" agreed to by the negotiators. This agreement would require reduction in excess of 50% not only on the vast majority of the benzenoid chemicals produced by the domestic industry but on 9 non-benzenoid chemicals as well.

Inequivalent converted rates

I would like to first deal with further reductions which result from the elimination of ASP valuation via the adoption of the converted rates of duty developed by the Tariff Commission. These converted rates do not provide the domestic industry with protection equivalent to that accorded under ASP valuation. This fact was specifically recognized by the Tariff Commission, which stated in its Report, TC Publication 181, July 1966 (p. 53), that:

" * * * no schedule of converted rates could be devised which would provide for future imports 'protection' equivalent to that afforded by the ASP system."

However, in order to analyze the economic effect of adoption of the proposed converted rate, it is not sufficient just to know that the rates do not provide equivalent protection. We must in some way assess just how inequivalent the converted rates really are. While time will not permit me to deal with the complicated matter of converted rates in any great detail, I believe it would be helpful to review briefly just what we mean by the term "converted rate".

The converted rate is the rate which, when applied to the more commonly used "export value" method of valuation, yields the same amount of duty on a product as would have been yielded by application of the current statutory rate to the American Selling Price of the product. Thus, a product which currently bears a 25% duty based upon the American Selling Price, which has an American Selling Price of \$2.00 and a foreign export value of \$1.00, would have a converted rate of 50% in order to yield the same amount of duty. You need only divide the American Selling Price by the foreign export value and multiply the result times the present ASP duty in order to obtain the converted rate. It is important to note that the greater the disparity between the U.S. price and the foreign price, the higher the converted rate as compared with the present ASP rate.

With this background I think that you can see the basic deficiencies in the converted rates developed by the Tariff Commission. In examining these deficiencies it is necessary to distinguish between the converted rates for products specifically named in the tariff and the converted rate developed for the "basket" categories. Neither provide protection equivalent to the ASP rates, but they are inequivalent for somewhat different reasons. The rates for named products were fairly equivalent as of 1964, but subject to erosion, while the rates for the basket categories were grossly inequivalent to begin with—indeed, they amounted to a substantial unilateral tariff reduction.

Rates for named products are subject to erosion

The converted rates developed by the Tariff Commission for named products were a little too low due primarily to reconstructing export values after the fact, but on the whole these rates do provide a substantial degree of protection, at

least as of 1964. Irrespective of how equivalent the converted rates on named products may have been as of 1964, they were subject to erosion. Any converted rate will only remain equivalent as long as the basic relationship between the ASP and the foreign export value remains the same. If after conversion this basic relationship changes, then the equivalency of the degree of protection will also change.

Because the switch to export value would provide an added incentive for lowering the export value in order to obtain a lower duty, it will place in the hands of foreign producers the ability and the incentive for eroding away even the most equivalent converted rate. It is quite clear that even the most equivalent converted rate based upon 1964 data will soon be eroded away because it is clearly in the foreign producers' interest to do so. Remember the wide range of prices at which foreign producers sell and that 56% of benzenoid imports are transactions between foreign companies and their U.S. subsidiaries in which the price of the import transaction is merely a question of where to take the profit.

The converted rates for the baskets result in substantial unilateral tariff reductions

Although also subject to erosion, the converted rates for the basket categories suffer from a much greater defect—they did not even begin to provide equivalent protection as of the 1964 base year. Indeed, as I mentioned a moment ago, these converted basket rates resulted in substantial unilateral tariff reductions.

Importance of the basket rates.—These basket rates are extremely important. Over 95% of the benzenoid products produced commercially in the United States are not named in the tariff and consequently must derive their tariff protection from the rates established for the so-called "basket categories". For example, the dye and pigment baskets alone account for over 90% of the more than 2,000 dyes and pigments produced domestically and represent approximately 60% of the total value of domestic production. The Special Trade Representative further emphasized the importance of these "baskets" when he pointed out that the basket rates are the "key to the future" for it is the basket rates which will apply to "tomorrow's products."

The competitive-noncompetitive distinction.—Yet it is in this critical area that the Tariff Commission's converted rates have their most serious deficiency. The Commission failed to distinguish between competitive and noncompetitive products in establishing converted rates for these "basket categories."

ASP valuation is applicable only to "competitive" imports, those which compete directly with identical products manufactured domestically. The noncompetitive products, which do not compete directly with domestically manufactured products, are valued in accord with the more common export valuation methods and therefore their converted rate is essentially the same as the existing rate. In terms of providing equivalent protection for products of U.S. industry, only the converted rates for competitive products are relevant.

Yet the Commission found that it was precluded "by the request of the Special Representative" from distinguishing between products on the basis of their competitive status even though it was recognized that to do so would have provided "a more equivalent degree of protection". (TC Publication 181, p. 55.)

In view of the instructions of the Special Representative, the Commission, in order to establish the converted rates for the basket categories, averaged together the converted rates for competitive and noncompetitive products with the anomalous result that the effective rates of duty on *noncompetitive products* were *increased* while the effective rates for imports for *competitive products* were *substantially reduced*. Because in most instances the value of noncompetitive imports in the baskets were greater than the value of competitive products, the converted rates for the baskets were weighted heavily downward. Consequently, the effective rates of duty on competitive products were reduced much more than the effective duty on noncompetitive products were raised.

Unilateral reductions.—Thus, the failure to distinguish between competitive and noncompetitive imports resulted in converted rates that amounted to a unilateral tariff reduction of from 14% to 44% for the large portion of domestic products, including the important "products of the future", which will have to derive their tariff protection from the basket categories.

I would like to illustrate this point with the following example: On the basis of its own data, the Tariff Commission informed us it found that the average converted rate for competitive dyes imported in 1964—covered by the basket

406.50—was 72% while the average converted rate for noncompetitive dyes was approximately the same as the existing statutory rate of 40%. By averaging all of these converted rates together on a weighted average basis, which gave added emphasis to the noncompetitive converted rate inasmuch as the value of such imports were almost twice that of competitive imports, the Commission came up with a rate of 48% for the basket category.

Based upon the Commission's own data, this constituted a 33% decrease—72% to 48%—in the average level of tariff protection accorded dyes produced in the United States. The same averaging system resulted in similar unilateral tariff cuts on competitive products in the important basket categories, as shown in the following table:

		[In percent]		
TSUS		Converted ad valorem rate on competitive products based on Tariff Commission data	Tariff Commission converted rate	Unilateral tariff reduction
403.60	Intermediates.....	42	36	14
405.15	Pesticides.....	39	25	29
405.40	Plasticizers.....	53	36	32
406.50	Dyes.....	72	48	33
406.70	Pigments.....	77	43	44
408.60	Flavor and perfume materials.....	64	54	16

I emphasize that these figures on unilateral tariff cuts as a result of the conversion alone are based upon the Commission's own data. Industry data indicates that the unilateral cuts were actually greater:

The "ceiling rates" result in tariff reductions substantially in excess of 50%

The unilateral tariff reductions accorded by the Tariff Commission's converted rates were further compounded by the "ceiling rates" agreed upon by the trade negotiators. The "separate package" agreement not only provides for the adoption of the inequivalent converted rates, but also requires that many of those rates be still further reduced to agreed-upon "ceiling rates". With respect to most benzenoid products produced in the United States the combination of inequivalent converted rates plus the "ceilings" result in tariff reductions considerably greater than the 50% reduction authorized under the Trade Expansion Act.

Basket Rates.—The Government witnesses insist that the reductions in the baskets—the "key to the future"—are less than 50%. Their claim is predicated on the Tariff Commission's converted rates which are based on the mixture of competitive and noncompetitive products; it disregards the only relevant rate for measuring the tariff reductions for products produced in the United States.

Since the Special Trade Representative's directive prevented the establishment of equivalent converted rates for competitive products in the basket categories, the Government is attempting to "lift itself up by its own bootstraps" by claiming these inequivalent converted rates as an appropriate starting point for measuring the percent by which the basket categories were reduced.

If the proper measure of reduction on competitive products—the average converted rate for competitive products—is used, the Commission's own data shows that the total reduction on competition products exceeded 50% in the important basket categories. The following table is illustrative:

		[In percent]		
TSUS		Tariff Commission converted rate for competitive imports	STR table 10 final ad valorem equivalent	Total reduction
403.60	Intermediates.....	146	20	57
405.15	Pesticides.....	145	15	67
405.40	Plasticizers.....	161	20	66
406.50	Dyes.....	72	30	59
406.70	Pigments.....	77	30	61
408.60	Flavor and perfume materials.....	165	20	69

¹ Tariff Commission's converted ad valorem rate for competitive products adjusted for the specific duty in order to reflect the ad valorem equivalent.

Specifically Named Products.—Whatever equivalency there may have been in the converted rates for individually named products as of 1964, the “ceiling rates” agreed to in Geneva resulted in tariff reductions substantially in excess of 50% for virtually all of these products. In order to demonstrate the magnitude of these reductions, we have taken Table 10 submitted by the Government and inserted a new column showing the percent reduction for the specifically named products based on the Government’s own figures.

Table 10 as so modified is attached. It shows that out of 61 TSUS items covering specifically named competitive products for which the Government has shown ad valorem equivalents, 42 have a total reduction in excess of 50%, 23 in excess of 60%, 9 in excess of 70%, and 3 in excess of 80%. [Table 10 as modified is attached as Exhibit 5.]

The majority of the competitive products specifically named have total tariff reductions of 60% or more.

Significance of cuts in excess of 50%

In connection with all of the reductions in excess of 50% that I have mentioned, it is important to note that a 60% reduction in the present rate of duty is the same as an additional 20% cut on top of the 50% cut authorized under the Trade Expansion Act, and a 75% reduction in the present rate is the same as two successive 50% cuts.

In this connection, it should be noted that the last AFL-CIO convention passed a resolution on ASP which states:

“No tariff cutting, beyond the authorization of the Trade Expansion Act, should be approved if there is any change of methods of valuation such as American Selling Price.”

While “not arguing either for or against retention of ASP”, Mr. Andrew BeMiller testified on behalf of the AFL-CIO that:

“Those who support the removal of American Selling Price valuation argue that the four industries—benzenoid chemicals, canned clams, wool-knit gloves and rubber soled footwear—should not have a separate method of valuation because no other industry enjoys this special method of protection. By the same token, *it seems reasonable to us that no industry should be given different treatment by being asked to absorb a greater than 50% cut.*” [Italic supplied.]

Yet the “separate package” agreement before this Committee *would* require our industry to absorb cuts in excess of 50% on the vast majority of the benzenoid chemicals produced in the United States and on 9 non-benzenoid chemicals as well. The “separate package” agreement is therefore clearly inconsistent with the position taken by the AFL-CIO.

Lack of economic rationale

Perhaps the most interesting thing about this “separate package” agreement is the complete lack of any sensible economic rationale. This is demonstrated by the fact that there were cuts in excess of 50% on most of the products we make while the tariffs on products we don’t make are actually raised. Because of the failure to make the competitive-noncompetitive distinction the rates of duty on noncompetitive products, those which are not made in the United States, would actually be raised above what has already been agreed to in the Kennedy Round. More important, the tariffs on the competitive products, those we do make, would be reduced by considerably more than 50%. In other words, the Congress is actually being asked to raise the duties on those products that we do not make and at the same time ask to reduce by more than 50% the duties on the products that are made in this country. What kind of economic sense does this make?

Moreover, as you will remember, I pointed out earlier that the conversion process results in the highest converted rates where the disparity in the U.S. and the foreign export value is the greatest. Consequently, in lowering the converted rates to the “ceiling rates”, the greatest amount of tariff cut has been made on precisely those products for which the foreigners have the greatest cost and price advantage over the United States. Where there is the least disparity between the United States and foreign prices the tariff is reduced by only slightly more than 50%, but where the disparity is the greatest the total reduction is as much as 80%. The greater the foreigner’s cost and price advantage, the greater will be the tariff reduction under the separate package. This too is exactly the opposite of what any reasonably considered proposal should suggest.

Non-chemical "concessions"

There were three "concessions" not related to chemicals which were thrown into the "separate" package as sweeteners on the theory that, as Mary Poppins says, "A little bit of sugar helps the medicine go down". These "concessions" are hardly that at all.

First, Belgium, France and Italy agreed to "set in motion the necessary constitutional procedures in order to adjust modalities" of their automobile road taxes so as not to discriminate against high cylinder capacity automobiles. Two comments should be made.

(1) The United States has taken the position that this discrimination is illegal under the GATT; and yet we are proposing to "pay" for its elimination. Section 252(a) (2) of the Trade Expansion Act specifically prohibits our negotiators from paying compensation for the removal of such illegal barriers.

(2) In addition, it is hard to say from this language what is agreed to—if indeed the Europeans agreed to do anything. The Government witnesses have now said the President will not proclaim the separate package until the laws are passed eliminating the illegal discrimination, but that is not what the agreement says. Under the agreement, all the Europeans have to do is "set in motion" the constitutional procedures—whatever that means. In this country I guess it would mean dropping a bill in the hopper. *Second*, the U.K. agreed to reduce the Commonwealth preference on tobacco by 25%. United States tobacco sells in the U.K. on the basis of quality, not price. Even without preference the price of tobacco from the Commonwealth countries is well below the U.S. price. Our sales to the U.K. have skyrocketed as a result of the sanctions against Rhodesia—previously by far the largest Commonwealth supplier.

As long as Rhodesia is under sanction we will continue our high level of tobacco exports to the U.K., but if the sanctions are ever removed we will hardly be able to compete with Rhodesian tobacco which will sell for less than half the U.S. price even before the preference. Indeed, the Department of Agriculture testified that we would be back before sanctions—our trade could be cut in half. The U.K. would then return to buying only enough U.S. tobacco to maintain the quality demanded by the U.K. consumers. Given the large amount of U.S. tobacco the U.K. is having to import in the present "sellers' " market, any lowering of the preference is a concession to U.K. tobacco manufacturers, not a concession to the United States.

Finally, the Swiss have agreed not to restrict imports of prepared or preserved fruit which contain corn syrup. We checked with the Department of Agriculture and the National Cancer Association and were informed that although Swiss law does not specifically allow corn syrup to be used in canned fruits, we have been exporting canned fruit with corn syrup to Switzerland for years without incident—over \$2 million worth last year alone.

Thus, what the Swiss are offering is hardly a "concession." On the contrary, if it is anything, it is a rather unpleasant threat. Are the Swiss now saying they will stop imports of fruit containing corn syrup from the U.S. unless we agree to the separate package? Is such a threat a "concession" which justifies an unreciprocal deal?

Separate Package Chemical "Concessions" are Unreciprocal

The Government has stressed that we would obtain a 30% reduction in EEC and U.K. chemical tariffs if the "separate package" is approved. The United States has of course already more than paid for this 30% reduction with its 50% Kennedy Round reduction.

However, after the Kennedy Round deal was made we went to the industry and put to them the following question:

Is the 30% reduction in European chemical tariffs worth the abolition of ASP and the further duty reductions in excess of 50% which would be required under the "separate package"?

We asked them to face this issue on the assumption that the 50%-20% deal was a *fait accompli*, whether they liked it or not. Facing this issue, the industry studied the "separate package" carefully and came up with an answer.

The answer was clear, the answer was unequivocal. The answer was an emphatic no!

The reason is simple. Because of our inherent cost disadvantages, a 30% reduction by foreign nations would not generate as much new export trade for the United States as our further duty reductions would provide for our foreign

competitors. So even if we were to view the "separate package" as a separate package—which it is not—the domestic chemical industry is clear that it would cause more harm not only to the industry and its workers, but to our country's balance of payments as well. This is not to say that there would be no benefits from the additional 30% cut by the foreigners, but only that whatever benefit we might derive in their markets would not be comparable to the benefits which they would obtain in ours.

Thus, no matter how you cut it, there simply is no reciprocity in the "separate" package. Indeed, it is difficult to see where there is really any independent consideration at all. This is the second way in which the United States and its chemical industry were deprived of reciprocity.

IV. BORDER TAXES AND EXPORT REBATES DISADVANTAGE U.S. TRADE AND MAKE THE CHEMICAL DEALS MORE UNRECIPROCAL

This brings me to the third way in which the Kennedy Round lacked reciprocity—that is, the border tax-export rebate mechanism employed by our principal trading partners. This mechanism disadvantages not only chemicals, but the entire spectrum of United States trade. I mention chemicals particularly, because since the beginning of the negotiations, the United States chemical industry has been complaining long and hard about these trade barriers, but to not avail.

Invalidity of GATT ground rules.—The ground rules set forth in the General Agreement on Tariffs and Trade have been interpreted as distinguishing between indirect taxes, such as turnover taxes, and direct taxes, such as income taxes, on the theory that turnover taxes are passed forward to the consumer, while income taxes are passed back to the producer. On the assumption that turnover taxes are taxes on domestic consumers, many of our principal trading partners apply these taxes to imports at the border and then rebate (or exonerate) such taxes on exports.

The invalidity of this distinction is manifest. We were pleased to see that the Government now accepts the consensus of economic opinion today that both taxes are passed forward to the consumer as much as the law of supply and demand will permit. An assumption that both forms of taxation are passed fully forward is certainly closer to economic reality than the assumption that one is always passed wholly forward while the other is always passed wholly backward.

Disadvantages to U.S. trade.—The use of this border tax-export rebate mechanism places the United States at a serious competitive disadvantage in international trade, impairs the value of tariff concessions made to us, and increases the value of tariff concessions we make to other countries. Until January 1 of this year, this mechanism disadvantaged our trade in two ways.

First, it forces our exports to bear not only the entire U.S. tax burden but, via the border tax, approximately half the total tax borne by the similar product in Common Market countries. At the same time, foreign turnover tax rebates subject U.S. industries to unfair competition from imported products which have to bear only about 50% of their domestic tax burden and none of the tax burden borne by similar products in the United States.

Effect on tariff negotiations.—Second, the adverse effect of the border tax and export rebate increases markedly as tariffs are reduced. European countries reduce only a part of the over-all barrier to our exports, while we reduce our entire barrier to theirs. Even if one were to accept the dubious negotiating position that equal percentage reductions in over-all trade barriers constituted reciprocity, it is clear that we have not been receiving it. If we reduce our entire trade barrier (tariffs) by 50% while they reduce only half of their trade barrier (tariffs plus border taxes) by 50%, we end up having reduced by twice as much as they have.

It is extremely difficult to understand how we could expect to obtain any semblance of reciprocity in the Kennedy Round, in which we made the largest tariff reductions in our history, without first requiring our trading partners to remove these unfair disadvantages to U.S. trade.

Border Tax Export Rebate Increases

In fact we did even worse: we negotiated the Kennedy Round agreement knowing full well that the Common Market countries were in the process of "harmonizing" their turnover taxes in such a way that the border taxes and export rebates of most of these countries would be increased drastically. Indeed, on June 2, 1967, almost a month before the deal was finalized, Germany passed a law increasing its border taxes and rebates from 4% to 10%.

As a consequence of our failure to take into account border taxes in the Kennedy Round negotiations, we are now faced with the fact that in most of the Common Market countries the barrier to our exports will actually be higher after the full Kennedy Round reductions than they were before the agreement. Moreover, their increased export rebates, when combined with our tariff reductions, will result in a situation in which their rebates will completely offset the total amount of our remaining tariff.

What's happening in Germany?

Let me demonstrate by showing what is happening in Germany, our principal trading partner in the Common Market. Until December 31, 1967, the Germans had a "cascade" type turnover tax under which goods were taxed 4% each time they changed hands. Because of the taxes already included in material which went into a product and because the goods might change hands several times in the distribution process, the total level of tax borne by the product was considerably higher. A border tax of 4% was applied to most imports, and exports received a rebate or exoneration of a similar amount.

On January 1 of this year the Germans switched to a "value added" type turnover tax of 10%, and the border tax and export rebate were increased to 10%. Both of these taxes will be increased to 11% on July 1, 1968. The German Government claims that the over-all tax burden within Germany was not increased as a result of its change. The Germans maintain that an 11% tax on the "value added" basis yields the same amount of revenue as a 4% turnover tax on a "cascade" basis—the average burden on German products is the same. But the border tax and export rebate have in fact more than doubled.

Whether or not the adjustment in German border taxes and export rebates is in accord with the unjustifiable distinction currently made in the GATT, the fact of the matter is that U.S. exports to Germany will have to pay more than twice as much border tax in order to enter the German market as before. German exports with which we will have to compete, both in the U.S. and in third country markets, will have the benefit of twice as large a tax rebate.

If we accept—as we should—the German premise that the over-all tax burden within Germany remains the same, two conclusions follow: (1) the competitive position of U.S. goods entering Germany is disadvantaged by 7% and (2) the competitive position of German exports to the U.S. and to third countries is enhanced by 7%, the amount of the additional rebate.

Effect of German Border-Tax Increase. The result of this border tax increase is shown on Chart I on the facing page. [Chart I appears in Mr. Barnard's oral testimony; Table I in support of that chart is as follows:]

TABLE I.—GERMAN BARRIERS TO U.S. CHEMICAL EXPORTS
[Percent of c.i.f. value]

	Tariff ¹	Border tax ²	Total trade barrier ³
Dec. 31, 1967	11.5	4	15.5
Before Kennedy round reduction and border tax increase.			
Jan. 1, 1968	13.5	10	21.5
After border tax increase.			
July 3, 1968	11.7	11	22.7
After full EEC Kennedy round reduction.			
Jan. 1, 1972	7.1	15	22.1
Under separate package reductions and tax harmonization at 15 percent.			

¹ "CCH Common Market Reporter," par. 9227 (April 1968), from data released by the EEC.

² Before Jan. 1, 1968, the normal German border tax was 4 percent of the duty paid landed value, with a higher rate permitted for some products. Effective Jan. 1, 1968, the German border tax was raised to 10 percent of the duty paid landed value and a 11-percent rate became effective July 1, 1968. By the early 1970's, the EEC countries plan to harmonize their turnover taxes, border taxes, and export rebates at approximately 15 percent. No adjustment has been made in the border taxes to reflect the fact that they are based upon the duty paid landed value rather than the c.i.f. value. In each case it would result in a border tax about 1-percent higher than shown on this table.

³ Tariff plus border tax equal total barrier.

On December 31, 1967, the average German chemical tariff was 11.5%, and a border tax of 4% was assessed on the duty-paid landed value of the import: the total barrier—tariff plus border tax—was 15.5%. Actually this understates the barrier slightly because the 4% border tax was applied to the duty-paid landed value and, consequently, on the basis of c.i.f. value, was approximately 1% higher; but for the purposes of simplicity we have not reflected this on our chart.

On January 1, 1968, the border tax was raised 6 percentage points to 10%; the total barrier, therefore, rose by a similar amount to 21.5%. On July 1, the border tax will go up another 1% to 11% and the tariff, as we pointed out earlier, will also increase .2% despite their 20% "reduction". This "reduction"—their total chemical "reduction" in the Kennedy Round deal—will increase their total barrier to 22.7%.

In other words, under the completed Kennedy Round agreement on chemicals, German chemical tariffs will actually be .2% higher than they would have been before the Kennedy Round, and the border tax will be 7% higher. Instead of it costing 15.5% for our products to enter Germany, it would cost 22.7%. And remember, the Germans claim that the over-all tax burden within Germany has not been increased.

But that's not all. Even if we assume that under the "separate package" the Germans reduce their chemical tariffs by 50%, and continue with the present plans of harmonizing turnover taxes at about 15%, our chemical exports will be almost just as bad off—the total barrier will only have been reduced from 22.7% to 22.1%—but that must be compared with the barrier of 15.5% before the Kennedy Round. As Mr. Turchan said earlier, what they have given with one hand, they have more than taken away with the other. This must have been what the U.S. Delegation meant when it recently told GATT that changes in border taxes "may often dwarf recently negotiated trade concessions".

Effect of Increased German Export Rebates. The increased German border taxes are only one-half the story, as Chart II on the facing page demonstrates. Chart II appears in Mr. Barnard's oral testimony; Table II in support of that Chart is as follows:

TABLE II.—U.S. BARRIERS TO GERMAN CHEMICAL EXPORTS

(Percent of export value)

	U.S. tariff ¹	German export rebate ²	Effective U.S. tariff ³
Dec. 31, 1967.....	15.9	4	11.9
Before Kennedy round reduction and export rebate increase.			
Jan. 1, 1968.....	14.4	10	4.4
After 1st U.S. tariff reduction and German export rebate increase.			
July 1, 1968.....	14.4	11	3.4
After further export rebate increase.			
Jan. 1, 1972.....	9.1	15	-5.9
After full U.S. Kennedy round reductions and EEC tax harmonization at 15 percent.			

¹ Weighted average U.S. chemical tariff on dutiable imports before Kennedy round reductions were estimated by the Government to be "almost 16 percent" (Government statement, p. 46). The U.S. tariff after full Kennedy round reduction was obtained by reducing 15.9 percent rate by 43 percent, by the average U.S. reduction in chemical tariffs in the Kennedy round (see Government statement, p. 38).

² Before Jan. 1, 1968, the German export rebate (or tax exoneration) was 4 percent of the price in Germany, with a higher rate permitted for some products. Effective Jan. 1, 1968, the German rebates rose to 10 percent and will move to 11 percent on July 1, 1968. By the early 1970's, the EEC countries plan to harmonize their turnover taxes, border taxes and export rebates at approximately 15 percent.

³ U.S. tariff minus German export rebate equals effective U.S. tariffs.

The German rebates offset the U.S. tariff. As the rebates increase, the offset becomes progressively greater until by 1972 the entire tariff will be offset and what we have termed the "effective tariff" will actually be a minus.

On December 31, 1967, before we began our Kennedy Round cuts, the average U.S. chemical tariff on dutiable goods was almost 16% (Government Statement, p. 46), about 4% of which was offset by the German export rebate. This left an effective tariff of about 11.9%. On January 1, 1968, after our first Kennedy Round reduction, our average chemical tariff became 14.4% and the Germans increased their export rebate to 10%. This left an effective chemical tariff of only 4.4%.

On July 1, 1968, the German export rebate will increase another 1%, reducing the effective U.S. tariff to 3.4%. After our final Kennedy Round reduction on January 1, 1972, the average chemical tariff would be 9.1%. Assuming EEC harmonization of indirect taxes at 15%, the 15% German export rebate would leave us an effective tariff of minus 5.9%.

Invalidity of comparing tariff levels without regard to border taxes

The invalidity of examining tariff rates alone without regard to border taxes is demonstrated on pages 45-6 of the Government testimony and in Table 8

submitted by the Government. That Table, disregarding border taxes and export rebates, attempts to show how high our tariffs are on 13 low-priced benzenoid intermediates relative to the EEC tariff on these same products. The Government stated (pp. 45-6) :

"I can present no more graphic picture to you than that provided by a table we are submitting for the record. This table presents, for a representative 'baker's dozen' of the largest-volume intermediates produced, a comparison of the U.S. and EEC tariff rates as provided for in the ASP agreement. This table indicates that U.S. rates will still be considerably higher than those of the European Community, if the Bill is approved, and that the smallest spread between them is 11 percentage points over an 8 or 9 percent EEC rate."

On the facing page, we have taken the liberty of borrowing Table 8 and inserting two additional columns to reflect the effect of the border taxes and export rebates on the respective U.S. and EEC trade barriers. [Table 8 appears in Mr. Barnard's oral testimony.] The EEC is expected to harmonize its border taxes and export rebates at about 15% about the time the Kennedy Round cuts are completed. We have therefore added 15% to the EEC tariff to reflect the amount of the border tax. Similarly, we have subtracted 15% from the U.S. tariff to reflect the amount of it that is offset by the EEC export rebate.

The results are startling. Instead of having a table showing the U.S. rates "considerably higher"—an average of 5 times as high as the EEC—the Revised Table shows that their barrier on these products averages out to be almost $\frac{1}{3}$ higher than ours. Instead of our barrier being at least 11 percentage points higher on all 13 products, their barrier is 5 to 19 percentage points higher than ours for 10 of the 13 products.

Table 8 clearly demonstrates what happens when you attempt to deal with tariffs alone as if the border tax-export rebate mechanism did not exist.

As I mentioned before, these increased border taxes and export rebates aren't just affecting chemicals, as is shown by Charts III and IV on the following pages which make the same comparisons for all industrial products. Charts III and IV appear in Mr. Barnard's oral testimony; Table III and IV in support of these Charts are as follows:

TABLE III.—GERMAN BARRIERS TO U.S. EXPORTS

[Percent of c.i.f. value]

	Tariff ¹	Border tax ²	Total trade barrier ³
Dec. 31, 1967.....	11.0	4	15.0
Before Kennedy Round reduction and border tax increase.			
Jan. 1, 1968.....	11.0	10	21.0
After border tax increase.			
July 1, 1968.....	10.7	11	21.7
After 1st 2 steps of EEC reduction.			
Jan. 1, 1972.....	7.5	15	22.5
Under full EEC tariff reductions and tax harmonization at 15 percent.			

¹ See table I.² See table I.³ See table I.

TABLE IV.—U.S. BARRIERS TO GERMAN EXPORTS

[Percent of export value]

	U.S. tariff ¹	German export rebate ²	Effective U.S. tariff ³
Dec. 31, 1967.....	11.8	4	7.8
Before Kennedy round reduction and export rebate increase.			
Jan. 1, 1968.....	11.0	10	1.0
After 1st U.S. tariff reduction and German export rebate increase.			
July 1, 1968.....	11.0	11	0
After further export rebate increase.			
Jan. 1, 1972.....	7.7	15	-7.3
After full U.S. Kennedy round reductions and EEC tax harmonization at 15 percent.			

¹ Weighted average U.S. tariff on all dutiable imports in 1965. "Statistical Abstract of the United States," 1966, p. 878.² See table II.³ See table II.

The effect upon our balance of trade is already apparent. In the first quarter of 1968, German exports to the United States rose a phenomenal 50% over the same period in 1967. From the point of view of its effect upon international trade, it is clear that the increased German border taxes and export rebates have the effect of a devaluation. This has been recognized by Germany's trading partners, including the U.S.

Because of the adverse trade effect, Belgium, Netherlands, Italy and Austria are adjusting their border taxes and export rebates upward even in advance of switching over to the "value added" type turnover tax.¹ Within the next two years, all of the Common Market countries (except France, which already has the "value added" tax) will move from a "cascade" to a "value added" type turnover tax system, which will similarly increase the disadvantage to our trade. Denmark has already adopted the "value added" tax and the U.K., Sweden, and other countries are also considering similar moves. Moreover, by the 1970's, the Common Market countries are planning to harmonize their turnover tax rates at 15%.

All of this is nothing new. Since 1963 the United States has been actively negotiating with its trading partners with respect to the effect of a border tax mechanism upon our trade, the added disadvantages which would be caused by harmonization, and the adverse effect which these actions would have upon the international payments system. The mystery is how the Government could believe that tariff reductions were meaningful when our trading partners not only left the border tax disadvantage untouched but were actually in the process of increasing this disadvantage.

Countervailing duties.—Our countervailing duty statute was designed to prevent unfair competition from imports which had the benefit of export rebates or other forms of exonerations from foreign taxes. Although there have been applications of countervailing duties with respect to some types of export rebates or tax exonerations, the Treasury Department has failed to apply the law to rebates of turnover taxes despite the unfair advantage they accord to imports.

Section 303 of the Tariff Act of 1930 requires the imposition of countervailing duties to offset any direct or indirect bounty or grant accorded by a foreign country upon export of a product. Both the language of the statute and its legislative history make it clearly applicable to the rebate or exonerations of turnover taxes. In spite of explicit Supreme Court decisions² interpreting this statute as applying to these types of tax rebates, the Bureau of Customs has administratively taken the position of not applying the countervailing duty statute in such cases. Indeed, following entry into the GATT, the Department of State sought legislation to change the statute in order to bring it in line with the manner in which it had been administered. The legislation was not passed.³

Earlier this year, the Treasury Department was asked why this law was not being applied to these export rebates. The Committee was informed that "grant and bounty had been interpreted by prior decisions not to involve a rebate of tax on the product itself".

We know of no court case so holding or, indeed, even any formal Treasury Decision directly in point. Earlier in the hearings it was suggested that the Treasury Department submit a memorandum explaining their administrative practice. We believe this would be helpful.

We have a memorandum on the applicability of the countervailing duty law to turnover tax rebates which I would like to submit for the record. [The memorandum is contained in this Committee's file.] This memorandum also points out that the U.S. has made no commitment in the GATT not to apply our countervailing duty to rebates of turnover taxes. Paragraph 1(b) of the GATT Protocol of Provisional Application reserves the right of the parties to apply previously existing statutes even though they may not be in harmony with the GATT. In any event, domestic law, which is paramount to the GATT, requires the application of countervailing duties to turnover tax rebates.

Balance of Payments Crisis

We support this Committee in its concern to find a solution to our balance of trade and balance of payments crisis. It is imperative that we act promptly to re-

¹ *Monthly Economic Letter*, First National City Bank, June 1968.

² *Nicholas & Co. v. United States*, 249 U.S. 34 (1919); *Downs v. United States*, 187 U.S. 496 (1903); cf. *United States v. Passavant*, 169 U.S. 16 (1898).

³ *Hearings Before the House Committee on Ways and Means on Simplification of Customs Administration* (H.R. 1535), 82d Cong., 1st Sess., p. 15 (1951).

Hearings Before the Senate Committee on Finance on H.R. 1612, 82d Cong., 1st Sess., p. 1197 (1951).

move the disadvantages to United States trade if our balance of trade and balance of payments positions is to be improved.

We were pleased to see the President recognize the urgency of this problem when he said on January 1 that:

"We must now look beyond the great success of the Kennedy Round to the problems of nontariff barriers that pose a continued threat to the growth of world trade and to our competitive position.

"American commerce is at a disadvantage because of the tax systems of some of our trading partners. Some nations give across the-board tax rebates on exports which leave their ports and impose special border tax charges on our goods entering their country.

"International rules govern these special taxes under the General Agreement on Tariffs and Trade. These rules must be adjusted to expand international trade further.

"In keeping with the principles of cooperation and consultation on common problems, I have initiated discussions at a high level with our friends abroad on these critical matters—particularly those nations with balance of payments surpluses.

"These discussions will examine proposals for prompt cooperative action among all parties to minimize the disadvantages to our trade which arise from differences among national tax systems.

"We are also preparing legislative measures in this area whose scope and nature will depend upon the outcome of these consultations." [Italics supplied.]

Since 1963 we have been negotiating with our trading partners on this border tax issue. Five years went by and nothing was done.

On January 1, 1968, the problem had become so serious, the President called for urgent action and a speedy solution to the problem. Over five months have passed since the President issued that call.

High level consultations and the prospect of legislation by the United States have not resulted in any "prompt cooperative action" by our principal trading partners. Witnesses at this hearing have forecast that negotiations may last years. Meanwhile, our trading partners are persisting in raising their border taxes and export rebates and thereby further increasing the disadvantages to our trade, at a time when the United States balance of trade can ill afford to be laboring under such disadvantages.

The only offer of any assistance which we have received since the President's call is an offer by a number of our principal trading partners to accelerate by one year their Kennedy Round reductions. But this offer was subject to the proviso that the United States impose no border taxes, import surcharges or quotas, and that Congress approve the "separate package" agreement.

In an attempt to keep us from following through on this border tax issue, our trading partners have offered us a mere sop. Indeed, even that sop is contingent upon the Congress doing their bidding with respect to this American Selling Price issue.

Passing for the moment the clear attempt to dictate to the Congress, what does this mean in practical terms and why do we call it a sop. The Common Market, in reviewing this problem, said that approximately 60% of United States exports to the Common Market would be affected by acceleration and estimated that the acceleration would increase United States exports to Europe by approximately \$80 million. This acceleration would amount to an average of about a 1% tariff reduction on about 60% of U.S. exports to Europe.

Accepting the Common Market's assumption that this 1% reduction on 60% of our trade would generate \$80 million in increased U.S. exports to the EEC in the coming year, then how much do border tax increases of 7% on our trade decrease our exports to Europe?

Despite the Committee's interest, the Administration's proposals for removing these disadvantages to United States trade have not been forthcoming. We believe, as the President so rightfully pointed out, that the GATT rules must be revised to remove the substantial disadvantages to our trade caused by the border tax-export rebate mechanism. We have read the U.S. Delegation position paper on border taxes submitted at the recent GATT meeting which the Government gave to the Committee. We applaud their analysis of the disadvantage to our trade.

But we have been negotiating with respect to this disadvantage for over five years, and have been preparing legislation for over 5 months—all to no avail!

It is obvious that the need is not for further analysis—the need is for action and action now.

Certainly, a long drawn-out negotiation is no answer. In our own domestic market, and in third countries, we simply cannot bear the 10 to 15% handicap which results from foreign export rebates and expect to remain competitive. Similarly, our export cannot bear a 10 to 15% border tax handicap and expect to remain competitive. In the face of these significant handicaps, imports will flood our markets and our exports will wither.

Since the Administration has not been forthcoming with its proposals, we would like to suggest proposals of our own. In formulating these proposals, we have set three goals:

One, that we seek equity, not largesse;

Two, that these proposals attempt to minimize the effect which our actions will have upon our trade with countries that do not employ these border tax-export rebate mechanisms; and

Three, we should abide by our international commitments.

To meet these goals, we recommend that the following steps be taken:

First, we should immediately impose a border tax and export rebate to the full extent that we are able to do so consistent with the existing GATT rules, that is, an amount equal to the total amount of indirect taxes imposed upon U.S. products. We believe that, as a minimum, these border taxes and export rebates should be at least 5%.

Second, until such time as an acceptable revision of the GATT rules has been worked out, the United States should enforce its countervailing duties statute in accordance with the decisions of the Supreme Court against all imports which have received the benefit of a turnover tax rebate or any other subsidy or bounty. The countervailing duty will fall upon imports from those countries that are subsidizing their exports and will have no effect upon those countries that do not. This step is required by existing law and it does not violate our GATT commitments because of the "grandfather" clause in the Protocol of Provisional Application.

Third, we should continue to press for an immediate and speedy reconsideration of the inequitable interpretation placed upon the GATT ground rules in order to provide fair and equitable treatment for countries with an income tax system.

When a U.S. border tax and export rebate are enacted, the Congress could make the question of our own border tax and export rebate, as well as our countervailing duty statute, proper subjects for discussion in any over-all negotiation designed to remove disadvantages to our trade caused by the border tax-export rebate mechanism, provided reciprocal action was taken by our trading partners.

This would provide more equitable treatment for our trade pending appropriate revision of the GATT rules. It would also provide negotiating leverage to assist our negotiators in working out an equitable settlement of this problem.

This third area—border tax-export rebate—in which the United States did not obtain reciprocity in the Kennedy Round negotiations, is an area in which all U.S. industry is deprived of reciprocity. If prompt action is not taken, this will have a continuing adverse effect upon our deteriorating balance of trade and balance of payments.

V. THE KENNEDY ROUND AND "SEPARATE PACKAGE" DEALS WILL HAVE A SERIOUS ADVERSE ECONOMIC EFFECT UPON THE U.S. CHEMICAL INDUSTRY, ITS WORKERS AND THE U.S. BALANCE OF PAYMENTS

We would now like to review for you the probable economic effect of the Kennedy Round and separate package agreement upon the domestic chemical industry, its workers and this country's balance of payments.

It is interesting to note at the outset the paucity of information in the Government testimony on this subject. The Committee was given page upon page of statistics as to the competitiveness and efficiency of the U.S. chemical industry, but no attempt was made to give the Committee any meaningful assessment of *what the effect of the Kennedy Round and "separate package" agreements will be on the domestic benzenoid chemical industry, its workers and the U.S. balance of payments.*

The Government presented this Committee with every possible favorable statistic about the chemical industry. But all of these Government statistics on the efficiency of the chemical industry really beg the issue—Mr. Turchan stated at the outset that this is a competitive, efficient industry. The real issue is: What

will be the probable economic effect of these chemical "deals" upon the U.S. industry, its workers and our country's already debilitated balance of payments?

Government testimony on economic effect

The Government testimony contains nothing but a few generalizations couplred with the assurance that the facts in support of these generalizations are all confidential and therefore will have to be presented to you in Executive Session—a matter about which I will have more to say shortly.

All the Committee and the public is told as to the effect upon this industry and its workers is that the Government witnesses:

"believe that the recommendations . . . will not cause any *significant* adverse impact upon the industries concerned." Government Statement, p. 1. [Emphasis supplied.]

and that the Government witnesses:

"would not attempt to mislead you with the judgment that no adjustments will be required in this industry, but I *believe* . . . that they will . . . be *surprisingly minimal*, and that the *adjustment assistance provisions* in this Bill *will be adequate*." Government Statement, p. 52. [Emphasis supplied.]

and that:

"the larger diversified firms in this industry have the resources . . . to *shift or re-employ any displaced workers*." Government Statement, p. 51 [Emphasis supplied.]

but that:

"[s]ome of the *smaller firms* may, in all candor, *face somewhat greater problems*." Government Statement, p. 51. [Emphasis supplied.]

These statements are hardly reassuring.

Of the crucial balance of payments effect of these "deals", the Government statement has very little to say except that it will "expand trade". However upon questioning it was acknowledged that this legislation was *not* a part of the Government's balance of payments program—an admission which we believe to be extremely significant.

Views of foreign competitors and marketing analysts

In commenting upon the economic effects of this deal we will attempt to give you our informed judgment *and* some facts as to the effect these "deals" will have upon the operations of our member companies. But in a very real sense we realize that this Committee will have to consider the Government's views and ours as coming from "interested parties." We therefore believe it would be helpful for the Committee to have the benefit of the views of some impartial "third parties", and the rather candid views of some of our foreign competitors.

Mr. Turchan has already mentioned to you how these chemical deals have made an official of our largest German competitor "feel like a little boy who has been promised an electric train for Christmas." Somewhat in the same vein, the British "Review of Industry" in July 1967 stated that:

"In chemicals, British, German and Swiss manufacturers should now be able to go hell for leather for the very big benzenoid chemical market of America."

In the July 15, 1967 edition of "Chemical Age" (U.K.), Desmond Fitzpatrick, a marketing expert for British Petroleum, Ltd., gives a thorough and penetrating analysis of the significance of these chemical "deals", especially as regards the low cost, high volume products in which labor cost is a less significant element. Mr. Fitzpatrick states:

"The effects of EEC's cuts will be marginal, of Britain's, relatively small. . ."

"The real difference to world trade is likely to arise from the offers, absolute and provisional made by the U.S. There is no need to see the details of the U.S. schedule of offers to assess the revolutionary effect of the general undertakings her negotiators have given."

"If, however, we assume that Congress agrees to the necessary legislation, the prospects in the U.S. market for British and Continental producers of benzenoid chemicals will be revolutionised. This is true in particular when low cost, high tonnage materials are considered."

"The abolition of ASP will have an even greater effect on foreign trade with the U.S. in plastics than in chemicals. . . ."

"Thus, an almost untouched export market will be created for plastics and resins manufacturers if ASP is abolished. How far they will be able to take advantage of it depends again on their level of surplus capacity."

* * * * *

"When and if ASP is abolished, levels of new plant capacity will take account of the newly created U.S. market. . . ."

I would wish to emphasize that Mr. Fitzpatrick's comments do not relate to the very sensitive labor intensive segment of our industry, but rather to the high volume, low priced, capital intensive products in which the Government has felt there was no threat whatsoever to our industry.

The overall significance and effect of these "deals" was summed up in a paper presented by Mr. George B. Hegeman of Arthur D. Little, Inc. at a Seminar on the Management of International Marketing in the Chemical Industry in Frankfurt, Germany in June, 1967. Mr. Hegeman stated:

" . . . Thus, Europe is a strong trading bloc and the move to reduce chemical tariffs around the world will provide a further stimulus to European exports and its balance of payments. With only limited tariff cuts scheduled for now in Europe, the U.S. chemical industry is not expected on balance to benefit from these negotiations. Should the American Selling Price be abandoned, U.S. imports will surely rise rapidly. Since the U.S. chemical trade balance will undoubtedly drop, so will its contribution to the U.S. payments position. However, the major firms now marketing in this area will try to maintain market position and will undoubtedly invest abroad to remain competitive. In doing so, they will follow the classic U.S. pattern of investing rather than trading. Only this time there will be a difference—they will intend to export to the United States and this will reinforce the pattern of improved trade balances in Europe and a deteriorating position in the United States."

Of course, Mr. Hegeman's speech was given before the U.S. adopted controls on foreign direct investment abroad. To the extent that these controls do effectively restrict our industry's investments abroad, the effect on the U.S. balance of payments will be even worse. Our foreign competitors will expand even more rapidly their share of the U.S. and world markets, with no resulting benefit at all for the U.S. balance of payments. From a balance of payments point of view, it is certainly far better for U.S. companies to retain as large a share as possible of its domestic market and of the world market even if it has to do so from lower cost bases abroad—at least our balance of payments would receive the benefit of the return on investment.

While we have been unable to find any similar economic independent assessments supporting the Government's position, we would, of course, be pleased to have the Government cite some for us and for the Committee. As I am sure you must realize, it is little consolation to the chemical industry that its foreign competitors and market analysts agree with it as to the serious adverse effect these chemical deals will have.

The Domestic Industry Analysis as to Probable Economic Effect

We would now like to turn to our analysis of the probable economic effect of these deals upon the operations of our member companies.

We did not want to come and follow the usual course of coming and just telling the Congress how badly we were going to be hurt. We therefore undertook a detailed study—item by item, cent by cent, using the actual sales and cost data off the books of the individual companies—to enable us to present a reasoned appraisal of the situation.

Industry Analysis.—I would now like to explain to you the type of analysis we have made. A Form A, which appears on the following page, [Form A appears in Mr. Barnard's oral presentation] was prepared for each individual product to enable comparison of the American Selling Price with the price at which the imported product could be sold in this market, after the payment of duty, insurance and freight and the importer's commission. The completed form shows the price at which imports can be sold in this country and the rate of duty (1) before the Kennedy Round reduction, (2) after the Kennedy Round reduction, and (3) after the "separate package" agreement. We then took the prices and calculated the loss of sales revenue and the pre-tax profit which would result if we had to sell our goods at the same price at which the imports could be sold in this market as a result of the duty cuts. In order that there not be the slightest question, the foreign prices used were those derived from

the Tariff Commission's converted rates although in many instances lower price quotations from abroad were available.

Our calculations were based upon two assumptions. First, we assumed that the entire amount of the duty cut would be passed on to the consumer. We assumed our foreign competitors would sell at a price that would provide them the same return they are now getting. In other words, that their profit would be the same as the profit which they are currently realizing on their sales to the United States. If these duty cuts are passed on *and* they still further reduce their price, the result would be even worse. If, on the other hand, these duty cuts are not passed on, it only means that our duty cuts are serving no purpose but to put additional cash in the pockets of our foreign competitors, with no benefit to the U.S. consumer.

The second assumption was that U.S. producers would continue to sell the same quantity that we sold in the base period. We recognize that if foreign producers were able to sell at these lower prices, they would take a large share of the market and that we would therefore not be able to sell the same quantity. Moreover, as can be seen from the pre-tax profit figures which would result from the Kennedy Round deal and the separate package deal, there would be considerable question as to whether we would even continue to make the product.

As a practical matter, one of these assumptions goes one way and one goes the other. As we shall discuss in a moment, there is no doubt in our minds that the actual effect upon our competitive position would be even worse than the results that are obtained by the method we used. But for now, let us return to our analysis.

We took the results of the individual product analyses and grouped them together by categories on Form B. On this basis we came up with an overall picture for the intermediates, dyes and pigment basket categories, which cover three of the principal benzenoid chemical areas. In this way we were able to avoid revealing any confidential business information, since individual product data would be buried in the overall figures which we are presenting.

Many companies were unable, either because of the way their books were kept or because of the amount of work involved to develop the information for us on a uniform basis. However, we were able to obtain data in three areas which provide a representative cross section of the industry. In each of these areas we have the results for 8 to 10 companies ranging from the largest to the smallest and in each instance the data accounted for approximately 90% of the total sales of such products by these companies. The products not included were those which accounted for a relatively small amount of the companies' sales.

Results of Industry Analysis.—The results are shown on Form B on the facing page. (Form B appears in Mr. Barnard's oral presentation.) For the intermediates baskets, TSUS 403.30–60, sales before the Kennedy Round by the companies supplying data were \$125 million and pre-tax profit was 9%. The loss of sales revenue which would be suffered under Kennedy Round reductions was \$9 million and pre-tax profit would fall to 2%. Then, assuming the prices at which we would have to sell in order to meet foreign prices under the "separate package" agreement, we would have a total loss of sales revenue of \$11 million and a pre-tax profit of .2%.

For the dye categories, TSUS 406.–50, sales by the companies supplying data before the Kennedy Round were \$123 million and pre-tax profit was 12%. The loss of sales revenue which would be suffered under Kennedy Round reductions was \$15 million and pre-tax profit would fall to .01%. Then, assuming the prices at which we would have to sell in order to meet foreign prices under the "separate package" agreement, we would have a total loss of sales revenue of \$21 million and a pre-tax loss of 6%.

For the pigment category, TSUS 406.70, sales by the companies supplying data before the Kennedy Round were \$59 million and pre-tax profit was 16%. The loss of sales revenue which would be suffered under Kennedy Round reductions was \$7 million and pre-tax profit would fall to 1%. Then, assuming the prices at which we would have to sell in order to meet foreign prices under the "separate package" agreement, we would have a total loss of sales revenue of \$10 million and a pre-tax loss of 5%.

These calculations clearly illustrate what the Kennedy Round and "separate package" agreements will do to the competitive position of the domestic benzenoid chemical industry.

Effect of Foreign Commercial Strategy.—As I stated earlier, we have no doubt but that the damage to our competitive position is even worse than is reflected

on Form B. We are left open to a commercial strategy by our foreign competitors which would have an even more serious adverse effect than is reflected in these calculations.

If you were sitting in the shoes of the foreigners, you would have a strategy to the way in which you passed on the tariff reductions. You would pass on the tariff reductions when the additional share of the market which you would obtain would earn more money for you than you would lose by passing on the tariff reduction. On those products where you did not feel you could obtain a sufficiently greater market share by passing on the duty reduction, you would retain the profit and use it in other areas where you are trying to obtain a larger share of the U.S. market—to finance price cuts in addition to the substantial tariff reductions.

Thus, these deals will give our foreign competitors both the ability and the incentive to cause serious economic injury to our industry. It is clear that their ability to sell in this market will be largely a function of their ability to develop the productive capacity necessary to do so. Given the large amount of profit which they would be able to make as a result of their inherent cost advantage and with the largest chemical market in the world available to them, there can be little question but their already rapidly expanding capacity could continue to expand at an even more rapid pace.

Summary of economic effect

I think that in the light of these figures and the independent analyses I referred to earlier it is readily apparent that chemical imports will continue to increase rapidly. As mentioned at the outset, even under the current ASP duties, imports have increased an average of 18% a year from 1960 to 1966, with the increase in recent years being even higher. The U.S. share of the export market has fallen from 29.5% in 1960 to 23.7% in 1967. In 1960 \$1 out of every \$9 of new capital expenditure by the U.S. chemical industry was made abroad, but by 1967 the industry was putting \$1 out of every \$3 of new capital expenditures into plants abroad. The potential effect of unreciprocal tariff reductions upon our industry can only serve to accentuate these trends.

What then will be the effect on these chemical "deals" upon the domestic chemical industry, its workers and the balance of payments position of the United States?

Industry.—The large diversified chemical companies—Dupont, Monsanto, American Cyanamid, *et al*—will not go out of business, but they *will be* seriously affected and will have to adjust. They *will* have to stop production of a number of products—they have already begun; they *will* have to close some plants—they have already begun. They *will be* forced to still further expand the investment in lower cost facilities abroad not only to remain competitive in foreign markets, but in order to remain competitive in the United States' market.

The economic effect upon the smaller companies *will be* considerably greater. Without the benefit of the resources or the diversified product lines of the larger companies some of them *will be* forced to close up shop. Others, with a stronger marketing position *will* eventually stop manufacturing in this country, begin importing or be absorbed by larger firms.

Labor.—There *will not be* any fewer workers in the chemical industry next year or the year after than there are this year, but the effect upon labor will be considerable. There *will be* fewer new jobs for American workers created by the chemical industry than there have been in the past. The chemical industry *will not be* able to make a contribution in the future as it has in the past to the hiring and training of the 5 million new workers which must be put to work each year. There *will be* American chemical workers who will lose their jobs or have to relocate or be retrained—but that's what adjustment assistance is for. There *will be* hundreds and eventually thousands of jobs exported by the chemical industry each year which would otherwise have been created in the United States.

Balance of Payments.—The chemical industry *will not* have a balance of trade deficit next year or even the year after, but its contribution to the United States balance of payments will be seriously affected. There *will be* an even more rapid rise in benzenoid chemical imports and in chemical imports generally. The chemical industry *will* continue to lose its share of the world market and thereby further injure our balance of payments. The chemical industry *will be* forced to invest as much in lower cost facilities abroad as the law will permit. Chemical exports *will* continue to expand, but at a much slower rate. The chemical industry *will* each year make less and less of a contribution to our balance of trade until by 1975 we will actually have a trade deficit.

If the "separate package" is approved and steps are not taken to remove the disadvantages to our trade resulting from the foreign border tax-export rebate mechanism, all of these things will come to pass. We do not like it, we do not want it to happen—it will hurt our industry as much as it will hurt our workers and the U.S. balance of payments. But whether we like it or not, this is what will happen.

Tariff Commission Report on Economic Effect

As I noted earlier, the Government testimony contains nothing on probable economic effect except a few generalizations coupled with repeated assurances that the facts in support of these generalizations are all confidential and therefore will have to be presented to you in Executive Session. This is but the latest and most recent example of the steps being taken to keep from this industry and the public the non-confidential portions of the Tariff Commission's findings and conclusions as to the probable economic effect these "deals" will have upon the domestic benzenoid chemical industry and its workers.

Despite repeated requests by Members of Congress and our industry, the Government has consistently denied access to the non-confidential findings and conclusions. At first the Government refused to release the Report on the grounds that the Commission's findings were "not meaningful and indeed hardly intelligible" without access to the confidential business data contained in the other part of the Report. When the Chairman of the Tariff Commission was asked what the Commission was doing preparing findings that were "not meaningful and indeed hardly intelligible", without access to the confidential business data, the Chairman responded that:

"The Commission's conclusions were stated in abbreviated fashion; however, their meaning is perfectly clear to anyone having the background information which the report contained."

Certainly this industry has the background information contained in the report—we supplied it to the Tariff Commission in the first place!

The repeated requests for the non-confidential findings and conclusions have been denied on the grounds that they would require the release of confidential business information, but not once has the Government asserted that the "findings and conclusions" contain confidential business information. Instead they respond that "both volumes" contain confidential business information. Moreover, requests that the Report be released with any confidential data expunged have met with no response.

We find it difficult to understand how our trade negotiators can come before this Committee and request implementation of the separate package agreement without releasing and permitting public comment on the non-confidential findings and conclusions of the Tariff Commission with respect to the probable economic effect of such action.

These non-confidential findings and conclusions contain valuable information. The Government's own testimony states that:

"The Commission advised whether particular concessions would or would not have an 'adverse effect' on domestic producers, i.e., whether 'this concession would or would not result in increased imports that would have significant effect on employment, profit levels, use of productive facilities, or on one or more of these economic factors'."

They were presumably quoting from the Commission's own description of what its report contained.

Why is the Commission's advice as to "whether particular concessions would or would not have an 'adverse effect' on domestic producers" confidential?

Why is the Commission's advice as to whether "this concession would or would not result in increased imports that would have significant effect on employment, profit levels, use of productive facilities, or on one or more of these economic factors" confidential?

Both of these questions can be readily answered without revealing any confidential business information. This Committee, our industry and the public can be the judges of whether this information is "meaningful or intelligible" without the underlying confidential business information upon which it is based. If indeed it is not "meaningful or intelligible" certainly no harm can come from its release.

The Government has instead elected to attempt to present its evidence on economic effect to this Committee "ex parte" in Executive Session, where the industry will not have the opportunity to comment on their facts and their

analysis. While we believe there is no excuse for the Government's not publicly presenting its analysis, less any confidential information, we agree with Congressman Curtis that industry should be represented at any session where the facts are discussed and accorded an opportunity to comment.

Conclusion

In light of the serious lack of reciprocity in the 50%-20% Kennedy Round deal and in the "separate package" and the serious adverse economic effect which these deals will have upon the domestic chemical benzenoid industry, its workers, and the U.S. balance of payments, we strongly urge this Committee to reject the "separate package" agreement and also to seriously consider what further steps it can take to bring some measure of reciprocity to the unreciprocal and coercive 50%-20% deal negotiated in Geneva last year.

In addition, we believe that it is absolutely necessary that prompt action be taken to remove the critical disadvantages caused our trade by the border tax-export rebate mechanism imposed by many of our trading partners. We have requested the prompt "cooperative action" of our trading partners. They have not only rejected our request, but have persisted in actions which will further increase our existing disadvantage. We therefore strongly urge that this Committee take those steps necessary to remove these disadvantages to our trade.

In our testimony we recommended one way of dealing with the problem. There certainly may be others, but the important thing is that action be taken—and taken now.

There can be no liberalization of trade without reciprocity, and there can be no liberalization of trade without requiring our trading partners to provide us with the same tax treatment of our goods as we provide theirs. Our balance of trade and balance of payments cannot stand it. Strong as we are, we are unable to compete with the rest of the world with one hand tied behind our back.

Thus, the issue we present to this Committee is not an issue of free trade versus protectionism. The issue which the Kennedy Round and these chemical "deals" pose for this Committee is whether we can afford trade liberalization without reciprocity and without equality of tax treatment for U.S. exports; whether we can afford to liberalize trade when our trading partners are doing just the opposite. We believe that the answer to both of these questions is "No"!

We appreciate the opportunity which you have accorded us to appear here today on behalf of the domestic benzenoid chemical industry.

MEMBERS OF THE DRY COLOR MANUFACTURERS ASSOCIATION

American Cyanamid Company, Pigments Division, Wayne, New Jersey
 American Hoechst Corp., Carbic Color Division, 270 Sheffield Street, Mount-
 side, New Jersey
 Federal Color Laboratories, 4526 Chickering Avenue, Cincinnati, Ohio
 Geigy Chemical Corp., Saw Mill River Road, Ardsley, New York
 General Aniline & Film Corp., Dyestuff & Chemical Division, 140 W. 51st Street,
 New York, New York
 The Harshaw Chemical Company, 1945 E. 97th Street, Cleveland, Ohio
 The Hilton Davis Chemical Co., 2235 Langdon Farm Road, Cincinnati, Ohio
 Holland Suco Color Co., P.O. Box 2166, Huntington, West Virginia
 I.C.I. (Organics) Inc., 55 Canal Street, Providence, Rhode Island
 Imperial Color & Chemical Dept., Hercules Powder, Inc., Glens Falls, New York
 Keystone Color Works, Inc., 151 West Gay Avenue, York, Pa.
 H. Kohnstamm & Co., Inc., 161 Avenue of the Americas, New York, New York
 Frederick H. Levey Co., 380 Madison Avenue, New York, New York
 Magruder Color Company, 1 Virginia Street, Newark, New Jersey
 Max Marx Color & Chemical Co., 192 Coit Street, Irvington, New Jersey
 Allied Chemical Corp., Harmon Colors, P.O. Box 14, Hawthorne, New Jersey
 New York Color & Chemical Corp., 374 Main Street, Belleville, New Jersey
 Charles Pfizer & Co., Inc., 235 East 42nd Street, New York, New York
 Ridgway Color & Chemical Div., Martin Marietta Corp., 75 Front Street,
 Ridgway, Pa.
 Sandoz, Inc., Pigment Dept., Hanover, New Jersey

The Sherwin-Williams Co., 101 Prospect Ave., N.W., Cleveland, Ohio
 Sun Chemical Corp., 750 Third Ave., New York, New York
 Thomasset Colors Division, Sterling Drug, Inc., 120 Lister Avenue, Newark,
 New Jersey

EXHIBIT 1

COMPARATIVE ANALYSIS OF AMERICAN SELLING PRICE VALUATION AND OTHER METHODS OF VALUATION BASED UPON OBJECTIVE STANDARDS

Over the years the valuation of imported goods has proved to be a recurring tariff problem for the United States. Since our import duties are made up in major part of ad valorem duties, the effectiveness of our tariffs is largely a function of the reliability of our methods of valuation.

A. "EXPORT VALUE" AND THE PROBLEM OF UNDERVALUATION

At the present time, our valuation system is based principally upon "export value", pursuant to which imports are valued at wholesale price at which they are freely sold or offered for sale for export to the United States in the principal markets of the country of exportation. It is usually difficult, if not impossible, for Customs to ascertain with any reasonable degree of certainty the price at which any given product is being sold for export to the United States in the principal markets of any given country. Customs must therefore rely to a very considerable extent upon the prices listed in the invoices submitted by the importer.

Consequently, a clear opportunity exists for the foreign producer and the importer to avoid the payment of duty by submitting fictitious invoice values.—Moreover, even where the invoice value does reflect the actual price being charged in the transaction, the price itself may also reflect other relevant considerations, such as tied purchases, which result in an understatement of the export value.

Not only does the opportunity and a clear incentive for undervaluation exist, but the ability of Customs to check on the value claimed by the importer, increases the potential for undervaluation.—Customs simply cannot readily ascertain what the export value should be without making inquiries abroad, which may or may not assist in establishing the export value. Even where foreign inquiry is made, there still exists the possibility of claiming and supporting an artificial price as the export value.

That this is not only possible, but indeed likely, is evident from a recent report prepared by the Customs Bureau¹ which discussed the problem of determining whether or not to apply the export value on the basis of the price of the good f.o.b. foreign port or on the basis of an ex-factory price. The elimination of inland freight charges usually results in an export value three to five percent less than the f.o.b. price.

Under existing practice, the merchandise is appraised at the f.o.b. price unless the manufacturer furnishes an affidavit that he sells, or offers to sell, at an ex-factory price. The Bureau of Customs report points out:

"That this can lead to fraudulent practices is obvious; to prove it is in most cases difficult, if not impossible. In Japan alone approximately 4,000 manufacturers have submitted affidavits that they sell at an ex-factory price. Because of this most of the merchandise coming out of Japan is appraised on an ex-factory basis. Yet those who profess to know claim that 95% of the merchandise imported from Japan is sold on an f.o.b. basis."

Because of this problem, the Bureau of Customs last year announced its intent to value all goods coming from Japan on an f.o.b. basis unless an affidavit is submitted and Customs has been able to confirm the fact that the goods are actually sold on an ex-factory basis. The actual implication of this proposed regulation is that the Bureau of Customs is unable to rely upon the sworn affidavits of foreign manufacturers that sell on an ex-factory basis. If we are unable to rely upon the sworn affidavits of foreign producers, at least as to the basis upon which they sell their goods where only three to five percent of the export value is involved and where Customs should be able to check, then one can only imagine the amount of undervaluation involved in the "export values" submitted to Customs where there is usually much more at stake and where Customs is in even less of a position to check the accuracy of the prices submitted.

¹ Bureau of Customs, *Evaluation of: Mission Organization Management* (December, 1964).

B. "BRUSSELS VALUATION" AND THE PROBLEM OF OVERVALUATION

While the export value method used by the United States is subject to undervaluation, the Brussels definition of value applied by most of our principal trading partners often results in overvaluation. Brussels valuation is based upon "the price which [the imported goods] would fetch . . . on a sale in the open market between buyer and seller independent of each other." Although this avoids the necessity of having to determine dutiable value on the basis of prices prevailing in foreign countries, it also gives Customs officials considerable discretion in establishing the dutiable value, especially where the buyer and seller are not completely independent of one another.

The International Chamber of Commerce has severely criticized Brussels valuation because of its uncertainty and tendency towards overvaluation.¹ This criticism coincides with the export experiences of some of our member companies, from whom the resulting overvaluation has become known as the "uplift" or "Maidenform" tax.

C. THE AMERICAN SELLING PRICE SYSTEM

1. *Objective Standards for Evaluating Methods of Valuation*

American Selling Price valuation avoids the problems of undervaluation inherent in our existing system of import valuation, and the overvaluation problems of Brussels valuation.

An appropriate set of objective standards for evaluating any method of valuation would be that it be (1) certain, (2) readily ascertainable by importers, domestic industry and Customs, (3) not subject to manipulation, and (4) not inconsistent with the purpose of our tariff. The American Selling Price system meets these objective standards far better than either the "export value" method currently applied by the United States or the so-called Brussels method of valuation applied by many of our principal trading partners.

2. *Whether ASP provides higher valuation base is irrelevant*

Unfortunately American Selling Price valuation has been much maligned both by our trading partners and by our own Government on the grounds that it provides for a higher basis of valuation and consequently higher amounts of duty than the other methods currently applied. This criticism is completely unjustified and is certainly not a consideration in the determination of which is the most appropriate method of valuation.

It should be recognized by all concerned that the fact that one method of valuation results in a higher value than another is completely irrelevant, since, consistent with international obligations, the rate of duty may be adjusted in such a manner as to assure that any change in valuation base does not result in change in the amount of duty collected. The fact that American Selling Price valuation usually results in a higher valuation base than the "export value" system is no more of an argument against American Selling Price than the fact that the Brussels valuation (based on landed value including insurance and freight) results in a higher basis of valuation than "export value" is an argument against the Brussels method.

3. *The merits of American selling price valuation*

We outline below the reasons why we believe the American Selling Price is a more appropriate basis of valuation than either export value or the Brussels method. For these reasons, we believe that American Selling Price valuation should be retained for benzenoid chemicals. In doing so we also answer the principal criticisms which have been made of ASP valuation.

a. *American Selling Price valuation is certain.*—It is based upon the price for which the product is sold or offered for sale in the United States in the ordinary course of trade and in the usual wholesale quantities at the time of exportation. Where the product is being sold at more than one price, Customs uses the price at which the greatest quantity was being sold as of the time in question.

American Selling Price valuation has been criticized for being uncertain, not as to the value itself, but as to whether or not there is an American Selling Price in instances where the product is not produced in the United States.

¹ International Chamber of Commerce, *The Brussels Definition of Value—The Case of the "Sole Buyer"* (February, 1963); International Chamber of Commerce, *Customs Valuation of Imported Goods—A Review of the Brussels Definition and of Its Application* (February, 1959).

If the product is not produced in the United States, the United States value or the so-called "export value" is applied. It is of course possible that U.S. production and sales of a given product may commence between the time an order is placed for import and the time the goods are actually exported to the United States. To the extent that this is a problem, it may readily be cured by providing that the American Selling Price will only be applicable to products which were produced and sold in the United States for a period at least, for example, 90 days, before the goods are exported. SOCMA recommended such a procedure both to the Bureau of Customs and to the Office of the Special Representative for Trade Negotiations on several occasions over the past three years.

b. The American Selling Price of the product is readily ascertainable to importers, Customs and domestic producers.—In addition to having the benefit of prices filed by domestic manufacturers and weekly price information from trade publications, Customs can quickly and easily confirm the American Selling Price through direct inquiries to domestic manufacturers and their customers.

It has been urged that an importer frequently does not have sufficient information as to what the American Selling Price of a domestic item actually is and therefore is unable to determine in advance what his duty will be. This is, of course, absurd. Before placing an order, any importer has to know the price at which the comparable domestic product is being sold in order to determine whether or not it would be profitable to import.

Because of the availability of information concerning the American Selling Price to all concerned, the chances of under or over valuation are virtually nonexistent. Both importers and domestic manufacturers are in a position to challenge any appraisal which may be out of line. Similarly, Customs is not in a position of having to accept the word of an interested party as to what the proper appraisal should be, since it is in a position to quickly confirm the ASP with U.S. consumers, and in the case of any dispute is able to subpoena the records of domestic manufacturers.

c. ASP valuation is not subject to manipulation.—Importers are unable to establish an artificial price where the exporter and importer are not dealing at arms length, such as an intra-corporate transaction or any other situation where the price of the goods is not the sole consideration of the transaction. Nor is ASP subject to manipulation by domestic producers. Competitive factors at work in the U.S. market, and certainly the United States antitrust laws, are a powerful deterrent to any manipulation by domestic producers.

More important, however, is the fact that there is no competitive advantage to be gained over imports by raising the American Selling Price.—For example, assume the American Selling Price of the product is \$1.00 per pound and imports of the same product can be sold in this country at \$0.99 per pound. Even at 40%, the highest ASP rate currently applicable, only 40% of any raise in the American Selling Price would be offset by increased duty. If the domestic manufacturer raised his price to \$1.10, it would result in 4 cents additional duty, which would raise the price of the import to \$1.03. Although the American manufacturer could by raising the ASP have increased the amount of duty the importer would have to pay by 4 cents, this would make little sense because he would actually be increasing the competitive advantage of the imported product from 1 cent to 7 cents.

d. ASP valuation is consistent with the purpose of our tariff.—The principal purpose of our tariff is to offset some of the disparity in costs of production here and abroad. Also a guiding principle is that of equal treatment to all of our trading partners. Yet the use of export value violates both of these principles by providing a tariff advantage to the lowest cost foreign producer on top of the significant cost advantages they already enjoy. Thus, where low production costs permit a low cost country to undercut the U.S. price of a product or the prices of other higher cost producers selling in this market, the application of a duty based upon export value actually increases rather than decreases the existing cost disparity.

By providing a tariff advantage on top of the substantial cost advantage already enjoyed, the use of export value actually subsidizes a widening of the cost disparity. Where a 30% duty is involved, the U.S. Government actually bears 30% of any reduction in the export value. This is, of course, clearly inconsistent with the theory of attempting to offset the production cost disparity. It does just the opposite.

ASP valuation, on the other hand, is consistent with the purpose of our tariff. Although it does not in any way diminish any existing cost advantage an import may have, unlike export value, it does not accentuate the cost advantage by pro-

viding additional tariff advantage on top of it. It treats all imports equally by levying the same amount of duty upon imports irrespective of whether it is a high or low wage country.

Moreover, unlike Brussels valuation (c.i.f.), it does not discriminate against foreign producers who, because of the distance involved or discriminatory freight rates, have to pay higher shipping charges in order to land their goods here.

Finally, ASP valuation reflects the cost of producing goods in the United States and the competitive factors prevailing in U.S. markets, instead of those prevailing abroad. This at least serves to diminish the extent to which changes in existing differences in production costs and market conditions will result in more favorable tariffs for foreign producers.

CLEARY, GOTTLIEB, STEEN & HAMILTON,
Washington, D.C.

ROBERT C. BARNARD,
GEORGE V. EGGE, Jr.,

*Counsel for the Synthetic Organic Chemical Manufacturers
Association and the Dry Color Manufacturers Association.*

EXHIBIT 2

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION,
New York, N.Y., May 17, 1966.

Hon. CHRISTIAN A. HERTER,
Special Representative for Trade Negotiations,
Washington, D.C.

DEAR GOVERNOR HERTER: In December 1964 we met with you to discuss SOCMA's proposal for improving the administration of the American Selling Price provisions of the Tariff Act. These proposals had been made to the Customs Bureau as early as 1963 in response to criticism by importers of alleged inequities in the administration of American Selling Price valuation.

The maintenance of American Selling Price valuation is very important to the maintenance of a strong and viable benzenoid chemical industry in the United States, and its removal would undoubtedly force the exportation abroad of both jobs and capital. In this connection, it is important to remember that importers of benzenoid chemicals have taken the position that the uncertainty and unfair practices in the administration of American Selling Price valuation is more of a trade deterrent than the amount of duty assessed by reason of determining duty on the basis of the American Selling Price (see Hearing before the Trade Information Committee, p. 2420). While we believe that the administration of the American Selling Price valuation provisions is on the whole as fair and reliable as any in our customs laws, there are areas of criticism in which actual or supposed inequities in the administration of American Selling Price valuation can be eliminated.

For this reason, we believe it appropriate to review for you again at this time our proposals for improving the administration of American Selling Price valuation in order to remove the alleged inequities complained of by importers of benzenoid chemicals.

We believe that these proposals constitute an acceptable solution to the issues which have been raised concerning American Selling Price valuation and fully meet the complaints which have been voiced by importers. There is certainly no need to eliminate American Selling Price valuation in order to meet the complaints which have been made abroad.

1. *Complaint.*—One frequently heard complaint by importers is that products which have been noncompetitive (and therefore appraised on the basis of U.S. value, export value or foreign value), are frequently, and without advance notice, determined by the appraiser to have become "competitive" and therefore subject to appraisal on the basis of American Selling Price. As a result, importers have at times incurred lawsuits since they had calculated their costs for the imported merchandise on the premise that the product was not competitive and therefore subject to appraisal at a lower valuation base than American Selling Price.

Solution.—In order to resolve this problem, we have urged and would support a proposal that the Bureau of Customs amend its regulations to provide

that the status of an imported product could not be changed from noncompetitive to competitive without 30 or 60 days' advance notice published in the Federal Register or the Treasury Decisions. In this way, importers could rely on the competitive status of a product that existed at the time the decision was made to import the product.

2. *Complaint.*—Another complaint by importers is that "competitive" status for some imports is sometimes based upon information filed by domestic manufacturers which has been obsolete as a result of discontinuance of production or withdrawal of the product from sale in the open market.

Solution.—We have recommended that this problem can be easily remedied by simply considering any information as to competitive status of a product filed by domestic manufacturers to be obsolete unless received every six months.

3. *Complaint.*—A similar objection has been that in some instances information requiring "competitive" status has been filed by domestic manufacturers who have not in fact freely offered the product for sale in the United States. Under Section 402(e) of the Tariff Act of 1930, as amended, the appraiser is to apply American Selling Price valuation (1) where sales are actually made, and (2) based upon "the price . . . a domestic manufacturer would have received or was willing to receive for such merchandise when sold for domestic consumption" in the United States. Importers complained that for some products Customs applies American Selling Price valuation even though a domestic manufacturer did not actually sell or freely offer a product by publication of price lists or sales literature but instead used the price a domestic manufacturer would have been "willing to receive" from a prospective purchaser.

Solution.—We feel that this problem could be readily cured if Customs will make "competitive" status contingent upon a domestic manufacturer's either actually participating in the market or clearly informing the trade that the product is available for sale—or can be delivered to a prospective purchaser within a reasonable time after receipt of an order.

4. *Complaint.*—Finally, on occasions there have been disputes as to whether an imported product; i.e., a dye or pigment, is sufficiently "similar" to a domestic product to be accorded "competitive" status, and, if so, on what basis. In such instances, either the importer or the domestic manufacturer has disagreed with the findings of the Customs Laboratory concerning strength, brightness or application of a product.

Solution.—We have recommended that this problem be remedied by the appointment of an arbitration panel of experts from domestic industry, importer and consumer interests to be used to assist the Customs Laboratory and appraisers in determining the similarity of the domestic and imported product. This panel of experts should be chosen from representatives not involved in the importation in question and their views should be conveyed directly to the Customs Laboratory with neither of the affected parties being aware of the position taken by the industry's arbitrators.

We believe that for the most part the foregoing recommendations are fully responsive to the criticisms of American Selling Price and can be implemented by revising the existing Customs Regulations. We would support such revisions and, indeed, would support legislation implementing these proposals to the extent legislation is necessary.

Sincerely yours,

C. S. OLDACH,
President, SOCMA.

CLEARY, GOTTLIEB, STEEN & HAMILTON,
Washington, D.C., November 17, 1966.

Re SOCMA's Recommendations for Improvement of the Administration of the American Selling Price Method of Valuation.

MR. RAYMOND MARRA,
Director of Appraisalment,
Bureau of Customs,
Treasury Department,
Washington, D.C.

DEAR MR. MARRA:

On September 26, 1966, representatives of the Synthetic Organic Chemical Manufacturer's Association (SOCMA) met with you, members of your staff and Mr. Robert A. Burt, Assistant General Counsel, Office of the Special Represent-

ative for Trade Negotiations, in order to make certain construction suggestions for improving the administration of the American Selling Price method of valuation. A memorandum of this meeting, describing SOCMA's suggestions and the initial reactions of the attending government representatives, was sent to the interested parties on September 27, 1966. On September 29, 1966, Dr. Carl S. Oldach, President of SOCMA, embodied the recommended administrative changes in a three-part proposal which was sent directly to the Special Trade Representative. A copy of this proposal is enclosed for your information.

During our meeting, the government representatives expressed interest in some of SOCMA's suggestions. It was my understanding that you personally believed that some of our proposals were of merit and should be explored further. With respect to SOCMA's proposal to eliminate the alleged importers' complaint that Customs laboratories' delays were a trade barrier, you stated that your office would require additional information which would be obtained and communicated to us.

In conformity with its policy of cooperating to improve and simplify the administration of the American Selling Price system, SOCMA and its members will be glad to provide you with additional information your office may require with respect to SOCMA's proposals. Apart from the fact that American Selling Price is currently a subject of discussion at the GATT negotiations in Geneva, SOCMA believes that it is important to remedy any flaws which may exist in the administration of the American Selling Price system. Since your office is in a position to evaluate the validity of importers' complaints, we would appreciate having your considered evaluation of SOCMA's proposals as set forth in the memorandum of meeting dated September 27, 1966 and Dr. Oldach's letter dated September 29, 1966.

Through continued cooperation between industry and government, improvements in our laws and their administration can be made in the public interest. In order that the members of SOCMA can do their part, it would be of great value to have your guidance, particularly with respect to assessing the validity of importers' complaints and the feasibility of implementing SOCMA's proposals.

Please feel free to call upon me for any assistance or additional information you may require. Copies of this letter have been distributed to all those who attended the September 26 meeting, as well as interested staff members of the Office of the Special Representative for Trade Negotiations.

Sincerely yours,

ROBERT C. ZIMMER.

Enclosure.

MEMORANDUM FOR INDUSTRY AND GOVERNMENT REPRESENTATIVES

Re Conference between Bureau of Customs, STR and SOCMA Representatives, September 26, 1966.

On September 26th, the undersigned, Mr. Frank Regan and Dr. Crayton Black of the DuPont Company met with Mr. Robert A. Burt, Assistant General Counsel, Office of the Special Representative for Trade Negotiations and Messrs. Raymond Marra, Director of Appraisement, Bureau of Customs, James Coleman, Assistant Director of Appraisement, Bureau of Customs, and Edward Doyle, Assistant General Counsel for Rules and Regulations, Bureau of Customs.

The purpose of the meeting was to discuss certain changes in the administration of the American Selling Price method of valuation which had been suggested by SOCMA to meet the objections of importers to the American Selling Price valuation method.

It was made clear at the outset that at the meeting we would not discuss the merits of maintaining ASP as a valuation method, inasmuch as that question would be considered by the Herter Office after it received the report of the Tariff Commission. At the same time it was stated that suggestions would be made for discussion which went further than any previous suggestions made by SOCMA.

SOCMA pointed out that the administrative problems—"uncertainty, unfair practices and long delays"—were the apparent gravamen of importers' general objections to ASP. This statement appeared in a colloquy between Mr. Joseph Donohue, counsel for the importers, and Mr. William B. Kelly, Jr., of the Office of Commercial and Financial Policy, Bureau of International Commerce, before the Trade Information Committee on January 29, 1964, copies of which were distributed.

What we had been informed were the principal importers' objections and solutions for these objections follow :

1. *Alleged Objection.*—Importers have complained that organic chemicals previously appraised as non-competitive were subsequently classified as competitive by an Appraiser, without advance notice, thereby causing serious loss to the importer.

Proposal.—The Bureau of Customs should amend its regulations to provide that a non-competitive commodity will not be appraised as competitive without advance notice to the importer of 90 days. Such notice would be published in the Federal Register and also mailed to principal importers of the product by the Bureau of Customs.

2. *Alleged Objection.*—Domestic manufacturers file price information which is obsolete or false, and price information is sometimes filed on products no longer manufactured by the domestic industry.

Proposal.—Unless domestic manufacturers submit sworn price information every six months, a commodity shall be considered non-competitive. Although we believe the importers' allegation concerning false price information is without merit, we propose that penalties be attached to the intentional filing of false price information.

3. *Alleged Objection.*—Commodities not actually sold are classified as competitive if they are "offered for sale" by domestic manufacturers. This practice permits the domestic industry to nominally maintain products in their line simply to exclude imports.

Proposal.—Unless a product is actually sold by a domestic manufacturer in commercial quantities, it shall be classified as non-competitive. This proposal goes further than SOCMA's suggestion in 1964 that a product simply be "available for sale."

4. *Alleged Objection.*—Importers complain that there are long delays in obtaining analyses from the Bureau of Customs laboratory and that this disrupts import trade.

Proposal.—When the Bureau of Customs believes that its laboratory facilities are overtaxed, it should refer import samples to independent laboratories, a list of which can be submitted to both importers and the domestic industry for possible objection. The independent laboratory would then submit its report to the Appraiser, in confidence, and he would make appropriate decisions. This suggestion differs from one made by SOCMA in 1964 in that no "panel" of representatives of importers or domestic producers would be involved to arbitrate disputes. Rather, the independent laboratories would simply provide additional manpower which could be used by the Customs Laboratory at its discretion in order to expedite the processing of import analyses.

Messrs. Marra and Coleman indicated their general feeling that we had over-emphasized the importance of importers' complaints in connection with the administration of ASP. Most sophisticated importers, said Mr. Marra, know the market conditions in the United States and do not require advance notice of the competitive status of benzenoid products or the general price levels. Mr. Marra felt that some of our suggestions would make the Bureau of Customs administration of ASP a great deal easier.

Mr. Marra stressed the importance of the suggestion that requirements that a product be "available for sale" or "offered for sale" be stricken from the law in connection with determining whether a product is competitive or non-competitive. Mr. Marra felt this would simplify Customs' work and that it would remove the opportunity for an importer to complain that the ASPs upon which duties are based are not real prices.

In elaboration of this proposal, we suggested that in order to establish an ASP, a domestic manufacturer might be required to submit a sworn statement that actual commercial sales had taken place within some reasonable period prior thereto at the prices reflected in the statement. Messrs. Coleman and Doyle questioned the use of such a price at a later date when the market price of the product in question could have declined. Dr. Black and I both indicated that the price reflected in the manufacturer's statement would be used only to indicate to importers the approximate market level; it would still be open to the Bureau of Customs or importers to establish that market prices were lower at the time of exportation or entry into the United States. All of the Government representatives present felt that such a proposal was of real merit and should be explored further.

Mr. Marra felt that our proposal that a non-competitive commodity will not be appraised as competitive without ninety days advance notice was similarly

worthwhile, although he believed sophisticated importers do not normally have problems in this area. However, he indicated that our proposal would be of benefit to the smaller importer since the larger importers are already aware of whether a commodity is competitive or non-competitive.

Messrs. Marra and Coleman rejected our 4th suggestion that the Bureau of Customs refer samples to independent laboratories when their own facilities are overtaxed. They stated that if Customs laboratories could not process import samples within a reasonable time, the solution was to add staff or equipment to such laboratory. In addition, they stated that they had not heard of any delays in such laboratories. Mr. Marra indicated he would look into this problem.

One problem which requires further consideration is how the Bureau of Customs would keep track of prices submitted by domestic manufacturers in order to comply with the six month filing requirement with respect to competitive status. Messrs. Marra and Coleman are both concerned that Customs will be flooded with quotations from manufacturers they have never heard of or chemicals that may never be imported. Publishing a notice in the Federal Register warning manufacturers that products will be non-competitive unless price information is submitted, they argued, is an open invitation to an extraordinary amount of unnecessary paper work. They noted that, at present, Customs only obtains price quotations for benzenoids which are actually imported, and that the time of importation for those particular products. Mr. Marra requested that we should consider further and discuss with them the number of products for which price data might be submitted by the domestic industry in response to the six month notice requirement.

Mr. Burt indicated that since the Bureau of Customs felt that some of our suggestions would be useful to them, and since they deal with some of the principal complaints of importers, we should propose them in writing to the Herter Office.

ROBERT C. ZIMMER.

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION,
New York, N.Y., September 29, 1966.

Hon. WILLIAM M. ROTH,
Deputy Special Representative for Trade Negotiations,
Washington, D.C.

SOCMA TARIFF PROPOSAL

DEAR AMBASSADOR ROTH: The domestic benzenoid chemical industry expects to face fair competition but cannot survive against foreign competitors without tariffs to equalize the basic cost advantage which foreign producers enjoy today. Furthermore, no alternative has been found which could be substituted for ASP without incurring major dislocation in the benzenoid industry. Therefore, SOCMA proposes the following program which has the objective of eliminating any alleged inequities which may exist under today's administration of ASP, and of providing for the orderly reduction of tariffs while maintaining fair competitive conditions:

1. Retain the American Selling Price basis for tariff evaluation of benzenoid products.
2. Change the administrative procedures applicable to the American Selling Price method, including legislative changes necessary, so as to remove any procedural impediments to import competition.
3. Reduce existing tariffs at a rate proportional to the rate of reduction of the differential in cost of producing benzenoid products in the United States and foreign countries.

While there may be practical problems in implementing the above proposed changes, we are certain that such problems can be solved through the cooperation of interested parties. SOCMA pledges to cooperate in order that these changes may be implemented.

Sincerely yours,

C. S. OLDACH, *President.*

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, October 7, 1966.

Mr. CARL S. OLDACH,
President, Synthetic Organic Chemical Manufacturers Association,
New York, N.Y.

DEAR CARL: Thank you for your letter of September 29, 1966, in which you set out a three-part proposal on behalf of the SOCMA with respect to the issue of American selling price (ASP).

First, with respect to the retention of ASP, it is clear that the Europeans are seeking the elimination of the ASP system, and this is the issue we must presently contend with in the Kennedy Round. In considering such elimination, the basic question is what economic impact the conversion of rates based on ASP would have on the domestic industry. Through a variety of means, including analysis of the Tariff Commission's report, independent research, and discussions with you, we hope to arrive at a fair and objective judgment on this important question.

Second, with respect to changes in the administration of the ASP system, we are certainly prepared to pursue the proposals which you have made, recognizing that the Bureau of Customs has primary responsibility in this field. Such changes would not, in our judgment, meet the present desires of the Europeans, but it is possible that their attitude may change.

Third, with respect to a tariff-reducing program tied to a decline in the difference in costs of production, I have my doubts, as you know, whether this would be negotiable. Nevertheless, I assure you that we will consider this proposal seriously as we develop our position on the ASP system.

With best wishes,

WILLIAM M. ROTH,
Deputy Special Representative.

EXHIBIT 3

THE ASSISTANT SECRETARY OF COMMERCE,
Washington, D.C., June 3, 1966.

ROBERT C. BARNARD,
Cleary, Gottlieb, Steen & Hamilton,
Washington, D.C.

DEAR BOB: As promised in my letter of May 16, I am enclosing copies of material submitted by our Embassies in Bonn, Brussels, Paris, Rome, the Hague, and Tokyo replying to our request for export price information on the benzenoid chemicals listed in your letter of May 11. I think these messages are self-explanatory. The export data book from Tokyo will be forwarded as soon as it is received. For your information I am also enclosing a copy of the message we sent to the Embassies in your behalf.

Our Embassy in Bern has advised us that there is no information available in published sources on export prices of benzenoids. The Embassy also said that it cannot obtain data from the Swiss chemical industry because in providing such data to the United States the Swiss industry would be violating Article 273 of the Swiss Penal Code.

Our Embassy in London has made a number of contacts attempting to obtain the desired information and has reported that data are available only from individual companies. It does not believe the companies would provide the price information desired on commercial grounds. No published production data are available except by broad categories. The Embassy further states that even if data were available it would not be meaningful because prices on chemical sales are negotiated and the final price is determined largely on the business relationship between seller and purchaser and the size of the purchase. It has been the experience of the Embassy in London that the best source for information of this kind is the American companies operating in the U.K. and the Embassy believes it might be useful for the U.S. industry to contact those companies for the needed information.

As indicated in the meeting in my office and in my letter of May 16, we were not very hopeful that our Embassies would be able to obtain the very specific

information desired. While it is regretted that this has proven to be the case, it may be possible to approach individual Embassies again if there are facts or other information which you believe might be obtainable through U.S. Government sources.

Please call or write me if we can be of further assistance on this subject.

Sincerely yours,

ROBERT L. McNEILL,
Deputy Assistant Secretary for Trade Policy.

Enclosures.

[Department of State Airgram, May 29, 1966]

To : Department of State.

Info. : Bonn, Berlin, London, Paris, Rome, The Hague, Tokyo.

From : Amembassy Brussels.

Subject : Chemical Export Price Data.

Ref. : CA-11272, May 17, 1966.

For Commerce/Garland

An Embassy spokesman consulted the Chief Statistical Consultant in the Belgian Federation of Chemical Industries regarding availability of data on export prices and production of benzoid chemicals and other products listed in referenced airgram. He stated that he knew of no source where this information could be obtained except from producers and exporters of these products. Locating these firms would be a major task in the first place, and secondly he doubted whether prices would be supplied to anyone except a bona fide purchaser.

Regret inability to provide requested data.

KNIGHT.

[Incoming Telegram, Department of State, May 26, 1966]

Subj : Chemical Export Price Data.

Ref : CA-11272.

1. Reference airgram received in embassy mail room May 23.
2. In response to our inquiries, statistician in Union Des Industries Chimiques (UIC) informed us only feasible system would be to take data provided in "statistiques du commerce exterieur" and divide total exports of given chemical by total export valuation. Might be possible to make some cross checks with industry. U.I.C. believes project would take considerable time.
3. Project may, however, be more difficult then UIC realizes, since in our spot check, we were unable identify products using four-digit bin numbers.
4. "Statistiques du commerce exterieur" for 1964 available in Washington and commerce may _____ refer to statistiques" to see if amplification to six-digit bin number is feasible to enable identification.
5. Production data is closely held and unavailable.

BOHLEN.

[Department of State Airgram, May 25, 1966]

From : Amembassy Rome

Subject : Chemical Export Price Data.

Ref. : CA-11272, May 17, 1966.

There are no published statistics available in Rome which would provide the data requested in the referenced instruction on Italian output and export prices of benzenoid and other chemicals. Local sources contacted confirmed that such data are not available.

Italian export prices usually are the result of negotiation with purchasers on the basis of volume and other considerations. As producers and associations are generally unwilling to provide information, it is suggested that American companies may wish to determine whether their representatives in Italy might be in a position to ferret out data for their headquarters.

The Embassy has forwarded the referenced instruction to the American Consulate General in Milan for any information it may be able to supply.

MELOY.

[Incoming Telegram, Department of State, June 3, 1966]

Subject: Chemical Export Price Data.

Ref.: CA-11272 and Deptel 837.

OF TSUS 403.48: 50: 60-75: 80-405.15: and 60 is almost 90 percent imported. Any domestic production is used locally. OF TSUS 407.32: 40: 50: 55: 72: and 85 about 70 percent imported, and primarily used locally.

Production data not available. In view of negligible exports and non-availability data no export prices are submitted.

TYLER.

[Incoming Telegram, Department of State, June 2, 1966]

Priority for Commerce/Garland

Re Chemical Export Price Data Ref CA-11272.

There are no production statistics available on listed classifications benzenoid chemicals. Export price data is highly classified trade information and also unavailable. A 1965 chemicals export data book being forwarded for general information under separate cover.

REISCHAUER.

[Department of State Airgram, May 30, 1966]

MAY 26, 1966.

From: Amembassy Bonn.

Subject: Chemical Export Price Data.

Ref.: CA-11272, May 17, 1966.

The Federal Republic does not publish production data for specific benzenoid chemicals as requested in the referenced airgram. For the most part, prices for benzenoid chemicals are negotiated, and depend primarily on size of the order and relationship of the purchaser to the supplying company.

Attached as enclosures are two price lists issued by Christian Oelerich & Co., Hamburg. The May 1960 issue is the last one issued by this company. A copy of the September 1959 issue is included for comparative purposes.

It will be noted that a large number of benzenoid chemicals are listed in the price list but we have been informed that these prices are almost universally subject to negotiation, particularly where a large volume is concerned.

MCGHEE.

[Department of State Airgram, May 17]

To: Brussels, Bonn, Bern, London, Paris, Rome, The Hague, Tokyo.

Info: Luxembourg, U.S. Mission Geneva, Brussels for Bubec.

From: Department of State.

Subject: Chemical Export Price Data.

The Tariff Commission will hold public hearings beginning June 8 to receive the views of interested parties on the proposed conversion of tariff rates on benzenoid chemicals and other products from the American selling price system of valuation to a system based on foreign export value. Copies of the two Tariff Commission releases on the ASP study were sent to addressee posts earlier this month.

The U.S. industry producing benzenoid chemicals has requested the assistance of the U.S. Government in obtaining export prices of foreign producers and the production data in producing countries for a fairly long list of selected chemicals now subject to ASP. A list of these chemicals which are identified by name, TSUS and BTN numbers, is attached. The industry would like to have the most recent information available on the chemicals listed but would prefer data for 1964 since that is the year being used by the Tariff Commission in converting rates from the ASP base. Data for earlier years have also been requested.

Commerce has informed the industry that it is unlikely that data will be available for the very specific chemical descriptions listed in the attachment and the industry has been advised of the publications of the EEC containing export data for 1962 according to CXT classifications. However, in view of the importance of this matter to the industry as well as to the U.S. Government, posts are requested to make all reasonable efforts to obtain the data requested. To comply with this request posts should review statistics and publications and

information from trade sources. Contacts with industry sources may be made at your discretion.

In view of the timing of the Tariff Commission hearings, posts are requested to extend priority to this request and to forward all material by airpouch no later than May 27 marked for Commerce Garland.

RUSK.

EXHIBIT 4

[Translation]

Federal Cartel Office [Bundeskartellamt]

3rd Division

B3-442100-A-232/67

DECISION

in the proceedings involving fines against

1. -----, Member of the Board
2. -----, Member of the Board
3. the Sales Manager of the ----- company
4. the -----
5. the -----
6. the -----
7. the -----

*

During its session on November 28, 1967, the Third Division of the Federal Cartel Office in Berlin, in the presence of a Director of the Federal Cartel Office, Mr. Hertel, who presided, of the senior civil servant, Dr. Tallner, and of the civil servant, Mr. Bethge, who acted as assessors, has decided:

I. On account of violation of the regulations under paragraph 1, section 1 of article 38, considered together with article 1 GWB, fines between 5,000 and 70,000 DM are levied against -----¹ [Text apparently deleted on breakdown of fines]

II. The defendants listed under 1-7 shall bear the costs of the proceedings (fees and disbursements); said defendants shall be jointly and severally liable for the disbursements.

GROUND S

1. The defendant listed under 1, -----, is a member of the Board of the ----- company; the defendant under 2, -----, is a member of the Board of the ----- company; the defendant under 3, -----, is the manager for dye sales of the ----- company. The defendants listed under 4, 5, 6 and 7 are corporations which manufacture aniline and mineral dyes, among other products. Respecting aniline dyes, their combined share of the German market equals about ---%. Since they do not manufacture all dye products themselves but, nevertheless want to offer a most complete assortment to their customers, each of these enterprises sells to other dye manufacturers, sellers and processors as well as to other related enterprises.

Initially, the prices for individual dye products are calculated separately; however, the defendants seek to increase prices at uniform rates despite the fact that, for all aniline dyes and pigment dyes, the portions of the costs of raw materials, wages and related matters are different.

*German press reports suggest that the four German corporations which were defendants 4-7 may have been: Farbenfabriken Bayer AG, in Leverkusen; Farbwerke Hoechst AG, in Frankfurt-am-Main; Badischen Anilin- und Soda-Fabrik (BASF), in Ludwigshafen; and Cassella Farbwerke Mainkur AG, in Frankfurt-am-Main.

¹ Article 38, section 1, paragraph 1 of the German Act Against Restraints on Competition [Gesetz gegen Wettbewerbsbeschränkungen (GWB)] reads as follows:

"A violation is committed by any person who willfully disregards that, by virtue of articles 1, . . . an agreement or decision is ineffective."

Article 1 of the GWB reads as follows:

"(1) Agreements made for a common purpose by enterprises or associations of enterprises and decisions of associations of enterprises are ineffective insofar as, by restraining competition, they may influence production or market conditions with respect to trade in goods or commercial services. This shall not apply to the extent that this Act provides otherwise.

"(2) The term 'decision of an association of enterprises' shall include a decision of a meeting of members of a legal entity, insofar as its members are enterprises."

At irregular intervals, the representatives of the enterprises meet with representatives of other European manufacturers of aniline and pigment dyes to discuss questions of common interest, including the price situation. This is intended to establish identical behavior of the participating producers to the fullest possible extent, respecting the questions dealt with. Such a meeting took place on August 18, 1967, in Basle -----, a meeting at which representatives of all of the enterprises in question participated, among others the defendant listed under 3, as well as representatives of French, English and Swiss dye manufacturers. At this meeting, uniform action on various questions was sought and achieved. When the topic "Miscellaneous" ["*Varia*"] on the agenda was reached, the representative of the Swiss corporation ----- declared that their prices for aniline dyes would be increased by 8% as of October 16, 1967. Afterward, the representative of the defendant listed under 5, -----, and the representative of a French dye manufacturer made statements to the effect that the rate of efficiency of their business would force them to entertain the idea of a price increase.

During the period up to September 19, 1967, the competent bodies of all enterprises which were represented in the meeting of August 18, 1967, decided on an increase of their aniline dyes prices by 8% as of October 16, 1967. During the period between September 8 and 15, 1967, with the participation of the defendants listed under 1 through 3—the Board member ----- also participated for the defendant under 6,—all of the enterprises in question communicated these price increases to all customers and all other related businesses on the ground that increases in costs, particularly the general cost situation, dictated this measure.

Several customers and customers' associations addressed themselves to the Federal Cartel Office, because they supposed that a concerted price arrangement existed among the producers. They particularly criticized the timing of the increase, because they had already calculated and published their prices for the new textile collections. In their opinion, the costs incurred by all dye manufacturers have not increased enough since the last price increase to justify an 8% price increase under present economic conditions.

The prices for aniline dyes had been increased on the German market by the defendants and by their most important competitors as of January 1, 1965. At that time, the rate of increase for all aniline dye products was 15%, for pigment dyes, which increased simultaneously, 10%. Because of the uniformity of this increase, which also evoked the suspicion, on the part of customers of the enterprises in question, that a concerted price arrangement existed, the Federal Cartel Office had started proceedings under paragraph 1, section 1 of article 38, considered together with article 1 GWB, but these proceedings were terminated for lack of proof of an agreement within the meaning of article 1 GWB.³ At the same time, proceedings were under way by the Commission of the European Economic Community against the enterprises in question and other dye manufacturers because of a suspected violation of article 85 of the EEC Treaty, proceedings which have not yet been terminated. These proceedings involve, among other things, a uniform and simultaneous price increase of aniline dyes on foreign markets in January 1964.

In the [Federal Cartel Office's] proceedings concerning the price increase as of January 1, 1965, the defendants listed under 4, 5 and 6 had caused a presentation to be made that intensive competition exists on the dye market which forces them to depart from their price lists—used domestically—so often and to such an extent that the price level falls very substantially over a short period of time. Consequently [this argument continued], an increase of the price level was unavoidable from time to time. When a manufacturer has "the courage to increase his prices" [this argument continued], the others were forced to follow him, because, toward their stockholders, they could not assume the responsibility of passing up an opportunity to make profits.

2. These facts rest on the written declarations of November 15, 1967, made by the defendant listed under 1, of November 24, 1967, made by the defendant under 2, of November 14, 1967, made by the defendant under 3, of October 13, 1967, made by each of the defendants under 4, 5, 6 and 7, of November 14, 1967, made by the witness -----, as well as on the files marked B3-442100-A-232/67 and B3-440000-A-431/64.

² Exact address deleted.

³ See footnote, p. 2.

3. The defendants deny that the price increase of October 16, 1967 was agreed upon. They unanimously declare that they adhered by autonomous decisions to the price increase made by the ----- company and/or other manufacturers, because the unfavorable rate of return requires a price increase which the market, through price increases of competitors, had made possible.

The defendants repeat their defence presented in the proceedings concerning the price increase of January 1, 1965; in this respect, the defendant listed under 5 asserts again that extraordinary competition reigns on the international dye market. For this reason [the argument continues], the consumers have an opportunity—constantly used by them—to oblige the dye manufacturers to make concessions on prices and on sales conditions. Despite separate initial calculations [the argument continues], the increases must be carried out at the same percentage, because there are approximately 2500 products to be sold and the overall result obtained in the sale of dyes is controlling for the determination of economic profitability.

III. Respecting the established facts, the defendants have violated paragraphs 1, section 1 of article 38 GWB, which forbids, among other things, disregarding the ineffectiveness of an agreement set forth in article I GWB.⁴ [This violation occurred] because they have informed their customers or rather have had them informed that, as of October 16, 1967, prices increased by 8% would be payable for aniline dyes, although the increase rested on an agreement which was ineffective under article 1 GWB.

1. The defendants' argument, to the effect that the simultaneous and uniform price increase did not rest on an agreement but on independent decisions of the individual enterprises to act in the same way as competitors, cannot be accepted. It is a known phenomenon that, in markets where only some sellers or a small group of sellers with market dominance exist beside a few manufacturers of lesser importance, the small group of sellers with market dominance behave identically, because the participants know that the other competitors, at least those that belong to the same group, will adhere, in any case, to their procedure for establishing prices. This manner of behavior, however, is not of a compulsory character, nor does it determine the real attitude of the enterprises concerned toward the market. The defendants have declared—and the Division has established this for the future—that, to a large extent, they have charged their customers individual prices which are lower than their listed prices and are different from the prices set by competition, because the competitors proceed in the same manner and because the price level constantly drops for competitive reasons. The enterprises in question having themselves admitted their market behavior, particularly as to prices, proves that these enterprises, despite the oligopolistic structure of the market, in fact enjoy freedom of action with respect to prices, that they exercise this freedom, and that they are not subject to inevitable coercion by the market to accept price uniformity. This is further established by the fact that, individually, the enterprises in question do not have uniform prices for their aniline dyes—which could hardly be the case for the type of products and for the multitude of these products which exceed 2500 in number—and therefore simultaneously increase only the price *level* from time to time.

In this connection, the coercion exercised by the oligopolistic market being absent, it is impossible to imagine that, in the present case, the prices of all the participants have been increased at the same time and by the same percentage, despite the differences in cost, without a related agreement between all of the enterprises in question. Not to mention that all of the circumstances, such as the magnitude of the increase of the price level at the same time for the same reasons despite the differences in cost, without a related agreement between all of the and costs of each individual party, particularly of the participants in foreign countries where existing wage and price conditions differ from those in the Federal Republic of Germany, already speak forcefully in favor of an agreement among the defendants, a determination to which all the other market conditions lead. Under present economic conditions, these same considerations, which otherwise led to undercutting competitors' prices, should have caused at least some dye manufacturers, by maintaining their previous prices or by increasing their prices to a lesser extent, to take advantage of competitors' price increases in order to enlarge or secure their shares of the market. Particularly in the present case, it would have been more appropriate to maintain the previous price level at least for

⁴ See footnote, p. 2.

some months, possibly until the date of the customers' next price computation, in order to derive an advantage from their ["at least dye manufacturers'"] own "good behavior" as a result of the unfavorable impression which the price increase—already unjustifiable, in the opinion of the customers, because of its timing and of the cost situation—would provoke.

That most of the customers would reward the lower prices with increased orders could be expected, all the more so since the last—substantial—price increase became effective less than two years ago and since at that time the customers and their trade associations had already considered the same action as a concerted action—the then-existing economic situation had caused the manufacturers to withdraw their requested prices; especially for these reasons, a new price increase would now encounter particular resistance. From another point of view, when the short period of time which had elapsed since the last price increase and the other circumstances mitigating against a new increase were taken into consideration, each dye manufacturer should have calculated that his competitors would irritate their customers with a substantial new price increase. Thus, if a manufacturer intended to increase his prices at such an unfavorable moment and wanted to maintain the previous behavior consisting of a uniform increase of the price level alone, the present market situation clearly shows that such a manufacturer would not autonomously decide upon the increase or announce it by himself to his customers, but would rather induce common consent on the part of the competing enterprises. This effectively occurred then with the declaration of August 18, 1967, made by the representative of the ----- company⁵ in Basle: Considering the earlier identical behavior of the competitors as to price increases and other measures, the ----- company⁶ could and must have expected that the dye manufacturers to whom this appeal was directed would immediately make known their view that the announced date [October 16, 1967] of the price increase or the extent of such increase would go amiss, and that they therefore would not behave identically.

Because the declaration of ----- company was made eight weeks before the date on which the intended increase would become effective and, therefore, kept open the possibility of withdrawing the declaration, the rest of the dye manufacturers were, under these circumstances, invited to increase prices and to make declarations on this subject, especially if they would also participate in an increase of the price level by exactly 8% and exactly as of October 16, 1967. Logically connected with this invitation was the promise [by "the Swiss corporation"] to increase itself the level of its prices; since, for the enterprises in question, this promise necessarily resulted from their earlier uniform behavior, it was tacitly tied to the condition that the dye manufacturers to whom it was addressed would increase their prices uniformly and simultaneously. The offer to reach an agreement could be conclusively accepted by announcing an increase of one's own prices, or conclusively rejected by announcing that the timing or the magnitude of the increase would make participation impossible this time. Given the constant practice of arriving at uniform behavior in accordance with available opportunities at least with respect to the basis for quoting prices and other terms, the meaning of the declaration of ----- company was not at all ambiguous to the persons to whom it was addressed. In view of the earlier uniform action involved in this case, it was also not ambiguous to the defendants that, in case the proposition made by ----- company was accepted, they would be "morally" obligated to respect the arrangement, that is, despite customer resistance, really to increase the level of prices by 8% as of October 16, 1967.

As required by [the conditions for applying] article 1 GWB under the concept of "agreement," with the decision likewise to increase one's own prices, an increase which would necessarily come to the immediate attention of ----- company and the other competitors, common consent was reached respecting performance and matching performance (increase of the price level favoring ----- company and other competitors as well as for one's own advantage). That a few defendants possibly wanted to reach a decision about ----- company's proposition only after knowing the reactions of the other dye manufacturers and actually made their decisions only thereafter, does not change anything in the relationship of cause and effect between ----- company's proposition and its acceptance by the enterprises in question and the consequent conclusion of an agreement.

⁵ "The Swiss corporation"; see p. 4.

⁶ "The Swiss corporation" see p. 4.

The "agreements" within the reach of article 1 GWB cannot be put on the same level as contracts within the meaning of the theory of tort and contract liability, because the will there required to produce legally binding effect cannot be frustrated in this case, since article 1 GWB, by providing for ineffectiveness as its legal consequence, does not make it at all possible for agreements to be legally binding if they are not legalized by articles 2 through 8 GWB and if they fulfill the other conditions of article 1 GWB. Were the will required to produce legally binding effect necessary for the application of article 1 GWB, this provision would only reach those—small—enterprises and owners or employees of enterprises who do not know that arrangements within the reach of article 1 GWB are ineffective as a matter of law. Such an interpretation would contradict the meaning and purpose of the prohibition principle anchored in article 1, considered together with paragraph 1, section 1 of article 38 GWB, and would lead to intolerable consequences.

A "moral" obligation, that is to say, the awareness that non-compliance with an explicitly or implicitly arrived-at agreement would, at the least, lead to loss of esteem or credibility in future business negotiations, is sufficient for the applicability of article 1 GWB. In the present case, such an obligation results when esteem and credibility are taken into consideration, because the enterprises in question not only are already competitors but also have supplier and customer relationships which necessitate a certain amount of confidence.

The agreement within the meaning of article 1 GWB which the enterprises in question have thus executed has a "common purpose" as required by article 1 GWB. The enterprises in question, which have relationship similar to those of a corporate group, thereby achieve the objective of uniform action designed to provide the largest possible gain for all participants. They thereby restrain competition among themselves, because the arrangement requires them to make a uniform, simultaneous increase of the level of prices, prevents them from holding to the former prices or from increasing prices by a lesser percentage, prevents them from using the former—8% lower—level of prices, at least as a starting point in negotiations with customers, and, consequently, inhibits their freedom of action to compete. Finally, this restraint on competition is susceptible of influencing market conditions for aniline dyes, because an important phase of market behavior, price formation, will be temporarily modified to the detriment of at least the large majority of customers. The agreement is therefore ineffective under article 1 GWB.

2. The defendants have disregarded the ineffectiveness of the agreement (paragraph 1, section 1 of article 38 GWB) by informing their customers, either directly or through individual intermediaries, about the agreed increase of the price level and by taking organized measures necessary [to carry it out], and, consequently, have contributed to the observance of the arrangement concerning prices.

3. The defendants have wilfully performed the acts described in paragraph 1, section 1 of article 38, considered together with article 1 GWB, inasmuch as they, or rather the individuals acting for them, as well as -----, the member of the Board of the defendant listed under 6, have been aware of all of the exact circumstances which pertain to the factual situation defined by law and described in said provisions: they were aware that their acceptance of the proposition made by ----- served a common purpose, that they thereby restricted their freedom of economic action as to competition, that this way of proceeding would influence conditions on the aniline dye market, particularly by worsening the customers' position; such price agreements are ineffective (this [has been the case] at least since the findings of the Federal Cartel Office and the EEC Commission in 1965), and, once the price increase was announced to customers, the price agreement was to be performed.

Although it might be questioned whether the defendants, or rather the individuals acting for them, including the Board member, Ohliger, considered the agreement which was arrived at as an "agreement" within the meaning of article 1 GWB and, therefore, whether they considered their action to be incompatible with the law concerning restrictions on competition, the mistake of law which may be attributed to them in this respect does not exclude the inference of a violation of the provisions of article 12 OWiG, because the defendants, or rather the persons acting for them, would have recognized the irregularity of their behavior if they had been reasonably perceptive; therefore, they caused

⁷ Presumably Mr. Ohliger; see the following paragraph.

their possible mistake of law.⁸ The responsible Board members and sales managers of the defendants knew, at least after the above-mentioned findings of the Federal Cartel Commission and the EEC Commission in 1965, that identical action by competitors as to the formation of prices might be considered as an agreement within the meaning of article 1 GWB. In taking reasonable care, they should have examined whether their behavior was authorized or forbidden by the law on cartels. The Board members and sales managers in question, as officials of important enterprises, were in a perfect position to have such an examination carried out by their legal departments or by some other legal adviser, who would have recognized the character of the agreement (compare the Federal Cartel Commission's Report on its Activities in 1960, Federal House of Representatives Document No. 2734, S. 17).

4. Despite this, the defendants listed under 1, 2 and 3 have wilfully violated the provisions of paragraph 1, section 1 of article 38, considered together with article 1 GWB. Because of the illegal action of these defendants, section 3 of article 7 OWiG⁹ is not applicable, and fines should be levied against them and the enterprises for which they acted, fines which, under section 4 of article 38 GWB, can be as high as 100,000 DM. In this respect, the fixing of the fines is based:

(a) for the defendant listed under 5, on the ground that a member of the organ [Board] which legally represents it, namely the defendant listed under 1, Mr. -----, has committed the proven violation of paragraph 1, section 1 of article 38, considered together with article 1 GWB (article 41 GWB¹⁰);

(b) for the defendant listed under 6, [on the ground that] the fine could be imposed under article 41 GWB, because its sales manager, Mr. -----, the defendant listed under 3, has committed a violation of articles 1 and 38(1) (1) GWB and because this action was approved by the competent Board member, Mr. -----¹¹;

(c) for the defendant listed under 7, [on the ground that] the Board member, Mr. -----, the defendant listed under 2, had violated paragraph 1, section 1 of article 38, considered together with article 1 GWB; hence a fine was levied under article 41 GWB;

(d) for the defendant listed under 4, on the ground of the proven illegal behavior of its executive bodies, which, on its behalf and in the same manner as the defendants listed under 1, 2 and 3, have subjectively and objectively met the conditions characterizing the prohibited acts. Indeed, not only individuals but also enterprises and associations of enterprises are potential violators of paragraph 1, section 1 of article 38 GWB (compare the February 1, 1962 decision of the BGH [German Supreme Court] for an association of enterprises—Wu W/E, BGH 465).

5. As to the amount of the fines levied, for the corporate defendants listed under 4, 5, 6 and 7, it was deemed appropriate to take into consideration their general size, their economic power in the markets affected by the price increase and in related markets, and, finally, the large volume of aniline-dye sales attained. Moreover, it was deemed appropriate to give weight to the fact that, respecting the aniline dyes affected by the price increase, one was dealing with dyes which—apart from the paint and color manufacturers transforming them—are also needed by other industries, such as the textile and leather industries, and that the action of the defendants therefore also brings about price increases in these fields—[that,] as a consequence of the agreement of the enterprises in question, the price increase for dyes also initiates a chain reaction of price increases.

Respecting the defendants under 1, 2 and 3, it was deemed appropriate to take their responsible and prominent positions and their income into consideration.

On the other hand, for the benefit of all defendants, consideration was given to the fact that individual uniform prices had not been fixed for each product, and that, when the particular situation requires it for the conclusion of sales, the enterprises in question depart in isolated cases from the increased prices.

⁸ Article 12, "Error", of the Law on Violations of Law (Ordnungswidrigkeitsgesetz, or OWiG) states in part that fines may be reduced respecting persons who cause their own error as to the existence or applicability of a law.

⁹ Under this provision, fines are not imposed for unimportant infractions.

¹⁰ This provision permits a legal entity to be fined for certain violations by its legal representatives.

¹¹ Presumably, Mr. Ohliger.

Table 10

BENZENOID CHEMICAL RATES OF DUTY, AD VALOREM EQUIVALENTS, AND 1964 IMPORTS

Article	Rate on 7/1/62	Kennedy Round final rate 1/	ASP Package final rate 2/	Ad valorem equivalent			1964 imports (\$1,000)
				Rate 7/1/62	KR rate	ASP Pkg. rate	
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.4¢ + 8%	1.4¢ + 10%	31	16	16	48%
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.7¢ + 12.5%	1¢ + 18%	64	32	20	68%
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	0.7¢ + 4%	0.7¢ + 4%	NA	NA	NA	NA
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.2¢ + 7%	1.2¢ + 7%	NA	NA	NA	NA
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.4¢ + 9%	1.4¢ + 8%	NA	NA	NA	NA
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.5¢ + 8.5%	1.5¢ + 12%	NA	NA	NA	NA
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	0.8¢ + 5%	0.9¢ + 5%	23	11	12	48%
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	0.8¢ + 5%	0.9¢ + 7%	19	9	9	53%
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.7¢ + 10%	1.7¢ + 10%	25	12	12	B 207
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.5¢ + 10%	1.5¢ + 10%	21	11	11	NC 120
Cellulose organic chemical products in any physical form having a benzene, nitro, amino, or modified benzene structure, not provided for in subpart A or C, part 1, subpart 1, of the tariff schedule.	2.0¢ per lb. + 25¢ ad val.	1.5¢ + 10%	1.5¢ + 16%	35	18	18	49%

NC = Non Competitive Products
 B = Basket
 2/ ASP eliminated.

Reduction

NA = Not available. 1/ ASP applicable.

B = Basket NC = Non Competitive Products

[illegible]

[illegible]

1/ ASP applicable. 2/ ASP eliminated.

[illegible]

* Rate for trinitrotoluene. ** Rate for explosives other than trinitrotoluene.

1/ ASP applicable. 2/ ASP eliminated.

1/ ASP applicable. 2/ ASP eliminated.

1/ ASP applicable. 2/ ASP eliminated.

Article	Rate on 7/1/62	Kennedy Round final rate 1/	ASP Package final rate 2/	Ad valorem equivalent		1964 imports (\$1,000)
				Rate 7/1/62	KR rate	
100.504 d colors, dyes, stains, and related products --Continued Acid blue 155, 221; Basic orange 28; Basic red 11; Disperse blue 73; Disperse red 24; Mordant brown 77; Mordant brown 95; Mordant blue 79; Reactive blue 19, 29; Reactive yellow 21, 59; Solubilized vat brown 65; Solubilized vat violet 71; and Vat blue 62, 63, 67, 77, 131; Acid black 62, 63, 67, 77, 131; Acid blue 155, 156, 157, 158, 189, 189, 203; Acid brown 30, 31, 76, 77, 227, 231; Acid green 53, 54, 55; Acid red 127, 228, 229; Acid violet 24, 24; Basic blue 41, 45, 62; Basic green 21; Basic red 22, 23, 29; Basic yellow 19, 23, 24, 25, 27; Direct blue 90, 100, 207, 225; Direct green 69, 69; Direct red 89, 92, 95, 209; Direct yellow 84, 84, 96, 109; Disperse blue 7, 7; Disperse orange 30; Disperse red 53, 105, 107, 109; Fluorescent brightening agent 47, 59; Mordant blue 51; Mordant green 51; Reactive blue 5, 7, 8, 10, 21, 24; Reactive green 6; Reactive red 9, 17, 40, 45; Solvent blue 51; Vat blue 61; Vat blue 61 and	log as val.	20%	30%	38	19	620
100.504 c Acid red 131, 133; Acid yellow 63; Direct green 31; Direct green 31; Direct yellow 27, 98; Disperse red 15; Mordant blue 29; Reactive red 12; Solvent blue 51; Vat green 1; and Vat yellow 33; Acid blue 5, 108; Acid orange 87; Acid orange 87; Acid red 1, 209; Basic blue 41; Basic red 15; Basic violet 16; Disperse blue 65; Disperse orange 28; Disperse blue 65; Disperse brown 21;	log as val.	20%	30%	42	21	5,044
100.504 d Acid blue 5, 108; Acid orange 87; Acid orange 87; Acid red 1, 209; Basic blue 41; Basic red 15; Basic violet 16; Disperse blue 65; Disperse orange 28; Disperse blue 65; Disperse brown 21;	log as val.	20%	30%	54	27	580

1/ ASP applicable. 2/ ASP eliminated.

	Article	Rate on 7/1/62	Kennedy Round final rate 1/	ASP Package final rate 2/	Ad valorem equivalent			1964 Imports (\$1,000)
					Rate 7/1/62	KR rate	ASP Pkg. rate	
406.50 b	Colors, dyes, stains, and related products--Continued							
--Con.	Disperse red 51							
	Disperse yellow 9							
	Disperse blue 18							
	Disperse blue 19							
	Disperse blue 21							
	Disperse blue 22							
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[illegible]

1/ ASP applicable. 2/ ASP eliminated.

* Rate for phenylephrine hydrochloride
1/ ASP applicable. 2/ ASP eliminated.

* Rate for phenylephrine hydrochloride
1/ ASP applicable. 2/ ASP eliminated.

A = Other than sulfa drugs. B = Sulfa drugs. 1/ ASP applicable. 2/ ASP eliminated. Source: Tariff Commission

A = Other than sulfa drugs.

Mr. BARNARD. I would now like to introduce to the committee Mr. Richard Davies, president of Klein & Saks, who has a brief statement to submit.

STATEMENT OF RICHARD DAVIES

Mr. DAVIES. Mr. Chairman, my name is Richard L. Davies. I am president of the economic and management consulting firm of Klein & Saks, Inc. I appreciate the opportunity of appearing before this committee in connection with the careful study the committee is making of foreign trade policies for the United States.

Over many years, Klein & Saks has served the governments of several countries in problems involving their balance of payments.

With regard to the recent U.S. balance-of-payments problems, we have made general studies at the request of the American Bankers Association, as well as studies of specific sectors. Now, at the request of the Synthetic Organic Chemical Manufacturers Association, we have studied the effects of the Kennedy round benzenoid agreements on the balance of payments of the United States.

Balance-of-payments studies would seem to be of great importance in current U.S. trade policy formulation. During the 5 years of Kennedy round activity (June 1962 to June 1967) our balance-of-payments deficit became of general and steadily increasing concern, with Presidential emphasis on the need to increase the merchandise trade surplus and with the imposition of a variety of controls on capital movements.

However, despite continuing U.S. deficits and the important relationship to balance of payments, in the presentations to this committee by the Kennedy round negotiators there has been included no meaningful study of the effect of the Kennedy round negotiations on the balance of payments.

Nor have we been able to find that such a study was made by the U.S. negotiators.

A study of the "probable economic impact" of proposed tariff concessions on the benzenoid industry within the United States was made in September 1966 for the Organic Chemical Group of the National Council of American Importers, by Prof. Walter W. Haines. We believe that the approach Professor Haines used in his study resulted in understating the unfavorable trade effects of the tariff changes. Moreover, he omitted consideration of balance-of-payments effects of the tariff cuts, but the methodology is of value. However, when even Dr. Haines' conservative methods are applied to the Kennedy round benzenoid agreements balance-of-payments projections, as was done in our study, very serious effects on the U.S. balance-of-payments are indicated.

Our total foreign trade (that is exports plus imports) in benzenoids would be projected to increase from \$334 million in 1964 (the year used as a base by the Kennedy round negotiators) to \$1,691 million in 1975. Increased total foreign trade is generally a good thing, for banking institutions, shipping companies, and for the whole world economy. But from a balance-of-payments point of view it is extremely important which way the trade is flowing. During this period our balance of trade in benzenoids would be projected to deteriorate from a positive \$236 million in 1964 to \$282 million deficit in 1975, and the U.S.

Competitive Index (balance of trade as percent of total foreign trade) for benzenoids would drop from a positive 71 percent in 1968 to a negative 17 percent in 1975.

This was done on a most conservative basis. It assumed that there would be a 50-percent reduction in the tariffs by the United States and a 50-percent reduction in tariffs by our trading partners. These figures do not include calculation for the increase in imports into the United States that would result from cuts in excess of 50 percent of the U.S. tariffs, which would be required by the "separate package."

Moreover, these projections do not take into account the effect on U.S. trade of increasing European border taxes and export rebates.

In reality, therefore, we must expect the 1975 deficit in benzenoid trade to be greater than the \$282 million projected, and the U.S. Competitive Index to be correspondingly more unfavorable.

There is another factor which will compound the damage to our balance of payments in the benzenoid sector. There is a clear and direct connection between tariff concessions and the future flow of investment capital for expansion and construction of benzenoid chemical production. With newly lowered tariffs promoting the U.S. importation of benzenoids, offering foreign producers the opportunity of a much deeper penetration into the American market, it appears obvious that for those producers it would be more often advantageous to expand or build at home rather than in the United States.

The resulting highly improved competitive position of foreign manufacturers would inevitably lead American producers to seek lower cost areas for the location of new productive facilities, to allow them to compete in foreign producing countries, "third" countries, and even in the American market. This, of course, involves not only the capital outflow, but a resulting increase in imports in place of domestic production. And we are speaking of magnitudes which are significant.

Our estimates suggest that annual free world consumption of benzenoids will increase by some \$4.2 billion by 1975 requiring additional capital investment of \$4.6 billion. Thus, the stakes are great, over \$500 million of increased consumption and a similar amount of new investment each year. Whether that consumption is supplied from abroad or from the United States will have significant impact on this country's balance of payments.

Not only will the U.S. balance of payments suffer from the impact of the Kennedy round agreements on benzenoids, but from certain changes in nontariff barriers to imports, which have been explained. With the knowledge of our negotiators, with our balance of payments in serious difficulty and in need of relief from the trade sector, the Kennedy round agreements and the "separate package" were negotiated while EEC border taxes were being "harmonized." The result of this has been not only to offset some of the concessions granted by the Europeans, but in many cases to create a total EEC barrier to entry on benzenoid products higher than that which existed prior to the beginning of the negotiations. This is clearly not reciprocity.

For example, let us examine the trade consequences on an important benzenoid like styrene, between the United States and the Netherlands. Prior to the Kennedy round negotiations the total U.S. barrier to imports of styrene from the Netherlands amounted to 4.2 cents per pound

while the Netherlands barrier to U.S.-produced styrene amounted to 1.2 cents per pound. (With regard to the difference in prenegotiation barriers, it may be noted that for 1965, the average wages in the Netherlands were \$0.83 per hour compared to the U.S. figure of \$2.61 per hour.) After the Kennedy round agreements, separate package, and border tax harmonization, the U.S. import barrier as offset by the Dutch export rebate, will have fallen from 4.2 cents to 4 cents per pound (90 percent lower) while the Netherlands barrier (tariff plus border tax) will have risen to 1.7 cents (41 percent higher).

Under these circumstances it is no surprise that the largest styrene plant in the world to serve the expanding markets here and abroad, is being built by an American company in the Netherlands.

It is clear that the Kennedy round agreements (the results of which would be compounded by elimination of ASP) will have a more serious negative effect on the competitive position of the U.S. benzenoid industry than our balance-of-payments position allows us to accept.

These balance-of-payments effects are of sufficient consequences to justify invoking article XIX of the GATT to obtain prompt renegotiation on chemicals.

With the permission of the chairman we would like to introduce into the record a copy of article XIX of the GATT.

The CHAIRMAN. Without objection it is so ordered.

(The information referred to follows:)

ARTICLE XIX

EMERGENCY ACTION ON IMPORTS OF PARTICULAR PRODUCTS

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or con-

tinue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1(b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Mr. DAVIES. Concurrently steps should be taken to remove the significant disadvantage to U.S. trade caused by European border taxes and export rebates.

Unless prompt action is taken in this matter there will be increasing serious damage to the balance-of-payments position of the United States.

Thank you, Mr. Chairman, for the opportunity to present this.

The CHAIRMAN. Thank you, Mr. Davies. In fact we thank all of you, Mr. Gerstacker, Mr. Turchan, Mr. Barnard, and Mr. Davies for your very fine presentation of the views of your organizations. The information is very helpful to us.

Any questions? Mr. Burke.

Mr. BURKE. I would just like to ask the counsel in connection with the tables that you presented here on total tariff reductions. Do you believe that the negotiators exceeded their authority under the law to grant these reductions where they would be over 50 percent?

Mr. BARNARD. May I answer this way. There is no doubt that the separate package is outside the authority granted by the TEA. Therefore, there is no authority in existing law for the separate package.

What I was trying to say was that the reductions in excess of 50 percent exceed any authorization that was approved by the Congress in the TEA. These separate agreements were not approved by the TEA. This is a separate consideration, but the total cuts that were negotiated exceed the cuts that were approved by the Congress in the TEA.

Mr. BURKE. Thank you.

The CHAIRMAN. Any further questions? Mr. Bush.

Mr. BUSH. Gentlemen, throughout the testimony there was a good deal of talk about the chemical industry being forced to go abroad. With respect to the plant, for example, that was built in the Netherlands, the largest styrene plant in the world, which Mr. Davies referred to on the last page of his testimony, page 6, is this plant 100-percent American owned, or is this plant partially Dutch owned?

Mr. DAVIES. I will get that information. We do not have the details of that. You want to know whether it is 100-percent owned.

Mr. BUSH. I don't particularly care about this plant but what I want to know is when the chemical industry talks about going abroad as a remedy to the existing dilemma that you find yourselves faced with, are you talking about 100-percent owned foreign plants, or

are you talking about plants that are going to be owned in conjunction with private industry in foreign countries for the most part?

Mr. BARNARD. Mr. Chairman, I believe that the figures released by the Department of Commerce indicate that it goes both ways. There are some 100 percent, some owned jointly with foreign interests, and some where the American companies even have a minority interest. I don't think there is any uniform principle that you could state was applicable to the chemical industry.

Mr. GERSTACKER. I would be glad to try to comment on that. It is both ways. Today I think all are trying to do it 100 percent, United States owned wherever they can. There are many countries where this is impossible. Dow Chemical in the Netherlands has a plant we have been building now for about 3 years in which we presently have between a \$100 and \$150 million investment and it is going to \$200 to \$250 million.

That is wholly owned, and I feel as if I have a flashback here. Some years back I testified before this same committee as the president of SOCMA against the Kennedy round of tariff cuts pointing out then that I thought the dollar gap was a thing of the past and that further cutting in our tariffs would hurt the balance of payments, that our country would then have a balance-of-payments problem, would have one in the future that our companies would build plants abroad, that this was the export of American jobs, and somehow I feel here I am again today and the problem hasn't improved.

We no longer have a dollar gap as far as I know.

Mr. BUSH. Are these foreign plants mainly built to sell in foreign markets?

Mr. GERSTACKER. That is an excellent question. Some of the testimony has discussed this. I think primarily they are being built for the foreign markets but there is no question in my mind that in the future there will be shipments from those plants to this country because of the competitive cost of manufacture and because of the border taxes and these various things you see today.

Mr. BUSH. I am wondering if we don't have a slight inconsistency in your being critical of the Commerce Department for the restrictions aimed at investing abroad on the one hand, and on the other hand, in this beautifully presented testimony, the dilemma that you face in the tariff field from competitive imports.

You are almost arguing on both sides, aren't you; in this testimony.

Mr. GERSTACKER. I am aware of what you mean by the inconsistency. I would think as long as the products of many industries are going to come into this country, if we are going to go in that direction, it is better that they come in by wholly owned U.S. companies that we are taxing and will bring the dividends home instead of coming in by foreign-owned companies.

Mr. BUSH. If they are being built for foreign markets mainly that wouldn't apply quite as much. The last question I have, Mr. Chairman, is what are the basic raw materials that go into benzenoid chemicals? Is this petroleum gas?

Mr. TURCHAN. They are mostly petroleum-derived now as opposed to the old coal tar but benzene is a very large raw material, naphthalene, hydrocarbons such as that.

Mr. BUSH. But you find that your raw materials essentially are cheaper when you build a plant abroad?

Mr. GERSTACKER. I would be delighted to comment on this. The chemical industry has been attempting to tell everyone who would listen this problem for sometime. The cost of petroleum raw materials in our country today is 50 percent, not one-fifth, but 50 percent, higher than the cost of those same raw materials in Europe.

Mr. BUSH. You are not talking about crude oil?

Mr. GERSTACKER. I am talking about crude oil.

Mr. BUSH. Is 50 percent higher?

Mr. GERSTACKER. Is 50 percent higher in the United States than it is in Europe.

Mr. BUSH. Laid down in, say, some port in the Netherlands?

Mr. GERSTACKER. Yes, sir.

Mr. BUSH. How about gas?

Mr. GERSTACKER. Well, gas of course has been cheaper in this country than it has been there depending upon which part of our country you are discussing. Gas is very high cost in Michigan or States that don't have it. It is quite low cost in the gulf or Arkansas and those places.

On the other hand, you are probably aware there have been new major discoveries in the Netherlands and offshore the United Kingdom and other regions, so I would imagine in the future that the gas costs will come down rapidly in the Common Market also but gas itself is not as major a raw material as is crude and the derivatives from crude for the petrochemical industry.

Mr. BUSH. In your testimony you mentioned labor rates. What percentage is labor of this total again? You probably have that in your testimony and I didn't hear it.

Mr. TURCHAN. The variation is tremendous. In other words, we are talking primarily today about benzenoids and then we stress primarily the small volume ones which they are extremely labor connected. Conversely when you talk about the petrochemical end and the part that Mr. Gerstacker was referring to in which we are at a decided raw material cost disadvantage here labor is a small part.

This is very important that you bring this up, sir, but you have to be careful about averages. Averages are strictly arithmetical and that is all. There is a very wide spectrum in our industry.

Mr. GERSTACKER. Just so long as there is no confusion, the labor costs are lower in other parts of the world than they are here. Now, you will see foreign people making the statements that their labor costs have been rising faster than ours. There are even some U.S. people who have been confused by this.

Let's explain this statistically. If you start with a \$1 an hour labor rate and raise it 10 percent you have gone up 10 cents. Here we start with \$4 and raise it 3 percent and you have gone up 12 cents, so the gap is widening. It is not narrowing. And all of these arguments have been on a percentage basis.

The truth is that the gap in rates has been widening ever since World War II. We do have this plant in Holland and I can assure you that the true cost of labor, including all fringes, including productivity, is about half in that plant as to a comparable plant in this country.

Mr. BUSH. You wouldn't term this industry as labor intensive, would you? Because of the technological aspects of your business it would not be labor intensive compared to a shoe plant.

Mr. GERSTACKER. Our direct labor costs in the petrochemical end of the business are low, but if you take the sales dollar and how much of that sales dollar goes to labor of all types, including research and development people and marketing people, administrative people, and so forth, it runs about 25 cents out of the income dollar which goes for labor cost in this country.

It is lower in Europe, it is much lower in Japan.

Mr. BUSH. Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions?

If not, again we thank all of you and we appreciate so much your very fine presentation. The fact that we don't have questions today doesn't mean that there is any lack of interest on our part in what you said.

Thank you.

Mr. BARNARD. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Dr. David H. Dawson. Dr. Dawson, we agreed to recognize you this morning for approximately 10 minutes. If you do omit any part of your prepared statement in the process of complying with our request do so with the knowledge that the entire statement will be a part of the record.

STATEMENT OF DAVID H. DAWSON, VICE PRESIDENT, E. I. DU PONT DE NEMOURS & CO.; ACCOMPANIED BY E. R. KIMMEL, TARIFF COUNSEL, AND E. R. PLEASANTS, TAX COUNSEL

Mr. DAWSON. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I am David H. Dawson, a vice president of E. I. du Pont de Nemours & Co., of Wilmington, Del. I have with me on your right Mr. Kimmel, our tariff counsel, and on your left, Mr. Pleasants, our tax counsel.

The CHAIRMAN. It is good having all of you with us.

Mr. DAWSON. Thank you. We have sought the privilege of speaking and testifying despite the fact that we have participated in and we subscribe to the excellent presentations which have been made by the Manufacturing Chemists Association and the Synthetic Organic Chemical Manufacturers Association this morning. We subscribe to their conclusions and their recommendations.

Nonetheless, we sought the privilege of appearing in order to make two points which we think it is important that we register with you.

First, we would like to speak to the textile situation and, second, we would like to attempt to give you one company's analysis of the reasons for the sharp disagreement between the industry and the Government negotiators. One-third roughly of the Du Pont Co.'s products, and they are about \$3 billion, go into the textile industry and for the purposes of tariff and trade considerations we are regarded, properly, as a part of the textile industry.

You have heard from representatives of all the segments of the textile industry as to the situation which they face and we would like to support their conclusions and to register three points with you.

First, there is, as perhaps has been made clear, a great interdependence in the whole complex of the textile industry. We as a producer of manmade fibers are involved in all of them. If a retailer

purchases imported garments this represents a loss of business to the local manufacturer of the garments, of the fabrics contained therein, and of the fibers which go to make it up.

If the textile mill industry imports fabrics this represents a loss to the local textile mill industry and to the manmade fiber people and if they import fibers it is a loss to the fiber producer.

So that we are involved in the incursions of the imports in all the segments of this industry.

The second point we wish to make is their situation, which they feel is acute and with which we would agree, has been occasioned in considerable part by the fact that our European trade partners have responded to these conditions in a very effective manner, and we have made a part of our statement a paper prepared by the Office of the Special Representative in which he outlines the restrictions applied by 12 foreign countries in 1967 and it speaks for itself.

The Europeans have effectively limited the incursion of the lower cost, largely Far Eastern countries into their markets where our markets remain open.

The third point that I would like to make is to reiterate a point which was made by a group of the House in March in which they discussed the problems besetting the textile industry and they in their reference to Appalachia made clear that there is an economically underdeveloped nation within the United States and that in these areas the textile industry is suppling one out of three manufacturing jobs.

I think I should also like to point out that in the manmade fiber industry 50 percent of the employment is located in these counties of Appalachia. The United States is the world's largest textile market and yet it is unprotected except for the long-term cotton agreement controls that provide for the orderly development of cotton textile and apparel trade.

With full recognition of the dangers and problems arising from the use of quotas, we submit that we have no choice but to embrace them so long as they are employed by our foreign competitors in such a very effective manner.

Now I would like to turn to the chemical section of the considerations which we have before us and talk very briefly as to perhaps why there is this marked difference of viewpoint. The Government witnesses are saying that the Kennedy round and the supplemental agreement represent a tremendous opportunity for export expansion.

We say that this is not true. You have heard that this morning. And in the case of the Du Pont Co. we have analyzed with great care all of our export business in an effort to determine whether we do have such export opportunities.

Briefly, to take you through one critical case of our Common Market exports, we exported roughly \$68 million worth of goods in 1967. We find that only about \$2 million of these are susceptible to export expansion if the supplemental package is approved.

The reasons are briefly these: In the case of \$37 million of them, 56 percent of our sales, they are primarily manmade fibers and polychloroprene synthetic rubber and the duties are outside the agreement and will be unaffected by it.

Of the remaining \$29 million there is a variety of reasons, but briefly about \$8 million of them are intermediates for use in our own plants which obviously are not susceptible to this sort of variation; \$3 million of them are products which have already been granted special low rates which would not be affected by the special agreement if implemented. Five million dollars plus comprise agricultural chemical products and other products which we now manufacture in Europe.

Expansion of our agricultural chemical products is effectively limited by the foreign patent laws. Many European countries require local manufacture or compulsory licensing which effectively prevents exporting from this country on a continuing basis.

Another \$6 million of sales comprise products where our market position is such that we found by experience that price reductions are immediately met by our competitors abroad, so that lowering our EEC prices by the amount of any foreign tariff reduction would not result in expanded volume.

Another \$3 million comprises specialty products not competitive with any produced in the EEC and again price is not a factor. So we are left with a total of about \$2.3 million where we agree that there is an opportunity for export expansion, but this is three and a half percent of our volume.

We have also reviewed products which we did not export in 1967 in an effort to determine whether we could expect export sales to be stimulated. We found no basis for such expectation. We can say with great definiteness that in the case of the Du Pont Co. the purported great opportunity for expansion of export markets if the special agreement is implemented is not the case.

As far as the American selling price is concerned we would support the opinion which has already been stated that the proposed deal is inequitable for our industry and for our company and should be rejected.

We completely support the position which has been expressed to you.

In the interest of brevity I would like to say only that we have included in our statement discussions of this difficult area of border tax. We support the conclusion that it will have adverse effects. We feel that these effects are as yet not completely defined so that it isn't possible to say just how great they are.

It will depend in large part on the reactions in the marketplace. We think they are real and that they demand the careful consideration of your committee in addressing yourself to this very complex problem.

We also endorse the recommendation that the question of tax incentives for exports be considered and that particular consideration be given to the recommendations of the National Export Expansion Council.

Finally, we support also the fact that the oil import quota scheme, which was put in for good reasons and which was entirely proper in our opinion, has become a very confusing situation as its use in chemicals has grown and that it has contributed to the poorer competitive posture of the American industry and as the Kennedy round proceeds it will become additionally important and the time is here when the Government should carefully consider the need for differentiating between energy and chemical uses of petroleum raw materials.

Mr. Chairman, that completely summarizes what we had to say.
(Mr. Dawson's prepared statement follows:)

STATEMENT OF DAVID H. DAWSON, VICE PRESIDENT, E. I. DU PONT DE NEMOURS & CO.

I am David H. Dawson, a Vice President of E. I. Du Pont de Nemours and Company of Wilmington, Delaware. Du Pont welcomes this opportunity to express its views on tariff and trade proposals before this Committee dealing with the general subject of the balance of trade between the United States and foreign nations.

Du Pont manufactures and sells in the United States and foreign countries a widely diversified line of chemicals, plastics, and man-made fibers. In 1967 our total sales were more than \$3 billion, of which \$239 million were sales abroad of products manufactured in and exported from the United States. In that same year our total foreign business, which includes in addition to exports from the U.S., products manufactured and sold outside of the United States by consolidated subsidiaries and non-consolidated affiliated companies was about \$619 million.¹

Obviously, Du Pont has an important interest in, and can be importantly affected by, the tariff and trade proposals being considered by this Committee. In the limited time available I would like to try to explain to the Committee in some depth how we believe some of the present and proposed foreign trade policies affect our company.

TEXTILES

More than 30% of our more than \$3 billion of sales in 1967 were to the textile mill products industry. Most of these sales were man-made textile fibers to textile mill operators. Obviously, the economic well-being of this industry is of the greatest importance to Du Pont, as it is to this country's balance of payments problems and to our economy.

What may not be so apparent, however, is the very high degree of economic interdependence between the various segments of the textile industry of which the man-made fiber producer is one, and how this interdependence operates most rigorously on the man-made fiber producer. The apparel manufacturer, for example, is free to import fabric; he is not necessarily dependent upon the textile mill operator. The textile mill operator, in turn, so far as his raw materials are concerned, may be the purchaser of imported man-made fibers. The domestic man-made fiber producer, however, is almost totally dependent upon the textile mill products industry for the consumption of the output of the fiber-producing plant, and indirectly dependent upon the apparel manufacturer to acquire fabric from a domestic mill in order to sustain demand for domestically produced man-made fibers. Thus, it is clear that imports of fabric and apparel have as great an effect on the domestic man-made fiber-producing industry as imports of the fibers themselves.

This Committee has already heard extensive and detailed testimony from representatives of the fiber, fabric and apparel segments of the domestic textile industry describing the import problem faced by each and its interrelation to the import problem of the other segments. We in Du Pont have satisfied ourselves, by independent analysis, that the views expressed by these individual segments of the textile industry are substantially correct. We are convinced that domestic man-made fiber producers, of which we are one, will be seriously and adversely affected should the Congress fail to recognize the serious import problems of the domestic textile industry.

For these reasons, Du Pont supports the domestic textile industry in its efforts to have the Congress enact appropriate textile quota legislation.

One aspect of the textile import problem deserve special mention because we believe it is one of the principal reasons why the United States has swung from being an exporter of textiles with a favorable trade balance of better than \$500 million to its current position of being an importer of textiles with an unfavor-

¹ Foreign business breakdown :

	<i>In millions</i>
Europe	\$218
Canada	161
Latin America	129
Elsewhere	111
Total	619

able trade balance of approximately the same size. This is the matter of quantitative import restrictions on wool and man-made textiles imposed by foreign countries.

Attached to this is a paper prepared by the Office of the Special Representative for Trade Negotiations identifying such restrictions applied by 12 foreign countries in 1967.² I do not propose to examine this paper with you in detail. It speaks for itself. It is clear from the table appearing on page 2 that EEC per capita imports from countries other than the U.S.A. and Canada (i.e., from the underdeveloped, low-wage, principally Far Eastern countries) are less than half those of the U.S.A. These European countries, which have ordinarily been larger importers than the U.S., are not importing proportionately as much from the underdeveloped nations and Far East, primarily because of the limitations which have been placed upon imports and which are spelled out individually by country in the study paper. These limitations of imports from lower labor cost countries which deflect Japanese exports into the wide-open U.S. market are the primary reason for the rapidly increasing pressure against the domestic textile industry.

While the emphasis at the time of passage of the Trade Expansion Act was to establish closer trade ties between the Common Market and the United States, the textile trade problem is tending more and more to be related to the developing nations and Japan. It is generally accepted that textile manufacture is one of the easiest industries to create in a developing economy because it is a high-labor, low-capital industry with an immediate local demand. Consequently, the textile industry has been the starting point in the industrialization of most countries. The large U.S. market has become the primary target of the developing countries. Seventy members of the House on March 9, 1967, discussed the problems besetting the textile industry and in their reference to Appalachia made clear that there is an "economically underdeveloped nation" within the United States. If this country remains resolute in its "war on poverty" it should be significant that in those counties in the U.S. where more than 40% of the families have income below \$2,500 per year, the textile industry provides one job in every three manufacturing jobs. With respect to man-made fiber production, 50% of the employment is located in the counties of Appalachia. Rising imports of man-made fibers and all other textiles would have their greatest impact on that segment of the population which the war on poverty seeks to help.

The U.S. is the world's largest textile market and yet it is unprotected except for the Long Term Cotton Agreement Controls that provide for the orderly development of cotton textile and apparel trade. With full recognition of the dangers and problems arising from the use of quotas, we submit that we have no choice but to embrace them so long as they are employed by our foreign competitors in such an effective manner.

SUPPLEMENTAL AGREEMENT RELATING PRINCIPALLY TO CHEMICALS

Part 1.—Export opportunities

Since it was concluded in June 1967, the special Geneva agreement on chemicals has been widely publicized and acclaimed by the President's Special Representative for Trade Negotiations (SRT) as deserving of support from all, including the domestic chemical industry. This is because, if implemented, it purportedly will provide domestic industry with very substantial new export opportunities and thereby generate additional income and new employment. Insofar as Du Pont is concerned, we must disagree and state that we are unable to find any *factual* basis for this assertion.

We are prepared today to discuss with this Committee in as great detail as it wishes how we believe the special Geneva agreement on chemicals will affect Du Pont export sales. The United Kingdom (U.K.) and the European Economic Community (EEC) are the two principal trading areas whose tariffs would be further reduced if this agreement were implemented.

We have analyzed our export sales to these two areas in depth and would like to illustrate the basis for our conclusion by reviewing briefly this analysis of our Company's export sales to the EEC. If there are questions concerning analyses of our export sales to the U.K., I would be glad to answer them.

Du Pont 1967 exports to the EEC were \$67.5 million. Our detailed analysis³

² Exhibit 1.

³ See Exhibit 2, a bar chart, which will facilitate following the ensuing discussion.

has included \$65.6 million or 97% of these sales. In the case of \$36.7 million, or 56% of these sales, EEC duties are outside the special agreement and unaffected by it. Most importantly, these are man-made fibers and polychloroprene synthetic rubber.

Of the remaining \$28.9 million of our exports to the EEC, we have concluded that \$26.6 million⁴ would be unaffected by lower EEC tariffs for several reasons.

1. \$8.5 million are intermediates for use in our own plants abroad, the volume of which will be entirely dependent on expansion of sales in Europe of the finished product manufactured therefrom.

2. \$3.1 million are products which have already been granted special low duties by the EEC which would not be affected by the special agreement if implemented.

3. \$5.4 million comprise agricultural chemical products and other products now being manufactured in Europe. Expansion of our agricultural chemical products exports is effectively limited by the foreign patent laws. Many European countries require local manufacture or compulsory licensing, which effectively prevents exporting from this country on a continuing basis. Export sales of the remaining products now manufactured in Europe will be insensitive to duties and foreign manufacture will be preferred for reasons of service and local product demands.

4. \$6.4 million of our export sales comprise products where our market position is such that we have found by experience that price reductions are immediately met by local large producers, so that lowering our EEC prices by the amount of any foreign tariff reduction would not result in expanded volume.

5. Another \$3.2 million comprises specialty products not competitive with any produced in the EEC or with distinctive quality advantages over their European counterpart. Price is not the primary factor in the sale of such products and price reductions of the magnitude allowable by duty reductions have not proved in the past to have stimulated exports.

This leaves a total EEC export volume of about \$2.3 million, where our studies lead us to believe that sales would be stimulated further by duty reductions. These comprise only about 3.5% of our 1967 exports. In addition, we reviewed products we did not export in 1967 to determine whether we could expect that export sales of them might be stimulated by the duty reductions; we found no basis for such an expectation.

It is therefore our reluctant conclusion that Du Pont export sales growth stemming from EEC duty reductions envisioned by the special Geneva agreement on chemicals would be very small indeed.

This typical analysis,⁵ based on our detailed studies, has convinced us that insofar as Du Pont is concerned, implementation of the special Geneva agreement on chemicals will not substantially increase our export sales nor importantly enhance our competitive position in world markets. These conclusions are in sharp disagreement with those of our negotiators, and we must ask the simple, but serious question—how will the United States, the domestic chemical industry, and Du Pont, gain from implementing the special agreement?

Part 2. Impact on Du Pont of loss of American selling price

As a result of the Kennedy Round negotiations alone, Du Pont estimates that on an annual basis it will suffer the loss of about 12% of its 1967 earnings by the time of the completion of the Round. The major factor is the effect of increased import competition from Europe and Japan and the concomitant loss of position in domestic markets and increased price erosion resulting therefrom.

The situation is serious enough in its direct impact on our Company operations. However, the problem does not end there since tariff reductions were negotiated on our customers' products. Under these circumstances, our customers and their customers in turn have to make adjustments to new competitive situations. As a result, we expect serious business problems in adjusting our manufacturing operations. We expect dislocations to occur in important segments of our business and probable discontinuation of some products.

Du Pont believes that implementation of the special Geneva agreement on chemicals, including elimination of the American selling price method of customs valuation (ASP), can only aggravate the problems resulting from increased

⁴ See Exhibit 3, which lists the products involved.

⁵ See Exhibit 4, which sets forth a comparable analysis of Du Pont 1967 export sales to the United Kingdom.

low-priced imports and further impair its ability to withstand import price pressures.

By the time these hearings are concluded, this Committee will have heard extensive and detailed testimony from representatives of the domestic benzenoid chemical industry describing the import problems faced by that industry and its importance to the national economy. We in Du Pont subscribe to the views expressed by the Manufacturing Chemists' Association and the Synthetic Organic Chemical Manufacturers Association.

BORDER TAXES

There has been a great deal of discussion recently about the impact of taxes imposed at foreign borders on goods exported from the U.S., particularly with respect to the switch which Germany made the first of this year from a cascade-type turnover tax to a value-added-type tax which France has had for many years and which most of the other countries in Europe have indicated they will adopt.

The nature of the competitive disadvantages to American chemical manufacturers because our trading partners use different tax systems and the reasons for them are fully analyzed in the statement submitted to this Committee by the Manufacturing Chemists' Association (MCA). Our own independent studies corroborate MCA's report.

MCA reported two principal disadvantages to American chemical manufacturers: first, the switch by our trading partners from one indirect tax system to another, and second, the fact that the economic realities of the market place often do not permit indirect taxes including value-added taxes to be shifted forward completely to the consumer. Both disadvantages in many cases decrease the profitability of American chemical export sales and increase the profitability of export sales by foreign competitors, including the profitability of their export sales to the U.S.

We have had several discussions with the Office of the Special Representative for Trade Negotiations concerning these competitive disadvantages, particularly that resulting from the German switch to the value-added tax. What has emerged from these discussions is, we believe, general agreement that American chemical manufacturers have been disadvantaged by the switch to a value-added tax system and may be further disadvantaged by the fact that value-added taxes often cannot be shifted forward completely. There is an increasing awareness in commercial and financial circles of these disadvantages and their significance to many American exports. In a recent speech,⁶ Walter B. Wriston, President of the First National City Bank of New York, describes them as "Gattmanship" which he defines as "lowering tariffs but hindering imports from the United States." He frankly acknowledges that up to this point their significance has not been widely understood because the tax structure is so complex and because the interaction of the border taxes and rebates is so difficult to trace.

The Office of the Special Representative has indicated that it would like industry to supply it with specific product examples quantifying the impact of these disadvantages and we expect to do so. However, from the work already done, the disadvantage caused by the switch is clear although its magnitude differs depending on the tax burden borne by the product prior to the switch and may never reach a market-place equilibrium. The trouble is that the key information to enable a product-by-product analysis to be made is not available to domestic industry or to the U.S. Government. It is held by the domestic industry of the foreign country and the government of that country.

We believe the present situation is that the Office of the Special Representative has had sufficient reliable information furnished it by industry to establish the fact of the competitive disadvantage to U.S. manufacturers resulting from a switch to the value-added tax to warrant that Office's taking up the subject with those countries who have switched and those who are contemplating the switch and insisting that immediate steps be taken to compensate for or remove the disadvantage. We understand that at a recent meeting of representatives of the member countries of the General Agreement on Tariffs and Trade (GATT) a representative of the Office of the Special Representative for Trade Negotiations raised the border tax problem. However, we do not know how strong a position has been taken on behalf of the United States.

⁶ Apr. 23, 1968.

In the meantime, we believe the United States should take steps to place its domestic industry in a position comparable to that occupied by its foreign competitors. Congress should enact legislation which will impose a border tax on all imports into the United States which approximates the amount of indirect tax borne by products of U.S. manufacture. This can be accomplished within the current GATT rules.

And, as is done by indirect tax countries, all goods exported from the U.S. should be relieved of the indirect tax burden by a corresponding tax rebate. This would improve the profitability of exports and thereby encourage U.S. manufacturers to expand export sales in aid of the U.S. balance of payments position. This, too, can be accomplished within the current GATT rules.

TAX INCENTIVES TO ENCOURAGE EXPORTS

In addition to relieving exports of their domestic indirect tax burden, we believe serious consideration should be given to formulating a program of income tax incentives to encourage exports. Such incentives are increasingly being used by other nations. For example, The Journal of Commerce for May 20 of this year reports that Japanese manufacturers increasing export sales will be granted tax breaks under regulations which went into effect on May 1.

In 1966 the Action Committee on Taxation of the National Export Expansion Council recommended a program of tax incentives for exports largely free of GATT problems involving changes in administrative interpretations and enactment of new legislation. We believe this Committee's recommendations are practical and on target. They are not short-range but rather form the basis for a long-term solution to the problem of how to effectively stimulate domestic industry to export.

OIL IMPORTS

By the time these hearings end, other witnesses will have described in detail how the U.S. oil import control program, because it makes petroleum more costly in the United States than in the rest of the world, poses a serious and growing threat to the American chemical industry. U.S. chemical producers face the prospect of paying the higher domestic price for their raw materials while their overseas competitors pay the lower world price.

As a result of the Kennedy Round settlements, U.S. tariffs on most petrochemical containing and derived products imported into the United States will be reduced by fifty percent. We expect imports of such products will substantially increase. In both domestic and export markets Du Pont and other U.S. chemical producers will face lower price competition from foreign chemical producers who will continue to have the advantage of lower labor, equal or lower capital investment and lower raw material costs than domestic industry. Our raw material cost disadvantage is the result of our self-imposed controls on imports of oil. Surely, this is one disadvantage under which domestic industry should not have to labor and can further worsen our nation's already acute balance of payments problem.

The Administration has agreed to some interim changes in the program which we believe move in the right direction, but much remains to be done if the domestic chemical industry is to retain both its export and domestic markets over the years ahead. Of major importance is how to change the program to achieve a realistic and effective separation between the energy and the chemical sectors of the oil import program. The Administration should recognize the distinction between the primary fuel and energy markets of the petroleum industry, which oil import quotas are properly designed to protect, and the needs of the chemical industry for competitively priced feedstocks for the production of chemicals and plastics.

CONCLUSION

The Du Pont Company is deeply concerned about current and prospective tariff and trade policies and their impact on its domestic and export business.

Du Pont and other domestic chemical producers are forced to operate under domestic tariff levels which have been lowered to the point where they do not adequately compensate for labor, investment and production cost advantages enjoyed by their foreign competitors. We are forced also to operate under Gov-

ernment import controls which deny access to foreign-source raw materials that are available to overseas competitors at prices lower than domestic U.S. prices. Finally, Du Pont and other domestic chemical manufacturer-exporters are forced to compete with foreign companies which operate under tax systems which advantage them, while our domestic tax systems fail to provide comparable incentives to stimulate export growth.

These seemingly paradoxical Government policies severely impair Du Pont's, as well as other domestic chemical manufacturers', competitive capability in domestic and export markets.

This Committee has a singular opportunity to formulate a sound long-range foreign trade policy by reconciling these important and complicated subjects.

Exhibit 1

DECEMBER 27, 1967.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

QUANTITATIVE IMPORT RESTRICTIONS ON WOOL AND MANMADE TEXTILES

This paper identifies quantitative import restrictions that have been applied in the calendar year 1967 against wool and man-made textiles by 12 foreign countries—Austria, Belgium-Netherlands-Luxembourg (Benelux), Canada, Denmark, France, Italy, Japan, Norway, Sweden, Switzerland, United Kingdom and West Germany.

For purposes of this paper, the term "quantitative import restrictions" means restrictions which have the effect of controlling the quantity of imports through such means as quotas, licenses, "voluntary" export controls, and minimum import prices. The term does not include licensing systems under which licenses are automatically granted nor general provisions of law, like "escape clause" provisions, which could potentially be invoked to impose quantitative import restrictions.

Various countries have bilateral trade agreements which specify products but do not establish quotas. These agreements were included in this paper when specific information on them was readily available or when there is evidence that licensing is being limited.

Following World War II, many countries, in seeking to rebuild their war-shattered economies, imposed quantitative import restrictions to conserve scarce foreign exchange. These restrictions did not prevent the countries concerned from maintaining their overall level of imports at close to the highest level permitted by their foreign exchange reserves, but did affect the import "mix". As the industrialized countries recovered in the late fifties and began to build their foreign exchange reserves, quantitative import restrictions on thousands of products were removed, particularly with respect to imports from the OEEC countries. Agricultural products, textiles, and coal are several examples of hard-core items which remain restricted.

Some countries continue legally to justify quantitative import restrictions directed at specific important textile exporting countries under GATT Article XXXV, which permits a GATT member to withhold the application of its tariff concessions or the provisions of the entire Agreement from another GATT member with whom it has not negotiated tariff concessions. This article was invoked by many European countries when Japan joined the GATT. Many of these countries have now disinvoked Article XXXV but rely on bilateral agreements or special valuation or other devices to protect domestic producers.

The overall significance of restrictive measures is indicated in a general way by the actual levels of imports. The following table shows the value of textile and apparel imports in 1966 for the countries listed in the study and, in comparison, for the United States. Imports are shown on a per capita basis in order to adjust for differences in population.

PER CAPITA IMPORTS OF TEXTILES¹ AND APPAREL² INTO SPECIFIED AREAS IN 1966³

Area	Gross imports	Less trade within EFTA or EEC	Net imports	
			Total	From areas other than United States, Canada, and Europe
Austria.....	\$28.57	\$7.75	\$20.82	\$1.88
Denmark.....	50.31	17.34	32.97	12.38
Norway.....	44.30	23.49	20.81	3.52
Portugal.....	4.37	2.22	2.15	0.36
Sweden.....	45.36	18.40	26.96	6.32
Switzerland.....	45.11	10.55	34.56	4.89
United Kingdom.....	10.89	1.20	9.69	4.67
EFTA average.....	20.04	5.56	14.48	4.53
Belgium-Luxembourg.....	43.42	36.42	7.00	1.90
France.....	8.68	6.36	2.32	0.46
Germany ⁴	24.98	16.15	8.83	3.61
Italy.....	4.63	2.75	1.88	0.51
Netherlands.....	52.30	43.91	8.39	2.29
EEC average.....	17.58	12.63	4.95	1.69
Canada.....	19.32		19.32	4.64
Japan.....	0.94		0.94	0.85
United States.....	6.07		6.07	3.77
Average.....	11.43	4.78	6.65	2.79

¹ SITC Nos. 651, 652, 653 (except woven jute fabrics), 654, 655 (except cordage and manufactures, and hat bodies), 656 and 657.

² SITC No. 841 (except leather clothes and accessories; headgear; and rubber clothing).

³ 1965 for Germany.

⁴ Includes West Berlin but excludes interzonal trade.

Source: U.N. Statistical Papers: Commodity Trade Statistics, vol. XVI (vol. XV for Germany).

These data indicate that, on a per capita basis, the value of U.S. textile imports is relatively moderate. However, per capita consumption is considerably greater in the United States than in other countries, as indicated by the data in the table below. The rankings of the countries in these two tables provide an indication of the relative role of imports in the domestic market. This comparison can only be indirect, primarily because the available data on imports are in dollars while those for consumption are in kilograms.

Per capita consumption of textiles in specified areas in 1964

Areas:	Apparent consumption, fiber equivalent, 1964 ¹
Austria.....	10.1
Denmark.....	12.6
Norway.....	10.3
Portugal.....	7.1
Sweden.....	12.8
Switzerland.....	12.4
United Kingdom.....	14.1
EFTA average.....	12.6
Belgium-Luxembourg.....	12.5
France.....	10.4
Germany.....	12.9
Italy.....	8.0
Netherlands.....	13.6
EEC average.....	10.9
Canada.....	13.3
Japan.....	13.0
United States.....	17.4
Average.....	13.8

¹ Availability for home use.

Source: "Per capita fiber consumption 1962-64 (cotton, wool, and manmade fibers)," FAO Document COA/66, Rome, Dec. 31, 1966.

AUSTRIA

A. Under an Austro-Japanese trade agreement, certain textile items are subject to import licensing, but without specified quotas; licenses are granted "to the extent permitted by the economic situation of Austrian industries involved."

B. A 1967 antidumping and market disruption law allows Austrian customs officials to impose supplementary duties on the following wool items when their landed prices are below the specified prices:

	<i>Per pound</i>
(a) Plain fabrics of blended wool yarn-----	\$0.72
(b) Cardigans, pullovers and sets, made of wool or fine animal hair:	
(i) if of lambswool-----	5.95
(ii) if of merino yarn-----	5.66
(iii) if of shetland yarn-----	3.90

- BENELUX

A. The three Benelux countries share a common bilateral trade agreement with Japan which expires April 30, 1969. Pursuant to this agreement, all imports from Japan are subject to licensing, and a "market disruption clause" provides for immediate consultations should any industry, including the textile industry, be actually or potentially injured. If no agreement can be reached within a reasonable time, the Benelux countries may impose quantitative restrictions as deemed appropriate. This clause, however, has thus far not been invoked, and licensing requirements have evidently not been used restrictively.

B. The bilateral agreement with Japan also establishes certain quotas on textiles, which are as follows for 1967. These quotas are allocated administratively among the three countries.

Product:	<i>Quota (metric tons)</i>
Yard of manmade fibers and rayon fibers for retail sale-----	125
Woven manmade filament fabrics, printed-----	50
Woven manmade filament fabrics, not printed exc. grey-----	275
Woven manmade spun fabrics, printed-----	78
Woven manmade spun fabrics, not printed exc. grey-----	170
Grey cloth of manmade fibers (filament and spun) and of cotton-----	¹ \$1,240,000
Ribbon, lace, braid and trimming, not silk-----	30
Outer garments and other articles, knitted or crocheted, of wool or wool mixtures-----	80
Women's, girls' and infants' outer garments, not silk or wool (excl. kimonos)-----	60
Men's and boys' shirts and pyjamas of manmade fibers and cotton-----	85
Handkerchiefs of cotton and manmade fibers-----	18
Shawls, scarves, etc., of manmade fibers-----	70

¹ Quota fixed in Belgian francs.

C. In June, 1967, the Commission of the EEC authorized the Dutch to restrict imports of woolen yarns and fabrics from Italy pursuant to Article 226 of the Treaty of Rome.

CANADA

A. A Japanese-Canadian agreement provides for the voluntary restriction on exports of certain Japanese goods including synthetic-fiber apparel in 1967, as follows:

Blouses ¹ -----	dozen--	41,000
Shirts ¹ (blends only)-----	do-----	76,000
Trousers and outer shorts ¹ -----	do-----	56,000
Knitted wear (including wool manmade blends)-----	do-----	354,000
Elastic braid (all fibers)-----	pounds--	500,000
Fabrics (nylon)-----	square yards--	3,300,000
Outer wear of spun rayon and synthetics-----	dozen--	105,600

¹ The terms of the agreement provide for 10% transfer rights between synthetic and cotton groups.

B. As the part of a broader trade agreement, Korea has accepted the following voluntary restraint levels for 1967.

Broadwoven fabrics wholly or substantially nylon.....	square yards..	200,000
Manmade fiber garments (with five subquotas).....	dozen..	97,500
Broadwoven worsted fabrics.....	square yards..	150,000
Narrow fabrics of any textile material.....	pounds..	45,000
Gloves (all types, including nontextiles).....	dozen..	20,000

C. An agreement with Hong Kong restrains the exports of garments made from 100% polyester and polyester-cotton blends of major weight polyester for October 1967–September 1968 as follows:

	Dozen
Shirts.....	75,000
Blouses.....	40,000
Trousers.....	55,000

DENMARK

A. Denmark requires import licenses for all exports from non-free list countries, which include the Communist bloc countries, as well as Japan, Korea, and Taiwan among the important textile exporters. Licenses are used as a means of regulating these imports, although there is no indication of the actual degree of restraint thereby exercised.

B. There are unconfirmed indications that Japan may be exercising voluntary control over some of its textile exports to Denmark, particularly of woolen fabrics, blouses, sports shirts of all fibers, and woolen sweaters.

FRANCE

A. France makes use of import licenses to restrict a number of wool and man-made apparel items, requiring them for imports from any GATT countries (although not OECD countries, with the exception of Japan). These licensing arrangements are not administered in conjunction with any established quotas. Besides these apparel items, certain other imports from Hong Kong, namely woven wool fabrics, certain blends and carpets (of mixed fiber content) are licensed in a restrictive fashion.

B. In addition to these licensing provisions, France has, according to available information, two trade agreements which include quotas on wool and man-made textiles. One, with Japan, establishes specific quotas—whose current levels are not available—on Japanese exports of filament yarn of man-made fibers, woven fabrics of all fibers, and woven and knitted garments of all fibers. This agreement includes a safeguard clause which may be invoked in the case of disruption or threatened disruption of markets in either country. The second, with India, provided for quota levels (in 1966) of 600,000 francs for man-made fiber imports and of 125,000 francs for imports of knitted goods of wool.

The following quota levels on Japanese wool and synthetic textile imports into France were in force between April 1965 and March 1966.

Item	Metric tons	Value (thousands)
Synthetic filament yarn (of which 33 tons of yarn thrown with more than 400 turns per meter).....	66	¹ (\$198.0)
Rayon filament yarn.....	165	(181.5)
Synthetic woven filament fabric.....	66	(330.0)
Rayon woven filament fabric:		
Printed.....	22	(55.0)
Unprinted.....	33	(110.0)
Combed woolen yarn for retail sale.....		220.0
Woolen fabric.....	61	(220.0)
Spun synthetic woven fabrics.....	44	(264.0)
Spun rayon woven fabrics:		
Printed.....	55	(220.0)
Unprinted.....	121	(220.0)
Textile articles other than cotton:		
Woven clothing.....		308.0
Knitted goods.....		88.0
Other articles.....		44.0

¹ Dollar values in parentheses are only indicative; where they exist, the tonnages are ruling.

In late 1967, both countries agreed to a reduction of discriminatory quotas. In return for certain Japanese concessions, France has agreed, by 1969, to reduce by half the number of categories of imports from Japan which are subject to quota restrictions; some wool and man-made textiles will likely be included, but it is not yet known which ones.

ITALY

A. A trade agreement with Japan provides for quotas on 95 categories of goods, including wool and synthetic fiber goods listed below. For the 1966-67 agreement year, quotas on restricted wool and synthetic items totaled \$2.62 million of which \$1.23 million were imports for domestic consumption and \$1.39 million were imports for processing and reexport. The following details are provided.

Item	BTN tariff No.	Import quotas	
		For consumption	For reexport
Synthetics:			
Yarn of continuous fiber, not for retail sale.....	51. 01	\$50,000	\$100,000
Monofilament.....	51. 02	40,000	-----
Yarn of continuous fiber, for retail sale.....	51. 03	5,000	-----
Woven fabrics of continuous fiber.....	51. 04	-----	360,000
Discontinuous fibers, not processed.....	56. 01	60,000	-----
Filament tow.....	56. 02	30,000	-----
Waste.....	56. 03	30,000	-----
Fibers, discontinuous, corded, or combed.....	56. 04	40,000	200,000
Yarn:			
Discontinuous.....	56. 05	50,000	50,000
For retail sale.....	56. 06	5,000	-----
Woven fabrics, discontinuous fiber.....	56. 07	-----	480,000
Total.....		310,000	1,190,000
Wool:			
Sheep's or lamb's wool.....	53. 05	400,000	200,000
Woolen yarn.....	53. 06		
Worsted yarn.....	53. 07		
Yarn, for retail sale.....	53. 10		
Woven fabrics.....	53. 11	-----	-----
Carpets, etc.:			
Woven pile fabrics.....	58. 04	80,000	-----
Narrow woven fabrics.....	58. 05	-----	-----
Miscellaneous: Elastic fabrics and trimmings combined with rubber thread.....	59. 13	40,000	-----
Apparel (excluding cotton):			
Knitted and crocheted:			
Gloves.....	60. 02	40,000	-----
Undergarments.....	60. 04	40,000	-----
Outer garments.....	60. 05	40,000	-----
Other than knitted or crocheted:			
Women's and girls' outer garments.....	61. 02	40,000	-----
Men's and boys' undergarments.....	61. 03	40,000	-----
Women's and girls' undergarments.....	61. 04	40,000	-----
Handkerchiefs.....	61. 05	40,000	-----
Shawls, scarves.....	61. 06	40,000	-----
Other made-up articles:			
Traveling rugs and blankets.....	62. 01	40,000	-----
Bed and table linen.....	62. 02	40,000	-----
Total.....		400,000	-----

1966 imports from Japan in these woolen and man-made categories amounted to only \$1.46 million in contrast to the 1966-67 agreement-year quota of \$2.62 million. The quotas, taken as a whole, may therefore not be overly restrictive. They may be restrictive, however, for individual categories.

B. Italy has trade agreements with Formosa, India, and Pakistan. The agreements list items of trade but do not specify quotas. Import licenses for Indian and Pakistani goods are granted without restriction (information on licensing of Formosan goods is not available).

JAPAN

Japan has a global quota on imports of woven woolen fabrics, amounting to \$22.8 million for the year ending March 31, 1968, with \$2 million reserved for France and \$800 thousand for Italy. The French quota is established under an overall bilateral trade agreement, while the Italian quota is set unilaterally by Japan.

NORWAY

A. An agreement between Norway and Japan establishes two import lists, consisting largely of textiles. For the first, import licenses on Japanese exports are automatically granted up to a certain limit, at which point the two countries consult "with a view to finding appropriate measures for the development of trade between the two countries". It is unclear whether such consultations have in fact taken place. The second list indicates those Japanese exports to Norway which will be licensed automatically and without limit. Of these, the Japanese have voluntarily undertaken to limit the exports of two synthetic fiber fabric items. This undertaking has provided for a yearly growth rate of somewhat more than 10%.

B. Licenses are also required for all imports, including textiles, from South Korea and Formosa. At present, no licenses for textile imports are granted to South Korea, due to the lack of an agreement between the two countries concerning Korean textile exports to Norway. No information is available as to the administration of the licensing system with respect to Formosa.

SWEDEN

A. An agreement with the Koreans regarded as temporary and due to expire February 1968, limits Korean exports to Sweden of certain knitted and crocheted goods. An investigation by Sweden will be completed in mid-January to determine whether this agreement should be continued.

B. An agreement with Japan which expired in 1963 is still considered ruling by the Swedish Government and its quota provisions on woolen and man-made textiles are still believed to be in force. However, the Sweden-Japan textile trade position has not been reviewed for some time, and Swedish imports of quota items from Japan are in fact many times the established quota limits. It is unclear whether any restrictions exist at all on Japanese wool and man-made exports to Sweden.

SWITZERLAND

Switzerland employs a "price certificate system" with respect to its textile imports, and in conjunction therewith requires import licenses for all textile imports at the fabric stage and beyond, regardless of origin. These licenses are granted automatically unless the country of origin is one of the Eastern European countries or Japan. For these countries, textile imports are not permitted entry if their landed prices are below domestic prices by the following margins:

	Percent
Garments and all other finished textile articles.....	20
Wool fabrics.....	12

There is no indication as to the degree of restraint which these limits have imposed.

UNITED KINGDOM

The United Kingdom applies import restrictions to woollen and man-made textile products from Japan. These are embodied in the Anglo-Japanese Commercial Treaty of November, 1962, in which the Japanese undertook voluntarily to limit their exports of certain of these textile items.

The agreement was renewed in 1967 with a reduction in the number of items subject to quotas. The following table indicates wool and man-made quotas still remaining for the years 1966 and 1967:

Item	Quotas	
	1966	1967
Spun yarn of manmade fibers.....	£25,000.....	£35,000.
Woven manmade fiber fabrics, except for reexport.....	4,200,000 sq. yds.....	5,000,000 sq. yds.
Woven wool fabrics.....	600,000 sq. yds.....	800,000 sq. yds.
Knitted fabrics and apparel (excluding gloves, of knitted, netted, or crocheted material of cotton), wool or manmade fibers (including stockings and socks).	£700,000.....	£800,000.
Outer garments (excluding gloves) and underwear of woven cotton or woven manmade fiber fabrics or of silk fabrics weighing more than 1.9 oz. per sq. yd.; handkerchiefs, shawls, scarves, and mufflers except those of silk weighing not more than 1.9 oz. per sq. yd. or of linen.	£1,875,000 of which not more than £300,000 for cotton or £350,000 for silk.	£2,100,000 of which not more than £333,000 for cotton.
Knitted gloves, other than gloves knitted to shape, and gloves of textile materials.	£160,000.....	£185,000.
Lace and lace net and embroidery of all types.....	£56,000.....	£64,000.
Narrow fabrics of all types and articles made therefrom.	£84,000.....	£96,000.

WEST GERMANY

A. Import licenses are required for synthetic textile imports when these countries are on "List B". Although this list includes the United States and Canada as well as the major Asiatic exporters (with the exception of Hong Kong and Macao), the United States and Canada have been recently exempted from this requirement.

Many, but not all woolens are subject to import licensing requirements. The restricted list includes some yarns and fabrics, and most articles of apparel. It is not known to what extent these requirements are used restrictively, but in some instances they have evidently been used as a basis for encouraging voluntary export controls.

B. Hong Kong has voluntarily agreed to limit its exports to West Germany of woollen sweaters to the following amounts:

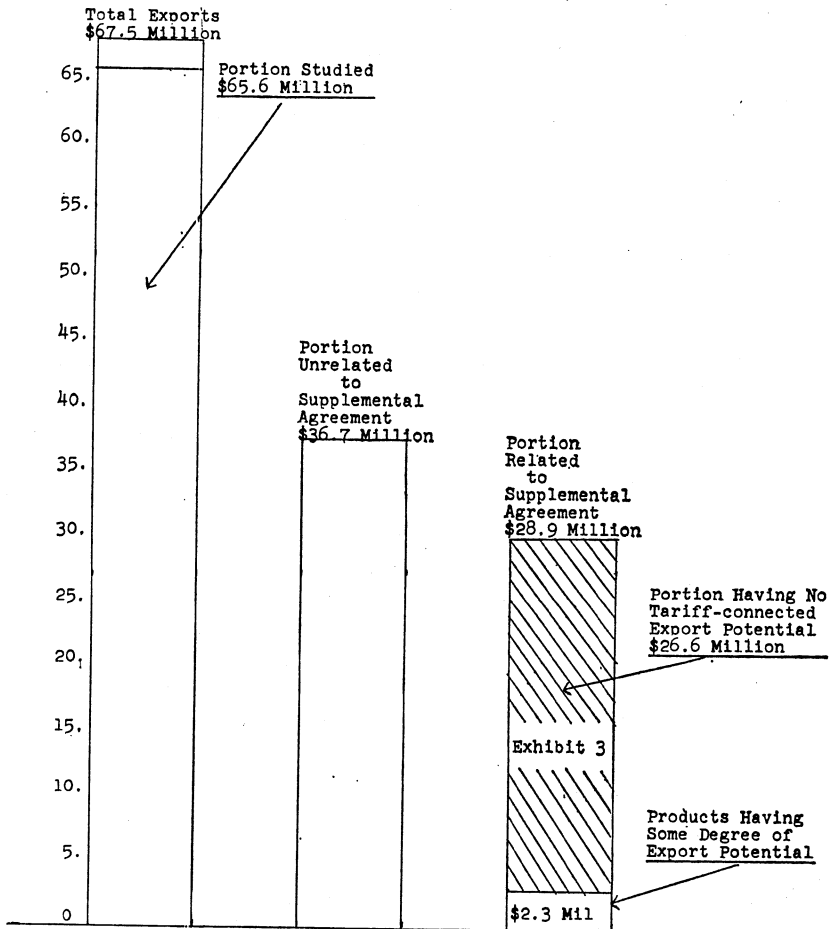
	<i>Dozen</i>
1967	825,000
1968	875,000
1969	925,000

In 1966, Germany's imports of this item amounted to about 40% of total domestic consumption; somewhat more than half of this was provided by Hong Kong.

C. An agreement with Japan sets 1967 voluntary export limits to Germany on certain woollen items, namely fabrics, hand knit yarns, and other yarns.

Negotiations with Japan for synthetic textile and apparel quota levels for 1967 have not yet been concluded. These negotiations have continued during the course of the agreement year, and the final figure agreed upon will reflect understandings as to market conditions, export potentials, etc., which have evolved during the continuing discussions between the two participants.

D. Quotas, whose amounts have not been made public, are established for both woollen and synthetic exports of India and Pakistan. Neither country has fully used its quota.

Exhibit 2DU PONT EXPORTS TO THE EEC - 1967

**EXPORTS TO EEC
PRODUCTS WITHOUT TARIFF CONNECTED
EXPORT POTENTIAL - 1967**

\$26.6 Million

<u>Part A</u> Inter- mediates \$8.5 Million	<u>PART A - INTERMEDIATES FOR CONSUMPTION</u> Man-Made Fiber Intermediates Polytetramethylene Ether Glycol Organic Isocyanates Dimethyl Terephthalate Plastic Intermediates Acetal Resin Base Photo Product Intermediates Polyester Film Base
<u>Part B</u> Special Tariffs \$3.1 Million	<u>PART B - PRODUCTS AFFORDED SPECIAL TARIFF TREATMENT</u> Fluoroelastomers Chlorosulfonated Polyethylene Urethane Rubber
<u>Part C</u> New Facility \$5.4 Million	<u>PART C - NEW EUROPEAN FACILITY</u> Fluorocarbon Resins Agricultural chemicals Fluorocarbon Refrigerants and Propellants
<u>Part D</u> Competition Determines Price \$6.4 Million	<u>PART D - LOCAL COMPETITION DETERMINES PRICES</u> Organic Specialties Polyester Packaging Film Nylon Molding Powders Cellophane Packaging Film Petroleum Additives Polyvinyl Butyral Interlayer Sodium Products Acrylic Molding Powders Ethylene/Vinyl Acetate Copolymers
<u>Part E</u> Special Qualities \$3.2 Million	<u>PART E - PRODUCTS HAVING SPECIAL QUALITIES</u> Photographic Arts & Reproduction Films X-Ray Films Titanium Pigments Engineering Reproduction Films Elastomer Chemicals Finishes

Exhibit 4**ECONOMIC ANALYSIS OF DU PONT EXPORTS TO THE UNITED KINGDOM—1967**

In 1967 Du Pont exports to the U.K. were \$12.6 million. We found we could conveniently analyze the effect of U.K. tariff reductions for 94% or \$11.8 million of these products by directing our analysis to a small number of principal product groups.

Our analysis is shown in the form of a bar graph in Attachment 1 to this exhibit. U.K. tariffs for products accounting for \$6.7 million are not affected by the Supplemental Agreement and thus its implementation could not enhance their export prospects. Attachment 2 lists these products.

Export sales of the following products of which Du Pont exported \$4.7 million to the U.K. in 1967 will not be affected because their U.K. tariffs are reduced. Why this is so is explained below.

1. ANTIKNOCK COMPOUNDS, \$1.8 MILLION

The U.K. market for antiknock is supplied by a single producer, owned by the consuming oil companies. We can sell into this market only during unusual shortage periods, one of which occurred in 1967.

2. AGRICULTURAL CHEMICALS, \$1 MILLION

Du Pont already has a facility in the U.K. for the production of certain agricultural chemicals necessitated by U. K. patent law which requires compulsory licensing of a patent if it is not worked within a certain period. Because of this, we must make patented agricultural chemicals in our U. K. facility. We expect our exports of such products to the U. K. to cease.

3. FLUOROCARBON RESINS, \$0.6 MILLION

The one point duty concession on this resin from 10% to 9%, effective 1972, can hardly be expected to stimulate our export sales to the U. K.

4. PHOTOGRAPHIC PRODUCTS, \$0.5 MILLION

Du Pont x-ray and graphic arts and engineering reproduction films compete in the U. K. market with similar U. K.-produced products. We are a minor factor in the U. K. market. Any price reduction initiated by us would be promptly equaled by local competition, and would not succeed in expanding our sales.

5. MISCELLANEOUS, \$0.8 MILLION

This is a group of unrelated products, either unique in character or quality or saleable in the U. K. only during shortages there. U. K. duty reductions will have little, if any, effect on export volumes.

There remains only about \$0.4 million of exports to be discussed. These are comprised of a range of miscellaneous small volume chemicals such as industrial intermediates, surfactants, chemicals for the rubber industry and photopolymer printing plates. Most of them are high priced specialties and will be dutiable at 23% under the Kennedy Round package and would be dutiable at 12% in 1972 under the supplemental package. It is conceivable that our exports of these products to the U. K. could be tariff stimulated to some degree. The extent of such stimulation is probably quite limited because the specialized nature of these products is in itself a limitation on the size of their individual markets. The increase in export volume by reason of duty reduction on less than half a million dollars worth of business per year can by no stretch of the imagination be considered as providing "very substantial export opportunities".

There is one additional interesting facet relating to the Geneva Agreement insofar as the U.K. is concerned—in the area of plastic materials. Prior to the start of the intensive Kennedy Round negotiations, Du Pont filed with the Office of the Special Representative a number of briefs on plastics wherein it was indicated that if U.K. duty rates were lowered our exports might be increased and we urged the Special Representative to obtain such duty concessions. With the exception of the one percentage point concession for fluorocarbon resins, granted only under the terms of the Supplemental Agreement, no U.K. tariff concessions affecting Du Pont's plastics exports were obtained by the Special Representative under the Supplemental Agreement or the Kennedy Round.

Additionally, the effects of devaluation of the British pound have largely offset any benefits to our competitive position that could otherwise be attributable to duty reductions of the Supplemental Agreement.

Our plastic products are listed together with their present and Kennedy Round duty rates in Attachment 3.

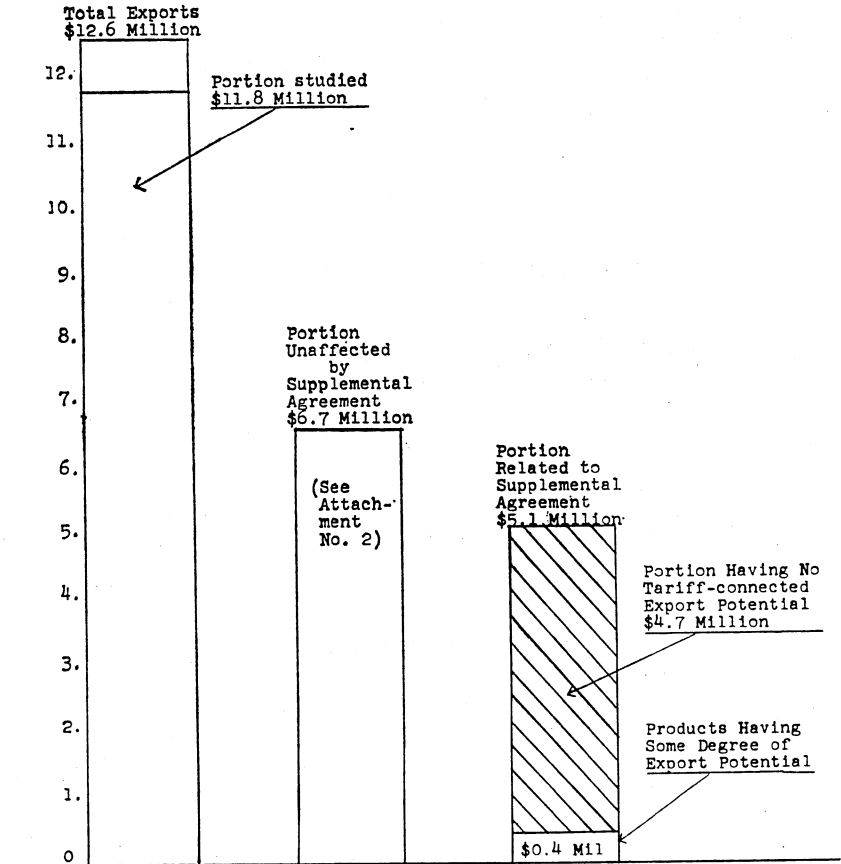
Exhibit 4Attachment 1DU PONT EXPORTS TO UNITED KINGDOM - 1967

Exhibit 4—Attachment 2

Du Pont United States exports to United Kingdom—1967—Products unaffected by the supplemental agreement

<i>Product</i>	<i>Reason</i>
Manmade fibers:	
Nylon	Ex agreement.
Polyester	Do.
Synthetic rubbers:	
Neoprene	Do.
Fluoroelastomers	No concession.
Chlorosulfonated polyethylene	Do.
Urethane	Do.
Plastic materials:	
Polyethylene resins	Do.
Filaments and strapping	Do.
Nylon resins	Do.
Polyvinyl butyral interlayer	Do.
Ethylene vinyl acetate copolymers	Do.
Acrylic resins	Do.
Acetal resins	Do.
Industrial films:	
Polyester	Do.
Cellophane	Do.
Color materials:	
Dyes	Do.
Pigment colors	Do.
Coated fabrics	Ex agreement.
Grand total	\$6.7 million.

Exhibit 4—Attachment 3

UNITED KINGDOM—PLASTICS, RESINS, AND FILMS FOR WHICH DU PONT SUBMITTED BRIEFS TO THE OSR ASKING FOR REDUCED DUTY RATES IN THE UNITED KINGDOM

[In percent]

Product	Present duty rate	Kennedy round rate	ASP rate
Resins:			
Acetal	10	10	10
Ethylene/vinyl acetate copolymers	10	10	10
Fluorocarbon	10	10	9
Ethylene ionomer	10	10	10
Polyolefinic	10	10	10
Films and sheeting:			
Polyester	10	10	10
Polyimide	10	10	10
Polyvinyl fluoride	10	10	10
Polyvinyl butyral	10	10	10
Fluorocarbon films and tubing	10	10	10

The CHAIRMAN. Dr. Dawson, we thank you for your statement and bringing to us your viewpoint. Are there are questions of Dr. Dawson? If not, we thank you, all of you.

The CHAIRMAN. Mr. May, we agreed to give you 7 minutes. If you will identify yourself, we will be glad to recognize you.

STATEMENT OF ERNEST M. MAY, OTTO B. MAY, INC.

Mr. MAY. I am Ernest M. May, president of Otto B. May Inc., a small dye manufacturer in Newark, N.J. We have been a part of the Newark business community since 1920, when my father founded the company. We sell dyes to the entire textile industry, especially for washfast cottons and permanent press fabrics.

For the past 5 years I have been technical specialist to the Office of Special Representative for Trade Negotiations, representing the dye industry. In this role I have made exhaustive analyses and furnished our trade negotiators with volumes of material relative to our industry, and I might add including the labor intensiveness of this industry where approximately 50 percent of the sales dollar is human effort.

I might also add that this human effort includes the very lowest unskilled labor, and materials handling, and shoveling, and so forth to the most sophisticated kind of chemical research so we exemplify the entire spectrum and are indeed a kind of a seed bed for new inventions since dye plants are capable of making in commercial quantities many of the new inventions that come out of benzenoid research laboratories.

I warned our negotiators in Geneva of the serious adverse impact a 50-percent reduction in dye tariffs would have upon our industry, and I documented this conclusion with many facts and many figures.

Our negotiators, however, agreed to a 50-percent reduction in dye tariffs. But they did not stop there. They went further and consented to what has become known as the "separate package" agreement. In the interest of accuracy, it should be called the "separate-but-not-equal package" because it heavily favors foreign manufacturers at the expense of American manufacturers. It would lower the average tariffs on dyes by an additional 25 percent.

The Kennedy round and separate package tariff cuts are a one-two punch with the potential to knock out our industry.

I have calculated the effect which these tariff reductions will have upon my company and upon the dye industry. It can be described best with one word: "Devastating."

These calculations, along the lines discussed by Mr. Barnard in his testimony, confirm the advice I had given to the Office of the Special Representative for Trade Negotiations while the negotiating sessions were actually in progress, both here and in Geneva. The same information was submitted to the Tariff Commission in confidence and in considerable detail in connection with their hearings on the probable economic impact of these actions.

In 1964 my company had a pretax profit of approximately 9.6 percent on dye sales or about 4.8 percent after taxes.

Assuming we produced and sold the same amount of dyes as we did in 1964, and had to sell them at a price which a comparable foreign product could be sold in the United States after the 50-percent Kennedy round reduction, our profit would turn to a loss of 1.2 percent.

Under the separate package which your committee is now considering, the situation would be even worse. Our loss would plunge to 5.8 percent on sales.

I must emphasize that these calculations are based upon export values which were derived from the Tariff Commission's converted rates. I have already received quotas from abroad for many of these products at export values that are, in fact, much lower than those derived from the Tariff Commission's converted rates.

The actual quotes, as distinguished from theoretical prices demonstrate dramatically that the Tariff Commission's converted rates were too low. More importantly, it shows that the figures I have just cited understate the potential adverse impact which the Kennedy round and separate package agreements will have upon our company.

In short, we are faced with more red ink than even the most pessimistic among us could have foreseen, and these figures do not reflect what the foreign dye cartel could do to my company and to our industry if it decides to take maximum advantage of the tariff reductions.

Let me stress that the quotes which have come to my personal attention are below our cost of manufacture. It would be cheaper for us to buy these products from our foreign competitors and shut down our own manufacturing if the separate package were enacted.

Enactment of the separate package would increase this pressure to intolerable levels and aggravate an already difficult situation.

In Newark, as in other big cities, tremendous effort is being exerted to solve the problem of disproportionate unemployment among those who dwell in urban ghettos.

Our firm is aware of this problem, and we are working with Federal, State and local government agencies toward a solution. We have initiated a comprehensive job training program for the hard-core disadvantaged that will give employment to individuals who desperately need work.

I would like to point out that 107 of our 207 employees in Newark are black, and many of them, when hired, came to us from disadvantaged backgrounds.

The average pay of those with less than 2 years of service is \$5,519, annually.

Those who have been employed 2 years or longer have average annual earnings that range from \$7,149 to more than \$10,000. Through on-the-job training, many of our minority group employees have risen to positions of responsibility, holding down positions as foremen and supervisors.

The nature of work in a dyestuff company lends itself to the development of specialized skills among those who may have shown little previous aptitude for formal education.

These job opportunities are threatened by the Kennedy round and separate package agreements, because our company cannot hope to compete with the lower priced products from abroad.

There are 39,000 jobs in chemical plants in the Newark area and 100,000 such jobs in the State of New Jersey.

I respectfully urge you to keep this in mind in reaching your decision on the separate package.

Thank you.

The CHAIRMAN. Thank you very much, Mr. May, for your very fine statement.

Are there any questions?

Thank you, sir.

Mr. Gillis, if you will identify yourself for the committee we will be glad to recognize you.

**STATEMENT OF JOHN GILLIS, VICE PRESIDENT, AND MEMBER
BOARD OF DIRECTORS, MONSANTO CO.**

Mr. GILLIS. My name is John L. Gillis. I am a vice president of Monsanto Co. and a member of its board of directors. I have responsibility for the worldwide sales of all Monsanto products.

I appreciate the opportunity to comment upon the matters now being considered by your committee. Although it is not possible to provide you with great detail and data in this brief time, an appearance here was considered essential because the issues before you so vitally, and in my judgment, uniquely affect my company.

Monsanto is a highly diversified, internationally oriented chemical and manmade fibers manufacturers. A profile of the company shows that, 1967 sales totaled \$1.6 billion. Twenty-two percent of these sales are made abroad as U.S. exports or by foreign subsidiaries.

Total employees number 59,000, 45,000 of whom are located in 43 U.S. plants and the balance are situated in 15 foreign countries.

We, at Monsanto, are involved daily in worldwide competition. We understand the effects of trade policy in the major countries and we have responded repeatedly in the past to the requests of the Congress and the U.S. Government agencies for constructive comment on U.S. trade policy. The proposed Trade Expansion Act of 1968 and other measures you are considering would have a deep and lasting effect on Monsanto in the future. For all of these reasons it would seem that Monsanto's views may be of value to this committee.

My statement will summarize briefly three recommendations covered in detail in a written statement provided yesterday to this committee by Monsanto. They are:

1. Retain the American selling price system of valuation by eliminating title IV of H.R. 17551.
2. Enact legislation which would control imports of manmade fibers and their products.
3. Provide access to world-priced feedstocks for U.S. petrochemical manufacturers.

With regard to American selling price, the valuable time of the committee will be conserved by not repeating the important points made in testimony by the Synthetic Organic Chemical Manufacturers' Association urging retention of ASP. Monsanto fully supports that statement.

It seems necessary, however, to emphasize to the committee how elimination of ASP would affect a large benzenoid producer. A number of our products would definitely be discontinued, others would stagnate. The sure result will be a lessening of our ability to provide new jobs and new products.

In 1967, Monsanto's U.S. benzenoid sales of over \$300 million were 19 percent of its total sales—much higher than the average of 8 percent for the entire industry. Eight thousand of our 45,000 employees in the United States are in the production of benzenoids. We produce per-

haps the broadest variety of benzenoids of any U.S. producer including plastics, plasticizers, bulk medicinals, food chemicals, pesticides, synthetic detergents, and intermediates.

For Monsanto benzenoid products, the effect of the 50 percent tariff cut which will ultimately result from the Kennedy round agreement will be serious. The tariff cuts made by other countries including only a 20 percent cut by the United Kingdom and the EEC countries, will not provide us with export opportunities comparable to those given up by the United States. This committee and the Congress has been asked to approve a second and separate agreement which would eliminate ASP and which is also badly unbalanced and unreciprocal.

Monsanto has measured as objectively as possible both the positive and negative effects on its operation if the separate agreement is approved. For most of our benzenoids a tariff cut beyond 50 percent would occur if title IV of the Trade Expansion Act is enacted. From our knowledge of world pricing and present experience with benzenoid imports, we know that the volume of such imports will grow very rapidly. The effect on Monsanto will be deterioration of a significant portion of our benzenoid operations. Imports have forced us to drop production of cyclamates (sweeteners), H-acid (a dye intermediate) and caffeine which is also a complex chemical but not a benzenoid. Saccharin, another sweetener, is in serious difficulty with imports and will likely be dropped eventually. You will appreciate that, for competitive reasons, it is not practicable for me to be specific about all the products under import pressures now and those to be affected later. They are, however, products on which we rely for research and development dollars for products of the future.

The beneficial effects of the additional 30 percent cut conceded by the United Kingdom and the EEC countries in return for elimination of ASP has been found to be minimal. There will be little or no new export opportunity created, although these will be some cost savings in U.S. exports to our United Kingdom and EEC subsidiaries.

Approval of the separate package would thus produce results having a negative effect not only on Monsanto but on the U.S. balance of payments.

Cost burdens imposed upon us by national policies result in higher costs in the United States than abroad. Raw materials are higher priced. Cartel selling is legal abroad but not in the United States. Incentives are common abroad including those for exporting.

For these reasons, the committee is urged to eliminate title IV of the Trade Expansion Act of 1968.

Let me turn to our second recommendations: It involves manmade fibers which accounted in 1967 for approximately 27 percent of Monsanto's total sales. Imports of competitive fibers and products made from them have caused us serious problems. Monsanto's fibers are nylon, acrylic, and polyester.

Again, to conserve the time of the committee, details of the problems of U.S. fiber producers will not be repeated here. Suffice it to say that we support fully the statement by the Manmade Fibers Association which proposes import controls on manmade fibers and products.

Let me emphasize one point, however. The fibers part of Monsanto's business is more a part of the textile industry than of the chemical

industry. Production of fibers is highly labor intensive and thus especially vulnerable to imported manmade fibers and their products from low labor cost countries. As recently as last year, imports seriously affected prices. This will happen again as Kennedy round tariff cuts are made and world overcapacity again exists. We believe it essential, therefore, for this committee to include manmade fibers in its considerations pertaining to the import limitations on manmade fiber products.

Monsanto's last recommendation concerns its need for competitively priced petrochemical feedstocks. As a large petrochemical producer, Monsanto's feedstock costs are approximately equivalent to those of our domestic competition. We are increasingly affected, however, by the fact that foreign competition has petroleum at \$1.25 per barrel lower than that in the United States. Raw materials account for two-thirds of the cost of petrochemicals. It is clear that the great disparity between United States and foreign petrochemical feedstock prices has a serious effect on our competitive ability worldwide.

There is no hardship for U.S. energy producers under present import controls since all sellers in the U.S. market operate with the same cost factors. We support the use of quotas for energy products in the interest of national security. It is not possible, however, for U.S. petrochemical producers to compete abroad, and ultimately in the United States with lower tariffs resulting from the Kennedy round and with higher priced raw materials. New petrochemical investment already is flowing to areas where the low priced feedstocks are available. The resulting negative effect on the U.S. balance of payments is obvious.

We strongly urge that the Ways and Means Committee consider the seriousness of the feedstock problem. Access must be provided to world-priced feedstocks for U.S.-based petrochemical manufacturers. We believe that our request for freely available petrochemical raw materials and import affecting measures for more sophisticated products such as benzenoids and manmade fibers is consistent and in accord with the international trade philosophy of the U.S. Congress.

I assure you again of the importance to Monsanto of the measures you are considering. The opportunity to appear here is most appreciated, and I would be happy to answer any questions you may have.

(Mr. Gillis' prepared statement follows:)

STATEMENT OF JOHN GILLIS, VICE PRESIDENT, AND MEMBER, BOARD OF DIRECTORS,
MONSANTO CO.

Monsanto is a highly diversified, internationally oriented, chemical and man-made fibers manufacturer. It is the third largest chemical company in the U.S.A. and the fifth largest in the world. Its sales in 1967 were just over \$1.6 billion and the value of its net assets and property, less accumulated depreciation and depletion was \$1.86 billion. The number of employees worldwide totals 59,000 including 45,000 employed in the U.S. It has manufacturing interests in fifteen foreign countries and forth-three plants in 22 states of the United States.

The products manufactured and sold by Monsanto number over 1,000 chemical, fiber, plastic and petroleum products. Literally, Monsanto serves every industry.

Monsanto has operated plants abroad since 1920. Approximately 22% of its total sales are made abroad either by exports from the U.S. or by foreign based subsidiaries. For many years, Monsanto has been knowledgeable of worldwide competitive conditions, has studied the effects of U.S. and foreign trade policy on its activities and those of the chemical industry and has, as the record indicates, responded repeatedly to the requests of the Congress and the agencies

of the U.S. Government for constructive comment on U.S. trade policy and legislation.

We believe that Monsanto's views, therefore, should be of some value to the Ways and Means Committee in its consideration of the major issues now under consideration. It is a fact that the proposed legislation, H.R. 17551, and the possible amendments to it will have a deep and lasting effect on Monsanto.

This statement presents Monsanto's reasons why:

- (1) Title IV of H.R. 17551, which would eliminate the American Selling Price system of valuation, should be deleted;
- (2) Man-made fibers, and products made from them, should be subject to the Long-Term Cotton Textile Arrangement now applicable to cotton products and
- (3) Access to world-priced feedstocks should be afforded U.S. petrochemical manufacturers.

AMERICAN SELLING PRICE (ASP) (H.R. 17551) TITLE IV

Monsanto subscribes fully to the statement by the Synthetic Organic Chemical Manufacturers' Association relating to this subject and hence many of the important points made in that testimony will not be repeated. However, there are a number of facts and considerations unique to Monsanto concerning the proposed elimination of the ASP system of valuation which we believe will be of interest to the Ways and Means Committee.

Over \$300 million of Monsanto's total sales volume of \$1.6 billion in 1967 resulted from the sale of benzenoid products. Monsanto clearly has a much higher proportion of sales of benzenoid products (19%) than does the industry which averages about 8%. Further, Monsanto's benzenoid product mix covers perhaps the widest variety of benzenoid products manufactured by any U.S. producer. Included are plastics, plasticizers, bulk medicinals, food chemicals, pesticides, synthetic detergents and intermediates.

Sales volume and/or sales price of most of these products would be adversely affected by changes in the ASP system by competitive products made abroad and shipped to the United States. Unique or patent protected products would not be affected but these are relatively few. Approximately 8,000 of our 45,000 employees in the U.S. are engaged in the manufacture of benzenoid products, including those benzenoids used internally to make other products, and their jobs would likewise be adversely affected.

Although the Kennedy Round tariff cuts will cause Monsanto major difficulty due to greatly increased benzenoid imports, the additional effect of loss of ASP is substantial and measurable. ASP should be retained for at least two other compelling reasons: (1) The damage to the benzenoid industry would clearly be against the national interest and (2) the separate agreement on ASP negotiated in the Kennedy Round is not reciprocal. The negative effects of new imports made possible under the separate agreement will far outweigh the positive effects of new exports which might result from the 30% tariff cuts conceded by the U.K. and the Common Market.

This statement will include consideration of both the positive and negative effects of the separate package on Monsanto.

First, the negative effect of elimination of ASP as it relates to Monsanto: The conversion of rates by the Tariff Commission in 1966 was a sincere effort to afford protection equivalent to that now afforded by ASP. This effort fell short in a number of cases due to the complexity of the task and the lack of essential foreign prices. There is little to gain by a discussion of the conversion because Monsanto's benzenoid product rates were reduced in the Kennedy Round separate package to a ceiling equivalent to 20%. Without application of this ceiling, the converted rates, cut by one half, would be higher. The effect is, that for well over half of our benzenoids, a greater than 50% tariff cut would result from the elimination of ASP. This is clearly beyond the spirit of the Trade Expansion Act of 1962 and is in violation of responsible treatment of a group of products already subjected by Kennedy Round tariff cutting to serious import competition.

Monsanto has made a series of studies with respect to most of its 130 benzenoid products to determine the effect of the Kennedy Round tariff cuts and the loss of ASP. Calculations made been made, on a product by product basis, to determine which foreign produced benzenoids can be shipped to the United States competitive to those made in the United States. Many of these products

are not imported today because the existing tariff is a deterrent. The conclusion reached is that most benzenoids manufactured by Monsanto will be subjected increasingly to price depressing imports under the double effect of the Kennedy Round tariff cuts and the loss of ASP.

As a result of the higher U.S. manufacturing costs and tariff cuts made in past GATT trade agreements, Monsanto already has experienced serious difficulties with some of its more complex organic products, most of which are benzenoids. Several examples will serve to illustrate these difficulties. Monsanto was forced to discontinue production of caffeine due to imports. A relatively new plant making cyclamates, which are companion products to saccharin as synthetic sweeteners, was shut down. An operation in Massachusetts producing H-acid, a dye intermediate, has just been shut down due to import competition, resulting in a loss of 32 jobs. The price of other products has been dropped as a result of the first Kennedy Round tariff cut of January 1, 1968. An increasing number of products will be affected as each subsequent tariff cut takes effect.

For competitive reasons, it would be inappropriate to detail the price cuts anticipated by Monsanto due to import competition or to specify the products which we are likely to discontinue when they become unprofitable or when imports supply a dominant share of the total U.S. market.

It has been said by those advocating tariff cuts and the elimination of ASP that the price attrition which leads to lower profits and even the discontinuance of manufacture is beneficial. This philosophy is often justified by incorrectly describing such problems as a healthy obsolescing of old products. To the contrary, the loss of American production of import-affected products is not a natural and beneficial result of a constantly changing world. Although Monsanto operates in an industry particularly noted for its innovation and adaptability to change, we are convinced that any such rationale must be challenged.

The many products for which Monsanto has calculated serious price and profit deterioration and even plant shutdown are by no measure decadent products. In nearly all cases, the sales volume of such products is growing at the same pace as for others in the chemical industry. These products should remain in the U.S. mix of products contributing profits to a benzenoid industry which must produce new products in the future. Without profits from established products, there will be a limited capability of providing research and development money for innovation in the benzenoid area.

One of the most illustrative examples of the need for Monsanto to continue manufacture of benzenoids made cheaper abroad is in the category of its fine and food chemicals. The manufacture of certain of these chemicals has been discontinued; others are under serious price attrition, all as a result of an increasing flow of imports. What was just a few short years ago considered to be one of our most promising product groups for new product development has been subjected to serious import pressures which will undoubtedly hold down the scope of our future efforts for such products.

Although the Kennedy Round tariff cuts are *not* the primary subject of this hearing, they must be considered in analyzing the effect of loss of ASP. Much of the impact described above on Monsanto's benzenoids will result from the Kennedy Round tariff cuts alone, particularly from the last reduction stages. Our studies show that duty cuts due to the loss of ASP will be serious because they will occur *in addition* to the other cuts. Tariffs will already be so low that access to imports will be more certain.

An example of this problem involves a well-known product, aspirin. Aspirin imported in 1967 would have been dutied at 17.2 cents per pound. In 1968, after the first Kennedy Round cut, the duty is 1.7 cents per pound lower, or 15.5 cents per pound. In 1971 after the Kennedy Round tariff cuts are completed, the duty will be 8.6 cents per pound. We expect imports to become sufficiently significant to inhibit the growth of aspirin production in the U.S. If ASP is eliminated, there will be a *further* duty reduction of 2.7 cents per pound of aspirin and its impact will be certain because it is a reduction additional to that already affording imports a share of the U.S. market.

While most benzenoids will experience lower duties if the separate agreement is ratified, some benzenoid products will actually have somewhat higher duties if ASP is eliminated. The effect of the limited number of cases where higher duties occur is minimal.

To sum up the negative effect of H.R. 17551, Monsanto is convinced that resulting imports would seriously undermine the economic health of its benze-

noid products. For a significant number of products, such imports would eventually result in discontinuance of U.S. based manufacture.

The economic reasons for the non-competitive position of U.S. benzenoids is too detailed to include here. Our petrochemical feedstocks are 40% higher than those abroad. Our labor costs, when combined with productivity usually result in a higher unit labor cost per pound of product. Cartel selling is legal for others but not for us. Export and other incentives are used abroad but not in the U.S.

The positive side of the separate package has also been studied and found to be minimal.

The United Kingdom and the Common Market would, on elimination of ASP, reduce chemical tariffs an additional 30% making tariff cuts by those countries equal to the 50% tariff cut by the United States in the Kennedy Round agreement. This is the *only* benefit to the U.S. chemical industry and we are convinced that new exports made possible under this additional tariff cut would be essentially negligible. Salesmen, in calculating the sale of a U.S. export into these countries, must include all costs of delivering the product to the customer's door. Tariffs are one of these costs. Presumably, if the tariff is reduced and all other costs remain constant, the U.S. exporter is in a somewhat more favorable, competitive position.

Calculations show, however, that few new export opportunities will be gained by the 30% tariff cuts. There would be a relatively greater gain in exports to the U.K. largely because of the border equalization tax situation in the Common Market countries. In five Common Market countries, border equalization taxes (applied to the *duty paid value*) will have moved from a 4% level to a 15% level estimated to occur by 1970. France will have reduced its rate from 25% to 15%. Germany and the Netherlands have moved to 10% (Germany will go to 11% in July 1968) and switched from a turnover cascade system to a value-added system. Our costs in exporting to these countries will have increased. Our netback on such sales will decrease more than that of a producer in the country of sale, thus making us less competitive. In addition is the effect of detaxation of exports which will aid the indirect tax countries in not only penetrating the U.S. markets but third markets as well. The net effect of increasing border taxes in Europe is to considerably offset the tariff cuts made in the Kennedy Round and in the separate package if it is approved.

From a realistic and commercial viewpoint, it can only be concluded that the 30% tariff cut by the U. K. and the Common Market countries will result in insignificant gains for Monsanto export sales. There would be relatively small savings on shipments to subsidiaries in the U. K. and the EEC.

We are convinced, therefore, that the American Selling Price system must remain. The loss of ASP would create serious problems, not compensated for by the concessions to the U. S. in the separate package agreement. Careful study of this complicated matter should convince the Ways and Means Committee of the necessity for the retention of ASP.

MAN-MADE FIBERS

Monsanto has a serious problem due to imports of man-made fibers and products manufactured therefrom under economic conditions advantageous over those of U.S. production. A major part of Monsanto's total sales, (26.9% in 1967), consisted of man-made fibers. This proportion has remained relatively stable since 1962. This is the single largest product category of the eleven categories into which Monsanto divides its sales. The man-made fibers produced by Monsanto include nylon, acrylic and polyester fibers.

This statement is in support of a statement to the Ways and Means Committee by the Man-Made Fiber Producers Association which discussed U.S. import controls on man-made fibers and products. The controls proposed would be an extension of those which presently limit imports of cotton products into the United States. This agreement by the U.S. with thirty other nations is referred to as the Long Term Cotton Textile Arrangement. The operation by Monsanto of a number of fiber plants abroad, in addition to those in the United States, gives us an understanding, we believe, of world fiber economics that supports the recommendation for import controls.

Since this statement is in support of that by the Man-Made Fiber Producers Association, the extensive documentation and views presented on behalf of the man-made fiber industry by the Association will not be repeated. It is essen-

tial to emphasize, however, that Monsanto plants which produce man-made fibers are more a part of the textile industry than of the chemical industry. The production of fibers is a highly labor intensive process. Production of chemicals to make fibers is a relatively labor-free task which, for Monsanto, involves in the U.S. less than 1,000 people. In contrast, approximately 12,000 Monsanto employees are involved in spinning and handling the staple and filament which are the raw materials for the textile industry.

Thus, the major part of the production of man-made fibers involves the same high labor content problem which has already been described for benzenoid chemicals. For such products the great difference in U.S. and foreign wage rates are not offset by higher productivity in the U.S., for it is a fact that foreign plants are as modern and technologically new as those in the United States.

Imports of man-made fibers, in one form or another, currently account for almost 10% of U.S. consumption. With lower Kennedy Round tariffs, fiber imports in the form of textiles, apparel and fibers will take an increasing share of the fast growing U.S. market. Prices which firmed early in 1968 will again be depressed by these imports and the U.S. will be deprived ultimately of plants and jobs that should accrue to this country in the development of a relatively new and fast growing sector of the economy.

The result of uncontrolled imports of man-made fibers in any form will lead to a predictable situation. The growth of a new and vital industry and the creation of new jobs, especially for the unskilled worker, will be stifled. Research and development funds which are necessary seed money for new products will not be available in adequate quantity.

It is essential and we respectfully urge, therefore, that the House Ways and Means Committee propose enactment of legislation providing for a means to reasonably limit the importation of man-made fibers and their products.

PETROCHEMICAL FEEDSTOCKS

Still another problem of ever-increasing importance to Monsanto occurs in the area of hydrocarbon feedstocks for the manufacture of primary petrochemicals. As the name implies, primary petrochemicals are first-step chemical derivatives of virgin petroleum raw materials. These materials are the basic chemical building blocks in the manufacture of chemicals, plastics and fibers by Monsanto and are the precursors of a major quantity of exports made by Monsanto in recent years.

Monsanto manufactures basic petrochemicals at two plants located in Texas utilizing as virgin petroleum feedstock a light crude oil of a type commonly called field condensate. In excess of 40,000 barrels per day of this condensate is purchased from Texas and Louisiana oil fields. Monsanto manufactures petrochemicals from oil by a process called "thermal cracking". At high temperatures the big oil molecules are literally cracked or fractured into smaller fragments, and these fragments are recovered and purified. From this cracking operation, approximately 20 primary petrochemicals are derived. To Monsanto, the most important of these petrochemicals are ethylene, propylene, butylenes, butadiene, benzene, xylenes and naphthalene.

A complicated sequence of manufacturing operations is required to convert these primary petrochemicals into consumer products. As a simple example, primary petrochemicals may be reacted to monomers, then monomers to polymers, and polymers into fibers or into plastic sheets. Finally, fibers are woven into sweaters, or plastic sheets are formed into auto seat coverings, or other such consumer products. Most of us wear fabrics having their origin in petroleum raw materials; our autos have plastic seat covers, plastic interlayer safety glass windows and a plastic finish.

In the first processing step—the cracking of field condensate to the primary petrochemicals—the cost of feedstock, or raw material, is of major importance, comprising about two-thirds of total costs. To illustrate—if 3¢ is the cost of a pound of a given primary petrochemical—(and actually a number of these primary petrochemicals sell for less than 3¢ per pound) the feedstock contribution to cost is 2¢ of the 3¢ total. Thus, raw material cost is the most important factor in the economics of making primary petrochemicals. It is vital that the price of feedstock to Monsanto not exceed the price of feedstock available to its competition. Monsanto's feedstock prices are approximately equivalent to those of our domestic competition. However, Monsanto is seriously disadvantaged when

compared with its foreign competition, since feedstocks abroad are only two-thirds as expensive as those in the U.S.

This difference in domestic and foreign feedstock costs can be directly traced to an oil import quota system introduced in 1959 to protect U.S. oil production for reasons of national security. Under this system, only about 15 per cent of the U.S. demand for petroleum products may be supplied by foreign sources. The balance must come from domestic oil wells. While this import restriction does protect the U.S. oil production industry and encourage it to stay active, a key result is that domestic crude oil and derivatives are made substantially more expensive. Presently, and for some years now, this cost difference has been about \$1.25 per barrel, or 3¢ per gallon. With such a burden, there can be but one result. The domestic petrochemical manufacturer must lose out to foreign-based competitors, first in established world industrial centers, next in the vast developing areas and ultimately in the United States.

The forced usage of domestic oils does not work a particular hardship in U.S. energy markets. Energy products such as gasoline and heating oils, while more costly due to the use of domestic crude, are sold only in U.S. markets protected by this same quota system. Monsanto supports the use of import quotas for energy products, believing it to be in the interest of national security, but Monsanto maintains that there exists an adverse effect on the domestic petrochemical industry from the continued application of this quota system to the petrochemical feedstock area.

Returning to the earlier example of a 3¢ petrochemical made with 2¢ of raw material of domestic origin, the 2¢ raw material cost would be reduced to just 1.3¢, if feedstocks were obtainable at costs prevailing in the EEC or EFTA areas. This is a difference of 0.7¢ per pound for a 3¢ material. It is a difference which cannot be tolerated in the freely competitive world toward which we are moving under the Kennedy Round agreements. Instead, only those manufacturing locations which make these primary petrochemicals at the lowest prices will be able to grow and prosper—those unable to achieve the 0.7¢ per pound savings will wither and die. We do not have a choice of whether these primary petrochemicals will be made with the cheaper, world-priced feedstocks—it is a certainty that they will. The only choices are whether this manufacture is to be in the United States, or abroad; whether with U.S. labor, or foreign labor; whether petrochemicals will provide a surplus or a deficit to the U.S. trade balance.

The Ways and Means Committee is strongly urged to consider the need of domestic petrochemical companies for feedstocks at prices competitive to the prices paid by their foreign counterparts for such material. The domestic petrochemical industry must achieve this parity to survive. This can be accomplished only through revision of the present mandatory oil import program to provide access to world-priced feedstocks for chemical manufacture. This has already been done in special actions enabling construction of a world-competitive petrochemical industry in Puerto Rico.

There is no inconsistency in Monsanto's position in favoring U.S. import limitations on textiles and opposing limits on petroleum feedstocks.

In petrochemical manufacturing, raw materials as already noted are the dominant cost factors—about 67% of total costs. Thus, while the cheap labor rates of foreign competition are not a factor in primary petrochemical production, Monsanto cannot compete with these same manufacturers without competitively priced feedstocks.

In contrast, raw materials are a minor factor in the cost of manufacturing fabrics—totaling only 5 to 10%. Labor costs are the dominant element, frequently comprising 40% or more of costs. Import quotas on textile products, therefore, are needed to preserve high wages and employment in the U.S. economy. These labor rates can no longer be offset by other factors.

The philosophy of making basic raw materials freely available for the manufacture of low-labor cost materials, such as petrochemicals, while protecting high-labor content products such as textiles and benzenoid chemicals is well recognized by economists. It is most useful to nations with balance of payments problems. And it will preserve healthy and vigorous chemical and textile industries in the United States.

To summarize, Monsanto recommends the retention of American Selling Price by deleting Title IV of H.R. 17551, limitations of imports of man-made fibers and their products and access to world-priced feedstocks for petrochemical manufacture.

The CHAIRMAN. Mr. Franko.

Without objection Mr. Franko's statement, if he is not here, will be made a part of the record.

(The following statement of Joseph J. Franko was received for the record:)

STATEMENT OF JOSEPH J. FRANKO, TREASURER, B. L. LEMKE & Co., INC.

Mr. Chairman, members of the committee, ladies and gentlemen, my name is Joseph J. Franko; I am Treasurer of B. L. Lemke & Co., Inc., of Lodi, New Jersey. Our Company manufactures fine and medicinal chemicals as well as organic intermediates. Most of these are considered essential to the nation's health, defense and space programs. We are typical small business, with sales of about \$2.25 million and 65-70 employees.

THE PROBLEM OF PRICE EROSION

We realize that competition is good for business and good for the consumer, but when imports reach about 50% of U.S. production and when we have to lower our selling price again and again to hold on to whatever share of the domestic market we have, this is neither fair nor sound competition. I am sure I don't have to elaborate on the rapidly rising costs of doing business. When costs go up, the established procedure is to raise prices.

Even those newspaper and magazine publishers, who are ardent supporters of a free-trade policy, realize that they cannot stay in business without offsetting increased costs with higher charges: over the past 4-5 years most publishers have increased their advertising rates 30-35%.

The Government too, has found it necessary to raise charges; postal rates have gone up and so has the cost of books put out by the United States Printing Office—in some cases by as much as 100%.

The question I am now raising is why we, in the benzenoid chemical business, are not allowed to make a reasonable return on our investment. For a number of years we have been spending 20% of our net worth for new equipment to increase plant productivity but it is a hopeless struggle when squeezed at both ends, that is by rising costs on one hand and declining selling prices on the other.

RAPID INCREASE IN IMPORTS

To show you what is actually happening to our business let me cite you a specific example: In 1952 there were six domestic manufacturers of Procaine Hydrochloride. This is our most important product and one that has been classified as essential by the Defense Department. This number of producers dwindled to three in 1960 and now in 1968, we are the only domestic producer left. *Imports were 5 pounds in 1958, 122,130 pounds in 1963, and 478,000 pounds in 1966.* This is more than 50% of U.S. Production.

Of considerable interest is the fact that this rapid and extraordinary increase in imports took place long before the Kennedy Round tariff reductions went into effect. (The first 10% installment became effective in 1968.) There are four more reductions to come and now the Government is considering the elimination of the American Selling Price System. This, frankly, would put us out of business.

NATIONAL SECURITY IMPAIRED

Free-traders hold the view that if American producers are not competitive in a certain field, we should leave the manufacture of whatever products are involved to foreign producers. How the dependency on foreign sources of supply would affect our national security, is best described by George W. Ball, the honorable and distinguished Undersecretary of State, now Ambassador to the United Nations. Let me quote from his recently published book—"The Discipline of Power.":

"Now it should be perfectly evident that to press the Soviet Union toward autarky makes no sense from the point of view of the West; *instead we should encourage Moscow to become dependent on us for certain necessary products.* That is the way one breaks down barriers; advantages would accrue to both sides in a better utilization of resources, *and from the military point of view the Soviet Union would be less able to wage a protracted*

war if it had to depend on sources of supply on this side of the Iron Curtain."

I am inclined to think that most of you would agree with me that, if it is bad for Iron Curtain countries to depend on foreign sources of supply in case of war, it is also bad for this country.

IMPORTS GENERATE UNEMPLOYMENT

Because of our batch operations, chemical producers like ourselves, absorb a relatively high amount of labor. We employ people of all walks of life including Negroes, Puerto Ricans, and refugees from Hungary and Poland. Some of these people have migrated here, because of the opportunities existing in this country, not aware that these same opportunities are now being exported on an increasingly large scale to competitor nations. In the New Jersey, Bergen and Passaic Counties alone, there are in excess of 22,000 people on the Unemployment Roll. Twenty-six weeks of Unemployment Compensation amounts to about \$35 million and it costs the state another 1½-2 million in administrative expenses to expend these funds. This is just for the two counties. Somebody may ask what is 65 or 70 more unemployed people. However, when you multiply this by hundreds of other small companies and add all the people who will be prevented, directly or indirectly, from being able to supply these companies with raw materials, services and equipment, you will realize that a seemingly small thing becomes quite staggering.

THE NEED FOR A MORE EFFECTIVE ANTI-DUMPING LAW

We believe that benzenoid chemicals are essential to the American economy and the welfare of its people and, if we consider this to be true, then in my opinion, it is the Government's duty to sufficiently protect this industry so it can stay healthy and make progress.

Keeping the American Selling Price on our tariff books is therefore of the utmost importance. But as I have explained, even with the American Selling Price and before any tariffs were reduced, benzenoid chemical producers have been confronted with a painful price erosion problem, as well as the problem of the rapidly increasing volume of imports.

You may wonder then why we haven't asked for relief under the anti-dumping law. The fact is that we have done so—but before the Government will act on a complaint, we must bring proof that the foreign export price is lower than the foreign home market price. This we have been unable to do.

The point I wish to make is that foreign producers can circumvent this particular provision of the anti-dumping law with impunity or with a relatively small sacrifice if their own consumption is only a small portion of their total export business.

For example, a benzenoid chemical producer in a European country with a population of only 5-6 million people may have the capacity of producing a million pounds of a certain product. The home consumption may only be 50,000 pounds while the remaining 950,000 pounds of his production are sold abroad. So in order to avoid any dumping suspicion, all the foreign producer has to do is to bring his home market price in line with his export price. This could, in some instances, work to further the foreign manufacturer's advantage if, as in the case of Germany, their competitive position is enhanced by a 10% additional rebate on exports to the United States and to third countries.

My Company feels that there should be a finding of injury if the import of a benzenoid chemical exceeds 20% of the U.S. production and if the price at which the import chemical is sold in the United States is below the level at which the United States producers can make a reasonable return.

SUMMARY

It has become painfully clear by now that tariff reductions by themselves do not increase exports. Their immediate and direct effect is to increase imports, reduce our balance of payments, increase unemployment and intensify the unhealthy price erosion problem with which our industry has been faced for years. If the Government eliminates the American Selling Price, there is nothing to stop foreign producers from taking over the entire United States benzenoid chemical market. I am sure that none of you gentlemen would like to see this happen.

We have, therefore, come to this Committee to protest against the passage of any "separate package" agreement by the Congress.

I am hopeful that this Committee will also realize the need for a revision of our Anti-Dumping Law so that critical industries are more fully and justly protected against cheap imports.

The CHAIRMAN. Mr. Meltzer. Mr. Meltzer, please identify yourself for our record by giving us your name, address, and capacity in which you appear.

STATEMENT OF YALE MELTZER, MANAGER, COMMERCIAL DEVELOPMENT AND MARKET RESEARCH, PATENTS AND TRADEMARKS, H. KOHNSTAMM & CO., INC.

Mr. MELTZER. Mr. Chairman and members of the committee, I am Yale L. Meltzer, manager of commercial development, market research, patents and trademarks for H. K. Kohnstamm & Co., Inc. of 161 Avenue of the Americas, New York City.

The CHAIRMAN. Mr. Meltzer, I believe we agreed to recognize you for 5 minutes and we are glad to have you with us and you are recognized, sir.

If you have to omit any part of your statement do so with the knowledge that the entire statement and the material appended to it will be a part of the record.

Mr. MELTZER. Thank you. My company, H. Kohnstamm & Co., is a domestic producer of benzenoid chemicals and products and I am appearing on its behalf.

H. Kohnstamm & Co., is one of the oldest producers of benzenoid chemicals and products in the United States. It has been owned and managed by the same family for four generations. It is a New York corporation and has been in business since 1851. It has approximately 500 employees and would be classified as a "small business" mainly upon its continued manufacture of benzenoid chemicals.

Some of the benzenoid chemicals which H. Kohnstamm & Co., manufactures and sells are dyes, organic pigments, and benzenoid intermediates. The history of H. Kohnstamm & Co. from 1851 to the present is a preliminary example of the American free enterprise system in action.

The company is now in its second century and is, to the best of any knowledge, the oldest privately owned chemical company in the United States. The ASP system gives us the protection which we need in order to compete with foreign producers who have lower labor costs.

In addition, many of the foreign producers have cartel arrangements, export rebates, and many other arrangements which put us at a great disadvantage and which necessitates the ASP system. I would also like to point out that foreign producers, particularly in Japan and Western Europe, have newer plants and equipment than we to manufacture the same products, because their original plants and equipment were destroyed during the Second World War, while we have to continue to use our older plants and equipment.

It would be disastrous for my company if ASP is repealed. I doubt whether it could survive such action by Congress.

I believe, however, that repeal of ASP would also be disastrous for the entire U.S. economy. The U.S. trade balance has been shrinking

steadily, falling from \$4.6 billion in 1966 to \$4.1 billion in 1967, and the month of May has shown a trade deficit for the second time this year.

Repeal of ASP would further deteriorate the U.S. trade balance which the U.S. economy cannot afford. It is estimated that the Kennedy round concessions on benzenoid alone will cost the U.S. balance of payments one-half billion dollars over the 8-year period to 1975.

President Johnson in his message to Congress of May 28, 1968, said: "A successful trade policy must be built upon reciprocity."

His trade bill, however, does not offer reciprocity. He is asking Congress to repeal the ASP nontariff barrier while other countries are erecting higher and more sophisticated nontariff barriers to trade. While small companies such as mine have almost been bled to death by the unreciprocal Kennedy round agreement in benzenoids, President Johnson is asking Congress to repeal ASP, which I am convinced will deliver the final blow to the business of my company and many other chemical companies of similar size.

In addition to the threats to the survival of my company posed by the Kennedy round tariff cuts, we have to contend with the rising growth of foreign cartels in benzenoid chemicals which are often not only permitted by foreign governments but these cartels are actually given active aid and support by those governments.

The latest figures available for the concentration of dye production for the main dye producing countries are shown in table 1 on page 12 of my written statement which has already been submitted to the committee.

This table clearly shows that there is much more concentration of production among the major foreign producers than there is among U.S. producers. The production of these foreign producers is much more rationalized or cartelized than in the United States.

I would also like to point out that a report by the U.S. Tariff Commission states that—

Foreign dye producers supply (through imports or production in their U.S. plants) about one-third of the U.S. dye market (in terms of value) . . .

We at H. Kohnstamm & Co. wish to make the following recommendations:

1. Maintain the American selling price system as a method of customs valuation for benzenoid chemicals.

2. Propose that a panel of Government officials, business leaders, and labor leaders investigate in detail the effect which repeal of the ASP would have on U.S. trade balance, the overall U.S. balance-of-payments position, the U.S. gold drain, and the present dollar crisis.

3. Request that a conference of GATT member nations, preferably under the auspices of GATT, convene as soon as possible to negotiate on all nontariff barriers to trade in detail.

This should include border taxes, secret buying by foreign governments, export rebates, import quotas, TVA, and other national taxation systems, cartels, and the many other nontariff barriers to trade.

4. Investigate methods by which the executive branch of Government can aid and encourage the formation of Webb-Pomerene associations, particularly by small companies, so that they may adequately compete with cartels in the export market.

5. Establish at least a 5-percent U.S. border tax and a 5-percent U.S. export rebate.

In conclusion, I wish to point out that what we are faced with in dealing with this proposed legislation is not a choice between either protectionism or free trade, as many argue. We are faced with a choice of whether we are going to establish a realistic program which will expand trade and encourage economic competition or whether we are going to permit the old order of international chemical cartels and monopolies which operated before the Second World War to be reestablished.

If the ASP system is eliminated foreign cartels will be able to undersell U.S. companies in many benzenoid chemicals, eliminate the competition of U.S. companies and, as a result, curtail U.S. advances in technology vital for the national defense.

Once U.S. competition is eliminated the cartels would be free to set high prices and the U.S. consumer will be the loser. The questions which get at the crux of the whole ASP issue with regard to benzenoid chemicals are:

(1) What makes the benzenoid chemicals so special?

(2) Why is elimination of ASP such an emotionally charged issue for European and Japanese chemical producers?

The answers are:

(1) Benzenoid chemicals are special because they provide the broad technological base from which many of the most important chemical developments can be expected.

(2) Why is elimination of ASP such an emotionally charged issue for the Europeans and Japanese because they see in it an opportunity for their rising cartels to control future chemical markets.

Finally, I wish to emphasize that for the sake of reciprocity we at H. Kohnstamm & Co. respectfully request that the United States establish a 5-percent border tax and a 5-percent export rebate.

Mr. Chairman and members of the committee, thank you very much for your attention.

(Mr. Meltzer's prepared statement follows:)

STATEMENT OF YALE L. MELTZER, MANAGER, COMMERCIAL DEVELOPMENT, MARKET RESEARCH, PATENTS AND TRADEMARKS, H. KOHNSTAMM & Co., INC.

Mr. Chairman and members of the Committee, I am Yale L. Meltzer, Manager of Commercial Development, Market Research, Patents and Trademarks for H. Kohnstamm & Company, Inc. of New York, New York. My company is a domestic producer of benzenoid chemicals and products and I am appearing on its behalf.

Before proceeding with my statement, I want to take this opportunity to thank you, Mr. Chairman, and the other members of the Committee for these public hearings on tariff and trade proposals.

DESCRIPTION OF H. KOHNSTAMM & CO., INC.

H. Kohnstamm & Company is one of the oldest producers of benzenoid chemicals and products in the United States. It has been owned and managed by the same family for four generations. It is a New York corporation and has been in business since 1851. It has approximately 500 employees and would be classified as a "small business." The ability of H. Kohnstamm & Company to stay in business depends to a large extent upon its continued manufacture of benzenoid chemicals and products. Some of the benzenoid chemicals and products which H. Kohnstamm & Company manufactures and sells are dyes, organic pigments

and organic intermediates. These products are of particular importance to the business of H. Kohnstamm & Company. The definition used for benzenoid chemicals and products is that to be found in Part 1, Schedule 4 of the Tariff Schedules of the United States Annotated (1968).

We have plants involved with benzenoid manufacture and compounding at the following locations:

Brooklyn, New York
Camden, New Jersey
Clearing, Illinois
Elizabeth, New Jersey
Kearny, New Jersey

THE IMPORTANCE OF THE AMERICAN SELLING PRICE SYSTEM TO THE BUSINESS OF
H. KOHNSTAMM & CO., INC.

The continued employment of the approximately 500 employees of H. Kohnstamm & Company is dependent to a large extent upon the United States maintaining the American selling price (ASP) system as a method of customs valuation.

H. Kohnstamm & Company, in addition to manufacturing benzenoid chemicals and selling them domestically, does a profitable export business with these products.

The history of H. Kohnstamm & Company, from 1851 to the present is, in fact, a prime example of the American free enterprise system in action. The company is now in its second century and is, to the best of my knowledge, the oldest privately-owned chemical company in the United States.

The ASP system gives us the protection which we need in order to compete with foreign producers who have lower labor costs. In addition, many of the foreign producers have cartel-arrangements, tax rebates for exports and many other arrangements which put us at a great disadvantage and which necessitates the ASP system. I would also like to point out that foreign producers, particularly in Japan and Western Europe, have newer plants and equipment than we to manufacture the same products, because their original plants and equipment were destroyed during the Second World War, while we have to continue to use our older plants and equipment.

The ASP system is absolutely essential for us to continue to compete with foreign producers in benzenoid chemicals and products. H. Kohnstamm & Company is a small company. It should be noted, in fact, that even with the ASP system, low-priced foreign benzenoid chemicals and products have been making increasing in-roads into U.S. markets. Since 1960, benzenoid imports have more than doubled and they are growing at an ever-increasing rate.

I would like to call the attention of the Committee to a statement by Mr. Ernest M. May before the Tariff Commission and Trade Information Committee:

"A study made by the SOCMA accountants, Haskin & Sells, from confidential information supplied by dye producers indicates that the human effort portion in dye manufacture mill cost is approximately 50%. That means for one dollar worth of product fifty cents has been spent in human effort. Human effort not only includes the fellow with the shovel, but all the way up to the fellow with the test-tube in the research and control laboratories. We know this cost in Europe is about one-third the United States cost or about 17 cents. Therefore, if an average U.S. dye costs one dollar at the mill, the average European dye made under the same conditions cost 67 cents assuming raw material costs and incremental costs are equivalent. In addition, we know that by concentration and assignment of large volume production to most efficient units, an additional saving up to 25% can be achieved.¹

I would further like to call to the attention of the Committee the fact that there would be great difficulty in administering the export value system which has been proposed to replace the ASP system for benzenoid chemicals and products. In 1951, Mr. W. R. Johnson, then Commissioner of Customs, pointed out in testimony before the House Ways and Means Committee that the ASP

¹ Ernest M. May. Memorandum before the Tariff Commission and Trade Information Committee in the Matter of Proposed Trade Agreement Negotiations under the Trade Expansion Act of 1962 (January 29, 1964), page 16.

system of valuation is easy to administer because all information is readily available to U.S. customs appraisers from domestic sources. In view of incremental costs, dumping and the complex structure of the benzenoid products, the ASP system of valuation should be maintained because elimination of ASP valuation would open up our Customs classification and method of appraisal to the danger of abuse by foreign producers.

THE DANGER TO THE NATIONAL DEFENSE OF THE UNITED STATES IF THE AMERICAN SELLING PRICE VALUATION WERE TO BE ELIMINATED

The U.S. benzenoid chemical industry is absolutely essential to the national defense of the country. The United States Tariff Commission has realized this. In its study of the Second World War, it in fact pointed out in a report concerning dyes:

"Maintenance of a dye industry has generally been considered essential to military strength, not so much because of the wartime requirements for dyes as because of the relation between technical progress in the manufacture of dyes and technical progress in the production of numerous other commodities essential to war."²

Benzenoid chemicals are used in military explosives, flame throwers and tear gas. A benzenoid chemical is used as the Hydrogen Bomb detonator on intercontinental ballistic missiles (ICBMs). The benzenoid dyes, toners and lakes are essential for camouflage in time of war. Benzenoid fibers, films, plastics and resins find many military uses. One benzenoid fiber, for example, is used in aircraft carrier deck crew suits, aviator suits and parachutes. Benzenoid chemicals are also of great military value as well as non-military value, as insecticides, herbicides and pharmaceuticals (e.g., aspirin and the sulfa drugs).³

H. Kohnstamm & Company itself has helped a great deal in the national defense of the country. It has manufactured dyes which have been used as camouflage on the skin of soldiers, benzenoid products which have been used by the U.S. Armed Forces for camouflage of military vehicles and equipment, dyes for food used by the U.S. Armed Forces, benzenoid products which have been used in pharmaceuticals, benzenoid products for colored smokes and benzenoid products for many other applications.

The United States benzenoid chemical industry works very closely with U.S. military authorities, who look to the industry for expert knowledge. This knowledge involves both classified and nonclassified areas. The elimination of the ASP system will result in foreign benzenoid producers taking over many areas of the benzenoid market. This would lead to a reduction in the amount of "know-how" available to U.S. military authorities and would put the United States in the precarious position of looking to foreign producers for the necessary "know-how". These foreign producers would have to meet our rigid security requirements.

THE DANGER OF FOREIGN CARTELS MOVING INTO UNITED STATES CHEMICAL MARKETS

In my statement to the U.S. Tariff Commission on September 9, 1966, I mentioned numerous non-tariff barriers to trade.⁴ I wish to concentrate, however, at this time, on one particular type of non-tariff barrier which is especially relevant to the U.S. benzenoid chemical industry: the growth of foreign cartels.

If we eliminate the ASP system, without first attacking the problem of the monstrous growth of foreign cartels, we will be subjecting the U.S. benzenoid chemical industry and, indeed, the entire U.S. chemical industry to very grave dangers. The ASP system was originally incorporated into the Tariff Act of 1922 to prevent foreign cartels from regaining the control over U.S. benzenoid chemical markets which they had exercised before the First World War. It would indeed be highly dangerous and unfortunate for the entire U.S. economy if we should now eliminate the ASP system and make it possible for foreign cartels to

² United States Tariff Commission, *War Changes in Industry Series of 1946* (Report 19).

³ Ernest M. May, *Loc. cit.*, pp. 22-24 and Marshall Stubbs, Major General (U.S. Army, Retired), Consultant to The Synthetic Organic Chemical Manufacturers Association, Importance of the Benzenoid Segment of the Chemical Industry to the United States Defense Activities (September 13, 1966).

⁴ Yale Leon Meltzer, U.S. Tariff Commission Investigation, Pursuant to Section 332 of the Tariff Act of 1930, with Respect to Probable Economic Impact of Concessions on Certain Products now subject to Duty on the American Selling Price Basis of Valuation, Investigation No. 332-49 (September 9, 1966).

gain control over many U.S. chemical markets which are essential for the national defense and prosperity of the country.

Representative Thomas B. Curtis has done well in pointing out the following in the Congressional Record (July 10, 1967) :

"One American virtue and European fault, is the problem of government buying. Here American practice, though now somewhat inconsistent as among government agencies, is completely in the open, conducted in accordance with published administrative regulations and open bidding. In many European countries and Japan, however, government buying is done secretly, with little opportunity for bidding that would include foreigners, and without publicly known ground rules.

"The 'border tax' and the 'export rebate' are not simply isolated practices to be removed by the stroke of a pen: they are integral parts of national taxation systems. It must therefore follow that 'doing something' about the border tax is a very big and very difficult undertaking and the 'doing something' will require perhaps change in European taxation systems, the GATT and perhaps some change in our own practices in the United States."⁵

I should like to point out to the Committee that we are dealing with broad national taxation systems, but even more than that we are dealing, in the case of West European countries and Japan, with a deeply engrained tradition of companies which operate through cartels and use every conceivable means possible to further their cartel activity. This includes secret government buying, border taxes, export rebates and numerous other non-tariff barriers to trade.

(A) DEFINITION OF A CARTEL

A cartel is an agreement to restrict competition in business. The agreement may be national or international in scope, written or unwritten, formal or informal and may be the result of the decisions of private businessmen, corporate committees, government agencies or other associations. In a cartel, the member-firms preserve their independent existence as legal entities. Cartels stifle foreign trade and can economically strangle those business firms which refuse to join a cartel.

(B) TECHNIQUES EMPLOYED BY CARTELS

- (1) *Price-fixing*: This technique is employed especially by export cartels.
- (2) *Territorial market-allocation*: This is the most popular technique employed by international cartels. Where national cartels are involved each cartel is usually assigned its domestic market as its exclusive domain.
- (3) *Allocation of production and investment*: This technique is employed by both national and international cartels. Allocation can take place either directly or indirectly. "Gentlemen's agreements" illustrate one form of this technique.
- (4) *Patents*: Use of patents as a technique for cartels has been particularly popular in Western Europe. World markets are often allocated by the sale or license of patents. Patent pools by companies from several countries represent enormous economic power and denial of access to these pools often amounts to a denial to do business in the areas of technology involved. For example, the German international chemical cartel I. G. Farben, which operated before and during the Second World War, was based to a large extent upon the patent technique.
- (5) *Trademarks*: Allocation of trademarks can permit chosen companies to do business and deny the right to do business to others.
- (6) *Joint sales services*.
- (7) *Joint purchasing services*.
- (8) *Profit pools*.
- (9) *Deception*: This involves both political and economic deception. The Germans use the word "Tarnung" to describe this type of technique. In a hearing before a U.S. Senate Subcommittee,⁶ the reasons why I. G. Farben (abbreviated "I.G.") employed this technique are given :
 - "(1) On the head tax reasons. The foundation of branch offices on subsidiaries would have meant an establishment of I.G. The taxes to be paid for such establishments much higher than those of independent companies.

⁵ Thomas B. Curtis, *Congressional Record* (July 10, 1967), page H8392.

⁶ U.S. Senate Hearings before a Subcommittee of the Committee on Military Affairs. S. Res. 107 and S. Res. 146 (Washington, February 1946), Part 10.

(2) The danger of war forced us to secure our organization and assets by "Tarnung." This system enabled us to maintain our selling organization, to secure our investments, and an advance on our outstanding claims.

(3) In the first years after the first war, the weakness of the Reich made it advisable to give our selling organization the national character of the country concerned.

(4) Commercial reasons also, "Tarnung" as protection against boycott. The customers preferred to buy from national firms.

(5) A branch office or a subsidiary forced to show the details of I.G.'s balance and profit and loss account.

(6) A branch office or subsidiary being under the foreign currency regulations of the country concerned.

(7) The U.S.A. Antidumping Act of 1921. Price invoiced to U.S.A. to be compared with (a) foreign market value or (b) price invoiced to countries other than U.S.A., or (c) the cost of production.

For I.G. important that prices invoiced to U.S.A. only be compared with the prices invoiced to countries other than U.S.A. Hereto the Act of 1921 says that only prices to free and independent customers can be compared. Therefore the foundation of free and independent importers in Canada and Australia."⁷

(C) CARTEL ACTIVITY AND RELATED ACTIVITY BY MAJOR COUNTRY

(1) Japan

On August 1, 1961, the Japanese Government officially established a cartel for synthetic dyes (which are benzenoid chemicals). The establishment of this cartel has been described in considerable detail by Toshio Kojima, Secretary of the Japanese Fair Trade Commission.⁸ The Japanese Fair Trade Commission is an agency of the Japanese Government which grants permission and aids in the formation of Japanese cartels. This Japanese synthetic dyestuff cartel has been operating for over six years with great success. The Japanese Government assigned the production of 38 principal dyes and coordinated the operations of individual Japanese chemical companies to eliminate uneconomical duplication of production.

The establishment of the Japanese cartel was made possible through a revision in the Japanese Anti-Monopoly Law in 1953. The synthetic dyestuff cartel has proven to be very effective for the growth of the Japanese economy.

The main Japanese chemical companies in this cartel are:

Hodogaya Chemical Industry Co., Ltd.
Mitsubishi Chemical Industry Co., Ltd.
Mitsui Chemical Industry Co., Ltd.
Nippon Kayaku.
Sumitomo Chemical Industry Co., Ltd.

The Japanese synthetic dyestuff cartel has excellent outlets into U.S. chemical markets. For example:

Mitsubishi International Corp.
Mitsui & Co. USA, Inc.

Other cartels also exist in the Japanese chemical industry. The Japanese cartels pattern themselves along the lines of the *Zaibatsu* which dominated the Japanese economy before the Second World War. Cartels are not only being recognized by the Japanese Government more and more. They are actually being encouraged. The Japanese Government grants permission to several types of cartels. Below are listed the types of cartels which are permitted in Japan:

(a) *Recession cartels*—cartels which are permitted if an over-supply forces prices to drop below production costs.

(b) *Rationalization cartels*—cartels which are permitted for purposes of advancing technology, standardizing products and concentrating (or allocating) production.

(c) *Export cartels*—cartels which are permitted by the Japanese Export-Import Transaction Law of 1952 to give Japanese companies advantages in international trade.

I wish to also call the attention of the Committee to the fact that in Japan banks are permitted to own up to 10% of the shares of a single enterprise and

⁷ *Ibid.*, pp. 1203-1204.

⁸ Toshio Kojima, *Senryo to Yakuhin* ("Dyestuffs and Chemicals"), Vol. 6, No. 12 (1961).

that the Japanese Fair Trade Commission is permitted to grant even larger percentages of ownership at its discretion.

(2) *West Germany*

The main companies in manufacturing benzenoid chemicals in West Germany are:

Badische Aniline & Soda-Fabrik (BASF).
Cassella Farbwerke.
Farbenfabriken Bayer.
Farbwerke Hoechst.

These companies have a cartel tradition that goes back to the giant German international chemical cartel I.G. Farben (Interessengemeinschaft für Farben-industrie Aktiengesellschaft) which operated before and during the Second World War and to the cartels which operated before and during the First World War. They were, in fact, the main components of I.G. Farben. These German companies have direct outlets to U.S. markets. Some of their U.S. outlets are:

American Hoechst—U.S. outlet for the German company Farbwerke Hoechst.

BASF Color & Chemicals—U.S. outlet for the German company BASF.

Mobay Chemical Company—U.S. outlet for the German company Farbenfabriken Bayer.

Verona-Pharma Chemical Corporation—U.S. outlet for the German companies Farbenfabriken Bayer and Cassella Farbwerke.

There is a great deal of continuity in the German cartel tradition. Thus, Dr. Fritz ter Meer is presently the Honorary Chairman of the Board of West Germany's largest chemical company Farbenfabriken Bayer. He was also on the central planning board of I.G. Farben in 1928.⁹ Dr. Karl Winnacker is presently the Chairman of the Board of Management of Farbwerke Hoechst, West Germany's second largest chemical company. Dr. Winnacker had a distinguished career with the I.G. Farben cartel.

(3) *Switzerland*

The following companies are the main producers of benzenoid chemicals in Switzerland:

Ciba
Geigy
Sandoz

These three Swiss companies have a cartel-type of arrangement which is called a "Basler Interessengemeinschaft". They have well-established outlets to U.S. markets through:

Ciba Corp.
Geigy Chemical Corp.
Sandoz Inc.

Representative Thomas B. Curtis has pointed out, concerning dye and dye intermediate producers in the United States, that "the biggest plant in the industry is that at Toms River, New Jersey, owned by a consortium of three Swiss firms, which employs 800-1,000 people, it is estimated. (The same three Swiss firms are also reported to be closely linked with several German chemical companies.)"¹⁰ The three Swiss firms referred to by Representative Curtis are Ciba, Geigy and Sandoz. The plant which he refers to is known as the "Toms River Chemical Company".

(4) *United Kingdom*

In the United Kingdom, we have Imperial Chemical Industries, Ltd. (ICI) which has a long history of working with numerous chemical cartels (ICI was established in 1926). It has an excellent outlet to U.S. chemical market through I.C.I. Organics, Inc., which operates plants, laboratories and warehouses in the United States. In addition, Imperial Chemical Industries, Ltd. is the second largest chemical company in the world and the largest dye producer in the world.

(5) *Soviet Union*

The Soviet Union possesses the second largest chemical industry in the world which it operates like one gigantic cartel. All the government ministries, banks,

⁹ Das Spezial-Archiv der Deutschen Wirtschaft, *Der Farben-Konzern 1928* (Berlin, Hugo Oppenheim & Sohn, 1928).

¹⁰ Thomas B. Curtis, *Loc. cit.*, page H8388.

manufacturing plants and other organizations are coordinated to help advance its chemical industry. I deal extensively with Soviet operations in my recently published book "Soviet Chemical Industry."¹¹ ASP offers some protection from the economic warfare which the Soviet Union sees fit to engage in to advance its military, political and economic goals.

(D) COMPARISON OF THE CONCENTRATION OF DYE PRODUCTION IN VARIOUS COUNTRIES

The latest figures available for the concentration of dye production for the main dye-producing countries are shown in Table I. This table clearly shows that there is much more concentration of production among the major foreign producers than there is among U.S. producers. In addition, the production of these foreign producers is much more "rationalized" or cartelized than in the United States. I would also like to point out that a report by the U.S. Tariff Commission states that: "Foreign dye producers supply (through imports or production in their U.S. plants) about one-third of the U.S. dye market (in terms of value) and imports consist predominantly of intracompany transfers between foreign dye producers and their U.S. subsidiaries."¹²

TABLE 1.—CONCENTRATION OF PRODUCTION IN PRINCIPAL DYE PRODUCING COUNTRIES OF THE WORLD

Country	Number of firms	Percent of total national production
West Germany ¹	4	95
Switzerland ²	3	92
France ³	1	90
Japan ⁴	5	79
Italy ⁵	1	70
United Kingdom ⁷	1	70
United States ⁸	2	30

¹ The West German companies Bayer, Hoechst, BASF, and Cassella. These were the main components of the German international chemical cartel I. G. Farben (Interessengemeinschaft für Farbenindustrie Aktiengesellschaft) which operated before and during the 2d World War.

² The Swiss companies Ciba, Geigy, and Sandoz. These companies have formed a cartel-type of arrangement known as the "Basler Interessengemeinschaft."

³ The French company Kuhlmann (Francolor subsidiary). This Kuhlmann subsidiary was formed by a merger of the 3 main pre-2d World War French dye firms. Kuhlmann itself has recently combined with the French companies Ugine and Société des Produits Azotés.

⁴ Sumitomo, Mitsui, Nippon Kayaku, Mitsubishi and Hodogaya. These companies are the main components of the official Japanese Government synthetic dyestuffs cartel.

⁵ The figure 79 percent is that given by the Japanese Fair Trade Commission.

⁶ The Italian company Montecatini (now Montecatini-Edison).

⁷ The British company Imperial Chemical Industries Limited (ICI).

⁸ The U.S. companies DuPont and American Cyanamid.

⁹ The figure 30 percent is that which was given by the Japanese Fair Trade Commission in its study of the degree of concentration in the United States. The U.S. Tariff Commission has pointed out that for 1964 5 producers of dyes in the U.S. accounted for 59 percent of sales. Foreign dye producers supply (through imports or production in their U.S. plants) about 1/3 of the U.S. dye market (in terms of value). Representative Thomas B. Curtis has pointed out that "the biggest plant in the industry is that at Toms River, New Jersey, owned by a consortium of 3 Swiss firms, which employs 800-1,000 people, it is estimated. (The same 3 Swiss firms are also reported to be closely linked with several German chemical companies)." These Swiss companies are Ciba, Geigy, and Sandoz.

Sources: Toshio Kojima, Senryo to Yakuhin ("Dyestuffs and Chemicals"), vol. 6, No. 12 (1961); Ernest M. May, memorandum before the Tariff Commission and Trade Information Committee (Jan. 29, 1964), p. 10 and Appendix 4; U.S. Tariff Commission, TC Publication 181 (July 1966), p. 19; and Thomas B. Curtis Congressional Record (July 10, 1967), p. H8392.

(E) CONDITIONS WHICH COULD PERMIT FOREIGN CARTELS TO GAIN CONTROL OVER MANY U.S. CHEMICAL MARKETS ESSENTIAL FOR NATIONAL DEFENSE

The conditions which existed in U.S. chemical markets during the 1930's made it possible for foreign cartels, particularly the German cartel I. G. Farben, to gain control over many critical areas of the U.S. chemical industry which were essential for the national defense. These conditions also exist today. They are:

(1) Low tariff duties in the United States. Tariff duties will be further lowered by the Kennedy Round tariff cuts.

(2) The U.S. patent laws—which permit foreign companies to obtain patents without requiring them to use the patented inventions in the United States.

¹¹ Yale L. Meltzer, "Soviet Chemical Industry" (Park Ridge, New Jersey, Noyes Development Corp., 1966).

¹² United States Tariff Commission, TC Publication 181 (Washington, July 1966).

The patent creates a legal monopoly for 17 years, under U.S. patent law, which, as a result, permits a foreign company to exclude U.S. companies from manufacturing, using or selling the patented invention (as stipulated in Title 35 of the U.S. Code) for the 17-year period. The use of a patented invention is required in many countries (this is often accomplished by increasing taxes each year for holding patents or by requiring compulsory licensing).

(3) Lack of detailed consultation and coordination of activities between the U.S. Government and the U.S. business community on foreign trade matters in particular (such as exists in many other countries).

(4) Lack of close coordination of U.S. fiscal and monetary policies with the activities of the U.S. business community (such as exists in many other countries).

(5) Numerous non-tariff barriers by other countries which restrict U.S. trade.

(6) Strong U.S. antitrust laws which are vigorously enforced by the Dept. of Justice which make it illegal for U.S. chemical companies to form cartels and monopolies (with the exception of Webb-Pomerene associations), while, in sharp contrast, many foreign governments not only permit the formation of cartels and monopolies, but often actively encourage and aid them in their formation and continuing operations.

(7) Lack of encouragement by the U.S. Government to the use of Webb-Pomerene associations by the U.S. business community. The Webb-Pomerene Act of 1918 is subtitled "An Act to Promote Export Trade" and provides limited exemptions from the prohibitions of the Sherman Antitrust Act, the Clayton Antitrust Act and the Federal Trade Commission Act. The limited exemptions from these U.S. antitrust laws is conditioned upon safeguard for domestic business competition and freedom to export by any domestic competitor. One of the main reasons why Congress passed the Webb-Pomerene Act was to make it possible for U.S. companies, particularly small companies, to compete with foreign cartels in the export market.¹³ The Department of Justice, however, has attempted to destroy even this last hope for U.S. companies to resist foreign cartels.¹⁴ As a result most U.S. companies have been afraid to form Webb-Pomerene associations. In sharp contrast, export associations of the European Common Market are specifically exempted from the antitrust provisions of the Treaty of Rome.

RECOMMENDATIONS

(a) Maintain the American selling price (ASP) system as a method of customs valuation for benzenoid chemicals and products.

(b) Propose that a panel of government officials, business leaders and labor leaders investigate in detail the effect which repeal of the ASP system would have on the U.S. trade balance, the overall U.S. balance-of-payments position, the U.S. gold drain and the present dollar crisis.

(c) Investigate the U.S. patent and trademark laws in the light of their effect upon tariff and trade policies.

(d) Carefully examine the marked growth in cartel activity, particularly in Western Europe and Japan.

(e) Request that a conference of the GATT-member nations, preferably under the auspices of GATT (the General Agreement on Tariffs and Trade) convene, as soon as possible, to discuss all non-tariff barriers to trade in detail. This should include border taxes, secret buying by foreign governments, export rebates, import quotas, tax-on-value-added (TVA) and other national taxation systems, cartels and the many other non-tariff barriers to trade.

(f) Make use of the OECD (Organization of Economic Cooperation and Development) Expert Committee on Cartels as a means of obtaining information on national and international cartels.

(g) Investigate, in detail, the effect of foreign cartels upon U.S. interests.

(h) Explore the possibility of having GATT, the United Nations or some other international body set up a special committee (similar to the *Ad Hoc* Committee on Restrictive Business Practices of the United Nations Economic and Social Council) which would have the power not only to investigate but to regulate the activities of cartels.

(i) Investigate specific modifications of foreign cartel laws which would protect U.S. interests against discrimination and other unfair business practices.

¹³ Webb-Pomerene Act, 40 Stat. 516 (1918), 15 U.S.C.

¹⁴ United States v. Minnesota Mining & Mfg. Co., 92 F. Supp. 947 (D. Mass. 1950); United States v. U.S. Alkali Export Ass'n., 86 F. Supp. (S.D. N.Y. 1949).

(j) Investigate methods by which the Executive branch of government can aid and encourage the formation of Webb-Pomerene associations, particularly by small companies, so that they may adequately compete with cartels in the export market.

In conclusion, I wish to point out that what we are faced with in dealing with this proposed legislation is not a choice between either protectionism or free-trade, as many argue. We are faced with a choice of whether we are going to establish a realistic program which will expand trade and encourage economic competition or whether we are going to permit the old order of international cartels and monopolies, which operated before the Second World War, to be reestablished.

Vested interest groups, particularly in Western Europe and Japan, are seeking to return to the old ways. They are seeking to return to the old order of cartels, control over technological progress and the establishment of private world monopolies (often with the aid of their governments). The elimination of the ASP system would help them to achieve these goals.

The United States cannot afford to eliminate its ASP system while industrialists in other countries maintain their non-tariff barriers to trade and systematically add to them. An example where new barriers have been raised to U.S. exporters is the tax-on-value-added (TVA) harmonization program of the European Common Market. West Germany on January 1, 1968 switched over to this TVA system from its previous turnover tax system which has raised border adjustments from about 6% to 10%. By January 1, 1970, all European Common Market countries have been directed to switch over to the TVA system. France has already been using a TVA system for quite a long time. Meanwhile, Belgium, Italy and the Netherlands are raising their export rebates and import charges as a means of changing over to the TVA system. Thus, more and more barriers are being raised to U.S. products.

The United States is the largest trading nation in the world and is in a position to prevent the reestablishment of the old order. It must insist on reciprocity. President Johnson was right when he said in his message to Congress on May 28, 1968 concerning this pending ASP legislation that "Trade is a two-way street. A successful trade policy must be built upon reciprocity." There was not, however, reciprocity in the Kennedy Round when U.S. tariff duties on chemicals were agreed to be lowered 50%, while the European Common Market and the United Kingdom only lowered theirs 20%. There will not be reciprocity if the U.S. eliminates its ASP non-tariff barrier while other countries erect higher and more sophisticated non-tariff barriers to trade.

If the ASP system is eliminated without reciprocity, the United States will have lost its trump card in dealing with the guardians of the old order in Western Europe and Japan. These guardians of the old order will be able to reestablish their industries along the lines of the *Zaibatsu* and the *Interessengemeinschaft* which existed before the Second World War. They will be able to gain control over trade and economic progress through secret government buying, national taxation systems, export rebates, border taxes, import quotas and numerous other non-tariff barriers to trade.

If the ASP system is eliminated, foreign cartels will be able to under-sell U.S. companies in many benzenoid chemicals, eliminate the competition of U.S. companies and, as a result, curtail U.S. advances in technology vital for the national defense. Once U.S. competition is eliminated the cartels would be free to set high prices and the U.S. consumer will be the loser.

Let us consider now the question: Why should an ASP system be applied to benzenoid chemicals (unlike the tariff system which is applied to most other products)? The answers are:

(a) There are wide variations in the prices of benzenoid chemicals among foreign countries producing them, so that use of the usual foreign price (or export value) system would make it difficult to base tariff duties.

(b) There is a very delicate economic balance for U.S. benzenoid producers in which they have to manufacture many co-products which may not be in demand. This results in only a relatively small number of products bringing in the bulk of the profits. A large increase in imports (which can be expected if the ASP system is eliminated along with the Kennedy Round tariff cuts already in effect) can break this delicate economic balance and make a complete line of products uneconomical.

(c) Many benzenoid chemicals are made by batch processes, which make their production labor-intensive. As a result, the lower labor costs in foreign countries puts U.S. producers at a disadvantage when competing in world markets.

(d) If the ASP system is eliminated, research in the benzenoid area will be reduced which will have an adverse effect upon the national defense and the health of the nation.

(e) There has been a dangerous growth in the formation of foreign cartels in benzenoid chemicals in the past few years. The anti-cartel laws which were passed soon after the Second World War in Western Europe and Japan, due to the liberalizing influence of the United States, have been eroded.¹⁵ The most obvious example of such erosion is the official Japanese Government cartel for synthetic dyestuffs which has already been operating for several years.

The questions which get at the crux of the whole ASP issue with regard to benzenoid chemicals are: (1) What makes the benzenoid chemicals so special? (2) Why is elimination of ASP system such an emotionally charged issue for European and Japanese benzenoid producers?

The answers are: (1) Benzenoid chemicals are special because they provide the broad technological base from which many of the most important chemical developments can be expected. (2) Elimination of the ASP system has become such an emotionally charged issue for the Europeans and Japanese because they see in it an opportunity for their rising cartels to control future chemical markets.

A case in point is the means by which the German international chemical cartel I. G. Farben developed. I. G. Farben was first based on a cartel for dyestuffs. It was later expanded to include other benzenoid chemicals (e.g. benzenoid organic pigments, benzenoid pharmaceuticals, benzenoid plastics, benzenoid synthetic rubbers and benzenoid synthetic detergents). From this economic and technological base, I. G. Farben was able to develop the synthetic rubbers, explosives, synthetic oil, synthetic gasoline and other products which it provided for the German war-machine during the Second World War. It evolved into a cartel empire which embraced 379 firms, in Germany alone, through direct or indirect participation.¹⁶

Former U.S. Attorney General Thurman Arnold explained why the United States was so ill-prepared at the beginning of the Second World War when he pointed out the following to a Special Senate Committee over which Harry S. Truman presided as Chairman:

"It is impossible to accomplish the purpose of a cartel, viz., to maintain high prices and to keep a tight control over the market and to eliminate independent competition without restricting production. Now, not only is production restricted but experimentation is restricted. These world cartels have made us dependent upon foreign nations for many of our most vital supplies by preventing production at home."¹⁷

Thurman Arnold underscored our past mistakes in dealing with international cartels. I sincerely hope that we have learned from the past and that we will not repeat our mistakes. If we have not learned from our past mistakes, the United States and the underdeveloped countries will be the main losers. International cartels will take over control of numerous technological areas and stifle trade, just as they did before the Second World War.

The future of the 116,000 workers of the U.S. benzenoid chemical industry, the future of the entire U.S. chemical industry and the future growth of the overall U.S. economy lies to a large extent in the hands of this Committee. The conditions of our time require that the ASP system be maintained for benzenoid chemicals and products.

Mr. Chairman and members of the Committee, thank you very much for your attention.

The CHAIRMAN. We thank you, Mr. Meltzer, for bringing your statement to the committee.

Mr. MELTZER. Thank you.

¹⁵ Corwin D. Edwards, *Cartelization in Western Europe* (Washington, U.S. Dept. of State, June 1964); Corwin D. Edwards, *Control of Cartels and Monopolies* (Dobbs Ferry, N.Y., Oceana Publications, Inc., 1967).

¹⁶ U.S. Senate Hearings, *Loc. cit.*, pp. 1156-1164.

¹⁷ U.S. Congress, Senate, Investigation of the National Defense Program, Part 9, S. Res. 71 (Washington, 1942), page 4308.

The CHAIRMAN. Mr. Cowherd. If you will identify yourself for our record we will be glad to recognize you for the 8 minutes that we agreed to give you.

STATEMENT OF EDWIN R. COWHERD, VICE PRESIDENT, DYESTUFF AND CHEMICAL DIVISION, GAF CORP.

Mr. COWHERD. I am Edwin R. Cowherd, vice president of the Dye-stuff and Chemical Division of GAF Corp., formerly General Aniline & Film Corp.

GAF is the second largest dyestuff and organic pigment producer in the United States. We have a line of more than 1,600 dyestuff and pigment products and in the past several years our net sales of dyestuffs and pigments have averaged over \$40 million a year.

We have dyestuff and pigment plants in Linden and Paterson, N.J., and in Rensselaer, N.Y., representing a capital investment of \$45 million. In the dyestuff area alone, GAF has approximately 1,700 employees, with an annual payroll of \$14 million. The average employee in these plants has worked for GAF for more than 15 years and his average age is 45.

Layoffs or terminations due to product cutbacks could be a serious matter for these employees. For this reason, the unions at these plants and their national affiliates have already expressed their concern to this committee and the Congress about the administration proposal.

Our dyestuff manufacturing operations are very important to the local economies of the communities in which they operate. In addition to payroll, GAF pays substantial State and local taxes and makes purchases in the surrounding areas of approximately \$6 million annually.

GAF also has chemical operations at Linden and Rensselaer and other chemical plants at Calvert City, Ky., Chattanooga, Tenn., and Huntsville, Ala. A new plant at Texas City, Tex. is currently being placed on stream. In all, we operate manufacturing and research facilities at more than 50 sites in 26 States. Although only three of these plants produce dyestuffs, the technology involved in the manufacture of many of GAF's chemicals and other products is not only an outgrowth of dyestuff-related research, but this research continues to greatly contribute to these operations.

GAF, its employees, and the communities in which it operates have a vital interest in any proposed legislation that might materially affect its dyestuff and organic pigments operations.

We have, therefore, made a comprehensive study to determine the effect of the Kennedy round and separate package on our dyestuff and pigment business. It is always difficult to make such predictions accurately. However, it is relatively easy to determine the relationship of a change in price and volume to the welfare of a business.

When we consider the dyestuff business in this light, the alarming thing is its extreme sensitivity to small changes in either the price that is obtained for the goods or the volume of production.

In our study we selected 204 of our products, which we believed are most representative of our dyestuff and pigment business. These included: 74 vat dyes, 71 pigments, 33 synthetic fiber dyes, and 26 azo dyes. Each of these products was individually assessed to determine, in